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TECHNICAL REPORT

BENEFIT SHARING FOR PROTECTED AREAS MANAGEMENT

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PoWPA

Programme of Work – Protected Areas

Benefit Sharing for Protected Areas Management DRAFT Report 17 November, 2009

Introduction

Among the components of the PoWPA Afghanistan country project, the development of a benefit sharing policy was identified as the single greatest policy need for protected area development. International experience and best practice in the management of protected areas has demonstrated that there is better management and protection of natural resources when benefits are shared with communities living in and adjacent to a protected area.

The concept and design of protected areas initially applied to the conservation of biological diversity. However, protected areas have increasingly become a tool for governments to address multiple goals such as conserving biological diversity and cultural heritage, poverty alleviation, contributing to sustainable development through the management of natural resources, and promoting local and national economic development through tourism. In order to ensure protected area objectives are met, Afghanistan will need to establish a sound management structure including the financial ability to meet revenue needs and distributional objectives for sharing benefits derived from protected areas.

The management plan for a protected area provides the essential framework for the structure of benefit sharing by clarifying management objectives, the management system, relevant user groups, financial needs and resources available. Community-based natural resource management (CBNRM) transfers some of the management responsibilities to communities with customary or formally recognized ownership and user rights within the protected area. CBNRM has recognized advantages over centralized or national level management in that benefits from sustainable management can be shared between the Government and communities who are co-managers of each protected area. The advantages are based on identification by communities and government of the direct (monetary) and indirect (non-monetary, such as environmental) benefits that may be derived from the protected area through the management plan.

Benefit sharing components of a management plan must consider whether the incentives created through community management are adequate to achieve the intended management outcomes. Distributional issues are inherent to benefit sharing. Benefit sharing goals must be clarified in terms of equity, particularly who bears the costs of protected area management, who receives benefits and the form benefits will take. Protected areas have direct costs including operational and management costs, staff salaries and maintenance. Similarly communities involved in protected area management incur both direct and opportunity costs from restricted access to certain areas, foregoing potentially economic activities in order to allocate time to management activities and the alternate uses of land for conservation or protection versus income-generation. Thus from the community perspective, the management of protected areas must produce associated benefits that, at the minimum, equal benefits attainable through other uses.



Thus the management of protected areas requires sources of funding to meet direct and indirect costs and the associated benefits. The common sources of funding around the world for protected areas include annual budget allocations from national government; grants and donations from individual donors, international donor agencies, trust funds, and charitable foundations; and revenue sources specifically designed to fund protected areas such as user fees, licenses and permits. The mix of funding sources and revenue streams should relate to the management plan with consideration of the local conditions and national policies that will affect the management of each protected area and ultimately the ability to share benefits.

Funds allocated to protected areas from the various source options do not necessarily contribute to long-term sustainability for management and operations. Funds often lack long-term commitment because they are short-term, or focused on specific activities such as infrastructure development without support for the continuing service that will enable benefits. The form of governance associated with co-management by government and communities can affect revenue flows and the distribution of benefits, particularly if communities are inadequately represented or marginalized in the management process. Benefit sharing is diminished without clearly articulated national policies supported and implemented by the designated national and local level institutions.

Afghanistan Context for Benefit Sharing

The Government of the Islamic Republic of Afghanistan has worked with partner organizations over the last 7 years to create the necessary legal, policy and management structures for protected areas management including benefit sharing. However the current structures focus only on the distribution of revenue without an underlying mechanism to realise benefit sharing. The development of a benefit sharing system for protected areas will necessarily be framed by the existing legal, regulatory and policy structures for the management of the environment and public finance. The respective objectives of these structures, while not conflicting, were designed independently of each other and reflect priorities that are appropriate and feasible to implement in the current political and institutional settings. Thus the benefit sharing system must meet its objectives within the separate priorities for environmental management and public financial management.

The Public Finance and Expenditure Law centralizes the receipt and distribution of public revenues and expenditures through the State Treasury. The Government budget is comprised of two sections:

- Ordinary - covers staffing and operating costs based on approved levels
- Development – includes funding for projects. Line ministry budget proposals include prioritized projects; however the Ministry of Finance ultimately decides the funding levels

The objectives for the National Protected Area System are established in the Environment Law:

- conserve the natural and cultural heritage;
- preserve present and future sustainable development options by conserving, and where necessary restoring representative ecosystems, habitats and natural and cultural features and integrating their management into local and national land use plans;



- ensure sustainable use of natural resources by involving local communities in all activities related to protected areas, including designating and delimiting areas, developing integrated management plans, and managing protected areas.

The national objectives have been elaborated into a Preliminary Management Plan for Band-e-Amir, Afghanistan's first national park designated on 22 April 2009. The Band-e-Amir preliminary management plan is based on the premise that people traditionally residing in or near Band-e-Amir will achieve enhanced quality of life from economic benefits arising from operations of the conservation area and will therefore conserve natural resources by limiting their land use in agreed ways necessary for maintaining the quality of Band-e-Amir's environment.

The broad goals identified for Band-e-Amir further elaborate the social, economic and environmental priorities including:

- preserving the integrity of the travertine dams and lakes
- improving the livelihoods in communities living near Band-e-Amir
- conserving and recovering the biological diversity and ecosystem integrity of Band-e-Amir
- providing opportunities for quality recreational, cultural and religious experiences for Afghan citizens and international travelers
- ensuring local communities actively engage in the development and management of Band-e-Amir

A detailed description of the specific laws, regulations, policies and management systems guiding the development of benefit sharing is listed in Appendix 1.

Benefit Sharing Process in Afghanistan

The objectives and activities of the benefit sharing component of PoWPA were designed to support the development and implementation of a benefit sharing mechanism between the Government of the Islamic Republic of Afghanistan and communities living in and adjacent to proposed protected areas. During the process WCS provided an enabling environment through the provision of technical and financial assistance for the Government and community representatives to develop an appropriate benefit sharing system.

The process began with the identification of the relevant government institutions to form a Government Working Group. Through initial discussions with senior officials from MAIL and NEPA, the Taqin (Legislation Review) department of the Ministry of Justice and the Revenue Department of the Ministry of Finance were subsequently identified as pertinent to the composition of the Working Group. WCS recognized that a broader working group including community representatives was necessary. However the Government representatives concurred that the framework for a benefit sharing system should orient from and reflect national priorities. Several meetings were held in Kabul during May and June 2009 to introduce the members to each other, help establish a working relationship and rapport, and outline the legal, regulatory, policy and management parameters that would frame the development of the benefit sharing system.

The Government Working Group is comprised of the following officials:

National Environmental Protection Agency (NEPA)

H.E. Mostapha Zaher, Director General



Ministry of Agriculture Irrigation and Livestock (MAIL)

Mr. Mohammad Sharif, Deputy Minister of Irrigation and Natural Resources Management
Mr. Hashim Barikzai, Director General of Natural Resources Management

Ministry of Finance (MoF)

H.E. Mr. Gul Maqsood Sabit, Deputy Minister of Customs and Revenue
Mr. Ahmad Shah Zamanzai, Director General of Revenue Department

Ministry of Justice (MoJ)

Mr. Said Yousuf Halim, Director of Taqin

An initial idea to conduct a study tour to Chitwan National Park in Nepal was revised after co-financing did not materialize. Co-financing through the USAID-funded Biodiversity Support Project for NEPA / ECODIT allowed the development of a policy framework dialogue to occur in Dubai, United Arab Emirates.

The Dubai workshop was intended to facilitate the opportunity for the government officials to interact with experts in the field of benefit sharing to explore options for designing and implementing a benefit sharing system that is appropriate for the Government and communities of the Islamic Republic of Afghanistan. The two experts, Mr. Barry Spergel and Mr. Marlon Flores, were identified through references from colleagues affiliated with organizations involved in global protected areas development, such as WCS, Conservation International, IUCN, GEF and WWF.

The workshop was held from 2-3 August, 2009. Although the representatives from NEPA were unable to attend, the Dubai workshop enabled Government officials from MAIL, Ministry of Finance and Ministry of Justice to reach an agreement on a definition of benefits sharing, including both direct benefits and indirect benefits and outline a pathway for a benefit sharing system based on existing budgetary and environmental management laws and policies.

Outcomes from the Dubai Workshop

The Government Working Group reached an agreement on a definition of community benefit sharing and specified a pathway to implement benefit sharing based on the existing Constitution and supporting legal, regulatory, policy and management options. The Group concurred that the term benefit sharing was more appropriate than revenue sharing as the range of benefits that communities will derive from protected areas will encompass more than revenue, such as environmental benefits from improved management of natural resources. The Government Working Group identified three guidelines for the benefit sharing system:

1. Revenues collected by the Government in protected areas must be transferred directly to the Central Treasury as per the Constitution.
2. The protected areas management structure established between NEPA and MAIL can involve communities in the delivery of services in protected areas through an appropriate contract between the Government and communities acting as contractors. The contracts which will be issued and managed by the Government



should anticipate specific conditions such as revenue sources and the quality and type of service to be delivered.

3. Issues to be included in the contract should be specific to the environmental and social characteristics of each protected area.

Guideline 1 explicitly states that any funds collected by the Government must go to the national Treasury.

Guidelines 2 and 3 offer methods to share both monetary and non-monetary benefits of protected areas with communities through contractual arrangements with the Government. The NGO Law and the Social Organization Law allow communities to register as non-profit organizations. Non-profit, registered organizations are eligible to contract with the Government to provide services in protected areas. The Government management authority can specify that a contract be awarded to a local community organization and that the contractor employ local community members to deliver contracted services. Revenues collected by contractors under the terms of the contract are retained by the contractor. The contractor is required to pay tax on those revenues based on the conditions associated with the way the organization is registered with the Government. There are many possibilities for service delivery contracts depending on the revenue stream in question. Additionally, benefits that communities derive indirectly from the use of natural resources in a protected area and its buffer zone are defined and allocated by the management plan for the specific protected area.

Community members hired by the contractor will pay Income Tax to the Government based on their salary under the terms of the contract (approximately 20%) but they will retain the balance of the revenue generated themselves. This method is allowed under Afghanistan's laws and, importantly, neither contravenes the Constitution or the Public Finance and Expenditure Law nor abrogates the Government's responsibilities for protected area management. By designing a co-management structure for protected areas the Government recognizes that management responsibilities will be shared with communities, which can include the delivery of services related to the management objectives for each protected area.

Public Consultation

A public consultation was held on 12 August to provide an opportunity for the Working Group to share the outcomes of the Dubai workshop with members of the Band-e-Amir Protected Areas Committee (BAPAC), the Wakhan Pamir Association (WPA) and international and national organizations contributing to the development of protected areas in Afghanistan.

The Government Working Group led the meeting. Deputy Minister Sharif (MAIL) chaired the meeting with Director General Zaher (NEPA) as co-chair. Both repeatedly acknowledged the need for benefit sharing with communities throughout the meeting and emphasized the Government's commitment to work with communities to find an appropriate mechanism based on the Constitution and existing legal framework. Their introduction was followed by a discussion led by Mr. Halim of the guidelines and contracting method resulting from the Dubai workshop.



The representatives from MAIL explained that the legal framework for environment and protected areas stipulates that local people should be involved in both conservation and management of protected areas. Their involvement will result in benefits derived from protected areas; however, the Environment Law does not clearly articulate the mechanism for benefit sharing. Both the Forestry and Rangeland strategy and policy of MAIL that was approved in 2003 and the draft Forest Law and Rangeland Law employ community-based management as the appropriate approach for Afghanistan. MAIL recognizes it is now important to design a benefit sharing mechanism and inform communities about its application.

NEPA explained that Afghanistan will be capable of protecting its national parks when people benefit. If local communities perceive that a decision has been imposed by the Government they will not necessarily support it. Local communities should be assured that the Government is helping them and paying attention to their needs. Furthermore, NEPA stressed that environmental protection should not be excluded from benefit sharing. Revenue from tourism, including eco-tourism, should benefit both local communities and the natural resources within protected areas to ensure sustainability.

The Band-e-Amir Protected Area Committee (BAPAC) and Wakhan Protected Area (WPA) representatives emphasized that Band-e-Amir and the Wakhan/Pamirs are their homes. Thus, they have a vested interest to protect the environment beyond the legal obligation based on protected area designation. The community members conveyed the value of benefit sharing to the Government and other participants.

Benefits of Community Participation in BAPAC

- **Co-ordination focal point** between Government, NGOs and local communities.
 - Builds the trust and confidence of local communities enabling them to talk directly to the Government and participate in the decision-making.
 - Helps NGOs coordinate work amongst themselves
- **Management assistance**
 - Provided important input to help the Government draft the Band-e-Amir Interim Management Plan
- **Community majority representation**
 - With 14 community representatives, the communities most affected have input into the decision-making process
- **Implementation assistance**
 - Assist the Government to implement Afghanistan’s laws and regulations (e.g. 100m state buffer zone, controlling hunting)
 - Government has primarily benefited from this implementation assistance
 - However, communities are participating due to the **potential** for long-term benefits

Benefits of Community Participation in WPA

- Provides **implementation assistance** to the Government for laws and regulations
- **Employed and trained 16 rangers (Big Pamir) and 17 rangers (Little Pamir).** This is an invaluable service to the Government. It also:
 - Provides employment in the area
 - Involves communities in the success of the project
 - Builds community awareness and education



- Acts as a **co-ordination focal point** between Government, NGOs and local communities
 - Builds the trust of local communities so that they can talk directly to the Government and participate in decision-making (WPA holds regular co-ordination meetings between local communities and local Government)
 - Helps NGOs to coordinate work amongst themselves

Lessons Learned for the Development and Implementation of a Benefit Sharing System

The Government's increasing ability to develop a system of governance for natural resources management, including protected areas, indicates significant progress in recent years. Although the Government is successfully creating a foundation for a governance system through the legislative, regulatory, policy and management instruments, it requires significant support to put this system into practice. The Government continues to build on this governance system by evolving its role from a top-down, centralized planning authority to coordination and policy setting, with responsibility for the management of natural resources gradually devolving to include communities and provincial offices of MAIL and NEPA.

In order to assist this evolution, the benefit sharing process was designed to support the representatives of the Government and communities who will ultimately comprise the leadership for the management of protected areas. WCS PoWPA and Biodiversity Support Project for NEPA/ECODIT applied their role as the support group to the benefit sharing process by creating an enabling environment for the organization of the National Benefit Sharing Working Group. While WCS PoWPA and Biodiversity Support Project for NEPA/ECODIT arranged the initial meetings in Kabul, the Government representatives identified the appropriate composition of the members and the key issues for discussion.

From the onset of the benefit sharing process the Government representatives were committed to finding a solution, a pathway, for benefit sharing among their respective priorities and objectives. The Dubai workshop provided a unique opportunity for the Government representatives to begin exploring options that were mutually reinforcing rather than competing. In the subsequent Public Consultation WCS and Ecodit provided minimal input as the Government representatives comprehensively explained the outcomes of the Dubai workshop including the basis for the contracting method and the trade-offs associated with balancing the needs of communities with the responsibilities to ensure adequate environmental and public financial management. This was an effective format that provided an opportunity for the Government and community members to discuss the Benefit Sharing guidelines, exchange views and begin establishing a collaborative working relationship.

The immediate achievement of this approach lies in the establishment of the National Benefit Sharing Working Group and the proactive participation by the members. Intra-governmental relations and the relationship between Government and communities has been characterized by adversity and misunderstanding, thus the Working Group has breached one of the primary constraints to the devolution of authority to communities to share management responsibilities for protected areas.



The contracting method identified as the starting point for a benefit sharing system will rely on the trust between the Government and communities inherent in this type of arrangement as well as the ability of MAIL and NEPA to implement the management structure for protected areas. In a contractual arrangement one group acts on behalf of another group, ideally with the capability and authority to carry out the terms of the contract. The contracting method identified by the Working Group will enable the Government to issue contracts to non-profit NGOs, Social Organizations, or individuals who will provide specific services corresponding to the management plan and objectives of a protected area including employment of community members.

While this is consistent with the Protected Areas Tarzelamal, which allows the Government to contract with a non-profit organization to administer a protected area following consultation with the relevant Protected Area Committee, establishing benefit sharing through a contractual arrangement should be viewed as an entry point for benefit sharing in the management of protected areas. A community-based approach formally involves communities in protected area and natural resources management. Contracting will provide a level of accountability to ensure that the identified benefits are shared properly. Contracts between the Government and Community Management Associations are also anticipated in the draft Forestry and Rangeland laws to establish the respective responsibilities and activities between the two groups. However, the application of a contract for benefit sharing may diminish the benefits and incentives of the management role of communities in protected areas if they perceive that the contracting method precludes them from receiving the full range of benefits from a protected area.

The contracting method is also vulnerable to the problems faced by a nascent management structure, such as the level of capacity and experience of both the Government and communities. NEPA and MAIL are in the process of forging a relationship necessary to implement the legal, regulatory, policy and management structure for protected areas. While this structure provides guidance, the working relationship is crucial to the overall management of protected areas, including benefit sharing.

The progress of the National Benefit Sharing Working Group to date indicates a willingness and ability among the members to solve problems. However the contracting method represents the beginning of a progressive process that will adapt as the Government acquires experience managing protected areas including a better understanding of management related costs, sources of monetary and non-monetary benefits, and issues related to distribution of benefits.

The enabling environment provided by WCS and Biodiversity Support Project for NEPA / ECODIT for the benefit sharing process can serve as a model for continued support by external partners to the Working Group. Such support will ensure that accountability measures are established to prevent corruption and conflict of interest in contract vetting and administration, and help further develop the individual and joint management capabilities of the Government and communities.

Next Steps

- The Working Group has effectively expanded into a National Benefit Sharing Working Group with the inclusion of the BAPAC and WPA as key members.



- Meetings of the National Benefit Sharing Working Group should occur on a regular basis, including an exchange program for the members to visit Band-e-Amir and the Wakhan/Pamir.
- The offer by WCS and Biodiversity Support Project for NEPA/ECODIT to provide legal support to the National Benefit Sharing Working Group to draft appropriate

contract templates was accepted by the Government and community members. In response WCS contracted two legal consultants, one international and one Afghan, to provide direct legal support to both the Government and the community members of the Working Group. Using Band-e-Amir National Park as the existing protected area model, the legal consultants will select two actual revenue streams to draft two contracts for direct implementation as test cases, ensuring that the contract templates appropriately incorporate the legal, regulatory and policy structure for environmental and public financial management in Afghanistan.



Appendix 1

Constitution of the Islamic Republic of Afghanistan

Article 15 obligates the Government to adopt necessary measures to protect the environment.

Article 42 establishes tax requirements on individuals and organizations and directs payments to a single State account

Environment Law

The Environment Law was enacted pursuant to Article 15 of the Constitution.

Article 22 gives NEPA authority to prepare regulations to promote implementation of the Environment Law.

Article 38 establishes the objectives for a national protected areas system.

Article 39.1 (4) provides that NEPA shall develop procedures (Tarzulamal) for implementing and further developing the national protected areas system.

Article 39.2 (7) explains that NEPA shall cooperate with relevant stakeholders to identify provisions for sharing benefits from the management of protected areas.

Article 39.4 explains that NEPA shall include funds for the management of protected areas in its annual budget.

Article 40 defines categories of protected areas and requires NEPA to prepare guidelines for the management of each category of protected area.

Article 41 describes the process for designating protected areas.

Afghanistan Protected Areas Interim Tarzulamal

The Tarzulamal was drafted and approved by NEPA and MAIL based on Article 22 of the Environment Law.

Article 5 authorizes NEPA to designate MAIL as the Central Management Authority of the National Protected Areas System. NEPA may also delegate any of its powers and functions related to the administration of the National Protected Areas System to the Central Management Authority in MAIL.

Article 9 describes the establishment, composition and functions of a Protected Areas Committee for each protected area and provisional conservation area.



Article 11 enables the Central Management Authority to contract with a non-profit institution or organization to administer a protected area, following consultation of the relevant Protected Areas Committee.

Article 19.2 states that each Collaborative Management Agreement shall specify the way in which revenue of a protected area will be shared among communities, in accordance with existing laws in Afghanistan. However this Article does not provide a mechanism for revenue sharing.

Articles 23, 24, 26, 27 and 28 pertain directly to types of revenue and financial management arrangements. Revenue sources include:

- Fees - general entry fee, license fees, permit fees
- Fines
- Leases

Policy and Strategy for Forestry and Rangeland Management

MAIL issued the policy and strategy in 2004 as a long-term vision for the management of natural resources through the establishment of systems of utilisation that achieve a balance between productivity, production and protection of Afghanistan's natural resources base. The policy and strategy recognizes the ability of communities to assume responsibility for the management of natural resources through the development of supporting laws and regulations that delineate user rights and responsibilities between the Government and communities.

Band-e-Amir Preliminary Management Plan

Band-e-Amir was officially declared a National Park on 22 April 2009 / 2 Saur 1388. The management plan is currently provisional until approved by Parliament.

Section 8.16 explains that until a revenue sharing agreement is approved by the Ministry of Finance, the Band-e-Amir Protected Areas Committee will collect entry fees. Entry fee amounts are included.

Section 8.17 explains that distribution of revenues will be established in a Collaborative Management Agreement

Appendix 1 is the template for the Collaborative Management Agreement, including a revenue distribution schedule for the 13 communities located within the park boundaries.

Appendix 3 sets fines for violations of the regulations and prohibitions included in the Preliminary Management Plan

Wakhan Pamir Association Bylaws

The Wakhan Pamir Association (WPA) is comprised of representatives from 9 Community Development Council (CDC) clusters in the Wakhan. The WPA is in the process of formulating a management plan for the eventual protected area.

Article 5 lists the WPA Objectives including creating the Wakhan Pamir Fund with contributions from communities, NGOs and public sector associations and equitable distribution of the benefits of conservation and development activities.



Article 38 addresses the distribution of WPA funds to villages. A schedule setting the rates for dividing surplus funds among the villages will be developed. Annual distribution of funds is anticipated.

Public Finance & Expenditure Management Law

The Public Finance & Expenditure Management Law addresses the financial and budget management affairs of public funds and expenditures.

Article 4 (1) assigns authority to the Ministry of Finance to set the financial and public expenditure policy of Afghanistan.

Article 7 describes the duties of the Treasury of the Ministry of Finance including management of the State's financial resources through a centralization of budgetary revenues.

Article 9 lists the funds and revenues that become public money upon receipt by the Government.

Income Tax Law

The Income Tax Law 2009 establishes the determination and payment of taxes pursuant to Article 42 of the Constitution of Afghanistan.

Article 2 defines the legal classification of residency and tax sources for tax implementation.

Article 4 lists the tax calculation for legal persons following a schedule ranging from 0% to 20%.

Article 10 describes conditions where organizations are exempt from taxation.

Article 13 lists receipts that are subject to tax.

Law on Social Organizations

This law establishes and regulates Social Organizations

Article 2 defines Social Organizations.

Article 6 explains the process for Social Organizations to apply for establishment to the Ministry of Justice.

Article 9 addresses the content of the Statute for each Social Organization, including financial issues.

Law on Non-Governmental Organizations

This law addresses the regulation of activities of both Afghan and foreign Non-Governmental Organizations (NGOs).

Article 4 identifies the Ministry of Economy as the registration body for NGOs.

Article 8 lists illegal activities including misuse of financial resources.

Article 11 defines the criteria for establishment.



Article 14 lists the contents of Statute for each NGO.

Article 22 defines the economic activities that are allowed and prohibited.

Article 25 identifies permissible sources of funding.

Article 30 defines tax exemptions and requirements.