

Session 4: EIA Hypothetical Case Exercise

1. In January 2016, the Project Proponent applied for an economic land concession to build an integrated hotel with a road and ferry wharf on land adjacent to Togle Sap. The project is called the Togle Sap Eco-Resort.
2. The Hotel would be for 200 rooms and the road would link the hotel to the main town and the superhighway.
3. The Ferry Wharf would also provide the tourist and hotel guests with a chance to be on the Togle Sap and also to travel to Phnom Penh by very fast boat. Very fast boats are known to cause problems with fishing communities, scare fish and cause erosion problems. Sometimes very fast boats have been known to destroy fishing equipment of local fisherfolk.
4. The Economic Land Concession for the Togle Sap Eco-Resort was granted in February 2016.
5. The Project Proponent prepared an Environmental Impact Assessment (EIA) Report in March 2017 and submitted it to the Ministry of Environment in May 2017. The EIA Report was for the construction of the hotel but did not mention construction of the ferry wharf. No EIA has been prepared for the ferry wharf.
6. The MOE imposes a number of conditions on the EIA Approval and the Environmental Management Plan including:
 - a. The Project Proponent may only build in accordance with the approved plans – the hotel construction is in Area A.
 - b. The Project Proponent must notify the MOE and the Ministry of Culture and Fine Arts if any 'chance find' of cultural heritage is discovered.
 - c. The Project Proponent does not have approval to build the Ferry Wharf in area B, this is subject to a further EIA.
 - d. The Project Proponent must not allow the workers to cut down any trees or forests or take fish from the Togle Sap.
7. The Project Proponent commenced construction of the Togle Sap Eco-Resort in June 2017. The Project Proponent has been delivering materials to the site via the road.
8. The Project Proponent is planning to commence construction of the ferry jetty in September 2017.

Cultural Heritage Discovery

9. During the construction the workers uncovered a statue that may date to the 12th century. This is in the middle of the construction for the Hotel dining room in Area A. The workers keep working in the area. The Project Proponent does not stop the work or contact any one from the Ministry of Culture and Fine Arts of the MOE.



10. The Ministry of Culture and Fine Arts only becomes aware of the discovery when someone puts a photograph of the statue on Facebook. Already more excavation is going on in the area.

Building the Ferry Jetty

11. The Project Proponent announced that it will plan to commence construction of the ferry jetty within the next few months. It told the local communities that it has all relevant approvals and permissions.
12. Workers start to clear forests and vegetation, including mangrove forests in the area near the proposed ferry jetty Area B.

Clearing of the Mangrove Forests

13. The Project Proponent also cleared the forests and vegetation, including mangrove forests in the area in front of the hotel. When asked by local communities and NGOs about the clearing the workers reply that they have been told to clear the mangroves to ensure that the hotel guests will be able to have a view of the Tongle Sap.

Fishing in the Tongle Sap

14. The Workers on the project also start to fish in the Tongle Sap and do not stop when requested to do so by the local villagers. They have started to use dynamite and have damaged the nets and fishing traps of the local villagers.

Court Proceedings

15. The Ministry of Environment has brought proceedings claiming that the Project Proponent has not complied with the EIA Approval and the Environmental Management Plan (EMP). The Ministry of Environment claims that the Project Proponent is in breach of the Law on Environmental Protection and Natural Resource Management 1996 and the EIA Sub-Decree (no 72) 1999 in the following ways:

