

(6) Cambodia: Comparison with International EIA Procedures

This section compares the Cambodia's EIA system (as of February 2015) with arguably one of the globally best practices for private investment, i.e., the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation (IFC) of the World Bank Group. Major findings in this comparison are shown below:

Mitigation and Monitoring

Among the IFC's Performance Standards, Performance Standard 1 recommends the mitigation hierarchy in which the risks and impacts of a project are addressed through avoidance, minimization, and compensation/offset in this order of priority (IFC 2012: PS1, para 14). Cambodia's EIA system, however, fails to define such an order of priority. In preparing an EIA report in line with the globally standard EIA procedure, it is necessary to define the order of priority among the avoidance, minimization, and compensation/offset of environmental impacts.

Performance Standard 1 also states that if the project will have a significant impact on communities, monitoring information needs to be verified by external experts (IFC 2012: PS1, para 22). Such verification is not required in the Cambodia's EIA system (as of February 2015). Moreover, Performance Standard 1 requires that the project proponent periodically report to the affected communities on progress in the implementation of the project action plan with respect to the risks and impacts on these communities (IFC 2012: PS1, para 36). By contrast, Cambodia's EIA system (as of February 2015) does not require the project proponent to provide such reporting to the affected communities.

Consideration of Impacts on Climate Change, Cumulative Impacts, and Impacts of Associated Facilities

IFC's Performance Standards 1 and 3 require that consideration be paid to reduce the emission of greenhouse gases and that cumulative impacts and the impacts of associated facilities be appropriately considered (IFC 2012: PS1, para 7, 8). They also require that, for any project that produces more than 25,000 tons of CO₂-equivalent annually, direct and indirect emissions of such greenhouse gases be quantified (IFC 2012: PS3, para 7,8). By contrast, Cambodia's EIA system (as of February 2015) does not incorporate any of these requirements. Nevertheless, the new EIA bill that is being drafted requires that cumulative impacts and the impacts of associated facilities be considered in an EIA report. It also requires that the impacts of climate change be assessed as necessary.

Information Disclosure and Community Participation

IFC's Performance Standard 1 requires that consultation with affected communities 1) begin at earlier stages of the project, 2) be based on the prior disclosure of information which is in an appropriate local language(s) and format and is understandable to affected communities, 3) be free of external pressure, and 4) be meaningful and interactive (IFC 2012: PS1, para 30). It also requires that the proponent of a project with potentially significant adverse impacts on communities undertake a consultation and participation process that is based on appropriate, interactive information (IFC 2012: PS1, para 31). By contrast, the Cambodian government's Declaration on General Guidelines for Developing Initial and Full Environmental Impact Assessment Reports (No. 376: BRK.BST of 2009) only calls for, as the items to be included in an IEIA/EIA report's section on public participation, the provision of information on the project, feedback from competent authorities, comments from NGOs, consultation with affected communities, and the like. The Declaration does not specify when and what information or consultation should be provided or held.

Labor and Working Conditions

IFC's Performance Standard 2 prohibits employing workers under the age of 18 under any condition (IFC 2012: PS2, para 21). Chapter VI, Section 8 of Cambodia's labor law, however, allows people aged 18 or older to work as workers. Such a difference in age limit deserves attention if global standards are complied with.

Performance Standard 2 requires that safe and healthy working conditions be secured for contracted workers and supply chain workers (IFC 2012: PS2, para 6 & 7). It also requires that a grievance mechanism be established that allows workers to raise concerns about their working conditions to the project proponent (IFC 2012: PS2, para 20). In Cambodia, Chapters VI, VII and VIII of the labor law as well as relevant sub-decrees and guidelines provide for the securing of both good working conditions and health of all workers, including contracted workers and supply chain workers. The procedures for workers to file a grievance are provided for in Article 37 of the Cambodian Constitution as well as Chapters XI and XII of the labor law. Except for the age limits of workers, Cambodia's labor law is largely in consistent with global standards.

Community Health, Safety, and Security

IFC's Performance Standard 4 requires that, in designing a project, safety be secured for third parties or affected communities and that external experts be retained in a project with significant risks (IFC 2012: PS4, para 6). In Cambodia, project design must be conducted in accordance with the Sub-decree on Construction Permit (No. 86 ANK/BK of 1997). Article 19 of this sub-decree provides that

safety procedures shall be respected in preparing construction sites. Article 20 provides for the right of municipal and provincial government officials to assess construction sites at any time.

Performance Standard 4 requires that the impacts of the project on the health of communities and third parties be considered (IFC 2012: PS4, para 7, 9: &10). By contrast, no reference is made to such health impacts under the current Cambodian system. Yet the new EIA bill that is being drafted requires the project proponent to conduct a health impact assessment as necessary. IFC's Performance Standard 4 also requires that risk assessment be made with regard to security arrangements for the project (IFC 2012: PS4, para 12). In Cambodia, however, risk assessment is not required for such arrangements.

