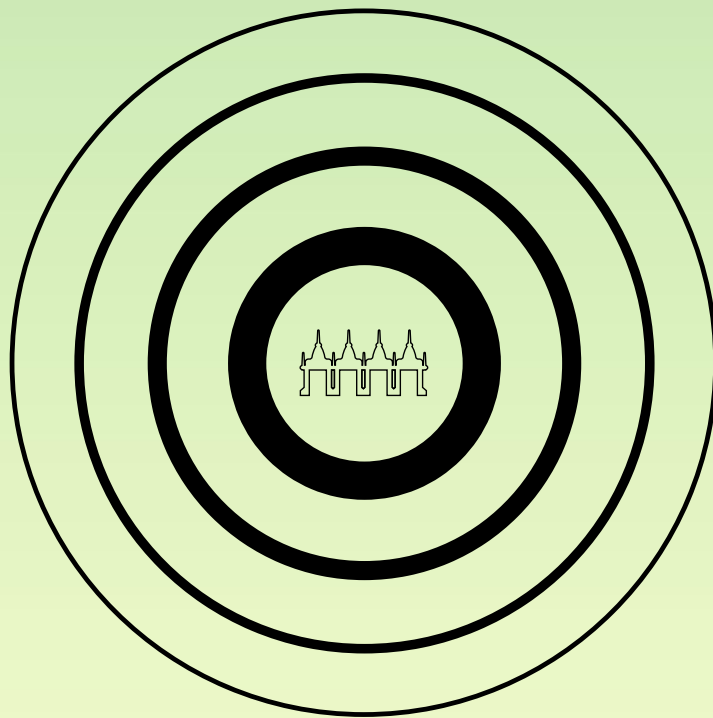


August 2024

# Legal Analysis: An Examination of Cambodia's Environment and Natural Resources Code (2023)

Changes to Governance of Protected Area and Community Protected Area Management and Remaining Challenges



CLIENTEARTH.ASIA

**ClientEarth** 



## Introduction

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 community protected areas (CPAs). Reform of the Protected Area Law (PA 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. In this context, this legal analysis provides an assessment of the ENR Code, focusing on governance of PA and CPA management and changes wrought through the ENR Code, concentrating on a select number of topics deemed to be of high interest to affected stakeholders.

This analysis may be useful to civil society, governmental authorities, and other stakeholders involved in PA and CPA management to any degree, who are interested in understanding and evaluating the impact of the ENR Code and challenges that still remain.

## Summary

This analysis focuses on 5 key topics that relate to the ENR Code and governance of PAs and CPAs:

- (1) responsible authorities,
- (2) land tenure,
- (3) PA establishment and zoning,
- (4) CPA establishment and management, and
- (5) ecotourism development.

### Some key recommendations include:

- Implementation of the transfer of authority to sub-national authorities as mandated by the ENR Code, including more detailed allocation of roles and responsibilities amongst the 3 tiers of sub-national authorities that exist in Cambodia (*i.e.*, the capital/provincial level, the khan/municipal/district level, and the sangkat/commune level)
- Registration of established CPAs in the land registration system, enhancing completeness of PA registration data as well as strengthening CPA communities' tenure security, and addressing CPA registration in the legal framework
- Incorporation of free, prior and informed consent into the PA establishment and zoning process, as such decisions could directly and/or indirectly affect the integrity of, access to, and utilisation of Indigenous Peoples' and local communities' territories and resources, as well as cultural practices and traditions
- Addressing renewal of CPA management agreements in the legal framework and provision of guidance related to CPA compliance determinations (with clear conditions and criteria), as well as establishment of complaint/appeal mechanisms for communities
- Development of a clear and comprehensive legal framework on ecotourism, including careful consideration of and clear processes regulating how ecotourism establishment and implementation interacts with PAs/CPAs and impacted communities, as well as proper limitations

More broadly, there is a need to develop and provide training, education, and guidance to relevant governmental officials (especially sub-national authorities) and civil society on the ENR Code, as it appears that there currently exists an implementation gap in practice – with many

stakeholders still reliant on the previous legal framework, rather than exercising their functions pursuant to the legislation that is in force.



## 1. Responsible authorities

The ENR Code has transformed the governance of PAs and CPAs through a substantial transfer of authority to sub-national authorities. A significant task that remains is implementation of the transfer of authority to sub-national authorities, which will need to include more detailed allocation of roles and responsibilities amongst the 3 tiers of sub-national authorities that exist in Cambodia (*i.e.*, the capital/provincial level, the khan/municipal/district level, and the sangkat/commune level). Implementation of delegated functions will also have to incorporate provision of necessary support, resources, and capacity building to ensure successful and effective transfer of responsibilities to sub-national authorities.

Under the ENR Code, some of the duties related to PA and CPA management that sub-national authorities shall be responsible for are:

- Ensuring sustainable management of PAs and increasing reforestation on degraded or empty forest land (Art 352(2)(a));
- Developing and implementing PA management action plans in their jurisdictions (Art 352(2)(b));
- Taking actions to control, prevent, research, and crack down on natural resource crimes in PAs and take cases to court following applicable legal procedures (Art 352(2)(c));
- Preventing and taking actions against all activities that damage or adversely impact PAs (Art 352(2)(d));

- Controlling permits and other relevant documents as provided in the ENR Code (Art 352(2)(e));
- Controlling all exportation and importation of animals, plants, plant seeds, and samples in PAs (Art 352(2)(f));
- Supporting local communities' traditional and customary use of natural resources in Conservation Zones and Sustainable Use Zones of PAs (Art 352(2)(g));
- Providing permission principles and recognising CPA establishment in Sustainable Use Zones and Community Zones that receive approval from the Ministry of Environment (MoE) (Art 352(2)(h));
- Managing and developing CPAs and ecotourism (Art 352(2)(i));
- Educating and disseminating information to raise awareness among citizens about the importance of biodiversity management and conservation, environmental restoration, and sustainable use of natural resources (Art 352(2)(j));
- Mobilising resources to support biodiversity protection, conservation, and restoration (Art 352(2)(k));
- Cooperating with relevant ministries or institutions, development partners, national organisations, international organisations, civil society organisations, and donors to strengthen capacity for management, conservation, and development of natural resources (Art 352(2)(l));
- Implementing additional or modified functions concerning the management of PAs (Art 352(3));
- With the MoE, developing action plans for PA management in compliance with national strategic plans on PAs in consultation with local communities and stakeholders (Art 357(1));
- Proposing PA establishment to the MoE (Art 358);
- Proposing modification of PAs (Art 360);
- Assisting the MoE in developing an official map of each PA, including identifying and determining zoning within PAs, demarcating boundaries, and registering PA land (Art 367);
- Administratively managing CPAs (Art 371(1));
- Initiating, coordinating, supporting, giving permission principles, and recognising establishment of CPAs after receiving approval from the MoE – this shall include studying the possibility of designating CPAs and determining specific appropriate locations and sizes in consultation and coordination with local communities and relevant stakeholders (Art 371(2),(3));
- Entering into agreements with CPA communities (*i.e.*, via CPA management agreements) in which the agreements' validity shall not exceed 25 years (Art 371(4));
- Suspending operation of CPAs to review and reassess, if CPA communities do not comply with CPA management agreements and CPA management plans (Art 371(5));
- Revoking CPA management agreements, after receiving approval from the MoE, in cases of community noncompliance with CPA management agreements and CPA management plans (Art 371(6),(7));

