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Policy Paper
on
Social Concessions
in the Kingdom of Cambodia

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Council of Land Policy

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Background

Land concessions for social purposes (social land concessions) is a legal mechanism established in the Land Law 2001 to permit the orderly transfer of State private land to private individuals or groups for social purposes, specifically, for residential and family farming . The Land Law and the sub decree on social land concessions will provide the legal basis. This policy will describe the concept of how the management mechanism of social land concessions is expected to work.

Social land concessions could be used in several situations in which there is a social need for land and the land use management for special purposes, such as residential land shortages, landlessness, requirements for resettlement, distribution of de-mined land, development of housing and subsistence plots for workers of large plantations. Other situations in which there is a social purpose for land distribution include the provision of land to victims of natural disasters, and provision of land for demobilized soldiers and for families of soldiers who were disabled or who died in the line of duty. Social land concession could be used in broader socio-economic development programs such as for social housing, resettlement, community development, restoring situations after natural disasters, and new land development. A social land concession is only one mechanism out of several through which the state can transfer land from the state's private domain for productive use. This mechanism is very important because it is the only mechanism that is specifically defined as having a social purpose. Therefore it has a leading role in contributing to the goal of poverty reduction.

In the short term (1-3 years), the first priority for using the social land concessions mechanism for poverty reduction is to establish functional and transparent procedures that can be applied in different locations and contexts. These procedures form one element of the overall framework for the management and allocation of state land.

Other important elements of state land management must be considered at the same time and consequently, including establishment of administrative boundaries of communes, classification of state land and long-term land use planning. The implementation of these measures will enable the state to grant social concession land which is the urgent need and could monitor the initial experiences to determine their impact and effectiveness. To accomplish these aims in granting social concessions, a sub-decree must be enacted and implementing instructions must be drafted to secure transparency of implementation procedures by local administrative authorities and involved parties. This is a complex process that involves many institutions and people throughout Cambodia. The intention of the strategy on social land concessions is to create a flexible and transparent mechanism which will make it possible to function in many different places and situations.

Legal Basis for Social Concessions

Legal authority to grant social concession land is established in several different provisions of the Land Law of 2001, including Chapter 2 (Public Ownership), specifically Article 17, and Chapter 5 (Land Concessions), Articles 48-62.

The key provision is Article 17, which states in relevant part:

The property belonging to the private property of the State and of public legal entities may be the subject of sale, exchange, distribution or transfer of rights as it is determined by law.

.....

The conditions and procedures related to the sale and the management of the private property of the State and public legal entities shall be determined by a sub-decree. No sale shall be made in the absence of the said sub-decree. Lands within the State private property may be the subject of a concession pursuant to the conditions set forth in Chapter 5 of this law.

From the date this law becomes effective, no more encroachment of land can take place within the private property of the State and public legal entities, even if it complies with Chapter 4 of this law.

However, vacant lands of the State private domain may be distributed to persons demonstrating need for land for social purposes in accordance with conditions set forth by sub-decree.

Chapter 5, articles 48-62, contains specific provisions related to granting two types of concessions authorized by the Land Law, namely, social and economic concessions. Specifically, Chapter 5 provides the following: “concessions may be granted to any natural person or legal entity or group of persons (article 48); social concessions may be used for residential or subsistence cultivation purposes (article 49); land concessions for social purposes may be granted gratuitously (article 51); and may establish ownership rights to the land (article 52); a concession must be based on a specific legal document issued prior to the occupation of the land and by a competent authority, and must be registered with the MLMUPC (article 53); and land concessions may be revoked under certain circumstances (article 55).” The complete text of Chapter 5 is set forth in the Annex.

Social Land Concessions in the Framework of State Land Management

Article 17 of the Land Law provides general authority for the sale, exchange, distribution or transfer of state private land, and specific authority for the distribution of state private land for social purposes. However, land in the private domain of the state may be used for different purposes and transferred through various mechanisms. For this reason, the grant of state private land for social land concessions is part of, an overall framework of land administration and management, and within this framework, the granting of state private land for social land concessions raises several important policy questions related to the management of state land, such as:

- How is state public and private land identified?
- How are lands in the private domain of the state determined and identified?
- How much land is in the private domain of the state?
- Who within government has the authority to grant state private land in concessions to individuals for social purposes?

