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Reform of Cambodia's 2017 Community Protected Area Guideline

A legal analysis within the context of the ASEAN Guiding Principles for Effective Social Forestry Legal Frameworks



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Introduction

There has been growing global awareness and recognition of the essential role that local communities and Indigenous peoples ("IPs") play in sustainable natural resources management and biodiversity conservation – which is especially urgent in light of the escalating planetary crisis (namely, the interrelated problems of climate change, pollution, and biodiversity loss). One way in which this understanding can be put into action is through social forestry ("SF"), which broadly encompasses various forms of community forest management. One model of SF are community protected areas ("CPAs"), which in Cambodia seek to both enhance conservation efforts and improve community livelihood development.

With the promulgation of Cambodia's 2023 Environment and Natural Resources Code ("ENR Code"), there have been changes to the legal framework governing protected areas ("PAs") and CPAs. Reform of the Protected Area Law – initially planned as a separate amendment – has been incorporated into the ENR Code. Thus, the ENR Code now stands as a primary legal instrument governing PAs and CPAs. With the ENR Code set to legally come into effect at the end of June 2024, the Ministry of Environment ("MoE") is working on revising the 2017 Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment ("CPA Guideline"), which will serve as an implementing legal instrument.¹

The aim of this analysis is to assess the CPA Guideline through the lens of the ASEAN Guiding Principles for Effective Social Forestry Legal Frameworks ("AGP"), in order to provide useful insights for the revision of the CPA Guideline and also for the development of an anticipated separate sub-decree on CPAs (which will likely serve as a complementary implementing legal instrument to the CPA Guideline).

The AGP are regional-level guiding principles for effective SF legal frameworks, which are meant to help strengthen national SF laws, policies/rules and regulations and their implementation in ASEAN Member States (which includes Cambodia). The AGP can provide a basis for the development of laws and regulations. The AGP may also be used to reflect on existing legal frameworks and to carry out an assessment of whether essential aspects of SF are already integrated or may require legal reform. As broad regional guidance, the AGP should be understood based on and tailored to specific national contexts.

Here in this analysis, the 10 guiding principles (and associated sub-principles) are presented for reference/context, and assessment of the CPA Guideline related to each guiding principle offered below each section. The analysis endeavors to inform civil society, policymakers, and other stakeholders working on or interested in CPAs in Cambodia, and in addition stakeholders from the broader Southeast Asia region who are interested in seeing implementation of the AGP in a specific context.

¹ To provide background context, the hierarchy of laws in Cambodia is as follows (starting from the highest level to the lowest, in terms of legal force): The Constitution; Laws (*Chbab*); Royal Decrees (*Preah Reach Kret*); Sub-Decrees (*Anu-Kret*); Ministerial Orders or Proclamations (*Prakas*); Decisions (*Sech Kdei Samrach*); Circulars (*Sarachor*); and Local Regulations or Bylaws (*Deika*). Prakas are executive regulations made at the ministerial level to implement and clarify specific provisions within higher-level legislative instruments and give instructions. Their scope is limited to the focus and subject matter of the ministry that enacted them. Sub-decrees, which are higher in the hierarchy of laws than prakas, are executive regulations that are used to clarify provisions within existing laws, set out functions and duties of governmental bodies, and appoint senior governmental officials. Sub-decrees are drafted within relevant ministries, approved by the Council of Ministers, and signed by the Prime Minister.



Principle 1: Recognising communities' land and forest tenure rights



The legal framework should ensure that communities involved in social forestry have strong and clear tenure rights and responsibilities in order to benefit from and contribute to SF and sustainable forest management, reflecting communities' customs and uses of forests and land, including those of Indigenous peoples and ethnic minorities.

- 1.1 The legal framework should formally recognise local communities', IPs' and ethnic minorities' forest and land tenure rights, including customary tenure. Where land and/or forest laws formalise customary tenure rights, these should also be reflected and recognised in social forestry laws. However, formal recognition of tenure rights may not be required in order for communities to access SF. Furthermore, formal recognition of local communities', IPs' and ethnic minorities' tenure rights should be a relatively simple process.
- 1.2 In the absence of legal recognition of customary rights, SF legal frameworks should take into account de facto customary forest and land tenure rights in order to reflect communities' customs and traditional uses of forests and land.
- 1.3 The legal framework should respect and acknowledge the traditional knowledge of local communities, IPs and ethnic minorities, as well as their knowledge management/knowledge systems as an asset of the community.
- 1.4 The legal and institutional framework should facilitate and support the participatory mapping of customary rights to lands and resources.
- 1.5 The legal framework should provide a gender-conscious approach to SF in order to safeguard against inequitable customary land tenure systems and to safeguard the rights of access and decision-making of women, especially those from low-income groups and local and Indigenous communities.

- 1.6 The legal framework should clearly outline the tenure rights upon which access to SF is based in order to avoid tenure conflicts.
- 1.7 Legal recognition of customary forest and land tenure rights should be consistent and harmonised throughout the legal framework, particularly in land and forest laws, to ensure legal certainty and same degrees of tenure security. Where inconsistency or incoherence is found, a participatory legal reform process may be engaged to address such issues.
- 1.8 The ministries and administrations responsible for the recognition and implementation of communities' land and forest tenure should coordinate with sectoral governmental bodies in order to ensure that sectoral laws are consistent with SF frameworks and vice-versa. Such coordination should encompass both national and sub-national authorities.
- 1.9 Governments should ensure that land and forest tenure rights, especially of local communities, IPs and ethnic minorities, recognised in laws are respected and enforced. Implementation of such rights should occur within an appropriate timeframe, such as by ensuring that necessary institutional structures are set up in a timely manner.
- 1.10 Registration of SF areas in existing land registration systems should be required to enhance tenure security and ensure greater transparency and rights protection.

Assessment

Land tenure rights of CPA communities could be expanded in the revised CPA Guideline. For example, the revised CPA Guideline could explicitly allow CPA communities to exercise **exclusion rights** (*e.g.*, the right to exclude outsiders from entering or using land allocated as a CPA, the right to exclude use of certain technology within CPA borders).

The 2017 CPA Guideline can be improved to better clarify the **strength of local communities' rights** associated with CPAs. For instance, how do CPA-related rights hold up against other tenure rights? It may benefit CPA communities to more clearly understand their rights when established as a CPA, and the security those rights provide.

Furthermore, CPA communities' legal security to CPA land could also be strengthened if they were issued an **official recognition of their tenure rights** (which can be linked to CPA registration, see below), which may increase CPA communities' leverage if disputes arise. For often, when land disputes arise, CPA communities face an opposing party from outside the community from an inferior position; opposing parties usually have some official authorisation supporting a claim to the land in dispute, such as a land title, concession agreement, or other approved use claim.

Although the ENR Code² requires the registration of PAs,³ whether CPAs are also similarly registered (either as part of PA registration or separately) is not addressed and is left open-ended. This could be clarified in the revision of the CPA Guideline, by including **registration of CPAs** in the revised CPA Guideline. It may be beneficial to have CPA registration occur without requiring communities to complete an extra step – for instance, authorities could automatically register CPAs when completing/finalising CPA establishment, or when a prakas of recognition is issued.