- Recognising CPA management plans (Art 374);
- Integrating CPA management plans into sub-national administration planning (Art 374);
- Issuing permits or entering into agreements or contracts for activities or projects in PAs by requesting prior approval from the MoE (Art 378(2));
- Along with the MoE, consulted prior to development of all construction and public infrastructure projects in PAs (Art 379(1));
- Providing permits prior to all private construction or building projects in PAs (Art 379(2));
- Bringing compensation claims for environmental and natural resources harm, environmental restoration, or complaints to prevent activities that will harm or pollute the environment and natural resources (Art 802(b));
- Appointing sub-national level officials responsible for PAs management within their jurisdiction, who shall have duties to monitor, control, and enforce the laws within PAs and may be qualified as judicial police officers who shall control natural resources offences within their jurisdiction and have the power to search, seize evidence, summon relevant persons, and fulfil other procedural tasks in compliance with the Criminal Procedural Code (Art 810); and
- Appointing environmental inspection officers, who will be responsible for inspection concerning environmental crime prevention and protection and may be qualified as judicial police officers to enforce natural resources offences within their jurisdictions and have the power to search, seize evidence, summon relevant persons, and fulfil other procedural tasks in compliance with the Criminal Procedural Code (Art 814, 816).

Delegation of PA/CPA-related responsibilities to sub-national authorities should include consideration of collaboration with Provincial Departments of Environment (PDoEs), which represent the MoE at the provincial level. Although PDoEs are technically considered national rather than sub-national authorities as they are part of the MoE, implementation of delegated functions by sub-national authorities should involve close collaboration with PDoEs, as PDoEs are responsible for implementation and facilitation activities relevant to the environmental sector and currently play an active, hands-on role.

Delegation of PA/CPA management-related responsibilities under the ENR Code to sub-national authorities should also be aligned with the imminent revision of the 2017 Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment, as well as an anticipated sub-decree on CPAs (currently in development).

For further information, see ClientEarth's analysis entitled "Decentralisation in Cambodia: A look at current and future environmental and natural resources governance" (July 2024).



## 2. Land tenure

The ENR Code dictates that PAs shall be registered as public state land.<sup>1</sup> As a part of PA registration, it would enhance the completeness of PA registration data as well as the strength of CPA communities' tenure security to include CPA registration. CPA management rights could be registered as rights of use/residence, or alternatively, CPA registration could treat CPAs as 'perpetual leases' on PA land. The ENR Code does not address CPA registration, and it is recommended that CPA registration be addressed in other legal instruments and/or in any future revisions of the ENR Code.

CPAs may be established in Sustainable Use Zones and Community Zones of PAs.<sup>2</sup> CPAs may be established for a period not exceeding 25 years, and are established in writing via CPA management agreements.<sup>3</sup> Without a mechanism to register CPAs as proprietary rights, such rights and responsibilities exist in contract only, and therefore lack the tenure security of a registered proprietary interest.

CPA registration should provide/create a real (proprietary) right to CPA communities – a right that can be asserted against all persons.<sup>4</sup> Real rights that could pertain to CPA communities include usufructuary real rights: perpetual lease, usufruct, and right of use/right of residence.<sup>5</sup> Of all the

<sup>1</sup> See Environment and Natural Resources Code (2023), Articles 351, 367

<sup>2</sup> Environment and Natural Resources Code (2023), Article 371; Prakas on Guideline on Procedure and Process of Community Protected Area (CPA) Establishment (2017) ("CPA Guideline"), Article 2. Presumably the CPA Guideline will include similar content in its revised version, which is expected to be promulgated sometime in the near future.

<sup>3</sup> Environment and Natural Resources Code (2023), Article 371

<sup>4</sup> See Civil Code (2007), Article 130

<sup>5</sup> See Civil Code (2007), Article 132

options, granting CPA communities with rights of use/residence may be the most straightforward option. However, granting perpetual lease rights could better serve CPA communities in terms of strength of tenure security.

## Right of use / right of residence

Right of use/right of residence<sup>6</sup> could be a relatively simpler option for strengthening CPA management rights. Rights of use/residence may be created in writing, and the CPA management agreement could serve as the written basis for the granting of the rights of use/residence to CPA communities. Granting CPA communities with rights of use/residence in writing would ensure that notice of extinguishment by the State could not occur at any time; there would be a set period of time during which the rights of use/residence would remain in effect.<sup>7</sup> In order for the rights of use/residence to be held up against third parties, the holder of the right(s) must actually use their right(s).<sup>8</sup> If CPA communities were granted rights of use/residence, and ownership of a CPA area were transferred, CPA communities' rights of use/residence could be held up against the transferee if the CPA communities were using their rights of use/residence.<sup>9</sup> This would prevent CPA communities losing their rights simply because a CPA area is transferred – instead the CPA communities' rights would continue after the transfer, provided that they are using those rights. CPA communities' rights of use/residence could be extinguished via the terms of the CPA management agreement or the State could demand that the court extinguish CPA communities' rights of use/residence if CPA communities inflict significant damage to the CPA area, do not properly preserve the CPA area, or otherwise breach the spirit of the rights.<sup>10</sup>

However, such authorisations to use or occupy state public property cannot be rights in rem<sup>11</sup> for the benefit of such rights holders.<sup>12</sup> Thus, if CPA management rights were deemed as rights to use/occupy, such rights could not be exerted against third parties in all instances, significantly weakening CPA communities' tenure security.

## Perpetual lease

If granting perpetual lease rights to CPA communities is an option, it could potentially offer CPA communities stronger tenure security. Given the recognised link between stronger land tenure structures and better conservation outcomes,<sup>13</sup> granting perpetual lease rights could be one way to draw on existing legal provisions to grant more secure tenure rights to CPA communities, thereby paving the way for improved environmental and sustainable development outcomes.

---

<sup>6</sup> "Right of use" refers to the right to collect the fruits of immovable property, to the extent of the needs of the right holder and his/her family. "Right of residence" refers to the right to occupy part of the property, to the extent required for residence by the right holder and his/her family. *See* Civil Code (2007), Article 274. However, it is unclear whether such rights would extend to encompass agroforestry activities, farming activities, profit-generating activities, etc.

<sup>7</sup> *See* Civil Code (2007), Article 276

<sup>8</sup> Civil Code (2007), Article 277

<sup>9</sup> *See* Civil Code (2007), Article 277

<sup>10</sup> *See* Civil Code (2007), Articles 282-283

<sup>11</sup> Rights in rem mean rights that relate to a specific property and can be enforced against anyone who interferes with that property, regardless of the owner. Rights in rem are distinguished from rights in personam, which are rights held by an individual. For example, rights contained in a contract that are enforceable by and against an individual are rights in personam.

