



Preparing REDD in Viet Nam, Lao PDR and Cambodia

Designing a REDD-compliant Benefit Distribution System



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Preparing REDD in Viet Nam, Lao PDR and Cambodia

Designing a REDD-compliant Benefit Distribution System

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30 September 2010

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This publication has been made possible in part by the generous support of the Sida.

Published by: IUCN, Gland Switzerland and Bangkok, Thailand

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ISBN: 978-2-8317-1341-0

Citation: Mather, R. (ed.) (2010). *Preparing REDD in Viet Nam, Lao PDR and Cambodia: Designing a REDD-compliant Benefit Distribution System*. Gland Switzerland: IUCN. 65pp.

Cover photograph: IUCN Viet Nam

Produced by: IUCN Asia Regional Office

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List of Acronyms

ADB	Asian Development Bank	FCPF	Forest Carbon Partnership Facility
AFD	Agence française de Développement.	FFRDF	Forest & Forest Resources Development Fund
APSARA	Authority for the Protection and Management of Angkor and the Region of Siem Reap	FIA	Fisheries Administration (of MAFF)
ARBCP	Asia Regional Biodiversity Conservation Program	FIPI	Forest Inventory and Planning Institute
BDS	Benefit Distribution System	FLEG	Forest Law Enforcement and Governance
BOD	Board of Directors	FLEGT	Forest Law Enforcement and Governance, where the "T" stands for international trade
CBI	Community Biodiversity Investment	FPD	Forest Protection Department
CC	Climate Change	FPDF	Forest Protection and Development Fund
CDM	Clean Development Mechanism	FPU	Forest Protection Unit
CF	Community Forestry	FRDF	Forest Resources Development Fund
COP	Conference of the Parties	FSC	Forest Stewardship Council
CPCs	Commune People's committees	FSSP	Forest Sector Support Partnership
DAFO	District Agriculture and Forestry Offices	GDANCP	General Department Administration for Nature Conservation and Protection
DANIDA	Danish International Development Agency	GHGs	Greenhouse Gases
DARD	Departments of Agriculture and Rural Development	GoL	Government of Laos
DFID	Department For International Development	GoV	Government of Viet Nam
DoF	Department of Forestry	GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
DoFI	Department of Forest Inspection	IDA	International Development Association
EC	European Commission	IUCN	International Union for Conservation of Nature
EPF	Environment Protection Fund	JI	Joint Implementation
ERI	Environmental Research Institute	JICA	Japan International Cooperation Agency
ESIAs	Environmental and Social Impact Assessments	KfW	KfW Entwicklungsbank
ET	Emissions Trading	LEnS	Lao Environmental and Social Project
FA	Forestry Administration	MAF	Ministry of Agriculture and Forestry
FAO	Food and Agriculture Organization	MAFF	Ministry of Agriculture Fisheries and Forestry National Fishery Administration

MARD	Ministry of Agriculture and Rural Development	PSC	Project Steering Committee
MLMUPC	Land Management, Urban Planning and Construction	REDD	Reducing Emissions from Deforestation and Forest Degradation
MoE	Minister for Environment	REL	Reference Emissions Level
MoF	Ministry of Finance	RGC	Royal Government of Cambodia
MoI	Ministry of Interior	SBCA	Seima Biodiversity Conservation Area
MONRE	Ministry of Natural Resources and Environment	SDC	Swiss Development Cooperation
MPI	Ministry of Planning and Investment	SENSA	Swedish Environmental Secretariat for Asia
MRV	Monitoring, Reporting and Verification	SFE	State Forest Enterprises
NAFRI	National Agriculture and Forestry Research Institute	SFW	Special Financing Windows
NCCC	National Climate Change Committee	SNC	Second National Communication
NFP	National Forest Programme	SNV	Netherlands Development Organization
NGO	Non-Government Organization	SOCs	State-owned companies
NLMA	district level land management offices	SUFORD	Sustainable Forestry and Rural Development Project
NPV	Net Present Value	SUFs	Special Use Forests
NSAP	National Strategy and Action Plan	TFF	Trust Fund for Forests
NSAs	Non-State Actors	TWG- FE	Technical Working Group on Forestry and the Environment
NTFPs	Non Timber Forest products	UNCERD	United Nations Committee on the Elimination of Racial Discrimination
OCCS	Office of Climate Change and Sustainability	UNDG	UN Development Group
ODA	Overseas Development Assistance	UNDP	UN Development Programme
PAFO	Provincial Agriculture and Forestry Offices	UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
PAMBs	Protected Area Management Boards	UNEP	United Nations Environment Programme
PAs	Protected Areas	UNEP-WCMC	UNEP World Conservation Monitoring Centre
PES	Payment for Environmental Services	UNFCCC	United Nations Framework Convention on Climate Change
PFES	Payments for Forest Environmental Services	USAID	U.S. Agency for International Development
PFMBs	Protection Forest Management Boards	VCM	Voluntary Carbon Market
PICE	Policy Implementation and Capacity Enhancement	VPA	Voluntary Partnership Agreement
PNG	Papua New Guinea	WB	World Bank
PPC	Provincial Peoples' Committee	WMU	Window Management Unit
PRF	Poverty Reduction Fund	WREA	Water Resources and Environment Agency

SUMMARY

Exports of carbon credits are no different from exports of timber, fish, shoes, cars or carpets, in the sense that all are subject to ever stricter social and environmental standards in international markets. But REDD (Reducing Emissions from Deforestation and Forest Degradation in developing countries) is still a moving target: the rules have not been fixed yet.

What is already clear is that the extent to which an individual country will be able to attract international investment and REDD payments will depend to a considerable extent on its ability to put in place a system that rewards forest managers who are changing their behaviour to reduce deforestation and degradation. In other words, they need to establish a benefit distribution system (BDS) that is transparent and efficient, and is seen to reward those actually providing the (emissions reduction) service. In addition to this, the establishment of a Monitoring, Reporting and Verification (MRV) system will be equally critical (although this subject is not addressed in this report which only focuses on the BDS).

For Viet Nam, Laos and Cambodia there are huge opportunities in REDD. But can they carve a niche for themselves vis-à-vis the competition of biomass rich “big hitters” such as Brazil, Indonesia or the countries of the Congo Basin, as a provider of carbon emissions reduction credits that offer *real* environmental and socio-economic benefits? And will the flow of funds to them be sufficient enough to make the system viable?

For this to happen, they must upgrade and adapt their forest management systems to demonstrate clear and direct links between the carbon performance, the economic and biodiversity co-benefits, and the payment. In all three countries, seemingly all-powerful States in reality have demonstrated a weak capacity for enforcing regulatory frameworks efficiently and fairly on the ground. For the success of REDD, the importance of ensuring that financial benefits also reach the local forest stewards, i.e. the rural communities and local administrations, cannot be overstated.

Sida's Swedish Environmental Secretariat for Asia (SENSA) has supported this IUCN project to review issues relating to REDD compliant Benefit Distribution Systems in Viet Nam, Cambodia and Lao PDR. This built on, and followed-up on activities IUCN had already facilitated for UN-REDD in Viet Nam, with a series of REDD+ BDS research, workshops and outreach in Laos and Cambodia to accelerate learning between neighbouring countries. It also provided the opportunity for IUCN to link into discussions on the UN REDD-readiness Roadmap process for Cambodia. Results of the studies, workshops and discussions are presented in this report.

Summary Findings from Cambodia

The unique history of Cambodia, its trajectory of rapid development and the current challenges it faces over land tenure, governance and technical capacity result in a requirement for careful consideration and study of the Cambodian context for project planning if REDD is to be introduced successfully. This report presents information on some of those general challenges, as well as more specific issues relating to BDS design, and presents key conclusions and options for dealing with the challenges.

There are a number of important big picture constraints in Cambodia which must be addressed as part of successful REDD development.

- Limited capacity to monitor forest management and distribute revenues in the natural resource sector in an equitable and transparent manner

A BDS system requires the ability of the concerned institutions to manage funds generated from REDD projects in a manner consistent with international best practise – separate from state budgets autonomous from state political influence and with mechanisms which ensure accountability and transparency. Furthermore a BDS must efficiently link payments from international carbon buyers with the outcomes of forest management at the local level. Cambodia has faced many challenges in distributing funds from central authorities to the local level according to such criteria. As Part of the Kingdom's process of Decentralisation and De-concentration, communes received funding for critical infrastructure projects. Although there were undoubtedly success stories from the project there have also been wide scale accounts of politicisation and interference from powerful patrons in the management of such funds (Netra & Craig, 2009). Local communities have also faced similar problems in the area of land and natural resource management.

- The issue of Land Tenure, which forms the platform for which REDD projects are built upon, remains a largely controversial issue within the Kingdom:

The issue of economic land concessions has caused considerable controversy within the Kingdom. Recent intensification of conflict relating to these concessions has placed Cambodia at the centre of extensive criticism. Insecurity in land tenure has also been on the rise in rural areas (NGOF, 2009). Security of Community Forestry areas has also not been without its challenges where in some cases, community forests have been encroached upon by private and government actors (Diokno, 2008; Gutal, 2007).

- Cambodia faces a low level of capacity to monitor the social and ecological indicators required for the success of REDD projects:

Cambodia, being one of the most aid dependant countries in the world (Godfrey *et al.* 2002) is only now starting to develop the capacity of indigenous institutions to carry out the nation's development programs. A requirement of any REDD project is that there is a clear transfer of capacity from developed to developing world. For instance, Cambodia should eventually be able to conduct its own ecological and social monitoring of projects and cater the specifics of such projects to a Cambodian context. Cambodia is currently far from having the capacity to do such monitoring on its own and would thus be dependent on foreign entities. Many past projects have failed to adequately consider how capacity development can realistically be achieved and have preferred to employ expensive foreign consultants (Godfrey *et al.*, 2002)

- Land alienation among Indigenous communities:

Indigenous land issues have become a major concern of many of the donors and governments which have bilateral relations with Cambodia. REDD documentation specifically mentions the need to ensure the inclusiveness of indigenous participants in any REDD projects – and ensuring that there are mechanisms to guarantee they receive benefit from projects on par with non indigenous participants. A currently major concern is the slow pace indigenous communities have been receiving land title (Diokno, 2008). The process has been characterised by political interference and only three communities have thus managed to formally register as legal communities (with two still awaiting provision of land). Also of concern is the manner in which some donors and NGOs have pushed ahead with natural resource management projects in collaboration with the RGC, without adequately resolving the issues surrounding indigenous land relations. Some REDD projects are likely to be on land indigenous people are dependent on.

- The need for a cautious approach

There is need to strike a balance between the deficiencies in institutional capacity and the inevitability of Cambodia being a major site of REDD activities. Some suggest that Cambodia is not ready to be host to REDD projects: the human rights situation, lack of separation between judiciary and administration, a culture of impunity, an increasingly entrenched system of patron client relationships, lack of land tenure and the governments slow progress with titling projects, wholesale selling of state owned natural assets, inability to effectively manage forest areas, continued granting of large scale illegal land concessions by the government and the critical situation indigenous communities face in increasing land alienation all seemingly provide some justifications as to why Cambodia should not host any REDD projects. To others, a major justification for continuing the REDD program in Cambodia is that activities will actively contribute to resolving these issues which require urgent attention.

Cambodia needs a cautious approach, and could even be seen as a special case within the UN-REDD programme which requires considerable investment and extra pre project preparation compared to other countries. At this point it would be much more effective (in terms of both money and time) if effort was primarily invested in improving the environment in which REDD activities are likely to operate rather than narrowly focusing on projects and legislation in isolation.

- Initial focus on research

Initially activities could focus on research. This should be done in collaboration with Cambodian institutions, so as both capacity and technical skills can be transferred from developed world intuitions and researchers and so an extensive research programme can be set up which prepares the country for REDD implementation. The aims of such a programme could be: to produce a detailed needs assessment for what is needed for the country to host REDD projects, contribute to a greater understanding of how the Cambodian political economic environment affects natural resource management, conduct extensive field research to evaluate previous REDD related or community conservation projects and extensive research with local and government stakeholders to establish expectations, concerns and possible ways forward for REDD in Cambodia.

Summary findings from Laos

Laos has a large forest area (especially per capita), and relatively high per capita emissions (including from fuel wood). While globally deforestation and forest degradation account for ca. 20% of greenhouse gas emissions, in Laos it is 72%. In the Lao context, the forest resources that will be generating carbon credits will most likely be claimed or classified as State property by the Government of Laos (GoL) that are being held in trust for the entire country.

- Establishing the legal basis for REDD+

It is suggested that a legal enabling document is drafted and enacted in the near future that will create a REDD+ Special State Fund for the purpose of pooling and distributing monies being made available from the international community for REDD+ activities, including donor funds that are earmarked for the implementation of the REDD+ Strategic Plan that is scheduled to be drafted and approved later this year. The fund can then be modified as necessary over time in conjunction with the nested (local\province\national) and phased approach that the GoL has already decided is the best way forward in the Lao context.

In addition to financial resources contributed by donors in support of REDD+ activities, a portion of the revenues generated from the various sub-national private sector/voluntary carbon market or future cap & trade related sub-national projects could also be fed directly into the fund in order to ensure that monies generated from these projects go directly back to the local communities that are associated with the forest resources where the carbon credits were generated. The GoL can decide to either create an entirely new fund, or modify an already existing State Fund (i.e. FFRDF, EPF, or PRF) in order to maximize governance efficiency and to ensure the utilization of already existing knowledge and capacity that exists in the country.

- Provisions of a Prime Ministerial Decree

Regardless of the option ultimately chosen by the GoL, there are certain provisions that should be incorporated into a Prime Ministerial Decree in order to ensure that the fund mechanism ultimately chosen will meet minimum standards and protocols of the international community that is ultimately supporting such a fund. The following are general examples:

- Organizational makeup: The fund management should have participation from all relevant government institutional organizations, private sector representatives, donors, civil society and local government.
- Transparency: Financial data and planning documentation should be readily available for public review.
- Use of funds: REDD+ Fund resources should be able to be used for natural resources management and conservation activities in the forestry sector, governance capacity building and also community development/poverty reduction activities.

The project reviewed experiences with existing payment mechanisms in Laos, providing useful insights for future REDD+ payments with respect to revenue retention, and payment structure.

- Revenue Retention

Source of funds for administration: The first issue is where the funds for administering the REDD+ funds and payment system should come from: the REDD+ revenue or the Lao government budget? In one instance, the administrative costs are covered by the State budget (Forest Resources Development Fund, FRDF) while in other cases the costs are paid by donor funds (Environmental Protection Fund, EPF; and Poverty Reduction Fund, PRF).

How much for administration? The second issue, then, is how much of REDD+ funds should be retained to pay for administration costs. The PRF has used around 20% of the total fund for administration, which is lower than the 25% permissible by the World Bank. In Viet Nam, the Five Million Hectare Reforestation Program (5MHRP) set a flat rate for management costs at 10% of the total budget; of which 0.7% is for national level, 1.3% for provincial level and 8% for the project developers¹. The PFES Pilot payment scheme set a rate of 19% of the total revenue to be used to cover administration costs (10% at the provincial and 9% at the district level). (Cao Duc Phat 2010). Nevertheless, fixed percentages risk leading to a situation where some entities cannot cover their costs, and may encourage inappropriate expenditures by others. It is, therefore, advisable that the rate be based on real costs.

Flexibility to deal with changing costs: Finally, as REDD+ fund allocation is contingent on performance, that is on achieving the specified emissions reductions targets that a given level of government administration is mandated to deliver, any method for calculating retention levels should also be flexible enough to cope with changes in costs over time. Normally, costs of introducing and setting up REDD+ programs will be higher than the subsequent costs of running the system once it is established.

- Payment Structure

Capacity to manage the fund: The existing experiences with the existing Lao funds discussed shows that complex procedures for fund management have been developed to meet the requirements of donors like ADB and WB (PRF and EPF). Over the years, human resources have been developed for fund management. Only PRF appears to have developed a comprehensive structure down to village level. EPF has sub-ordinate offices at the provincial level and FRDF will start offices at this level from late 2010 onward. In addition, experiences so far have only been with managing project grants and little if at all have been with distribution of money to different stakeholders, as should be the case with REDD+ revenue distribution.

Cash or non-cash payment: Cash payments are desirable from the point of view of the ultimate beneficiaries. However, given the lack of experience with cash payment so far, it is advisable to start with non-cash payments while developing the necessary framework for both beneficiaries and staff involved in the REDD+ revenue distribution for cash payments.

Stakeholder participation: so far, in the management of the three existing funds, the decision-making involvement of *non-state* actors (NSAs, i.e. civil society and the private sector) has been minimal. For REDD+ revenue distribution, however, the active involvement of NSAs in the fund management and payment system is pre-requisite to ensure transparency, equity and accountability. The REDD+ payment system will have to take this into account.

Management level: given the in-country experience discussed earlier, it is desirable to work at the national and provincial at the beginning. At the same time, capacity at the district level should be built so that, in the long run, payments can be managed at the district level.

Fund management agency: although the goals of all three existing funds are relevant to REDD+, PRF would seem to have the most adequate set up to manage REDD+ revenues. It has established management structures from the national down to village levels, and developed procedures to meet the strict requirements

¹ Decision 100/2007/QĐ-TTg of the Prime Minister of Viet Nam, dated 6 July 2007

from international donors. Nevertheless, even the PRF is not yet ready to take over the specific requirements of REDD+ fund management.

Other key issues highlighted by the study relate to beneficiaries, and timing of payments.

- Beneficiaries

Which types of resource users should receive REDD funds? For Lao PDR where most of forests are still legally owned by the State, the important issue is how local communities can benefit from future REDD+ revenues. In the short run, local communities can be contracted to protect the forest resources and thus be paid for the labour and time they invest. At the same time, however, it will be necessary to accelerate the forest land allocation to local communities to ensure they will benefit from REDD+ in the long run.

- Timing of Payment

Timing and frequency of REDD+ fund disbursement from international sources to Lao PDR and then to ultimate beneficiaries. If REDD+ payments were only to be made *ex post* or “on delivery” of carbon emissions reductions, it would be hard or even impossible for many groups to invest their very limited resources into REDD. The delay in payment would have significant impacts on the ability of different stakeholders to implement REDD+ projects (ICF International 2009, cited by Cao Duc Phat 2010). It is, thus, preferable to establish *ex-ante* payment at the out-set of a REDD+ project to at least cover some initial costs of establishment, in combination with *ex-post* performance-related payments. This would increase the likelihood for participation by especially the poor as there is less risk involved. Nevertheless, the issue how to acquire the funds needed for upfront payments still needs to be discussed and resolved.

Summary findings from Viet Nam

Viet Nam is well placed to develop a REDD+ compliant BDS as a result of many years of experience with similar systems such as Programme 661 (also known as the Five Million Hectare Reforestation Programme), which pays households to protect forests, and internationally supported payments for forest environmental services (PFES) pilot projects.

Viet Nam’s functioning administration, social stability, and relatively high degree of tenure security are assets that Viet Nam can use to gain a competitive edge in a future international REDD+ regime. Viet Nam also has large areas of degraded forest that if allowed to regenerate naturally could rapidly sequester carbon and conserve soil and water. (In fact, 1.2 million out of Viet Nam’s 16 million hectares of forest are classified as “chua co rung” or “not yet forested”.)

To assist the government of Viet Nam design a REDD+ BDS, UN-REDD funded a study of BDS issues and options under the leadership of the Ministry of Agriculture and Rural Development (MARD). The study was coordinated by IUCN and carried out by a team of national and international consultants in late 2009. The study’s executive summary was presented at COP15 and a final version was completed in January 2010 and is available from <http://tinyurl.com/vietnam-bds-study>. Several conclusions of note are:

- Potential revenues

REDD+ could generate about \$80-100 million/year in Viet Nam—3-4 times current ODA support to the forestry sector. However, this potential can only be realized if government takes steps to ensure that REDD+ is implemented effectively. This involves: developing a comprehensive REDD+ strategy to generate and sustain emissions reductions at the local level; developing the necessary capacity to measure and report on emissions reductions; and putting in place a BDS that meets the requirements of international investors and the needs of forest managers.

- Implementation at the national level

Because REDD+ is still under negotiation, it doesn't exist legally yet. This fact is obscured by the many "REDD" projects that are underway in Viet Nam and other countries targeting the voluntary carbon market. But REDD+ will probably be implemented at the national level in order to avoid the problem of within-country leakage. This implies that funds will flow to a national entity before distribution to those responsible for the emissions reductions (assuming emissions have indeed been reduced below the reference level). Reporting on national performance is more complex than reporting on site performance because it must encompass the entire forest estate, not just "islands" of conservation success in a "sea" of deforestation.

- REDD+ can learn from PFES, but they are not the same thing

Finally, REDD+ has much to learn from PFES projects, which have been successfully piloted in Viet Nam, but the two should not be confused. Both concepts involve rewarding land users for the environmental services they provide, but there are several important differences, including the fact that under PFES as currently practiced in Viet Nam, the buyers of environmental services are local companies that have been mandated to do so by central government at an administratively set price. Buyers of REDD+ credits, on the other hand, would be foreign entities that offer prices that have been determined internationally, possibly through market forces. This means that REDD+ may not be managed in the same way as existing PFES schemes.

Of the study's policy recommendations, several stand out:

- Addressing Legal constraints to Community involvement

Experience from Lam Dong and other projects shows that the allocation of forest to communities rather than households increases equity in the payment distribution and reduces the scope for elite capture. The 2004 Forest Protection and Development Law recognizes communities as forest owners. But the Civil Code does not recognize "community" as a legal entity, which means that they cannot sign contracts. A MARD review of community forestry in 34 of Viet Nam's 40 forested provinces showed that provincial governments are reluctant to grant long-term forest tenure to communities because they cannot assign responsibility to individuals for breaches of contract. Given the government's obsession with fire suppression, government officials are understandably nervous about allocating forests to groups that cannot be legally held to account for their actions.

- Avoiding Perverse Outcomes

It is necessary to avoid a potentially perverse outcome of putting a price on forest carbon without the necessary safeguards. If this price is high enough there will be a strong incentive to control forest, and since two-thirds of Viet Nam's forest is owned by state owned companies or people's committees, REDD+ could run counter to the government's long standing policy of allocating forest to households and communities. In some provinces, the allocation of forest that belongs to bankrupt state forest enterprises has stalled because the provinces do not want to take responsibility for the ensuing redundancy payments. If the value of the standing forest increased sharply, the incentive to allocate forests to non-state actors might weaken.

- Establishing a Credible Recourse Mechanism

Any BDS, however well designed, will inevitably give rise to complaints about who benefits. To ensure the credibility of the BDS, it is necessary to build in a recourse mechanism so that complaints can be independently reported and addressed. In Viet Nam, citizens' complaints have to be submitted to the responsible government department. But if the same department is responsible for the BDS, then a conflict of interest arises. Some form of third-party oversight is required. Viet Nam has little experience of civil society participation in environmental decision making and there are no models that can be used as-is. However, a Vietnamese NGO has established a telephone hotline and case tracking system that has demonstrably increased public participation in reporting on the illegal wildlife trade (over 2,300 cases have been logged since the hotline started in January 2005). The NGO also monitors the government response and publishes a quarterly newsletter. A REDD+ compliant BDS could apply a similar model.

1. Introduction: Objective, Outputs and Activities of this project

This Sida-SENSA supported project was developed to build on work started by IUCN under UN-REDD in Viet Nam, to share experience and approaches from Viet Nam with Lao PDR and Cambodia, and to initiate similar work in these two countries.

Established in 2008 and initially primarily funded by the Norwegian government, the UN-REDD Programme (www.un-redd.org) helps developing countries, including Viet Nam, to get ready to participate in a future REDD+ mechanism. Of the “REDD readiness” issues that need to be addressed, the government of Viet Nam identified the design of a transparent and equitable benefit distribution system (BDS) as a priority. This was innovative because few countries have looked at how benefits should be distributed. It was also courageous because, unlike carbon monitoring and other technical challenges, it raises sensitive governance issues.

To assist the government of Viet Nam design a REDD+ BDS, UN-REDD funded a study of BDS issues and options under the leadership of the Ministry of Agriculture and Rural Development (MARD). The study was coordinated by IUCN and carried out by a team of national and international consultants in late 2009. The study identified constraints that need to be addressed in order to create a REDD+ BDS, and ways to address them. In doing so it examined the practicalities of REDD+ implementation in Viet Nam. It therefore provided a reality check at a time when much of the REDD+ discourse is abstract and theoretical. The study’s (at that time) draft executive summary was presented at COP15, and was subsequently finalised in January 2010.

The **objective** of the present project was the delivery of “Support to the successful implementation of future REDD initiatives in Viet Nam, Laos and Cambodia” through the provision of input to the design of a “REDD-compliant benefit distribution system” in each country. The specific **outputs** of this project were:

1. Additional work to fill some of the gaps emerging from the BDS study that IUCN was contracted to conduct in Viet Nam for UN-REDD. A final version of the executive summary presented at Copenhagen was completed in January 2010 and is available from <http://tinyurl.com/vietnam-bds-study>.
2. A rapid BDS study that provides a roadmap for the legal and administrative reforms that Laos will need to implement to fully benefit from REDD (using the study from Viet Nam as a model)
3. A preliminary study on REDD BDS possibilities and issues in Cambodia
4. Briefing of government and non-government stakeholders on the results of the studies, and specific reforms that will be required in order for these countries to position themselves to benefit from REDD (including addressing the flow of illegal timber from Laos and Cambodia into Viet Nam).

The main questions that the studies set out to address were as follows:

- What are the relevant laws for receipt of international revenues? Are they adequate?
- To what extent do the forest laws and environmental law enforcement systems of the countries contribute to successful REDD development?
- Are there agreed legal definitions of key terms relating to benefit sharing
- Who owns the carbon?
- What central government agency and fund should receive REDD revenue?
- What should the respective roles be of different ministries?
- What % of revenue should be retained by central government?
- For what REDD activities should the funds be retained?
- Which entities should receive revenues transferred to sub-national levels? Provincial Peoples’ Committee (PPC)? Departments of Agriculture and Rural Development (DARD)? Other?
- What percentage of revenue should be retained by sub-national entities?
- Should disbursement to sub-national entities be based on performance?
- If so, how should performance at sub-national level be measured?
- How should payments to the ultimate beneficiaries be structured? Households? Communities?
- At how many levels can performance-based payments realistically be made?
- Participatory procedures: who can participate?

- How will the local communities be engaged and what will be their rights (participation, right to access resources) in REDD project areas?
- What accounting/reporting standards need to be applied to ensure payments are based on performance and there is appropriate financial management?
- What conflict resolution/recourse mechanisms are needed to address complaints and concerns?
- What are the countries' comparative advantage in a future REDD carbon market? (and what may be the recommendations for improving a good climate for investors)
- What are the regional leakage issues, and options for addressing them?
- What approximate level of long-term income could REDD generate for the countries?

In addition to conducting the studies, the main activities of the project consisted of a series of workshops and briefings to share the Viet Nam experience with Laos and Cambodia, in order to encourage similar reforms in all countries. A number of communication materials were produced in English and local languages, including Issue Briefs, and web articles.

2. Background

More than a decade ago, the international community came together under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC) to consider what can be done at the international level to abate and mitigate the dangerous impacts of human induced global warming. More importantly, in 2005, a number of countries entered into the legally binding Kyoto Protocol, which set emission reduction targets for each individual member country. The protocol also produced a number of mechanisms for member countries to reduce emissions targets based on the principle of common but differentiated responsibilities. These mechanisms are: Emissions Trading (ET), The Clean Development Mechanism (CDM) and Joint Implementation (JI). The basis of these mechanisms is the commoditisation of greenhouse gases (GHGs), where countries which produce less than their annual allowance of GHGs, are allowed to sell credits to those member countries which produce more than their annual allowance of GHGs. Over the last few years, a number of countries such as Australia and Norway and regional bodies such as the European Union have produced their own internal carbon trading systems. The global market produced through the Kyoto protocol will complement these national and regional markets. Although such a global market is yet to be fully established it is expected to be one of the largest commodity markets, in dollar values, in the world (UNFCCC, 2009).

