

CHAPTER II

2. LEGISLATION AND REGULATIONS FRAMEWORK

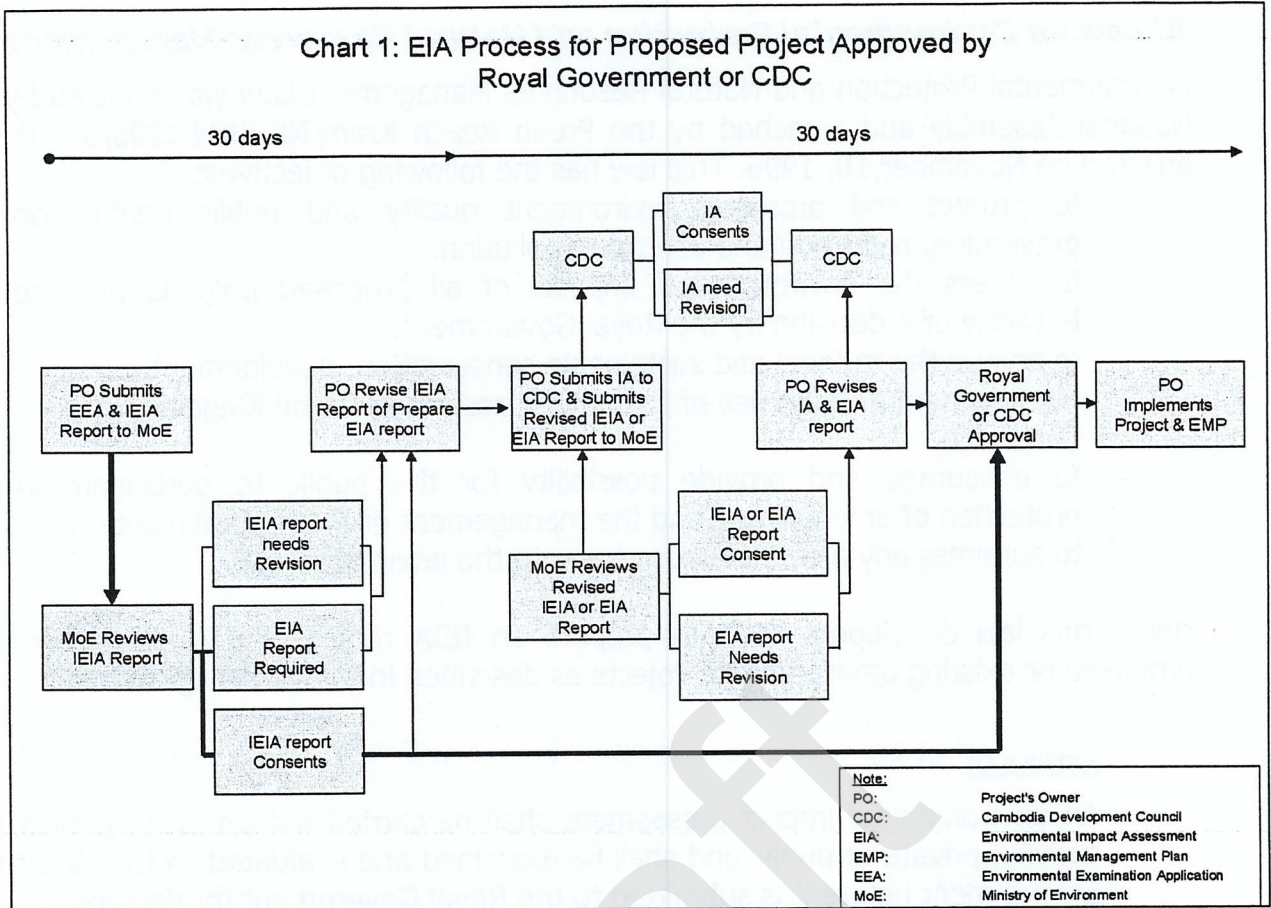
2.1 Key Agencies

The proposed hydropower plant is directly under the control of the Cambodian Electrical Authority and Ministry of Industry Mines and Energy (MIME). Due to the project location in Stung Treng province and concerning the natural resources protection and management within the province, the key agencies include the provincial authorities of Stung Treng, Ministry of Agriculture Forestry and Fishery (MAFF), and Ministry of Environment (MoE). In relation to the relocation and resettlement of the affected people/communities the key institutions are Inter-ministerial Resettlement Committee (IRC) led by Ministry of Economics and Finance (MEF) and Ministry of Land Management Urban Planning and Construction (MLMUPC). In relation to water resources, the Ministry of Water Resources and Meteorology (MoWRAM) is the main stakeholder under the recently passed Law of Water Resources Management. As the project is also a large investment project the Ministry of Economic and Finance (MEF) as well as CDC are major institutions for approving the project investment.

2.2 EIA Process in Cambodia

The Law on Environmental Protection and Natural Resource Management and sub-decree on environmental impact assessment process use as an environmental planning tool for development projects in Cambodia by requiring that "an environmental impact assessment shall be done on every project and activity, private and public, and shall be reviewed and evaluated by the Ministry of Environment before being submitted to the Royal Government for decision", (Article 6 of the Law). The Sub-decree on Environmental Impact Assessment Process contains a requirement that an IEIA/EIA report shall be submitted along with the feasibility study documentations of the project to the Ministry of Environment for reviewing and approval. The process being followed with the present project involves the Project Owner "EVN/PECC1" need to submit EIA report with Feasibility Study Report of Lower Sesan 2 HPP Project to MoE.

The following chart is showed the EIA process for proposed project approval by Cambodia Development Council (CDC).



2.3 Legislation and Guidelines

A number of important laws, sub-decrees, and guidelines apply to the Sesan 2 Hydropower Plant Project are as follows:

A) Constitution of Kingdom of Cambodia, 1993

In economic part in chapter 5 of the constitution stimulated that:

- The properties of the state include land, underground resources, mountain, sea, sea bottom, under sea bottom, coastal/beach, atmosphere, island, river, preak, stung/stream, lake, forest, natural resources, economical-culture centre, nation defence base, other structure define as belong to the state, Article 58.