<sup>12</sup> *See* Land Law (2001), Article 16

<sup>13</sup> Robinson, B.E., Masuda, Y.J., Kelly, A., Holland, M.B., Bedford, C., Childress, M., Fletschner, D., Game, E.T., Ginsburg, C., Hillhorst, T., Lawry, S., Miteva, D.A., Musengezi, J., Naughton-Treves, L., Nolte, C., Sunderlin, W.D. and Veit, P. (2018), Incorporating Land Tenure Security into Conservation. CONSERVATION LETTERS, 11: e12383. <https://doi.org/10.1111/conl.12383>



State public property may be leased if it has been registered.<sup>14</sup> All state land—both public and private—is meant to be registered in the Land Register and State Property Inventory.<sup>15</sup> Leasing of state public property must not change the intended usage nor cause damage to the property, and must not affect or change its public function.<sup>16</sup>

A perpetual lease, also known as a long-term lease, is a lease of land (and anything immovably fixed to that land, such as structures, crops, timber, etc) for a renewable term of not less than 15 years and not more than 50 years.<sup>17</sup> A perpetual lease is not valid unless it is established by writing, and it can only be held up against third parties if the perpetual lessee registers the perpetual lease.<sup>18</sup> If CPA establishment is treated akin to granting perpetual leases, CPA registration would be important as a way to strengthen CPA communities' land tenure by enabling them to hold up their CPA-derived rights against third parties.<sup>19</sup> Perpetual leases may also be assigned without consideration.<sup>20</sup>

Perpetual lease rights stemming from CPA establishment would differ from typical perpetual leases by the non-application of stipulated rental payments and the inability to sublease the leased land.<sup>21</sup>

Leasing of state public property must not exceed 15 years.<sup>22</sup> As mentioned above, CPAs can be established in certain zones of PAs (which are to be registered as state public land) for periods up to 25 years. The government should consider defining CPAs as a special category of long-term lease that is exempt from the 15-year restriction. This would be a better approach than discouraging CPA establishment duration for the maximum 25 years (in order to enable long-term lease rights), and also more suitable than exploring options of requiring reclassification of CPA areas from state public land to state private land (it would be best to overall maintain legally-mandated protective measures of state public land, to prevent additional delays to establishing CPAs by adding an additional reclassification process, etc).

If CPA establishment and registration are treated as providing real rights akin to long-term lease rights, the CPA management agreement should serve as the "lease" and it would need to be signed by the Minister of the Ministry of Economy and Finance (MEF), along with the MoE and/or relevant sub-national authorities.<sup>23</sup> Furthermore, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) should issue certificates of long-term lease to CPA communities, which should specify the category of immovable property, its size, location, the

---

<sup>14</sup> Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006), Articles 2-4 (refers to State Property Inventory); Sub-Decree on the Mortgage and Transfer of the Rights Over a Long-Term Lease or an Economic Land Concession (2007), Article 5 (refers to Master Land Register). The State Land Map and Database (under the management of Provincial/Municipal State Land Management Committees), the State Property Inventory (under the management of the Ministry of Economy and Finance), and the Land Register (under the management of the Ministry of Land Management, Urban Planning and Construction) all complement one another. Sub-Decree on State Land Management (2005), Article 17.

<sup>15</sup> Sub-Decree on State Land Management (2005), Article 3; Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006), Article 5

<sup>16</sup> Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006), Article 16

<sup>17</sup> Civil Code (2007), Articles 120, 244, 247

<sup>18</sup> Civil Code (2007), Articles 134, 245, 246. If a perpetual lease is not registered, it may be held up against a subsequent acquirer of any real right over the leased land if the lessee has occupied and continuously used and profited from the leased land; however, this only applies up to fifteen (15) years. Civil Code (2007), Articles 246, 598. Registration of perpetual leases is addressed in the Inter-ministerial Prakas Concerning Real Rights Registration Procedure Pertaining to the Civil Code (2013).

<sup>19</sup> Leases of an immovable (such as CPA areas) can be held up against subsequent acquirers of any real rights over the immovable by virtue of the fact that the lessee (such as CPA communities) has occupied and continuously used and profited from the leased immovable. *See* Civil Code (2007), Article 598.

<sup>20</sup> Civil Code (2007), Article 252

<sup>21</sup> *See* Civil Code (2007), Articles 248, 252; Environment and Natural Resources Code (2023), Article 372; Sub-Decree on the Mortgage and Transfer of the Rights Over a Long-Term Lease or an Economic Land Concession (2007), Articles 7-8

<sup>22</sup> Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006), Article 18

<sup>23</sup> *See* Environment and Natural Resources Code (2023), Articles 352, 371; Sub-Decree on the Mortgage and Transfer of the Rights Over a Long-Term Lease or an Economic Land Concession (2007), Article 5

identity of the owner of the land, the identity of the lessee (*i.e.*, the CPA community), and the duration of the lease (*i.e.*, the CPA management duration term).<sup>24</sup>

## Usufruct rights

A third option would be to grant CPA communities with usufruct rights. Usufruct refers to the rights to use and enjoy the profits of land (and anything immovably fixed to that land) of another person, for a period that may not exceed the life of the usufructuary.<sup>25</sup> Usufructs may be established by agreement or by law, and may be created in writing or otherwise.<sup>26</sup> Similar to perpetual leases, a usufruct can only be held up against third parties if it is registered.<sup>27</sup>

If CPA management rights were deemed as akin to usufruct rights, it would differ from typical usufructs in that CPAs may not be assigned or leased to others.<sup>28</sup>

## In general

CPA communities should be exempt from any fees or taxes associated with CPA registration and granting of tenure rights.<sup>29</sup> Such an exemption seems to be supported by the intentions of the ENR Code – for instance, in directing the MEF to develop draft policies and legal instruments on economic rules to support the environment, natural resources, society, and culture (in collaboration with the MoE and other relevant ministries or institutions), the ENR Code states that such economic rules shall include those relating to community-based natural resource management (including exemption from value-added tax and other taxation of any income, fees, funds, or other contributions received while implementing collaborative management) and payments for generating or maintaining natural resources and ecosystem services to individuals and communities in collaboration with sub-national administrations.<sup>30</sup>

The real right shall take effect in accordance with the agreement between CPA communities and the MoE – *i.e.*, the CPA management agreement.<sup>31</sup>

CPA registration should ensure that the holder of the real right created by the CPA management agreement is the CPA community itself (rather than, for example, solely the MoE), as it is presumed that a right that is registered belongs to the person to whom it is registered.<sup>32</sup> Thus, tenure security would not necessarily be strengthened if CPA registration only and/or primarily included state authorities, rather than the CPA communities themselves.

---

<sup>24</sup> See Sub-Decree on the Mortgage and Transfer of the Rights Over a Long-Term Lease or an Economic Land Concession (2007), Articles 6, 10

<sup>25</sup> Civil Code (2007), Article 256

<sup>26</sup> Civil Code (2007), Articles 257, 258

<sup>27</sup> Civil Code (2007), Article 259. Registration of usufructs is addressed in the Inter-ministerial Prakas Concerning Real Rights Registration Procedure Pertaining to the Civil Code (2013).

<sup>28</sup> See Civil Code (2007), Articles 263, 264; Environment and Natural Resources Code (2023), Article 372

<sup>29</sup> See, *e.g.*, Civil Code (2007), Article 284 (allocation of expenses for holders of rights of use/residence); Sub-Decree on the Mortgage and Transfer of the Rights Over a Long-Term Lease or an Economic Land Concession (2007), Article 10 (fees for issuing certificates of long-term lease); Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006), Article 20 (leasing fee on State property). It is not clear whether a registration tax, also known as 'transfer tax' or 'stamp duty tax', would be applicable to CPA communities 'leasing' their CPA area (which is state public land).