- Who determines future land uses on state private land?
- How can target land recipients be identified in a transparent way that serves the social purpose?

According to Article 17 of the Land Law, the responsibilities for state land management and the rights to sell and grant social land concessions shall be determined by sub-decree and other legal instruments as necessary. Those legal instruments will determine the concession of state land, sale of state land, and shall clarify the rights and obligations for administrative levels and state institutions with regard to owning, transferring and managing land.

The preparation of regulations for the granting of social land concessions shall focus attention on a set of questions relating to state land management. Before land can be granted for social purposes, state land needs to be identified and classified and plans for its use need to be adopted. State land includes forests, waterways, roads and other transportation infrastructure, parks, protected areas, cultural heritage sites, public facilities and areas for military use, as well as unutilized areas. These are giant tasks that will take many years to complete. But the need to grant land concessions for social purposes is crucial to poverty reduction and economic development. Therefore we cannot wait until these long-term issues are entirely resolved.

This policy provides an outline of how to move forward with the implementation of social land concessions, even while some other aspects of state land management continue to be prepared. Therefore, this policy is a transition plan of land administration in Cambodia. This plan includes basic procedures and administrative mechanisms for implementing initial social concession land in the very near future. The procedures and administrative mechanisms shall be consistent with land management as a whole at the provincial/municipal level.

Social Purposes

Article 49 and other relevant articles of the Land Law states that land concessions shall respond to a social or economic purpose. Land concessions responding to a social purpose allow land recipients to build residential constructions or do family farming. There are clearly several social purposes for which the provision of land concessions would be an appropriate response:

- Provide residential land for people without housing
- Provide agricultural land for family farming for poor families
- Resettle families who have been displaced by public infrastructure development
- Resettle families who have been displaced by natural disasters
- Facilitate economic development at grassroots level
- Facilitate economic land concessions by providing housing and agricultural plots for workers of large plantations.
- Develop unused land in remote areas
- Provide land for the return of refugees
- Provide land for demobilized soldiers or families of soldiers who were disabled or who died in the line of duty.

Because it is impossible to predict all of the situations in which a land concession for a social purpose could be appropriate, this policy paper raises general categories of social purposes

for which the land concession can be made. But concessions for social purposes which do not fall into the above purposes should not be considered.

It is important to emphasize that a social land concession is only one of several mechanisms through which State private land may be granted. Other mechanisms mentioned in the Land Law are sale, exchange, lease and transfer of rights, including the granting of land rights for economic land concessions. For this reason, social purposes can be defined in a relatively narrow sense compared with other mechanisms.

Authority to Grant Social Land Concessions

National Social Land Concession Committee

As noted in the previous sections, there will be cases in which initiatives generated at the local level to provide land concession for social purposes will be insufficient to meet the demand for land of the people in a certain locales, and in which even provincial-level rationalization of land availability will be insufficient to respond to demands. There shall be a National Social Land Concession program in order to 1) rationalize land availability and demand for land concessions between provinces; 2) to coordinate the development of un-serviced or inaccessible land; and 3) to link land concessions for social purposes with land concessions for economic purposes. In this program the initiative to identify target land recipients and available land will come from the national level, relying on information provided by local- social land concession programs and applications made directly to the national social land concession committee. In addition, the national social concession plan shall be initiated with the participation of the concerned Provincial/Municipal Land Use and Allocation Committee (PLUAC), commune councils and people residing in that area. The approved national plan shall be open to the public at all levels such as in the case of local social concession plans.

Development of unused land may be one way to provide land to people who need land. Large scale projects of national social land concession programs will require integrated planning which is broader than simply distributing land. Physical infrastructure and social services will need to be in place, and an economic development plan will need to be established, with coordination of all necessary public and private investments. Therefore a large-scale social land concession is one type of land allocation mechanism used to provide land within the context of the overall development program.

