

CAMBODIA

May 2012



GENERAL COMMENTS

The management of forests is under the general jurisdiction of the Ministry of Agriculture, Forestry, and Fisheries. The state, however, delegates some management of protected areas to the Ministry of Environment (Art. 3, Law on Forestry, 2002). As a consequence, Community Forests and forestland within Indigenous Community Lands are under the jurisdiction of the Ministry of Agriculture, Forestry, and Fisheries; and Community Protected Areas are under the jurisdiction of the Ministry of Environment.

1.0 | Community Forests

	Rating	Rationale
General Description		The Minister of Agriculture, Forestry and Fisheries may allocate any part of a Permanent Forest Reserve to a community living inside or near a forest area in the form of a Community Forest (Art. 41, Law on Forestry, 2002) through the issuance of a Community Forest Agreement. This document ensures the customary user rights of local communities (Art. 42, Law on Forestry, 2002). Community Forests are classified as Production Forests (Art. 10, Law on Forestry, 2002). Within Community Forests, local communities are allowed to use forest products and by-products for subsistence use based on their customary practices without having to acquire special permits (Art. 40, Law on Forestry, 2002). However, in order to exploit forest products commercially communities must comply with the terms of the Community Forest Management Plan (CFMP) and acquire a permit (Art. 25-27, 43, and 44, Law on Forestry, 2002). Communities are not allowed to alienate their traditional rights (Art. 40 and 44, Law on Forestry, 2002).
Legal documents consulted:		Chapter 9, Law on Forestry of 2002; Sub-Decree on Community Forestry Management of 2003

Legislation confers rights to:	Communities living within or near the forest area of a Permanent Forest Reserve	Articles 41 and 42, Law on Forestry, 2002. When residences or groups of homes are located inside or near state forestlands the community therein is defined as a tribe or a group of people who share common customs, religious beliefs and culture and are dependent upon forest products and by-products for their subsistence (Glossary, Law on Forestry, 2002).
Access	1	Within Community Forests, local communities are allowed to use forest products and by-products for subsistence use based on their customary practices without having to acquire special permits (Art. 2 and 40, Law on Forestry, 2002). However, in order to exploit forest products commercially communities must comply with the terms of the CFMP and acquire a permit (Art. 25-27, 43, and 44, Law on Forestry, 2002).
Withdraw (NTFP)	2	Within Community Forests, local communities are allowed to use forest products and by-products for subsistence use based on their customary practices without having to acquire special permits (Art. 2 and 40, Law on Forestry, 2002; Art. 13, Sub-Decree on Community Forestry Management, 2003). However, in order to exploit forest products commercially communities must comply with the terms of the CFMP and acquire a permit (Art. 25-27, 43, and 44, Law on Forestry, 2002). Communities must also comply with a five year moratorium on the selling of timber and NTFP and must pay royalties and premiums to the Minister of the Ministry of Agriculture, Forestry and Fisheries (Art. 12, Sub-Decree on Community Forestry Management, 2003). Royalties may be waived if the community is deemed to be too poor (Written comments by Bradley).
Withdraw (Timber)	2	Communities are also allowed to continue to practice traditional swidden agriculture during specific periods of time as determined in the CFMP (Art. 37, Law on Forestry, 2002; Art. 11, Sub-Decree on Community Forestry Management, 2003).