Forest loss and degradation are responsible for about one-fifth of global greenhouse gas emissions, more than the entire transport sector. It is not only a major contributor to global warming but there is evidence that it's possible to put a price on standing forest that makes conservation the economically rationale land use. In technical terms, there are large areas of forest where the price-elasticity of supply is high, meaning that decisions about whether to keep or clear forest are highly responsive to its price.

This price sensitivity makes forest conservation potentially a very efficient way to reduce green house gas emissions, which is why reducing emissions from deforestation and forest degradation (REDD) was first put on the agenda of the UNFCCC in 2005. At the Eleventh Conference of the Parties Meeting (COP11) in Montreal, Costa Rica and Papua New Guinea (with the support of other rainforest countries), placed on the agenda a mechanism for reducing emissions from deforestation in developing countries. Their proposal was the establishment of a programme whereby developing countries would be financially compensated for reducing their emissions through the selling of carbon credits from reforestation and conservation projects. The proposal received general support and two years later it was included as an expanded concept, "REDD+", incorporating enhancement of existing forest carbon stocks, in the Bali Action Plan at COP13 in 2007.

Since this time, REDD has received a huge amount of interest by both annex 1 (developed countries with set reduction targets) and non annex countries, Non Government Organisations (NGOs) and communities. Although REDD will not officially come into existence until after the first phase of the Kyoto Protocol (post 2012), there have been many efforts to prepare recipient countries for future REDD projects. During the COP 13 meeting, the Bali action plan was created which began to detail principles and procedures for REDD projects. In addition, it was also agreed that REDD+2 projects would play an important role in the post 2012

² Within this report 'REDD' is generally used as a shorthand for 'REDD+'

framework (projects which actively contribute to increased carbon stocks). Although there remain many gaps and difficulties in the establishment of the REDD programme COP15 (Copenhagen) saw REDD receive considerable support and agreement from parties in comparison to other aspects of climate negotiations at the conference. Funds have now been established to prepare countries for REDD and currently pilot projects are being put in place. Yet there still remains uncertainty about REDD – at this stage it is not even guaranteed that there will be a functioning UN endorsed global market. This is a major challenge for countries trying to prepare legislative and institutional environments for REDD.

2.1. Main Actors

For REDD+ to succeed, poor nations with forests must implement policies that reduce and eventually eliminate forest clearing and degradation, and/or policies that enhance existing forest carbon stocks. Those that do will be rewarded financially from governments and businesses in the developed world that need to offset their own emissions. The concept is simple; the reality is likely to be much more complex.

The UN-REDD programme is the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, and involves collaboration of three key UN Agencies - UNDP, FAO and UNEP. It is an effort to create a financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. The predicted significant flow of funds could reward a meaningful reduction of carbon emissions and could also support new, pro-poor development, as well as helping to secure biodiversity vital ecosystem services. The UN-REDD programme was initially funded by the Government of Norway, but subsequently Spain and Denmark also became donors.

In 2009 the UN-REDD programme released and committed around \$20 million. Indonesia, Papua New Guinea and Viet Nam were selected as the first pilot countries in Asia Pacific, and Cambodia, Nepal and Sri Lanka joined later, with the Solomon Islands also applying to join.

The World Bank is also currently playing an important role in funding REDD preparation project activities through its Forest Carbon Partnership Facility (FCPF) – a \$300 million fund for small projects. In addition the governments of Australia and the UK have also been providing considerable funding for REDD preparedness projects in parts of Asia, Latin America and Africa.

2.2. The Voluntary Carbon Market (VCM)

Although no UN endorsed market for REDD carbon credits exists, there is currently a private market which many REDD pilot projects have focused on. The private market has its own verification body (The Voluntary Carbon Standard), which allows REDD projects to produce credits which can be sold on the global market alongside other types of carbon credits (e.g. from energy efficiency). A major difference between activities focused on the voluntary carbon market and the UN-REDD endorsed market is that the latter focus on the national level while the former operate at the project level. Within the VCM, carbon stock accounts are taken at whatever size the project is, where it is expected that the area of land the project covers will hold a certain amount of carbon which can be translated into carbon credits and sold on the market. The UN-REDD programme level however only considers the carbon stored at the national level. Even if a particular project successfully prevents deforestation and degradation and can calculate the amount of carbon stored, if the national stock overall is in decline, the project will not generate any credits. This will be a major challenge for Cambodia where so far early REDD initiatives have tended to solely focus their concentration at the project rather than national level.

It is also worth noting that there are expectations that the UN-REDD endorsed credits will receive a substantially higher price on the market than those authenticated through the voluntary market system.

3. Initial REDD Pilot Projects and Experiences

Through the UN-REDD programme, a number of pilot studies and preliminary capacity building and implementation projects have been conducted in the initial nine partner countries. However, due to the recentness of these programs, only limited data and experiences have been made available. Early experience in some other Asia-Pacific countries (including Viet Nam) is of considerable interest for subsequent REDD development in Cambodia and Laos.

3.1. Cambodia

On the basis of a request from the Director General of the Forest Administration to UN-REDD, FAO and UNDP are providing support to the government to develop a REDD-readiness road map. Cambodia has already been accepted by the World Bank REDD financing mechanism (FCPF) and UN-REDD but significant programme funding is not yet available.

As with the case of PNG, there are very relevant lessons to be learnt from Indonesia which should be carefully considered in the case of Cambodia's future REDD scheme. Cambodia, like Indonesia has also experienced problems of ethnic conflict over land. For years domestic NGOs have been publicising cases of 'indigenous land alienation' in the highlands of Ratanakiri, Mondulkiri and Stung Treng. More recently this issue has received considerable attention from international bodies, foreign donors and governments. UNCERD has repeatedly expressed its concerns over the deteriorating situation of land alienation in the indigenous highlands of Cambodia. Considering that the highlands will be one of the focal areas for future REDD projects, the politics of indigenous participation in natural resource management need to be considered in great detail.

3.2. Indonesia

Currently Indonesia has the most developed REDD legislation of the initial nine UN-REDD member countries. In 2008, a climate change working group was established which has since developed an extensive set of REDD laws and regulations. The principle components of the REDD legislation are as follows:

- The REDD Regulation lists (exhaustively) the different types of Indonesian forest areas that are eligible to host REDD projects. Several of these are defined by reference to concessions that may be held by private parties in respect of forest areas, for example Wood Forest Product Utilisation Concessions and Ecosystem Restoration Concessions.
- REDD projects may also be undertaken on forested lands that have not been formally designated as forest areas, but are subject to pre-existing land rights (for example agricultural land owned by a private entity for the purposes of developing an oil palm plantation). However, forested land which is not yet subject to any form of land right or other right has not been included in the REDD Regulation's list of eligible land areas, and so will not be able to be used as an Indonesian REDD project site
- REDD projects must be submitted by national entities (the concession holder) and international entities (government or private entity) to the Ministry of Forestry which then forwards it to the REDD commission for assessment. If approved the proponents will receive a REDD implementation license of which the maximum duration is initially 30 years. The international entity then pays the national entity directly. Presently it remains unclear whether the government will be entitled to receive a percentage of the credits (earlier drafts indicated a rate of 30%).
- Like PNG, Indonesia is currently trying to align its REDD legislation with that of international standards to incorporate projects in the voluntary carbon market into the international UN-REDD market.

So far the proposed Indonesia UN-REDD and voluntary REDD programs have received mixed reactions from the international community. The Australian government has held such projects as an exemplarily example of successful rainforest conservation projects which bring genuine benefits to local communities. The UN-REDD programme has also largely promoted the Indonesian programme as an important first step in REDD implementation – although also noting concerns in a lack of detail in the specific mechanisms for project implementation. However the Indonesian REDD experience has also generated criticism and concern from a range of national and international actors.

A joint international study on the Indonesian REDD programme including researchers from the Kent University and the Centre for International Forestry Research has suggested that "...[the] *initiative will not significantly*

reduce deforestation in northern Sumatra and will have little impact on orangutan conservation," Primarily they believe this is because of the large tracts of forest which will remain outside the REDD programme will be open to palm oil plantation development. *"In essence, REDD may simply end up resembling other types of conservation projects that promote the establishment of protected areas, where conservation funds help finance monitoring and law enforcement within protected area boundaries"* (Gaveau et al., 2009)

In March 2009 the United Nations Committee on the Elimination of Racial Discrimination (UNCERD) wrote a letter to the Indonesian government warning that poor implementation of REDD projects could lead to increased conflict over land.

"The Committee has received information according to which Indonesia continues to lack any effective legal means to recognize, secure and protect indigenous peoples' rights to their lands, territories and resources. For instance, it seems that Indonesia's 2008 'Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation' reiterates Law 41 of 1999 on Forestry that appears to deny any proprietary rights to indigenous peoples in forests," wrote Fatimata-Binta Victoire Dah, Chairperson of the Committee for the Elimination of Racial Discrimination (UNCERD, 2009).

The anthropological work of Tania Li, which has examined the politics of highlander and community participation in conservation projects in Indonesia, also provides important lessons for any future REDD projects. Li's work highlights the importance of understanding 'communities' and 'indigenous' peoples as heterogeneous entities which are located in uneven power relations between outsiders (whether it be government or non-governmental organisations) and those who depend on forests for their livelihoods (Li, 2007). Li's work also challenges the logic of technical conservation interventions aimed at 'empowering' communities. Using Indonesia as a case study she shows how many such interventions have failed to bring about material change for such people due a lack of consideration of the historical and political context that they are embedded in. Li's work, in the context of Indonesia, where land issue have often been characterised by ethnic contestation, offers a stern warning against REDD projects which don't have clear mechanisms for ensuring indigenous participation and accrual of generated benefits.

3.3. Lao PDR

Laos is so far not one of the UN-REDD programme pilot countries but is part of the FCPF, which will fund pilot REDD-related activities in forest outside of protected areas, while GTZ will fund REDD related activities in some protected areas and their buffer zones.

3.4. Papua New Guinea

Papua New Guinea was one of the initial proponents of the adoption of a REDD programme at COP11. Since that time it has established an Office of Climate Change and Sustainability (OCCS) which oversees and carries out all climate change and REDD activities. Currently the OCCS is helping to draft REDD legislation. Some of the key aspects of this legislation include:

- The government will regulate and facilitate the sale of carbon however the right to carbon will stay with the landholder;
- There will be a 2% tax on REDD projects, similar to the share of proceeds under the CDM – which will go into an adaptation fund; and
- Existing carbon agreements have split benefits 80:10:10 - 80 to landowner, 10 to company and 10 to payment of monitoring and verification costs. The Government is still yet to confirm they will follow similar benefit sharing ratio, but landowners are pressing for their share not to be reduced.

(Source: UN-REDD, 2009)

A major challenge of the government has been to incorporate existing voluntary carbon agreements into national and international REDD policies. Poor regulation has meant that many of the 45-50 agreements between communities and private carbon companies have failed to abide by either international standards or the few existing national standards. Carbon trading entrepreneurs have taken advantage of this situation and the general low level of knowledge about carbon trading systems amongst forest communities to secure agreements for large tracts of land. This has occurred even where the future price of carbon and hence benefits have been unclear (and even whether it will be possible to get the project authenticated). As the majority of land in Papua New Guinea is under customary title and requires direct consent from local

communities to sell to a third party, carbon brokers have negotiated directly with communities, bypassing government regulatory systems. However, as mentioned above, it is likely that it will be mandatory for the OCCS to act as facilitator in all carbon trading negotiations.

In 2009, Papua New Guinea came into the international spotlight when a number of documents, issued by the OCCS, giving large tracts of lands to traders without due process, were leaked to the media. The government put a freeze on all carbon deals between traders and communities and replaced the head of the OCCS who it was discovered was a partner to one of the larger companies the OCCS had given licenses to. As the government continues to develop its REDD legislation and begins the process of incorporating deals from the voluntary market into the UN-REDD market, it remains to be seen how effective it will be in reinstating confidence in its ability to manage forest resources. The fact that currently a 158,000 ha logging concession in Madang continues even after it received a court order to cease activities, highlights some of the political and institutional difficulties the country is likely to face in future REDD projects.

These issues highlight the importance of land tenure and government capacity to enforce land laws within any future REDD projects – and the need to regulate carbon traders and get them to work to approved standards and practices.

3.5. Viet Nam

Amongst the UN-REDD pilot countries, Viet Nam's progress in officially launching its UN-REDD National Programme in September 2009 and starting up some key activities puts the country in a leading position to share lessons with other countries preparing for REDD. So far the UN-REDD programme for Viet Nam has assisted the government in establishing a national network for REDD and contracted IUCN Viet Nam to facilitate a preliminary study on a Benefit Distribution System (BDS). The proposed recommendations developed as an outcome of this study were adopted by the Vietnamese Government and used in negotiations in Copenhagen.

Viet Nam is well placed to develop a REDD+ compliant BDS as a result of many years of experience with similar systems such as Programme 661 (also known as the Five Million Hectare Reforestation Programme), which pays households to protect forests, and internationally supported payments for forest environmental services (PFES) pilot projects. The focus on BDS also capitalizes on Viet Nam's functioning administration, social stability, and relatively high degree of tenure security. These are assets that Viet Nam can use to gain a competitive edge in a future international REDD+ regime. Viet Nam also has large areas of degraded forest that if allowed to regenerate naturally could rapidly sequester carbon and conserve soil and water. (In fact, 1.2 million out of Viet Nam's 16 million hectares of forest are classified as "chua co rung" or "not yet forested".)

3.6. Linkages to FLEG and FLEGT

The fact that countries will be rewarded for national level performance has an important implication: if emissions reductions at one location are not to be offset by emissions increases elsewhere, REDD+ must be accompanied by substantially improved forest law enforcement and governance (FLEG). This is a key issue in the region – e.g., in Viet Nam, the Forest Protection Department (FPD) records 50,000-60,000 forest crimes a year while the area of natural forest continues to decline. In the absence of improved FLEG, REDD+ could exacerbate conflict between forest owners. The inflow of significant funding could also block progress in a sector that badly needs innovation and reform. The REDD+ and FLEG agendas are therefore two sides of the same coin: they are mutually supportive and require careful sequencing and coordination.

The World Bank launched a FLEG initiative in 2001. In 2003, the EU published a FLEGT Action Plan, where the "T" stands for international trade. The purpose is to use the incentive of access to the EU market for wood products to promote improvements in forest governance. Countries that cannot demonstrate that their wood product exports are made from legal timber will be banned from the EU market. (The US has introduced similar legislation in the form of the Lacey Act.) In effect, the "T" adds teeth to FLEG. The action plan includes a provision for the negotiation of a Voluntary Partnership Agreement (VPA) between wood product exporters and the EU. In May 2010, MARD sent a letter to the EU indicating its interest in starting VPA negotiations. These negotiations are an opportunity for reflection and reform to address Viet Nam's deep-seated forest governance problems.

FLEGT, ranging from prevention through detection to suppression of illegal logging, is an essential precondition for the future success of REDD: if the governments are unable to regulate and monitor forest resource use then they cannot meet REDD requirements. The failure to move ahead with community forest allocation, poorly regulated/managed plantation and infrastructure development, and the huge supply gap that drives illegal timber cutting and trading are serious barriers to internationally competitive REDD projects in the three project countries.

IUCN is facilitating a multi-stakeholder FLEGT process that aims to build agreement among the relevant government agencies, businesses, and civil society on how Viet Nam, Laos and Cambodia will move the forest industry to a more sustainable footing in general, and how they should adapt to the new and emerging rules in key international “green” markets in particular. For example, in 2008 Viet Nam exported \$2.8 billion worth of wooden furniture, up from a mere \$560 million in 2003. This phenomenal growth has driven an equally rapid growth in Viet Nam's timber imports, which supply 80% of the furniture industry's timber demand. A significant proportion of this timber comes from Laos and Cambodia, and much of it is undocumented.

Two-thirds of Viet Nam's furniture exports go to the USA and the EU. However, continued unrestricted access to these markets has been called into question by recent legal changes (Lacey Act, etc.). So Viet Nam needs to implement a system to filter out imports of illegally harvested timber from Laos and Cambodia, and ensure that its imports are transported, processed, and exported in accordance with relevant laws and regulations. This makes it clear that, if not tackled, weaknesses in the countries' forest governance system jeopardize their ability to benefit from REDD revenues.

The above also explains why a regional approach is necessary. Viet Nam has effectively “exported” its deforestation to its neighbours and this would need to be accounted for in a global REDD regime. Only a regional approach can address regional “leakage” as a result of the flow of illegal timber from Laos and Cambodia into Viet Nam.

Viet Nam, Cambodia and Lao PDR (plus Thailand and Myanmar) have either applied to start or expressed interest in starting VPA negotiations with the EU. A key component of a VPA is a timber harvesting legality definition that is developed through a multi-stakeholder process. A VPA potentially offers a strong incentive for government to address regional timber flows from high-risk countries and to incorporate civil society feedback in the legality definition—key elements of a national REDD+ strategy.

4. Guiding Principles and Considerations for a REDD BDS

Although there is currently not yet a systematic set of principles and procedures for the implementation of REDD projects, the UN-REDD programme has begun to set out baseline considerations for BDSs. At the very fundamental level, all REDD projects will have to follow the five inter-related principles of the UN Development Group (UNDG). These include:

- Human-rights-based approach to programming, with particular reference to the UNDG Guidelines on Indigenous Peoples' Issues;
- Gender equality;
- Environmental sustainability;
- Results-based management; and
- Capacity development.

In addition, each UN Organization will:

- Build on its comparative strengths;
- Facilitate partnerships, drawing on expertise from a range of national and international organizations acting as executing agencies to ensure well coordinated and timely action; and
- Actively contribute to coordination and mainstreaming in-country, while avoiding duplication of effort with other REDD initiatives.

In a recently released UN-REDD working paper: *Background Analysis of REDD Regulatory Frameworks* (2009), it was stated that:

Regardless of the structure of an international REDD mechanism, there are a number of elements that underpin that mechanism that have achieved general support from those countries most actively engaged in the REDD negotiations. They include:

- Participation in REDD must be voluntary;
- REDD must respect national sovereignty;
- REDD should be flexible, recognise different national circumstances and enable broad participation;
- Permanence, additionality and leakage should be addressed;
- Long-term sustainable forest management should be promoted;
- Positive incentives need to provide sustainable and long-term flows of funding to stakeholders;
- Support should be provided to establish robust mechanisms to support measurement, monitoring, accounting, reporting and verification; and
- If a market based approach is to be used, it must be performance based using ex-ante crediting.

More specifically, in the context of the preparation of a BDS, the UN-REDD programme document outlines that funds generated from REDD projects must be managed in a transparent manner with participation from local stakeholders and civil society groups.

The government of Norway has proposed a number of useful principles which are particularly relevant to Cambodia, Laos and Viet Nam. These are:

- Broad references to “rights” that include both procedural rights within REDD processes and rights to land and natural resources;
- Broad terminology to refer to “Indigenous Peoples and Local Communities,” encompassing a broad category of actors and recognizing collective rights (Annex 5.1);
- Cross-referencing to obligations in human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Annex 5.3.1).⁵² This has the advantage of avoiding renegotiation but the disadvantage that some parties are not signatories of such agreements;
- Establishing public consultation procedures at national/international levels;
- Strengthening local organizations and groups that represent the interests of (Indigenous Peoples) IPs and (Local Communities) LCs;
- Training staff in local regulatory and funding agencies; and
- Development of social impact assessments and involvement of IPs and LCs in assessment.

The Bonn guidelines which have been developed at various COP meetings and detail the steps involved in the process of obtaining access to genetic resources and benefit-sharing, are a useful guide for REDD project guidelines. The Bonn Guidelines specifically state that competent national authorities are responsible, among other things, for putting in place “mechanisms for the effective participation of different stakeholders, as appropriate for the different steps in the process of access and benefit sharing, in particular, indigenous and local communities [...] promoting the objective of having decisions and processes available in a language understandable to relevant indigenous and local communities” (para. 14). CBD parties were further called upon to ensure that decisions are made available to relevant communities and relevant stakeholders and “support measures, as appropriate, to enhance indigenous and local communities’ capacity to represent their interests fully at negotiations” (para. 16(a)). In addition, users were called upon to seek informed consent prior to access to genetic resources; respect customs, traditions, values and customary practices of indigenous and local communities, [and] respond to requests for information from indigenous and local communities” (para. 16(b)).

5. Findings of the study from Cambodia

5.1. The Cambodian Context and Implications for REDD

The unique history of Cambodia, its trajectory of rapid development and the current challenges it faces over land tenure, governance and technical capacity result in a requirement for careful consideration and study of the Cambodian context for project planning if REDD is to be introduced successfully. This report presents information on some of those general challenges, as well as more specific issues relating to BDS design, and presents key conclusions and options for dealing with the challenges.

5.1.1 Current Legislation Related to Forest Management

The management of forests within Cambodia falls under a number of institutions depending on how the forest is classified. There are a number of laws relating to management of forest land that are critical for REDD in Cambodia – The Land Law (2001), The Forestry Law (2002), the Fisheries Law (2005) and the Protected Areas Law (1993, 2008). At the broader level, the Land Law classifies land into four main categories:

1. **State Public Property:** land that carries a public interest and is held by the state in public trust. It cannot be sold or transferred to another entity. This includes protected areas and waterways.
2. **State Private Property:** state land that does not carry a public interest and can be sold and transferred to another entity. This includes degraded forest and all land that economic land concessions are on.
3. **Indigenous Land:** land where indigenous communities have established their residence and where they carry out traditional agriculture. In order to receive collective ownership communities must go through a process of registering with the Ministry of Interior (MoI).
4. **Private Land:** The Royal Government of Cambodia (RGC) along with a number of partner organisations has been conducting a large long term project which attempts to provide urban and rural Cambodians of which the majority don't have land title with official land tenure.

More specifically applying to forested areas, is the Forestry Law (2002). Under this law, the Forestry Administration (FA) is in charge of most of Cambodia's forest estate (except for protected areas under the jurisdiction of the Ministry of Environment, flooded forest areas under the jurisdiction of the Fisheries Administration and forests managed by the APSARA Authority). The law sets out the responsibilities of the agency for different types of forest. Under Article 10 of the Forestry Law, the permanent forest estate under the jurisdiction of the FA, is defined as including both *permanent forest reserve* lying on state public property and *private forest* lying on private property. *Permanent forest reserve* is further divided into three categories:

1. **Production Forest:** areas of forest primarily for the sustainable production of timber or Non Timber Forest products (NTFPs)
2. **Protection Forest:** has the primary function of protecting forest ecosystems, conserving biodiversity and regulating water and soil resources.
3. **Conversion Forest:** degraded and idle forest (that will at some point most likely be re-classified as State Private Land and subsequently used for Social Land Concessions or Economic Land Concessions)

The FA has regulatory authority, but not management authority over forest resources on private land (*private forest*)

Protected Areas which are areas of high biological significance are State Public Property under the jurisdiction of the Ministry of Environment. Figure 1 summarizes the different types of forested land resources.

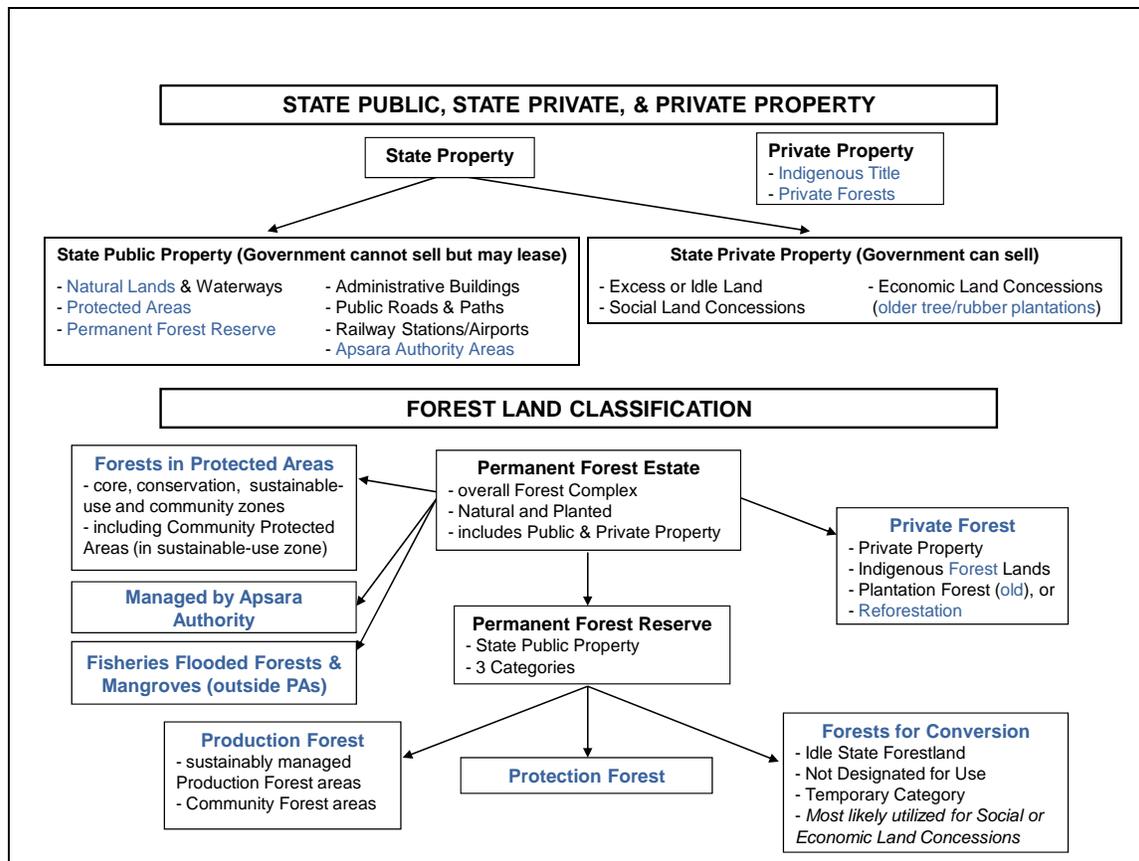


Figure 1. Types of Forests in Cambodia (Robert Obendorf and Nhean Munin, 2010, Cambodia REDD+ Legal Review)

6.1.2 Forest Loss and Economic Land Concessions

Cambodia is classified as a ‘high forest cover, high deforestation’ country, with approximately 10.7 million hectares of forest in 2006, and an annual deforestation rate of 0.5%. Forests in Cambodia fall under the jurisdiction of the Forestry Administration (FA) of the Ministry of Agriculture, Forestry and Fisheries (MAFF), with the exception of just over 3 million hectares of Protected Areas, which were declared in 1993 and are the responsibility of the General Department Administration for Nature Conservation and Protection (GDANCP) of the Ministry of Environment (MoE), and the flooded forest areas that are managed by the Fisheries Administration (FiA) of MAFF. According to land-cover analyses published by the Forestry Administration, between 2002 and 2006 Cambodia lost approximately 379,485 hectares of forest, which was 3.0% of its forest cover, or 2.1% of its land area (2002: 61.0% forest cover, 2006: 58.9%) (Clements, 2010).