Examples of the kind of situations in which the national social land concession program would operate are the following:

- Where there is a program to develop land in remote areas, and there are not sufficient local residents to develop the land.
- Where there is a program to resettle large groups of families, such as urban squatters, or displaced persons.
- Where social land concession may be linked to economic land concessions to develop industrial agriculture.

The National Program shall be implemented by a National Social Land Concession Committee. The National Social Land Concession Committee has the following duties: 1) develop and approve National Social Land Concessions; 2) collect data information from the PLUAC and 3) review, adjust or cancel decisions on provincial/municipal land use and

allocation planning. In actual circumstances, the General Department of Land Management of MLMUPC is the general secretariat of the National Social Land Concession Committee. The National Social Land Concession Committee shall be chaired by the MLMUPC and includes as members other ministries that are directly related to implementation of the social land concessions. The National Social Land Concession Committee shall be under the supervision of the Council of Land Policy. Its composition is as follows:

- Minister of Land Management, Urban Planning and Construction, Chair
- State Secretary, Ministry of Interior, Member
- State Secretary, Ministry of National Defence, Member
- State Secretary, Ministry of Rural Development, Member
- State Secretary, Ministry of Agriculture, Forests and Fisheries, Member
- State Secretary, Ministry of Economy and Finance, Member
- State Secretary, Ministry of Planning, Member
- State Secretary, Ministry Women and Veterans Affairs, Member
- State Secretary, Ministry of Environment, Member
- State Secretary, Ministry of Water Resources, Member
- State Secretary, Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation, Member
- Other concerned ministries and institutions may be invited to participate by the chair of the committee, according to the needs of each case, Member

Provincial/Municipal Land Use and Allocation Committee

As noted earlier, the sub-decree on social land concessions shall clearly define all activities needed to be implemented to grant social land concessions and shall define one or more competent government institutions to implement those activities. Social land concessions relate with many land issues and the concerned institutions shall have authority to resolve those issues, such as urban areas, agricultural land, forests, roads, waterways, government public services, parks, protected areas, cultural areas, military development areas, and others. Besides this, the concerned institutions shall resolve other issues such as preparing the social concession land allocation plans, the approval process, identification of target land recipients and monitoring the implementation of these plans. This policy recommends that a multi-department planning committee be established at the provincial level to develop land use plans. This multi-department committee would be called the Provincial/Municipal Land Use and Allocation Committee (PLUAC). The PLUAC is responsible for approving all land classification, land use planning and State land allocation decisions in the province or municipality. Once administrative boundaries are demarcated, and land classification and land use plans are established, responsibility for management of specific state land areas would continue to reside with the line ministry, local administration or other authorities.

The membership of the PLUAC would consist of the following:

- Governor or Deputy Governor, Chair
- Chief of Sub-commission of Military, Member
- Director Provincial Department of Land Management, Urban Planning and Construction, Member
- Director Provincial Department of Rural Development, Member
- Director Provincial Department of Agriculture, Member
- Director Provincial Department of Economy and Finance, Member
- Director Provincial Department of Planning, Member

- Director provincial Department of Women and Veterans Affairs, Member
- Director Provincial Department of Environment, Member
- Director Provincial Department of Water and Hydrology, Member
- Director, Provincial Department of Social Affairs, Labor, Vocational Training and Youth Rehabilitation, Member
- Other concerned Provincial Department Directors may be invited to participate Directors of PLUAC, according to the needs of each case, Member

The PLUAC shall have the responsibility for:

- Identifying State public land and State private land;
- Helping Commune Councils to determine land uses and classifications;
- Approving local social land concession plans;
- Cooperating with mine authorities, for areas with landmines
- Working with ministries on overall coordination of land use planning for development.