<sup>30</sup> Environment and Natural Resources Code (2023), Article 759

<sup>31</sup> See Civil Code (2007), Article 133

<sup>32</sup> See Civil Code (2007), Article 137

## Looking forward

Registration of CPAs would help address the ongoing issue of land disputes, as the registration process includes (1) confirmation of State ownership of the land, (2) demarcation of boundaries of the land, (3) resolution of the competent authorities to any dispute, and (4) registration in the Land Register.<sup>33</sup>

PA registration should be prioritised by governmental authorities, so that CPA registration can efficiently and without undue delay also occur. Registration of PAs would set the foundation for registering CPAs as rights of use/residence, perpetual leases, or usufructs on PA land. This would provide CPA communities with clarified rights linked to their management over CPA land, and be a clear way for governmental authorities to conduct registration of PAs and CPAs. In registering CPAs, the government should ensure that it does not cause additional burden on communities; registration should be an automatic part of the overall CPA establishment process.<sup>34</sup>

---

<sup>33</sup> See Sub-Decree on State Land Management (2005), Article 8

<sup>34</sup> See generally Inter-ministerial Prakas Concerning Real Rights Registration Procedure Pertaining to the Civil Code (2013)



### 3. PA establishment and zoning

Free, Prior and Informed Consent (FPIC) should be incorporated into the PA establishment and zoning process. FPIC is a right granted to Indigenous Peoples (IPs) that is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and which aligns with their universal right to self-determination. FPIC allows IPs to give, withhold or withdraw consent, at any point, regarding legislation, administrative policies or projects that could impact their lands, territories or rights. FPIC allows IPs to influence the design, implementation, monitoring, and evaluation of projects/activities.<sup>35</sup> It has also been recognised that FPIC is not only important for IPs, but is also best practice for meaningfully engaging with local communities, as involving them in the decision-making of any proposed development activity increases their engagement and helps guarantee their right to development as a basic human rights principle.

**'Free'** means that consent is given voluntarily and without coercion, intimidation, or manipulation – a process that is self-directed by the community from whom consent is being sought, unencumbered by duress, expectations, or timelines that are externally imposed.

**'Prior'** means that consent is sought sufficiently in advance of any authorisation or commencement of activities. This should allow sufficient time for relevant stakeholders to be consulted and have reasonable time to review the proposal.

<sup>35</sup> Food and Agriculture Organization of the United Nations, "Indigenous Peoples", <https://www.conservation.org/projects/free-prior-and-informed-consent-in-context#:~:text=The%20principle%20of%20Free%2C%20Prior,given%20under%20force%20or%20threat>

**'Informed'** means that sufficient engagement and information (detailed, emphasising both the potential positive and negative impacts of the activity, and presented in a language and format understood by the community) should be provided prior to seeking consent and also as part of the ongoing consent process.

**'Consent'** refers to the right of the community to make a collective decision, reached through customary decision-making processes of the communities, before an activity or project begins and also throughout the life of the activity/project.

The right to FPIC is relevant for the establishment and zoning of PAs, as such decisions could directly and/or indirectly affect the integrity of, access to, and utilisation of IPs' and local communities' (IPLCs') territories and resources, as well as cultural practices and traditions.

Respect for FPIC and its incorporation into the PA establishment and zoning processes should include meaningful engagement with IPLCs when making a determination on PA establishment as well as zoning of each PA.

Establishment as a PA and zoning of a PA into four (4) different types of zones – from most protected/restrictive zone to least: (1) Core Zones, (2) Conservation Zones, (3) Sustainable Use Zones, and (4) Community Zones<sup>36</sup> – entail application of restrictions mandated by law, and thus could impact IPLCs that reside in or near PAs, their activities, and their access to resources within PAs.

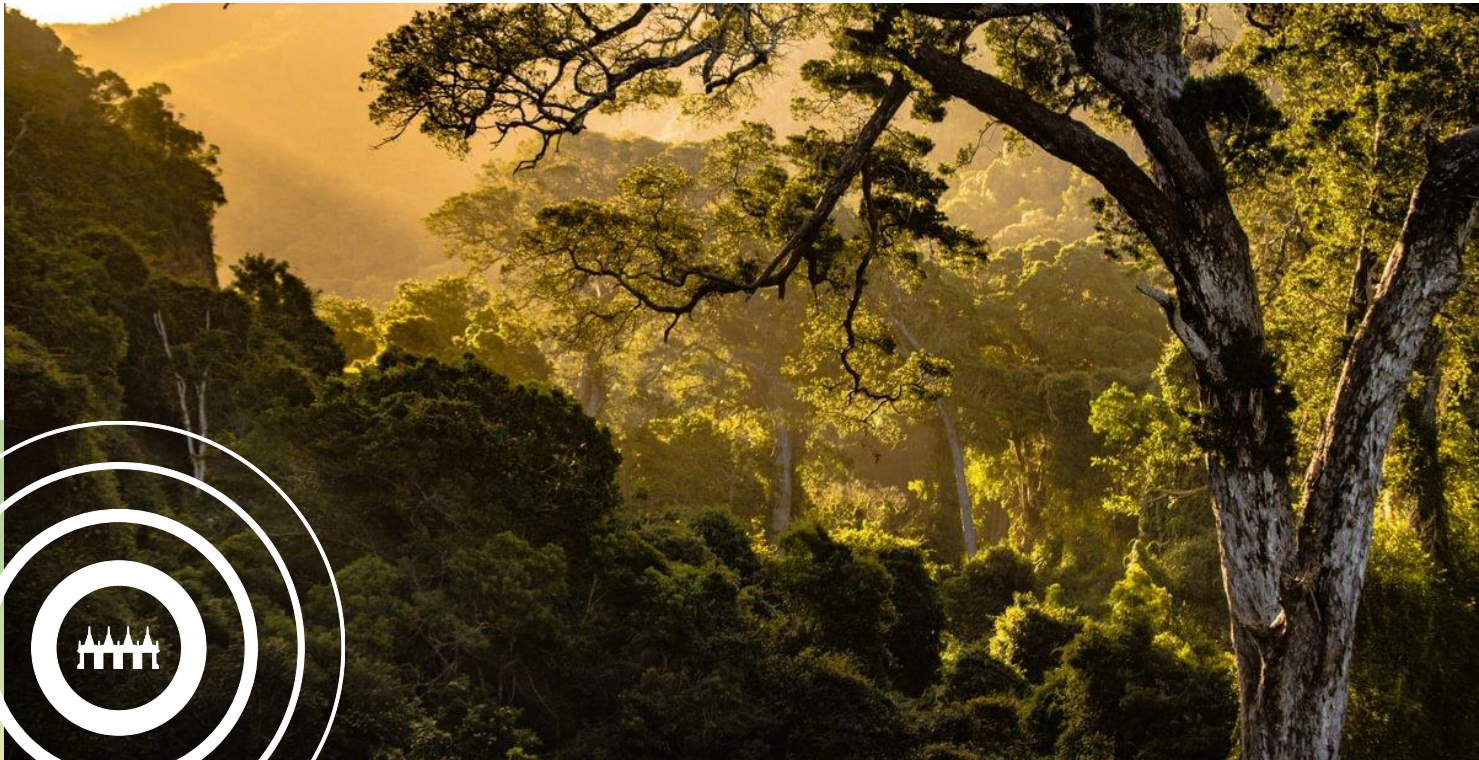
The ENR Code does broadly require consultations with stakeholders before determination of PA establishment and modification,<sup>37</sup> although it is less clear whether non-governmental parties can participate in zoning determinations of PAs.<sup>38</sup>

---

<sup>36</sup> Environment and Natural Resources Code (2023), Article 364

<sup>37</sup> Environment and Natural Resources Code (2023), Articles 358, 360

<sup>38</sup> Environment and Natural Resources Code (2023), Articles 364-365, 367



## 4. CPA establishment and management

The ENR Code does not address whether renewal of CPA management is permitted after the initial 25-year duration (assuming the CPA management agreement term is for the maximum 25 years). Thus, there is no guarantee that the CPA management agreement can be renewed, nor that CPA communities would be granted preferential rights to renew as long as they have been abiding by their CPA management plan and CPA management agreement, relevant laws, etc. Without assurance that good management of CPAs can ensure continued management of such areas via renewal, tenure security for CPA communities is tenuous and relatively short-term. Effective long-term management of CPAs would be incentivised if CPA renewal was guaranteed (with reasonable conditions). Communities would also feel more secure, especially in a context where often they face the potential risk of losing CPA land to competing governmental interests and priorities, such as development, investors, etc.