Deforestation is driven by a complex mixture of factors, including:

- Improvements in accessibility to remote forested areas encouraged initially by a rapid increase in commercial logging activity in the 1990s, which ceased when the Government declared logging moratorium in 2002, and more recently by road-building projects;
- Expansion of towns and semi-urban areas;
- Uncertain land tenure, which encourages land-grabbing based on squatters rights, even though illegal under the Land Law (2001);
- Illegal logging and lack of Government capacity in remote areas to adequately manage forests, which are state public property under the Forestry (2002) and Land Laws;
- A rapid increase in agricultural expansion and other development;
- Increasing regional and global demand for raw materials; and
- Rural poverty, which is still widespread in Cambodia. The majority of the rural poor are dependent on forest resources for a portion of their livelihoods.

However, possibly the most significant cause is land clearance for small and large scale economic concession activities. This is mainly for agricultural activities (food crops, rubber and oil palm), and forestry plantations such as acacia. Figure 2 provides an indication of the extent of economic and social land concessions which cover around 12% of all arable land in the kingdom.

A lack of capacity to monitor concessions has meant that a common problem with the system has been concessionaires illegally encroaching onto forest lands. There have also been issues with the granting of economic concessions in forest areas that would be more appropriately designated as protection forest. Economic concessions can only be granted on state private lands. However forest areas which are state public land can be reclassified by the state as state private land to meet a public purpose – including through the granting of economic land concessions. Concerns have been raised about this process and its transparency.

The new National Forest Programme (NFP) aims to reduce the rate of forest loss and ensure sustainable management of the remaining forest resources. It is based on the continuation of a number of significant reforms that have been introduced since 2002. These include:

- *Demarcation, classification and registration of forest lands.* To date, pilot projects for method development have been initiated in four provinces.
- *Forest resource management and conservation.* Ten Protected Forests covering 1,434,032 hectares have been declared for forest conservation, watershed protection and sustainable use by local communities. This will be increased to 3 million hectares under the NFP. In addition 3.1 million hectares are Protected Areas under the management of the Ministry of Environment. A further 2.4 million hectares will be managed according to sustainable forest management guidelines and, possibly, forest management certification.
- *Forest law enforcement and governance (FLEG).* A range of improvements including development of chain of custody systems for harvested timber.
- *Community forestry (CF).* In 2006, there were more than 300 CF sites established, covering 218,647 hectares, and involving 614 villages. The Forestry Administration is currently reviewing nationwide applications for up to 325,000 hectares. The NFP aims at a national target of 2.0 million hectares of approved community forests and sees local management as a key component of efforts to reduce deforestation and forest degradation. The importance of community forestry was explicitly recognised in the RGC's Rectangular Strategy II (2008) (Clements, 2010).

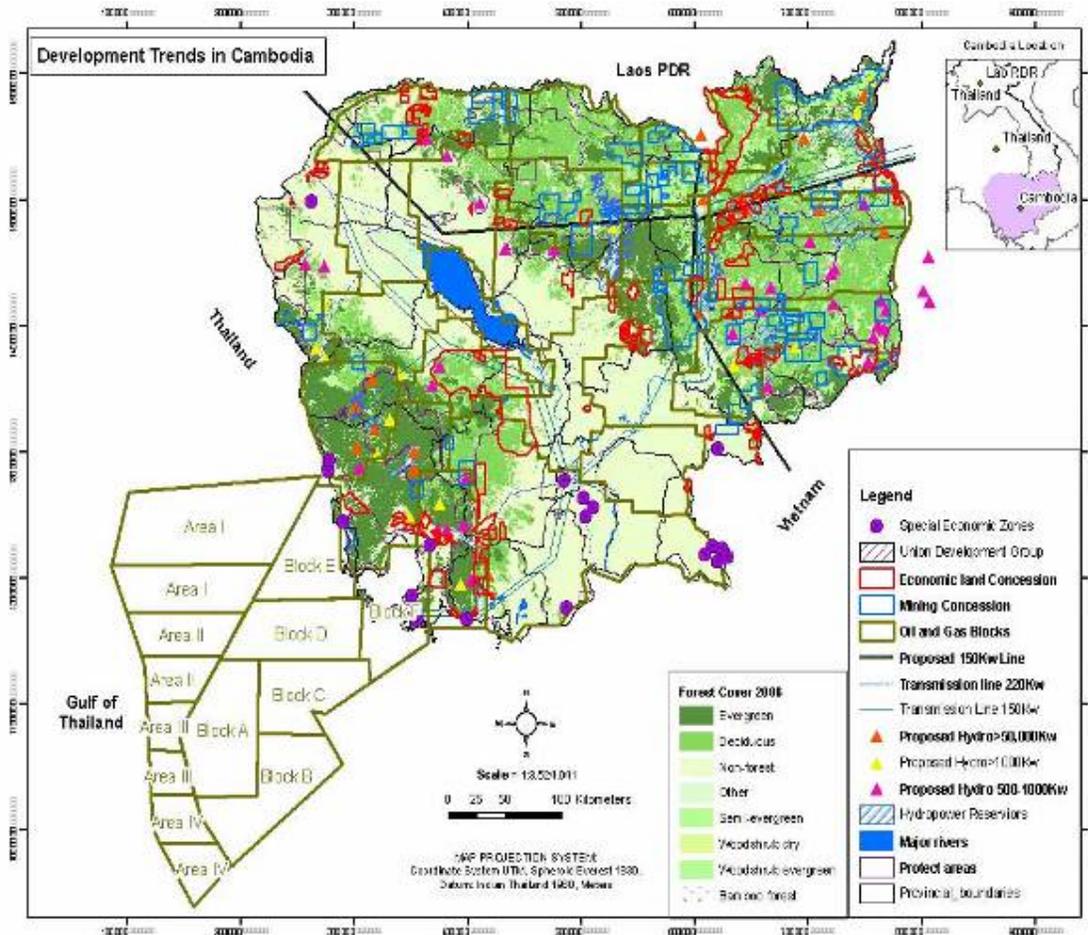


Figure 2. Land Concessions in Cambodia (Source: CCHR 2009)

6.1.3 Status of REDD in the Kingdom

In 2004, the Technical Working Group on Forestry and the Environment (TWG- FE) was set up to promote cooperation between donor and government agencies and act as a coordinator for forest related activities in the Kingdom. It is co-chaired by the Forestry Administration and a representative selected by development partners. The TWG-FE includes members from relevant ministries (Forestry Administration, Ministry of Agriculture Forestry and Fisheries, Ministry of Environment, Ministry of Economy and Finance, Ministry of Land Management, Urban Planning and Construction, Ministry of Industry, Mines and Energy, Ministry of Commerce and Ministry of National Defence), development partners (AFD, DANIDA, DFID, JICA, FAO, UNDP, USAID and World Bank) civil society and NGOs.

Cambodia has already started the development of two carbon storage projects: the Oddar Meanchey project and the Seima project in Mondulkiri. Decision number 699 of the Council of Ministers, approved the Oddar Meanchey pilot project which involves 13 community forests covering 66,000 hectares in 50 villages. The decree also established guiding principles for REDD projects to ensure that carbon revenues are used to: 1) improve forest management; 2) provide maximum benefits to local communities which participate in the project activities; and 3) support development of new REDD projects in Cambodia. In addition, the Decision requires that revenues from REDD for the pilot project are managed through the TWG-FE bank account, ensuring transparency and oversight. The project, developed in collaboration with the Clinton Climate Initiative, Community Forestry International, Terra Global Capital and PACT, will generate an estimated 8 million tons of CO₂ offset credits over the 30 year project life (Clements, 2010).

The Seima project covers 187,698 hectares of the Seima Biodiversity Conservation Area (SBCA) in Mondulakiri province. This pilot has been developed with the Wildlife Conservation Society (WCS), and covers one of the most important areas for biodiversity conservation in Cambodia. The Mondulakiri forests are also home to the indigenous Bunong minority, and the SBCA pilot will be an important demonstration of benefit-sharing from REDD to local people (Clements, UNDP/FAO 2010).

However both these projects operate within the Voluntary Carbon Market and were initiated before a comprehensive set of procedures and guidelines have been developed by the UNFCCC for REDD projects. To date, REDD activities and the development of procedures and legislation has been rather fragmented and piecemeal. On the other hand, at this early stage, it is probably better to have a variety of different approaches being tested, then after this learning by doing period has provided a better understanding of what works, a comprehensive national framework can subsequently be put in place.

As a national level mechanism to reduce emissions from deforestation and degradation, REDD potentially provides a future source of financing for implementation of the NFP and management of Protected Areas (PAs) as well as other activities likely to reduce emissions from forestry. Over the past two years Cambodia has made significant steps towards establishing REDD related activities. Key achievements to date have included:

- Sub-decree number 188, 4 November 2008, designated the FA as the responsible agency for assessing national forest carbon stocks;
- Creation of the National Climate Change Committee (NCCC), which includes representatives from 19 ministries and is responsible for coordinating climate related dialogue in Cambodia including mitigation (e.g. REDD+) and adaptation. The NCCC is chaired by the Minister for Environment (MoE), with the Prime Minister as the honorary chair. The NCCC is supported in its operation through the Cambodia Climate Change Alliance (CCCA), a multi-donor trust fund with financing from UNDP, EC, Danida and Sida;
- Dr. Omaliss Keo, Deputy Director of the Department of Wildlife and Biodiversity the Forestry Administration was designated as national REDD Focal Point, and the Forestry, Climate Change and Innovative Financing Working Group was created within the TWG-F&E;
- A Readiness Project Idea Note (R-PIN) was developed by the FA, which was submitted to the Forest Carbon Partnership Facility (FCPF) in late 2008. Following the submission Cambodia was accepted into the FCPF at the meeting in Panama in March 2009, although Cambodia has not been allocated any funds for development of a Readiness Preparation Proposal (R-PP, which replaced the R-Plan);
- In October 2009 Cambodia became an official observer of the UN-REDD Programme, Policy Board;
- In 2010 a number of task force meetings and training events have been held; and
- A series of background papers have been commissioned directly or undertaken by other development partners at the direction of the Taskforce. These background papers were designed to inform the Roadmap process.

The papers are:

- Assessment of land use, drivers of land use change and forest governance. Led by FAO. Initiated: January 2010, expected completion date: June 2010;
- General review of legal, policy and institutional arrangements relevant to REDD+. Led by consultant legal team. Initiated: March 2010, expected completion June 2010;
- Assessment of potential REDD+ co-benefits. Led by UNEP-WCMC. Initiated: March 2010, expected completion date: May/June 2010;
- Review of social and environmental safeguards. Planned consultancy;
- Technical assessment of possible options for MRV (Monitoring, Reporting and Verification) and setting Reference Levels. Led by Winrock International, partly funded by the ARBCP. Initiated: May 2010, expected completion date: July 2010;
- Capacity Needs Assessments and follow-up trainings for MRV and REL. Supported by the ARBCP. Initiated: April 2010, expected completion date: June 2010;
- Consideration of possible REDD+ strategies and implementation framework. Led by the REDD+ Taskforce. Status: ongoing; and
- Gathering information about existing activities, led by UNDP.

6.1.4 Current REDD Legislation

Although the RGC has committed to preparing Cambodia for REDD, the recentness of Cambodia's inclusion in the REDD programmes means that as yet there is no comprehensive legal framework for REDD projects. However previous pilot projects have set an important precedent for the way funds and benefits will be managed. One of the most important outcomes of REDD preparatory activities in Cambodia so far is decision 669 of the Council of Ministers. During the development of the Oddar Meanchey project, NGOs, donors and the head of FA (who initiated the project) lobbied the RGC (Council of Ministers and the Prime Minister) to develop legislation to allow FA to manage funds from the project. Decree 699 also articulates that at least 50% of all revenue generated from REDD projects must go to the community. It further states revenues from carbon sales will be used to: improve the quality of the forest, maximise the benefits to local communities participating in the project and study potential sites for new carbon REDD projects. Apart from being an important first step in developing REDD legislation, GD 669 also serves an important role in reassuring potential carbon buyers of the government's commitment to REDD projects. However, so far there remains ambiguity around this decision as most people have interpreted it as applying specifically to the Oddar Meanchey project while some have interpreted it as applying to all REDD projects. The role of other ministries and departments related to forest management in REDD currently remains ambiguous and as of yet there is not an actual mechanism for distributing funds to forest managers.

6.1.5 Issues in Forestry Management

Although a legal structure now exists in the Kingdom to manage forests, the various institutions responsible for forestry management and enforcement face a number of difficulties. These include:

1. A lack of clearly defined boundaries between different forest types: Many of the maps which demarcate different forest types were drawn up in Phnom Penh with limited field surveys to validate distinctions between different forest categories. Lack of financial and technical capacity is a barrier to mapping programmes, as is political interference. Borders placed on maps within ministries in Phnom Penh have often not translated into meaningful borders for people on the ground. FA, MoE and the Ministry of Land Management, Urban Planning and Construction (MLMUPC) are currently conducting a project aimed at reviewing and using ecological field surveys to re-demarcate different forest zones. However this is only occurring in a limited number of provinces. Broader demarcation and delineation plans are also outlined in the NFP. Requirement for Registration of State Lands is additionally highlighted in the 2009 Land Policy document.
2. Lack of capacity to manage and monitor forest zones: As the FA was only set up in 2004, it still has limited experience in the management of forests. Most of its budget comes from foreign NGOs and donors and it remains heavily dependent on foreign technical advisers and staff. Like all institutions in Cambodia it is also has a limited staff and budget.
3. Conflicting laws and lack of Decrees and *Prakas* to guide implementation: There are many inconsistencies in Cambodia's land law – especially in regard to how each type of forest category is classified. Whilst it is generally the case that laws are intentionally not overly detailed, this implies the need for additional documents (such as Decrees and *Prakas*, to spell out the details. In the forest sector a lack of sub decrees to specify the mechanisms for classifying and managing land has often led to the re-interpretation of laws by political elites.

6.1.6 Land Tenure and Land Disputes

Land tenure may possibly be the largest issue that REDD projects are likely to face. Figure 3 shows the spatial distribution of 173 cases of land conflicts in the Kingdom during 2008. NGO Forum on Cambodia (2006) reports that land alienation is increasing in severity in Ratanakiri province and leading to a "*disintegration of the social fabric of indigenous communities*". Similar statements have come out of research from Monduliri province, and have detailed a situation of land alienation amongst Bunong and Cham communities (Frewer, 2009, Diakno, 2008). Land tenure has been an issue of great concern amongst indigenous communities who have been extremely vulnerable to illegal evictions and land sales which alienate them from land. So far the 2001 Land Law has not provided an adequate system of Land Tenure for Indigenous communities. However the limited size of indigenous minority populations, and the area of land that could come under communal tenure, implies that this may not be a major problem for REDD implementation per se.

It is estimated that 21% (282,700ha) of six areas under environmental protection in Mondulkiri and Ratanakiri has been allocated to mining concessions and since 2007 and a further 7% (98,239ha) has been allocated as Economic Land Concessions (Land and Housing Working Group, 2009). In Kompong Speu, a sub decree signed by the Prime Minister allocated 17,650 ha of the Aural protected conservation area to a private agricultural firm (Phnom Penh Post 3/3/2010). Apart from violating numerous aspects of the 2001 Land Law (which states agricultural concession cannot be larger than 10,000) ha, such cases also illustrates the haphazard nature of land allocation and the culture of impunity that exists at the highest levels within the Kingdom.

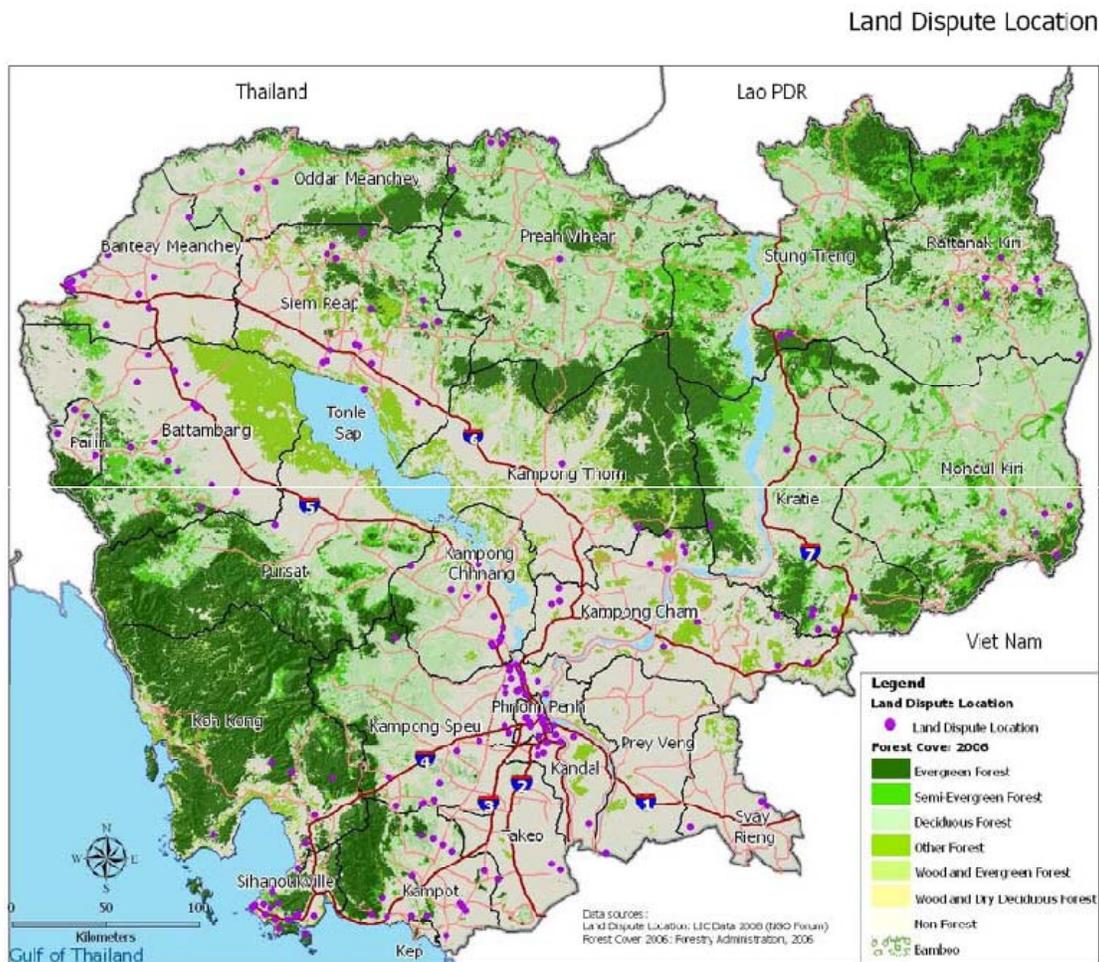


Figure 3. Land Dispute Cases in 2008

6.1.7 Community Forestry and Lands Managed by Indigenous Communities

Community forestry initiatives exist throughout the Kingdom. Covering approximately 0.7% of the total forested area and including 3.6% of the population (Sunderlin, 2006). Much of the projects have received extensive support from NGOs and in particular, FAO has played an important role in providing technical assistance and capacity building. Provisions found in the 2002 Forestry Law, and the community forestry sub decree (no. 7) give legal rights for communities to manage lands and provides the mechanism for the establishment of community forestry groups. FA is in charge of community forestry programmes, except where they fall on protected areas in which case the MoE takes jurisdiction. As to date there has been little peer reviewed research conducted on the effectiveness of Cambodia's Community Forestry Programme. One of the few pieces of research available was conducted before the CF guidelines that provided the necessary

tools to implement the CF Sub-Decree and relevant provisions in the Forest Law, were enacted in 2007. Since that time, a large number of CF sites have been formally recognised by the RGC.

The process by which indigenous communities receive land has also been problematic. Under the 2001 Land Law, communities can become registered under the Mol in order to receive community land title. Although donors and NGOs generally supported the provisions of the Law, (which is considered to be very progressive) subsequent sub-decrees have gone against the original spirit of the law being sufficiently vague to prevent progress on community registration. So far three pilot communities have been identified to partake in the initial process of becoming a legally defined indigenous community. To date only one community has actually succeeded in becoming a community - and it is still in the process of receiving land title. Based on the above information it is not possible to guarantee tenure for indigenous communities involved in REDD projects. Hence it is currently not possible to ensure that benefits will always be received by forest dependent communities.

6.1.8 Capacity at the local scale - communities

As forest dependent communities are at the centre of the REDD initiative, the way in which communities in Cambodia operate and interact with the law and authorities warrants careful consideration. Although many REDD policy briefs and documents openly state the difficulties of ensuring gender equity, ensuring participation of indigenous peoples, guaranteeing sustainability and transferring technical capacity and project ownership to communities, there are few specific mechanisms for how this is supposed to be achieved. Mostly it is assumed that capacity and skills *will just transfer* from project designers and implementers to communities and relevant institutions. Frequently the vague use of the word *participation* cloaks project ideas which do not sufficiently consider details. Furthermore it is not always clear what is meant by the term *community*. This section will start by considering some of the assumptions the REDD programme has about communities. These are:

- Communities are homogenous entities;
- Communities are able to maintain autonomy over decision making when projects are entrusted to them;
- Communities *understand* and *operate within* a framework of a rational bureaucratic set of laws and regulations; and
- Forest protection and conservation is in the best interest of forest dependent communities.

The first assumption that communities are homogenous does not hold much traction in a Cambodian context. Massive internal displacement has led to a situation where villagers and towns are composed of people who do not always have a long and close association. Furthermore there are large divides between those who have been settled in areas for long periods of time and new immigrants. This is particularly so in urban and peri-urban areas where poor rural migrants often experience a much lower standard of living than local permanent residents. The reverse is also true where labourers come into rural and forested areas as workers for agricultural and construction companies. Settled areas are rarely closed off from immigration and emigration and are constantly changing their ethnic, gender and age composition. There are also important internal hierarchies and power relations within villages where age, gender, ethnicity, political connections and income play important role in differentiating different individual members of a certain space.

The second assumption is that communities are able to maintain autonomy in decisions that affect them. Kimchoeun *et al.* (2007) states that the relation between Cambodian rural villagers and authorities has traditionally been – and continues to be - mediated through hierarchy, fear and respect. Villagers are often expected to relinquish their decision making autonomy upwards to powerful patrons. Recent traumatic experiences with authorities and the continuing power of the kinship system in Cambodia mean that *participation* and *accountability* must be understood as having unique meanings – not always parallel to common understanding used with western literature. People at the lower level are always situated in hierarchical chains where they are rarely able to make decisions in regards to the village and commune level without influence from those above them.

The third assumption is that communities understand and operate within set laws. The World Bank (2007) recently began research on the *demand side* of governance at the local level. The findings were that many local people: 1) Had very little understanding of even basic Cambodian laws and national and local administration structures and 2) had a preference for using informal mechanisms for resolving disputes. Hughes (2001) also had similar results. Many people try to avoid officials and the administration out of fear and concerns of having to pay excessive bribes.

The final assumption is that it is in the best interest of local people to join in conservation and biodiversity protection activities. There are a number of risks involved in local people entering into REDD projects. Primarily there is little guarantee that benefits will be accrued to local people.

Firstly the price of carbon is prone to market fluctuation – in the case of the Oddar Meanchey project the price dropped significantly throughout the project process. Even where there are guarantees of fixed prices, other benefits such as transfers of capacity development and project ownership cannot be guaranteed. From local perspectives, experiences would suggest that projects are also prone to political interference, benefit capturing by elites and changes in land tenure. Local people also have to invest considerable time and effort – not to mention opportunity costs, into REDD projects.

Finally it is often assumed that local people (and particularly indigenous people) are inherently conservation minded. During field research in Mondulokiri, the foreign staff of one of the largest NGOs supporting REDD projects noted that 'Bunong haven't internalised conservation principles the way other indigenous groups elsewhere have'. The preference of many Bunong people to only superficially participate in the organisations programmes while continuing hunting and land selling spurred such comments. However, considering that selling land and hunting were often much more likely to return greater benefits than collecting and selling NTFPs (especially in the context of harassment by FA officials and insecure land tenure) the decision to only participate superficially appears logical. Furthermore, Bunong people like any Cambodian citizens should be entitled to have aspirations of moving beyond a subsistence livelihood constrained to NTFP collection.

From this discussion, it is currently not possible to guarantee that outsiders will not interfere in the decision making and distribution of benefits generated from REDD activities. There are currently no basic social infrastructure or legal mechanisms which can effectively prevent power and benefits from being concentrated amongst the elite.

5.2. Cambodian Case Study – Oddar Meanchey

This section reviews a relevant example of community based forestry management in a Cambodian context.

Oddar Meanchey Project

The Oddar Meanchey project is the most relevant to the development of a REDD BDS. However the fact that it operates in the voluntary carbon market, was designed before the existence of extensive procedures and protocols on REDD projects, and has not yet clearly determined how benefits will be distributed, means that it can only serve as a very course guide for future REDD projects. The project involves 13 community forestry groups, comprising 58 villagers and based on 67, 853 ha of forestland. The various proponents and their roles are highlighted in Box 1.

As can be seen below, the project involves a wide variety of stakeholders with a range of roles. FA is the main institution responsible for the administration of the project. Input from PACT and the TWG-FE in decision making and fund management is also used as a method to ensure accountability and transparent use of funds. A major strength of the project is that it is based on a system of already established Community Forest Areas. Without having done field research on this project it is extremely difficult to give an evaluation of its strengths and weaknesses. However based on the Project Design Document (2009) and the FACT document *Communities and Carbon, Establishing a Community Forestry REDD Project in Cambodia* (2009), some issues become apparent:

1. There is no mechanism specified for how benefits are to be distributed. Both documents are extremely vague on this issue.
2. The focus on technical criteria for being approved within the Voluntary Carbon Market was to the detriment of the political and social criteria within a UN system.
3. The issue of how capacity development and transfer of technical knowledge will be conducted is not sufficiently addressed. The project is dependent on a foreign firm which takes a considerable share of the revenues generated.

4. A lack of transparency in how funds will be managed. Both documents state that the firm in charge of ecological assessments and monitoring will take a percentage of the credits without specifying the exact amount.
5. Lack of certainty over benefits. Fluctuations in the price of carbon play a large role in determining the financial benefits that local CF groups will receive. Coupled with a lack of understanding of how global carbon markets work, it is possible to see how the expectations of local CF groups could be unrealistically raised.
6. Dependence on patron client relations. The PACT documents states “*Fortunately in this case, H.E. Ty Sokhun was able to secure a special audience with H.E. Prime Minister Hun Sen, to whom he serves as an Advisor. Making a persuasive case for the FA’s ability to direct the majority of the carbon credit funds to the forest communities, the Administration in May 2008 was designated the official seller of forest carbon under Government Decision (GD) No. 699*”. The designation of an agency for future REDD projects should be based on a systematic evaluation of what is best for Cambodia rather than the ability of a single individual to influence high level decision makers. This decision has set an important precedent for all other REDD projects.
7. Uncertain Land Tenure status. A major positive aspect of the project is that it has sped up the process of receiving land tenure for the communities involved. Yet there are still CF groups who are waiting to receive land tenure and the project has gone ahead before land tenure could be guaranteed. There is also a question of equity here where communities involved in REDD projects may be favoured in their applications for land tenure in comparison to those not able to be involved in REDD projects.

