

Legal Analysis of Forest and Land Laws in Cambodia

Robert B. Oberndorf, J.D.



COMMUNITY FORESTRY INTERNATIONAL
Supporting Sustainable Management & Restoration of the World's Forests

Community Forestry International (CFI) assists rural communities to regenerate forests by helping policy makers, development agencies, NGOs, and professional foresters develop the legal instruments, human resource capacities, and negotiation processes and methods to support resident resource managers. Community forest management contributes to livelihood security and poverty alleviation that, in turn, leads to sustainable development. CFI enables community forest management strategies to become an integral part of stabilizing forest management worldwide. CFI strategies are implemented through four interrelated thematic program areas. These include 1) Regional and National Policy Dialogues, 2) Mediation Processes and Methods for Enhancing Tenure Security, 3) Participatory Research and Field Programs, and 4) Communication. The program components are designed to engage national policy makers, professional practitioners, and communities to facilitate learning, reduce conflicts, and ultimately create management agreements that result in more equitable, sustainable forest management.

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Front cover: Robert Oberndorf in spirit forest in Ratanakiri.

Back cover: Poey Commune in Rattanakiri.

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Robert B. Oberndorf, J.D

2006

FOREWORD TO THE COMMUNITY FORESTRY SERIES-CAMBODIA

A major goal of CFI's mission in Cambodia is to support the involvement of civil society in the management of forests. Rural communities have a special role to play as forest stewards, both due to their logistical proximity to natural forests, but also because of their dependency upon these resources for shelter, water, fuel and food. In many parts of the world, forests are important components of the local economy, whether for subsistence goods, non-timber forest products, employment in commercial lumber production, livelihood generation, or involvement in the tourist industry. In Cambodia, rural communities are concerned over the destruction and mismanagement of local forests and are seeking to address problems of rapidly changing landscapes by establishing community forestry committees, mobilizing forest patrols to guard against illegal logging and land grabbing, framing user rules to control access, and securing management tenure.

In much of Asia and the United States, forests are legally considered public land. While some communities may be interested in managing forest lands, they often have little basis under the law to exert authority over management decision-making. In recent years, a growing number of governments have established policies and programs to allow communities to engage in management “partnerships,” typically with national forestry agencies. India, Nepal, Cambodia, and the Philippines have passed laws that extend clear use and management rights to specific villages over state forest land.

In Cambodia, there has been a growing trend towards engaging local communities in forest management, both in planning and field activities over the past decade. In part, this transition is driven by recognition that government agencies lack the staff and financial resources to ensure sustainable use. The shifting management paradigm is also being pushed from below by demands of rural, forest-dependent people. There are factors impeding this transition towards a more decentralized, participatory approach involving a wider range of stakeholders.

During the 1990s in Cambodia, commercial timber concessions covered nearly two-thirds of the country's forest area and logging operations were rapidly degrading the nation's once rich forests. In 2002, the Royal Government of Cambodia suspended 4 million hectares of logging concessions, and passed the Community Forestry Sub-Decree in 2003 paving the way for a new approach to forest management. A recent GTZ/RGC report identified 8 million hectares of land suitable for community forest management, representing much of the nation's land area. However, illegal logging remains widespread and forest land speculation is rampant in many parts of the country. Further, there is economic pressure to convert forests to estate crops.

In 2003, Community Forestry International (CFI) initiated a project called the Community Forestry Alliance in Cambodia project (CFAC). The CFI approach involves building the capacity among Cambodian NGOs and Forest Administration staff to begin implementing CF projects around the country, while supporting the development of operational guidelines for the National CF Program's implementation. CFI also helps to mobilize financial and technical support from the donor community, as well as provide training in financial and organizational management, conflict resolution, gender awareness, and sustainable natural resource management.

CFI also supports the indigenous communities in Ratanakiri where communal land management is under pressure from outside land speculators. The breakdown of communal land management systems, through privatization, is leading to widespread land loss among indigenous households, and ultimately to their impoverishment and social marginalization. The pending collapse of communal tenure is opening the path for landscape-level forest clearing and land conversion to commercial estate crops. CFI seeks to help local communities sustainably manage their natural resources and conserve their cultural traditions by supporting local networks and organizations that provide legal resource rights education and promote cultural solidarity.

This series of publications on community forestry and land-use issues is designed to educate and encourage a greater awareness of the challenges facing forest dependent communities, while suggesting possible strategies to stabilize the nation's forests in ways that respond to the needs of Cambodia's forest people. As part of its greater mission, CFI attempts to disseminate information that can stimulate an on-going forest management dialogue among government, donor organizations, NGOs, the international community, and the Cambodian people. It is our hope that by devolving management to communities and building the capacity of government and NGOs, Cambodia's critical ecosystems will be conserved and utilized in ways that benefit the rural poor.

-Mark Poffenberger, Ph.D.
CFI Executive Director

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ACRONYMS

CBNRM	Community-Based Natural Resource Management
CF	Community Forestry
CFA	Community Forestry Agreement
CFAC	Community Forestry Alliance for Cambodia
CFI	Community Forestry International
CFM	Community Forestry Management
CFMC	Community Forestry Management Committee
CFMP	Community Forestry Management Plan
CFO	Community Forestry Officer
CFSD	Community Forestry Sub-Decree
DFW	Department of Forestry and Wildlife
EIA	Environment Impact Assessment
FA	Forestry Administration
FARCF	Forestry Administration Recognized Community Forestry
ICC	International Cooperation Cambodia
LL	Land Law
MAFF	Ministry of Agriculture, Forestry and Fisheries
MOI	Ministry of Interior
MOE	Ministry of Environment
MOWRAM	Ministry of Water Resources and Meteorology
NPRS	National Poverty Reduction Strategy
NREM	Natural Resource and Environmental Management
NTFP	Non-Timber Forest Product
PLG	Partnership for Local Governance
PLUP	Participatory Land Use Planning
PRDC	Provincial Rural Development Committee
RGC	Royal Government of Cambodia
SEDP	Socio-Economic Development Plan

This report provides a brief introduction to recent Cambodian legislation and policies related to land, forests, and the role of communities in their management. The report is comprised of legal and policy analysis papers compiled by Mr. Robert Oberndorf, J.D. between 2003 and 2005 as a consultancy for Community Forestry International. The report is intended to provide guidance to development agency staff, NGOs, students, and professionals who are interested in gaining a basic understanding regarding the emerging legal and policy environment in Cambodia, especially as it affects the relationship of rural communities to land and forest resources.

Section I concisely describes key elements in the Land Law and Forestry Law. The discussion proceeds to identify gaps within the current legislation and raises a number of questions where existing laws are unclear. Section II introduces the Community Forestry Sub-Decree (CFSD) that was approved by the Royal Cambodian Government in 2003. This section outlines procedures for creating community forest areas and identifying community forestry communities. The discussion also covers next steps for implementing the CFSD and how it relates to the role of commune councils. Section III discusses the role of national Cambodian policies related to Community-based Natural Resource Management and how they reflect recent legislation. This section explores how legislation is developed and ratified by the Royal Government of Cambodia, including explaining the hierarchy of laws. Section IV provides a brief analysis of the Environmental and Social Impact Assessments that may be required of communities implementing management plans under CF agreements. Section V is intended as a guide to the enforcement provisions in the Forestry and Land Laws. This section includes an analysis of prohibitions and penalty provisions included in the Forestry Law. Annex A further elaborates on the list of forestry offenses and penalties articulated in the Forest Law. Finally, Annex B reviews the community rights and responsibilities under the Forestry Law.

-Mark Poffenberger
CFI Executive Director

1. Overview of the Land Classification Systems Within the Land and Forestry Laws

The Land Law classifies the various types of property within the Kingdom of Cambodia and the ownership rights that are available with the different classifications. At the same time, the Forestry Law creates a classification scheme for the forest lands in the Kingdom. There continues to be some confusion as to how these two classification schemes work, and how they interact with one another. This basic overview tries to provide a concise and simple explanation of how property and forest land are classified under the two pieces of legislation, and points out where there may be areas of confusion. The terms used in this overview are the same as those used in the current unofficial English translations of the Land Law and the Forestry Law. Problems with the terminology and definitions will be explored in the weaknesses analysis.

2. Land Law:

The Land Law creates three types of property classification in Cambodia: State Public Property, State Private Property and Private Property¹. Private Property is further classified based on the ownership rights involved.

2.1 State Public Property

State Public Property (**Articles 15 & 16 LL**) is land held by the State in public trust, which carries a public interest use. State Public Property includes the following:

- Properties of a natural origin, such as the permanent forest reserve, navigable or floatable waterways, lakes, seashores, etc;
- Properties that are developed for general use, such as the harbor in Sihanoukville, railways and railway stations, airports, etc.
- Property made available for public use, such as roadways, public parks, or natural reserves;
- Property that provides a public service, such as public schools and universities, administrative buildings or public hospitals;
- Properties of archeological, cultural or historical significance, such as the temples at Angkor;
- Royal properties, such as the Royal Palace.

It is important to note that State Public Property may not be sold or transferred to other legal entities, though it may be subject to rights of occupancy or use that are strictly temporary in nature, such as a logging concession in the Permanent Forest Reserve. The Land Law does say that State Public Property may be reclassified as State Private Property if the property loses its public interest use. For example, the land and buildings that are occupied by the Department of Forestry and

¹The various classifications of private property are beyond the scope of this analysis and will not be covered.

Wildlife are State Public Property. If the government moved the location of the FA and this property became vacant, then it would lose its public interest use and could be reclassified as State Private Property. This type of reclassification cannot occur until a law has been passed on transferring of State Public Property to State Private Property.

2.2 State Private Property

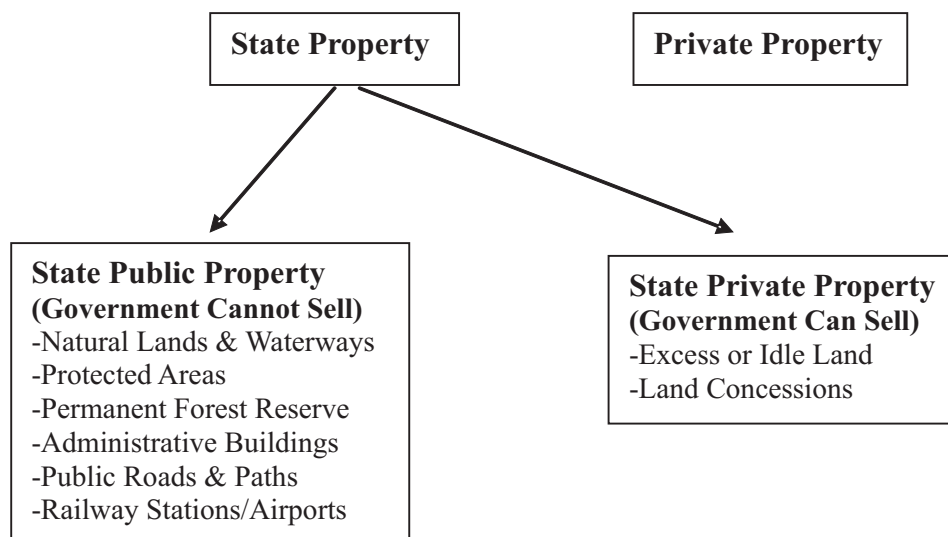
State Private Property (**Article 17 LL**) is land that is owned by the State or public legal entities that does not have a public interest use (owned by the State or public legal entity, but does not fit the definition of State Public Property as outlined above). State Private Property can be described as excess or idle land that is held by the State or a public legal entity. The main difference between State Private Property and State Public Property is that State Private Property may actually be sold or transferred to other legal entities, such as the eventual permanent transfer of properties within the Social Land Concession framework to the target land recipients therein.