The ENR Code only addresses the ability of sub-national authorities to suspend for review and reassessment of CPA operations if CPA communities fail to comply with the CPA management agreement and CPA management plan, and that CPA management agreements can be revoked if a CPA community acts in contravention of the terms of the CPA management agreement and CPA management plan.<sup>39</sup> It does not contain provisions directly enabling CPA renewal by sub-national authorities.

<sup>39</sup> Environment and Natural Resources Code (2023), Article 371

There are some concerns over the lack of guidance related to CPA communities' compliance with CPA management agreement and CPA management plan terms. Such guidance—with set conditions and criteria—would help both CPA communities and authorities understand how compliance is determined, and better enable accountability and transparency in how monitoring and evaluation assessments are conducted. This is important as CPA communities' compliance is the primary factor that governing authorities base their decisions on for whether CPA communities can continue managing their allocated CPA management area. Having clear conditions and criteria in place could help prevent inaccurate mismanagement claims by governing authorities, who could claim noncompliance by CPA communities. In such instances, CPA communities should also have access to complaint mechanisms.

If governing authorities do decide to revoke CPA management and cancel the CPA management agreement, the affected community should be entitled to appeal such a significant decision. Procedural mechanisms should be put in place to enable appeals by CPA communities.



## 5. Ecotourism development

Ecotourism<sup>40</sup> appears to be an initiative that the Cambodian government is pushing to develop.<sup>41</sup> This is reflected in the ENR Code:

- The MoE is responsible for coordinating and collaborating with the Ministry of Tourism (MoT) and sub-national administrations to manage ecotourism projects in PAs.<sup>42</sup>
- The MoE (or sub-national administrations, with prior MoE approval) has the right to issue permits and enter into agreements or contracts for ecotourism development projects in PAs (in consultation with relevant ministries or institutions, sub-national administrations, and stakeholders).<sup>43</sup>

<sup>40</sup> Ecotourism, in the context of PAs, biodiversity conservation corridors (BCCs), and CPAs, refers to travel to or tourism services and activities in PAs, BCCs, and/or CPAs that have minimal impacts on the natural environment within and surrounding the place, and are meant to support conservation efforts, enhancing awareness and appreciation of the nature and culture in the area, and benefit local and regional socioeconomic development in a sustainable manner. Minimal impact refers to the least impact or change upon biodiversity resources, ecosystem, natural landscape, environmental condition, visual amenities of the place, sociocultural characteristics and values in the area, tourist experience and quality of visit, local cost of living, as well as upon carrying capacity of the place, conservation efforts, and local and regional capability for economic development and growth. Prakas no. 294 on the Implementation of Guideline on the Below 10-Hectare Small Scale Ecotourism Development Projects in Natural Protected Areas and Biodiversity Conservation Corridors (2022).

<sup>41</sup> The Phnom Penh Post, "[ASEAN and Cambodia boost ecotourism initiatives](#)" (6 February 2024); Cambodia's Local Community Development Strategic Plan 2024-2028

<sup>42</sup> Environment and Natural Resources Code (2023), Article 607

<sup>43</sup> Environment and Natural Resources Code (2023), Article 378



- The MoE has the right to establish fishery-based ecotourism in Conservation Zones and Core Zones of PAs (the 2 most protected zones of PAs) in consultation with the Ministry of Agriculture, Forestry and Fisheries (MAFF) and sub-national administrations.<sup>44</sup>
- The MoE is responsible for developing draft policies, legal instruments, strategic plans, management plans, action plans, and technical guidelines for managing ecotourism development investment projects and community-based ecotourism development projects; coordinating and collaborating with relevant ministries/institutions, sub-national administrations, and the private sector to manage ecotourism investment projects; studying, coordinating, and managing ecotourism development investment projects and community-based ecotourism development projects in collaboration with relevant ministries/institutions; coordinating to establish, control, monitor, and evaluate the implementation of ecotourism packages to attract national and international guests to visit PAs in collaboration with relevant ministries/institutions; coordinating to determine the location and install boundary markers for ecotourism development investment projects in PAs; preparing, monitoring, and reviewing the implementation progress of ecotourism development investment projects and community-based ecotourism development projects; reviewing and adjusting master plans and development programs for ecotourism development investment projects; coordinating dispute resolution and irregularities involving implementing ecotourism development investment programs and projects; developing income collection mechanisms from ecotourism services to support PA conservation activities; mobilising financial and technical assistance from development partners and the private sector to support effective ecotourism development; and studying to create tourist products in PAs and strengthening the capacity of sub-national administrations and local communities on ecotourism development in collaboration with relevant ministries/institutions and development partners.<sup>45</sup>
- The MoT is responsible for developing draft policies and ecotourism development plans in PAs in collaboration with the MoE, sub-national administrations, and relevant stakeholders; developing national and regional tourism plans and submitting them to the Royal Government for review, approval, and incorporation into the National Strategic Development Plan; managing and controlling the ecotourism industry in PAs with the MoE; issuing licenses and permits to the ecotourism industry in PAs; collaborating with the MoE and sub-national administrations to study and define potential areas for ecotourism implementation in PAs; and monitoring, controlling, and inspecting the implementation of ecotourism industry licenses and permits.<sup>46</sup>
- The MoE, in collaboration with the MoT, relevant ministries/institutions, and sub-national administrations, is responsible for developing legal instruments on ecotourism development and management in PAs in compliance with national and international ecotourism standards.<sup>47</sup>

While ecotourism does not inherently pose issues, it is important to carefully consider how ecotourism is implemented, especially in PAs. From a governance perspective, there appears to

---

<sup>44</sup> Environment and Natural Resources Code (2023), Article 603. Core Zones of PAs (*i.e.*, the most protected zones of PAs) are zoned as such due to its high value for conservation of animal or plant species that are rare, nearly extinct, or threatened, wild animal breeding sites, and fragile ecosystems. Access to Core Zones is prohibited except for officials responsible for PA management on duty and scientific researchers with prior authorisation from the MoE and when it is necessary for national security and defense. Conservation Zones of PAs (*i.e.*, the 2<sup>nd</sup> most protected zones of PAs) are adjacent to Core Zones and have value for natural resource conservation, ecosystems, watersheds, and natural scenery. Access to Conservation Zones requires prior authorisation from officials responsible for PA management, except for national security and defense necessity. Environment and Natural Resources Code (2023), Article 364.

<sup>45</sup> Environment and Natural Resources Code (2023), Article 608

<sup>46</sup> Environment and Natural Resources Code (2023), Article 609

<sup>47</sup> Environment and Natural Resources Code (2023), Article 612

be a lack of a clear and comprehensive legal framework on ecotourism,<sup>48</sup> particularly in relation to how ecotourism operations of all kinds will interact with or operate in accordance with CPA management.