Box 1. Proponents and their roles in the Oddar Meanchey Project

Organization	Role
FA	Seller of carbon on behalf of Royal Government of Cambodia. Participate in project design. Responsible for implementation of project actions, administering project funds and conducting monitoring activities. Support forest protection and enforcement, guarantee security of CF areas, capacity building for local communities, stakeholder consultation and conducting forest inventories. Daily administration of all project activities.
PACT	Assisting the FA with coordination of project actions. Participate in project design. Facilitation between various stakeholders, ensuring accountability, transparency in use of revenues, and good governance. Support with training of local communities, stakeholder consultation and integration. Designing and conducting social appraisals, and support with conducting forest inventories.
CDA	Support with implementation of project actions in the field. Support with training of local communities, stakeholder consultation and integration.
TGC	Participate in project design. Carbon calculations, development of Project Design Documents, creation of management system to gather monitoring data, technical assistance. Designing forest inventory plan. Monetization and marketing of project carbon credits as a broker.
CCI	Technical partner and funder.
Sonnenschein Nath & Rosenthal LLP	Legal advice on Emission Reduction Purchase Agreement
CFI	Project identification and design, research and monitoring
TWG-F&E	Project review and control, approval of future project actions.
Buddhist Monk’s Association	Facilitate cooperation with Sorng Ruka Vonn CF
Communities of Oddar Meanchey	Protect and manage forest/CF resources. Assist in planning and implementing activities to improve livelihoods and forest quality.

5.3. Principles and Scope for a REDD Benefit Distribution System for Cambodia

5.3.1 Principles for a REDD BDS in a Cambodian context

Apart from the broad UN-REDD principles, the following could be considered:

- A BDS should be detailed but flexible. A vague BDS and set of accompanying legislation will allow intermediaries to reinterpret laws for self interest - e.g. extracting fines or fees from local stakeholders or removing people from certain areas of land without proper justification – a pattern which has occurred in many projects in the country.
- A BDS should be managed so as to ensure that fund mismanagement and appropriation for individuals does not occur. Funds will need to be tightly regulated with mechanisms to ensure accountability. Currently it would be difficult if not impossible to rely on Cambodian institutions to manage funds in such a manner. Hence initially funds will need to be at least partially managed and monitored by institutions and organisations with a proven record in fund management.
- A BDS should include mechanisms to ensure capacity development. The capacity of Cambodian institutions to monitor the many ecological and social aspects of a REDD system is currently low. Initially there will need to be large investments to ensure that Cambodian institutions such as the Royal University of Phnom Penh, government agencies and NGOs can effectively manage the process of monitoring.
- Before BDS systems are set up uncertainties and contestations over land and land tenure should be resolved. Where this is not possible, detailed and systematic plans for how these issues can be addressed through the project need to be collaboratively developed *before* implementation of any REDD project. This should include comprehensive documentation of traditional/customary land and resource laws/rules, rather than just an analysis of Cambodian statutory law. The 2001 Land Law contains provisions to enable this to happen.
- Before any REDD projects are set up in areas where indigenous peoples occupy the land, systematic plans should be collaboratively produced which seek to detail how the inequalities and vulnerabilities of indigenous people can be addressed within the scope of the project. It should also be ensured that indigenous peoples are able to express and pursue lifestyle and livelihood aspirations in the same manner as any other Cambodian and not be confined by projects to notions of being 'traditional' (e.g. NTFP collection being seen as the only livelihood option). At the same time care should be taken that other vulnerable peoples, especially poor lowland migrants (e.g. migrants from Kompong Cham to the north east) are also treated in an equitable manner where project design takes into account the inequalities such groups face.
- Care should be taken that people who enter into REDD projects are not treated unequally in comparison to people not engaged in REDD activities in terms of access to basic rights and their treatment under Cambodian law.

The following sections aim to give a broad overview and provide some recommendations for the implementation of a BDS system. This section should be read cautiously as the recommendations below are only valid where the above mentioned concerns are met.

5.3.2 The Scope of a BDS System

There are a number of major issues to consider in design of a BDS system

- **National fund management:** Where funds are kept; project based, off central budgets, as a part of budgets.
- **Fund distribution mechanism:** Who are the actors involved in the distribution of funds; at what scales do they operate.
- **Legal framework for fund distribution:** what laws already exist, what laws may need to be introduced for funds to be channelled down to local communities.

- **Accountability and management of funds:** The mechanisms for ensuring that funds are distributed transparently and that fund managers are held accountable for decisions.
- **Percentage distribution of funds to different stakeholders:** how much revenue governments should retain and what percentage of revenues should be guaranteed to forest users.
- **Linking funds to outcomes:** The mechanism for linking payments from international sellers with the outcomes of forestry management at the local level.
- **Mechanisms for increasing capacity of monitoring:** How can technical skills and knowledge be transferred to institutions within participating countries so they are not dependent on foreign entities.
- **Recourse mechanism:** How can complaints, conflicts and points of contention which will arise during the initiative be resolved and dealt with in a fair, equitable and transparent manner.

National Fund Management

There are a number of options for national fund management. These include: direct transfer of funds between buyers and sellers as in the case of Indonesia and Papua New Guinea, using an off budget account as proposed in the case of Viet Nam or having REDD funds going to a specially earmarked fund within the budget. Figure 4 outlines these broad types of funding mechanisms, while Box 2 highlights some strengths and weaknesses of the different options.

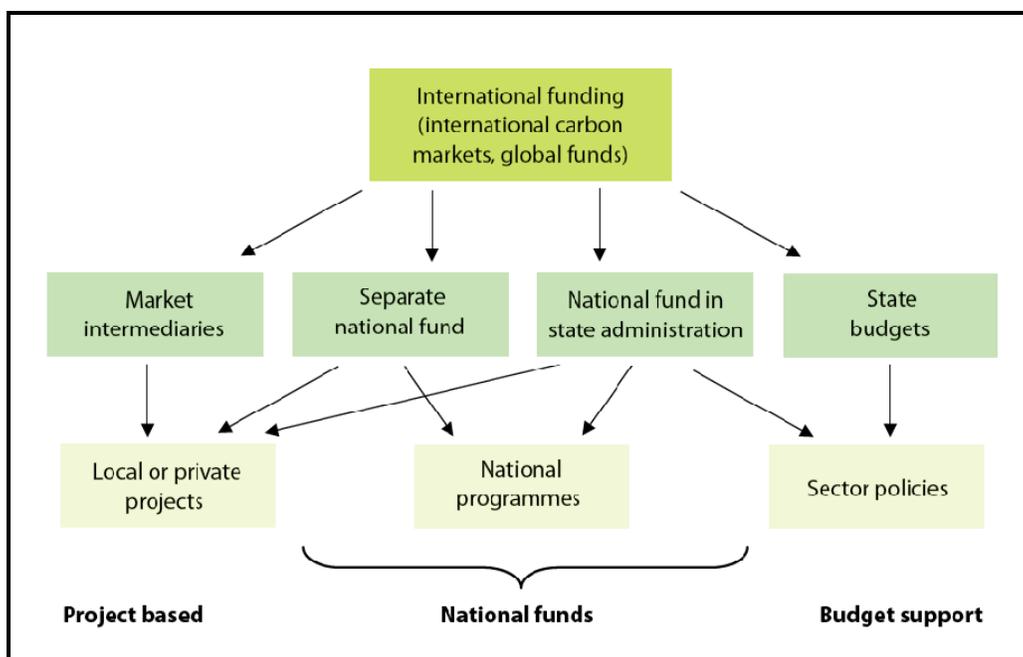


Figure 4. Options for fund management mechanisms

Box 2. Strength and Weaknesses of different fund management options

	Project	Separate REDD+ fund	REDD+ fund within state administration	State budgets
Political legitimacy	Capacity to deliver targeted results on carbon. National legitimacy may be weak, especially if transfers are large. High legitimacy among private carbon buyers and donors.	National legitimacy higher than for projects. Might raise issues of state sovereignty. Legitimacy among the private sector may be less than for projects.	Scores high on state sovereignty; secures high national control. Potential concerns by the private sector and donors. Some issues concerning capacity to target interventions.	Scores highest on state sovereignty and national control. Problems of private actor engagement highest. Issues concerning capacity to target interventions.
Governance	May attract intermediaries that use information asymmetry to their advantage. Opportunities for corruption. Challenges concerning overall transparency. Need to establish separate fiduciary systems.	Corruption is a challenge. Might avoid corruption in state administration, but has governance challenges for funds. Need to establish separate fiduciary systems.	Corruption a serious challenge, but variable. Relies on country systems. REDD+ resources might be used to improve governance.	Corruption a serious challenge, but variable. Relies on current budget systems. REDD+ resources might be used to improve governance.

Based on these considerations it would seem appropriate that Cambodia creates a separate REDD fund. A project approach would likely result in intermediaries taking advantage of a poorly regulated environment for personal gain – akin to the current situation of land concessions. There are also limited opportunities here for capacity development. Having the REDD fund entirely within the state administration or state budgets is also problematic as it requires a degree of transparency and accountability that the state cannot currently offer. Furthermore there are high transaction costs associated with these methods. By having a separate REDD fund, government counterparts can still take a leading role in administration, while also involving other stakeholders to ensure accountability and transparency.

A number of possibilities exist for the exact manner in which this fund is administered and who are the stakeholders involved in management. These include:

- FA along with the technical working group on forests and environment. Here funds could be managed by FA where major decisions have to go through the TWG-FE: a model used within the Oddar Meanchey project;
- Non Government actors with experience in fund distribution. For instance NGOS or the UNDP could distribute funds through a grant system or utilise already established connections with local forest users to distribute funds; and
- A trust fund which is administered by a range of government and non government stakeholders distributes funds to FA and MoE and then monitors further fund disbursement.

Of these options the third is preferred. In the first the sustainability of the TWG-FE cannot be guaranteed. There is also an over-representation of FA in this model – for instance the MoE will also need to play an important role in funds management (as under Cambodian law it is responsible for protected areas). The second option, which may be appropriate for individual projects, would be difficult to scale up to the national level. There are also sustainability issues here – especially if an NGO administers funds as well as a lack of opportunity for capacity development and ownership on the part of government counterparts. The third option would hopefully overcome some of these issues. Figure 4 details how this option would work.

Fund Distribution Mechanism

Based on the above model, it is suggested that funds be allocated from the national trust to the relevant FA and MoE departments where they will be further distributed directly to local beneficiaries. Depending on the land that the project is likely to be based on - protected areas or state public property, funds will be distributed to either FA or MoE. Funds will then be distributed to lower levels (with continual monitoring). In the case of FA, the existing structure of cantonments can be utilised. For the MoE the General Department of Administration for Nature Conservation and Protection (GDANCP) in cooperation with park managers could be used to distribute funds to local levels. It should be noted that this model skips the provincial level. This is due to high transaction costs associated with a low level of capacity to manage funds at the provincial level. However a phased approach could be taken where initial projects aim to increase the capacity of provincial authorities through involvement in monitoring and conflict resolution mechanisms so as to allow for their direct involvement in administration activities at a later stage in the project.

There are also many different options for how payments should be made at the local level -e.g. to community forestry groups, indigenous community groups, individuals, co-operatives, villagers, communes, etc. A dilemma with entrusting village and commune administrators with funds is that they are often heavily entrenched in hierarchical patron client relationships, furthermore increasing pressure on village and commune chiefs to support the dominant political party. Following the model of the Oddar Meanchey project, preference could be given to community forestry groups. However care should be taken that peoples who are unable, due to political and bureaucratic constraints, to form community forest groups, are not excluded from REDD projects. Where it is not possible to use the structure of community forest groups, co-operatives could be established with training and support from relevant FA cantonments or National Park management authorities.

Legal Framework

As mentioned before there is no overriding REDD legal framework within the country. Rather than drawing specific conclusions about the details of what laws should be introduced, it is suggested that funding priorities be set to research legal possibilities within the Kingdom for allowing the above mentioned model to run effectively. This could be incorporated into the REDD-readiness roadmap process. There is also a need to ascertain what customary law applies in the indigenous minority areas and map the extent of customary jurisdiction.

Accountability and Management of Funds

There will need to be extensive up front investments to ensure sustainability, accountability and transparency in all aspects of REDD projects. The monitoring of funds will also have to be done in a manner which is agreeable for all stakeholders involved. Like the other components of a BDS, there has not been extensive research conducted on how a monitoring system could operate in a Cambodian context. Furthermore, there are few examples at the scale and complexity of REDD that can be used as case studies. A broad outline of a possible monitoring system is presented as an example here. An external monitoring group would need to be established which is directly responsible to the trust fund committee. Initially it would need to be ensured that there are permanent people on the ground that either report regularly to the external monitor or are directly members of the monitoring group. The two levels which require the greatest level of monitoring would be at the Cantonment/ GDANCP/Park Manager scale and the local scale. It may be possible to subdivide the monitoring group into these two levels so that they there are permanent representatives at both these scales who can make regular assessments and reports of project progression (Figure 5).

Retention of REDD Revenues by the Government

As in the case of Viet Nam, it is suggested that the government take a proportion of revenues generated from REDD activities in order to cover administrative costs and serve as an incentive for continual government involvement. This could also serve as mechanism for funding research activities (although initially research funding would need to come from donors as it must be initiated *before* REDD activities commence).

Like in the Viet Nam assessment, it is also suggested that for Cambodia, the amount of revenues retained by the government be performance based.

Percentage of Funds Allocated to Different Stakeholders

Within the Oddar Meanchey project, the FA indicated that at least 50% of funds be allocated to communities. It would recommended here that this rate be used as a minimum for all future REDD projects.

It is also recommended that the percentage of funds going to private foreign companies to evaluate and monitor the carbon storage capacity of forests, be minimised. It should be a major priority to establish and develop the capacity of Cambodian institutions to be able to conduct such research.

Payment to beneficiaries should be adaptable to the specific situation of different local forest user groups. (In some places and some situations, it is more difficult and requires more effort to improve forest management than others). It is recommended that a pilot project be conducted (as in Viet Nam) which uses weightings to reflect the different conditions forest users are under. However the aim should always be to ensure that funds received by local beneficiaries are sufficient in order to be an incentive for continual forest preservation and conservation. However it is not yet clear how this might be achieved when carbon prices are going up and down in a market situation.

Recourse Mechanism

It is suggested here that the external monitor also provide a mechanism for recourse. As there are already established members of the monitor at the local level, this could be the first point of contact for resolving disputes and issues and channelling them to higher levels. For disputes, informal procedures at the local level should be focused on. Local level monitors should encourage people involved to engage in discussion an attempt to resolve problems (while also ensuring that all issues and complaints are recorded and reported on). If issues cannot be resolved at this level, proponents may either directly go to the provincial office of the external monitor or the local monitor could take the case to the provincial office. If issues cannot be resolved at this level and the provincial office deems them of major significance, the issue can be taken to the national office of the external monitor which will also report the case to the committee of the trust fund.

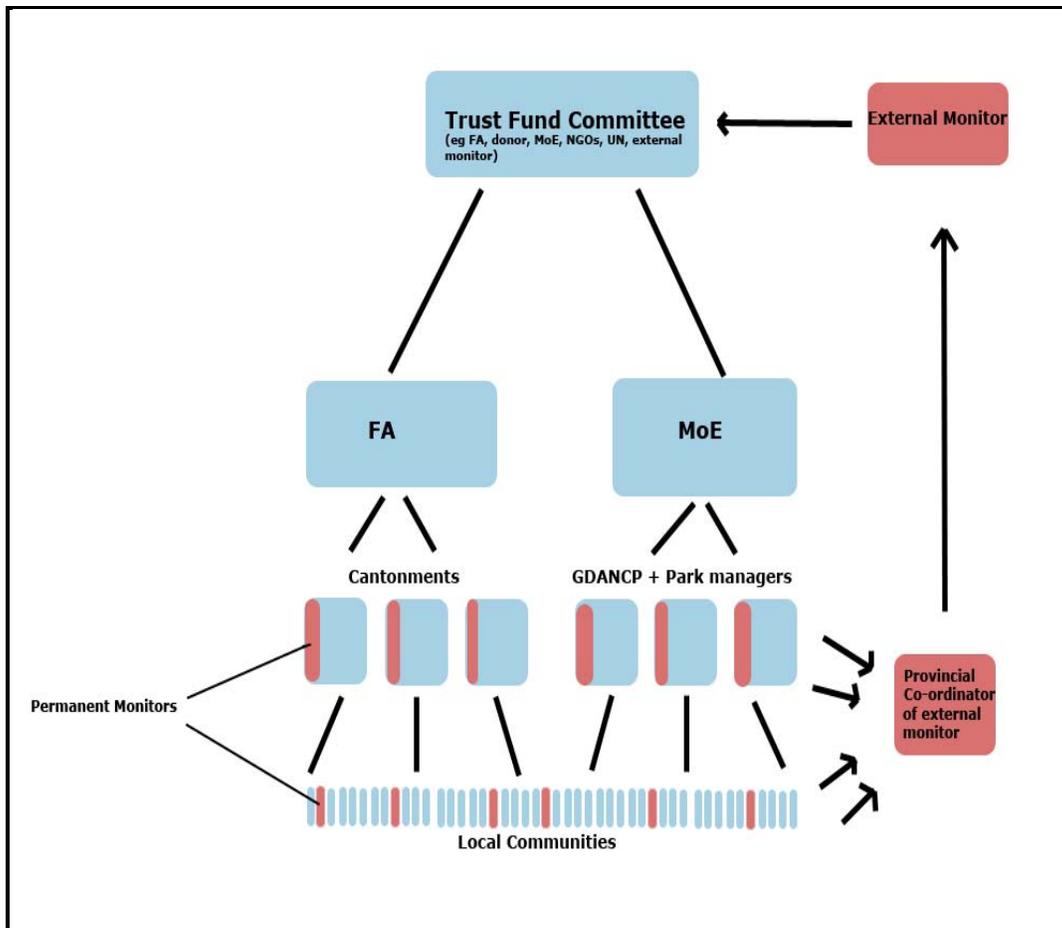


Figure 5. The Components of a Possible Benefit Distribution System within Cambodia

5.4. Main Conclusions for Cambodia

There are a number of important big picture constraints in Cambodia which must be addressed as part of successful REDD development.

1) Limited capacity to monitor forest management and distribute revenues in the natural resource sector in an equitable and transparent manner: A BDS system requires the ability of the concerned institutions to manage funds generated from REDD projects in a manner consistent with international best practise – separate from state budgets autonomous from state political influence and with mechanisms which ensure accountability and transparency. Furthermore a BDS must efficiently link payments from international carbon buyers with the outcomes of forest management at the local level. Cambodia has faced many challenges in distributing funds from central authorities to the local level according to such criteria. As Part of

the Kingdom's process of Decentralisation and Deconcentration, communes received funding for critical infrastructure projects. Although there were undoubtedly success stories from the project there have also been wide scale accounts of politicisation and interference from powerful patrons in the management of such funds (Netra and Craig, 2009). Local communities have also faced similar problems in the area of land and natural resource management.

2) The issue of Land Tenure, which forms the platform for which REDD projects are built upon, remains a largely controversial issue within the Kingdom: The issue of economic land concessions has caused considerable controversy within the Kingdom. Recent intensification of conflict relating to these concessions has placed Cambodia at the centre of extensive criticism. Insecurity in land tenure has also been on the rise in rural areas (NGOF, 2009). Security of Community Forestry areas has also not been without its challenges where in some cases, community forests have been encroached upon by private and government actors (Diokno, 2008; Gutal, 2007).

3) Cambodia faces a low level of capacity to monitor the social and ecological indicators required for the success of REDD projects: Cambodia, being one of the most aid dependant countries in the world (Godfrey *et al.* 2002) is only now starting to develop the capacity of indigenous institutions to carry out the nation's development programs. A requirement of any REDD project is that there is a clear transfer of capacity from developed to developing world. For instance, Cambodia should eventually be able to conduct its own ecological and social monitoring of projects and cater the specifics of such projects to a Cambodian context. Cambodia is currently far from having the capacity to do such monitoring on its own and would thus be dependent on foreign entities. Many past projects have failed to adequately consider how capacity development can realistically be achieved and have preferred to employ expensive foreign consultants (Godfrey *et al.* 2002).

4) Land alienation among Indigenous communities: Indigenous land issues have become a major concern of many of the donors and governments which have bilateral relations with Cambodia. REDD documentation specifically mentions the need to ensure the inclusiveness of indigenous participants in any REDD projects – and ensuring that there are mechanisms to guarantee they receive benefit from projects on par with non indigenous participants. A currently major concern is the slow pace indigenous communities have been receiving land title (Diokno, 2008). The process has been characterised by political interference and only three communities have thus managed to formally register as legal communities (with two still awaiting provision of land). Also of concern is the manner in which some donors and NGOs have pushed ahead with natural resource management projects in collaboration with the RGC, without adequately resolving the issues surrounding indigenous land relations. Some REDD projects are likely to be on land indigenous people are dependent on.

There is need to strike a balance between the deficiencies in institutional capacity and the inevitability of Cambodia being a major site of REDD activities. Some suggest that *Cambodia is not ready* to be host to REDD projects: the human rights situation, lack of separation between judiciary and administration, a culture of impunity, an increasingly entrenched system of patron client relationships, lack of land tenure and the governments slow progress with titling projects, wholesale selling of state owned natural assets, inability to effectively manage forest areas, continued granting of large scale illegal land concessions by the government and the critical situation indigenous communities face in increasing land alienation all seemingly provide some justifications as to why Cambodia should not host any REDD projects. To others, a major justification for continuing the REDD program in Cambodia is that activities will actively contribute to resolving these issues which require urgent attention.

For many within the Cambodia development community, there is sense of a 'rush' to prepare Cambodia for REDD. Many have ambitiously began planning pilot projects and preparing research papers on the details of the legal system, methods for on the ground law enforcement and monitoring of carbon stocks. Many of these activities are highly praiseworthy, but the focus has thus far remained largely on technical ecological aspects rather than social and political factors, and has largely been dominated by international conservation orientated organisations and a key number of select government departments. In any case, REDD Roadmap development as currently planned, will be undertaken by the REDD Technical Taskforce led by the Forestry Administration, with representatives from key line agencies as well as development partners and civil society. During development of the REDD Roadmap, consultations will be facilitated by the REDD Technical Taskforce and through the TWG-FE, and also through informal means (Figure 6).

Cambodia needs a cautious approach, and could even be seen as a special case within the UN-REDD programme which requires considerable investment and extra pre project preparation compared to other countries. At this point it would be much more effective (in terms of both money and time) if effort was primarily invested in improving the environment in which REDD activities are likely to operate rather than narrowly focusing on projects and legislation in isolation.

Initially activities could focus on research. This should be done in collaboration with Cambodian institutions, so as both capacity and technical skills can be transferred from developed world intuitions and researchers and so an extensive research programme can be set up which prepares the country for REDD implementation. The aims of such a programme could be: to produce a detailed needs assessment for what is needed for the country to host REDD projects, contribute to a greater understanding of how the Cambodian political economic environment affects natural resource management, conduct extensive field research to evaluate previous REDD related or community conservation projects and extensive research with local and government stakeholders to establish expectations, concerns and possible ways forward for REDD in Cambodia.

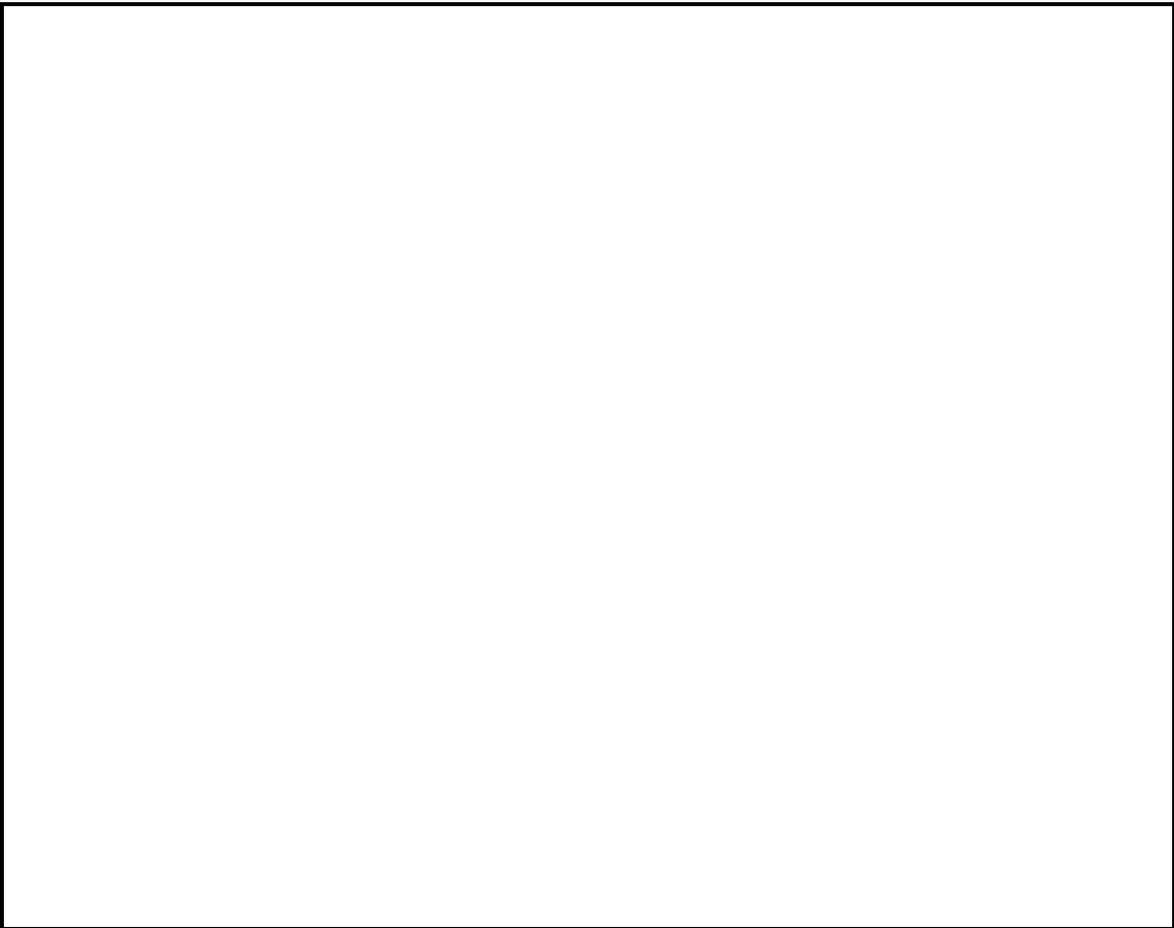


Figure 6. REDD-Readiness Roadmap for Cambodia (Source: Clements, 2010)

6. Findings of the study from Lao PDR

6.1. Background

Lao PDR (Laos) is climate change-vulnerable, because of its high dependence on natural resources, and its low adaptive capacity as a developing country. On the other hand, Laos has a large forest area (especially per capita), and relatively high per capita emissions (including from fuel wood). While globally deforestation and forest degradation account for ca. 20% of greenhouse gas emissions, in Laos it is 72%.

The main drivers for deforestation and forest degradation are (i) encroachment / conversion into tree or agriculture crop plantations (e.g. rubber), (ii) commercial logging (according to unofficial estimates ca. 900,000m³ per year, with >50% illegal), (iii) hydropower dams (“salvage logging”, which then triggers illegal logging above the high-water demarcation line), (iv) mining (ca. 120 companies hold ca. 200 mining concession, and (v) shifting cultivation (especially in the north of Laos). The Department of Forest Inspection (DoFI) was established in March 2008 to improve forest law enforcement. Both the Forestry Strategy 2020 and the National Action Plan & Strategy on GHG Emission Mitigation include the ambitious long-term target of increasing national forest cover from currently ca. 40 to 70%.

Laos was selected in July '08 (of) to be included in the Readiness Fund under World Bank’s REDD-FCPF (Forest Carbon Partnership Facility), as one of 13 countries in total (Laos is not a UN-REDD country). In August 2010 Laos prepared a draft Readiness Preparation Proposal (R-PP), with \$ 3m foreseen for a 3-year implementation phase; and is working National Strategy and Action Plan on CC (NSAP) and Second National Communication (SNC) to UNFCCC (the latter would include a new and improved GHG inventory, a programme for mitigation & adaptation measures, and climate change scenarios for Laos).