Management	2	<p>“A Community Forest shall be managed in the economic and sustainable manner by the local community conforming to the Community Forest Management Plan, rules on Community Forestry and guidelines on Community Forestry. The Forestry Administration shall monitor the implementation of the Management Plan and provide technical assistance, where appropriate, upon the request of the local community. The management plan of the Community Forest shall be prepared by the local community and subject to approval by the Cantonment level of the Forestry Administration" [sic] (Art. 43, Law on Forestry, 2002) (See also Art. 29, Sub-Decree on Community Forestry Management, 2003). A “Community Forest Management Plan is a document prepared by a CF Community with approval by Forestry Administration following the Environmental and Social Impact Assessment and detailing the procedure, regulation and measure related to sustainable use and management of the Community Forest” (Art. 5, Sub-Decree on Community Forestry Management, 2003). Furthermore, each CF Community is represented by a Community Forestry Management Committee (Art. 16, Sub-Decree on Community Forestry Management, 2003). The Community Forestry Management Committee consists of an odd number of members, between five and eleven, who are selected from among the community's members and are elected by the community (Art. 17, 18, and 20, Sub-Decree on Community Forestry Management, 2003) for a term of five years. The functions and roles of the Community Forestry Management Committee are several and include for example: (a) preparing and adopting Community Forestry regulations; (b) preparing and adopting Community Forestry Management Committee by-laws; and (c) preparing a draft of the Community Forest Agreement (Art. 21, Sub-Decree on Community Forestry Management, 2003).</p>
Exclusion	1	<p>Secondary users may have the rights to access and use a Community Forest if it is included in the terms of a CFMP and the Community Forestry Regulations (Art. 14, Sub-Decree on Community Forestry Management, 2003). A CFMP is developed by a community, and so we have considered that communities have exclusive rights.</p>
Alienation (Lease)	0	<p>A local community cannot transfer any traditional user rights to a third party even if there is a mutual agreement or contract (Art. 40, Law on Forestry, 2002). A local community cannot use the Community Forest as a concession, nor sell, barter or transfer its rights to a third party (Art. 44, Law on Forestry, 2002). (See also Art. 15, Sub-Decree on Community Forestry Management, 2003)</p>
Alienation (Collateral)	0	
Alienation (Sale)	0	

Extinguishability	1	"Community Forest Agreements may be terminated prior to the expiration date based on one or more conditions as follows: 1. Written agreement between all parties; 2. Agreement among Community Forestry Management Committee and at least 2/3 of the CF Community members; 3. Noncompliance with, or serious violation of, the terms and conditions in the Community Forest Agreement and other provisions that causes the non-sustainable use of forest resources. 4. An understanding of the Royal Government of Cambodia that there is another purpose which provides a higher social and public benefit to the Kingdom of Cambodia" (Art. 28, Sub-Decree on Community Forestry Management, 2003). Should this last case occur, the Kingdom of Cambodia must give the Community Forestry Management Committee a written notice six months prior to termination. This notice must explain the reasons for the termination and the Kingdom must negotiate with the Community Forestry Management Committee to determine what will be a suitable compensation for the community's loss (Art. 28, Sub-Decree on Community Forestry Management, 2003).
Duration of Rights (Years)	15 years (renewable)	"Community Forest Agreements may be terminated prior to the expiration date based on one or more conditions as follows: 1. Written agreement between all parties; 2. Agreement among Community Forestry Management Committee and at least 2/3 of the CF Community members; 3. Noncompliance with, or serious violation of, the terms and conditions in the Community Forest Agreement and other provisions that causes the non-sustainable use of forest resources. 4. An understanding of the Royal Government of Cambodia that there is another purpose which provides a higher social and public benefit to the Kingdom of Cambodia" (Art. 28, Sub-Decree on Community Forestry Management, 2003). Should this last case occur, the Kingdom of Cambodia must give the Community Forestry Management Committee a written notice six months prior to termination. This notice must explain the reasons for the termination and the Kingdom must negotiate with the Community Forestry Management Committee to determine what will be suitable compensation for the community's loss (Art. 28, Sub-Decree on Community Forestry Management, 2003).
General Comments	"The chief of the Cantonment of the Forestry Administration has the authority to sign a Community Forest Agreement with a community living within or near a forest area in the Permanent Forest Reserve. This agreement has validity for a period not to exceed fifteen (15) years. However, such an agreement may be extended based on monitoring and evaluation reports of the division of the Forestry Administration" [sic] (Art. 42, Law on Forestry, 2002) (See also Art. 27, Sub-Decree on Community Forestry Management, 2003). A "Community Forest Agreement is a written agreement between a CF Community and Forestry Administration Cantonment Chief that grants and protects the CF Community's rights within any specific area to access, use, manage, protect and benefit from forest resources in a sustainable manner" (Art. 5, Sub-Decree on Community Forestry Management, 2003).	