The Cambodian government's promotion of ecotourism includes the development of 3 prakas (*i.e.*, ministerial orders or proclamations): a prakas on implementation of small-scale ecotourism projects covering an area less than 10 hectares in PAs for a duration of not more than 15 years via a land lease agreement; a prakas on guidelines for the implementation of large-scale nature tourism projects via land lease agreements for a maximum period of 50 years; and a prakas on the organisation and services of ecotourism communities in PAs.<sup>49</sup>

There is some confusion as to the status of these prakas. There is a prakas on the implementation of a guideline for small-scale ecotourism development projects less than 10 hectares in PAs.<sup>50</sup> The prakas indicates in an attached model land use contract that a less than 10-hectare small-scale ecotourism development project can be established for 15 years from the date of signature and approval by the MoE. If the project developer wishes to extend or end the contract, the developer will submit a written request to the MoE 2 years before the current contract's validity end date. The contract extension will be granted based on the results of the MoE's assessment and decision.<sup>51</sup>

The prakas on the implementation of a guideline for small-scale ecotourism development projects less than 10 hectares in PAs states that such ecotourism development projects could operate as one of 2 models: (1) a private development project or (2) a private-local community development partnership project. Types of permissible services include: accommodation (*e.g.*, ecolodge, mobile and permanent campground/tented camp, tree house, meditation and yoga facility, small caravan camp, ranger lodge, community lodge, community B&B, homestay); F&B (*e.g.*, small café & restaurant, ranger kitchen, community kitchen, community B&B, vending machine using green energy & technology, open space dining ground, small wooden/bamboo/semi-concrete food stall); guiding service (*e.g.*, ranger guide, community guide); transport (*e.g.*, bicycle, electric bike, electric car, horse/ox riding, hand tractor/Kor Yun riding); souvenir (*e.g.*, community souvenir ground, small souvenir shop, small-scale handicraft exhibition center, signature product craftsmanship center or selling ground); other permissible infrastructure, facility and utility (*e.g.*, nature viewpoint, wildlife observation tower, small parking facility/Parvis, waste management facility, interpretation center, early warning facility, hiking and trekking ground, comfort facility including green toilet, exhibition panel, signage, information center, research and educational enrichment facility, walking/cycling trail, emergency post). Types of permissible activities include: hiking and trekking; animal/wildlife watching or observation; tented camping and small caravan camping; sightseeing; swimming in natural water source like waterfall/lake/river/etc; yoga and meditation club; research and educational enrichment-related activities; cycling, horse/ox riding; electric car/bike riding; religious procession or parade; photographing; star observation or viewing; canoeing/boating/kayaking; snorkeling; scuba diving; bungee jumping; rock climbing; skydiving; and other small-scale entertainment activities that have minimal impacts on the natural environment, biodiversity resources and local culture. The General Directorate of Local Communities (under the MoE) is responsible for facilitating and implementing small-scale ecotourism development projects less than 10 hectares in PAs.<sup>52</sup>

<sup>48</sup> See Cambodia's Local Community Development Strategic Plan 2024-2028 (ecotourism legal frameworks are not yet solid)

<sup>49</sup> Khmer Times, "307 small nature tourism projects approved in September" (4 October 2022)

<sup>50</sup> Prakas no. 294 on the Implementation of Guideline on the Below 10-Hectare Small Scale Ecotourism Development Projects in Natural Protected Areas and Biodiversity Conservation Corridors (2022)

<sup>51</sup> Prakas no. 294 on the Implementation of Guideline on the Below 10-Hectare Small Scale Ecotourism Development Projects in Natural Protected Areas and Biodiversity Conservation Corridors (2022) (model land use contract, presumably a template)

<sup>52</sup> Prakas no. 294 on the Implementation of Guideline on the Below 10-Hectare Small Scale Ecotourism Development Projects in Natural Protected Areas and Biodiversity Conservation Corridors (2022)

Broadly, the prakas on the implementation of a guideline for small-scale ecotourism development projects less than 10 hectares in PAs contains 2 annexes, a land use contract model, an outline for the preparation of the master plan and development program for small-scale ecotourism development projects less than 10 hectares in PAs, an outline for the preparation of the concept note for small-scale ecotourism development projects less than 10 hectares in PAs, and sample letters of proposition for small-scale ecotourism development projects less than 10 hectares in PAs (2 versions: one for an individual applicant & one for a company applicant). Annex 1 covers the application and implementation procedure for small-scale ecotourism development projects less than 10 hectares in PAs, of which there are 4 phases. Phase 1 is the proposition process, where a small-scale ecotourism development project proponent (which can be a legal person or a legal entity) submits their proposition to the One Window Service Office of the MoE. Phase 2 is the assessment process (duration: up to 45 working days), which entails a review of the proposition documents, a site visit and study of the proposed location, and determination of a decision by the MoE (resulting in a permission notification letter in principle (Sor.Chor.Nor)). Phase 3 is the procedure completion process (duration: up to 180 working days after receiving Sor.Chor.Nor), which entails site demarcation and pole installation, company registration and signing of site use contract, master plan and development program preparation, and Environmental and Social Impact Assessment (ESIA) report preparation (which results in signing of an environmental protection contract). Phase 4 is the small-scale ecotourism development project implementation process, which entails implementation in accordance with the approved master plan, development program, and environmental protection contract; implementation progress report preparation (every 6 months); and monitoring and evaluation (every 6 months and/or when necessary).<sup>53</sup>

Annex 2 of the prakas on the implementation of a guideline for small-scale ecotourism development projects less than 10 hectares in PAs covers criteria for such projects. Annex 2 indicates that small-scale ecotourism development projects can be established in Sustainable Use Zones of PAs; the site of such projects should have minimal impacts on biodiversity resources and the ecosystem; the site should be located a suitable distance from nearby formal villages or local settlements; the site should be accessible, have suitable access to water sources, have access to power supply or have the ability to generate energy, and have access to phone service; any proposed products and services should be eco-friendly, reflect local culture, prioritise local involvement, and focus on the quality of the visitor experience; and the project's development activities and infrastructure plan will utilise not more than 30% of the total allocated land area (leaving the rest of the area unspoiled). Annex 2 further instructs that the master plan and development program of small-scale ecotourism development projects are to be suitable for and supportive of natural and cultural attributes and values in the relevant PA (*e.g.*, size and infrastructure design are eco-friendly, suitable to natural landscape, and acceptable to local culture; infrastructure and facility construction plan and methods will generate minimal environmental and social impacts; project prioritises using local materials and skills; etc); such projects will have minimal impacts on the relevant PA (*e.g.*, limits of acceptable change studies are conducted and targets are carefully set and fully enforced (including consultations with relevant institutions, authorities, and local community/ies); environmental and social impacts are carefully conducted and enforced (including consultations with relevant institutions, authorities, and local community/ies); environmental management plan is incorporated into the ESIA report; etc); and project operation should incorporate environmental and cultural best practices (*e.g.*, ecotourism products and services are developed and operated based on environmental, economic, and social sustainability; such projects engage relevant stakeholders, local community/ies, and IPs

<sup>53</sup> Prakas no. 294 on the Implementation of Guideline on the Below 10-Hectare Small Scale Ecotourism Development Projects in Natural Protected Areas and Biodiversity Conservation Corridors (2022)

living in and around the relevant PA in socioeconomic studies as well as project operation; projects provide fair and equal opportunities for local communities and IPs living in and around the relevant PA to be employed by and/or supply services or goods with reasonable remuneration; etc).<sup>54</sup>

The prakas on the implementation of a guideline for small-scale ecotourism development projects less than 10 hectares in PAs indicates that multiple entities are involved in development and implementation of such projects, including the MoE (including the Department of Ecotourism, General Directorate of Local Communities, Department of Environmental Impact Assessment, General Directorate of Protected Areas), working groups in target provinces, sub-national administrations (including provincial administrations), and Provincial Departments of Environment (which technically are also under the MoE).<sup>55</sup>

