

Timber Legality Risk Assessment Cambodia

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Abbreviations

CDC	Council for Development of Cambodia
COM	Council of Ministers
ELC	Economic Land Concession
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
FA	Forestry Administration
GDANCP	General Department of Administration for Nature Conservation and Protection
GDCE	General Department of Customs and Excise
MAFF	Ministry of Agriculture, Forestry and Fisheries
MoC	Ministry of Commerce
MEF	Ministry of Economy and Finance
MoE	Ministry of Environment
NGO	Non-governmental Organization
NGOF	Non-governmental Organization Forum
NTFP	Non-Timber Forest Product
ODC	Open Development Cambodia
PDAFF	Provincial Department of Agriculture, Forestry and Fisheries
RGC	Royal Government of Cambodia
SLC	Social Land Concession
TWG-FR	Technical Working Group on Forest Reform

A. Introduction

This Timber Legality Risk Assessment for Cambodia provides an analysis of the risk of sourcing timber from areas of illegal harvesting and transport.

Please see the Preferred by Nature Sourcing Hub for information on the risk assessment methodology: <https://preferredbynature.org/sourcinghub/info/timber-risk-assessment-methodology>

Version history

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B. Overview of legality risks

The key legality risks identified in this report concern: legal rights to harvest; taxes and fees; timber harvesting activities; third parties' rights; and trade and transport.

A summary of identified risks related to illegal harvesting of timber in Cambodia is listed below. More information about each risk can be found by going to the applicable indicator, stated in brackets for each risk.

For **Legal Rights to Harvest**, there is a risk that:

- Land tenure is unclear due to confusion regarding property rights (1.1).
- Conflict occurs in relation to land concessions, arising from land grabs, forced evictions, and natural resource exploitation (1.1, 1.2).
- Illegal forest clearance takes place prior to the legal process for granting Economic Land Concessions (ELCs) being completed (1.2).
- The legal maximum allocation limit of 10,000 ha for ELCs are often exceeded. This is because many ELC parcels of 10,000 ha are owned by the same investors and are adjacent to each other (1.2).
- Disputes arise between local and higher-level decision-makers around land use, frequently resulting in intimidation, threats or dismissal of the local authorities (1.2).
- ELCs are illegally allocated in the wrong zoning areas within protected areas (1.2).
- Some ELCs do not meet their productive use objectives (1.2).
- The requirement to have management plans in place is not complied with (1.3).
- Timber theft takes place through harvesting without a permit (1.4).
- Illegal harvesting beyond allocation boundaries takes place (1.4).
- Illegally harvested timber is laundered through ELC or conversion projects (1.4).
- Conversion permits are misused to harvest profitable forest areas (1.4).

For **Taxes and Fees**, there is a risk that:

- There is non-payment of taxes and fees (1.5, 1.6, 1.7).

For **Timber Harvesting Activities**, there is a risk that:

- Harvesting is above the annual allowable cut (1.8).
- The regulations specified in some ELC contracts are violated (1.8).
- Guidelines and regulations are not complied with the conversion of forests (1.8).
- Protected areas are illegally harvested due to inconsistent zoning (1.9).
- ELCs/SLCs are allocated within protected areas (1.9).
- Illegal logging of protected species (i.e. luxury timber/resin trees) (1.9).

- Environmental Impact Assessments (EIA) and Environmental and Social Impact Assessments (ESIA) are not in place prior to operation of ELCs (1.10).
- There is fertilizer run-off from the areas of ELCs (1.10).
- Environmental requirements, including respecting buffer zones are not complied (1.10).
- Logging is approved despite EIA/ESIA showing negative social and environmental consequences, which is in violation of the law.
- Health and safety regulations are violated during logging operations (1.11).
- Legal requirements related to employment are not complied (1.12).

For **Third Parties' Rights**, there is a risk that:

- Logging companies do not provide development to villagers in accordance with the law (1.13).
- Conflict between villagers and logging companies (1.13).
- Villagers are not permitted by logging companies to enter the forest (1.13).

For **Trade and Transport**, there is a risk that:

- Abuse of transport documents occurs due to lack of identification of logs and associated volumes (1.16, 1.17).
- Incorrect information on quality and volumes (1.16, 1.17).
- Illegal offshore trading and transfer pricing take place in timber transactions (1.18).
- Illegally logged timber is exported illegally (1.19).
- Export documents are falsely prepared (1.19).
- Timber is exported through unofficial border crossings (1.18).
- Despite legal controls, luxury timber and timber larger than 25 cm width are exported (1.18).
- Illegal harvest and export of CITES species (1.20).
- CITES permits are illegally issued (1.20).

Timber source types and risks

TIMBER SOURCE TYPES IN CAMBODIA

Conversion timber from infrastructure development	State Private Land that is allocated to private companies for development (e.g. hydro-power dams, national and provincial road areas). <i>Harvest Permits</i> are required to clear the land to prepare for the development. Like forest conversion for Economic Land Concession (ELC), timber harvest and forest clearance are made by separate entities. Timber from infrastructure development can be used for domestic use or export.
Economic Land Concessions (ELCs)	State Private Land that is classified as production forest or within the protected areas system. ELC contracts are allocated to private companies to develop forest areas for other uses. Since 2014, ELCs can be awarded for agro-industrial purposes (including forest plantations) for maximum 50 years of lease duration and for areas no greater than 10,000 ha. ELC contracts can be revoked or cancelled by the government when legal and contractual requirements are not complied. Harvesting is supervised by Ministry of Agriculture, Forestry and Fisheries (MAFF) with technical recommendations by the Forestry Administration (an MAFF department). <i>Harvest Permits</i> are required. The actual timber harvest is required by the national regulations, to be carried out by an entity separate to ELC companies. The ELC companies only have rights to develop the ELC areas after forest areas have been converted. Prior to the jurisdictional transfer of 2016, both the Ministry of Agriculture, Forests and Fisheries (MAFF) and the Ministry of Environment (MoE) shared jurisdiction over ELCs, depending upon the location of each specific ELC (located within MAFF versus MoE holdings, as the case may be). However, since 2016, all ELCs are under MAFF supervision, even those ELCs previously approved by MoE and located within the MoE-supervised protected areas system.
Timber/ NTFP from community forestry areas	<i>Limited source of timber</i> Community forests (CF) may only be located on state public property. A Community Forest Agreement with Management Plan (CFMP) is

required (Forest law, article 43). Timber from community forestry areas can also be exported as long as the timber is purchased by Timber Export Companies. However, to date, there is no timber available from community forestry areas because almost all the community forestry sites have been established after 2004 and timber has not yet reached DBH ready for harvesting. Furthermore, almost all CF sites were created on degraded forestlands and a range of bureaucratic requirements (5 year waiting period, complications in management plan approval process, transportation permit requirements, etc.) have had the effect that there are no known instances of CFs being a source of legal timber.

It is worth noting that there is another community-based natural resource management scheme: community protected areas (CPAs). However, commercial activity within the CPA is limited to sale of NTFP, fishing and eco-tourism activities, and is therefore not a source of timber.

Confiscated illegal timber

Transport Permits are required. Any drifted, stranded, sunk, unmarked logs, and any unclaimed timber shall be seized as state property and publicly auctioned. A transport permit (PC-2) is given to the auction winner, normally a Cambodian entity, to transport the seized timbers to their target processing sites. Illegal timbers that are confiscated within the protected areas are handled by Ministry of Environment (MoE). However, the auction winner, must have PC-2 from the Forestry Administration to transport the timbers to their target processing sites. It is noted that the MoE officials are restricted to patrol illegal timber harvest only within the territories of protected areas, land outside protected areas are handled by MAFF.

Tree plantations

Private land: Privately owned land that is managed by private companies. Land must be registered as forest land and a *Registration Certificate* is issued.

State land: State Forest Land that is managed privately, either by communities, individuals, households, or the Forestry Administration. Agreements for granting rights to plant trees must be obtained.

Forest plantation cover has been increasing significantly in recent years.

Timber from Social Land Concessions (SLC).

Limited source of timber

State Private Land that is allocated for residential use and/or family farming as social land concessions. Timber derived from SLCs can

enter the commercial timber chain including export. After five (5) years of tenure of State Private Land, the Social Land Concessions can be converted to private land; and forest plantations, if any, become private forest plantation. A *land certificate* and *land tenure title* are required.

Natural Forest Concessions

Not a source of legal timber.

It should be noted that this mechanism has not been used in recent years and due to evolving legal framework and jurisdictions it is unlikely to be used in the future.

On State Public Land, managed by private companies. A concession agreement is required. Natural forest concession activities have been suspended from 2002 to now (September 2020), and several (but not yet all) Forest Concessions have been formally cancelled. As Natural Forest Concessions are currently (as of 2020) not a source of timber in Cambodia, risk has not been evaluated.

Timber from Annual Bidding Coupes (ABCs)

Not a source of timber.

It should be noted that this mechanism has not been used in many years, and due to evolving legal framework and jurisdictions it is unlikely to be used in the future.

State Public Land classified as production forest. Land is owned by the state but managed by private companies. A Harvest Permit (this permit is referred to as an Annual Bidding Coupe or ABC) is required. The Annual Bidding Coupes (ABCs) are regulated by the Forestry Administration under the Forest Law. In theory, ABCs are implemented to assure that local wood demand (domestic demand) can be met, but in practice, limited supply is available. ABCs do not allow for direct conversion of forests but include management planning and forest management requirements. Normally, ABCs are issued to Cambodian entities, not international companies. The timber from ABCs are purposed for domestic uses such as house construction and furniture. However, it is not formally illegal to export.

Risk Results: Timber Legality Risk Assessment Cambodia

Below matrix summarises the findings of the timber legality risk assessment set out in this report.

Legal Category	Sub-Category	Timber Source Types					
		Conversion timber	Economic Land Concessions	Community Forestry Areas	Confiscated illegal timber	Tree plantation	Social land concession
Legal rights to harvest	1.1 Land tenure and management rights	Specified	Specified	Specified	N/A	Specified	Specified
	1.2 Concession licenses	N/A	Specified	Specified	N/A	N/A	Specified
	1.3 Management and harvesting planning	N/A	Specified	Specified	N/A	N/A	Specified
	1.4 Harvesting permits	Specified	N/A	N/A	N/A	N/A	N/A
Taxes and fees	1.5 Payment of royalties and harvesting fees	Specified	Specified	Specified	N/A	Specified	Specified
	1.6 Value added taxes and other sales taxes	Specified	Specified	Specified	Specified	Specified	Specified
	1.7 Income and profit taxes	Specified	Specified	Specified	Specified	Specified	Specified
Timber harvesting activities	1.8 Timber harvesting regulations	Specified	Specified	Specified	N/A	Specified	Specified
	1.9 Protected sites and species	Specified	Specified	Specified	N/A	Specified	Specified
	1.10 Environmental requirements	Specified	Specified	Specified	N/A	Specified	Specified
	1.11 Health and safety	Specified	Specified	Specified	N/A	Specified	Specified
	1.12 Legal employment	Specified	Specified	Specified	N/A	Specified	Specified

Third parties' rights	1.13 Customary rights	Specified	Specified	Low	N/A	Specified	Specified
	1.14 Free, prior and informed consent	N/A	N/A	N/A	N/A	N/A	N/A
	1.15 Indigenous/traditional peoples' rights	Specified	Specified	Low	N/A	Specified	Specified
Trade and transport	1.16 Classification of species, quantities, qualities	Specified	Specified	Specified	Specified	Specified	Specified
	1.17 Trade and transport	Specified	Specified	Specified	Specified	Specified	Specified
	1.18 Offshore trading and transfer pricing	Specified	Specified	Specified	Specified	Specified	Specified
	1.19 Custom regulations	Specified	Specified	Specified	Specified	Specified	Specified
	1.20 CITES	Specified	N/A	Specified	Specified	N/A	N/A
	1.21 Legislation requiring due diligence/ due care procedures	N/A	N/A	N/A	N/A	N/A	N/A

C. Overview of the forest sector in Cambodia

Forest cover and forest classification

Forest cover in Cambodia has decreased from 60% of total land area in 2010 (FA, 2010) to 45% (8.1 million hectares [ha]) in 2016 (REDD+ Secretariat of Cambodia, 2016). Unfortunately, different teams of government experts do not agree as to the definition of "forest cover"; with some arguing that rubber and oil palm plantations should be counted as part of the statistical forest cover. The Ministry of Environment (MoE) has stated, however, that the two types of plantations should not be considered forest cover (MoE, 2018).

Natural forest cover is categorised as: 1) production forests (PF) and 2) protected areas (PA). Protected areas cover 7.4 million hectares of land corresponding to 41% of the total forest cover. With regards to forest management, the production forest areas are official sources of timber (Forest Law, 2002), whereas the protected areas are strictly protected, although commercial activity is permitted in the Sustainable Use Zones of PAs (Law on Protected Areas, 2008, Article 11). Other sources of timber are Economic Land Concessions (ELCs) and hydro-power development areas. The ELC and hydro-power areas may be located within either PF or PA or both; and are designated for conversion of forest to other land uses.

Forest governance

Cambodia's administration consists of following tiers: capital city, province, district, municipality, khan, commune, and village. Currently, the Kingdom of Cambodia consists of a capital city, 24 provinces, 165 districts, 26 municipalities and 12 Khans, 1646 communes and 14,073 villages.

The national government has oversight of both legal and institutional frameworks of the provincial and local governments. Any regulations that are issued by the government, ministries, and other national bodies have a higher ranking than those of a local administration (ODC, 2015). However, it should be noted that Cambodia's ongoing decentralization process is specifically intended to provide greater autonomy to the sub-national administrations, including matters of natural resource management.

The majority of forest management is under the jurisdiction of the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of Environment (MoE). The MoE has jurisdiction over protected areas while the remaining forest areas are under the jurisdiction of MAFF.

Following Sub-decree No. 69 (Sub-decree ANK/BK No. 69, issued on 28 May 2016), a re-organization was put in place such that MoE became responsible for all Protected Area (PA) management; and MAFF responsible for production forests and investment such as Economic Land Concessions (ELCs). MAFF continues to oversee ELCs issued by MAFF, but also takes responsibility for ELCs located inside PAs, which the MoE had previously overseen. MoE is also mandated to be responsible for areas designated as biodiversity conservation corridors, which are newly proposed areas on either the existing production forests or on degraded forests suitable for corridors to allow wildlife crossing from one PA to another.

The legislative framework includes *the 2002 National Policy, Forest Law 2002, the Law on Protected Areas 2008, the Guidelines on Community Forestry 2006, and the Guidelines on Community Protected Areas (2017)*. Similarly, the National Policy on Development of Indigenous People (2009),

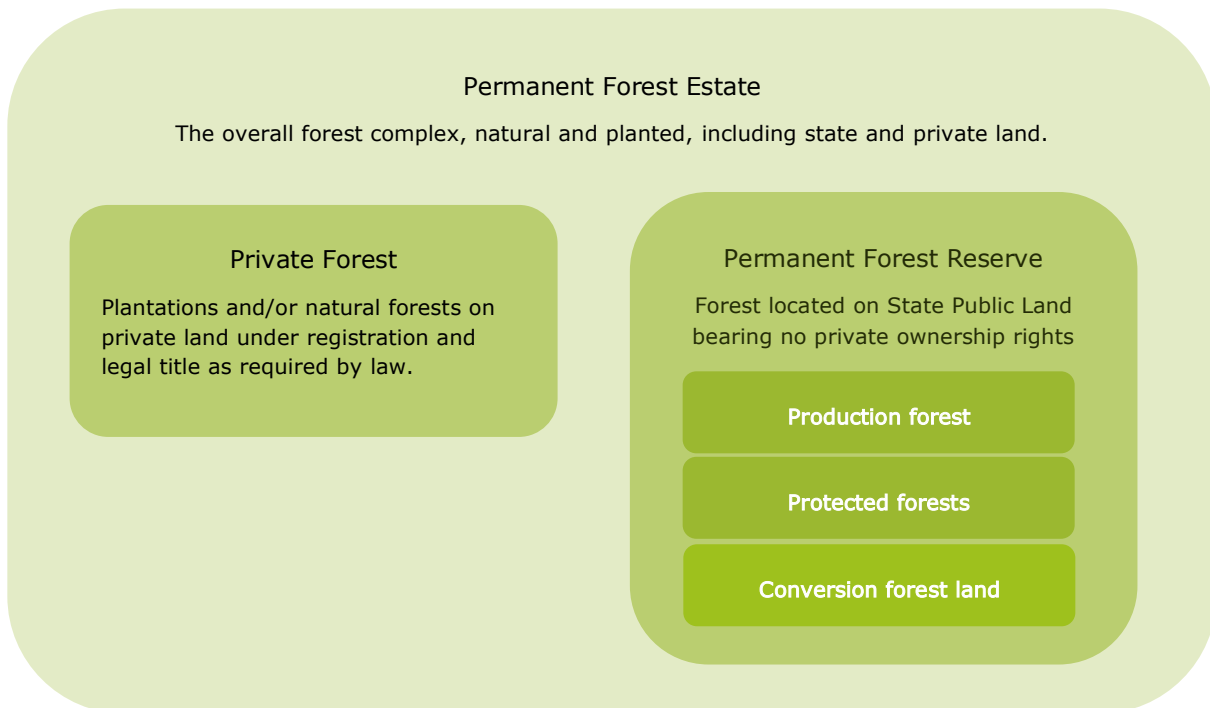
Policy on the Registration and Right to Use of Land of Indigenous Communities, and the Sub-decree on the Procedure of Registration of Land of Indigenous Communities (2009) are relevant.

Land types

The 2001 Land Law introduced the current land classification system to Cambodia. There are three main categories: private land, state public land, and state private land.

- **Private land** is property that is legally owned or possessed either individually or jointly by persons or a company.
- **State Public Land** is all lands that have a public interest value. This includes land of natural origin (e.g. rivers, lake, mountains and forests), protected areas, archaeological and historical sites, and official property of the Royal Family.
- **State Private Land** is all property that belongs to the state but does not have any public interest value (i.e. does not come under any of the categories listed above). It can be sold or leased, including long-term lease and land concessions, but any such transfer must follow legal procedure. The distinction between State Public Land and State Private Land is important as it affects how the land may be used and managed (Land Law, 2001).

Forest land types



The **Permanent Forest Estate** is defined as natural and planted forest, including State and Private (Forest Law, 2002), and divided into:

- **Permanent forest reserve**

- **Private forest**

Private forest (on private land) is forest plantations or trees, whether planted or naturally grown, on private land under registration and legal title pursuant to authorize legislation and procedures.

The **Permanent forest reserve** is state forest located on lands bearing no private ownership rights, which are further classified into **production forests** and **forests of protected areas**.

- **Production forests** (on state public land) have the sustainable production of forest products (and by-products) as their first function. Their protection function is a secondary function. Production forests also include forest areas of community forests (CF); that are granted under agreement between the Forestry Administration (FA) of MAFF and a local community, or organized group of people living, within or near the forest area, and depend upon it for subsistence and traditional use, in order to manage and utilize the forests in a sustainable manner.
- **Protected forests** (on state public land) have protection of the forest and its ecosystem as their priority. Permits are not issued for the harvest of forest products or by-products, although local communities have customary user rights to collect forest products and by-products so long as the impact is minor. Nevertheless, the Law on Protected Areas states that sustainable use zone could be granted as ELC for sustainable development. In this regard, almost all ELC sites of the protected areas had played main sources of timbers.
- **Conversion forestland** for other development purposes. This is idle land, comprised mainly of secondary vegetation. Land which has not yet been designated for use by any sector shall be classified as permanent forest reserves until the Royal Government decide to use and develop the land for another purpose.

Logging in natural forest and protected areas

Since 2002 there has been a moratorium in place for timber from forest concessions in natural forests. The moratorium was put in place due to lack of control of timber harvesting in these concession areas. Up until the present time, the operations can be approved and resumed on forest concessions that are suspended but not formally cancelled. This can be done on the basis, that a revised contract agreement and management plan is submitted with a commitment to manage areas under sustainable forest management principles. However, to the present day, no entity holding a forest concession has attempted to resume its activity in this way. As of 2014, there were no records of timber being harvested from concessions in natural forest (Technical Working Group on Forestry Reform, 2014), and there is no information indicating that any new forest concessions have been established since the 2002 moratorium. It was noted during a technical workshop on the Timber Legality Risk Assessment report held in Phnom Penh on 4 October 2019, that not all concessions have been formally cancelled, but that the concessions are no longer in use.

Legal timber, as defined by the 2002 Forest Law, can only come from production forests. Nevertheless, the Protected Area Law (2008) allows for the creation of ELCs within the protected area sites, and timber can also be accessed from these areas.