2.0 | Community Protected Areas

	Rating	Rationale
General Description	Community Protected Areas are part of the sustainable use zone of a protected area allocated to communities residing within or adjacent to that protected area (Art. 25, Protected Area Law, 2008). Inside these areas communities have the right of access for traditional uses, local customs, beliefs, and religions (Art. 22, Protected Area Law, 2008).	
Legal documents consulted:	Chapter VI of the Protected Area Law of 2008	
Legislation confers rights to:	Communities residing within or adjacent to a Protected Area	Article 25, Protected Area Law, 2008
Access	1	The state recognizes and secures access for traditional uses, local customs, beliefs, and religions of the local communities and indigenous ethnic minority groups residing within and adjacent to Protected Areas. Access for traditional uses of natural resources and for the customary practices of local communities and indigenous ethnic minority groups, on a family scale, may be allowed within sustainable use zones and conservation zones. Those partaking, however, are required to follow the guidelines set forth in the Prakas of the Ministry of Environment (Art. 22, Protected Area Law, 2008).
Withdraw (NTFP)	2	The state recognizes and secures access for traditional uses, local customs, beliefs, and religions of the local communities, and indigenous ethnic minority groups residing within and adjacent to Protected Areas. Access for traditional uses of natural resources and for the customary practices of local communities and indigenous ethnic minority groups, on family scale, may be allowed within sustainable use zones and conservation zones (Art. 22, Protected Area Law, 2008). However, “local communities and indigenous ethnic minorities may not have the rights to clear or work forestlands in the community protected areas allocated to it, pursuant to the agreements with the Ministry of Environment, to practice agricultural farming or to claim title over the land, or to sell, lease, pawn, donate, share, divide or transfer the areas under its own management to any person or legal entity” [sic] (Art. 26, Protected Area Law, 2008).
Withdraw (Timber)	1	Indigenous communities have traditionally practiced shifting cultivation. In order to fulfill the requirements needed to reach an agreement with the Ministry of Environment communities have had to abandon cultivating according to their traditional practices (Written comments by Sophorn).

Management	2	Communities may manage resources according to the Community Protected Area's Management Plan, which is drafted by the community and local authorities and is approved by the Nature Conservation and Protection Administration. The plan must be reviewed regularly every three years or earlier if necessary, by the Nature Conservation Protection Administration (Art. 28, Protected Area Law, 2008).
Exclusion	0	The Ministry of Environment (and not the community) has the right to decide who can or cannot enter the Community Protected Area (Inferred from Chapter VI, Protected Area Law, 2008).
Alienation (Lease)	0	"Local communities and indigenous ethnic minorities may not have the rights to clear or work forestlands in the community protected areas allocated to it, pursuant to the agreements with the Ministry of Environment, to practice agricultural farming or to claim title over the land, or to sell, lease, pawn, donate, share, divide or transfer the areas under its own management to any person or legal entity" [sic] (Art. 26, Protected Area Law, 2008).
Alienation (Collateral)	0	
Alienation (Sale)	0	
Extinguishability	0	"The Ministry of Environment has the authority to revoke the agreement with the community protected area in case the community acts in contravention of the terms of the agreement and management plan" [sic] (Art. 25, Protected Area Law, 2008).
Duration of Rights (Years)	15 years	"The concerned community protected area shall enter into an agreement with the Nature Conservation and Protection Administration and the agreement shall be valid for a period not exceeding fifteen (15) years" [sic] (Art. 25, Protected Area Law, 2008).
General Comments	There are drafts of guidelines on the procedure for and process of establishing Community Protected Areas, however, they have not yet been issued by the Ministry of Environment.	

