

# Introduction to REDD+ governance in Cambodia

Briefing Paper of the  
*Overcoming the Legal Barriers to REDD+ Implementation Project\*\**

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## **ABOUT THIS BRIEF**

Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries (REDD+) has emerged out of the United Nations Framework Convention on Climate Change (UNFCCC)/Kyoto Protocol negotiations. It is intended to be a mechanism to channel funding (both public and private) for reducing emissions from the forest sector, and as an international climate change policy it relies on national implementation. In order to attract and manage REDD+ investments, countries need to implement appropriate policy choices supported by strong legal frameworks. Therefore, countries seeking to implement REDD+ need to address various different issues in their REDD+ policies, including the development of robust legal structures to facilitate REDD+ implementation. These legal frameworks could be based on existing laws, and could require new law making.

This Brief provides an overview of the existing policies, law and institutions relevant to REDD+ implementation in Cambodia, and also outlines current REDD+ initiatives in the country.



A village in Siem Reap province, Cambodia, near a potential REDD+ project area  
(*Chapman, 2012*)

# 1. OVERVIEW OF CAMBODIA'S LEGAL AND POLITICAL SYSTEM

## 1.1 General

The Kingdom of Cambodia, operating under the motto “Nation-Religion-King”,<sup>1</sup> has a constitutional monarchy based upon three branches of government (Legislative, Executive, and Judicial<sup>2</sup>), in addition to a Chief of State (King Norodom Sihamoni, since 29 October 2004)<sup>3</sup>. It is intended that three branches function according to the *separation of powers*,<sup>4</sup> although the practical reality of this has been questioned.<sup>5</sup>

- The legislative branch is divided into the National Assembly and the Senate, with the authority to approve and amend legislation initiated by them or the Royal Government of Cambodia [RGC].<sup>6</sup>
- The Executive Branch consists of the Prime Minister, Council of Ministers (also referred to as the RGC) and the various Ministries.<sup>7</sup>
- It is intended that the Judiciary should be independent and with the role to “guarantee and uphold impartiality and protect the rights and freedoms of the citizens.”<sup>8</sup>

Cambodia is divided into Provinces, and the major city areas are called Municipalities.<sup>9</sup> The Provinces are sub-divided into districts (srok) which are further divided into communes (khum).<sup>10</sup> Municipalities are divided into sections (khan) which are further divided into quarters (sangkat).<sup>11</sup> The Khum or Sangkat are further subdivided into villages (phum), which consist of several households; it

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<sup>1</sup> See Kingdom of Cambodia, *Constitution*, art. 4 (1993)

<sup>2</sup> Constitution, art. 51 (“The Kingdom of Cambodia adopts a policy of liberal democracy and pluralism. The Cambodian people are the masters of their own country.

All powers belong to the people. The people exercise these powers through the National Assembly, Senate, Royal Government and the Judiciary.

The Legislative, Executive, and the Judicial powers shall be separate.”).

<sup>3</sup> CIA *The World Factbook: Cambodia*, <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html> (last accessed 15 Nov. 2012).

<sup>4</sup> 1993 Constitution, at art. 51.

<sup>5</sup> See, e.g., Surya P. Subedi, *A Human Rights Analysis of Economic and Other Land Concessions in Cambodia*, Addendum to the Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, at 2-3 (24 Sept. 2012) (“The majority of the challenges . . . identifi[ed] in this report . . . derive from a failure to apply the domestic legal framework—that is, the laws, policies and regulations that the Government itself has developed . . . . The granting and management of economic and other land concessions in Cambodia suffer from a lack of transparency and adherence to existing laws. Much of the legal framework on these matters is relatively well developed on paper, but the challenge is with its implementation in practice.”).

<sup>6</sup> Robert B. Oberndorf, *REDD+ in the Cambodian Context: An Overview of the Policy, Legal and Governance Frameworks Impacting Implementation* (Aug. 2010), at 11 [citing Council of Ministers, *Legal and Judicial Reform Policy*, at 8 (20 June 2003)].

<sup>7</sup> Robert B. Oberndorf, *REDD+ in the Cambodian Context: An Overview of the Policy, Legal and Governance Frameworks Impacting Implementation* (Aug. 2010), at 12.

<sup>8</sup> 1993 Constitution, at art. 128.

<sup>9</sup> 1993 Constitution, art. 145.

<sup>10</sup> 1993 Constitution, art. 145.

<sup>11</sup> 1993 Constitution, art. 145.

is important to note, however, that a phum is not an administrative division identified by the Constitution. This is particularly important in the case of community forestry initiatives, where information regarding the numbers of villages in an area designated for community forestry is needed. Each administrative unit has corresponding levels of the executive agencies with specific responsibilities for that jurisdiction.<sup>12</sup>

## 1.2 The Hierarchy of Laws in Cambodia

The hierarchy of Cambodian laws is outlined below. The scope and time required to issue these official mandates becomes narrower moving down the list:

- 1) **The Constitution:** The Supreme Law of the Kingdom of Cambodia
- 2) **Treaties and Convention:** According to Article 26 of the Constitution, the King shall sign and ratify international treaties, both multilateral and bilateral, and conventions, following the approval of the National Assembly and Senate. After such ratification, international treaties and conventions shall become laws and may be used as the basis for judicial decisions.
- 3) **Laws (Chhbab):** Laws adopted by the National Assembly
- 4) **Royal Kram (Preah Reach Kram) and Royal Decree (Preah Reach Kret):** To be issued under the name of the King for executing his constitutional powers
- 5) **Sub-Decree (Anu-Kret):** To be signed by the Prime Minister after adoption by the Cabinet Meeting. In case the sub-decree has not been adopted by the Cabinet Meeting, countersignature by the Minister(s) in charge shall be required. The Prime Minister can use this in exercising his own regulatory powers.
- 6) **Ministerial Order (Prakas):** To be issued by members of the government in exercising their own regulatory powers.
- 7) **Decision (Sechkdei Samrech):** Individual decision of the Prime Minister and Decision (Prakas-Deika) of a Minister or a Governor, which is used in exercising his own regulatory powers.
- 8) **Circular (Sarachor):** In general, to be issued by the Prime Minister as head of government, and by a minister as an official of the ministry either to explain or clarify certain legal regulatory measures or to provide instructions
- 9) **Provincial Deka (Arrete):** To be used by a provincial governor within the geographical limits of his province<sup>13</sup>

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<sup>12</sup> See, e.g., Sub-Decree 118, *Sub-Decree on State Land Management*, No. 118 HNK/BK (07/10/2005) (detailing the specific duties of the “Provincial/Municipal State Land Management Committee located at the Provincial Department of Land Management, Urban Planning, Construction and Cadastre” [sub-division of the MLMUPC that registers all land] and then the “District/Khan State Land Working Group located at District/Khan Office of Land Management, Urban Planning, Construction and Land Administration” in Chapter 9).