The Protected Area Law (2008) is mandated to manage all types of protected area sites for biodiversity conservation. There are four zones that may be established in a PA: core, conservation, sustainable use, and community zones. Commercial activity is permitted within the sustainable use zone, raising the possibility of significant timber harvesting from the PA system in the future. One

current reform under consideration is to provide communities with management rights including, rights to enter into contracts for commercial activities, within the sustainable use zone. See the discussion on “Collaborative Management” in the “Emerging Trends” section (Pp. 20). Note that MoE has stated that it will not allow any additional ELCs within PAs, although several mining concessions have recently been permitted, including in contravention of zoning standards in PAs that have completed zoning.

Institutions in Charge

The main involvement of official institutions can be classified into two: those are involved in domestic legalised timber flows and those involved in only international legalized timber flows.

- **The main official institutions involved in domestic legalized timber flows are:** Forestry Administration (FA) and Provincial Department of Agriculture, Forestry and Fisheries (PDAFF). The FA is a nationwide official institution covering all provinces of the country whereas PDAFF is mandated to only one province territory. Within the PDAFF, there are offices, one of those is Forestry Administration Cantonment (FAC). The FAC work under immediate supervision of the PDAFF and under indirect supervision of FA. The FAC is administratively supervised by PDAFF and technically and indirectly supervised by FA.
- **The main official institutions involved in international legalized timber flows are:** Council of Ministers (of the Prime Minister level) (CoM), FA, MAFF, Ministry of Commerce (MoC), and General Department of Customs and Excise (GDCE) of the Ministry of Economy and Finance (MEF).

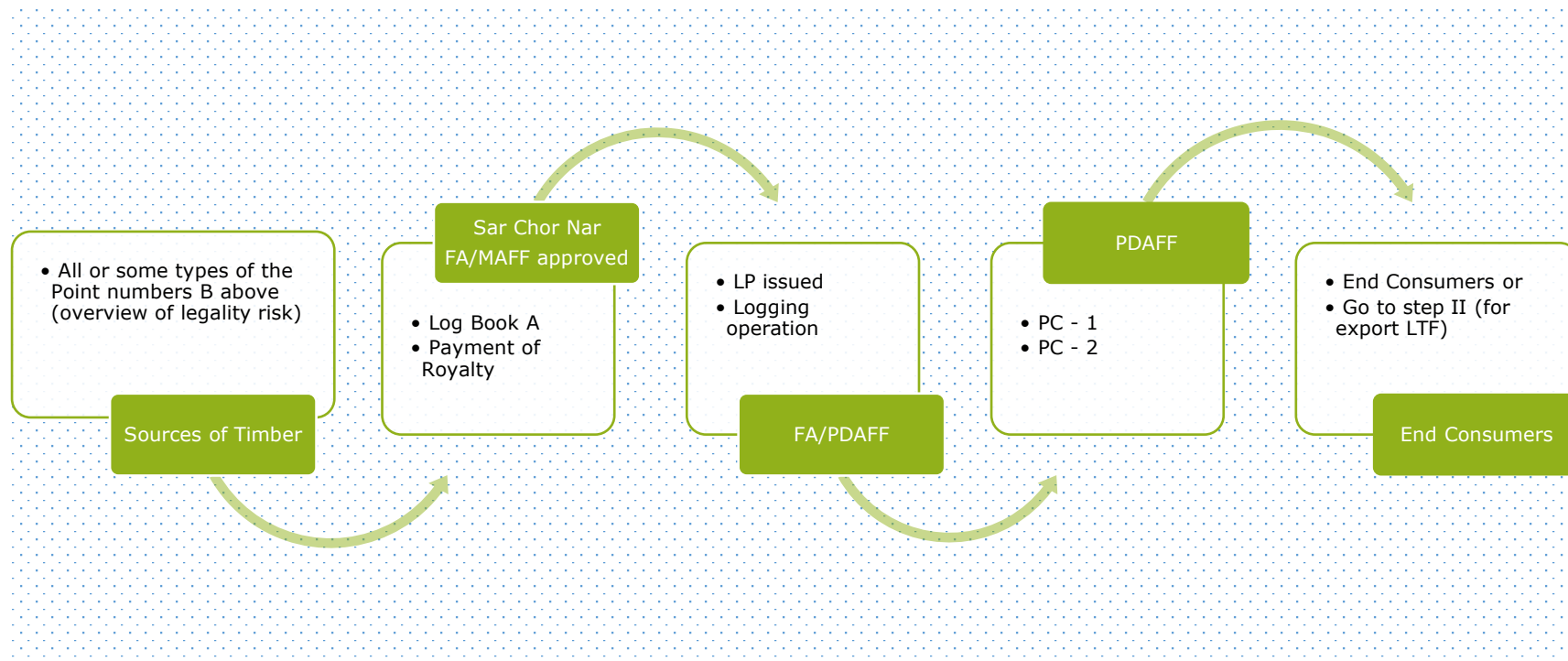
Processes of Obtaining Permissions

The technical activities required for obtaining harvesting rights depend on the source type and include: forest inventory, granting of log permit, establishment of log book A, timber cutting, transport of timber and sawmill activities. The forest inventories are conducted under FA technical supervision. The FA is mandated to grant the log permit to a businessperson, to enter into forestlands for establishment of log book A. The log book A is normally included timber volumes for royalty payment. In order to transport timber a permit must be obtained. The processes of obtaining permits to transport timber are detailed in the two diagrams below (Step I and Step II).

Step I: For Domestic Legalized Timber Flows

Entities: Businessperson, FA, MAFF, and PDAFF.

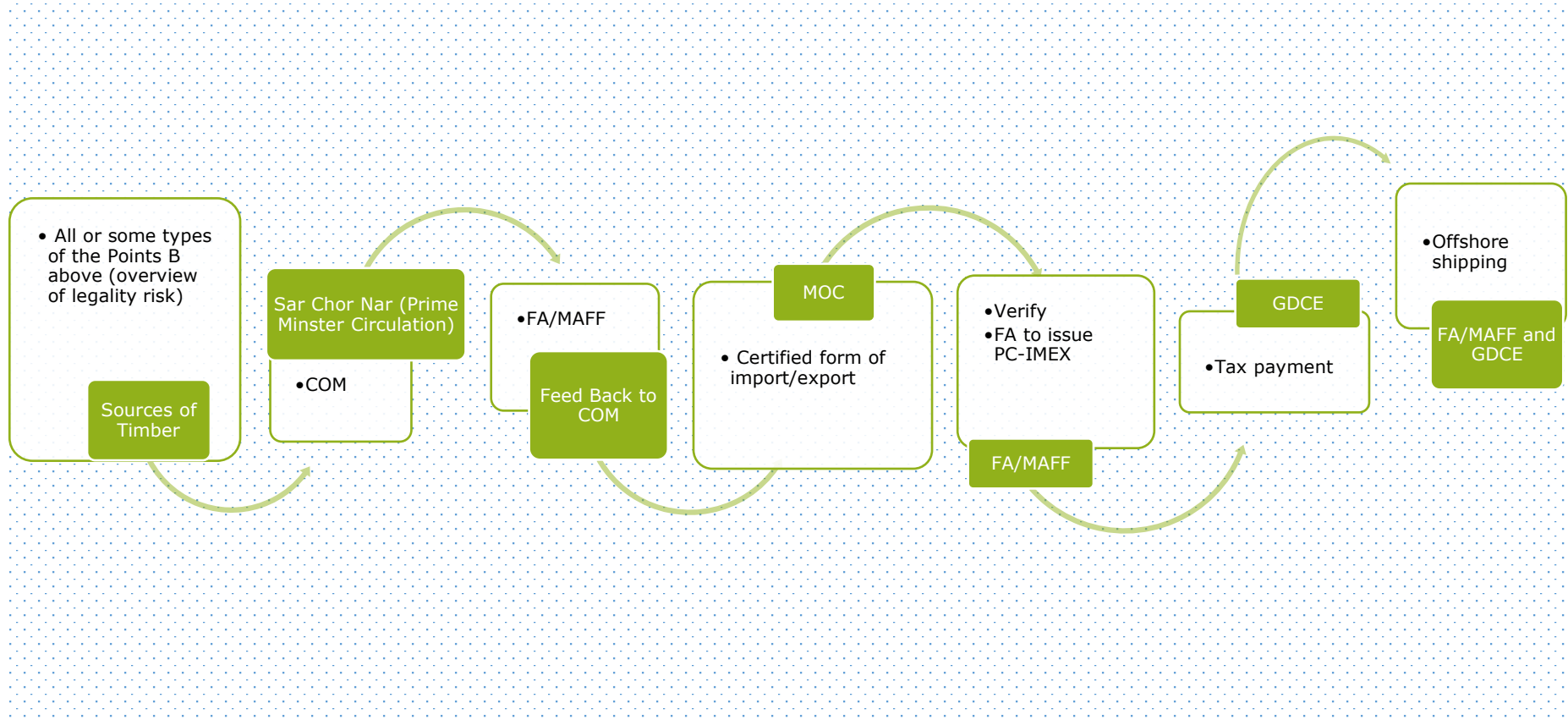
A businessperson plays the main role in the permit destinations. The businessperson ensures the permits are permits circulated, signed, and passed to other official institutions.



Step II: For International Legalized Timber Flows

Entities: Businessperson, CoM, FA/MAFF, MoC, FA/MAFF,

GDCE, FA/MAFF/GDCE



Enforcement

There are three ministries mandated to enforce the laws on harvests and trade of timbers:

1. MAFF is responsible for forest management and development on the areas of production forests. Forestry Administration (FA) and its provincial departments are technically responsible on behalf of the MAFF. Each province consists of provincial FA.
2. MoE is responsible for forest and biodiversity protection and conservation of the protected areas. MoE's General Department of Administration for Nature Conservation and Protection (GDANCP) and its provincial departments are technically responsible on behalf of MoE and function with increasing autonomy. Each province consists of a provincial Department of Environment (PDoE).
3. Ministry of Commerce (MoC) is responsible for timber trade including export and import. Up to the time of writing, MoC's main responsibility is to issue export permits of timber. Timber export and import are checked by custom officials at all official border check points in Cambodia.

According to the Forest Law (2002) (article 76), forest offenses are criminal offenses, which are specially defined in this law. The Forestry Administration officials qualify as judicial police officials and have jurisdiction to investigate forest offenses and file cases and documents with the court.

Aside from the three main ministries in law enforcement of timber harvest and transport, General Department of Customs and Excise of the MEF plays an important role in tax collection prior to any export and import of timbers and timber related products. At all international border checkpoints, the General Department of Customs and Excise closely plays a role in ensuring that timber related products go through official tax payments prior to export and import.

Emerging Trends

This Assessment has been prepared during a time of dynamic change in the environment and natural resources sector in Cambodia. During the past four years, the following processes have been undertaken and remain underway to various extents:

- A major jurisdictional transfer between the Ministry of Agriculture Forests and Fisheries (MAFF) and the Ministry of Environment (MoE) occurred in 2016. This transfer saw major swathes of former FA-managed production forests and protection forests transferred from FA to MoE, while those ELCs under MoE jurisdiction were transferred to MAFF control. The overall intention of this transfer was to establish MoE's primacy in conservation while consolidating MAFF's jurisdiction for production (Sub decree 34, 2016);
- An ongoing process, led by MoE, to create a new Environment and Natural Resources Code. This intended to be a complete recodification of all Cambodian law related to environment and natural resources matters. The process begun in 2015 and to date spanning 11 drafts, the draft code during November 2019 is undergoing internal review at MoE;
- An ongoing process within MoE is to determine how to manage its expanded Natural protected areas system, that now covers 41 percent of Cambodia's land mass. This includes the entirety of protected areas under MoE jurisdiction

as well as the newly created Biodiversity Conservation Corridors (BCCs) (Sub decree 07, 2017);

- An ongoing process within the Forestry Administration is to redefine its scope and mission, including the characterization of its own current land holdings;
- A decentralization process that is accelerating devolution of key responsibilities for natural resource management to sub-national authorities (Circular 05, 2016). One aspect of this has been a years' long effort led by the Ministry of Interior to create revisions to the Protected Areas Law, Forestry Law and Fisheries Law to accelerate decentralization and clarify new roles and responsibilities.

As these reforms move forward, the information presented in this assessment represents the presently documented legal and policy framework. However, in the current rapidly changing environment significant changes should be anticipated in the next 1-3 years. Important potential shifts include the following:

Forestry Administration: with much of its jurisdictional holdings transferred to MoE in 2016, FA has been engaged in a process to determine what lands and substantive matters still remain in its jurisdiction; for example, all ELCs in Cambodia (including those transferred from MoE in 2016) community forests and numerous small plot forestation and afforestation areas. FA is intent on developing a proper timber production sector from these holdings and has recently been formulating a new National Production Forest Strategic Plan that articulates these realities. Significant new procedures for timber production and licensing may be forthcoming as part of this plan.

There may be other changes to FA's jurisdiction forthcoming. The draft Environment and Natural Resources Code contains a title (equivalent to a law) on Sustainable Forest Management that represents a complete overhaul of current FA forest classification. Similarly, the Ministry of Interior's efforts on decentralization may result in other significant changes to the Forestry Law.

Meanwhile, although the practice of annual bidding coupes has not been officially annulled, there have been no documented coupes since 2013. Considering the changes that are underway at FA, it seems quite likely that this mechanism will no longer be used in the future.

Finally, Cambodia is now formally participating in the FLEGT program - with Cambodia, the FAO, and the EU, agreeing to a FLEGT Roadmap in early 2019. This is expected to lead to an extended period of technical assistance and eventually leading to Cambodia's own negotiation of a VPA (FAO 2019).

Ministry of Environment: Following the 2016 jurisdictional transfer, MoE is still in the process of consolidating its jurisdictional control over the more than 7 million hectares (41 percent of Cambodia's land mass) under its control (Sokha 2017). There are two relevant considerations as MoE goes through this process. First, while there is not yet any plan in place for the zoning and management of the BCCs, many of these particular areas are interlaced with private land holdings and would seem compatible with significant commercial forest production once proper systems are established. Secondly, while MoE's holdings currently include 45 protected areas, only 4 of these have been properly zoned to date. MoE is planning a more aggressive effort to zone these vast PAs in the next few years. This is significant because many PAs contain extensive human settlements and the Protected Areas Law specifically allows "development and investment activity" within the sustainable use zone (PA Law, Article 11, 2008). Thus, it

seems quite likely that as the zoning process accelerates many new portions of the PA system will be opened to commercial activity. In fact, in acquiring its new holdings in 2016, MoE officials explicitly acknowledged that significant areas of the PA system should be properly assigned to well-regulated commercial exploitation.

MoE is now only beginning to come to terms with how to accomplish this. One approach that MoE is considering currently with its partners is the expansion of the jurisdiction of the current CPA system, through a series of reforms locally referred to as “collaborative management (CM).” Under the 2017 CPA Guidelines, CPAs may be established in either the community zone or sustainable use zone of protected areas (in practice, they are often established in PAs where no zoning has yet taken place). A community may enter into a CPA agreement for a 15-year renewable term. Typically, the CPA is on a small parcel of land, in the range of several hundred to typically no more than 3000 ha. Commercial activity within the CPA is limited to sale of NTFP, fishing and eco-tourism activities.¹

The collaborative management (CM) approach would change many of these dynamics. Under CM, communities would receive more robust management rights, including: the right to participate in all management and planning throughout the *entire* PA; the right to exercise primary jurisdictional control throughout the entire sustainable use zone (as opposed to within a small delimited CPA); and the right to enter into contracts directly with private companies for a wide range of commercial activities throughout the zone provided such activities are consistent with zoning requirements and management plans. The communities are also provided with a proper use right in the form of a long-term rent-free lease, and the term of a CPA agreement (and thus the accompanying use right) is extended from 30 to 50 years.

Legal text for this entire framework has been forwarded for inclusion into the code; a process to create a new CM Guideline is also underway. “Community empowerment and development team”, a local NGO, has been working with MoE on the text for the code and the development of the guideline, and it is also operating two pilot CM sites in cooperation with the MoE, sub-national authorities, and local communities.

In addition, the MoE is the implementing partner for a new World Bank project, the Cambodia Sustainable Landscape and Ecotourism Project. This recently launched project will, among other things, identify 20 CPAs to be strengthened to conduct a range of ecotourism and community scale commercial activities, potentially including commercial timber production. This project may serve as a catalyst for further governance reforms. A key project priority is the establishment of sustainable conservation financing.

¹ See CPA Guideline, Appendix 6, Model Framework for Monitoring and Evaluation, Condition 2: the wellbeing of CPA members is improved.

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D. Legality Risk Assessment

LEGAL RIGHTS TO HARVEST

1.1. Land tenure and management rights

Legislation covering land tenure rights, including customary rights as well as management rights, that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.

1.1.1. Applicable laws and regulations

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- Prakas no. 607 on Procedures and Formalities for Establishment of Factory and Handicraft.

Tree planting/ tree planting areas

- Sub-decree no. 26 on Rules for Granting User Rights to Plant Trees within State Forest Lands (March 2008). Available at: http://www.forestlegality.org/sites/default/files/country_documents/Sub-Decree%20No.%2026%20on%20Rules%20for%20Granting%20User%20Rights%20to%20Plant%20Trees%20within%20State%20Forest%20Lands%20%28March%202008%29.pdf

1.1.2. Legal authority

- Ministry of Land Management, Urban Planning and Construction to issue property titles.
- The state is responsible for the management of the cadastral administration of immovable property.
- MAFF shall classify and set boundaries for all forests within the permanent forest estate.
- MoE is responsible for all protected sites area.

Timber from Annual Bidding Coupes (ABCs)

- Forestry Administration, Ministry of Agriculture, Forestry and Fisheries (regulates forestry operations)

Conversion timber from Economic Land Concessions (ELCs)

- Ministry of Agriculture, Forestry and Fisheries (has the legal authority to grant ELCs)
- Provincial State Land Management Committee (approves land use plan)
- Ministry of Environment (enforces environmental law and regulations)
- Council for the Development of Cambodia (CDC) (highest decision-making body for private and public sector investment in Cambodia)

Conversion timber from infrastructure development (hydro-power dams)

- Ministry of Mines and Energy (responsible for the development of the Cambodian hydro-power sector)
- Ministry of Water Resources and Meteorology (issues water use licenses)
- Ministry of Environment (enforces environmental law and regulations)
- Council for the Development of Cambodia (CDC) (highest decision-making body for private and public sector investment in Cambodia)
- Ministry of Public Works and Transport (issues permits for infrastructure construction, e.g. road development)
- Ministry of Rural Development (e.g. road infrastructure development)

Confiscated illegal timber

- Tenure and management rights are not applicable, but MAFF is mandated to make sure that the timbers are securely kept until final auction is finished.

NTFP (bamboo and rattan)

- Department of Nature Conservation and Protection/ Community Protected Area Development Office, Ministry of Environment
- Forestry Administration, Ministry of Agriculture, Forestry and Fisheries
- Provincial or municipal Department of Industry and Handicrafts, Ministry of Industry and Handicrafts
- Local Community General Directorate

1.1.3. Legally required documents or records

- Trade and transport

1.1.4. Sources of information

Government sources

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1.1.5. Risk determination

Overview of legal requirements

Land in Cambodia can be either state or privately owned.

- **State land** is divided into *State Public Land* (land that have a public interest value and cannot be subject of ownership (article 43)) and *State Private Land* (land that belongs to the state but does not have any public interest value and can be leased or privatized).
- **Private land** is legally owned or possessed either individually or jointly by persons or a company.

Only people or legal entities of Khmer nationality have the right to ownership of land in Cambodia (Land Law, article 8).

Occupation of land and request of ownership

Any person who has had uncontested possession of State Private Land for five (5) years before the Land Law 2001 came into force, has the right to request ownership of the land (Land Law, article 30). If possession has been less than five years, a person can get authorisation to extend their possession up to five years to apply for title of ownership (Land Law, article 31).

A new occupant without a title to a property belonging to public bodies or private persons shall be considered as an illegal occupant (Land Law, article 34), and shall be forced to vacate the premises immediately (Land Law, article 43). Only the competent authorities may force illegal occupants to vacate the property. Removal can be effective only by court order upon the claim of the person who claims the property (Land Law, article 35).

Where the Forestry Administration has evidence that occupation of any land has been obtained through illegal clearing of state forest, the Forestry Administration has the right to issue a written notice, evicting and reclaiming ownership of the state forest without any condition (Forest Law, article 106).

Penalties for illegal occupation are provided in article 259 of the Land Law 2001.

Land rights for concessions (ELCs, Social Land Concessions, SLC)

A land concession can only be granted on State Private Land (Land Law, article 58) within a fixed-term by the concession contract. The State Public Land can be reclassified to State Private Land by Sub-decree no.129, if the land has lost its public interest (ADHOC, 2014).

Only land under Social Land Concessions can be privatised (Land Law, article 52).

