

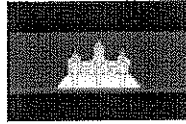
**(別添 7)**

**BRP 英語版**





Ministry of Economy  
and Finance



KINGDOM OF CAMBODIA  
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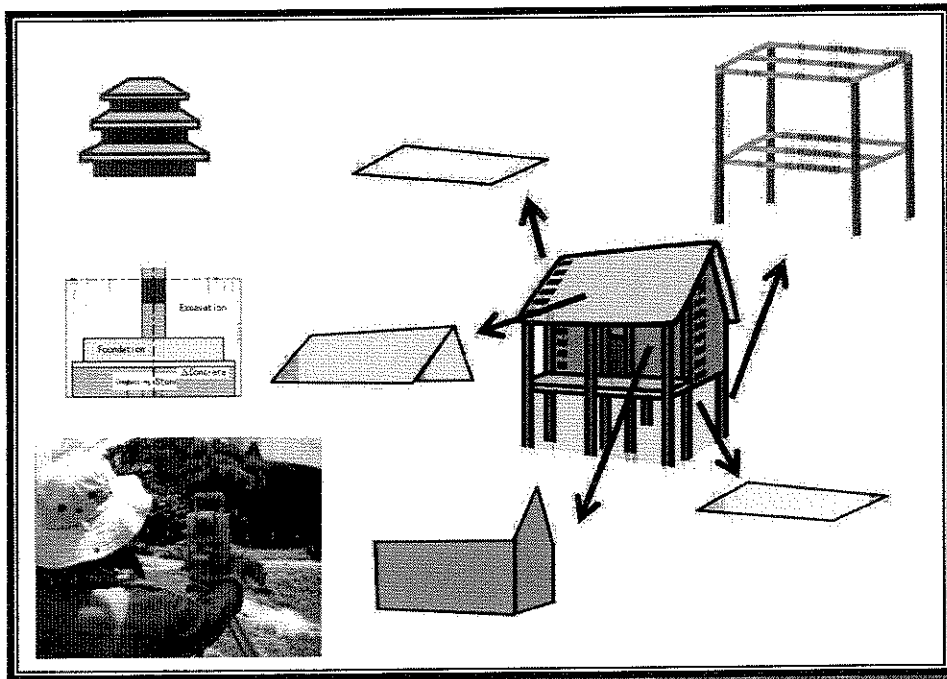


Ministry of Public Works  
and Transport

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# Basic Resettlement Procedures (BRP)

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Ministry of Economy and Finance (MEF)

March 2012

Supported by



**[Note]**

- (1) BRP demonstrates basic workflow and procedures on resettlement
- (2) BRP shall be modified and/or updated in line with condition changes (e.g. legal framework, institutional framework, and so on)

# Contents

Preface .....	v
Abbreviations .....	vii

## I. BACKGROUND

A. Resettlement Workflow .....	1
B. Legal Framework .....	1
C. Organization .....	3

## II. STEPS OF RESETTLEMENT PROCEDURES

### A. Pre-Resettlement Implementation Stage

Step 1. Resettlement Planning	4
1-1 Project Identification	9
1-2 Census	9
1-3 Initial RAP Drafting	10
1-4 Project Appraisal	11
Step 2. Institutional Arrangements	12
2-1 IRC, IRC-WG establishment	15
2-2 PRSC, PRSC-WG establishment	15
2-3 Grievance Redress Committee establishment	15
2-4 Internal and External monitoring	15

### B. Resettlement Implementation Stage

Step 3. Detailed Measurement Survey (DMS)	18
3-1 Institutional Arrangement	22
3-2 Public Consultation Meeting	23
3-3 DMS Preparation	25
3-4 DMS Implementation	26
3-5 Data Entry and Budget Calculation	27
Step 4. Replacement Cost Study (RCS)	28
4-1 Contract with Independent Evaluator	32
4-2 Replacement Cost Study by Independent Evaluator	33
4-3 RCS Report Submission	34