<sup>13</sup> Council for the Development of Cambodia (CDC), *Cambodia Investment Guidebook*, Table 0-3-1 Legal Hierarchy in Cambodia (Jan. 2010), [http://www.synergycambodia.com/userfiles/submenuimg/cambodia\\_investment\\_guide\\_book\\_2010.pdf](http://www.synergycambodia.com/userfiles/submenuimg/cambodia_investment_guide_book_2010.pdf).

## **2. LEGAL AND POLICY FRAMEWORK RELEVANT TO REDD+ IN CAMBODIA**

### **2.1 Overview**

There are several national policies that are relevant forest governance in Cambodia, including the:

- Cambodian Millennium Development Goals (CMDG);
- Rectangular Strategy (RS)-Phase II (2008-2013);
- National Strategic Development Plan (NSDP);
- National Forest Programme (2010 – 2029);
- Cambodia REDD+ National Roadmap (2011);
- National Policy and Strategic Plan for Green Growth (2013-2030);
- Government Decision (Sar. Chor. Nor) No.699 (May 2008);
- Sub-decree (Anu Kret) 188 (November 2008); and
- Declaration on Land Policy (2009).

In addition, there are more sector-specific laws and policies such as the

- Land Law (2001);
- Civil Code (2001);
- Forestry Law (2002);
- Community Forestry Sub-Decree (2003);
- Law on Environmental Protection and Natural Resource Management (1996);
- Law on Protected Areas (2008); and
- Fisheries Law (2006).

### **2.2 Outline of key policies**

#### **2.2.1 *The Cambodian Millennium Development Goals (CMDGs)***

The Cambodian Millennium Development Goals (CMDGs) emphasize the importance of improving forestry and natural resource management in the country. The RGC has expressed its commitment to increase total forest cover to 60% of land area (from the current 57%) by combating deforestation and forestland conversion<sup>14</sup>. To achieve these goals, the Rectangular Strategy (RS)-Phase II (2008-2013), a national socio-economic development policy agenda, was formulated. The RS-Phase II aims to

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<sup>14</sup> Achieving Cambodia's Millennium Development Goals (2010)

ensure sustainable forest management, protect biodiversity and promote community forestry programs in the country.

### **2.2.2 *Rectangular Strategy Phase II (2008-2013)***

The Rectangular Strategy (RS)-Phase II (2008-2013) is a national socio-economic development policy agenda. This strategy focuses on four main components, including (1) agriculture development, (2) infrastructure rehabilitation development, (3) private sector development and employment creation, and (4) capacity building and human resource development. The key priorities for forestry reform include law enforcement, effective management of protected areas, climate change actions and the promotion of community forestry programs.

### **2.2.3 *National Strategic Development Plan (2009-2013)***

The National Strategic Development Plan (NSDP) (2009-2013) serves as the ‘roadmap’ for implementing the RS-Phase II (explained above) and it aims to support the sustainable use of all natural resources in the country. The NSDP outlines the importance of conserving Cambodia’s unique natural heritage and biodiversity, along with enhancing environmental sustainability, sustainable economic growth, poverty reduction, and improvements in the lives of rural communities. In addition, the NSDP sets a national target of 60% forest cover, 450 approved Community Forests and reducing fuel-wood dependence by 2013. It also recognizes the importance of REDD+ and greenhouse gas mitigation projects in mitigating climate change.

### **2.2.4 *National Forest Programme (2010-2029)***

The National Forest Programme (NFP) 2010-2029 aims to achieve sustainable forest management and also to alleviate poverty in Cambodia. Specifically, it identifies objectives and goals in developing and managing forests to improve livelihoods, environmental services and overall economic development. Importantly, it aims to ensure that the management and exploitation of forests generates benefits for government entities, local communities, the private sector and individuals. The NFP has aims to register 1,000 community forestry groups nationally, and for community forest programmes to cover 2.0 million hectares by 2030. The NFP has also identified REDD+ as an important source of sustainable forest financing<sup>15</sup>.

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<sup>15</sup> TWGF&E, *National Forest Programme 2010-2029—Strategy & Implementation* (2010)

The NFP prioritizes six programmatic areas that will be emphasised over the next two decades in order to achieve several objectives, including:

- forest demarcation;
- classification and registration;
- forest conservation and development of forest resource and biodiversity;
- forest law enforcement and governance programme;
- capacity and research development;
- sustainable forest financing<sup>16</sup>; and
- Community Forestry (CF).

### **2.2.5 Cambodia REDD+ National Roadmap**

The Cambodia REDD+ National Roadmap outlines a national plan for ‘REDD+ Readiness’ activities. According to this document, all forestlands are Public State Property (except forests under indigenous land titles and private forests), and therefore the majority of forest carbon is owned by the State with the forest carbon in private forests belonging to their owners<sup>17</sup>. In this way, it appears that the RGC has linked forest carbon ownership to land ownership.

### **2.2.6 National Policy and Strategic Plan for Green Growth (2013-2030)**

The National Policy and Strategic Plan for Green Growth recognises the role of REDD+ for sustainable forest management and conservation in Cambodia. The role of the REDD+ National Roadmap in facilitating ‘green growth’ was noted in this document.

### **2.2.7 Declaration on Land Policy (2009)**

The Declaration on Land Policy (2009) focuses on three sub-sectors:<sup>18</sup> land administration,<sup>19</sup> land management,<sup>20</sup> and land distribution.<sup>21</sup> It is consistent with the broader national Rectangular Strategy

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<sup>16</sup> Robert B. Oberndorf, *REDD+ in the Cambodian Context: An Overview of the Policy, Legal and Governance Frameworks Impacting Implementation* (Aug. 2010), at 22-23.

<sup>17</sup> Cambodia REDD+ National Roadmap (2011).

<sup>18</sup> Declaration on Land Policy (2009), at 1.

<sup>19</sup> Declaration on Land Policy, at 2 (“**The goals of land administration** are to clearly register ownership and other rights over immovable properties (State and private), to conduct official transfer of those rights, to prevent and resolve land disputes in order to strengthen land tenure security, and ensure reliability and efficiency of land market.”).

<sup>20</sup> Declaration on Land Policy, at 3 (“**The objective of land management** is to ensure management, protection and use of land and natural resources with transparency and efficiency in order to preserve environmental sustainability and equitable socio-economic development in rural and urban areas as well as to prevent disputes

– Phase II policy, which incorporates environmental sustainability as one of its fundamental principles. The reform is focused on strengthening land management, land distribution, and land use planning to ensure the security of land ownership and to eradicate illegal land holding. Land allocation and registration to poor households have been issued through the social land concession programme. The government also aims to continue to resolve land conflicts in the country.