The rights of a concessionaire during the period of the concession are the same rights as an owner, save for the right to transfer and sell the rights. The concessionaire is entitled to the protection of his or her rights by the competent authorities (Land Law, article 56), and may defend the land under concession, against encroachment or infringement (Land Law, article 56). The concessionaires may not make any alteration to the intended purpose of the land that causes damage affecting its natural structure or exploit it in such a way that it is destroyed at the end of the concession (Land Law, article 56).

Private land

The owner of a property may freely carry out clearing of lands and forests (logging) and their cultivation in accordance with his or her use purposes and in accordance with the Land Law (Land Law, article 88, 89).

If an encroacher has created plantations or undertaken construction and development, knowing the land belonged to someone else, the owner of the land is entitled either to keep the materials or to force the encroacher to remove them at the cost of the encroacher. The encroacher may receive a penalty in the form of compensation paid to the landowner if the removal caused any damage to the landowner. If the owner prefers to retain such plantations and works already done, he or she must reimburse the cost of the materials and labour (Land Law, article 98). However, if the alterations were made in good faith as provided for in article 38 of the Land Law (2001), the owner may not demand the removal of the said works, plantations or developments, but may either pay the cost of materials and labour; or to pay an amount of money equivalent to the increased value of the land (Land Law, article 98).

Any use of ownership that does not comply with the land rules but was binding by contract before the Land Law (2001) came into effect shall not be affected, but cannot be extended (Land Law, 2001, article 116).

Plantations

Plantations can be established on private land and state land. Private plantations are planted forest under registration and legal title.

The Forestry Administration (FA) has also established plantations on state land, managed by the FA. Through planting records, it is indicated that about 14,345 hectares of state land were planted between 1985 and 2011 (TWG-FR 2014).

Community forest

According to Chapter 9 of the Forest Law, local communities who manage a community forest have the rights to harvest forest products and NTFP within the demarcated forest area stated in the community forest agreement and in consistency with the Community Forest Management Plan. They may not sell or transfer any rights to anyone else. According to Chapter 6 of the Law on Protected Areas (2008) and the procedures of the Guideline on Community Protected Areas (2017), communities living near protected areas which are under the responsibility of the Ministry of Environment (MoE) have the right to establish a community protected area within the sustainable use zone of a protected area as established by MoE. They have the right to establish their own regulations for the community protected area. The CPA agreement needs to be approved by the General Department of Local Communities at the Ministry of Environment (CPA Guideline, 2017, Chapter 8).

Description of risk

- Open Development Cambodia (ODC) noted in 2015 that multiple NGO reports reported land concessions have been the source of land conflicts, including land grabs, forced evictions, and natural resource exploitation. Risks are present due to lack of formal land titles, insufficient land registration, and poor implementation of the law (ODC, 2015). When land is not registered as private land, it is *de facto* state private land and can be allocated as land concessions. While the government has achieved success in issuing more than 3.8 million land titles as of 2015, many households do not own title to their land (ODC, 2015; TWG-FR, 2014).
- In general, there were significant inconsistencies in data availability and records in respect to land use and associated management of forest areas in Cambodia. A total of 1.2 million hectares of production forest areas are not identified within each province or on the current land use map. While the PAs and BCCs under MoE jurisdiction are publicly identified, the areas of ELC regulated by the MAFF and the MoE are not comprehensively disclosed, although this information has become generally available through a variety of means.
- The lack of available information about demarcation between state public land and state private land continues to raise concerns. Since a land classification registry is not publicly consultable, re-classification of land is more likely to be undertaken in violation of legal criteria and procedures (ADHOC, 2014).
- To date, internal zoning has occurred in only four PAs throughout entire MoE's PA system. This lack of internal PA zoning abets the encroachment upon areas that should be classified as "core" or "conservation" zones but that may be classified as "sustainable use" zones at the same time as the granting of the ELC. Furthermore, even in those PAs where zoning has occurred, there are instances of conservation or core zones being reclassified to accommodate mining concessions (<https://www.phnompenhpost.com/business/emerald-expects-licence-after-sanctuary-rezoning>). Indeed, almost all ELCs awarded prior to the ELC moratorium of 2012 encroached on protected areas and/or heavily affected indigenous peoples' land (ADHOC, 2014). In 2015, 70 percent of ELCs were located within protected areas (Global Witness, 2015 – source 36).
- Amnesty International reported in their Country Page 2017/18 that "...land grabbing, land concessions granted to private stakeholders for agro-industrial use, and major development projects continued to impact the right to adequate housing for communities around the country. A report released in January by the Land Management Ministry showed an increase in land dispute complaints received in 2016 compared to the previous year. Work on the Lower Sesan II hydro-power dam in the northeastern province of Stung Treng progressed; indigenous people who refused to leave their ancestral lands faced forcible relocation. Those who accepted relocation were moved to sub-standard and flooding-affected resettlement sites" (Amnesty International, 2018).

- “In some cases, the lines of legality over the property rights of concessionaires and communities are blurred. Some of those evicted as illegal occupants of state public land have seen their property reclassified from state public land to state private land by government and leased as a concession to a private company. Perhaps the best-known example of this is the Phnom Penh’s Boeung Kak Lake land conflict. Authorities asserted that families living in the Boeung Kak Lake area lived illegally on state public land and were therefore illegal occupants. However, many households lived in the area around the lake on state private land and, therefore should have been able to assert possession rights and apply for private ownership titles. Despite these strong claims, authorities granted a long-term lease of the area (where over 4000 families lived) to a developer, in an act NGOs asserted contravened laws relating to the management of state public land. In response, the authorities reclassified the area as state private land to legalize the lease, though NGO reports dispute the legality of this reclassification. Observers noted once the land was reclassified in this way, residents located across the site – whether located on the lake or not – should have been able to reasonably claim legal possession. The majority of residents, however, were prevented from becoming owners and evicted from the site (ODC, 2015).
- “While recognizing the numerous violations of land rights against vulnerable households recorded by NGOs, it is important to point out that some do not have strong legal claims to ownership. Such households may not meet the requirements for legal possession under the 2001 Land Law. For example, they may have commenced their occupation after 2001, and therefore their possession may be deemed illegal by the government. In other cases, households may occupy property that is legally registered as belonging to another person or entity” (ODC, 2015).
- In 2012, the Cambodian Human Rights and Development Association (ADHOC) registered 55 conflicts related to ELCs. In 2013, despite the drastic reduction of newly granted ELCs, the number of land disputes related to ELCs handled by ADHOC remained high (29 cases) (ADHOC, 2014). Logging or land clearing operations in ELCs have often led to land dispossession and forced evictions that are conducted by military forces (ADHOC, 2014). Additionally, NGOs report that forced evictions primarily occur after the granting of an ELC, and that evictions can become violent as companies use security personnel or state security forces to protect concessions (ODC, 2015).
- Allocation of SLCs also does not occur without controversy and can result in the displacement of residents. Corruption, mismanagement, abuse and nepotism are also issues in the distribution of SLCs (ADHOC, 2013; Ra and Banks, 2014, p. 21; ODC, 2015).

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.1.6. Risk designation and specification

Specified risk

1.1.7. Control measures and verifiers

The matter of land tenure clarity and security for local communities living in and near PAs and other forested areas requires systemic commitment from government, including coordination among different government ministries. While efforts to date have been very limited and ad hoc, the emerging collaborative management mechanism holds promise as a means by which to clarify the user rights of certain communities living within and adjacent to PAs. Beyond this, it has not been possible to develop mitigation actions at this time, this is a work in progress and any suggestions will be gratefully received as part of the consultation process.

1.2. Concession licenses

Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g. Corruption Perceptions Index (CPI)) should therefore be considered when evaluating risks.

1.2.1. Applicable laws and regulations

Annual Bidding Coupes (ABCs)

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- Sub-decree on Forest Concession Management (2000). Available at: <http://extwprlegs1.fao.org/docs/pdf/cam134594.pdf>
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Economic Land Concessions (ELCs)

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Tree plantations

- Sub-decree no. 26 on Rules for Granting User Rights to Plant Trees within State Forest Lands (March 2008). Available at: <https://www.ecolex.org/details/legislation/Sub-Decree-no-26-on-rules-for-granting-user-rights-to-plant-trees-within-state-forest-lands-lex-faoc134077/>

1.2.2. Legal authority

Timber from Annual Bidding Coupes (ABCs)

- Upon the request of the Minister of Agriculture, Forestry and Fisheries, the Royal Government of Cambodia may grant forest concessions.
- Forestry Administration, Ministry of Agriculture, Forestry and Fisheries (regulates forestry operations)
- Ministry of Commerce (issues business licenses)
- Council for the Development of Cambodia (CDC) (highest decision-making body for private and public sector investment in Cambodia)

Conversion timber from Economic Land Concessions (ELCs)

- Ministry of Agriculture, Forestry and Fisheries to grant ELCs with a total investment value of more than 10,000,000 (ten million) riels or more; or a total concession land area of 1,000 (one thousand) hectares or more (sub-decree no. 146, article 29).
- The relevant provincial/ municipal governor to grant economic land concessions with a total investment value less than 10,000,000 (ten million) riels and a total concession land area of less than 1,000 (one thousand) hectares (sub-decree no. 146, article 29).
- Council for the Development of Cambodia (CDC) is the highest decision-making body for private and public sector investment in Cambodia.

1.2.3. Legally required documents or records

Economic Land Concessions (ELCs)

- Cadastral maps
- Land Register
- Land use plan adopted by the Provincial-Municipal State Land Management Committee
- Environmental and Social Impact Assessment
- Detailed Solicited Proposal or Unsolicited Proposal
- Economic Land Concessions contract
- Commercial registration

1.2.4. Sources of information

Government sources

- TWG-FR (2014). *Understanding timber flows and control in Cambodia in the context of FLEGT*. [online]. Available at: <http://www.euflegt.efi.int/documents/10180/211477/Understanding+timber+flows+and+control+in+Cambodia+in+the+context+of+FLEGTc/03c0c17a-5dd0-43d6-9ccc-b4f661ba7463> [Accessed on 31 January 2019].

Non-Government sources

- COMFREL (2013). *Assessment of the Second Term of Decentralization in Cambodia: Commune Council's performance and Citizens Participation*.
- ODC (2015). *Concessions*. [online]. 4 August 2015. Open Development Cambodia. Available at: <https://opendevelopmentcambodia.net/topics/concessions/> [Accessed on 31 January 2019].
- Global Witness (2013). *Rubber Barons*. [online]. Available at: <https://www.globalwitness.org/en/campaigns/land-deals/rubberbarons/> [Accessed on 31 January 2019].
- Forest Trends (2015). *Conversion Timber, Forest Monitoring, and Land-Use Governance in Cambodia*. [online]. Forest Trends Report Series. Forest Trade and Finance. Available at: <https://forest-trends.org/wp-content/uploads/2015/07/Cambodia20Concessions20Report20small20size.pdf> [Accessed on 31 January 2019].
- Work, C., Tistan, A., and Rong, V. (2016). *Community Coherence Assessment*. [online]. Pley Lang Forest Protection Communities. Danmission and Mosaic Project. Available at: https://www.academia.edu/37282749/DANMISSION_AND_MOSAIC_PROJECT_Community_Coherence_Assessment_Pley_Lang_Forest_Protection_Communities [Accessed on 31 January 2019].
- Personal Communication 1: Independent consultant within forest governance, January 2019.

1.2.5. Risk Determination

Overview of legal requirements

Cambodia instituted a moratorium on logging in natural forest concessions in January 2002, as a result most timber currently is derived through land clearing activities in ELCs regulated by the Ministry of Environment and the Ministry of Agriculture, Forestry and Fisheries.

Timber can currently (January 2019) originate from the following concession types in Cambodia:

- Economic land concessions (ELCs)
- Social land concessions
- Forest plantations/tree plantation
- Community forest

Economic Land Concessions

Economic land concessions are concessions for agricultural use and industrial-agricultural exploitation, including large-scale plantations allocated through an economic land concession contract to a concessionaire.

- There is currently a moratorium on establishing new ELCs, and existing ELCs are being reviewed (Order 01BB on Measures for Strengthening and Increasing the Effectiveness of the Management of Economic Land Concessions, 2012). The moratorium did not apply to ELCs already in the approval process when the moratorium was implemented. As a result, at least 33 ELCs were granted after Order 01 was issued as of 2015 (ODC, 2015).
- ELCs shall be no greater than 10,000 ha (Land Law, article 59), and allocated for a maximum duration of 99 years (Land Law, article 61). A recent governmental review process led to a reduction of the duration of several ELCs to 50 years, and MoE announced in 2014 that ELCs issued after Order 01 would receive a lease of no longer than 50 years (ODC, 2015).

- ELCs established prior to the 2001 Land Law, which exceed the limit of 10,000 ha, are meant to be reduced. However, if such reduction would result in compromising the exploitation in progress of the concession established prior to the 2001 Land Law a concessionaire may obtain an exemption by the Council of Ministers (Land Law, article 59; sub-decree no. 146, article 39). Tree cutting for the purpose of land clearing is not considered exploitation in progress or a demonstration of meeting land development requirements under the concession contract.
- The issuance of land concession titles in several places relating to areas greater than 10,000 ha in favour of one specific person or several legal entities controlled by the same natural persons is prohibited (Land Law, article 59).
- An economic land concession may be granted only on land that meets all of the five criteria (Sub-decree 146, article 4):
 1. The land has been registered and classified as state private land.
 2. Land use plan has been adopted by the Provincial-Municipal State Land Management Committee and the land use is consistent with the plan.
 3. Environmental and Social Impact Assessments have been completed with respect to the land use and development plan for economic land concession projects (see more under 1.10).
 4. Land has solutions for resettlement issues, in accordance with the existing legal framework and procedures. The contracting authority shall ensure there will be no involuntary resettlement by lawful land holders and that access to private land shall be respected.
 5. Land for which there have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality.
- Sub-decree no. 146, Chapter 3 covers the procedures for initiating, requesting and granting economic land concessions.
- There are two permissible ways to establish economic land concession projects (Sub-decree no. 146, article 6):
 1. Solicited proposal, where a contracting authority proposes a project for solicitation of proposals from investors.
 2. Unsolicited proposal, where an investor proposes a project proposal to the state for approval.

For solicited proposals, the technical secretariat shall widely disseminate the notice and shall specify the manner, place and time for submission of proposals with specification of the commencing and finishing dates for acceptance. The submission period shall not be less than 60 (sixty) days from the date of publication of the notice (Sub-decree no. 146, article 10).

- Economic land concession contracts granted prior to the effective date of sub-decree no. 146 on economic land concessions shall be revised. The following shall have been conducted (depending on each case) (sub-decree no. 146, article 37):
 - Revise the concessionaire's contractual compliance with the terms of the existing concession contract in consideration of the investment made, and to be made;
 - Revise the land use fees and other revenue from the concession contracts;
 - Hold a public consultation to solicit comments on the land concession activities within communes(s) where the concession land is located;

- If a concessionaire holds economic land concessions in excess of 10,000 hectares, it shall be requested that the concessionaire voluntarily reduce the concession land size or, if the concessionaire will not voluntarily reduce the size, attempt to negotiate a reduction;
- Request land 'regularization' as provided in article 42 of sub-decree no. 146 (and defined below), where it is stated that in the existing economic land concessions review process, the Ministry of Land Management, Urban Planning and Construction shall regularize the land within the overall area of the Economic Land Concession under review. Land regularization will include land parcel adjustments, adjudication of the land rights of occupants with land parcels under review, and demarcation and registration of the land through existing procedures.

Social Land Concessions

- Social land concessions may be granted to provide land for residential purposes for families, or to facilitate economic development, or develop land that has not been developed (sub-decree no. 19, article 3).
- Social land concessions granted for family farming purposes can be up to two hectares, but for some areas the size of social land concessions may be up to five hectares based on the characteristics and potential productivity of the land or the type of crop and labour (sub-decree no. 19, article 17). It is possible to establish plantations on the social land concessions.
- A social land concession for family farming shall be cultivated within twelve months of receiving the land and the land shall continue to be utilized in accordance with the conditions of the concession program.
- After correctly complying with the criteria of the social land concession program for five years, the recipient has the right to ownership of the land and may request ownership title (sub-decree no. 19, article 18).

Community Forests

- Community forests shall have a community forest agreement attached with: 1:50,000 scale maps including coordinates, a list of CF community members and community forestry management committee members, by-laws and regulations, objective of the management of the forest resource and certification of the sustainable management of the forest resource, and an inventory of the forest resource (sub-decree no. 79, article 25).
- Community forest agreements shall be in public hearing for 30 days before being reviewed and approved by the Forestry Administration Cantonment.
- Community forest agreement shall be in effect for no more than 15 years and can be renewed for an additional 15 years (Sub-decree no. 79, article 27).

Description of risk

Economic Land Concessions (ELCs)

- Companies have been accused of clearing forestry areas before the proper legal process for granting concessions has been completed (ODC, 2015).
- Most ELCs granted in recent years comply with the 10,000 ha size limitation. Company data and media reports suggest, however that many adjacent ELCs are owned by the same investors and are merely parceled out into 10,000 ha sections, thus creating a block often far exceeding the 10,000 ha limit (Forest Trends, 2012; Global Witness, 2013; Ra and Banks, 2014).

- Furthermore, recent analysis of the democratization and decentralization process (COMFREL, 2013) has shown that Commune Councils have little or no power to influence high-level decisions pertaining to natural resource allocation in their communes. Local officials representing the interest of their constituency against higher-level decision-making are frequently targets of intimidation, threats or, in some cases, dismissal.
- The extent to which local authorities become involved varies. The decision to establish a concession has sometimes been taken at the central level prior to the development of the preliminary ESIA, and projects are presented to the local population as having been decided, leaving them with no option but to accept it. Investor demands may overrule the existing frameworks. For example, in the case of an ELC within a protected area, the land was allocated to a company that needed land up to 100,000 hectares. MAFF did not have enough capability to look for land so turned to MoE for help².
- ELCs have been allocated within protected areas and remaining forest areas (Global Witness, 2015). In 2015 Global Witness reported that five ELCs had been allocated in an area where zoning of protected areas had not been finalized, as required by law according to a report by the Global Forestry Services (2014) on understanding timber flows and control in Cambodia in the context of FLEGT. MoE's PA zoning guideline was approved in late 2017 and until now the only four protected areas have been properly zoned. Allocation of ELCs in Natural Forest are therefore illegally allocated on State Public Land (Global Witness, 2015).
- The current practice of retro-fitting the allocation process to decisions made at the highest level of government is also reflected in the attitude of provincial and local authorities in considering conflict between developers and local communities as a "bilateral" issue. Government representatives get involved only if conflicts and disagreements reach a higher level. Even under these circumstances, local officials advise villagers to "take the company to court if they have problems." Considering the well-connected nature of most ELC developers, companies' frequent use of military personnel, and the weaknesses in the implementation of Cambodia's legal system, legal actions against ELC companies have been mostly symbolic exercises. Some cases have been pending for a decade without affecting the operations of certain companies (Forest Trends, 2015, p.7).
- Many of the ELCs are not meeting their productive use objectives. The Land Law obliges concessionaires to exploit their land within twelve months; any failure to do so, without proper justification, is considered grounds for cancellation. Investigations by local civil society organizations, however, reveal that a number of ELCs are not being developed after the land has been cleared of all forests.
- New allocations of ELCs have been reduced since 2012 due to national policy changes and the scarcity of investment, especially joint-international investment from neighboring countries. However, the process of concession license application has not been well-publicized and – if indeed any announcement is made publicizing the ELC application process – it is made with a very short deadline. In this regard, Villagers do not have enough time to appeal and claim their lands, and instead are left with no other choice other than to demonstrate at the beginning of ELC operation. In addition, ELCs should be granted on degraded forestlands; but forest status was assessed by government officials (e.g. forest inventories) without the participation of local communities and/or non-governmental stakeholders. In short, licensing of ELCs lacks proper application of given technical guidelines (personal communication 1, January 2019).

² Unofficial translation of the Minutes of a Meeting about the Report on Preliminary Social and Environmental Impact Assessment Regarding a Proposal of Economic Land Concession Project between the provincial and district officials and the ESIA consultancy company, June 2010.

Social Land Concessions (SLCs)

- Allocation of SLCs is occurring with controversy and can result in the displacement of former residents. Corruption, mismanagement, abuse and nepotism are also the issues in the distribution of SLCs (ADHOC 2013, Ra and Banks, 2014, p. 21; ODC, 2015).
- SLCs have been used as a pretext for deforestation by community chiefs (Work *et al.*, 2016).
- Example of clearing beyond boundaries for an SLC (Work *et al.*, 2016).

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.2.6. Risk designation and specification

Specified risk

1.2.7. Control measures and verifiers

Direct communications with government could seek to elicit confirmation of its intentions regarding concession policy. A significant emerging question is how the government will allocate land within the sustainable use zones as zoning progresses throughout the PA system. Beyond this, it has not been possible to develop mitigation actions at this time, this is a work in progress and any suggestions will be gratefully received as part of the consultation process.

