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RAPID ASSESSMENT OF THE POLITICAL, LEGAL AND INSTITUTIONAL SETTING

CAMBODIA



Lowering Emissions in Asia's Forests (LEAF)

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CAMBODIA

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Acronyms

ASEAN	Association of Southeast Asian Nations
APSARA	Authority for the Protection and Management of Angkor and the Region of Siem Reap
AWG-LCA	Ad-hoc Working Group on Long-term Cooperative Action
CBD	Convention on Biological Diversity
CC	Commune Council
CCD	Cambodian Climate Change Department
CDC	Council for the Development of Cambodia
CDM	Clean Development Mechanism
CDM EB	CDM Executive Board
CF	Community Forest
CFMC	Community Forest Management Committee
CO ₂	Carbon dioxide
CPA	Community Protected Area
DANIDA	Danish International Development Agency
DNA	Designated National Authority
DOLMUPCC	District Office of Land Management, Urban Planning, Construction and Cadastre
DWG	District Working Group
ELC	Economic Land Concessions
ESIA	Environmental and Social Impact Assessment
FA	Forestry Administration
FAO	Food and Agriculture Organization (of the United Nations)
FCPF	Forest Carbon Partnership Facility
FiA	Fisheries Administration
FORRU	Forest Restoration Research Unit
GDANCP	General Department of Administration for Nature Conservation and Protection
GEF	Global Environmental Facility
GIS	Geographical Information System
IPCC	Intergovernmental Panel on Climate Change
ITTA	International Tropical Timber Agreement
ITTO	International Tropical Timber Organization
JSDF	Japan Social Development Fund
KP	Kyoto Protocol
LDC	Least Developed Country
MAFF	Ministry of Agriculture, Forestry and Fisheries
MEF	Ministry of Economy and Finance
MIME	Ministry of Industry, Mines and Energy
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MoE	Ministry of Environment

Mol	Ministry of Interior
MoP	Ministry of Planning
MPWT	Ministry of Public Works and Transport
MRD	Ministry of Rural Development
NA	National Assembly
NAMA	Nationally Appropriate Mitigation Action
NAPA	National Adaptation Program of Action
NBSAP	National Biodiversity Strategy and Action Plan
NCCC	National Climate Change Committee
NGO	Non-governmental Organization
NFP	National Forest Policy
NSDP	National Strategic Development Plan
NTFP	Non-timber Forest Product
PA	Protected Area
PC	Participants' Committee
PEB	Program Executive Board
PFRs	Permanent Forest Reserves
PLUAC	Provincial Land Use Allocation Committee
REDD(+)	Reducing Emissions from Deforestation and Forest Degradation (and the role of the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries).
REL	Reference Emission Level
RGC	Royal Government of Cambodia
RL	Reference Level
R-PP	Readiness Preparation Proposal
SFM	Sustainable Forest Management
SGS	Société Generale de Surveillance
SLC	Social Land Concession
ToR	Terms of Reference
TSELC	Technical Secretariat for Economic Land Concessions
UNDP	United Nations Development Program
UNEP	United Nations Environment Program
UNESCO	United Nation Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
VCS	Verified Carbon Standard
WCS	Wildlife Conservation Society

Political, Institutional and Legal Setting for REDD+ in Cambodia

This report provides an assessment of the national, institutional, political and legal circumstances relevant to forest and land use in Cambodia; and, more importantly to identify areas of opportunity for increased support from institutional donors.

The assessment provides an overview of national context, including the country's status of REDD+ readiness, involvement in multilateral REDD+ processes and other international forest sector reform initiatives, a discussion of the current forest cover and trend of deforestation, as well as Cambodia's experience in other carbon market mechanisms. This chapter is followed by an analysis of the main drivers of deforestation and forest degradation as identified by the country and described in existing literature, as well as by an analysis of the main institutions in the country in charge of land use matters including forestry, agricultural and REDD+. The fourth chapter provides an overview of the legal framework regarding land use, including national definitions (or lack thereof) for key issues such as forest types, forest degradation and different types of land tenure arrangements. This is followed by an overview of government efforts to address drivers through policies, programs and other legal provisions.

The basis for the assessment was an initial literature review to examine the political, institutional and legal challenges for REDD+ implementation in Cambodia. In a second step, twelve semi-structured interviews with experts in financial mechanisms, conservation and development initiatives and with a specific target audience, REDD+ practitioners and project implementers for national or jurisdictional REDD+ programs. The literature review together with these interviews helped to identify the opportunities and interventions most relevant to the provision of additional support from institutional donors.

Executive Summary

Cambodia has one of the highest levels of forest cover in Southeast Asia; however, area estimations differ significantly between sources. Total forest area is reported to be as high as 10.2 million hectares of forest; covering approximately 60% of Cambodia's land area. Other sources suggest that this figure might be overestimated by 25%. Cambodia participates in the Forest Carbon Partnership Facility (FCPF) and the UN-REDD Program and has submitted its program documents for both processes. REDD+ readiness is still in the very early stages in Cambodia. Nonetheless, plans to follow the phased approach, set out in the Cancun Agreements, have been laid out in the context of Cambodia's participation of the FCPF and UN-REDD Program. However, the FCPF has raised concerns about the lack of strategies i) to address forest land tenure and resource rights as well as forest land conflicts; and, ii) to identify the issuance of Economic Land Concessions as a major driver of deforestation. Hence, it is expected that it will take some time until the country will be able to access all funding available for REDD readiness support.

Experience exists at national and local level in developing voluntary REDD+ projects. The Oddar Meanchey REDD+ project has gained international visibility since it is the first REDD+

project that has obtained a political risk guarantee from an international institution (the US Overseas Private Investment Corporation) to cover some host country political risk. The project is in advanced validation stage and more projects are in the pipeline. The project is set up through official community forestry arrangements, whereby the carbon credits are considered a sovereign asset that is held by the central Government, which channels revenue payments to the local level.

Drivers of Deforestation and Degradation

- Logging has historically been the key driver of deforestation and degradation. A logging moratorium in 2002 halted all licenses, but illegal logging has continued unabated. The Prime Minister issued a strong public condemnation of illegal logging in 2010 signaling a renewed desire to tackle the problem.
- Rapid increases in industrial agricultural expansion, largely as a result of foreign direct investment, are likely to have had a major impact on deforestation. Rubber, sugar cane and biofuels are major expansion crops.
- Traditional open access rules have historically led to forest encroachment. Though this was on the decline, new roads and other infrastructure developments have opened up previously inaccessible areas and led to further encroachment.
- Fuelwood is still a major source of both household and industrial energy production in Cambodia. While household use has not generally been linked to unsustainable degradation practices, industrial use, particularly in brick-making and garment manufacturing has been noted as a cause for concern.
- The annual rate of mangrove loss is significantly higher than that of terrestrial forest loss, with mangrove charcoal production as the major driver.
- Key underlying factors include low institutional capacities, weak forest governance, land speculation and poor implementation of environmental impact assessment regulations.

Institutional Framework

- There are several institutions with responsibility for forest management in Cambodia, with roles largely defined by forest category. This has been known to lead to significant overlap in mandates and confusion over specific roles.
- The Forestry Administration is in charge of the Permanent Forest Estate, but faces several challenges in carrying out its mandate. These include severe resource deficiencies and powerful vested interests.
- A decentralization process has been underway since the late 1990s, under which policies are defined at the central level and implemented at local levels. The reforms intend to provide for a greater role for local levels of government in natural resource management.
- REDD+ institutions are largely not yet established, though their future structure is currently being worked on. The REDD+ Task Force was created in January 2010 with an interim mandate to develop the Cambodian R-PP, and will be complemented by both technical teams and high-level advisory groups.

Legal Framework

- Land is subject to both public and private ownership in Cambodia, though only Cambodian citizens and companies can own land outright. Planted forests can be owned by private individuals or companies, whereas natural forests are owned by the government, with some minor exceptions.

- There is a strong system of customary land rights. Rights to traditional lands are secured by law and, when registered, are equal to full ownership rights.
- The Royal Government of Cambodia (RGC) has claimed ownership over most of the country's forest carbon, on the grounds that most of the country's forests belong to the State. To date, no steps have been taken toward regulation of forest carbon other than assigning responsibility for carbon sales.
- The RGC has recently adopted a comprehensive forestry policy for the period up to 2029. As this has only recently been officially improved, it is too early to assess its implementation or effects.
- There is an official framework for establishing community forests and granting communities rights over forest management. Communities are not, however, entitled to ownership rights. Further research is needed to assess the progress that has been made so far on implementing this framework.
- The RGC has recently undertaken a major revision of all economic land concessions to ensure compliance and to reduce the size of concessions over 10,000 hectares. To date, several concessions have been reduced and more have been cancelled under the revision. Further research is needed to assess the total area of concessions recently granted or still pending approval.

Opportunities for additional institutional donor support

Cambodia is a least developed country with a recent history of violence, corruption and political turmoil. Government institutions and policy enforcement are weak, making institutionalization of successful sustainable land-use policies challenging. The concerns raised by the FCPF and the World Bank with regards to land conflicts and displacement of communities in context of issuance of economic land concessions are high and it remains to be seen how this will be addressed at the highest political level. At the same time, high-level figures have shown support for tackling deforestation, and involvement in multilateral REDD+ processes. The number of reforms that the Government has announced, such as the legal reform as spelled out in the National Forest Program as well as the planned introduction of a comprehensive framework for sustainable forest management may be taken as evidence of the positive momentum existing at highest political level.

The discrepancy between ambitions and current status means there are substantial opportunities for technical assistance to help improve the policy and legal framework. As an overarching strategy, it is recommended for institutional donors to work along the lines of the positive momentum for regulatory reform and preparation for REDD+.

The following is a tentative list of potential areas for additional institutional donor support with a main focus on central level activities. The main drivers targeted by the following activities are illegal logging as well as encroachment by smallholders and by commercial agriculture. One of the main underlying factors to be addressed is the inadequate regulatory framework to assign tenure and management rights to local communities. REDD+ can potentially serve as a vehicle to discuss management and tenure concepts as well as the roles of communities in light of complementing Government agencies' efforts related to natural resources management. Hence, it is recommended to follow the dual strategy of addressing regulatory deficiencies through the REDD+ readiness process, as well as through the forest sector reform process. Further analysis and discussions with donors and policy-makers as well as input from objective 4 is needed to refine the activities and specify which drivers can be targeted most effectively; as well as, whether it is advisable to link this work to specific pilot projects on-the-ground.