## 2.3 Outline of key laws

In Cambodia at present, REDD+ operates at both the project level and national level. The wider legal framework related to forest governance in the country is important when considering how to manage issues that affect the drivers of deforestation (such as poverty, tenure insecurity and the commercial use of forests), in addition to more REDD+-specific concerns such as carbon ownership.

### 2.3.1 Constitution (1993)

The Constitution is the supreme law of Cambodia; all other law must be consistent with constitutional provisions. The Constitution specifies that forests, land, and natural resources are all property of the State (discussed further below).<sup>22</sup> It also provides for gender equality<sup>23</sup>, which is particularly important when considering benefit-sharing issues for REDD+.

### 2.3.2 Land Law (2001)

#### 2.3.2.1 Cambodian real property regime

The Land Law classifies the different types of property and ownership rights in Cambodia: (i) State Public Property, (ii) State Private Property, and (ii) Private property:

- i. **State Public Property:** According to the Articles 15 & 16 of this law, State Public Property is land held by the State which carries a public interest use. State Public Property includes

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over land use by regulating land development, land conversion, land readjustment, construction, resettlement in compliance with the Law on Land Management, Urban Planning and Construction, the Strategy of Land Policy Framework, decentralization, de-concentration, and good governance policies.”).

<sup>21</sup> Declaration on Land Policy, at 4 (“**The objective of land distribution** is to provide clear direction for allocation and use of State land for public and private purposes in a transparent and equitable manner in response to the needs for land of the people, particularly the poor, disabled soldiers, and family of deceased soldiers who have no land or lack land by implementing social land concession program.”).

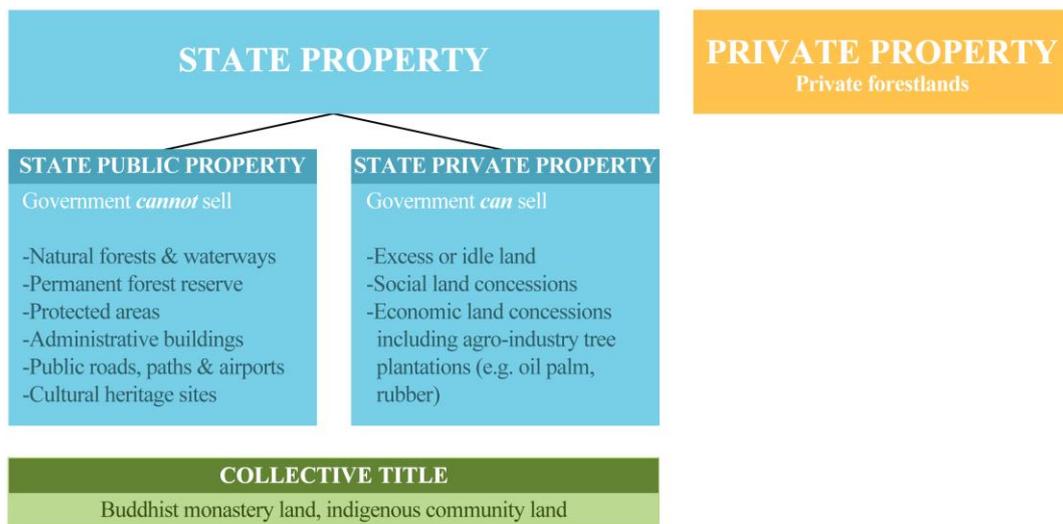
<sup>22</sup> 1993 Constitution, art. 58 (“State property notably comprises land, mineral resources, mountains, sea, underwater, continental shelf, coastline, airspace, islands, rivers, canals, streams, lakes, forests, natural resources, economic and cultural centres, bases for national defence and other facilities determined as State property. The control, use and management of State properties shall be determined by law.”).

<sup>23</sup> Constitution, art. 45.

properties of a natural origin, such as the Permanent Forest Reserve. State Public Property cannot be sold or transferred to other legal entities, although it may be subject to rights of occupancy or use that are temporary in nature (such as a logging concession in the Permanent Forest Reserve).

- ii. **State Private Property:** Under Article 17, State Private Property is land that is owned by the State or public entities that do not have a public interest use (i.e. owned by the state or public entity, but does not fit the definition of State Public Property as mentioned above). In addition, State Private Property can be described as excess or idle land that is held by the State or public entities. State Private Property may actually be sold or transferred to other legal entities, such as use for social or economic land concessions.
- iii. **Private Property:** Private property is property owned by natural persons or legal entities other than the State or public entities. Private property can be owned by individuals, collectives or business organizations/associations<sup>24</sup>.

## Property Regimes in Cambodia



### 2.3.2.2 Indigenous rights to land and indigenous land titling

Registration and titling of lands of Indigenous Communities was recognized under the Land Law<sup>25</sup>, with further procedures outlined in the Sub-Decree #83 on Procedures of Registration of Land of Indigenous Communities (2009). In addition, the Policy for Indigenous Peoples' Development was adopted in April 2009, recognizing the rights of the indigenous peoples to their cultures, land, and

<sup>24</sup> Land Law 2001, art. 8.

<sup>25</sup> Land Law 2001, art.25.

natural resources. Such lands can be registered under communal title, however, this is still in the pilot phase<sup>26</sup>.

Prior to land registration, indigenous communities must complete an initial evaluation by the Ministry of Rural Development and then formally register with the Ministry of Interior<sup>27</sup>. Under Indigenous Land Titling, a registered group of indigenous people with legally recognized by-laws can acquire collective ownership rights over state private and state public lands (e.g. forests). However, the indigenous community or individuals within the community cannot sell these lands. In addition, a group of indigenous people may choose not to register, in which case they remain eligible for individual private ownership of land.

#### 2.3.2.3 *Sub-Decree on State Land Management (2005)*

The Sub-Decree on State Land Management (2005) addresses the classification, reclassification and mapping of State land. Using the ‘trustee authority’ concept, “the State may entrust the official use right and the duty to administer and safeguard State public or State private land to a Ministry, institution or territorial authority.”<sup>28</sup> This could be a provincial, district or commune entity or territorial authority which has jurisdiction to regulate or manage<sup>29</sup> the Permanent Forest Reserve (such as the Forestry Administration or the Ministry of the Environment).

#### 2.3.2.4 *Sub-Decree on Rules and Procedures for Reclassifying Property of the State and of Public Legal Entities (2006)*

The RGC is responsible for State land management.<sup>30</sup> The Ministry of Finance is responsible for maintaining an inventory of all State properties, in addition to oversight/coordination/approval powers over State properties, including the approval and oversight of any leases or concessions over State land.<sup>31</sup> The State Property Management Authority deals with sales, exchanges, and leases of state

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<sup>26</sup> Donal Yeang, *Tenure Rights and Benefit Sharing Arrangements for REDD: A Case Study of Two REDD Pilot Projects in Cambodia, Forest and Nature Conservation*, (Wageningen, The Netherlands 2010).