Land concessions (**Chapter 5 LL**), whether for a social or an economic purpose, may only occur on State Private Property.

2.3 Private Property

Private property, or property that is under private ownership, is property within the Kingdom of Cambodia that is owned by natural persons or legal entities other than public legal entities. Private property may be used by its owner or owners in any way, as long as the use does not create a nuisance or is otherwise prohibited by law. Private property, in very general terms, may be leased, used as collateral, inherited, or transferred to other individuals or legal entities.

Ownership of private property takes various forms based on the number of people or legal entities that own the property and the rights of use that they have, such as individual ownership, collective ownership, undivided ownership, co-ownership and joint ownership. (**Article 10 & Title IV LL**).



3. Forestry Law

The Forestry Law sets up a classification system for forest land within the Kingdom of Cambodia that is separate from the classification system of the Land Law. Unlike the Land Law, the Forestry Law defines the terms used in the classification system².

3.1 Permanent Forest Estate

The Permanent Forest Estate is all forested land within the Kingdom of Cambodia, including forest that occurs on private land and flooded forest. All categories of forest fall within the definition of the Permanent Forest Estate.

The Forestry Law defines the Permanent Forest Estate as follows: “the overall forest complex, natural and planted, in the Kingdom of Cambodia, including State and private, designated as two main categories: the Permanent Forest Reserve and Private Forest, to be maintained to ensure a sustainable permanent forest cover and use.” Since MOE protected areas do not fit within the classification scheme for the Permanent Forest Reserve, it is assumed that they fall within the Permanent Forest Estate classification as State Public Land. The definition of Permanent Forest Estate does not make specific mention of these areas, so the classification is somewhat confusing. Granted, some MOE protected areas are not forested, such as national seashores, but those areas that should be considered as part of the Permanent Forest Estate.

3.2 Private Forest

Private Forests are those forested areas that are located on Private Property as described above. The Forestry Law defines Private Forest as follows: “Forest Plantation or trees, whether planted or naturally grown on private land under registration and legal title with the State pursuant to authorized legislation and procedures.” How exactly these private forests will be regulated, and what types of restrictions will be placed on them is unknown at the moment.

3.3 Permanent Forest Reserve

The Permanent Forest Reserve is comprised of forests that are located on State Public Property. There are three sub-categories of forest within the Permanent Forest Reserve: Production Forest, Protection Forest and Conversion Forest. Protected Areas, under the Jurisdiction of MOE, are not included within the Permanent Forest Reserve.

The Forestry Law defines the Permanent Forest Reserve as follows: “State forest on lands excluding land that is privately owned, categorized as production forest, protection forest and conversion forestland for other development purposes.”

3.4 Production Forest

The primary purpose of production forest is for the extraction of timber and NTFP resources. The Forestry Law defines Production Forest as follows: “Forest area having the primary function for sustainable production of Timber and Non-Timber Forest Products. Production forest includes forest concession; forest permitted for harvesting, degraded forest, forest to be rehabilitated, reserved area for forest regeneration or forest plantation, reforested areas and forest areas under agreement between the Forestry Administration and the local community.”

²See the definitions annex and Chapter 4 (Permanent Forest Reserve) in the Forestry Law translation. Just because the terms are defined does not mean they are defined clearly.

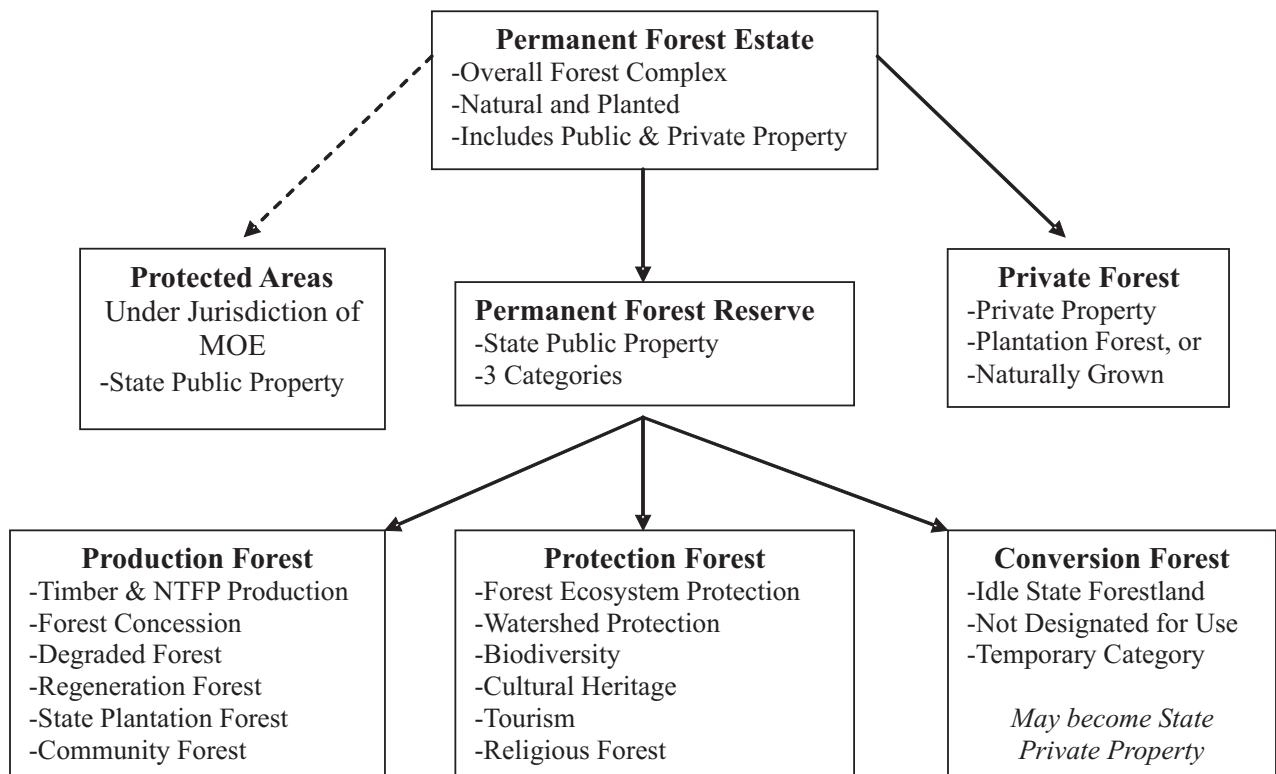
3.5 Protection Forest

The Forestry Law defines Protection Forest as follows: “Forest area having the primary function for protecting the forest ecosystem including the water resources regulation; conservation of biodiversity, land, water, watershed and catchments areas; wildlife habitat, fishes, prevention of floods, erosions, sea water intrusion; soil fertility and valuable for cultural heritage which serve the public interests. Protection Forest under this Law does not include the protected areas under the jurisdiction of Ministry of Environment pursuant to the Environmental Protection and Natural Resources Management Law.” Note that the protected areas under the jurisdiction of MOE, mentioned in the above definition, are considered State Public Property under the Land Law.

3.6 Conversion Forest

The Forestry Law defines Conversion Forest as follows: “Idle State forestland, covered mainly by secondary vegetation, not yet designated for any use that shall be classified temporarily as Permanent Forest Reserve.”

Though Conversion Forest is part of the Permanent Forest Reserve, and therefore State Public Property under the Land Law, it could be reclassified and removed from the Permanent Forest Reserve. If this is done, it would most likely become State Private Property and be used for land concessions or sold.



4. Weaknesses and Gaps

One of the major weaknesses within the current legislation is a lack of clear definitions within the law. For example, the definition of forest is not precise and is open to interpretation. This will lead to difficulties when it comes time to actually delineate and demarcate areas of the Permanent Forest Reserve. Discussions with the various stakeholders in border areas cannot be guided by any clear standards and definitions. Likewise, the definition of Conversion Forest for other purposes is not clear, and sounds similar to the degraded forest areas within the Production Forest classification. Another area of confusion within the Forestry Law language has to do with the use of the term permanent.

Exactly how permanent is the Permanent Forest Estate and the Permanent Forest Reserve? If the Permanent Forest Estate includes private forests located on private property, does this mean that the owner of the property will have a restriction on title that states the property must always have forest cover? Since Conversion Forest is only temporarily within the Permanent Forest Reserve and will be used, presumably for some other purpose (converted to State Private Land, perhaps even then sold), how can it be within a “permanent” reserve? Of course, this is a semantics issue, but it could cause political problems down the road as reports come out that either the Permanent Forest Estate or the Permanent Forest Reserve is shrinking in size, and therefore is not permanent at all.

There are also problems with the definition of State Private Property. For actual areas of land that might be forestland, how does one tell that it has lost its “public interest use” and therefore can be classified as State Private Property? Similar weaknesses in the definition of State Public Land exist.

LEGAL ANALYSIS OF THE COMMUNITY FORESTRY SUB-DECREE

1. Introduction

The long awaited Community Forestry Sub-Decree (CFSD) was passed by the Royal Government of Cambodia in 2003. The passage of the CFSD represented an important “next step” in the effort by a variety of people who have understood that Community Forestry could play an important role in sustainable land use and natural resources management, thereby leading to long term sustainable poverty reduction within the Kingdom of Cambodia.

The purpose of this memo is to give an overview of the CFSD and its provisions, outline the major changes that have been made since the version that was originally sent to the Council of Ministers in early 2003, and discuss some of the realistic opportunities for implementing this currently enacted version. As part of this analysis, the potential role of Commune Councils will be discussed and the CFSD will be compared to another recently passed land use management tool in Cambodia, the Social Land Concession Sub-Decree.

As already stated, the passage of this CFSD is an important “next step” towards making the concept of Community Forestry in Cambodia a meaningful reality. By no means does the passage of the CFSD mean that the effort is finished; in many ways the real work is just beginning.

2. Overview of the CFSD

The CFSD, with the general provisions on community forestry management found in the Forestry Law, creates a rather straightforward and easy way to understand the structure for implementation. However, many of the details required for full implementation are not included in the CFSD. These details will be enacted through guidelines on community forestry management in the form of Prakas. In many ways, this is a good thing, since Prakas/guidelines are relatively easy to modify based on lessons learned during the implementation or piloting of the Sub-Decree, while the general structures within the relevant provisions of the Forestry Law and CFSD remain in place. Prakas/guidelines are frequently revised and updated in Cambodia. It should be noted that the CFSD clearly states that MAFF will issue Prakas/guidelines on community forestry, format of community forestry regulations, Community Forestry Management Committee by-laws, Community Forestry Agreements and Community Forestry Management Plans using a consultative process.

2.1 Areas Where Community Forest Can Be Created

It is important to understand what areas of land can be managed as community forest under the Forestry Law and the CFSD. The answer to this question is found in the Forestry Law, and explains the limited scope of the CFSD. The Forestry law clearly states in Article 41 that the Ministry of Agriculture, Forestry and Fisheries (MAFF) “has the authority to allocate any part of the Permanent Forest Reserve...in the form of a community forest.” The Permanent Forest Reserve is under direct jurisdictional control of MAFF and the Forestry Administration. Ministry of Environment Protected Areas, for example, are not part of the Permanent Forest Reserve.

So, community forestry can occur within the Permanent Forest Reserve, but what areas of the Permanent Forest Reserve? The answer to this question is found in Article 10 of the Forestry Law. Under Article 10, the Permanent Forest Reserve is broken down into three categories; Production Forest, Protection Forest and Conversion Forest. The Production Forest category includes “Community Forests under agreement.” So, community forestry, under the legal authorization found in the Forestry Law, can only occur within Production Forest areas of the Permanent Forest Reserve, which are under the direct control and management of MAFF and the Forestry Administration. The Forestry Law does not give authorization for the CFSD to cover any additional areas, which is why provisions related to community forestry on lands under the control and management of other Ministries and departments, such as MOE Protected areas, were removed from earlier drafts of the CFSD.