3.0 | Indigenous Community Lands

	Rating	Rationale
General Description		The lands of indigenous communities are those lands where said communities have established their residences and where they carry out traditional agriculture. The lands of indigenous communities include not only lands actually cultivated, but also land necessary for the shifting of cultivation required by the agricultural methods they currently practice and which are recognized by the administrative authorities (Art. 25, Land Law, 2001). Ownership of immovable properties is granted by the state to indigenous communities as collective ownership. This collective ownership includes all of the rights and protections of ownership as are enjoyed by private owners. However, the community does not have the right to dispose of any collective ownership that is state public property to any person or group (Art. 26, Land Law, 2001).
Legal documents consulted:		Chapter 3, Part 2, Land Law of 2001; Sub Decree on Procedures of Registration of Land of Indigenous Communities of 2009
Legislation confers rights to:	Indigenous Communities established as a legal entity	Article 3, Sub Decree on Procedures of Registration of Land of Indigenous Communities, 2009. "An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use" (Art. 23, Land Law, 2001). A community established as legal entity is an indigenous community that has assembled and was officially registered at the Ministry of Interior (Art. 5, Sub Decree on Procedures of Registration of Land of Indigenous Communities, 2009).
Access	1	Ownership of immovable properties is granted by the state to indigenous communities as collective ownership. This collective ownership includes all of the rights and protections of ownership as are enjoyed by private owners. However, the community does not have the right to dispose of any collective ownership that is state public property to any person or group (Art. 26, Land Law, 2001).
Withdraw (NTFP)	1	Article 26 of the Land Law of 2001 states that ownership of immovable properties is granted by the state to indigenous communities as collective ownership and includes all of the rights and protections of ownership as are enjoyed by private owners (Art. 26, Land Law, 2001). We have considered Indigenous Lands as Private Forest in the context of the Law on Forestry of 2002. "Private Forest shall be maintained by the owners with the interesting rights to manage, develop, and harvest, use, sell and distribute the products by themselves" [sic] (Art. 10(3), Forest Law, 2002). The Law guarantees subsistence rights based on customary rights (Art. 2 and 37, Law on Forestry, 2002), but a permit is required for commercial use of timber and NTFP (Art. 25-27, Law on Forestry, 2002).
Withdraw (Timber)	1	

Management	2	Indigenous Communities collective ownership includes all of the rights and protections of ownership as are enjoyed by private owners, except the right to dispose of any collective ownership that is state public property to any person or group (Art. 26, Land Law, 2001). Private owners of immovable property have the exclusive and extensive right to use, enjoy and dispose of his property except in a manner that is prohibited by the law (Art. 85, Land Law, 2001).
Exclusion	1	Indigenous Communities collective ownership includes all of the rights and protections of ownership as are enjoyed by private owners, except the right to dispose of any collective ownership that is state public property to any person or group (Art. 26, Land Law, 2001). Private owners of immovable property have the exclusive and extensive right to use, enjoy and dispose of property except in a manner that is prohibited by the law (Art. 85, Land Law, 2001). Exclusive rights can be exercised within state private land and public land entitled to communities (Art. 6, Sub Decree on Procedures of Registration of Land of Indigenous Communities, 2009). As for other state land on which indigenous communities have traditionally harvested forest sub-products and used water sources, the community can continue to use and enjoy these benefits according to its tradition; however, it must enter into an agreement with relevant trustee institutions of state land (Art. 7, Sub Decree on Procedures of Registration of Land of Indigenous Communities, 2009). (See also Art. 37, Law on Forestry, 2002)
Alienation (Lease)	0	Indigenous communities do not have the right to dispose of any collective ownership that is state public property to any person or group (Art. 26, Land Law, 2001).
Alienation (Collateral)	0	
Alienation (Sale)	0	
Extinguishability	1	“No person may be deprived of his ownership, unless it is in the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and after the payment of fair and just compensation in advance” (Art. 5, Land Law, 2001).
Duration of Rights (Years)	Unlimited	Inferred from Chapter 7 of the Land Law of 2001