- a. The Project Proponent has cleared the mangroves which are not allowed by the EIA Approval or the EMP;
 - b. The Project Proponent intends to breach its EIA Approval to build the Ferry Jetty as it has announced that this will be done soon and the Project Proponent does not have any approvals to build the Ferry Jetty.
- 16. The local villages have engaged a local law firm, Environmental Lawyers Cambodia, to commence legal action for the destruction of the mangrove and the fishing by the workers.
- 17. The local village claims that the Project Proponent and its workers have not complied with the EIA Approvals and are causing harm to the fisheries and the environment.
- 18. The local village claims that the Project Proponent is in breach of the Law on Fisheries 2007:
 - a. Article 8 and Article 28 protect mangroves and inundated forests and prohibit the destroying on mangroves
 - b. They also claim that neither the Project Proponent nor the workers have any permission to catch fish in the inland waterway or use prohibited measures to kill fish.
- 19. The local villages are seeking to stop the cutting down of the mangroves and an order requiring restoration of the mangrove forests.
- 20. An international NGO, International Heritage Protection, which also has a long history of work in Cambodia, also engages Environmental Lawyers Cambodia to take action for breaches of the Law on the Protection of Cultural Heritage 1996 and for breaches of the Law on Environmental Protection and Natural Resource Management 1996 and the EIA Sub-Decree (no 72) 1999.
- 21. International Heritage Protection claims that the Project Proponent is in breach of its EIA and Environmental Management Plan and in breach of Article 37 of the Law on the Protection of Cultural Heritage 1996.
- 22. International Heritage Protection seeks the following relief from the Court:
 - a. Interim measures including an order that all work be stopped until the statue can be assessed for its heritage value;
 - b. An order that would allow International Heritage Protection to access the site to see if there are other items of heritage that may have been damaged or destroyed;
 - c. That the Directors of the Project Proponent give personal undertaking that the Project Proponent and the contractors and sub-contractors will comply with the Law on the Protection of Cultural Heritage 1996 and immediately notify the MoCFA if there are any more chance discoveries.

The Provisions of Relevant Laws

Law on Environmental Protection and Natural Resource Management 1996

CHAPTER III: ENVIRONMENTAL IMPACT ASSESSMENT

ARTICLE 6:

An environmental impacts assessment shall be carried out on every project and activity of either private or public and shall be examined and evaluated by the Ministry of Environment before it is submitted to the Royal Government for decision. This assessment shall also be applicable for those existing activities and those which are being under process and which their environmental impacts have yet not been assessed.

Procedure for the environmental impact assessment shall be determined by Sub-decree following a proposal of the Ministry of Environment.

Nature and size of the proposed projects as well as the existing activities and activities under process of both private and public which are subject to assessment of their environmental impacts, shall be determined by Sub-decree following a proposal of the Ministry of Environment.

ARTICLE 7:

Every Investment Project Application and proposed project which are submitted by the State, shall enclose with them a preliminary Environmental Impact Assessment or Environmental Impact Assessment as stated the article 6 of this law. The Ministry of Environment shall consider and make recommendations on the preliminary Environmental Impact Assessment or Environmental Impact Assessment to relevant competent bodies within a period as determined in the Law on Investment of the Kingdom of Cambodia.

ARTICLE 22:

If the commission of an offence causes harm to physical body or human life, private or public property, environment or natural resources of the State, shall be subject to a fine penalty of 10,000,000 (ten million) to 50,000,000 (fifty million) riels or shall be subject to punishment of 1 (one) year to 5 (five) years in prison or to both punishments.

Any person who commits offence shall additionally be liable for repairing damage or compensation.

ARTICLE 23:

In case of an offence which causes serious dangers to the society, the court may consider on the circumstance of the gravity of the offence to combine with any of the offenses above to pronounce a sentence.

EIA Sub-Decree 1999

ARTICLE 1:

The purpose of this Sub-decree are:

- An environmental impact assessment (EIA) shall be done on every project and activity, private or public, and shall be reviewed by the Ministry of Environment before being submitted to the Royal Government for decision. - The nature and size of the proposed projects and activities and existing and in-process activities, both private and public, shall be subject to

environmental impact assessment. - Foster public participation in the environmental impact assessment process in recognition that their concerns should be considered in the project decision-making process.

ARTICLE 20:

The project will be implemented only after receives the IEIA or and EIA reports approved by the Ministry of Environment.

CHAPTER 7 PENALTIES

ARTICLE 29:

A Project Sponsor, who knowingly fails to disclose or misrepresents information that is vital to the environmental process or does not implement environmental management plan as described in approved EIA report or otherwise violates a provision of this Sub-Decree, shall be subject to the penalties set forth in Article 20/21/22/23 and 25 of Charter 5 of the Law on Environmental Protection and Natural Resources Management.