2.2. Procedure for Creating Community Forest Areas and Community Forestry Communities

Though the CFSD states very clearly in Article 3 that the Forestry Administration has the right to give official recognition of the demarcation of each community forest boundary, there are two approaches to how this can take place. The first is a bottom up approach, where local residents, living in or near the Permanent Forest Reserve, initiate the process in creating a community forestry community (cf community) and request an area of the Permanent Forest Reserve as community forest. The second is a top down approach, where the Forestry Administration will identify areas suitable for community forestry management, designate and demarcate areas of the Permanent Forest Reserve, and then work with the communities in the area to create cf communities and manage the resources accordingly. As will be mentioned later in this paper, this simultaneous top down and bottom up approach is similar to that found in the Social Land Concession Sub-Decree.

The area to be designated as a community forest, whether the process is initiated by the local community or the national level, is based on what is essentially a situational needs analysis (referred to as a requirement and problem faced analysis in Article 7 of the CFSD) by the Forestry Administration. This analysis is to be done with the involvement of local authorities or Commune Councils.

It is important to note that the Forestry Administration makes the assessment for the designation of an area as community forest, but it is the duty of MAFF, through the Minister, to issue a Prakas “recognizing and terminating areas requested for establishing community forestry by the Forestry Administration.” This authority for designation of an area as community forest comes from specific language in the Forestry Law and is reiterated in Article 23 of the CFSD.

Once initial approval for an area has been made to allow for the designation of an area as community forest and the establishment of a cf community, then the cf community needs to create a Community Forestry Management Committee (CFMC), which is created through secret balloting during a free and fair election by at least 2/3 of the members of a cf community during a public meeting. [See Article 17 of the CFSD]

Once the CFMC is established, it is then responsible for drafting by-laws for its operation, a Community Forest Agreement (CFA) that the Forestry Administration and the cf community will enter into, and community forestry regulations that will be used to control the use of the community forest by the cf community and secondary users.

The CFA will be a standard document that, once drafted, will be publicly noticed for 30 days at the offices of the Commune Councils, district governor and provincial governor. If no conflicts arise with the proposed agreement, then the Forestry Administration Cantonment for the area in question can approve the agreement. It should be noted that the approval of the agreement is at the Cantonment level, not the national level, of the Forestry Administration.

As stated in the Forestry Law, the CFA is in effect for a period no longer than 15 years, but if the community forest is being managed in a sustainable manner in compliance with the CFA and Community Forest Management Plan (CFMP), then that agreement can be renewed for an additional 15 years. CFA renewal can be denied if, based on monitoring and evaluation reports that were created with the participation of the CFMC, it is shown that the community forest is not being managed in compliance with the CFA, CFMP and other rules and regulations. In addition, the CFA can be terminated prior to the expiration date if there is written agreement between all parties to the agreement, the CFMC and at least 2/3 of the cf community members agree to terminate, there is serious non-compliance or violation of the conditions in the CFA or other provisions that leads to the non-sustainable use of the community forest, or the RGC decides that there is a higher public use for the area in question (compensation should be paid to the cf community if this occurs). The actual procedures for preparation of the CFA will be created through Prakas/guidelines issued by the Minister of MAFF.

Once the CFA is entered into, it is the responsibility of the CFMC to draft a CFMP. The CFMP, once drafted, is sent for approval through the Forestry Administration Cantonment to the national level of the Forestry Administration. The preparation procedures for CFMPs, like those for the CFAs, will be created through Prakas/guidelines issued by the Minister of MAFF.

2.3 Other Provisions in the CFSD

In addition to the procedural provisions in the CFSD, there are also provisions which outline the basic roles duties and responsibilities of the cf communities [Articles 10 and 11], the CFMC [Article 21], MAFF [Article 23] and the Forestry Administration [Article 24]. These are pretty straightforward and link with roles and duties found in the Forestry Law and the recently enacted Prakas on the organization and functioning of the Forestry Administration.

Roles and duties of local authorities and Commune Council's are not spelled out in a specific article, but it is clear from the text of the CFSD that they will only play a facilitation role in the creation of community forests and cf communities.

There is also a provision on financial resources for community forestry [Article 31], which can come from the national forest development budget, charitable organizations, and/or national and international organizations.

With regards to royalties and premiums, the CFSD reiterates the provisions that already exist and control in the Forestry Law. The CFSD does state that the royalties and premiums that are required under the Forestry Law “should be set after consultation with the cf community in order to support community development, equitable benefit sharing and poverty alleviation.” [Article 13]

Another important provision that should be noted is that related to a five year moratorium on the harvesting of forest products (five years from the approval date of a CFMP). It should be understood that this provision applies only to forest products, otherwise commonly referred to as timber products, not NTFPs.

3. Possibilities and Next Steps for Implementation

Now that a CFSD has been passed, what could and should be done next? The first step should be to look at the opportunities that are presented within the CFSD. Areas within the production forest areas which are suitable for community forestry should be identified, communities in these areas should be informed of the fact that they now have an opportunity to manage and benefit from the resources in their immediate area, and assistance should be given to enter into agreements and create acceptable management plans. In addition, local authorities such as Commune Councils,

district governors and provincial governors should be made aware of the CFSD so they can assist in implementation, since these entities have a real interest in the creation of sustainable livelihoods in their areas. While those efforts are ongoing, it is necessary for the Forestry Administration to enact and implement all the necessary Prakas/guidelines. Once in place and implementation is occurring, effective monitoring and evaluation should be ongoing so that lessons learned can be used to modify or redraft the Prakas/guidelines in order to make them more effective.

As already stated, the passage of the CFSD is just the “next step” in a long series of steps that must take place before community forestry becomes a meaningful and important land use/ natural resources management and poverty alleviation tool. It should also be recognized that this new tool is just one of many that have come into existence in Cambodia in recent years, and it will take time to discern exactly how community forestry and the CFSD will fit into the larger picture.

4. Potential Role of Commune Councils in Implementation

Communes specifically have no authority over forest areas under the jurisdiction of the Forest Administration (Commune Administration Law, Article 45). Though it appears that this article contradicts a commune's duty to protect and conserve the environment, it merely means that the commune administration has no decision-making authority over issues related to the Permanent Forest Reserve, such as granting forest concessions or entering into Community Forestry Agreements. However, Commune Councils can still take an active interest in issues surrounding forest areas, such as helping to facilitate the creation of community forests, or identifying opportunities or needs for the establishment of community forestry through the Commune development planning process. The CFSD already recognizes this fact in stating that Commune Councils should facilitate the process of Community Forestry. It is important that when thinking about the role of the Commune Council, it should be viewed not just within the realm of the CFSD, but within the provisions of the Forestry Law as a whole.

Chapter 9 of the Forestry Law, in conjunction with Article 2, outlines customary user rights, such as the gathering of non-timber forest products (NTFPs), within the permanent forest reserve; these rights are protected under the law. It also outlines the authority for community forestry activities and the principals for planting trees by individuals. Commune councils should assist the Forest Administration and local communities in identifying areas that are important for customary user rights, have potential for community forestry, are suitable for religious or spirit forest protection status, or appropriate for tree plantations. Commune councils could also assist in the preparation of community forestry agreements and management plans through its facilitation role.

The Forestry Law states that any person who plants trees on his/her private land or on State forest land where they have granted user rights, has the right to maintain, develop, use, sell, or distribute the products. The planting of trees within the Permanent Forest Reserve may be done directly by the Forestry Administration, through CFAs and CFMPs by cf communities, or by participation of people through a right granted to use State forest. Rules on granting rights to use State forest land to plant trees shall be prescribed by Sub-Decree, though this has yet to be done. Tree plantations could be an important socio-economic development tool identified by commune councils during land use/natural resource management planning activities. As already stated, this type of activity can occur within community forest areas which have been heavily degraded but are still classified as production forest.

Unfortunately the capacity level of most Commune Councils is quite low at the moment, so it is questionable as to how much of a role they can really play in the near term with regards to community forestry type activities. The first step will be to inform them of the CFSD and what it means.

5. Comparison to Social Land Concession Sub-Decree

As already stated in Section 4 above, the CFSD is just one land use/natural resources management tool that will be implemented in Cambodia. Another that has been recently passed is the Social Land Concession Sub-Decree. It is interesting to compare these two Sub-Decrees in terms of their similarities and differences.

One similarity that has already been mentioned is that both address the initiation process from a bottom up (where the local community can initiate the process) and top down (where the process is initiated from the national level) approach. Another similarity is the respect for hierarchy in the system, where the approval process must follow clear lines of authority through the proper channels. This respect for hierarchy is a reflection of the overall governance system in Cambodia and Cambodian culture itself.

There are notable differences between the two Sub-Decrees. Though the two processes are clearly within the authority of the line ministry with jurisdictional authority (MAFF for the CFSD and MLMUPC for the Social Land Concession Sub-Decree), the Social Land Concession Sub-Decree has mechanisms and structures that create far more horizontal integration and interaction with other relevant Ministries. At the National level, the Social Land Concession Sub-Decree creates a National Social Land Concession Committee with representative members from number of ministries (national defense; land management, urban planning and construction; economy and finance; rural development; agriculture, forestry and fisheries; planning; women and veterans affairs; environment; water and meteorology; social affairs, labor, vocational training and youth rehabilitation). The CFSD does not have any such horizontal integration. This, however, is reflective of the Forestry Law itself, along with the rather insular nature of MAFF and the Forestry Administration in general.

Another difference between the Sub-Decrees is that the Social Land Concession Sub-Decree has more detail in the bottom up procedures mentioned above, including clear timelines within the approval process. It should be noted that the top down approach within the Social Land Concession Sub-Decree is quite vague. As with the CFSD, the Social Land Concession Sub-Decree calls for the enactment of Prakas/guidelines that clarify procedures and duties.

6. Conclusion

The passage of the CFSD has been viewed as a positive step in the right direction for community forestry in Cambodia. Though it is not perfect, it is something to work with, and there are real opportunities presented with its passage. It is easy to focus on flaws and disappointed expectations, but what is more difficult (and far more important at this stage) is to focus on the opportunities for proper implementation and development of this land use/natural resources management tool.

Note: This report was adopted from a previously written report by the author for the GTZ-CGFP in 2003.

OVERVIEW OF THE POLICY AND LEGAL FRAMEWORK RELATED TO CBNRM

1. Introduction

The primary purpose of this section is to provide the reader with an overview of currently existing policy and legislative documents (Laws, Sub-Decrees and Prakas) that can be linked to CBNRM in Cambodia. In order to assist the reader, an explanation of what is policy (policy as compared to legislation) and an overview of the legislative system in Cambodia is provided. In addition, this chapter will identify existing gaps within the legislative framework in Cambodia.

2. Understanding Policy

The difference between policy and legislation is often confusing; in many instances commentators will refer to legislation as policy, though they should be separate and distinct instruments in the governance field. Policy documents represent a course of action or vision that a government has adopted, written in a standard report format, while legislation sets out specific mandates, rights, responsibilities and prohibitions on a subject matter within a rigid format of chapters and articles. Policy documents are written and adopted by a government's executive branch³. Legislation is enacted by either the legislative or executive branches of government, with Laws being enacted by the legislative branch and implementing rules and regulations enacted, implemented and enforced by the executive branch³.

Good policy documents should be clearly written providing a government and its administrative agencies with clear directions on a course of action that is adopted. Policy documents are often adopted to direct the drafting, enactment and implementation of legislation. Policy documents can also be written to assist in the interpretation of legislation by those entities that are responsible for implementation and enforcement. Properly written policy documents compliment and link to legislative documents. In instances where there is no written policy on a subject matter, then the legislative documents are often times referred to as the government's policy; this is considered a very poor form of policy development, and in such instances clear policy should be written and adopted by the government.