Step 5. Updating Resettlement Action Plan (RAP)	35
5-1 RAP Updating	37
5-2 RAP Approval	37
Step 6. Relocation Site Preparation	38
6-1 Site Selection	40
6-2 Site Survey and Land Purchase	40
6-3 Design	40
6-4 Construction	40
Step 7. Negotiation and Contract	41
7-1 Preparation for Negotiation and Contract	43
7-2 Public Consultation Meeting	44
7-3-1 Negotiation [Agree]	46
7-3-2 Negotiation [Disagree]	47
Step 8. Budget Disbursement and Payment	48
8-1 Preparation and Disbursement	51
8-2 Public Information Meeting	52
8-3 Payment	54
8-4 Report	55
Step 9. Relocation and Clearance	56
9-1 Relocation of PAPs	57
9-2 Clearance of Corridor of Impact	57
<b>C. Cross-Cutting Issues</b>	
Step 10. Public Consultation Meeting	58
10-1 Arrangement	60
10-2 Preparation	60
10-3 Implementation	60
10-4 Follow up	60
Step 11. Grievance Redress Mechanism (GRM)	65
11-1 PRSC-WG, IRC-WG or Commune	69
11-2 District Office	69
11-3 Provincial Grievance Committee	69
11-4 Court	70
Step 12. Monitoring and Evaluation	71
12-1 Pre-resettlement Implementation	73
12-2 Resettlement Implementation	73
12-3 After Resettlement	73

## Preface

Basic Resettlement Procedures (BRP) is a roadmap on resettlement in Cambodia which has been discussed and developed jointly by Ministry of Economy and Finance (MEF) and Ministry of Public Works and Transport (MPWT), and Japan International Cooperation Agency (JICA) under a two years Technical Cooperation Project on "Capacity Enhancement of Environmental and Social Considerations for Resettlement (TCP-COR)".

The primary purpose of BRP is to ensure standard quality of resettlement activities by government technical officials whose level of experience and knowledge is different. In this point, BRP provides simple and effective work steps in general. It describes clearly the different steps or workflow of resettlement activities ranging from pre-resettlement implementation to the post resettlement implementation stage, and the role and responsibility of each relevant institution. In this perspective, the BRP is not intended to be a policy or guideline, but a simple and clear roadmap on resettlement activities in practice.

This final BRP is based on the information from the site visits and on a long fruitful and meaningful discussion between relevant stakeholders within two years. We highly appreciate and are proud of our good and continuous cooperation even in the hard time of resettlement issue. It is hoped that BRP will be widely applied to the future resettlement activities, especially under infrastructure development projects and contribute to the further development of Cambodia.

With our best regards,

December 2011

Ministry of Economy and Finance (MEF)  
Ministry of Public Works and Transport (MPWT)  
JICA TCP-COR

# **Basic Resettlement Procedures (BRP)**

**(1) What is BRP?**

Basic job tool with work steps on resettlement to be followed in any resettlement projects

**(2) Why is BRP necessary?**

Necessary to avoid human errors, to ensure quality and transparency of work by standardizing work steps on resettlement

**(3) Who are users for BRP?**

RD, IRC & IRC-WG including Implementing Agency and Other Government Officials who are in charge of resettlement

**(4) What kinds of activities are targeted?**

All resettlement activities such as Census, DMS, RCS, RAP, Grievance Redress Mechanism, PCM, Relocation Site Preparation etc.

**(5) How to use**

1) BRP shall be used anytime during resettlement work to make sure if your works follow these procedures

2) Resettlement works should not deviate significantly from BRP

3) BRP shall be modified and/or updated according to condition changes (ex. Legal Framework, Institutional Framework etc.)