<sup>27</sup> Cambodia REDD+ Roadmap (2011)

<sup>28</sup> Sub-Decree on State Land Management, art. 18. If State Private Land is not entrusted to a trustee authority, then it must undergo Allocation and Use Planning by the Provincial/Municipal State Land Management Committee.

<sup>29</sup> “The trustee authority has no right to lease, sell, transfer, donate or exchange, except as provided in a separate sub-decree”—which would be issued upon approval by the RGC. Sub-Decree on Land Management, art. 18(f).

<sup>30</sup> Robert B. Oberndorf, *REDD+ in the Cambodian Context: An Overview of the Policy, Legal and Governance Frameworks Impacting Implementation* (Aug. 2010), at 25 [citing Sub-Decree on Rules and Procedures for Reclassifying Property of the State and of Public Legal Entities, art. 2(1)].

<sup>31</sup> Robert B. Oberndorf, *REDD+ in the Cambodian Context: An Overview of the Policy, Legal and Governance Frameworks Impacting Implementation* (Aug. 2010), at 26 [citing Law on Public Finance System, art. 17

property.<sup>32</sup> The State Property Possession Authorities conduct annual inventories of property under their direct control (e.g. natural State forestland in their area), and can also propose leases of such State Public Property to the Ministry of Finance “for review and submission to the RGC for approval.”<sup>33</sup>

When the State Property Management Authority decides to authorize a lease of State Public Property, it can only be for 15 years and “[t]he leasing agreement is made in the form of [a] temporary, irregular letter of approval to possess the State Public Property and it can be withdrawn any time in order to protect the state public property and to serve [the] public interest.”<sup>34</sup>

### 2.3.3 *Forestry Law (2002)*

#### 2.3.3.1 *Overview*

The Forestry Law, an important sector-specific law, defines the management framework for harvesting, use, development, conservation, and protection of forests in Cambodia. It aims to ensure sustainable forest management and customary user rights of forest resources for indigenous and local communities. Reaffirming the Constitution, the Forestry Law provides that all forests (referred to as the Permanent Forest Estate), belong to the State, noting that there is currently a lack of proper demarcation of Cambodia’s forest estate<sup>35</sup>. The Permanent Forest Estate is divided as follows:

- **Permanent Forest Reserves** are State Public Property and fall under the jurisdiction of the Forestry Administration (FA) which is housed the Ministry of Agriculture, Forestry and Fisheries (MAFF). According to the Forestry Law, the Permanent Forest Estate is defined as all forested land within the Kingdom of Cambodia. Generally, all categories of forests fall within the definition of the Permanent Forest Reserves - including forests that occur on private lands, flooded forests, wetland forests and mangrove forests. However, while all these forests are under the jurisdiction of the FA, wetland and mangrove forests outside the Protected Areas (PA) are

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(2008); Sub-Decree on State Property Management, art. 17 (2005); Sub-Decree on Rules and Procedures for Reclassifying Property of the State and of Public Legal Entities [State Property Inventory, Lease, Sale, Exchange and Reclassification], art. 2 (2006); Land Policy (2009)]. Article 2(2) of the Sub-Decree on Reclassifying Property specifies that the MEF should issue Prakas on the form and procedure for public entities to register their land in the state property inventory.

<sup>32</sup> Sub-Decree on Rules and Procedures for Reclassifying Property of the State and of Public Legal Entities, art. 2(1).

<sup>33</sup> Robert B. Oberndorf, *REDD+ in the Cambodian Context: An Overview of the Policy, Legal and Governance Frameworks Impacting Implementation* (Aug. 2010), at 27 [citing Sub-Decree on Reclassifying Property, arts. 15 & 17].

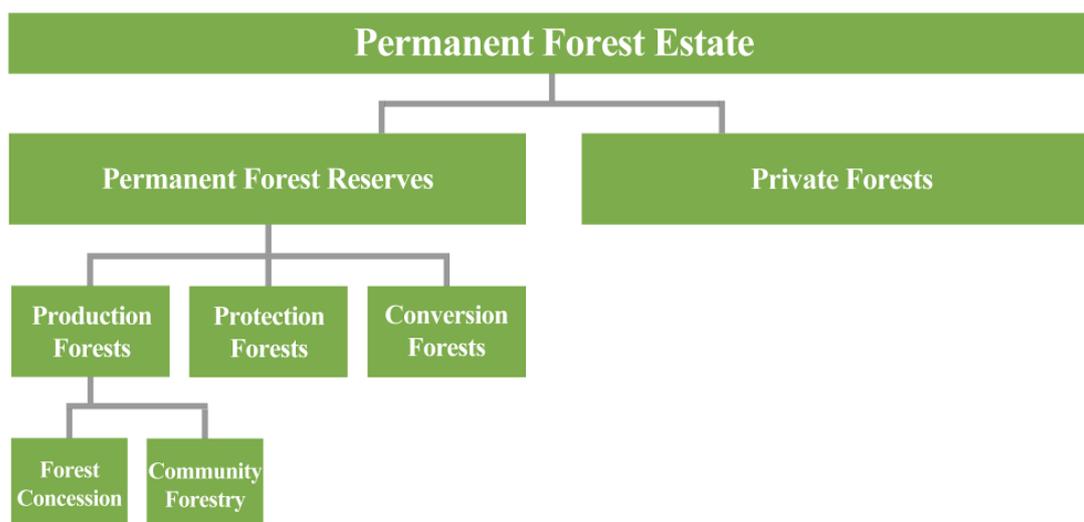
<sup>34</sup> Sub-Decree on Reclassifying Property, art. 18.

<sup>35</sup> Global Forest Resources Assessment 2010, *Country Report: Cambodia* (FAO: Rome, 2010), page 11 (at 2.2.3).

under the jurisdiction of the Fisheries Administration (FiA) of the MAFF. Permanent Forest Reserves consist of three sub-categories: a) Production Forests, b) Protection Forests and c) Conversion Forests. Production Forests are forests that are managed primarily for the sustainable production of timber and non-timber forest products. In these forests, protection is a secondary objective. As shown in Figure 2, Production Forests include Forest Concessions and Community Forests. Areas under Production Forests include those forests where harvesting is permitted (e.g. annual bidding coupes for domestic wood supply), degraded forests, forests to be rehabilitated, and forests reserved for regeneration or plantation. The government may grant an area of production forest, not under use, to a forest concession through public bidding consistent with the National Forest Management Plan and after consultation with concerned ministries, local authorities and communities<sup>36</sup>. However, from January 2002, the RGC issued a Declaration on the Suspension of Forest Concession Logging in the country<sup>37</sup>. Community forests are forests owned by the state that have been allocated to communities under a 15-year renewable agreement. The primary goal of community forests is to protect and rehabilitate forests and to enhance the sustainable use of forest resources by local communities.