For government policy to be truly effective, it should contain clear statements on courses of action to be taken that can be effectively measured and monitored over time. Far too often policy documents only contain broad statements embracing a general concept without spelling out a clear course of action.

³See Section 4 below for an in depth explanation of the legislative framework in Cambodia.

3. Policy Documents

The following is an overview of policy documents that link in some way to CBNRM in Cambodia⁴.

3.1 Royal Government of Cambodia's Second Five Year Socio-Economic Development Plan 2001-2005

The Royal Government of Cambodia's (RGC) Second Five Year Socio-Economic Development Plan (SEDP II) is a policy document charting the course for the government's focus on a broad variety of developmental issues with a concentration on actions to be taken to stimulate economic growth and private sector development. Because of the natural links between this policy and the recently adopted National Poverty Reduction Strategy (NPRS), the two will be combined in 2006.

This policy makes a commitment to the sustainable use of natural resources and discusses the areas of agriculture, forestry, fisheries and land management reform, but statements that can be linked directly to CBNRM are quite limited. The document does specifically call for the "optimization of benefits [from forest resources] to rural communities through community based forestry," formulation and implementation of a legal and regulatory framework for community fisheries management," and recognizes as a guiding principal that "structured interventions to provide local communities with the skills to manage the natural resources base on which their livelihoods depend is the most effective way of achieving sustainable management of these resources."

3.2 Royal Government of Cambodia's Strategy of Land Policy Framework (2002)

This policy document that elaborates on the 2001 Statement on Land Policy and sets forth the principals and plans which will be utilized to accomplish the RGC's goals regarding land and plans for assuring that land resources are used effectively to achieve broad national goals. It represents an ongoing process of creating detailed land policies for Cambodia.

There are several promising principals that are adopted that link to CBNRM. The policy states that "the people who use land are the day-to-day land managers, their participation in land use planning is essential." The policy also states that "concepts of community forestry and community fisheries... imply that community land use planning and land management are expected nationwide."

The policy explains that the "preferred method for implementing decentralized land use planning is referred to as Participatory Land Use Planning (PLUP)." This is a method of developing local agreement about current and future land use in harmony with development goals and available natural resources, and is based on the principles of local ownership and control of the planning process. In relation to indigenous land rights, the document states that principals of "local land use planning and expanded partnerships between indigenous communities, NGOs and government in managing areas in and around communal property will guide implementation of communal titling.

3.3 Royal Government of Cambodia's National Poverty Reduction Strategy (2003)

The NPRS, like SEDP II, covers a broad range of issues impacting on poverty reduction within Cambodia. The policy does an excellent job of clearly listing objectives, actionable measures to be taken, measurable indicators and targets set to specific timelines and the agencies responsible for carrying out the actions. As such, this is an example of a well written policy document as described above in Section 2.

⁴Policy documents that have exceeded their intended time frames, such as the Government Action Plan (2001-2004) or the National Environmental Action Plan (1998-2002) are not included in this analysis. These government policies need to be replaced or have been integrated into other policy mechanisms such as the National Poverty Reduction Strategy.

This policy and SEDP will be integrated into one broad policy document guiding development and poverty reduction in 2006.

Unfortunately the policy makes very few statements that can be linked to CBNRM type activities. The policy does specifically call for the “establishment of land use planning integrated with natural resources management and decentralized land use planning and management,” which should be incorporated into a Sub-Decree on Land Use Planning as called for under the Land Law⁵. It also calls for establishing and strengthening community forestry through increasing awareness and “assisting forest user groups in implementing community forestry management plans,” and continuing “efforts of sustainable communities-based fisheries management.” In the area of water resources management, the policy states the government needs to adopt a comprehensive set of guidelines and regulations relating to farmer's involvement in irrigation development and management through the promulgation of a Water Resources Law and Sub-Decree on Farmer Water User Communities.

3.4 Royal Government of Cambodia's National Forestry Policy (2002)

This document is not so much a policy document as it is a government statement which states a commitment to broad management principles. A comprehensive forestry policy within Cambodia still needs to be developed, and is required under provisions found in the Forestry Law. With this in mind, there is very little in this statement that links to CBNRM issues. The document states that the government shall “ensure the maximum involvement of private sectors and local communities in the form of sustainable conservation and management of forest resources...,” recognize and “legally protect the traditional rights of local communities in use of forest resources...,” and “increase the benefits of local communities from the use and management of forest resources through the concepts of community based forest and wildlife conservation.”

3.5 Royal Government of Cambodia's National Water Resources Policy (2004)

In January of 2004, the RGC adopted the country's first National Water Resources Policy. This broadly worded document recognizes the importance of water resources within Cambodia, and calls for the sustainable development, use and conservation of these resources throughout the country. The major weakness with this policy document is that it does not spell out concrete actions that are to be taken, what timelines are involved or what institutions, agencies or departments are responsible. The only ministry that is mentioned is MOWRAM, and only in a very limited sense.

In terms of CBNRM issues, the only language within this policy document that links are those statements relating to improved participation of beneficiaries and farmer user communities in management of the water resources in question.

4. Overview of the Legislative System in Cambodia

The legal system in Cambodia exists within the overall governance structure created under the Constitution, which is the supreme law of the land. The government is made up of a system where the intent is to have a clear separation of powers between the legislative, executive and judicial branches of government. “The separation of powers ensures that no element or branch of government can assume absolute or dictatorial power, and it is a safeguard for the people against abuses of state power.”⁶ Due to weakness and lack of capacity within both the legislative and judicial branches, this system of separation of powers does not work as effectively as it should.

⁵This Sub-Decree has yet to be enacted; see Section 5 on Gaps in Legislative Framework

⁶Legal and Judicial Reform Policy, Page 8, as adopted by the Council of Ministers (20 June 2003)

The judicial branch is perceived as the weakest of the three, though efforts are being made to rectify this situation, such as the recent adoption of a legal and judicial reform policy as drafted by the Council for Legal and Judicial Reform.

The Legislative branch is divided into the National Assembly and the Senate with the authority to approve and amend legislation initiated by them or the Royal Government of Cambodia (RGC)⁷. The Executive Branch consists of the Prime Minister, the Council of Ministers and the various line ministries. The Judicial branch consists of 19 provincial courts, two municipal courts, a military court, and an Appeals and Supreme Court in Phnom Penh. The Ministry of Justice and the Chief Prosecutor implement criminal law, procedure and oversee judicial police in the enforcement of all legislation through the Courts⁸. The laws and regulations of Cambodia are hierarchical, and each of these derives its validity and authority from a rule placed above it in the hierarchical structure of laws. The following is a general outline of the hierarchy of law within the Kingdom of Cambodia:

- 1) Constitution
- 2) Laws (Chhbab)
- 3) Royal Decree (Reach-Kret)
- 4) Sub-Decree (Anu-Kret)
- 5) Prakas
- 6) Circulars (Sarachor)
- 7) Deika

Within this hierarchy of law are general observations that can be made on time and scope. The higher the level of the instrument that is being enacted, the greater the amount of time for actual enactment due to various levels of review it must go through. For example, a law that is drafted at the level of the RGC must go through a review process at the Council of Ministers, the National Assembly and finally the Senate, while a Prakas is simply reviewed within the Ministry that is promulgating it⁹.

Another aspect that should be considered is scope of the legal document. Laws have broad scope and apply to all government entities and geographic locations within the country, unless specifically limited within their text. Prakas are only binding within the Ministry in which they are promulgated, and Deika only apply to the geographical area of the province or commune that enacts them.

4.1 Law: Laws, or Chhbab in Khmer, are the primary source of law in Cambodia. Chhbab are the laws passed by the National Assembly (lower house) and the Senate (upper house). The Chhbab is often times confused with the Kram, which is a form of Royal Decree used for the promulgation of a Chhbab by the King or Head of State. The process of promulgating a Law that is proposed by the RGC is rather time consuming, as already mentioned, and generally proceeds according the following procedure¹⁰:

- 1) Preparation of a draft law by a technical line ministry, such as MOI;
- 2) Discussion of the draft law in inter-ministerial meetings (or, if need be, within the concerned ministry itself. Interested stakeholders (donors, civil society, private sector, etc.) are often times consulted as well.

⁷The RGC consists of the Council of Ministers headed by the Prime Minister.

⁸Constitution, Chapters 7-11

⁹After promulgation, laws may also be reviewed for constitutionality by the Constitutional Council, but only upon request of the King, President of the Senate or National Assembly, the Prime Minister, ¼ of members of the Senate, 1/10 of the members of the National Assembly or the Courts. The Constitutional Council has no authority to review laws on non-constitutional issues, nor does it have authority to review other legal instruments such as Sub-Decrees or Prakas.

¹⁰This procedure would apply to proposed amendments to laws as well.

- 3) Study of the draft law by the Council of Jurists under the Council of Ministers to check conformity with the Constitution, coherence with existing legislation, etc.;⁴⁾ Discussion of the draft law at the inter-ministerial level under the Council of Ministers;
- 5) Examination and adoption of the draft law by the Council of Ministers;⁶⁾ Submission of the draft law of the RGC to the National Assembly. Draft laws are submitted in a written format accompanied by a “Statement of Purpose” to the Permanent Committee of the National Assembly for distribution to all deputies. The Permanent Committee forwards the draft law to a specialized commission for review. After such review, the Chairman of the Commission presents the opinions of the Commission to the National Assembly;
- 7) Examination and debate of the draft law at the plenary session, including modifications by the National Assembly;
- 8) Vote on the draft law by the National Assembly (simple majority);
- 9) Submission of the adopted law to the Senate which has to review and provide a recommendation within no more than one month. For urgent matters, the period is reduced to seven days. If the Senate does not provide the recommendation within the time limit stipulated, the law is promulgated. If the Senate calls for changes, the National Assembly shall take them into account a second time immediately. In the second review of the adopted law, the National Assembly must adopt it by an absolute majority;
- 10) Promulgation of the law by the King or the Head of State (Kram).

4.2 Royal Decree: The Constitution states that “upon proposal by the Council of Ministers, the King (or Head of State) shall sign decrees (Kret) appointing, transferring or ending the mission of high civil and military officials...”¹¹ This provision has been utilized by the RGC to create high level multi-ministerial bodies such as the National Committee to Support the Commune and Supreme Council for State Reform. There are also times when Royal Decrees are used as regulatory instruments, such as the case with the Royal Decree on Watershed Management; technically speaking, such Decrees are unconstitutional since the King only has authority to reign, not govern.

4.3 Sub-Decree: Sub-Decrees, or Anu-Kret, are legislative documents that are generally used to implement and clarify specific provisions within Laws, though they are also utilized to outline the roles, duties and responsibilities of government entities, such as a ministry, or for the appointment of high ranking government officials. Sub-Decrees tend to be drafted within a ministry or amongst several ministries that have subject matter competence on the area to be legislated. Once drafted, the Sub-Decree is submitted to the Council of Ministers for examination and adoption¹². Once adopted by the Council of Ministers, the Sub-Decree is signed by the Prime Minister and counter signed by the minister or ministers in charge of implementation and enforcement. Authorization for the Sub-Decree, whether direct or indirect, must come from a higher level legal instrument, such as a Law. Since Sub-Decrees are adopted at the Council of Ministers level, their scope can be quite large.