² For purposes of this analysis, an informal translation of select provisions of the ENR Code was utilised.

³ Environment and Natural Resources Code, Articles 351, 367. Such registration would presumably be in the Land Register, and potentially in other relevant land/state property registries and databases.

Registering PAs and CPAs in a centralised registration system could help reduce or eliminate the risk of competing land claims.

If appropriate, **permitted access to traditional uses of natural resources and customary practices of local communities⁴ on a family scale within sustainable use zones and conservation zones** could be addressed in the revised CPA Guideline, which the ENR Code states will follow guidelines prescribed in a future prakas issued by the MoE.⁵ Such guidelines could be included in the revised CPA Guideline, or in a separate prakas.

The revised CPA Guideline could acknowledge the **traditional knowledge** of local communities, Indigenous peoples, and ethnic minorities, as well as recognise their **knowledge management/ knowledge systems** as an asset of the community.

The revised CPA Guideline could facilitate and support the **participatory mapping of customary rights to lands and resources**. The ENR Code instructs the MoE to develop official maps of each PA, in part based on consultations with local communities.⁶ Such maps could include customary rights to lands and resources, informed and incorporated into PA maps with the full participation of local communities. The revised CPA Guideline could provide further guidance on the inclusion of customary rights to lands and resources in official PA maps, as well as guidance on how such consultations with local communities could be conducted.

In addition, **participatory zoning of PAs** (which will presumably be included in official PA maps) may be important. As CPA establishment is only allowed in the sustainable use zones and community zones of PAs, local communities' and Indigenous peoples' participation in the overall zoning determinations of PAs is a consideration. This could be addressed in the revised CPA Guideline, with guidance on how local communities and Indigenous peoples could be included in PA zoning determinations. In instances where PA zoning occurs in areas where CPA establishment has already taken place, the revised CPA Guideline could address CPA communities' participation in PA zoning determinations.

To maximise effective management of PAs, CPA communities could be permitted and encouraged to actively participate and cooperate with governmental authorities in **all aspects of resource mapping, land use planning, zoning, management planning, and co-patrolling of PAs**. This could be addressed in the revised CPA Guideline.

The revised CPA Guideline could emphasise a **gender-conscious approach** to CPA establishment and implementation, where women's rights of access and decision-making are protected and enhanced.

The revised CPA Guideline could clearly outline CPA communities' tenure rights, including rights that are contained in the ENR Code and clarifying **how CPA communities' tenure rights interact with other rights/activities**. For instance, how will permitted activities/projects in PAs (*e.g.*, development of eco-tourism projects, hunting sport)⁷ and public or private projects in PAs (*e.g.*, construction, public infrastructure development)⁸ operate in relation to CPAs?

⁴ In the context of the Environment and Natural Resources Code, "local communities" are defined as communities that are living in or nearby protected areas – they could be established and recognised as community protected area, community forest, or community fishery communities (though they do not have to be), or recognised as a community by law, such as an Indigenous community. However, the usage of "local communities" in this analysis should be understood as referring to local communities broadly/generally.

⁵ Environment and Natural Resources Code, Article 369

⁶ Environment and Natural Resources Code, Article 367

⁷ Environment and Natural Resources Code, Article 378

⁸ Environment and Natural Resources Code, Article 379

Legal recognition of customary forest and land tenure rights could be **consistent and harmonised** throughout the relevant legal framework – for revision of the CPA Guideline, harmonisation with the ENR Code may be needed. If other laws (*e.g.*, revised Forestry Law (ongoing), revised Land Law) relate to CPAs in any capacity, harmonisation with such laws may also be needed.

With the relatively recent enactment of the ENR Code, and substantial transfer of roles and responsibilities to subnational authorities mandated by the ENR Code, the revised CPA Guideline may need to **clarify the roles and responsibilities of relevant governmental authorities**.

Revision of the CPA Guideline could be accompanied by **setting up any and all necessary institutional structures in a timely manner**, so that implementation can properly occur and be enforced.

Clear boundary demarcation has been identified as an important factor enabling enforcement. Currently, unclear or non-existent demarcation, or lack of awareness among stakeholders as to where boundaries are located, leads to frequent trespassing and permanent encroachment. Registration of CPAs, if addressed in the revised CPA Guideline, could satisfy the need for an accessible database system of CPA boundaries – which could be accompanied by clear physical demarcation of CPA boundaries.



Principle 2: Simplifying the process of allocation of SF areas



The legal framework should provide for a simple and inexpensive process to allocate SF areas in order to ensure good access to SF for local communities, IPs and ethnic minorities. The legal framework should allow a community to undertake the procedure by itself or to seek external support if it chooses to do so.

- 2.1 The legal framework should clearly state who can be allocated a SF area, under which conditions and what form, if any, a community needs to take to be allocated a SF area. The legal framework should also make clear what, if any, geographic limitations exist for allocated SF areas (such as specific forest domains where SF areas can be created and size limits), as well as any duration limits.
- 2.2 The legal framework should clearly outline the steps of the allocation process, including the technical documents that are required to be submitted by the community. It should also outline the deadlines/timelines of each procedural step to be observed during the decision-making process.
- 2.3 The legal framework should clearly identify the institutions in charge of processing SF applications and where institutional coordination is required. The responsible institutions should be supported with appropriate capacity-building programmes, to ensure they have the training and skills needed to effectively engage with communities and carry out their duties.
- 2.4 In cases where proposed SF establishment is rejected, the legal framework should require that a justification be provided by the relevant administration. Communities should also be provided an opportunity to amend their submission.
- 2.5 To simplify and clarify the allocation process, governments should also adopt binding or non-binding operational guidelines or visuals to help explain the

process and guide applicants through it. These guidelines should be culturally and gender sensitive, and translated into local languages where possible.

- 2.6 Decentralisation of the allocation process, where local administration and government representatives have a central role in the decision-making process, should be considered as one mechanism to ensure simpler, more accessible and more efficient procedures.
- 2.7 The legal framework should clearly outline the reasons and conditions under which an established SF area could be terminated, and also require a clear rationale be provided. The legal framework should include the recourse available to communities to challenge such a decision, such as a grievance mechanism. Communities should be compensated if the termination is not based on the fault of a community.
- 2.8 The legal framework should ensure transparency during the allocation process, such as by requiring the sharing of information on the process and by providing a mechanism for any interested persons to provide comments or raise objections.

Assessment

The revised CPA Guideline should reflect the increased CPA duration period of 25 years stated in the ENR Code.⁹ However, whether **renewal** is possible is *not* addressed in the ENR Code; thus, it could be addressed in the revised CPA Guideline.¹⁰ An additional consideration is to provide not just the option to request renewal, but to guarantee that renewal will be approved (as long as there is interest by the CPA community and there are no significant issues with the CPA community's management that cannot be resolved). This could further strengthen CPA community's tenure rights, and provide better security and incentives for effective long-term management of CPAs. Generally, the revised CPA Guideline could provide further rules on renewal of CPAs, such as the length of a renewed tenure term, whether there is a limit of how many times renewal can occur, the criteria a renewal decision is based on, when such a decision must be made by authorities, the result if there is a lack of response to a renewal request (ideally it could result in an automatic approval of the renewal request, providing incentive for authorities to process/review renewal requests in a timely manner and ensuring priority for CPA communities' interests), etc.

