



Technical Report

Assessment of Existing Fund Mechanisms under Cambodian Law for a National REDD+ Fund

Cambodia, 2014



Disclaimer

This report was prepared by Gillian Duggin, an independent consultant, and does not necessarily represent the views of the national REDD+ taskforce, the Forestry Administration, the General Department For Administration of Nature Conservation And Protection, the UN-REDD Programme or its participating agencies.

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Acronyms

ANSAB	Asia Network for Sustainable Agriculture and Bioresources
BNDES	Brazilian Economic and Social National Development Bank
CCBA	Climate, Community and Biodiversity Alliance
CCCA	Cambodia Climate Change Alliance
CCD	Climate Change Department
CCTT	Climate Change Technical Team
CDM	Clean Development Mechanism
CFUG	Community Forest Users Group
COFA	Multi-stakeholder Guidance Committee
COP	Conference of the Parties
CS Fund	Commune/Sangkat Fund
FA	Forestry Administration
FCTF	Forest Carbon Trust Fund
FECOFUN	Federation of Community Forest Users, Nepal
FIA	Fisheries Administration
FONAFIFO	National Forestry Financing Fund
GDANCP	General Department for Administration of Nature Conservation and Protection
GG	Green Growth
GHG	Greenhouse Gas
GIS	Geographic Information System
GLCC	General Law on Climate Change
GRIF	Guyana REDD+ Investment Fund
ICCTF	Indonesia Climate Change Trust Fund
ICIMOD	International Centre for Integrated Mountain Development
LCDS	Low Carbon Development Strategy
M&E	Monitoring and Evaluation
MAFF	Ministry of Agriculture, Forestry and Fisheries
MLVT	Ministry of Labour and Vocational Training
MoE	Ministry of Environment
MoEF	Ministry of Economy and Finance
MRV	Measurement, Reporting and Verification
NCCC	National Climate Change Committee
NCGG	National Council on Green Growth
NFDF	National Forestry Development Fund
NFMS	National Forest Monitoring System
NFP	National Forest Programme
NGO	Non-governmental Organization
NSSF	National Social Security Fund
PA	Protected Area
PAS	Sustainable Amazon Plan
PES	Payment for Ecosystem Services
PNMC	National Plan for Climate Change
PPCDAM	Plan of Action for the Prevention and Control of Deforestation in the Amazon
REDD+	Reducing Emissions from Deforestation and Forest Degradation, and the Role of Conservation, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks in Developing Countries
SIS	Safeguard Information System
UNDP	United Nations Development Programme
UNFCCC	United Nations Framework Convention on Climate Change
VCS	Voluntary Carbon Standard

1 Background and Context

1.1 Introduction

The purpose of this Report on the Assessment of Existing Fund Mechanisms under Cambodia Law (the Report) is to support the first step in a process for establishing a National REDD+ Fund for Cambodia. With recent progress made on REDD+ under the UNFCCC, and the progression of Cambodia's own REDD+ 'readiness' activities, it is timely for Cambodia to consider potential options for a REDD+ Fund at the national level. A REDD+ Fund is designed to enable access to, and act as a single focal point or entity, for receiving international and domestic funding for REDD+ activities from a range of sources, and to act as a mechanism for the distribution and sharing of benefits amongst relevant stakeholders. As such, it will be a key institutional component for Cambodia to progress to national REDD+ implementation.

The main objective of the Report is to review and assess existing fund mechanisms and opportunities under Cambodian law, to identify possible avenues for establishing a National REDD+ Fund in Cambodia. The review incorporates both a national level legal analysis, and a review of the international context, as well as international experiences related to National REDD+ funding mechanisms. Based upon this review and assessment, the Report provides recommendations for a possible avenue and approach for a REDD+ fund in Cambodia, taking into account the range of domestic and international influences.

The Report is set out in four main parts:

- A review of background information on REDD+ as relevant to Cambodia, including the international UNFCCC policy setting, current Cambodian REDD+ and climate change policies, programmes and projects;
- A review of available Cambodian laws and decrees relevant to a fund mechanism, In particular, focusing on potential opportunities under Cambodian Law for proceeding with a REDD+ Fund, whether through existing or new legal arrangements, or external to the legal system (through a project-based trust fund);
- A review of international experience with regards to the establishment of National REDD+ Funds, focusing on REDD+, forest and climate change funds; and
- The identification of potential options, guiding factors for analysing these different options, and recommendations on most appropriate option for Cambodia.

A number of issues were considered when analysing the various funds (both national and international) that are examined for the purposes of this Report. These issues include details on their objectives, legal basis, governance arrangements, fund distribution modalities, and matters relevant to fiduciary standards, accountability and transparency. Where applicable, approaches to results-based (or performance-based) payments are also highlighted, given the central relevance of this for REDD+ financing. However, it is important to note that as this Report is focused on identifying possible approaches and legal options for establishing a National REDD+ Fund in Cambodia, it is not a comprehensive analysis of detailed design elements. These issues are considered to provide general insight into decision-making with regards to the overarching approach for establishing a fund and its likely structure. Careful, detailed analysis, together with widespread and intensive stakeholder consultation, would be required to develop the detailed design of a fund, once this overarching approach and basic structure has been determined.

1.2 International Context: REDD+ and the UNFCCC

The international context, in particular the UNFCCC funding modalities for REDD+, must play strong and overarching guiding role in establishing a National REDD+ Fund if Cambodia intends to access international finance under a future UNFCCC REDD+ compliance mechanism. While REDD+ has been

on the UNFCCC agenda since 2005, a formal mechanism for results-based funding has yet to be agreed upon and operationalized by Parties. Nevertheless, recent decisions of the Conference of the Parties (COP) have provided overarching guidance with respect to future financing modalities.

1.2.1 UNFCCC and REDD+ Financing

Decisions from COP16 have requested developing country Parties, in the context of financial support, to develop a national strategy or action plan, a national forest reference emission level, a robust and transparent national forest monitoring system, and a system for providing information on how the adopted safeguards are being addressed¹. Both market and non-market finance has been agreed upon as potential approaches.²

Recent progress at COP 19 in Warsaw (2013) included a focus on REDD+ financing. Decisions at COP 19 emphasised that finance for REDD+ should be 'results-based' and should come from entities including the Green Climate Fund, which is to play a key role. COP 19 also reinforced that REDD+ funding should come from a variety of sources, that results-based actions should be fully measured, reported and verified for results-based finance, and that developing countries will have to provide information on how they meet safeguards before they can receive the payments.³ In addition, the range of current and potential REDD+ financing agencies were requested to better coordinate funding and support, to ensure that developing countries are able to follow one set of rules and procedures, aligned to those of the UNFCCC (on matters such as fiduciary standards and safeguards). An 'information hub' is to be established to act as a unified point for participating countries to submit information on the results of REDD+ activities, and associated payments, to increase transparency.

The COP 19 decisions also invited interested parties to designate a 'national entity or focal point' to act as liaison with the UNFCCC secretariat and relevant bodies under the convention⁴ on the coordination of support for implementation of REDD+ actions. Participating countries can nominate this entity to obtain and receive results-based payments, consistent with any operational modalities of the financing entities providing them with support for full implementation of REDD+ actions with emphasis on information sharing and coordination⁵.

These decisions provide overarching guidance for countries including Cambodia when establishing national level REDD+ funds. Pertinent requirements include the emphasis on a national level entity for a Fund, transparency of information, payments are to be based on verifiable results, and that donors should align their own financing procedures with that of the UNFCCC. However, while these recent decisions provide useful guidance, uncertainty remains regarding future modalities for REDD+ funding.

1.2.2 The Green Climate Fund

In addition to the above-mentioned UNFCCC positions regarding REDD+ finance, it is also worth considering in more detail the future role of the Green Climate Fund, given it is likely to be a significant channel for the allocation of future international finance under the UNFCCC, including REDD+. Following its initiation at COP 16 and launch at COP 17, the Green Climate Fund is now being operationalized, and its financing modalities determined. All developing country parties will be eligible to receive resources from the Green Climate Fund, which will finance 'agreed full and agreed incremental costs for activities to enable and support enhanced action on...mitigation (including REDD+)'⁶ (amongst other things), through thematic funding windows. The Fund has affirmed that 'results-based financing approaches may be used, in particular, payment for verified results for

¹ UNFCCC COP Decision 1/CP.16

² UNFCCC COP Decision 1/CP.17.

³ UNFCCC Cop Decision CP.19, paragraphs 3-4.

⁴ UNFCCC COP Decision on Institutional arrangements/CP.19 Paragraph 1.

⁵ UNFCCC COP Decision on Institutional arrangements/CP.19 Paragraph 2.

⁶ Green Climate Fund Governing Instrument.

incentivising mitigation actions’⁷. Relevantly for Cambodia, resources will be balanced between adaptation and mitigation activities, with particular recognition given to the most vulnerable countries⁸. It will also include resources for readiness and preparatory activities, technical assistance and institutional strengthening, including of capacities for country coordination, and to meet fiduciary standards and environmental and social safeguards to enable direct access.⁹

While funding volumes likely to be paid into the Green Climate Fund remain uncertain, based on the potential availability of funding through the Green Climate Fund, including its specific targeting of REDD+ activities, Cambodia should ensure that any REDD+ Fund is adequately aligned with the Green Climate Fund’s modalities, in order to ensure future access to REDD+ funds channelled through it. In particular, Cambodia would have the opportunity to seek direct access to the Fund, which avoids the need to have a multilateral institution act as implementing entity for the funds obtained¹⁰. Requirements will very likely include adherence to a range of fiduciary principles, as well as environmental and social safeguards.¹¹ Thus, any approach to establishing a National REDD+ Fund should ensure that it could meet such requirements. This would likely include abilities relating to robust financial integrity and management (auditing, effective disbursements, planning and budgeting), institutional capacity including procurement, monitoring and evaluation, and implementing project cycles, as well as adherence to transparency and availability of self-investigative powers¹². These are based on the current requirements for accreditation for national entities to have direct access to the Adaptation Fund currently operating under the UNFCCC¹³. While the Green Climate Fund has yet to finalize its detailed access modalities, this is currently under development and its Board is reviewing related fiduciary and safeguards models such as the Adaptation Fund to assist the development of its own requirements. Progress on this aspect of the Green Climate Funds’ operation should therefore be considered closely¹⁴.

Currently, the access modalities for direct access identify three categories of entities that have different institutional capacities and thus will have a different range of responsibilities. These are implementing entities, intermediaries and funding entities. While designing a national fund, these categories and the corresponding responsibilities need to be understood and the fund design accordingly gauged.

1.3 REDD+ in Cambodia: Institutional Setting

The current institutional arrangements related to REDD+ in Cambodia will also be influential for the decision-making process for establishing a funding mechanism. In particular, the related and interaction of responsibilities of different government institutions, including inter-ministerial entities, will influence the feasibility of different approaches, both from a legal perspective as well as from political and practical perspectives. This part of the Report therefore reviews the Cambodian institutional setting for REDD+.

⁷Green Climate Fund Governing Instrument.

⁸Decision 3/CP.17.

⁹GCF Governing Instrument, paragraphs 37-43.

¹⁰ For more discussion of this issue, see for example Ornsaran Pomme Manuamorn and Robert Dobias, ‘Understanding the Green Climate Fund: Implications for the Evolving Architecture of Direct Access to Climate Finance’. Discussion Paper. USAID and ADAPT Asia-Pacific, September 2012.

¹¹Green Climate Fund Governing Instrument paragraphs 45-54.

¹² See the Fiduciary Standard for the Adaptation Fund, available at:

¹³ For more information on this process, see the Adaptation Fund website: <<https://www.adaptation-fund.org/page/accreditation-process>>

¹⁴See GCF/B.05/08 paper, ‘Business Model Framework: Access Modalities – Accreditation’ dated 23 September 2013 for Board meeting of 8-10 October 20130. Available at: <<http://gcfund.net/documents/board-meeting-documents.html#c463>>

1.3.1 National REDD+ Taskforce

A National REDD+ Taskforce has been formally established under the leadership of MAFF by *Prakas No. 87 on the Establishment of Cambodian REDD+ Taskforce 2013*¹⁵. Its mandate is to manage and coordinate project strategies and implementation, including pilot projects, monitor results and report monthly to the Minister of MAFF. The Taskforce is chaired by the Deputy Director General of Forestry Administration, and vice-chaired by the Deputy Director General of General Department of Administration for Nature Conservation and Protection of MoE. Other members of the Taskforce come from a range of relevant Ministries/Departments. The Taskforce is supported by a REDD+ Taskforce Secretariat hosted by FA.

1.3.2 The Ministry of Agriculture, Forestry and Fisheries

The Forestry Administration (FA) of the Ministry of Agriculture, Forestry and Fisheries (MAFF) is responsible for managing Cambodia's forest estate in accordance with the *Law on Forestry 2002*. It is specifically responsible for conducting assessments of national forest carbon stocks, and developing and arranging for forest carbon trades and forest services to increase revenue for effective forest operations and development¹⁶. A Council of Ministers *Circular* issued in 2008 also specifically designates the FA as the Government's agent for arranging the sale of credits for the Oddar Meanchey REDD+ Pilot Project, with final approval with the Government as the seller of forest carbon¹⁷.

In addition to FA, the Fisheries Administration within MAFF has jurisdiction over flooded forests (*Law on Fisheries 2006*), and that the Ministry of Environment (MoE) through the General Department of Administration for Nature Conservation and Protection (GDANCP) has responsibility for protected areas where many of forest areas are located (*Law on Protected Areas 2008*), both of which are also clearly relevant for REDD+ activities.

1.3.3 The Ministry of Environment

The Ministry of Environment (MoE) has the authority to lead and manage the environment¹⁸. Within MoE, as noted previously the GDANCP has responsibility for managing protected areas, in accordance with the *Law on Protected Areas 2008*. In addition, the Climate Change Department (CCD)¹⁹ has key roles and responsibilities relating to climate change. CCD's responsibilities include developing, in collaboration with relevant agencies, a national strategy, action plan and policy and legal instruments related to climate change, implementing technical activities and acting as the focal point for the UNFCCC²⁰, including reporting, coordinating the implementation of clean development mechanism and carbon credit projects in Cambodia, mobilizing required resources, particularly to attract grants for implementation of activities on climate change, and cooperating with line agencies for the development and management of climate change funds and carbon credit policy.

¹⁵ 'REDD+ Taskforce,' Cambodia REDD+ programme website, see <<http://www.cambodia-redd.org/category/national-redd-framework/redd-taskforce>>

¹⁶As referred to in the REDD+ Roadmap. Article 4 of *Sub-Decree (No. 188) 2008, amending the 2000 Sub-Decree No. 17 on the Organisation and Function of MAFF*.

¹⁷ Cambodia REDD+ Roadmap, UN-REDD Programme, accessed from:

<http://www.theredddesk.org/sites/default/files/8_redd_roadmap_cambodia_v4_0_official_222_5.pdf>

¹⁸In accordance with the *Law on the Establishment of the Ministry of Environment 1996* and the *Sub-Decree on Organization and Functioning of Ministry for Environment 1997*.

¹⁹*Sub-Decree No. 175 on the Separation of Department and Promotion of Office to Specialized Departments under the General Department of Administration for Nature Conservation and Protection in complementing Sub-Decree No. 37 2008, 2009; and Prakas on The Establishment and Functioning of the Department of Climate Change 2010*

²⁰According to personal communications, the Council of Ministers has recently confirmed that this role of UNFCCC focal point also extends to REDD+ activities in Cambodia.

1.3.4 National Climate Change Committee

In addition to MoE's responsibilities for climate change, the National Climate Change Committee (NCCC) operates as a high-level, cross-sectoral inter-ministerial entity responsible for climate change. Its members include the Environment Minister as Chair (with Prime Minister as Honorary Chairperson), and Secretaries and Under-Secretaries from relevant line Ministries, and is supported by a Climate Change Technical Team (CCTT), composed of representatives from government institutions, to give technical support and advice²¹. The CCD acts as the Secretariat for the NCCC. The NCCC's role focuses on policy development, coordination and cooperation with concerned ministries and institutions. Amongst other things, its specific responsibilities include coordinating activities and encouraging mainstreaming of climate change, promoting the conservation and enhancement of carbon sinks, reporting to the national government on climate change issues, approving national reports for the UNFCCC, and overseeing implementation of climate change projects, programmes and research activities in Cambodia²².

1.3.5 The National Council on Green Growth

A final institution that also should be recognised is the National Council on Green Growth (NCGG)²³, a national council established in 2012 with the goal to promote development of the 'green economy' in Cambodia. It is also chaired by the Minister for Environment, and comprised of a range of Ministers, Secretaries of State and Secretaries General. The NCGG has broad-ranging duties which are closely related to the climate change mandate, including preparing policies, strategies, and programmes of green growth, providing facilitation and cooperation related to green growth activities with relevant institutions, and mainstreaming green growth principles across a range of sectors, including green environment and natural resources, economy, investment, industry, green energy, tourism and education²⁴.

1.3.6 The Ministry of Economy and Finance

The Ministry of Economy and Finance (MoEF) is responsible for public financial management in Cambodia and plays a central role in all matters related to state revenue collection and expenditure. Its responsibilities, as are potentially for a REDD+ funding mechanism, include mobilizing national revenues through revenue collection, establishing a national uniform financial system, preparing and administering the national budget, collecting tax and non-tax revenues, controlling and endorsing expenditures of public institutions, participating in the 'mobilization' of aid and the preparation of foreign loan borrowings and payments, and monitoring performance, and managing and administering public procurement transactions of public institutions²⁵. For duties related to the competence of other institutions, respective responsibilities should be allocated and implemented through a joint *Prakas* of both institutions²⁶. The role and responsibilities of MoEF will have a direct influence on how a fund may be established and operate, particularly if domestic revenues are to be included and/or it is to be established under Cambodian law.

1.4 REDD+ in Cambodia: Project Setting

Cambodia has been a leading country in establishing pilot projects for REDD+. Five REDD+ pilot projects have been identified in Cambodia²⁷. This part considers the two pilot projects that are most advanced (due to limited information available on the remaining projects), and where possible focuses on proposed approaches to funding mechanisms.

²¹Sub-Decree (No. 99) on the Creation/Management of the National Climate Change Committee 2010.

²²Sub-Decree (No. 99) on the Creation/Management of the National Climate Change Committee 2010, Article 3.

²³Royal Decree on the Organization and Functioning of the National Council on Green Growth 2012

²⁴Royal Decree on the Organization and Functioning of the National Council on Green Growth 2012, Article 3

²⁵Sub-decree on the Organization and Functioning of the Ministry of Economy and Finance, 2000, Article 3

²⁶Sub-decree on the Organization and Functioning of the Ministry of Economy and Finance, 2000, Article 26

²⁷ Amanda Bradley and David Shoch, 'Survey and Analysis of REDD+ Project Activities in Cambodia', Climate Focus.

1.4.1 Seima REDD+ Pilot Project

The Seima REDD+ Pilot project, a partnership between the Wildlife Conservation Society and the FA, has been under development since 2009. The REDD+ project area for the Seima Protection Forest covers 180,513 hectares of forest in Mondulkiri and Kratie Provinces. Conservation efforts in the forest were previously limited, with access to funding and competition with other land uses limiting factors. The REDD+ project is proposing to sell carbon credits generated from 'avoided unplanned deforestation', and identifies a number of direct interventions including improving implementation of legal documents, improving law enforcement, and providing support for alternative livelihoods. Sustainable financing from carbon revenues has been identified as essential to enable long-term conservation actions²⁸. Key aspects of the financial model (based on 30 year project budget) include REDD credit sale revenues, grant revenues, and expenditure on three main aspects including: annual operating costs, deposits into a long term 'permanence fund' to ensure a proportion of early revenues to finance long-term recurrent management costs; and other revenues for community benefit-sharing arrangements. The project proposes the establishment of a financial mechanism for REDD+ revenues and other income, although details of the proposed mechanism are yet to be finalised.

1.4.2 Oddar Meanchey Community Forestry REDD+ Pilot Project

The Oddar Meanchey Community Forestry REDD+ pilot project²⁹ was launched in early 2008 by Community Forestry International in partnership with the FA, together with a number of other local implementing partner organisations. Located in Oddar Meanchey province in northwest Cambodia, it covers 13 community forestry sites, with a total project area of 56,050 hectares. Since 2009, the PACT has taken over the pilot project activities from Community Forestry International as an implementing NGO partner.

The project proposes to sell credits in the voluntary market, and has already been validated by both the VCS and CCBA standards. This pilot project also has some formalised arrangements regarding benefit distribution. According to *Council of Minister's Decision No. 699* (2008), noted previously and set out in full in Appendix 1, the FA is identified as the seller of forest carbon on behalf of the government. The decision also specifies that revenue is to be used to improve the quality of the forest, maximize benefits to local participating communities, and study potential sites for new REDD+ projects, and will be 'channelled through' the Technical Working Group on Forestry and Environment during the first 5 years of the project. However, further details with respect to the detailed operation of the benefit distribution system have yet to be finally determined and agreed upon with the FA.

1.5 REDD+ in Cambodia: Policy Setting

Currently, there are no comprehensive laws or policies directed specifically to REDD+ in Cambodia, aside from those limited to institutional arrangements, noted in Part 1.3 above. However, relevant sector policies and programmes are closely linked to, and reference, REDD+. In addition, the REDD+ Roadmap does establish a phased approach to facilitate 'readiness' and future implementation of REDD+, although to date this has not been formerly adopted by the Cambodian government.

1.5.1 Forestry, Fisheries and Protected Areas

The **National Forest Programme 2010-2029 ('NFP')** is the overarching strategic framework for managing Cambodia's forests. Its objective is for forest resources to provide optimal contribution to equitable macro-economic growth and poverty alleviation, particularly in rural areas, through conservation and sustainable forest management, with active participation of all stakeholders.

²⁸ Information taken from Project Description (VCS Validation document), 'Reduced Emissions from Deforestation and Degradation in Seima Protection Forest, Cambodia,' 13 August 2013

²⁹ Information about the Oddar Meanchey project adapted from: Amanda Bradley and David Shoch, 'Survey and Analysis of REDD+ Project Activities in Cambodia', Climate Focus.

Multiple strategic objectives and programmes of the NFP incorporate REDD+. For example, Strategic Objective 2 identifies forests as having mitigation potential, and specifies carbon markets for access to financing (specifically, REDD and the CDM), and to contribute to addressing climate change threats. The NFP's Programme 4 (Community Forestry Programme) recognises the role community forestry can play in mitigating the effects of climate change, and that the potential for engaging in carbon markets is greater than many alternative forest management modalities. Most relevantly regarding financing, Programme 6 (Sustainable Forest Financing Programme) provides that all sub-programmes are to contribute to sustainable forest management, including by capturing the full value of all forest resources, and by contributing to carbon-neutral growth. This includes REDD+ as a potential future source of financing (up to 20% of some of the sub-programmes), amongst a range of other 'innovative' financing mechanisms and more traditional financing such as donor assistance, royalties, etc.

In relation to those forested areas that are under the jurisdictions of MoE and the Fisheries Administration, neither the *Law on Protected Areas 2008* nor the *Law on Fisheries 2007* specifically addresses REDD+. In relation to protected areas, there is also no strategic policy or management framework in place. However, the MoE is proposing to develop a **National Protected Areas Strategic Management Plan** for Protected Areas³⁰ (). In relation to fisheries management, the **Strategic Planning Framework for Fisheries** (2010-2019) is Cambodia's overarching vision, and implementation plan, for the fisheries sector in Cambodia. While it does not specifically reference REDD+ actions, it does identify targets and indicators regarding the protection of flooded forests (Objective 5.2), and the need to address climate change is referenced throughout the Framework.

1.5.2 REDD+

As noted, there is currently no REDD+ policy or strategy targeted to REDD+. However, the **Cambodian REDD+ Roadmap** was finalised in October 2010 and offers useful guidance on the proposed approach to REDD+ in Cambodia, even though it has not been formally approved by the government. It describes and synthesises information on REDD+ in Cambodia, establishing an overarching national plan for Cambodia to move forward with REDD+ 'readiness'. General Principles of the REDD+ Roadmap include, relevantly, that REDD+ Readiness should be based on the existing mandates of Government institutions, make use of existing coordination mechanisms, seek to provide predictable and substantial finance for implementation and scaling-up of existing forest management strategies, be consistent with the international negotiations processes, and be based on existing REDD+ pilot projects (amongst others). The Roadmap identifies three main 'steps' for the Cambodia REDD+ Readiness process, namely; preparation of the Roadmap, implementation of the Roadmap and implementation of REDD+ through performance-based payments.

The Roadmap addresses financing for REDD+ in various ways. In addition to supporting Programme 6 of the NFP (sustainable forest financing), Section 3 (development and implementation of REDD+ strategies) identifies the investigation of additional strategies including innovative financing models such as conservation concession, payment for ecosystem services (under MoE), and the use of local forest protection contracts with local communities. A key element of Section 4 is 'fund and revenue management for REDD+ implementation'. Finance for implementation is identified as available from donor grants, fund-based mechanisms and carbon market mechanisms. The Roadmap provides that Cambodia could establish a REDD+ Trust Fund to provide funding for REDD+ Readiness and later for performance-based payments. This could use an existing modality (such as the fund mandated under the Protected Area Law 2008), or could be done through a new fund or series of funds. The Roadmap also details fundamental elements including development of a National REDD+ Strategy (Section 3), the development of a Reference Level (Section 5) and the development of a Framework for MRV (Section 6), all which will be related to and critical for the future operation of a National REDD+ Fund.

³⁰Law on Protected Areas 2008, Article 15

1.5.3 Climate Change and Green Growth

In November 2013, Cambodia approved its first holistic policy on climate change, the **Cambodia Climate Change Strategic Plan 2013 (CCCSP)**, which will clearly be relevant to potential national level REDD+ activities under a future UNFCCC mechanism. This was prepared under the NCCC with the support of the CCD, and with the participation of nine line ministries³¹. It identifies eight strategic objectives, and their underlying strategies. REDD+ is addressed through Strategic Objective 3 ('Ensure climate resilience of critical ecosystems, biodiversity, protected areas and cultural heritage'), which identifies the specific strategy of promoting schemes to pay for ecosystem services including REDD+. It would also be covered by broader strategies within the CCCSP relating to mitigation and low-carbon development, including facilitating carbon market opportunities.

Importantly, the CCCSP also has a specific focus on climate financing and strengthening institutional arrangements for climate change. It specifies the elaboration of a Climate Change Financial Framework, which is currently under development. It also specifically identifies the proposed establishment of a national climate change fund to secure international climate financing, including by attaining accreditation of the NCCC (or its Secretariat) as a National Implementing Entity for international financing bodies such as the Adaptation Fund and the Green Climate Fund. It is understood that at the 3rd National Forum on Climate Change held in November 2013, it was agreed that the development of a National Climate Change Fund would be pursued, in line with the CCCSP³².

The **National Policy Green Growth (2013)** ('GG Policy') and **National Strategic Plan on Green Growth (2013-2030)** together provide the overarching framework for green growth in Cambodia. These have been prepared by and are under the mandate of the National Council on Green Growth, within MoE. The GG Policy establishes overarching policy objectives for green growth, and a range of strategies to achieve these goals. Climate change is specifically identified, including preparing methodologies for carbon emission reductions, creating green communities for adaptation and resilience to climate change, and enhancing carbon credits through increasing forest cover for carbon sinks. The GG Strategic Plan then identifies nine strategic directions, each containing an extensive range of strategies. Many are directly relevant to climate change, and REDD+ specifically, including implementing 'carbon credit' schemes.

1.6 Summary: Implications of the Institutional and Policy Setting

As the above review makes clear, the institutional and policy arrangements surrounding REDD+, and related issues of climate change and green growth, are currently under development, both internationally and at the domestic level.

Important developments at the international level under the UNFCCC, including the identification that a national level entity should be identified, that REDD+ finance is to be based on verifiable results-based payments, the implementation of safeguards, and the importance of meeting robust fiduciary standards, all provide significant guidance for a National REDD+ Fund. Aligning a REDD+ fund mechanism with international arrangements, which is also identified by the REDD Roadmap, will be critical to ensuring the greatest access to future international funding streams for REDD+. This will necessitate closely following the progress of the development of the Green Climate Fund's modalities, in particular those relating to the Fund's access, which is likely to be centred on meeting environmental and social safeguards and robust fiduciary standards. Development of a REDD+ fund mechanism for Cambodia should be undertaken very carefully, in consideration of and alignment with these current conditions, and ongoing and future developments.

³¹ The nine line Ministries/institutions are: Ministry of Agriculture, Fisheries and Forestry; Ministry of Industry, Mines and Energy; Ministry of Education, Youth and Sport; Ministry of Health; Ministry of Women's Affairs; Ministry of Water Resources and Meteorology; Ministry of Public Works and Transport; Ministry of Rural Development; National Committee for Disaster Management.

³² Personal communications.

With respect to the domestic institutional setting, it is important to emphasise that the participation and access of all line agencies, FA, FiA and GDANCP to a National REDD+ Fund must be assured on an equal basis. In addition, the critical role of the NCCC and CCD, as responsible for national climate change policy and coordination, and acting as the focal point for the UNFCCC including reporting requirements, must be recognised in respect of any REDD+ funding mechanism, considering that REDD+ may constitute a significant component of Cambodia's response to climate change, particularly when a UNFCCC REDD+ mechanism is operationalized. Significantly, MoE has recently been appointed as the national REDD+ focal point for reporting to the UNFCCC³³. Thus, any National REDD+ Fund must be truly 'national' and be accessible equally across institutions, as well as being closely linked to and aligned with the broader climate change policy and institutional setting within Cambodia. Resolving any confusion with respect to institutional arrangements and respective roles and responsibilities is likely to be critical to enable a National REDD+ Fund to be successfully established and to operate effectively.

With respect to the current policy setting, a key issue is the current absence of a National REDD+ policy or Strategy. While the development of a Strategy is identified in the REDD+ Roadmap, progress on this will be critically important to guide the future operation of a National REDD+ Fund by satisfying potential donors of commitment to REDD+ and achieving results, and will therefore be intricately tied to Fund development. In addition, strategies related to REDD+ are planned for imminent development, such as the Protected Areas Strategic Management Plan, and the CCCSP will be moving towards implementation, significantly the identified plans to develop a national climate change fund. To avoid duplication of efforts, inefficiency and confusion or overlap, these should be developed in close consultation with decision-making about a national REDD+ funding mechanism. It is therefore strongly recommended that a National REDD+ Fund be developed in close coordination with these activities. Finally, the role of pilot projects should also be noted. While these are currently operating in the voluntary market 'space' and at a sub-national level, if these projects do develop their own funding mechanisms to facilitate the management of revenue from carbon credit sales, and distribution of benefits, they have the potential to offer useful lessons in terms of design features that are effective in Cambodia. Moreover, they may ultimately be identified for incorporation within a national level fund mechanism. This could create considerable technical and administrative issues, and should be considered in advance.

2 Legal Framework for a REDD+ Funding Mechanism in Cambodia

2.1 Potential Existing Legal Avenues for Establishing a REDD+ Fund

2.1.1 Introduction

A starting point for considering potential avenues for establishing a National REDD+ Fund in Cambodia is to consider the governing legal framework for a fund. Cambodia's legal system is based on a hierarchy of laws, commencing with the Constitution. This hierarchy is further elaborated in the *Sub-Decree on the Organization and Functioning of the Council of Ministers*. The effect of the hierarchy is that any legal instrument must be able to identify adequate legal authority from a higher level³⁴. As Cambodia does not have any identifiable overarching law or any sub-decree that guides or regulates the establishment of funds generally (aside from the more general *Law on Public Finance System 2008*, discussed further below), the result is that existing funds in Cambodia have been created on an ad hoc basis through special subject-matter laws. Therefore, for a National REDD+ Fund to be established under the Cambodian legal system, it must have the legal authority for its establishment identifiable

³³According to personal communications.

³⁴Kong Phallack, 'Overview of the Cambodian Legal and Judicial System,' Chapter 1 in Hor Peng, Kong Phallack, Jorg Menzel (Eds) *Introduction to Cambodian Law*. 2012

in a Law. Further details could then be included below this Law, via a *Sub-Decree*, in accordance with the hierarchy. An exception to this would be a project-based, donor managed trust fund established under contractual arrangements with a development partner(s) (also discussed further below).

Guided by this legal context, this part of the Report reviews the primary natural resource management and environment laws that currently operate in Cambodia and are relevant to REDD+³⁵. These laws are reviewed in the context of their potential to contain legal avenues for establishing a national REDD+ funding mechanism.

2.1.2 Law on Forestry 2002

The *Law on Forestry 2002* ('Forestry Law') establishes the legal framework for the management, harvesting, use, development and conservation of the forests in Cambodia³⁶. It establishes the specific responsibilities of the FA in this respect. The Forestry Law does not specifically address REDD+ or forest carbon more broadly³⁷. However, relevantly for this review, it enables the establishment of a National Forestry Development Fund (NFDF)³⁸. According to the Forestry Law, the NFDF is to be administered and managed under the responsibility of the National Forestry Development Committee (the organisation and function of which is to be set out in Sub-Decree), and co-chaired by the Minister of Agriculture, Forestry and Fisheries, and the Minister of Economy and Finance³⁹. The Forestry Law specifies that its revenue sources will include government allocations, premiums on forest products/by-products, wildlife conservation fees, contributions from international organisations, donations from individuals and non-government organisations, and revenue from 'other services in the forestry sector'⁴⁰. Activities the NFDF's funds may be only used for, which are reforestation, silviculture and forestry rehabilitation, forest and biodiversity protection and conservation, scientific and technical research, extensions services; development in the forest and wildlife sector, development of community forestry; and training human resources for the forest and wildlife sector. The revenue of the fund must not be used for the organization and functioning of the FA⁴¹. The FA is currently preparing the Sub-Decree to operationalize the NFDF. The current draft of this Sub-Decree does not contain any explicit reference to funding REDD+ activities. Regarding management, the draft Sub-Decree reiterates that the NFDF will be managed by Committee, with a secretariat to be based in the FA. This Secretariat will have two executive bodies; a planning and financial body, and a technical, monitoring and evaluation body⁴².

Interpreting the Forestry Law's provisions guiding the NFDF, it is not clear that they would enable the fund to apply to REDD+ activities. While some supported activities clearly do align with REDD+ (reforestation, forestry rehabilitation, forest protection and conservation), the Law was not drafted to explicitly address forest carbon issues or targeted to support REDD+. Moreover, the location of the NFDF within the legal authority of the Forestry Law would likely place limitations on REDD+ financing, including restriction on funding only those forests under the jurisdiction of MAFF, and sources of revenue. For example, it likely excludes the generation of revenue from innovative mechanisms such as carbon credits or payments for environmental services (unless these can be considered 'other services in the forestry sector'), without amendments to the Forestry Law.

³⁵A complete analysis of the legal framework for REDD+ in Cambodia can be found in: Robert B. Oberndorf, J.D., 'REDD+ in the Cambodian Context - An Overview of the Policy, Legal and Governance Frameworks Impacting Implementation,' August 2010.

³⁶*Law on Forestry 2002*, Article 1.

³⁷A complete analysis of the legal framework for REDD+ in Cambodia can be found in: Robert B. Oberndorf, J.D., 'REDD+ in the Cambodian Context - An Overview of the Policy, Legal and Governance Frameworks Impacting Implementation,' August 2010.

³⁸*Law on Forestry 2002*, Article 62-64. See Appendix 2 for the full text.

³⁹*Law on Forestry 2002*, Article 62.

⁴⁰*Law on Forestry 2002*, Article 63.

⁴¹*Law on Forestry 2002*, Article 64.

⁴²draft Sub-Decree on the organization and functioning of the NFDF, Articles 6-11.

2.1.3 Law on Protected Areas 2008

The *Law on Protected Areas 2008* ('PA Law') establishes a framework for the management, conservation and development of protected areas, under the jurisdiction of GDNCAP of MoE. Amongst other things, the PA Law requires the establishment of a National Protected Area Strategic Management Plan, action plans and technical guidelines for managing protected areas, and proposals for establishing and modifying any protected areas⁴³. Relevantly, the PA Law also contains provisions enabling the establishment of a Protected Areas Fund ('PA Fund'). Similar to the Forestry Law, the PA Fund is to be organized, managed and 'given responsibility' by a protected area committee, which is to have the Minister of Environment and the Minister of Economy and Finance as co-chairs. The details of the organisation and functioning of the committee is to be established in *Sub-Decree*⁴⁴.

The PA Law specifies that funding support for 'rehabilitation, improvement of protected areas and biodiversity' is to come from the national budget, protected area entrance fees and other service fees, environmental endowment insurance, donations, assistance from development partners, and assistance from international environment funds⁴⁵. It also specifies that the PA Fund may be used for activities within protected areas including the protection, conservation, rehabilitation and enhancement of biological resources and ecosystems, technical and scientific research and study, maintenance and extension of eco-tourism services, training, human resource development and capacity building of staff, support for establishing community protected areas, education on protected areas, and infrastructure needs.

The PA Fund has not yet been operationalized. As with the NFDF, the PA Fund arguably covers activities that fall within the scope of REDD+ (protection, rehabilitation of ecosystems and biological resources). However, it is very unlikely that it would cover the full range of REDD+ activities, given that the use of its revenue is restricted to *within* protected areas. Thus in its current form, the PA Fund would not be broad enough in scope to be applied as a national REDD+ Fund and fund activities beyond MoE's jurisdiction for protected areas. It would also place limitations on sources of revenue, as with the NFDF, as more innovative financing mechanisms are not currently included within the PA Law provisions.

2.1.4 Law on Environment Protection and Natural Resource Management 1996

The *Law on Environment Protection and Natural Resource Management 1996* ('Environment Protection Law') under MoE establishes a broad framework on matters including national and regional environmental plans, natural resource management, environment protection and pollution control, and environmental impact assessment. It also provides the foundations for the establishment of an 'Environment Endowment Fund', a special Treasury account to be created and administer by the MoE 'for environmental protection and natural resource conservation' in Cambodia. Sources of revenue are to constitute government contributions, grants from international organizations, donations from individuals and non-government organisations, and other lawful sums.⁴⁶

To date, MoE has not operationalized the Environment Endowment Fund. However, given its broad purpose 'for environmental protection and natural resource conservation,' and the inclusion of climate change within MoE's mandate, this provision offers an additional legal avenue to establish a fund that could potentially incorporate climate change issues including REDD+. Again, there would be some limitations on this Fund, particularly the guidance on revenue sources, and there may also be complexity in arguing that this fund could apply very broadly, to activities falling outside of MoE's jurisdiction, including REDD+.

⁴³Law on Protected Areas 2008, Article 5.

⁴⁴Law on Protected Areas 2008, Article 32.

⁴⁵Law on Protected Areas 2008, Article 33.

⁴⁶Law on Environment Protection and Natural Resource Management 1996, Article 19.

2.1.5 Law on Fisheries 2006

The *Law on Fisheries 2006*, under the responsibility of the FiA, governs fisheries and fishery resource management, including aquaculture, community fisheries and promoting biodiversity conservation and natural cultural heritage. It contains specific provisions for the protection and management of inundated forest and mangrove forest, and the identification of these areas as Protected and Conservation Areas of Fishery Resources, which are relevant to REDD+ activities⁴⁷. The FiA is the responsible government entity to administer the Fisheries Law⁴⁸. However, unlike the laws discussed above, there are no provisions relating to financing or establishing a fund in the Fisheries Law.

2.1.6 Land Law 2001

The *Land Law 2001* establishes the framework for land ownership in Cambodia. Relevant to REDD+ activities, it governs the use of public property, and how land can be acquired and disposed of through concessions. Public property is identified through the Land Law as including any property that ‘has a natural origin’ such as forests, courses of navigable or floatable water, natural lakes, banks of navigable and floatable rivers and seashores, property for general or public use, natural reserves protected by law, and archaeological, cultural and historical patrimonies⁴⁹. The Land Law enables land to be granted for occupation and use to private parties through land concessions, for social or economic purposes, and specifically for residential use, land cultivation, ‘industrial agricultural exploitation’⁵⁰. Other concession types (such as forestry, mining and infrastructure) are covered in respective sector laws. However, there are no relevant provisions in respect of funding or financing with regards to the use of public land.

2.1.7 Summary: Potential for a REDD+ Fund under existing Sector Laws

The Forestry Law, PA Law and Environment Protection Law all offer legal avenues that could potentially be utilised for a REDD+ funding mechanism. However, based on the above analysis, all three of these laws would likely require amendment in order to enable any of them to be used effectively for a REDD+ funding mechanism. Amendments required would include specifying that the funds may be used for funding REDD+ activities and expanding the sources of revenue that may contribute to the fund. It would also be advisable to include specific requirements with respect to governance arrangements (such as specifying multi-stakeholder composition of the governing committee), to ensure governance and management arrangements detailed in Sub-Decree are sufficient to meet the robust international requirements with respect to fiduciary standards, as well as meeting safeguards. In addition, REDD+ payments are to be results based and this requires specific operational arrangements that are different from and more complex than traditional grant-making. Amending a Law in this way may be a difficult process, as it would involve amending and re-approving the Law, with associated consultation and approval processes.

Moreover, serious complications may be created due to the fact that each Law is targeted to specific sectoral issues and is designed to apply only to those areas under jurisdiction of each Ministry, particular the Forestry Law and the Protected Areas Law. For example, the PA Law applies only to protected areas under MoE, and not to protected forests under the jurisdiction of FA through the Forestry Law. Therefore, it is likely to be very difficult to extend the PA Fund (by amending the PA Law) to cover national REDD+ activities, as this would include activities that are under the mandate of both FA and FiA within MAFF. A similar obstacle would apply to the NFDF.

As a result, even if amendments are made to specifically incorporate REDD+ activities within either the Forestry Law or the PA Law, more substantive changes that go beyond funding and address the scope of application of the Law itself would be required. Even if this could be achieved, the existence of the

⁴⁷Law on Fisheries 2006, Article 18.

⁴⁸Law on Fisheries 2006, Article 7.

⁴⁹Land Law 2001, Article 15.

⁵⁰Land Law 2001, Article 49.

Fund within the jurisdiction of one sectoral Line Ministry may detract from this entity operating as a true ‘national level’ entity as required by the UNFCCC. Without very robust governance arrangements, including shared, inter-ministerial decision-making powers, there is a real risk that such a fund may not operate in accordance with national level interests, as there may be inherent conflict of interests involved for decision-makers to allocate resources primarily to activities under their own jurisdiction. Finally, given the current absence of a legal framework for REDD+, and the importance of not rushing through legal arrangements prematurely (which is supported within the REDD+ Roadmap), this approach would potentially rush decisions on a broader legal framework, which is unadvisable.

Therefore while it may be possible to use either of these Fund provisions, assuming amendments can be made to the relevant governing Law, there are complicating factors that will require very careful consideration before proceeding and ultimately could seriously detract from the Fund being an appropriate and effective mechanism for a national level REDD+ funding mechanism. As a result, the alternative way to proceed under Cambodian law would be to develop a new, standalone Law that is specifically targeted to establishing a national level REDD+ fund.

2.2 Existing Funds operating in Cambodia

2.2.1 Introduction

None of the funds identified and discussed in Part 2.1 above have been operationalized, with final details settled through Sub-Decree. Therefore, this Part of the Report considers other funds that are currently operating, to identify guidance on existing practice relating to funding mechanisms and modalities in Cambodia. While not directly linked to REDD+ activities, reviewing the establishment and operation of other sector funds is nevertheless useful, as this process may provide useful observations and lessons on approaches and structures of effective funds in Cambodia, may provide insights into what approach is likely to be feasible, and may also offer value in the precedents that they establish regarding important design elements which are directly relevant for decision-making about establishing a National REDD+ Fund.

This Part therefore considers two funds that are currently enabled through their own legal frameworks and operate under government administration in Cambodia, the Commune/Sangkat Fund, and the National Social Security Fund. It also considers the UNDP managed Cambodia Climate Change Alliance Trust multi-stakeholder trust fund, as an alternative to a government-administered fund established by Law. Under a multi-donor trust fund, contractual arrangements form the legal basis for the fund, most likely between participating government institutions and a multilateral institution that acts as a trustee with fiduciary responsibilities for the fund. For each of the three funds reviewed, the focus is on the fund’s objectives, revenue sources, governance arrangements and payment distribution mechanisms.

2.2.2 The Commune/Sangkat Fund

The Commune/Sangkat Fund (CS Fund), established under the *Law on the Administration and Management of Communes/Sangkat 2001* (the Commune/Sangkat Law), operates to transfer national and other revenues to the Commune/Sangkat budgets. The detailed operation of the Commune/Sangkat Fund (CS Fund) is set out in the *Sub-Decree on the Establishment of the Commune-Sangkat Fund 2002*. The CS Fund’s purpose is to enable the Communes/Sangkats to fulfil their general responsibilities for local administration and local development, in addition to reducing the difference in relative potential amongst Commune/Sangkats to mobilize their own revenue, and to act as an incentive for building good governance of Commune/Sangkat Councils⁵¹. It is understood that the CS Fund was initially established through a donor-funded project (with the World Bank) and then was successfully transferred to the government administration and formerly established by Law.

⁵¹*Sub-Decree on the Establishment of the Commune-Sangkats Fund 2002, Article 2.*

The CS Fund operates on the basis of sourcing revenue from both domestic and international sources. It receives revenues into a special account at the National Treasury from a set percentage share of recurrent domestic revenue⁵², as well as grants and loans made by donors and international financial institutions, and any other sources⁵³. Annual targets are also made with respect to mobilizing external contributions to the CS Fund⁵⁴.

The CS Fund is governed by a Board, which is chaired by a representative of the Minister of Economy and Finance, and composed of representatives from government institutions and elected Commune/Sangkat Councils⁵⁵. The Board is responsible for a range of management activities, including making recommendations on the share of total revenue to be allocated to the Fund, monitoring the flow of resources from external grants and loans, adopting and reviewing the distribution formula for fund resources, adopting and revising classifications of Communes/Sangkats for allocation purposes, approving annual resource distribution plans, and liaising with Communes/Sangkats about annual entitlements, monitoring actual resource transfers, and approving annual financial statements.⁵⁶ A Permanent Secretariat supports the Board and is housed within the Ministry of Economy and Finance, is responsible for providing administrative and technical support to the Fund Board.⁵⁷

The Minister of Interior has final authorisation power for all resources transfers to the individual Commune/Sangkat accounts. The Minister of Interior is also responsible for monitoring the performance of the use of the CS Fund's resources, and providing the Board periodically with detailed information on the transfer and use of the Fund's resources⁵⁸. The Provincial Governors are also delegated the power to monitor and certify compliance of the Commune/Sangkat Councils with the conditions of access to the CS Fund, and to monitor their performance⁵⁹.

The CS Fund also establishes a specific system for resource sharing amongst the Commune/Sangkats, based on a formula. Total resources of the CS Fund are divided into two components, which caps resources at one-third for a General Administration Component, and at least two-thirds for a Local Development Component⁶⁰, from the total distributable resources of the CS Fund. Within these limits, the Board is to determine the division of resources. Classification of Communes/Sangkat Councils supports this approach, to ensure effective and accountable use of resources, based on their financial performance. Councils must be categorised as either capable of 'making effective and efficient use of the Fund transfers earmarked for development spending' (Category 1) and those that are not (Category 2). This categorisation determines how Commune/Sangkat Councils can use the fund's resources. Those in Category 1 only may access resources allocated for local development. Resources under for local development are also to be distributed in three shares: an equal share, a share proportional to the population of the Commune/Sangkat and a share proportional to a poverty index, weighted by the population of the Commune/Sangkat. Both Category 1 and 2 may access resources allocated for general administration⁶¹.

⁵²*Sub-Decree on the Establishment of the Commune/Sangkats Fund 2002*, Article 9. The specific transfer amount commenced at 2% and is now 2.8%. Guidance for resource transfers (including the budget contribution level) are set out in the amended in the *Sub-Decree No. 93 On Resources Transfer from National Budget to Commune/Sangkat Fund, 2010*, including an increase in the level of the state budget transfer to 2.8%.

⁵³*Sub-Decree on the Establishment of the Commune-Sangkats Fund 2002*, Article 3.

⁵⁴*Sub-Decree on the Establishment of the Commune/Sangkats Fund 2002*, Article 10.

⁵⁵*Sub-Decree on the Establishment of the Commune-Sangkats Fund 2002*, Article 5.

⁵⁶*Sub-Decree on the Establishment of the Commune-Sangkats Fund 2002*, Article 4.

⁵⁷*Sub-Decree on the Establishment of the Commune-Sangkats Fund 2002*, Article 6.

⁵⁸*Sub-Decree on the Establishment of the Commune-Sangkats Fund 2002*, Article 7.

⁵⁹*Sub-Decree on the Establishment of the Commune-Sangkats Fund 2002*, Article 8.

⁶⁰*Sub-Decree on the Establishment of the Commune/Sangkats Fund 2002*, Articles 12, 15.

⁶¹*Sub-Decree on the Establishment of the Commune/Sangkats Fund 2002*, Article 14.

In addition to the governance mechanisms noted above, the *Sub-Decree* also contains provisions to ensure the oversight of transfer of funds and access. The National Treasury is to make transfers to Commune/Sangkat accounts, in accordance with approved allocations, at the request of the Minister of Interior, in three instalments throughout the course of one year⁶². To receive the transfers, Councils must demonstrate that they have met certain conditions, including following a participatory process of planning, budgeting and implementation, completing all financial report, and mobilised beneficiaries contributions to complement Fund transfers. Provincial Governors also play a role, verifying compliance with these access conditions, and making recommendations to the Ministry of Interior for the transfer⁶³.

2.2.3 The National Social Security Fund

The National Social Security Fund (NSSF) is a fund established to support and manage a pension benefits scheme and an occupational risk scheme, and is founded by the *Law on Social Security Scheme for Persons Defined by the Provisions of the Labour Law*. The *Sub-Decree on the Establishment of the National Social Security Fund* sets out the organization and functioning of the NSSF in greater detail⁶⁴. It establishes the management and governance arrangements of the NSSF, a 'public, legal and financially autonomous entity,' allocating technical responsibility to the Ministry of Labour and Vocational Training (MLVT). Financial responsibility is allocated to MoEF,⁶⁵ which is to manage the NSSF, provide benefits as required, collect contributions from members and employers, make health care and social services benefits available to members, and cooperate with other relevant agencies, and manage NSSF investments⁶⁶.

A multi-stakeholder Governing Board guides the NSSF. It consists of representatives from the MLVT (president), the Office of the Council of Ministers, the MoEF, the Ministry of Health, two representatives of Employers, and two of Workers of the NSSF, and the Director of the NSSF⁶⁷. Its role is to guide and monitor implementation, including by budgeting, annual reporting, approving internal regulations, approving requests on contribution and benefit rates, and determining the investment plan⁶⁸. The Director, whose role is to manage day-to-day operations and to provide support to the Governing Board, is to be appointed through sub-decree at the request of the MLVT⁶⁹. An Executive Unit supports the NSSF, and is comprised of civil servants of MLVT or other Ministries upon request of the Director. The management structure is to be determined by *Prakas* of the MLVT upon request of the Governing Board⁷⁰.

The NSSF is supported primarily from domestic funding, including seed funding from the government, compulsory employer and member contributions (ear-marked for financing the operation of NSSF departments), support from the national budget, fines related from late contributions and payroll submissions, investment profits, donations and other lawful sources⁷¹. Expenditures from the NSSF may include expenses from benefits (which may be allocated according to eligibility criteria), administration, and health care and social affairs activities⁷². Contribution and benefit rates are to be

⁶²*Sub-Decree on the Establishment of the Commune/Sangkats Fund 2002*, Article 16.

⁶³*Sub-Decree on the Establishment of the Commune/Sangkats Fund 2002*, Article 17.

⁶⁴ The Fund has been fully functional since 2008. Note that only occupational benefits have currently been operationalized through the Fund, with health insurance and pension benefits forthcoming. See: <<http://www.social-protection.org/gimi/gess/ShowProjectSpeWiki.do?wid=895>>

⁶⁵*Sub-Decree on the Establishment of the National Social Security Fund*, Articles 1,2

⁶⁶*Sub-Decree on the Establishment of the National Social Security Fund*, Article 3

⁶⁷*Sub-Decree on the Establishment of the National Social Security Fund*, Article 4.

⁶⁸*Sub-Decree on the Establishment of the National Social Security Fund*, Article 5.

⁶⁹*Sub-Decree on the Establishment of the National Social Security Fund*, Articles 11-12.

⁷⁰*Sub-Decree on the Establishment of the National Social Security Fund*, Articles 15-16.

⁷¹*Sub-Decree on the Establishment of the National Social Security Fund*, Article 20.

⁷²*Sub-Decree on the Establishment of the National Social Security Fund*, Article 21.

set out in *Prakas* by the MLVT, with the agreement of the MoEF upon request of the Board⁷³. In order to manage the NSSF, a minimum 'reserve fund' is allocated for each of the pension and occupational risk components. If balance falls below the reserve, contribution rates are to be reviewed.⁷⁴ The 'operational fund' is to cover the expenses of the NSSF, and is not to be less than twice the amount of the monthly average expense of the NSSF in the previous year⁷⁵.

Regarding financial accountability, the NSSF is required to follow MoEF public accounting principles and rules, as supervised by an accountant⁷⁶. A range of decision-making powers under the NSSF is divided between the two Ministers. Both the Minister of Economy and Finance and the Minister of Labour and Vocation and Training are to receive the proposed annual budget and development programme for the NSSF from the Governing Board. Final approval falls to the Minister of Labour and Vocational Training,⁷⁷ who is required to cancel or delay decisions from the Governing Board if it is contrary to the NSSF's objectives, procedures, or laws and regulations, and may also propose the inspection or review of the Fund's activities⁷⁸. The Minister of MoEF has approval powers for the annual financial reports of the NSSF⁷⁹. Both Ministers must approve requests from the Board or Director regarding the sale or transfer of real estate, credit exceptions, loans or similar⁸⁰.

2.2.4 Cambodia Climate Change Alliance Trust Fund

The Cambodia Climate Change Alliance (CCCA) Trust Fund was developed in 2010 as a funding mechanism to support strengthening government technical and institutional capacity regarding climate change, through a unified donor engagement point. The CCCA Trust Fund's objective is generally to secure external funding for identified priority interventions from development partners, in the form of pooled and non-targeted resources, and to ensure a more coordinated approach to climate change funding. It was also initiated on the premise that the 'current multi-donor initiative will be substituted by country systems, possibly government managed trust fund or direct budget support, in a later phase'⁸¹. In this way, the CCCA Trust Fund has the potential to act as a 'stepping-stone' to enable Cambodia to start receiving financial resources for climate change, which will be managed according to internationally accepted standards, while country systems and capacity is developed over time⁸².

As the fund is project-based and therefore not established by Law, each donor to the CCCA Trust Fund enters into a contract with the UNDP regarding the administration of its donated funds⁸³. The UNDP is then responsible, as Trust Fund Manager, for administering and operating the Trust Fund. As such, the Fund is subject to UNDP rules and procedures. In addition, the CCCA Trust Fund has also developed its own Operational Manual.

To ensure government ownership over the CCCA Trust Funds' activities, the Fund operates from within MoE, as the government implementing partner, which hosts a Secretariat to manage the daily operations of the CCCA Trust Fund. To support effectiveness and accountability, an appointed Trust Fund Administrator supports the fund's management, and is responsible for providing capacity-

⁷³Sub-Decree on the Establishment of the National Social Security Fund, Articles 25-26.

⁷⁴Sub-Decree on the Establishment of the National Social Security Fund, Article 22.

⁷⁵Sub-Decree on the Establishment of the National Social Security Fund, Article 23.

⁷⁶Sub-Decree on the Establishment of the National Social Security Fund, Article 17.

⁷⁷Sub-Decree on the Establishment of the National Social Security Fund, Article 27.

⁷⁸Sub-Decree on the Establishment of the National Social Security Fund, Articles 29-30.

⁷⁹Sub-Decree on the Establishment of the National Social Security Fund, Article 31.

⁸⁰Sub-Decree on the Establishment of the National Social Security Fund, Article 32.

⁸¹Climate Change Department, Ministry of Environment Cambodia, 'Trust Fund' in Trust Fund Information, <<http://www.camclimate.org.kh/index.php/trust-fund/trust-fund-description.html>>

⁸²'Lessons learned' in Irawan et al. (2012) Case Study Report: Cambodia Climate Change Alliance Trust Fund. A UNDP working paper. <http://www.snap-undp.org/elibrary/default.aspx>

⁸³Irawan et al. (2012) Case Study Report: Cambodia Climate Change Alliance Trust Fund. A UNDP working paper. <<http://www.snap-undp.org/elibrary/default.aspx>>

building support, as well as financial assurances and reporting on use of funds, to ensure donor and government accountability and transparency requirements are met and reported on. A Programme Support Board (Board) guides decision-making with respect to the CCCA Trust Fund's activities, including on funding, policy and operational matters. To support government ownership and alignment with national policy, the Board includes four government representatives appointed by the NCCC, and four donor representatives. The Trust Fund Administrator and other development partners are able to act as observers. The Board meets at least twice per year to review and approve budgets, work plans and grant proposals, with decisions submitted to the Secretariat for the release of funds, in accordance with UNDP operational rules. The Secretariat is also responsible for providing administrative support to the Board, and the Climate Change Technical Team, the cross-sectoral entity under the NCCC, may provide technical support and advice, including making recommendations on grant proposals⁸⁴.

The CCCA Trust Fund operates as a 'pooled' fund. As a result, donor contributions are not earmarked for specific activities, but are to be allocated in accordance with five established outputs of the CCCA project (established in the CCCA's Project Document). The CCCA Trust Fund operates under a project cycle, utilising 'calls for proposals' followed by a two-step appraisal process (concept notes and full proposals), and grants are capped at a maximum of US\$300,000. It accepts proposals from government institutions, international organisations, NGOs and research institutes/universities. Applicants selected for funding must enter into an agreement with UNDP, and comply with applicable UNDP rules and procedures⁸⁵. To ensure accountability at the project level, projects must submit quarterly progress reports to the Secretariat. At the Trust Fund level, the Head of the Secretariat is also required to provide quarterly reports to the Board for endorsement, which are then submitted to the NCCC and development partners. A Joint Programme Review is also conducted annually, to ensure the CCCA project is progressing in line with government and development partner agreements.

2.2.5 Summary: Lessons from Operating Funds in Cambodia

Based on the review of these funds, and the structures of their enabling legal arrangements, some useful observations can be made regarding practice in Cambodia with respect for the establishment and operation of funds under the legal system. Both government-administered funds are established according to specific Laws, which identify in brief, the purpose or objectives of the fund, its sources of funds, the overall framework governance/management, as well as some guidance on payments or expenditure. Greater detail set out in *Sub-Decree* focusing on organization and function of the fund mechanism, with a particular focus on governance and management structures (especially the various roles and responsibilities allocated to various Ministries, and any governing board or committee, and the approval processes regarding significant decision-making powers and procedures) as well as more technical matters such as criteria for disbursing funds.

The MoEF plays a central role for both funds, maintaining high levels of control of financial management, and decision-making processes surrounding the allocation of funds. In both cases, technical and policy-oriented decision-making powers fall to the technical Ministry (although in the case of the CS Fund, this is limited to final approval for transfers). This existing practice would be highly relevant to establishing a government-administered REDD+ Fund, in particular with respect to the likely governance arrangements that may be deemed acceptable, in particular the need for the MoEF to play a central role.

In addition, a highly relevant precedent for a REDD+ Fund is provided by the NSSF, as it includes multi-stakeholder participation in its governance arrangements (Board) within its legal arrangements, with

⁸⁴Information adapted from: 'Governing bodies and beneficiaries' in Irawan et al. (2012) Case Study Report: Cambodia Climate Change Alliance Trust Fund. A UNDP working paper. <http://www.snap-undp.org/elibrary/default.aspx>

⁸⁵Website of Climate Change Department, Ministry of Environment Cambodia, 'Applicants' in Trust Fund Information, see: <<http://www.camclimate.org.kh/index.php/trust-fund/trust-fund-description.html>>

its *Sub-Decree* allocating non-government members to its Governing Board including representatives of ‘employers’ and ‘workers,’ in addition to members from relevant government entities. This is likely to be a key interest on the part of international donors, particularly with respect to REDD+. This ensures a broader representation of stakeholder views with regards to policy and operational decision-making, which would also be very important in respect of stakeholder representation for REDD+, considering the varied interested stakeholders involved in REDD+.

All three funds provide useful insights regarding revenue sources, and in particular the pooling of domestic and international funds. Both government-administered funds identify both domestic and international funds to provide revenue, and in the case of the CS Fund this approach is understood to have been relatively successful. This is perhaps based on the fact that the fund was established through a World Bank project and has been able to build international donor confidence in its effective use of funds and compliance with international management standards. It is also a strong precedent for the mandatory inclusion within a domestic Law to provide a consistent stream of revenue into a national-level fund, through its use of percentage-based transfers from the state budget.

As a REDD+ Fund will be based on performance, it is useful to note that the CS Fund also uses a performance-based approach in determining revenue allocations, including that each Commune/Sangkat Council is to meet certain standards regarding financial management and implementation of participatory approaches. This could provide useful insights when establishing fund distribution mechanisms and ensuring beneficiaries meet fiduciary standards and safeguards.

Finally, the CCCA Trust Fund, as well as the history of the CS Fund, also provides evidence of donor willingness to contribute to multi-stakeholder governed funds, as well as willingness to pool resources based around overarching goals. In the case of the CS Fund, it is possible that the establishment of this fund on a project basis that enabled the fund to build donor trust and government fund-management capacity, that eventually have enabled it to be successfully transitioned to a government-administered fund.

2.3 Other Cambodian Laws relevant for Funds

Finally, it is necessary to briefly consider whether there are any other laws, beyond specific sector laws and specific fund laws that will be relevant to the establishment of a National REDD+ Fund. As noted previously, no laws in Cambodia directly govern the establishment and functioning of funds. However, other laws should also be considered, particularly those relating to public financial management and fiduciary practices.

The *Law on the Public Finance System 2008* (Public Finance Law) provides the framework for public financial management in Cambodia and is therefore directly relevant, particularly if a National REDD+ Fund is to be administered by government, and seeks domestic budget support or earmarked revenue streams to contribute to its funding sources. The Public Finance Law provides MoEF with the central responsibilities for managing revenue, expenditure, borrowing, lending, and guarantees of the state, as authorized by laws⁸⁶. Specifically, only the Minister for Economy and Finance (under certain limits) has the right to borrow, receive grants, invest on financial fixed assets and other financial commitments, and lend money domestically and externally, amongst other things.⁸⁷ Regarding revenue, the MoEF is to collect and supervise taxes, excises and other fiscal revenues, and supervise the collection of non-fiscal revenue. Some revenues may be allocated only for actual expenditure items, under forms and conditions specified by law (enabling ear-marking).

The Public Finance Law also establishes various types of budget accounts: the national budget, annexed budget, the budget of public administration ‘establishments’, and special accounts of the

⁸⁶*Law on the Public Finance System 2008*, Article 34.

⁸⁷*Law on the Public Finance System 2008*, Article 67.

National Treasury⁸⁸. Relevantly, special accounts may record separate revenue for specific financing of public transactions, or to record transactions of a commercial or industrial nature, and are subject to additional conditions⁸⁹. These provisions for special accounts indicate they are likely to be appropriate for a separate Fund, due to the separation they enable from the main state budget.

The review of the Public Finance Law identifies that it gives significant responsibility and control to MoEF to manage and administer public finances. Based on this, any National REDD+ Fund that is established under Cambodian law is highly likely to require some degree of oversight by MoEF, especially if it sources public revenues, and/or enables loans. Any legal instruments establishing a Fund would therefore require careful drafting in close consultation with MoEF, to ensure that it is aligned with the Public Finance Law.

Finally, relevant to fiduciary standards, the Minister of Economy and Finance also has the duties to manage public procurement, and provide instructions to implement it, and all Ministries and public institutions are to comply with all laws and instructions on public procurement⁹⁰. The *Law on Public Procurement 2012*, as well as the *Law on Anti-Corruption 2010*, will therefore apply to all public institutions. Thus, any fund established under Cambodian law as a public entity will require compliance with these laws. However, it is possible that to meet international standards, more rigorous procurement procedures may be required (that go beyond the requirements of these laws), based on criticism and ongoing contention surrounding the Law on Public Procurement⁹¹.

3 International Practice in National REDD+, Forest and Climate Change Funds

3.1 Introduction

Establishing a National REDD+ Fund in Cambodia will necessarily involve considering international experiences with funds. This is particularly the case with respect to REDD+, given its linkages to international policy decisions, and the novelty of, and complexity associated with, funding mechanisms, in particular the emphasis on enabling verifiable results-based payments. Due to the fact that UNFCCC REDD+ financing modalities remain uncertain and are continuing to develop, as well as the complexity associated with REDD+ financing, there is relatively limited international experience with national funds targeted specifically to REDD+. Nevertheless, national REDD+ funds are being developed, and REDD+ is also being included within the mandate of broader national climate change funds. Further, lessons on establishing funds can also be learned from experiences with national forest or conservation funds.

In this context, this Part of the Report has identified six funds to provide a range of examples of approaches taken towards national funding mechanisms, from which lessons for a National REDD+ Fund in Cambodia can be drawn. With respect to REDD+ and forest funds, Brazil, Guyana, Nepal and Costa Rica have been examined. These funds represent a mix of approaches, including publicly administered funds and multi-donor trust funds, and particularly identifying the only examples of funds directed specifically to REDD+, and that are experimenting with mechanisms for results-based payments. In addition, the case studies of Indonesia and Mexico were considered, as they have

⁸⁸*Law on the Public Finance System 2008*, Article 14. The Financial Laws are those constituting the annual budget.

⁸⁹*Law on the Public Finance System 2008*, Articles 31-33.

⁹⁰*Law on the Public Finance System 2008*, Article 70.

⁹¹ As identified through personal communications. Media reports have also criticized the Law for the fact that it lacks components including procurement planning, implementation monitoring and procurement methods, as well as investigation and complaints procedures. For example, see: <<http://www.phnompenhpost.com/national/public-procurement-law-passes-assembly>>

recently established broader climate change funds that include REDD+ within their scope. Of course, each country's approach to establishing a fund will be influenced by national circumstances. However, more so than perhaps other funds in Cambodia (such as the CS Fund and the NSSSF), due to the interface of a National REDD+ Fund with the international UNFCCC context, international experiences and approaches provide valuable lessons for Cambodia.

3.2 National REDD+ and/or Forest Funds

3.2.1 Brazil⁹²

The Amazon Fund is the only identified national, government-administered fund that explicitly is focused on REDD+ actions. The overarching purpose of the Amazon is to raise funds to support efforts to prevent, monitor and combat deforestation, as well as to promote the preservation and sustainable uses of forests of the Amazon biome,⁹³ and is also specifically targeted to reducing greenhouse gas emissions. The Fund receives its income from donations, as well as net return on cash investments. To date, major investors have been the Governments of Norway and Germany. Additionally, Brazil's national petroleum company Petrobras, has recently made a significant contribution to the fund. Donations to the fund are made conditional on achieving reductions in GHG emissions from deforestation in the Amazon.

Funds are spent in accordance with the priorities of Brazil's Plan of Action for the Prevention and Control of Deforestation in the Amazon (PPCDAM), Sustainable Amazon Plan (PAS) as well as its National Plan for Climate Change (PNMC), and funds can be accessed by any party including non-government entities, and federal, state and municipal governments. The activities supported by the Funds must directly or indirectly reduce deforestation in the Amazon, and include:

- Management of public forests and protected areas;
- Environmental control, monitoring and inspection;
- Sustainable forest management;
- Economic activities created with sustainable use of forests;
- Ecological and economic zoning, territorial arrangement and agricultural regulation;
- Preservation and sustainable use of biodiversity; and
- Recovery of deforested areas (National Decree No 6,527/08).

The Amazon Fund may support the development of systems to monitor and control deforestation in other Brazilian biomes and in biomes of other tropical countries (up to 20%). In addition to reducing the emission of greenhouse gases, proposed subject areas for support by the Amazon Fund may be coordinated in such a way as to contribute to accomplishing significant targets including prevention, monitoring and combat against deforestation, and targets related to promoting the preservation and sustainable use of forests in the Amazon biome.

The Brazilian Economic and Social National Development Bank (BNDES) has the overarching responsibility for managing the funds of the Amazon Fund. The BNDES is a wholly-owned federal public company, under the supervision of the Minister of State for Development, Industry and Foreign Trade. It also raises funds, facilitates contractual arrangements, and monitors and supports projects that are funded. Housing the Amazon Fund within the BNDES enabled the fund to be operationalized quickly, based on established

⁹²Information in this section was adaptation from the website of the Amazon Fund:

<http://www.amazonfund.gov.br/FundoAmazonia/fam/site_en/>; Maya Forstater, Smita Nakhooda and Charlene Watson, 'The effectiveness of climate finance: a review of the Amazon Fund' ODI Working Paper 372. March 2013; <http://www.climatefundupdate.org/listing/amazon-fund#TOC-Fund-Governance>

⁹³This is set out in Decree No. 6527 dated 1 August 2008.

governance, operations and risk control systems, as well as its existing reputation for integrity⁹⁴.

The Fund's management is supported by a multi-stakeholder Guidance Committee ('COFA'), which has the responsibilities for developing the Funds' guidelines⁹⁵ and monitoring adequacy of projects, as well as the commitments under the relevant policies and directives. This is constituted by three voting 'blocks'; the federal government, state governments, and civil society (including indigenous people, traditional communities, NGOs, industry and scientists). Each member holds one vote within each block. An independent auditor also assesses whether the application of the funds adhere to the guidelines set by Guidance Committee. The Fund also has a Technical committee, which is appointed by the Ministry of Environment (in consultation with the Brazilian Climate Change Forum), and consists of six technical and scientific experts for three-year terms. The Technical Committee is responsible for verifying the Ministry's calculations regarding emissions reductions from deforestation, including appraising methodologies used.

The Fund, through the BNDES, provides non-reimbursable loans to projects that are aligned with its objectives and funding criteria, etc. These are effectively grants, but are treated as a loan until the end of the project period. When the BNDES is satisfied that the funds have been spent in line with the agreed terms, repayments are cancelled.

One of the major innovative components of the Amazon Fund is the results-based payments model that it has established. According to this model, financial support is to be provided to the Fund by donors, to deliver its objectives, equivalent to the emission reductions achieved. This is based on an estimate of the hectares of avoided deforestation achieved below a reference level (baseline), average carbon stocks, and a fixed carbon price. The deforestation rates are calculated on an annual basis, which are calculated against a baseline (of 2006), to be adjusted downwards every 5 years. The fixed price of carbon at \$5/tonne CO₂ equivalent is to provide a carbon equivalency for donations. GHG reductions are estimated conservatively using a single emissions factor for the whole country (at 100 tonnes of carbon per hectare). Donors receive a non-tradeable certificate indicating the amount of avoided emissions reductions associated with the donation. However, this system has become largely symbolic, largely due to the fact that significantly greater numbers of emissions reductions have already accrued than are likely to ever be funded⁹⁶.

In addition to financial management procedures of BNDES, project monitoring and evaluation is also conducted according to BNDES operational procedures. However this focuses more on project level reporting, rather than evaluation of the impacts of the Fund itself, particularly since the fund has operated for a relatively short period of time⁹⁷.

3.2.2 Guyana REDD+ Investment Fund ⁹⁸

The Guyana REDD+ Investment Fund (GRIF) is a multi-contributor trust fund that was established based on a Memorandum of Understanding with the Government of Norway, to act as a financial mechanism for performance based payments to Guyana, for the implementation of its Low Carbon Development Strategy (LCDS), focusing on payments received for avoided deforestation. The objective of the Fund is to establish a financial mechanism that balances national sovereignty over investment priorities,

⁹⁴ODI publication

⁹⁵ For example, see 'Guidelines and criteria for allocation of resources and focus in 2013 and 2014', available at: <http://www.amazonfund.gov.br/FundoAmazonia/export/sites/default/site_en/Galerias/Arquivos/diretrizes_criterios/COFAs_GUIDELINES_2013-14.pdf>

⁹⁶For further discussion and analysis of this model, see Maya Forstater, Smita Nakhooda and Charlene Watson, 'The effectiveness of climate finance: a review of the Amazon Fund' ODI Working Paper 372. March 2013

⁹⁷Maya Forstater, Smita Nakhooda and Charlene Watson, 'The effectiveness of climate finance: a review of the Amazon Fund' ODI Working Paper 372. March 2013.

⁹⁸Information in this section adapted from the GRIF website, including the Administration Agreement and the Operational Manual: <<http://guyanareddfund.org/>>

while at the same time ensuring compliance with donor safeguards requirements. The basic concept of the GRIF is that it will: “(i) receive payments for forest climate services provided by Guyana; and (ii) transfer these payments and any investment income earned on these payments, net of any administrative costs of the Trustee and the Secretariat and any administrative fees to the Partner Entities, for projects and activities that support the implementation of Guyana's LCDS”⁹⁹.

The GRIF is based on the Administration Agreement between the GRIF, the Royal Norwegian Ministry of Foreign Affairs as Contributor, and the International Development Association as Trustee (World Bank), made in October 2010. The Agreement details arrangements for instalments to the GRIF, and also establishes ‘Standard Provisions for the GRIF’ that are to apply to all subsequent contributors. This addresses transfers to partner entities and their responsibilities, and includes specific requirements regarding accounting and financial reporting and disclosure of information, amongst other things. It also includes the GRIF Governance Framework and the GRIF Verification Framework.

The Governance Framework for the GRIF consists primarily of a Steering Committee that acts as the oversight and decision-making body, and a Trustee (appointed as the World Bank’s International Development Association), to provide financial intermediary services to the GRIF. The Chair of the Committee is a representative of the government, and members of the Committee from both the government and financial contributors. Partner entities, the Trustee, civil society organisations and private sector entities may be invited to participate as observers. A Secretariat is to support the Committee, with the governments of Norway and Guyana constituting the secretariat in the interim. The Trustee manages the funds received from contributors, and will make transfers to of GRIF resources as approved by the Committee, to Partner Entities.

Partner Entities are entities that provide operational services for projects approved under the LCDS (ie manage and monitor project implementation), and include multilateral banks and any program or agency of the United Nations Development Group. Others may be included if they meet internationally recognised standards (fiduciary, safeguard and operational standards), and are approved by the Committee. Partner Entities are to enter into agreements with implementing entities, which are responsible for the implementation of actions. These may include the Government of Guyana or any other entity that is eligible under Partner Entity policies, and approved by the Committee.

To monitor and evaluate the GRIF, the Agreement also provides that after three years of operation, each Partner Entity and the Trustee must submit progress reports to the Committee, and thereafter implement any measures identified to address issues raised. The fourth annual status report is also to include an independent evaluation of the GRIF.

The Verification Framework establishes the performance-based payments model used by the GRIF and therefore is the link between the Government of Guyana and contributors to the GRIF. It specifies that the level of financial support be based on two sets of indicators:

1. Indicators of enabling activities: policies and safeguards to ensure REDD+ contributes to the achievement of identified goals. Indicators are: alignment with strategic framework, multi-stakeholder consultation process, governance, MRV, indigenous rights, and an annual assessment and verification.
2. REDD+ performance indicators: a set of forest-based GHG emissions-related indicators. These will gradually be substituted as a MRV system for emissions from deforestation and forest degradation in Guyana is established. The interim indicators include, amongst others, gross deforestation (against a baseline set in 2009), loss of intact forest landscapes, carbon loss as indirect effect of new infrastructure, and emissions resulting from illegal logging activities. The methodology

⁹⁹GRIF fact sheet

involves calculating the observed deforestation rate from an agreed interim reference level, calculating achieved reduced deforestation by applying the conservative carbon loss estimate of 100 tonnes/hectare, subtracting changes in emissions based on forest degradation, and applying an interim carbon prices of \$5/tonne.

The contributor's support to the GRIF is not to exceed the amount calculated on the basis of the interim methodology, with the aim that contributions will vary directly with emissions. Finally, it sets out the bases of a REDD+ Governance Plan. Amongst other things, this is to include an emphasis on transparency and accountability including through public availability of decisions and data, a reporting system on multiple benefits of REDD+, the development of a national land use planning system to avoid leakage, and the development of a valuations system for determining costs and benefits for alternative uses of forests, the development of a multi-year plan for the demarcation of Amerindian land, and developing mechanisms for the distribution of REDD+ funds.

3.2.3 Nepal¹⁰⁰

Nepal's Forest Carbon Trust Fund (FCTF) is a project-based trust fund that was established by three non-government groups Asia Network for Sustainable Agriculture and Bioresources (ANSAB), International Centre for Integrated Mountain Development (ICIMOD) and Federation of Community Forest Users, Nepal (FECOFUN), with the financial support provided by the Government of Norway. Its aim was to explore governance approaches for the distribution of performance-based incentives for local communities in the context of REDD+, within a community forestry setting, and has been implemented in three districts. Thus, while it is not a national level, it offers an interesting 'experimentation' with establishing performance-based incentives linked to forest carbon, and may be particularly relevant regarding establishing benefit-sharing arrangements under a National REDD+ Fund.

The FCTF was formally established through a multi-stakeholder taskforce that included the founding groups, as well as members from the Government and the Nepal Federation of Indigenous Nationalities. The current governance arrangements consist of (1) Community forest users' groups (CFUGs); (2) Watershed level networks, advisory committees and monitoring committees, and (3) a central level Project Management Unit and Advisory Committee. There is also a Verification Agency and Monitoring Committee.

At the central level, the Advisory Committee's role is supervision and oversight of the fund, including on policy and strategic matters and reviewing performance of the Fund. The Project Management Unit is responsible for overseeing all project activities for REDD+ payments. It has overall responsibility for management and coordination of the Fund. At the 'watershed' level, the Watershed Advisory Committee is responsible for overseeing fund utilization, as well as providing strategic and policy advice, at watershed level. Each Watershed REDD network is responsible for management and operation of pilot project activities, including through coordination, reporting and financial management. The Monitoring Committee is to oversee that payments (claims and disbursements) and the carbon database are accurate and transparent, and there is full involvement of all stakeholders.

At the community level, the CFUGs, already established under Nepalese law, are responsible for project activities including carbon measurement, reporting and engagement in promotion of carbon enhancement activities and capacity building on REDD+. They are also liable to ensure their REDD+ benefit distribution plans are transparent and inclusive, and promote and respect social and environmental safeguards. The Verification Agency is independent, and is responsible for reviewing forest carbon methodologies, validating measurement methodologies as applied, assessing the

¹⁰⁰Information taken from Sudarshan Khanal, 'Initiation of Forest Carbon Trust Fund in Nepal,' Asia Network for Sustainable Agriculture and Bioresources (ANSAB), accessed at: <<http://www.forestcarbonportal.com/resource/initiation-forest-carbon-trust-fund-nepal>>; and Operational Guidelines of Forest Carbon Trust Fund 2011 for Regulating Seed Grant under Community Forestry REDD+ Project, Nepal.

standards and criteria are met by the Watershed REDD networks while disbursing payments to CFUGs, verify and certify claims received from the watershed level, evaluating fund use by Watershed REDD Networks and CFUGs, and verifying payment utilization by Watershed REDD networks.

In order to access the FCTF, the CFUG's conduct forest carbon surveys, provide social data, and a tentative plan for proposed use of the funds. Funds are to be used for REDD+ activities, which may include alternative energy promotion, conservation of forest carbon stocks, sustainable management of forest, biodiversity conservation, enhancement of forest carbon stocks, poverty reduction/livelihood improvement activities, forest carbon monitoring, awareness raising and capacity building on REDD and climate change, and auditing of FCTF and verification of data.

The Watershed REDD Networks compile the claims from each CFUGs within the watershed, and prepare a claim across the watershed, which is presented to the relevant Watershed Advisory Committee, for approval. Once approved, the watershed-level claim is then processed at the central level, by the Project Management Unit. The Project Management Unit submits the collected claims and submits this to the central Advisory Committee, which is responsible for approval of payments after verifying the submitted data based either on the Verification Agency, and/or by direct monitoring. The Watershed Advisory Committee, upon receiving funds, distributes them to the CFUGs as per their submission.

Four basic elements have been established by the taskforce to guide distribution of funds: 1) the quantity of forest carbon saved above the baseline, 2) the number of households of indigenous peoples and minority groups, 3) the female population and women, and 4) the number of poor households within the project area. Each is assigned a relative percentage. Based on these elements, funds are distributed to the CFUGs. However, 'reserve funds' are retained in each watershed, in order to ensure that the CFUGs perform the activities in accordance with their plan.

3.2.4 Costa Rica (FONAFIFO)¹⁰¹

Costa Rica's National Forestry Financing Fund (FONAFIFO) has been in operation since 1997 and is frequently discussed due to its pioneering role in establishing a fund for payments for environmental services. Its overarching objective is to finance small and medium-sized landowners of forested land to promote the management of forests and to encourage forest plantation and reforestation processes, in order to reduce the conservation and recovery of the country's forest cover. It focuses on mobilising funds through payments for environmental services (PES) by forests and other activities, as well as offering loans for the purposes of forest management, and other activities, supported by a forestry tax.

FONAFIFO is a fully decentralized entity within the organizational structure of the State Forest Administration, and was established through amendments to the Forest Law and associated regulations and executive decrees. It has relative autonomy with independent legal status, and the authority to engage in legal transactions, to ensure the effective administration of its resources. Its funding comes from a range of sources, including through the national budget (raised from a fuel tax), forestry tax revenues, from contributions of development partners. It also receives resources from contracts signed with energy and hydroelectric companies for watershed and environmental services protection.

The PES Program, FONAFIFO's main program, enables private landowners to voluntarily enter into contracts with the government, which require them to protect their property (and therefore its environmental services) for a set period (between 5 and 20 years depending on the contract type), with obligations binding on future landowners. 'Forest conservation certificates' are then issued to the

¹⁰¹ Information from this part was adapted from the FONAFIFO website: <<http://www.fonafifo.com/english.html>>

landowners. Payments are made over the first 5 years.¹⁰² Individual landowners may enrol up to 300 hectares (and a minimum 2 hectares), however there is no limit on a group of landowners acting together through a non-government organisation. Governing decrees and manuals that are regularly revised, set out eligibility requirements, the basis for calculating payments, and geographic priorities. Approximately 60% of participants are small to medium sized landowners, often enrolled through community-based contracts, with private companies, indigenous groups and conservation organisations constituting the remainder¹⁰³.

Monitoring for compliance with management plans for land enrolled in the PES program has been critical to FONAFIFO's PES program. While primarily the responsibility of FONAFIFO, private forest agents also undertake verification activities to ensure that landowners are complying with their contracts. Agents are obliged to report any violations to the government, although enforcement relies on legal action where non-compliance is identified¹⁰⁴. FONAFIFO also uses GIS and an integrated management system to ensure it appropriately manages and controls the allocation of contracts and processing of payments to beneficiaries.

In terms of governance, FONAFIFO has a Governing Board of five members (two representatives from the private sector and three from the public sector), appointed for a two-year period. It has an Executing Unit to carry out the daily work of the fund, headed by an Executive Director, and five departments: Environmental Services, Credit, Administration, Legal and the Resource Management. It uses the model of a trust fund for its operations, meaning that FONAFIFO conveys the ownership of its assets and rights to a trustee who holds them for the benefit of the relevant third party, in this case the small/medium forest producers and landowners.

3.3 National Climate Change Funds

3.3.1 Indonesia¹⁰⁵

The Indonesia Climate Change Trust Fund (ICCTF) has recently been established to pool and coordinate resources from various funding sources, to enable Indonesia to finance its climate change policies and programmes. The objectives of the ICCTF are to achieve Indonesia's goals for a low carbon economy and greater climate change resilience, and to enable the Government of Indonesia to increase the effectiveness and impact of its leadership and management in addressing climate change issues. It is also considered to act as an important policy dialogue for development partners and the government on climate change.

The ICCTF has three main funding windows; (1) land based mitigation, which focuses on REDD+, (2) energy, which focuses on improving energy security and reducing GHG emissions from the energy sector, and (3) adaptation and resilience, which focuses on preparing institutions, and vulnerable communities, for the impacts of climate change. Sources of funding for the ICCTF is focused on receiving pooling funding from a range of sources, including the private sector and donor funding from development partners.

The UNDP acts as the trustee and interim fund manager for the ICCTF and thus the mechanism for receiving and delivering funds follows standard UNDP programming, whereby a Project Document has

¹⁰²Chomitz, Kenneth M., Esteban Brenes and Luis Constantino, "Financing Environmental Services: The Costa Rica Experience and Its Implications". Rep. 1998. Web; Steed, Brian C., "Government Payments for Ecosystem Services – Lessons from Costa Rica". Journal of Land Use 23.01 (2007): 177-202. Web.

¹⁰³ Porras, Ina. "Fair and Green? Social Impacts of Payments for Environmental Services in Costa Rica". Rep. London: Sustainable Markets Group, International Institute for Environment and Development (IIED), 2010. Web.

¹⁰⁴Chomitz, Kenneth M., Esteban Brenes and Luis Constantino, "Financing Environmental Services: The Costa Rica Experience and Its Implications". Rep. 1998. Web; Steed, Brian C., "Government Payments for Ecosystem Services – Lessons from Costa Rica". Journal of Land Use 23.01 (2007): 177-202. Web.

¹⁰⁵ Information taken from Fund website, see: <<http://www.icctf.or.id/>>

been signed with the National Development Planning Agency. To date, Australia, the UK and Sweden have all made contributions to the fund. Beyond the Trustee, the governance and management arrangements for the ICCTF include a Steering Committee, a Technical Committee, and a Secretariat. The Steering Committee is responsible for policy and operational guidelines, management, and monitoring and evaluation. It is divided into two forums: the Policy Forum (responsible for identifying strategic policy recommendations, including defining the priority areas for funding), and Management Forum (responsible for decision-making and approval of management and operational aspects, including approving guidelines, project proposals and Standard Operation Procedures). Representatives from development partners and non-government organisations may also be part of this forum. Both forums will include non-implementing agencies (Planning, Foreign Affairs) and sectoral ministries involved in priority areas (energy, forestry, etc.), as well as the Head of the Secretariat of the National Climate Change Council.

The Technical Committee is responsible for advising the Steering Committee in all technical matters, and is to consist of staff from the National Development Planning Agency the Ministry of Finance, and other line ministries. It may also be advised by a group of experts. Its role includes evaluating project proposals, developing guidelines and manuals on mechanisms, modalities and procedures of the trustee, and providing technical assistance and any other tasks for the Steering Committee. The Secretariat supports the daily operations of the fund, supporting the Steering Committee and Technical Committee on administering grant agreements, proposals and approvals. It operates on a full time basis and consists of members with technical, administrative and financial expertise, and sits under the National Planning Development Agency.

Distribution of funds under the ICCTF is managed under a grant-based approach. The ICCTF has established a project cycle that includes appraisal against eligibility criteria, for which the Steering Committee has final responsibility for approval or refusal. Each approved project then signs a project agreement and funds may be disbursed. Annual monitoring and evaluation of projects funded by the ICCTF is carried out by the Secretariat on behalf of the Steering Committee.

Regarding transparency and accountability, the ICCTF has a range of auditing practices, in addition to monitoring and evaluation. The Steering Committee is held accountable by annual policy compliance audits conducted by an independent auditor, which are aimed at ensuring that external grants are allocated in accordance with donor partner grant agreements. The same auditor will also audit the performance of the Trustee, as well as the use of funds by grant recipients. For those activities that are implemented by Ministries, they are responsible for ensuring compliance with regulations on public use of funds. Six monitoring and evaluation criteria are applicable to all projects, programs and themes; efficiency, effectiveness impact, transparency, relevance and sustainability. M&E is based on the Government's laws and regulations (applying to development plans and work plans/budgets of government ministries), grant agreements between the Government and development partners, and contractual agreements between the Government and service provider. The Technical Committee, on behalf of the Steering Committee, is in charge of the technical aspects of M&E.

3.3.2 Mexico

Mexico has had considerable experience with forest and environment funds, including a National Forest Fund, and a Carbon Trust Fund to support CDM projects. Most recently however, Mexico has passed a *General Law on Climate Change 2012* (GLCC)¹⁰⁶, which is also considered international best practice. While much of its focus is on mitigation and balancing the country's rapid development with climate change¹⁰⁷, it includes comprehensive institutional reforms. It also elaborates in detail the

¹⁰⁶The English translation utilized is set out in a publication by the Mexico-US Climate Law Network, 'What are the next steps? Legal perspectives on Mexico's General Law on Climate Change.' 2012.

¹⁰⁷ For example, see analysis at Mitigation Partnership:

guiding principles and objectives for national climate change policy, identifying specific adaptation and mitigation actions, and details requirements of the National Strategy, National Program, State programs, as well as the Inventory and Climate Change Information System, Registry and Fund.

The GLCC establishes a Climate Change Fund¹⁰⁸. Its objective is to channel public, private, national and international financial resources to support climate actions. Adaptation actions are prioritised. The Fund's resources are destined to, amongst others, projects that simultaneously contribute to climate change mitigation and adaptation by increasing the natural capital through actions oriented towards, among others, reverting deforestation and degradation; conserving and restoring the lands in order to increase carbon capture; and implementing sustainable agricultural practices¹⁰⁹.

Resources are to come from the budget, tax fees and fiscal gains as established in applicable laws, national/international donations, donations from foreign governments and international organizations, and the value of certified emissions reductions from projects implemented in Mexico, and acquired voluntarily from the market¹¹⁰.

It is operated through a public trust created by the Secretariat of Finance and Public Credit in accordance with applicable legal provisions¹¹¹. It is to have a Technical Committee presided over by the Environment Secretariat, and composed of representatives from the Secretariats of Finance and Public Credit; Economy; Government; Social Development; Communication and Transportation; Energy; and Agriculture, Livestock, Rural Development, Fishing, and Alimentation¹¹². The Technical Committee must seek the Inter-Ministerial Committee Climate Commission's opinion regarding operational regulations and operative budgets¹¹³. The Fund shall be subject to the procedures of control, audit, transparency, evaluation, and accountability established by the applicable legal provisions¹¹⁴.

3.3.3 *Summary of Lessons from International Experiences*

The international experiences discussed in this part offer very useful comparative examples from which Cambodia can learn, from more narrow and targeted REDD+/forest funds (through Brazil, Guyana, Nepal and Costa Rica), to broader climate change funds (through Indonesia and Mexico). All funds are focused on access international financing, although most also seek a wide range of revenue sources, including both public and private sector, as well as national and international sources, and most are directly linked to national level policies on REDD+ and/or climate change or low carbon development. The examples identified also provide different approaches to funds being operated as a multi-donor trust fund (such as Guyana and Indonesia), compared to national (government administered) funds (such as Brazil and Costa Rica), and the governance and management arrangements that have been implemented in response to these choices. They also provide options and ideas for addressing more detailed operational matters, for example, experimentation with approaches for results-based payments (such as in Nepal and Guyana), as well as for providing practical applications of how likely donor requirements can be implemented (on matters such as governance, safeguards and fiduciary standards). However, each country's national circumstances are of course unique, and thus any application of international experience will nevertheless also be closely guided by domestic Cambodian context.

As noted previously, in spite of these identified examples, there is relatively limited international experience available with respect to National REDD+ Funds, considering the novelty of this approach

<<http://mitigationpartnership.net/implementing-climate-change-general-law-mexico>>

¹⁰⁸ Mexico's General Law on Climate Change 2012, Articles 80-86.

¹⁰⁹ Mexico General Law on Climate Change 2012, Article 82.

¹¹⁰ Mexico General Law on Climate Change 2012, Article 81.

¹¹¹ Mexico General Law on Climate Change 2012, Article 83.

¹¹² Mexico General Law on Climate Change 2012, Article 84.

¹¹³ Mexico General Law on Climate Change 2012, Article 85.

¹¹⁴ Mexico General Law on Climate Change 2012, Article 86.

as determined under the UNFCCC, which limits the range of experience from which Cambodia can draw upon. At the same time, the funds established related to REDD+, have also enabled experimentation with results-based payments models, given limited collective international experience with such approaches. According to the approaches that are emerging (in Brazil and Guyana), a significant aspect worth noting is that projects supported by these funds is that payments are assessed against emissions reductions by a defined and conservative national baseline, as well as against agreed performance indicators, including on institutional and policy reform component, particularly in the case of Guyana. They have also proceeded despite the absence of detailed benefit-sharing arrangements being in place, nor well-established technical methodologies for determining emissions reductions.

In addition, it is worth emphasising that with the exception of Brazil, no countries have successfully established and operationalized a national, government-administered and operated fund that is designed specifically for REDD+. The majority of funds established are those operating under trust fund arrangements with donors, and have multi-stakeholder participation in governance arrangements. The use of multi-donor trust funds appears to have been important for enabling access to international financial contributions, while at the same time promoting government ownership in decision-making, and providing opportunities for capacity-building, with the view to future transition to government-controlled funds. It also indicates that donors are likely to be reluctant, in current circumstances, to invest funds in REDD+ activities, without the participation of non-government actors in governance arrangements. Again, Brazil has been one exception to this, due to its well-respected national development bank generating sufficient trust to enable it to act as trustee, and attract international donor contributions.

Finally, the range of approaches should be emphasised, including that national level REDD+ funding mechanism are developing both through targeted REDD+ funds, as well as with broader National Climate Change Funds. Ultimately, the range of decisions that need to be made on the approach to and design for National REDD+ Fund will be closely linked to each country's national circumstances. This will include each country's particular objective(s) for a fund, its domestic policy and legal framework and institutional arrangements surrounding both REDD+ and climate change broadly.

4 Options

4.1 Identification of Options for Establishing a National REDD+ Fund

Based on the reviews undertaken in this Report canvassing the international setting, the Cambodian institutional, policy and legal setting, together with international experiences, the potential avenues for establishing REDD+ funding mechanism in Cambodia have been identified as follows:

Option 1: A multi-donor REDD+ trust fund, administered by an independent trustee (such as a multilateral institution), which could be transitioned to a government-administered fund in the future;

Option 2: A government-administered National REDD+ Fund, with multi-stakeholder participation, established through a new Law;

Option 3: A REDD+ sub-fund or funding 'window' within a new National Climate Change Fund; and

Option 4: Amendment and expansion of the Fund provisions within the Law on Forestry or Law on Protected Areas to explicitly enable REDD+ funding and incorporate necessary details.

These options are those identified as those that are possible within the Cambodian legal system, and current circumstances and practice. However, the decision on which option to proceed with should

be guided by a range of factors, linked both to international and domestic circumstances, as identified through the review for this Report.

4.2 Guiding Factors for Decision-Making

Developing a National REDD+ Fund will likely be a lengthy and complex process, requiring substantial consultation and various policy decisions on structure and design. However, at this preliminary stage of analysis, the focus of this Report is to identify the most appropriate approach or ‘pathway’ to start this broader process, based on the international and domestic circumstances that have been discussed throughout this Report. This Part therefore identifies a range of factors to provide guidance with analysis of the four options that are available, and to support decision-making.

4.2.1 Access to International Finance

Establishing access to (and sustainability of) financing should be a key driver in establishing a national REDD+ funding mechanism. Given that the majority of REDD+ funding is likely to continue to come from international sources, a National REDD+ Fund must be closely aligned with international requirements, processes and decisions. Current and future requirements imposed by international institutions, in particular the UNFCCC, as well as development partners more broadly, should be closely considered.

Regarding current UNFCCC guidance, including related to likely access to the Green Climate Fund, a National REDD+ Fund should be a national-level entity, enable verifiable results-based payments, and should also apply high standards of financial management, accountability and transparency, as well as ensuring compliance with relevant environmental and social safeguards. In addition, given ongoing uncertainty regarding a UNFCCC REDD+ mechanism, in addition to the early stage of international experience with national REDD+ funds based on results-based payments, it is important that any proposed fund is sufficiently flexible to be able to respond to future UNFCCC developments, to ensure international compliance can be achieved, and to not impose any limitations on future funding streams.

Broader international considerations also relate to the necessary fund structure that will be required to ensure that international donors are willing to contribute to a National REDD+ Fund, particularly in the interim period before the operationalization of formal UNFCCC REDD+ mechanism and the Green Climate Fund. In this case, the experiences of other countries provide particularly useful lessons. Striking a balance between international donor requirements, and broad national participation will be necessary¹¹⁵. Donors are interested in ensuring international fiduciary standards and safeguards can be met, while simultaneously ensuring funds have sufficient national ownership over decision-making, and to ensure that funding will be aligned to domestic policy priorities. Achieving this balance has been consistently identified as critical for attracting international donor finance. Multi-stakeholder participation in governance arrangements, which also recognises the very clear role that non-government stakeholders such as NGOs will continue to play with the ongoing and future implementation of REDD+ activities, independence from the public administration, transparent processes are a key ways to maintain this balance¹¹⁶. Clearly linking the fund to national policies or strategies on REDD+ (and broader climate change policies) will also be important¹¹⁷. Ensuring the establishment of a National REDD+ Fund is guided by and aligned with these principles will be fundamental in providing the best access to as wide a range of international finance as possible.

¹¹⁵Darragh Conway and Luke Pritchard, ‘International experience with REDD+ and national forest funds’, Lowering Emissions in Asia’s Forests (LEAF).

¹¹⁶Darragh Conway and Luke Pritchard, ‘International experience with REDD+ and national forest funds’, Lowering Emissions in Asia’s Forests (LEAF).

¹¹⁷ Recent analysis of efforts by the Democratic Republic of Congo to establish its own REDD+ fund also identified these factors as relevant. See: Aquino, A., Guay, B., ‘Implementing REDD+ in the Democratic Republic of Congo: An analysis of the emerging national REDD+ governance structure,’ Forest Policy and Economics (2013), <<http://dx.doi.org/10.1016/j.forpol.2013.04.003>>

4.2.2 Alignment and Cohesion with National Institutions, Policies and Laws

Existing national institutional, policy and legal arrangements will also necessarily influence decision-making for a REDD+ funding mechanism in Cambodia. First, any National REDD+ Fund must clearly be compliant with existing laws within Cambodia, and decisions should also consider the way that existing Laws will apply. Critically, the role of the Ministry of Economy and Finance, consistent with the provisions of the Public Finance Law, must be closely considered, with respect to any Law that is developed for a fund. The identified legal limitations of the existing Fund provisions in sector laws (most notably the Forestry Law and PA Law) will also strongly influence their potential for a REDD+ funding mechanism.

Institutional arrangements will also play an influential role in establishing a Fund. Currently, the REDD+ Taskforce, supported by a Secretariat hosted by FA, is the overarching institution leading on REDD+ in Cambodia. It is intended to guide the FA, FiA and GDANCP, which all have jurisdiction over different types of forested land and thus are linked to REDD+ activities. Significantly, while the Taskforce does have inter-ministerial membership, it currently is established within MAFF and is guided only by *Prakas* of that Minister, which under the legal system limits its authority to MAFF only. However, it is important that any National REDD+ Funding mechanism should ensure equal access to funding and participation in decision-making across MAFF and MoE, as well as for non-government entities. This is also supported by the recent UNFCCC COP decision calling for the identification of a national entity to facilitate coordination of REDD+. Yet with the current institutional arrangements, broad access to REDD+ funds may be limited if managed by only one of these institutions, such as the FA, as this will not represent a truly 'national entity'. Addressing and clarifying the institutional context should therefore be a significant consideration in establishing governance arrangements for a National REDD+ Fund.

The national policy context must also be considered. In addition to the necessity of progressing with a National REDD+ Strategy (or Policy) to guide and align with a National REDD+ Fund, climate change and green growth policy in Cambodia is also relevant. A National REDD+ Fund (and broader policy approaches and institutional arrangements REDD+) should carefully consider and align itself with these broader government policies. In particular, the intention to establish a National Climate Change Fund as set out in the CCCSP and affirmed at the 3rd National Forum on Climate Change, should be closely considered. The development of a National Climate Change Fund opportunities for alignment and integration of a National REDD+ Fund, and also raises the issue of the need to avoid duplication of efforts, which would generate inefficiency and risk overlap of mandates and confusion.

4.2.3 Practical Considerations¹¹⁸

Finally, a number of practical considerations will influence the choice of avenue for a National REDD+ Fund, including the potential timeframes associated with pursuing and establishing a fund under different avenues, existing capacity, and issues related to feasibility broadly.

Time frames associated with the different options will be relevant, particularly because the timely establishment of a national funding entity will be critical to facilitating the progress towards REDD+ implementation. In particular, establishing a law in Cambodia can be a lengthy process and may take many years, due to the consultation and review processes that are necessary. Of course, with high levels of political commitment, it is also feasible that a Law can be passed very rapidly. However, establishing a fund through project arrangements with a development partner is likely to be able to be done more rapidly, although this will also depend on the complexity of the fund design, amongst other things. Domestic and international experiences in this regard are instructive. For example, in the case of Brazil, the Amazon Fund was established very quickly (with approximately one year, with donor

¹¹⁸ Useful analysis and guidance for decision-making, although in the specific context of establishing national climate change funds, can be found in: Irawan S, Heikens A, Petrini K (2012) National Climate Funds: Learning from the experience of Asia-Pacific countries. UNDP Discussion Paper.

contributions within the following year), as there was high political commitment as well as an existing Brazilian institution that had existing fund management experience and within which the Amazon Fund could be integrated¹¹⁹. However, from a very general perspective, it is anticipated that a multi-donor trust fund could be established within 1-2 years (from initial design through to operationalization) while a more complex, public fund could take around 3-5 years¹²⁰.

Existing capacity, both financial and technical, for managing a National REDD+ Fund, is also a relevant factor. While a multi-donor trust fund would enable capacity-building to take place simultaneously, if a public fund (administered by a government institution) is contemplated, a significant consideration is identifying an appropriate institution that has existing capacity to manage a National REDD+ Fund in accordance with necessary international fiduciary standards, or as an alternative, identifying whether sufficient financial resources would be available to hire a fund manager as an interim arrangement.

Finally, considerations regarding feasibility, both financial and political are relevant. Whether donor financial commitment and support is available will of course guide the likely feasibility of establishing a fund. This is because considerable establishment costs, as well as long-term operational costs, are likely, and will also differ between the various National REDD+ Fund options. More significantly, feasibility related to donor commitment may well be closely linked to whether donors perceive commitment on the part of the Cambodian government to move forward towards establishing and implementing REDD+ policies and strategies to ensure results in reducing emissions from avoided deforestation will in fact be achieved, thus making available results-based payments. From a political perspective, the likelihood of achieving the support of key stakeholders in Cambodia for the development, and operationalization over a National REDD+ Fund will also be influential. In this context, the established funds already operating in Cambodia provide useful precedents regarding accepted practice in relation to various important and sustainable design elements (for example, the likely role that the MoEF will play), which may also influence political feasibility and acceptability of the various National REDD+ Fund avenues.

4.3 Analysis of Options

4.3.1 Option 1: Multi-donor Trust Fund

The option of a multi-donor trust fund is the model that is likely to facilitate access to international finance. This is because it is likely to enable the highest levels of accountability and transparency, and to meet international fiduciary standards. Combined with commitment and progress with REDD+ and climate change policies at the national level, a trust fund also is likely to provide the most secure avenue for donors willing to make contributions to the fund, which will be important particularly in the short term. It also enables support for capacity building (both institutional and human), as well as promoting alignment with country systems and policies through the strong participation of government on decision-making bodies. This approach would also enable a multi-donor trust fund to be used as a 'stepping stone' to transition to a government-administered fund in the future.

From a more practical perspective, this fund is also highly likely to be able to be initiated more rapidly, as it avoids the need to develop, consult and undertaking various review and approval processes within the legal system that a new Law and Sub-Decree would require. Because it operates on a project-basis, it would also offer more flexibility without 'locking' in one model in a legal instrument. It would also allow for 'experimentation' and learning with respect to the fund model and design, which would ultimately enable the most appropriate model for Cambodia is identified, which could then later be

¹¹⁹Maya Forstater, Smita Nakhooda and Charlene Watson, 'The effectiveness of climate finance: a review of the Amazon Fund' ODI Working Paper 372.

¹²⁰Adapted from: Irawan S, Heikens A, Petrini K (2012) National Climate Funds: Learning from the experience of Asia- Pacific countries. UNDP Discussion Paper, at p 23.

formalised through a Law. This is important considering the current uncertainty regarding modalities for REDD+, particularly under the UNFCCC and the Green Climate Fund, as well as the very limited international experience with operating National REDD+ Fund models that are centred on results-based payment methodologies.

On the other hand, a multi-donor trust fund would require strong donor support and commitment of resources, including the identification of a willing institution to act as trustee. As it operates externally to the government, there is the risk that if designed inappropriately, it may also operate outside of national systems and respond inappropriately to the national context. As it would be initiated on a project-basis, it may also be difficult to guarantee the eventual successful transfer to a government-administered trust, and would require careful upfront, long term planning to ensure that this is successful. In the short term, it may be less successful in integrating domestic revenue streams (budget support) due to its status as a donor-project.

4.3.2 Option 2: National REDD+ Fund established through new Law

Establishing a National REDD+ Fund through a new Law offers the flexibility to appropriately tailor and design the fund according to government national priorities. As it is not restricted to any existing legal arrangements, with the exception of the requirements to comply with the Public Finance Law, it would not be bound by any constraints associated with the existing enabling provisions that currently exist under the Forestry Law or PA Law. If designed to ensure multi-stakeholder participation in relevant governance arrangements, as well as ensuring very robust financial management, accountability and transparency requirements, it could also potentially meet international fiduciary and safeguards standards. This option may facilitate better integration within government budget processes, including linking fund sources to government revenue streams. It would also enable flexibility in terms of the fund model to be established, and as such may enable the investment of funds.

However, it must be acknowledged it may not be feasible to easily establish this fund, given the frequently slow and difficult process of approving laws in Cambodia. This would also be resource-intensive, and require significant capacity and support to design and then advocate for the approval of a Law establishing a new fund. Moreover, if the eventual design of the fund, including governance arrangements, did not include any non-government participation in decision-making (amongst other things), and are considered to not meet international fiduciary standards, this is likely to severely limit access to international REDD+ finance, which will be critical in the early phases of the fund. This is a very significant risk with pursuing a model attached to government administration, particularly given the emphasis placed on independence of funds, as well as the very limited availability of international examples that have succeeded in doing so. While a trustee model could still be used, this would rely on the identification of an appropriate Cambodian institution (such as Brazil's use of its national development bank), although it is uncertain whether an equivalent institution exists in Cambodia. Very close consultation with potential donors would need to be undertaken before proceeding with this option.

Further, in the absence of a broader national REDD+ legal framework and the lack of clarity regarding current national institutional arrangements, together with ongoing international uncertainty with respect to final modalities for a REDD+ mechanism, it is likely to be premature to establish a Law establishing a National REDD+ Fund. Such a Law would require very careful drafting to ensure a balance is found between establishing a robust governance framework, while permitting flexibility to respond to future developments. Finally, if a National Climate Change Fund is established, the development of a REDD+ Fund alongside it may be an inefficient approach, resulting in establishing parallel systems and potentially overlapping mandates.

4.3.3 Option 3: REDD+ Window or Sub-Fund of National Climate Change Fund

The primary advantage of establishing a REDD+ funding mechanism as a window or sub-fund under a broader National Climate Change Fund is that it would ensure greater national policy alignment and

coordination, and would avoid duplication of efforts or the creation of parallel (and potentially overlapping) systems. Particularly in light of the development of the Green Climate Fund, which is likely to fund a broad range of climate change activities under the UNFCCC, including REDD+, pursuing this option may support the greatest alignment with future international finance modalities. Although the model of a National Climate Change Fund is currently uncertain, it is possible that such a fund will develop from the experiences of the CCCA Trust Fund into a national, government-administered fund under Cambodian law. If so, the same advantages and disadvantages as for Option 2 would similarly apply.

However, additional difficulties associated with this option include that it may be time-consuming and politically difficult considering current institutional arrangements, to combine a REDD+ with a National Climate Change Fund. Robust governance and management arrangements would be required to ensure that this fund is genuinely cross-sectoral, and supported by multi-stakeholder decision-making processes directly linked to and guided by national policies and strategies, to avoid potential conflicts of interest. Finally, the particular emphasis of REDD+ funding on results-based payments, and requiring the distribution of benefits across a variety of stakeholders, may mean that it requires some separate operational processes than funding for other climate change activities. While this issue could potentially be resolved by the compartmentalisation of REDD+ through the window or sub-fund, it is likely to create added complexity to the design, development and operation of the National Climate Change Fund.

4.3.4 Option 4: Amendment and Expansion of Fund provisions within the Law on Forestry or Law on Protected Areas

The primary advantage associated with this option for a National REDD+ Fund is that it is likely to offer a more rapid approach to operationalizing a fund, as opposed to the development and approval of a new, standalone Law. However, as noted previously in this Report, there are likely to be substantial limitations and difficulties associated with this approach, even if the relevant legal provisions are amended to explicitly incorporate REDD+. Specifically, placing REDD+ activities within a specific sector law may have the practical consequence of limiting the accessibility to the fund for other relevant institutions, unless very robust multi-stakeholder decision-making procedures, with oversight mechanisms, are in place to ensure this does not occur. As per Option 2 above, in the absence of a broader national REDD+ legal and policy framework, together with the lack of clarity over national institutional arrangements, it would be premature to identify REDD+ activities for the purposes of a fund, within a sectoral law. This risks the creation of complexities and problems in the future. Finally, similar advantages and disadvantages as per Option 2 would also apply particularly regarding the risk of limiting access to international financing that is associated with a purely government-administered fund. If this option were to be pursued, very careful drafting of the relevant legal instruments and very closely consultation amongst relevant stakeholders, including potential donors, would be required.

5 Recommendations

Based on the four options identified above, it is considered that the most suitable option in the context of Cambodia's current circumstances is to pursue the establishment of a multi-donor REDD+ Trust Fund (Option 1). This option meets the requirement for a national-level entity, and is highly likely to ensure access to international finance for the establishment of the fund as well as for receiving ongoing results-based payments. This is based on the fact that a multi-donor trust fund model will most likely meet international donor requirements for a balance of national ownership through governance mechanisms, ensuring the fund is aligned with national policy objectives and strategies, with ensuring multi-stakeholder participation and oversight of the fund's operation. By establishing the fund in this way, with high fiduciary standards, and accountability and transparency mechanisms, it will develop donor trust and willingness to continue to contribute to fund REDD+ activities in Cambodia, particular until a formal mechanism is established under the UNFCCC. It would also enable 'experimentation'

with key aspects of a REDD+ Fund specific for Cambodia's circumstances, such as governance arrangements, a system for results-based payments, without prematurely 'locking in' an inappropriate mechanism through a legal framework. This is particularly relevant considering the early stages of international experience with national REDD+ funding mechanisms, particularly with respect to revenue distribution mechanisms and benefit sharing.

This option will also support capacity building support to establish appropriate governance and management structures (including financial management) for the fund. It will also promote the development of human resources and institutional capacity. From a more practical perspective, it is also likely to be a more rapid process to take this approach, given that the approval and development of a Law could take multiple years by itself. In this regard, much will depend on the levels of government commitment and support for establishing a National REDD+ Fund, and for actively pursuing REDD+ strategies to reduce emissions more broadly. A multi-donor trust fund would also support the future transition of the fund to government administration. For the long-term plan for a National REDD+ Fund, follow on from a multi-donor trust fund, the fund could be incorporated into a broader National Climate Change Fund if this is operationalized, or transferred to government management and codified through an appropriate Law and Sub-Decree.

Of course, it must be acknowledged that pursuing this option would require the commitment of significant donor support upfront, which in turn would require significant commitment on the part of the Cambodian government to REDD+ at the national policy and activity level (for example by commencing the drafting of a National REDD+ Strategy and Action Plan). This government commitment will be critical to provide initial justification for proceeding with the development of a National REDD+ Fund.

If this support can be obtained, and the overarching approach of a National REDD+ Fund is agreed up, more detailed design aspects will require significant levels of discussion and consultation moving forward. This will include making decisions across a range of design issues, which would include, amongst other things:

- Terms of Reference or concept note for the Fund outlining its main characteristics and its relationship with other national REDD+ bodies
- investment plan or portfolio description based on the national REDD+ strategy including a framework for establishing performance/results-based payments, both for policy and institutional indicators, in addition to activity-based funding for emissions reductions, against an identified national baseline; and
- operational manual including the
 - The composition and role of a Governing Board including cross-sectoral government members, development partners, and other non-government representatives (such as the private sector and NGOs);
 - The composition and role of a Secretariat, potentially based in a government institution (such as MoEF);
 - The identification of a multilateral institution to act as Trustee (including decision of fund management modality);
 - The composition and role of a Technical Committee, constituted of experts (including external to government administration) to provide advice to the Board on policy and activity-based decisions;
 - Specifications for international standards with respect to fiduciary arrangements and commitments to social and environmental safeguards;
 - Access modalities
 - Funding windows

- Funding allocation and proposal selection procedure
- Basic elements of the M&E both at the fund and project level including external evaluations and audits and links to relevant REDD+ tools/mechanisms such as NFMS, SIS, Registry etc.
- Transitional structures if necessary
- fundraising plan and business plan
- TOR for staff and experts to be recruited
- M&E plan
- Risk management plan
- Mapping of partners and activities
- Legal agreements between donors and the fund and the fund and the entities with access
- Capacity building and transition plan

At the same time, Cambodia would be advised to progress on a range of related REDD+ activities that will link to and support the eventual operation of a National REDD+ Fund, including establishing a reference level, and a framework for MRV (in addition to a National REDD+ Strategy and Action Plan). These activities would be reinforcing with respect to the likelihood of the successful establishment of a National REDD+ Fund, not only because they will play a key role in the eventual operation of a fund, but because progress on these aspects would demonstrate important commitment to the international community of Cambodia's intention to progress towards national level implementation of REDD+.

Appendix 1 – Decision No. 699 of the Council of Ministers, 2008

As stated in the above subject and references the Council of Ministers would like to inform Your Excellencies that the Royal Government of Cambodia (RGC) decides to support the forest carbon credit project in Cambodia as follow:

- 1. Designates the Forestry Administration (FA) as the seller of the Forest Carbon in Cambodia with the CFI.*
- 2. The RGC, as seller of the forest carbon, is responsible for helping to fulfil the terms and conditions in the contract “selling carbon” with the buyer.*
- 3. Have a Memorandum of Understanding (MOU) between CFI and the RGC, represented by FA that would allow CFI to identify buyers, and explore terms and carbon prices subject to the review and approval by the RGC. The Royal Government of Cambodia decides in the MOU that revenue from selling Carbon in the Carbon Credit for community forestry project will be used to:*
 - a. Improve the quality of the forest;*
 - b. Maximize the benefits flows to local community who is participating in the project;*
 - c. Study potential sites for the new forest carbon credit REDD project.*
- 4. Revenue from forest carbon REDD project will be channelled through the Technical Working Group on Forestry and Environment (TWG-F&E) during the first five years of the project.*
- 5. Delegates the Forestry Administration as the representative of RGC to execute the sale of Cambodia forest carbon with consultation within the TWG-F&E, if necessary.*

Appendix 2 – Text of Enabling Legal Provisions under Cambodian Law

Law on Forestry 2002

Article 62:

The Royal Government of Cambodia shall establish a fund known as “National Forestry Development Fund” which shall be administered and managed under the responsibility of the National Forestry Development Committee, and co-chaired by the Minister of Ministry of Agriculture, Forestry and Fisheries and the Minister of the Ministry of Economy and Finance.

The organization and functioning of the National Forestry Development Committee shall be determined by Anu-Kret.

Article 63:

The National Forestry Development Fund shall have sources of revenues derived from:

- 1. Distributions from the Royal Government of Cambodia;*
- 2. Premium on Forest Products & By-products;*
- 3. Wildlife Conservation Fees;*
- 4. Aid from international organizations;*
- 5. Donations from charitable individuals and national and international non- governmental organizations, and*
- 6. Revenue from other services in the forestry sector.*

All of the above mentioned revenue should be deposited into the account of the National Forestry Development Fund.

Article 64:

National Forestry Development Fund shall not be used for the organization and functioning of the Forestry Administration.

This fund shall be used only for the following activities;

- 1. Reforestation;*
- 2. Silviculture and forestry rehabilitation;*
- 3. Forest Protection and Conservation and bio-diversity*
- 4. Forest and wildlife scientific and technical research;*
- 5. Extensions on Forest and Wildlife sector;*
- 6. Development in Forest and wildlife sector;*
- 7. Development of Community Forestry; and*
- 8. Training human resources for the Forest and Wildlife sector.*

Law on Protected Areas 2008

Article 32:

The Government shall establish a fund called "protected areas fund" which is organized, managed and given responsibility by a protected area committee with Minister of Environment and Minister of Economy and Finance as co-chairmen.

The establishment and functioning of the committee shall be determined by a Sub-decree.

Article 33:

Funding support for rehabilitation, improvement of protected areas and biodiversity shall come from:

- 1. National budget*

2. Protected area entrance and other service fees
3. Environmental endowment insurance
4. Donations
5. Assistance from national and international organizations and friendly countries
6. Assistance from international environment funds

Article 34:

Budget and funds from sources as stated in article 33 of this law may be used to support the following activities within the protected areas:

- *The protection and conservation of biological resources and ecosystems;*
- *Rehabilitation and enhancement of biodiversity and ecosystems;*
- *Technical and scientific research study on the biological diversity and ecosystem;*
- *Maintenance and extension of eco-tourism services*
- *Training, human resource development and capacity building of the Nature Conservation and Protection Administration staff for effective protection and conservation of biodiversity and ecosystems;*
- *Programmes supporting the establishment of community protected area;*
- *Dissemination and education on protected area; and*
- *Construction, rehabilitation and maintenance of infrastructure.*

[Law on Environment Protection and Natural Resource Management 1996](#)

Article 19:

A special Treasury account, the Environment Endowment Fund, shall be crested, and administered by the Ministry of Environment for environmental protection and natural resource conservation in the Kingdom of Cambodia in accordance with the Finance Law.

The Environment Endowment Fund, which comes from contributions from the Royal Government, grants from international organizations, donations from charitable individuals, donations from non-governmental organizations, and other lawful sums, shall be included in the National Budget in order to provide the above special account.



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