4.4 Prakas: Prakas are ministerial or inter-ministerial regulations that are used, like Sub-Decrees, to implement and clarify specific provisions within higher level legislative documents. They are also often used for the creation of guidelines that are necessary for the implementation of Laws or Sub-Decrees. Prakas are usually drafted at the technical department level and then signed into effect by the minister (or ministers) in charge of the ministry within which the regulation or guidelines apply. It should be noted that Prakas are largely used to implement Law in Cambodia, and that lessons learned can be quickly incorporated since the process for enacting a Prakas are relatively simple and quick.

¹¹Constitution, Article 21

¹²The steps taken for passage of a Sub-Decree essentially mirror steps 1-5 for the passage of a Law.

The drawback to Prakas is that their scope is limited to the subject matter jurisdiction of the ministries that enact them, and other line ministries or government entities will not always feel bound to follow them.

4.5 Circulars: Circulars, or Sarachor, are instruments that are issued by the Prime Minister or a minister to explain or clarify certain legal or regulatory measures, or to provide instructions. Like Prakas, these are limited in scope, but easily issued.

4.6 Deika: Deika are orders given by provincial governors or Commune Councils that have the force of law within the geographical limit of their territorial authority. Deika can not conflict with other rules and regulations at the national level.

5. Legislative Documents

The following is an overview of primary legislative documents that link in some way to CBNRM in Cambodia. Legislative documents that are currently in draft form are discussed in Section 6.

5.1 Law on Environmental Protection and Natural Resources Management (1996)

This Law includes provisions for the protection of the country's natural resources and environment that covers Protected Areas that fall under the management responsibility of the Ministry of Environment, water pollution control activities, creation of national and regional environmental action plans, and conducting Environmental Impact Assessments for development projects or other activities that could have a significant impact on the environment.

One of this Law's stated objectives is to "encourage and provide the possibility of the public to participate in the protection of the environment and the management of natural resources." While this certainly links to concepts of CBNRM, there are no concrete provisions within the Law addressing how this is to be done. The Law authorizes the drafting and enactment of a Sub-Decree on procedures for the participation of the public in the protection of the environment and management of natural resources, but this was never done.

5.2 Land Law (2001)

The Land Law outlines concepts of land classification (State Public, State Private and Private) and ownership in Cambodia¹³. It also includes important provisions on communal property ownership rights of minority indigenous groups within the country. The Law does not specifically spell out any mechanisms for land use planning and management that would link to CBNRM activities, but it does call for the enactment of a Sub-Decree on state land management that might cover this through provisions on participatory land use planning. The Land Law does provide some conflict resolution mechanisms that could be used when encountering problems of ownership during CBNRM activities.

5.3 Law on Administration and Management of the Commune (2001)

This important piece of legislation grants executive and legislative authority to semi-autonomous democratically elected commune councils at the local level of government in Cambodia. Commune councils have authority to protect the environment and natural resources within their commune boundaries, though they are specifically prohibited from making management decisions on forestry issues unless granted specific authority from the RGC.

¹³For an overview of how the Land Law and Forestry Law classification systems link, see Annex to this Chapter below.

The commune councils must create commune development plans that can include issues surrounding natural resources management. In addition, the commune councils may create sub-committees to assist in specific management issues, such as those that would link to CBNRM activities¹⁴. There are no specific provisions within this Law or subsidiary legislation that directly link to CBNRM.

5.4 Forestry Law (2002)

The Forestry Law outlines the general rules and regulations related to administration and management of the Permanent Forest Estate within Cambodia. Though primary jurisdiction is granted within the law to the Forestry Administration (FA) over the Permanent Forest Reserve, the FA also has jurisdictional authority over other areas within the Permanent Forest Estate, such as forestry crimes in MOE protected areas and regulation of timber plantations on private land (private forest). The Forestry Law outlines the basic structures, functions and responsibilities of the FA.

The Forestry Law is one of the most important existing pieces of legislation that links to CBNRM issues. This Law contains important provisions on traditional use and access rights to forest resources, though these do not include management rights. More importantly are the provisions that allow for the creation and management of community forests, whereby communities are granted an area of the Permanent Forest Reserve to manage and derive benefits from. Unfortunately provisions within the Forestry Law only allow community forestry activities to occur in areas classified as Production Forest, thereby excluding areas of Protection Forest from this management scheme.

5.5 Royal Decree on Protected Areas (1993)

This Royal Decree creates the system of MOE protected areas, but does very little in regards to the management of these areas. The Royal Decree has been criticized for its judicial legitimacy, though that has been handled through the passage of the Forestry Law; essentially the Forestry Law is the mechanism by which the National Assembly has ratified the Royal Decree and given MOE clear jurisdiction over the management of these areas.

5.6 Community Forestry Sub-Decree (2003)

This Sub-Decree, specifically authorized by the Forestry Law, outlines the general rules and procedures for community forestry within Cambodia¹⁵. Detailed procedures and requirements necessary for implementation will be laid out in the guideline Prakas that are being drafted at the moment. It is expected that the guideline Prakas will be enacted by the Ministry of Agriculture, Forestry and Fisheries sometime in 2006.

5.7 Fisheries Law (2006)

This Law covers management of the entire fisheries sector in Cambodia, including issues surrounding family fishing activities and community fisheries that link to CBNRM activities. This Law was enacted by the National Assembly in 2006.

5.8 Sub-Decree on Community Fisheries (2006)

This Sub-Decree, enacted under a Royal Decree, creates the detailed rules for establishment and management of community fisheries in Cambodia. As such, it naturally links well with CBNRM issues and is similar, in terms of granting an area of resources to a community to manage and derive

¹⁴Natural Resource and Environmental Management (NREM) committees have been established by some Commune Councils in Cambodia as part of a program to mainstream NREM into the commune development planning process.

benefits from, to the Community Forestry Sub-Decree. In general, the law is well-received, but there are some perceived weaknesses in terms of enforcement procedures. Communities do not have the right to deal with illegal activities themselves, but rather must cooperate with government officials.

6. Legislative Gaps

There are many Laws, Sub-Decrees and Prakas with the potential to impact on CBNRM activities in the country that have yet to be enacted. Following is a listing of key legislative documents that have been or are in the process of being drafted. It is uncertain what form these will take when finally enacted.

6.1 Protected Areas Legislation

There is a tremendous need for legislation that guides the management of Protected Areas under the management authority of the Ministry of Environment. There is currently a draft that includes provisions on community use and management zones that would link to CBNRM issues. Though originally drafted as a Law, it looks more likely that this legislation will be enacted as a Sub-Decree.

6.2 Water Resources Management Law

The draft Water Resources Management Law (most recent draft dated March 2002) has the stated purpose of “fostering the effective management of the water resources of the Kingdom of Cambodia in order to attain socio-economic development and the welfare of the people.” This shall be done through the determination of: the rights and obligations of water users; the fundamental principals of water resources management; institutions in charge of implementation and enforcement; and the participation of users and their associations in the sustainable development of water resources. With its provisions on rights and obligations of water users, including farmer user groups, this legislation links well with CBNRM issues in Cambodia.

6.3 Community Forestry Guidelines Prakas

This Prakas will provide the details for enactment of the Community Forestry Sub-Decree. It will include annexes that provide the general format and content of the Community Forestry Agreement, Community Forestry Management Committee By-Laws, Community Forestry Regulations and Community Forestry Regulations. Currently existing community forestry sites, nor areas that are being proposed for community forestry type activities in the future, cannot be formally recognized under the law until these guidelines are enacted.

7. Conclusion

There are limited provisions within Cambodian policy and legislative documents that directly support concepts of CBNRM. A promising sign in this regard is current use of participatory land use planning techniques that may be codified into legislation on land management in the future, passage of the Community Forestry Sub-Decree, and currently draft legislative documents that contain provisions relating to Farmer Water User Groups and community fisheries management.

What must be remembered is that policy and legislation can change over time. As lessons are learned and attitudes change, then there can be greater opportunity for adoption of concepts relating to CBNRM in the policies and legislation of Cambodia.

ESIA REQUIREMENTS FOR COMMUNITY FORESTRY

1. Introduction

There is an issue relating to whether it will be required to conduct an ESIA as part of a Community Forestry Management Plan. During discussions with the Community Forestry Office (CFO), it was argued that provisions within the Prakas on the guidelines for community forestry (CF Prakas) should be consistent with other provisions in the laws and regulations of the Royal Government of Cambodia. The main laws that are involved in this analysis are the Forestry Law and the Law on Environmental Protection and Natural Resources Management.

The following is an outline of the relevant legal provisions, the position that CFAC lobbied for based on the relevant legal provisions and comments that were received, and what appears to be the Forestry Administration's (FA) current stance on the issue.

2. Legislative Background

2.1 Forestry Law (and Community Forestry Sub-Decree)

The Forestry Law, in paragraph 2 of article 4, states that, consistent with the Environmental Protection and Natural Resources Law and the Code of Forest Management, an “Environmental and Social Impact Assessment (ESIA) shall be prepared for any major forest ecosystem related activity that may cause adverse impact on society and environment.”

It should be noted that the Code of Forest Management only mentions conducting an ESIA for concessions and that the articles in the Forestry Law that deal directly with Community Forestry make no mention of an ESIA requirement.

The Community Forestry Sub-Decree does not make any mention of an ESIA requirement in Chapter 7 on Community Forestry Management Plans. The only place where there is any mention of this in the Sub-Decree is in the definition of Community Forestry Management Plan (CFMP) contained in Article 5, but it does not state exactly when or under what circumstances this needs to be conducted. The Definition of CFMP reads as follows:

A document prepared by a CF Community with approval by Forestry Administration following the Environmental and Social Impact Assessment and detailing the procedure, regulation and measure related to sustainable use and management of the Community Forest.

2.2 Law on Environmental Protection and Natural Resource Management

This law outlines the requirements for conducting Environmental Impact Assessments (EIA) in Cambodia¹⁵. The details for when this activity is required are contained in the Sub-Decree on

¹⁵While the Forestry Law and subordinate regulations use the term “Environmental and Social Impact Assessment, the Law on Environmental Protection and Natural Resources Management and the Sub-Decree on Environmental Impact Assessment Process uses the term “Environmental Impact Assessment.” Though slightly different terminology is used, they are the same type of assessment.

The Annex in the Sub-Decree on EIA Process lists what activities and size of activities require an EIA. In the Agricultural area, it states that Concession Forests greater than 10,000 Ha require an EIA. It also states that Agricultural Concessions greater than 10,000 Ha require an EIA. Though it does not mention Community Forests, it would make sense that the same size limitation would apply, since Community Forests would generally have less of an impact on the environment than Concession Forests or Agricultural Concessions.

In addition to the above activities, the Annex in the Sub-Decree also requires an EIA for “Logging” greater than 500 Ha. It could be argued that Community Forestry Management Plans that encompass the commercial harvesting of timber would fall under this activity.

3. Position of CFI Expressed to CFO Staff

The primary concern related to ESIA language in the draft CF Prakas had to do with the addition of seemingly unnecessary bureaucratic requirements to the community forestry process and the inability of communities to carry out such a process. It was recognized, however, that the Forestry Administration was set on some sort of ESIA requirement for the CFMPs, and that the requirements would be clarified in the CF Prakas.

In light of this, it was decided by the Policy and Legal Advisor to CFI that the argument should be made that community forestry activities are similar to concession forest activities and therefore should be treated similarly under the law. While an ESIA may be required as part of the Community Forestry Management Plan Process, it should only be required for Community Forests that are larger than 10,000 Ha. In this way, the language related to ESIA in the Guidelines for Community Forestry (CF Prakas) will be consistent with existing Law in Cambodia. In addition, since most Community Forest Agreements would cover areas less than 10,000 Ha, it would not place too much of a burden on the community forestry process.

The primary weakness in this argument is the language in the Sub-Decree on EIA Process that requires an EIA to be carried out for logging greater than 500 Ha. If a Community Forestry Management Plan included commercial harvesting of timber, would it be subject to this provision? The argument could certainly be made that it would be, but the law does not have enough clarity to answer the question one way or the other.