Under the ENR Code, **subnational authorities** are heavily involved in CPA establishment (subnational authorities are responsible for formulating agreements for CPAs in sustainable use zones and community zones of PAs; subnational authorities shall initiate, facilitate, support, provide principles, and recognise establishment of CPA after consent from MoE; subnational authorities shall study feasibility of establishing CPA, identify location and suitable size with consultation and facilitation with local communities and other stakeholders).¹¹ It may be helpful to have such designated responsibilities incorporated into the revised CPA Guideline, with any additional detail that could be useful.¹²

⁹ Environment and Natural Resources Code, Article 371

¹⁰ Renewal is currently permitted in Article 33 of the 2017 CPA Guideline. Whether renewal (the process, relevant authorities, etc) will change should be considered, and then clarified in the revised CPA Guideline.

¹¹ Environment and Natural Resources Code, Articles 352, 371

¹² As part of providing further detail on subnational authorities' roles and responsibilities, the revised CPA Guideline could be updated to reflect changes to responsible institutions contained in the 2017 CPA Guideline – for instance, General Directorate of Local Communities (Article 4), Department of Community Livelihood (Article 5), Provincial Department of Environment (Article 6), Director of Protected Areas (Article 7), working group composition (Procedure on Establishment of Community Protected Areas (CPA), Section 1.1), technical working group composition (Procedure on Establishment of Community Protected Areas (CPA), Section 2.1), etc.

The MoE is responsible for providing **capacity building and technical support** to subnational authorities and local communities,¹³ and this role of MoE could be included and further fleshed out in the revised CPA Guideline.

What remains unclear under the ENR Code is what will be covered by a future **sub-decree on measures for establishing CPAs**¹⁴ and what will be covered by a **prakas on principles/guideline for procedures and process of establishing CPAs**.¹⁵ The aforementioned prakas is presumably referring to the CPA Guideline. It may be helpful to keep in mind as revision of the CPA Guideline proceeds (to ensure harmonisation, prevention of gaps, etc).

The CPA establishment process is considered by communities and supporting non-profit organisations ("NGOs") as lengthy, complicated, and costly. It may be helpful to **simplify the steps of the CPA establishment process** in the revised CPA Guideline – for example, mapping requirements can be made less technical and rely on community-generated sketch maps, and simple management plans generated by communities themselves can be deemed sufficient.

As **currently structured**, the process of establishing a CPA requires participating community members to complete a CPA membership application, a CPA establishment application, a CPA committee election (including receipt of warrant of recognition of CPA committee by Commune/Sangkat Chief), CPA boundary demarcation (including formally recognised scaled CPA map), development of the CPA by-law, receipt of prakas of recognition issued by the MoE, development of the CPA management plan, and development of the CPA management agreement.¹⁶ The official 7-step CPA establishment process, however, is not always followed as in reality the process can be more flexible and case-specific to each CPA.

Communities have expressed frustration with the CPA establishment process, as it requires the **completion of many steps, with numerous authorities involved**. It seems difficult for communities to follow and complete the CPA establishment process entirely themselves. Each step requires submission from communities and approval from authorities, and nearly every step involves governmental authorities for either consultation or technical assistance. **Delays are frequent**, for reasons such as the capacity limit of communities; inadequate technical, financial, and human resources of authorities; and resolution of related land conflicts/disputes.

The revised CPA Guideline could also provide **deadlines** for the administration to complete handling a community's application at each stage of the CPA establishment process, or at least provide an overall timeframe in which determination on CPA establishment must be made. The revised CPA Guideline could additionally address whether an absence of response from the administration results in an approval or dismissal of the CPA establishment submission (communities should also have recourse if the CPA establishment submission is rejected, and be informed of what recourse is available).

The revised CPA Guideline could clarify **conditions for acceptance or rejection** of CPA establishment submissions, as well as address **available options for communities if a CPA establishment submission is rejected**, such as an appeal mechanism or the possibility to resubmit an amended CPA establishment submission. Conditions for acceptance or rejection of proposed CPA establishment could include factors for decision-makers to consider in making a

¹³ Environment and Natural Resources Code, Article 351

¹⁴ Environment and Natural Resources Code, Article 371(8)

¹⁵ Environment and Natural Resources Code, Article 371(9)

¹⁶ CPA Guideline, Articles 12, 32; CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Sections 1-7 (outlines the 7 steps of the CPA establishment process)

determination, which could be reviewed in cases where an appeal mechanism (if made available) is utilised. The revised CPA Guideline could also require that a **justification** be provided by governmental authorities for rejection of proposed CPA establishment. Written justification for rejections can be important for appeal and administrative review processes, while also informing communities of how their CPA establishment submissions are incomplete, inadequate, etc. With that awareness, communities could then adapt and submit an amended CPA establishment submission.

The CPA establishment process is also costly for communities. Though applying to establish a CPA is free, various **operational costs** are incurred during the process. For example, there are transportation costs to arrange consultations between authorities and communities and field costs for CPA boundary demarcation. These financial burdens are often borne by NGOs assisting communities going through the process, as it may be overly burdensome for communities to handle alone.

All of the abovementioned challenges could be considered as the CPA establishment process gets reviewed and ideally simplified in the revised CPA Guideline – modifying the process to **simplify administrative logistics and improve difficulties** experienced by communities (time, cost, etc).

The revised CPA Guideline could include **operational guidelines or visuals** to help explain the CPA establishment process. It may be beneficial to have these guidelines be **culturally and gender sensitive**, and translated into **non-dominant local languages**. Language barriers, for instance, make it challenging for Indigenous communities.

The 2017 CPA Guideline contain **appendices**: model of CPA membership application form (appendix 1); model of CPA establishment application form (appendix 2); model of CPA by-law (appendix 3); model outline of CPA management plan (appendix 4); model of CPA management agreement (appendix 5); model of monitoring and evaluation frameworks (appendix 6); and model of CPA committee quarterly report (appendix 7). The revised CPA Guideline could clarify how communities should utilise them (for example, how closely/strictly do they need to follow the model documents? Are the model documents merely suggestions or are communities expected to basically copy the provided model forms?). To provide greater access and flexibility to communities, the revised CPA Guideline could make clear that the **model forms and documents are suggestions**, and that communities have the right to create their own versions – this would be accompanied by authorities' acceptance of a wide variety of documentation.

Under the ENR Code, subnational authorities can cancel a CPA management agreement if a CPA community fails to strictly abide by CPA management plan and agreement terms.¹⁷ This would presumably be after subnational authorities have reviewed and assessed the CPA management operation.¹⁸ The revised CPA Guideline could further clarify **CPA termination**, by outlining the reasons and conditions under which an established CPA could be terminated and also requiring that a clear rationale be provided for termination. The revised CPA Guideline could also include the recourse available to CPA communities to challenge a termination decision, such as a grievance mechanism. CPA communities could be compensated if termination is not based on the fault of a community (but rather, for example, for external reasons).