The creation of the PLUAC is based on existing multi-sector commission to serve the de-mining activities, the Provincial Steering Committee and the so-called LUPU and LUMU, which are the Land Use Planning Unit and the Land Use and Management Unit. LUPU was created in Battambang to deal with inter-sectoral issues regarding the allocation of de-mined land to people for residential and agricultural purposes. LUMU was created in Banteay Meanchey for the same purpose regarding de-mined land. The view is that LUPU/LUMU are generally comprehensive and recently units were created in 8 different provinces.

The PLUAC shall create technical support units as necessary to perform their duties. The composition of the technical support units shall consist of technical staffs from institutions and departments who are the members of PLUAC. PLUAC is a policy institution and shall have authority to make decisions. The technical support units provide technical support to PLUAC on determining policy and making decisions.

The sub-decree allows PLUAC to create 3 technical support units:

- **Land Support Unit** led by the provincial department of LMUPC, with the duties to monitor the selection process, boundary demarcation and land allocation.
- **Target Land Recipient Selection Support Unit** led by the provincial authority, with duties to review the selection of target land recipients.
- **Development Support Unit** led by the provincial department of Rural Development, with the duties to review the general development issues and ensure that the necessary services and infrastructure are integrated in social land concessions plan in a timely manner.

District/Khan Working Group (DKWG)

The DKWG shall consist of technical officials from the district offices of the members of the PLUAC and shall carry out the mandate of the PLUAC at the district level.

The Ministry of Land Management, Urban Planning and Construction

The Ministry of Land Management, Urban Planning and Construction will play a key technical role within the PLUAC through the chief of PDLMUPC, who is the chair of Land Technical Support Unit. The Ministry of Land Management, Urban Planning and

Construction would be responsible for the mapping, determining ownership and boundaries of social land concession areas, registering State public and private land and determining that proposed social concession land is State private land

Role of Different Levels of Administration Relating to Social Land Concession Projects

The need for land for social purposes is found in many jurisdictions in Cambodia. In some areas local residents seek land for housing and agricultural use near their home villages. In some cases, such as resettlement programs, groups of people require more land than could be available in their local areas. For these reasons, it is foreseen that there will be a need for both local and national social land concessions programs with participation from all levels of government authorities.

The availability of land for social land concession will vary from commune to commune, district to district and province to province. The demand for land will also vary from place to place, because the socially needy are not evenly distributed geographically. So the administrative level shall necessarily rationalize the available land to the number of people who need land. Different administrative levels as described below shall be responsible to implement this role according to the different geographical areas.

Local Level

The commune level is the level that initiates and implements the social land concession project within the context of the commune development plan prepared by the commune council as stated in Chapter 6 of the Law on Khum/Sangkat Administrative Management. The land concession plan may be prepared at the village level, but the adoption shall begin at commune/ sangkat level. The Commune Council shall prepare and review annually the commune/sangkat development plan in which the land concession plan shall be integrated as an element.

A local social land concession plan that has been approved by all levels shall be open to the public at the concerned commune/Sangkat office, PLUAC and NSCC.

District/ Khan Level

The mission of the District level is to assist the commune councils and other concerned persons such as village or supporters in preparing plans and evaluating applicants, and implementing the program.

Provincial/Municipality Level

The mission of PLUAC is to 1) assure that standards for land classification and land use planning are utilized, and to assist commune councils in establishing land use plans; 2) to review and evaluate plans for land use and social land concession presented to it; 3) make the decision to approve, deny or adjust the plans presented to it; 4) submit its plans and decisions to the national level for review if necessary; 5) monitor the implementation of land concessions. The PLUAC will thus also play a role of monitoring and rationalizing the amounts of land available with the needs of target land recipients across all districts in each province.

The national level will receive information from the provincial/municipal level regarding the provincial/municipal decisions, but may only intervene in the decision in specific circumstances. PLUAC is supported by technical units and gets assistance as necessary.