4. Forestry Administration's Current Position

Based on conversations with the CFO staff, it appears that the Forestry Administration's opinion will be to require an ESIA for Community Forest Management Plans that will include commercial harvesting of timber products and by-products. It is the opinion of the Forestry Administration that community forestry activities that include commercial harvesting operations are “a major forest ecosystem related activity that may cause adverse impact on society and environment,” and therefore require an ESIA under Article 4, Paragraph 2 of the Forestry Law. Community Forestry Management Plans that only envision customary use activities as outlined in Article 40 of the Forestry Law will not require an ESIA.

The FA believes that it is the requirement of the Administration, not the community, to carry out the ESIA on the management plan as part of the approval process. This should allay the fears of those who commented that communities do not have the capacity to carry out an ESIA. It is uncertain how exactly this would be carried out, or what role the Ministry of Environment might have in the process.

Considering that EIAs or ESIA are rarely carried out in Cambodia, even when explicitly called for, this may become a non-issue during implementation. What is for certain is that the FA is not likely to budge on this issue, and that clarifying language related to ESIA requirements for Community Forestry Management Plans will be included in the CF Prakas.

1. Introduction

The following section is intended as a general guide to identifying and enforcing penalty provisions within the Forestry and Land Laws. The focus is on natural resources management issues, specifically forest resources located on State Public Land. The analysis of penalty provisions found in the Land Law is included as a compliment to provisions found in the Forestry Law.

The report includes an overview analysis of prohibitions and penalty provisions included in the Forestry Law, including provisions related to Forestry Administration officials and other government employees, statutes of limitation, and available appeals procedures. Related provisions found in the Land Law are then explored. As an illustration of circumstances where these various provisions can be utilized, two case examples are presented; the first is based on illegal logging activities that took place in the Mt. Aural Wildlife Sanctuary in 2004, while the second explores a hypothetical situation where a concessionaire illegally cuts resin trees that are tapped by a local community for traditional use. As a supplement to this general guide, the detailed list of forestry offenses and penalties found in Chapter 15 of the Forestry Law is included in Annex “A.”

2. Forestry Law

The Forestry Law contains various prohibitions on activities within the permanent forest estate that are classified as forestry offenses and subject to penalty provisions if engaged in. These prohibitions appear throughout the body of the Forestry Law, though the detailed list of forestry offenses and penalties are spelled out in Chapter 15, with the procedures for resolving forestry offenses covered in Chapter 14.

2.1 Violations of Forestry Law Subject to Penalty

Violations of the Forestry Law subject to penalty can be carried out by a variety of individuals including private actors, Forestry Administration officials and other government employees/authorities. In addition, employers or supervisors of employees can be held accountable for the actions of those individuals that are working for or managed by them.

2.1.1 General Violations Classified as Forestry Offenses

General prohibitions or violations contained in the body of the Forestry Law that are subject to penalty are as follows:

According to **Article 24** of the Forestry Law, “Any individual, legal entity or community that intends to harvest Forest Products & By-products for commercial purposes must possess a harvest permit issued by the Forestry Administration.” It should be noted that communities that are harvesting amounts equal to or below customary use limits defined in Chapter 9 of the Forestry Law, or that are harvesting above these limits pursuant to a Community Forestry Agreement and approved Community Forestry Management Plan, do not need a permit, as “permission” has been granted through another mechanism contained in the law. Harvesting without a harvest permit is a forestry offense under the law.

Article 25 takes the permitting issue a step further and presents a list of permits that are required for various activities. Not possessing the necessary permit, or not complying with the terms and conditions of the permit, constitutes a forestry offense under the law. The permits listed in this article include:

- 1) Permit setting an annual harvesting quotas for forest products & by-products;
- 2) Permit to harvest forest products & by-products;
- 3) Permit setting the transport quotas for forest products & by-products;
- 4) Permit to transport forest products & by-products;
- 5) Permit for use of forests or forest lands;
- 6) Permit to establish a forestry industry, sawmill, or forest products & by-products processing facility (issued by Prakas);
- 7) Permit to enter forest for the coupe preparation (for concessionaires);
- 8) Permit to establish a stock place to sell or distribute forest products & by-products;
- 9) Permit to establish any type of kiln that uses forest products & by-products as raw material;
- 10) Permits containing export quotas for forest products & by-products;
- 11) Export and Import Permits for forest products & by-products;
- 12) Other types of permits that may be required according to provisions in the Forestry Law.

Article 28 states that the granting of a right or permission (permit) to harvest forest products and non-timber products may only occur in areas classified as Production Forest. As such, any harvesting of forest products or non-timber products outside of Production Forest areas, such as in protection forests or MOE protected areas, would be classified as a forestry offense. It should be noted that this provision would not apply to customary user rights outlined in Chapter 9 of the Forestry Law.

Article 29 spells out specific prohibitions on harvesting, subject to exceptions authorized by the Ministry of Agriculture, Forestry and Fisheries. Under this article it is generally prohibited to harvest forest products and by-products as follows:

- 1) Tree species whose diameter is smaller than the minimum diameter allowed to harvest;
- 2) Rare tree species;
- 3) Tree species that local communities have tapped to extract resin following tradition;
- 4) Trees that yield high-value resin.

The terms of this provision are to be clarified by Prakas. Anyone who harvests these forest products or by-products without authorization from the Ministry can be held liable for committing a forestry offense.

Article 30 generally prohibits the processing of forest products or by products, establishment or operation of sawmills or other processing facilities, or the operation of any types of kilns within the Permanent Forest Reserve. These types of facilities should be located at least 5 kilometers outside of the permanent forest reserve unless a specific exception has been granted by the Ministry of Agriculture, Forestry and Fisheries based on studies conducted by the Forestry Administration. The existence of such facilities within the Permanent Forest Reserve is a forestry offense.

Article 31 prohibits the clearing of forestland for public road construction unless approved by the Royal Government of Cambodia. It also prohibits the clearing of forestland for the construction of forestry roads unless approved by the Minister of the Ministry of Agriculture, Forestry and Fisheries. In addition, settlement along public or forest roads within the Permanent Forest Reserve is strictly prohibited unless there is permission from the Royal Government of Cambodia (this is an anti-encroachment provision).

Article 32 prohibits a list of activities that damage forest resources, including:

- 1) To displace, remove, or destroy the boundary posts or distinctive sign marking the forest boundary;
- 2) To grid bark, poison, destroy, fell down or uproot any tree without technical necessity;
- 3) To use harvest rights for forest products & by-products in a manner different from those authorized by permit;
- 4) To use various means or allow unleashed or leashed livestock within an area with tree seedlings or recent growth after harvesting, or forest fires, or in areas being or recently planted; and
- 5) To establish yellow vine or other forest by-products' processing facilities that may cause significant pollution or destruction to the forest ecosystem.

Article 33 creates a general prohibition on all forest clearing activities, unless the activity is permitted elsewhere in the law. This provision is not very helpful for enforcement purposes.

Article 36 creates a general prohibition on the setting of forest fires.

Article 38 states that it is prohibited to saw, slice or process logs within the Permanent Forest Reserve (this compliments the language found in **Article 30**), and also prohibits the use of chain saws to harvest forest products within the Permanent Forest Reserve unless operating with a permit authorized by the Forestry Administration (chain saws also need to be registered and tagged by the Forestry Administration according to **Article 70**).

Article 39 is a general prohibitive statement on the issuing of permits, clearing forestland, harvesting forest products or by-products, or occupying land within the Permanent Forest Reserve contrary to other provisions within the law. It is essentially a catch-all provision that is not that useful for enforcement purposes due to its lack of specificity.

Article 49 spells out specific prohibitions related to wildlife. For all wildlife species, it is prohibited to hunt, harm or harass:

- 1) Using all types of dangerous means;
- 2) Hunting during the prohibited season; and
- 3) Hunting in protected zones and special public areas.

For wildlife that is classified as rare or endangered, the following activities are prohibited:

- 1) Harass or harm any such species above or its habitat;
- 2) Hunt, net, trap or poison;
- 3) Possess, stock or maintain as a zoo or in a family house;
- 4) Transport;
- 5) Trade; and
- 6) Export-Import.

Article 50 spells out activities involving common wildlife species that are illegal unless a permit has been issued by the Forestry Administration:

- 1) Stock or maintain as a zoo or in a family house;
- 2) Transport and Trade an amount exceeding that necessary for customary use.
- 3) Import or Export.

Article 57 generally covers the issue of valid permit holders carrying out activities but failing to pay the necessary royalties or premiums.

Article 68 strictly prohibits the felling of trees and the collection and transport of forest products & by-products between the hours of 8:00PM and 5:00AM within the Permanent Forest Reserve. There are no exceptions to this rule.

Article 69 states that it is illegal to transport or stockpile forest products or by-products without the required transport and stock permits, or not in compliance with the terms and conditions stated within valid permits.

Article 70 states that it is prohibited to use unregistered or improperly tagged machinery, vehicles and chainsaws within the Permanent Forest Reserve.

2.1.2 Forestry Offenses Committed by Government Officials

Non-Forestry Administration government officials are treated specially within the Forestry Law for commissions of forestry offenses. **Article 100** states as follows:

Any activities carried out by the official of local authority, the police officer, Royal armed forces or other authorities that directly or indirectly allow forest exploitation or other activities contrary to the provisions of this law, or to threaten a Forestry Administration officer, or to obstruct the performance of duties and operations of a Forestry Administration officer, shall be subject to one (1) to five (5) years in prison and fines of ten (10) million to one hundred (100) million Riel.

In addition to this, **Article 78** places a mandatory duty on all government officials and local authorities to assist in the investigation, prevention and suppression of forestry offenses, such that any failure to meet this duty would be a violation of Article 100 above.

2.1.3 Forestry Offenses Committed by Forestry Administration Officials

Forestry Administration officials, like other government officials, are treated specially in the Forestry Law. **Article 101** spells out the provisions as follows:

The following activities shall be regarded as forestry offense committed by a Forestry Administration Official and shall be subject to one (1) to five (5) years in prison and fines of ten (10) million to one hundred (100) million Riel:

- 1) Grant authorization contrary to provisions of this law;
- 2) Entirely or partially participate directly in any forest exploitation activity contrary to the provisions of this law;
- 3) Allow any forestry offense;
- 4) Conducting any business related to the forestry sector either as a sole owner, a shareholder, an employee or a guarantor for others, while a position or within one (1) year after quitting the position for any reason;
- 5) Failure to report or failure to timely file for a Class I forestry offense occurring in his/her responsible territory; and
- 6) Intentionally neglect duties during a mission or provide the false written report that allowed the commission of a Class I forestry offense.

It should be noted that the penalties outlined for Forestry Administration officials are equivalent to Class II forestry offense penalties outlined in Article 98.

2.1.4 Agency Concepts

The Forestry Law holds those who have management authority or control over others liable for the acts of those below them. This is true for both private individuals and those that are acting in an official government capacity. **Article 86** of the Forestry law states as follows:

Individuals who are state employees, or employees of the private sector, who have used means from relevant State offices or private companies to commit forestry offenses, the individuals or their employers shall be penalized as described in the provisions of this law. The employers shall be

penalized under the provisions of this Law for forestry offenses committed by an individual or an organized group working for them in their organization.

2.2 Statute of Limitations for Enforcement

The Statute of Limitations to file a case with the court for a forestry offense is spelled out in **Article 85** as follows:

- 1) Class I forestry offense fifteen: (15) years counting from the date the offense was committed;
- 2) Class II forestry offense five: (5) years counting from the date the offense was committed;
- 3) Class III forestry offense one: (1) year counting from the date the offense was committed.