¹⁷ Environment and Natural Resources Code, Article 371

¹⁸ See Environment and Natural Resources Code, Article 371

Transparency of the CPA establishment process could be enhanced. The revised CPA Guideline could enable straightforward access to information related to the CPA establishment process – allowing communities to be able to easily check on the status of their CPA establishment submissions, for example – and could also provide a mechanism for any interested persons to provide comments or raise objections.

Free, prior, and informed consent (“FPIC”) of Indigenous peoples and neighboring communities is not currently included as a condition of any aspect of the CPA mechanism (establishment, cancellation, renewal, modification, etc), nor is compensation of Indigenous peoples and neighboring communities required if they are impacted in any way. The revised CPA Guideline could include such measures as conditions of CPA establishment, providing more inclusive safeguards. For instance, the revised CPA Guideline could include FPIC as part of step 1 of the CPA establishment process. The revised CPA Guideline could also provide guidance on how to fulfill FPIC requirements during the CPA establishment process.



Principle 3: Developing rules on SF management



The legal framework should provide for the elaboration of simple but comprehensive forest management plans to be designed by community members, with the help of easy-to-understand templates and guidelines. Rules should be designed so that such management plans can be tailored to local circumstances, such as the type of activities foreseen in a forest, the size of the forest and the size of a community.

- 3.1 The legal framework should envisage the creation of a longer-term management plan reflecting a broader community vision, as well as shorter-term periodic work plans (in accordance with the longer-term management plan) to allow flexibility in planning and implementing specific activities. Requirements for both types of management plans should be reasonably simple enough that communities are able to develop them on their own.
- 3.2 The legal framework should clearly state what activities are permitted or prohibited to take place in a SF area in order to guide the design and implementation of the management plan.
- 3.3 The type of community body responsible for the development, adoption and implementation of the management plan should be clearly identified in the legal framework, and fairly represent all segments of the community. In addition, the process of developing the management plan should be participatory.
- 3.4 Legal provisions around management plans should be supplemented by accessible guidelines and templates, explaining the process and content of management plans in simple terms and supporting the communities to develop their own plans.
- 3.5 The legal framework should allow external support to be provided to communities to develop management plans, and for capacity building activities for communities as well as local authorities.

- 3.6 The legal framework should identify the authorities responsible for monitoring implementation of the management plan, as well as the reporting requirements of communities.

Assessment

The ENR Code anticipates development of a CPA management plan that will be reviewed every 3 years (or beforehand in special cases).¹⁹ Revision of the CPA Guideline should incorporate the **3-year validity period** of the CPA management plan (currently, the validity period of a CPA management plan under the CPA Guideline is 5 years²⁰). The 2017 CPA Guideline also mentions a **"yearly action plan"** that is to be part of CPA management plan drafting,²¹ but there is no further elaboration about this yearly action plan. The revised CPA Guideline could clarify development of the yearly action plan – for instance, currently the yearly action plan seems to be understood as a breakdown of the multi-year CPA management plan (*i.e.*, anticipated actions for year 1, year 2, etc), but the better approach may be for the yearly action plan to be developed annually. While the yearly action plan would still be in accordance with the longer-term CPA management plan, a yearly action plan that is developed every year would allow for changes to be accounted for and flexibility in planning and implementing specific activities.

The current process of developing a CPA management plan, and management plan requirements, does **not seem to envision that a community would be able to develop their CPA management plan on their own**, nor that a CPA management plan could be reasonably simple. External support and involvement (various governmental authorities, development partners) are built in to the development process; there is even a specific step focused on consulting external stakeholders on a draft CPA management plan.²² The model outline of a CPA management plan that is provided in an appendix of the CPA Guideline also strongly suggests that the CPA management plan is a considerable piece of work.²³ The CPA management agreement also appears to involve technical and material support from governmental authorities, containing certain content related to CPA management planning.²⁴

The revised CPA Guideline could enable communities to design **simple, community-led management plans that are appropriate to local capacities and adaptable to a wide variety of circumstances**, based on the type of activities proposed, the size of a community, and the size of their CPA area. This could help alleviate communities' struggle with the complexity of current CPA management plan requirements, while also ensuring that CPA management plans reflect the practical realities of how communities each utilise forest and natural resources. The revised CPA Guideline could permit simplicity in management plan structure and content (preferably a brief document with a level of technical detail appropriate to local capacity and proposed activities) and flexibility as to form and content. Also, even if development of CPA management materials is a simple enough process for communities to manage on their own if they choose, it may be useful for external support to remain an option. The revised CPA Guideline could facilitate easy access to such external support, as well as provision of capacity building programs/activities.

¹⁹ Environment and Natural Resources Code, Article 374

²⁰ CPA Guideline, Article 26

²¹ CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Section 6.4

²² CPA Guideline, Article 25; CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Sections 6.1-6.7 (steps of CPA management plan development)

²³ CPA Guideline, Appendix 4 (model outline of CPA management plan)

²⁴ CPA Guideline, Article 31; CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Sections 7.1-7.2 (steps of CPA management agreement development); CPA Guideline, Appendix 5 (model of CPA management agreement)

The revised CPA Guideline could also ensure that the CPA community body (currently, the CPA committee) primarily responsible for developing and implementing the CPA management plan **fairly represents all segments of the CPA community**, and that the overall process of developing the CPA management plan is **participatory** (prioritising community participation primarily).

The revised CPA Guideline could clearly state **permitted and prohibited activities** in CPA areas, which would help guide the design and implementation of CPA management plans. This may encompass permitted and prohibited activities found in other legal instruments, such as the ENR Code.²⁵ Indigenous peoples' livelihood practices could also be legally recognised and allowed in the revised CPA Guideline (*e.g.*, diversified local land use by Indigenous peoples, where they integrate their productive land use into forested landscapes).

The revised CPA Guideline could also grant **additional management rights** to CPA communities. CPA communities could be granted rights to directly enter into agreements with third parties such as private companies and financing entities; manage commercial activities; and substantively and effectively participate in management throughout the entire PA system (rather than restricting management to within a delimited CPA).

The revised CPA Guideline could clearly **identify responsible authorities** for monitoring CPA management implementation, in case there are any changes from the current structure. The revised CPA Guideline could also make CPA communities' **reporting requirements** clear and straightforward. Under the current CPA Guideline, CPA communities are responsible for submitting quarterly and annual reports to various governmental authorities.²⁶

The 2017 CPA Guideline also provides a **monitoring and evaluation framework**.²⁷ CPA management implementation is monitored and evaluated based on 4 conditions, with associated criteria. Condition 4 focuses on support from outsiders – this condition relates more to support provided *to* CPA communities, rather than activities of CPA communities themselves. Thus, this condition could be monitored and evaluated not only by CPA communities, but also by responsible authorities, who are likely better placed to address issues linked to this condition.