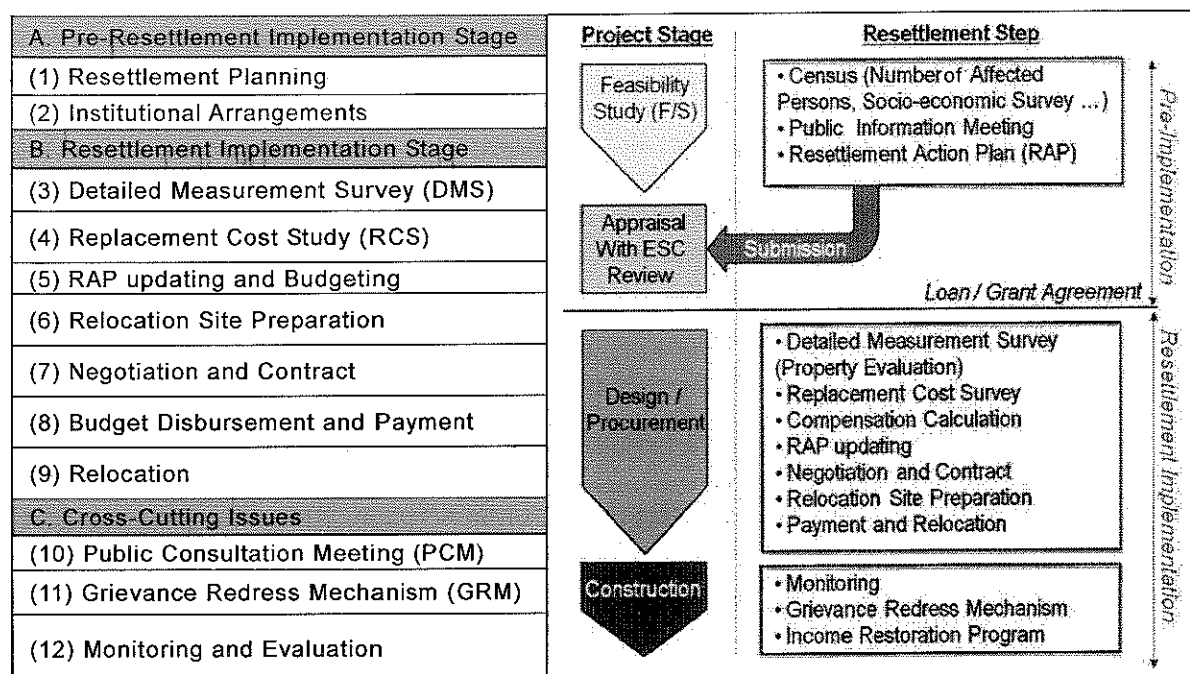


## Abbreviations

ADB	Asian Development Bank
BRP	Basic Resettlement Procedure
COI	Corridor of Impact
DMS	Detailed Measurement Survey
GRC	Grievance Redress Committee
GRM	Grievance Redress Mechanism
IRC	Inter-ministerial Resettlement Committee
IRC-WG	IRC Working Group
JICA	Japan International Cooperation Agency
MEF	Ministry of Economy and Finance
MPWT	Ministry of Public Works and Transport
MLMUPC	Ministry of Land Management, Urban Planning and Construction
PAPs / APs	Project Affected Persons / Affected Persons
PRSC	Provincial Resettlement Sub Committee
PRSC-WG	PRSC Working Group
RAP / RP	Resettlement Action Plan / Resettlement Plan
RCS	Replacement Cost Study
RD	Resettlement Department
ROW	Right of Way
SES	Socio Economic Survey