It is unclear from reading the law what the Statute of Limitations would be for offenses committed by Forestry Administration or other government officials covered under Articles 100 and 101. The argument could be made that, since the penalties are the same as those found under a Class II forestry offense, the 5 year Statute of Limitations for said offenses should apply.

2.3 Administrative and Judicial Appeals of Forestry Administration Enforcement Decisions

The Forestry Law clearly spells out that the Forestry Administration is responsible for enforcement activities for all forestry offenses (see **Article 3, Article 76**). However, any individual that is not satisfied with an enforcement decision of a Forestry Administration official, including decisions to not take action, can follow administrative and judicial appeal procedures that are described within the Forestry Law. Paragraphs one and two of **Article 89** state as follows:

Any person dissatisfied by a decision made pursuant to this law by the Forestry Administration has the right to appeal to the Head of Forestry Administration within 30 days of notification of the administrative decision. The Head of Forestry Administration shall make a decision on the appeal within a maximum of 30 days. After a final decision has been made by the Head of Forestry Administration, if there is not agreement with this decision, those persons may file a judicial appeal to the court.

There are no details on the formalities of this appeals procedure contained within the Forestry Law.

3. Land Law

The Land Law contains important penalty provisions, specifically related to infringements against public property, which can compliment the enforcement provisions contained in the Forestry Law. Unfortunately the Law is unclear as to how these provisions are to be enforced.

3.1 Violations of Land Law on State Property Subject to Penalty

There are several provisions within the Land Law that can be used in conjunction with provisions found in the Forestry Law. As stated earlier, the Permanent Forest Reserve is classified as State Public Property, and therefore any penalty provisions within the Land Law related to State Public Property would apply within the Permanent Forest Reserve.

Article 248, for example, states that an improper or illegal beginning of occupation of State Public Property constitutes a penal offense under the Law.

Article 259 states that an infringement against State Public Property shall be fined from five million (5,000,000) Riel to fifty million (50,000,000) Riel and/or subject to imprisonment from one to five years.

Related to the above is **Article 261**, which states that an official or authority, irrespective of whether acting under orders or not, who abuses his power to seize immovable property (State Property or Private Property), shall be subject to a fine from ten million (10,000,000) Riel to twenty-five million (25,000,000) Riel plus additional administrative sanctions. If the act of the official or authority is carried out with violence, the offender shall be imprisoned for six months to two years in jail in addition to the fine. The individual who gave the order shall be subject to the same penalties imposed against the offender.

Similarly, **Article 262** states that a competent authority or any kind of armed forces who wrongfully acquire immovable property (State Property or Private Property) where they are in charge of maintaining public order shall be subject to a fine of three million (3,000,000) Riel to thirty million (30,000,000) Riel, and/or shall be imprisoned from two to five years, and shall also be subject to administrative sanctions.

Articles 265 and 266 of the Land Law state that an administrative authority responsible for management of a zone, such as a Forestry Administration official within the Permanent Forest Reserve, which infringes on the land rights of indigenous communities or monastery immovable property is subject to fines and even imprisonment as follows:

Indigenous Community Land: Fine from one million five hundred thousand (1,500,000) Riel to nine million (9,000,000) and or put in prison from two to five years, plus administrative sanctions.

Monastery Immovable Property: Return of the property and fine from one million, five hundred thousand (1,500,000) Riel to nine million (9,000,000), plus administrative sanctions.

3.2 Questions Related to Enforcement of Land Law Provisions

The Land Law is silent with regards to who is supposed to enforce the penalty provisions contained therein. The obvious conclusions would be that provincial, district or commune police would be charged with the duty to prosecute such matters, though this is not certain based on the language in the Law.

The Land Law is also silent on provisions related to appeals of decisions, administrative or otherwise. It is assumed that the drafters of this legislation were relying on provisions in the Constitution related to the right of individuals to appeal decisions made by the government. As stated in **Article 39 of the Constitution (as revised 1999)**, “Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts.

4. Example 1: Illegal Logging and Encroachment Activities in a Protection Forest

4.1 Fact Pattern

Mr. X is a military commander whose base is located near a Protection Forest. Mr. X has established a small commercial logging operation within the Protection Forest which consists of a saw mill, forestry access roads to the mill and into the heavily forested areas for accessing and transporting timber, chainsaws for cutting down trees, and several transport vehicles for moving logs to the mill and sawn timber out of the Protection Forest to distributors located in the region. In order to maximize profit, Mr. X has set up a kiln next to the saw mill in order to convert cut green tree limbs into charcoal.

Mr. X has hired several employees to run the operation made up of a combination of civilian and military personnel. In addition, Mr. X has employed Mr. Y as his manager for the site, as Mr. X is usually not located on site. As part of the payment package for working for the operation, Mr. X has told his employees that he can give them each a 1 hectare parcel of land within the Protection Forest along the forestry access road for residential and farming purposes. His employees have used this land to build simple residences, clear forest land and plant fruit trees and other crops. In order to clear the land, the employees have intentionally set forest fires. The employees have enclosed the parcels of land they are using with available fencing materials in order to claim ownership.

In order to avoid detection, Mr. X has instructed his manager to transport the sawn timber at night, under cover of darkness. During a recent evening Mr. X's employees were transporting sawn timber when their vehicle was stopped by Forestry Administration officials located just outside of the Protection Forest, but within the boundaries of the Permanent Forest Reserve where the officials were operating a check point. When the Forestry Administration officials requested to inspect the contents of the vehicle, Mr. X's employees responded by threatening the officials with AK-47 rifles. As the Forestry Administration officials did not have weapons on them, they had no choice but to let the vehicle continue on its way.

4.2 Violations of Forestry and Land Laws

What provisions under the Forestry and Land Laws can be used to prosecute Mr. X and his employees for violations of said laws? First it should be reiterated that Mr. X can be held accountable for the illegal activities of his manager and the other employees based on the language contained in **Article 86** of the Forestry Law.

Specific violations are as follows:

- 1) Mr. X and his employees have violated **Article 24** of the Forestry Law because they have harvested Forest Products and Non-Timber Forest Products without the required harvest permit.
- 2) Mr. X and his employees have violated **Article 25** of the Forestry Law because they do not possess the necessary permit to harvest forest products & by-products, permit to transport forest products & by-products, permit for use of forests or forest lands, permit to establish a forestry industry, sawmill, or forest products & by-products processing facility (issued by Prakas), or permit to establish any type of kiln that uses forest products & by-products as raw material.
- 3) Mr. X and his employees have violated **Article 28** of the Forestry Law because they are harvesting forest products and by-products outside of an area classified as Production Forest (they are harvesting within an MOE protected area).
- 4) Mr. X and his employees have violated **Article 30** of the Forestry Law because they are operating a sawmill and charcoal kiln (processing forest products and by-products) within the Permanent Forest Reserve.
- 5) Mr. X and his employees have violated **Article 31** of the Forestry Law because they have cleared forestland for the construction of forestry roads without approval from the Minister of the Ministry of Agriculture, Forestry and Fisheries. In addition, they have created settlements along the same forest roads within the Permanent Forest Reserve without permission from the Royal Government of Cambodia.
- 6) The employees have violated **Article 36** because they have set forest fires to clear land. It would be difficult to find Mr. X liable for this activity since the employees were not necessarily doing this activity at his direction. The argument could be made, however, that if it were not for Mr. X's operation, the employees would never have set the fires, and therefore he should be held liable for the violation.

- 7) Mr. X and his employees have violated **Article 38** of the Forestry Law because they have sawn, sliced and processed logs within the Permanent Forest Reserve, and have also used chain saws to harvest forest products within the Permanent Forest Reserve without a permit authorized by the Forestry Administration.
- 8) Mr. X and his employees have violated **Article 68** of the Forestry Law because they have transported forest products & by-products between the hours of 8:00PM and 5:00AM within the Permanent Forest Reserve.
- 9) Mr. X and his employees have violated **Article 69** of the Forestry Law because they have transported forest products and by-products without transport permits.
- 10) Mr. X and his employees have violated **Article 70** of the Forestry Law because they have used unregistered or improperly tagged machinery, vehicles and chainsaws within the Permanent Forest Reserve.

Based on the above violations and the fact pattern presented, the following offenses and penalties can be identified within **Chapter 15** of the Forestry Law:

Transaction Fines (**Article 96**) for the following activities:

- 1) Fell tree without mark authorizing the felling;
- 2) Transport Forest Products & By-products without a permit;
- 3) Fell, saw, split and chop logs within the Permanent Forest Reserve, or use chain saw as a means to harvest forest products without permit or tag;
- 4) Harvest Forest Products & By-products during unauthorized hours;
- 5) Transport Forest Products & By-products that were obtained from felling or harvesting contrary to the provision of this law;
- 6) Selling or distributing Forest Products & By-products that were obtained from felling, finding, transporting or processing contrary to the provisions of this law; and
- 7) Forest Products & By-products that were obtained from harvesting, transporting and processing contrary to the provision of this law.

Punishment under a Class I forestry offense (**Article 97**) for the following activities:

- 1) Clear forestland and enclose it to claim for ownership;
- 2) Set forest fires intentionally; and
- 3) Gird bark, poison, destroy, fell or uproot trees to collect stumps.

Punishment under a Class II forestry offense (**Article 98**) for the following activities:

- 1) Use machinery or vehicle with the purpose of Forest Products & By-products harvesting without permit or tags;
- 2) Use forest land exceeding the size of the area authorized in the permit or without permit to construct public road, forest road or all types of building or residence along the road within the Permanent Forest Reserve;

- 3) Establish a forest industry base, sawmill, Forest Products & By-products processing facility at large and medium scale without a Prakas issued by Ministry of Agriculture, Forestry and Fisheries;
- 4) Establishing all types of kilns that use Forest Products & By-products as raw material without permit;
- 5) Harvest Forest Products & By-products without a permit.

Punishment under a Class III forestry offense (**Article 99**) for the following activities:

- 1) Use any type of chainsaw to harvest Forest Products & By-products without permission from the Head of Forestry Administration;
- 2) Establish stock place, wholesale and retail depot for Forest Products & By-products or small scale of Forest Products & By-products processing facilities without permit or contrary to permission; and
- 3) Establish industrial forest factory, sawmill, Forest Products & By-products processing facilities or any type of kiln that use Forest Products & By-products as raw material or as an energy source contrary to permission of the Forestry Administration.

In addition to the above, Mr. X and those employees that are members of the military can be held accountable under **Article 100** for directly or indirectly allowing forest exploitation or other activities contrary to the provisions of the Forestry Law, and for threatening a Forestry Administration officer, or for obstructing the performance of duties and operations of a Forestry Administration officer.

Provisions found within the Land Law could also be used to prosecute Mr. X and his employees. As outlined in section 3.1 above, the following articles within the Land Law could be utilized due to the activities within the fact pattern that amount to infringement on State Public Land: **Article 248**, **Article 259**, **Article 261** and **Article 262**.

5. Illegal Cutting of Resin Trees

5.1 Fact Pattern

Acme Logging has a concession in Cambodia. Within the concession area there are several existing indigenous communities whose livelihoods depend on the tapping of resin trees within areas that they claim as their traditional lands.

One day some of the indigenous community members discover that Acme Logging has cut several of the resin trees that the community traditionally uses.

5.2 Violations of Forestry Law

What provisions within the Forestry Law could possibly be used to prosecute Acme Logging for violation of said law? Since this is an area of the Forestry Law that is waiting for clarification through the issuance of a Prakas, this analysis should be considered preliminary.

Possible specific violations are as follows:

- 1) Acme Logging has probably violated the provision in **Article 29** of the Forestry Law that prohibits the cutting of tree species that local communities have tapped to extract resin following tradition.