²⁵ *E.g.*, Environment and Natural Resources Code, Articles 352, 372, 383-386

²⁶ CPA Guideline, Article 21; CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Section 8.3; CPA Guideline, Appendix 7 (model of quarterly report)

²⁷ CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Sections 8.1-8.3; CPA Guideline, Appendix 6 (model of monitoring and evaluation frameworks)



Principle 4: Supporting internal community governance



The legal framework should support internal community governance by providing for general principles of accountability and transparency for the implementation of SF, while allowing communities to establish specific mechanisms for implementation of these principles and according to their own institutional structure.

- 4.1 The legal framework should ensure that communities have decision-making authority over how they manage SF areas, according to their own community internal governance.
- 4.2 The legal framework should allow communities to create new decision-making bodies or rely on existing bodies to manage SF areas. Such bodies should have clearly defined objectives, roles and responsibilities.
- 4.3 Although the legal framework may provide suggestions, examples or guidance, communities should be allowed to structure and develop their own internal rules/policies, such as by-laws. In doing so, the legal framework should recognise local customs and traditions.
- 4.4 The legal framework should establish the principle that an information sharing mechanism should be used by communities, especially by those in leadership roles, where information pertaining to SF decision-making, activities, etc., is broadly shared with community members.
- 4.5 The legal framework should require that communities develop and use accountability mechanisms in order to ensure good governance. The legal framework should also provide for complaint mechanisms as a recourse.

Assessment

The revised CPA Guideline could ensure that communities have **decision-making authority** over how they manage their CPA, according to their own community internal governance. One model of CPA governance does not fit all circumstances. Local communities can have different social dynamics and differ in internal governance styles; acceptance of a more **case-by-case approach** could be more effective and appropriate when it comes to CPA communities' internal governance.

The revised CPA Guideline could allow communities to create new decision-making bodies or rely on existing bodies to manage CPA implementation. While allowing for flexibility in **decision-making bodies**, the revised CPA Guideline can help define objectives, roles, and responsibilities.

If the revised CPA Guideline maintains the list of **criteria for CPA committee candidates**,²⁸ the criteria could be reviewed to make sure that it is not overly limiting. For instance, currently the ability to read and write Khmer and "good health" are listed as 2 of the criteria. Does the requirement of being able to read and write Khmer prevent those who cannot from being able to participate as a CPA committee member? How is "good health" defined – can someone with a disability still be a candidate?

The revised CPA Guideline could permit communities to structure and develop their own **internal rules/policies**, such as by-laws, while **recognising local customs and traditions**. Currently, development of a CPA by-law is required. The process of CPA by-law development involves many steps, and a model CPA by-law is provided as well.²⁹ As part of developing the CPA by-law, consultation with external parties is required, and it appears that adjustments can be made to a community's final submission of their CPA by-law by governmental authorities.³⁰ The revised CPA Guideline could ensure that communities have **primary control** over the development and content of their finalised CPA by-law.

The revised CPA Guideline could establish that an **information sharing mechanism** should be used by CPA communities, especially by those in leadership roles, where information pertaining to CPA decision-making, activities, etc, is broadly shared with CPA community members.

The revised CPA Guideline could require that communities develop and use **accountability mechanisms** in order to ensure good governance – for example, holding regular meetings with community members, reporting finances, etc. Revision of the CPA Guideline could also broadly consider provision of **complaint mechanisms for recourse** – currently, the only option is to have a CPA committee terminated and a new election held if at least 60% of CPA members request intervention by the Commune/Sangkat Council to address mismanagement by the CPA committee.³¹

²⁸ CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Section 3.1

²⁹ CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Sections 5.1-5.5; CPA Guideline, Appendix 3

³⁰ CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Section 5.4

³¹ CPA Guideline, Article 17; CPA Guideline, Appendix 3



Principle 5: **Enabling community participation & representation of marginalised groups**



The legal framework should enable SF by including specific provisions to ensure participation in SF decision-making, activities and management by all community members, especially from marginalised groups, such as women, IPs, ethnic minorities, and the poorest or most disempowered members of the community, based on the local context. Participation by youth should also be encouraged. The legal framework should allow community members to determine the most suitable mechanisms for participation.

- 5.1 The legal framework should include provisions on the inclusion of marginalised groups in SF, which may differ according to each country's local context. Such groups may include, but are not limited to, women, IPs, ethnic minorities, and poor and socially marginalised groups.
- 5.2 The legal framework should specifically define the marginalised groups that are being targeted to enhance their participation.
- 5.3 The legal framework should require participatory decision-making, where marginalised groups are able to fully and effectively participate and/or are properly represented. To ensure substantive participation, the legal framework should require representation of marginalised groups in all levels of decision-making, including in leadership roles.
- 5.4 The legal framework should encourage youth participation in SF.
- 5.5 The legal framework should allow, and encourage as needed, external support to be granted to communities in order to help foster greater participation by marginalised groups and youth, such as by appointing a community facilitator.

Assessment

The revised CPA Guideline could **expand inclusion of marginalised groups** in CPA decision-making, management, and activities. Participation of women is more explicitly emphasised (*e.g.*, encouraged for women to be part of management structure, participate in initial drafting of CPA by-law).³² No other marginalised groups are accounted for beyond women – other marginalised members could be taken into account, such as the poor, disabled, Indigenous peoples, widows, etc. The revised CPA Guideline could define the marginalised groups being targeted to enhance their participation.

To ensure participatory decision-making, the revised CPA Guideline could require **representation of marginalised groups in all levels of decision-making**, including in leadership roles. This could enable marginalised groups to fully and effectively participate and/or be properly represented. The revised CPA Guideline could also encourage **youth participation**, both girls and boys.

The revised CPA Guideline could also clarify how **"CPA member"** is defined, which could affect participation of marginalised members. Under the current CPA Guideline, a household is registered as a CPA member, with the head of the household representing the household as a CPA member.³³ This could result in the head of the household being the only one within the household able to participate in CPA-related decisions, and especially problematic if the head of the household does not fairly represent all household members' perspectives. To enable more inclusive participation and representation, the revised CPA Guideline could define "CPA member" as individuals that are part of the CPA community, rather than limiting CPA membership to households.

It may be beneficial for the revised CPA Guideline to not confer the presumption that CPA members who are **not able to participate in decision-making activities are automatically considered as approving** the plan.³⁴ This could potentially skew results; rather, they could be deemed as taking a neutral stance.

The revised CPA Guideline could allow external support to be granted to communities in order to help foster greater participation by marginalised groups and youth, such as by appointing a **community facilitator**.

³² CPA Guideline, Article 13; CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Sections 3.2, 3.3, 5.2; CPA Guideline, Appendix 3

³³ See CPA Guideline, Articles 10 (membership of CPA is made through registration as a household), 11 (CPA cannot be established unless there is voluntary participation of at least 60% of total *households* in a village) (emphasis added), 15 (head of household registered as CPA member can vote if minimum 18 years old); CPA Guideline, Appendix 1 (model of CPA membership application form)

³⁴ *E.g.*, CPA Guideline, Article 13; CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Sections 5.3 (CPA by-law), 6.5 (CPA management plan)



Principle 6: Enabling community access to markets



The legal framework should provide support and facilitate opportunities for market access and the sale of SF products and services, with clear and enabling provisions on tax, transport and processing, as well as economic incentives.