- Government shall protect environment and balancing natural resources and manage with properly plan on the land, water, air, atmosphere, geology, ecological system, mines, energy, petroleum and gas, rocks and sand, gems, forest and forest by-product, wildlife, fish, and aquatic resources, Article 59.

- Government promote economic development in all sectors and remote areas especially agricultural, handicraft, industrial with attention to water policies, electricity, roads, transportation facilities, modern technology, and credit system, Article 61.

B) Law on Environmental Protection and Natural Resources Management

Environmental Protection and Natural Resources Management Law was enacted by the National Assembly and launched by the Preah Reach Kram/NS-RKM-1296/36. It was enacted on November 18, 1996. This law has the following objectives:

- to protect and promote environment quality and public health through prevention, reduction and control of pollution.
- to assess the environmental impacts of all proposed projects prior to the issuance of a decision by the Royal Government.
- to ensure the rational and sustainable conservation, development, management and the use of the natural resources of the Kingdom of Cambodia.
- to encourage and provide possibility for the public to participate in the protection of environment and the management of the natural resources.
- to suppress any acts that cause harm to the environment.

Under this law developers need to prepare an IEIA report or EIA report for their proposed or existing development projects as described in the following articles:

Article 6:

An environmental impact assessment shall be carried out on every project and activity, private or public and shall be examined and evaluated by the Ministry of Environment before it is submitted to the Royal Government for decision.

Article 7:

Every Investment Project Application and proposed project which is submitted by the State, shall enclose with them a preliminary Environmental Impact Assessment or Environmental Impact Assessment as stated in Article 6 of this law. The Ministry of Environment shall consider and make recommendations on the Initial 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 8:

The natural resources of the Kingdom of Cambodia, which include land, water, airspace, air, geology, ecological systems, mines, energy, petroleum and gas, rocks and sand, precious stones, forests and forest products, wildlife, fish, and aquatic resources, shall be conserved, developed, and managed and used in a rational and sustainable manner.

C) Preah Reach Kret (Royal Decree) on Natural Protected Areas

The Royal Decree on Natural Protected Areas was enacted by the National Assembly and launched into use by Preah Reach Kret/01 dated Nov 1993.