- 2) Acme Logging has probably violated **Article 32** of the Forestry Law that prohibits the use of harvest rights for forest products & by-products in a manner different from those authorized by permit.

Based on the above violations and the fact pattern presented, the following offenses and penalties can be identified within **Chapter 15** of the Forestry Law: Transaction Fines (**Article 96**) for the following activities:

- 1) Transport Forest Products & By-products that were obtained from felling or harvesting contrary to the provision of this law;
- 2) Sell/buy or distribute Forest Products & By-products that were obtained from felling, finding, transporting or processing contrary to the provisions of this law; and

Punishment under a Class II forestry offense (**Article 98**) for the following activities:

- 1) Non-compliance with the technical regulation defined in the Code of Practice for Forest Management in Cambodia;
- 2) Non-compliance with management plan and annual Forest Products & By-products harvest plan;
- 3) Misuse of a forest use permit to harvest Forest Products & By-products; and
- 4) Fell trees with a classified diameter smaller than allowed, that are rare species, that local people tap for resin or that yield high-value resin.

6. Conclusions

There are provisions within both the Forestry Law and Land Law that can be identified for prosecution purposes when analyzing fact patterns of this nature. The key to using this guide is to match the fact pattern with the provisions identified in Sections 2.1 and 3.1 above, along with those provisions listed in Annex "A." In this manner one can quickly and easily identify available prohibition provisions, offenses and penalties contained in the law from which to write up a clear and effective enforcement brief.

ANNEX A

LIST OF FORESTRY OFFENSES AND PENALTIES FROM CHAPTER 15 OF THE FORESTRY LAW

Article 95

The Forestry Administration may issue a written warning and impose a requirement to repair damage for the following activities in the Permanent Forest Reserve:

- 1) Use of any means, including unleashed or leashed livestock animals within the Permanent Forest Reserve, forest plantation or state nursery, that harms trees or seedlings located in that area;
- 2) Injure or damage trees or other vegetation that have been planted or are under maintenance; and
- 3) Steal or damage fences, boundary poles or signs in nurseries or the Permanent Forest Reserve.

Article 96

An individual who has committed the following forestry offenses shall be subject to a transactional fine from the Forestry Administration for two (2) to three (3) times the market value of real evidence:

- 1) Fell tree without mark authorizing the felling;
- 2) Transport Forest Products & By-products without a permit;
- 3) Stock Forest Products & By-products without a permit;
- 4) Transport Forest Products & By-products contrary to the destination or exceeding the quantity authorized in the permit;
- 5) Use an expired transport permit for Forest Products & By-products;
- 6) Actual specifications of Forest Products & By-products contrary to those described in a transport permit;
- 7) Stock Forest Products & By-products exceeding the quantity authorized in a permit;
- 8) Export Forest Products & By-products, forest seed and vegetation species exceeding the amount in the applicable license;
- 9) Fell, saw, split and chop logs within the Permanent Forest Reserve, or use chain saw as a means to harvest forest products without permit or tag;
- 10) Harvest Forest Products & By-products during unauthorized hours;
- 11) Transport Forest Products & By-products that were obtained from felling or harvesting contrary to the provision of this law;
- 12) Forest Products & By-products for processing obtained from felling or harvesting contrary to the provision of this law;
- 13) Sell/buy or distribute Forest Products & By-products that were obtained from felling, finding, transporting or processing contrary to the provisions of this law;
- 14) Forest Products & By-products that were obtained from harvesting, transporting and processing contrary to the provision of this law;

Article 98

Any individual who has committed the following forestry offenses shall be punished under class II forestry offenses subject to one (1) to five (5) years in prison and/or court fines of ten (10) million to one hundred (100) million Riel, and confiscation of all evidence as state property:

- 1) Non-compliance with the technical regulation defined in the Code of Practice for Forest Management in Cambodia;
- 2) Non-compliance with management plan and annual Forest Products & By-products harvest plan;
- 3) Misuse of a forest use permit to harvest Forest Products & By-products;
- 4) Use machinery or vehicle with the purpose of Forest Products & By-products harvesting without permit or tags;
- 5) Quarry, excavate stone or sand, or mine within the Permanent Forest Reserve;
- 6) Use forest land exceeding the size of the area authorized in the permit or without permit to construct public road, forest road or all types of building or residence along the road with in the Permanent Forest Reserve;
- 7) Establish a forest industry base, sawmill, Forest Products & By-products processing facility at large and medium scale without a Prakas issued by Ministry of Agriculture, Forestry and Fisheries;
- 8) Establishing all types of kilns that use Forest Products & By-products as raw material without permit;
- 9) Hunt wildlife in closed season or in protected zones;
- 10) Hunt, kill, trade, or export rare species;
- 11) Hunt wildlife by dangerous means that harm to animal biology; and
- 12) Posses, process, stock, transport or import endangered wildlife species or specimens.

Any individual who has committed the following activities shall be punished under a Class II forestry offense subject to one (1) to five (5) years in prison and a fine of ten (10) million to one hundred (100) million Riel, and confiscation of all evidence as state property:

- 1) Harvest Forest Products & By-products without a permit;
- 2) Harvest Forest Products & By-products outside a coupe area as stated in a permit or outside the location set forth in the annual operational plan;
- 3) Transfer a right or sell a license or permit without permission;
- 4) Fell trees within a State Forest plantation;
- 5) Fell trees with a classified diameter smaller than allowed, that are rare species, that local people tap for resin or that yield high-value resin;
- 6) Import seeds of forest vegetation species without a visa from the scientific authorities from the exporting country and without permission from Ministry of Agriculture, Forestry and Fisheries;
- 7) Export Forest Products & By-products without license;

Any individual who has committed Class II forestry offense multiple times shall be penalized as stated for a Class I forestry offence in this law.

Article 99

Any individual who has committed the following offenses shall be punished under Class III forestry offense subject to one (1) month to one (1) year in prison or fine of one (1) million to ten (10) million Riel. All evidence shall be confiscated as state property:

- 1) Use any type of chainsaw to harvest Forest Products & By-products without permission from the Head of Forestry Administration;

- 2) Import all types of machinery, vehicles and chainsaws to harvest Forest Products & By-products without an appropriate evaluation by the Ministry of Agriculture, Forestry and Fisheries;
- 3) Export Forest Products & By-products in a container without a seal from the Forestry Administration;
- 4) Harass, harm, or collect egg or offspring of, an endangered or rare wildlife species or destroy its habitat;
- 5) Establish stock place, wholesale and retail depot for Forest Products & By-products or small scale of Forest Products & By-products processing facilities without permit or contrary to permission;
- 6) Establish industrial forest factory, sawmill, Forest Products & By-products processing facilities or any type of kiln that use Forest Products & By-products as raw material or as an energy source contrary to permission of the Forestry Administration.

Any individual who commits a Class III of forestry offense multiple times shall be penalized as stated for Class II of forestry offense in this law.

ANNEX B

COMMUNITY RIGHTS AND RESPONSIBILITIES IN THE FORESTRY LAW

Note: The following is a simple listing of important rights and responsibilities of communities that are found in the Forestry Law (2002). Language has been simplified for ease of use, but the Article from which the right or responsibility comes from is noted.

1. Community Rights

Article 10, point 2, second paragraph

Local communities have customary user rights to collect Forest Products & By-products within Protection Forest areas, but with only minor impacts of the forest. The rights to collect Forest Products & By-Products will usually be more limited in Protection Forest Areas than other areas of the Permanent Forest Reserve.

Article 40

In general, you may use the forests, including the forest products and by-products contained in the forest, for traditional family use. You do not need a permit for this type of use, and you do not need to pay royalties or premiums for this type of use. The use of forest products and by-products should be sustainable, not disrupt the natural balance of the forest ecosystem, and respect the rights of other users.

- 1) You may collect dead wood in the forest for cooking and heating purposes.
- 2) You may collect wild fruit in the forest, as long as you do not kill or harm the tree to get to the fruit.
- 3) You may collect bee honey in the forest.
- 4) You may hunt common wildlife species, such as wild pig.
- 5) You may collect resin from trees in the forest, as long as you do not kill the tree to take the resin.
- 6) You can use timber from the forest to build your residence, but you should check with the local Forestry Administration officials to find out how much timber you are allowed to use in your area.
- 7) You may use timber products to build stables for animals or fences.
- 8) You may use timber products to make agricultural instruments.
- 9) You may collect grass cutting for livestock, or let your livestock loose to graze in the forest.
- 10) You may barter or sell forest products you have collected as long as the amount you are collecting does not cause significant damage to the forest and the activity is sustainable. People you sell to may have to get a transport permit and pay necessary royalties and premiums.
- 11) You may not transfer your traditional user rights to other individuals, by contract or other agreement.

Traditional user rights in some areas may be limited by law, such as in Protection Forests.

Article 44

A local community, operating under a Community Forest Agreement, shall have the rights to harvest forest products & by-products within the demarcated forest area stated in the Community Forest Agreement and consistent with the Community Forest Management Plan.

A local community can not use the Community Forest in the form of a concession, nor sell, barter or transfer its rights in such forest to a third party.

Article 45

The government can recognize your traditional spirit forest areas as protection forest.

It is prohibited to harvest a community's spirit trees, so a community may specially mark these trees as spirit trees to protect them. If the community has a Community Forestry Agreement, then the spirit trees should be identified in the Community Forestry Management Plan.

2. Community Responsibilities (Prohibitions)

Article 30

It is prohibited to operate a charcoal, or other type of kiln in the Permanent Forest Reserve.

You may not process other forest products & by-products on a commercial scale: For example, you may not operate a sawmill operation.

Article 31, paragraph 4

You may not establish a new household or settlement along public or forest roads in the Permanent Forest Reserve. The Forestry Administration considers this to be encroachment on forest lands, and there are penalties under both the Forestry Law and Land Law if you do this.

Article 32

You may not displace, remove, or destroy the boundary posts or signs marking the forest boundaries.

You may not let your cows or other livestock graze in areas with tree seedlings (re-planted areas), where there is tree re-growth after harvesting or forest fires

Article 36

You may not set forest fires in the Permanent Forest Reserve.

Article 38

You may not use a chainsaw to cut trees or timber unless you have a special permit from the Forest Administration. Traditional or customary use rights do not include the use of chainsaws.

Article 49

It is strictly prohibited to hunt, harm or harass all wildlife:

- 1) Using all types of dangerous means;
- 2) Hunting during the prohibited season; and
- 3) Hunting in protected zones and special public areas.

It is prohibited to commit the following activities against rare and endangered wildlife species:

- 1) Harass or harm any such species or its habitat;
- 2) Hunt, net, trap or poison;
- 3) Keep in a family house as a pet.

Article 59, paragraph 1

People have the obligation to participate in tree planting and reforestation.

Article 96 - 99

The following are activities that are subject to penalties in the Forestry Law and that are of particular concern to communities:

- 1) Fell tree without authorization;
- 2) Transport Forest Products & By-products without a permit;
- 3) Fell, saw, split and chop logs within the Permanent Forest Reserve, or use a chain saw as a means to harvest forest products without the special permit or tag;
- 4) Hunting in public area.
- 5) Destroy, alter, or damage the boundary posts of the forest areas;
- 6) Clear forestland and enclose it to claim for ownership;
- 7) Set forest fires intentionally;
- 8) Establishing all types of kilns that use Forest Products & By-products as raw material without permit;
- 9) Hunt wildlife in closed season or in protected zones;
- 10) Hunt, kill, trade, or export rare or endangered species of wildlife;
- 11) Hunt wildlife by dangerous means;
- 12) Use any type of chainsaw to harvest Forest Products & By-products without permission;
- 13) Harass, harm, or collect egg or offspring of, an endangered or rare wildlife species or destroy its habitat;



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