National level

The mission of the National Social Land Concession Committee is to: 1) supervise and monitor the grant of social concessions land, and adjust policy and regulations if necessary; 2) rationalize land availability with the needs of applicants across provinces when necessary and 3) directly initiate social land concessions programs when the need arises. The national level will intervene in the provincial/municipal land allocation decision process in three situations only: 1) when there is inconsistency with the priorities of national land use access. 2) When there are technical errors or violations of provisions of sub-decrees or other laws. 3) When the approved plans contradict with national social land concession programs.

The national level will therefore rationalize the needs of people with land availability across provinces by monitoring the provincial plans. The national level will be responsible for initiating the development of larger scale land allocation programs in areas which have available land but require the development of infrastructure and other public services.

In those cases where locally implemented social land concessions will be insufficient to a) meet the needs of the people, or b) utilize the available land effectively, social land concessions programs initiated at the national level may relocate people from areas, where there is not sufficient land to meet social needs, to areas where there is.

Selection of Target Land Recipients

Local social land concession programs would be initiated at the commune level through the Commune Council, with the technical assistance of the DKWG. In some case, this program would be initiated at village level, but it will be approved by the Commune Council. The social land concession plan shall specify the target land recipient selection process o.

The draft sub-decree establishes minimum safeguards in order to ensure the process takes place in an open, fair and transparent manner, including:

- The process to submit the application shall be conducted openly and shall be publicized in the concerned land concession area;
- Sample of application form
- Post the list of selected target land recipients in the areas determined by the plan.
- Evaluate the applicants form as determined in the plan.
- Make written approval or denial of applicants and publicize these decisions.

Citizens may submit an application to the Commune Council to receive social concession land using a sample application form. The application form needs to specify if the request is for land for family farming or residential purposes, or both.

The application will be evaluated to determine if the applicant meets all eligibility requirements and to document the factors which establish priority. This evaluation would be performed under the supervision of the Commune Council with the aid of the DKWG. The approval and refusal shall be made in writing, giving reasons. The approved list shall be posted in public places.

The plan approved by commune council shall include the approved list of applicants and the list of priority target land recipients. Both the lists of all applicants and those selected as priority target land recipients shall be posted in public places. The list of approved applicants shall be part of the social concession plan and would also be forwarded to the PLUAC for its approval. After land areas are identified and selected for distribution, the commune council, with assistance and rationalization from the District/Khan Working Group, would determine which applicants would be given priority in receiving the concessions land of each determined land parcel. This determination is subject to review and approval by the PLUAC.

People who were not selected for local social land concession program may directly apply to the National Social Land Concession Committee (NSCC) so that their applications could be incorporated in the National Social Land Concession Program.

Selection of Land

A. Classification of Land

Identification of land as belonging to the State private domain will require an exercise of land classification. The State private domain shall be defined as the land remaining after State public land and private land are identified. General observation suggests that much of the land in the State private domain is already under use, for example, agricultural concession land. Some land that is currently in the State public domain—but which no longer serves a public purpose—if necessary should be transferred in the State private domain, for example in certain areas of degraded forest which will never be reforested. In some areas State private land has been illegally occupied or encroached upon and will require enforcement of Article 19 of the Land Law in order to be made available for possible distribution.

In many areas, State land is not yet classified as “public” or “private.” Thus, classification of land should be part of the commune council land use planning process under the supervision of PLUAC. In areas where there is little or no existing identification of land, the processes of systematic land registration should be the first choice to spatially and legally determine these areas.

This procedure involves identification of presumptive areas of State and private land based on existing documentation such as photographic map and photographic interpretation and field appraisal. This method may be used to establish general boundaries suitable for planning purposes, and for state land inventory registration.

To make land identifications, land classifications and land use plans, the Commune Council may receive technical assistance from officials at the Provincial/Municipal and District/Khan levels, in particular the MLMUPC and the PLUAC, which are the provincial inter-ministerial land use planning and land allocation committees. Where technical groups such as LUPU/LUMU exist, their resources could be utilized to assist in this exercise.

B. Land Use Plan

In accordance with the procedures for the preparation of commune development plans in Chapter 6 of the Law on Khum/Sangkat Administrative Management, the Commune Council shall identify vacant land in the commune that may be available for social land concessions through preparation of a commune land use plan. The commune land use plan is the basis for the preparation of the social land concession plan.