The other 2 prakas do not yet appear to exist. Based on practice, it seems that ecotourism projects that are 10 hectares or larger in size seem to be established for 50 years.<sup>56</sup>

Where ecotourism can be developed in PAs is partially addressed in the current legal framework, at least for small-scale ecotourism development projects less than 10 hectares in size.<sup>57</sup> Based on where ecotourism projects are being established in practice, it appears that ecotourism development is permitted in Sustainable Use Zones of PAs (regardless of size).<sup>58</sup> According to the ENR Code, Sustainable Use Zones are areas of PAs that have economic value for national economic development, and along with conservation as a PA could contribute to improving local communities' livelihood. The Royal Government may allow sustainable biodiversity development in the area as proposed by the MoE in consultation with relevant ministries/institutions, sub-national administrations, and local communities in compliance with legal procedures.<sup>59</sup>

In addition, ecotourism seems to be treated as a type of land concession. One issue with ecotourism being treated akin to a land concession is that land concessions can only be granted on private state land.<sup>60</sup> Protected areas, on the other hand, are technically public state land.<sup>61</sup> Thus, it appears that areas of PAs (*i.e.*, public state land) are being reclassified to private state land in order to grant ecotourism concessions.<sup>62</sup> Reclassifying parts of PAs to private state land means that such areas no longer benefit from certain protections afforded to public state land.<sup>63</sup> Also, it is unclear whether such areas, once reclassified as private state land, are still considered PAs (which would present a legal conflict, as PAs are technically public state land by law); if not, that means that ecotourism projects could progressively reduce areas that were originally designated as PAs in Cambodia. Additionally, it is uncertain whether areas where ecotourism is developed (*i.e.*, areas of PAs reclassified as private state land) automatically revert back to public state land/PAs once the ecotourism concession expires.

---

<sup>54</sup> Prakas no. 294 on the Implementation of Guideline on the Below 10-Hectare Small Scale Ecotourism Development Projects in Natural Protected Areas and Biodiversity Conservation Corridors (2022)

<sup>55</sup> Prakas no. 294 on the Implementation of Guideline on the Below 10-Hectare Small Scale Ecotourism Development Projects in Natural Protected Areas and Biodiversity Conservation Corridors (2022)

<sup>56</sup> See Sub-Decree no. 259 on the Demarcation of Sustainable Use Zones and the Reclassification of State Public Property to State Private Property in Kep National Park, Sangkat Prey Thum and Sangkat Kep, Kep City, Kep Province for 2 Ecotourism Projects (2023) (2 ecotourism projects that are greater than 10 hectares in size were established in (originally designated) Sustainable Use Zones of PAs for 50 years)

<sup>57</sup> See Prakas no. 294 on the Implementation of Guideline on the Below 10-Hectare Small Scale Ecotourism Development Projects in Natural Protected Areas and Biodiversity Conservation Corridors (2022) (Sustainable Use Zones of PAs)

<sup>58</sup> See Sub-Decree no. 259 on the Demarcation of Sustainable Use Zones and the Reclassification of State Public Property to State Private Property in Kep National Park, Sangkat Prey Thum and Sangkat Kep, Kep City, Kep Province for 2 Ecotourism Projects (2023)

<sup>59</sup> Environment and Natural Resources Code (2023), Article 364

<sup>60</sup> Land Law (2001), Articles 17, 58

<sup>61</sup> Land Law (2001), Article 15

<sup>62</sup> See Sub-Decree no. 259 on the Demarcation of Sustainable Use Zones and the Reclassification of State Public Property to State Private Property in Kep National Park, Sangkat Prey Thum and Sangkat Kep, Kep City, Kep Province for 2 Ecotourism Projects (2023)

<sup>63</sup> This also potentially raises questions about the governance and administration of land and resources by relevant government agencies.

Furthermore, it is unclear if the reclassification of PAs to private state land to grant ecotourism concessions has proper legal basis and is going through the required reclassification process. For instance, public state land can be reclassified to private state land if the public state land loses its public interest use.<sup>64</sup> When it comes to ecotourism development in PAs, ecotourism is built around the public interest use of the PAs, and thus those areas have not lost their public interest use. Therefore, the legal basis of reclassification of PAs for ecotourism concessions is unclear.<sup>65</sup>

Procedurally, reclassification may be initiated by a ministry, institution or territorial authority filing a written request with the relevant Provincial/Municipal State Land Management Committee.<sup>66</sup> The request must include specific reasons for the requested classification.<sup>67</sup> A panel comprised of representatives of relevant technical departments to review and make recommendations on the request is designated, and the panel must publicly post the reclassification request for at least 30 days, during which time interested parties (*e.g.*, other ministries, institutions, territorial authorities, non-governmental organisations, civil society groups, local residents) may submit comments.<sup>68</sup> The review panel provides recommendations on the request to the Provincial/Municipal State Land Management Committee, which then provides its own recommendation to the Council for Land Policy to accept, reject, or modify the request.<sup>69</sup> The Council for Land Policy will then submit its own recommendations to the Council of Ministers, and following the adoption of a sub-decree on reclassification of the land or promulgation of a law on reclassification of the land (as appropriate), the MLMUPC will enter the reclassification information onto the State Land Map and Database and accordingly register in the Land Register.<sup>70</sup>

There is some lack of clarity as to whether the reclassification procedure laid out above is overridden by Royal Decree NS/RKT/0806/339 on Principles and Transitional Provisions on Transferring Public Properties of the State and Public Legal Entities (2006) and Sub-Decree no. 129 on Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006). Royal Decree NS/RKT/0806/339 allows reclassification of public property only if the land no longer serves the public interest, has lost its originally intended function, or is no longer used directly by the public.<sup>71</sup> Sub-Decree no. 129 states that reclassification of public property must comply with Royal Decree NS/RKT/0806/339, but does not provide a more detailed procedure.<sup>72</sup> Notably, there are no provisions requiring disclosure or public comment in Royal Decree NS/RKT/0806/339 or Sub-Decree no. 129.

It is unclear what procedure reclassification of PAs for ecotourism concessions is going through. It should be made clear what is procedurally required for ecotourism development in PAs, and implemented and followed accordingly.

Interestingly, the prakas on the implementation of a guideline for small-scale ecotourism development projects less than 10 hectares in PAs does not address reclassification of PAs (public state land) to private state land. If this is a gap in the current legal framework, it should be addressed in a timely manner – and ecotourism development in PAs of all kinds (*e.g.*, sizes, types, etc) should be considered when filling this gap.

---

<sup>64</sup> Land Law (2001), Article 16

<sup>65</sup> Such ambiguity risks undermining the integrity of PAs as a category of public land serving a specified function, if reclassification does not occur through proper legal processes and for permissible reasons, and also risks undermining Cambodia's calculation of Nationally Determined Contributions as part of its commitments under the Paris Agreement

<sup>66</sup> Sub-Decree No. 118 on State Land Management (2005), Article 15

<sup>67</sup> Sub-Decree No. 118 on State Land Management (2005), Article 15

<sup>68</sup> Sub-Decree No. 118 on State Land Management (2005), Article 15

<sup>69</sup> Sub-Decree No. 118 on State Land Management (2005), Article 15

<sup>70</sup> Sub-Decree No. 118 on State Land Management (2005), Article 15

<sup>71</sup> As the author could not access the full text of this law, the author relied on the following source: Surya P. Subedi, *Report of the Special Rapporteur on the situation of human rights in Cambodia*, Human Rights Council (24 September 2012), p. 11, available at [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf)

<sup>72</sup> Sub-Decree No. 129 on Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006), Articles 40-41

If ecotourism is treated more akin to leases, rather than concessions, ecotourism projects that are 10 hectares or greater in size that last for up to 50 years would be perpetual leases by law, and ecotourism projects that are less than 10 hectares in size that last for up to 15 years would be leases under the law.<sup>73</sup> The legal framework on ecotourism should clearly address what type of legal right/arrangement is created when ecotourism development projects are established.