1.3. Management and harvesting planning

Any legal requirements for management planning, including forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.

1.3.1. Applicable laws and regulations

- Forest Law (2002), article 9. Available at: <http://extwprlegs1.fao.org/docs/pdf/cam50411.pdf>. [article 2 \(customary user rights of forest products\), article 10.](#)
- Forest Concession Management Planning Manual
- The Cambodian Code of Practice for Forest Harvesting (1999)
- Cambodian Forest Management Codes of Practice
- Sub-decree no. 79 on Community Forestry Management (2003). Available at: <http://extwprlegs1.fao.org/docs/pdf/cam81979.pdf>
- Sub-decree no. 146 on Economic Land Concessions (2005). Available at: http://www.cambodiainvestment.gov.kh/Sub-Decree-146-on-economic-land-concessions_051227.html

1.3.2. Legal authority

- Forestry Administration

- Ministry of Agriculture, Forestry and Fisheries

1.3.3. Legally required documents or records

- National Forest Sector Policy
- National Forest Management Plan

Forest concession

- Long-term Management Plan approved by the Minister of Agriculture, Forestry and Fisheries, upon the recommendation of the Head of the Forestry Administration.
- Annual Operational Harvesting Plans for each coupe level; and
- Block Management Plans for each annual harvest.
- The Annual Operational Harvesting Plans and Block Management Plans shall be approved by the Head of the Forestry Administration.

1.3.4. Sources of information

Government sources

- Ministry of Agriculture, Forestry and Fisheries;
- Forestry Administration

1.3.5. Risk determination

Overview of legal requirements

National planning

A National Forest Management Plan shall be prepared by the Forestry Administration and approved by the Royal Government of Cambodia. This shall be used as a long-term planning tool to set priorities and activities on forest management. The National Forest Management Plan shall be reviewed and revised every five years to reflect changes in conditions and circumstances (Forest Law, article 9).

The National Forest Management Plan shall, among others, review the physical, environmental and social factors regarding forest resources, and estimate the volume of all categories of forest products and NTFP, as well as, designated forestlands, land to be reforested, and community forests.

Management plans shall furthermore be prepared for both 1) natural forest under concession (developed by concessionaire) and 2) production forest not under concession (developed by each division chief of the Forestry Administration).

Economic Land Concessions (ELCs) and Forest Plantations

The management plan for ELCs and plantations is usually included in the contractual document as requested by the Technical Secretariat and Contracting Authority (Sub-decree no. 146, 2005. articles 16, 24 and 25).

Annual Bidding Coupes (ABCs)

The Division Chief of the Forestry Administration shall prepare and submit management plans for production forest not under concession located in their jurisdiction to the Head of the Forestry Administration for review and approval. This is similar to management plans developed for forests under concession (Forest Law, article 21) (*management plan for forest not under concession*).

Officials of the Forestry Administration, at all levels, national and sub-national, are the only government mandated staff to evaluate the numbers of timber volumes to be harvested for domestic demand. According to the Forest Law (2002), the evaluation is based on capacity of sustainable forest management rather than the demand of wood from markets.

Social Land Concessions (Sub-decree on SLCs, 2003)

No management plans are required for Social Land Concessions. It only refers to communal planning for proposing land allocation for landless families such as vulnerable families.

Community Forests

Community forests shall have in place a Community Forest Management Plan (Forest Law, article 43), developed by the Community Forestry Management Committee, and the Community Management Plan shall be reviewed by the Forestry Administration every five years or earlier if necessary (sub-decree no 79, article 30).

Description of risk

No information can be obtained about the risk in relation to management plans. Such information is considered sensitive, and no reports were identified that covers legal compliance of drafting management plans and inventorying. The government is drafting the production forest strategic plan 2019-2032; it is not clear yet about how the risk would affect community forest.

Risk conclusion

This indicator has not been possible to assess due to lack of information. We are therefore not able to state that the risk is low.

1.3.6. Risk designation and specification

Specified risk

1.3.7. Control measures and verifiers

At a minimum, it would be necessary to provide transparent access to all relevant management plans in the forest and natural resource management sectors. Beyond this, it has not been possible to develop mitigation actions at this time, this is a work in progress and any suggestions will be gratefully received as part of the consultation process.

1.4. Harvesting permits

Legislation regulating the issuing of harvesting permits, licenses or other legal documents required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.

1.4.1. Applicable laws and regulations

- Forest Law (2002). Available at: <http://extwprlegs1.fao.org/docs/pdf/cam50411.pdf>
- Sub-decree no. 79 on Community Forestry Management (2003). Available at: <http://extwprlegs1.fao.org/docs/pdf/cam81979.pdf>

1.4.2. Legal authority

- The Minister of Ministry of Agriculture, Forestry and Fisheries (Forest Law, article 26):
 - Permits to set harvest quota for registered companies in the production forests not under concession.
- The Head of Forestry Administration:
 - Permits to harvest forest products and NTFP from production forests that are not under concession;
 - Permit to enter coupe, called Forest Entering Permit, prior to issuance of annual Harvest Permit.

Community forest

- The Chief of Cantonment of the Forestry Administration:
 - Permit to set harvest quota of forest products and by-products for local communities.
- The Chief of Division of the Forestry Administration:
 - Permit to harvest forest products and by-products in a community forest at an amount above the customary user right.

Conversion timber in permanent forest reserve

- Project development:
 - A prior study-evaluation from MAFF
 - Authorization by the Royal Government of Cambodia (RGC)
- Road construction:

- Public road: approved by the RGC, upon request of the Ministry of Public Works and Transport after consultation with MAFF.
- Forest road: approved by the Minister of MAFF, upon request of the Director of the Forestry Administration.

1.4.3. Legally required documents or records

Community Forest

- Community Forest Agreement

1.4.4. Sources of information

Government source

- TWG-FR (2014). *Understanding Timber Flows and Control in Cambodia in the Context of FLEGT*. [online]. Available at: <http://www.euflegt.efi.int/documents/10180/211477/Understanding+timber+flows+and+control+in+Cambodia+in+the+context+of+FLEGTc/03c0c17a-5dd0-43d6-9ccc-b4f661ba7463> [Accessed 1 February 2019].

Non-Government sources

- Work, K. C. (2016). *Think Biotech Cambodia Ltd. Fiction and Forest Loss in Cambodia*. [online]. 6 July 2016. Mosaic Field Report. Available at: https://www.academia.edu/37282750/FICTION_AND_FOREST_LOSS_IN_CAMBODIA [Accessed 1 February 2019].
- Ra, K. and Banks, A. (2014). *Forest-Land Conversion and Conversion Timber Estimates: Cambodia Case Study*. [online]. NEPCon. Available at: <https://www.forest-trends.org/wp-content/uploads/imported/2-cambodia-koy-ra-and-a-banks-pdf.pdf> [Accessed 1 February 2019].
- Understanding Timber Flows and Control in Cambodia in the Context of FLEGT, Global Forestry Services, the Forestry Administration of Cambodia and the EU FLEGT Facility, 2014; Available at <http://www.euflegt.efi.int/documents/10180/211477/Understanding+timber+flows+and+control+in+Cambodia+in+the+context+of+FLEGTc/03c0c17a-5dd0-43d6-9ccc-b4f661ba7463>

1.4.5. Risk determination

Overview of legal requirements

Any individual, legal entity or community that intends to harvest natural timber and NTFP for commercial purposes must possess a harvest permit issued by the Forestry Administration (Forest Law, article 24).

Below are listed permits applicable for harvest timber and NTFP (Forest Law, article 25):

1. Permit to set annual harvest quota;
2. Permit to harvest;
3. Permit to use forest;
4. Permit to enter coupe for preparation.

The permits under article 25 of the Forest Law shall contain the following items:

1. The name of the permit holder;

2. The duration of the permit;
3. The specific location and boundaries of harvest area;
4. The quantity of timber products and/or NTFPs allowed to be harvested in a unit determined by the Forestry Administration;
5. Origin and destination of timber products and/or NTFPs being transported; and
6. Other items based on the type of permit required by the Forestry Administration.

The permits may be extended, based on an evaluation report of the Forestry Administration.

Annual Bidding Coupes (ABCs)

After suspending forest concessions, Annual Bidding Coupes were established to supply timber for domestic consumption. While they have now themselves fallen into disuse, with the last documented harvesting from a coupe occurring in 2013 (Global Forest Services, 2014). As a legal matter the Annual Bidding Coupes are issued through bidding at auctions (Forest Law, article 21). The production forest which are not under concession shall be managed with the priority use to meet domestic needs (Forest Law, article 20).

ELCs, plantations and private lands

Private landowners and concession areas where trees have been planted do not require a harvesting permit/ licence (TWG-FR 2014, p. 51).

Conversion timber

Forest clearing activities can only be allowed in the permanent forest reserve for:

- The establishment of public and forest road construction with approval from the authorities (article 31). All projects of public and forest road construction within the permanent forest reserve shall be subject to consultation with the concerned local authorities and communities and Environmental and Social Impact Assessment (ESIA) pursuant to article 4 of the Forest Law (see more under 1.10).
- Traditional slash and burn practices authorised under the Community Forest Management Plan (article 37). Communities can sell the timber to local markets.
- Conversion for quarrying, soil and sand excavation, mining, and other natural resources extraction, with a prior study-evaluation from MAFF and authorization by the Royal Government of Cambodia (article 35).
- Otherwise all forest clearing activities shall be prohibited within the permanent forest reserve (article 33).

A permit is required for conversion, and an EIA shall have been developed.

Seized timber

Any drifted, stranded, or sunk logs, and any unmarked or unclaimed timbers shall be seized as state property, and placed for public auction (Forest Law, article 74). A transport permit will be issued by Forestry Administration once bidding on the seized timbers is finished.

Description of risk

Annual Bidding Coupes (ABCs)

- It has not been possible to collect information related to legality in relation to the ABCs. This information is considered sensitive and not shared publicly. As of 2009 the Forestry Administration have issued three ABCs or bidding coupe management plans to three separate companies covering, in total, 5000 hectares (Ra and Banks, 2014). However, it

seems no ABCs are in operation as of October 2019 (expert stakeholder meeting, 4 October 2019).

Conversion

- Risk of timber theft
- Risk of harvesting out of bounds and laundering of timber through ELCs or conversion projects. Global Witness (2015) provided examples of conversion permits for ELCs which were primarily being used to launder timber harvested outside their boundaries and mixed with timber harvested legally from conversion from ELCs. Evidence of timber being laundered through concessions is consistent with extensive media coverage in the Cambodian press and NGO reports (expert meeting in Phnom Penh, February 2018).
- Risk of selecting logging under a permit for conversion (misuse of permit for conversion) (Work, 2016).

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.4.6. Risk designation and specification

Specified risk

1.4.7. Control measures and verifiers

It has not been possible to develop mitigation actions at this time. However, it should be noted that the ABCs are no longer in use and many former production forests are now shifted to MoE jurisdiction.

TAXES AND FEES

1.5. Payment of royalties and harvesting fees

Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume-based fees. It also includes payments of the fees based on correct classification of quantities, qualities, and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.

1.5.1. Applicable laws and regulations

- Forest Law (2002) in Chapter 11, article 52 till 58 mentioned royalties, taxes and fee and defined all kind of forest classification.
- Forest Law (2002) in Chapter 11 related to community rights in article 53 and 58. Available at: <http://extwprlegs1.fao.org/docs/pdf/cam50411.pdf>
- Sub-decree no. 79 on Community Forestry Management (2003). Available at: <http://extwprlegs1.fao.org/docs/pdf/cam81979.pdf> .
- Prakas no. 089 on royalty classes: MAFF (2005) Forbidding to Harvest Timber and NTFP. Available at: <https://www.cdri.org.kh/publication-page-old/pub/policybrief/nre/nrepbE03.pdf>.
- Joint Prakas between MAFF and MEF on rate of royalties of different timber qualities.

1.5.2. Legal authority

- Forestry Administration
- Ministry of Agriculture, Forestry and Fisheries
- Ministry of Commerce
- Ministry of Economy and Finance

1.5.3. Legally required documents or records

- Detailed list of forest inventories and timber volumes, called "Book A"
- Certified documents issued: by Forestry Administration (for domestic transportation); by Ministry of Economy and Finance (for export timber, if any)

1.5.4. Sources of information

Government sources

- Forestry Administration
- Ministry of Agriculture, Forestry and Fisheries

Non-Government sources

- CDRI (2006). *Timber Productivity in Selected Cambodian Forest Types*. [online]. <https://www.cdri.org.kh/publication-page-old/pub/policybrief/nre/nrepbE03.pdf> [Accessed on 1 February 2019].
- Transparency International (2016). *Tax System in Cambodia, Transparency International Cambodia*. [online]. Case Study. Available at: <http://ticambodia.org/library/wp->

[content/files_mf/1536811560Final_Eng_CaseStudyonTaxSystem.pdf](#) [Accessed 1 February 2019].

1.5.5. Risk determination

Overview of legal requirements

Royalties and premiums shall be paid for timber and NTFP within the permanent forest reserve which are used for commercial purposes. The royalties and premiums shall be paid to the national budget through the Forestry Administration (Forest Law, article 52).

Royalties or premiums for the harvesting of forest products and NTFP is not required for private forests (Forest Law, article 52), or local communities under customary user rights or from forest communities under the community forest agreement (Forest Law, article 53). However, communities shall pay royalties and premiums on timber and NTFP sold and transported (Sub-decree no. 79, article 12). Royalties and premiums should be set after consultation with a Community Forestry Management Committee to support community development, equitable benefit sharing, and poverty alleviation (Sub-decree no. 79, article 13).

Royalties and premiums for any forest products and NTFP collected from the permanent forest reserve may be waived if for scientific purposes or to create an economic incentive to efficiently use forest products and NTFP (Forest Law, article 53).

Royalties and premiums shall be paid for all forest products and NTFP recorded in the "Book A" (recording book for wood harvesting) (Forest Law, article 55).

A delay in the payment of royalties and premiums can be allowed if the Forestry Administration has recognized the permit holder practicing sustainable forest management (Forest Law, article 56). If a permit holder does not pay royalties and premiums by the agreed scheduled date, the Forestry Administration can seize the forest products and NTFP, without exception, and detain such products as state property until legal resolution of the dispute occurs (Forest Law, article 57).

Before the issuance of a permit to harvest forest products and NTFP, a security financial deposit shall be made to guarantee payment of royalties and premiums by the potential permit holder. The amount of the deposit shall be stated in a concession agreement or annual forest products and NTFP quota permit.

Description of risk

It was not possible to find any information on the risk of not paying royalties and fees in the forest sector. This information was not shared by the MEF. However, according to a case study on "Tax System in Cambodia" (Transparency International 2016, page 20) conducted by Transparency International Cambodia (www.ticambodia.org), causes of corruption and its impact on the tax system include:

1. The complexity of tax law
2. The monopoly power of tax officials
3. Mutual benefit
4. Patronage system
5. The habit of facilitation payment by individuals in the private sector to public officials; and
6. The overall environment of public administration.

This indicates that risks are present in relation to payment of taxes and fees in Cambodia.

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.5.6. Risk designation and specification

Specified risk

1.5.7. Control measures and verifiers

Since the permanent forest reserve and Community Forests are no longer the primary sources of Cambodian timber, it is important to assess the royalty mechanisms for wood coming from ELCs and otherwise from the PA system (for example, CPAs).

1.6. Value added taxes and other sales taxes

Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.

1.6.1. Applicable laws and regulations

- Forest Law (2002). Available at: <http://extwprlegs1.fao.org/docs/pdf/cam50411.pdf>
- Customs Law (2007). Available at <http://www.customs.gov.kh/wp-content/uploads/2015/10/Customs-Law-and-Regulations-EN-GDCE.pdf>
- Law of Taxation (1997). Available at: (https://www.wto.org/english/thewto_e/acc_e/khm_e/wtacckhm3a3_leg_48.pdf)
- Sub-decree no. 131 (2006) on Forest and Non-timber forest products. Available at: http://www.cambodiainvestment.gov.kh/wp-content/uploads/2012/03/Sub-Decree-131-on-Forest-and-Non-Timber-Forest-Products-Allow-For-Export-and-Import_061128.pdf

1.6.2 Legal authority

- General Department of Custom and Excise of Cambodia
- Ministry of Economy and Finance (MEF)
- MAFF (based on Forest Law, 2002)
- Forestry Administration

1.6.3. Legally required documents or records

- Payment Receipts
- Different official letters from related ministries and ministerial line departments.

1.6.4. Sources of information

Government sources

- GDTMEF (N.Y). *Value Added Tax*. [online]. General Department of Taxation, Ministry of Economy and Finance (2011–2018). Available at: <http://www.tax.gov.kh/en/bvat.php> [Accessed on 1 February 2019].

Non-Government sources

- Dara, M. (2018). Mondulkiri Rife with Forest Crimes. [online]. *The Phnom Phen Post*, 5 November 2018. Available at: <https://www.phnompenhpost.com/national/mondulkiri-rife-forest-crimes>. [Accessed on 1 February 2019].
- ODC (2015). *Taxation*. [online]. Available at: <https://opendevelopmentcambodia.net/topics/taxation/#ref-85325-12>. [Accessed on 1 February 2019].
- NGF Forum: Logs and patronage (2015). Available online at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjPz6WKjZPkAhVqILcAHYzCBjsQFjAAegQIABAC&url=http%3A%2F%2Fngoforum.org.kh%2Ffiles%2F285f754ecbc4fd24ead730ef44cf9521-Logs-and-Patronage-Eng.pdf&usq=AOvVaw07i3p79C7zGT6mKfHM5zH>. [Accessed on 21 August 2019].

1.6.5. Risk determination

Overview of legal requirements

The rates of VAT are as follows (GDTMEF, N.Y):

- 0%: This rate applies only to goods exported from the Kingdom of Cambodia and services consumed outside Cambodia. Exports are defined as including international transportation of passengers and goods.
- 10%: This standard rate applies to all supplies other than exports and non-taxable supplies.

A study by The NGO Forum on Cambodia (2015) found that VAT from timber is needed in general. However, the applicable legislation was not identified as part of this study.

Paragraph 3 of article 73 of Forest Law (2002) states that for all export and import of timber and NTFP, taxes must be paid according to the relevant laws of the country. Sealing of containers of timber and NTFP must be made by MAFF and Ministry of Commerce prior to transportation (paragraph 2, article 73 of Forest Law). Detailed information relating to taxes, export and import of timber, and NTFP should be stated on Prakas of the Ministry of Agriculture, Forestry and Fisheries.

Description of risk

- “In 2015, nearly all small businesses, a potential source of tax revenues, were reportedly unregistered. Some companies have been reported by the ministry to bear outstanding tax liabilities too, and delay their payment, leading to deficiency in tax revenues and the state’s national budget” (ODC, 2015).
- In the past three years, more businesses have properly registered, and payment of VAT taxation is becoming more routine throughout all sectors.
- The export of illegally logged timber (1.19) results in lack of payment of taxes (Dara, 2018).

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.6.6. Risk designation and specification

Specified risk

1.6.7. Control measures and verifiers

It has not been possible to develop mitigation actions at this time, this is a work in progress and any suggestions will be gratefully received as part of the consultation process.

1.7. Income and profit taxes

Legislation covering income and profit taxes related to the profit derived from sale of forest products and harvesting activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.

1.7.1. Applicable laws and regulations

- Sub-decree on patent on selling goods, Council of Ministers, 1985.
- Law of Taxation (1997). Available at: https://www.wto.org/english/thewto_e/acc_e/khm_e/wtacckhm3a3_leg_48.pdf
- Prakas on The Profit Tax (2004). Available at: <http://www.pat-professional.com/wp-content/uploads/2014/06/Prokas.-Tax-on-Profit-English.pdf>

1.7.2. Legal authority

- MEF (Ministry of Economy and Finance);
- General Department of Taxation.

1.7.3. Legally required documents or records

- Records of payment receipts.

1.7.4. Sources of information

Non-Government sources

- PWC (2006-2018). *Cambodia Corporate – Taxes on Corporate Income*. [online]. Available at: <http://taxsummaries.pwc.com/ID/Cambodia-Corporate-Taxes-on-corporate-income> [Accessed on 1 February 2019].
- ODC (2015). *Taxation*. [online]. Available at: <https://opendevelopmentcambodia.net/topics/taxation/#ref-85325-12> [Accessed 1 on February 2019].
- Rd.go.th (N.Y). *Cambodia*. [online]. Available at: http://www.rd.go.th/publish/fileadmin/user_upload/AEC/AseanTax-Cambodia.pdf [Accessed on 1 February 2019].

1.7.5. Risk determination

Overview of legal requirements

The standard rate of corporate income tax for companies and permanent establishments who are classified as medium and large taxpayers is 20%.