6.2. Legal and institutional frameworks relevant to establishing a REDD+ BDS in Laos³

6.2.1 Overview and Analysis of Primary Legislation

The following is an overview and analysis of the primary legislation⁴ in the Lao PDR that are directly relevant to the establishment of a REDD+ benefit sharing mechanism in the country. While the Prime Ministerial Decrees that established the special State Funds analyzed in this report are subsidiary regulations, their importance in the legal analysis is such that they are discussed in the following section below. The legal analysis in this section is, by necessity, limited in scope and does not cover all issues relevant to the establishment and operation of a REDD+ system of forestland and forest resources management in the country.

Law and Governance in the Lao PDR (an often changing landscape)

It should be understood by the reader that the legal and regulatory frameworks in the country are continuously developing and changing, and that some of the information contained in the report may become out of date in the near future. For example, the National Assembly is currently working on a new Environmental Protection Law, which will likely be enacted later this year. In addition, a new Investment Law was enacted late in 2009 that might be relevant to the establishment of REDD+ benefit sharing arrangements in the country, but a translation of this legal document could not be secured for the purpose of this report. Another directly relevant example involves the State Budget Law, which refers to a Committee of Planning Investment, rather than the relatively new Ministry of Planning and investment. While the exact future of law and governance structures in the Lao PDR that will be relevant to REDD+ cannot be predicted, change is certain.

In support of this section of the report, a legal matrix that provides easy access to REDD+ benefit sharing relevant provisions in existing legislation in the country is included in an annex to the report. This annex can be used on its own as a quick reference guide for the stakeholders involved in the decision making process for establishment of REDD+ benefit sharing mechanisms in the Lao PDR.

⁴ The term legislation is being used narrowly in this analysis: legislation = laws passed by the legislative branch of government, which in the case of the Lao PDR are laws enacted by the National Assembly.

Constitution (2003)

The Constitution provides the basis upon which all other laws and regulations can exist in the country. It provides for foreign direct investment and promotes the use of modern management technologies (Article 15), lays out the basis for both State and private property ownership (Article 16), guarantees the protection of land property rights (rights to use, transfer and inherit) in Article 17, and also creates a duty in all citizens and organizations in the country to protect the environment and natural resources of the country (Article 19).

State Assets Law (2002)

The State Assets Law defines the different types and outlines the management responsibilities for assets of the State such as forest-lands and the trees occurring naturally on them (as opposed to plantation forests, where the trees are owned by the plantation developers). This law is critical and should form the basis of any REDD+ legal analysis in the Lao PDR. Since this piece of legislation goes directly to the heart of the question, “who owns the carbon?”.

According to this law, State assets are owned by the national community and centrally controlled, though access, use and management of these assets may be granted to organizations and individuals (Article 3). State assets with natural features such as forestlands are classified in the law as “Public Assets” (Article 4), and while these assets must be used for the good of the public and are still owned and held in trust by the State, they can be granted to individuals and organizations through a lease or concession (Article 13).

Article 13 in this law is of particular importance for the creation of REDD+ benefit sharing arrangements in the future, as it provides room for designing creative approaches while using the already existing legal framework in the country, such as the creation of carbon forestry concessions, whereby local groups could be granted access, use and management rights over an area in order to gain a particular set of defined incentive benefits in exchange for sustainably managing the area granted over an extended period of time. Article 13 is essentially the basis mechanism by which the SUFORD village production forest concessions are authorized (Sustainable Forestry and Rural Development project supported by Government of Finland and World Bank) and is also the foundation of support for the recent eco-tourism conservation concessions that are now being authorized in the country (Nam Lik, Bokeo Gibbon Project, etc.).

State Budget Law (2006)

The State Budget Law provides the legal framework for the management and expenditure of all State revenues, which are to be centrally controlled by the National Treasury. All State revenues are to remain in the overall State budget system, though special State funds may be established with proper authorization (Article 6). According to this law, special State funds can be created with the authorization of the government for specific purposes as outlined through regulation (Article 3). The Environment Protection Fund (EPF), Poverty Reduction Fund (PRF) and Forest and Forest Resources Development Fund would be considered as such funds. A specific REDD+ benefit-sharing fund could be established, either by modifying and creating specific finance windows in an already existing fund, or as a newly created fund. To encourage governance efficiency and utilize already existing capacity within the Government of Laos PDR (GoL) where it exists, this report places emphasis on the option that an already existing fund should be modified and used for REDD+ benefit sharing purposes.

In addition to outlining the rules for the management and expenditure of various State revenues, the law also outlines the roles and responsibilities of the Bank of Lao (Article 30), the Ministry of Finance (Article 74), and the Ministry of Planning and Investment (Article 74), which until relatively recently existed in accordance with the provisions of this law as the Committee for Planning and Investment under the Prime Ministers Office (Article 29).

Forestry Law (2008)

The Forestry Law provides the overall framework for the classification of forestlands and forest resource management in the Lao PDR. As such, it is one of the most important pieces of legislation in terms of analyzing how to implement REDD+ benefit sharing arrangements in the country.

While natural forest and forestlands are considered as property of the State (with the possibility of various access and use rights granted to individuals and organizations), trees that are planted in designated areas are considered the property of those that planted them (Article 4). This provision is important in terms of answering the question of who owns the carbon sequestered by forests, and how benefits resulting from carbon credit sales should be distributed, depending on how broadly such a provision might be interpreted by the GoL.

The Forestry Law promotes the concept that local people should be involved in the sustainable management of forest resources in the country, and they should be able to benefit from such involvement (Article 6). Building upon this idea, the Law mandates that regulations should be implemented to create incentives that encourage households and individuals to be involved in the regeneration of forests and forestlands (Article 34). These provisions could form the basis and justification for creating a performance based REDD+ benefit sharing system in the country. Additional support for creating such a system exists in the mechanism for allocating production and non-production forestlands to villages, thus allowing them to legally access, use, manage and benefit from these areas (Articles 3 & 82). The Law also allows the Government to grant forestlands to households, individuals and organizations as a lease or concession, which could create additional opportunities for the development of REDD+ performance based benefit-sharing arrangements in the country if properly utilized (Article 85).

In addition to the above, the Forestry Law provides the legal basis for the Forest and Forest Resource Development Fund (Articles 37 & 38). Unfortunately the Law states that use of these funds are limited to activities relating to the conservation, rehabilitation and management of forests and forest lands, and it does not appear that it can be used as a mechanism to provide non-forest management related poverty alleviation or other benefits to local communities or individuals that might be involved in the sustainable management of forest resources in the country. Depending on how broadly the language in the Forestry Law is interpreted by the GoL, this might limit the use of the Forest and Forest Resource Development Fund as a REDD+ benefit sharing mechanism.

The Forestry Law also outlines the authority of the Department of Forestry and its line agencies at the provincial, district and village levels (Articles 26, 57, 104-108). The Law also makes note of the responsibilities of the National Land Management Authority in relation to forestlands in the country (Article 58).

Environmental Protection Law (1999)

The Environmental Protection Law lays out important provisions for the protection and restoration of the natural environment in the country. The Law also provides the basis for the establishment of the Environmental Protection Fund in Laos (Articles 30-32). Finally, the Environment Law outlines the roles and responsibilities of the Science, Technology and Environment Agency, which has now been renamed the Water Resources and Environment Authority to more accurately reflect its areas of authority and focus in the country.

Land Law (2003)

The Land Law outlines the overall regime for the classification, use, management and protection of land resources in the Lao PDR. The law states that all land in the country is technically owned by the State, various rights can be granted, including the right of access, use, usufruct, transfer, inheritance and alienation (Article 3). The type of rights granted depends on the legal entity involved and the type of land involved.

Similar to the Forest Law, the Land Law defines forestland (Article 19). Individuals and families may only be granted long term use rights to degraded forestlands, while other areas of forestlands, such as production forest areas or forestland areas for tourism, may be granted through a lease or concession from the government (Article 21).

In addition, the Law includes provisions that outline the authority of the National Land Management Authority and the Ministry of Agriculture and Forestry (Articles 10, 20 & 78).

Contract Law (1990)

The Contract Law defines the parameters of contractual arrangements in the country, which is important since REDD+ arrangements could not occur without contractual agreements being recognized in the Lao PDR; REDD+ is ultimately a contractual agreement between parties, where payment for a particular specialized service is being made (Article 1).

The Law lists the possible parties to a contract, including the State, individuals, legal entities and collective organizations (Article 2). Collective organizations could be broadly defined or interpreted to include a community group or organization. Contracts under the Law may be between multiple parties, such as an international organization, the State, and a community group or organization (Article 4). This ability to have multiple parties to a contract could be very important in the REDD+ context in Laos.

GoL Authority to Grant Awards Supports REDD+ Performance Based Benefit Sharing

There is a peculiar legislative tradition in the Lao PDR where very similar language provisions can be found in a number of REDD+ relevant and other laws, the Environment Protection Law (Article 43), the National Heritage Law (Article 70), the State Assets Law (Article 26), the Land Law (Article 83), the Wildlife Law (Article 66) and most important the new Forestry Law (Article 121).

The provisions all state that individuals and organizations that do a good job of managing State lands and natural resources in compliance with the law shall be granted awards and other benefits from the GoL for their efforts in compliance with rules and regulations. These provisions could form an important basis of REDD+ "performance based" benefit sharing arrangements in the country.

6.2.1 Analysis of the Prime Ministerial Decrees that have been enacted for the Establishment of the (three) existing State Funds

The following analysis is based solely on the black and white in the legal text within the Prime Ministerial Decrees that were enacted to establish the three funds examined in this report, with the goal of attempting to determine whether they match up with what would be needed legally for a REDD+ fund in the Lao PDR in the future (basically, does the language contained in these legal instruments meet what are generally agreed upon as minimum requirements for such mechanisms by the international community under future REDD+ protocols; things like transparency, civil society involvement, relevance to management issues in the sector, etc.).

Forest & Forest Resources Development Fund (FFRDF)

The primary strength of the Prime Ministerial Decree that establishes the FFRDF is that it is focused on the development of forestry sector and forest resources in the country (highly relevant to REDD+, as it is primarily concerned with forest sector governance issues). In addition to this, the fund management council includes representatives from institutions not directly linked to the forestry sector (Director General from the Environment Department within WREA, Director General of Department of State Assets within the Ministry of Finance, and the Director General for Planning and Land Development within the Prime Minister's Office). There are also important provisions relating to annual and special audits of the funds, and reports being made available for review to those entities that contribute to the fund and other concerned organizations as required, which indicates a certain level of transparency in the operation of the fund.

Some of the apparent weaknesses within the Prime Ministerial Decree include the fact that the fund is situated at a relatively low level within the Ministry of Agriculture and Forestry, and individuals representing this Ministry dominate the fund's management council. There is also no stipulation for civil society or other non-government representation on the fund's management council, which would most likely be required of any REDD+ benefit sharing fund mechanism that is created. Finally, by definition, sources of funding for the fund are somewhat limited, and can only be utilized for rather narrow purposes within the forestry sector. There

seems little room that the fund could actually be used for benefit sharing purposes to local communities with the Prime Minister's decree that established it as currently written; in fact there is no mention that the fund can be used for community development or poverty reduction purposes. As such, it is quite likely that those responsible for managing this fund have little direct experience with supporting community development activities through the use of the fund.

Environmental Protection Fund (EPF)

The Prime Ministerial Decree of the Environmental Protection Fund's obvious strength is that it deals generally with natural resources and environmental protection issues in the country, and can also be concerned with social development and governance capacity building issues that are linked to broader natural resources management issues in the country. In addition, the fund is situated quite high in the government hierarchy, with the board of directors of the fund being led by the Deputy Prime Minister. The decree also outlines very broad membership on the fund's Board of Directors from various concerned line ministries, the private sector, mass organizations and members from civil society organizations. Finally, the decree has very strong provisions relating to the transparency of its operations, requiring the development of five-year strategic plans, annual plans, quarterly and annual financial reports, and operational manuals. The Decree also allows some flexibility in the operation of the fund, in that newly created specialized financial windows can be added to its operations, and there is very little limitation on the sources of financial resources that can be fed into the fund.

One of the weaknesses of the Decree is that it blocks the creation of any other funds dealing with environmental or natural resources related issues. This provision essentially mandates that any REDD+ fund that is established, which is inevitably linked to natural resources management issues, be embedded within the EPF through the use of its provisions allowing for the creation of specialized financial windows. Another weakness of the fund is its rather odd limitation that "resources of the EPF shall only be used to finance regular and recurrent expenses of ministries, departments, agencies, and any other public or private entities receiving financial support from the EPF. Such a provision would appear to limit funds in the EPF from being used to support REDD+ community development activities in the sphere of performance based payments.

Poverty Reduction Fund (PRF)

As with the EPF, a real strength of the PRF being that the Administrative Board is led by a non-ministerial representative (deputy Prime Minister), and that Civil Society representatives are not only included as members, but that a Civil Society Member is appointed as second vice Chair to the operation of the fund.

One of the weaknesses of the PRF in terms of what is needed for a REDD+ fund is the fact that there is no representation on the board from any of the government institutions or ministries primarily concerned with natural resources management or environmental protection in the country. Likewise, there is no focus within the fund found in the Prime Ministerial Decree establishing it, and therefore likely to be little actual experience, with issues relating to natural resources management in the country. There are also limited provisions in the Prime Ministerial Decree establishing the fund relating to reporting requirements of the fund, whether financial or otherwise.

6.3. Options for the Development of a Benefit Sharing System, and Regulatory Instruments

The drafting and enactment of new legislation, or amendment of already existing legislation, is not recommended at this point in time in order to create a REDD+ benefit sharing mechanism in Laos. Development of REDD+ benefit sharing mechanisms can be handled through the creative, well-coordinated and properly harmonized drafting and enactment of subsidiary rules, regulations, guidelines, manuals, contracts and overarching policy documents. In addition, the option is presented below that, in the interest of governance efficiency and utilization of existing capacity, that a previously created special State fund be modified to incorporate various REDD+ funding streams.

In order to fully understand the possible options that are presented for the development of a REDD+ benefit sharing fund mechanism in the country, some relevant background information should first be presented and its relevance explained.

6.3.1 National References

The recently released Annual Review of REDD+ in Lao PDR (2009) provides the following information regarding the GoL's position on supporting a nested phased approach and preferences for financing (Section 8.2: *Position of Lao PDR*):

"With respect to scale, Lao PDR supports the nested approach in which the overall aim is to implement REDD+ at a national level. However, having a subnational approach nested within a national framework is the most realistic option as it takes into account the national circumstances and capacities of the country, which differ by region, and supports project related REDD activities, as well as national level strategies, programmes and action plans. Having a sub-national approach also means that REDD+ demonstration activities can start very quickly, and have the option of access to the voluntary carbon market. The nested approach also supports the 3 phased implementation of REDD+ where the timeframe for implementing readiness (phase 1), demonstration activities (Phase 2), and full implementation (phase 3), will differ significantly depending on the region in Lao PDR.

For implementation, Lao PDR supports the 3-phased approach. Phase 1 begins with the development of national strategies, action plans, policies and measures, and has a specific focus on capacity building. Phase 2 would follow with implementation of national policies and measures, and national strategies or action plans and, as appropriate, sub-national strategies that could further involve capacity building, technology transfer and results-based demonstration activities. Phase 3 would include results-based actions that are fully monitored, reported and verified. The timeframe for implementation of such activities should depend on national circumstances, capacities and capabilities.

Financing REDD+ is an essential feature and will be strongly related to the overall outcome and success of REDD+ in Lao PDR – flexibility is the most important element for financing REDD+ in Lao PDR. At this stage, Lao PDR prefers to build readiness for REDD+ with bilateral relationships with donors, given the extensive capacity building, which is required within the readiness phase. As a participating country within the Forest Carbon Partnership Facility (FCPF), Lao PDR also supports multilateral approaches for financing. In the hope to keep financing flexible, particularly within the UNFCCC, Lao PDR supports the hybrid approach to financing which means financing REDD can come from both funds and market based approaches. Lao PDR is also interested in opportunities within the voluntary market to support sustainable project based approaches to REDD+."

6.3.2 Options for the Development of a REDD+ Fund

Taking into account the background information above, It is suggested as an option that a legal enabling document is drafted and enacted in the near future that will create a special State fund for the purpose of pooling and distributing monies being made available from the international community for REDD+ support activities, including donor funds that are earmarked for the implementation of the REDD+ Strategic Plan that is scheduled to be drafted and approved this year. The fund can then be modified as necessary over time in conjunction with the nested phased approach that the GoL has decided is the best way forward in the Lao context.

In addition to financial resources contributed by donors in support of REDD+ activities, a portion of the revenues generated from the various sub-national private sector/voluntary carbon market or future cap & trade related sub-national projects could also be fed directly into the fund in order to ensure that monies generated from these projects go directly back to the local communities that are associated with the forest resources where the carbon credits were generated. These revenues, while located within the same REDD+ State fund as the financial resources contributed by various donors, could be placed into a specially created financial window that is designed specifically to handle such revenues and earmark their use to supporting the communities associated with the forest resources as already mentioned.

The key to this option is that it will combine various financial resources into one fund in order to ensure the performance-based linkages actually exist. In addition, the more money that can be placed into the same fund, the easier it will be to manage and monitor successfully, and the greater likelihood of there being actual performance based payments that reach local communities in the country. Why should the GoL seriously consider taking such an approach? Because in the Lao context, the forest resources that will be generating carbon credits will most likely be claimed or classified as State property by the GoL that are being held in trust for the entire country.

The two following scenarios help to illustrate how this option might work and be justified in the Lao context:

Example 1: SUFORD Project Forest Stewardship Council (FSC) certified commercial production forest areas are likely contenders for generating carbon credits. Do the villages actually own these forest resources? No, definitely not. Under the regulatory framework that was created to support this project approach to forest resource management in the country, it is clear that the villagers can get a portion of the proceeds from the commercial timber sales, but the production forest lands and the natural forest on those lands belong to the GoL, even though they are within village administrative boundaries. The same is true for non-commercial production, conservation, and protection forest areas within village administrative boundaries. The villagers may have access, use, and management rights (they create their own rules and regulations), the forest resources are still owned de-facto by the GoL. The forest resources include the carbon in the trees, so the carbon credits would most likely be considered as property of the GoL.

With this being the case, the option is being presented that a percentage of the proceeds from carbon credit sales go directly into the REDD+ special State fund, specially earmarked in a specific financial window within the fund for the benefit of the village or Koumban (cluster of around three to five villages) from which the carbon originated (basically utilizing the financial model that the Poverty Reduction Fund already uses, which is based on the needs and desires of the community in question), thus avoiding being lost forever in the National Treasury after the Ministry of Finance (MoF) takes possession, which, in accordance with the State Budget Law, is where the proceeds from carbon credit sales would otherwise be transferred.

Example 2: After the NLMA (district level land management offices) rezone village forest areas in cooperation with members from the Department of Forestry (DoF, including the Provincial / District Agriculture and Forestry Offices, PAFO and DAFO) in accordance with the Land Law, Forestry Law and the new Participatory Agriculture and Forest Land Use Planning Manual, and proper follow up village forest management extension services are provided, it is quite likely that non-commercial village production forest areas, village protection forest areas, and village conservation forest areas could generate carbon credits.⁵ Again, under the option being presented, a portion of the proceeds from carbon credit sales should go directly into the REDD+ fund, specially earmarked for the benefit of the villages/Koumbans from which the carbon originated.

Note on Allocation of Carbon Credit Sale Proceeds

For examples 1 & 2 above, it is suggested that an actual portion of the carbon credits be allocated to villages/Koumbans, with 100% of the proceeds from those carbon credits sold going directly into the REDD+ fund. Each time carbon credits are sold from the area in question, the agreed upon portion of carbon credits allocated to the villages/Koumbans are apportioned in the sale along with any other parties (portion belonging to the carbon credit project developer/financier, portion belonging to GoL, etc.). This will avoid scenarios where carbon marketing contracts between the financier and the GoL are written in such a way that, for example, proceed from the first 100,000 carbon credits sold go to the financier, proceeds from the next 200,000 carbon credits sold go to the GoL, and the last 50,000 sold go to the community, which may never see any proceeds since those final carbon credits are the most speculative (the carbon stocks may never reach the estimated amounts reflected in the project contract documents). This arrangement also limits the risk that proceeds may end up being much lower than anticipated for some reason, as has been the case with the share of proceeds to communities in relation to commercial timber auctions conducted through the SUFORD project.

6.3.3 Options for the Development of a Legal Enabling Document for a REDD+ Special State Fund

In terms of creating a REDD+ Special State Fund with the options for phased development and operation presented in the section above, The GoL can decide to either create an entirely new fund, or it can adopt the option of modifying an already existing State Fund in order to maximize governance efficiency and to ensure the utilization of already existing knowledge and capacity that exists in the country. This would entail modifying one of the Prime Ministerial Decrees that established an already existing fund in order to

⁵ The carbon credit sales in examples 1 and 2 should most likely be associated with Koumbans, or groupings of Koumbans linked to the carbon credits generated, due to the fact that members of villages with poor forest resources have a tendency to go into other village forest areas to extract the resources they cannot find closer to home.

incorporate the various REDD+ funds into its operation, or drafting and enacting a new Prime Ministerial Decree in order to create an entirely new fund.

One of the problems with creation of a new fund is that Article 17(4) of the Prime Ministerial Decree establishing the Environmental Protection Fund already expressly prohibits the creation of any new funds that deal with environmental protection or natural resources management issues in the country. It would appear that this provision would inherently block the creation of a standalone REDD+ fund as a possible option in the Lao context.

Regardless of the option ultimately chosen by the GoL, there are certain boilerplate provisions that should be incorporated into a Prime Ministerial Decree in order to ensure that the fund mechanism ultimately chosen will meet minimum standards and protocols of the international community that is ultimately supporting such a fund. The following are general examples of what these boilerplate provisions should contain.

- 1) **Organizational Makeup:** The fund management should have participation from all relevant government institutional organizations, private sector representatives, donors, civil society and local government.
- 2) **Transparency:** Financial data and planning documentation should be readily available for public review.
- 3) **Use of funds:** REDD+ Fund resources should be able to be used for natural resources management and conservation activities in the forestry sector, governance capacity building and also community development/poverty reduction activities.

6.3.4 Overview of Institutional Authorities Relevant to REDD+ Revenue Sharing Arrangements (other than State Funds)

Box 3: Overview of relevant GoL institutions and authorities

<p>National Steering Committee for Climate Change (NSCCC) Established in July 2008. Chaired by the Deputy Prime Minister, with Vice-chairs from MAF, WREA and MPI. Secretariat hosted at the Department of Environment (DoE). 7 Technical Working Groups, including one on "Agriculture, Forestry and Land Use".</p>
<p>National Climate Change Office (NCCO) Established in October 2008. Hosted by WREA / Department of Environment. Relevant Units are for (i) Policy and Coordination (e.g. National CC Strategy and Action Plan, (NSAP), (ii) Vulnerability and Adaptation (National Action Plan for Adaptation, NAPA May 2009), and (iii) Mitigation and CDM units.</p>
<p>REDD Task Force This specialized task force's secretariat is in the Department of Forestry. It meets regularly, with strong membership and participation from the University, international organizations, and the private sector.</p>
<p>National Environment Committee (NEC) Established in 2002. The main responsibilities of NEC are to coordinate and provide advice to GoL and its agencies regarding environmental management, strategies, regulations and plans. The NEC consists of management level officials from 14 key agencies, and is chaired by the Vice Prime Minister, with the WREA President and the MAF Minister acting as Deputy Chairpersons. The Secretariat is housed in WREA. (Source: STEA-WB Environment Report 2005)</p>

National Land Management Agency (NLMA)

The NLMA, located under the Prime Minister's office, is the lead Government entity responsible for the drafting of policies, strategic plans and legislation in relation to land management and development in the country. The NLMA is essentially responsible for taking the lead role in land classification or zoning and land use planning activities mandated by the Land Law in coordination with other government entities from the local to the central level. NLMA is also primarily responsible for managing construction land throughout the country, including issuing regulations on the management, protection, development and use of this land.

Sub-National Entities

At the sub-national level, provincial land authorities, district land authorities and village land units are to be established throughout the country. The provincial authority is in charge of registration and issuing titles or land survey certificates, district in charge of conducting surveys, zoning of village land and putting together necessary documentation for registration, and village units in charge of gathering data/evidence for land files and assisting with conflict resolution at the grassroots level.

Ministry of Agriculture and Forestry (MAF)

Primary responsibility over management of forest, agricultural and water lands, including drafting and enforcement of legislation and regulations related to these lands. Primarily responsible, in coordination with other sector entities, for categorizing different agriculture and forest land types at national, provincial, district and village levels.

Key Departments or Divisional Entities Within MAF

Department of Forestry: Responsible for managing forest lands and forest resources in the country in coordination with other line ministries, including National Protected Areas.

Department of Forest Inspection (DoFI): Responsible for investigating and bringing for prosecution possible violations of law relating to the use and management of forest resources in the country, including issues relating to National Biodiversity Conservation Areas and wildlife trade.

National Agriculture and Forestry Research Institute (NAFRI): Responsible for carrying out scientific research on issues relating to agriculture and forestry resource use in the country.

National Agriculture and Forestry Extension Service (NAFES): Responsible for handling extension services in relation to agricultural and forestry issues throughout the country.

Sub-National Entities

Provincial & District Agriculture and Forestry Offices (*PAFO & DAFO*): Oversight over Village Forest Management Units for planning and management of local forest resources. Also responsible for forest-land allocation of degraded forest lands, in coordination with NLMA at provincial and district level, to both individuals and organizations.

National Protected Areas: NPAs are generally staffed and managed by the relevant PAFOs/DAFOs. The most common arrangement is for the NPA Head to be assigned from the PAFO, and his core staff drawn from a mix of PAFO and DAFO staff.

Ministry of Information and Culture

Responsible for managing the cultural land throughout the country, such as National Heritage sites, including issuing regulations on management, protection, development & use of this land.

Ministry of Industry and Commerce

Responsible for managing industrial land throughout the country, including issuing regulations on the management, protection, development and use of this land. This Ministry is also responsible for monitoring and regulating wood processing enterprises in the country. With regards to forest resources in the country, the Ministry of Industry and Commerce is responsible for timber sales related to pre-planned and scheduled harvests of timber in the country. Since this ministry is responsible for timber sales in the country, it would be reasonable to assume that it would be responsible for carbon credit sales as well, though this is not entirely certain and there is no clarity in the Law on this point.

Ministry of Planning and Investment (MPI)

Responsible for reviewing large scale planning and investment projects, including those that involve land resources such as various types of concession agreements. Responsible for entering into and enforcing Project Development agreements (PDA), which should include provisions for feasibility studies and ESIA's.

Ministry of National Defense and Ministry of Public Security

Responsible for managing the national defense and security land throughout the country throughout the country, including issuing regulations on the management, protection, development and use of this land.

Water Resources and Environment Agency (WREA)

Formerly the Science, Technology and Environment Agency (STEA), which was established under the Prime Minister Office in 1993, includes the Department of Environment (DoE) and the Environmental Research Institute (ERI). WREA is the principal Government agency for formulating and guiding environmental policy in the country. These two departments are the national focal points for environmental management, including the development of strategies, policies, regulations, programs and projects, implementing Government responsibilities in environmental impact assessment, environment monitoring, and research and training activities. WREA responsible for ensuring that the Law on Environmental Protection is complied with, including being responsible for ensuring provisions within the law relating to Environmental and Social Impact Assessments (ESIAs) are properly prepared and complied with. This would include projects that impact on land resources such as various types of concessions (hydropower, plantation, mining).

