



វេទិកាសម្រាប់ការចូលរួមរបស់សង្គមស៊ីវិល កម្ពុជា
The NGO Forum on Cambodia

Report on Community Participation in Decision-Making Process(es) For the Large-Scale Development and Investment Projects



Phnom Penh, Cambodia

**Report on Community Participation in Decision-Making Process(es)
For the Large-Scale Development and Investment Projects**

Printed Date: May 2022

Published by: The NGO Forum on Cambodia,

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DISCLAIMER: The views expressed in this research report are those of the consultant(s), and may not reflect the views and opinions of the NGO Forum on Cambodia, other Non-Governmental Organisations, civil society entities and organisations, communities and other stakeholders consulted during this action research.

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Acronyms and Abbreviations

| | |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3SPN | 3S Rivers Protection Network |
| ADB | Asian Development Bank |
| ADHOC | Cambodian Human Rights and Development Association |
| AFSC | American Friends Service Committee, Cambodia |
| AIIB | Asian Infrastructure Investment Bank |
| CBOs | Community Based Organizations |
| CDC | Council for the Development of Cambodia |
| CEPA | Culture and Environment Preservation Association |
| CFi | Community Fisheries (a state recognised entity) |
| CIPO | Cambodia Indigenous Peoples Organization |
| CLEC | Community Legal Education Center |
| CPA | Community Protected Area (a state recognised entity) |
| CSO | Civil Society Organization |
| DRA | Demand Responsive Approaches |
| EA | Environmental Assessment (see below) |
| EIA | Environmental Impact Assessment (theoretically a comprehensive process to identify, quantify and proposed mitigating measure for (larger scale development projects) |
| EMP | Environmental Management Plan |
| ENRC | (DRAFT) Environmental & Natural Resources Code (an output of a multi-donor supported process (2015-2018?) to draft a comprehensive ENR code) which is still being considered, by MoE and the Royal Government. |
| ESF | Environmental and Social Framework (for all World Bank financed projects) |
| ESS | Environmental and Social Standards ('new' (2018) World Bank performance-based protection and mitigation measures) |
| FAO | UN Food and Agricultural Organisation |
| FGDs | Focus Group Discussions |
| FPIC | Free, Prior, Informed, Consent |

| | |
|---------|-------------------------------------------------------------------------------------------------------|
| ICT | information communication technologies |
| IAIA | International Association for Impact Assessment |
| IEIA | Initial Environmental Impact Assessment (a screen exercise for projects) |
| IFC | International Finance Corporation |
| IFI | International Finance Institution |
| IP | Indigenous People |
| JICA | Japan International Cooperation Agency |
| KII | Key Informant Interview |
| KfW | Kreditanstalt für Wiederaufbau (Bankengruppe) (Banking Group and Credit Institute for Reconstruction) |
| KOICA | Korea International Cooperation Agency |
| LSS2 | Lower Sesan II Hydropower Development Project |
| MLMUPC | Ministry of Land Management Urban Planning and Construction |
| MoE | Ministry of Environment |
| MRC | Mekong River Commission |
| MRD | Ministry of Rural Development |
| MVi | My Village |
| NCDD | National Committee for Sub-National Democratic Development |
| NGO | Non-Government Organization |
| NGOF | NGO Forum on Cambodia |
| NRG | Natural Resources Governance |
| NRM | Natural Resource Management |
| PAP | Project Affected Persons' or Peoples' |
| PP | Public Participation |
| SEIA | Strategic Environmental Impact Assessment |
| SNA | Sub-National Administration |
| SSI | Semi-Structure Interview |
| ToR | Terms of Reference |
| UN | United Nations |
| UN-DRIP | United Nations Declaration on Rights of Indigenous People |
| UN-REDD | United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation |
| WBG | World Bank Groups |

Acknowledgement

The NGO Forum on Cambodia (NGOF) has commissioned this study, carried out by Mr. Tep Kuntheara, Consultant. The NGOF and Consultant would like to acknowledge the contributions of all individuals in producing this study report. Firstly, we would like to thank NGOF management and team who provided the necessary guidance for this study.

We would especially like to extend our gratitude to the NGOF partners and in particular the focal points who worked very hard to help us coordinate the various online focus groups, key interviews and discussions and also facilitate the readiness of respondents in remote areas. Particularly, the reviewing committee such as Mr. Pheap Sophea, program manager, Mr. Vong Kosal, Network Coordinator, Mr. Mak Bunthoeurn, Network Coordinator, and Mr. Say Jeudi, Network Coordinator who reviewed and proof read the study.

Lastly, and most importantly, we extend our appreciation and gratitude to all of the respondents such as all five selected communities, representatives of sub-national administrations, and officials of provincial line departments in Stung Treng and Mondulhiri provinces. As well as representatives from E&A Consultant Co., Ltd (E&A), Assessment & Solution Co. Ltd, Renaissance Minerals (Cambodia) Ltd, and other NGO staff who shared their understanding and opinions concerning the state of community participation in large-scale project(s). We hope that the findings and recommendations presented herein faithfully represent their collective views. We also hope that the outcomes of this study report and recommendations meet the expectations of NGOF and its partners and provide them with the necessary guidance for the future implementation of principles and standards for community participation in Cambodia.

1. Background

The desire to have communities affected by ‘development projects’ more engaged in the ‘decision making’ processes that may affect them is worthwhile. But the realities and challenge to this not only in Cambodia, but nearly everywhere globally, are that this is not the case! Communities may “participate” in development processes, but they do not have effective roles in decision-making. Most countries either rely on elected representatives as the final arbiter of decision making either at national and local levels, or on designated institutional or sector authorities mandated to approve projects.

In Cambodia, the 1993 Constitution¹ and existing national legislation² enables participation (but not active decision-making roles) of people. Where decisions made are not satisfactory, people and communities have recourse to the civil courts, a route rarely if ever tested in Cambodia, mainly because of the likely financial costs involved.

Where indigenous communities are involved, the ambition of free, prior, informed, consent, (FPIC) of development project is worthy and aspirational. The premise of FPIC is to ensure indigenous peoples are engaged and allowed, “to give or withhold consent to a project that may affect them or their territories”³. This has been incorporated in the United Nations Declaration on the Rights of Indigenous Peoples⁴ (UN-DRIP) which was adopted United Nations General Assembly adopted the Declaration in 2007. Today (2021) “the Declaration is the most comprehensive international instrument on the rights of indigenous peoples. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples”⁵.

International Financing Institutions (IFIs), such as the World Bank Group (WBG), the Asian Development Bank (ADB), Asian Infrastructure Investment Bank (AIIB) and the International Finance Corporation (IFC) as well as bilateral financing institute (JICA KfW, KOICA....). All now have some degree of participatory processes and documentation, and some have measures for ‘endorsement of development projects’ by affecting communities, be it demand responsive approach (DRA) or consultative approach etc... (but not veto). A form of FPIC has been incorporated into the recently operationalised (2018) Environmental and Social Framework (ESF) and ten Environmental and Social Standards (ESS) standards, to be applied to all World Bank financed projects (and these often superseded government requirements. As they are contractual obligations for the financing.

¹ “Article 35: Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation. Any suggestions from the people shall be given full consideration by the grant of the State.”

https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Constitution_ENG.pdf

² Through the provision of Chapter 6. Commune Development Plans 2001 Commune Administration Law, 2008 and Chapter 1, the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans (“the Organic Law”)

³ <https://www.fao.org/indigenous-peoples/our-pillars/fpic/en/>

⁴ A United Nations Declarations is generally not legally binding; however, they represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles.

<https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>

⁵ <https://www.un.org/development/desa/indigenouspeoples/news/2021/09/adoption-of-the-united-nations-declaration-on-the-rights-of-indigenous-peoples-14-years-later/>

However, what influence communities can have on decisions related (to larger scale) development project is likely to be minimal or non-existent depending on the nature and scale of the project, and the size of community. As there have been cases where public opinions have influenced decisions being made on certain types of projects, or have influenced or affected the public's opinion of companies proposing development projects.

2. Problem Statement & Rationale for Study

The NGO Forum on Cambodia (NGOF) like many similar civil society network support organisations worldwide believes that public participation is extremely important activity and input(s) for advocating with governments with regard to the environmental and natural resources protection. It believes that public participation should be progressively integrated into the national legislative framework, and development processes; to ensure meaningful participation of the public. So that the voiced concerns and demands of project affected peoples' (PAP) and communities should be heard and considered in decision-making processes of a government/authority on any development project.

Globally it is reported that 156 (out of 193) countries have recognised "the right to a healthy environment in constitutions, legislation and regional treaties, while the United Nations has not yet formally recognised this right" for global application, but this is being considered. However, it is worth noting that this recognition is frequently aspirational in nature, with numerous examples globally of approved development projects significantly impacting the environment, even with applied mitigating measures.

This aligns with the growing global demand to develop and adopt a United Nations' instrument on Human Rights and Environment. the United Nations Human Rights Council originally established a mandate for the Independent Expert (Special Rapporteur) on human rights and the environment in 2012 (resolution 19/10) and this mandate has now been extended four times (with the latest in March 2021⁶). The most recent adopted mandated was to "to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment", includes explicit references to;

*"The exercise of human rights, including the freedom to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and the right to an effective remedy, is vital to the protection of a clean, healthy, safe and sustainable environment". It also "recognising the importance of gender equality, gender-responsive action to address climate change and environmental degradation, the empowerment, leadership, decision-making and meaningful participation of women and girls, and the role women play as managers, leaders and defenders of natural resources and agents of change in safeguarding the environment"*⁷.

Nationally, public participation⁸ has been defined as "the participation of all stakeholders concerned with the development project including ministries/institutions, local authorities, relevant

⁶ <https://undocs.org/A/HRC/RES/46/7>

⁷ Ditto

⁸ Prakas on General Guidelines for Developing Initial and Full EIA reports which was adopted in 2009

departments, project owners, consulting companies, representatives of affected people and non-governmental organizations”.

While securing the space for the engagement, there is some doubt as to whether the engagement is meaningful toward decision-making process. Given that Cambodia does not as yet have a clear definition of what it wants for ‘meaningful engagement in decision making’. It is described as a process of engaging relevant stakeholders especially project affected people to understand the proposed development project through access to project information and ability to identify issues/problem, develop solutions/action plan, and the ability to take action.