For companies and permanent establishments who are classified as small taxpayers, the corporate income tax (CIT) rates are progressive, from 0% to 20% (PWC 2006–2018).

Prakas on The Profit Tax (2004) comprehensively states and determines profit taxes of different tax payers including profits derived from provision of services and salary.

Description of risk

- “In 2015, nearly all small businesses, a potential source of tax revenues, were reportedly unregistered. Some companies have been reported by the ministry to bear outstanding tax liabilities, and delay their payment, leading to deficiency in tax revenues and the state’s national budget” (ODC 2015).
- It shall be mentioned that tax income grew rapidly in 2017, and Cambodia is improving its tax collection abilities. Payment of both personal and corporate income tax has become more routine in the past several years, and its applicability to the timber sector should be more thoroughly addressed in future.

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.7.6. Risk designation and specification

Specified risk

1.7.7. Control measures and verifiers

It has not been possible to develop mitigation actions at this time, this is a work in progress and any suggestions will be gratefully received as part of the consultation process.

TIMBER HARVESTING ACTIVITIES

1.8. Timber harvesting regulations

Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.

1.8.1. Applicable laws and regulations

- Forest Law (2002). Available at: <http://extwprlegs1.fao.org/docs/pdf/cam50411.pdf>
- Cambodian Code of Practice for Forest Harvesting (1999).
- Sub-decree using and management forest (2008).
- Sub-decree on Forest Concession Management (2000).

1.8.2. Legal authority

- Ministry of Agriculture, Forestry and Fisheries;

- Forestry Administration and its line departments at central and sub-national levels.

1.8.3. Legally required documents or records

- Permit of timber harvest;
- Permits of sawn and round timber transport;
- Licence of sawmill of timber processing.

1.8.4. Sources of Information

Government sources

- Ministry of Agriculture, Forestry and Fisheries (2003). *Field Guide in Reduced Impact Logging in Cambodia*. [online]. ITTO-FA Project on Training and Reduced Impact Logging (RIL) in Cambodia. PD 65/01 Rev. 2(i). 30 December 2003. Forest Administration. Available at: [http://www.itto.int/files/user/pdf/publications/PD%2065%2001/pd65-01-1%20rev2\(I\)%20e.pdf](http://www.itto.int/files/user/pdf/publications/PD%2065%2001/pd65-01-1%20rev2(I)%20e.pdf) [Accessed on 1 February 2019].

Non-Government sources

- Technical Working Group on Forestry Reform (2014). *Understanding Timber Flows and Control in Cambodia in the Context of FLEGT*. [online]. Available at: <http://www.euflegt.efi.int/documents/10180/211477/Understanding+timber+flows+and+control+in+Cambodia+in+the+context+of+FLEGTc/03c0c17a-5dd0-43d6-9ccc-b4f661ba7463> [Accessed on 1 February 2019].
- Global Witness (2002). *Deforestation Without Limits -How the Cambodian Government Failed to Tackle the Untouchables*. [online]. Available at: https://www.globalwitness.org/documents/12894/deforestation_without_limit.pdf [Accessed on 1 February 2019].
- Work, K. C. (2016). *Fiction and Forest Loss in Cambodia*. [online]. Mosaic Field Report. Available at: https://www.academia.edu/37282750/FICTION_AND_FOREST_LOSS_IN_CAMBODIA [Accessed on 1 February 2019].

1.8.5. Risk determination

Overview of legal requirements

Annual Bidding Coupes (ABCs)

The forests shall be protected against damaging activities caused by excessive exploitation, abusive forest clearing, forest ecosystem pollution, forest fires, shifting cultivation, diseases, noxious insects, and the imports of harmful forest vegetation and wildlife species. It is not allowed to obstruct boundary posts or distinctive sign marking of the forest boundary; nor to grid bark, poison, destroy, fell, or uproot any tree without technical necessity. It is not allowed to harvest forest products and NTFP in violation of the authorized permit (Forest Law, article 32).

It is prohibited to set fires in the permanent forest estates. However, the FA is allowed to set fires or use fires to benefit forest management (Forest Law, article 36).

It is prohibited to saw, slice or process logs within permanent forest reserves, and the use of chain saw within the permanent forest reserves is only allowed with a permit authorized by the Forestry Administration (Forest Law, article 38).

Before entering the annual harvest area, the forest concessionaire or forest coupe owner shall register all machinery, vehicles and chain saws with the Forestry Administration to obtain their identification tag and register at the Forestry Administration (article 70).

All projects for public and forest road construction within the permanent forest reserves shall be subject to consultation with local authorities and communities and an Environmental and Social Impact Assessment (ESIA) (Forest Law, article 31) (see more under indicator 1.10 of this report).

The Cambodian Code of Practice for Forest Harvesting regulates selective logging in natural forest (applicable to ABCs) and contains the technical regulations for e.g. logging on slopes, buffer zones, and felling direction.

Forest plantations and ELCs

Forestry Administration shall monitor and provide technical aspects to all harvest and transportation of planted trees and record all volumes of logs in order to issue transport permits as stated on the tree plantation sub-decree no. 26 (2008) and Forest Law (2002).

Community Forests

Community forestry regulations are passed by the Community Forestry Management Committee (established by the local communities in the applicable area) consistent with the Forest Management Plan, and includes such things as rights of access and duties for community members and secondary users, user fees, benefit sharing, reporting requirements, fines for violations, etc.

Communities under a community forest agreement may not harvest forest products for selling or bartering within the first 5 years of approval of the Community Forest Management Plan (sub-decree no 79, article 12).

Description of risk

From expert meeting in Phnom Penh, February 2018:

- There are examples of harvest above the annual allowable cut (See 1.4).
- Lack of reforestation when required timber have been harvested from ELCs areas, where forests are clear cuts, risks of violation of the regulations specified in the contract of the ELCs are taking place.
- Guidelines and regulations being ignored during conversion of forest (Work, 2016).
- Enforcement work to achieve compliance with harvesting requirements have been insufficient to date. Following the 2016 jurisdictional shift between MAFF and MoE, there are no known efforts to address these deficiencies.

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.8.6. Risk designation and specification

Specified risk

1.8.7. Control measures and verifiers

It has not been possible to develop mitigation actions at this time, this is a work in progress and any suggestions will be gratefully received as part of the consultation process.

1.9. Protected sites and species

International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note: protected areas may include protected cultural sites, including sites with historical monuments.

1.9.1. Applicable laws and regulations

- Law on Protected Areas 2008. Available at: http://www.cambodiainvestment.gov.kh/law-on-nature-protection-area-protected-areas-law_080104_080104.html
- Decision no. 050 dated 12 August 1986 on classification of wood qualities and allowable minimum Diameter at Breast Height (in cm) cutting.
- Sub-Decree (2006): Article 2, Paragraph B. 13. Prohibition of export of rosewood (luxury timber)
- Directive on the Measure of Prevention, Obstruction and Suppression from Transportation, Collection, Stocking and Export of Rosewood (*Dalbergia cochinchinensis*), Order no. 2BB, 22 February 2013. Royal Government of Cambodia.
- Royal Government of Cambodia (2014) Inter-Ministerial Proclamation on Strengthening Management of Economic Land Concessions. no.177 Bror Kor.Kor Sor Kor, issue by the Ministry of Agriculture, Forestry and Fisheries, and the Ministry of Environment, 14th May 2014. Royal Government of Cambodia.

1.9.2. Legal authority

- Ministry of Environment
- The General Department of Administration for Nature Conservation and Protection (GDANCP)
- Officials of the GDANCP

1.9.3. Legally required documents or records

- Not identified

1.9.4. Sources of Information

Non-Government sources

- Cambodia Tree Seed Project (2005). List of Luxury Timber [online]. Available at: <http://www.treeseedfa.org/uploaddocuments/Proceedingworkshop.pdf> [Accessed 1 February 2019].
- Forest Trends (2015). *Conversion Timber, Forest Monitoring, and Land-Use Governance in Cambodia*. [online]. Forest trends Report Series. Forest Trade and Finance. July 2015. Available at: <https://forest-trends.org/wp-content/uploads/2015/07/Cambodia20Concessions20Report20small20size.pdf> [Accessed 1 February 2019].
- Global Witness (2015). *The Cost of Luxury - Cambodia's Illegal Trade in Precious Wood with China*. [online]. Available at: <https://www.globalwitness.org/en/campaigns/forests/cost-of-luxury/> [Accessed 1 February 2019].

- Koemsoeun, S. (2018). *Villagers in Mondulkiri Say Illegal Logging is Going on Unabated*. [online]. Available at: <https://www.phnompenhpost.com/national/villagers-mondulkir-say-illegal-logging-going-unabated> [Accessed 1 February 2019].
- The NGO Forum on Cambodia (2015). *Logs and Patronage: Systematic Illegal Logging and the Destruction of State Forests and Protected Areas in Rattanakiri and Stung Treng Provinces, Cambodia*. [online]. Available at: <http://ngoforum.org.kh/files/285f754ecbc4fd24ead730ef44cf9521-Logs-and-Patronage-Eng.pdf> [Accessed 1 February 2019].
- Suy, P. (2018). *Four Jailed for Illegal Logging*. [online]. Available at: <https://www.khmertimeskh.com/50542461/four-jailed-for-illegal-logging/> [Accessed 1 February 2019].

1.9.5. Risk determination

Overview of legal requirements

Protected area

The Forestry Administration shall prepare a management plan for protected forest to be approved by MAFF (Forest Law, article 23). Commercial harvesting is not allowed within the protected areas (Law on Protected Areas, 2008, Act 43).

MAFF may propose to the RGC to revise the classification of an area in the protection forest to production forest. This is on the provision that new study data by the Forestry Administration shows that the area has sufficient potential for extraction of timber and/or NTFPs. Otherwise, the harvesting of harvest timber products and/or NTFPs within the protection forest shall be prohibited (Forest Law, article 28).

Protected areas are under the jurisdiction of the Ministry of Environment.

Each protected area may include up to four (4) management zones (Law on Protected Areas, article 11.):

1. *Core zone*: management area(s) of high conservation values containing threatened and critically endangered species, and fragile ecosystems. Access to the zone is prohibited except for the purpose of research or national security and defense.
2. *Conservation zone*: management area(s) of high conservation values containing natural resources, ecosystems, watershed areas, and natural landscape located adjacent to the core zone. Access to the zone is allowed only with prior consent of the Nature Conservation and Protection Administration of the area, with the exception of national security and defense sectors. Small-scale community uses of non-timber forest products (NTFP) to support local ethnic minorities' livelihood may be allowed under strict control, provided they do not present serious adverse impacts on biodiversity within the zone.
3. *Sustainable use zone*: management area(s) of high economic values for national economic development and management, and conservation of the protected area(s) itself thus contributing to the local community, and indigenous ethnic minorities' livelihood improvement. After consulting with relevant ministries and institutions, local authorities, and local communities in accordance with relevant laws and procedures, the Royal Government of Cambodia may permit development and investment activities in this zone, in accordance with the request from the Ministry of Environment.
4. *Community zone*: management area(s) for socio-economic development of the local communities and indigenous ethnic minorities and may contain existing residential lands, paddy field and field garden, or slash and burn agriculture (Chamkar).

All clearances and bulldozing for the purposes of building of public infrastructures is strictly prohibited within the core zone and conservation zone. However, clearance can be carried out in the sustainable use zone and community zone with approval from the Royal Government of Cambodia (Law on Protected Areas, article 36).

The Ministry of Environment develops a National Protected Area Strategic Management Plan (NPASMP) (Law on Protected Areas, article 15), which shall be renewed at least every 5 years, and shall be put up for consultation (Law on Protected Areas, article 17). NPASMP shall include objectives of the conservation, rehabilitation, prevention, suppression of illegal activities, and sustainable use of natural resources and ecosystems within an individual protected area. The current status of natural resources and ecosystems within each zone including flora and fauna species, genetic resources and socio-cultural aspects shall also be included in the management plan. Alongside this, recommended actions for successful achievement of the protected area objectives and the steps for implementation of management plan for priority protected areas shall be included (Law on Protected Areas, article 16). The most recent National Protected Areas Strategic Management Plan 2017-2031 can be found here:

https://redd.unfccc.int/uploads/54_2_cambodia_nat_protected_area_strategic_plan_eng_27_jul_2017.pdf

The General Department of Administration for Nature Conservation and Protection shall develop an action plan for each individual protected area to be approved by the MOE and in accordance with the NPASMP. The Process for the development of the Plan shall involve coordination and consultations with stakeholders (Law on Protected Areas, article 18).

Amongst others, the content for such plans shall include (Law on Protected Areas, article 19): a detailed description of the activities allowed within each zone and accompanied by zoning category; as well as description of the available natural resources, their uses and land use status within the protected area; and a description of prohibited activities that run counter to the protected area management objectives.

Restrictions and protected species within the permanent forest reserve

It is prohibited to harass or harm any endangered, rare or common wildlife species or its habitat (article 49), and unless authorized by Ministry of Agriculture, Forestry and Fisheries in special circumstances, it is prohibited to harvest the following forest products and NTFP within the permanent forest reserve (Forest Law, article 29):

1. Tree species whose diameter is smaller than the minimum diameter allowed to harvest;
2. Rare tree species;
3. Tree species that local communities have tapped to extract resin following tradition;
4. Trees that yield high-value resin.

Rare tree species was expected to be defined through a Prakas but this has not yet been issued as of September 2020. In its absence, FA officials and others use a list of agreed endangered or rare tree species, described as 'luxury timber species (first quality)' from 2000, based on a 1986 regulation for the classification of wood qualities (Global Witness, 2015).

Special action has been taken on Siamese Rosewood (*Dalbergia cochinchinensis*) when the government in 2013 banned its collection, storage and processing for domestic use and export (Order No 2BB, 2013).

Forest that is defined as religious by local communities, living within or near the forest shall be protected, as protection Forest observes religious, cultural and/or conservation purposes. It is prohibited to harvest any spirit trees, which may be specially marked and shall be identified in a Community Forest Management Plan (Forest Law, article 45).

Description of risk

- The zoning of protected areas has been proceeding slowly, with only four PAs zoned to date (November 2019). As a result, in large parts of the country, the sustainable use zones and community zones within PAs that are eligible to be used as part of the timber supply have not yet been identified. Meanwhile, in 2017, MoE issued a new "Zoning Guideline for Protected Areas in Cambodia." This Guideline contains additional technical information about the characteristics of the four zoning classifications that may be applied in PAs. However, this provides only general notions about the actual procedures and standards by which the actual zoning process is to be conducted.
- In those PAs where zoning has been completed, the process has been conducted primarily through the efforts of international conservation NGOs, and with only sporadic engagement of local communities. Since 2018 donor funding has decreased and as a result the activities on protected area zoning activities are limited (Personal communication 1, July 2019). However, with the Zoning Guideline in place, and with a PA Management Plan Guideline under development, MoE has identified PA zoning as a priority in the next several years. Meanwhile, alleged inconsistencies in the zoning process of protected areas has led to deforestation in protected areas (ODC, 2015), and ELCs/SLCs are allocated without regard to existing zoning, or zones are retrofitted without clear scientific or logical basis (Forest Trends, 2015).
- Workers, managers and loggers have been deployed to harvest, collect and transport luxury timber inside protected areas, wildlife sanctuaries and permanent state forest reserves, outside the economic land concession areas. This violates articles 28, 29 and 30 of the Forest Law 2002 (The NGO Forum on Cambodia, 2015).
- Over the years there has been documented cases of extensive illegal logging of luxury timber within PAs in Cambodia (Global Witness, 2015; Koemsoeun, 2018). There are reports of the violation of the logging of protected species (Suy, 2018), as well as logging within Protected Areas, particularly by politically connected individuals and companies, often working in collaboration with local officials. This timber may be directly exported or in many cases taken to ELCs for processing.
- Poaching is related to illegal logging activities. While the authorities are aware of poaching, they do not act as they are complicit to the illegal logging (The NGO Forum on Cambodia, 2015).
- A manager of Conservation International at O Kasiep ranger station in the Veun Sai- Siem Pang Conservation Area highlighted that all luxury timber had been logged in the area and a large reduction in wildlife. He said he was unable to protect the area alone, as the criminals were powerful people. He tried to report the poaching to the Government, but no action was taken (The NGO Forum on Cambodia, 2015).
- Logging of resin trees takes place even though they are protected by the Forest Law, 2002 (Work, et al., 2016). In many cases, middlemen working for powerful individuals or companies, including ELC concessionaires threaten resin tree owners in order for them to agree to accept an unsatisfactory price for logging of their resin trees. This widespread practice which threatens an important source of local livelihoods. In addition, the resin trees are normally and naturally grown near to riverbanks and water body areas, where buffer zones for water streams and water body prevention are required by law to prevent logging activities.

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.9.6. Risk designation and specification

Specified risk

1.9.7. Control measures and verifiers

PAs (and their adjacent Biodiversity Conservation Corridors BCCs) need proper zoning and management plans. These processes should be conducted in a transparent manner and provide local communities greater participation and management authority within the PA system.

Mitigation of this risk will require on-site verification to verify harvest areas and ensure that timber is not sourced from protected areas or sites.

1.10. Environmental requirements

National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.

1.10.1. Applicable laws and regulations

- Forest Law 2002, Chapter 1, article 4, Chapter 5, article 19. Available at: <http://extwprlegs1.fao.org/docs/pdf/cam50411.pdf>
- Sub-decree on Environmental Impact Assessment Process, and Annex of sub-decree No 72 ANRK. BK. Date 11 August 1999. Available at: <https://data.opendevelopmentmekong.net/en/dataset/af85d2c5-4104-4df2-ac5d-b5ac360caa96/resource/88f37045-5db0-4f00-935c-3d3fc70458f4/download/a8861734-4040-484d-b7b9-d48958f29e58.pdf>
- Law on the Protection of the Environment and Natural Resource Management 1996, articles 6, 8.
- The Cambodian Code of Practice for Forest Harvesting (1999).

1.10.2. Legal authority

- Ministry of Environment (MoE) to review and evaluate Forest Concession Management Plan (enforces environmental law and regulations).
- Ministry of Agriculture, Forestry and Fisheries (MAFF) to approve Forest Concession Management Plan. And to ensure that the Forest Concession Management Plan and the Environmental and Social Impact Assessment are available for public comment prior to the issuance of Harvest Permit for forest products and NTFP.
- Forestry Administration (FA) to develop Management plan for protection forest.
- Ministry of Agriculture, Forestry and Fisheries to approve Management plan for Protection Forest.

1.10.3. Legally required documents or records

- Report of Environmental and Social Impact Assessment.

1.10.4. Sources of information

Government sources

- Forestry Administration (2008). *Country paper on Forestry Outlook 2020 - Phnom Penh, Kingdom of Cambodia*. [online]. Available at: <https://data.opendevlopmentmekong.net/dataset/8ce5be24-ece8-4db2-811a-01fc72f4d5e8/resource/f3357124-2596-4bc0-92d9-3c3a3253e7f2/download/75a3f52c-f44d-49fe-a2c9-a3125747b5f4.pdf> [Accessed 1 February 2019].

Non-Government sources

- Work, K. C. (2016). *Fiction and Forest Loss in Cambodia*. [online]. Mosaic Field Report. Available at: https://www.academia.edu/37282750/fiction_and_forest_loss_in_cambodia

1.10.5. Risk determination

Overview of legal requirements

The Environmental Law (1996) and Environmental Impact Assessment Guidebook (2012) require an independent capable team to develop the EIA report for the government ministries, MOE and MAFF, to review and endorse, if acceptable.

Economic Land Concessions

- Larger projects (including forest operations) shall include an Environmental and Social Impact Assessment in their Forest Concession Management Plan (Forest Law, article 19) in accordance with the sub-decree on Environmental Impact Assessments No 72. A project sponsor shall conduct an initial Environmental Impact Assessment (IEIA) (sub-decree 72, article 6), and a full EIA if a project tends to cause serious harm (sub-decree no. 72, article 8) is required for:
 - concession forests (including plantations on agricultural land) \geq 10,000 hectares;
 - Logging operations \geq 500 ha; and
 - Land covered by forests if \geq 500 ha.

Conversion

- Establishing projects for quarrying, soil and sand excavation, mining, and other natural resources extraction, conducted within the permanent forest reserves, shall require a prior study-evaluation from MAFF, and if causing adverse social or environmental effects, a Social and Environmental Impact Assessment shall be conducted (Forest Law, articles 4, 35).
- Authorization by the Royal Government of Cambodia shall be given, which shall state the protection and restoration measures of the site for quarrying, soil and sand excavation, mining, and other natural resource extraction. The holder of such rights shall be responsible to:
 1. Avoid causing or aggravating soil erosion, damage to growing vegetation, damage to the hydrologic systems and water quality;
 2. After project completion, to restore the site of quarrying, soil and sand excavation, mining, or other natural resources extraction, to their original state within the time frame set by the permit.