- **Private Forests** are those that are individually owned and these forests are managed by the owners for a range of benefits. The owners have the free will to utilize these forests the way they deem fit and in addition, forest carbon in private forests belongs to the owners<sup>38</sup>.

## Forest Estate Classification in Cambodia



<sup>36</sup> Forestry Law 2002, art.13.

<sup>37</sup> Cambodia REDD+ Roadmap, (2011).

<sup>38</sup> Cambodia REDD+ Roadmap (2011)

Land within the Permanent Forest Estate can also be zoned as a Protected Area. **Protected Areas** fall under the jurisdiction of the Ministry of Environment (MOE); applicable law includes the Protected Area Act 2008 and the Environmental Protection and Natural Resource Management Law 1996 (both discussed separately, below). Protected areas are Public State Property and they are managed mainly for biodiversity conservation; according to the REDD+ Roadmap, they cover 3 098 000 hectares<sup>39</sup>.

#### 2.3.3.2 *Sub-Decree on Community Forestry Management (2003)*

Promulgated under the Forestry Law, the Sub-Decree on Community Forestry Management (2003) aims to empower local communities to manage and use forest resources to preserve their culture and traditions as well as to improve their livelihoods. In addition, the Sub-Decree also intends to ensure forest user rights for local communities and offer an effective means for them to participate in reforestation, rehabilitation and conservation of natural resources (including forests and wildlife). It aims to support not only the RGC's policies of poverty reduction but also decentralization via community based forest management.

#### 2.3.4 *Law on Protected Areas (2008)*

The Law on Protected Areas was promulgated in 2008. The objectives of this law are to manage and effectively implement the conservation of biological resources and the sustainable use of natural resources in the Protected Areas. In addition, it determines the responsibilities and participation of local communities, indigenous ethnic minorities, and the general public. According to this law, the state recognizes and secures access to traditional uses, local customs, beliefs, and religions of local communities and indigenous ethnic minority groups residing within and adjacent to the protected areas.

Community Protected Area (CPA) can be established under a 15-years renewable agreement between the local communities and the Nature Conservation and Protection Administration (NCPA)<sup>40</sup> of the MoE<sup>41</sup>. However, the CPA guidelines regarding the procedures and process of establishing CPAs has not yet been approved; this needs to be determined by Prakas (regulation) of the MoE.

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<sup>39</sup> *Ibid.*

<sup>40</sup> The Nature Conservation and Protection Administration has now been changed to the General Department of Administration for Nature Conservation and Protection (GDANCP)

<sup>41</sup> Law on Protected Areas (2008), art. 25.

The MoE is the jurisdictional trustee authority over NPAs, with its General Department of Administration for Nature Conservation and Protection (GDANCP) serving as the secretariat for the management of these areas.<sup>42</sup>

Protected areas can be categorized as a: 1. National Park, 2. Wildlife sanctuary, 3. Protected landscape, 4. Multiple use area, 5. Ramsar site, 6. Biosphere reserve, 7. Natural heritage site, 8. Marine park.<sup>43</sup> Each protected area shall be divided into four (4) management zoning systems, as follows:

1. **Core zone**: management area(s) of high conservation values containing threatened and critically endangered species, and fragile ecosystems.

Access to the zone is prohibited except the Nature Conservation and Protection Administration's officials and researchers who, with prior permission from the Ministry of Environment, conduct nature and scientific studies for the purpose of preservation and protection of biological resources and natural environment with the exception of national security and defense sectors.

2. **Conservation zone**: management area(s) of high conservation values containing natural resources, ecosystems, watershed areas, and natural landscape located adjacent to the core zone.

Access to the zone is allowed only with prior consent of the Nature Conservation and Protection Administration at the area with the exception of national security and defense sectors.

Small-scale community uses of non-timber forest products (NTFPs) to support local ethnic minorities' livelihood may be allowed under strict control, provided that they do not present serious adverse impacts on biodiversity within the zone.

3. **Sustainable use zone**: management area(s) of high economic values for national economic development and management, and conservation of the protected area(s) itself thus contributing to the local community, and indigenous ethnic minorities' livelihood improvement.<sup>44</sup>

After consulting with relevant ministries and institutions, local authorities, and local communities in accordance with relevant laws and procedures, the Royal Government of Cambodia may permit development and investment activities in this zone in accordance with the request from the Ministry of Environment.

4. **Community zone**: management area(s) for socio-economic development of the local communities and indigenous ethnic minorities and may contain existing residential lands, paddy field and field garden or swidden (Chamkar).<sup>45</sup>

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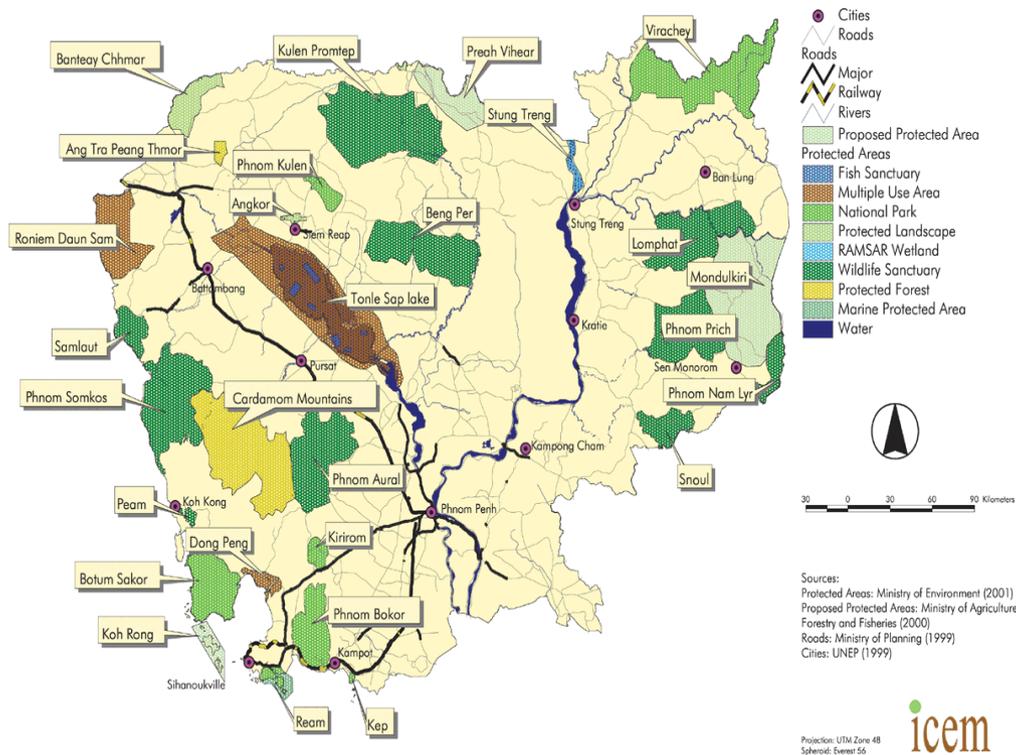
<sup>42</sup> Robert B. Oberndorf, *REDD+ in the Cambodian Context: An Overview of the Policy, Legal and Governance Frameworks Impacting Implementation* (Aug. 2010), at 33 [citing NPA Law, art. 4; Forestry Law 2002, art. 3].