- 6.1 The legal framework should put in place simple rules to develop economic activities and establish a community business, as well as facilitate access to different steps or nodes of the supply chain for sustainable provision of forest-related products and services.
- 6.2 Different economic incentives should be considered in order to stimulate communities' access to markets, such as tax exemptions, subsidies, simplified rules for obtaining transporting or manufacturing permits, different permit requirements depending on the scale of the commercial enterprise (for example, small-scale harvest for local market versus products entering larger supply chains) or the type of product (such as timber versus non-timber forest products), easier access to capital and technical support for community enterprises.
- 6.3 The legal framework should allow communities to enter into agreements with third parties in forest management, including companies, while providing safeguards against abuse of power imbalances between communities and third parties as well as grievance mechanisms.

Assessment

The revised CPA Guideline could generally enable CPA communities to **develop economic activities and establish community businesses**, as well as facilitate **access to the supply chain** for sustainable provision of forest-related products and services. **Economic incentives** could also be provided, in order to stimulate CPA communities' access to markets.

The potential for commercial activities and economic gains is an important driver for participation in CPAs. The revised CPA Guideline could allow CPA communities to **manage commercial activities and enter into agreements with third parties** (with safeguards against abuse of power imbalances, as well as grievance mechanisms, in place). There is a strong need to **mitigate risks** for CPA communities seeking private sector partnerships in order to prevent harm from **power imbalances or elite capture**.

The revised CPA Guideline could also provide support and guidance for **scaling production at a commercial scale**, as well as on **certifying products for authenticity and fair price**.

A complication, however, is that enabling community access to markets may require further analysis of the ENR Code, especially related to **clear identification of authorities responsible for various aspects of market access**. Under the ENR Code, subnational authorities are responsible for inspecting licenses, permits, and other relevant documents, as well as managing and developing eco-tourism by local communities.³⁵

Another point of clarification to be addressed, which may impact revision of the CPA Guideline, is how to interpret the ENR Code when it states that subnational authorities may not authorise (unless otherwise given permission by the government) **commercialisation of forest and non-timber forest products ("NTFPs") for economic purposes in local areas**.³⁶ It is not clear whether this prevents commercial activities by CPA communities. In addition, it seems that natural resource products and by-products may be processed, and sawmill bases for wood processing, timber process plants, and shops to **process natural resource products and by-products** may be established and operated, in CPAs if approved by the MoE – this may require clarification, however, as the ENR Code states that such activities may occur in sustainable use zones and community zones if approved (but does not specifically refer to CPAs).³⁷

The ENR Code also anticipates **development of policies and legal instruments of economic measures to support the environment and natural resources**, with such development including consideration of community-based natural resource management (including exemption from value added tax and other taxation of any income, fees, funds, or other contributions received in the course of collaborative management³⁸ implementation); equitable allocation of revenue from carbon-offset mechanisms; and payments for the generation or maintenance of natural resources and ecosystem services to individuals and communities in collaboration with subnational administrations.³⁹

³⁵ Environment and Natural Resources Code, Articles 352, 378

³⁶ Environment and Natural Resources Code, Article 353

³⁷ Environment and Natural Resources Code, Article 385

³⁸ "Collaborative management" is not defined in the ENR Code, but is generally understood as a broad term that refers to any collaboration between the government, communities, civil society, the private sector, etc, that involves/relates to protection, conservation, and/or management of the environment and/or natural resources.

³⁹ Environment and Natural Resources Code, Article 759

The revised CPA Guideline could allow CPA communities to **directly receive and manage monies** from private investment and commercial activities and public funding sources (*e.g.*, eco-tourism, NTFP collection and utilisation, carbon financing mechanisms, conservation finance and investment funds, money from any contracts or benefit sharing arrangements, grants, donations, Environmental and Social Fund, Commune/Sangkat Fund, other revenue sources). One method could be to establish a CPA fund/account for each CPA that would be managed by the CPA community.

The revised CPA Guideline could include provision of government resources for **technical and financial support** to CPA communities to start up local businesses, as well as **capacity building** for business management and sustainable product development. The revised CPA Guideline could also support the formation of **co-ops or local associations of producers, traders, and exporters** among communities, to enable resource sharing and bigger market power leverage.

Under the current CPA Guideline, CPA management implementation is monitored and evaluated based on 4 conditions, with associated criteria. One of the conditions is focused on support from outsiders, and one of the criteria of this condition is **support for product price in markets**.⁴⁰ The revised CPA Guideline could further consider how this monitoring and evaluation condition/criteria can be better supported.

⁴⁰ CPA Guideline, Procedure on Establishment of Community Protected Areas (CPA), Section 8.1; CPA Guideline, Appendix 6 (model of monitoring and evaluation frameworks)



Principle 7: Equitable benefit sharing



The legal framework should enable benefit sharing by providing a general framework, while allowing communities to use their own mechanisms to equitably share the benefits from SF activities between community members. The legal framework should provide safeguards that ensure information transparency and a monitoring system to protect community members against risks such as elite capture.

- 7.1 The legal framework should provide that monetary, material and non-monetary/non-material benefits derived from the use and management of a SF area belong to the community.
- 7.2 The legal framework should include the principle of equitable benefit sharing, while recognising that communities can use their own specific benefit sharing mechanisms.
- 7.3 The legal framework can provide guidance on developing and implementing benefit sharing mechanisms by, for example, defining benefit sharing (types of benefits, horizontal versus vertical benefit sharing) or providing examples or models of benefit sharing arrangements.
- 7.4 The legal framework should envisage mechanisms that reduce the risks of benefit or elite capture, such as setting up a system to ensure transparency, accountability and monitoring of benefit sharing. There should also be mechanisms to ensure equal access to benefits by marginalised groups, such as women, IPs, ethnic minorities and others.

Assessment

The revised CPA Guideline could enable equitable benefit sharing on multiple levels. For instance, under the ENR Code, the MoE is tasked with developing **mechanisms for determining payments to natural persons for contributing to controlling, protecting, or managing ecosystem services**.⁴¹ How such payments will occur, how the mechanism will be implemented and administered, etc, still needs to be clarified, but the revised CPA Guideline could facilitate integration of such mechanism(s) into CPA communities' benefit sharing.

The revised CPA Guideline could make clear that **monetary, material, non-monetary, and non-material benefits** derived from the use and management of a CPA area belong to the CPA community. The revised CPA Guideline could facilitate the development and implementation of benefit sharing mechanisms by providing **further guidance on benefit sharing** (*e.g.*, types of benefits, horizontal versus vertical benefit sharing, factors to consider, minimum standards, fair pricing, dispute resolution mechanisms for third party contracts) and/or providing **examples or models** of benefit sharing arrangements/agreements.

The revised CPA Guideline could promote mechanisms to **reduce the risks of benefit or elite capture**, such as setting up a system to ensure transparency, accountability, and monitoring of benefit sharing. Transparency standards could be detailed, including robust monitoring by independent entities and financial reporting, of all benefit sharing arrangements linked to CPA communities (potentially encompassing governmental authorities, the private sector, etc). There could also be mechanisms to ensure **equal access** to benefits by marginalised groups.