Annual Bidding Coupes (ABCs)

- One of the main objectives of The Cambodian Code of Practice for Forest Harvesting is to prevent soils from heavy erosion during and after logging activities. The code specifically states that logging is not allowed along water streams at least 50 m on either side of the waterways. Road building activities shall not cause erosion. Although large-scale forest concession timber harvest been suspended, the Code is implemented for the existing Annual Bidding Coupes (Forestry Administration, 2008, p. 19).

Description of risk

- Lack of EIA and ESIA development prior to operations of ELCs have been detected, together with fertilizer run-off into the local water supply (Work, et al., 2016, p. 11-12).
- Damage and lack of rebuilding roads.
- Lack of required buffer zones (Work, 2016) causing damage to the environment (muddy streams and rivers).
- Approval of logging by MAFF despite EIA and ESIA indicating negative social and environmental consequences.

Despite its widespread legal applicability, the EIA process is significantly flawed, with EIAs often being performed after project approval, or not at all, or with no quality assessment, and typically with little to no long-term monitoring. The entire process of EIA requires a focus on the means of implementation, monitoring and enforcement.

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.10.6. Risk designation and specification

Specified risk

1.10.7. Control measures and verifiers

Mitigating this risk will require on-site evaluation of how the company is meeting EIA requirements, as well as evaluation of the contents of the EIA document.

1.11. Health and safety

Legally required personal protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements for machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.

1.11.1. Applicable laws and regulations

- Labour Law (1997). 13 March 1997. Chapter VIII, Health and Safety of Workers. Available at: <http://sogi.sithi.org/admin/upload/media/121-htjccec1370826550.pdf>
- Royal Kram (Code) NS/RKM/0902/018. 25 September 2002. law on social security schemes for persons defined by the provisions of the Labour Law. Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/71910/96916/F1873020753/KHM71910.pdf>

- Prakas (proclamation) on Determination of Contribution Rate and Formality of Paying Contributions for the Health Care Scheme (MoLVT no. 220 K.B/Br.K of 2016). 2016-06-13 (KHM-2016-R-103418). Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103418/125606/F-238680648/KHM103418%20Eng.pdf>
- Ministry of Labour and Vocational Training Prakas no. 037/14 K.B/Kr.K on the Establishment of a Single Labour Inspector Team. 2014-02-21 (KHM-2014-R-96891). Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96891/114709/F-1121429324/KHM96891%20Eng.pdf>
- Sub-decree concerning the Establishment of National Social Security Fund (Sub-decree no. 16 OrNkr. BK). 2007-03-02 (KHM-2007-R-89833). Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/89833/103293/F-1091257045/KHM89833%20Eng.pdf>
- Prakas on Health Care Benefits (MoLVT no. 109 KB/Br.K). 2016-03-17 (KHM-2016-R-103421). Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103421/125611/F1759295532/KHM103421%20Eng.pdf>
- Sub-decree concerning the Establishment of Social Security Scheme on Health Care for Persons Defined by the Provisions of the Labour Law (Sub-decree no. 01 OrNkr.BK of 6 January 2016). 2016-01-06 (KHM-2016-R-103419). Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103419/125607/F-1229514826/KHM103419%20Eng.pdf>
- Cambodian Code of Practice for Forest Harvesting (1999). Ministry of Agriculture, Forestry and Fisheries; Royal Government of Cambodia (only hard copy is available).

1.11.2. Legal authority

- The Ministry of Labour and Vocational Training
- Departments at the capital, provincial and municipal levels

1.11.3. Legally required documents or records

- Not applicable

1.11.4. Sources of information

Government sources

- Ministry of Agriculture, Forestry and Fisheries Royal Government of Cambodia (1999). *The Cambodian Code of Practice for Forest Harvesting*.

Non-Government sources

- ODC (2015a). *Labour*. [online]. Open Development Source. Available at: <https://opendevelopmentcambodia.net/topics/labor/>
- Phallack, K. (2012). *Introduction to Cambodian Law Cambodian Labour and Employment Law*. [online]. Chapter 12. Pp. 287-311. Available at: http://www.kas.de/wf/doc/kas_31083-1522-2-30.pdf?120720080516
- Personal communication 1: Independent consultant within forest governance, January 2019.

1.11.5. Risk determination

Overview of legal requirements

The labour law sets out rules for health and safety of workers and work-related accidents.

All establishments and workplaces must be set up to guarantee the safety of workers. Machinery, mechanisms, transmission apparatus, tools, and equipment must be installed and maintained in the best possible safety conditions. Management of technical work utilising tools, equipment, machines, or products used must be organised properly for guaranteeing the safety of workers (article 230).

Enterprises and establishments covered by the labour law must provide primary health care to their workers (article 238). The legislation furthermore covers how to deal with accidents. Health insurance is not compulsory for employees under the labour law. However, the employer is required to join the National Social Security Fund under the 2002 Law on Social Security. The Law on Social Security states employers and workers are required to pay contribution to the National Social Security Fund. The Cambodian National Security Fund is broken into three components including: occupational risk work injury or occupational disease; health care; and pension scheme.

However, for the first phase of the implementation of the Law on Social Security only the occupational risks component is applied, and the employer is required to pay the contribution for work injury scheme which is 0.8% of the assumed wage based on the employee's monthly wage (Phallack 2012, p. 307).

Description of risk

The safety and health of workers is a concern in every sector. While the health and safety standards in the garment and textile industry is well covered by media, the situation in the forestry sector is less well documented (ODC, 2015).

Although the Cambodian Code of Practice for Forest Harvesting (1999, pages 50–61) clearly states that safety and health of timber harvest workers should be respected, anecdotal evidence indicates that forest and timber workers are almost exclusively employed on an informal basis and there is almost no implementation to ensure health and safety on the ground (personal communication 1).

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.11.6. Risk designation and specification

Specified risk

1.11.7. Control measures and verifiers

The key point for this indicator is that there needs to be a rigorous monitoring and enforcement system in place for health and safety issues in the forestry sector. The system Better Factories program undertaken in the garment sector in collaboration with the ILO may be an interesting model.

Mitigation of this risk shall include on-site evaluation of the employer to provide legally required health and safety measures to workers.

1.12. Legal employment

Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withheld by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large-scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.

1.12.1. Applicable laws and regulations

- The Civil Code of Cambodia (2008). 31 August 2008. Available at: http://sithi.org/temp.php?url=law_detail.php&id=201
- Labour Law (1997). 13 March 1997. Available at: <http://soqi.sithi.org/admin/upload/media/121-htjccec1370826550.pdf>
- Law on Trade Unions (2016). 17 May 2016. NS/RKM/0516/007. Available at: http://sithi.org/admin/upload/law/trade_union_law_eng.pdf
- Decree 38 on Contract and Other Liabilities of October 28, 1988. Available at: http://www.bigpond.com.kh/Council_Of_Jurists/Commerce/com001g.htm

1.12.2. Legal authority

- Ministry of Labour and Public Work;

1.12.3. Legally required documents or records

- Employment card
- Employment contract
- Payroll ledger

1.12.4. Sources of information

Non-Government sources

- Phallack, K. (2012). *Introduction to Cambodian Law Cambodian Labour and Employment Law*. [online]. Cambodian Labour and Employment Law. Chapter 12. Pp. 287-311. Available at: http://www.kas.de/wf/doc/kas_31083-1522-2-30.pdf?120720080516 [Accessed 1 February 2019].
- ODC (N.Y.). *Labor Laws*. [online]. Available at: <https://opendevelopmentcambodia.net/tag/labor-laws/> [Accessed 1 February 2019].
- Fidh (2011). *Land Cleared for Rubber Rights Bulldozed -The impact of rubber plantations by Socfin-KCD on indigenous communities in Bousra, Mondulkiri*. Cambodia. October 2011, No 574a.

1.12.5. Risk determination

Overview of legal requirements

The labour law sets out rules for employment conditions such as apprenticeships, labour contracts, collective labour agreements, general working conditions, specific working conditions

for agricultural work, placement and recruitment of workers, union freedom and worker representation in the enterprise, settlement of labour disputes, strikes and lockouts, labour administration, and the labour advisory committee.

An employment contract shall be in place. The Labour Law provides the basic legal form and scope of a labour contract in Cambodia and details the rights and obligations of the employer and workers. Providing further guidance are Decree 38 on Contract and Other Liabilities of October 28, 1988 and the Civil Code. These two laws set out the basic rules of contract. Furthermore, the Civil Code provides a guideline for implementing a labour contract according to provisions of the Labour Law (Phallack, 2012).

Every person of Cambodian nationality working as a worker for any employer is required to possess an employment card (article 32). The employment card shall contain work for which the employer has been contracted for, the duration of contract, the agreed wages and the method of payment, as well as the successive contracts (article 34). The employment card is drawn up and issued by the Labour Inspectors at the request of the worker who shall present an identity card issued by the competent authorities and a certificate of employment issued by his employer (article 35).

Every employer shall keep a payroll ledger and keep it for three years after it has been closed (article 39) and shall include information about each worker employed by the enterprise on work performed, wage and holidays (article 40).

Collective agreements (labour law, chapter V) shall determine the working and employment conditions of workers and to regulate relations between employers and workers as well as their respective organisations. The collective agreement can also extend its legally recognised roles to trade union organisations.

The wage must be at least equal to the guaranteed minimum wage (article 104). For work of equal conditions, professional skill and output, the wage shall be equal for all workers subject to this law, regardless of their origin, sex or age (article 106).

The minimum wage is set by a Prakas of the Ministry in charge of Labour, after receiving recommendations from the Labour Advisory Committee (article 107). There are no such Prakas for the forestry sector.

The allowable minimum age for wage employment is set at fifteen years, and eighteen years for hazardous work.

Partial payment in kind is allowed but cannot be imposed (article 198). It is possible to pay part of the salary in rice (article 198-200). The payment in rice covered in the preceding article can be replaced by a payment in cash if the parties so agree. Payment in cash is the most common practice.

Workers and employers have the right to establish unions (Labour Law, chapter XI, article 266 and Law on Trade Unions, article 5).

Description of risk

In many cases labourers do not understand labour law and relevant regulation. In this regard, they either accept or do not accept job offers depending on their viewpoints of risks and benefit of the jobs.

There is almost no, if not at all, records of contractual labour in timber transport and timber processes because majority of timber business in the country are family or small scales. The timber business teams are established by verbal agreement and much of time obtain payment on case-by-case result-based deliverables instead of paper contracts.

In addition, and in practice, government officials normally do not require owners of the timber business teams or groups to show paper contracts of their labourers. The owners of the timber

business teams or groups would internally and bilaterally solve problems in case of sickness of labourers.

A study from 2011 showed that workers in an ELC had complained about precarious working conditions and incidents of physical exhaustion. The precarious working conditions are related to the fact that 80% of the workforce were day labourers (Fidh, 2011).

Law enforcement of labour law in the country is weak.

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.12.6. Risk designation and specification

Specified risk

1.12.7. Control measures and verifiers

Similar to the previous indicator, a rigorous monitoring and enforcement system needs to be put in place for labour standards in the forestry sector. To date there has been very little consistent action in this regard.

THIRD PARTIES' RIGHTS

1.13. Customary rights

Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.

Forest Law considers rights of customary people to the same degree as indigenous peoples rights. In some cases, newcomers (normally whole families) from provincial towns to the communities, living as far as 5 km from natural forestlands (article 30, Forest Law), have used customary rights to harvest timber and NTFPs for family consumption, as allowed by law. Either indigenous or newcomers can utilize timber and NTFP for daily family consumption.

In this regard the indicators for *Customary rights (1.13)* and *Indigenous/traditional people rights (1.15)* are considered the same, as legislation and risks are similar.

1.13.1. Applicable laws and regulations

- Forest Law (2002), chapter 9, article 40-47. Available at: <http://extwprlegs1.fao.org/docs/pdf/cam50411.pdf>
- Environmental Code Book 1, table 2 Book 2 table 3.
- Sub Decree No. 79 on Community Forestry management issued Dec 02, 2003.
- MAFF's Prakas No. 219 on Community Forestry Guideline (July 2006). Available at: https://theredddesk.org/sites/default/files/iii_prakas_-_english_v2_0_proofread_0.pdf
- Sub-decree no. 146 on Economic Land Concessions (2005). Chapter 2, article. 4. Available at: http://www.cambodiainvestment.gov.kh/Sub-Decree-146-on-economic-land-concessions_051227.html
- Sub-decree on Procedures of Registration of land of Indigenous Communities (2009). No 83 ANK.BK, June 09, 2009. Kingdom of Cambodia.

1.13.2. Legal authority

- The Minister of Ministry of Agriculture, Forestry and Fisheries
- Ministry of Environment

1.13.3. Legally required documents or records

- Not applicable

1.13.4. Sources of information

Non-Government sources

- The NGO Forum on Cambodia (2015). *Logs and Patronage: Systematic Illegal Logging and the Destruction of State Forests and Protected Areas in Rattanakiri and Stung Treng Provinces, Cambodia*. [online]. Available at: <http://ngoforum.org.kh/files/285f754ecbc4fd24ead730ef44cf9521-Logs-and-Patronage-Eng.pdf> [Accessed 1 February 2019].
- Work, C., Tistan, A., and Rong, V. (2016). *Community Coherence Assessment. Prey Lang Forest Protection Communities*. [online]. Danmission and Mosaic Project. Available at: https://www.academia.edu/37282749/DANMISSION_AND_MOSAIC_PROJECT_Community_Coherence_Assessment_Prey_Lang_Forest_Protection_Communities [Accessed 1 February 2019].
- Ironside, J. (2017). *The Recognition of Customary Tenure in Cambodia*. MRLG Thematic Study Series #5. Vientiane: Mekong Regional Land Governance project.

1.13.5. Risk determination

Overview of legal requirements

Customary rights in permanent forest reserve

- Customary rights can be practiced within the permanent forest reserve. Practices conducted within or close to protected areas are governed by the Law on Nature Protection Areas, while the remaining areas are governed by the Forest Law, 2002.
- Customary use is defined in the Forest Law, article 40. Local communities living within or near permanent forest reserves, and who do not have a community title still has traditional user rights for traditional customs, beliefs, religions and living, and no permit is required to carry out these activities (Forest Law, article 40).
- The traditional user rights include the following (Forest Law, article 40):
 1. The collection of dead wood, picking wild fruit, collecting bees' honey, taking resin, and collecting other forest by-products;
 2. Using timbers to build houses, stables for animals, fences and to make agricultural instruments;
 3. Grass cutting or unleashing livestock to graze within the forests;
 4. Using other forest products and NTFP consistent with traditional family use;
 5. The right to barter or sell NTFP shall not require a permit, if those activities do not cause significant threat to the sustainability of the forest. The customers or any third party who has collected NTFP from local communities with the purposes of trade, in a

manner consistent with the provisions of this law, shall have the permit for NTFP transportation after royalty and premium payments.

- A local community cannot transfer any of these traditional user rights to a third party (Forest Law, article 40).
- The Forest Law, article 15 requires the concessionaires to ensure their forest operation does not interfere with customary user rights, where it takes place on land property of indigenous communities; and customary access and user rights practiced by communities residing within or adjacent to forest concessions.

Community Consultation Committee

- MAFF shall cooperate with the local authorities and all concessionaires to establish a permanent Community Consultation Committee. This shall be used as a coordinating mechanism for discussion and consultation on all issues of joint concern between the concessionaire and communities inside, or in the vicinity of the concession, for the purpose of protection and preservation of traditional rights of local communities. The Community Consultation Committee members shall be elected among the chairpersons of the Village Development Committees or from the chairpersons of social organizations (ANUKRET on Forest Concession Management, 5.5).

Community rights in relation to ELCs

- ELCs can only be established on land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected. Public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality shall also be conducted (Sub-decree no. 146, article 4).

Community forest

- Any part of the permanent forest reserve can be allocated to a community living inside or near a forest area in the form of a community forest (Forest Law, article 41). A community forest can be allocated for 15 years, with possibility for extension.
- Local communities who manage a community forest have the right to harvest forest products and NTFPs within the demarcated forest area, as stated in the community forest agreement and consistent with the Community Forest Management Plan.
- Shifting cultivation practices are prohibited in natural intact forest in the permanent forest reserves, but local communities who traditionally practice shifting cultivation may conduct such practices on community land registered with the State. The FA authorises these activities as part of a Community Forest Management Plan. Forestlands reserved for shifting cultivation shall be identified by Sub-decree no. 83, 2009.
- The Community Forest Management Plan shall be prepared by the local community and approved by the Cantonment level of the Forestry Administration. The Plan shall be sent to the central level of the Forestry Administration and be reviewed every five years or earlier if needed.
- Planted or natural forest established as a community forest by a local community shall be consistent with a Community Forest Management Plan, and subject to the technical supervision and assistance of the Forestry Administration.
- The rules for establishment, management and use of a community forest are determined by sub-decree 219 on Community Forestry Management 2006.
- Ministry of Agriculture, Forestry and Fisheries shall recognize the religious forest of local communities, living within or near the forest, as protection forest serves religious, cultural or

conservation purposes. It is prohibited to harvest any spirit trees, thus they may be specially marked and shall be identified in a Community Forest Management Plan (Forest Law, article 45).

Customary rights in protected areas

- Communities living near protected areas, which are under the responsibility of the Ministry of Environment (MoE) have the right to traditional use and practices of natural resources, local customs, beliefs, and religions within a sustainable use zone defined by the MoE.
- The Ministry of Environment can allocate parts of sustainable use zone to communities residing within or adjacent to a protected area as the community protected area. The concerned community protected area shall enter into an agreement with the General Department of Nature Conservation and Protection Administration and the agreement shall be valid for a period not exceeding fifteen years and can be revoked if the community acts against the terms of the agreement and management plan (Law on Nature Protection Area, article 25).
- Access to traditional uses of natural resources and customary practices of local community and indigenous ethnic minority groups on family scale may be allowed within sustainable use zone and conservation zone (Law on Nature Protection Area, article 22).
- Shifting cultivation shall not be permitted in the core zone or the conservative zone in the protected areas (Law on Nature Protection Area, article 24).
- Local communities and indigenous ethnic minorities do not automatically have rights to clear or work forestlands in community protected areas, nor to practice agricultural farming, or to claim the land title, or to sell, lease, pawn, donate, share, divide or transfer the areas under its own management to any person or legal entity (Law on Natural Protected Area, article 26).
- The community protected area shall develop a natural resources management plan which shall be reviewed and approved by the General Department of Nature Conservation and Protection. The Plan shall be reviewed at least every third year. The Plan and the community protected area development activities shall be integrated into the commune development plan (Law on Nature protection Area, article 28).

Settlement

- Unless otherwise authorized by the RGC, it shall be prohibited to establish a new settlement along public or forest roads in the permanent forest reserve (Forest Law, article 31).

Description of risk

- Risk of companies removing all luxury trees but not providing development and not re-building ruined roads (The NGO Forum on Cambodia, 2015).
- Conflicts are present between villagers and logging companies. There are cases of community leaders attempting to protect the forests by filing complaints at all levels of government, up to the prime minister, but have received no positive response; in contrast, armed forces were sent to support the companies cutting down the trees (The NGO Forum on Cambodia, 2015).
- Risk that policies and programs erode the customary tenure rights of those communities dependent on forest resources, rendering them unable to receive any legally recognized use or control right over lands that are essential for their livelihoods (Ironsides, 2017).
- Indigenous communities protested to prevent companies from logging and repeatedly submitted petitions to the government without success. Community members were reportedly beaten and threatened by armed forces protecting the logging companies (The NGO Forum on Cambodia, 2015). Reports after a company moved in to occupy a forest in

2013, villagers were not allowed to enter. Department of Environment guards were stationed at the entrance of Virachey National Park, preventing community members, journalists or others from entering. People were not allowed to travel near the company’s headquarters and Villagers were also not allowed to work for the company (The NGO Forum on Cambodia, 2015).

- In general, enforcement of laws in all kinds, Forest Law, Protected Area Law, and Land Law, is very weak. The law enforcement tends to benefit those in positions of power or with significant wealth, if conflicts between the third-party rights (Customary People) and timber companies takes place (The NGO Forum on Cambodia, 2015).

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.13.6. Risk designation and specification

Specified risk

1.13.7. Control measures and verifiers

A number of measures can increase the validity of local communities’ customary tenure claims, among them decentralized land management administration, simplifying the communal land titling system for indigenous peoples, strengthening customary tenure systems within cancelled ELCS, strengthening grievance review mechanisms, and implementing a system of stronger natural resource use and management within the current collaborative management reform process.

1.14. Free, prior and informed consent

Legislation covering "free, prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.

1.14.1. Applicable laws and regulations

Not applicable.

FPIC is currently not addressed anywhere within Cambodian law or policy; however, Cambodia is a signatory to the UN Declaration on the Rights of Indigenous People (UNDRIP).