Land Acquisition and Involuntary Resettlement

IFC's Performance Standard 5 states that when involuntary resettlement cannot be avoided, the project proponent must offer affected communities and persons compensation for loss of assets at full replacement cost and other assistance to help them improve or restore their livelihoods (IFC 2012: PS5, para 9). In Cambodia, people may have no choice but to be displaced in road-widening or other public works projects under the Appropriation Law of 2014. Displaced people are given two options: to be compensated based on the market price of the lost assets or to acquire the land prepared by the government. In a private project, the associated compensation is provided based on consultation between the project proponent and affected communities and persons.

Performance Standard 5 obliges the project proponent to compensate residents who do not have the legal right to the land or assets they occupy or use (IFC 2012: PS5, para 17). In Cambodia, residents who do not have the legal right to the land or assets they occupy or use are eligible for compensation under the Sub-decree on Social Land Concession (dated May 31, 2010) and the Sub-decree on Social Land Concession, and Circular 03 on Resolution on Temporary Settlement which have been illegally occupied on State land (dated May 31, 2010).

In Cambodia, land acquisition and compensation procedures are undertaken by the Ministry of Economy and Finance (MEF). In 2011, MEF and the Ministry of Public Works and Transport of Cambodia worked with the Japan International Cooperation Agency (JICA) of Japan to establish the Basic Resettlement Procedure. This document sets out the details on involuntary resettlement, ranging from displacement planning and competent authorities, to the estimation of compensation, negotiation with residents, and compensation payment to them, and to consultation and grievance mechanisms for them (MEF 2011).

Biodiversity Conservation and Management of Living Natural Resources

IFC's Performance Standard 6 provides that when the project is located in a habitat of significant importance to endangered or precious species, the project proponent will take a number of measures,

including retaining external experts, avoiding a net reduction in the global and/or national/regional population of any such species, and developing a long-term monitoring program (IFC 2012: PS6, para 8, 16&17). Performance Standard 6 also provides that the project proponent will identify priority ecosystem services for protection and avoid introductions of alien species (IFC 2012: PS6, para 22&24). The Cambodia's Law on Natural Protected Areas of 2008, which provides for critical habitats (core zones), meets almost all of these global standards.

That said, Performance Standard 6 states that if primary commodities such as food and fiber are produced in a region where there is a risk of significant conversion of critical habitats, the suppliers of such commodities should be evaluated as part of the project evaluation (IFC 2012: PS6, para 26&27). Yet Cambodia does not have provisions for this.

The Rights of Indigenous Peoples

IFC's Performance Standard 7 defines the term "indigenous peoples" as having such characteristics as self-identification, collective attachment to geographically distinct habitats, and customary, cultural, economic, or social institutions (IFC 2012: PS7, para 5). Cambodia's Law on Natural Protected Areas of 2008 defines indigenous ethnic minorities as "hill-tribe peoples, many of whom live on shifting cultivation as well as additional means of living such as hunting, fishing, and the gathering of forest resources."

Performance Standard 7 also requires that the proponent of any project that will have a significant impact on indigenous peoples obtain their free, prior and informed consent (FPIC) (IFC 2012: PS7, para 12, 16 & 17). The Cambodian government has signed the UN Declaration on the Rights of Indigenous Peoples; however, the ideals of the declaration have not been incorporated into the country's legislation. In reality, however, the project proponent of any project with serious impacts on important cultural heritage is required to identify the cultural and spiritual traditions in an EIA report and compensate for them. The project proponent is required to provide compensation based on negotiation and agreement with affected indigenous people(s), although there are no provisions for specific amounts of compensation.

Cambodia's regulations on indigenous peoples include the Provisions in the land to protect the rights to land ownership of indigenous people and the Sub-decree on Procedure of Registration of Land of Indigenous Communities, as well as the above-mentioned Law on Natural Protected Areas of 2008, which provides for the protection of the rights of indigenous peoples to use natural resources.

Cultural Heritage

IFC's Performance Standard 8 requires that the proponent of any project that may have an impact on cultural heritage retain external experts to assist in the identification and protection of cultural

heritage (IFC 2012: PS8, para 7). Cambodia has the National Policy on Culture (dated July 18, 2014) to protect national cultural heritage. Accordingly, the proponent of any project that will have significant impacts on cultural heritage is required to take measures to minimize such impacts largely in accordance with the global standards. Yet this policy does not require the project proponent to retain experts to assist in the identification and protection of important cultural heritage.