⁴¹ Environment and Natural Resources Code, Article 762



Principle 8: Including mechanisms for conflict resolution



In case of conflict, the legal framework should guarantee that communities and all community members have access to a process of fair dispute resolution, which can rely on customary or alternative dispute resolution mechanisms, while ensuring that judicial means, such as tribunals and courts to file formal complaints, are also available. The legal framework should also ensure that access to legal assistance is available.

- 8.1 The legal framework should allow communities to use their own chosen dispute resolution mechanism, and, in doing so, recognise customary or alternative dispute resolution mechanisms.
- 8.2 In cases of conflict between communities and third parties, the legal framework should guarantee that there is a means to recourse for communities, such as an administrative or contract-based redress mechanism.
- 8.3 The legal framework should also provide access to a judicial or other independent and enforceable dispute resolution mechanism, so that parties may formally file complaints or seek recourse.
- 8.4 The legal framework should ensure that access to legal assistance is readily available, in order to make sure all parties, especially communities and marginalised groups, can sufficiently and effectively obtain remedy.

Assessment

The revised CPA Guideline could make clear that CPA communities are permitted to use their own **chosen dispute resolution mechanism, recognising customary or alternative dispute resolution mechanisms**. The revised CPA Guideline could develop clear guidelines and operating standards for dispute resolution within the CPA system that remain respectful of traditional/customary practices.

Under the current CPA Guideline, several **government institutions** are tasked with facilitating the resolution of conflicts occurring within CPAs.⁴² However, there are no established procedures or standards to guide governmental units on conflict resolution. If going through official channels, it may be beneficial for CPA communities and relevant governmental authorities to clearly understand what to expect, for reasonable timeframes for resolution to be established, and for the process to be transparent.

In cases of conflict between CPA communities and third parties, the revised CPA Guideline could **guarantee means to recourse** for communities, such as an administrative or contract-based redress mechanism. The revised CPA Guideline could also provide **access to a judicial or other independent and enforceable dispute resolution mechanism**, so that parties may formally file complaints or seek recourse.

The ENR Code includes provisions on **environmental and natural resources complaints**, stating that parties are to attempt resolving complaints through mediation before filing a complaint to court (or if a complaint is filed before attempting mediation, the court will submit the complaint to mediation; if mediation does not resolve the issue, the complaint can proceed in court).⁴³ Complaints can also be filed to claim compensation for harm and damages, as well as cessation or prevention of harmful activities.⁴⁴

The ENR Code establishes **dispute resolution committees on environment and natural resources**, at the national level and capital/provincial level.⁴⁵ However, it seems that they are not automatically operational, and further preparation needs to be done. These dispute resolution committees provide mediation, but if mediation is not successful, complaints can be filed to court.⁴⁶

The revised CPA Guideline could ensure that **access to legal assistance** is readily available (*e.g.*, financial assistance, availability of legal services, etc), in order to make sure all parties, especially communities and marginalised groups, can sufficiently and effectively obtain remedy.

⁴² CPA Guideline, Articles 4-7 (MoE's General Directorate of Local Communities, Department of Community Livelihood, Provincial Department of Environment, Directors of PAs)

⁴³ Environment and Natural Resources Code, Article 801 (mediation does not apply for criminal cases)

⁴⁴ Environment and Natural Resources Code, Article 802

⁴⁵ Environment and Natural Resources Code, Articles 803-805

⁴⁶ Environment and Natural Resources Code, Article 807



Principle 9: Enforcing SF frameworks



The legal framework should identify what constitutes an offense and clearly state the associated sanctions and who can issue them. The legal framework should specifically identify the roles and responsibilities of communities and governmental authorities in enforcing SF rules.

- 9.1 The legal framework should clearly establish what constitutes an offense and what the associated sanctions are or may be. Sanctions should be fair, proportionate and dissuasive.
- 9.2 The legal framework should provide some authority, as well as the necessary means and tools, to communities to enforce rules relevant to their management of a SF area. Such authority may include taking action against community members or third parties for wrongdoing. If direct action is not permitted to be taken against third parties, the legal framework should make clear what actions are available to communities.
- 9.3 The legal framework should lay out the types of sanctions or other measures a community may impose, such as reprimands or warnings. Such sanctions should be included in a community's internal rules/policies (for example, by-laws).
- 9.4 The legal framework should identify which governmental bodies are responsible for monitoring SF implementation and enforcement. This should include specifying how such monitoring and enforcement will be conducted. Sufficient financial and human resources should be provided to ensure monitoring and enforcement activities can be fully achieved.
- 9.5 As part of the monitoring process, the legal framework should require an evaluation of the communities' fulfilment of forestry obligations and a formal notification mechanism to allow them to undertake remedial actions before sanctions may be imposed. The legal framework should also provide for an appeal mechanism if sanctions are imposed, especially for severe sanctions such as withdrawal/revocation of an allocated SF area.

Assessment

It may be beneficial for **offenses and associated sanctions** to be clear, and for sanctions to be fair, proportionate, and dissuasive. Certain offenses and penalties are stated in the ENR Code.⁴⁷

The revised CPA Guideline could provide some **authority to CPA communities**, as well as the necessary means and tools, to enforce rules relevant to management of their CPA. Such authority may include taking action against community members or third parties for wrongdoing. If direct action is not permitted to be taken against third parties, the revised CPA Guideline could make clear what actions are available to CPA communities. The ENR Code does call for improvement of enforcement through cooperation with others, including local communities.⁴⁸

Under the current CPA Guideline, CPA community members play a more limited role in enforcement – primarily reporting violations of laws or CPA by-laws to governmental authorities and cooperating with authorities when needed – and are not authorised to take direct enforcement action or impose sanctions themselves. **Enabling CPA communities to take enforcement actions** (*e.g.*, temporary detainment of violators, seizure of illegal equipment, widespread joint patrolling) could improve overall management of natural resources in CPAs/PAs. This could be accompanied by provision of adequate funding and capacity for patrolling and other enforcement.

The revised CPA Guideline could lay out the **types of sanctions or other measures** a CPA community may impose, such as reprimands or warnings.

The ENR Code identifies **officers responsible for PAs** (at national and subnational levels) and **inspection officers**.⁴⁹ It may be helpful to clarify further in the revised CPA Guideline whether, and how, such officers' responsibilities relate to CPA implementation and enforcement. This may affect the current assignment of responsibilities, where as a practical matter Provincial Departments of Environment have a leading responsibility in day-to-day CPA enforcement matters, in collaboration with MoE's General Directorate of Local Communities, and Directors of each PA are responsible for taking action against natural resource offenses within CPAs.⁵⁰

Under the current CPA Guideline, it appears that some **compensation** could be paid to a CPA community for certain natural resource offenses, but it is unclear.⁵¹ The revised CPA Guideline could clarify what compensation CPA communities may receive for natural resource offenses and how compensation is provided and distributed.