The Royal Decree stipulates as follows:

Article 1: Responsibility for the protection of natural areas

The Secretariat of Environment shall be responsible for managing and supervising the development and protection of natural areas, including the protection of environment, land, forestry, wetland and coastal areas. The Secretariat of Environment shall have the right to create and chair appropriate committees in order to co-ordinate inter-ministerial activities both at the political and technical level. The management and supervision of the protected natural areas of the nation shall be the responsibilities of the Secretariat of Environment in co-operation with other competent relevant institutions.

The following areas including all land reserves are:

- 1. National Parks:** Areas reserved for nature and scenic views to be protected for scientific, educational and entertainment purposes.
- 2. Wildlife Preserves:** Natural areas preserved at their natural conditions in order to protect wildlife, vegetation and ecology balance.
- 3. Protected scenic view areas:** Areas to be maintained as scenic views for pleasure and tourism.
- 4. Multi purposes areas:** Areas necessary for the stability of the water, forestry, wildlife, and fisheries resource, for pleasure, and for the conservation of nature with a view of assuring economic development.

Article 3: amendment

The protected natural areas may be modified or expanded in the future on the basis of scientific information involved in the conservation of ecology and the maintenance of the existing landscape in the Kingdom of Cambodia.

D) Sub-Decree on Environmental Impact Assessment Process

The sub-decree No 72 ANRK.BK on Environmental Impact Assessment dated 11 August 1999. The key relevant articles are as follows:

Article 1:

This sub-decree has the objectives to:

- Define an EIA for all projects and activities of private or public sector and shall be examined and evaluated by the Ministry of Environment prior to submitting to the Royal Government for decision.
- Define a nature and size of the proposed activities together with the existing and on-going activities of both private and public sector to be assessed the environmental impact.
- Foster public participation in the EIA process in order to take their ideas and comment into consideration for project approbation.

Article 2:

This sub-decree has an expanded implementation on the proposed project and existing activities, under operation of the Private Company, joint-venture or State own Company, Ministry-State Institution, which are decree, except some

The Ministry of Environment shall be responsible for preparing and reporting the development and protection of natural areas, including the protection of environment, land, forestry, wetland and coastal areas. The Ministry of Environment shall have the right to create and designate natural areas in order to establish the management activities and the protection and technical level. The management and supervision of the natural areas shall be the responsibility of the Ministry of Environment. The Ministry shall cooperate with other competent relevant national and international organizations.

- The following areas including all land reserves are:
1. Natural Areas: Areas reserved for nature and scenic views to be protected for scientific, educational, and entertainment purposes.
 2. Wildlife Reserves: Areas reserved for natural resources and wildlife protection and scientific research.
 3. Protected Areas: Areas to be established as national parks, reserves, and forests.

4. Other purposes areas: Areas necessary for the safety of the work, the safety of the public, the safety of the environment, and the safety of the public. The Ministry shall have the right to create and designate natural areas in order to establish the management activities and the protection and technical level. The Ministry shall cooperate with other competent relevant national and international organizations.

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of particular and urgent the needed projects that are decided by Royal Government.

Article 3:

The Ministry of Environment has the duties to:

- a/ Examine and evaluate the EIA report in collaboration with other lined Ministries-Institutions.
- b/ Monitor surveillance and take measure in order for the project's owner to abide by the Environmental Management Plan during the project construction, operation, and closure, as mentioned in the approved EIA report.

ARTICLE 8:

The Project's Owner has to apply for an examination of the Full EIA Report and the project feasibility study to the MoE for the projects which may cause adverse environmental impact on natural resources, ecosystem, human health and public welfare.

ARTICLE 17:

MoE has to review the report as mentioned in article 16 of this sub-decree, and provide recommendation to the project's owner and the approval institutions within 30 working days after having been received the project feasibility study and full EIA report from the project's owner.

ARTICLE 20:

Before implementing the proposed project, the Project's Owner should receive consent from the MoE in advance on the report of IEIA or full EIA.