The draft Environmental and Natural Resource Code of Cambodia mentions the concept of FPIC several times. Article 18, The Principle of Free, Prior, And Informed Consent for Indigenous Communities, specifically states that "Any proposed activity or project that may affect indigenous peoples’ land or other resources, especially in relation to the development, use, or exploitation of natural resources, must receive the indigenous peoples’ free, prior, and informed consent". See Environment and Natural Resources Code of Cambodia. Revised 11.1th Draft (as of September 2020). The code is currently under internal review at MoE. FPIC is a topic of internal debate during this review, as a result the final handling of FPIC within the code unclear.

1.15. Indigenous/traditional peoples' rights

Legislation that regulates the rights of indigenous/traditional people as far related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.

- This indicator is similar to indicator number 1.13 of this risk assessment.
- Forest Law considers rights of customary people to the same degree as indigenous people. In this regard the indicators customary rights (1.13) and Indigenous/ traditional people rights (1.15) are considered the same, as legislation and risks are similar.
- Recent policy developments and implementation have greatly eroded the value and effectiveness of the communal land title for indigenous peoples that is established by the 2001 Land Law (Ironsides, 2017).

TRADE AND TRANSPORT

1.16. Classification of species, quantities, qualities

Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally, or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).

1.16.1. Applicable laws and regulations

- Forest Law (2002, article 54). Available at: <http://extwprlegs1.fao.org/docs/pdf/cam50411.pdf>
- Customs Law (2007).
- Prakas (Ministerial Decree/ Circular) shall be issued by MAFF detailing the Minimum Diameter allowable cut of all commercial tree species (Forest Law, article 29).

1.16.2. Legal authority

- MAFF to classify and, if needed, to re-classify minimum diameter allowable cut of commercial tree species (Forest Law, article 29).
- Forestry Administration should provide technical knowledge on all commercial tree species to MAFF for approval.
- Forestry Administration to update endangered status of all commercial tree species; and submit lists of the tree species to MAFF for approval

1.16.3. Legally required documents or records

- Log Book A.
- Transport Permits PC-1 (Permit de Conduire-1): transport of logs from the stockpile to a defined processing sawmill.
- Transport Permit PC-2 (Permit de Conduire-2): transport timber products from sawmills for the domestic markets.
- PC-IMEX): Transport permit to allow timber and NTFP exported or imported.

1.16.4. Sources of information

Non-Government sources

- The NGO Forum on Cambodia (2015). *Logs and Patronage: Systematic Illegal Logging and the Destruction of State Forests and Protected Areas in Rattanakiri and Stung Treng Provinces, Cambodia*. [online]. Available at: <http://ngoforum.org.kh/files/285f754ecbc4fd24ead730ef44cf9521-Logs-and-Patronage-Eng.pdf> [Accessed on 1 February 2019].

1.16.5. Risk determination

Overview of legal requirements

- Forest products and NTFP that are harvested shall be assessed for quality and quantity by the Forestry Administration official at the log landing within the annual forest coupe, prior to transport from the forest (Forest Law, article 54).
- The assessment of the quantity and quality of the forest products and NTFP shall be recorded in the "Book A" with the approval of the Head of the Forestry Administration (Forest Law, article 54).
- Species shall be classified according to their timber quality (luxury timber; grade no. 1–3). The list for grading timber can be found in The NGO Forum on Cambodia (2015), annex 14.

Description of risk

- The PC-1 is only a summary of the timber being transported based on quality and volumes without reference to physical identification to log numbers, species and dimensions. The PC-1 can be issued for more than one truckload thus the quantity registered on a PC-1 may not match the volumes being transported on a specific truck. A log list is required to be attached as an associated document to the PC-1 and it can serve to trace the material on a specific truck to the licensed harvest area. The lack of clear identification of logs and associated volumes between the PC-1 and the log list can prohibit verification of the physical material against the documents to control against abuse (TWG-FR, 2014, Pp. 82-83).

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.16.6. Risk designation and specification

Specified risk

1.16.7. Control measures and verifiers

Implementation and enforcement of classification species has been extremely lax and subject to corruption. It has not been possible to develop mitigation actions at this time, this is a work in progress and any suggestions will be gratefully received as part of the consultation process.

1.17. Trade and transport

All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.

1.17.1. Applicable laws and regulations

- Forest Law (2002), Chapter 13, article 68. Available at: <http://extwprlegs1.fao.org/docs/pdf/cam50411.pdf>
- Custom Law (2007).

1.17.2. Legal authority

- Ministry of Agriculture, Forestry and Fisheries
- Forestry Administration
- The Head of Forestry Administration:
 - Permit to set transport quota for forest products and by-products from concession and production forest not under a concession;
 - Permit to transport forest products and by-products intended for export-import
- The Chief of Cantonment of the Forestry Administration has the authority to issue:
 - Permit to set transport quota of forest products and by-products originating from a community forest.
- The Chief of Division of the Forestry Administration shall have the authority to issue:
 - Any permits to transport forest products and by-products originating from the area under his/her division jurisdiction.

1.17.3. Legally required documents or records

- Transport Permits PC-1 (Permit de Conduire-1): transport of logs from the stockpile to a defined processing mill.
- Transport Permit PC-2 (Permit de Conduire-2): transport timber products from mill sites to the domestic markets.
- PC/B (also referred to as PC-IMEX): transport permit to allow timber and NTFP exported or imported.

1.17.4. Sources of information

Government sources

- Ministry of Agriculture, Forestry and Fisheries.
- Forestry Administration.

Non-Government sources

- EU promotes laundering of looted Cambodian Wood, available at: <https://www.khmertimeskh.com/553267/eu-promotes-laundering-of-looted-cambodian-wood/> [Accessed on 31 July 2019].
- Timber transportation resumed by Try Pheap Timber Company, available at: <https://kohsantepheapdaily.com.kh/article/881787.html?fbclid=IwAR0FOgQ6MbXye8syWsEvG7W8kH7BBhaqcp9FSKVANmHOjYn-V3n95K6SJSI> [Accessed on 8 July 2019].
- About 98 m³ of rosewood timber was seized from two stock piles of Mondulkiri province, north-eastern Cambodia, along the border to Vietnam, available at: <https://kohsantepheapdaily.com.kh/article/896934.html> [Accessed on 30 July 2019].
- Wood class No. 1 of approximately 28.3 m³ of illegal timbers seized in Mondulkiri province, December 2018 (Vietnam border areas), available at: <https://www.phnompenhpost.com/national/illegal-timber-seized-mondulkiri-province>
- The NGO Forum on Cambodia (2015). *Logs and Patronage: Systematic Illegal Logging and the Destruction of State Forests and Protected Areas in Rattanakiri and Stung Treng Provinces, Cambodia*. [online]. Available at:

<http://ngoforum.org.kh/files/285f754ecbc4fd24ead730ef44cf9521-Logs-and-Patronage-Eng.pdf> [Accessed on 1 February 2019].

- Technical Working Group on Forestry Reform (2014). *Understanding timber flows and control in Cambodia in the context of FLEGT*. [online] Available at: <http://www.euflegt.efi.int/documents/10180/211477/Understanding+timber+flows+and+control+in+Cambodia+in+the+context+of+FLEGTc/03c0c17a-5dd0-43d6-9ccc-b4f661ba7463> [Accessed on 1 February 2019].

1.17.5. Risk determination

Overview of legal requirements

Transport Permits

The transport of logs and timber requires a transport permit issued by the local Forestry Administration office.

- All forest products and NTFP transported within the country shall be accompanied by a transport permit issued by the Forestry Administration (Forest Law, Art 69).
- All forest products and NTFP must be moved from the forest to the stockpile at the permanent log landing within one month after harvest and shall be accompanied by a transport permit issued by the Forestry Administration (Forest Law, Art 69).
- All forest products and NTFP that have been stocked anywhere in Cambodia shall be accompanied by an authorized transport or stock permit issued by the Forestry Administration (Forest Law, Art 69).
- Transportation or stockpiling of forest products and NTFP without a required permit or not in compliance with the terms and restrictions stated in the permit(s) is illegal (Forest Law, article 74).
- In case of auction of seized timber a transport permit will be issued by Forestry Administration once bidding is finished.

The following Transport Permits are used within Cambodia:

- Transport permits PC-1 (Permit de Conduire-1) for logs to be taken from the stockpile to a defined processing mill.
- Transport permit PC-2 (Permit de Conduire-2) to transport timber products from mill sites to the domestic markets.
- PC/B (also referred to as PC-IMEX): transport permit to allow timber and NTFP exported or imported.

Hammer-stamp marks

The Cambodian Forestry Administration hammer-stamps are created in order to:

- Mark legal logs prior to transport from the forest log landing; or
- Mark illegal logs that are evidence of forest offenses.

The Forestry Administration hammer-stamp mark shall have a round shape engraving with abbreviated letters R.K. (read as Ro. Kar.), and an identification number beneath the abbreviation to identify each hammer-stamp. MAFF shall make the imprint of the hammer-stamp and record it as an archive at the Ministry of Interior and at the Provincial or Municipal Courts (Forest Law, article 65).

Cambodian Forestry Administration hammer-stamp shall be stamped clearly on logs by the Forestry Administration officer, as follows (Forest Law, article 66):

- *Logs permitted to be transported* from the forest stockpile to the final destination shall possess four (4) or more Cambodian Forestry Administration hammer-stamp marks, both at the base and at the end of the log; and
- *Illegal logs* impounded or detained by the Forestry Administration shall possess three (3) Cambodian Forestry Administration hammer-stamp marks in a triangular position as follows: the base, middle, and the end of the log.

All trees in the permanent forest reserve that are permitted to be felled shall have a mark of the Cambodian Forestry Administration hammer-stamp by sworn Forestry Administration officials.

Rules governing the use of this hammer-stamp shall be determined by the Prakas of MAFF.

Private hammer-stamp

Any forest concessionaire or forest coupe owner may have his/her private hammer-stamp for his/her personal use on timber products; however, the mark from this private hammer-stamp shall have different shape, size, and letters from those of the Forestry Administration hammer-stamp and before its use, the forest concessionaire or forest coupe owner shall make an imprint of the hammer-stamp for approval by the Head of Forestry Administration, and shall register the imprint at the appropriate Forestry Administration Office (Forest Law, article 67).

Hours for harvesting and transport

- It is prohibited to fell trees and collect or transport forest products and NTFP within the permanent forest reserve from eight (8:00) PM to five (5:00) AM, even with a harvest permit issued under the provisions of the Forest Law (Forest Law, article 68).

Description of risk

- Transport of timber and NTFP is not well regulated. Mill production is not well regulated and there is no formal requirement to report input of logs and output of wood products to the Forestry Administration or the Ministry of Environment. In general, there are found to be significant inconsistencies in transport and input data, indicating poor consistency of data and records (TWG-FR, 2014).
- The PC-1 is only a summary of the timber being transported based on quality and volumes without reference to physical identification of log numbers, species and dimensions. The permit (PC-1) can be issued for more than one truckload thus the quantity registered on a PC-1 may not match the volumes being transported on a specific truck. A log list is required to be attached as an associated document to the PC-1 and it can serve to trace the material to a specific truck from the licensed harvest area. The lack of clear identification of logs and associated volumes between the PC-1 and the log list can prohibit verification of the physical material against the documents to control against abuse (TWG-FR, 2014, Pp. 82-83).

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.17.6. Risk designation and specification

Specified risk

1.17.7. Control measures and verifiers

While there are sporadic checkpoints along key timber transportation routes, serious enforcement commitment is needed to crack down on widespread violations of labelling and permitting requirements. It has not been possible to develop mitigation actions at this time. This

is a work in progress and any suggestions will be gratefully received as part of the consultation process.

1.18. Offshore trading and transfer pricing

Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personnel involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.

1.18.1. Applicable laws and regulations

- Custom Law (2007), available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=2ahUKEwiWg4Trjd7jAhWIL48KHVPBCMYQFjABegQIAxAC&url=http%3A%2F%2Fwww.customs.gov.kh%2Fwp-content%2Fuploads%2F2015%2F10%2FCustoms-Law-and-Regulations-EN-GDCE.pdf&usg=AOvVaw0tj9bOs6aXja8gnLWfZfMO>
- Prakas no. 986 MEF.P. (Prakas 986). 10 October 2017.

1.18.2. Legal authority

- General Department of Taxation (GDT);
- General Department of Customs and Excise;
- Ministry of Economy and Finance
- Ministry of Commerce

1.18.3. Legally required documents or records

- Invoices, must be kept for ten years;
- Companies must disclose related-party transactions when filing their annual Corporate Income Tax return (CIT) and provide relevant transfer pricing documents;
- PC-IMEX.

1.18.4. Sources of information

Non-Government sources

- DFDL (2018). *Cambodia Tax Alert Transfer Pricing Regulations*. [online]. Available at: <https://www.dfdl.com/resources/legal-and-tax-updates/cambodia-tax-update-transfer-pricing-regulations/> [Accessed on 1 February 2019].
- PWC (2017). *Cambodia introduces transfer pricing rules (2nd Issue)*. [online]. PricewaterhouseCoopers (Cambodia) Ltd. Available at:

<https://www.pwc.com/kh/en/publications/newsbrief/kh-newsbrief-october-tp-2017.pdf>
[Accessed on 1 February 2019].

1.18.5. Risk determination

Overview of legal requirements

Prakas 986 defines the transfer price as 'the price of goods, services, or property charged between related parties. Transfer pricing (TP) refers to setting the value of transactions (e.g. the sale or purchase of goods, royalties or interest etc.) between related parties using the most appropriate transfer pricing methodology. The transactions must be done in accordance with the arm's length principle. Entities which transact with related parties must prepare and maintain transfer pricing documentation setting out related-party transactions and the transfer pricing methodologies used to justify an arm's length value. Documents related to the transactions, such as invoices, must be kept for ten years and companies must disclose related-party transactions when filing their annual corporate Income Tax Return (CIT); and provide relevant transfer pricing documents if required by the General Department of Taxation (GDT) (PWC, 2017; DFDL, 2018).

"Prakas 986 is effective from the signing date of 10 October 2017, with no clear indication of the first fiscal year to be applied. However, considering many Cambodian enterprises have fiscal years ending 31 December and the annual corporate tax filing deadline is 3 months from fiscal year end, the assumption is that both the transfer pricing form and documentation should be completed by 31 March" (DFDL, 2018).

Failure to comply with the above requirements would lead to:

- Transfer pricing adjustments, which would result in additional tax.
- Tax penalties, which range from 10% to 40% of the additional tax for violations of the Law on Tax (LoT) according to article 133 of the LoT, plus an interest charge of 2% on late payment.
- A lawsuit filed by the local tax administration against enterprises for charges stipulated under the LOT.

Description of risk

At the time of writing of this indicator (January 2019) the legislation has only recently been implemented, and it is too early to evaluate the level of implementation. However, taking into account that there is a general risk of non-payment of tax (see 1.5-1.7), export tax and general custom requirements (see 1.19), the risk is considered to be specified based on a precautionary approach.

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.18.6. Risk designation and specification

Specified risk

1.18.7. Control measures and verifiers

It has not been possible to develop mitigation actions at this time; this is a work in progress and any suggestions will be gratefully received as part of the consultation process.

1.19. Custom regulations

Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).

1.19.1. Applicable laws and regulations

- Law on Customs, 2007. NS/RKM/0707/017. Available at: <http://www.customs.gov.kh/wp-content/uploads/2015/05/Law-on-Customs.pdf>
- Forest Law, 2002, article. 72, 73.
- Sub-decree no. 131 On Forest and Non-Timber Forest Products Allow For Export And Import. Available at: http://www.cambodiainvestment.gov.kh/wp-content/uploads/2012/03/Sub-Decree-131-on-Forest-and-Non-Timber-Forest-Products-Allow-For-Export-and-Import_061128.pdf
- Sub-decree no. 209 on the Enforcement of the list of prohibited and restricted goods. Available at: <http://www.customs.gov.kh/wp-content/uploads/2015/05/Anukrit-209-on-Enforcement-of-the-List-of-Prohibited-and-Restricted-Goods.pdf>

1.19.2. Legal authority

- Royal Government of Cambodia
 - For determining annual quotas for export
- The Minister of Ministry of Agriculture, Forestry and Fisheries (Forest Law, article 26)
 - to approve import-export quota for timber and NTFP
- The Head of Forestry Administration (Forest Law, article 26):
 - To issue permit to transport timber and NTFP intended for export-import
 - To issue permit or visa on the export-import license for timber and NTFP.
- The Ministry of Commerce
 - Issuing of export license for timber products and NTFP after signature from the head of the Forestry Administration (Forest Law, article 73)
 - Extending export license (Forest Law, article 73).
- Ministry of Finance and Economy
 - General Department of Customs and Excise.

1.19.3 Legally required documents or records

- Export licence issued by the Ministry of Commerce with visa issued by the head of the Forestry Administration (sub-decree no. 131, article 7).
 - The visa allows for export of timber
 - Export license is issued for international trade (tax, royalties, premiums)
- Mills that produce timber product must obtain a PC-IMEX for the import or export of wood products.

1.19.4 Sources of information

Non-Government sources

- O'Byrne, B., Marazzi, A., Sassoon and Chansopheakvatey, V. (2018). *Timber Trade to Vietnam Up – Again*. [online]. Available at:

- <http://www.phnompenhpost.com/national/timber-trade-vietnam-again> [Accessed on 1 February 2019].
- Davies, J. (2018). *Is the EU Complicit in the Destruction of Cambodia's Forests?* *Ecologist*. [online]. Available at: <https://theecologist.org/2018/apr/26/eu-complicit-destruction-cambodias-forests> [Accessed on 1 February 2019].
 - EIA (2017). *Repeat Offender - Vietnam's Persistent Trade in Illegal Timber*. *Environmental Investigation Agency*. [online]. Available at: <https://drive.google.com/viewerng/viewer?url=https://eia-international.org/wp-content/uploads/Repeat-Offender.pdf> [Accessed on 1 February 2019].
 - EIA (2018). *Serial Offender - Vietnam's Continued Imports of Illegal Cambodian Timber Forests*. *Environmental Investigation Agency*. [online]. Available at: <https://eia-international.org/wp-content/uploads/eia-serial-offender-web.pdf> [Accessed on 1 February 2019].
 - Global Witness (2015). *The Cost of Luxury - Cambodia's Illegal Trade in Precious Wood with China*. [online]. Available at: <https://www.globalwitness.org/en/campaigns/forests/cost-of-luxury/> [Accessed on 1 February 2019].
 - The NGO Forum on Cambodia (2015). *Logs and Patronage: Systematic Illegal Logging and the Destruction of State Forests and Protected Areas in Rattanakiri and Stung Treng Provinces, Cambodia*. [online]. Available at: <http://ngoforum.org.kh/files/285f754ecbc4fd24ead730ef44cf9521-Logs-and-Patronage-Eng.pdf> [Accessed on 1 February 2019].
 - O'Bryne, B and Marazzi Sassoon, A. and Chansopheakvatney, V. (2018). *Timber trade to Vietnam up – again*. *The Phnom Penh Post*. 8 February 2018 [online]. Available at: <https://www.phnompenhpost.com/national/timber-trade-vietnam-again> [Accessed 10 September 2020].
 - Technical Working Group on Forestry Reform (2014). *Understanding Timber Flows and Control in Cambodia in the Context of FLEGT*. [online]. Available at: <http://www.euflegt.efi.int/documents/10180/211477/Understanding+timber+flows+and+control+in+Cambodia+in+the+context+of+FLEGTc/03c0c17a-5dd0-43d6-9ccc-b4f661ba7463> [Accessed on 1 February 2019].
 - Zsombor, P. (2016). *Timber trade Continues Despite Ban, Data Shows*. *The Cambodian Daily* [online]. 31 May 2016. Available at: <https://www.cambodiadaily.com/news/timber-trade-continuing-despite-ban-data-shows-113237/> [Accessed 10 September 2020].

1.19.5. Risk determination

Overview of legal requirements

- All processed and non-processed timber products from plantations (planted forest) can be exported (Sub-decree 131, article 1).
- Production forest not under concession shall be managed with the priority use to meet domestic annual needs for timber products and NTFP. These products may be exported only upon showing that the supply is higher than the local demand (Forest Law, article 20). The export shall be consistent with the annual quota set by the Royal Government (Forest Law, article 72).
- Production from legal sources of natural forest can be exported (Sub-decree no. 131, article 2), but needs to be processed prior to export. Logs (debarked or not); crude/ round or rough sawn timber; squared logs with a thickness or width of more than 25 cm, even when

smoothed; and firewood and charcoal from natural forests cannot be exported (article 3 of the Sub-decree no. 131).