# I. BACKGROUND

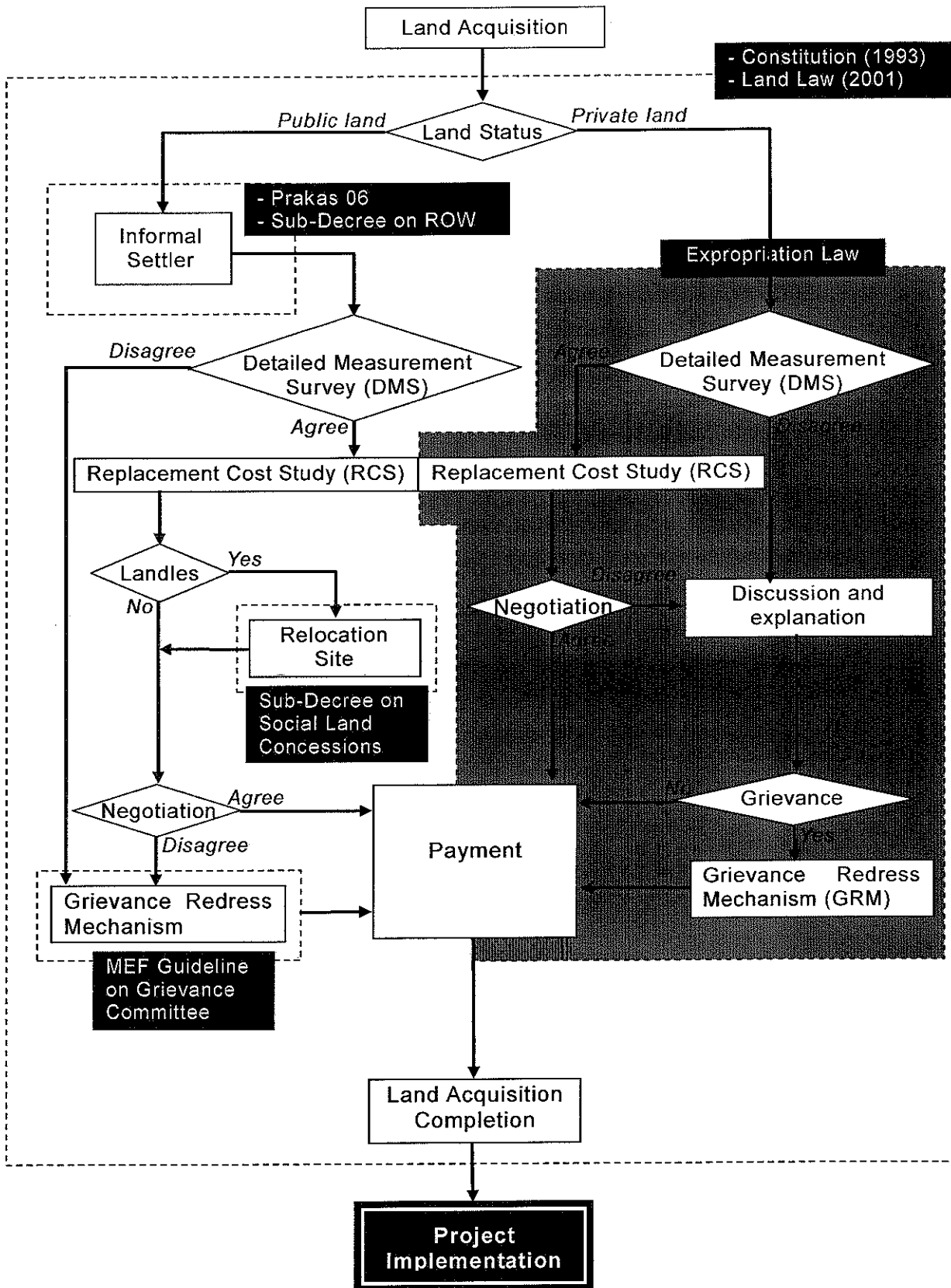
## A. Resettlement Workflows



## B. Legal Framework

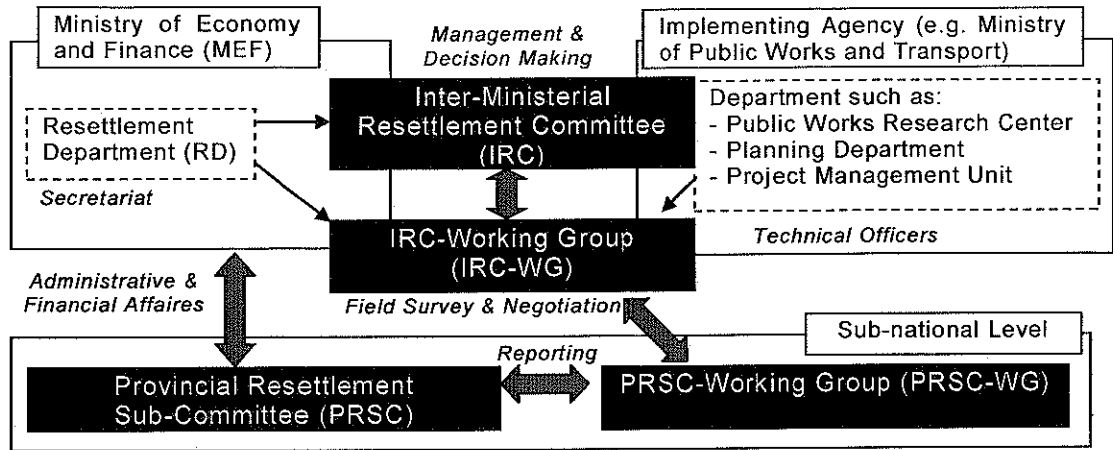
Law / Regulations	Related Resettlement Issue
Constitution (1993)	
Land Law (2001)	
Expropriation Law (2010)	
[Sub-Decree No.19 ANK/BK] Social Land Concessions (March 19, 2003)	Relocation Site Preparation
[Sechkdey Prakas No. 06] Measures to Crack Down on Anarchic Land Grabbing and Encroachment (Sep 27, 1999)	Entitlement Matrix
[MEF Letter No. 961] Regarding the Implementation of Right of Way (ROW) policy on National Roads, Provincial Roads, Communal Roads, and Railways (06 April 2000)	Entitlement Matrix
[Sub-Decree No.197] Right of way of National road Channels and Railroads of the Kingdom of Cambodia (23 Nov 2009)	Entitlement Matrix
[Circular No. 03] Settlement of the illegal construction on the state land in cities and urban areas (31 May 2010)	Entitlement Matrix
[Circular No. 02] Illegal State Land Occupation (26 February 2007)	Entitlement Matrix
[MEF Guideline] Guideline on the Functions and Duties of Grievance Committee under the Development Project	Grievance Redress Mechanism