Local Administration (province, district, village)

The Local Administration Law spells out very broad mandates for the various levels of local administration, without providing much in the way of detail on what exactly the various levels do in relation to one another, except that the province supervises the district, and the district supervises the village. The three levels do have administrative decision-making and regulatory authority where it has not been superseded by or conflicts with other rules and regulations. In addition, it should be pointed out that the village is the basic level for revenue (tax) collection, and that the village chief is responsible for conflict resolution among the people within the village. More detail tends to exist in legislation on the various line ministries and ministry-equivalent organizations, which have local offices or representatives at the provincial, district and sometimes village level.

Note: Emergence of Koumban or Village Clusters as a Unit for Local Governance Interaction

The Koumban is a cluster of between 5 and 10 villages, with each District made up of between 5 and 10 clusters. As part of the GoL strategy for decentralisation, efforts are being made to strengthen service delivery at the Koumban level. Although the Koumban is not a fully established administrative layer in the currently recognized Government structure (the Local Administration Law does not make mention of this administrative level or its arrangement), coordination of certain development activities in some areas of the country is carried out through a committee that represents key ministries - agriculture, health, and education - and the security services. The head of the Koumban committee is appointed by the Party and reports to the District Governor.

7. Findings of the study from Viet Nam

7.1. Background and context

Viet Nam is one of nine countries where the UN-REDD Programme is supporting the development of REDD+ readiness. In preparing for REDD+, there are several elements that need to be addressed—the “components of readiness”. Of these, the Government of Viet Nam (GoV) identified the design of a transparent and equitable benefit distribution system (BDS) as a priority for UN-REDD support. This is innovative because so few countries have looked at how benefits should be distributed. It is also courageous because, unlike carbon monitoring and other technical challenges, it raises potentially sensitive governance issues.

7.1.1 Forest Cover

In 2008, Viet Nam had 19.2 million hectares of “forest land”, but of this only 13.1 million hectares was forested, with the remainder consisting of denuded hillsides and barren lands. Of the forested land, 10.3 million hectares are natural forest and 2.8 million hectares are plantation. In terms of management, there are three types of forest: special use forests or SUFs (mainly protected areas) covering 2.2 million hectares; protection forests covering 5.7 million hectares; and production forests covering 8.3 million hectares.

Viet Nam’s forest cover has undergone dramatic changes over the last 50 years. From 1945 to the early 1980s about 50% of its forest was cleared, primarily for agriculture. Forest cover hit a minimum of about 27% around 1990. Between 1990 and 2000, however, as a result of extensive replanting, Viet Nam gained an average of 236,000 hectares of forest per year, equivalent to a 2.5% annual increase. Between 2000 and 2005, the growth rate was 2.1% per year, and by 2008 forest cover reached 38.7% (MARD, 2009).

However, the national figures mask wide variations in different parts of the country. In the Central Highlands, deforestation and forest degradation are the dominant land use change. In other parts of the country, for example the North-central region, forest loss continues but at a much lower rate and the forest cover is relatively stable.

7.1.2 Forest tenure

According to the Constitution of the Socialist Republic of Viet Nam, all forest resources (including land, trees, and wildlife) are under the ownership of the people. On behalf of the people, the State manages forest resources and legally entrusts the management of forest to specific groups. At present, eight different groups are recognized, of which the largest are:

1. State-owned companies (SOCs), formerly known as state forest enterprises (SFEs).
2. Individual households.
3. Management boards for protection forest (PFMBs).
4. Management boards for SUF (PAMBs).
5. People’s committees (PCs), mostly at the commune level (CPCs).
6. Village communities.

In 2008, the areas of natural and plantation forest under different management systems are given in Table 1 below:

Table 1: Natural and Plantation Forest in Viet Nam (UN-REDD, 2009)

<i>In hectares</i>	SOC	PFMB/ PAMB	Household	Community	CPC	Other	Total
Natural forest	1,635,000	3,900,000	1,900,000	112,000	2,163,000	639,000	10,349,000
Plantations	471,000	499,000	1,248,000	28,000	375,000	149,000	2,770,000
Total	2,106,000	4,399,000	3,148,000	140,000	2,538,000	788,000	13,119,000

In terms of tenure arrangements, SOCs, and households are allocated forest for long-term management (typically 50 years) and are entitled to land use certificates that legalize their control. Although SOCs have recently been restructured and have had to return part of the forest under their management to the state for allocation to the other stakeholders, they still play an important role. In many provinces, particularly in the central and southern parts of the country, SOCs not only manage the forest allocated to them but also control the forest they used to manage.

PFMBs, PAMBs, and CPCs are typically allocated forest for an unspecified period. Management boards are entitled to receive state budget for forest management. CPCs often serve as temporary custodians of forest that was formerly managed by SOCs and is in the process of being allocated to other stakeholders (e.g., households or communities). CPCs therefore do not have full tenure rights to the forest under their users. In practice, such areas often turn into “open access” zones as many CPCs do not have sufficient staff to manage the forest under their care.

7.1.3 Forest administration

At the national level, the Ministry of Agriculture and Rural Development (MARD) is responsible for forest management. Within MARD, two departments are in charge of forestry. The Department of Forestry (DoF) is responsible for forest management, utilization, and development. The Forest Protection Department (FPD) is in charge of forest protection and forest law enforcement. Technical divisions within FPD include divisions of forest protection, nature conservation, and legal inspection, and a special task force.

At the provincial level, MARD is represented by Departments of Agriculture and Rural Development (DARD). In each province, the sub-DoF and sub-FPD, the line agencies of DoF and FPD, are under DARD. At the district level, the economic division (or the agricultural division in some cases) is responsible for forest management. The district Forest Protection Unit (FPU) is independent of the economic division and reports directly to sub-FPD at the provincial level. At the commune level, there is one agriculture and forestry official based in the CPC. This official is supported by a field level forest protection agent from the district FPU.

7.2. Policy Issues and recommendations for BDS design in Viet Nam

The full report developed by the team coordinated by IUCN for UN-REDD in Viet Nam summarizes the study's conclusions and recommendations in 17 “Policy Decisions” Subsequently 10 were selected as being of higher priority. As part of the current SENSEA project, IUCN invited seven senior policy makers from the forestry sector to provide comments on these 10 recommendations.

These policy makers provided written comments on each recommendation and in some cases met with IUCN staff for further discussion. A summary of their feedback is given under each recommendation. The basic conclusions are that: (1) these policy makers agree with the study's recommendations; (2) these recommendations are in line with government policy; (3) substantial resources are needed to implement these recommendations; and (4) a detailed work plan to implement these recommendations should be prepared. The 10 most significant Policy Decisions are listed below. The Policy Decision boxes address issues that impinge the benefit distribution system.

7.2.1 Policy Issue #1 (Adapted from UN-REDD, 2009)

WHAT'S AT STAKE?

REDD+ is new to Viet Nam and national laws and implementing regulations contain gaps and ambiguities that need to be addressed. Since addressing these reforms will take time and the international REDD+ rules are under negotiation, a major recommendation is that GoV pilots mechanisms to implement REDD+ in several provinces over the next 2-3 years. Based on the results and lessons learned, it should prepare a REDD-specific legal document that establishes an efficient and equitable BDS and defines the rights, roles, and responsibilities of all stakeholders. A clear legal framework will also give international investors greater confidence in, and enhance the value of, emissions reductions generated in Viet Nam.

Of special concern is clarification of who can benefit from REDD+. Globally, unclear land rights and uncertainty over land title are considered major threats to effective REDD+ implementation. Disempowered communities could suffer from loss of access to forest resources, the unequal imposition of the costs of forest protection, and they could be ineligible for REDD+ benefits if they do not enjoy formal title. There is particular

concern over the role of local communities. Under the 2004 Forest Protection and Development Law, village communities are eligible to be allocated forest. But Viet Nam's Civil Code does not recognize communities as legal bodies. This means that according to the Civil Code, they cannot enter into contractual arrangements (unlike households), which may limit their ability to participate in REDD+.

POLICY DECISION 1: LEGAL FRAMEWORK FOR REDD+ IN VIET NAM	
Issue to be addressed	<p>REDD+ is new to Viet Nam, and international requirements concerning management of REDD+ revenues are likely to require approaches to governance and a degree of legal certainty that have not been encountered in similar schemes such as PFES, or the 661 programme. Furthermore, REDD+ brings with it legal concepts that are novel to Viet Nam, such as ownership or rights to forest carbon.</p> <p>Therefore in order to facilitate REDD+ implementation, the legal framework in which REDD+ operates should be equitable, effective and efficient in order to meet international expectations. It should clearly define rights, particularly those of communities living in and around forest areas, a financial mechanism that allows REDD+ funds to reach the local beneficiaries, the fund's governance structure, how funds are monitored, roles, rights, and responsibilities of major stakeholders, etc.</p> <p>Three specific legal issues to need to be addressed as a priority in Viet Nam: (1) The rights to carbon, land and forests, particularly forest allocation and associated land use rights; (2) The coordination of the action of the government authorities involved with REDD+, in particular MARD and MONRE; and (3) Ensuring that all legitimate beneficiaries are recognized, in particular addressing the legal status of local communities.</p>
Options	<p>a) Implement REDD+ by interpreting only existing legal instruments, without legal reform</p> <p>b) Enact specific legal instruments to ensure clarity concerning REDD+ and administration of REDD+ revenues, without undertaking broader legal reform</p> <p>c) Undertake a broad legal reform which addresses all aspects of REDD+ governance and administration of REDD+ revenues.</p>
Recommended principle or policy to be adopted	<p>A phased approach to legal reform is recommended. Consistent with its commitment to international leadership on REDD+, the GoV should in a first stage, and pending the clarification of the international REDD+ legal framework, plan to issue a REDD+ specific decree that addresses governance issues associated with international funding of REDD+, so as to ensure that implementation of REDD+ is consistent with Vietnamese law. This decree should be issued after a pilot phase (over at least 2 years) during which REDD+ modalities would be tested. This approach is similar to how PFES has been implemented with a decree being prepared following a 2-year pilot phase. The GoV should also accelerate the other legal reforms required to ensure effective implementation of REDD+</p>
Actions required to confirm policy option	<p>As soon as possible, the GoV should develop plans for piloting REDD+ in a small number of provinces and districts, and establish a system to ensure that lessons are captured and analyzed in preparation for the issuance of a decree on REDD+ at some time in the future (target 2012 or 2013).</p> <p>A detailed workplan for addressing the other required legal reforms should be developed in the first 3 months of 2010. Consideration should also be given to the use of instruments such as "R-Coefficients" (see Policy Decision 5.2, below) to provide incentives for SFE reform</p>

COMMENTS

All agreed with option c), in other words undertake a thorough view of all aspects of REDD+ governance. They also recommended preparing a road map to develop and accelerate other legal reforms required for REDD+ implementation. These include forest valuation, forest allocation to households and communities, benefit sharing mechanisms, and clarifying the legal status of communities. The ability to allocate forest to households, communities, and organizations was considered essential.

The government should allow REDD+ piloting if funds are available. When the international rules for REDD+ are identified, Viet Nam will issue a separate legal document to implement REDD+.

7.2.2 Policy Issue #2 (Adapted from UN-REDD, 2009)

WHAT'S AT STAKE?

Since REDD+ is a performance-based funding mechanism there has to be a link between the revenues received and payments to forest managers, the ultimate beneficiaries. This implies that the REDD+ funds should be held off-budget. If they enter the state budget they could not be earmarked to reward performance and would also be subject to complex state budgeting rules. The financial mechanism that links the central level to the ultimate beneficiaries needs to be transparent and have a governance structure that includes all relevant stakeholders.

No such financial mechanism currently exists in Viet Nam. The Forest Protection and Development Fund (FPDF) was established in 2008 in order to mobilize public and private funding for forestry activities. To date, provincial FPDFs have been established in two provinces, Son La and Lam Dong, where they have received funding from PFES projects. There are also provisions to extend the FPDF to districts and/or work through the Viet Nam Bank for Social Policies, which has a branch in every district. Because the FPDF is state-owned, however, there is no scope for civil society participation in the fund management, which is a likely REDD+ prerequisite.

An alternative model is the Trust Fund for Forests (TFF), which was established in 2004 with funding from Sweden, Finland, Switzerland, and The Netherlands. The TFF is managed by the Forest Sector Support Partnership (FSSP), which was set up in 2001 to improve donor coordination in the forestry sector, reduce transaction costs, and ensure that donor support is aligned with GoV administration and planning systems. Most donor support to the forestry sector is now channelled through the FSSP.

POLICY DECISION 2 CLASSIFICATION OF REDD+ REVENUES AND CREATION OF A DEDICATED REDD+ FUND	
Issue to be addressed	An appropriate off-budget mechanism needs to be identified which meets international expectations regarding transparency, equity and performance linkage. This implies the need to “fire-wall” REDD+ revenues to prevent co-mingling with other sources of funding. The mechanism also needs to be able to accommodate the disbursement of REDD+ revenues to sub-national and local levels, as well as to follow strict monitoring and performance requirements. Several possible mechanisms exist. One example is the FPDF, created in part to manage PFES revenues, and incorporating a national FPDF mirrored by provincial funds and, potentially, District funds. The TFF is another example of an off-budget financial mechanism already existing in the forest sector. The principle of transparent governance of REDD+ revenues implies the need for broad participation in the governance of the revenues which may be difficult to meet under current arrangements.
Options	a) REDD+ revenues are managed through a sub-fund of the FPDF b) REDD+ revenues are managed through a newly-created REDD+ Fund
Recommended principle or policy to be adopted	Given limitations in participatory governance of the FPDF, the GoV should commit to the establishment of a new, REDD+ Fund. This could be modelled on the TFF, so as to allow participatory governance, and with equivalent provincial and district fun The GoV should also commit to ensuring that the REDD+ Fund is to be governed by a broad-based multi-stakeholder board, and subject to independent external audit.
Actions required to confirm policy option	International examples of REDD+, or Climate Change Funds (e.g. in Indonesia) should be studied, together with existing financial instruments in Viet Nam, such as the TFF, so as to identify the characteristics and necessary actions required for the creation of a Viet Nam REDD+ Fund.

COMMENTS

All agreed that option a) is more feasible. The FPDF has been established that should be used. Establishing a new fund would require substantial effort and on-going additional management.

7.2.3 Policy Issue #3 (Adapted from UN-REDD 2009)

WHAT'S AT STAKE?

Forest management in Viet Nam is highly decentralized with both provinces and districts playing important roles. In terms of national coverage, the proposed REDD+ pilot phase is an opportunity to stratify provinces and districts to identify those where REDD+ activities should be targeted, e.g., where opportunity costs of REDD+ are relatively low and/or degraded land is sequestering carbon rapidly.

In terms of which sub-national level REDD+ revenues are managed and disbursed, there will remain an inevitable trade-off between efficiency and equity. Efficiency in terms of minimizing transaction costs would be maximized by minimizing the number of levels. But equity considerations call for careful targeting and monitoring, implying the involvement of district and even commune governments. A 2-step process is recommended, working first down to the provincial and then, as experience is gained, to the district level. Below these levels, funds would be transferred to the ultimate beneficiaries (households, communities, etc.).

POLICY DECISION 3 SUB-NATIONAL LEVELS AT WHICH REDD+ REVENUES SHOULD BE MANAGED

Issue to be addressed	<p>The national government will receive REDD+ funding from the international community (see Policy Decision 2). These revenues will then need to be disbursed to those who have incurred costs in reducing emissions, with distribution to the ultimate beneficiaries, particularly people living in and around forest areas who have changed their behaviour in response to REDD+ incentives.</p> <p>There are trade-offs to be considered in this regard. The greater the number of hierarchical levels at which revenues are managed, the less cost-effective the mechanism is likely to be. There will tend to be higher implementation costs, and a higher risk of rent-seeking and corruption. On the other hand, fewer hierarchical levels make it harder to ensure efficiency and equity in the disbursement, because of the "distance" between the source and target of the funds.</p>
Options	<p>a) REDD+ revenues managed at national and provincial levels b) REDD+ revenues managed at national, provincial and district levels c) REDD+ revenues managed at national and district levels</p>
Recommended principle or policy to be adopted	<p>Option C (REDD+ revenues managed at national and district levels) is not recommended, as it bypasses the province, which is an important administrative level for forest management and planning. For initial piloting of REDD+, Option A may be initially adopted. However, once experience has been developed, provided the additional transaction costs are not prohibitive, and especially when appropriate capacity has been built at province and district level, including the establishment of district level funds, Option B should be adopted.</p>
Actions required to confirm policy option	<p>Piloting of REDD+ revenue management structures in a small number of provinces and for capacity building at province and district level should be undertaken over a period of at least 2 years to gain lessons concerning the costs, efficiency and effectiveness of management of REDD+ revenues at multiple levels. Note that PFES pilots have not yet had to address this issue of disbursement from national down to local level.</p>

COMMENTS

Some agreed with option c). At present, the FPDF operates at national and provincial levels. For provinces with large areas of forest, sub-funds at district level should be established.

Others preferred option 1, at least initially, and option 2 when REDD+ is operational.

7.2.4 Policy Issue #4 (Adapted from UN-REDD, 2009)

WHAT'S AT STAKE?

Experience in benefit sharing and participatory monitoring shows that meeting the requirements of equity, effectiveness, efficiency, and transparency will depend on what is measured, the data source, and who carries out the monitoring. The role of institutions responsible for monitoring will need to be clear and their work well executed to ensure the credibility of REDD+ in Viet Nam.

A wide range of data and information will need to be collected, analyzed, and reported. An important consideration is therefore to determine the degree of participation required for each monitoring function, and the organizations that need to be engaged in the process. Given this, the main policy decisions concern the degree of participation involved in different monitoring functions, and the institutional arrangements for each. In other words, where do the appropriate expertise and experience reside that can be applied to monitoring and, if they do not exist, how can they be developed.

POLICY DECISION 4 INSTITUTIONS TO BE INVOLVED IN MONITORING REDD+ INTERVENTIONS AND ACTIONS

Issue to be addressed	<p>There are four different types of monitoring required for REDD+:</p> <ul style="list-style-type: none"> • Monitoring of emissions (C-stocks) • Monitoring of REDD+ interventions and actions • Monitoring of revenue disbursement • Monitoring of financial transactions (auditing) <p>The range of expertise required is therefore broad. For monitoring of emissions, technical agencies such as FPD and the Forest Inventory and Planning Institute (FIPI) must be involved given their experience in forest resource monitoring at national and local levels.</p> <p>For monitoring of actions and disbursements at sub-national levels, the provincial (and possibly district) PCs need to be involved. Mass organizations such as the Farmers' Association, Women's Union, and Youth Union may also be involved in REDD+ monitoring since they have branches down to commune/village level.</p> <p>The need for comprehensive monitoring needs to be balanced with the transaction costs. Care also needs to be taken to avoid any conflict of interest between the monitoring agency and recipients of REDD+ funding.</p>
Options	<p>a) Assign monitoring of different aspects of REDD+ to different technical agencies in line with their mandates and competencies.</p> <p>b) Establish a comprehensive monitoring process to ensure effectiveness and efficiency across all types of monitoring and at all levels from national to local.</p>
Recommended principle or policy to be adopted	<p>Option b is recommended. GoV should establish a REDD+ Monitoring Body to oversee and coordinate all REDD+ monitoring. Members of this body should come from Government Inspection, Ministry of Finance, an independent financial auditing company (e.g., Viet Nam National Independent Auditing Company Ltd.), FPD, FIPI, and Vietnamese civil society organizations. Except for the secretariat, members of this body may work part-time in the initial stages.</p> <p>At the provincial level, a similar structure should be established. It is not necessary that members of the provincial body come from the province. For example, civil society organizations or sub-FIPI may be based outside the province. To reduce costs, lower level bodies would not be created; the provincial bodies would be responsible for monitoring down to the local level.</p>
Actions required to confirm policy option	<p>The GoV should carry out an assessment of monitoring needs and costs through a review of current monitoring processes, taking into account the higher standard of monitoring expected under REDD+. Results of this assessment can then be used to develop a detailed plan for national and provincial REDD+ monitoring.</p>

COMMENTS

All agreed with option b). The involvement of civil society and technical organizations is very important in BDS monitoring but it was noted that if many bodies were involved in this process the transaction costs would increase. The capacity of civil society organizations needs to be developed.

7.2.5 Policy Issue #5 (Adapted from UN-REDD, 2009)

WHAT'S AT STAKE?

Although the main goal of the BDS is to ensure that those who are directly responsible for undertaking actions to reduce deforestation and forest degradation are rewarded and compensated, the government (and possibly other groups) will also incur costs in establishing, administering, and overseeing such a system. These costs need to be covered by REDD+ revenues.

For a REDD-compliant BDS, permissible levels of revenue retention will have to be defined. The two instances where specific allowances for retention are provided for in relation to extra-budgetary, national-level conservation funds (Programme 661 and PFES payments) both allow for a fixed percentage of payments to be retained by government, but do not set a common precedent or follow the same procedure. In neither case is the retention level based on the actual costs of managing and administering the funds, but seems to have been set somewhat arbitrarily.

In order to be effective and fair, while minimizing the likelihood of unnecessary or inappropriate diversion of funds, the level of revenues retained by government under the REDD+ BDS should accurately reflect effort, performance, and delivery. It should be enough to cover the costs of administering and managing the system, and may also allow for a small premium to encourage and reward compliance.

**POLICY DECISION 5 (5.1):
REVENUE RETENTION BY GOVERNMENT**

Issue to be addressed	Administration of a payment distribution system incurs administration and management costs. This system needs to be balanced with the requirement of ensuring that the major portion of REDD+ funds are used as efficiently and effectively as possible to reduce deforestation. In relation to national-level government-administered funds in Viet Nam, there are currently no standard procedures for determining permissible management fees.
Options	a) Allocate based on costs incurred and emissions reductions delivered; or b) Allocate according to a flat fee or percentage of total funds.
Recommended principle or policy to be adopted	The specified amount or percentage of revenues retained by government should be performance-based, and set at a level which approximates closely to actual transactions and implementation costs, plus a small incentive for participation in REDD+.
Actions required to confirm policy option	<ul style="list-style-type: none"> As part of its commitment to establishing a world-class payment distribution system, the GoV should indicate that the revenues to be retained by government will be limited to actual implementation and transactions costs, against agreed budgets; The magnitude of these costs, and indicative retention levels, will be determined by further studies to be conducted.

COMMENTS

All agreed with option 2. The reason was that actual costs will vary greatly and that it would be more practical to use a fixed percentage of total funds to cover the management costs.

7.2.6 Policy Issue #6 (Adapted from UN-REDD, 2009)

WHAT'S AT STAKE?

If local-level payments are to be effective in reducing deforestation and forest degradation, they will need to be high enough to offset any opportunity costs that forest users incur, and at the same time provide clear incentives to participate in REDD+. These costs and incentives may be both monetary and non-monetary, and will vary substantially between different forest users and sites in Viet Nam.

For REDD+ revenues, an appropriate formula for local benefit distribution will need to be agreed. Current procedures for calculating payments for forest conservation (under Programme 661) and the provision of environmental services (under PFES projects) neither incorporate full opportunity costs nor allow for a mix of financial and non-financial incentives. Rather, they are set administratively.

The approach of using weightings ("K-factors"), which have been used to calculate household-level PFES payments, provides a useful model for REDD+, albeit with some modification. The use of weightings can permit payment levels to vary to reflect variations in direct and opportunity costs, and can also allow payment levels to address co-benefits, such as poverty alleviation and biodiversity conservation. Payments need to reflect both the costs of reducing deforestation and the amount of emissions reduced.

POLICY DECISION 6 (5.2): LOCAL PAYMENT LEVELS AND PAYMENT STRUCTURING

Issue to be addressed	<p>Local-level payments for avoided deforestation should ideally compensate the direct and opportunity costs incurred and provide clear incentives to land and resource users. Current procedures for calculating payments for forest conservation and the provision of environmental services in Viet Nam do not reflect the variation in supply costs or balance the need for monetary and non-monetary incentives. Due to the highly specific nature of opportunity costs, there are practical limitations on making these estimates for all REDD+ participants.</p> <p>Payment structuring can also be designed to meet social goals in parallel with rewarding performance. This is the intent of the K-factors developed by PFES pilot projects. As REDD+ is expected to address local social and economic needs while rewarding performance in reducing emissions, similar considerations should be incorporated into REDD+ payment structuring. However, REDD+ considerations will not be the same as those applicable to PFES as there are additional actors influencing the criteria used for payment structuring, notably international investors.</p>
Options	<p>a) Apply standardized cost norms; or b) Base payments on costs incurred to generate reduced emissions. <i>And</i> c) Make cash payments only; or d) Combine cash payments and non-monetary benefits.</p>
Recommended principle or policy to be adopted	<p>The level and nature of benefits provided should reflect opportunity costs and losses incurred in avoiding deforestation, both monetary and non-monetary; although it may be most practical to use a standardised formula to compute payments, this should allow for weighting to reflect variation in the costs of generating emissions reductions between different areas and groups and under different production systems and ecological conditions.</p>
Actions required to confirm policy option	<ul style="list-style-type: none"> • Consistent with its stated goals of compensating for the provision of environmental services and stimulating sustainable rural development, the GoV should reiterate its intention to ensure that REDD+ benefits shared with forest land and resource users will be set at equitable and effective levels. • Further work will require broad opportunity cost norms to be investigated for different areas, groups, production systems and ecological conditions; • Further work will include design of checks and balances and guidance on calculation of payment weights ("R-Coefficients", similar to the "K-factors" used in current PFES schemes).

COMMENTS

All agreed with option b) and the use of R-coefficients to estimate payments based on direct and opportunity costs.

7.2.7 Policy Issue #7 (Adapted from UN-REDD, 2009)

WHAT'S AT STAKE?

Existing initiatives in Viet Nam to channel payments to rural poor have suffered from the phenomenon of “elite capture” by which influential individuals or organizations secure a disproportionate amount of the payments and the rural poor receive little or nothing. This is reflected, for example, in the allocation of forest to households. Entities responsible for allocation, especially SOCs, have tended to retain high value forest and allocate poor quality forest to households, especially the poorest ones. However, initiatives such as the PFES pilot project in Lam Dong and the KfW community forestry projects have demonstrated the advantages of payments to communities, where greater equity in local payments can be achieved. If a REDD-compliant BDS fails to address the risks and adverse consequences of elite capture, local stakeholders will lose interest in participating in REDD+. If a large number of stakeholders fail to participate, the entire REDD+ system risks failure. Careful thought should therefore be given to which forest users should be eligible to receive REDD+ payments, and under which circumstances the more powerful stakeholder groups may or may not be eligible.

POLICY DECISION 7 (3.2): TYPES OF FOREST OWNERS ELIGIBLE TO RECEIVE REDD+ BENEFITS

Issue to be addressed	Most benefit distribution programmes in Viet Nam target payments to individual households, SOCs, and PAMBs. However, there are problems with such an approach, including unclear, contested or overlapping rights to forest carbon and the possibility of conflict resulting from some households receiving benefits and other not. Many of these problems of rights can be avoided by targeting benefits to village communities, which may better positioned to produce rapid gains in carbon stocks than other types of forest manager. However, currently targeting communities faces a legal constraint as the community is not a legally recognized entity under the Civil Code.
Options	<ul style="list-style-type: none"> a) GoV continues to favour payments to SOCs, PAMBs and individual households at the risk of missing out on potential carbon gains and benefits to rural poor. b) GoV creates a level playing field for communities by refining the legal framework and creating supportive implementation structures. c) GoV gives priority to village communities in the distribution of REDD+ payments in order to access additional carbon finance at the international level and to contribute to poverty alleviation
Recommended principle or policy to be adopted	GoV should address the legal constraints that prevent village communities being eligible to receive REDD+ payments under the same conditions as SOCs, PAMBs and individual households. This will allow GoV to maximize the carbon revenues received from the international community and simultaneously add to the overarching goal of poverty alleviation. The GoV should also establish a policy for PFMBs and PAMBs that REDD+ revenues will only lead to a reduction in state budget support if the total revenues of the PFMB or PAMB plus their “normal” level of budget support exceeds their estimated costs; whilst establishing safeguards to ensure that this does not create an adverse incentive to slow forest allocation.
Actions required to confirm policy option	The GoV should commission independent evaluations of experience from community forestry projects, including the community funds established under the KfW-6 project and the TFF-funded Community Forestry Pilot Programme. The evaluations should inform the formulation of enabling legislation on community forestry and corresponding measures to strengthen the capacities of MARD to support community forestry. In addition, together with international donors, GoV should identify a number of community forestry initiatives to serve as pilots for community-based REDD+.