Furthermore, it remains somewhat unclear whether CPA communities have any influence or recourse if proposed ecotourism development projects overlap with their CPA areas. Although uncertain what would exactly result from such a scenario, it appears that in such an instance CPA communities may be limited to raising an objection—with no ultimate control over determining impact mitigation measures, resettlement, etc—and effectively development projects could proceed despite any raised objections.<sup>74</sup> The lack of proprietary rights, combined with the absence of a clear dispute resolution mechanism, substantially limits the extent to which communities can assert their rights enabling their management of CPAs and the sustainable development of their communities.

In general, environmental impact assessments (EIAs) and social impact assessments (SIAs) must be conducted before the MoE grants approval on a proposed ecotourism development project.<sup>75</sup> ESIA's are also mandated as part of the process for establishing small-scale ecotourism development projects that are less than 10 hectares in PAs (final step before implementation).<sup>76</sup> ESIA processes should be properly conducted with robust public participation.<sup>77</sup>

Some provisions which facilitate public participation enable stakeholders to inform competent authorities on activities or decisions that may impact the environment and natural resources; raise questions about, request clarification on, object to, and meet to discuss activities or decisions that may impact the environment and natural resources; and file complaints or objections against activities or decisions.<sup>78</sup> Additionally, prior to any decision or approval on a development project, relevant ministries/institutions, sub-national administrations, and project owners must notify, provide necessary information, and give relevant stakeholders reasonable time for public participation; provide necessary information to relevant stakeholders in a language that can be understood by all stakeholders and in a culturally appropriate format; pay attention to the needs and values of stakeholders in public participation processes; provide a fair and reasonable amount of time to evaluate and respond to information relevant to any proposed project, activities, plans, and decisions; ensure the extent of public participation is proportionate to the size of stakeholder interests; ensure that the public participation process is flexible and adaptive in keeping with reasonable expectations of stakeholders; and take into consideration all comments from the public in the decision-making process, acceptance or rejection of which shall be explained with appropriate reasons.<sup>79</sup>

All comments from public participation processes must be recorded, attention must be paid to all issues raised by affected parties, projects' impacts on the public and the public's acceptance or rejection of proposed projects must be considered, and a clear justification must be provided if project owners reject any comments/proposals made by the public.<sup>80</sup> The public participation process must include a prior consultation with stakeholders affected by the project regarding

<sup>73</sup> Civil Code (2007), Articles 244, 247, 599 (perpetual leases are long-term leases for terms of minimum 15 years and maximum 50 years; general leases do not have set duration limits)

<sup>74</sup> Environment and Natural Resources Code (2023), Articles 690-691

<sup>75</sup> Prakas no. 227 on Procedures and Implementation of Guidelines for the Verification Table in Preparing the Initial Environmental and Social Impact Assessment Report on Tourism Development Projects (2021); Environment and Natural Resources Code (2023), Article 654

<sup>76</sup> Prakas no. 294 on the Implementation of Guideline on the Below 10-Hectare Small Scale Ecotourism Development Projects in Natural Protected Areas and Biodiversity Conservation Corridors (2022)

<sup>77</sup> See Environment and Natural Resources Code (2023), Article 687

<sup>78</sup> Environment and Natural Resources Code (2023), Article 688

<sup>79</sup> Environment and Natural Resources Code (2023), Article 689

<sup>80</sup> Environment and Natural Resources Code (2023), Article 690

proposed impact mitigation measures based on prior and informed consultation. For impact mitigation measures, the project owner shall (a) determine various measures to promote livelihood and assist those affected by the project and (b) ensure that affected stakeholders participate in resettlement planning to minimise adverse resettlement impacts, that compensation for property loss has been addressed fairly, appropriately, and justly before resettlement, and that impact mitigation measures are appropriate.<sup>81</sup> Agreement on proposed impact mitigation measures must be sought from affected stakeholders through public participation processes, and public participation must also be included in the monitoring process (incorporated into the environmental management plan).<sup>82</sup> It should be noted that consultation is not commensurate with 'consent' under FPIC – the best approach would be to fully incorporate FPIC into the approval process.

Development projects may continue even if affected local communities object to proposed mitigation measures, but the project owner must determine alternative mitigation measures or address impacts on local communities. Grievance procedures for affected local communities and resettlement procedures are to be determined by legal instruments of the MoE, and the format and procedure for compensation for damages to affected local communities shall be determined in an inter-ministerial prakas between the MoE and the MEF.<sup>83</sup>

A concern raised by some stakeholders has been that there does not seem to be any preventative measures in the regulatory framework inhibiting individuals, companies, etc, from obtaining a larger ecotourism concession by pooling together multiple individual ecotourism concessions. There does not seem to be a prohibition against one applicant being granted multiple ecotourism concessions. The only legal limitation is that one individual or multiple legal entities controlled by the same individual(s) must not be granted land concession areas totaling more than 10,000 hectares.<sup>84</sup> This is particularly concerning given the ambiguity as to how CPAs will function alongside ecotourism operations in smaller areas: without clarifying how these two schemes will interact, there is a risk that community interests may be subverted, or communities may be prevented from complying with CPA management plans and/or CPA management agreements by the ecotourism operations. Clarifying the rights, procedures and government entities governing this space is in the interests of both communities and ecotourism operators.

While development of a comprehensive and enabling regulatory framework is still in progress and has yet to be completed, as of September 2023 the MoE has approved 493 ecotourism projects (including agro-tourism development projects), encompassing 32 projects of special economic zones greater than 10 hectares in size (covering a total area of 89,418 hectares) and 461 small-scale ecotourism development projects less than 10 hectares in size (covering a total area of 4,145 hectares).<sup>85</sup>

---

<sup>81</sup> Environment and Natural Resources Code (2023), Article 691

<sup>82</sup> Environment and Natural Resources Code (2023), Article 692

<sup>83</sup> Environment and Natural Resources Code (2023), Article 691

<sup>84</sup> Land Law (2001), Article 59. However, whether this limitation is strictly followed/enforced is unclear, as there have been large-scale ecotourism development projects exceeding 10,000 hectares in size, such as an ecotourism enterprise under Union Development Group Co., Ltd., at "Botum Sakor NP" Koh Kong encompassing an area of 36,000 hectares for 99 years, and another under SOKIMEX Investment Group at "Bokor NP" Kampot-Preah Sihanouk encompassing an area of 18,987 hectares for 99 years. See Neth Baromey, *Report: Ecotourism Development and Management Models in Cambodian Protected Areas*, World Bank (May 2019)

<sup>85</sup> Cambodia's Local Community Development Strategic Plan 2024-2028

## Authors

This analysis was developed by lead author **Yena Kwon**, International Environmental Law and Policy Consultant, and co-author **Kanyara Sath**, Independent Consultant based in Cambodia, for ClientEarth.

It benefitted from peer review, technical contributions, and comments by **Babette Tachibana-Brophy** (ClientEarth) and **Amalia Rodriguez Fajardo** (ClientEarth).



ClientEarth is a registered charity that uses the power of the law to protect people and the planet.

ClientEarth is funded by the generous support of philanthropic foundations, institutional donors and engaged individuals.