<sup>43</sup> NPA Law, art. 7

<sup>44</sup> Article 25 allows for the Community Nature Protected Areas to be established in Sustainable Zones.

<sup>45</sup> NPA Law, art. 11.

## Protected Areas in Cambodia



### 2.3.5 Environmental Protection and Natural Resource Management Law (1996)

The Environmental Protection and Natural Resource Management Law (1996) has multiple aims, including the assessment of environmental impacts of proposed projects to “ensure the rational and sustainable preservation, development, management and the use of the natural resources” and to promote public participation environmental protection and natural resource management.<sup>46</sup> It provides for the development of national and regional environmental plans (Chapter II), encouragement of public participation (Chapter VII), sustainable natural resource management (Chapter IV) including “forests and forest sub-products” (Article 8), and an ‘Environment Endowment Fund’ applicable to environmental protection projects (Article 19).

### 2.3.6 Fisheries Law (2006)

The Fisheries Law (2006) grants the Fisheries Administration (FiA) of the MAFF the power to manage and regulate flooded forest and mangrove areas outside of the Protected Areas (PA) of the

<sup>46</sup> Article 1, Law on Environmental Protection and Natural Resource Management (1996).

MoE, including Community Fisheries Areas and protected fisheries areas<sup>47</sup>. The formation of community fisheries shall be determined by Sub-decree and the community fisheries agreement between the local communities and the FiA is valid not more than 3 years; however, the agreement can be renewed depending on the monitoring report and re-evaluation by the FiA.

### **2.3.7 Government Decision (Sar. Chor. Nor) No.699 (May 2008)**

Government Decision (Sar. Chor. Nor) No.699 (May 2008) which was specifically issued to endorse the Oddar Meanchey Community Forestry REDD+ Project (OM CF REDD+ Project), designated the Forestry Administration as the seller of forest carbon for the project. The circular also defines how revenue from the OM CF REDD+ carbon credit sales could be used to (1) improve the quality of the forest, (2) maximize the benefit flows to local communities who are participating in the project and (3) study potential sites for the new forest carbon credit REDD+ projects<sup>48</sup>. Furthermore, this Decision intends for revenue to be channelled through the Technical Working Group on Forestry and Environment (TWG-F&E)<sup>49</sup> during the first five years of the project.

### **2.3.8 The Sub-decree (Anu Kret) 188 (November 2008)**

Sub-decree (Anu Kret) 188 (November 2008) authorized the FA to assess and determine the amount of the national forest carbon stock and to regulate and execute the trade of forest carbon and forest environmental services to generate income for effective forest management<sup>50</sup>.

### **2.3.9 Law on Mineral Resource Management and Exploitation (2001)**

In general terms, the Law on Mineral Resource Management and Exploitation (2001) provides for the management of natural resource exploitation. The Law on Mineral Resource Management and Exploitation (2001) states that “ownership of all mineral resources in, on or underneath the land, mountains, plateaus, territorial water and sea islands, and in or on seabed within the territorial integrity of the Kingdom of Cambodia, shall be included in the Property of the State.”<sup>51</sup>

This includes “any substance, whether in solid, liquid or gaseous form, naturally originated by a geological process”.

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<sup>47</sup> Fisheries Law (2006), art. 3.

<sup>48</sup> Government Decision (Sar. Chor. Nor) No.699 (2008).

<sup>49</sup> Technical Working Group on Forestry and Environment (TWG-F&E) was renamed to the Technical Working Group on Forestry and Reform (TWG-F&R) in 2012.

<sup>50</sup> Sub-decree (Anu Kret) 188, (2008).

<sup>51</sup> Law on Mineral Resource Management and Exploitation, art. 2.

### **2.3.10 Investment Law (1994)**

Foreign investors may be granted the right to use land for the purposes of investment. Under Article 16 of the Investment Law, “*use of land shall be permitted to investors, including long-term leases of up to a period of 70 years, renewable upon request.*”<sup>52</sup> However, “*ownership of land for the purpose of carrying on promoted investment activities shall be vested only in natural persons holding Cambodian citizenship or in legal entities in which more than 51% of the equity capital are directly owned by natural persons or legal entities holding Cambodian citizenship.*”<sup>53</sup>

Investors must “submit investment applications to the Council for the Development of Cambodia (CDC) for review and decision.”<sup>54</sup> If the investment is approved or incentives are offered by the CDC, they are not transferable or assignable.<sup>55</sup> Incentives can be granted to encourage investments in different fields, including ‘provincial and rural development’<sup>56</sup> and ‘environmental protection’<sup>57</sup>.

### **2.3.11 Law on Foreign Exchange (1997)**

Under the Law on Foreign Exchange (1997), foreign exchange operations relating to payments for commercial transactions, capital flows or investment<sup>58</sup> must be performed by “authorized intermediaries”, being Cambodian banks.<sup>59</sup>

### **2.3.12 Civil Code (effective 2011<sup>60</sup>)**

The Civil Code provides a regulatory framework for civil relations (commercial and personal), including: legal capacity<sup>61</sup>; incorporation<sup>62</sup>; rights regarding immovable and movable property<sup>63</sup>; and contracts<sup>64</sup>.

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<sup>52</sup> Law on Investment, Article 16 (2)

<sup>53</sup> Law on Investment, Article 16(1)

<sup>54</sup> Law on Investment, art. 6.

<sup>55</sup> Law on Investment, art. 15.

<sup>56</sup> Law on Investment, Article 12, 7.

<sup>57</sup> Law on Investment, Article 12, 8.

<sup>58</sup> Law on Foreign Exchange, Article 1.

<sup>59</sup> Law on Foreign Exchange, Article 5.

<sup>60</sup> Due to the operation of the Law on the Implementation of the Civil Code, 2011

<sup>61</sup> Civil Code 2007, Book Two(Persons)/Chapter 1 (Natural persons)/Section 1 – Legal Capacity.

<sup>62</sup> Civil Code 2007, Book Two(Persons)/Chapter 2 (Juristic Persons): Section 1 – General Provisions; Section 2 – incorporated associations; Section 3 – Incorporated foundations.