COMMENTS

All agreed with option c). However, understanding among these policy makers of the legal status of communities varied. One position is that all forest owners given in the Law on Forest Development and Protection should be eligible to receive REDD+ benefits, including communities. This implies that there is no legal barrier to communities participating in REDD+. If a community receives REDD+ revenue, it will be shared among households within the community. Others worry about the legal status of communities since

“community” is not defined in the Civil Code. One option is for households that wish to receive benefits as a community to form a cooperative or management board.

7.2.8 Policy Issue #8 (Adapted from UN-REDD, 2009)

WHAT’S AT STAKE?

REDD+ requires some form of local technical support capacity to promote compliance with contracts, help prevent and resolve conflicts, and intervene to protect forest managers against powerful outsiders. FPD is responsible for such activities. In practice, however, it focuses heavily on the suppression end of law enforcement, which results, on average, in about 55,000 forest crimes cases being recorded every year. Most of these involve very small amounts of timber and often reflect the ambiguous nature of existing regulations that criminalize timber taken for subsistence needs. From a REDD+ and forest conservation perspective, this approach is inadequate because the trees have already been cut down (or wildlife killed) and because the risk of detection is so low and the punishment so light relative to the value of the timber, that there is no effective deterrent against further illegal activities. The REDD+ and Forest Law Enforcement and Governance (FLEG) agendas are therefore two sides of the same coin.

POLICY DECISION 8 (3.4): STRENGTHENED LAW ENFORCEMENT FOR PERFORMANCE-BASED DISTRIBUTION	
Issue to be addressed	Forest law enforcement continues to be weak in Viet Nam. In particular, issues such as illegal logging and encroachment have the effect of counteracting other initiatives undertaken to reduce emissions. Without more effective forest law enforcement, the risk exists that stakeholders who are successful in reducing emissions go unrewarded due to the non-performance of others who are responsible for illegal activities.
Options	<ul style="list-style-type: none"> a) GoV accepts that payments to stakeholders who undertake REDD+ interventions are diluted or possibly eliminated due to non-performance of others under the current forest law enforcement regime. b) GoV develops operational structures that offer effective law enforcement to households and communities
Recommended principle or policy to be adopted	GoV should develop operational structures for effective forest law enforcement in the medium term. These will most likely include a Central Forest Inspectorate with a hotline for reports on illegal operations and complaints about local law enforcement activities. In the short term, GoV may have to define the conditions (such as timely reporting) under which payment recipients are exempt from liability for non-performance due to factors beyond their control.
Actions required to confirm policy option	Recent experiences with community-based law enforcement require assessment and translation into national regulations. The new General Department of Forestry and forest protection units at the district and provincial levels will need technical assistance to improve their law enforcement capacities. The REDD+ pilots should make appropriate law enforcement a central component of project design from the beginning. They will indicate ways to determine the liability of forest managers under different circumstances

COMMENTS

Most agreed with option b). MARD’s new General Directorate of Forestry is running well. To improve forest management it is necessary to build its capacity and to implement additional reforms.

One policy maker preferred option a) on the basis that when forests are allocated, violations will decrease and that government should therefore focus on speeding up forest allocation.

7.2.9 Policy Issue #9 (Adapted from UN-REDD, 2009)

WHAT'S AT STAKE?

The principles that will determine the international acceptability of REDD+ are those that will confirm its effectiveness in reducing emissions. In particular, the principles of performance, additionality, equity, and transparency must be demonstrated. A REDD-compliant BDS must satisfy each of these principles, and monitoring provides the basis for demonstrating that each principle has been satisfactorily addressed.

The term “participatory monitoring” describes activities that involve local people who have, in a number of cases, demonstrated that they can cost-effectively record information about their landscape on a systematic basis. For example, participatory monitoring of timber and non-timber forest products has used vegetation samples, transects, fire calendars, field diaries, community workshops, rainfall measurements, etc. Many of these methods are relevant to REDD+. Experience shows that monitoring creates a culture of questioning and acts as a catalyst for learning about the landscape and the cycle of planning, action, and assessment. For REDD+, monitoring is an essential way to check on compliance and identify enforcement requirements.

POLICY DECISION 9 (7.1): PARTICIPATORY MONITORING

Issue to be addressed	<p>Local people can efficiently record information about numerous variables and events affecting their livelihoods. Participatory monitoring creates a culture of questioning (or social control) and acts as a catalyst for learning about the landscape and the cycle of planning, action, assessment, and learning. Participatory monitoring also builds confidence in the overall system and a sense of equity and transparency.</p> <p>Local people can play a role in monitoring emissions, but are especially valuable in identifying, reporting, and enforcing the interventions and tasks required for REDD+. Participatory monitoring will strengthen their understanding and commitment while providing a degree of comfort to investors that REDD+ is sustainable. Participatory monitoring may add value to the carbon offsets generated. However, GoV has limited experience with participatory forest monitoring approaches.</p> <p>There is a wide range of approaches that have been tried for local people to participate in monitoring. At this stage no preferred method has been identified.</p>
Options	<p>a) Participatory monitoring; bringing the advantages of community engagement and ensuring the involvement of a critical stakeholder at the local level; or b) Non-participatory monitoring by parties and persons from outside the local area</p>
Recommended principle or policy to be adopted	<p>Option A is recommended. Consistent with its stated goal of international leadership on REDD+, GoV should embrace the concept of participatory monitoring and implement principles governing such monitoring.</p>
Actions required to confirm policy option	<p>GoV should review participatory monitoring methods with a demonstrated history of success. Based on this review, GoV should prepare principles for participatory REDD+ monitoring.</p>

COMMENTS

All agreed with option 1. The involvement of civil society is important and necessary. For the model to work, civil society capacity needs to grow. The grassroots democracy decree allows the formation of local legal entities but its application has been limited for several reasons, including lack of public awareness of the decree and limited government capacity to process the paper work.

Payments for forest ecosystem services pilot projects have applied participatory monitoring model methods. This has involved training and public awareness campaigns for both government officials and communities.

7.2.10 Policy Issue # 10 (Adapted from UN-REDD, 2009)

WHAT'S AT STAKE

Any BDS, however well designed, will inevitably give rise to complaints. It is necessary to build in a recourse mechanism so that complaints can be independently reported and addressed. This is needed to ensure the credibility of the BDS.

In Viet Nam, citizens' complaints have to be submitted to the responsible government agency. But if the same agency is responsible for the BDS, then a conflict of interest arises. One option is for a centrally located point of contact to receive complaints. Such a system has two advantages. Since it would be far removed from the field it would be less prone to local interference. This would increase its credibility. A central contact point would also facilitate the collection and monitoring of complaints, which may provide important insights into the performance of the BDS. This would encourage an approach that instead of seeking to suppress complaints uses the information to fine tune and improve the system.

Viet Nam's political system provides space for public complaints. Groups and individuals can complain about local government officials, particularly when it comes to urban and industrial pollution. They can also speak to the media. Vietnamese newspapers frequently run stories about public complaints against corrupt or incompetent officials. Some Vietnamese Non-governmental Organizations (NGOs) have established telephone hotlines that have succeeded in increasing public participation in reporting environmental crimes and monitoring government response. A REDD-compliant BDS could apply a similar model with a centrally located hotline.

POLICY DECISION 10 (7.4):

DESIGN OF A SOCIALLY ACCEPTABLE RECOURSE MECHANISM

Issue to be addressed	Any BDS, however well designed, will inevitably give rise to complaints by those who think that they have not been rewarded appropriately and/or are losing out to free-riders who receive benefits but have made no contribution to forest protection and reducing carbon emissions.
Options	a) Recourse mechanism that is entirely managed by government. b) Recourse mechanism that includes civil society participation.
Recommended principle or policy to be adopted	Option B is recommended. Given the importance of managing complaints to ensure that the BDS rewards those who deserve to be rewarded on the basis of emissions reductions and to generate information that can be used to improve the BDS, a credible recourse mechanism is required. GoV should consider establishing a recourse mechanism that allows complaints to be managed transparently and efficiently and how Vietnamese civil society organizations can be most appropriately integrated into such a mechanism.
Actions required to confirm policy option	The GoV should undertake a more detailed analysis of the appropriate institutional structure of a participatory recourse mechanism. This should lead to a communications strategy through which information on the proposed recourse mechanism is widely disseminated to all stakeholders.

COMMENTS

All agreed with option 2 but its implementation will require time and effort. The design and implementation of a participatory recourse mechanism requires review and revision of existing laws and regulations that may constrain the ability in practice of citizens to exercise their rights.

7.3. Costs, retained revenues for administration, and payment structure of a REDD + BDS for Lao PDR

7.4.1 Potential REDD+ revenue flows to Lao PDR

Parties to the UNFCCC have yet to decide what might actually qualify as an emission reduction under REDD+; and the necessary assessments of changes to carbon stocks are hampered by the unavailability of quality data.

Based on the various assumptions made (carbon pricing, avoided deforestation / emission reductions), the existing calculations for potential national REDD income vary too widely (and wildly) to be useful at this stage.

7.4.2 Defining and calculating the costs of REDD+: international experiences

In general, existing literature on costs related to REDD identifies three types of costs: opportunity costs, transaction costs and implementation costs.

Opportunity costs constitute the largest cost component. In the context of REDD, they can be defined as the net income per hectare per year or the net present value (NPV) that is sacrificed as a result of not logging or not converting land to other productive uses (Olsen and Bishop 2009). Opportunity costs are, of course, different in different parts of the country.

Implementation costs are the second largest cost component. They consist of expenses for planning and implementing activities under a REDD project, such as forest management, patrolling, law enforcement, alternative livelihood programmes, capacity building, education and awareness, etc. They are influenced by economies of scale; that is, the larger the REDD project area, the smaller the implementation cost per unit (e.g. ton CO₂e, where “e” stands for equivalent).

Transaction costs refer to the costs that enable the monitoring, reporting, verification and certification of the emission reductions, which include the costs of negotiations for financing and contracts between buyers, sellers and verifiers (Minang *et al.*, 2009).

IUCN estimate of REDD implementation and transaction costs

IUCN has adopted US\$ 1/ton CO₂e as a rough global estimate of implementation and transaction costs (Olsen and Bishop, 2009, p.3). The estimate is based on the aggregation of sub-sets of implementation and transaction costs from a range of studies:

- Antinori and Sathaye's (2007) estimate of transaction costs of US\$ 0.38/ton CO₂e,
- Nepstad *et al.*'s (2007) implementation cost estimate of US\$ 0.51/ton CO₂e), and
- Grieg-Gran's (2006) highest administrative cost estimate of US\$ 0.04/ton CO₂e.

Following the example from Viet Nam (Cam Duc Phat, 2010, pp. 106-107), a fourth element of costs – the REDD+ rent – is also included in the REDD+ costs. The rationale is that REDD+ payments should not only cover the costs but also generate some incentive for the stakeholders, particularly the local community, for avoiding deforestation and forest degradation.

REDD+ Rent

In economic terms, “REDD rent” is similar to the concept of producer surplus – the difference between what a producer is paid for a good or service and what it costs them to supply it.

Not all REDD+ costs can be expressed in purely monetary terms. Some will be felt as the loss of non-monetary benefits or of non-marketed goods and services. The opportunity costs of avoided deforestation are not limited to a reduction in income. They may also be felt as losses of un-marketed goods and services (such as traditional healthcare products, wild meat or emergency foods) or through a decline in social wellbeing or other indicators (such as a decline in nutritional standards). Along similar lines, the cash returns to different land and resource uses are not the only factors motivating forest degrading activities – and therefore monetary payments are unlikely, by themselves, to add up to a sufficient incentive package to persuade people not to deforest.

For this reason, there is broad consensus that local payment mechanisms to compensate REDD+ opportunity costs must usually consider the provision of both cash and non-cash benefits, which will balance the monetary and non-monetary losses that forest land and resource users incur. These BDSs must, in addition to covering costs, provide positive incentives for avoiding deforestation and forest degradation.

7.4.3 Review of approaches for allocating and retaining conservation payments in Lao PDR

Currently there are three major national State Funds related to forest resource management in Laos: the Poverty Reduction Fund (PRF), the Environmental Protection Fund (EPF) and the Forestry and Forest Resource Development Fund (FRDF).

The Poverty Reduction Fund

The Poverty Reduction Fund (PRF) is a financially autonomous organization, legally set up by the Decree No 31 / PM dated 31st May 2002 and operated in accordance with Decree No 222 / PM dated 29th September 2006. The main objectives of the PRF are to finance small-scale infrastructure and services and to strengthen local capacity in respect to village development. Currently the main funding sources are from the World Bank (the International Development Association, IDA), and Swiss Development Cooperation (SDC), plus some revenue from e.g. the sale of PRF products such as T-Shirts). PRF now works in all 17 provinces, in 47 districts out of the total 72 districts that have been officially classified as “poor”. The organizational structure of PRF reaches from the national down to the village levels.

At the national level, PRF decision making and governance is carried out by the National Administrative Board. The PRF National Office facilitates fund management for funded projects and is the secretariat to the Administrative Board. The provincial PRF team consists of a group of around 5 technical experts and two support staff working under a provincial coordinator. At the district level, there are three technical staff members and a district coordinator. At Koumban level, there are a community team leader, Koumban facilitators, a Koumban implementation and maintenance team, a Koumban procurement team, and Koumban representatives. At the village level, there are village representatives working with the Village Implementation and Maintenance Team (number of team members depending on the number of sub-projects in a village). Staff of PRF at the national (except for the executive director and his deputy who are civil servants), provincial and district levels are on the pay-role of PRF. At Koumban and village levels work is undertaken on a voluntary basis.

Funded activities focus mainly on road access, agriculture, public health (e.g. wells), education (school buildings), and income generation. Activity planning under PRF starts at village level where villagers meet to agree on priorities. Normally each village can propose around three “sub-projects”. After that, there is a meeting at the Koumban level where priorities for the whole Koumban are prepared and submitted to the district level, where all submissions by Koumbans in the district are reviewed. Results of the review are presented at a meeting, and decisions made whether a proposed activity will be funded or not. Usually, there are not more than three sub-projects funded each year per Koumban, with the funds not exceeding US\$30,000 per sub-project per annum.

All the planning, management and fund allocation activities follow detailed manuals/guidelines prepared at the national level to meet the requirements of the donors:

- The *Manual of operations* provides detailed guidance on all operational aspects at all levels.
- The *Finance and administration manual* describes financial and accounting policies and procedures, budget preparation, delegation of authority to project staff, disbursement procedures, internal controls, etc.
- The *Social and environmental guideline* stipulates policies and procedures to avoid or minimize adverse environmental and social impacts of sub-projects and to ensure that they meet the World Bank' safeguards policies.

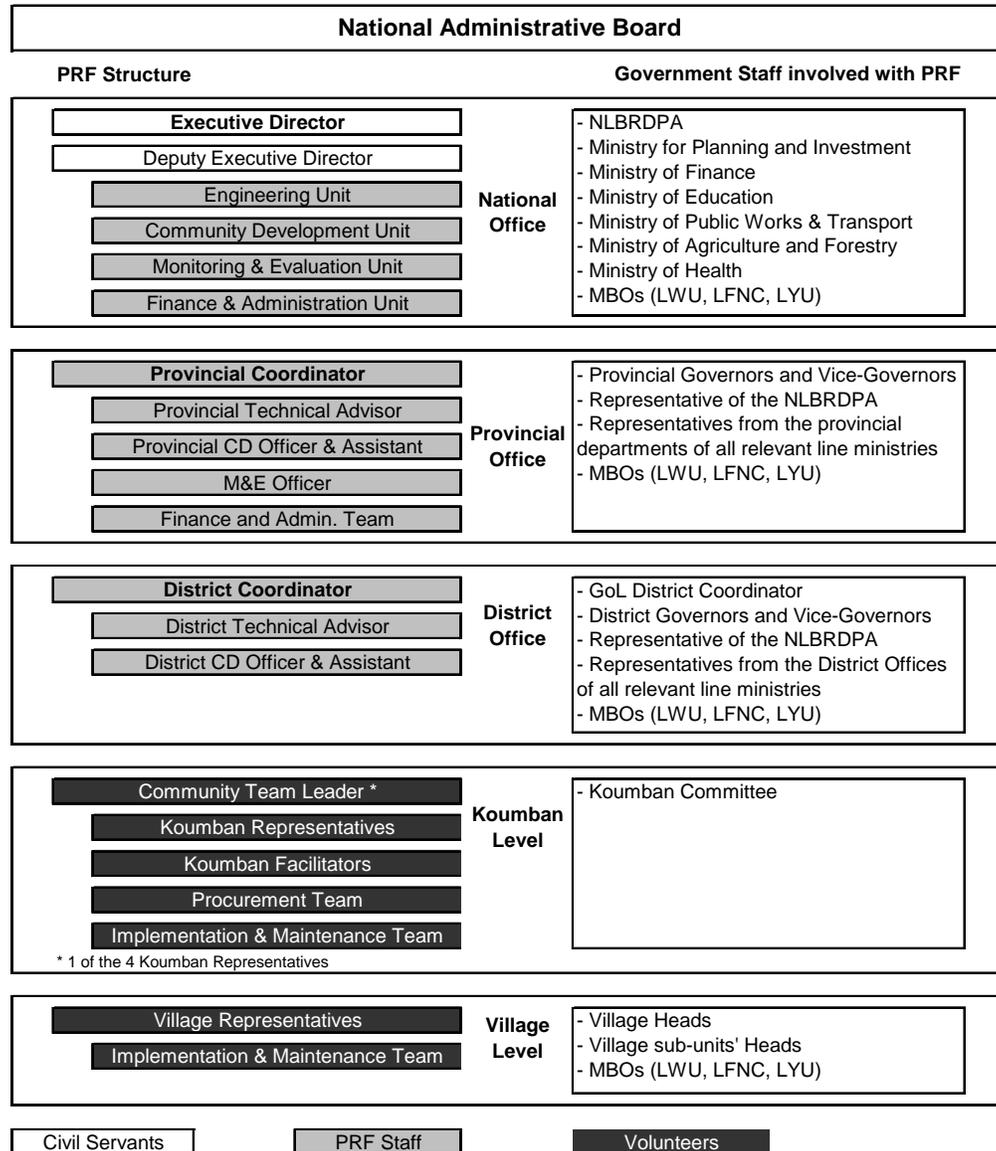


Figure 7. Organizational structure of the Poverty Reduction Fund in Lao PDR (Source: PRF Finance and Administrative Manual)

At central level, PRF has three separate bank accounts in US\$ for IDA and SDC and other sources, and one additional account in KIP for other sources. At the provincial level, all funds are converted into KIP and held in separate accounts: accounts for operational costs and development activities, and accounts for subprojects. Bank accounts are set up at the Koumban level but not at the village level.

The current separate bank accounts for the World Bank and for SDC are supposed to be a temporary arrangement until an agreement is reached that all funds can be pooled into one single Special Account.

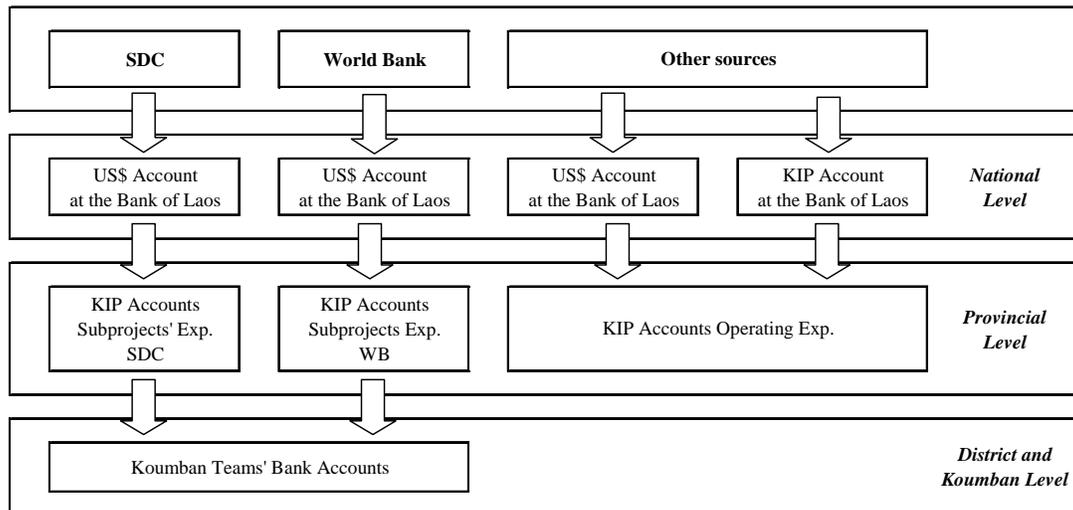


Figure 8. The Poverty Reduction Fund's bank account system (Source: PRF Finance and Administrative Manual)

For approved activities, which have become sub-projects, the fund will go from the national level to the sub-projects through bank transfer (Figure 9). A maximum of 40% of the total sub-project fund can be made in the initial transfer. Subsequent transfers are only made after the Koumban Team has reported progress and a PRF technical advisor certified physical progress. The Koumban representatives are responsible for paying sub-project expenses. In case of large amounts, funds can be disbursed directly from the provincial account.

The donors require that the cost of delivering the funds is kept to a minimum so that most of the funds have a direct impact on poverty at the community level. At least 75% of PRF's total budget must be used for subproject financing and capacity building, i.e. no more than 25% of the budget can be used for fund management. In addition, 3% of the sub-project budgets can be used to cover Koumban Team management costs (i.e. travel and meetings) and 2% for the sub-project technical supervision.

So far, the actual costs of management/ supervision are around 20% (excluding those at the sub-project level).

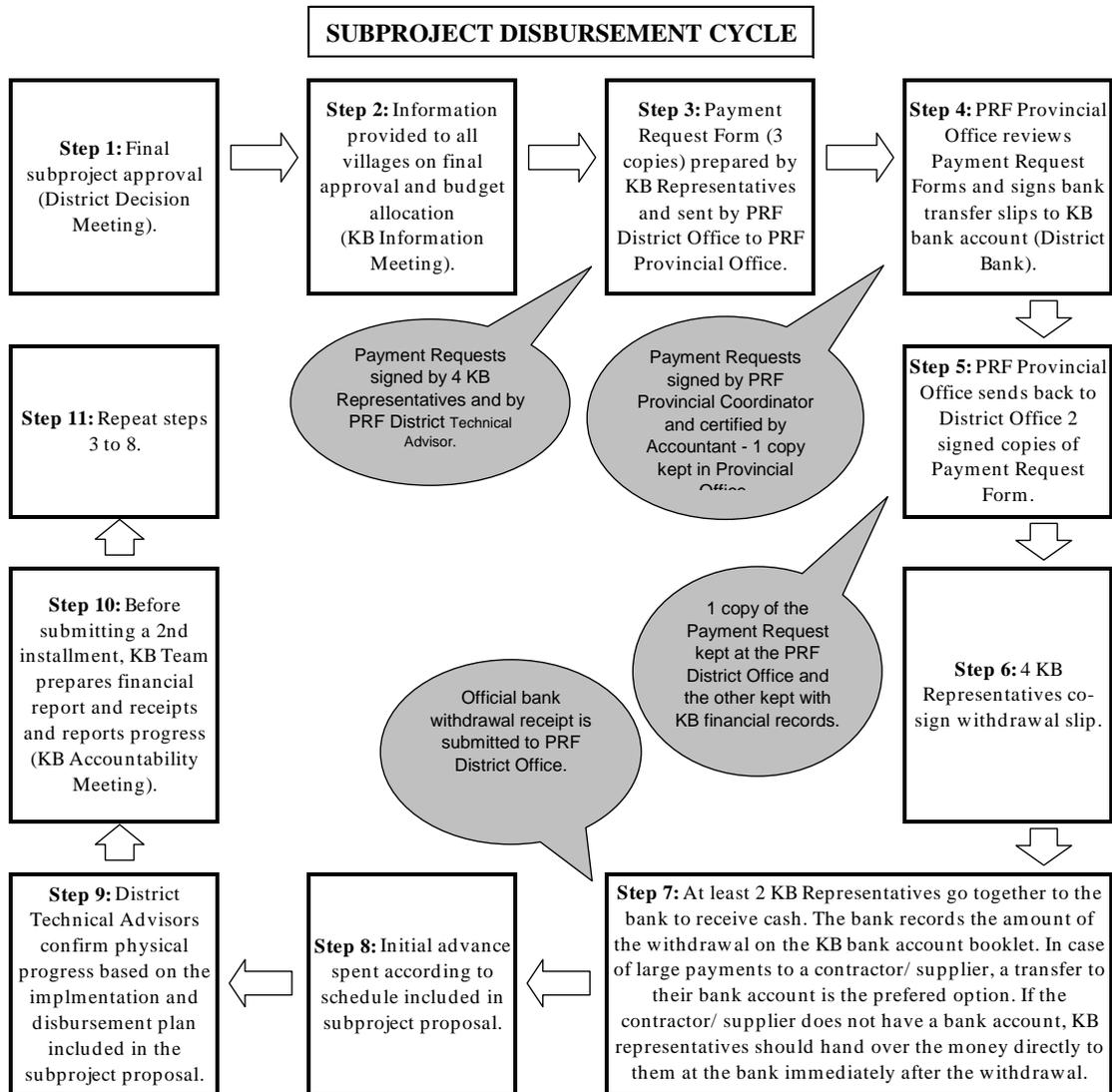


Figure 9. Fund disbursement for PRF sub-project activities

The Environmental Protection Fund

Similar to PRF the Environmental Protection Fund (EPF) is an autonomous organization set up by the Government of Laos (Prime Ministerial Decree No 146, dated 6 June 2005). EPF aims to strengthen environmental protection, sustainable natural resource management, biodiversity conservation and community development in Lao PDR.

The EPF's organization consists of two bodies at national level (with no branches at sub-national level):

- Board of Directors: chaired by the Deputy Prime Minister, with members such as ministers of MoF and WREA, and representatives mass organizations, chamber of commerce, research institutes or civil society organisations.
- Executive Office: headed by an executive director, with four units, including a Window Management Unit (WMU) for the Special Financing Windows (SFW).

The main sources of funding are the Asian Development Bank (ADB) through the Environment and Social Program Loan (US\$ 5.7 million), and the World Bank (WB), providing US\$ 4 million through the Lao Environmental and Social Project (LEnS) (EPF Five Years Strategic Plan, 2007).

Funding from EPF is provided through grants in five Special Financing Windows (SFW) (Table 2). Two SFW are financed by the World Bank and the other three by ADB:

Table 2. EPF's Special Financing Windows Budget in 2009/2010 (Source: EPF Five Years Strategic Plan, 2007)

Special Financing Windows	Date of establishment	Donor
1. Policy Implementation and Capacity Enhancement (PICE)	2005	WB
2. Community Biodiversity Investment (CBI)	2005	
3. Pollution Control	2006/07	ADB
4. Waste Water Management	2006/07	
5. Sustainable Land Management	2007/08	

Both agencies and individuals are eligible to receive EPF funding, provided that their proposed activities are in line with the direction set out by the decree and the SFW's regulations.