E) Sub-Decree on Water Pollution Control

The sub-decree No 27 ANRK.BK on Water Pollution Control is dated 6 April 1999. The purpose of this sub-decree is to regulate water pollution control in order to prevent and reduce the water pollution of public water areas so that the protection of human health and the conservation of bio-diversity is ensured.

This sub-decree applies to all sources of pollution and all activities that cause pollution of public water areas.

This sub-decree also set up the pollution types, effluent standards, and water quality standards in different areas. Annexes to the sub-decree provide:

- Types of hazardous substances
- Effluent standards for pollution sources discharging wastewater to public water areas or sewer
- Types of pollution sources required to have permission from the Ministry of Environment before discharging or transporting their wastewater
- Water quality standards in public areas for bio-diversity conservation
- Water quality standards in public areas for public health protection.

F) Sub-Decree on Solid Waste Management

The sub-decree No 36 ANRK.BK on Solid Waste Management is dated 27 April 1999. The purpose of this sub-decree is to regulate solid waste management in a proper technical manner and safe way in order to ensure the protection of human health and the conservation of bio-diversity.

This sub-decree applies to all activities related to disposal, storage, collection, transport, recycling, dumping of garbage and hazardous waste.

G) Land Law

The Land Law was passed by the National Assembly on July 20, 2001. The key relevant articles are as follows:

Article 3:

All persons shall respect the property of the State and legally acquired private property. The management of the cadastral administration of immovable property belonging to the State and the competence to issue titles related to immovable property throughout the Kingdom of Cambodia are under the authority of the Ministry of Land Management, Urban Planning and Construction. The regulations and procedures for the administration of State immovable properties will be determined by sub-decree.

Article 5:

No person may be deprived of his ownership, unless it is in the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and after the payment of fair and just compensation in advance.

Article 7:

Any regime of ownership of immovable property prior to 1979 shall not be recognized.

Article 23:

An indigenous community is a group of people that resides in territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.

Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.

Article 30:

Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can

lawfully be privately possessed, has the right to request a definitive title of ownership.

In case the granting of a definitive title to ownership is subject to an opposition, the claimant has to prove that he himself fulfills the conditions of peaceful, uncontested possession for no less than five years over the contested immovable property or to prove that he purchased the immovable property from the original possessor or his legal beneficiary or from the person to whom the ownership was transferred, or from their successors.

H) Forestry Law

The Forestry Law was approved by the National Assembly and put in use by Royal Decree No.NS/RKM/0802/016 on 31 August 2002. The key relevant articles are as follows:

Article 1:

This law defines the framework for management, harvesting, use, development and reservation of the forests in the Kingdom of Cambodia. The purpose of this law is to ensure the sustainable management of forests for their social, economic and environmental benefits, including conservation of biological diversity and cultural heritage.

Article 2:

This law applies to all forests, whether natural or planted. The State ensures traditional user rights of timber products and NTFPs for local communities as provided in this Law and other existing laws.

Article 3:

Forest management is under the general Jurisdiction of the Ministry of Agriculture, Forestry, and Fisheries (MAFF).

The flooded forest shall be managed by separate law.

The State delegates the management authority of Protected areas to the Ministry of Environment as set forth in provisions of the law on Environmental Protection and Natural Resources Management promulgated on December 24, 1996, Royal Decree on the establishment and determining of protected areas dated on November 1st, 1993 and other existing laws and regulations.

MAFF shall have the authority to strengthen law implementation for all forestry crimes occurred in the protected areas in cooperation with MoE pursuant to provisions set forth in Chapter 14 of this law. However, such activities shall not affect the jurisdiction of MoE provided by the Environmental Protection and Natural Resources Management Law.

Article 4:

This law shall be implemented to ensure full public participation in all government decisions that have the potential impact on concerned communities,

livelihoods of local communities and forest resources of the Kingdom of Cambodia.

Any major activities relating to forest ecosystem causing adverse social and environmental impact shall be subject to social and environmental impact assessment (SEIA) according to the Code of Forest Harvesting Practice and shall be consistent with the Environmental Protection and Natural Resources Management Law. A copy of the SEIA shall be made available for public comment.