<sup>63</sup> Civil Code 2007, Book Three(Real rights)/Chapter 2(Ownership)/Section 1 – Things (Article 120 – Movables and Immovables).

<sup>64</sup> Civil Code 2007, Book Four(Obligations)/Chapter 1(General Provisions); Chapter 2(Declaration of intention and contract); Chapter 3(Performance of Contract); Chapter 4(Remedies for Breach of Contract); Chapter 5(Burden of Risk); Chapter 6(Effect of Obligation against Third Parties); Chapter 7(Extinction of Obligation);

## **2.4 Institutional framework supporting REDD+ in Cambodia**

### **2.4.1 Governance agencies responsible for forest management**

Forest management is divided between different government agencies according to type/use:

#### **1. Forestry Administration, Ministry of Agriculture, Forestry and Fisheries:**

Permanent Forest Estate

- i) Permanent Forest Reserve (State Public Property)
  - (1) Production Forests, including:
    - (a) Community Forests
    - (b) Concession Forests
  - (2) Protection Forests
  - (3) Conversion Forests (which can be transferred to state private property for other land - uses such as economic or social land concessions)
- ii) Private Forests (Private Property), including privately-owned forests

#### **2. Ministry of Environment:**

Protected Areas (State Public Property), including:

- i) Community Protected Areas
- ii) Flooded Forests and Mangroves inside Protected Areas

#### **3. Fisheries Administration, Ministry of Agriculture, Forestry and Fisheries:**

Flooded Forests and Mangroves inside fisheries domains (State Public Property) outside Protected Areas, including:

- i) Community Fisheries
- ii) Fishing Lots
- iii) Fisheries Protected and Conservation Areas

#### **4. Apsara Authority and other Temple Authorities:**

Forested Areas around temple complexes (State Public Property)

#### **5. Indigenous Peoples:**

Forest Resources within lands of indigenous peoples, registered as collective title (State Public Property)

#### **2.4.2 Government agencies responsible for REDD+ implementation**

The following government agencies have jurisdiction over different aspects of REDD+ activities:

- The Council of Ministers is the top executive body of the Royal Government of Cambodia (RGC). It is responsible for adopting management plans of all state properties and transfers, and reclassifies as well as designates entrusted authorities for those properties.
- The Ministry of Economy and Finance (MEF) is responsible for managing state properties in terms of selling, leasing, transferring, and granting various state concessions or contracts on management of state property. At present, all forest carbon sales need to be approved by the RGC based on MEF's recommendation.
- The Ministry of Land Management, Urban Planning and Construction (MLMUPC) manages cadastral administration of state lands and issues title/ownership certificates to all immovable properties in Cambodia. The MLMUPC is also responsible for mapping and land-use planning.
- The Forestry Administration of the Ministry of Agriculture, Forestry and Fisheries (MAFF) is in charge of conducting assessments to determine the quantity of national forest carbon stock and developing forest carbon trade to increase revenue for forest management in Cambodia.
- The Fisheries Administration of the MAFF is responsible for developing and implementing a national fisheries plan, especially the management of flooded forest and mangrove areas outside protected areas.
- The Ministry of Interior (MOI) is responsible for national and sub-national administration (including provinces, districts and communes in the country).
- The Ministry of Environment (MOE) manages all the protected areas and reviews environmental impact assessments of all the development projects in Cambodia. The General Department of Administration for Nature Conservation and Protection (GDANCP) of the MOE is responsible for the management of protected areas and community protected areas, in addition to cooperation with relevant institutions to develop climate change policies. It also plays a role as a national focal point for the UNFCCC and coordinates the implementation of CDM and carbon credit projects in Cambodia.
- The Ministry of Rural Development (MRD) also involves in evaluating and recognizing indigenous communities for registration with MOI.

## National Responsibilities for REDD+ Readiness in Cambodia

|  |   |   |
|--|---|---|
| <p><b>Royal Government of Cambodia/<br/>Council of Ministers</b></p> <ul style="list-style-type: none"> <li>• Management of all state properties</li> <li>• Adopts management plans for state properties</li> <li>• Transfers, reclassifies and designates entrusted authorities for state properties</li> </ul>   | <p><b>Ministry of Agriculture, Forestry and Fisheries</b></p> <ul style="list-style-type: none"> <li>• General jurisdiction for forests and forest resources (Protected Area management under Ministry of Environment)</li> <li>• Registration of permanent forest estates</li> </ul> <p style="text-align: center;"><u>Forestry Administration</u></p> <ul style="list-style-type: none"> <li>• Responsibility for the Permanent Forest Estate</li> <li>• Developing and implementing national forest programme (including community forestry)</li> <li>• Studying and collecting data on all state forests</li> <li>• Conducting assessments of national forest carbon stocks</li> <li>• Developing forest carbon trades</li> <li>• Reforestation</li> </ul> <p style="text-align: center;"><u>Fisheries Administration</u></p> <ul style="list-style-type: none"> <li>• Responsibility for flooded forest and mangrove areas</li> <li>• Developing and implementing national fisheries plan (including community fisheries)</li> </ul> | <p><b>Ministry of Environment</b></p> <ul style="list-style-type: none"> <li>• Management of Protected Areas</li> <li>• Review environmental impact assessments</li> <li>• Clean Development Mechanism interim designated national authority</li> </ul> <p style="text-align: center;"><u>General Department of Administration for Nature Conservation and Protection (GDANCP)</u></p> <ul style="list-style-type: none"> <li>• Developing and implementing National Protected Areas Strategic Management Plan</li> <li>• Responsibility for international environmental conventions</li> </ul> <p style="text-align: center;"><u>Department of Climate Change of GDANCP</u></p> <ul style="list-style-type: none"> <li>• Cooperate with relevant institutions to: develop national climate change strategies, and carbon credit policy, manage climate change trust funds; Secretariat of National Climate Change Committee</li> <li>• UNFCCC focal point: negotiations, implementing UNFCCC decisions and preparing national greenhouse gas inventory reports</li> <li>• Coordinating implementation of the Clean Development Mechanism and carbon credit projects</li> </ul> |
| <p><b>Ministry of Economy and Finance</b></p> <ul style="list-style-type: none"> <li>• Maintains inventory of state properties</li> <li>• Executive agent of the Royal Government of Cambodia in managing state properties, including transfer, sale, lease, concessions, etc</li> <li>• Management of state revenue</li> <li>• Co-chair of state trust funds</li> </ul> | <p><b>Ministry of Land Management, Urban Planning &amp; Construction</b></p> <ul style="list-style-type: none"> <li>• Manage cadastral administration of state land</li> <li>• Issue title/ownership certificates to all immovable properties</li> <li>• Management of maps of Cambodia</li> </ul>  | <p><b>Ministry of Interior (including the National Committee for Democratic Development)</b></p> <ul style="list-style-type: none"> <li>• Subnational administration (prov/dist/comm)</li> <li>• Commune development plans &amp; funds identify functions to be transferred to sub-national councils (National Committee for Democratic Development)</li> </ul>   |
|  |   | <p><b>Ministry of Rural Development</b></p> <ul style="list-style-type: none"> <li>• Recognize indigenous communities for registration with Ministry of Interior</li> </ul>   |

Graphic adopted from Royal Government of Cambodia, 'Readiness Preparation Proposal' (for submission to the Forest Carbon Partnership Facility 4 March 2011) 16 fig. 2.