1. The National Forest Program 2010-2029 lays out the RGC's plan to develop a sub-program on legal and administrative reform. Institutional donors could provide legal and policy advice to help ensure this reform is framed and implemented in a manner that supports the RGC's aims with regards to an emerging REDD+ framework. Further research may be required to determine the scope of the government's intentions for this reform and specific activities donors could support.
2. The RGC has indicated in several documents that it intends to introduce a comprehensive sustainable forest management (SFM) framework for Cambodia. Institutional donors could assist the RGC develop an appropriate legal and policy framework for SFM that is consistent with REDD+. Research should be undertaken to explore how such activities could complement existing programs, such as the SFM project being undertaken by the UNDP and GEF.
3. Cambodia is intending to develop a National REDD+ Strategy and a National (Implementation) Framework for REDD+. Though much of this will be done under the auspices of the UN-REDD Program and FCPF, limited capacities within the RGC indicates that there may be significant room for donor assistance on legal and policy elements of the strategy.
4. The RGC has expressed its intention to explore and develop innovative financing sources for forestry and REDD+. This includes potential development of conservation concession arrangements under a PES. Institutional donors could assist the RGC to explore the options available and potentially develop the legal framework(s) required to implement funding flows.
5. Cambodia intends to develop its REDD+ capacities and activities in stages following a "nested approach", though there are few defined plans or ideas so far on how this may be implemented. Donors could provide support for outside experts with experience in a nested approach to provide technical assistance to the government to help it define and implement appropriate policies to support this approach.

1. National context

Key Findings

- Cambodia has one of the highest levels of forest cover in Southeast Asia, however, area estimations differ significantly between sources. Total forest area is reported to be as high as 10.2 million hectares of forest covering approximately 60% of Cambodia's land area. Other sources suggest that this figure might overestimated by 25%.
- Cambodia participates in the Forest Carbon Partnership Facility (FCPF) and the UN-REDD Program and has submitted its program documents for both processes. REDD+ readiness is still in the very early stages in Cambodia. Nonetheless, plans to follow the phased approach set out in the Cancun Agreements have been laid out in the context of Cambodia's participation in the FCPF and UN-REDD Program.
- The FCPF has raised major concerns about lacking strategies i) to address forest land tenure and resource rights as well as forest land conflicts and ii) to identify the issuance of Economic Land Concessions as a major driver of deforestation. Hence, it is expected that it will take some time until the country will be able to access all funding available for REDD readiness support.
- Experience exists at the national and local level in developing voluntary REDD+ projects. The Oddar Meanchey REDD+ project gained international visibility since it is

the first REDD+ project that has obtained a political risk guarantee from an international institution (the US Overseas Private Investment Corporation) to cover some host country political risk.

1.1 Engagement with REDD+ and other forest sector cooperation

Cambodia is a participant in both the **UN-REDD Program** and the **Forest Carbon Partnership Facility (FCPF)**. Cambodia submitted its National Program Document to the UN-REDD Policy Board in November 2010, and received approval for a \$3 million grant. A revised version was finalized in May 2011. In March 2011, Cambodia submitted its R-PP to the FCPF governing body (the Participants Committee, or PC). The PC identified several key issues that needed to be addressed before Cambodia can move forward in the FCPF process, including the revision of implementation of existing national laws and policies to i) inform strategies to address community forest land tenure and resource rights as well as forest land conflicts; ii) identify Economic Land Concessions (ELCs) as a driver of deforestation and degradation and elaborate possible strategies to reduce rates of deforestation/degradation caused by ELCs; and, to iii) continue progress on information sharing and consultations among government and stakeholders. Cambodia has requested that UNDP (instead of the World Bank) serve as its delivery partner for a potential \$3.6 million grant from the FCPF.

1.2 State of REDD+ Readiness

National strategy or action plan

The development of a **National REDD+ Strategy** and implementation framework is currently planned as part of Cambodia's UN-REDD Program and R-PP implementation under the FCPF.¹ Six key outputs are intended as part of strategy development: i) development of individual REDD+ strategies and implementation modalities; ii) evaluation of REDD+ co-benefits; iii) revenue and benefit-sharing studies; iv) establishing REDD+ fund mechanisms; v) policy and legal development for the National REDD+ implementation framework; and, vi) safeguards and monitoring of co-benefits. Implementation of the strategy is expected to occur through the **National Framework for REDD+** and sub-national implementation; and that any crediting follows the nested approach. Innovative financing models, such as conservation concessions, are intended to be explored to support implementation.²

The expected completion date is unclear, with the UN-REDD National Program Document referring to both the end of 2012³ and the end of 2013⁴ as intended completion dates. The document's timeline specifies mid-2013 as the intended completion date for many of the key outputs.

National forest reference (emission) level (RL/REL)

Cambodia is still in the early stage of developing RLs and/or RELs. Development is to be undertaken by the **MRV/REL Technical Team**, which reports to the REDD+ Taskforce, but at

¹ See UN-REDD Program, National Program Document – Cambodia, May 2011 [*hereinafter* Cambodia UN-REDD NPD], at 9.

² RGC, Readiness Preparation Proposal, Submitted to the FCPF on 4 March 2011 [*hereinafter* Cambodia R-PP], at 46.

³ Cambodia UN-REDD NPD, at 9.

⁴ *Ibid*, at 95.

the time of writing it had yet to begin. Assistance from JICA, along with the FCPF and UN-REDD Program is expected.⁵

Both its R-PP and UN-REDD National Program Document refer to the development of RLs/REs based on historical emissions and national circumstances, and the R-PP outlines several key principles for RL/REL development. These include accuracy, environmental integrity, comprehensiveness, comparability and transparency. Sub-national RLs/REs are also intended in line with a nested approach.⁶

National monitoring, reporting and verification (MRV) system

The development of an MRV system is in its very early stages. Cambodia's R-PP and UN-REDD National Program Document set out initial ideas, including establishing appropriate institutions with adequate capacity; developing a REDD+ monitoring system for forest carbon; and, establishing a national forest inventory system. The development of a national MRV system is tasked to the MRV/REL Technical Team.

Implementation and monitoring safeguards

The implementation of safeguards is one of the six key outputs to be developed as part of the National REDD+ Strategy. A Consultation and Safeguards Technical Team composed of representatives of i) the Forestry Administration; ii) the General Department of Administration for Nature Conservation and Protection and other government sub-agencies; iii) development partners; and, iv) civil society has been tasked with developing a number of safeguards components. These include i) a consultation plan; ii) the strategic environmental and social assessment framework; and, iii) the Monitoring System for Multiple Benefits, Other Impacts, and Governance.

1.3 Other UNFCCC engagement

Cambodia has not been particularly active in negotiations under the UNFCCC, but is affiliated with the G77/China's position on most issues. As a member of ASEAN, Cambodia participated in the bloc's joint submissions on REDD+ in 2008 and 2010, which supported the use of both **market and fund-based finance** for REDD (with flexibility for developing countries to choose which sources to receive based on circumstances and priorities); a **flexible scope** (to include forest management and enhancement of forest carbon stocks); a **phased approach**, including providing flexibility with respect to national accounting and sub-national implementation; and, the ability for countries to **set reference levels based on national circumstances** and not just historic emissions.⁷ Cambodia's REDD+ focal point, Omaliss Keo from the Cambodia Forestry Administration is a familiar face in international REDD+ discussions and participates actively in UN-REDD, the FCPF, and the REDD+ Partnership.

⁵ Cambodia R-PP, at 76-77.

⁶ Ibid, at 72, 78.

⁷ ASEAN Common Position Paper On Reducing Emission from Deforestation and Forest Degradation (REDD) in Developing Countries", included in UNFCCC, AWG-LCA, Fourth Session, Poznan, 1-10 December 2008, "Ideas and proposals on the elements contained in paragraph 1 of the Bali Action Plan, Submissions from Parties: Addendum, Part II", FCCC/AWGLCA/2008/MISC.5/Add.2 (Part II); "ASEAN Common Position Paper On Reducing Emission from Deforestation and Forest Degradation (REDD+) in Developing Countries", Concluded at ASOF High Level Executive Seminar on ASEAN Common Position for UNFCCC COP 16, 20 November 2010, Bogor, Indonesia.

As a least developed country (LDC) Cambodia has a **National Adaptation Program of Action** to Climate Change (NAPA), which was submitted in October 2006 by the Ministry of Environment.⁸ The Program contains several forest-related actions, including afforestation in watersheds and mangrove protection activities. Cambodia submitted its first National Communication to the UNFCCC in August 2002.⁹ It includes a national greenhouse gas inventory from 1994, but has not been updated since.

Carbon market experience

Cambodia's Designated National Authority (DNA) includes representatives from a broad range of ministries. The Cambodian Climate Change Department (CCD) of the MoE acts as the DNA Secretariat.¹⁰ As of March 2011 there were 4 CDM projects in Cambodia registered by the CDM Executive Board (EB), 7 projects approved by Cambodia's DNA and three projects at or after the validation phase. The seven approved CDM projects include four biogas projects, one hydro-power project, one waste/heat gas utilization project, and one biomass project.

In May 2008, the Council of Ministers endorsed the first REDD+ demonstration project in **Oddar Meanchey**, adopting specific guidance on use of revenues and management by the Technical Working Group on Forestry & Environment. The Oddar Meanchey project covers 67,783 hectares, and intends to sequester or avoid emissions of 7.1 million tCO₂e over 30 years. The project will be implemented through community forestry (CF) groups, with CF Management Committees (see chapter 3.3.3) entering into regeneration contracts to restore degraded forests. Project activities are wide-ranging, and include forest fire prevention, agricultural intensification, cracking down on illegal logging, as well as, reforestation and silviculture. It is currently undergoing validation under both the Verified Carbon Standard and the Climate Community and Biodiversity Alliance Standard.

The project is the first of its kind in which the host country political risk of a REDD+ project is being insured by an international development finance institution, in this case the US Overseas Private Investment Corporation (OPIC). The insurance agreement covers the investment of US-based Terra Global Capital, one of the project's main investors.¹¹

1.4 Forest cover, deforestation and forest degradation trends

Cambodia has one of the highest levels of forest cover in Southeast Asia. RGC estimates Cambodia contains approximately 10.2 million hectares of forest cover representing approximately 60% of Cambodia's land area.¹² The RGC states that data on forest cover reported to the FAO are based on remote sensing, although the specific sensor and/or spatial resolution are unspecified. Data are from the years 1992/1993, 1996/1997, 2002 and 2005. Little ground-truthing of satellite interpreted data was done for 1992 and 1996 due to war and economic reasons. The 2002 and 2005 figures for forest area are aggregates of several

⁸ Cambodia's NAPA is available at: <http://unfccc.int/resource/docs/napa/khm01.pdf>.

⁹ Cambodia's National Communication under the UNFCCC, prepared by the Ministry of environment, See: <http://unfccc.int/resource/docs/natc/khmnc1.pdf>.

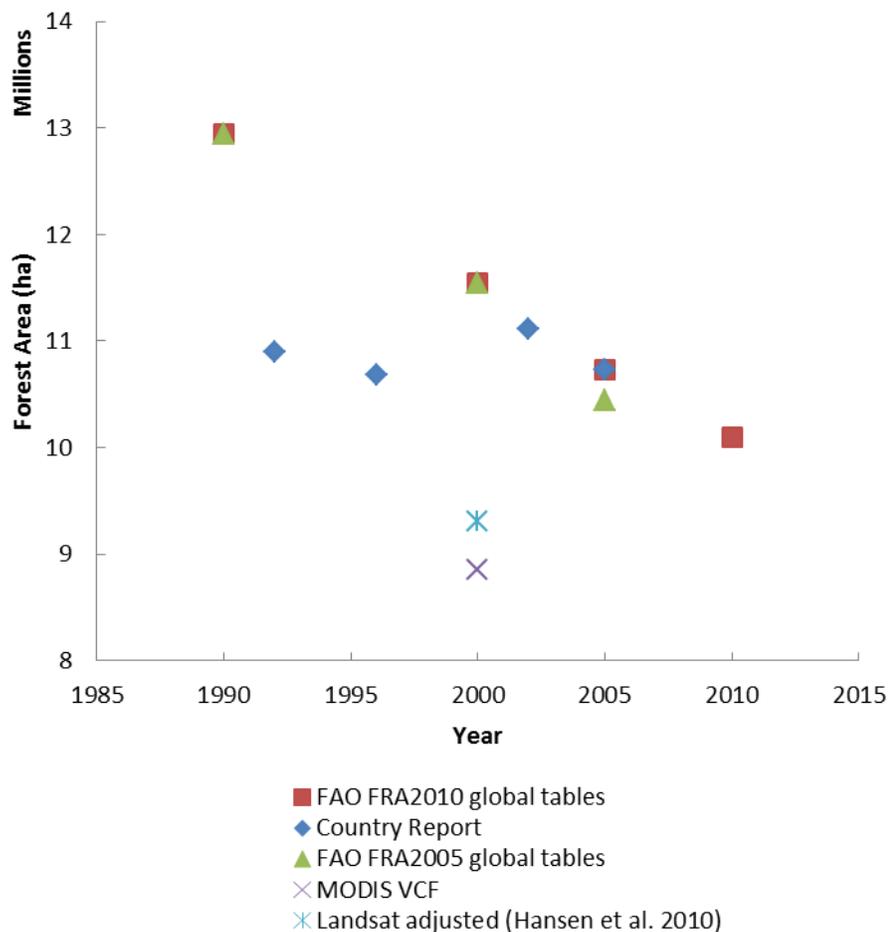
¹⁰ Institute of Global Environmental Strategies (IGES), RGC [Ministry of Environment], "Clean Development Mechanism (CDM)" in Cambodia, available at http://enviroscope.iges.or.jp/modules/envirolib/upload/984/attach/cambodia_final.pdf

¹¹ Global Carbon Emissions Monitor, 7 July 2011, at 8-9.

¹²RGC (Forestry Administration). Forest Cover Changes in Cambodia, 1965-2006. Paper prepared for workshop on "Road to REDDiness – making RELs work", Bangkok, Thailand, September 2011.

different classes that make it difficult to estimate forest area specifically for FRA. Overall, estimation and forecasting was done to arrive at figures for forest area reported to FAO based on older data. More recent remote-sensing based assessments of forest area in Cambodia suggest that there is less forest area in the country than reported to FAO, e.g. coarse resolution MODIS data show forest area as 25% less than forest area reported to FAO. However, Landsat adjustments decrease the discrepancy somewhat, as shown in Figure 1.

Figure 1: Trends in forest area over time in Cambodia according to multiple data sources



Some recent assessments show forest loss at about half of FAO estimates for the same time period. However, this may be caused by different forest definitions. If Cambodia’s forests are dominated by inundated forest classes, some forest land may be classified as water in the interpretation of coarse resolution remote sensing imagery if limited ground data is available.

Table 1: Forest area change estimates in Cambodia for different time periods according to different data sources. FAO estimates represent net loss while MODIS VCF and Hansen et al. estimates represent gross loss.

Time Period	Forest Area Change							
	<i>ha yr⁻¹</i>				<i>% yr⁻¹</i>			
	FAO FRA2010	FAO FRA2005	MODIS VCF	Landsat adjusted MODIS (Hansen et al. 2010)	FAO FRA2010	FAO FRA2005	MODIS VCF	Landsat adjusted MODIS (Hansen et al. 2010)
1990-2000	-140,000	-140,000			-1.14		-1.1	
2000-2005	-163,000	-219,000	-106,987	-58,394	-1.45		-2.0	-1.21
2005-2010	-127,000				-1.22			-0.66

According to Forestry Administration statistics a total of 380,000 hectares of forest were cleared between 2002 and 2005/6,¹³ resulting in a deforestation rate of 0.5% per year. As a consequence Cambodia has been classified as a 'high forest cover, high deforestation' country for the purposes of REDD+.¹⁴

2. Drivers of Deforestation

Key Findings

- Logging has historically been the key driver of deforestation and degradation. A logging moratorium in 2002 halted all licenses, but illegal logging has continued unabated. The Prime Minister issued a strong public condemnation of illegal logging in 2010 signaling a renewed desire to tackle the problem.
- Rapid increases in industrial agricultural expansion, largely as a result of foreign direct investment, are likely to have had a major impact on deforestation. Rubber, sugar cane and biofuels are major expansion crops.
- Traditional open access rules have historically led to forest encroachment. Though this was on the decline new roads and other infrastructure developments have opened up previously inaccessible areas and led to further encroachment.
- Fuel wood is still a major source of both household and industrial energy production in Cambodia. While household use has not generally been linked to unsustainable degradation practices, industrial use, particularly in brick-making and garment manufacturing has been noted as a cause for concern.
- The annual rate of mangrove loss is significantly higher than that of terrestrial forest loss, with mangrove charcoal production as the major driver.
- Key underlying factors include low institutional capacities, weak forest governance, land speculation and poor implementation of environmental impact assessment regulations.

¹³ Bronson Griscom et al., "Sensitivity of amounts and distribution of tropical forest carbon credits depending on baseline rules" 12 *Environmental Science and Policy* 897(2009).

¹⁴Ibid.

- There is little quantitative analysis on the impacts of respective drivers of deforestation and degradation in Cambodia. As independent quantitative research on drivers has not been possible for the preparation of this assessment, the following assesses available information gathered from documents prepared for multilateral REDD+ processes along with governmental and non-governmental reports and academic literature.

Unsustainable and illegal logging

Unsustainable logging, largely related to the long-running conflict between the RGC and several guerilla groups, has historically been one of the most important drivers of deforestation in Cambodia. Large amounts of international loans and aid were suspended in the late 1990s in an attempt to slow deforestation rates. In response, a **logging moratorium** was imposed by the RGC in 2002. As a result commercial logging declined and most of the production forestry concession agreements were cancelled by 2006. All remaining logging concessions, which have been reduced to 3.4 million hectares of the Permanent Forest Reserve (PFR), remain halted.¹⁵

The logging moratorium has not been successful in halting **illegal logging**. Rather, it had the effect of shifting logging from a few commercial operators to many smaller scale operators, and from exports to domestic markets. According to a 2009 World Bank estimate, up to 94% of the total volume of logging in the country is illegal,¹⁶ despite the total logging moratorium being partially relaxed in 2007 (see below).

In 2010 the Prime Minister issued a strong **public condemnation** of illegal logging and replaced a number of key officials (including the director of the Forest Administration) due to their failure at central and provincial levels to control such activities.¹⁷ Between 2004 and 2007 there was no legal logging reported. In 2007 the RGC introduced a system of annual bidding in order to meet annual wood needs. It is stated that forestry coupes are offered for public bidding after the Forestry Administration has conducted tree-marking, social and environmental impact assessments and one-year management plans.¹⁸

Agricultural production

Land concessions issued for agricultural production have been closely linked to deforestation. The most important cash crops have been rubber, sugar cane and, more recently, biofuel crops.¹⁹ Over the past years, **foreign investment** in agriculture has expanded rapidly, with particularly notable growth in rubber plantations. In some cases, there have been reports of concessions being granted in forest areas and former forest concession areas in violation of the provisions of the forestry law and forestry regulations. The total area of rubber plantations increased from around 51,000 hectares in 1985 to 69,000 hectares in 2001, and recent figures suggest that 956,690 hectares is currently subject to Economic Land Concessions, mostly for agriculture.²⁰ The Independent Forest Sector Review of 2004 claimed that Cambodian plantations are not replacements for natural forests and therefore are not driving deforestation

¹⁵ Cambodia R-PP.

¹⁶ USAID Country Profile, Property Rights and Resource Governance, Cambodia, available at <http://usaidlandtenure.net/usaidltp/products/country-profiles/cambodia/cambodia-country-profile.pdf> [*hereinafter* USAID Cambodia country profile].

¹⁷ USAID Cambodia country profile, at 3.

¹⁸ ITTO, "Status of Tropical Forest Management", Technical Series 38, June 2011, at 151.

¹⁹ Cambodia R-PP.

²⁰ *Ibid.*

directly.²¹ However, figures from the Forestry Administration indicate that 35,000 hectares was cleared between 2002 and 2006 in Pailin Province alone, indicating that this may not be the case.²²

The sharp increase in large agriculture development may also have negative effects on landlessness, which has increased steeply in recent years. The 2004 Socio-Economic Survey estimated landlessness at 20% in the same year.²³ This is in turn likely to have a knock-on effect on deforestation through encroachment.

Forest encroachment

Forest-land not currently under management is traditionally seen as an open-access resource that can be claimed by whoever clears it first. In-migration in many forested areas of Cambodia has increased demand for land and resources. In some provinces in-migration has been encouraged in past years with the opportunity for secure land being offered. Migrants generally clear farm land for themselves or for subsequent sale. Moreover, as immigrants arrive rapidly and occupy land illegally, existing land-use plans become destabilized and land tenure conflicts become more prevalent.²⁴ Although migration rates have been on the decline since 2008, new **road developments** have opened up previously inaccessible forests, which increase deforestation and degradation in these areas. Protected areas adjacent to development zones are especially threatened. The situation is further worsened by lack of state land registration and forest estate demarcation.²⁵

Fuelwood

Fuelwood is the major source of energy for most rural and some urban household and even for some industries.²⁶ Although domestic use of fuelwood is not usually associated with unsustainable forest loss, high levels of commercial demand and lack of alternative energy source are a cause for concern.²⁷ The brick-making and garment manufacturing industries are the most important users of fuelwood. Several carbon-market cook stove projects, whereby more efficient cook stoves are introduced in homes to reduce domestic fuelwood consumption, have recently been developed to address deforestation due to fuelwood collection. However, concerns have been expressed over the additionality of such projects, and further research may be needed on current aspects of fuelwood use.²⁸

Forest fires

The role of fire in forest loss in Cambodia is unclear. Use of fire for clearing for crops, hunting and maintenance of existing pastures, cropland and unimproved roads and paths is widespread

²¹ Independent Forest Sector Review, The Forest Sector in Cambodia, Part I: Policy choices, issues and options, April 2004, at 70.

²² See

<http://www.afd.fr/webdav/site/afd/shared/PORTAILS/PAYS/CAMBODGE/Site%20MaJ%20Aout2011/Publications/Pailin%20-%20Case%20study%20-%20V6%20-%20light.pdf>.

²³ Cambodia UN-REDD NPD.

²⁴ Cambodia R-PP.

²⁵ Ibid.

²⁶ Ibid.

²⁷ N Top et al., "Variation in woodfuel consumption patterns in response to forest availability in Kampong Thom Province, Cambodia" 27 *Biomass and Bioenergy* 57 (2004).

²⁸ Cambodia R-PP.

in Cambodia.²⁹ However, this has been practiced for hundreds of years and there is little to suggest that such activities are inherently unsustainable.

Mangrove charcoal

The **annual rate of mangrove loss exceeds terrestrial forest loss**. The annual loss rate of mangrove forests grew from 1.6% between 1990 and 2000 to 1.9% between 2000 and 2010. By 2010 only 56,000 hectares of mangroves remained in Cambodia with only 70% of the mangrove area present in 1990 still undisturbed.³⁰ The export of mangrove charcoal from Cambodia to Thailand is a major cause of mangrove loss in Cambodia.³¹

Summary

While the foregoing represent the most important drivers of deforestation and degradation in Cambodia today, other activities and factors have been directly and indirectly associated with forest loss. A summary of direct and indirect drivers of deforestation both within and outside the forestry sector is provided in Table 2.

Table 2: Direct and indirect drivers of deforestation within and outside the forest sector (Source: Cambodia R-PP, p.38)

	Within the forest sector	Outside the forest sector
Direct Drivers	<ul style="list-style-type: none"> • Unsustainable and illegal logging • Fire (role disputed) • Unsustainable wood fuel collection 	<ul style="list-style-type: none"> • Clearance for agriculture • Expansion of settlements • Infrastructure development
Indirect Drivers	<ul style="list-style-type: none"> • Lack of demarcation of forest areas • Low institutional capacity and weak policy implementation • Inadequate forest law enforcement • Weak forest sector governance <ul style="list-style-type: none"> ○ Low levels of stakeholder participation and involvement ○ Lack of transparency and accountability ○ inadequate assessment of social and environmental impacts • Lack of sustainable or alternative supply of wood and timber, including for wood energy to meet demand • Demand for wood energy for domestic and industrial use 	<ul style="list-style-type: none"> • Population increases • Poverty • Rising incomes and demands for resources • Increasing accessibility of forest areas • Low agricultural yields • Migration into forest areas • New settlements, including in border areas • Large-scale agro-industrial developments (including economic and social land concessions and other concessions) • Land speculation • Regional demand for resources • Poor ESIA regulations and lack of implementation • Governance <ul style="list-style-type: none"> ○ Weak forestland tenure – tenure is weakest in forests and other areas outside residential or farming zones ○ Land grabbing ○ Weak enforcement of the law

²⁹ Ibid.

³⁰ Ibid, at 39.

³¹ Liana Talaue-McManus et al, “Transboundary Diagnostic Analysis for the South China Sea”, UNEP (2000), Available at: http://www.cobsea.org/documents/Transboundary_Diagnostic_Analysis.pdf.

	<ul style="list-style-type: none"> • Low efficiency of wood conversion and use for construction, energy production, etc. • Lack of incentives promoting sustainable management of forests • Lack of finance to support sustainable forest management activities by line agencies, local authorities and local communities 	<ul style="list-style-type: none"> ○ Limited implementation of land registration (private and state) ○ Insufficient implementation of land-use planning ○ Overlapping/unclear jurisdictions • Social norms (claiming land through utilization) • Economic benefits provided by sustainable management of forests at the national level often appear lower than alternative land-uses • Opportunity costs of sustainable management of forests at the local level • Low awareness of environmental roles of forests.
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3. Institutional Framework

Key Findings

- There are several institutions with responsibility for forest management in Cambodia, with roles largely defined by forest category. This has been known to lead to significant overlap in mandates and confusion over specific roles.
- The Forestry Administration is in charge of the Permanent Forest Estate, but faces several challenges in carrying out its mandate. These include severe resource deficiencies and powerful vested interests.
- A decentralization process has been underway since the late 1990s, under which policies are defined at the central level and implemented at local levels. The reforms intend to provide for a greater role for local levels of government in natural resource management, however, effectiveness of this decentralization process has met challenges.
- REDD+ institutions are in the process of being established and their future structure is currently being worked on. The REDD+ Task Force was created in January 2010 with an interim mandate of developing the Cambodian R-PP, and will be complemented by both technical teams and high-level advisory groups.

3.1 Overview

National Government

Cambodia is a constitutional monarchy with a representative parliamentary democracy. The King of Cambodia is head of state, but is not directly involved in government activities.³² The country operates a bi-cameral parliamentary system, with a lower house, the **National Assembly (NA)** and an upper house (the Senate). The main tasks of the NA involve the approval of legislation, the national budget, international treaties and state planning documents.³³ It can also ask questions of high-ranking government officials.³⁴ While the Senate

³² Constitution of the Kingdom of Cambodia 1993, Article 7.

³³ Ibid, Articles 90, 93 & 113.

³⁴ Ibid, Articles 96-7.

may propose legislation or amendments or delay adoption, its consent is not required for legislation to enter into force.³⁵

The political party with the most seats in the NA is entitled to appoint the **Royal Government of Cambodia (RGC)**, which is then subject to a vote of confidence by the NA. The RGC is headed by the Prime Minister (PM) and includes Deputy PMs, Senior Ministers, Ministers (of which there are collectively over 50) and Secretaries of State. It is the body with overall responsibility for day-to-day governance of the country. The PM, along with the Senate and the NA, has the right to initiate legislation. The **Cambodia People's Party** has been in government, at times in coalition, since 1981. Hun Sen has been the PM since 1985 (including a period as "second" PM in a power-sharing arrangement).

Local Government

The Kingdom of Cambodia is divided into 20 provinces and four municipalities (Phnom Penh, Sihanouville, Kep, and Pailin). **Provinces** are further divided into districts (srok) and districts divided into communes (khum). There are also groups of villages (phum) but these are not considered official administrative units. **Municipalities** are divided into sections (khan) and sections are divided into quarters (sangkat).³⁶

Starting in the late-1990's, the country embarked on a **decentralization process** with numerous incentives including a three-tiered system of planning and budgeting focused on the commune, district, provincial and the national levels. The reform was further reinforced by the RGC's Rectangular Strategy (2004), which has now entered into its second term of implementation. These reforms aim to lay the foundations for local Commune/Quarter Councils, along with the District and Provincial Councils, to govern, coordinate and provide oversight in resource management.³⁷

Article 127 of the Cambodian Constitution specifies that provinces, districts, sections, communes, and quarters should be governed according to an organic law. The **2008 Organic Law on Sub-national Administration** established sub-national councils with the responsibility to oversee local development and natural resources management. Under this law, policies are established at the national level, but implemented at the local level, with the goal of improving their effectiveness, including those related to natural resource management.³⁸ The Ministry of Interior is responsible for administering provinces and municipalities. Provincial and municipal **governors** are appointed by the prime minister.³⁹ Chapter 4 of the Law on Commune Administrative Management 2001 provides for a bottom-up commune development process in which the commune authority functions to manage natural resources.⁴⁰

³⁵ Ibid, Articles 91 & 113.

³⁶ Kingdom of Cambodia, Public Administration Country Profile, Division for Public Administration and Development Management (DPADM), Department of Economic and Social Affairs (DESA), United Nations, February 2004 [*hereinafter* PA Country Profile], Available at: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023231.pdf>.

³⁷ RGC (Ministry of Environment), Fourth National Report to the Convention on Biological Diversity (October 2010) [*hereinafter* Cambodia CBD Report], at 35.

³⁸ Cambodia CBD Report, at 6.

³⁹ PA Country Profile.

⁴⁰ Cambodia CBD Report, at 29.

3.2 Institutions involved in forest and land management

Cambodia’s forests are managed by a range of government institutions, depending upon their classification. While forest classifications are explained in more detail in section 4.1., this section describes the roles and responsibilities of the institutions responsible for the management of each forest category.

A distinction is made between regulatory authority and management authority (sometimes also known as “trustee authority”). **Regulatory authority** involves the power to adopt general regulations governing a particular category of forest, while **management authority** involves direct management rights over specific forest areas. In some cases the same entity will have jurisdiction over both regulation and management, while in others regulation will fall to one (government) entity and management to another, such as communities or private persons.

Figure 2 provides an overview of the key government bodies involved in forest and land management, while Figure 3 identifies the institutions with specific responsibilities for managing each category.

Figure 2: Overview of institutions involved in forest and land management

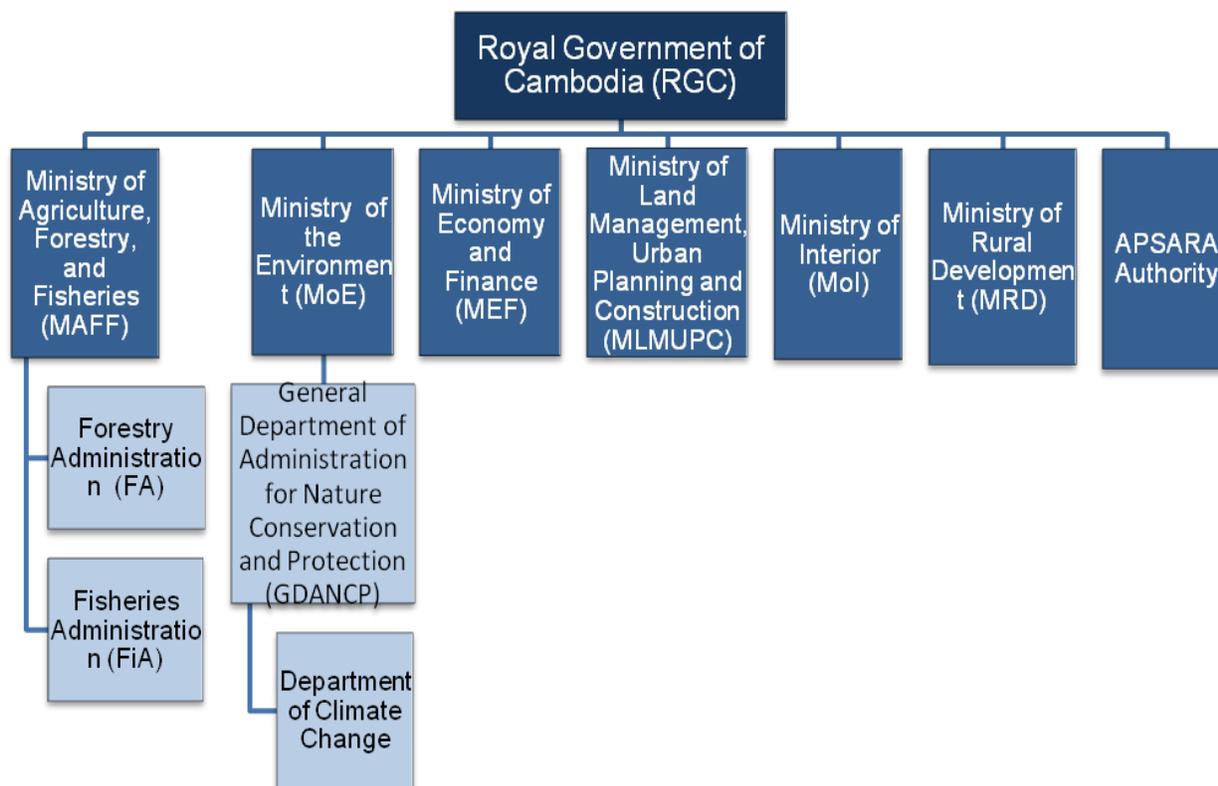
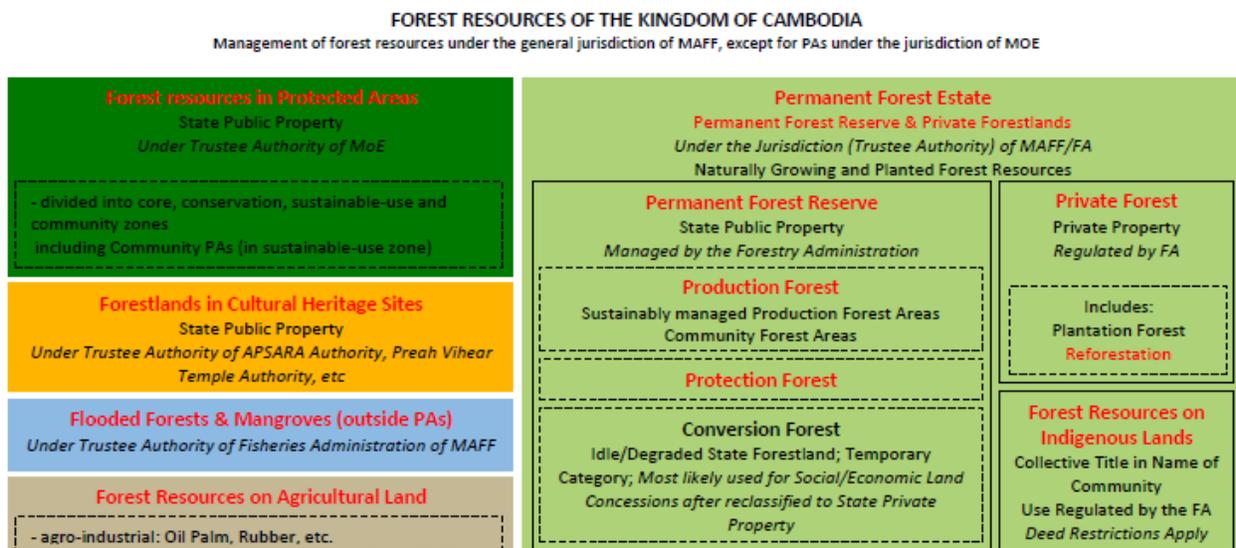


Figure 3: Responsibilities for management of Cambodia's forest categories (Source: UN-REDD Program, National Program Document – Cambodia, November, 2010, p. 32)



Ministry of Agriculture, Forestry, and Fisheries (MAFF)

According to the Law on Forestry 2002, the management of forests is under the general jurisdiction of the Ministry of Agriculture, Forestry, and Fisheries.⁴¹ Protected areas are, however, delegated to the Ministry of Environment (MoE). The MAFF consists of 12 departments and the General Directorate of Rubber Plantations. At the provincial level Provincial Departments of Agriculture, Forestry and Fisheries operate. A number of public institutions are under the technical management of MAFF, including colleges, research institutes, seven rubber plantation companies, including the Cambodia Rubber Development Company and the Rubber Import, Export, Transport and Equipment Company.⁴² MAFF is also responsible for the registration of permanent forest estates.⁴³

Forestry Administration (FA)

The FA, operating under MAFF, was created in 2003 and replaced the Department of Forestry and Wildlife.⁴⁴ It is responsible for managing forests and forest resources according to the National Forest Sector Policy and the Law on Forestry. The Law on Forestry states that the FA is divided into **hierarchical levels**: central, regional inspectorates, cantonments, divisions, and districts.⁴⁵ Both private forests and the **Permanent Forest Reserve** (which is State Public Land) fall under the jurisdiction of the FA. The FA has regulatory authority over the former and both regulatory *and* management authority over the latter.⁴⁶ Additional duties of the FA include the development and implementation of national forest programs (including community forestry); collection of data on all state forests; and, assessment of national forest carbon stocks.

⁴¹ Law on Forestry 2002, Article 3.

⁴² Ministry of Agriculture, Forestry, and Fisheries, official website, "About MAFF", available at <http://www.maff.gov.kh/en/aboutmaff/organization.html>.

⁴³ Cambodia R-PP.

⁴⁴ ITTO, "Status of Tropical Forest Management 2005", available at http://www.ito.int/sfm_detail/id=12370000.

⁴⁵ Law on Forestry 2002, Article 6.

⁴⁶ Cambodia UN-REDD NPD, at 14.

As of 2008 the FA has been allocated general responsibilities for the management of **forest carbon**. Specifically, the FA is responsible for (i) assessing the quantity of the nation's carbon stocks; and, (ii) developing and arranging for forest carbon trades for carbon located in the Permanent Forest Estates.⁴⁷ The FA has also been designated as the authority with responsibility for arranging for the sale of carbon credits from the Oddar Menchey project (see section 1.3 above).⁴⁸

The RGC has identified several key challenges the FA faces in effectively carrying out its mandate. Foremost amongst these are severe budget and human resource deficiencies and threats from vested interests.⁴⁹

Fisheries Administration (FiA)

The FiA, also under MAFF, has jurisdictional management and regulatory authority over flooded forest and mangrove areas outside of the Protected Area network, including Community Fisheries areas.⁵⁰

Ministry of the Environment (MoE)

Although MAFF/FA has primary responsibility for forests, Protected Areas (PAs) such as national parks and reserves are under the jurisdiction of the MoE. This has been known to create some overlaps between the responsibilities of these two ministries.⁵¹ Currently, there are about 3.1 million hectares of designated PAs in Cambodia. These include Community Protected Areas where co-management is decentralized to local communities. Approximately 40% of Cambodia's Forests have some level of protection.⁵² The MoE is also responsible for the review of environmental impact assessments (EIAs).⁵³

General Department of Administration for Nature Conservation and Protection (GDANCP)

Specific responsibility for the management of Protected Areas in the MoE lies with the GDANCP. The GDANCP is also in charge of the development and implementation of the National Protected Areas Strategic Management Plan and is responsible for international environmental conventions.⁵⁴

Department of Climate Change (DCC) of the GDANCP

Through cooperation with relevant institutions, the DCC is responsible for the development of national climate change strategies and carbon credit policy, managing climate change trust funds and serving as the secretariat for the National Climate Change Committee (NCCC). In addition, the department is the Designated National Authority under the CDM and focal point for the UNFCCC. It participates in UNFCCC negotiations and is responsible for implementing UNFCCC decisions and preparations of national GHG inventory reports. It also plays a role in the coordination of CDM and carbon credit project implementations.⁵⁵

⁴⁷ Sub-Decree 118 of 2008 (amending the 2000 Sub-Decree #17 on the Organisation and Function of MAFF).

⁴⁸ Council of Ministers Circular (SaraChor) #699, 26 May 2008.

⁴⁹ National Strategic Development Plan Update 2009 – 2013, at 28.

⁵⁰ Cambodia UN-REDD NPD, at 14.

⁵¹ Ibid; ITTO, Status of Tropical Forest Management 2005.

⁵² Cambodia UN-REDD NPD.

⁵³ Cambodia R-PP.

⁵⁴ Ibid.

⁵⁵ Ibid.

Ministry of Economy and Finance (MEF)

The MEF acts as the executive agency of the RGC in managing state properties, including **forest carbon** belonging to the state. This includes authority over selling, leasing, transferring, and other arrangements including granting various state concessions or contracts on management of state property. As a result, all legal contracts with the state for forest carbon are likely to require the approval by the RGC based on the recommendation of the MEF.⁵⁶

Ministry of Land Management, Urban Planning and Construction (MLMUPC)

MLMUPC is the agency with primary responsibility for land management. Its responsibilities include the cadastral administration of state land and individuals' private land registration, including indigenous communal land titles; issuing land titles throughout Cambodia; Social Land Concessions; carrying out cadastral surveying and mapping; and coordination and management of Geographical Information Systems (GIS) and maps of Cambodia.⁵⁷

Ministry of Interior (Mol)

Mol is responsible for sub-national administration (provincial/district/community) and commune development plans and funds as well as the identification of functions to be transferred to sub-national councils (NCDD).⁵⁸

Ministry of Rural Development (MRD)

MRD is in charge of the recognition of indigenous communities for registration with Mol.⁵⁹

Cultural heritage trustee authorities

There are areas in Cambodia where there are State public forestlands that are not under the direct jurisdictional trustee authority of MAFF/FA, MoE or MAFF/FiA. These are forestlands included in Cultural Heritage sites covered by the Law on Cultural Heritage (1996).

Military

The extent of the Cambodian military's involvement in land and forest management is unclear. Since 2002 the military has been charged with replanting trees on degraded forest land under five year mandates. At the end of this five year period, the forest land is returned to the management of the FA. There have been reports in the past that the military has been engaged in granting economic land concession (ELCs), which is officially the prerogative of MAFF (see section 3.3 below). According to the reports from 2001, ELCs have been granted for land assigned to military control in 1994. If substantiated this granting of ELCs would represent a complications due to overlap with MAFF's jurisdiction to issue ELCs and the use of conflicting land maps. MAFF has, however, stated that no forest concessions were granted by the military.⁶⁰

Overlapping and unclear roles of institutions

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Cambodia R-PP.

⁶⁰ Chan Sophal et al, Land Tenure in Cambodia, A data update, Cambodia Development Resource Institute, Working paper 19, October 2001, Page 23, available at <http://www.cdri.org.kh/webdata/download/wp/wp19e.pdf>

The Independent Forest Sector Review in 2004 characterized Cambodia's forestry sector as being in “**institutional disarray**”. The review claims that “formal rules of the game are unclear, contradictory and incomplete, allowing informal and hidden rules to operate. Roles and relationships of actors—both those with formal positions as well as those operating informally—are confused, contradictory and allow the continued poor implementation of policy and legislation on the ground”.⁶¹

A key area of overlap concerns the **jurisdictional overlap** between the MAFF and the MoE. MAFF manages protection forests and other parts of the Permanent Forest Reserves (PFRs), while MoE manages PAs. The unclear division of these categories leads to many forest areas falling under the jurisdiction of both ministries. The Law on Forestry tries to address this overlap by noting that “the Ministry of Agriculture, Forestry and Fisheries has the authorization to cooperate with the Ministry of Environment [...] on enforcement activities for all forest offenses that occur within protected areas. However, such activities shall not affect the management jurisdiction of Ministry of Environment as provided by the Environmental Protection and Natural Resources Management Law.”⁶² This, however, does not solve many of the main issues arising from the jurisdictional overlap during administration and implementation. Despite this overlap, recent laws and policy documents continue to support the division of responsibilities between the two ministries.⁶³

3.3 Roles of institutions in key land management decisions

Granting Economic Land Concessions (ELCs)

ELCs can be obtained through solicited or unsolicited proposals. According to the Sub-decree on ELCs, solicited proposals are given priority, and unsolicited proposals are considered only where “exceptional advantages to achieving the purposes of economic land concessions” are offered.⁶⁴ The key institutions in both cases depend on the size and value of the ELC. **MAFF** is designated as the “contracting authority” (i.e. the authority with responsibility for granting the ELC) for ELCs of 1,000 hectares or more or with a value of Riel 10 million (app. 2,400 USD) or more. **Provincial governors** are designated as the contracting authority for other ELCs. In each case, the **Technical Secretariat for ELCs (TSELC)**, comprised of representatives of several government agencies, plays a key role.⁶⁵

Solicited proposals begin through the development of initial project documents by the relevant contracting authority in consultation with the local **Provincial Land Use and Allocation Committee (PLUAC)** and the regulatory authority in charge of the activity that is the subject of the ELC. These are sent to Commune Councils (CC) for comment and comments must be responded to. On the basis of the project documents and the results of the Environmental and Social Impact Assessment (ESIA), TSELC will develop terms of reference (ToRs) and release a notice for solicited proposals. The ToRs shall also include the criteria for evaluating proposals, which must include, *inter alia*, environmental and social impacts, employment creation and the financial proposal. After proposals are received and a public meeting is held to clarify questions concerning any proposal, TSELC will rank the proposals based on a set of defined criteria and make recommendations to the contracting authority. The contracting authority then invites the

⁶¹ Independent Forest Sector Review, The Forest Sector in Cambodia, April 2004.

⁶² Law on Forestry 2002, Article 3.

⁶³ See, e.g. Protected Areas Law 2008; National Forest Program 2010-2029 [*hereinafter* NFP 2010-2029].

⁶⁴ Sub-Decree on Economic Land Concession 2005, Article 18.

⁶⁵ *Ibid*, Articles 29-32.

top-ranked proposer for negotiations; if these are not successful the others are invited in the order of their ranking. Where negotiations are successful the contracting authority may conclude a preliminary agreement.⁶⁶ In practice, this is then sent to the **Council of Ministers**, and requires the PM's signature before approval is given.

Unsolicited proposals begin by the submission of a preliminary application, which is considered by the contracting authority in consultation with the PLUAC and the relevant regulatory authority. If the core criteria for ELCs (as defined by the sub-decree) are met, the contracting authority requests the applicant to submit a detailed proposal. The contracting authority then sends this to TSELC or the Provincial State Land Management Committee for review and recommendations. CCs are given the opportunity to comment at this stage, and all comments must be considered. As with solicited proposals, negotiations are then conducted by the contracting authority, and the PM's signature is sought before final approval is given.⁶⁷

Granting Social Land Concessions (SLCs)

SLCs are a mechanism for transferring State private land to entities for social projects, in particular infrastructure projects in poor areas. Two types are possible: Local SLC Programs and National SLC Programs.

Local SLC Programs are initiated by CCs or by local residents, organizations or groups acting through CCs. CCs submit their proposals through the local District Working Group (DWG) to the PLUAC for approval. If approved, the National SLC Committee is entitled to amend the plan or cancel the approval. When cleared the SLC is implemented by CC with technical assistance from the DWG.⁶⁸

National SLC Programs are initiated by the development of a proposal by one or more concerned ministries or institutions. Participation of the relevant PLUAC, CC and local community is also required at this stage. The proposal is then submitted to the National SLC Committee for adjustment or approval. Approved programs are then implemented by the relevant ministries or institutions that made the proposal in coordination with the relevant PLUAC, CC and local community.⁶⁹

Registration of indigenous communities land title

Registration of indigenous communities' land title begins with an application being submitted to the **District Office of Land Management, Urban Planning, Construction and Cadastre (DOLMUPCC)** by the chairman of the community committee or traditional authority of the relevant community. A certification by the commune chief affirming that the community is located within the stated commune is required at this stage. The application must contain, *inter alia*, the community's statute and rules on land-use management. If the location, size and boundary of the proposed land are not disputed by the relevant administrative authorities or the community's neighbors, the application is opened for public comments. Upon the resolution of any issues raised in public comments, DOLMUPCC registers the land and issues a registration title.⁷⁰

⁶⁶ Ibid, Articles 7-16 and 35.

⁶⁷ Sub-Decree on Economic Land Concession 2005, Articles 19-22 and 35.

⁶⁸ Sub Decree on Social Land Concessions 2003, Article 5-6.

⁶⁹ Ibid, Articles 6-9.

⁷⁰ Sub-Decree on Procedures of Registration of Land of Indigenous Communities 2009, Articles 8-9.

Establishment of Community Forests (CFs)

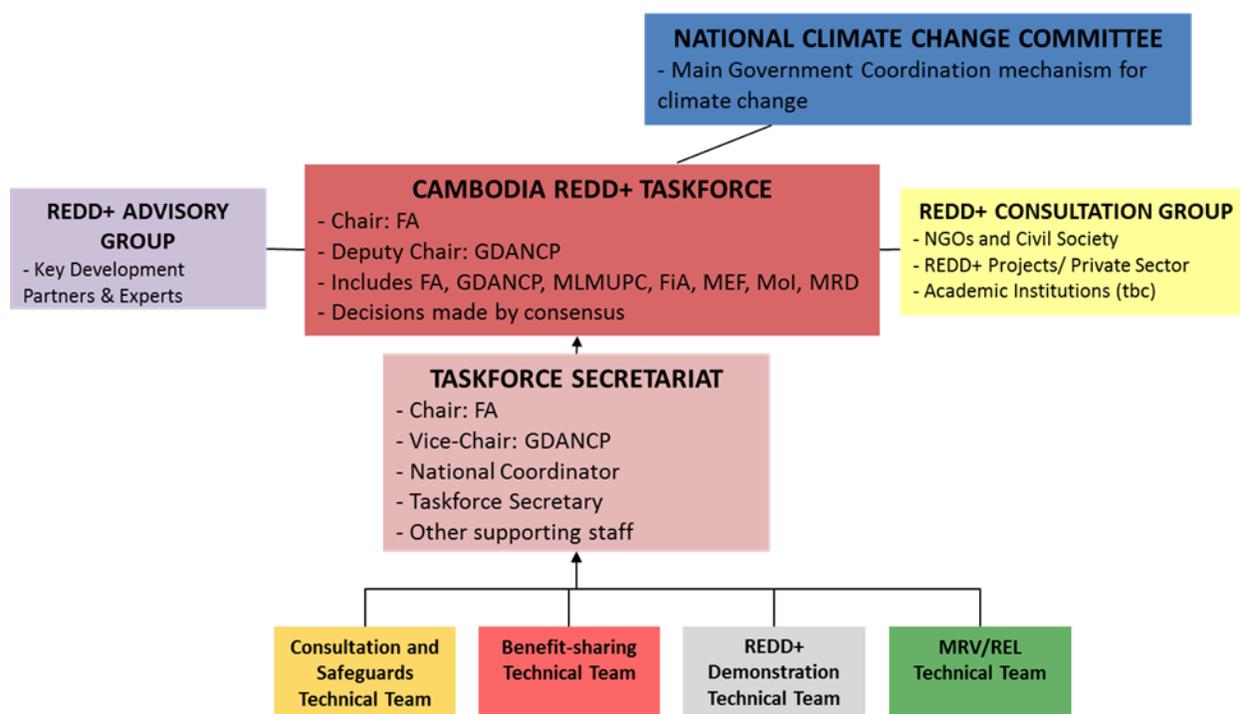
The process of establishing a CF begins with the establishment of a CF Community. This is done by the local community submitting a written request to the FA, which will assess the request based on local requirements together with the CCs or other local authority. If the CF Community is established, a **CF Management Committee (CFMC)** is elected by a secret ballot of community members. The FA is responsible for demarcating the areas for the CF, and the CFMC is then responsible for preparing, with assistance from the **FA cantonment**, a CF Agreement. The FA Cantonment Chief is then empowered to enter into the CF Agreement. MAFF has general jurisdiction over CFs, and has the authority to accept or reject the request of the FA to allocate portions of land for CF.⁷¹

3.4 REDD+ Institutions

The existing institutions involved in land and forest management will be complemented by an emerging institutional framework governing climate change generally and REDD+ specifically (see Figure 4). The **National Climate Change Committee (NCCC)** is responsible for preparing, coordinating and monitoring implementation of the Royal Government policies, strategies, regulations, plans and programs related to climate change. The NCCC coordinates and cooperates with concerned ministries and institutions in the preparation of draft policies, strategies, regulations, plans and programs on climate change; determines the national negotiation positions and strategies for participation in international negotiations on climate change; and, reviews and adopts reports of the UNFCCC. The Department of Climate Change of the GDANCP of MoE serves as the secretariat of the NCCC.

⁷¹ Forestry Law 2002, Articles 41-42; Sub-Decree on Community Forest Management 2003.

Figure 4: Expected REDD+ Institutional Arrangements (Source: Country presentation on Cambodia REDD+ Status and National Circumstances, LEAF Inaugural Workshop, Thailand, August 2011)



A **REDD+ Task Force** was created in January 2010 with an interim mandate to develop the Cambodian R-PP. It was chaired by the FA. The Task Force also included the MoE and the MLUPC. In Cambodia’s R-PP it is proposed that the REDD+ Task Force be renewed for three years with a mandate to manage the initial REDD+ Readiness process. The Taskforce membership would be revised to include all government agencies with responsibilities for REDD+ Readiness. The REDD+ Taskforce will establish separate Technical Teams in order to develop technical recommendations on particular key issues. The Taskforce sends reports to the NCCC. A **REDD+ Advisory Group** of 4-6 people will be created to advise the Taskforce. The duties of the group include the review of the REDD+ Readiness process; the drafting of reports; and, proposed decisions of the REDD+ Taskforce. In addition, a **REDD+ Consultation Group** of up to 10 people will be created to represent civil society, indigenous peoples, NGOs, private sector and academic institutions.

For the UN REDD Program funding, the Program Executive Board (PEB) is responsible for overall oversight of progress, and approving annual work plans and budgets and it is proposed that the PEB is given similar responsibilities for the R-PP funds.

4. Domestic Policies and Legislation

Key Findings

- Land is subject to both public and private ownership in Cambodia, though only Cambodian citizens and companies can own land outright. Planted forests can be owned by private individuals or companies, whereas natural forests are owned by the government, with some minor exceptions.
- There is a strong system of customary land rights. Rights to traditional lands are secured by law and, when registered, are equal to full ownership rights.
- The Royal Government of Cambodia (RGC) has claimed ownership over most of the country's forest carbon, on the grounds that most of the country's forests belong to the State. To date, no steps have been taken toward the regulation of forest carbon, other than assigning responsibility for carbon sales.
- The RGC has recently adopted a comprehensive forestry policy for the period up to 2029. As this has only recently been officially improved, it is too early to assess its implementation or effects.
- There is an official framework for establishing community forests and granting communities rights over forest management. Communities are not, however, entitled to ownership rights. Further research is needed to assess the progress that has been made so far on implementing this framework.
- The RGC has recently undertaken a major revision of all economic land concessions to ensure compliance and to reduce the size of concessions over 10,000 hectares. To date, several concessions have been reduced and more have been cancelled under the revision. Further research is needed to assess the total area of concessions recently granted or still pending approval.

4.1 Legal framework

Forest Classification

The **Protected Forest Reserves (PFRs)** are State public lands and are further categorized into production, protection and conversion forests.

- **Production forests** are to be maintained for the sustainable harvesting of forest products and by-products, though they also have a protection function. They are further divided into forest concessions; production forest not under concession; rehabilitation forests; reserve forestland (for plantation or regeneration); degraded forestland and community forests.
- **Protection forests** are to be maintained for the protection of forest ecosystems and forest resources. They are divided into reserve forests for special ecosystems; research forests; watershed protection forests; forests for regulating water sources; recreational forests; religious forests and botanical gardens.
- **Conversion forests** are described as idle land consisting mainly of secondary vegetation which has not been designated for use by any particular sector. Such land is given priority for conversion to non-forest uses.⁷²

Protected areas (PAs) are divided into eight categories, including national parks, wildlife sanctuaries and Ramsar sites. Each PA is divided into core, conservation, sustainable-use and community zones.

⁷² Law on Forestry 2002, Articles 10-12.

- **Core zones** exist for the protection of highly threatened species or fragile ecosystems. Access is restricted to researchers and officials with prior permission.
- **Conservation zones** are areas of high conservation value. Prior permission is required for access, and resource use is restricted to small-scale community use of NTFPs under strict controls.
- **Sustainable-use zones** are areas of high economic value. Development and investment activities may be permitted in these zones pursuant to government permission.
- **Community zones** exist for socio-economic development of local communities, and may include swidden or paddy land.⁷³

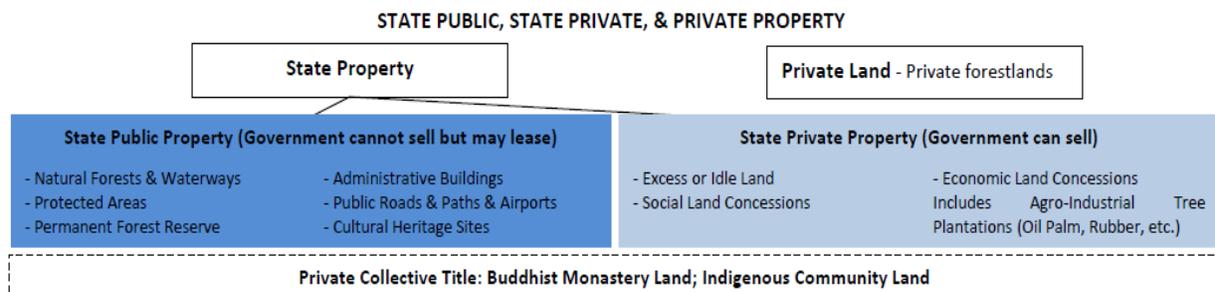
Since 1993, 4.65 million hectares of the 10.86 million hectares of forested areas in Cambodia (the latter figure representing 60% of the country’s land area), have been designated as protected areas. Despite such detailed classifications in the law, boundaries of administrative regions and demarcations of land under different uses are in many areas only approximate. In addition, there has not been any major land mapping survey in Cambodia in recent years and therefore available information is not up to date.⁷⁴

Land Ownership

Land in Cambodia can be owned by natural and legal persons of Cambodian nationality only. Enterprises registered in Cambodia in which at least 51% of the shares are owned by Cambodian citizens or Cambodian legal entities may also own land.⁷⁵

The Land Law (2001) classifies the various types of land-property within the Kingdom of Cambodia and the ownership rights that are available with the different classifications. Other laws and regulations provide additional classifications that are particularly important for REDD+ implementation, which fit within this overarching framework, such as the Forestry Law (2002), the Protected Areas Law (2008), and the Fisheries Law (2006). These additional classifications will be further explored below.

Figure 5: Categories of land ownership in Cambodia (Source: UN-REDD Program, National Program Document – Cambodia, May 2011, p. 32.)



⁷³ Protected Area Law 2008, Article 11.

⁷⁴ Chan Sophal et al, “Land Tenure in Cambodia: a data update”, Cambodia Development Resource Institute, Working paper 19, October 2001, at 5.

⁷⁵ Land Law 2001, Articles 8-9.

As illustrated in Figure 5, the Land Law creates three distinct types of land-property classification in Cambodia: State public property, State private property and private property.

i. State public property

State public property is land and other property held by the State in public trust, which carries a public interest use. It may not be transferred nor acquired in any other way by a non-state entity.

ii. State private property

State private property is land and other property that is owned by the State or public legal entities that does not have a public interest use (owned by the State or public legal entity, but does not fit the definition of State public property as outlined above). State private property is considered excess or idle land and is generally eligible for being issued as concessions.

The Land Law authorizes the granting of **land concessions** for either social or economic purposes. Land concessions must be based on a specific legal document, issued by the competent authority (in the case of forest, either MAFF or MoE) prior to the occupation of the land, and must be registered with the MLMUPC. There are three main types of land concessions in Cambodia:

- **Social Land Concessions (SLCs)** – under which beneficiaries can build residential constructions and/or organize the cultivation of state private lands for economically disadvantaged people. SLCs are limited to 10 hectares per family and after five years the land becomes their private property if it has been developed properly.
- **Economic Land Concessions (ELCs)** – under which beneficiaries can clear land for agri-industrial businesses; ELCs are limited to a maximum area of 10,000 hectares and a maximum duration of 99 years.
- **Use, development or exploitation concessions** – these include fishing, mining, port, airport and industrial development concessions.

iii. Private property

Private property may be owned individually or collectively. Several joint ownership arrangements are possible under the land law:

- **Co-ownership** involves several persons each exercising rights over particular parts of a property, with other parts being subject to common use under contractual agreement;
- **Undivided ownership** involves several persons collectively exercising rights over the entire property;
- **Collective ownership**, such as that by **indigenous communities**, involves groups of persons exercising collective rights over property pursuant to specific arrangements set out by contract or law.⁷⁶

Generally, owners of private property are entitled to its full beneficial use, subject to any laws or deed restrictions. This includes the right to lease, use as collateral, inherit, or transfer the property to other eligible individuals or legal entities.

⁷⁶ Land Law 2001, Articles 8, 10.

Since 2001 the Land Law has recognized indigenous communities as the rightful collective owners of the lands they have traditionally lived on and cultivated. This ownership has broadly the same rights and incidences as other forms of private ownership, with the key difference that land belonging to the community cannot be transferred to persons or entities outside the community.⁷⁷ Registration of indigenous lands began in 2007. At the time of writing, 28 indigenous community land titles have been registered.

Forest ownership

As was shown in Figure 5 above, most categories of forest in Cambodia are State public property.⁷⁸ Forests under MAFF's regulatory authority (the Permanent Forest Estate), are divided into Private Forests and the Permanent Forest Reserves (PFRs).

In general, **Private Forests** refers only to plantations on private property, which are encouraged under the Forest Law. Natural forests may not ordinarily be privately owned. Two exceptions exist, however. The first relates to forest on land that is recognized as belonging to indigenous communities under the Land Law.⁷⁹ Secondly, forest land may be acquired by adverse possession where persons without ownership rights clear cut the forest for agricultural purposes for five consecutive years without formal objection by the government.

Community forests and community protected areas

Community Forestry has a strong history in Cambodia, having been promoted for over a decade before a legal CF framework was established under the Community Forestry Sub-Decree in 2003. Communities may be granted rights with respect to forests within the PFRs (Community Forests) or within Protected Areas (Community Protected Areas).

Community Forests (CFs)

Communities living in or near the PFRs are entitled to engage, *inter alia*, in collection of dead wood and NTFPs; livestock grazing; and, harvesting timber for domestic use without the formal establishment of a CF.⁸⁰ Where CFs are established under **Community Forest Agreements**, additional rights to plant, manage and harvest forest products and sell tree species are granted. These rights must be exercised in accordance with relevant **Community Forest Management Plans**, and are subject to an initial five year moratorium on harvesting of forest products for selling or bartering outside the community. Community Forests remain State public property, and rights may not be transferred outside the community, nor may concessions be granted over CF land⁸¹, it has been reported however that the latter has been violated in the past on several occasions. Regulatory authority remains with the FA.

While the establishment of a legal and policy framework at the national level permits formal recognition of CF groups throughout the country, a major constraint to creating a decentralized, community-based management system for state forestlands is the absence of adequate financing for field staff, training programs, mapping and boundary demarcation, community-implemented protection and restoration activities.

Community Protected Areas (CPAs)

⁷⁷ Ibid, Articles 23-28.

⁷⁸ Cambodia R-PP, at 16.

⁷⁹ Cambodia Un-REDD NPD, at 12.

⁸⁰ Law on Forestry 2002, Article 40.

⁸¹ Sub-decree on Community Forest Management 2003, Articles 11-15.

Under the Protected Area Law, traditional uses and practices of local communities within PAs are recognized. However, the utilization of natural resources is restricted to CPAs created within a PAs' Sustainable-use Zones. Activities allowed in CPAs are more limited than in CFs, and farming and working or clearing forestland are prohibited. All natural resource use must be in accordance with the Natural Resources Management Plan, and no title or transferable rights are granted to local communities. CPAs are under the regulatory jurisdiction of GDANCP.

Forest Carbon

While the RGC has designated responsibility for the sale and management of forest carbon to the FA, it has not taken any tangible steps to regulate forest carbon ownership or provide a regulatory framework for the operation of REDD+ projects. The RGC has stated that, as the State is the owner of most of the country's forests, most forest carbon also belongs to the State.⁸² Though the statement that most forests are under the ownership of the State is largely true, the claim that most forest carbon thereby belongs to the State may benefit from further independent analysis, particularly if any claim of forest carbon corresponds to a loss of use or access rights by local communities.

4.2 Overall forest and land policy

The overall policy and direction of the RGC is guided by the **Rectangular Strategy for Growth, Employment, Equity and Efficiency**, which is now in its second phase. One of the four 'fundamentals' of the strategy is "Ensuring environmental sustainability", within which forestry reform is a sub-category of legislative priorities. Emphasis in the strategy is on sustainable forest management (SFM), CF and Biodiversity.

Within the framework of the Rectangular Strategy, the **National Strategic Development Plan (NSDP)**, which has now been updated for the 2009-2013 period, is the overarching policy document for pursuing priority goals and actions. One of the key priorities of the NSDP is the "Enhancement of Agricultural Sector" as a means for poverty reduction, with a sub-section dedicated to "Forestry Reform". Forestry priorities for the present legislative period are ensuring SFM and the use of forests to contribute to the livelihoods of rural people as well as to the economy as a whole, encouraging private forest plantations, strict enforcement of laws and forestry concessions and mobilizing resources to combat emissions from forest degradation. The NSDP also mandates the MoE to develop several laws relating to strengthening the legal framework for PAs.

Strategies for specific policy areas within the NSDP are set out in sector-specific program documents. The key program document for the forestry sector is the National Forest Program 2010-2030.

National Forest Program (NFP) 2010-2030

The NFP is a long-term, 20 year national forest management plan. It was developed through a two-year multi-stakeholder consultation process between 2008 and 2010 (supported by Danida and FAO). The Plan is widely accepted as the primary long-term plan for a comprehensive reform of Cambodia's forestry sector. During the preparation of the country's R-PP, in-country stakeholders emphasized the importance of investing in the implementation of the NFP rather than starting a new policy reform process.

⁸² Cambodia R-PP, at 12.

The NFP identifies **nine strategic objectives**. The most relevant of these are (i) establishing macro land-use planning that allows for harmonized cross-sectoral planning; (ii) improving forest law; (iii) enforcement and governance; (iv) applying modern sustainable management models; (v) ensuring sustainable financing sources; and (vi) maximizing forests' contribution to livelihoods and equitable economic growth. The objectives are to be achieved through the implementation of six programs (each divided into several sub-programs). These include several legal and policy related sub-programs, such as those on legal and administrative reform; developing a forest management action plan; and exploring innovative financing roles.

The NFP sets **targets** for Community Forests (2 million hectares, up from the current 400,000), Protection Forests (3 million hectares, up from the current 1.5 million) and Production Forests under sustainable management, including certification (2.6 million hectares). The Plan also includes forest goals concerning demarcation and classification, forest law enforcement and governance, capacity-building, as well as research and sustainable financing for the forests. It further aims to ensure compatibility with the overall socio-economic and environmental goals as defined in other government plans and international conventions.⁸³

The Forestry Administration is primarily responsible for development and implementation of the NFP, although NGOs will also be involved in development and monitoring of the Plan. Reference is also made to the private sector, knowledge institutions and development partners.⁸⁴

4.3 Other relevant policies and laws

Sub-Decree on Economic Land Concessions 2005

In addition to setting out the procedures for issuing ELCs, as described in section 3.3 above, this sub-decree is significant in requiring a full review of all existing ELCs, including a review of land-use fees and compliance with the terms of the ELC. A public consultation is also to be held in order to review the activities of the concessionaire within the local area.⁸⁵ In June 2009 MAFF set up five working groups to conduct such reviews. Upon receiving the reviews, MAFF has reportedly begun discussions with 38 companies who are suspected of not fulfilling the terms of their ELCs, and five concessions with an area of 40,171 hectares have so far been cancelled by the RGC upon MAFF's request.⁸⁶

In addition, all ELCs over 10,000 hectares are to be reviewed with a view to reducing their size to 10,000 hectares or less, either by voluntary reduction by the concessionaire or, if this fails, through negotiating a reduction.⁸⁷ Of the nine companies with ELCs of over 10,000 hectares, five have agreed to reduce their area to under 10,000 hectares, two have cancelled their contracts, and the remaining two are still under negotiation.⁸⁸

National Biodiversity Strategy and Action Plan (NBSAP)

⁸³ Cambodia USAID country profile, at 17.

⁸⁴ NFP 2010-2029; Cambodia UN-REDD NPD, p.16

⁸⁵ Sub-Decree on Economic Land Concessions 2005, Article 37.

⁸⁶ <http://www.elc.maff.gov.kh/en/news/12-elc-status.html>.

⁸⁷ Sub-Decree on Economic Land Concessions 2005, Article 37.

⁸⁸ <http://www.elc.maff.gov.kh/en/news/12-elc-status.html>.

The National Biodiversity Strategy and Action Plan (NBSAP) has been under implementation since 2002. The Plan consists of 98 priority actions covering 17 different themes. It highlights the three pillars of sustainable development (ecological integrity, economic sustainability and social equity) and also sets the stage for the country to assess the adequacy of current efforts to conserve and use biological resources in a sustainable manner and to determine how gaps will be filled and opportunities realized.⁸⁹

Environmental Protection and Natural Resources Management Law (1996)

This law constitutes the main legislation regarding environmental protection, pollution control and the rational and sustainable use of natural resources. It describes the rights and responsibilities of MoE, as well as some environmental procedural requirements that must be met, such as environmental impact assessments and public participation in environmental protection and natural resource management (in which MoE is also heavily involved). There are few specific details provided in this legislation, however, as they are to be published through Sub-Decrees following a proposal by the MoE. As many of these details are to be determined by the Ministry of Environment, this law grants the Ministry a sizeable amount of authority. For example, both the environmental impact assessment process and public participation procedures are to be determined by the MoE.⁹⁰

Sub-decree on State Land Management (2005)

This sub-decree provides a framework for state land identification, mapping, registration and classification and notes where additional administrative guidelines are required.⁹¹ The sub-decree further includes a process for determining definite ownership of any land including a process to adjudicate and resolve disputes.⁹²

Protected Areas Law (2008)

The stated objective of this law is to “ensure the management, conservation of biodiversity, and sustainable use of natural resources in protected areas”.⁹³ The law lists the institutions responsible for the management of protected areas along with their respective rights and duties. The Ministry of Environment has the major responsibility for protected areas, but its duties are divided among different agencies within the Ministry. In addition, the law describes how protected areas are established and modified; explains their zoning, as well as involvement with local and indigenous ethnic communities; and, rights of access to protected areas. Moreover, the law provides for education, improvement and funding of protected areas; and describes permitting, prohibitions, enforcement and penalties. The law requires the completion of environmental and social impact assessments for activities undertaken within and adjacent to protected areas.⁹⁴

5. Conclusion

⁸⁹ Cambodia CBD Report, at 6.

⁹⁰ Environmental Protection and Natural Resources Management Law (NS/RKM/1296/36), Articles 6, 7, 16 and 17.

⁹¹ Cambodia UN-REDD NPD, at 28.

⁹² Ibid, at 37.

⁹³ Protected Areas Law 2008, Article 1.

⁹⁴ Ibid, Article 44.

Cambodia is a least developed country with a recent history of violence, corruption and political turmoil. Government institutions and policy enforcement are weak, making institutionalization of successful sustainable land-use policies challenging. The concerns raised by the FCPF and the World Bank with regards to land conflicts and displacement of communities in the context of issuance of economic land concessions are high and it remains to be seen how this will be addressed at the highest political level. At the same time, high-level figures have shown support for tackling deforestation, and involvement in multilateral REDD+ processes. The number of reforms that the Government has announced, such as the legal reform spelled out in the National Forest Program, as well as the planned introduction of a comprehensive framework for sustainable forest management, may be taken as evidence of the positive momentum existing at highest political level.

The discrepancy between ambitions and current status means there are substantial opportunities for technical assistance to help improve the policy and legal framework. As an overarching strategy, it is recommended for institutional donors to work along the lines of the positive momentum for regulatory reform and preparation for REDD+.

The following is a tentative list of potential areas for additional institutional donor support with main focus on central level activities. The main drivers targeted by the following activities are illegal logging as well as encroachment by smallholders and by commercial agriculture. One of the main underlying factors to be addressed is the inadequate regulatory framework to assign tenure and management rights to local communities. REDD+ can potentially serve as a vehicle to discuss management and tenure concepts as well as roles of communities in light of complementing Government agencies' tasks related to natural resources management. Hence, it is recommended to follow the dual strategy of addressing regulatory deficiencies through the REDD+ readiness process, as well as through the forest sector reform process. Further analysis and discussions with donors and policy-makers as well as input from objective 4 is needed to refine the activities and specify which drivers can be targeted most effectively; as well as, whether it is advisable to link this work to specific pilot projects on-the-ground.

1. The National Forest Program 2010-2029 lays out the RGC's plan to develop a sub-program on legal and administrative reform. Institutional donors could provide legal and policy advice to help ensure this reform is framed and implemented in a manner that supports the RGC's aims with regards to an emerging REDD+ framework. Further research may be required to determine the scope of the government's intentions for this reform and specific activities donors could support.
2. The RGC has indicated in several documents that it intends to introduce a comprehensive sustainable forest management (SFM) framework for Cambodia. Institutional donors could assist the RGC develop an appropriate legal and policy framework for SFM that is consistent with REDD+. Research should be undertaken to explore how such activities could complement existing programs, such as the SFM project being undertaken by the UNDP and GEF.
3. Cambodia is intending to develop a National REDD+ Strategy and a National (Implementation) Framework for REDD+. Though much of this will be done under the auspices of the UN-REDD Program and FCPF, limited capacities within the RGC indicates that there may be significant room for donor assistance on legal and policy elements of the strategy.
4. The RGC has expressed its intention to explore and develop innovative financing sources for forestry and REDD+. This includes potential development of conservation concession arrangements under PES. Institutional donors could assist the RGC to

explore the options available and potentially develop the legal framework(s) required to implement funding flows.

5. Cambodia intends to develop its REDD+ capacities and activities in stages following a “nested approach”, though there are few defined plans or ideas so far on how this may be implemented. Donors could provide support for outside experts with experience in a nested approach to provide technical assistance to the government to help it define and implement appropriate policies to support this approach.