The Natural Resources Governance (NRG) program of the NGOF and its network members have been implementing the Forum’s logical framework 2018-2023 at the national and sub- national levels. One of the aims of which is to contribute to influencing government policy processes to ensure sustainable and inclusive natural resources governance. One of the major milestones logical framework, is to increase (the capacities of) affected community representatives who are actively involved in decision-making process concerning hydropower policy, indigenous people conservation and development, and forest conservation.

Box 1 NRG Decision-Making

NGOF framework indicates the need to study the participation of affected community representatives in decision making process”, thus, this should not about review of this framework.

The NRG program was interested in conducting assessment to:

- Understand current level of community participation in decision -making processes in the foreign investment projects in Cambodia.
- To explore the need of community members in terms of capacity building to enhance skill and knowledge that enable them to gain more confidence and knowledge to effectively participate in the decision-making processes on foreign investment projects.

The findings of the assessment were also to be used to develop community led solutions on addressing current challenges in knowledge and participation in decision-making process of the government.

2.1. Rationale for the Study

The reported rational behind the study, is a gap of knowledge/ capacity of local communities (and it has to be said by local/provincial CSOs/NGOs) to participate in consultations or discussions on any proposed project. NGOF also want to try and quantify this, and to contribute to identify possible areas/issues for inputs.

3. Aims and Objectives of the Assignment

The issued terms of reference (ToR) stated the following:

Table 1 Assignment Objectives

| | |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| OBJECTIVE ONE: | To understand the current level and gaps of participation by community in decision making process for the development of hydropower projects, indigenous people conservation and development, and natural resources governance. |
| OBJECTIVE TWO: | To identify community needs for support to build sustainable solutions that will allow them to gain more confidence and knowledge to effectively participate in decision making process on foreign investments projects. |

In order to achieve the objectives as discussed during the kickoff meeting on 2nd September 2021 with NGOF team, it's necessary to ask the following questions: (i) Are we doing things by prioritization and correctly to promote effective community participation? (ii) Does it meaningfully consult local communities affected by projects during planning and construction processes, implementing, operating. Therefore, the research questions were developed to discuss among important dimensions as highlighted in the finding section 7.

4. Locations of the Assignment

The NGOF identified five communities across four provincial locations in Stung Treng, Kampot, Koh Kong, and Mondulakiri provinces to be consulted by the researchers about their experience and or fears with a range of implemented or proposed large scale development projects, namely those involved with (i) extractive industries (gold mining); (ii) a hydropower development project; and (iii) coastal zone development.

Table 2 Locations of Reviewed Projects and Communities

| # | Province | Name of communities | Profiles |
|---|----------|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Kampot | Trapaing Sangkea Fishing Community (TFC) | TFC was established in 2005, and officially registered in 2009 by the MAFF. Main occupation of community members is sea fishing. The community is very determined to protect their fishing ground for better livelihoods and avoid future migration. |

| | | | |
|---|--------------|-------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | Koh Kong | Thmor Sar Community Fishery (CFis) | Thmor Sar CFis was established in 2005 with support from the American Friends Service Committee (AFSC). It was officially registered in 2011 by the MAFF. The fishing ground is 11,200 hectares, with 600 community members. The main goal is to protect fishery resources, flooded forest. |
| 3 | Stung Treang | Kbal Romeas and Sre Kor Community (new resettlement) | Majority of villagers affected by LSS2 Hydropower Project, who accepted to move from old villages to the newly-created villages, known as resettled villages. |
| | | Old Kbal Romeas and Sre Kor Community (old villages) | Some of villagers affected by LSS2 Hydropower Project, who refused to move from old villages to the resettled villages due to big concern on the loss of community origin, culture and traditions etc. |
| 4 | Mondulkiri | “Putung & Puhaing” CPA in Chong Phlas Commune, Keoseima District. | “Putung & Puhaing” CPA was officially created in 2008 with total size of 2,913 hectares, more than 200 members from “Putung” and “Puhaing” villages. |

5. Methodologies Applied

Under NGO direction, the assignment was undertaken in specific communities supported by NGO partner organisations. Often the chosen targeted communities were at different stages,

- Some were at risk from development proposals (Kampot, Koh Kong);
- Other were communities living with the results of
 - Based on an approved 2018 extraction licenced (but at the end of a long exploration and development process) which began commercial operation in 2021. Namely the indigenous communities in Mondulkiri province impacted by the Okvau Gold Mining Development Projects.
 - (Long) approved and implemented projects the two communities in Stung Treng province impacted by the Lower Sesan Hydropower Project;

The sampling of stakeholders to be interviewed and consulted was therefore restrictive and purposive in nature [that is a form of non-probability sampling in which the researcher relied on directions given by the client (in terms of the targeted communities and projects when choosing members of the population to participate in their study)]. As outlined and agreed to in the inception report.

5.1. Desktop Review

The assignment undertook as desktop review, while multiple examples of community participation are reported, few if any published material covered their involvement in the decision-making in (large) scale development processes. While communities are usually passively involved in said processes, they rarely if ever have any role in decision-making.

5.2. Participation and Consultation

- **In-depth Key Informant Interviews (KIIs)** with key stakeholders are undertaken. these are primarily targeted at the five focus communities identified by NGOF and its partners including any other ideas or experience about public participation in development and investment projects, and the ways in which it could support the sustainable development.
- **Focus Group Discussions (FGDs)** Where possible groups in targeted communities are gathered together, to validate and garner information about their community's experiences.

5.3. Stakeholder Met and Consulted

Table 3 Stakeholders Met & Consulted

| # | Types of Respondents (Rs) | Tools | Rs (Man) | Rs (Woman) | Rs (Total) |
|----|---------------------------------------------------------------------|-------|----------|------------|------------|
| 1 | Interview with CSOs in Stung Treng province (CEPA, 3SPN, MVi, CIPO) | SSI | 3 | 1 | 4 |
| 2 | Kbal Romeas and Sre Kor Thmey Community groups | FGD | 5 | 1 | 6 |
| 3 | Kbal Romeas and Sre Kor (old) Community groups | FGD | 4 | 1 | 5 |
| 4 | Trapaing Sangke Fishing Community in Kampot province. | FGD | 5 | 3 | 8 |
| 5 | Thmor Sar Fishing Community in Koh Kong province. | FGD | 6 | 3 | 9 |
| 6 | CPAs (Pu Tong Community) in Mondulkiri province. | FGD | 3 | 3 | 6 |
| 7 | Provincial Departments in Stung Treng province | SSI | 7 | 0 | 7 |
| 8 | Provincial authority in Stung Treng province | SSI | 1 | 0 | 1 |
| 9 | Provincial authority in Mondul Kiri | SSI | 3 | 0 | 3 |
| 10 | CLEC, ADHOC | SSI | 2 | 0 | 2 |

| # | Types of Respondents (Rs) | Tools | Rs (Man) | Rs (Woman) | Rs (Total) |
|----|-----------------------------------------------------------------------------|-----------------|----------|------------|------------|
| 11 | Local authority in Stung Treng province | KI | 1 | 0 | 1 |
| 12 | Interview with commune council in Chong Phlash commune, Mondulkyri province | KI | 1 | 0 | 1 |
| 13 | Interview with Ministry of Rural Development | SSI | 2 | 2 | 4 |
| 14 | E&A Consultant Co., Ltd (E&A) | KI | 1 | 0 | 1 |
| 15 | CSOs in Kampot | SSI | | | |
| 16 | NGO Forum on Cambodia | SSI | 4 | 0 | 4 |
| 17 | Assessment & Solution Co. Ltd | KI | 1 | 0 | 1 |
| 18 | Renaissance Minerals (Cambodia) Ltd | KI (written) | 1 | 0 | 1 |

6. Limitations and Challenges

Lack of access to key informants of ministries, department of EIA except the Ministry of Rural Development posed a substantial limitation to this study by narrowing the window of access to ministries' perspectives on community engagement in a large scale project. Some government's respondents at sub-national level were also unavailable at the appointed time.

To mitigate these limitations, the consultant requested a delay to meet with the groups of local authorities, local communities and other local CSOs and private sectors (e.g. EIA consulting firms, Renaissance Minerals (Cambodia) Ltd. And all these discussions were able to cover to what extent the local participation in development project and other aspects of local governance processes.

7. Context (Related to Environmental Impact Assessment)

Following discussions with NGO and the acceptance of the inception report which targeted the research framework's focus on (large scale) development projects requiring Environmental Impact Assessment clearances. The related national legislative and regulatory context of impacts assessments is set out below:

The 1993, Constitution of the Kingdom of Cambodia (as amended), explicitly states that; "the State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological system, mines, energy, petroleum and gas, rocks and sand, gems, forests and forestry products, wild-life, fish and aquatic resources", (Article 59). Previously Article 35, stated, that "Khmer citizens of either sex shall have the rights to

participate actively in the political, economic, social and cultural life of the nation, (and) *all requests from citizens shall be thoroughly considered and resolved by institutions of the state*". So that the state has an obligation to protect the environment, citizens' have a right to participate in the economic life of the nation, and the right to request information from government institutions.

Cambodia's Environmental Impact Assessment (EIA) requirements were first set out in the 1996 Law on Environmental Protection and Natural Resource Management. One of the five stated purposes of the Law was "to encourage and enable the public to participate in environmental protection". The three articles of the Chapter III of the Law, set out the requirement to undertake EIAs for all (new) public and private projects, and for existing and in process activities that have not yet been assessed for environmental impact. With the nature and size of proposed projects and activities to be determined by sub-decree (article 5).

Chapter Seven on Public Participation and Access (to) Information, states, "MoE shall provide information on its activities and shall encourage public participation in environmental protection and natural resource management", (Art. 16). The procedures for public participation and access to information on environmental issues shall be determined by sub-decree (Art 17). MoE and different ministries shall, mutually disseminate information related to environmental protection and natural resource management, (Art 18). However, NO participation procedural sub-decree has ever been adopted to operationalise this requirement.

The requisite sub-decree to operationalise EIA processes was adopted in August 1999, namely Sub-decree 72 ANKr.BK., on Environmental Impact Assessment Process. The opening article of the sub-decree sets out its three primary objectives, one of which is to "Encourage public participation in the implementation of EIA process and take into account of their conceptual input and suggestion for re-consideration prior to the implementation of any project". However, this is the only mention of participation in the EIA process sub-decree.

Other relevant regulations are the 2005 'PRAKAS (DECLARATION) on the Delegation of Decision-making Authority on (IEIAs/EIAs for) Investment Projects, to the Municipal-Provincial Department of Environment instead of the Ministry'. This established a sub US\$ 2 million-dollar threshold, below which provincial departments are responsible for reviewing, authorising and monitoring accepted and approved project environmental management plans (EMPs) during project construction, operation and for closures, as part of the approval process.

Prakas #376 BRK.BST (dated September 2009) on General Guideline for Preparing Initial Environmental Impact Assessment and Full Environmental Impact Assessment Reports. This Prakas actually define participation (article 1), in that;

"Public Participation: is the participation of all stakeholders concerned with the development project including ministries/institutions, local authorities, relevant departments, project owners, consulting companies, representatives of affected people and non-governmental Organizations concerned with the project area(s)".

This 2009 Prakas also sets out a range of requirements to document and report on Public Participation by different stakeholders (to be include in chapter 5). The chapter on IEIA/EIAs describes in detail public consultation which has to be incorporated into the following section of the report (Chapter 5):

- Introduction
- Public participation

- Dissemination by the project owner with local authorities and local communities of the development project;
 - Feedback from relevant ministries/ agencies/ departments and relevant local authorities;
 - Comments from relevant non-government organizations (NGOs);
 - Consultation with affected local communities.
- Conclusions on results of the public consultation

Additionally, a number of worthwhile initiatives in the twenty-tens to advance and develop the EIA legislative and regulatory framework were undertaken, including

- A process to revise, expand and elevate the EIA sub-decree to a full Environmental Impact Assessment Law was undertaken (2012-2013). This was apparently set aside, and was later incorporated into;
- The DRAFT Environment and Natural Resources and Code (ENRC), which while going through numerous drafts (the latest apparently #11 dated 2018) and rounds of consultations (with a 7th National Consultation also undertaken in 2018). This included multiple sections/chapters and articles (Book #1 20-31; Book #2 74-76, 93) to strengthen public participation, access to Information, FPIC and consideration of comments from public participation processes.
- The text for a DRAFT “Prakas on Public Participation in Environmental Impact Assessment Process” has been developed (reportedly in 2015/16), this is apparently based on five principles (i) Access to Information (ii). Public Participation (iii) Access to Social Justice and Effective Remedies (iv) Gender Equality in Public Participation (v) Promoting Indigenous People in Public Participation. However, this too remains un-adopted, and it remains unclear whether it will ever be adopted.

While these worthwhile initiatives would make considerable and significant improvements to EIA processes and procedures, including improving consideration of the outputs of community participation. They as yet remain unapproved, and are therefore inapplicable to the current context.

Table 3 Definitions of Participation and Decision Making

| | National Reference | International Definition |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Community) Participation | <p>Public Participation: is the participation of all stakeholders concerned with the development project including ministries/institutions, local authorities, relevant departments, project owners, consulting companies, representatives of affected people and non-governmental Organizations concerned with the project area(s)".</p> <p>(MoE 2009 Prakas (DECLARATION) # N. 376 BRK.BST on General Guidelines for Developing Initial and Full Environmental Impact Assessment Reports)</p> | <p>Public Participation: Within a decision-making process, the involvement of individuals and groups that are both positively or negatively affected by a planned intervention (e.g. a project, a program, a plan, a policy) or are interested in it. Levels of participation in Environmental Assessment (EA) varies from</p> <ul style="list-style-type: none"> • Passive participation (an unidirectional form of participation), to • Participation through consultation (such as public hearings and open-houses) and to • Interactive participation (such as workshops, negotiation, mediation and co-decision). <p>Different levels of PP may be relevant for the different phases of the EA process, from the community analysis and the notice of the planned intervention to the decision making, and even to the monitoring and follow-up stage.</p> <p>Public participation contributes to better projects, better development and collaborative governance. To be successful, it requires access to information, consideration in decision making and access to justice</p> <p>IAIA (International Association for Impact Assessment (2004) Public Participation Best Practice Principles⁹</p> |
| Decision making process | No where (globally) are communities given effective roles in decision-making processes on large scale projects. | No where (globally) are communities given effective roles in decision-making processes on large scale projects. |

9 https://www.iaia.org/pdf/IAIAMemberDocuments/Publications/Conference_Materials/IAIA04/PapersPDF/SN29.3-Andre-Public%20Participation.pdf

8. Findings

8.1. Levels of Participation in Targeted Locations

The current state of participation across all five communities was discussed in terms of empowering participation rather than participation for the decision making participation as this (to be clear) does not happen, as due to the scale of the implemented or planned projects affecting the targeted communities the decision making is undertaken at national level. Community participants perceived levels of participation was ranked on a three-level scale; (1) Good, (2) Satisfactory, and (3) Poor as following:

Table 4 Rating System of Participation Used

| # | Rating | Reasons | Examples |
|---|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Good | <p>(i) There is a good relation with, and the community gets support from key provincial sectors, local authorities at all levels and CSOs. On top of this, the community is viewed by multi-stakeholders as a strong community.</p> <p>(ii) When the good relation is built with other stakeholders, in particular with local authorities and CSOs, some Community Committees and members are pro-active in communication, raising concerns and creating solutions in different consultation platforms at national and sub-national levels.</p> <p>(iii) It's wise to promote the community profile at national and sub-national levels. A few communities appear with adaptive learning, could be role models for other communities.</p> | <p>Trapaing Sangke and Thmor Sar Community demonstrate strong commitment to protect flooded forest, planting more mangroves, active patrol activities, in particular, for protection of their fishing ground after its establishment.</p> <p>Trapaing Sangke Community has a strong solidarity, will and position after its establishment in 2008 in protecting community's benefits and aspirations. It is much better if compared to other fishing communities in Kampot province.</p> <p>Under Renaissance's Gold Mining Project, there is a good practice that affordable compensation schemes were consulted with, and offered to villagers who settled illegally to explore gold mining over years. Renaissance' approach to stakeholder engagement, consultation & disclosure is based on the following methods</p> <ul style="list-style-type: none"> • Plan ahead and inform • Consult using basic principles of good practices • Involve – work directly with the community • Collaborate – fostering partnership with the community. |
| 2 | Satisfactory | <p>the existing local mechanisms are adequate for consultations with communities were able to build "agreements" with local authority on the promising development activities (e.g. access to water, roads, schools and a health centre) in resettled villages.</p> | <p>For example, under Lower Sesan2 Hydropower Project, Communities in the resettlements were positive about the process to obtain the agreed benefits for the community. However, the sub-national authority (commune level) is not able to better respond in time, lack of oversight from national bodies. Villagers considered this as lack</p> |

| | | | |
|---|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <p>Generally, ethnic minority groups have very limited awareness and knowledge. Therefore, their participation remains limited, and depending on their leaders who can participate. Again, their leaders told that they are not good in representing the whole community and limited in argument in the dialogues with local authorities.</p> | <p>of respect to what were discussed and agreed during the project planning.</p> |
| 3 | Poor | <p>Ethnic communities expressed concerns in being able to freely expression their concerns about safety.</p> <p>They want to participate and talk with freedom, but often times got obstruction from local authority.</p> <p>Ethnic groups indicated that there is a very limited space in raising their concerns, therefore, increasing concerns about the loss of their identity/origin, culture and traditions.</p> <p>They called for the authority to show patience and commitment to listen and to understand their concerns either good or bad ideas.</p> <p>It's no doubt that there are platforms for community to participate, but community ability to participate and make voices in the dialogue (quality) remain poor. The quality of awareness of local people, in particular, ethnic groups is low including their language problem.</p> <p>In some instances, it was reported that there were tough discussions or tensions between communities and local authority. Interviewees mentioned that there are many projects appeared with societal problems affected the local communities which authorities failed to explain community for many cases. It's clear that some local authorities with the general mandate representing the communities and affected population do not well exercise the mandatory function for the representation.</p> | <p>Old Kbal Romeas community felt disappointed over unexpected delay in achieving step 3: registration of collective land despite step 1: identification of community identity/origin and step 2: formalized the community as the legal entity were completed long time ago. Indeed, the legal procedures of the concerned ministries such as MRD, Mol and MLMUPC remain complicated and a time-consuming process.</p> |

- 33% ranked their levels of experience as good,
- 39% of community consulted participants ranked their levels of experience as satisfactory
- 28% ranked their levels of experience as poor, and

However, without a standardise framework for benchmarking, monitoring and reporting on levels of community participation, which is usually a longer term process based approach, the ranking of participation is likely a subjective snap-shoot.

There is a general perception among all consulted stakeholders, that levels of participation in large scale (private sector projects is lacking and undertaken to “go through the motions” of participation, with unknown consideration of community concerns.

This runs somewhat contrary to reported experiences with local (state) development processes delivered through subnational administrations particularly communes. This again requires annual village levels consultations to identify projects to be financed with local (government) funds, with (accepted) project endorse by the directly elected Commune Councils. So realistically the communities are not responsible or involved in actual “decision-making”, but they have opportunities to be consulted. Overall those consulted, believed that the standard of community participation in local development projects (at district and commune level) is highly appreciated by local actors such as local authorities, communities, and civil society organizations as it did provide some directly beneficial developments.

The failing with this participation approach which is now roughly twenty years old. Is that SNAs (commune) have up till recent years lack the financial resources and guidance to address many (the majority) of the demands being raised for support, and communities have often become frustrated with this and lost confidence in local development processes.

Box 2 Observations on Consultation

However, the observations from all the consultations undertake were

- (i) That decision on the implementation of a particular (large-scale) projects at the location that affected community already existed. “Most of respondents confirmed that the level of participation in the planning stage of development projects has been overwhelmingly as “informing” the communities about the project (s) rather than broader consultations with them to create or obtain better choices for communities” – a one-way communication.
- (ii) In practice, many respondents confirmed that the good intention to encourage people participation in development projects remains weak. In this regard, community people and civil society grouped on natural resource governance continue to have tough debates on the development projects despite the development projects have potential benefits for the country’s long term economy growth because of communities’ concerns over social, culture and environmental consequences, in particular, natural resources-based dependent communities. So, this has made such as a contentious debate over decades.

8.2. CSOs are a Vibrant Force to Influence Public Participation

Consulted NGO staff and provincial CSOs in the targeted provinces expressed the feeling that CSOs have made great efforts for community participation through their projects on water governance, land issues, fisheries, climate and local governance using participatory approaches.

National level CSOs are focused more on issues advocacy, which is very much dependent on grass root CSOs, to provide inputs on the state of communities through their work and support to local communities. While national civil society organisations and federations have been advocating for the adoption of the EIA Law/ the ENRC, and other developed initiatives, progress appears to be limited, with CSOs stated that often their advocacy mandates are challenging.

In general, advocacy CSOs don't focus on the development and livelihoods of communities. These CSOs, tended to use their network ideas for their own study for policy demands and advocacy with the authority and concerned institutions to address community issues. Most interviews confirmed that advocacy CSOs should put great emphasis on training for community on meaningful participation so that community can advocate by themselves for positive response from the authority at all levels.

The bottom-up and consensus development of a coherent strategy to support development affected communities is needed, supporting and building on their abilities to (i) express themselves in participatory process. As pointed out elsewhere in this report

It was and is evident that that some CSOs have an identity crisis, they exist and function for their own existence, and not to deliver services and inputs to improve the situation of at risk and vulnerable groups and communities. As well as holding responsible authorities and developers are accountable to ensure no one is left behind and the adverse impacts against of development are mitigated.

To be effective, part of CSOs' roles should focus on the development of and the provision of a tailor-made capacity and coaching to vulnerable, at risk and deprived communities and groups in society in the context of development. This will contribute to empowering communities/ group and increasing their active engagement with authorities and provider as well as private sector developers for a long run.

While the FPIC concept of and by indigenous communities has been identified by civil society organisations as an approach to be adopted by the government's agencies to ensure the better protection of indigenous groups. Therefore, it requires active state engagement and involvement and ideally an incorporation into national legalisation, as without this it remains aspiration. To date, globally, only four countries are reported to have adopted FPIC instruments into their national legislative frameworks¹⁰ while only 23 countries have ratified the associated ILO Convention (#169). A number of international NGOs and partners CSOs have been advocating for the mainstream FPIC's concept and key principles in and for development processes and for project approvals. In fact, the government' officials who the consultant met feel that the CSO advocacy for FPIC is a desire to create a parallel system.

The alternative approach for applying FPIC has been its incorporation into development partner financing compliance requirements such as the World Bank Group's recently adopted 2016 (and

¹⁰ **Bolivia** had previously ratified ILO 169 Convention on the Rights of Indigenous and Tribal Peoples in 1991 (Law 1257) and formally incorporated UNDRIP as a National law in 2007 (Law 3760. It later Constitutionalise FPIC mechanism through including "Consulta Previa Libre e Informada" clauses in its 2009 Constitution. **Canada**, (in June 2021) through the *United Nations Declaration on the Rights of Indigenous Peoples Act*; The Philippines through its Indigenous Peoples' Rights Act of 1997; **Peru**, through its 2011 Law on the Right to Prior Consultation for Indigenous or Native Peoples (now Law L. 29785) Constitutionalise FPIC mechanism through including "Consulta Previa Libre e Informada" and approved an FPIC law in 2011 <https://www.loc.gov/item/global-legal-monitor/2011-09-27/peru-new-law-granting-right-of-consultation-to-indigenous-peoples/>

effective in 2019) Environmental and Social Framework (ESF) and its 10 performance standards. It has also been increasingly including as a require of United Nations agency financing of programmes and projects such as the United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UNREDD), or by the UN Food and Agricultural Organisation (FAO).

One example of this was that NGO previously invited to participated in the inter-ministries consultative meetings on EIA reports such as for the Lower Sesan II (LSS2) Hydropower Development, but these invitations have stopped in the last two years. NGO continued to request EIA reports from the ministry of environment, however, this approach was unsuccessful.

It is noted that CSOs in the networks appeared to different approach such as constructive engagement and activism. What is wrong with either constructive or activism approach in Cambodia's context? A good way for the approaches is to ensure the advocacy messages are conveyed in practical at local level for convincing policy at national level. Activists should be well trained to argue using social-science, and professionalism. Therefore, NGO Forum on Cambodia should initiate to create "Think Tank" group to cook all raw materials, provide strong justifications on laws and regulations, and make recommendations for policy dialogues.

8.3. National Policy Emphasis for Public Participation

The government and its ministries play important roles in setting and leading national development; as currently set out in the Rectangular Strategy Phase IV, the National Strategic Development Plan NSDP 2019-2023; the Cambodian Sustainable development Goals (CSDGs); sector/ ministry plans. The government has advanced considerably over the last decade, partly driven by having increasing national (financial) resources and that cooperation between the government and CSOs would be significantly strengthened to align greater effort to contextual changes.

However, at national level, there is limited to no room for community engagement, a failing on both side of the argument. In that national institutions don't provide multiple opportunities annually or open fora for communities to present and follow up on their cases or concerns related to large scale development projects.

Theoretically, sub-national administrations and provincial departments (e.g. environment, land management etc.) who are invited to attend the ministerial-level consultations to discuss and (should represent) protect the benefits of affected communities and enunciate and communicate ongoing community concerns, ideally identified through periodic or regular local public dialogues and consultations with affected communities.

However, this remains institutionally, governably, and culturally challenging for provincial, district or even commune authorities to (try and) challenge/ contradict higher order institutions to protect the benefits of communities or raised unforeseen issues (in the EIA or Environmental Management Plan documentation) which impacts the communities. There is a need to develop a rolling system of public consultations for impacted commune and communities engaging to better understanding the situation of communities and be able to represent them during project development and ongoing monitor.

A Case Study's findings from Lower Sesan II (LSS2)

Kbal Romeas and Srekor villages in Sesan district, Stung Treng province were/are affected by the LSS2 hydropower project with these villages being mainly home to indigenous populations “Bunong” and “Lao” respectively. Village consultation for this research confirmed that the EIA process was intensive and inclusive, and viewed as the positive exercise for local participation.

However, it was also noted that portions of the affected communities (reported to be 180 families)¹¹ refused to leave their old villages despite extensive consultation and negotiation between the commune councils, provincial and district authorities, project developers, and EIA-Impact Compensation Committee with affected villagers. The reported adopted mitigation solution for the hydropower project was the relocation of communities outside the planned inundation area of the hydropower projects dam. While the majority of villagers agreed to move to new resettlement villages, some communities (the aforementioned 180 families) refused to leave their old villages.

It was reported that NGO and partners CSOs was also extensively involved to support the affected communities and had helped them generate a list of 150 points of concern raised by the communities. However, after the extensive consultation process at the inter-ministerial level, only 4-5 points were finally considered by the EIA process.

Overall the consulted CSOs, reported that they and the communities often found it difficult to participate in decision making processes related to large scale development projects, such as LSS2 as well as other sensitive issue areas, such as NRM, IP conservation and development. We found that authorities at provincial, district and commune level seems to have sufficient authority from the policy point of view to advocate for communities they are supposed to represent, but are not empowered to address the needs and demands of affected population through the government's projects.

There does appear to be a disconnect of the greater understanding among different stakeholders. The realities of the ESIA process are that it endeavour to assess the likely impacts of development projects and provide a process to mitigate adverse and negative impact. It rarely provides (no matter where globally) a veto for groups to stop projects. Unfortunately, a systemic weakness of the ESIA process (globally) is that it is usually applied to pre-decided sites. Efforts to rectify this has been the development of Strategic Environmental Impact Assessment (SEIA) to take a broader holistic view of issues that need to be considered in/for sector development

8.4. The Capacity and Ability of CSOs and Local Authorities to Support Communities

Some interviewees stated that most CSOs play effective facilitation role with authority and sectoral departments to effectively support communities in the sensitive sectors such as NRG through various dialogues at national and sub-national level. In this effort, the roles, and governance of CSOs remains critical; in that they need to know what they want to do? What they can do and will this attract funding as some provincial CSOs are driven by the funding partners' requirements.

The capacities and competencies of consulted provincial CSOs varied greatly, and assisting and facilitating community's engagement with often powerful private sector developers and authorities

¹¹ Southeast Asian Globe (December 2020) Power to the people? Cambodia's Lower Sesan II Dam, two years on <https://southeastasiaglobe.com/lower-sesan-ii-dam/>

from different levels was and is intimidating both for the communities and the CSOs as they fear repercussions. Countering this fear and creating an open non-intimidating environment for consultation is necessary and possibly a role for large national CSOs to monitor and the authority is responsible to ensure such an enabling environment. However as pointed out by rights-based organisation this remains lacking due to the ambiguous defamation clauses of the criminal code.

For example, WWF provides advice and facilitation to “Putung & Puhang” CPA in consultations with Renaissance’s gold mining project. If it’s the case, therefore, the internal capacity of affected community would be built to engage productively in the existing platforms rather inventing new ways. It would be fair for affected communities and other communities to make greater effort for enhancing community dialogues with the authority and advocate for their benefits and aspirations. Therefore, it’s necessary to develop an effective training and capacity-building initiatives for local community-based organisation (e.g. CPA, CFis) as most of grassroots CBOs expressed that they lacked a good knowledge on the potential steps and requirements of large scale development projects¹² and the EIA process, so that they can be better informed, engaged, and prepared. All communities expressed the same opinion that they wanted CSOs to better train communities at least about (and this cannot be considering a comprehensive list),

- (i) How to know about planned development
- (ii) How to assess proposed develops;
- (iii) How to undertake engagement with multiple stakeholders including government and the private sector, and
- (iv) Have better communication skills.

So that they (the communities) can better engage and tell multiple stakeholders the truth from their perspective, and be to better able to quantify and communicate issues of concern to communities. CSOs and communities acknowledged that they had had some trainings, however these were often theoretically focused, rather than on hands-on experience on participation in development and local projects. This is not useful to make headways for a meaningful participation.

To make local participation effective and efficient, CSOs should assist the communities to develop an influencing framework outlining a series of engagement activities, to train and empower the gender balance community representatives, leaders and members to be less dependent on external CSOs. By doing so, also enabling the community to create its own initiatives for influencing local leaders and higher authorities.

The consultant as part of this study has developed a Hands-On/Experiential Learning on Effective Engagement that is tailored for all local actors such as local authorities, communities and CSOs. Therefore, NGO and its CSO networks can maximize and expand upon the use of this learning unit by expanding the learning from a unit to a course on community participation with a view to evolving training to better empower communities.

It is evident, that there is a need to better engage with national and subnational administrations at different level to better protect and represent residents in and around proposed project areas. This

¹² The is an opportunity that as part of the development project registration process under the Council for the Development of Cambodia (CDC) or those done through the Council of Ministers; that community and local authority notification and community consultation should be required and undertaken; To raise awareness amongst possible communities of the proposed projects, and that CSO could advocate for this.

needs to be done with the existing and evolving national legislative framework in terms of the Decentralization and Deconcentration policy; the Law on Administrative Management of Communes/Sangkats; and the Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans (Organic Law), and the stated mission of the National Committee for Sub-national Democratic Development (NCDD)¹³.

8.5. Community-Led Initiatives for Effective Engagement

RGC emphasizes the principle of participation, accountability and responsiveness as one of the critical elements for sub-national democratic development and for sustainable development. Inherent in these principles are the questions of local governance initiatives and community participation.

In this study, which focused on and found that EIA processes have brought government and national / larger non-government stakeholders together on the same platforms, but civil society and affected communities are usually less well represented. While they may have been consulted to some degree in the scoping and mandatory EIA process, documentation process, after which they are often effectively ignored, with decisions being made usually at national levels for large scale projects, which do not involve likely affected communities. Depend who the proponents/ backers of the large scale projects are; the duration of the requisite Environmental Management Plan (EMP) to protect, minimize, and mitigate adverse impacts, may differ.

Those (projects) back by IFI/ development partners usually have reasonably effective EMP during the construction phases, which teeter off once construction is completed with little or no or token ex-post follow up during the operation phase(s), or in the project life cycle. For private sector supported development projects the levels are EMP requirements to protect, minimize, and mitigate adverse impacts and follow ups are significant less (as these cost)

Despite the existence of numerous participation channels through reported meetings; purportedly local governance platforms, such as; annual local (commune) planning & development cycle process, citizen-council meetings; and EIA processes in locations for larger scale projects etc. There remain outstanding concerns and challenges for communities to ensure adequate representation in each of these fora.

Existing government guidelines where they exist (for example for SNA planning and development cycles) are still deficient and need expanding, elaboration, updating and tailoring to different locations and context needs (rural, urban, IP etc.) to better respond to community needs. For example, for EIA processes, while participation is mentioned as a key objective little more is said on this (it is actually only mentioned once in the existing process sub-decree (#72/1999) and the later (2009), non-statutory guidelines again makes reference to the public participation aspiration, but go little further than stating “detail information about public participation, the Environmental Impact Assessment Department will develop a separate technical standard document or law” which some 11 years later are still pending (though apparently drafted¹⁴).

The lack of effective public participation guidance, limits the value of the focused upon EIA process, in getting the most out of and be more responsive from community participation through consultation processes. What value is placed upon community raised issues, remains unknown, as

¹³ <http://ncdd.gov.kh/en/what-we-do/>

¹⁴ First drafted as a stand-alone EIA Law; later incorporated into the draft Environmental & Natural Resource Code.

there is no a quorum or conditionality or results framework to be obtained from community engaging meetings?

Several of the communities met with reported about their emerging experiences and satisfaction in the increasing use of “adaptive learning”¹⁵ in creating a process for reflecting on the importance of community mechanisms and involvement for communication and possibly decision-making. Though this is likely a long term goal, with little to no evidence of communities being given a role in large scale project decision making, this challenge is not just in Cambodia but is a global challenge. Even with evolving legal frameworks, evidence of communities been given roles in project decision making is often lacking or non-existence, or exaggerated when examined.

What is evident is the community participation for development projects (again is not just in Cambodia but globally) is frequently reactive to already decided upon largescale projects; in that no matter a community does the project is likely to go ahead in that area. So what can be done?

The following steps are proposed for consideration to initiate process to begin to empower and capacitate communities and supporting Local CSOs to response to largescale development project proposals?

- At risk and vulnerable communities to be increasingly made aware of the possible risks and opportunities from development projects, as they can have both positive and negative impacts. However, this is often beyond the capacities of communities. This is where the large NGOs/CSOs their networks and partners can play an initial role(s) in engaging with government to keep informed of submitted (larger scale) development projects (and where are they are planned to be located).
- Development of innovate contemporary communication and learning materials on (i) different types of development projects and the possible impacts; (ii) technical capacities on EIA techniques, inputs, and process, as well as on the evolving legal frameworks; (iii) documentation’ engagement, and negotiation skills, and progressively moving these onto information communication technologies platforms/ applications. As the learning impact(s) of conventional/traditional ‘class room’ training has been identified as being limited¹⁶. The use of innovative technologies allows for the improved take up through visual (video) and aural communication means. Rather than through text driven presentations, as well as the easy ability to rerun the sections again and again to catch up on poorly understood concepts.

Once a risky project proposal is identified, CSO support entities at national levels need to alert provincial CSOs, to engage and communicate with at risk communities, to begin to raise their awareness of or to alert them to refresh their knowledge on a particular project type and the risk it poses to their communities, this could involve

- Existing Community CSO committees should be encourage to hold “*pre-meetings*” with community household representatives young people (‘the youth’), women groups, elderly people as well as from ethnic minority groups where present. The purpose of these meetings, is to provided information on (i) the proposed project and (ii) its possible impacts; (iii) identified

¹⁵ Often defined as “Adaptive learning — or adaptive teaching — is the delivery of custom learning experiences that address the unique needs of an individual through just-in-time feedback, pathways, and resources (rather than providing a one-size-fits-all learning experience).” It frequently applied the use of information communication technologies (ICT) but is often limited by the availability of appropriate language materials

¹⁶ A deficiency also learnt from a recent review of the considerable training inputs provided to subnational administration official by NCDD.

stakeholders (proponents; responsible local government agencies and officials), responsible decision making agencies, etc...); (iv) identify what is to be done, who is to do what, and determine altogether on key issues, possible choices. Before their appearance/ involvement in events with external entities outside the community. This is would be greatly appreciated by community members (as “being forewarned is forearmed”, to be better prepared) and to respect the principles of discussion, clarity, agreement and respect. At an early stage communities need to engaged with SNAs to assess what they know, where they stand, and to demand accountable action(s) from them, as per their mandates.

- Strengthened communities and representative committees (CPA, CFA, CFi, others) should be organize twice a year dissemination meetings, as often articulated in community by-law. Additional meetings should also be organised during the year as needed, to continue to refined the communities understanding about the possible impacts of a development project or about illegal activities (in forested areas, fisheries). Community representatives consulted reported finding these types of meetings useful to keep updated, and to enable them to engage with other local stakeholders to witness and support their communities’ CBO/CSOs long term interests. This is likely a basic strategy, but it has to enable the communities to demonstrate priorities, concerns, updates and skills, and also be ready to build, expand and sustain relationships – *“it’s a less, but more approach”*.
- Not many communities and CSOs can (or desired) to organize monthly meetings unless there is something important to be communicated with local authorities. However it may be worthwhile observing and taking part in the mandatory Commune Council/ district council monthly meetings¹⁷. Periodic meetings or as required by community bylaw with Communes should be requested to discuss and ensure documentation of community’s issues and challenges (for example as done by Putung CPA). *This process is a good transition that can help to amplify the voices of local communities*. Even when the abilities of local authority are limited, the direct meeting with elected local councils can gradually strengthen local voices – making local politicians are aware and accountable to communities’ perceptions.
- From their experiences, communities consulted highlighted the importance as a core value of community solidarity, but how to build this up and more importantly sustain it over time. Representative from Old Kbal Romeas and Srekor communities in Stung Treng impacted by the LSS2 continue to struggle for their perceived rights regardless of decisions made. They reported having been able to obtain concessions from the developer and the government, by their continued struggle. Resulting in the successfully re-opening of local schools, and health center(s), as well as the improvement of roads and construction of water ponds in the two villages. Through their efforts, and the relationship of mutual accountability between citizens and elected local councils, the government has offered these improvements to these ethnic communities who have persistently demanded their rights and protections, an example of – *voice for social change*.

8.6. Building Trust for Participation

Despite the formal recognition of focused upon communities, some indigenous and coastal communities visited virtually revealed a poor understanding of local governance principles, instruments, structures, systems, and the representative role(s) of elected local councils. For example,

¹⁷ Which are reportedly open to the public? And if so this right should be observed and used

they appeared confused about decision-makings roles for locally-identified projects while decisions for large-scale development projects are made nationally/institutionally, and in which SNA authorities have little to no role(s).

In these contexts, it was reported that there were/are tensions between different actors, this is often the case between local governments and affected and indigenous communities. On discussing this issue with some local authorities, they expressed a wish to support communities, and use local governance processes and mechanisms to establish an enabling environment in which all stakeholders, in particular local communities can express themselves freely and negotiate any differences fairly and transparently. One of the principal ways is to use local governance systems and structure ultimately to engender certainty and trust, both of which can contribute to supporting genuine participation. Actually, trust building is one of the core values of local authority in executing their general mandate. As mentioned, involving local authorities early is important and showing a knowledge and understanding their roles and responsibilities is useful to holding them accountable.

Based on the consultations undertaken through this research, the following were the synthesis of proposals/ suggestions raise by those consulted and from KIIs:

- ❑ First, increasing communities' access to effective and efficient use of local resources, and local authorities would empower them to engage and responding to all promising development activities in affecting communities.
- ❑ Trust building within the communities themselves is important. The formation and strengthening of local community committees, selection of community leaders, and establishment of community networks have contributed to the acceptance of community values-fair, care, share and trust.
 - A challenge on this point is ensuring accountability of these community structures and positions holders to serve the community's interests as a whole.
- ❑ A few communities expressed the need to have alternate members in their committees. They wanted all community members to nominate and select alternate members. Alternate members can attend meetings with community leaders. So, the system of alternates is used to ensure adequate representation of the entire communities in various meetings with outsiders.
 - This expressed point is similar with the globally identified deficiency of the community development committee model in having a vertical structure of a committee on top of the members. The identified remedy for this was the self-help- group (SHG) model which provides for the rotation of members of management structure, and the creation of more responsive sub structure of groups/ pools of members to progressively sit on committee structures.
- ❑ There is a need for higher authority institutions (at provincial and national levels) to build trust through socialization and consultative processes with CBOs/CSOs, Local Authorities, and Communities. In particular, for ethnic communities whose culture and history, are not easy to change in fact their cultural differences may need protection. But beneficial changes (for health, welfare, women's rights etc.) need to be obtained through awareness raising of issues and consensus of community members rather than imposed.
 - Allied with this is the ethnic communities' cultural relationships with land, which makes it extremely difficulties for them to relocate (as was evident by the two ethnic communities in Stung Treng).

- ❑ If meeting processes can produce good results, then people will participate actively. Therefore, effective engagement is the outcome of discussions, clarity, agreement, and respect between community members, CSOs and local authorities.
 - So building communities/CSOs capacities to applied method and techniques to have productive meetings would be beneficial.
- ❑ Find ways and processes which motivate community people to participate more actively in any development project process continuum. For example, supporting broader dissemination of information about development projects in the communities, undertaking joint activities between CSO and community representatives, encourage mutual respect by and for communities CSOs, local and national authorities. Local authorities need to be empowered to demonstrate and stand up for their commitment to serve the interests of local communities.
- ❑ To address the needs of affected communities will need time, resources, and patience. Local authorities can and do play an important role, and have to report precisely, be able to bring concerns to higher authorities and bring back explained and documented responses from higher authorities to the communities.

8.7. Identified Issues and Challenges Confronting Community Groups

The majority of consulted community, CSO and local authority representatives reiterated that barriers and challenges continue to exist. While the quality of participation of affected communities varied between EIA processes and discussions on other current and future investments (usually through their engagement with local Commune development processes) that may affect/benefit them. The following are some of the challenges identified.

- (a) The positions of a few communities, CSOs and authority are polarized in solving problems related to impacts of the development project,
 - For example, the LSS2 Hydropower Project which results in them not communicating and collaborating together or with the private sector proponents, and the government's concerned ministries and institutions.
- (b) Ethnic groups/ communities have big concerns over their spiritual forests and ancestor graves. As there is no "consent" / "Agree to Disagree" principles
 - Just offering compensation schemes and options for resettlements does not consider or address ethnic cultural requirements and their importance.
 - While UN-DRIP and FPIC are (and remain aspirational) the right of community "veto" is unlikely to be adopted by the government (as is the case in the majority of countries around the world).
- (c) The understanding and experiences of local communities with current participation processes remains limited.
 - As commune councils often (and for numerous years) could not address community priorities due to limited finance. The continual identifying of priorities issues through participatory processes, and the continual lack of responses have often demoralised communities' confidence in participatory processes.

- (d) There is a (probably rightly so) perception for and by local councillors to be able to represent and argue for local communities with higher authorities and often connected with project proponents.
 - It seems that they don't have power and clear role in EIA process as the EIA is the top-down approach.
- (e) Ethnic and coastal communities (e.g. CPA and CFIs) are still challenged in participating and protecting their livelihood resources areas.
 - Communities have started understanding that nobody can be excluded in any discussions between investment companies and authorities at all level as it concerns everyone. As their experience is that decisions are more often made without any effective consideration of their (ethnic) concerns. They feel that if they had a chance to explain their situation to the decision makers that decisions may be more favourable to their needs.
- (f) The public fora organized by provincial or district authorities as part of the local development processes often just focus on public services/ infrastructure, local security and safety, While NRM related issues are not well considered and addressed.
 - Affected populations have frequently felt bad about this and often did not want to go back to these as they have little or no results for them.
 - This is a common complaint not only by ethnic groups, but the rural population in general, as they go through various participatory process identifying issues but no result happens as no resources are allocated to address the issue.
- (g) Right of free of expression remain restricted, as CSOs and local communities are viewed as opposing to development project such as the LSS2 Power project
 - At present the government continues to express mixed messages and has created a confused environment for public participation. In that on the one hand it has expressed its desire to have public to become more engaged and involved in local government decision making and accountability of those involved. While, on the other, the ambitious legislative context regarding defamation¹⁸ and legitimate criticism is stifled and constrained¹⁹, and results in a perceived fear by opponents of development projects.
- (h) The capacities of local CSOs and communities to engage, address, and legally argue their position, and to develop evidence-based inputs remains limited, to enable them to effectively undertake constructive engagement with the government through dialogues.

8.8. Suggested Criteria for Effective Participation

As described in section 7.7 above, effective participation can only be ensured if the following criteria are well addressed.

¹⁸ Article 305 of the Cambodian Penal Code currently reads: "Defamation shall mean any allegation or charge made in bad faith which tends to injure the honor or reputation of a person or an institution."

¹⁹ The Special Rapporteur on the situation of human rights in Cambodia recommended to repeal provisions of the Criminal Code that could be used to restrict the freedoms of expression, assembly and association in order to achieve greater compatibility with international human rights standards, decriminalizing offences such as defamation. Source OHCHR 2019 Report of the Office of the United Nations High Commissioner for Human Rights Compilation on Cambodia, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/337/25/PDF/G1833725.pdf?OpenElement>

- (i) There is a clear understanding by all local actors and stakeholders on the government's processes and proceedings relating to EIA for development and investment projects;
- (ii) There is a clarity of roles; for example, CSOs play a facilitation role rather than an advocacy role, with the communities as advocates, and the local authorities truly representing the people.
- (iii) That a transparent process and mechanism that allow and motivate local people to interact with the EIA and other development processes are available.
- (iv) That there are regular meetings available to all interested community members to inform and update them on progress and issues with development projects progress, for examples, a system of quarterly (or as required) meetings, with adequate attendance by stakeholders.
- (v) All parties value and ensure equal participation and respect each other to raise issues and challenges.
 - o This could be addressed through joint learning sessions on effective engagement based on the (first step: Community Participation) approach developed by the consultant for this study.
- (vi) All local actors and stakeholders must be pro-active in disseminating information, facilitating communication, and regular meetings to discuss issues – don't wait until it's too late.

9. Conclusions

The stakeholders consulted by the study believed that (some) participatory processes for affected communities are adequate. In some instance (possibly for local development processes) this may be so, as participatory processes for these have (in theory) come a long way toward achieving the principles of local governance in Cambodia – transparency, accountability, responsiveness and inclusiveness. However, people, communities, and vulnerable groups confidence even in these have declined over time, as they have often become demoralised with these processes in not being able to deliver on their perceived prioritised needs.

For specialised processes, such as for EIA, the associated participatory processes are considered by some as being deficient. This results from the lack of participatory guidance and guidelines to ensure that communities are engaged and their views on the proposed developments garnered and effectively considered.

A number of examples of good lessons and practices have been identified, and these have contributed to greater effort for strengthening local processes and mechanisms for participation. Parallel with these, there are also several areas that require additional inputs and work, particularly in ensuring the meaningful participation of affected communities and vulnerable populations.

As described, some of the identified challenges are closely linked to capacities, competencies, and the attitudes of involved actors and stakeholders, to facilitate communication and information sharing. Other challenges, are related to the difficulties of CSOs and local communities as well as local authorities at all levels in creating and maintaining the channels that enable affected communities to be effectively consulted. However, communities having a voice in project decision-making processes, for large-scale and local development projects is unlikely to happen both here in Cambodia and elsewhere.

The system of nominating representatives from affected communities to inter-ministerial level consultations is absent. This will be perhaps the case for lobbying the government's ministries, bilateral and multilateral partners, the private sector and NGOs to work together on standards for participation to ensure attendance and participation of local community in project related government's dialogues, and for achieving quorum.

Most of interviewees felt that there is a need for clearer definitions of public participation as well as for possible (participatory) performance standards. These will have to ideally adhere to principles of equal participation and good governance practices and make further effort to encourage the enhancement in and for the transparency of decision-making processes – and avoiding the culture of criticism, but embracing the culture of collaboration. So, socialization processes may be important to increase the level of confidence and trust among local actors and stakeholders.

Lessons being Learnt

This section attempts to capture the learnings about participation, processes with a view towards linking these learnings to the recommendations in the following section.

- The EIA process conducted for the Renaissance's gold mining project could be an example of a good practice in promoting local participation. The project created an enabling environment for participation. It's wise to engage high-profile company for development and investment projects. Support for greater participation of affected communities and families using a more iterative process to engage local communities and authority.
- Local communities and ethnic groups must strengthen themselves including educating for young people. This is to enhance community engagement for long term development.
- It's important to showcase a model community as a knowledge sharing platform, therefore, promoting people participation for large scale and local development projects.
- Ethnic minority communities and other communities have learned, understood a lot about their rights to lands and natural resources. Their work to overcome human rights barriers (e.g. discrimination) is advanced, with strengthened internal capacity, rights and gender equality.
- A model of development project offered focused, accountable and comprehensive consultative process to collect the strongest ideas, perspectives and innovative spirits on resettlements and compensations before the project started. There is no pressure to accept compensations and/or to make them away.
- SNA at all levels, provincial departments, CSOs and local community gradually learned and expressed core values of participation in EIA under LSS2-Hydropower Project, and Renaissance's Gold Mining Project. Some interviewees pointed out that these EIA exercises were not so smooth, some affected villagers didn't want to participate for "no result" but a general view was acceptable.

Recommendations

The following recommendations are made (each is given equal weighting and value, and ordering does not infer preference or priority) to/for,

Table 5 Phase, Stakeholders Recommendations

| Stakeholders | Short Term (< 1 year) | Medium Term (>1-3 Years) | Long Term (>3 years) |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGOF & Civil Society | <ul style="list-style-type: none"> ➤ Develop a holistic strategy to strengthen communities and community leadership. By experiential learning and skills transfer, for example, highlighting successful examples of leadership through exposures of communities to the situation on the ground, improving documentation, dissemination and/or making leadership training modules available for the community management committees and their support. ➤ Focus on empowerment community-based organizations and grass-root civil society organizations to improve their participation by making some funds available for capacity building using experiential learning approach, e.g. in the areas of community engagement/participation, argument and communication skill, organizing | <ul style="list-style-type: none"> ➤ Encourage government to commit to examining and considering adoption of the (i) the Draft Public Participation Sub-Decree; (ii) Environmental & Natural Resource Code; As both of these would significantly advance the nature of consideration of communities' inputs and participation in large-scale project development processes. ➤ Ensure genuine participation by CSOs, NGOOF continues to support better CSOs consultations and expand adequate CSO representation with sector ministries, the private sector, academic/educational institutions, national and regional mechanisms etc. ➤ NGOOF and CSO networks should create a "Think Tank" to work closely with the Government's "Think Tank" and initiate to work closely with private sector. Said this, | <ul style="list-style-type: none"> ➤ Encourage and support multiple stakeholder ex-ante reviews of development projects and adherence to project environmental management plans. ➤ Secure resources to undertake legal reviews and court action (if required) on large-scale development project approval, which run contrary to constitutional and legal provisions. |
| | | | |

| Stakeholders | Short Term (< 1 year) | Medium Term (> 1-3 Years) | Long Term (>3 years) |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| | <p>and documenting effective meetings, public speaking etc.</p> <ul style="list-style-type: none"> ➤ There is a need to harmonize CSOs' support to the government's ministries to develop Guidelines on Standards for Public Participation (such as those outlined in the draft Public Participation Sub-decree for State-Initiated Project and Investment Project. Decision-making is the key governance function of any government, but standards for transparency and equal participation are crucial in ensuring the decision-makings protect the national interests and can address community issues. ➤ Community and CSOs should pay great attention in using the existence of local governance platforms to make broader participation. ➤ CSO needs to begin a process to better engage and enlighten state institutions and local authorities on the roles of civil society and the benefits of allowing and increasing public participation in development process; | <p>CSOs can consider to create the positions on private sector engagement.</p> <ul style="list-style-type: none"> ➤ Work toward increasing acceptance of affected communities and CSOs in/ by and for Government's platforms as this remains a challenge. Things are changing, mentality is changing. NGO should support grass-root CSOs, and communities to develop advocacy and influencing frameworks and undertake open discussions with key ministries, the private sector and multi-stakeholder the issues surrounding the participation of CSOs and affected communities across EIA proceedings and other local governance processes. ➤ There is a need to increase knowledge of local communities on legal requirements relating to conservation of natural resources and livelihood development, and open for them to advocate within the legal and policy framework. This is the empowerment of community. ➤ Regarding EIA processes, ensure that communities are fully engaged in every steps of sub-national consultations, in | |

| Stakeholders | Short Term (< 1 year) | Medium Term (>1-3 Years) | Long Term (>3 years) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| | this should be built around ongoing initiatives on public and social accountabilities. | <p>particular local dialogues and PPC. If possible, make a conditionality for the affected groups to sit in the national consultation. Also ensure that local people have better understanding through broader disseminations and consultation at the early stage of EIA exercise.</p> <p>➤ As the situation has changed, mentality is changing, therefore, CSOs should focus on what the ideal world is for the different communities and working towards achieving their aspirations – without activism approach, but influencing approach.</p> | |
| While the assignment focused civil society organisations, NGOOF asked for recommendations to other project development stakeholders as well, how they can be applied and delivered is beyond the scope of the assignment. | | | |
| National Government | <p>➤ Consider examining and considering adoption of the;</p> <ul style="list-style-type: none"> ○ Draft Public Participation Sub-Decree; ○ Environmental & Natural Resource Code; <p>As both of these would significantly advance the nature of consideration of</p> | <p>➤ For any development and investment projects, the Government's competent ministries must ensure that intensive EIA processes are conducted, allowing sufficient time to interact with local communities on their benefits and aspirations.</p> <div>For example, the EIA cases of LSS2 Power Plant and Renaissance Minerals</div> | |

| Stakeholders | Short Term (< 1 year) | Medium Term (>1-3 Years) | Long Term (>3 years) |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| | <p>communities' inputs and participation in large-scale project development processes.</p> <ul style="list-style-type: none"> ➤ In the EIA system, there should be some additional provisions for the community to file the complaints and solve problems effectively and efficiently through independent arbitration | <p>gold mining project in south-western Mondulakiri province could be deemed as models for future development and investment project processes to follow. In this example, the Government will perhaps be willing to engage with high standard companies for the development of national interests and alleviate the gaps in country economy.</p> <ul style="list-style-type: none"> ➤ Improve guidance on EIA and participatory processes ➤ When the goals of the government are to develop or encourage investment in new projects or industries, it is an opportunity for communities, public, NGO's, CSO's to work with the project proponent and authorities to present the best possible version of the project for assessment. That version must be viable, sustainable and deliver positive outcomes for affected communities and Cambodia as a whole. | |
| Sub-National Governments | Increase awareness of and hold local authorities accountable to the constitution and local mandates | | |

| Stakeholders | Short Term (< 1 year) | Medium Term (>1-3 Years) | Long Term (>3 years) |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| Private Sector Developers | <ul style="list-style-type: none"> ➤ Private Sector proponents and developers need to better engage with communities and civil society entities earlier in development processes to ensure adequate time and effort(s) are made to address community concerns and mitigate adverse impacts | <ul style="list-style-type: none"> ➤ The Private sector and representative bodies (such as professional association and Chambers of Commerce) and Financing institution should commit (their members/borrower) to following the likes of “UN Guiding Principles on Business and Human Rights” or the International Finance Corporation’s (IFC) promoted multi-product “Sustainability Policies and Standards” for private sector development, or latest iteration of the “Equator Principles”. Or other publish Environmental and Social Governance Frameworks or; ➤ Other private sector initiative included “Global Reporting Initiative (GRI)” “Standards and the Sustainability Accounting Standards Board (SASB) Standards”, “Global ESG Disclosure Standards for Investment Products” which all look at sustainability practices of businesses. There is also the recently launch (at COP26) “International Sustainability Standards Board”; which is intend to bring much needed consistency and comparability to the ~600 diverse | |

| Stakeholders | Short Term (< 1 year) | Medium Term (>1-3 Years) | Long Term (>3 years) |
|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|----------------------|
| | | ESG reporting standards currently being applied across 140 jurisdictions. | |
| Communities | <ul style="list-style-type: none"> ➤ Community and/or CSOs should pay greater attention in using the existence of local governance platforms to make broader participation. ➤ Community and/or CSOs should focus on what the ideal world is for the different communities and work towards achieving their aspirations – rather than through activist approach, but through influencing approaches. | | |
| Development Partners and IFI INGOs | <ul style="list-style-type: none"> ➤ Consider providing resources to enable responsible national and subnational governments to better involve (national level) and represent (subnational) communities in (public/ private) project development processes; ensuring effective participation, consultation, and communication of all relevant information their voices are effectively heard. Enable: <ul style="list-style-type: none"> ○ National and subnational governments to be objective facilitators of said development processes; ○ Communities to feel confident and safe in expressing their views and concerns about projects, their perceived risks/impacts at different stages of project processes, including planning and development (including impact assessment); construction; operation; and closure. ➤ Consider providing resources to enable civil society to strengthen the capacities of communities and provincial organisations to effectively engage, participate, and influence development processes and related decision making. Or to support organisations to do so. ➤ Train and orient CSOs on the changing Environmental and Social Frameworks/ Standards and safeguard approaches to be applied in DP/IFI financed/ supported programmes and projects to better enable communities and CSO to participate and support such processes, to enable them to better train communities on them. | | |
| Academia / Research Institutions | <ul style="list-style-type: none"> ➤ Be willing and open to advise and provide technical insights to communities and civil society on the nature of different development projects; and the possible impacts they may have. Informing them how to enhance positive impacts, and mitigate any adverse impacts. As communities and CSO often lack the technical capacities and know-how to effectively assess diverse development projects and their possible impacts/risks. | | |

| Stakeholders | Short Term (< 1 year) | Medium Term (>1-3 Years) | Long Term (>3 years) | | | | | | | | | | | | |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------|--------------------|------------------------------------------------|--|--|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| | <p>➤ Undertaken and publish independent research (in Khmer and other languages) of and on planned and previously implemented development project(s) to assess what is planned to be/ has been implemented, what are the risks associated with or emanating from projects</p> | | | | | | | | | | | | | | |
| | <table><tr><th>Stages of Projects</th><th colspan="3">Some (but not limited) issues to be researched</th></tr><tr><td>Existing Projects</td><td colspan="3"><ul style="list-style-type: none">• Did the project(s) do what they were intended to do?• What have been the positive and negative impacts of the project?• What have been the impacts on 'project affected communities' over time?• Were the Environmental and other assessment correct?• Were (and are) developed and approved Environmental Management Plans being followed? And are they effective and adequate?</td></tr><tr><td>Planned projects</td><td colspan="3"><ul style="list-style-type: none">• The nature of the project? Type of project? size of project? Footprint of project- how much land or other resources will it consume? What technologies will be applied? What (solid, liquid, or atmospheric) waste products will it generate? Are there risks from these?• What is the timeframe from the project?• What possible impact(s) (positive and negative will a particularly project type produce• What will it do?• Will the projects' cause pollution? What types of pollution? how? And what are the possible impact?• Who are the developers? What is their business background (in country, regionally or globally) experiences with similar types of projects elsewhere? How have their practices/previous project been prepared and how have they worked with considered community raised issues?</td></tr></table> | | | Stages of Projects | Some (but not limited) issues to be researched | | | Existing Projects | <ul style="list-style-type: none">• Did the project(s) do what they were intended to do?• What have been the positive and negative impacts of the project?• What have been the impacts on 'project affected communities' over time?• Were the Environmental and other assessment correct?• Were (and are) developed and approved Environmental Management Plans being followed? And are they effective and adequate? | | | Planned projects | <ul style="list-style-type: none">• The nature of the project? Type of project? size of project? Footprint of project- how much land or other resources will it consume? What technologies will be applied? What (solid, liquid, or atmospheric) waste products will it generate? Are there risks from these?• What is the timeframe from the project?• What possible impact(s) (positive and negative will a particularly project type produce• What will it do?• Will the projects' cause pollution? What types of pollution? how? And what are the possible impact?• Who are the developers? What is their business background (in country, regionally or globally) experiences with similar types of projects elsewhere? How have their practices/previous project been prepared and how have they worked with considered community raised issues? | | |
| Stages of Projects | Some (but not limited) issues to be researched | | | | | | | | | | | | | | |
| Existing Projects | <ul style="list-style-type: none">• Did the project(s) do what they were intended to do?• What have been the positive and negative impacts of the project?• What have been the impacts on 'project affected communities' over time?• Were the Environmental and other assessment correct?• Were (and are) developed and approved Environmental Management Plans being followed? And are they effective and adequate? | | | | | | | | | | | | | | |
| Planned projects | <ul style="list-style-type: none">• The nature of the project? Type of project? size of project? Footprint of project- how much land or other resources will it consume? What technologies will be applied? What (solid, liquid, or atmospheric) waste products will it generate? Are there risks from these?• What is the timeframe from the project?• What possible impact(s) (positive and negative will a particularly project type produce• What will it do?• Will the projects' cause pollution? What types of pollution? how? And what are the possible impact?• Who are the developers? What is their business background (in country, regionally or globally) experiences with similar types of projects elsewhere? How have their practices/previous project been prepared and how have they worked with considered community raised issues? | | | | | | | | | | | | | | |

Annex 1: The Terms of Reference (ToR)

Community Participation in Decision-Making Processes for Development Projects

Rationale

Public participation is extremely important content that civil society organizations in the globe have been advocating governments to integrate it into a legal binding to ensure a meaningful participation of the public especially project affected people into a decision-making process of a government on a development project. Public participation²⁰ is defined as the participation of all stakeholders concerned with the development project including ministries/institutions, local authorities, relevant departments, project owners, consulting companies, representatives of affected people and non-governmental organizations.

While securing the space for the engagement, there is some doubt as to whether the engagement is meaningful toward decision making process. Given Cambodia does not have a clear definition of the meaningful engagement in decision making, it is described as a process of engaging relevant stakeholders especially project affected people to understand the proposed development project through access to project information and ability to identify issues/problem, develop solutions/action plan, and the ability to take action.

The Natural Resources Governance program of the NGO Forum on Cambodia and its network members have been implementing the logical framework 2018-2023 at the national and sub-national level to influence government policy process to ensure sustainable and inclusive natural resources governance. One of the major milestones is to increase affected community representatives who are actively involved in decision making process concerning hydropower policy, indigenous people conservation and development, and forest conservation. The program is interested in an conducting assessment to understand current level of community participation in decision making process in the foreign investment projects in Cambodia. On the other hand, the assessment will explore the need of community member in terms of capacity building to enhance skill and knowledge that enable them to gain more confidence and knowledge to effectively participate in the decision-making process on foreign investment projects.

The finding will be used to develop community led solutions on addressing current challenges in knowledge and participation in decision making process of the government.

Key focus of the assessment

To understand the current situation in the community in terms of levels of participation in decision making process and meetings regarding all development projects (including hydropower projects, indigenous people conservation and development, and natural resources governance). In particular, to identify community led ideas on types of support needed to find sustainable solutions to addressing current challenges to participation in decision making process. (refer to Annex A – draft guidance for development of Assessment questions).

Assessment objectives

²⁰ Prakas on General Guidelines for Developing Initial and Full EIA reports which was adopted in 2009

- To understand the current level of participation by community in decision making process for the development of hydropower projects, indigenous people conservation and development, and natural resources governance.
- To identify community needs for support to build sustainable solutions that will allow them to gain more confidence and knowledge to effectively participate in decision making process on foreign investments projects.
- To produce policy brief with key finding and recommendation for effective public engagement in decision making toward sustainable development (Khmer and English version)

Assessment approach and key activities

The assessment will be done by consulting affected communities using the questions. It will gather the pre-training data needed for analysis to identify key topics to develop training materials and approach. Also, to identify sustainable approaches to people's participation in decision making process on all projects which may impact their local communities and environment.

The key assessment activities are:

- Develop research methodology
- Review and adapt draft assessment questions
- Consultation with NGO and partners on final assessment questions to be used
- Conduct interviews with NGOs members and targeted local communities
- Gather data that measure current level of participation, level of confidence and knowledge, and community ideas on sustainable ways to increase and maintain knowledge and interest to participate in meetings/events where decision making takes place.
- Write up assessment report which provides detail information on the questions asked
- Outline community priorities for support as identified in the consultation discussions.

Scope of the study:

- The study shall focus on the investment projects in some provinces where indigenous communities and community-based natural resources are living.
- The study shall conduct assessment of current levels of public participation and suggestions on sustainable approaches to participation in the decision-making process for sustainable development projects including the hydropower project, indigenous people conservation and development, and natural resources governance.
- Produce case studies of community participation in context of hydropower project, indigenous people conservation and development, and natural resources governance.
- Produce policy brief with key finding and recommendation for effective public engagement in decision making toward sustainable development
- Timelines Early Sept. 2021

Deliverable

The consultant/team will be required to complete her/his assignment by August 2021. The proposed timeline shall be made by consultant following the proposed activities below within the given timeframe.

| # | Deliverable | Date |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| 1 | Review draft guideline for the development of the assessment questions. Prepare, submit and agree with committee on final assessment questions. | July |
| 2 | Conduct assessment in targeted communities | August |
| 3 | Prepare draft assessment report and submit to committee for feedback. | August |
| 4 | Submit final assessment report to NGO Forum (Khmer and English version) | End of August |
| 5 | Disseminate the assessment report to key stakeholders | End of Oct. 2021 |

Requirements

The interested consultant shall have:

- University degree in the field of social science research and related fields and with 5 years of experience working in the sector.
- Demonstration of experiences in conducting assessments
- Demonstration of experiences in relation to public engagement in decision making process
- Experiences working consulting with Communities and policies related to water governance, indigenous people development and conservation, and natural resource management
- The research methodology should reflect gender mainstreaming in its research tools, including questionnaire, sample size, focus group discussion and the analytical framework for this study.
- This consultancy welcomes and encourages women to apply.

ANNEX A of the ToR:

DRAFT Guidance to for the development of Assessment Questions

- Measure current level of participation by affected communities (gather data from community leaders/representatives/local authorities)?
- Measure female participation in meetings/events/gathering.
- Measure the type of roles women take in these meetings/gathering/events?
- Measure % of women participation in the decision-making process and public speaking in these events.

- Measure the depth of participation, like at village, commune, district, provincial and national/state level?
- Measure level of knowledge on approaches, analysis, strategies and appropriate language for involvement/participation in meetings/events?
- Measure level of confidence to participate when participating and speaking at village, commune, district, provincial and national/state level?
- Identify the types of critical support that community need to feel confident to participate in meetings/event where decision making takes place.
- A group of Mentors and trainers to provide continues knowledge and support for a set period of time (need to explain this model in the text)
- Understanding of project documents being discussed
- Analyze the long-term impact of proposed project
- Prepare speaking notes, recommendations and solutions
- Funds for travel, transportation, accommodation and meals when meetings/events are outside of their local area
- Need support with care of children to attend meetings
- Meeting to be schedule at a time that women can participate
- Others.....

Annex 2: Timetable of Virtual Meetings

| No. | R Type | Tool | R #s (Man) | R #s (Woman) | R #s (Total) | Time | Remarks |
|-----------|-----------------------------------------------------------------|--------------------------|------------|--------------|--------------|------------------|-----------------------------------------------------------------------------|
| 09-Sep-21 | | | | | | | |
| 1 | Interview with CSOs in Stung Treng (CEPA, 3SPN, Mui, CIPO) | Semi-Structure Interview | 3 | 1 | 4 | 14.00 - 16.00 | CSOs working with the selected communities in Stung Treng province. |
| 13-Sep-21 | | | | | | | |
| 2 | Kbal Romeas and Sre Kor Community - resettled villages | FGD | 5 | 1 | 6 | 08.30 - 10.00 | Community accepted the compensations |
| 3 | Kbal Romeas and Sre Kor Community - old villages. | FGD | 4 | 1 | 5 | 10.00 - 11.30 | Community rejected the compensations |
| 14-Sep-21 | | | | | | | |
| 4 | Trapaing Sangke Fishing Community in Kampot province. | FGD | 5 | 3 | 8 | 09.00 - 10.30 | Fishing community in Kampot province |
| 18-Sep-21 | | | | | | | |
| 5 | Thmor Sar Fishing Community in Koh Kong province. | FGD | 6 | 3 | 9 | 10.00 - 11.30 am | Affected by Royal Group Coal Power Plant |
| 6 | CPAs (Pu Tong Community) in Monduliri province. | FGD | 3 | 3 | 6 | 12.00 - 13.30 pm | Community Committee |
| 20-Sep-21 | | | | | | | |
| 7 | Provincial departments in Stung Treng province | Semi-structure | 7 | 0 | 7 | 10.00 - 11.30 am | Environment, MAFF, MEF, Fishery, Forestry |
| 8 | Provincial authority in Stung Treng province | Semi-structure | 1 | 0 | 1 | 17.00 - 18.30 pm | Deputy Director of Administration |
| 21-Sep-21 | | | | | | | |
| 9 | Provincial authority and key sector (MME) in Monduliri province | Semi-structure interview | 3 | 0 | 3 | 10.00 - 11.30 am | Provincial Deputy Governor, Deputy Director of MME and Dept. of Agriculture |
| 10 | CLEC, ADHOC | Semi-structure | 2 | 0 | 2 | 15.00 - 16.30 PM | Karuna, Chhundy |
| 22-Sep-21 | | | | | | | |
| 11 | Local authority in Stung Treng province | KI | 1 | 0 | 1 | 14.30 - 15.30 | Director of Admin, Sesan district |
| 04-Oct-21 | | | | | | | |
| 12 | Interview with commune council in Chong Phlash | KI | 1 | 0 | 1 | 9.00 - 10.30 | Chief of Commune Council |
| 13-Oct-21 | | | | | | | |
| 13 | CSOs in Kampot | Semi-Structure | 4 | 0 | 4 | 8.00 – 10.00 am | CWDCC, ERCO, FACT, SAMAKY |
| 14 | Ministry of Rural Development | Semi-Structure | 2 | 2 | 4 | 15.00 - 16.30 | Director of Dept. of Ethnic Minority Dev and staff |
| 19-Oct-21 | | | | | | | |
| 15 | E&A Consultant Co., Ltd (E&A) | KI | 1 | 0 | 1 | 9.00 - 10.30 | Managing Director |
| 16 | NGO Forum on Cambodia | Semi-Structure | 4 | 0 | 4 | 14.30 - 16.00 | Program staff involved in water and NRG projects |
| 20-Oct-21 | | | | | | | |
| 17 | Assessment & Solution Co. Ltd | KI | 1 | 0 | 1 | 9.00 - 10.30 | |
| 15-Nov-21 | | | | | | | |
| 18 | Renaissance Minerals (Cambodia) Ltd | KI | 0 | 1 | 1 | n/a | (written response) |

Annex 3: References

- RGC's Constitutions (as amended)
- RGC's Law on Environment Protection (1996)
- Sub-Decree 72 on Environment Impact Assessment
- RGC's Prakas on Environment Impact Assessment Guidelines_(2009)
- RGC's National Protected Area System Strategic Framework (2014)
- RGC's Law on Expropriation
- Cambodian Sustainable Development Goals (CSDGs) Framework (2016-2030)
- Country Technical Note on Indigenous People's Issues (2012)
- The World Bank Environmental and Social Framework (2017)
- NGO's A Transdisciplinary Study of Sesan Riverine Communities
- Case Study on Public Participation in EIA in Cambodia (Hydropower, Mining, Land Concession), 2019
- Effective Public Participation is Good for Business in the Mekong Region (2017)
- United Nations Declaration on the Rights of Indigenous People (2007)
- Training Manual for Indigenous People on Free, Prior and Informed Consent (FPIC, 2014)
- AIPP's Handbook on Extractive Industries and FPIC of Indigenous Peoples (2019)

Annex 4: Key Websites

- <https://www.moe.gov.kh/en>
- <https://mef.gov.kh/>
- <http://www.cambodiainvestment.gov.kh/>
- <http://www.mme.gov.kh/en/>
- <https://www.emeraldresources.com.au/renaissance-minerals-cambodia-limited>
- <https://www.ngoforum.org.kh/>
- www.ohchr.org

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