The Royal Government of Cambodia ("RGC") shall consider final recommendation of the SEIA relating to all final decisions on major forest ecosystem related activities and may notify the public any final decision by the RGC referred to in this Article.

Article 94:

Person who has illegal activities on the forest caused damaging to forest resources shall provide rehabilitation cost or repair the damaging to be as previous condition.

1) Law of Water Resources Management

The Law of Water Resources Management was passed by the National Assembly of Cambodia in May 2007. Some key relevant articles concerning to the project are:

Article 1:

This law has an objective to manage water resource in effective and sustainable development of social economic and welfare of the nation. The law specify as following:

- Right and obligation of the water user
- Principal of water resources management
- Involvement/participation of community water user in sustainable water development.

Article 4:

Water and water resources to be manage and develop according to managerial approach of multi-water-resources.

Managerial approach of multi-water-resources will consider on:

- All aspect of water resources
- Interaction between water resources and other aspect of natural environment
- Water demand for human being environment and other sectors in order to be sustainability and effectiveness.

Implementation of managerial approach of multi-water-resources shall be done in same time and under cooperation condition between all related institutions.

Article 5:

Ministry of Water Resources and Meteorology (MoWRAM) has responsibility role to manage, guide, and monitor in functioning of the law. MoWRAM shall do consultation with line ministries, in special case the Royal Government of Cambodia can establish committee to solve and facilitate between concerned ministries.

Article 11:

Everyone has right to use the water resource in one quantity no exceed basic requirement for drinking, washing, bathing, and other consumption for feeding animal, fish, and gardening and vegetation with avoidance of water right conflict.

Article 12:

Conversion, extraction, and using the water resources in agricultural and industrial activities or exceed the level described in article 11 and the physical structure related to water need to apply for permission or license.

J) National Water Resources Policy

This policy was approval by Council Ministers at the plenary meeting on 16 January 2004. The aim of the National Water Resources Policy is:

- To protect, manage and use water resources with effective, equitable and sustainable manner;
- To foresee and take measures to assist related institutions to settle the facing problems which might be occurred in water sector;
- To develop and implement the national strategy and formulate the national policy and sector policies on water resources management;
- To direct the water resources development, management and utilization in the Kingdom of Cambodia to all activities of institutions, private sector and public sector; and
- To improve and uplift the people living to achieve the national policy on poverty reduction and sustainable national economy development.

In section 4.2.2 "Water for Energy" Cambodia has a potential for development of about 10,000MW of hydro-electric power, of which 50% is in the main rivers, 40% in the tributaries and 10% in the coastal areas, but only 13 MW has been developed: Ochum Hydropower Plant (1MW) and Kirirom I Hydropower Plant (12MW). Kamchay Hydroelectric Plant (192MW) is under construction. Hydropower development has an advantage of contributing to poverty reduction and promoting the Cambodian economy; it not only provides electrical energy to urban and rural areas but also can enable agriculture, flood protection, and agro-industry in rural areas, which is a very important market for farmers.

To address the above issues, and gain full advantage from the water resources, the Royal Government of Cambodia has the following policies:

1. To promote and encourage the research study for small, medium and large scale hydropower development on the potential of water use for hydropower including costs and benefits.
2. To promote investment and exploitation at all scales of hydropower development, including those that meet the needs of poor, remote and/or small communities for affordable electricity.

K) 1995 Mekong Agreement and Procedural Rules, MRC

In chapter III: Objectives and Principles of Cooperation

Article 1: To cooperate in all fields of sustainable development, utilization, management and conservation of water and related resources of the Mekong River Basin including, but not limited to irrigation, hydropower, navigation, flood control, fisheries, timber floating, recreation and tourism, in a manner to optimize the multiple-use and mutual benefits of all riparians and to minimize the harmful effects that might result from natural occurrences and man-made activities.

Article 2: To promote, support, cooperate and coordinate in the development prevent of the full potential of sustainable benefits to all riparian States and the prevention of wasteful use of Mekong River Basin waters, with emphasis and preference on joint and/or basin-wide development projects and basin programs through the formulation of a basin development plan, that would be used to identify, , categorize and prioritize the projects and programs to seek assistance for and to implement at the basin level.

Article 3: To protect the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin.