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# Community Protected Areas in Cambodia

Analysis of Legal Framework, Practice and Recommendations



ClientEarth

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# Acronyms

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<b>CEDT</b>	Community Empowerment and Development Team
<b>CF</b>	Community Forestry / Community Forest
<b>CIPO</b>	Cambodia Indigenous People's Organisation
<b>CLT</b>	Collective Land Titling / Collective Land Title
<b>CPA</b>	Community Protected Area
<b>ELC</b>	Economic Land Concession
<b>FA</b>	Forestry Administration
<b>FLO</b>	Forests and Livelihoods Organisation
<b>FPIC</b>	Free, Prior and Informed Consent
<b>GDANCP</b>	General Department of Administration for Nature Conservation and Protection
<b>GPL</b>	Greening Prey Lang
<b>HA</b>	Highland Association
<b>LCIPs</b>	Local Communities and Indigenous Peoples
<b>MAFF</b>	Ministry of Agriculture, Forestry and Fisheries
<b>MEF</b>	Ministry of Economy and Finance
<b>MLMUPC</b>	Ministry of Land Management, Urban Planning and Construction
<b>MoE</b>	Ministry of Environment in Cambodia
<b>MOI</b>	Ministry of Interior in Cambodia
<b>NGO</b>	Non-Governmental Organisation
<b>NTFP</b>	Non-Timber Forest Product
<b>NTFP-EP</b>	Non-Timber Forest Products-Exchange Program
<b>PA</b>	Protected Area
<b>PDoE</b>	Provincial Department of Environment
<b>WB</b>	World Bank
<b>WWF</b>	World Wildlife Fund

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# Executive Summary

There has been a growing recognition globally of the essential role that local communities and indigenous peoples (LCIPs) play in sustainable natural resources management and biodiversity conservation.

When legal frameworks, particularly those at the national level, enable LCIPs to properly undertake this role, long-lasting environmental, social, economic and cultural benefits can be achieved.

This report was developed following initial discussions with a number of stakeholders, including the Ministry of Environment (MoE), who expressed an interest in examining the potential means by which to strengthen the current Community Protected Area (CPA) system. The report identifies gaps in the framework, as well as implementation challenges, and recommendations for addressing said gaps and issues.

The report is divided into ten main sections, derived from ClientEarth's model<sup>2</sup> of ten key building blocks of a regulatory framework that supports community-based natural resource management, of which CPAs are one type. While this report primarily considers regulatory issues in the context of the CPA framework managed by the MoE, the discussion can also be instructive to reform efforts within the community forestry system managed by the Forestry Administration (FA) under the Ministry of Agriculture, Forestry and Fisheries (MAFF).

**Our analysis of Cambodia's CPA framework, using the ten key criteria of the ClientEarth model, leads to the following key findings:**

## 1. Land Tenure

The main challenge facing CPA communities is land tenure insecurity. Under the CPA legal framework, communities have partial land tenure rights, in that they may generally exercise access rights, use rights, withdrawal/extraction rights, and management rights. However, CPA communities lack exclusion rights (ability to exclude outsiders from entering or using CPA land), which weaken CPA communities' overall land tenure, greatly impairing their long-term planning, livelihood and conservation decision-making. Adjusting the CPA legal framework to explicitly allow communities to obtain more appropriate land tenure rights, including the right to exclude outsiders, would greatly increase the effectiveness of the existing CPA legal framework. In addition, extending the duration of CPA tenure would allow communities to fully engage in consistent management activities over the long-term.

## 2. CPA Establishment

The administrative complexity regarding CPA establishment forces communities to rely on government officials and non-governmental organisations (NGOs) for help at every step of the process. Simplifying the CPA establishment process, while ensuring meaningful involvement of communities in the mapping and zoning of entire Protected Areas (PAs) and CPAs, would enable greater participation by communities in the establishment process and better access overall to the benefits of the CPA system.

### 3. Community Internal Governance

Transparency and accountability are essential to effective community internal governance. However, the CPA legal framework does not provide much in the way of specific accountability mechanisms. Furthermore, guidance or specific requirements on transparency are rare and somewhat scattered throughout the CPA legal framework. Additional accountability and transparency mechanisms would help local communities successfully self-govern and manage designated CPAs.

### 4. Community Participation and Representation

The presence of vulnerable groups in leadership roles helps ensure that the needs of all CPA members are met. Current CPA management is largely male-dominated, and the inclusion of women, youth, and poor community members needs to be further encouraged. Recruitment of vulnerable individuals and strengthening of safeguards to encourage their participation would be most effective at increasing diversity within CPA management.

### 5. CPA Management

CPA management plans are often too complex to be solely undertaken by the CPA communities themselves. They are also often restricted from including valuable economic activities that can be compatible with sustainable conservation measures, particularly the rights to directly enter into agreements with third parties and manage commercial activities. Simplifying management plan requirements, allowing for the level of complexity to be tailored to proposed activities, and expanding management rights to allow CPA communities to enter into agreements with third parties to conduct sustainable business activities would increase communities' self-reliance throughout their tenure and improve their livelihood options – providing communities access to benefits while they sustainably manage CPA land and its natural resources.

### 6. Access to Markets

Lack of clarity regarding regulatory requirements for economic activities (such as permits), responsible authorities, and pertinent regulations severely undermines CPA communities' ability to sustainably manage and utilise CPA land and its natural resources. Clearly defining and simplifying permitting processes, clarifying who the responsible authorities are, and connecting the private sector with CPA communities would improve communities' capacity and access to markets. In strengthening partnerships between CPA communities and the private sector, CPA communities should be supported in building capacity in order to minimise the risk of power imbalances or elite capture.

### 7. Benefit Sharing

The CPA legal framework generally stipulates that benefits should be shared in a transparent, accountable and equitable manner, but does not specify how benefit sharing should be implemented within CPA communities. Further guidance is therefore needed for CPA communities in relation to benefit sharing. Providing factors to consider, options, models, minimum standards, and/or a template benefit sharing agreement would help ensure communities operate transparently and equitably and reach their full economic and conservation potential.

## 8. Conflict Resolution

Land disputes have long been a significant issue in Cambodia, from which CPA communities are not immune. When such conflicts arise, CPA communities are typically in an inferior position, facing an opposing party from outside the community who usually has some official authorisation supporting a claim to the land in dispute, such as a land title, concession agreement or other approved use claim. Despite such continuing issues, dispute resolution mechanisms and guidelines remain vague. Establishing clear guidelines and operating standards for dispute resolution that remain respectful of traditional/ customary practices could help address conflicts more effectively when they occur.

## 9. Enforcement

Enforcement of CPA-related activities could be further improved. Strong enforcement and dissuasive penalties are currently lacking. Providing CPA communities with greater authority to directly enforce CPA rules and laws pertinent to their CPA management, as well as ensuring adequate funding and capacity for patrolling and enforcement, could help strengthen essential enforcement.

## 10. External Support

External support can be instrumental for successfully establishing and operating a CPA. Although NGOs will continue to play an important role in providing technical and financial assistance to CPA communities, greater collaboration between CPA communities and the private sector, along with sufficient government-provided funding and capacity building for CPA communities, is necessary to reduce reliance on limited traditional public and NGO-sector resources.



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# Introduction

This report is a joint effort between the Community Empowerment and Development Team (CEDT), a Cambodian NGO, and ClientEarth, a UK-based international environmental law NGO, with support from Columbia University and Lewis and Clark Law School, both based in the US.

The research is based on extensive implementation experience with the MoE, local communities, and supporting NGOs, and seeks to comprehensively analyse the current situation affecting CPAs in Cambodia, looking at both the legal framework and practical experience to date. This report is the result of a combination of desk-based legal analysis, literature review, case studies and interviews from CPA communities in Cambodia, as well as interviews with a wide range of stakeholders. The result is a set of detailed recommendations for ways to improve the CPA system, both in structure and practical function.

This report is organised into ten sections, derived from ClientEarth's model<sup>3</sup> of ten key building blocks of a regulatory framework that supports community-based natural resource management, and is representative of the ten core issues regarding CPA creation, management, and ongoing implementation. Each section begins by defining the issue in relation to CPAs in Cambodia. Next, each section contains a portion explaining the present state of the legal framework and the range of potential gaps in current practice. Finally, each section contains recommendations relevant to improving the efficacy and efficiency of each particular issue.

The report is intended as a resource for national and local level governmental authorities, policymakers, and relevant key stakeholders in Cambodia. We also aim in this report to provide broader guidance to actors who are engaged in the Cambodian CPA legal framework in any capacity, such as development partners, NGOs, or broader civil society. The format of the report, analysing CPA issues according to ten criteria, allows the reader to use it as a reference tool on a topic-by-topic basis as need be.

Prepared during the period of uncertainty associated with the COVID-19 pandemic, the report faced a number of particular challenges and limitations. Key among these has been the difficulty of conducting field work, especially in terms of community interaction and coordination with local authorities. In addition, due to demands of the pandemic, we were limited in our ability to directly engage with relevant government officials at both the local and national level. As a result, we now present this report as a tool for all relevant stakeholders and in particular government officials, in order to begin a dialogue of learning and experience sharing that can lead to improved CPA implementation going forward.



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# Background

## Protected Areas and Policy Environment

Protected areas (PAs) are important for conserving biodiversity and ensuring sustainable development.<sup>4</sup> They function to decrease deforestation and land conversion and this has been shown in multiple studies.<sup>5</sup> Other studies, however, have argued that expansion in the designation of PAs directly impacts local communities, who have often been evicted from their traditional lands, resulting in increased conflict and criminalisation of customary uses.<sup>6</sup> PAs can also become vulnerable to general degradation and encroachment by infrastructure development, private investment, and illegal poaching.<sup>7</sup> While the trend has been towards growth of PAs, at the same time it has become clear that restrictive, top-down government-led approaches for the management of PAs are failing to meet conservation objectives.<sup>8</sup>

Since the 1990s, the Cambodian government has made a concerted effort to strengthen the protection of natural resources and habitats. In 1993, a royal decree on the protection



>40%

of Cambodia's land mass  
is covered by PAs

of natural areas recognised 23 PAs.<sup>9</sup> In total, PAs covered more than 40% of Cambodia's land mass by late 2017.<sup>10</sup> Currently, there are 53 established PAs. Furthermore, each PA can be classified into up to four zones based on its natural characteristics and conservation needs: Core Zone, Conservation Zone, Sustainable Use Zone, and Community Zone.

The Core Zone, containing threatened and critically endangered species and fragile ecosystems, is the most protected area with the most limited access. Access is generally prohibited, except by General Department of Administration for Nature Conservation and Protection (GDANCP) officials and researchers to conduct studies of the environment and natural resources (after receiving permission from the MoE).<sup>11</sup>

The Conservation Zone is also an area of high ecological value, and is located adjacent to the Core Zone to act as a "buffer."<sup>12</sup> Although not as highly protected as the Core Zone, access to the Conservation Zone is only allowed with prior consent of the GDANCP. There is an exception for small-scale community uses of non-timber forest products (NTFPs) to support local ethnic minorities' livelihood, provided that such access and use do not present serious adverse impacts on biodiversity.<sup>13</sup> Ecotourism activities may also be allowed/permitted if it is determined that such activities pose minimal impact on the ecosystem and biodiversity.<sup>14</sup>

The Sustainable Use Zone is less ecologically protected than the Core Zone and Conservation Zone. The Sustainable Use Zone prioritises sustainable use of natural resources and improving the livelihood of local communities and indigenous ethnic minorities. Access is more widely permitted, although certain activities are prohibited.<sup>15</sup> CPAs may be established in this zone.<sup>16</sup>

The Community Zone places the least importance on ecological protection amongst the four zones, and socioeconomic development of local communities and indigenous ethnic minorities is given priority in this area.<sup>17</sup> The Community Zone is solely for the use of local populations; non-local use is prohibited.<sup>18</sup> CPAs may be established in this zone,<sup>19</sup> although this is somewhat inconsistent with the general rule laid out in the Zoning Guideline for the Protected Areas in Cambodia (2017) (hereinafter referred to as "Zoning Guideline"), which states that the Community Zone should be restricted to areas of existing settlements (villages) and their cultivated areas (e.g., rice fields, plantations and field gardens) for which land titles have been issued.<sup>20</sup>

In 1999, Cambodia became a party to the Convention on Wetlands of International Importance, or the Ramsar Convention, resulting in the addition of five wetland areas as protected Ramsar sites.<sup>21</sup> In 2008, this was followed by the adoption of the Protected Area Law, which codified the different types of protected areas into eight categories: national park, wildlife sanctuary, protected landscape, multi-purpose use management area, biosphere reserve (particularly the Tonlé Sap), natural heritage site, marine park, and Ramsar site.<sup>22</sup> In 2017, the MoE announced the creation of a series of new “Biodiversity Conservation Corridors” to connect existing PAs, spanning nearly 1.5 million hectares (ha). For several years, a new Environmental Code has been under discussion, championed by the MoE, but has yet to be forwarded for parliamentary approval.

Despite government efforts to step up community-based conservation, and to implement stiff penalties for violations of the Protected Area Law, natural resources in Cambodia are still under serious threat.<sup>23</sup> The annual forest cover in Cambodia has dramatically declined from 57.07 percent to 46.86 percent of total area between 2010 and 2016.<sup>24</sup> Declining forest cover has been noticeable from year to year due to increasing illegal logging, deforestation, infrastructure development, and agricultural expansion. Key drivers for deforestation are the high demand for timber exports to other countries as well as agricultural production through large-scale economic land concessions (ELCs).<sup>25</sup> It is within this context that all interested stakeholders – national government, local authorities, communities, civil society and NGOs – must work to preserve and sustainably cultivate natural resources.

## Community Protected Areas in Cambodia – Status Quo

Currently, community-based natural resource management mechanisms in Cambodia exist in three forms: CPAs, Community Forests (CFs), and Community Fisheries (CFis). In 2016, the management of forests within PAs was transferred from the MAFF to the MoE. The total land under PA management now equals 7.5 million ha (or 41% of Cambodia’s total national territory).<sup>26</sup>

182

established CPAs,  
covering 309,463 ha

The MoE is the authority in charge of establishing and overseeing CPAs. Currently, there are 182 established CPAs, which cover 309,463 ha in total. CPAs usually contain one to three villages and range from 500 to 8,000 ha in size. At present, there are 55,446 families that are part of these CPA communities. The communities typically take initiative in the formation of CPAs by going through a legal application mechanism outlined in the Prakas on Guideline on Procedure and Process of Community Protected Area

(CPA) Establishment (2017) (hereinafter referred to as “CPA Guideline”), sometimes with government or NGO assistance. CPA communities are given 15-year agreements granting them the rights to manage the land. Their rights do not extend beyond the CPA boundaries. The CPA mechanism aims to significantly improve conservation efforts while increasing community livelihood opportunities.<sup>27</sup> Its potential as a framework to organise and attract investment activities such as sustainable agriculture and ecotourism is also recognised by the MoE and NGOs. In order to better facilitate the aforementioned goals with communities playing a more active role, informal discussions have been taking place between the MoE and other stakeholders about a potential review of the CPA Guideline.

Criticisms of the existing CPA mechanism include: limited access to natural resources by local people which affects their livelihoods, ineffective law enforcement, weak land tenure, and lack of real rights to be able to manage, protect, and participate in PAs.<sup>28</sup>

# 1. Land Tenure

## Definition

Land tenure rights can be conceptualised as a group of specific rights, which may include: *access rights* (accessing land), *use rights* (using land and its resources), *withdrawal/extraction rights* (taking out resources, e.g., harvesting timber or non-timber forest products from land), *management rights* (decision-making power in relation to the use of land), *exclusion rights* (possibility to exclude outsiders from entering or using land), and *alienation rights* (possibility to rent, sell or grant rights to others in regards to land).<sup>29</sup>

## Governing Law

Constitution of the Kingdom of Cambodia (2008), Land Law (2001), Protected Area Law (2008), Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017)

## Stakeholders

MoE, MOI, MLMUPC, PDoE, Provincial Governor, Commune Council, Communities

## Context

Cambodia's legal framework statutorily acknowledges customary land tenure rights of LCIPs, but in differing ways that are not completely consistent. For instance, the Protected Area Law (2008) states that "[t]he State recognises and secures access to traditional uses, local customs, beliefs, and religions of the local communities, and indigenous ethnic minority groups residing within and adjacent to the protected areas," although such use and customary practices are limited to the Sustainable Use Zone and Conservation Zone of Protected Areas (PAs) (see "CPA Establishment" section for further information on PA zones).<sup>30</sup>

"The State recognises and secures access to traditional uses, local customs, beliefs, and religions of the local communities, and indigenous ethnic minority groups residing within and adjacent to the protected areas."

This limited approach of the Protected Area Law, which provides for limited recognition of traditional customs and uses within limited portions of PAs, can be compared to the Land Law (2001), which provides collective land title (CLT) to indigenous communities that meet certain criteria.<sup>31</sup> These different approaches have never been harmonised, which creates uncertainty and can result in different indigenous communities receiving different degrees of tenure security depending on whether or not their lands are located within the PA system.

Under the CPA legal framework, CPA communities have partial land tenure rights, in that they may generally exercise access rights, use rights, withdrawal/extraction rights, and management rights. However, CPA communities lack exclusion and alienation rights, which weaken CPA communities' overall land tenure rights. This includes the inability to provide rights to others – hindering, for example, the ability to enter into contracts with private sector enterprises that may be interested in entering into sustainable business arrangements with the communities regarding some use of their CPA land – which poses a significant obstacle to community livelihood development. However, considering frequent power imbalances between communities and companies, certain mechanisms, for example NGO support to

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communities to negotiate agreements or prohibition of shifting liability to communities for third party misconduct in the development of economic activities, should be put in place to ensure communities are protected as a weaker contractual party.

Land rights for LCIPs living in and adjacent to PAs are now subject to an additional process as well. At a 3 July 2020 meeting of the Council of Ministers, the Prime Minister issued a directive ordering three ministries (Land Management, Urban Planning and Construction; Agriculture, Forestry and Fisheries; and Environment) to allocate land within PAs to local people living in these areas.<sup>32</sup>

Details of how this directive is to be implemented are still emerging. According to informal sources, a possible procedure going forward would be for the provinces to create new working groups that are first tasked with generating statistics regarding the locations and numbers of families living in and near to PAs. These working groups would also determine, according to the status of the land on which the various families are located, which of the three ministries has jurisdiction to resolve the matter. Each ministry would then take the necessary steps to complete the allocation to the families.<sup>33</sup>

This process is not meant to be a new legal standard; rather, all land allocations are meant to occur according to current law. Thus, it remains to be seen exactly what form any land allocations will take. It is quite possible that the MoE may elect to use the CPA mechanism as the means by which to meet its obligation under this directive. This may also require the MoE to revise the tenure arrangements of the CPA system in order to meet the standard set in the directive.

A developing concern of this directive's implementation has been its lack of transparency and the way the directive has in some cases been co-opted for land grabbing by the elite and powerful. This has caused issues on the ground and a gold rush into areas to acquire land, which ultimately results in formerly protected land that was meant to be granted to communities living in PAs being acquired by powerful private interests.<sup>34</sup>

## Legal Gaps

### Ownership vs. Use Rights

The CPA legal framework allows LCIPs to gain a degree of legal certainty through establishing CPAs, providing some protection and security of their customary rights to their land and resources, as described above (but strictly limited to within the demarcated boundaries of the CPA). This falls well short of actual ownership with the accompanying full land tenure rights, as land allocated to communities as CPAs are under the communities' temporary management but remain under State ownership.<sup>35</sup> (As described above, separate from the CPA framework, indigenous communities can gain collective land tenure rights via a land title issued under the Land Law,<sup>36</sup> although obtaining a land title can be a long and arduous process).

### Clarifying Rights

The security of land tenure rights under the CPA legal framework is significantly diluted by the State's ability to revoke a CPA at any time for the broadly-worded reason that the CPA area "provides more social and public benefits than CPA establishment."<sup>37</sup> In such cases, the General Directorate of Local Communities is directed to provide the CPA community with a written letter at least six (6) months prior to the termination, and the CPA community is intended to receive incentives and benefits from any development projects proposed in its place. The aforementioned "social and public benefits" are not further defined, nor is there an explanation of how such a comparison between "social and public benefits" and CPA establishment will be made. Furthermore, there is no clarification of the "incentives and benefits" that CPA communities are meant to receive in compensation, and thus there is no clarity on how to reliably implement or enforce that directive/mandate.<sup>38</sup>

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In addition, Cambodian law does not provide for the Free, Prior and Informed Consent (FPIC) of indigenous peoples and neighbouring communities as a condition of any aspect of the CPA mechanism (allocation, cancellation, renewal, modification, etc.), nor does it provide for any compensation of indigenous peoples and neighbouring communities if they are negatively impacted by CPA establishment. Including such measures as conditions of CPA establishment would provide more inclusive safeguards – ensuring not only that land tenure rights of CPA members are protected, but also the land tenure rights of non-participating indigenous peoples and neighbouring communities.

### Length of Term and Renewal

Land tenure rights protected and ensured by the CPA framework are also temporary, with communities granted management over CPAs for only fifteen (15) years (with the option to request renewal, but no guarantee that such renewal will be approved).<sup>39</sup>

The length of this tenure period is widely understood, both in Cambodia and in comparison to best practices observed in other countries, to be inadequate for carrying out both effective long-term management activities and developing appropriate sustainable economic activities. This is exacerbated by the practicalities of making a CPA operational. While the 15-year term begins to run as soon as the CPA establishment process is completed culminating with a signed CPA management agreement, in reality it can take additional years for CPA community members to fully understand, implement, and enforce their management plan, bylaws, and other relevant regulations and policies.<sup>40</sup>

By contrast, longer term legitimate tenure rights contribute to better local community-led conservation management.<sup>41</sup> In general terms, community-based management agreements for at least 30 years are deemed to be more effective.<sup>42</sup>

Although the CPA legal framework permits renewal of CPAs, there is no further stipulation of rules regarding renewal, such as the criteria upon which a renewal decision would be based.<sup>43</sup> This can be a cause for concern for CPA communities, especially amid rapid development in the country.<sup>44</sup> For example, a local CPA community in Ratanakiri Province has expressed concern that its CPA management agreement may not be renewed because their CPA area is highly desired by private companies for development.<sup>45</sup>

### Reallocation of Unused Economic Land Concessions

LCIPs typically apply for CPA designation for land they currently use for livelihood activities. Through the CPA application process, however, local communities sometimes discover the land they seek to claim is already granted as part of an ELC, which can be granted for up to fifty (50) years. Many times, the companies granted land tenure rights under ELCs are no longer using the land. Yet the process of reallocating an ELC is lengthy, often taking at least two (2) to three (3) years, and involves other ministries in addition to the MoE. For example, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) is responsible for receiving complaints regarding unused ELCs.<sup>46</sup> Greater transparency regarding ELCs generally (e.g., providing public access to a concrete list of existing ELCs with related information such as location, size, status, etc.) and a more efficient and clarified ELC reallocation process would shorten the CPA establishment process significantly in locations where these issues arise. “Recycling” unused or abandoned ELCs by reverting some form of tenure and management control back to local communities in the form of new CPAs could help with reforestation and the economic livelihood of local communities.<sup>47</sup>

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## Implementation Issues

### Limited Commercial Access Opportunity

Currently, most commercial activities are only permitted in Sustainable Use Zones and Community Zones of PAs, with limited access to Core Zones and Conservation Zones. This is considered by some as limiting livelihood opportunities, such as appropriate forms of low impact ecotourism. Furthermore, the CPA legal framework is very restrictive as to permissible commercial activities. Clarification of CPA communities' rights to conduct commercial activities is needed, with the goal of enhancing CPA communities' opportunities to sustainably improve their livelihood. As mentioned above, this should also include communities being granted rights to their CPAs for a sufficient period of time (30 years or more) in order to be able to design suitable livelihood activities and to attract responsible investors for sustainable economic activities.

In 2017, the Cambodian government began the informal case-by-case process of authorising ecotourism developments of up to 10 ha within PAs. This is an important opportunity to bolster appropriate economic development that contributes to local livelihoods and conservation management objectives.<sup>48</sup> However, this practice does not include any safeguards or standards by which to encourage projects benefiting LCIPs. Without any such procedures in place, there is a risk that this approach may be used to provide advantages to well-connected business interests, rather than to local populations.

### Administrative Disconnect Between Provincial and National Authorities

The case of a local community in Ratanakiri Province presents strong evidence that a vertical disconnect exists between the administration of PAs by national and subnational authorities. In 1997, the provincial authority of Ratanakiri initiated an informal 25-year special agreement with a local community, to give the community more management rights over natural resources. This agreement did not go through a formal application process with national authorities and was of questionable legal authority. The provincial authority then proceeded to try and terminate the same agreement before the end of its 25-year duration period in order to enter into a 75-year contract with a Chinese developer. It was stopped by a direct intervention from the Prime Minister, whereupon the community began the process of applying for CF tenure with the MAFF. The application was later transferred to the MoE and converted to applying for CPA tenure.<sup>49</sup>

### Preference for CLT over CPA Due to Tenure Security

As mentioned above, an alternative land tenure system available for indigenous peoples' communities is CLT under the Land Law, which provides greater land tenure rights and benefits than the CPA system. Though communities have expressed frustration over CLT's expensive and lengthy process, small land size allotments and limited land types, they highly value the land ownership and strong exclusion rights granted under CLT. CLT tenure security can be seen in instances where land under a CLT overlaps with a PA. In such instances, the government typically determines that the disputed land belongs to the community under the CLT, after evaluating the community's history of using the land.<sup>50</sup> On the contrary, CPA communities are more likely to lose CPA land to commercial companies when disputes arise.

There has been a recent increase in encroachment on CPA land, with encroachers claiming access rights based on their past use of the land. Pursuant to the recently issued Circular 06, the Cambodian government has established a special working group and procedures to examine local land tenure claims, including within PAs. This working group and related procedures may be one means by which to evaluate unclear claims concerning particular CPAs and even to devise more secure tenure for CPA communities generally.<sup>51</sup>

## Recommendations

- i.** Expand land tenure rights of CPA communities – for example, the CPA legal framework should explicitly allow CPA communities to exercise exclusion rights (e.g., the right to exclude outsiders from entering or using land allocated as a CPA, the right to exclude use of certain technology within CPA borders)
- ii.** Lengthen the duration of CPA tenure, ideally to a minimum of thirty (30) years
- iii.** Formalise land tenure rights in the Land Register (see “Conflict Resolution” section)
- iv.** Clarify how “social and public benefits” are defined in the legal framework as it relates to CPA revocation; allow CPA communities and other relevant or interested stakeholders to participate in the determination of whether “social and public benefits” outweigh CPA establishment; and define the comparison process to allow for more consistent application of existing laws
- v.** Ensure CPA communities are provided with fair and just compensation in advance of land deprivation from CPA revocation/termination by issuing further guidance on how such compensation will be provided, what kind of compensation, how it will be determined, when compensation will be provided, etc.
- vi.** Provide for the FPIC of indigenous peoples and neighbouring communities as a condition of CPA establishment, including issuing guidance on how to fulfil FPIC requirements during the CPA establishment process
- vii.** Streamline the process for communities to reclaim land granted as ELCs that is no longer being used for its intended purpose and develop a procedure to convert unused, abandoned, or cancelled ELCs into CPAs
- viii.** Provide for further rules on the renewal of CPAs, such as the length of a renewed tenure term, the criteria a renewal decision is based on, when such a decision must be made, the result if there is a lack of response to a renewal request, etc. (e.g., community forestry rules on renewal could provide some guidance<sup>52</sup>)



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## 2. CPA Establishment

### Definition

In the Cambodian context, the CPA establishment process can be initiated by local communities, the government, development partners, and/or NGOs. CPAs can only be established in the Sustainable Use Zones and Community Zones of Protected Areas, and the establishment process involves multiple steps, culminating in an official approval by the MoE.

### Governing Law

Protected Area Law (2008), Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017), Zoning Guideline for the Protected Areas in Cambodia (2017)

### Stakeholders

MoE, PDoE, Provincial Authorities, Commune Councils, Communities, NGO partners

### Context

The CPA legal framework states that CPAs can be allocated to communities residing within or adjacent to protected areas.<sup>53</sup> 'Community' is defined as "a group of villagers in one or more villages in [the] Kingdom of Cambodia who are interested in social problem, environment, tradition, and economy and in the use of sustainable national resources of one area where they are living in or near that area with purpose to feed life and improve the standard of living."<sup>54</sup>

The CPA legal framework also specifies where CPAs can take place. CPAs are part of the larger PA system, and CPAs may only be established in specific areas of a PA. PAs are established by the Cambodian government with a sub-decree, and PAs may fall into one of eight (8) categories.<sup>55</sup> Each PA is divided into four (4) zones – Core Zone, Conservation Zone, Sustainable Use Zone, and Community Zone – and each zone entails different management prerogatives.<sup>56</sup>

Zoning of PAs is based on five (5) criteria – area management objectives, ecological criteria, socioeconomic and cultural criteria, carrying capacity of natural resources in the area, and geographic settings of the area.<sup>57</sup> Such zoning is primarily the responsibility of the MoE, along with participation by the MLMUPC, local authorities, local communities, and other relevant agencies.<sup>58</sup>

As CPA establishment is only allowed in the Sustainable Use Zones and Community Zones of PAs, local communities' and indigenous peoples' participation in the overall zoning determinations of PAs is an important consideration.<sup>59</sup> In current law, local communities may participate in the PA zoning process as sources of information and data when consulted by governmental authorities.<sup>60</sup> In practice, such participation is sometimes limited or does not occur.

The initiative to establish a CPA may be taken by various parties: communities can independently proceed with the CPA application process themselves or, alternatively, governmental officials and/or development partners can consult with LCIPs to gauge suitability of and interest in establishing a CPA.<sup>61</sup> In order to establish a CPA, participating community members must complete a CPA membership application, a CPA establishment application, a CPA committee election, CPA boundary demarcation, development of the CPA bylaw, development of the CPA management plan, and development of the CPA management agreement.<sup>62</sup>



## The CPA establishment process broadly entails the completion of seven (7) steps:

### 1. Participatory Assessment and Consultation

The gathering of information by government officials and development partners, in collaboration with the local community, to understand the local community/area and analyse the suitability of CPA establishment.

### 2. CPA Establishment Application

The completion of a CPA membership application by each family interested in being part of the CPA community, as well as the completion of a CPA establishment application by the CPA community.

### 3. Organisation of CPA Structure

A free, fair and just election held to create a CPA committee. The CPA management structure may comprise two (2) or three (3) layers, depending on the number of participating villages in the community. Within fifteen (15) days of being elected, the CPA committee must have a warrant of recognition issued by the Commune/Sangkat Chief in order to legitimise the committee's leadership and representation of the CPA.

### 4. CPA Boundary Demarcation

The demarcation of CPA boundaries, based on the area's geography and the purposes of CPA management. Several steps are followed:

- a) discussion on boundary demarcation amongst the CPA committee, a technical working group, and local authorities;
- b) site visit to demarcate CPA boundaries with the Director of the PA, where temporary border markers are installed to allow potential complaints to be brought against the boundary demarcation;
- c) resolution of any conflicts;
- d) demarcation of the CPA, with any needed technical and material assistance, with clear recording of CPA coordinates;
- e) scaled mapping using DATUM: WGS 84, coordinated by the Department of Community Livelihood; and
- f) placement of border poles, marked in numbered order with the name of the CPA and UTM, and signs that inform or prohibit entry/actions.

### 5. CPA Bylaw Development

The development of the CPA bylaw, which involves the following steps:

- a) pre-bylaw development,
- b) bylaw drafting,
- c) consultation on drafted CPA bylaw with members,
- d) consultation on drafted CPA bylaw with stakeholders, and
- e) bylaw recognition.

During pre-bylaw development, the CPA committee may request technical assistance from development partners, the Director of the PA, the Provincial Department of Environment (PDoE), or the Department of Community Livelihood. During bylaw drafting, those invited to participate include the CPA committee, the village chief, the Commune Council, and key members of the CPA community.

## The CPA establishment process broadly entails the completion of seven (7) steps:

### 6. CPA Management Plan Development

The development of the CPA management plan, including management zoning and assessment of natural resources and consumption demand in the CPA community. The CPA management plan, once drafted, must undergo consultations with CPA community members and other relevant stakeholders. The CPA committee must ultimately complete an application form for CPA management plan recognition, and the CPA management plan must be officially signed.

### 7. Development of CPA Management Agreement

The development of the CPA management agreement, with technical assistance from and consultation with local authorities, culminating in a signing ceremony.

Currently, there are 182 CPAs established within 31 PAs. Of the total number of CPAs, 141 CPAs have received an official Prakas of recognition from the MoE (which is issued after the fifth step involving CPA bylaw development); 39 CPAs have a signed CPA management agreement; and 48 CPAs have completed a CPA management plan.<sup>63</sup>

## Legal Gaps

### Problems in Sequencing of CPA Establishment Steps and Insufficient Emphasis on Management in CPA Establishment Process

The seven-step process as set out in the CPA Guideline follows a seemingly logical sequence of steps. However, as routinely practiced, the sequence of the steps in the process leads to problems in implementation over the long-term. Although CPA application forms are fairly accessible and straightforward, a key issue is that the sustainability and future management of a CPA is not adequately considered during steps one and two. Step one is often undertaken very quickly and in a very superficial manner without developing a full understanding within communities as to the purpose of the CPA and how it will continue to function in the future. Furthermore, steps three to six are often overlooked entirely, or are only undertaken after the CPA has already been established. The result is a situation where important capacity building and governance requirements upon which to develop are not put in place, greatly hindering the CPA's prospects for success.<sup>64</sup> Moving step six – i.e., CPA management plan development – to earlier in the sequential process could help ensure communities are better prepared to establish a CPA by engaging at an earlier stage in an assessment and clarifying how they plan to manage their CPA.

According to many accounts, communities presented with the opportunity to form a CPA see it as an urgent race to claim land within the state-owned PA without fully understanding or considering the future use and methods of collective management of the area for mutual benefit. Typically, the CPA committees just view this land as an area that they are responsible for either protecting or using for immediate financial benefits as other areas of forest surrounding the CPA are lost or sold off to the highest bidder.<sup>65</sup>

### Administrative Complexity

The CPA establishment process as structured in CPA legislation involves extensive consultation with and technical support by government officials. It is extremely difficult for LCIPs to follow and complete the CPA establishment process entirely themselves. Nearly every step that communities need to complete involves governmental authorities, either for consultation or technical assistance.<sup>66</sup>

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Experience indicates that it often takes communities an estimated six (6) to seven (7) years to develop and reach agreement on a CPA management agreement – which includes completion of other CPA establishment-related documents, such as the CPA management plan – significantly weakening both communities’ ability to protect areas under immediate threat of degradation and their ability to launch sustainable livelihood activities within the overall timeframe of the CPA.<sup>67</sup> (See “CPA Management” section for further discussion.)

## Demarcation

Of particular concern to LCIPs who desire to establish CPAs is participation in CPA boundary demarcation. The CPA legal framework does appear to afford LCIPs with strong participatory rights in the CPA boundary demarcation process, although in practice local communities’ and indigenous peoples’ participation in and impact on CPA boundary demarcation determinations seems to vary. Community participation is important because the CPA legal framework does not regulate the size of areas that can be allocated as CPAs – it merely states that CPAs are to be an “appropriate size”.<sup>68</sup> This is ultimately determined by the GDANCP, although the determination should be contingent on consultation and coordination with local communities, indigenous peoples, and local authorities.<sup>69</sup> Often, CPAs are sited in areas that do not correspond with areas of local community traditional use or sustainable livelihood opportunities, leading to additional implementation challenges.<sup>70</sup>

“Community participation [in boundary demarcation] is important because the CPA legal framework does not regulate the size of areas that can be allocated as CPAs – it merely states that CPAs are to be an ‘appropriate size’.”

## Timely Processing of Applications

The CPA legal framework does not provide a set period within which the administration has to handle the community’s application at each stage of the CPA establishment process, nor does the legislation specify whether an absence of response from the administration results in an approval or dismissal of the CPA application (nor does the legislation address what recourse communities may have if the CPA application is rejected).<sup>71</sup> This undefined length of time for governmental authorities to review and either ultimately authorise or reject a CPA application creates serious uncertainty for communities going through the CPA establishment process. Although governmental authorities may attempt to process CPA applications expeditiously on a case-by-case basis, the lack of regulatory deadlines can result in CPA applications languishing indefinitely with no requirement for timely action on the part of the authorities.<sup>72</sup>

Furthermore, although decentralisation has been an ongoing objective – with roles and responsibilities being distributed amongst national and subnational authorities – establishment of CPAs is still under an overall centralised approach, with any CPA establishment requiring final approval by the MoE.<sup>73</sup>

Decentralising the establishment process – e.g., by spreading permission to authorise CPA establishment amongst national and subnational authorities – could shorten the establishment time and strengthen decision-making with closer links to realities on the ground, increasing communities’ access to CPAs. However, this could backfire if local authorities who are in charge of approving CPAs have competing priorities to those of CPA development – perhaps favouring private development instead of promoting community livelihoods.

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## Implementation Issues

### Costly and Lengthy Registration Process

The CPA registration process is perceived by communities and supporting NGOs as lengthy and costly. Though applying to establish a CPA is free, various operational costs are incurred in the process. For example, there are transportation costs to arrange consultations between authorities and communities and field costs for CPA boundary demarcation. These financial burdens are often borne by NGOs assisting communities going through the process, as it may be overly burdensome for communities to proceed alone.<sup>74</sup>

Communities have expressed frustration with the CPA establishment process, stating that it requires the completion of too many steps, with many authorities involved. Each step requires submission from communities and approval from authorities. Delays are frequent, for reasons such as the capacity limit of communities and inadequate technical, financial and human resources of authorities. There are instances in which NGOs or others have been able to provide informal support for expedited processing, but this leads to inequities in terms of which communities are able to process their CPA applications in a timely and streamlined manner. While the CF establishment process is considered tedious as well, some communities appear to perceive it as easier than the CPA process.<sup>75</sup>



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## Need for Greater Community Influence on CPA Land Allocations

The ambiguity in community participation requirements in the CPA boundary demarcation process has led to varying degrees of participation in practice, resulting in varying degrees of community satisfaction with CPA land allocations.<sup>76</sup> In extreme cases, the actual CPA land allocated to the community is much smaller and comprises land in a different location than the land requested in the submitted CPA proposal.<sup>77</sup> This practice of excluding requested land from the CPA allocation, which often has abundant forest cover and biodiversity, limits a community's opportunity to maintain traditional practices and develop livelihood activities such as ecotourism and NTFP collection, diminishing the economic and conservation potential of CPA management and overall community commitment to the mechanism.

In most cases, NGOs assist local communities in the CPA establishment process, including demarcation and zoning. At the local level, NGOs typically help communities with three activities pertinent to CPA boundary demarcation: sketching boundaries on a map; verifying sketched boundaries in the field; and submission of documentation to the MoE. The submission requires approval from different levels of government authorities such as the commune chief, district and provincial authority, and the PDoE.<sup>78</sup> Communities have expressed frustration over the demarcation process being at times dominated by technicians from the PDoE, with insufficient consultation and consensus building with community members. Consequently, CPA allocations sometimes fail to respect communities' customary land and forest use, resulting in communities' dissatisfaction over CPA aspects such as location and size.<sup>79</sup> It is particularly challenging for indigenous communities, as language barriers further inhibit communication.<sup>80</sup> At the national level, NGOs have worked directly with MoE on CPA zoning, when demarcation information was received from CPA communities.

## ELC Overlap with CPA

ELCs are often granted without properly consulting affected communities. This at times results in ELC land overlapping with existing local communities' and farmers' land, CPA land, and indigenous people's land – which consequently affects LCIPs' livelihoods, biodiversity, forests, and wildlife; land conflicts; and sustainability of local belief systems and culture.<sup>81</sup> Furthermore, land is often granted as ELCs more quickly than it would be allocated as a CPA. There appears to be no clear and effective legal mechanism for negotiating conflicts between ELC and CPA allocation. The local practice of communities filing complaints with the provincial authorities has been ineffective.<sup>82</sup> It is recognised that clear boundary demarcation, for both ELCs and CPAs, is important for conflict prevention as well as conflict resolution. In practice, stakeholders often have inadequate knowledge of where boundaries are located.<sup>83</sup>

## No Transfer Mechanism from CF to CPA

To date, there is no legal mechanism detailing how to transfer status from a CF to a CPA (or vice versa), leading to practical confusion in terms of jurisdiction and administrative procedure. Communities attempting to make such a transfer are encumbered by required approvals from subnational to national authorities, who also operate in technically and procedurally unclear conditions.<sup>84</sup> Subnational authorities continue to work with non-CPA related authorities – such as the MAFF – for reasons of convenience, even on CPA-related issues.<sup>85</sup> Establishing a clear and simple transfer mechanism is urgent and necessary to encourage expansion of the CPA system.

## Recommendations

- i.** Ensure substantive participation by LCIPs when conducting mapping and zoning of entire PAs and also CPAs as part of the CPA establishment process – this will provide sufficient understanding and consideration of LCIPs’ history, culture, and traditions that closely connect to the management of their environment and its natural resources
- ii.** Simplify the steps of the CPA establishment process to allow for better access by a greater number of LCIPs (e.g., mapping requirements can be made less technical and rely on community-generated sketch maps); also, simple management plans generated by communities themselves can be sufficient
- iii.** Develop consistently delivered programmes to strengthen technical capacity of LCIPs in order to enhance their self-sufficiency and reduce their reliance on outside assistance (taking into account the length of time involved to go through the entire CPA establishment process, and also taking into account the typically low level of effective management occurring within CPAs, incorporate basic capacity building on sustainable management and livelihood opportunities and responsibilities into steps one and two of the CPA establishment process – this will enable more effective community management of the CPA throughout the years of the full CPA establishment process, and lead to greater ownership of management plan implementation)
- iv.** Clarify conditions for acceptance or rejection of CPA applications, as well as address available options for communities if an application is rejected, such as an appeal mechanism or the possibility to resubmit an amended application, in order to avoid discretionary decisions
- v.** Specifically include forestland in CPA allocations, which is often excluded – inclusion of forestland would contribute to greater sustainable landscape protection, ecosystem and forest management, income generation through ecotourism and sustainable enterprises, and local community development
- vi.** Provide appropriate and effective mechanism for conversion allocation between a CF and a CPA by establishing clear jurisdictions, procedures, requirements, timelines, key stakeholders’ roles and responsibilities, and an appeal mechanism if applications are rejected

## 3. Community Internal Governance

### Definition

The way a CPA community is managed by its members, and the system for doing so. It entails power delegation, decision-making processes, financial management and any customary practices in a CPA community.

### Governing Law

Protected Area Law (2008), Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017), Law on Commune/Sangkat Administrative Management (2001), Sub-Decree No. 26 on Commune/Sangkat Financial Management System (2002)

### Stakeholders

MOI, Community Leader, Elected Members of Community, National Treasury

### Context

The governance structure in Cambodia consists of two administrative levels: national and subnational (including provincial, district and commune authorities). Subnational authorities perform duties within their jurisdiction, but are subordinate to the national government.<sup>86</sup> Since 2008, subnational entities have gradually gained more autonomy with decentralisation reforms under the National Committee for Sub-National Democratic Development.<sup>87</sup> At the local community level, Commune Councils are the highest administrative authority, composed of members directly elected by local people.

The Commune Councils are directly responsible for allocating funding for community activities. Most of their resources come from a Commune/Sangkat Fund, which is paid from the national budget directly to the commune level. It supports two functions of the councils: administrative expenses and local development expenditures. The administrative expense is allocated to each council according to the number of elected commune councillors. The local development expenditure is allocated based on three components: an equal portion for all councils; a portion proportional to the commune's population; and the last is calculated based on the commune's poverty index. The councils also collect local contributions from citizens. In addition, some councils receive resources from NGOs.<sup>88</sup> Communes go through cycles of 5-year Commune Development Plans, which guide annual planning and budgeting. A key annual event called the District Integration Workshop finalises annual budgeting for commune projects. It requires attendance from directly related stakeholders such as the PDoE and Commune Council members, and is open for interested stakeholders such as NGOs to attend and pledge financial contributions.

“Under the CPA legal framework, management of CPAs generally relies on management by an elected CPA committee, with oversight by authorities.”

Under the CPA legal framework, management of CPAs generally relies on management by an elected CPA committee, with oversight by authorities.<sup>89</sup> An elected CPA committee may operate for a maximum term of five (5) years, and the CPA Guideline delineates the committee's rights and responsibilities.<sup>90</sup> The CPA Guideline also prescribes a specific CPA management structure, with the formation of two or three levels of management (group(s), sub-committee(s), and committee), depending on the number of participating villages.<sup>91</sup>

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# 7-15

members in  
CPA committees

Current practice indicates that the number of members in CPA committees range from 7 to 15 people, with the average CPA community size reaching between 80-150 households. The CPA Guideline instructs the formation of a Temporary Working Group to coordinate activities related to the election of the CPA committee, and this working group is responsible for selecting candidates.<sup>92</sup> In practice, candidates are either nominated by community groups and assisting NGOs or are self-volunteers.<sup>93</sup>

Along with respecting applicable laws, CPA members must abide by the rules developed in their CPA bylaw, CPA management plan, and CPA management agreement (which are developed by the community, with formal recognition by governmental authorities).<sup>94</sup> Models of a CPA bylaw, CPA management plan, and CPA management agreement are provided in appendices to the CPA Guideline.

## Legal Gaps

### Level of Adherence to CPA Model Governing Documents

According to one stakeholder, clarification is needed on how strictly CPA communities need to follow the model documents.<sup>95</sup> There was one instance when a CPA community expended significant effort discussing and developing a thorough CPA bylaw tailored to their community's needs and goals, even bringing in outside expertise and support, only to be told by authorities that they could not stray from the CPA bylaw model provided in the CPA Guideline. This position is not supported by any provisions in the CPA legal framework.<sup>96</sup> There is also the risk of excluding consideration of indigenous customary practice and knowledge in CPA governing documents if community input is severely limited. Thus, it should be made clear as to how the models provided in the CPA Guideline appendices should be understood and utilised.

### Accountability

Accountability mechanisms, key tools of good governance, are important to hold decision-makers – i.e., CPA committee members – accountable to all CPA members within the community. The CPA legal framework does not provide much in the way of specific accountability mechanisms. The only mechanism found in the legal framework is the option to have a CPA committee terminated and a new election held if at least sixty percent (60%) of CPA members request intervention by the Commune/Sangkat Council to address mismanagement by the CPA committee.<sup>97</sup> The CPA legal framework does appear to anticipate some accountability mechanisms to be developed and included in the CPA bylaw, such as requiring holding regular meetings with CPA members.<sup>98</sup>

### Transparency

Transparency is another cornerstone of good governance. The principle of transparency is mentioned in the context of benefit sharing and CPA management, although it is somewhat scattered in its references and the practical effect is unclear.<sup>99</sup>

## Implementation Issues

### Limited and Unequal Public Funding

Communities rely heavily on funding from the national government and development partners for community activities. Financing of community development projects is mostly limited to the Commune/Sangkat Fund and national level fiscal transfers.



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**\$100,000**

per annum is the general limit to commune funds

Commune funds are generally limited to an estimated \$100,000 per annum, 40% of which is used for development.<sup>100</sup> There is strong competition for development project funding, which often prioritises hard infrastructure projects, such as roads, instead of conservation. Commune Councils also often experience delays in receiving funding.<sup>101</sup> While substantial development funding comes from large development partners, it is strongly controlled by central government

agencies and dispensed through official channels.

At the national level, the MoE is typically underfunded in the national budgeting process, and this directly impacts funds available for the Commune/Sangkat Fund. The MoE Environmental and Social Fund is a fund dedicated to natural resource management and community development. Its availability is also directly linked to the MoE's budget allocation during the national budgeting process. The amounts available to communities, eligibility criteria, and process of distributing resources through this fund are not yet clearly defined.

In addition, although the Protected Area Law provides for a Protected Areas Fund, which is to be organised and managed by a committee co-chaired by the MoE and the Ministry of Economy and Finance (MEF), its functioning is as yet unclear.

Communities also receive limited direct funding from NGOs to assist with administration costs and training costs for governance improvement. A few communities have started to develop share-holding schemes to raise development funds. Currently, the amount is small (for example, \$25 per share) and participation is limited (20-50 people). The local education level in communities is identified as a plausible constraint to participation. Long-term training and development is required for such schemes to be fully functional and sustainable.<sup>102</sup>

### Respect for Customary Practices of Internal Governance

Indigenous communities are characterised by a strong sense of trust, even among different groups within communities that speak different dialects. They follow established customary practices of internal governance – for example, vulnerable groups typically defer to decisions made by community elders.<sup>103</sup> The formal education level is often low in indigenous communities, resulting in weak understanding of the development process, especially development plans and governance principles conceived by formal, centralised institutions. Levels of ambition for development also vary among communities.<sup>104</sup>

Considering these dynamics, one model of CPA governance clearly does not fit all circumstances. A much more case-by-case process that engages communities and relies on local knowledge and concerns will be much more effective in achieving CPA objectives.

Depending on their location, local communities have different social dynamics and hence differ in internal governance styles. In communities with a higher number of immigrants, whose affinity to the land is often limited, participation in communal governance tends to be low. Cambodia's recent history also appears to have a profound influence over communities' dynamics with power and authority. In some instances, community leaders feel a sense of obligation to submit to certain decisions of provincial or other higher authorities, particularly regarding land use or economic activities, even if those decisions are unfavourable to communities.

## Recommendations

- i.** Clarify how much autonomy CPA communities have to determine and develop CPA regulatory documents (e.g., CPA bylaw, CPA management plan, CPA management agreement, including modification of templates)
- ii.** Provide additional accountability mechanisms in the legal framework, such as holding regular meetings with community members, reporting finances, internal auditing, etc.
- iii.** Highlight the principle of transparency more broadly and overtly in CPA legislation, including specific requirements, such as access to information by CPA community members about decision-making structures, processes and activities in the CPA
- iv.** Dedicate a set allocation of the Commune/Sangkat Fund to finance management of natural resources, including CPA management
- v.** Empower and encourage communities to have a greater voice in the Commune/Sangkat Fund allocation process (e.g., consider including at least one CPA committee member on the Commune Council membership – in cases where a CPA spans multiple local jurisdictions, the fund allocation process should include at least one representative from each jurisdiction)



## 4. Community Participation and Representation

### Definition

In the Cambodian CPA context, participation refers to the active involvement of community members in the dynamic interactive process in which relevant stakeholders make CPA-related decisions together. Representation refers to the extent different groups within a community can participate, have a voice and exert influence in collective decision-making. These groups can be defined by gender, age, ethnicity, socioeconomic status, etc.

### Governing Law

Protected Area Law (2008), Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017)

### Stakeholders

PDoE, Commune Council, CPA Committee, Community Members

### Context

The CPA legal framework contains some provisions regarding community participation. Initially, establishment of a CPA requires voluntary participation by at least sixty percent (60%) of the total households in a village.<sup>105</sup> Many measures contain a sixty percent (60%) threshold: in order for a CPA committee election to proceed there must be an election quorum of at least sixty percent (60%) of the CPA's total members; at least sixty percent (60%) of a CPA's total members need to be consulted when evaluating a draft bylaw as well as a draft management plan; at least sixty percent (60%) of a CPA's members are required to request restructuring of the CPA committee; and a CPA bylaw can only be revised upon consensus of at least sixty percent (60%) of the CPA's total members.<sup>106</sup> There is also the general responsibility of a CPA committee to make decisions regarding CPA development with the approval of the majority of CPA members.<sup>107</sup>

60%

voluntary participation from total households in a village to establish a CPA

The CPA framework does not generally define “vulnerable groups.” It does, however, broadly recognise and encourage participation by certain populations – specifically, indigenous ethnic minorities and women. The Protected Area Law identifies the rights of indigenous ethnic minorities to participate in decision-making pertinent to PAs, and additionally encourages the participation of indigenous ethnic minorities in implementing CPAs.<sup>108</sup> However, there is no further elucidation of how such participation can be realised or guaranteed in CPA legislation.<sup>109</sup>

Participation of women is more explicitly emphasised with some concrete measures provided in the CPA legal framework. Women are encouraged to participate in CPA management by putting themselves forward as candidates in the CPA committee election, and it is strongly advised that women be part of the CPA management structure.<sup>110</sup> Women are also encouraged to participate in the initial drafting of the CPA bylaw, which is first undertaken by a small group of key community members.<sup>111</sup>

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## Legal Gaps

As mentioned above, although the CPA legal framework encourages participation of indigenous ethnic minorities and women, it does not provide practical measures to ensure such participation takes place when it comes to indigenous ethnic minorities. Additionally, no other vulnerable groups are considered beyond indigenous ethnic minorities and women. Other vulnerable members should be taken into account, such as the poor and socially marginalised groups.

## Implementation Issues

### Representation of Vulnerable Groups

Representatives on the CPA committee are typically the most engaged community members, followed closely by some of the youth population.<sup>112</sup> Women, elders, and community members in non-leadership positions typically have much smaller roles within the inner workings of the CPA.<sup>113</sup> This is partially due to traditional notions of deferment to elders; however, a lack of education and understanding surrounding the CPA process can also add to confusion among some CPA members about CPA objectives and operations.<sup>114</sup> The final result is that reduced representation on the CPA committee often results in these vulnerable groups' needs being subordinated to needs of those with more involvement.<sup>115</sup>

The inclusion of women and youth, especially in leadership roles, would benefit community governance and CPA management. For example, many indigenous elders do not speak Khmer and face challenges in understanding CPA regulations. NGO experiences with recruiting local youth to aid communication with elders have been effective.<sup>116</sup> Research also indicates that women are more likely to care strongly about sustainability when managing natural resources.<sup>117</sup> One way to encourage participation by women could be through education. In neighbouring Laos, villages that have received education aid for several years have started to show increased female participation.<sup>118</sup>

### Impact of Limited Commercial Potential

The potential for commercial activities and economic gains is an important driver for participation in CPAs. The current limitations on commercial activities in CPAs discourage communities' interest in participation.<sup>119</sup> Furthermore, limited economic opportunities drive out-migration of youth, straining communities' human capital. NGO-led CPA initiatives such as share-holding schemes that require upfront financial input tend to exclude community members with less education and resources, subsequently increasing inequality within communities.<sup>120</sup>

### Methods to Encourage Participation

Solidarity and commitment from within the community have been identified as key elements to participation.<sup>121</sup> Also, the means by which information is distributed within a community impacts participation. Direct face-to-face communication is considered more effective, while using paper documents to relay information is perceived as unengaging and deters participation.<sup>122</sup> Experiences from Laos show that well considered planning around community consultation sessions encourages greater participation. For example, half-day sessions can accommodate community members' agricultural production schedules; local transportation should be provided when possible; and meetings should be held at accessible locations, such as temples.<sup>123</sup> Furthermore, the law should also allow the community to determine the most suitable mechanisms for participation.

## Cultural Challenges

Ensuring effective participation includes addressing cultural acceptance of non-dominant cultures and practices, such as those of indigenous peoples. Indigenous peoples still face challenges when it comes to the dominant Khmer culture in Cambodia – Khmer culture regards the culture and shifting cultivation patterns of indigenous communities with suspicion. One way to tackle that could be through education. Education, currently inadequate in many rural communities, could be a strong tool to encourage inclusivity; teaching the indigenous way of life in schools across the country could bridge understanding.<sup>124</sup>

## Recommendations

- i. Strengthen safeguards within the CPA framework to encourage and ensure participation by vulnerable groups – existing measures for indigenous ethnic minorities and women can be improved, for example, by requiring regular community meetings with the participation of all community members or quotas to ensure the representation of certain groups in CPA decision-making bodies
- ii. Include other vulnerable groups beyond those already identified in the legal framework (e.g., the poor, socially marginalised groups)
- iii. Establish clear standards of practice for how information about the CPA process is conveyed to local communities, emphasising culturally appropriate and easily understandable in-person communication methods



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## 5. CPA Management

### Definition

Development of a CPA management plan laying down management rules that are tailored to local circumstances, such as the type of activities foreseen and the size of a community, and outlining lawful and prohibited activities, agreed upon by members of the community, authorised by the MoE, and subsequently carried out by community members.

### Governing Law

Protected Area Law (2008), Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017)

### Stakeholders

MoE, PDoE, Provincial Governor, Deputy Governor, CPA Committee, Community Members

### Context

The management framework for CPAs is dependent on the larger management of PAs, which is under the supervision of the MoE. CPA management must comply with the National Protected Area Strategic Management Plan, developed by the MoE and reviewed and revised at least once every five (5) years, as well as the action plan for the individual PA that a given CPA is a part of, which is developed by GDANCP.<sup>125</sup>

In establishing a CPA, the participating community must develop a CPA management plan, which is reviewed every three (3) years, or earlier if necessary.<sup>126</sup> (See “CPA Establishment” section for further discussion of the overall CPA establishment process, of which development of a CPA management plan is one step amongst several.) The management plan remains valid for five (5) years, and is expected to contain a five-year action plan.<sup>127</sup> The development of the management plan is allotted a one-year time limit, and it is anticipated that the CPA community will require technical and material assistance from governmental authorities and/or other development partners.<sup>128</sup>

Certain steps to follow in developing a CPA management plan are prescribed in the CPA Guideline:

- 1) management zoning,
- 2) assessment of natural resources (community forest inventory),
- 3) assessment of natural resource consumption demand in the community,
- 4) discussion on CPA management plan drafting,
- 5) consultation on drafted CPA management plan with community members,
- 6) consultation on drafted CPA management plan with other relevant people (i.e., governmental authorities, development partners), and
- 7) recognition of the CPA management plan by governmental authorities.<sup>129</sup>

Certain points should be addressed in the CPA management plan, and there is an outline of a model CPA management plan provided in the CPA Guideline.<sup>130</sup> It is not clear whether all the topics listed in the model CPA management plan must be covered in every CPA management plan, but generally the CPA legal framework does not seem to support the design of a simple, community-led management plan that is appropriate to local capacities. For instance, it appears that CPA communities are directed to assemble and provide a significant amount of data in their CPA management plans.

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The CPA legal framework identifies activities that may be pursued by CPA communities and those that are prohibited. CPA communities may not clear or work forestlands in their CPA; practice agricultural farming; claim title over the land; or sell, lease, pawn, donate, share, divide or transfer the CPA area to any person or legal entity.<sup>131</sup> CPA communities may also not set forest fires; process natural resource products and by-products in the CPA (or in the larger PA that it is a part of); or cause damage to plants and wildlife.<sup>132</sup> CPA communities may carry out activities pertaining to sustainable management and use of natural resources; ecotourism; protection of natural resources; and community development and governance.<sup>133</sup>

## Legal Gaps

### Complexity in Timing to Create Management Plans

According to the CPA Guideline, the CPA management plan is the sixth step in the seven-step process to establish a CPA, and is to be completed before a CPA management agreement is signed. However, CPA communities are often rushed into CPA establishment without a management plan. Although the development of the CPA management plan should not take longer than 1 year, in practice, it may take up to 6-7 years after CPA establishment to get the management plan approved (see “CPA Establishment” section for further discussion).

### Limited Management Rights

Management rights granted under the current CPA legal framework are limited. Rights to conduct additional activities should be considered and addressed in future amendments to the CPA legal framework, particularly the rights to directly enter into agreements with third parties such as private companies and financing entities; manage commercial activities; and substantively and effectively participate in management throughout the entire PA system (rather than restricting management to within a small, delimited CPA). These additional rights would then also be set out clearly in CPA management plans.

### Clarification of Related Laws

In addition, one area that needs further clarification is how laws related to forestry, which contain provisions related to forestry activities that are permitted or prohibited, are applicable to CPAs. Primarily of concern is the Law on Forestry (2002), which defines the framework for managing, harvesting, using, developing and conserving forests under MAFF jurisdiction.<sup>134</sup> It appears that certain provisions in the Law on Forestry remain applicable to CPAs, despite the fact that forests in the PA system are now under MoE jurisdiction. This leads to jurisdictional confusion and potential conflict between the MoE and the MAFF, leaving both authorities and communities in a state of uncertainty. (See “Access to Markets” section for further discussion.)

## Implementation Issues

### Lengthy Authorisation Process

The CPA management plan preparation process includes the creation of a set of documented information (such as accounts of existing community resources), with a consultation, endorsement (by community leaders/representatives) and approval (by MoE representative) process. Currently, this process is largely facilitated by NGOs and typically takes over a year.<sup>135</sup> Inexperienced and more remote communities often take an additional few years to set up management activities.<sup>136</sup> It is generally considered that this leaves insufficient time to carry out meaningful long-term oriented economic activities, such as properly setting up ecotourism or other sustainable livelihood activities, all within the 15-year CPA tenure period, negatively impacting the economic potential of CPAs, and thus weakening community confidence in and commitment to the CPA mechanism.

Aligning divergent ambitions within a community has been identified as a difficulty when it comes to developing a CPA management plan. Communities have also expressed frustration over the complexity of management plans. Much greater simplicity in the management plan structure and content (preferably a brief document with a level of technical detail appropriate to local capacity and proposed activities) and flexibility as to form and content are desired by communities in creating CPA management plans.<sup>137</sup>

### Need for Greater Management Capacity

A common observation is that communities do not “own” their management plan and tend to over rely on NGO support. Differences between customary practice and NGOs’ foreign-derived management principles result in confusion and suspicion. When NGOs stop their projects that provide support to CPA communities, inadequate skill and will from within communities render management activities weak or non-existent.<sup>138</sup> Nevertheless, NGOs’ assistance in capacity building has been broadly valued by communities – for instance, in accountable financial management (managing bank accounts), alliance building (resource sharing among neighbouring villages), and education on CPA regulations.<sup>139</sup>

It is also acknowledged that local NGOs’ power is limited and good relationships with local and national authorities are crucial for communities to gain support and security for their CPAs. It is suggested that communities proactively engage and lobby local authorities in relation to CPA management.<sup>140</sup> On the other hand, with decentralisation, provincial governors now have greater decision-making power over technical aspects of CPAs. Local authorities must have sufficient training and resources to effectively collaborate with local communities to ensure that management plans incorporate localised best practices rather than the authorities’ own top-down instructions.<sup>141</sup>





## Recommendations

- i.** Simplify CPA management plan requirements, allowing for level of complexity to be adaptive to the size of a CPA, the capacity of the community, and the type and complexity of proposed activities – for instance, a simple, one-page template that can be completed readily by communities themselves without outside support, with the flexibility to develop a more complex management plan depending on the community’s capacity and envisioned activities
- ii.** Expand CPA management rights to allow CPA communities to enter into agreements with third parties and manage commercial activities that are legally operated and sustainably managed in accordance with the CPA management plan throughout the Community Zones and Sustainable Use Zones
- iii.** Expand CPA management rights to allow CPA communities to directly receive and manage monies from private investment and commercial activities under their customary land use rights and public funding sources (e.g., ecotourism, NTFP collection and utilisation, carbon financing mechanisms, conservation finance and investment funds, money from any contracts or benefit sharing arrangements, grants, donations, environmental and social fund, Commune/ Sangkat Fund, other revenue sources)
- iv.** Expand CPA management rights to allow CPA communities to actively participate and cooperate with governmental authorities regarding all aspects of resource mapping, land use planning, zoning, management planning, and co-patrolling of all relevant zones within PAs
- v.** Understand and encourage, as well as reasonably limit, indigenous peoples’ livelihood practices (e.g., diversified local land use by indigenous peoples, where they integrate their productive land use into forested landscapes)
- vi.** Clarify applicability of forestry laws to CPAs, and amend CPA legal framework to address any resulting gaps

## 6. Access to Markets

### Definition

Market access refers to the ability of a CPA community to sell products and services deriving from the use of a CPA. The ability to sell in a market is accompanied by provisions that are clear and beneficial for communities, including ones that pertain to taxes, permits, transport and processing of products – provisions should also provide economic incentives.<sup>142</sup>

### Governing Law

Protected Area Law (2008), Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017), Zoning Guideline for the Protected Areas in Cambodia (2017), Law on Forestry (2002), Sub-Decree No. 34 on Arrangement of Duties and Responsibilities of Ministry of Environment and of Ministry of Agriculture, Forestry, and Fisheries in relation to Jurisdiction and Management of Economic Land Concession Areas, Management and Jurisdiction over the Protected Areas, and Conservation of Forestry and Fisheries (2016)

### Stakeholders

MAFF, MoE, MOI, Provincial Department of Commerce, FA, Communities, Private Sector Actors, NGOs

### Context

Communities living within CPAs sustain themselves through a variety of methods that vary by location.<sup>143</sup> As of 2014, between 30-42% of local households' livelihoods, or \$280-\$345 USD a year, came from resources acquired in the forest.<sup>144</sup>

The CPA legal framework can be improved so as to more readily facilitate and enable access to markets, which is important for supporting community livelihood development

and long-term viability. One way for CPA communities to generate income is through ecotourism activities.

Currently, such activities are mainly limited to Sustainable Use Zones and Community Zones.<sup>145</sup>

Low-impact ecotourism activities may also be allowed in Conservation Zones if it is determined that such activities pose minimal impact on the ecosystem or biodiversity.<sup>146</sup>

Recently, the Cambodian government issued the National Policy for Tourism 2019-2030, which provides

general guidance encouraging ecotourism through conservation of natural resources and protection of the environment by local communities.<sup>147</sup> The policy aims to accomplish sustainable ecotourism by establishing development plans for resources and tourism projects, advocating for local participation, and increasing the total number of tourists visiting designated locations.<sup>148</sup>

Comprehensive rules on harvesting, processing, transporting, and selling forest products and by-products (also referred to as timber products and NTFPs) would enhance CPA communities' access to markets.<sup>149</sup> The current CPA legal framework has a few relevant rules, such as prohibitions against processing natural resource products and by-products in PAs; collecting and transporting natural resource products and by-products without a permit; and stocking natural resource by-products without a permit.<sup>150</sup> GDANCP officials are

**30-42%**

of local households' livelihoods came from resources acquired in the forest

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also tasked with inspecting licenses and permits and the Minister of Environment is authorised to issue permits, agreements and contracts for non-profit purposes.<sup>151</sup> However, there is no further elucidation of the permit system.<sup>152</sup>

It is worth briefly noting that access to markets is governed by a proliferation of regulations, many of which are outside the scope of CPA legislation.<sup>153</sup> This poses its own set of challenges for communities.

## Legal Gaps

### Permitting

The lack of clarity and detail in the CPA legal framework is a significant problem, creating uncertainty for CPA communities trying to develop viable economic activities. It also creates uncertainty regarding NTFP production within the MoE's PA system generally. On the other hand, the Law on Forestry contains a well-developed set of provisions on the harvesting, processing, transporting and sale of forest products and by-products with the associated permit requirements and exemptions.<sup>154</sup>

Despite the 2016 jurisdictional shift between the MoE and the FA under the MAFF, in which many forestlands under FA jurisdiction were converted to PAs under MoE jurisdiction,<sup>155</sup> these provisions of the Law on Forestry remain applicable to forestlands under MoE jurisdiction until they are specifically repealed or overridden by alternative legislation. For instance, Article 24 of the Law on Forestry provides that any community harvesting of NTFPs for commercial purposes requires a permit from the FA. This provision is generally understood to remain broadly applicable at present and thus retains this permitting power with the FA – regardless of whether the NTFP being harvested is within land that is subject to FA jurisdiction or MoE jurisdiction after the 2016 jurisdictional transfer.

For CPA communities, this creates a confusing and fundamentally unworkable situation in which they are subject to MoE jurisdiction on the one hand, yet are still subject to FA permitting jurisdiction on the other hand. Considering the realities of the relationship between the FA and the MoE since 2016, this has created practical problems in a number of instances, with various stakeholders coming up with different ways of addressing the ambiguity. One stakeholder, for example, shared that until CPA laws were clarified or amended to address issues like transport permits, communities would default to relying on forestry laws and working with the FA under the MAFF.<sup>156</sup> It appears that as a result of this overlapping and inconsistent jurisdiction and lack of guidance, many CPA communities have kept sale of NTFPs contained within the community, and wider access to market opportunities has been limited.

The MoE has recognised the problems created by this jurisdictional issue, and recently has begun to issue its own special letters authorising commercial NTFP activities within lands under MoE jurisdiction. While a welcome attempt to address the situation, these letters lack proper legal basis and are an imperfect interim solution at best. Addressing the existing legal inconsistencies and gaps through proper revision of the legal framework would provide much needed clarity and greatly improve CPA communities' ability to enhance their livelihoods.

### Permitted Uses

Although ecotourism activities are explicitly permitted, the CPA legal framework does not adequately address how CPA communities may use natural resources, such as NTFPs, for commercial purposes. It does appear that sale of NTFPs is authorised, but further development of the CPA legal framework is needed to fully flesh out the relevant mechanisms for accessing markets.<sup>157</sup>

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## Implementation Issues

### Underdeveloped Market Mechanism

Apart from self-consumption, communities typically sell NTFP products (e.g., honey, resin, rattan, bamboo crafts, etc.) seasonally in small quantities for income. Due to an underdeveloped commercial capacity to provide regular and consistent products, and a lack of links to end-use markets, products are sold mostly in nearby community markets for low prices, and seldomly in more distant urban markets. Informal trade is frequent, with middle men reaping large profits while communities get very small income returns.<sup>158</sup>

Communities and NGOs have expressed frustration over the lack of clearly defined guidance and support for scaling production at a commercial scale, as well as on certifying products for authenticity and fair price.<sup>159</sup> There have been cases where large international NGOs organised collections of honey from communities and used an internationally recognised Geographical Identification to authenticate the products for sale in European markets.<sup>160</sup> Such initiatives are currently donor funded and require further capacity building to be self-sufficient.<sup>161</sup>

In addition, well-designed incentives are necessary to curb illegal activities and ensure sustainable commercial activities. More opportunities for legal sources of income may help to prevent illegal logging that produces low-value added firewood.<sup>162</sup> Given the increasing global emphasis on corporate environmental social responsibility, a growing number of private companies are seeking opportunities to partner with local communities to create mutually beneficial commercial endeavours. In Cambodia, examples include enterprises collaborating with communities to develop sustainable tree plantations, to cultivate specific fruits and vegetables, or to sustainably harvest bamboo. Strengthening collaborative partnerships between communities and the private sector is important, as it has often been observed that the private sector can have a greater impact in influencing national policy reform and accelerating those changes needed to promote sustainability of forest resources, compared to local communities' engagement.<sup>163</sup> It is equally important, however, to strengthen local communities' capacity to engage with the private sector, as there is the ever-present risk of elite capture, where businesses may take advantage of inexperienced communities with low capacity.

### Lack of Infrastructure

Basic infrastructure is lacking in many rural regions of Cambodia, resulting in poor access to physical and technological resources. Lack of physical storage and processing facilities limits the value of products for the market. Poor road conditions and connectivity, as well as lack of suitable transportation vehicles, restrict transportation of community products. Poor telecommunication facilities and internet access result in limited opportunities for critical information exchange crucial to commercial success, further restricting the reach of community products. In addition, ancillary services such as local market regulatory agencies or accessible microfinance are extremely limited.<sup>164</sup>

### Lack of Capacity Building of Local Communities

Weak social infrastructure for education poses immense hurdles to community capacity building. NGOs supporting community livelihood activities have constantly observed that low literacy rates and lack of business knowledge undermine communities' understanding of product value and ability to organise proper commercial activities. As a result, communities are over-reliant on NGOs to organise production activities beyond self-consumption, and capacity training efforts have been slow to advance.<sup>165</sup> Private companies also expressed concerns about working with communities.<sup>166</sup> Besides providing basic education and training in business skills, local authorities could support the formation of co-ops or local associations of producers, traders and exporters among communities, to enable resource sharing and bigger market power leverage. The national government could also consider providing sovereign guarantees to key private investments.

In addition, the societal perception linked to the word “enterprise” often includes negative associations such as destruction of customary sites and deforestation. Suspicion of commercial activities is prevalent in communities, leading to reluctance to participate in these activities. It will take a combination of effective regulation, training and oversight to develop the proper enabling environment in which to cultivate collaborative and sustainable interactions between communities and enterprises on a wider scale.<sup>167</sup>

## Recommendations

- i.** Clarify and develop the legal framework governing market access in CPAs (responsible authorities, pertinent regulations, etc.) and make sure to resolve jurisdictional conflicts and overlaps among different ministries and authorities
- ii.** Clarify the applicability of forestry laws to CPAs, making clear MoE jurisdictional control and permitting authority over all aspects of commercial NTFP production, harvesting and transport within and originating from CPAs and the entire MoE-managed PA system
- iii.** Mitigate risks for communities seeking private sector partnerships in order to prevent harm from power imbalances or elite capture
- iv.** Provide the private sector with some sort of guarantee/warranty by the government in order to ensure security of investment for enterprises meeting clearly stated sustainability criteria
- v.** Provide through government resources both technical and financial support to local communities to start up local businesses, as well as capacity building for business management and sustainable product development



## 7. Benefit Sharing

### Definition

Benefit sharing mechanisms include how the benefits from CPA activities are defined and shared between community members themselves (horizontal benefit sharing) and community members and the State/third parties (vertical benefit sharing), and how to ensure the accountability of benefit sharing arrangements, such as measures to ensure public participation and transparency.<sup>168</sup>

### Governing Law

Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017)

### Stakeholders

National Treasury, Provincial Authority, Commune Council, Community Members

### Context

The CPA legal framework generally instructs that benefits should be shared in a transparent, accountable and equitable manner, but does not specify how benefit sharing should be implemented within CPA communities.<sup>169</sup> The framework seems to anticipate benefit sharing arrangements to be developed by each CPA community and addressed in the CPA bylaw and management plan.<sup>170</sup>

From one perspective, the CPA legal framework allows communities the flexibility to determine for themselves the most suitable mechanism for benefit sharing in the context of their specific CPA community. However, this approach relies on each CPA community to adequately and equitably develop and implement benefit sharing within their CPA, and also to have the required authority and sophistication to negotiate arrangements with outside commercial actors.

### Legal Gaps

#### Lack of Guidance

The CPA legal framework, while mentioning the idea of benefit sharing generally, does not provide enough detail to furnish communities and other stakeholders with a solid foundation from which to develop successful horizontal and vertical benefit sharing arrangements.

#### Outside Scrutiny

Monitoring of benefit sharing appears to largely be assigned to CPA committees, with little outside scrutiny – which can limit the likelihood of ensuring fair and equitable benefit sharing, due to the limitations of a CPA committee’s own capacity and practical leverage in dealing with other stakeholders such as the government and private sector actors.<sup>171</sup>

### Implementation Issues

#### Existent Inequalities

Existing inequalities within communities may be exacerbated without carefully designed benefit sharing mechanisms, which are still in early stages in most CPA communities. For example, shareholding schemes developed by NGOs based on upfront financial input are only accessible to CPA community members above a certain income level. Consequently, the benefits derived from management activities are only accessible to “shareholders”, rather than benefiting all community members equally.<sup>172</sup>

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## Conflicts of Interest

In addition, concerns have been raised over the conflict of interest between local authorities and communities, in cases where funding flows to powerful local leaders instead of benefiting the community.<sup>173</sup> Transparency in fund management at all levels – within communities, and between communities and local authorities and other stakeholders – needs to be improved.

## Capacity Building of Communities and Authorities

Strong will and capacity at the community level to participate in benefit sharing is crucial to community members' fair inclusion in benefit sharing programmes, which could be strengthened through community empowerment activities.

In addition, well allocated authority and responsibility at the various administrative levels, as well as an open and dependable relationship between the different government levels and local communities, are critical for the operational success of a benefit sharing mechanism, which requires good governance practices at all levels and constant communication between stakeholders.<sup>174</sup>

Building such relationships between communities and authorities can take time and require considerable effort. Any effort towards benefit sharing must include capacity building for both communities and authorities. This should include not only training on the substance of benefit sharing arrangements, but also on the procedures for administering such arrangements, and the importance of information sharing and collaboration between authorities and communities. Training on these topics can involve both authorities and communities at the same time, further serving to strengthen these relationships.

## Recommendations

- i.** Provide detailed guidance on horizontal and vertical benefit sharing arrangements (e.g., factors to consider, options, models, minimum standards, template benefit sharing agreement)
- ii.** Enact detailed transparency standards, including robust monitoring by independent entities and financial reporting, of all benefit sharing arrangements applicable to all relevant stakeholders (local authorities, private sector, communities, etc.)
- iii.** Increase capacity of local communities through educational programmes, control and access to benefits, and operational efficiency
- iv.** Conduct joint capacity building for communities and authorities about the roles that each play in a coordinated and effective approach to benefit sharing
- v.** Build trust with communities through targeted facilitation of benefit sharing programmes and partnerships involving technical assistance for the programmes' execution

## 8. Conflict Resolution

### Definition

The right of each CPA community member to a fair dispute resolution mechanism, which can rely on traditional dispute resolution methods, as well as guaranteed access to a judicial dispute resolution mechanism (tribunal/courts) as a means of recourse.

### Governing Law

Protected Area Law (2008), Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017), Guideline on Conflict Resolution and Management for CPAs (2020)

### Stakeholders

MoE, MOI, MLMUPC, PDoE, Community Members, NGOs, Private Sector Actors

### Context

Multiple conflict resolution mechanisms and institutions are provided for in the CPA legal framework. Generally, CPA committees may resolve disputes within the community themselves, but may also reach out for outside support.<sup>175</sup> Several government institutions are tasked with facilitating the resolution of conflicts occurring within CPAs, including MoE's General Directorate of Local Communities, the Department of Community Livelihood (which is under the General Directorate of Local Communities), the PDoE, and Directors of PAs.<sup>176</sup> However, there are no established procedures or standards to guide how any of these governmental units actually go about resolving any conflict.<sup>177</sup>

Additionally, the Protected Area Law established the National Committee for Conflict Resolution on Protected Area Management to assist with conflict resolution pertaining to PAs.<sup>178</sup> The Committee is to be chaired by the Minister of Environment with participation by relevant ministries and institutions. However, there are no indications that the National Committee for Conflict Resolution on Protected Area Management has ever been properly operational.

In July 2020, the Prime Minister directed the MoE, MAFF, and MLMUPC to issue land titles to local people who have been occupying land in PAs and forested areas on a long-term basis, to increase reserved land for collective use by local communities by ten percent (10%), and to take action against illegal land and forest encroachment (see **"Land Tenure" section for further discussion**).<sup>179</sup> How this directive will be implemented and enforced, and how the numerous conflicts that will inevitably arise in the course of implementation of this directive are resolved, remains to be seen.

"In December 2020, a new guideline on conflict resolution and management for CPA communities was published."

In December 2020, a new guideline on conflict resolution and management for CPA communities was published. Its stated purpose is to instruct CPA community and committee members on how to manage conflict, find solutions, and pursue mediation. Greater awareness and effectiveness of this new guideline is as yet unclear.



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## Legal Gaps

### Uncoordinated Distribution of Use Rights and Management Duties

Land disputes have long been a significant issue in Cambodia, from which CPA communities are not immune. When land disputes arise, CPA communities are typically in an inferior position, facing an opposing party from outside the community who typically has some official authorisation supporting a claim to the land in dispute, such as a land title, concession agreement, or other approved use claim. CPA communities are at a distinct disadvantage in such situations, as they are not granted land titles or any other type of recognised land right through CPA establishment – they merely enter into a contractual agreement with the MoE. CPAs are also not registered in other land registration systems, such as the Land Register under the Land Law, which results in increased risk of overlapping land claims.

An experience of one CF community in Kampong Speu Province is instructive. In that case, a conflict between the local CF members and a rock mining company ended in the armed takeover of a bulldozer used to clear the forest.<sup>180</sup> The dispute began due to overlapping boundaries and ownership/management documents given to each party by different government departments.<sup>181</sup> The mining company continued to clear the land while the case went before the courts. In response, the community decided to halt the deforestation itself by seizing the bulldozer, forcing the company into negotiations. Eventually, the company decided to abandon the project altogether.<sup>182</sup>

## Implementation Issues

### Difficulties in Obtaining Favourable Resolutions

The drastic inequities in economic resources, political influence and sophistication between private companies and communities make it very difficult for a community to obtain a favourable resolution when conflicts arise. Improper actions have been observed, such as when companies take advantage of loopholes in existing law. In one extreme case from the region, a Vietnamese rubber company registered itself as multiple entities, thus enabling it to receive five times as much ELC land as may be allocated to one single entity by law.<sup>183</sup>

Furthermore, disputes filed by communities with provincial authorities often receive no response.<sup>184</sup> In cases where complaints by communities have been considered by authorities, the process often takes prolonged periods of up to 3 years, leading to extended uncertainty and loss of productivity in communities. Final outcomes also tend to be unfavourable to communities.<sup>185</sup>

“In cases where complaints by communities have been considered by authorities, the process often takes prolonged periods of up to 3 years, leading to extended uncertainty and loss of productivity in communities.”

### Increasing Reliance on Alternative Conflict Resolution Channels

A mixture of factors influences communities' attitudes towards conflict resolution: a culture of respect for authority, unequal education levels, the presence of externally driven advocacy (usually supported by NGOs), lack of ready accessibility to reliable dispute resolution mechanisms, and past experiences with authorities and private sector actors. Currently, the most common practice appears to be that communities file disputes with various provincial authorities with NGO assistance.

It appears that a vertical disconnect, in understanding of and adherence to official conflict resolution procedures, exists between national and subnational levels. Experience indicates that much more procedural ambiguity exists at the provincial level. Processes are often long, opaque and driven by individual authorities' interest in the case.<sup>186</sup> As a result, communities are increasingly turning to NGOs for help instead of going through official channels. NGOs providing support to communities often orient their efforts towards two strategies that appear to have a higher success rate in protecting communities' rights in relation to conflict resolution: first, seeking partnership and support from a national or international authority, and second, engaging private sector companies up the supply chain.<sup>187</sup>

### Recommendations:

- i. Develop clear guidelines and operating standards for dispute resolution within the CPA system that remain respectful of traditional/customary practices
- ii. Ensure that a clear dispute resolution mechanism is established for all claims arising in the course of implementation of Circular 06 (see "Land Tenure" section)
- iii. Issue an official recognition of the tenure rights of CPA communities to strengthen legal security to CPA land, thus increasing communities' leverage when disputes arise
- iv. Register PAs/CPAs in a centralised registration system, such as the Land Register, to reduce or eliminate the risk of competing land claims
- v. Consolidate the processes of licensing resource rights and improve inter-ministerial transparency, cooperation and communication to ensure future conflicts do not arise



## 9. Enforcement

### Definition

In the Cambodian CPA context, enforcement refers to the lawful execution of CPA management activities as agreed in a CPA management plan as well as ensuring compliance with relevant laws. This includes legal actions taken to prevent and prosecute illegal activities, including activities contrary to an approved management plan.

### Governing Law

Protected Area Law (2008), Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017)

### Stakeholders

MoE, PDoE, FA, Community Members, NGOs

### Context

The State generally oversees the implementation of CPAs, and governmental authorities are responsible for enforcing the law and imposing sanctions. As a practical matter, the PDoEs have a leading responsibility in day-to-day CPA enforcement matters, in collaboration with MoE's General Directorate of Local Communities. CPA community members play a more limited role in enforcing the law – primarily reporting violations of laws or CPA bylaws to governmental authorities and cooperating with authorities when needed – and are not authorised to impose sanctions themselves.

Broadly, the GDANCP is in charge of monitoring and enforcing laws on natural resource offences in the PAs.<sup>188</sup> GDANCP officials, who function as judicial police officers, may impose sanctions in certain instances, while in other instances GDANCP officials can file the case with the court, with the court ultimately determining whether a natural resource offence took place and what the appropriate sanction is.<sup>189</sup>

Possible sanctions for natural resource offences within PAs include: imprisonment, court-mandated fines, transaction fines, confiscation of evidence, payment of restoration damages, warnings, and termination/suspension of agreements or permits.<sup>190</sup>

The GDANCP may impose transaction fines, order payment of restoration damages, and issue warnings, while only the Minister of Environment may terminate or suspend agreements or permits.<sup>191</sup> GDANCP officials are also responsible for managing any seized/confiscated evidence, and are authorised to temporarily halt illegal activity until the case is resolved.<sup>192</sup>

“If an offender refuses to pay imposed fines or restoration damages, then the GDANCP may file a court proceeding for that offence and the case will be resolved by the courts.”

If an offender refuses to pay imposed fines or restoration damages, then the GDANCP may file a court proceeding for that offence and the case will be resolved by the courts.<sup>193</sup> Except in certain situations, any person who disagrees with a decision made by the GDANCP may appeal to the head of the GDANCP, and in all instances, the remedy of an appeal to the courts is available.<sup>194</sup>

Fines imposed by court decision and revenue generated from selling confiscated evidence accrue to the national budget.<sup>195</sup> The CPA legal framework appears to anticipate that some compensation could be paid to a CPA community for certain natural resource offences, but this is unclear.<sup>196</sup>

The Directors of each PA are responsible for taking action against natural resource offences within CPAs.<sup>197</sup> CPA communities are generally responsible for enforcing their bylaw, management plan and agreement, as well as cooperating with authorities to combat natural resource crimes.<sup>198</sup> It appears that CPA communities are largely restricted to merely reporting crimes, without the added ability to take any direct enforcement action. Permitting CPA communities to take direct enforcement action and clarifying what enforcement action(s) CPA communities may take – e.g., temporarily detaining violators, seizing illegal equipment, widespread joint patrolling – could improve overall management of natural resources in CPAs/PAs.

Monitoring of CPA implementation is overseen by multiple entities. While the CPA committee is responsible for managing and monitoring its CPA day-to-day, the CPA committee must make quarterly and annual reports to the Director of the PA that the CPA is part of (with copies provided to the Commune/Sangkat Council and district/city authorities).<sup>199</sup> Said Director of the PA must make quarterly reports to the PDoE (and provide the General Directorate of Local Communities with a copy), and the PDoE must submit annual reports to the MoE.<sup>200</sup>

Monitoring and evaluation of the implementation of the CPA Management Plan is conducted annually by the Director of the PA, the PDoE, the Commune/Sangkat Council and development partners.<sup>201</sup> The Department of Community Livelihood monitors and evaluates the implementation of the CPA Management Plan every three (3) years, or earlier if necessary.<sup>202</sup>

**CPAs are expected to be monitored and evaluated based on four (4) conditions, which are laid out in the CPA legal framework.<sup>203</sup> The conditions also have associated criteria, and the conditions and criteria are:**

**Condition 1: Protection of natural resources** (criteria: management and use zoning; conservation and protection of biodiversity; improvement of natural resources in the community; reasonable natural resource exploitation and use)

**Condition 2: Improvement of CPA members' prosperity** (criteria: CPA members have access to natural resources; natural resources in the community contribute to improving CPA members' livelihood; natural resources contribute to agricultural development; CPA members have improved chances to obtain additional work)

**Condition 3: Insurance of community prosperity** (criteria: CPA management system is set up with the participation of members; mechanism and effectiveness of conflict management and resolution; leadership skills of CPA committee; transparency in CPA management)

**Condition 4: Support from outsiders** (criteria: stakeholders participate and support CPA management; government's policies on community development; education and awareness raising in formal and non-formal system contribute to community-based natural resource management; support for product price in markets)

Based on the aforementioned conditions and criteria, indicators are developed by CPA communities and set in their CPA management plan.

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There are currently three forms of ranger groups that patrol CPAs:

- (1) CPA Patrols made up of CPA community members;
- (2) CPA Joint Patrols made up of CPA community members, local authorities, and MoE rangers; and
- (3) PDoE and MoE Joint Patrols.<sup>204</sup>

CPA Patrols are restricted to CPA borders and have no jurisdiction beyond their CPA borders, but have proven effective at curbing the rate of illegal activity.<sup>205</sup> CPA Joint Patrols provide a cost-effective means for patrolling the larger PA area as a whole due to the lower number of MoE rangers needed per excursion, and PDoE and MoE Joint Patrols help ensure both provincial and national level stakeholder interests are protected.<sup>206</sup> All three categories of patrol are heavily reliant on outside funding and training.<sup>207</sup> However, facing scarce resources, the groups have adopted technologically advanced monitoring and information platforms to compensate for their small numbers.<sup>208</sup> Most CPAs receive technical, equipment and financial support from NGOs for patrolling. For instance, NGOs with more funding have supplied communities with new technological tools such as drones and GPS equipment – enabling rangers to plan patrols more efficiently, and collect better evidence of illegal activities.<sup>209</sup>

## Legal Gaps

### Limited Ability to Take Enforcement Action

As mentioned above, CPA communities are limited in their ability to take direct enforcement action. Local communities attempting to protect the forest have been threatened and accused of being illegal loggers themselves, and CPA communities forcibly told by local officials as having no rights to detain illegal loggers or their equipment have often observed the same illegal loggers and equipment released without punishment.<sup>210</sup>

### Lack of Deterrence

Overall, laws are rarely accompanied by strong enforcement and dissuasive penalties. Concerns have been raised regarding the effectiveness of sanctions as currently set in the legal framework to deter illegal activity, especially when it comes to illegal encroachment and exploitation of natural resources by third parties. Unlawful practices have been observed at the provincial level, such as illegal loggers who have been arrested making informal payments to officials to secure release without trial.<sup>211</sup> In addition, provincial authorities, as well as community members (especially migrants without strong ancestral ties to the land), are also alleged to sometimes actively organise or directly engage in illegal logging for their own profit.<sup>212</sup> There is a general understanding that benefits derived from certain illegal activities outweigh potential punishment if caught. Furthermore, authorities are overwhelmed by the sheer volume of complaints, leading to reliance on NGOs to follow through on filed cases and advocate for appropriate prosecution.<sup>213</sup>

## Implementation Issues

### Limited Availability of Resources

Composition of ranger teams responsible for patrolling is largely dependent on available resources.<sup>214</sup> CPA communities typically have few financial resources while they begin developing CPA management plans.<sup>215</sup> During this time local communities often rely on outside funding, such as from NGOs, to pay for their patrolling activities.<sup>216</sup> Unfortunately, not all CPAs have the same access to capital, resulting in ranger patrols often being cut from community budgets and activities.<sup>217</sup> With few or no patrols, clandestine natural resource harvesting operations may easily proceed without any risk of consequences.

However, even when patrols are possible, most violators are either heavily armed or supported by powerful entities, leaving rangers few practical options in terms of actual enforcement action. Practices of resource sharing – for example, having government rangers co-patrol CPAs – appear to be effective.<sup>218</sup>

### Exclusion of Customary Indigenous Practice

Insufficient consideration is given to indigenous communities and their customs when it comes to inclusion of indigenous practices in activities deemed lawful. This has led to such practices becoming technically considered unlawful and thus places indigenous communities at risk of potential sanctions.<sup>219</sup>

### Internal Migration

Increased internal migration also has increased the difficulty of enforcement. Migrants, with little attachment to the land in which they have newly arrived, are more likely to engage in illegal activities for a quick profit.<sup>220</sup> Clear boundary demarcation has been identified as an important factor enabling enforcement.<sup>221</sup> Currently, unclear or non-existent demarcation, or lack of awareness among stakeholders as to where boundaries are located, leads to frequent trespassing and permanent encroachment.

## Recommendations

- i.** Provide CPA communities with more authority to directly enforce CPA rules, including taking action against third parties as they monitor their CPAs (with necessary support – i.e., the means and tools to carry out checks, support from local authorities and PDoEs as required – and legal safeguards in place to ensure transparent and fair sanctions)
- ii.** Clarify what compensation CPA communities may receive for natural resource offences and how compensation is provided and distributed – including reallocating, in whole or in part, fines collected for natural resource offences and revenue generated from selling confiscated evidence from the State to affected CPA communities
- iii.** Analyse criminal and civil penalties to assess whether the severity of the penalty is sufficient to deter illegal activity
- iv.** Ensure adequate funding and capacity for patrolling and other enforcement
- v.** Legitimise and specify the terms and conditions of co-patrolling involving community members and MoE rangers, both within CPAs and throughout the wider PA system
- vi.** Create a system for physical demarcation of CPA boundaries with an accessible database system

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# 10. External Support

## Definition

The technical, financial and capacity-building assistance from outside entities, either directly or indirectly, that support communities in conducting CPA activities. In the context of this report, external support refers to support from both inside and outside the Cambodian administrative system, including government agencies, international donors, NGOs and private sector actors.

## Governing Law

Protected Area Law (2008), Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017)

## Stakeholders

MoE General Directorate of Local Communities, MOI, PDoE, Provincial Governor, Deputy Governor, Commune Council, Local NGOs, International Donor Agencies, Community Members

## Context

The CPA legal framework explicitly recognises the role of assistance from external actors to communities. Government support is an integral part of the CPA framework – e.g., establishment of a CPA involves extensive consultation with and technical support by governmental officials. Implementation of a CPA requires regular supervision by governmental authorities. In carrying out its supporting role, sufficient budgetary, human and technical resources are necessary.<sup>222</sup>

Financial support for CPA establishment and implementation may derive from a variety of sources, including the Protected Areas Fund, the national budget, PA entrance and other service fees, environmental endowment insurance, donations, assistance from national and international organisations and friendly countries, assistance from international environment funds, damage compensation, monthly membership fees from CPA members, sale of NTFPs, ecotourism services, and the Commune/Sangkat Fund.<sup>223</sup>

Other external support is also envisaged and promoted. The Protected Area Law explicitly states that “National and International Non-Governmental Organisations (NGOs) and civil societies are encouraged to provide assistance and coordination for the establishment and implementation process of a community protected area.”<sup>224</sup> Furthermore, the General Directorate of Local Communities and the PDoE are responsible for building engagement with development actors and the private sector to seek their support for CPA establishment, management and development.<sup>225</sup>

Indeed, NGOs provide a key source of support for local communities and indigenous ethnic minorities in the establishment and implementation of CPAs.<sup>226</sup> The private sector is a source of support that could be further developed when it comes to CPA communities, although engagement remains limited.

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## Legal Gaps

### Procedural Complexity in CPA Establishment

The CPA legal framework sets out the steps for CPA establishment, and mandates involvement from both the community and the authorities in each step. However, practical experience makes clear that despite efforts to adhere to these procedures, contextual constraints render the process unreasonably time consuming. NGOs involved have cited cost of transportation, difficulty in accessing communities, scheduling conflicts of authorities, competing development priorities at different levels of government, and even the national election season, as some of the factors that delay the CPA consultation and approval process. It is suggested that procedures be redesigned to simplify administrative logistics, and to improve the time and resource efficiency of stakeholders supporting the process of CPA establishment.

### Lack of a Well-Defined Mechanism for Collaboration with External Stakeholders on CPA Management

The CPA legal framework does not mandate that a proportion of Commune level funding is to be dedicated to natural resource management. There is also a lack of any national benchmark guiding minimum funding allocation necessary to manage CPAs of various sizes, and no guarantee of any government funding whatsoever. As a result, CPA communities rely heavily on NGOs' financial support to manage their activities.<sup>227</sup> NGOs sometimes engage in cost-sharing with national or local authorities, offering matching funding as an incentive to increase government funding allocation to CPAs. This process is not formalised in the current CPA legal framework, and NGOs are unable to hold authorities accountable for funding mismatches.

## Implementation Issues

### Over-reliance on External Support

As a result of the aforementioned funding constraints (see "**Community Internal Governance**" section), CPA communities' overwhelming reliance on NGO financial support is concerning to NGOs. The concern is twofold: first, communities have become accustomed to external actors managing their resources and thus do not "own" their management plans; second, communities have to follow NGOs' agendas, which may not best represent the communities' own interests.<sup>228</sup> NGOs fear that if they cease their support to CPAs at some point in the future, efforts up to that point may become undone.<sup>229</sup>

### Experience of NGOs in Supporting CPAs

NGOs support communities in a wide range of activities, often with a strong focus on facilitating collaboration with other stakeholders, and community capacity building. One major barrier lies in communication. Language barriers often present challenges for NGOs working with indigenous groups that sometimes speak little or no Khmer.<sup>230</sup> In addition, many management concepts used by NGOs are unfamiliar to local communities and may be ill-suited to the local context, making it difficult for them to gain traction within communities. To address some of these issues, some NGOs begin working with communities before the CPA process begins, to give communities more time to build capacity in preparation for submitting their CPA applications.<sup>231</sup> Another major hurdle is in finding consensus among stakeholders during participatory consultations. Experience has shown that, due to varying interests and understandings of the CPA legal framework among community members and others, it can take up to several years to reach agreement on management rules.<sup>232</sup>

NGOs' experiences working with authorities have been varied. There has been general frustration over the recent decentralisation of power, as it is often unclear which governmental authorities are responsible for CPA implementation, at both national and provincial levels. Understanding of the CPA legal framework also varies greatly among



different governmental entities, posing further coordination difficulties. In addition, NGOs' ability to exert positive influence in the CPA development process varies greatly. Larger NGOs, backed by international donors and typically well financed, appear to have greater capacity and influence when engaging with authorities. There is also no clear consensus on whether strong partnerships with national authorities versus provincial authorities is more effective in protecting communities' CPA rights – experiences have varied on a case-by-case basis.

### Limited Private Sector Engagement

Private sector actors have mainly worked with communities through NGO facilitation. In a few pilot cases, communities arranged meetings and directly negotiated with private sector actors for various commercial arrangements, and private sector actors have sometimes provided training for community members.<sup>233</sup> However, the framework that would facilitate this type of interaction to regularly occur remains lacking.

#### Recommendations:

- i.** Ensure regular and sufficient capacity and funding for sustainable support of CPA development, including technical capacity of CPAs to properly engage with all external stakeholders
- ii.** Establish operational guidelines specifying the roles and responsibilities among NGOs, communities and authorities in instances of collaboration in local level development efforts
- iii.** Formalise procedures in cost-sharing between communes and NGOs regarding CPA management activities, and incorporate transparency in CPA fund management
- iv.** Encourage and facilitate greater collaboration between CPA communities and the private sector, through the provision of clear rights to communities to engage in contracts and other mechanisms for commercial activity, including clear criteria and safeguards to minimise power imbalances or elite capture of CPAs by private companies



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# Endnotes

- 1 This report was made possible by the Gilmour-Samson gift.
- 2 See ClientEarth, *Communities at the heart of forest management: How can the law make a difference?* (February 2019); ClientEarth, *Toolkit for enabling laws on community forestry* (September 2019). Note that ClientEarth's methodology uses the term "community forestry" to describe community-based natural resources management in a broader sense. The term used in the Toolkit should not be understood to mean "community forestry" as a specific model of community-based natural resources management in Cambodia.
- 3 ClientEarth created a first-of-its-kind legal *Toolkit for enabling laws on community forestry* (September 2019) to support the development of laws on community-based natural resources management worldwide. The toolkit draws on lessons from community-based natural resources management models of Nepal, the Philippines and Tanzania, summarized in ClientEarth, *Communities at the heart of forest management: How can the law make a difference?* (February 2019). This report provides governments and communities with legal guidance to reform and implement community forestry laws.
- 4 Paley, R., "Managing Protected Areas in Cambodia," *Conservation and Development in Cambodia: Exploring Frontiers of Change in Nature, State and Society*, 141-59 (2015).
- 5 Naughton-Treves, L., Holland, M.B., & Brandon, K., "The Role of Protected Areas in Conserving Biodiversity and Sustaining Local Livelihoods," *Annual Review of Environment and Resources* (2005); Barber, C.P., Cochrane, M.A., Souza Jr., C.M., & Laurance, W.F., "Roads, Deforestation, and the Mitigating Effect of Protected Areas in the Amazon," *Biological Conservation* (2014); Pfaff, A., Robalino, J., Herrera, D., & Sandoval, C., "Protected Areas' Impacts on Brazilian Amazon Deforestation: Examining Conservation - Development Interactions to Inform Planning," *PLoS ONE* (2015); Miranda, J.J., Corral, L., Blackman, A., Asner, G.P., & Lima, E., "Effects of Protected Areas on Forest Cover Change and Local Communities: Evidence from the Peruvian Amazon," *World Development* (2016); Busch, J., & Ferretti-Gallon, K., "What Drives Deforestation and What Stops It? A Meta-Analysis," *Review of Environmental Economics and Policy* (2017).
- 6 NGO Forum on Cambodia, *Logs and Patronage: Systemic Illegal Logging and the Destruction of State Forests and Protected Areas* (2015); Curran, L.M., Trigg, S.N., McDonald, A.K., Astiani, D., Hardiono, Y.M., Siregar, P., Caniago, I., & Kasischke, E., "Lowland Forest Loss in Protected Areas of Indonesian Borneo," *Science* (2004); Brun, C., Cook, A.R., Lee, J.S.H., Wich, S.A., Koh, L.P., & Carrasco, L.R., "Analysis of Deforestation and Protected Area Effectiveness in Indonesia: A Comparison of Bayesian Spatial Models," *Global Environmental Change* (2015).
- 7 International Centre for Environmental Management (ICEM), *Lessons Learned in Cambodia, Lao PDR, Thailand and Vietnam* (2003).
- 8 Lacerda, L., Schmitt, K., Cutter, P., & Meas, S., *Management Effectiveness Assessment of the System of Protected Areas in Cambodia Using WWF's RAPPAM Methodology* (2004).
- 9 Royal Decree No. PRK/11Nov93 on the Protection of Natural Areas (1993).
- 10 Open Development Cambodia, "Protected Areas," available at <https://opendevdevelopmentcambodia.net/topics/protected-areas/>.
- 11 Protected Area Law (2008), Article 11. Note: The GDANCP was formerly known as the Nature Protection and Conservation Administration.
- 12 Zoning Guideline for the Protected Areas in Cambodia (2017), Section 6.2.
- 13 Protected Area Law (2008), Article 11. What is meant by "serious adverse impacts on biodiversity" is left unclear.
- 14 Zoning Guideline for the Protected Areas in Cambodia (2017), Sections 5.1.2, 6.2.
- 15 For example, ecotourism activities and development of necessary infrastructure such as irrigation systems, water reservoirs, hydropower, and poles for power grids are permitted, but economic land concessions (ELCs) may not be granted in the sustainable use zone. Zoning Guideline for the Protected Areas in Cambodia (2017), Section 6.3.
- 16 Protected Area Law (2008), Articles 11, 25; Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017), Article 2 [hereinafter CPA Guideline].
- 17 Protected Area Law (2008), Article 11.
- 18 Zoning Guideline for the Protected Areas in Cambodia (2017), Section 5.1.4.
- 19 CPA Guideline, *supra* FN 16, Article 2.
- 20 Zoning Guideline for the Protected Areas in Cambodia (2017), Section 6.4.
- 21 Ramsar, "Country Profiles," available at <https://www.ramsar.org/country-profiles>; Save Cambodia's Wildlife, *The Atlas of Cambodia: National Poverty and Environment Maps* (2006).
- 22 Protected Area Law (2008).
- 23 Violations of the Protected Area Law are punishable by stiff penalties of fines up to 250 million riel (approx. US\$62,700) and 10 years in jail.
- 24 Ministry of Environment, *Cambodia Forest Cover 2016* (2018).
- 25 Davis, K.F., Yu, K., Rulli, M.C., Pichdara, L., & D'Odorico, P., "Accelerated Deforestation Driven by Large-Scale Land Acquisitions in Cambodia," *Nature Geoscience* (2015).
- 26 Ministry of Environment, *Cambodia Forest Cover 2016* (2018).
- 27 A key function of CPAs, as well as community-based natural resource management mechanisms generally, is to enhance local communities' livelihood, which often entails partnering with the private sector, government, and/or NGOs. See Boissière, M., Mulcahy, G., Sethaphal, L., & Chou Beang, L., *Improving the Management of Commercial Non-Timber Forest Products in Cambodia for the Benefit of Local Communities* (2013); Naughton-Treves, L., Holland, M.B., & Brandon, K., "The Role of Protected Areas in Conserving Biodiversity and Sustaining Local Livelihoods," *Annual Review of Environment and Resources* (2005); NGO Forum on Cambodia, *Research Study Report on "The Feasibility of NTFP Commercialization and Supply Chain Management"* (September 2021).

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- 28 Paley, R., "Managing Protected Areas in Cambodia," *supra* FN 4.
- 29 See Rights and Resources Initiative, "What is the 'bundle of rights'?", *available at* [https://rightsandresources.org/tenure\\_data/what-is-the-bundle-of-rights/](https://rightsandresources.org/tenure_data/what-is-the-bundle-of-rights/).
- 30 Protected Area Law (2008), Article 22. Other laws, relevant but not directly related to the CPA framework, also mention customary use and access rights of local and indigenous communities, including the Law on Forestry (2002) and the draft Environment and Natural Resources Code (which has not yet been enacted):
- Law on Forestry, Article 2*: "The State ensures customary user rights of forest products & by-products for local communities and as further provided in the provision of this Law or other relevant laws."
- Law on Forestry, Article 10*: "Local communities have customary user rights to collect Forest Products & By-products within the Protection Forest with minor impact of the forests."
- Law on Forestry, Article 15*: "Concessionaires shall have the right to manage and conduct Forest Products & By-products harvesting operations within their concession, while ensuring that the operation does not interfere with the following: 1. Customary user rights taking place on land property of indigenous community that is registered with the state consistent with the Land Law; and 2. Customary access and user rights practiced by communities residing within, or adjacent to forest concessions."
- Law on Forestry, Article 40*: "For local communities living within or near the Permanent Forest Reserves, the state shall recognise and ensure their traditional user rights for the purpose of traditional customs, beliefs, religions and living as defined in this article."
- Draft Environment and Natural Resources Code of Cambodia, Article 397*: "Land use rights under the collaborative management framework shall include rights to reside in, to conserve, to manage of communities within participatory management zone and right to benefit from the sustainable natural resources in line with their customary and traditional land rights and livelihood practices within the participatory management zone according to an approved collaborative management plan."
- Draft Environment and Natural Resources Code of Cambodia, Article 400*: "Land use right under the management framework shall be the additional rights to other rights possessed by the indigenous communities through other laws and legal instruments in force."
- Draft Environment and Natural Resources Code of Cambodia, Article 401*: "The current or future establishment of a natural protected area at where the indigenous peoples are present or have a collective attachment or interest shall not impact the current or future land rights of the indigenous peoples, as provided in this Code."
- 31 Land Law (2001), Articles 23-28.
- 32 Governmental Notification, 3 July 2020.
- 33 Interview and discussion with Cambodia-based legal expert, October 2020.
- 34 See Gerald Flynn, "The great Koh Kong land rush: Areas stripped of protection by Cambodian gov't being bought up," Mongabay (7 October 2021), *available at* <https://news.mongabay.com/2021/10/the-great-koh-kong-land-rush-areas-stripped-of-protection-by-cambodian-govt-being-bought-up/>; Voun Dara, "Koh Kong confronts encroachment on protected state land," The Phnom Penh Post (22 November 2020), *available at* [https://www.google.com/url?q=https://www.phnompenhpost.com/national/koh-kong-confronts-encroachment-protected-state-land&sa=D&source=docs&ust=1641570676909042&usg=AOvVaw302ytN5XpS\\_QcNk2j0Etd](https://www.google.com/url?q=https://www.phnompenhpost.com/national/koh-kong-confronts-encroachment-protected-state-land&sa=D&source=docs&ust=1641570676909042&usg=AOvVaw302ytN5XpS_QcNk2j0Etd); Khorn Savi, "Minister tells governors to speed up land allocation," The Phnom Penh Post (7 July 2020), *available at* <https://www.phnompenhpost.com/national/minister-tells-governors-speed-land-allocation>.
- 35 Protected Area Law (2008), Article 26 (local communities and indigenous peoples allocated land to manage as a CPA may not claim title over the land); Protected Area Law (2008), Annexes: Lexicon ('Protected Area' defined as part of State's public properties); CPA Guideline, *supra* FN 16, Article 20.
- 36 Land Law (2001), Articles 23-28. Such ownership of land by indigenous communities is considered "collective ownership." The only limitation to the community's land tenure rights is that the community does not have the right to dispose of any collective ownership that is State public property to any person or group.
- 37 CPA Guideline, *supra* FN 16, Article 35.
- 38 Although communities that are allocated land to manage as CPAs technically do not own that land (which is still ultimately owned by the State), CPA communities should be provided with similar protection as landowners, who, if deprived of land for the "public interest," must be paid fair and just compensation in advance. See Constitution of the Kingdom of Cambodia, Article 44 ("Expropriation of ownership from any person shall be exercised only in the public interest as provided for by law and shall require fair and just compensation in advance."); Land Law (2001), Article 5 ("No person may be deprived of his ownership, unless it is in the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and after the payment of fair and just compensation in advance.").
- 39 Protected Area Law (2008), Article 25; CPA Guideline, *supra* FN 16, Article 33. As the CPA system is fairly new, the renewal right has yet to be tested as no CPAs have yet come up for renewal.
- 40 Ngin, C. & Diepart, J.-C., "Challenges in Managing State Land in Cambodia: Addressing Competing Interests for Lands Inside Protected Areas (PAs)," Mekong Region Land Governance Project (2016); ClientEarth, *Communities at the heart of forest management: How can the law make a difference?* (February 2019).
- 41 FAO, Global Forest Resources Assessment 2015 - Country Report: Cambodia (2014).
- 42 See ClientEarth, *Communities at the heart of forest management: How can the law make a difference?* (February 2019).
- 43 CPA Guideline, *supra* FN 16, Article 33.
- 44 Telephone interviews with Highland Association (HA), Community Empowerment and Development Team (CEDT).
- 45 Consultations with one of the local communities in Ratanakiri Province.
- 46 Sub-Decree No. 146 on Economic Land Concessions (2005), Article 42; Sub-Decree No. 118 on State Land Management (2005).
- 47 Ngin, C. & Diepart, J.-C., "Challenges in Managing State Land in Cambodia: Addressing Competing Interests for Lands Inside Protected Areas (PAs)," *supra* FN 40.
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- 48 Consultations with one of the local communities in Ratanakiri Province (the local community relies on ecotourism activities to maintain the CPA).
  - 49 Consultations with one of the local communities in Ratanakiri Province.
  - 50 Telephone interviews with Forests and Livelihoods Organisation (FLO), HA.
  - 51 Telephone interview with World Bank (WB).
  - 52 Sub-Decree on Community Forestry Management (2003), Article 27; Prakas on Guideline on Community Forestry (2006), Article 31.
  - 53 Protected Area Law (2008), Article 25; CPA Guideline, *supra* FN 16, Article 8.
  - 54 Protected Area Law (2008), Annexes: Lexicon. This definition of 'community' seems consistent across different legislation. *See* Law on Forestry (2002), Glossary (defines 'community' as "[a] group of people living in one or more villages, in the Kingdom of Cambodia, interested in social, culture, custom and economic issues in using sustainable natural resources within or nearby their area for their subsistence and livelihood improvement"); Sub-Decree on Community Forestry Management (2003), Article 5 (defines 'community' as "a group of residents in one or more villages in the Kingdom of Cambodia who share a common social, cultural, traditional and economic interest and use the natural resources in an area, where they live in or near, in a sustainable way for subsistence and livelihood improvement purposes").
  - 55 Protected Area Law (2008), Articles 7-10.
  - 56 Protected Area Law (2008), Article 11.
  - 57 Protected Area Law (2008), Article 12; Zoning Guideline for the Protected Areas in Cambodia (2017), Sections 5, 6.
  - 58 Protected Area Law (2008), Article 14.
  - 59 Consultations with one of the local communities in Ratanakiri Province.
  - 60 Protected Area Law (2008), Article 14 (when formalising map for each protected area, MoE to consult with MLMUPC, local authorities, local communities and relevant agencies); Zoning Guideline for the Protected Areas in Cambodia (2017), Section 5.3 ("Local communities living within or adjacent to the protected areas or [Biodiversity Conservation Corridor] shall be consulted."); Zoning Guideline for the Protected Areas in Cambodia (2017), Section 7 (lays out 5 steps of the PA zoning process). *See generally* Protected Area Law (2008), Article 4 ("The management of the protected area shall have to guarantee the rights of the local communities, indigenous ethnic minorities and the public to participate in the decision-making on the sustainable management and conservation of biodiversity.").
  - 61 Protected Area Law (2008), Article 27; CPA Guideline, *supra* FN 16, Article 8; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA). Consultations with one of the local communities in Kompong Thom Province.
  - 62 CPA Guideline, *supra* FN 16, Articles 12, 32; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Sections 1-7 (outlines the 7 steps of the CPA establishment process).
  - 63 Update Report from General Directorate of Local Communities to Minister of MoE, 2 July 2021.
  - 64 Email correspondence and in-person discussions with WCS staff.
  - 65 *Ibid.* *See also* United Nations Development Programme, *Draft Policy Brief for Discussion – Community Protected Areas and Ways Forward*, 2 (2016).
  - 66 Consultations with one of the local communities in Mondulakiri Province.
  - 67 Telephone interview with WB.
  - 68 Protected Area Law (2008), Article 27.
  - 69 *Id.* *See also* CPA Guideline, *supra* FN 16, Articles 7, 21; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Section 4 (outlines CPA boundary demarcation procedure).
  - 70 Consultations with one of the local communities in Ratanakiri Province.
  - 71 The only deadlines set by the CPA legal framework involve warrants recognising CPA committee election results (Commune/ Sangkat chief must issue such warrants within 15 days), development of CPA management plans (such development must not take longer than 1 year, although it is unclear whose responsibility this is), and review of final drafted bylaws (MoE's Department of Community Livelihood must review and adjust the final drafted bylaw within 15 working days). CPA Guideline, *supra* FN 16, Articles 16, 28; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Sections 3.4, 5.4.
  - 72 The draft Environment and Natural Resources Code of Cambodia, which has yet to be enacted and is currently still under review by the MoE, proposes a three (3) month response deadline and permits resubmission if determined that modifications are needed, but it does not specify as to whether an absence of response within the time limit results in an approval or dismissal. Draft Environment and Natural Resources Code of Cambodia, Article 385.
  - 73 CPA Guideline, *supra* FN 16, Article 10.
  - 74 Telephone interviews with FLO, NTFP-EP.
  - 75 Telephone interview with NTFP-EP.
  - 76 Telephone interview with Cambodia Indigenous People's Organisation (CIPO).
  - 77 Consultations with one of the local communities in Ratanakiri Province.
  - 78 Telephone interviews with FLO, NTFP-EP.
  - 79 Telephone interview with CIPO.
  - 80 Telephone interview with HA.
  - 81 Diepart, J.-C., "They Will Need Land! The Current Land Tenure Situation and Future Land Allocation Needs of Smallholder Farmers in Cambodia," Mekong Region Land Governance Project (2016).
  - 82 Telephone interviews with HA, NTFP-EP.
  - 83 Telephone interviews with HA, CEDT.
  - 84 Consultations with one of the local communities in Mondulakiri Province.
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- 85 Telephone interview with CIPO.
  - 86 Law on Administration of Capital City, Province, Municipality, District and Khan (2008), Article 94.
  - 87 Royal Decree No. NS/RKM/1208/1429 on Establishment of National Committee for Sub-National Democratic Development (2008).
  - 88 Mansfield, C. & MacLeod, K., *Commune Councils & Civil Society: Promoting Decentralization Through Partnerships*, Phnom Penh: PACT (January 2004).
  - 89 CPA Guideline, *supra* FN 16, Article 13.
  - 90 CPA Guideline, *supra* FN 16, Articles 18, 21.
  - 91 CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Section 3.3; CPA Guideline, *supra* FN 16, Appendix 3.
  - 92 CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Section 3.2.
  - 93 Telephone interview with Greening Prey Lang (GPL).
  - 94 Protected Area Law (2008), Article 26; CPA Guideline, *supra* FN 16, Articles 22-23, 25, 29, 31.
  - 95 Telephone interview with CIPO.
  - 96 CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Section 5 (“CPA bylaw can be developed differently from one area to another based on its geography and purposes of CPA management...CPA bylaw development is based on three factors as below: Involvement of community people; compliance of the bylaw meanings with laws; compliance of the bylaw meanings with objectives of management and its applicability[.]”).
  - 97 CPA Guideline, *supra* FN 16, Article 17; CPA Guideline, *supra* FN 16, Appendix 3.
  - 98 CPA Guideline, *supra* FN 16, Appendix 3 (model of CPA bylaw).
  - 99 CPA Guideline, *supra* FN 16, Article 21; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Sections 6.4, 8.1; CPA Guideline, *supra* FN 16, Appendices 3, 6.
  - 100 USAID Greening Prey Lang: Prey Lang Extended Landscape Sustainable Finance Plan, USAID (2019).
  - 101 Mansfield, C. & MacLeod, K., *Commune Councils & Civil Society: Promoting Decentralization Through Partnerships*, *supra* FN 88.
  - 102 Telephone interview with FLO.
  - 103 Telephone interview with CIPO.
  - 104 Telephone interview with WB.
  - 105 CPA Guideline, *supra* FN 16, Article 11.
  - 106 CPA Guideline, *supra* FN 16, Articles 15, 17, 24; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Sections 5.3, 6.5. For consultation on a draft CPA management plan, however, there is a presumption that any CPA members who are not able to participate in the consultation meeting are considered to approve the plan (rather than deeming them as taking a neutral stance) – this could potentially skew results from consultation with the community.
  - 107 CPA Guideline, *supra* FN 16, Article 21.
  - 108 Protected Area Law (2008), Articles 4, 6, 21.
  - 109 Consultations with one of the local communities in Ratanakiri Province.
  - 110 CPA Guideline, *supra* FN 16, Article 13; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Sections 3.2, 3.3; CPA Guideline, *supra* FN 16, Appendix 3.
  - 111 CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Section 5.2.
  - 112 Consultations with one of the local communities in Ratanakiri Province.
  - 113 Telephone interview with CIPO.
  - 114 *Id.*
  - 115 FAO, *Governing Land for Women and Men: A Technical Guide to Support the Achievement of Responsible Gender-Equitable Governance of Land Tenure* (2013).
  - 116 Telephone interview with CIPO.
  - 117 FAO, *Governing Land for Women and Men: A Technical Guide to Support the Achievement of Responsible Gender-Equitable Governance of Land Tenure* (2013).
  - 118 Telephone interview with GAPE International.
  - 119 Telephone interviews with HA, RECOFTC.
  - 120 Telephone interview with FLO.
  - 121 Telephone interview with GPL.
  - 122 Telephone interview with CIPO.
  - 123 Telephone interview with GAPE International.
  - 124 Telephone interview with FLO.
  - 125 Protected Area Law (2008), Articles 15-19.
  - 126 Protected Area Law (2008), Article 28; CPA Guideline, *supra* FN 16, Article 30.
  - 127 CPA Guideline, *supra* FN 16, Article 26; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Section 6.4.
  - 128 CPA Guideline, *supra* FN 16, Articles 25, 28; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Sections 6.1-6.6. Consultations with one of the local communities in Kompong Thom Province.
  - 129 CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Sections 6.1-6.7.
  - 130 CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Section 6.4; CPA Guideline, *supra* FN 16, Appendix 4.
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- 131 Protected Area Law (2008), Article 26; CPA Guideline, *supra* FN 16, Article 20.
- 132 Protected Area Law (2008), Articles 40-42.
- 133 CPA Guideline, *supra* FN 16, Articles 9, 19, 21.
- 134 Law on Forestry (2002), Articles 1-3.
- 135 Telephone interview with CIPO.
- 136 NGO stakeholders explained that there are often limited funds available for transportation for authorities to complete the required consultation and approval process, especially in remote villages. If NGOs facilitate the entire process, it is often much faster, with the process completed in 1 year rather than 3-5 years.
- 137 Telephone interview with WB.
- 138 *Id.*
- 139 Telephone interview with GAPE International.
- 140 Telephone interview with WB.
- 141 Telephone Interview with RECOFTC.
- 142 ClientEarth, *Toolkit for enabling laws on community forestry* (September 2019).
- 143 Katila et al., *Forests Under Pressure – Local Responses to Global Issues*, 207 (2014).
- 144 *Id.*
- 145 Essentially, to the zones where CPAs can be established.
- 146 Zoning Guideline for the Protected Areas in Cambodia (2017), Sections 5.1.2, 6.2.
- 147 National Policy for Tourism 2019-2030 (2018).
- 148 National Policy for Tourism 2019-2030 (2018), Article 14.
- 149 Consultations with one of the local communities in Kompong Thom Province.
- 150 Protected Area Law (2008), Articles 42, 59.
- 151 Protected Area Law (2008), Articles 6, 35.
- 152 Perhaps one avenue to pursue is determining whether the prakas referred to in Article 35 of the Protected Area Law (2008) (which is supposed to define request procedures and formalities of obtaining permits, etc.) has already been issued by the MoE, and, if not, mitigating that gap.
- 153 Some examples: Law on Administration of Factory and Handicraft (2006); Sub-Decree No. 131 on Timber and Non-Timber Forest Products Allow[ed] for Export and Import (2006); Anukret No. 208 on Amendment of Note II of Annex 2 of Anukret No. 209 ANK.BK Dated 31 December 2007 on the Enforcement of the List of Prohibited and Restricted Goods (2011).
- 154 Law on Forestry (2002), Articles 24-27 (covering various permits, of which more than 10 are listed, pertinent to forest products and by-products, as well as responsible authorities).
- 155 Sub-Decree No. 34 on Arrangement of Duties and Responsibilities of Ministry of Environment and of Ministry of Agriculture, Forestry, and Fisheries in relation to Jurisdiction and Management of Economic Land Concession Areas, Management and Jurisdiction over the Protected Areas, and Conservation of Forestry and Fisheries (2016).
- 156 Although even within community forest (CF) communities, which is a community-based natural resource management mechanism governed directly by the Law on Forestry (2002), confusion still appears to exist on the part of the communities as well as authorities.
- 157 CPA Guideline, *supra* FN 16, Article 27.
- 158 Telephone interview with FLO.
- 159 Telephone interviews with RECOFTC, WB.
- 160 A Geographical Indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.
- 161 Telephone interview with World Wildlife Fund (WWF).
- 162 Telephone interview with a private sector stakeholder.
- 163 Telephone interviews with a private sector stakeholder, HA, WWF.
- 164 Telephone interview with a private sector stakeholder. *See also* NGO Forum on Cambodia, *Draft Research Study Report on “The Feasibility of NTFP Commercialization and Supply Chain Management”* (December 2020).
- 165 Telephone interviews with RECOFTC, CIPO.
- 166 Interview with private sector stakeholder.
- 167 Telephone interview with RECOFTC.
- 168 *See* ClientEarth, *Communities at the heart of forest management: How can the law make a difference?* (February 2019).
- 169 CPA Guideline, *supra* FN 16, Article 21; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Section 6.4.
- 170 CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Section 6.4; CPA Guideline, *supra* FN 16, Appendix 3 (model of CPA bylaw); CPA Guideline, *supra* FN 16, Appendix 4 (model of CPA management plan).
- 171 CPA Guideline, *supra* FN 16, Article 21.
- 172 Telephone interview with FLO.
- 173 Telephone interview with an NGO stakeholder.
- 174 Telephone interview with an NGO stakeholder.
- 175 CPA Guideline, *supra* FN 16, Article 21.
- 176 CPA Guideline, *supra* FN 16, Articles 4-7.
- 177 Consultations with one of the local communities in Monduliri Province.
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- 178 Protected Area Law (2008), Article 20.
- 179 Khorn Savi, "Protected land given to people," *The Phnom Penh Post* (5 July 2020), available at <https://m.phnompenhpost.com/national/protected-land-given-people>.
- 180 Katila et al., *Forests Under Pressure – Local Responses to Global Issues*, 210 (2014).
- 181 *Id.*
- 182 *Id.*
- 183 Telephone interview with HA; consultations with one of the local communities in Ratanakiri Province.
- 184 Telephone interview with CIPO.
- 185 Telephone interviews with HA, NTFP-EP.
- 186 Telephone interviews with CIPO, HA, NTFP-EP.
- 187 In the case of a dispute involving a local community in Ratanakiri Province, direct instruction from the Prime Minister to give the disputed land to the CPA community instead of the contesting private company was effective. In the aforementioned case involving a Vietnamese rubber company, communities learned that the International Finance Corporation (IFC) invested in the company and used its Office of the Compliance Advisor/Ombudsman (CAO) mechanism. IFC convened all stakeholders involved and effectively facilitated a transparent process that was fair to communities. Communities managed to get claimed land back. However, concern was raised that if communities had advocated too much, the MoE may have held back its support. NGOs are training communities to understand financial terms and environmental, social, and governance (ESG) terms of supply chains. In one case, communities threatened to file a report to Mazda, the end buyer of rubber supplied from disputed land. It was effective in bringing the rubber company to the negotiating table.
- 188 Protected Area Law (2008), Articles 5-6, 45. Natural resource offences are criminal offences defined in the Protected Area Law. They are generally categorized into four (4) levels, or "grades," with corresponding levels of punishment. The severity of penalties increases from offences of the first grade (least severe) to the fourth grade (most severe). Protected Area Law (2008), Article 56.
- 189 Protected Area Law (2008), Articles 45, 53.
- 190 Protected Area Law (2008), Article 53.
- 191 *Id.*
- 192 Protected Area Law (2008), Articles 45, 51.
- 193 Protected Area Law (2008), Articles 53-54.
- 194 Protected Area Law (2008), Article 52.
- 195 Protected Area Law (2008), Article 55.
- 196 One of the articles in the model CPA bylaw contained in Appendix 3 of the CPA Guideline, *supra* FN 16, states: "CPA committee shall ask for compensation from natural resource offences of the first grade as provided in Article 56 of the Law on Nature Protection Area." As this language is contained in an example of a CPA bylaw, which is developed based on the unique factors present in a specific CPA, it is unclear as to how much flexibility CPA communities are given in developing such measures on compensation in their bylaws (e.g., could CPA committees ask for compensation from natural resource offences of the fourth grade?).
- 197 CPA Guideline, *supra* FN 16, Article 7.
- 198 CPA Guideline, *supra* FN 16, Article 19; CPA Guideline, *supra* FN 16, Appendix 3 (model of CPA bylaw). The CPA legal framework appears to anticipate some information on offences to be identified and developed into CPA bylaws.
- 199 CPA Guideline, *supra* FN 16, Article 21; CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Sections 8.2-8.3.
- 200 CPA Guideline, *supra* FN 16, Articles 6-7.
- 201 CPA Guideline, *supra* FN 16, Article 30.
- 202 *Id.*
- 203 CPA Guideline, *supra* FN 16, Procedure on Establishment of Community Protected Areas (CPA), Section 8.1; CPA Guideline, *supra* FN 16, Appendix 6 (model of frameworks for monitoring and evaluation).
- 204 Telephone interview with GPL.
- 205 *Id.*
- 206 *Id.*
- 207 *Id.*
- 208 Telephone interviews with WB, GPL, and WWF.
- 209 Telephone interview with GPL.
- 210 Communities' ability to participate in forest protection activities has become increasingly difficult. See Amnesty International, "Cambodia: Widespread illegal logging in Prey Lang rainforest amid ban on community patrols" (25 February 2021), available at <https://www.amnesty.org/en/latest/news/2021/02/cambodia-widespread-illegal-logging-in-prey-lang-rainforest-amid-ban-on-community-patrols/>; IUCN, "Community-level responses to 'forest violence' in Cambodia" (10 September 2021), available at <https://www.iucn.org/news/commission-environmental-economic-and-social-policy/202109/community-level-responses-forest-violence-cambodia>; NGO Forum on Cambodia, *Logs and Patronage: Systemic Illegal Logging and the Destruction of State Forests and Protected Areas* (2015) (recommended that as part of forest policy and law reform, "local communities should be given a significant role in forest protection and the monitoring of forest infringements").
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- 211 Telephone interview with CIPO. *See also* Surya P. Subedi, *Report of the Special Rapporteur on the situation of human rights in Cambodia* (2012); May Titthara, "Prey Lang network says authorities profit from illegal logging," *The Phnom Penh Post* (28 April 2015), available at <https://www.phnompenhpost.com/national/prey-lang-network-says-authorities-profit-illegal-logging>; NGO Forum on Cambodia, *Logs and Patronage: Systemic Illegal Logging and the Destruction of State Forests and Protected Areas* (2015).
- 212 Telephone interviews with HA, CIPO.
- 213 Telephone interview with GPL.
- 214 Telephone interview with NTFP-EP.
- 215 *Id.*
- 216 *Id.*
- 217 *Id.* Consultations with one of the local communities in Ratanakiri Province (the local community lacks resources for implementing ranger programmes).
- 218 Telephone interview with NTFP-EP.
- 219 Telephone interviews with CIPO, FLO, RECOFTC.
- 220 Telephone interviews with NTFP-EP, a private sector stakeholder.
- 221 Telephone interview with WB.
- 222 Consultations with one of the local communities in Kompong Thom Province.
- 223 Protected Area Law (2008), Articles 32-34; CPA Guideline, *supra* FN 16, Article 27. Whether the protected areas fund is currently a viable source of financial support needs further clarification – the fund requires a managing committee, which is established by the issuance of a separate sub-decree. Whether such a sub-decree has yet been issued is unclear.
- 224 Protected Area Law (2008), Article 27.
- 225 CPA Guideline, *supra* FN 16, Articles 4, 6.
- 226 Consultations with one of the local communities in Kompong Thom Province (the community relies on funding from NGOs to carry out basic CPA functions).
- 227 Telephone interview with GPL.
- 228 Telephone interview with WB.
- 229 Telephone interview with NTFP-EP.
- 230 Telephone interviews with HA, CIPO.
- 231 Telephone interview with GPL.
- 232 Telephone interview with WB.
- 233 Telephone interview with GPL.



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