The revised CPA Guideline could establish a **formal notification mechanism** to allow CPA communities to undertake remedial actions before sanctions are imposed, in case CPA communities' fulfilment of CPA obligations is deemed unsatisfactory. The revised CPA Guideline could also provide for an **appeal mechanism** if sanctions are imposed, especially for severe sanctions such as termination of CPA establishment.

⁴⁷ Environment and Natural Resources Code, Articles 824-825, 827-828, 849-851

⁴⁸ Environment and Natural Resources Code, Article 486

⁴⁹ Environment and Natural Resources Code, Articles 810, 815, 816

⁵⁰ CPA Guideline, Article 7

⁵¹ One of the articles in the model CPA by-law contained in Appendix 3 of the CPA Guideline states: "CPA committee shall ask for compensation from natural resource offences of the first grade as provided in Article 56 of the Law on Nature Protection Area." As this language is contained in an example of a CPA by-law, which is developed based on the unique factors present in a specific CPA, it is unclear as to how much flexibility CPA communities are given in developing such measures on compensation in their by-laws (*e.g.*, could CPA committees ask for compensation from natural resource offences of the fourth grade?). This of course needs updating regardless, to align with the ENR Code.



Principle 10: Enabling external support to communities



The legal framework should allow external actors, such as NGOs, the government, the private sector or international institutions, to provide a broad range of support to community members in accessing and implementing SF. The legal framework should also clearly establish the necessary means and institutions for such external support to materialise.

- 10.1 The legal framework should specifically identify the relevant governmental bodies that will be involved in supporting SF, including their mission and functions. The legal framework should also make clear how sectoral government entities will coordinate on SF matters. A clear programmatic approach should be put in place and pursued by relevant authorities, and sufficient financial means made available to fulfil their missions.
- 10.2 The legal framework should expressly allow NGOs to provide support to communities. The legal framework should also make clear if there are any requirements that NGOs must meet in order to provide such support, and what such requirements entail. Any such requirements should not be burdensome, including rules on registration of association and operating as an NGO.
- 10.3 The legal framework should authorise the involvement of private sector actors in SF, while also containing safeguards to ensure a balanced relationship between communities and private sector actors and minimise risks of capture of SF by private sector actors.
- 10.4 The legal framework should allow international institutions to provide support for SF. The legal framework should enable such support to be directly granted to communities. Where direct support may not be allowed, the legal framework should clearly establish how support can be provided.

Assessment

The revised CPA Guideline could facilitate a wide variety of support from external actors to CPA communities. When it comes to **governmental support**, the revised CPA Guideline could identify the relevant governmental bodies tasked with supporting CPA implementation, including their mission(s) and function(s). The revised CPA Guideline could also clarify how sectoral government entities will coordinate on CPA-related matters.

The ENR Code accounts for various **funding mechanisms**, which can be reflected in the revised CPA Guideline. The ENR Code envisions the establishment of an Environmental and Social Fund, which can be used for providing support on establishment and development of local communities; local communities' development projects, including providing microfinance as a revolving fund; human resource training; and other activities related to the environment and natural resources.⁵² However, first an Environmental and Social Fund Committee (which will manage the Environmental and Social Fund) needs to be established, as well as how the Environmental and Social Fund will operate.⁵³

It is expected that the **Environmental and Social Fund** will be funded by an initial capital contribution from the government; contributions from a special tax related to the environmental sector which will be determined by the government; contributions from the civil aviation sector which will be determined by the government; royalties from owners of private and public development projects determined in Environmental Management Plans of Environmental Impact Assessment Reports and/or Environmental Protection Agreements; income from environmental support, ecosystem services, and biodiversity conservation; contributions from the Environmental Endowment Fund⁵⁴; contributions from the Protected Areas Fund⁵⁵; contributions from entrance fees to visit PAs; rental fees from installment of antennae and other infrastructure; contributions from service fees for renting locations for eco-tourism development that are less than 10 hectares; contributions from selling carbon; funds from complaint resolution; grants and/or donations from NGOs, development partners, private institutions, whether local or international; contributions from other service fees involving the environmental sector; and other sources.⁵⁶

The ENR Code also introduces **environmental trusts**⁵⁷ as well as a **Collaborative Management Fund**.⁵⁸ The Collaborative Management Fund is to be designed to support the collaborative management activities within each collaborative management area. The Collaborative Management Fund shall be managed by a Collaborative Management Committee (monitored and evaluated by the MoE), and the Collaborative Management Committee shall receive funding and generate income from a range of sources, including social and environmental funds; direct donations from the private and public sectors; other services, usage fee charges, entertainment fees, or entrance fees; and other contributions, donations, and funding.

The ENR Code mandates that the use of **incomes, expenditures, or other contributions** received through a collaborative management practice shall be used only for the benefit of local communities living in the collaborative management areas, for supporting collaborative

⁵² Environment and Natural Resources Code, Articles 769, 771

⁵³ Environment and Natural Resources Code, Article 772

⁵⁴ Environment and Natural Resources Code, Article 767

⁵⁵ Environment and Natural Resources Code, Article 768

⁵⁶ Environment and Natural Resources Code, Article 770

⁵⁷ Environment and Natural Resources Code, Articles 773-792

⁵⁸ Environment and Natural Resources Code, Article 793

management activities, and for the conservation of collaborative management areas and adjacent areas to PAs.⁵⁹ A clear method of dividing incomes, expenditures, or other contributions shall be determined in a collaborative management agreement.⁶⁰ The ENR Code also states that income, expenditures, or other contributions received from collaborative management by communities shall be prioritised for exclusion from taxes and other charges.

It may be helpful for the revised CPA Guideline to indicate **minimum funding allocations** from applicable funding sources that will be dedicated towards CPA establishment, management, and implementation. This would help ensure regular, reliable, and sufficient capacity and funding of CPA development. It would additionally be useful for the revised CPA Guideline to address how such funding could be accessed by CPA communities (*e.g.*, mechanisms that need to be established; applicable criteria for CPA communities, if any, such as setting up a bank account; etc).

The revised CPA Guideline could enable **NGOs** to provide support. The ENR Code encourages NGOs, civil society, and the private sector to be involved and facilitate the CPA establishment and implementation processes.⁶¹ To support such involvement, the revised CPA Guideline could include operational guidelines specifying the roles and responsibilities among NGOs, communities, and authorities. Any operational guidelines should be carefully developed so as not to cause an unintended effect of limiting and/or excluding NGOs' involvement in practice.

The revised CPA Guideline could also authorise **private sector actors** to collaborate with CPA communities. The revised CPA Guideline could ensure that safeguards are established for this type of engagement, to minimise risks of elite capture and/or those linked to power imbalances.

The revised CPA Guideline could enable **international institutions** to grant direct support to CPA communities. The revised CPA Guideline could help facilitate such direct support by addressing any criteria CPA communities must meet, if any, to receive and access such direct support. If direct support is not permitted, the revised CPA Guideline could clearly establish how support can be provided.

⁵⁹ Environment and Natural Resources Code, Article 794

⁶⁰ "Collaborative management agreement" is not defined in the ENR Code, but presumably refers to agreements governing collaborative management activities (see footnote 38 for description of general understanding of "collaborative management").

⁶¹ Environment and Natural Resources Code, Article 373

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