Figure 10 depicts the funding application process for activities under the Community and Biodiversity Investment Window. Small grant applications are submitted to the provincial facilitator for initial review. EPF may provide help to the applicant to revise the proposal for resubmission. For grants above 10,000 US\$, the proposal must be endorsed by the LEnS Project Steering Committee (PSC).

Once the proposal is approved, the applicant signs a sub-project agreement. The implementing organization needs to have a separate account for the sub-project (multiple sub-projects under one implementing agency can jointly use one account but need separate bookkeeping). Funding for the sub-project will come directly from the Designated Account. The formal representative for the sub-project must assign a person in charge of managing all financial matters and an accountant to prepare monthly financial statements.

EPF administration is financed by the interests from an initial ADB Endowment Fund.

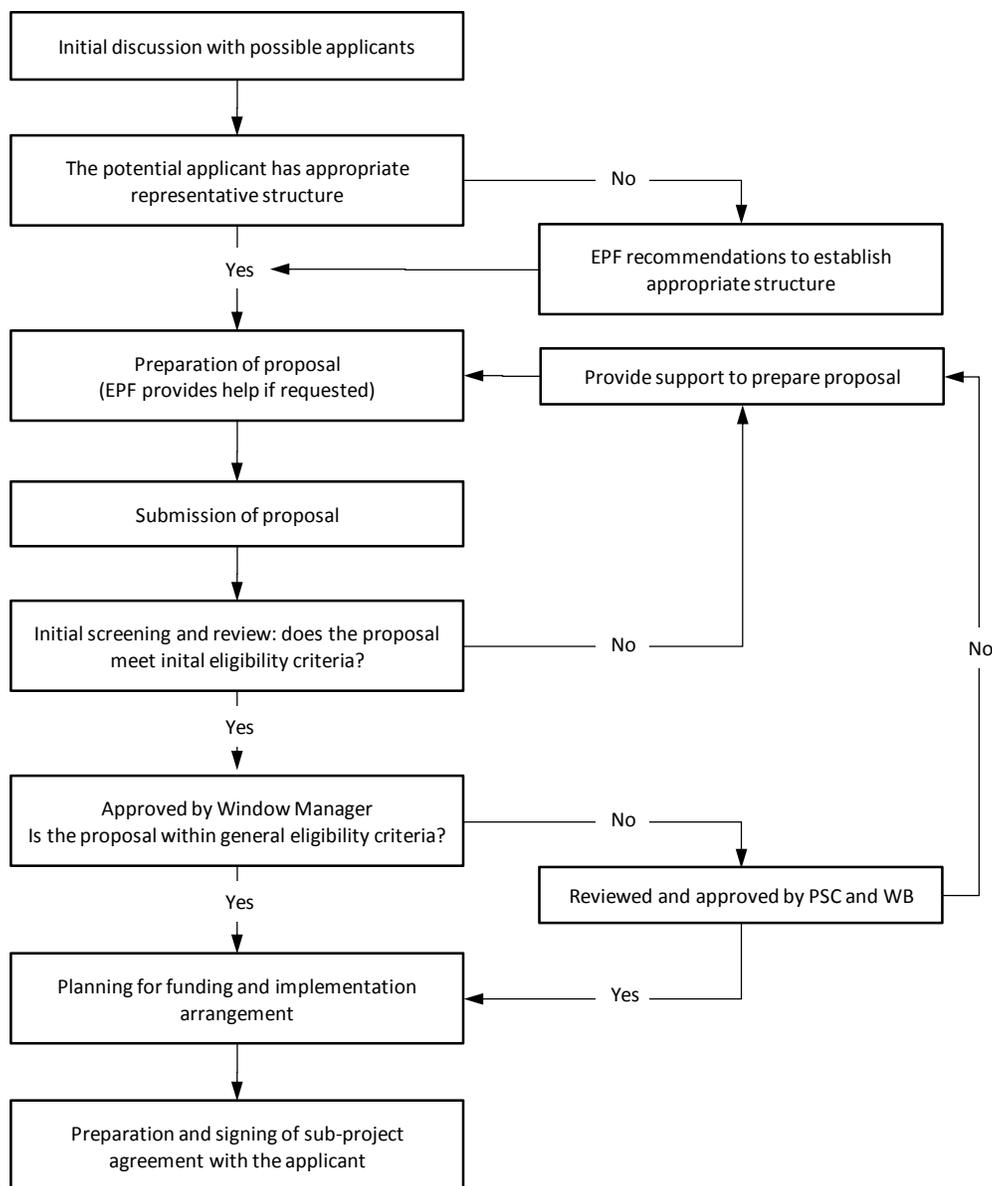


Figure 10. Fund application for activities under CBI window (Source: EPF Guidelines on preparation of proposals for Community and Biodiversity Investment Financing Window)

The Forestry and Forest Resource Development Fund

The Forestry and Forest Resource Development Fund (FRDF) was set up in 2005, following the Prime Minister's Decree No 38/PM dated 21 February 2005, as a body under the Ministry of Agriculture and Forestry (MAF). FRDF aims "to generate and aggregate financial resources from national and international agencies to be used for implementation of forest development activities, especially, management of Protected Forest Areas and National Biodiversity Conservation Forests, plantation establishment, maintenance and regeneration of degraded forests and forest lands, watersheds, environmental protection, wildlife conservation, dissemination of and training in forest development policies, forestry laws, forest management techniques and other policies related to forest and forest resources management" (Article 2 of Decree 38/PM).

The Board of Directors (BOD) is chaired by MAF's Deputy Minister, with members from relevant MAF departments, Ministry of Finance (MoF), Office of the Prime Minister, and the Department of Environment,

Science and Technology. A “Secretary Committee” supports the BOD and undertakes day-to-day fund management.

Funding sources for FRDF are supposed to be:

- royalties and fees for forest land and forest resources
- fees for timber and NTFPs harvested from plantations
- fees for forest, forest land and forest resource inventories
- contributions from national and international organisations including non-profit organisations
- the additional revenue from competitive log sales
- interest on bank deposit.

Nevertheless, so far only fees collected from timber and NTFP harvests contribute to the fund. Funding has been highly volatile ever since the date of its establishment

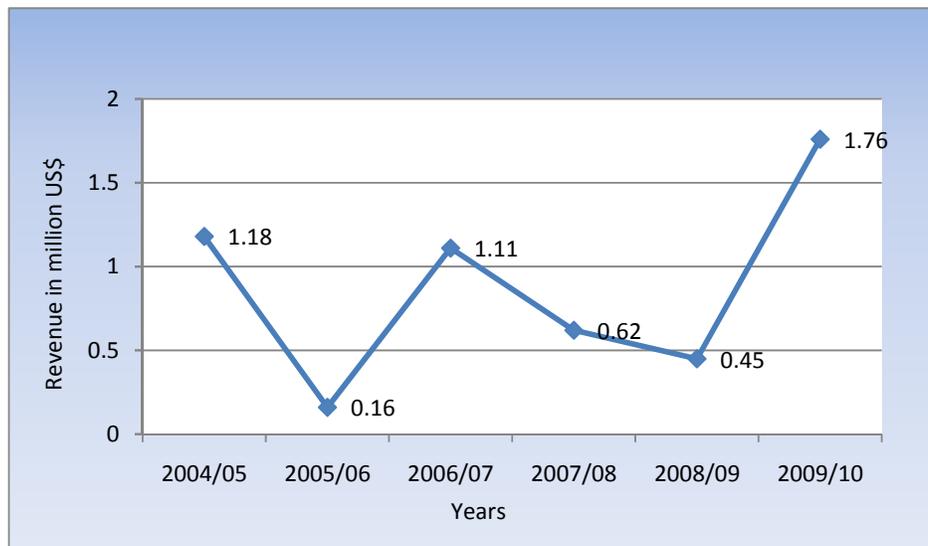


Figure 11. FRDF Budget over time (Source: Kyophilavong, P. Sustainable National Protected Area Management (SuNPAM), 2010)

FRDF finances forest management activities such as forest inventories, plantations, regeneration, harvesting, processing, protection and stabilization of shifting cultivation. Eligible have so far only been state agencies at the national (NAFRI and departments under MAF) and provincial (PAFO/ DAFO) levels. So far, funding has been approved for 13 programs with a total budget of 15 billion Kip or ca. 1.76 million USD – Table 3. This represents only 44% of the total budget requested (34 billion Kip).

Table 3: Budget by programs under Forest Resource Development Fund in 2009/2010 (Source: Kyophilavong, 2010)

	Proposed budget		Approved budget	
	Million Kip	% over total	Million Kip	% over total
Agriculture and forestry land use planning at district level	2,000	5.7%	1,300	8.7%
Monitoring and evaluation of agriculture and forestry land uses	600	1.7%	500	3.3%
Eradicating shifting cultivation and providing permanent jobs for people living in in three forest types	2,000	5.7%	1,600	10.7%
Management of production and plantation forests	2,000	5.7%	500	3.3%
Forest inventory and planning	10,000	28.6%	2,900	19.3%
Forest and forest resources regeneration for economic and environmental purposes	500	1.4%	2,000	13.3%
Biodiversity conservation, forest conservation and wildlife protection	7,000	20.0%	3,000	20.0%
Dissemination of forest policy, law and regulation	800	2.3%	500	3.3%
Management of forest and forest development fund at national level	100	0.3%	900	6.0%
Forest and forest resource inspection and protection	300	0.9%	1,000	6.7%
The NTFP management and preservation	50	0.1%	350	2.3%
Forestry research project	0	0.0%	0	0.0%
Projects which replace projects associated with credits and loan	0	0.0%	0	0.0%
The project for monitoring and evaluation of forest and forest resource management	5	0.0%	450	3.0%
	25,355		15,000	

First, the applicant organization prepares an expenditure plan, based on Fund guidelines. In general, the proposed activity has to come under the list of programs identified by FRDF. FRDF reviews the activities and budgets, feasibility and priority of submitted projects and submits them to the Fund Committee for approval. Approved projects and budgets are sent to Ministry of Finance (MoF), who will inform the concerned provinces when the funds are available. MoF transfers the budget directly to the recipient organisations.

Costs for administration of the FRDF are borne by the state budget, i.e. not taken from the FRDF. For the year 2009/10, 900 million Kip has been approved for the administration of the fund at national and provincial level, which is around 6% the amount of the budget approved for projects.

8. Findings from Viet Nam

The study identified constraints that need to be addressed in order to create a REDD-compliant BDS, and ways to address them. The most important conclusions are highlighted below:

1. According to an estimate made by SNV on the basis of low-resolution remote sensing data, REDD+ could generate about \$80-100 million/year in Viet Nam—3-4 times current Overseas Development Assistance (ODA) support to the forestry sector. However, this potential can only be realized if GoV takes steps to ensure that REDD+ is implemented effectively. This involves: developing a comprehensive REDD+ strategy to generate and sustain emissions reductions at the local level; developing the necessary capacity to measure and report on emissions reductions; and putting in place a BDS that meets the requirements of international investors and the needs of forest managers.
2. REDD+ is subject to negotiations under the auspices of the UNFCCC. Although the principles are becoming clearer, the details remain to be determined. It is therefore not possible at this point to be prescriptive in terms of how REDD+ should be implemented in Viet Nam. Nevertheless, the study was able to identify several clear policy options for GoV consideration at this early stage. In other instances, as the study recognizes, further work is required to identify the most appropriate approach.
3. REDD+ has much to learn from PFES projects, but the two should not be confused. Both concepts involve rewarding land users for the environmental services they provide, but there are several important differences, which mean that REDD+ may not be managed in the same way as existing PFES schemes. Differences include the fact that under PFES as currently practiced in Viet Nam, purchasers of environmental services are local companies whereas the buyers of REDD+ credits would be predominantly foreign entities.
4. Because REDD+ is still under negotiation, it doesn't exist legally yet. This fact is obscured by the many "REDD" projects that are underway in Viet Nam and other countries targeting the voluntary carbon market. But REDD+ will probably be implemented at the national level in order to avoid the problem of within-country leakage. This implies that funds will flow to a national entity before distribution to those responsible for the emissions reductions (assuming emissions have indeed been reduced below the reference level). Reporting on national performance is more complex than reporting on site performance because it must encompass the entire forest estate, not just "islands" of conservation success in a "sea" of deforestation.
5. Addressing the legal constraint that limits local community participation in REDD+ will be key to future success. (Experience from Lam Dong and other projects, shows that the allocation of forest to communities rather than households increases equity in the payment distribution and reduces the scope for elite capture.) The 2004 Forest Protection and Development Law recognize communities as forest owners. But the Civil Code does not recognize community as a legal entity, which means that they cannot sign contracts. A MARD review of community forestry in 34 of Viet Nam's 40 forested provinces showed that provincial governments are reluctant to grant long-term forest tenure to communities because they cannot assign responsibility to individuals for breaches of contract. Given the government's obsession with fire suppression, government officials are understandably nervous about allocating forests to groups that cannot be legally held to account for their actions.
6. It is also necessary to avoid a potentially perverse outcome of putting a price on forest carbon without the necessary safeguards. If this price is high enough there will be a strong incentive to control forest, and since two-thirds of Viet Nam's forest is owned by state owned companies or people's committees, REDD+ could run counter to the government's long standing policy of allocating forest to households and communities. In some provinces, the allocation of forest that belongs to bankrupt state forest enterprises has stalled because the provinces do not want to take responsibility for the ensuing redundancy payments. If the value of the standing forest increased sharply, the incentive to allocate forests to non-state actors might weaken.
7. A related issue is that any BDS, however well designed, will inevitably give rise to complaints about who benefits. To ensure the credibility of the BDS, it is necessary to build in a recourse mechanism so that complaints can be independently reported and addressed. In Viet Nam, citizens' complaints have to be submitted to the responsible government department. But if the same department is responsible for the BDS, then a conflict of interest arises. Some form of third-party oversight is required. Viet Nam has little experience of civil society participation in environmental decision making and there are no models that can be used as-is. However, a Vietnamese NGO has established a telephone hotline and case tracking system that has demonstrably increased public participation in reporting on the illegal wildlife trade (over 2,300 cases have been logged since the hotline started in January 2005). The NGO also monitors the government response and publishes a quarterly newsletter. A REDD+ compliant BDS could apply a similar model.

POSSIBLE DESIGN FOR AN OVERALL REDD+ SYSTEM IN VIET NAM

A. PLANNING AND IMPLEMENTATION

1. National REDD Strategy sets overall goals and plans, establishes roles for provincial and district agencies, monitoring roles, etc., and guidelines to be used in determining local benefit distribution.
2. Agencies defined in National REDD Strategy monitor implementation of REDD actions.
3. Local PCs determine locally appropriate benefit distribution proposals, following guidance from the National REDD Programme and prepared in a participatory manner.
4. Local agencies prepare socio-economic development plans that mainstream REDD considerations.
5. At periods defined by UNFCCC, agencies responsible for monitoring emissions undertake monitoring activities.
6. Viet Nam's performance report compiled, comparing actual measured emissions with projected emissions under the national Reference Emissions Level (REL), submitted to UNFCCC.
7. UNFCCC verifies and certifies the number of carbon credits achieved.
8. Viet Nam is eligible to receive revenues corresponding with verified carbon credits through an international market and/or funding mechanism.

B. BENEFIT DISTRIBUTION

9. Viet Nam receives revenues into a National REDD Fund (new stand alone fund or sub-fund of an existing fund), overseen by a broad-based, multi-stakeholder governing body.
10. Staff of National REDD Fund calculate provincial shares of the total revenues based on provincial performance.
11. Staff of National REDD Fund calculate implementation and opportunity costs incurred by the central government and subtract these amounts from the gross revenues.
12. Net revenues are distributed to Provincial REDD Funds (mirrored on the National Fund, and also with participatory governance structures) according to R coefficients.
13. Option A: Provincial REDD Fund staff repeat steps 10-12 to determine distribution of net REDD revenues to District Funds. OR 13. Option B: Provincial REDD Fund staff are responsible for disbursement to ultimate beneficiaries.
14. Provincial/District Fund staff (depending on option A or B) determine net revenues to be distributed to ultimate beneficiaries and deliver payments and/or other benefits.
15. Agencies monitor disbursement activities.
16. Agencies responsible for providing recourse in the event of disputes take action to ensure that all beneficiaries are able to register a complaint.
17. Staff of National REDD Fund initiate independent external auditing of National, Provincial, and (if relevant) District REDD Funds.

9. Conclusions and Recommendations

9.1. Recommendations for REDD+ Fund Development

Taking into account the background information and deliberations above, it is suggested that a legal enabling document is drafted and enacted in the near future that will create a REDD+ Special State Fund for the purpose of pooling and distributing monies being made available from the international community for REDD+ activities, including donor funds that are earmarked for the implementation of the REDD+ Strategic Plan that is scheduled to be drafted and approved later this year. The fund can then be modified as necessary over time in conjunction with the nested (local/province/national) and phased approach that the GoL has already decided is the best way forward in the Lao context.

In addition to financial resources contributed by donors in support of REDD+ activities, a portion of the revenues generated from the various sub-national private sector/voluntary carbon market or future cap & trade related sub-national projects could also be fed directly into the fund in order to ensure that monies generated from these projects go directly back to the local communities that are associated with the forest resources where the carbon credits were generated. These revenues, while located within the same REDD+ State fund as the financial resources contributed by various donors, could be placed into a specially created financial window that is designed specifically to handle such revenues and earmark their use to supporting the communities associated with the forest resources as already mentioned.

The key to this option is that it will combine various financial resources into one fund and to ensure the performance-based linkages actually exist. In addition, the more money that can be placed into the same fund, the easier it will be to manage and monitor, and the greater the likelihood of performance based payments that reach local communities.

In the Lao context, the forest resources that will be generating carbon credits will most likely be claimed or classified as State property by the GoL that are being held in trust for the entire country. The two following scenarios help to illustrate how this option might work:

Example 1: SUFORD Project FSC-certified commercial production forest areas are likely contenders for generating carbon credits. Do the villages actually own these forest resources? No, definitely not. Under the regulatory framework that was created to support this project approach to forest resource management the villagers *can* get a (relatively small, if any) portion of the proceeds from the commercial timber sales, but the production forest lands and the natural forest on those lands belong to the GoL, even though they are within village administrative boundaries. The same is true for non-commercial production, conservation, and protection forest areas within village administrative boundaries. The villagers may have access, use, and management rights (they create their own rules and regulations), the forest resources are still owned de-facto by the GoL. The forest resources include the carbon in the trees, so the carbon credits would most likely be considered as property of the GoL.

With this being the case, the option is being presented that a percentage of the proceeds from carbon credit sales go directly into the REDD+ special State fund, specially earmarked in a specific financial window within the fund for the benefit of the village or Koumban from which the carbon originated (basically utilizing the financial model that the Poverty Reduction Fund already uses, which is based on the needs and desires of the community in question), thus avoiding being "lost" in the National Treasury after the MoF takes possession, which, in accordance with the State Budget Law, is where the proceeds from carbon credit sales would otherwise be transferred.

Example 2: After the NLMA (district level land management offices) rezone village forest areas in cooperation with DoF in accordance with the Land Law, Forestry Law and the new Participatory Agriculture and Forest Land Use Planning Manual, and follow up village forest management extension services are provided, it is likely that non-commercial village production forest areas, village protection forest areas, and village conservation forest areas could generate carbon credits.⁶ Again, under the option being presented, a portion of the proceeds from carbon credit sales should go directly into the REDD+ fund, specially earmarked for the benefit of the villages/Koumbans from which the carbon originated.

⁶ The carbon credit sales in examples 1 and 2 should most likely be associated with Koumbans, or groupings of Koumbans linked to the carbon credits generated, due to the fact that members of villages with poor forest resources have a tendency to go into other village forest areas to extract the resources they cannot find closer to home.

Note on Allocation of Carbon Credit Sale Proceeds

It is suggested that, with 100% of carbon credits sold going directly into the REDD+ fund, an agreed upon portion of the proceeds be allocated to villages/Koumbans. Each time carbon credits are sold from the area in question, the portion of carbon credits allocated to the villages/Koumbans are apportioned in the sale along with any other parties (portion belonging to the carbon credit project developer/financier, to GoL, etc.).

This will avoid carbon marketing contracts between the financier and the GoL written in such a way that, for example, proceeds from the first 100,000 carbon credits sold go to the financier, proceeds from the next 200,000 carbon credits sold go to the GoL, and the last 50,000 sold go to the community, which may never see any proceeds since those final carbon credits are the most speculative (the carbon stocks may never reach the estimated amounts reflected in the project contract documents).

This arrangement also limits the risk that proceeds may end up being lower than anticipated, as has been the case with the share of proceeds to communities in relation to commercial timber auctions conducted through the SUFORD project.

9.1.1 Developing a REDD+ Special State Fund Legal Enabling Document

In terms of creating a REDD+ Special State Fund with the options for phased development and operation presented above, the GoL can decide to either create an entirely new fund, or modify an already existing State Fund (i.e. FFRDF, EPF, or PRF) in order to maximize governance efficiency and to ensure the utilization of already existing knowledge and capacity that exists in the country. This would entail modifying one of the Prime Ministerial Decrees that established an already existing fund in order to incorporate the various REDD+ funds into its operation, or drafting and enacting a new Prime Ministerial Decree in order to create an entirely new fund.

Regardless of the option ultimately chosen by the GoL, there are certain provisions that should be incorporated into a Prime Ministerial Decree in order to ensure that the fund mechanism ultimately chosen will meet minimum standards and protocols of the international community that is ultimately supporting such a fund. The following are general examples of what these boilerplate provisions should contain:

- 1) Organizational makeup: The fund management should have participation from all relevant government institutional organizations, private sector representatives, donors, civil society and local government.
- 2) Transparency: Financial data and planning documentation should be readily available for public review.
- 3) Use of funds: REDD+ Fund resources should be able to be used for natural resources management and conservation activities in the forestry sector, governance capacity building and also community development/poverty reduction activities.

9.1.2 Recommendations for Revenue Retention and Payment Structure

The review of existing experiences with payment mechanisms in Laos provide useful insights for future REDD+ payments.

9.1.2.1 Revenue Retention

The first issue is where the funds for administering the REDD+ funds and payment system should come from: the REDD+ revenue or the Lao government budget? In one instance, the administrative costs are covered by the State budget (Forest Resources Development Fund, FRDF) while in other cases the costs are paid by donor funds (Environmental Protection Fund, EPF; and Poverty Reduction Fund, PRF).

In the former case, it is obviously attractive for international investors to know that the Lao government is willing to pay for the administrative costs of the payment system and, thus, a higher portion of the REDD+ revenue can directly reach the ultimate beneficiaries. Nevertheless, it is more realistic to expect costs to be borne by REDD+ revenues.

The second issue, then, is how much of REDD+ funds should be retained to pay for administration costs. The PRF has used around 20% of the total fund for administration, which is lower than the 25% permissible by the World Bank. In Viet Nam, the Five Million Hectare Reforestation Program (5MHRP) set a flat rate for management costs at 10% of the total budget; of which 0.7% is for national level, 1.3% for provincial level and 8% for the project developers⁷. The Payment for Environmental Service (PES) Pilot payment scheme set a rate of 19% of the total revenue to be used to cover administration costs (10% at the provincial and 9% at the district level).

In Latin America, the National Programme for Hydrological Environmental Services in Mexico and the National Fund for Forest Financing in Costa Rica have a ceiling of 4% and 7%, respectively. In Indonesia, levels are specified by law, and allow between 10% and 50% of the total to be retained by government; of which 40% is remitted to central, 20% to provincial and 20% to district governments (Cao Duc Phat 2010). Nevertheless, fixed percentages risk leading to a situation where some entities cannot cover their costs, and may encourage inappropriate expenditures by others. It is, therefore, advisable that the rate be based on real costs.

A third issue is the incentive for the government to take part in REDD+ payment system. As discussed earlier, there are different elements to be considered: implementation costs, transaction costs, opportunity costs, and a certain level of rent.

Finally, as REDD+ fund allocation is contingent on performance, that is on achieving the specified emissions reductions targets that a given level of government administration is mandated to deliver, any method for calculating retention levels should also be flexible enough to cope with changes in costs over time. Normally, costs of introducing and setting up REDD+ programs will be higher than the subsequent costs of running the system once it is established.

9.1.2.2 Payment Structure

Capacity to manage the fund: The existing experiences with the three Lao funds discussed earlier show that complex procedures for fund management have been developed to meet the requirements of donors like ADB and WB (PRF and EPF). Over the years, human resources have been developed for fund management. Only PRF appears to have developed a comprehensive structure down to village level. EPF has sub-ordinate offices at the provincial level and FRDF will start offices at this level from late 2010 onward. In addition, experiences so far have only been with managing project grants and little if at all have been with distribution of money to different stakeholders, as should be the case with REDD+ revenue distribution.

Cash or non-cash payment: Cash payments are desirable from the point of view of the ultimate beneficiaries. However, given the lack of experience with cash payment so far, it is advisable to start with non-cash payments while developing the necessary framework for both beneficiaries and staff involved in the REDD+ revenue distribution for cash payments.

Stakeholder participation: so far, in the management of the three existing funds, the decision-making involvement of *non-state* actors (NSAs, i.e. civil society and the private sector) has been minimal. For REDD+ revenue distribution, however, the active involvement of NSAs in the fund management and payment system is pre-requisite to ensure transparency, equity and accountability. The REDD+ payment system will have to take this into account.

Management level: given the in-country experience discussed earlier, it is desirable to work at the national and provincial at the beginning. At the same time, capacity at the district level should be built so that, in the long run, payments can be managed at the district level.

Fund management agency: although the goals of all three existing funds are relevant to REDD+, PRF would seem to have the most adequate set up to manage REDD+ revenues. It has established management structures from the national down to village levels, and developed procedures to meet the strict requirements from international donors. Nevertheless, even the PRF is not yet ready to take over the specific requirements of REDD+ fund management.

Beneficiaries: which types of resource users should receive REDD funds? For Lao PDR where most of forests are still legally owned by the State, the important issue is how local communities can benefit from future

⁷ Decision 100/2007/QĐ-TTg of the Prime Minister of Viet Nam, dated 6 July 2007

REDD+ revenues. In the short run, local communities can be contracted to protect the forest resources and thus be paid for the labour and time they invest. At the same time, however, it will be necessary to accelerate the forest land allocation to local communities to ensure they will benefit from REDD+ in the long run.

R-coefficients: to determine the appropriate distribution of REDD+ benefits, taking into account the variations in conditions and costs related to achieving emission reductions in different sites. Such coefficients can be used for distribution of REDD+ revenues to provinces, then to districts and finally to local beneficiaries. These tentatively termed “R-coefficients” need to reflect actual contributions to emissions reductions and performances by different levels (and still need to be developed; Cao Duc Phat 2010).

Timing of payment: timing and frequency of REDD+ fund disbursement from international sources to Lao PDR and then to ultimate beneficiaries. If REDD+ payments were only to be made *ex post* or “on delivery” of carbon emissions reductions, it would be hard or even impossible for many groups to invest their very limited resources into REDD. The delay in payment would have significant impacts on the ability of different stakeholders to implement REDD+ projects (ICF International 2009, cited by Cao Duc Phat 2010). It is, thus, preferable to establish *ex-ante* payment at the out-set of a REDD+ project to at least cover some initial costs of establishment, in combination with *ex-post* performance-related payments. This would increase the likelihood for participation by especially the poor as there is less risk involved. Nevertheless, the issue how to acquire the funds needed for upfront payments still needs to be discussed and resolved.

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