ARTICLE 30:

The reporting of violated and violator is the responsibility of Ministry of Environment.

The Law on Fisheries

Article 28.

Shall be prohibited

1. Expanding agriculture lands or using lands which are protected by the provision of this law for other purposes other than development of fisheries in the inundated areas.
2. Issuance of land title in the protected inundated areas.
3. Cutting, reclaiming, digging out, clearing, burning or occupying flooded forests and mangroves.
4. Destroying, cutting down of inundated forest and mangrove forest or rooting up to collect trunks of inundated and mangrove forests.
5. Commercial collection, transportation, and stocking of woods, firewood or charcoals of inundated and mangrove forest species.
6. Construction of kilns, handicraft places, processing places and all type of plants using raw materials of woods of inundated and mangrove forest species.

Article 32.

All types of fishing exploitation in the inland and marine fishery domains, except subsistence fishing, shall have:

1. To get fishing license.
2. To pay tax and fishing fees to the state.
3. To follow the regulations stipulated in the fishing license.

The hiring of fishing lots for exploitation can be undertaken through investment, public bidding or hiring by agreements for those fishing lots, which have no any bidder interested in the bidding.

The legal procedures for investment, public bidding, hiring by agreement, and payment of fishing fees shall be determined by sub-decree.

Legal Procedures for Fishery Offence Solving

Article 72.

A fishery offence is a peculiar criminal offence as stipulated in this law.

The officers of the Fisheries Administration have the competence as a judiciary police officer in investigating the fishery offence and file a complaint to the competent tribunal.

Investigating, controlling, preventing and protecting against fishery offence are the competence of the Fisheries Administration.

The operation of the Fisheries Administration Officials habilitated as judicial police officers have to abide by the law on penal procedures.

Law on the Protection of Cultural Heritage 1996

Section 7: Chance Discoveries

Article 37:

When construction work or any other activity bring to light cultural property such as monuments, ruins, ancient objects, remains of inhabited sites, ancient burial sites, engravings or any property likely to be of interest in the study of prehistory, history, archaeology, ethnology, paleontology or other branches of science dealing with the past or of human sciences in general, the person finding the property and the owner of the site where it was discovered are obliged to stop the construction work and immediately make a declaration to the local police, who shall transmit it to the Governor of the province without delay. The Governor shall in turn inform the competent authority and shall take the measures necessary to ensure the protection of the objects and the site.

Article 38:

The competent authority shall, within thirty days of the declaration mentioned in Article 37, announce the temporary suspension of the work and the safeguarding measures to be taken. If no such measures are announced within that time limit, the effects of temporary suspension shall no longer apply. The competent authority shall decide on the permanent measures to be taken concerning chance discoveries.

Article 39:

Movable cultural property found by chance is public property. The competent authority shall provide within three weeks a reward to the finder of the discovery, the amount of which is to be fixed by agreement or by expert opinion.

Section 11: Legal Protection and Penal Clauses

Article 62:

Decisions made by the competent authority in accordance with this law may be contested by recourse to the relevant legal authority.

Article 63:

- a. A sentence of imprisonment of a minimum of five years and a fine equal to the value of the cultural object in question, to be determined by expert opinion, shall be imposed on anyone who, through negligence:
 - Alienates, moves, destroys, modifies, alters, repairs or restores a registered cultural object inscribed in the inventory without respecting

the obligation to inform the authorities in accordance with Article 9, paragraph 1.

- Fails to declare cultural property discovered during construction or other work and fails to stop that work (Article 37).

b. The penalty shall be imprisonment for a minimum of two and a maximum of eight years and a fine equal to two times the value of the object in question, to be determined by expert opinion, if the offender was acting intentionally.

In certain cases concerned in (a) and (b) above, the offender shall be subject to only one of these types of penalties, either imprisonment or fine.

Article 64:

The civil and administrative sanctions provided for in Articles 21, 22, 35, 49, 56, 59, as well as penal sanctions provided for in Article 63, may be applied.

Article 65:

Offenses shall be evidenced by reports made by investigators of the Prosecutors Office and by any qualified authorities,