- Illegally logged timber seized by the authorities and sold through bidding can be allowed for export (Technical Working Group on Forestry Reform, 2014). See more about seized timber under 1.4 of this report.
- In 2016 a ban for wood export to Vietnam was announcement by the National Military Police Commander (Zsombor, 2016). Timber export ban, to Vietnam and anywhere else, has been declared by the official paper called Declaration No. 01 BB of the government of Cambodia, once in 1999, 2004, 2006, and in 2012. It is also widely mentioned in news media (Zsombor, 2016; O'Byrne, 2018; Davies, 2018).
- An export license is required for all timber and NTFP products, except products following traditional style. The products following traditional style are either timber or non-timber forest products (NTFP) used for traditional consumption, normally for use by ethnic minority families living near or inside forest domain. The main difference of traditional style forest products to non-traditional style is that they are for non-commercial and commercial purposes. For instance, timbers (and NTFP) for house construction and agricultural tools of the ethnic people are traditional style. The license shall be issued by the Ministry of Commerce with a supportive letter signed by FA/MAFF (sub-decree no. 131, article 7) (The NGO Forum on Cambodia, 2015).
- Import and export of forest and NTFP shall go through government official ports (sub-decree no. 131, article 11).
- Timber products and NTFP for export shall be inspected during loading into containers and sealed by the Forestry Administration official prior being transported to customs warehouse and stockpile area. Ministry of Agriculture, Forestry and Fisheries shall issue a Prakas to determine the sample of the seal to be attached to the outside of the container holding the goods for export (Forest Law, article 73).

Description of risk

- The export of timber from ELCs is cumbersome (many fees, permits and signatures are to be obtained). Shipments shall be stated in advance making it difficult to react quickly to market demand. Export taxes and fees depend on the product to be exported (stakeholder consultation, February 2018).
- There are several reports and news articles reporting illegal export of timber from Cambodia, and specifically going to Vietnam and China (EIA, 2017; EIA, 2018; The NGO Forum on Cambodia, 2015; Davies, 2018; Global Witness, 2015; O'Byrne, 2018).
- Discrepancy between Cambodian export data and import data in receiver country, indicating potential export of illegally logged timber or timber export not declared to customs (The NGO Forum on Cambodia, 2015; EIA, 2018). Furthermore, a risk of timber crossing borders without being recorded, neither in Cambodia nor the importing country.
- Imports from Cambodia to Vietnam has been declared by Vietnam, while the Cambodian government has not acknowledged this export (Davis, 2018; O'Byrne *et al.* 2018) indicating a discrepancy in the official data and the actual export. Furthermore, Vietnamese companies underestimate their value of timber to avoid paying import taxes, implying the values of import from Cambodia might be greater than the official records in Vietnam (Davies, 2018).
- Vietnam Customs' records of imports from Cambodia may underestimate volumes by 10 percent, as Vietnamese Customs allow a 10 percent margin of error in declared volumes. In 2017, EIA investigators were informed by Vietnamese importers in Gia Lai that all importers very accurately measure their logs as a standard procedure before submitting import declarations which can reduce the real volume by 10 per cent. Exploiting such loopholes

could add a further 18,000 m³ of timber to the officially declared 2017-18 dry season trade (EIA, 2018).

- In 2011, a discrepancy was recorded in trade statistics between Cambodia Forestry Statistics and FAO reporting reflecting an important problem with statistical data collection and national reporting over a longer period (Technical Working Group on Forestry Reform, 2014).
- A case study published by NGO Forum 2015, showed falsely prepared documentation for export. This was defended by sections of the Government due to those involved with financial interests in exporting timber. Licenses and authorization papers giving the company the right to harvest NTFP and transport processed timber up to 100,000 m³ were not passed by legislative institutions. There was no public process of bidding or community consultation; rather decisions were made secretly the NGO Forum on Cambodia (2015).
- Governmental officials and border authorities involved in illegal logging through bribes,
 - Risk of illegal timber products being hauled across the border with the complicity of the both the government of Cambodia and Vietnam (Davies, 2018).
 - Illegal logging operations in Cambodia are coordinated by powerful tycoons with close connections to senior members of the government, and by members of the armed forces and government.
 - Involvement of Cambodian police at border gates, with the involvement of bribes (several cases).
 - Vietnamese companies having made agreements with members of Cambodia's Border Army Unit 23 to construct a road into the area and extract timber. This information has since been confirmed by Cambodian media reports (EIA, 2018).
 - EIA documented a 'road of tolls' in Phnom Prich Wildlife Sanctuary. Trucks travelling this road pass four permanent ranger stations and more than 20 checkpoints manned by soldiers and military police, all nominally responsible for policing illegal logging (EIA, 2018).
 - In EIA 2018 it was reported that illegal timber going through official, as well as unofficial border crossings.
 - The formal quota system described in repeat offender appears to have ceased, resulting in a reduced imperative for Vietnamese traders to 'legalize' their timber into Vietnam. Without the need to pay import taxes in Vietnam, EIA identified Vietnamese timber traders now offering timber 'without papers'.
- Risk of export of timber not allowed for export according to Sub-decree No. 131 (rare/ luxury timber, logs and squared logs greater than 25 m width).
 - A case study published by NGO Forum 2015 into a specific company showed that workers were deployed to cut luxury timber, such as Kranhoung, Beng, Neangnuon and Thnung/Thnong (*Pterocarpus edatus*), and export to foreign countries (The NGO Forum on Cambodia, 2015).
 - Vietnamese import declarations accessed by EIA 2018 revealed 8 percent (14,791 m³) of imported wood was Thnung (Burmese padauk/ *Pterocarpus macrocarpus/ pedatus*). This species is graded as a luxury timber according to "Decision no. 050, dated 12 August 1986, on classification of wood qualities and allowed minimum diameter in breast height (DBH in cm) when cutting and prohibited to harvest" (EIA, 2018).
 - Global Witness reported expensive export of luxury timber in 2015. The containers controlled by custom authorities were approved for export despite that such export is in violation with the legal framework and does not have a valid export permit (Global Witness, 2015).

- Global Witness (2015) furthermore reported illegal export of Siamese Rosewood – Hongmu, which is also on the CITES list as well as being listed as luxury timber (See 1.20).
- Photos taken during an investigation for the NGO Forum 2015, showed that Thnung/Thnong timber bigger than 25 cm width limit was cut for export (The NGO Forum on Cambodia, 2015). Global Witness has also recorded this issue for another company (Global Witness, 2015).
- Export of whole logs in contravention with legislation (EIA, 2018).
- Bypassing official border crossings/official port of exit.
 - In EIA 2017 it was reported trucks capable of carrying up to 20 m³ of logs transporting timber to Vietnam, were avoiding the official border gates and Cambodian Custom officials (EIA, 2017).
 - Estimate of only 10 per cent of trucks from Phnom Prich to Vietnam crossed via official crossing points (EIA, 2018).
 - In 2017-2018, there were large proportions of illegally harvested timber crossing into Vietnam without passing through official Cambodian ports of exit. This is to avoid Cambodian export laws and taxes, or the substantial bribes required to have these ignored by Cambodian enforcement agencies. Such smuggling meant timber often did not enter Vietnam through official border gates, instead entering via tracks through Vietnamese rubber plantations adjacent to them (EIA, 2018).
 - Trade data reveals that Vietnamese importers are regularly declaring the Cambodian port of export as “Other” or “Cambodia”, indicating no official crossing was used in Cambodia. From October 2017 to March 2018 this amounted to a total of 55,106 m³ of logs and sawn timber, suggesting about 30 per cent of the trade during this period was through informal crossings without inspection by Cambodian officials (EIA, 2018).
 - It is likely not all Cambodian timber entering Vietnam through unofficial crossings is registered by Vietnam Customs, due in large part to the illicit nature of the trade and a desire to avoid required taxes and bribes (EIA, 2018).
 - Investigation by EIA (2018) showed many Vietnamese traders are offering Cambodian wood in Vietnam on social media platforms and other marketing mediums; with the possibility to buy wood both with and without documentation for two different prices; one for the timber with Vietnamese customs, tax and transport papers and one without these documents. Where buyers are willing to take timber without papers, that timber may never pass through Vietnamese Customs and never enter Vietnamese trade statistics (EIA, 2018). This enables sellers to use any papers they may have to legitimize other batches of unregistered timber or sell the papers to other companies that need to launder their wood into Vietnam (EIA, 2018).

Thus, the risk of illegal export of timber in Cambodia is high.

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.19.6. Risk designation and specification

Specified risk

1.19.7. Control measures and verifiers

Recent government crackdowns have reduced illegal exportation to some extent. However, these crackdowns are sporadic and selective in their targeting, failing to tackle the issues on a systemic basis. Further suggestions will be gratefully received as part of the consultation process.

1.20. CITES

CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not for example the area from which CITES species are imported).

1.20.1. Applicable laws and regulations

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973). Signed at Washington, D.C., on 3 March 1973. Available at: <https://cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf>
- Sub-decree on International Trade and Endangered Animal and Plant Species (2006). Sub-decree No 53 ANK/BK on CITES dated 29 May 2006 by RGC.
- Royal Kram No. NS/RKM/0112/002 on Promulgation of the Law on Adoption of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (R/L/IntAgr/Khm& Eng/ 2012) (Royal Gazette, Year 12, No. 02, dated January 8, 2012).
- Penalties and enforcement power are provided in:
 - Forest Law (NS/RKM/0802/016) (31/08/2002)
 - Protected Area Law (2008)

1.20.2. Legal authority

- Management authority: Ministry of Agriculture, Forestry and Fisheries (MAFF).
- Scientific authority: MoE, Forestry Administration (FA), and Fisheries Administration.
- Enforcement authority: MAFF/FA.

1.20.3. Legally required documents or records

- CITES import/export permit

1.20.4. Sources of information

Non-Government sources

- BNG Legal (2012). *Primary Law Update, January 2012*. [online]. Available at: <http://bnlegal.com/cn/wp-content/uploads/2013/05/120423-PLU-Jan.pdf> [Accessed on 1 February 2019].
- CITES (N.Y). *Checklist of CITES Species*. [online]. Available at: <http://checklist.cites.org/#/en> [Accessed on 1 February 2019].
- CITES (N.Y) a. *What is CITES?*. [online]. Available at: <https://www.cites.org/eng/disc/what.php> [Accessed on 1 February 2019].
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- EIA (2016). *Red Alert: How Fraudulent Siamese Rosewood Exports from Laos and Cambodia are Undermining CITES Protection* [online]. Environmental Investigation Agency. Available at: <https://eia-international.org/wp-content/uploads/EIA-Red-Alert-FINAL.pdf> [Accessed on 1 February 2019].
- EIA (2013). *Routes of Extinction: The corruption and violence destroying Siamese rosewood and the Mekong*. [online]. The Environmental Investigation Agency. Available at: <https://eia-international.org/wp-content/uploads/Routes-of-Extinction-FINAL-lo-res.pdf> [Accessed on 1 February 2019].
- Forest Legality Initiative (2016). *Cambodia – Risk Tool*. [online]. Available at: <https://forestlegality.org/risk-tool/country/cambodia> [Accessed on 1 February 2019].
- Global Witness (2015). *The Cost of Luxury, Cambodia’s Illegal Trade in Precious Wood with China*. [online]. Available at: <https://www.globalwitness.org/en/campaigns/forests/cost-of-luxury/> [Accessed on 1 February 2019].

1.20.5. Risk determination

Overview of legal requirements

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival (CITES, N.Y.).

Cambodia has ratified the CITES convention in national law, and trade in species listed on the CITES appendixes I, II and III, shall be regulated in order not to prevent further threats to the survival of these species (BNG Legal, 2012).

The import-export and re-export of any species listed in the CITES appendices require the prior granting of an import-export permit from the Scientific Authority (Forestry Administration) and Management Authority (MAFF) in Cambodia. An import-export and re-export permit is valid for a period of six months from the date which it was granted (BNG Legal, 2012).

The timber species *Dalbergia* spp. (Rosewood) and *Diospyros ferrea* (Black Ebony) are both listed on CITES Appendix II (CITES checklist), which means that trade must be controlled in order to avoid utilization incompatible with their survival (CITES, N.Y.).

Description of risk

- In 2016 the EIA reported that Cambodia had not conducted any inventory of Rosewood – explaining why export was not based on credible data, and most likely illegally harvested (2016).
- Between June 2013 and December 2014, a volume of 12,202 m³ of *Dalbergia cochinchinensis* was exported with a CITES Permit. As Rosewood is already protected under Forest Law no 35, 2002 as Priority 4 in the list of endangered or rare species, Rosewood cannot be legally harvested in Cambodia (see indicator 1.9 in this report). None of the Rosewood exported had been seized and sold through a legal process of seized timber (EIA, 2016).
- Based on the point above, the EIA report considered it more likely that the permits were illegitimately issued (EIA, 2016). In 2014 EIA received clarification from the Cambodian management authorities that no CITES export permits had been issued. However, in the same period Vietnam had issued re-export permits for Rosewood claimed to be from Cambodia, this information supports the presence of laundering of Rosewood in Vietnam (EIA, 2013). At a meeting with local NGOs on 27 February 2018 it was confirmed by participants that timber on the CITES list was being exported to Vietnam with a CITES permit.

- According to the EIA (2013), Cambodia prohibits harvest and trade in Siamese Rosewood (*Dalbergia cochinchinensis*) but awards exclusive contracts to timber barons for illegally seized precious wood, including Siamese Rosewood cut from controversial Economic Land Concessions that are decimating the country's forests. Investigations by EIA have shown that such auctions are corrupt, and paperwork generated by them is used to launder far larger volumes of equally illegal timber into international markets (EIA, 2013).
- In general, there is a high level of illegal harvest within Cambodia (see indicator 1.4), and Rosewood in particular has been highlighted in many cases (EIA, 2013; EIA, 2016) and exported through other countries such as, Vietnam to China (EIA, 2013).

Due to the above points specified risk is determined for CITES.

Risk conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.20.6. Risk designation and specification

Specified risk

1.20.7. Control measures and verifiers

- Avoid buying CITES listed species unless it can be confirmed that a full inventory of the species has been done at a national level, and that a sustainable harvesting level has been set.
- Ensure that relevant stakeholders (e.g. scientists and NGOs) can agree to the harvesting levels being set at a sustainable level compared to the national inventory.
- Collect CITES permit for the species sourced and confirm with the authorities that the permit is authentic.

1.21. Legislation requiring due diligence/ due care procedures

Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and/or the keeping of trade-related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.

1.21.1. Applicable laws and regulations

There is no legislation in place covering due diligence/due care procedures in relation to ensuring legality of timber harvesting and trade. This indicator is therefore not applicable for Cambodia.

Annex I: Timber source types

The table **Timber Source Types in Cambodia** identifies the different types of sources of timber it is possible to find in the country.

'Timber Source Type' is a term used to describe the different legal sources of timber in a country, in order to allow a more detailed specification of risk. The Timber Source Type is used to clarify:

- Which forest types timber can be sourced from legally;
- What the legal requirements are for each source type, and
- If there are risks related to certain source types and not others.

The Timber Source Type can be defined by several different characteristics. It may be based on the actual type of forest (e.g. plantation or natural), or other attributes of forests such as ownership, management regime or legal land classification. In this context Timber Source Types are defined and discerned using the following characteristics:

- a) **Forest type** - refers to the type of forest such as plantation or natural tropical forest, or mixed temperate forest. Often the clearest differentiation is between natural forest and plantations.
- b) **Spatial scale (region/area)** - relating to meaningful divisions of a nation. However, in some cases the assessment may be carried out at national level where it allows for the risk assessment to establish risk at a meaningful level. E.g. a small country with uniform legislation and a uniform level of risk in all areas of the country, as national level assessment may be enough. In cases where there are significant differences in the legal framework or legality risks between different types of ownership (e.g. public forest, private forest, industrial forest), between different type of forest (e.g. natural forest and plantations) and/or between different geographical regions the conformance risk evaluation shall specify these differences when specifying the risk and apply the appropriate control measures.
- c) **Legal land/forest classification** – refers to the legal classification of land. Focus is on land from where timber can be sourced, and this could entail different legal categories such as e.g. permanent production forest, farmland, protected areas, etc.
- d) **Ownership** – ownership of land may differ in a country and could be state, private, communal etc. Ownership of land has impacts on how land can be managed and controlled.
- e) **Management regime** – independently of the ownership of the land, the management of forest resources may differ between areas. Management may also be differentiated as private, state, communal or other relevant type.
- f) **License type** – licenses may be issued to different entities with a range of underlying requirements for the licensee. A license might be issued on a limited area, limited period of time and have other restrictions and obligations. Examples could be a concession license, Harvest Permit, community forestry permit etc.

TIMBER SOURCE TYPES IN CAMBODIA

Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit type	Description of source type
Natural forest	Cambodia	State Public Land, production forest	State	Private companies	Harvest Permit (this permit is referred to as an Annual Bidding Coupe, ABC)	<p>Timber from Annual Bidding coupes (ABCs).</p> <p>There are currently no known ABCs operating on Cambodia.</p> <p>The Annual Bidding Coupes (ABCs) are regulated by the Forestry Administration under the Forest Law. In theory, ABCs are implemented to ensure local wood demand can be met, in practice, limited supply is available.</p> <p>ABCs do not allow for direct conversion of forests but include management planning and forest management requirements (World Resources Institute, 2016). Normally, ABCs are issued to Cambodian entities, not international companies.</p>
		State Private Land	State	Private companies	Harvest Permits	<p>Conversion timber from establishing Economic Land Concessions (ELCs)</p> <p>Timber harvest is made by separate entity from ELC companies. The ELC companies have only rights to develop the ELC areas after forest areas have been converted.</p>

	State Private Land	State	Private companies	Harvest Permits	<p>Conversion timber from infrastructure development (e.g. hydro-power dams, national and provincial road areas).</p> <p>Similar to forest conversion for ELC, timber harvest and forest clearance are made by separate entities.</p>
	Not Applicable	State	Private companies	<p>Transport Permit</p> <p>(the permit is given to auction winner, normally Cambodian entity, to transport seized timbers to their target processing sites).</p>	<p>Confiscated illegal timber</p> <p>Seized timber.</p> <p>Any drifted, stranded or sunk logs, unmarked, and any unclaimed timbers shall be seized as State property, and placed for public auction (Forest Law, article 74).</p> <p>Illegal timbers that are confiscated from within the areas of Protected sites are made by MOE whereas illegal timbers confiscated from transportation and hidden depots outside the areas of Protected sites are made by MAFF.</p>
	State Public Land/ State Private Land/ Private Land	State Public Land (Sub-decree on community forest management, article 3)	Communities	Community Forest Agreement with Management Plan (CFMP)	Timber/ NTFP from Community forestry areas
	State Public Land	State	Private companies	Concession agreement	<p>Natural Forest Concessions</p> <p>There are currently no Natural Forest Concessions allocated in Cambodia.</p>

						<p>Natural forest concessions activities have been suspended since 2002 up to now (January 2019).</p> <p>A Natural Forest Concession can be allocated if a sustainable forest management plan is approved.</p> <p>As Natural Forest Concessions are currently not allocated, their legislation and associated legality risks will not be evaluated in this risk assessment.</p>
Plantation		State Private Land, Production Forest	State	Private Companies	ELC contract	<p>Economic Land Concessions (ELCs)</p> <p>Since 2014, ELCs can be awarded for agro-industrial purposes (including forest plantations) for maximum lease durations of 50 years.</p> <p>They cannot exceed the legal limit of 10,000 hectares and can be revoked or cancelled by the government when legal and contractual requirements are not complied with.</p> <p>The RGC has converted huge areas of State Public Land to State Private Land and then granted those State Private Lands to various potential companies in order to implement agro-industrial development business/ purposes such as rubber plantations, sugar cane and other plantations.</p> <p>Harvesting is supervised by MAFF.</p>
		State Private Land	State	Private	Land certificate and Land tenure title	<p>NTFP and Timber from Social Land Concessions</p>

					<p>Social Land Concessions are for residential use and/or family farming. Social Land Concessions have many purposes going beyond timber production, but plantations can be established and enter the commercial timber chain, but is considered to be a minor source of timber.</p> <p>After five years of tenure of State Private Land, the Social Land Concessions can be converted to private land; and forest plantations, if any, become private forest plantation.</p>
	Private Land	Private	Private	Certificate received after registration of forest land	<p>Tree plantations on private land</p> <p>Forest plantation cover has been increasing significantly in recent years. However, the newly established plantations have not yet reached harvesting age. Therefore, the timber supply from this source is very limited.</p> <p>Under the 2010 National Forest Program, a target was set of 0.5 million hectares of plantations annually. In 2012 about 85,000 ha of tree plantations were established (Ministry of Environment, 2018).</p>
	State Forest Land	State	Private (communities, individuals, households/ Forestry Administration	Agreements for granting rights to plant trees	<p>Tree planting on State Land</p> <p>Planting of trees on State Land.</p>

About LIFE Legal Wood



LIFE Legal Wood is a project with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The project is funded by the LIFE programme of the European Union.