The land use plan shall be simple in technical format and classification schemes, with the minimum goal of planning the land areas available for social land concessions. In general this will take the form of a planning map accompanied by textual explanation of the map. The Commune Council would be assisted in this process by provincial/municipal departments and district/khan offices of the Ministry of Land Management, Urban Planning and Construction, and by the Ministry of Agriculture, Forest and Fisheries. The policy of the Royal Government for land use planning is to promote a method of Participatory Land Use Planning (PLUP). Cadastral maps, topographical maps and orthophoto maps will be made available by the MLMUPC to the Commune Councils, District/Khan Working Groups and PLUAC to prepare the land use plan. The finished land use plans showing land classification and availability will be retained and displayed by the Commune Council, with copies retained by the District/Khan Working Group, PLUAC and by the National Social Land Concession Committee.

C. Suitability of Land

To make sure that land granted in social land concessions will be utilized for social purposes, the social land concession plan needs to include facilities necessary to implement the plan, as access to water, roads, electricity, schools and other services. Past experiences show that unless there is an appropriate program to provide public services the program to provide land to poor people will fail. Social land concession plans shall show that land and infrastructures are appropriate for the intended goal. It is anticipated that NGOs and donors will play important roles in establishing and implementing social land concession programs.

Social Land Concession Grant: Transfer of Land

As described above the process of target land recipient selection and available land identification shall be brought together by the Commune Council and District/Khan Working Group into a Social Concession Land Allocation Plan. This plan would contain detailed surveys of the specific parcels for which concessions would be issued, and the entire dossier on each applicant. These plans would be presented to PLUAC for approval or amendment, at meetings held at the headquarters of the District/Khan Working Group. This Social Concession Land Allocation Plan would show the location, size and number of parcels to be allocated, and list priority target land recipients equal to the number of parcels, and a “waiting list” of the next highest priority applicants. The available parcels of land will be offered to the target land recipients in order of the priority on the target land recipient list. The list of priority applicants who are chosen to receive social concession land will be publicly displayed. . The social concession land allocation plan shall be attached with physical and social infrastructure evaluation as well as environmental and social impact assessment The PLUAC would evaluate all plans based on District/Khan Working Group recommendations, and accounting for province-wide land availability and need.

The PLUAC shall take a decision to approve or adjust the Social Concession Land Allocation Plans submitted by the commune councils at least yearly. Once a plan is approved or amended, the Commune Council will have the responsibility for implementing it, with technical assistance provided by the DKWG.

Implementation consists of three steps: 1) Issuing registration documents for the social concession land. This is the responsibility of the Land Technical Support Unit of PLUAC. 2) Ensuring that adequate facilities are in place for the target land recipients to adequately utilize the land. This is the responsibility of the development technical support unit of PLUAC. 3)

Monitoring the conditions of use of the social concession land. This is the responsibility of the Commune Council.

Qualifications of Land Recipients

Land concessions under this policy are made only for social purposes. Therefore an applicant shall meet the criteria as follows:

- Be a Cambodian national, with legal capacity to own land.
- Be the head of the family, which is two or more individuals related by blood or marriage and residing in the same household.
- Meet the financial criteria provided in detail by Prakas of Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation and based on the comments of the National Social Land Concession Committee.
- Does not own or possess other land equal to or in excess of the size limitations for social land concession.
- Has never received land through a social land concession program or belong to the household of anyone who has received land social concession land.

Protection of Vulnerable Groups

The social land concession program is created to help people who need land. But most people in Cambodia, particularly people in rural areas, are landless; therefore the demand for land is more than the supply. Therefore, the program developer needs to identify the most vulnerable people to get help. In some cases, NGOs or donors who support land concession program may help. Thus there shall be reasonable criteria to provide preferential selection of applicants. The criteria of preferences include:

- Large family
- Period of time that the family has lived in that area
- Family with a woman, disabled person, former soldier with a labor disability or demobilized soldier as the head of household or family of soldier who was disabled or who died in the line of duty

In all cases the transparency of the process shall be maintained by public posting of the list of applicants and target groups of recipients and open records about decisions. The preference system will be established to assure that land for agricultural activity is only granted to families that can provide the labor to effectively use the land.