### 2.4.3 International and donor support for REDD+ in Cambodia

The following international agencies and bilateral donors are active in Cambodia:

**UN-REDD:** Cambodia is already participating in the UN-REDD Programme. Cambodia has received \$3 million to support the REDD+ Readiness process, especially the implementation of the Cambodia REDD+ Roadmap. However, due to time constraints, Cambodia's UN-REDD national programme has been extended to December 2014.

**Forest Carbon Partnership Facility (FCPF):** The FCPF of the World Bank is a global partnership of governments, businesses, civil society, and indigenous peoples that aims to assist developing countries to implement REDD+ by providing financial and technical support. The FPCF will provide \$3.6 million to Cambodia to support the REDD+ readiness phase.

*Japan International Cooperation Agency (JICA):* The Government of Japan pledged approximately \$9-10 million to the RGC for supporting national REDD+ Readiness and the implementation of the National Forest Programme. This support focuses on infrastructure, equipment, capacity-building and technology (especially the MRV system for REDD+).

*United State Agency for International Development (USAID):* The Helping Address Rural Vulnerabilities and Ecosystem Program (HARVEST) of USAID-Cambodia includes support for national REDD+ readiness. The programme supports the development of the first REDD+ glossary in Khmer and the translation of other relevant policy documents. In addition, the programme also supports the development of the climate change and REDD+ curriculum for postgraduate and undergraduate courses at the Royal University of Phnom Penh. Another initiative is the Sustainable Landscape Programme that aims to support REDD+ projects, training and capacity-building and national REDD+ strategy development.

*European Union (EU):* The EU recently supported the Siem Reap Community Forestry REDD+ project in Cambodia via the REDD+ Community Carbon Pool Programme, a regional initiative in Southeast Asia to improve and strengthen REDD+-related forest governance (with a particular emphasis on the tenure rights of indigenous and forest-dependent communities). Lessons learned are expected to inform the development of the REDD+ National Strategy.

### **3. REDD+ ACTIVITIES IN CAMBODIA**

#### **3.1 Capacity-building initiatives**

The RGC is currently engaging in the following REDD+ capacity-building initiatives:

*Greenhouse Gases (GHG) Inventory Training in Siem Reap:* The Forestry Administration (FA) of the Ministry of Agriculture, Fishery and Forestry (MAFF) and the General Department of Administration for Nature Conservation and Protection (GDANCP) of Ministry of Environment (MOE), under the auspices of the Cambodia UN-REDD Programme, organised GHG Inventory Training in Siem Reap province in November 2012. The training aimed to build local capacity for developing a GHG inventory under the UNFCCC guidelines, and included relevant stakeholders from government agencies, academic institutions and non-governmental organizations. In addition, the status of the national forest inventory and biomass assessment (important for developing an MRV system) were also discussed in the workshop.

***National Consultation/ Forest Inventory Training on “Land Cover Classification and Forest Monitoring System in the Context of REDD+”:*** The workshop was held in March 2013, with the following agenda: 1) identification of different definitions, classification systems and available data, (2) identification of constraints related to the harmonization of available data in the context of the establishment of a national system for monitoring forest cover and REDD+ activities, (3) establishing the link between field data and analysis of satellite images, (4) identifying the different sampling strategies for establishment of a national forest inventory, (5) presenting the current status of the national forest inventory design, and (6) proposing a system for REDD+, including a national forest inventory and monitoring system of forest cover using Remote Sensing techniques. Stakeholders from government, NGOs and private sector were in attendance.

### **3.2 REDD+ projects**

Several REDD+ projects are being designed and implemented in Cambodia, including the following initiatives:

#### **(1) Oddar Meanchey Community Forestry REDD+ (OM CF REDD+) Project**

This was the first REDD+ demonstration project in Cambodia, and is ongoing. It aims to enhance storage and sequestration of carbon in natural forests, and to assess a climate-related payment mechanism for forest conservation. The FA, Pact International and TGC are leading the project’s development and the UK Department of International Development (DFID), the New Zealand Agency for International Development (NZAID) and the Clinton Climate Initiative (CCI) are its main financiers.

#### **(2) Siema Protection Forest REDD+ (SPF REDD+) Project**

The second REDD+ demonstration project in Cambodia aims to expand and improve law enforcement activities, to register existing communities’ land claims, and to provide incentives for communities to protect forests. The FA and WCS are leading the project’s development. Winrock International, JICA, USAID, the MacArthur Foundation and the Cambodia UN-REDD programme are the main donors for the project.

#### **(3) Prey Long REDD+ Carbon (PL REDD+) Project**

Conservation International (CI), with support from the Blue Moon Fund, conducted a feasibility study for this initiative in 2011. The preliminary results of the feasibility study indicate that a REDD+ initiative in Prey Long could generate great value in terms of climate change mitigation and other co-benefits. With technical support from Japan International Cooperation Agency (JICA), a biomass inventory to assess carbon stocks in the area was conducted in 2012.

**(4) Northern Plains REDD+ (NP REDD+) Project**

WCS is planning a REDD+ project in the Northern Plains, Preah Vihear province, together with the Ministry of Environment (MoE). Feasibility studies have been carried out across the Northern Plains landscape with the support of the Cambodia UN-REDD programme. Income from REDD+ is expected to help conserve the Northern Plains landscape that covers an area of 400,000 ha of mosaic forest types and species of high conservation value.

**(5) Southern Cardamom REDD+ (SC REDD+) Project**

Wildlife Alliance is implementing the Southern Cardamom REDD+ Project in collaboration with the Forestry Administration and the Office National des Forêts International (ONF). The aim of the project is to build a sustainable long-term project to reduce deforestation while providing alternative livelihoods and revenues to local people and local stakeholders, extending activities to the surrounding threatened areas in order to directly address the drivers of deforestation.

**(6) Siem Reap Community Forestry REDD+ (SR CF REDD+) Project**

Fauna and Flora International (FFI) in collaboration with the Forestry Administration is implementing the project aimed at strengthening the participation of local communities and local government officials in REDD+ implementation. The European Union (EU) is the main funder of this project. The project is expected to close in 2014.



A sustainable livelihood project in Siem Reap Province, Cambodia (*Chapman, 2012*)