Conditions of Occupancy and Use of Social Concession Land

In order to ensure that land granted in social land concession is used for the purpose of the grant, there shall be a few basic conditions on occupancy as follows:

- The land cannot be sold, rented or given to another without the consent of the authority for the first five years, or the target land recipients generally will lose the land.
- On social concession land for residential purposes, the target land recipients shall build at least part of a permanent residence within the first 3 months after the land has been allocated and at the least the members of the household must dwell there for more than 6 months out of each year. The requirement is an important basic and is not done with the intention to impose sanctions on the poor, but is to protect against violation and exploitation.

- Social concession land for family farming must be used for this purpose within 12 months after receiving the land. There are ambiguities in the land law on the agricultural subsistence, so the sub-decree needs to clarify that the agricultural subsistence includes cultivating and animal grazing.
- After residing on and cultivating the land for five years the target land recipient has the right to ownership and may request land title through the MLMUPC through a procedure described in ministerial instructions.

The conditions of residential construction and family agricultural purpose may be subject to exceptions such as force majeure or severe illness facing by occupants. If a target land recipient fails to meet the occupancy and use requirements, the land shall revert to the state for redistribution. Procedures for the revision of the land shall ensure principles regarding:

- appropriate advance notice to the target land recipients who fail to fulfill the occupancy and use requirements,
- an opportunity for the target land recipients to respond,
- a written decision by the commune council, and
- guidelines for the removal and determination of appropriate compensation for losses by the target land recipient.

Administrative Work and Legal Issues

To avoid improper implementation in allocating private state land, it is necessary to include a monitoring function by PLUAC and the NSCC to check on the progress of implementation and the utilization of social concession land. Monitoring requires reports from the commune council to the NSCC and requires inspection by representative of NSCC.

Other safeguards shall be included in a draft sub-decree in order to provide maximum protection. One way is to allow the applicants to appeal to the PLUAC or the NSCC if they believe that their application has not been interpreted in accordance with the provisions of the Land Law, the sub-decree or other legal texts. The PLUAC and/or the National Social Land Concession Committee must necessarily supply a written response to each appeal.

Other Administrative work and legal issues are:

- The unexpired period of the social concession land will be inheritable if the concessionaire dies during the period of the land concession.
- As State property, the social concession land will not be subject to liens or payments of debt so crops or fixtures on the land may not be subject to such claims.
- The administration of social land concessions will be subject to the provisions of sub-decrees or laws on State land management and economic land concessions.

Annex

Annex to Policy on Social Land Concession in the Kingdom of Cambodia, Taken from the Land Law, articles 17, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62, promulgated by Royal Kram No. NS/RKM/0801/14 of August 30, 2001.

Article 17

The property belonging to the private property of the State and of public legal entities may be the subject of sale, exchange, distribution or transfer of rights as it is determined by law.

Such property may be leased out and it may be the subject of any contract made properly according to the law. The conditions and procedures related to the sale and the management of the private property of the state and public legal entities shall be determined by sub-decree. No sale shall be made in the absence of the said sub-decree. Lands within the State private property may be the subject of a concession pursuant to the conditions sets forth in Chapter 5 of this law.

From the date this law become effective, no more encroachment of land can take place within the private property of the state and public legal entities, even if it complies with Chapter 4 of this law.

However, vacant lands of the State private domain may be distributed to persons demonstrating need for land for social purposes in accordance with conditions set forth by sub-decree.

Article 48

A land concession is a legal right established by a legal document issued under the discretion of the competent authority, given to any natural person or legal entity or group of persons to occupy a land and to exercise thereon the rights set forth by this law.

Article 49

Land concessions shall respond to a social or economic purpose.

Land concessions responding to a social purpose allow beneficiaries to build residential constructions or to cultivate lands belonging to the State for their subsistence.

Land concessions responding to an economic purpose allow the beneficiaries to clear the land for industrial agricultural exploitation of land in the territory of the Kingdom of Cambodia.

Article 50

There may be several other kinds of concessions such as authorizations for the use, development or exploitation of State land, whether or not related to rendering a public service, such as mining concessions, port concessions, airport concessions, industrial development concessions, fishing concessions. These concessions do not fall within the scope of the provisions of this law.

Article 51

A land concession may not be gratuitously granted except for the concession responding to a social purpose given to poor families to establish a residence for themselves or to develop subsistence cultivation.

Article 52

A land concession may only create rights for the term fixed by the concession contract in accordance with the provisions of this law.

A land concession cannot establish ownership rights on the land provided for concession except for concessions responding to social purposes.

Article 53

A land concession can never result from a de facto occupation of the land. The land concession must be based on a specific legal document, issued prior to the occupation of the land by the competent authority, such as the State or a public territorial collectives or a public institution that is the owner of the land on which the concession is being granted. The concession must be registered with the Ministry of Land Management, Urban Planning and Construction.

Article 54

A land concession is conditional. It must comply with the provisions of this law that are provisions of public order.

The concession document may further contain other specific clauses that have contractual force.

Article 55

A land concession is revocable through governmental decision when its legal requirements are not complied with.

The concessionaire is entitled to appeal these decisions in compliance with the procedures provided by law.

A court may cancel the concession if the concessionaire does not comply with specific clauses specified in the contract.

Article 56

The rights of a concessionaire on conceded land during the period of the concession are the rights attributed to an owner, save for the right to alienate. The concessionaire is entitled, in particular, to the protection of his rights by the competent authorities.

A concessionaire may defend the land which he has been given in concession, against encroachment or infringement, irrespective of its forms.

A concessionaire may take the fruits of the land [and] carry out any agricultural developments in accordance with the intended purpose of the concession. The concessionaires may not make any alteration to the intended purpose of the land that causes damage affecting its natural structure or exploit it in such a way that it is destroyed at the end of the concession.

Article 57

Conceded land cannot be transferred through alienation. A transfer of conceded land can only result from the creation by the competent authorities of a new concession contract for the benefit of the new concession titleholder.

In the case of the death of a concessionaire, his successors may continue, if they so wish, to exercise his rights during the remaining period of the concession.

Article 58

A land concession can only be granted on lands that are part of the private property of the State.

The land concession may not violate roadways or transportation ways or sidewalks or their borders and the ground necessary for their maintenance, nor to waterways, pools, ponds and water reserves to be used by the people in their daily lives.

Article 59

Land concessions areas shall not be more than 10,000 hectares.

Existing concessions which exceed such limit shall be reduced. However, if such reduction would result in compromising the exploitation in progress, a concessionaire may obtain a specific exemption. The procedures for reductions and specific exemptions shall be determined by sub-decree.

The issuance of land concession titles on several places relating to surface areas that are greater than those authorized by the first paragraph in favor of one specific person or several legal entities controlled by the same natural persons is prohibited.

Article 60

The procedure for granting land concessions for residences as well as land concessions for agricultural subsistence or for industrial agricultural exploitation shall be determined by sub-decree.

Article 61

The maximum duration of a land concession is limited to ninety-nine years.

Article 62

Any land concession created for the purpose of industrial cultivation must be exploited within twelve months after issuance of the concession. If this is not complied with, it [the concession] will be considered as cancelled.

Any failure to exploit [lasting] longer than 12 months, without proper justification, shall be grounds for cancellation of the concession.

All land concessions granted before this law has come into force that are not exploited within 12 months after this law comes into force shall be cancelled.

Any failure by a concessionaire to fulfill the conditions attached to the concession charges book shall be grounds to withdraw the concession.

In the case of withdrawal of a concession, for whatever reason, the concessionaire is not entitled to claim any compensation for any damage.