## Land Acquisition Procedures and relevant Laws & Regulations

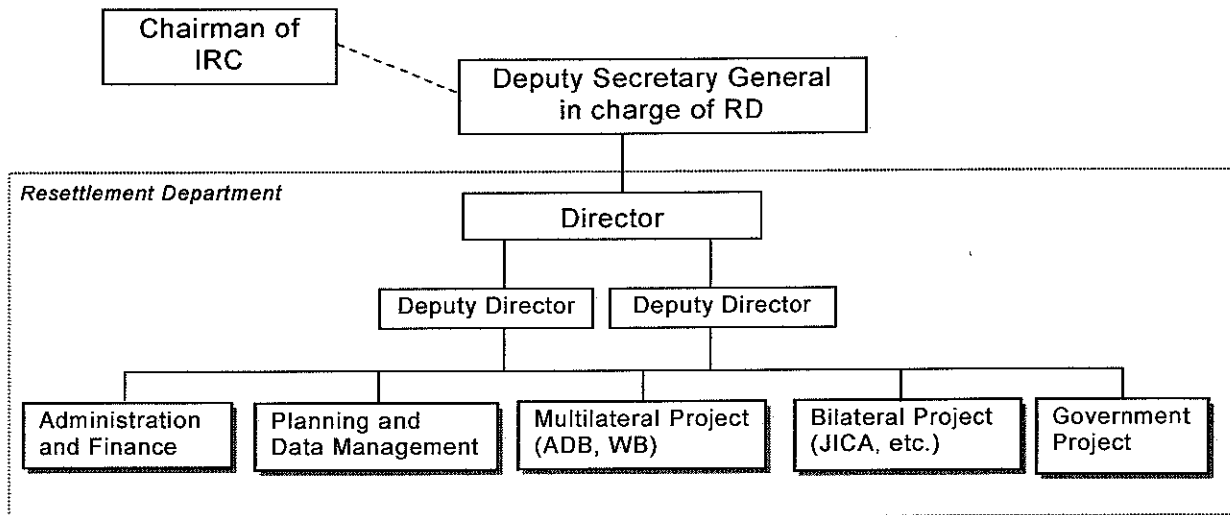


## C. Organization

### a) Inter-Ministerial Resettlement Committee (IRC) and relevant organizations



### b) Resettlement Department (RD) [Permanent Department in MEF]



## II. STEPS OF RESETTLEMENT PROCEDURES

### A. Pre-Resettlement Implementation Stage

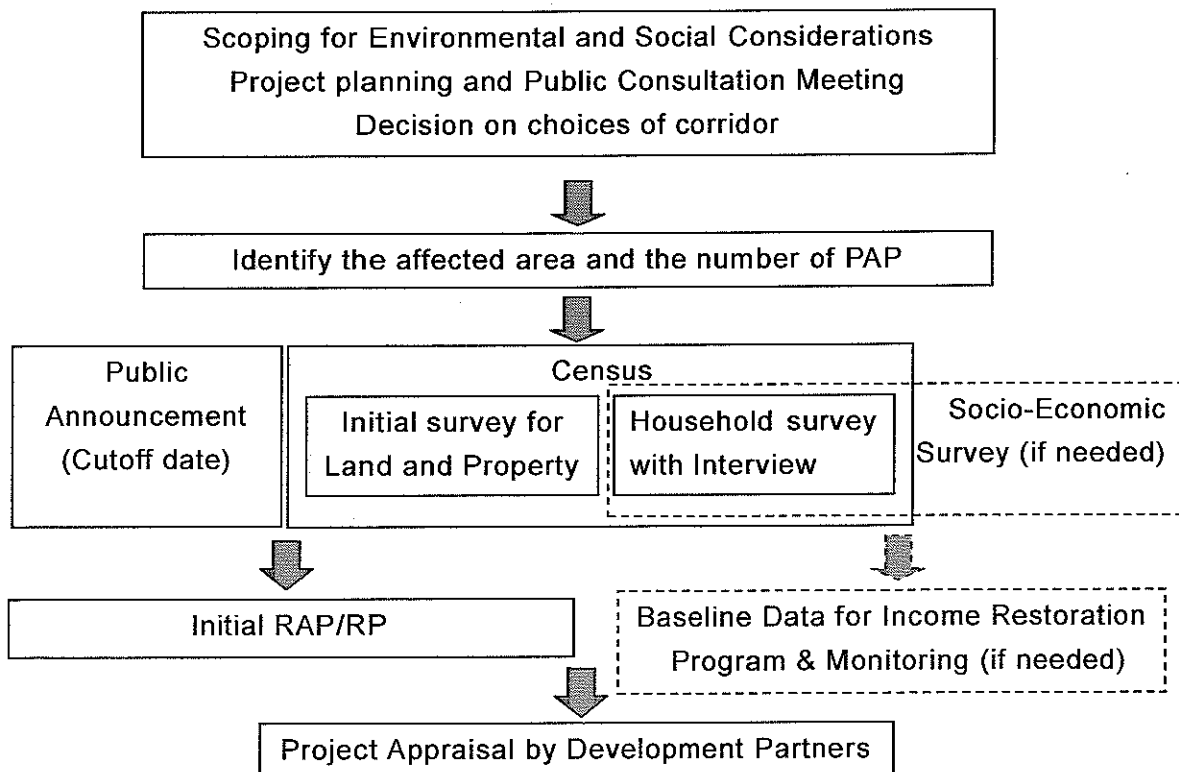
#### Step 1. Resettlement Planning

##### (1) Outline

The purpose of resettlement planning is to ensure the similar or better livelihood and standards of living of Project Affected Persons (PAPs) compared to the pre-project level. This step covers scoping for environmental and social impacts, development of a project plan, conducting a census to prepare an initial Resettlement Action Plan (RAP) before project appraisal in the Pre-Resettlement Implementation stage.

During this stage, the affected area and the number of Project Affected Persons (PAPs) will be determined, based on the drawing of the project. And then, a census will be conducted by implementing agency (consultants) to identify the persons who will be affected by the project, to determine who will be eligible for assistance, and to discourage inflow of people ineligible for assistance. This census procedure might include interview with PAPs, initial survey for land and property, and Public Announcement regarding Cut-Off date.

The Socio-Economic Survey (SES) might be also conducted during the census if there is large scale resettlement impact. In case it cannot be conducted during the census, the survey might be undertaken during Detailed Measurement Survey (DMS). The updated RAP with the final data will be discussed in Step 5.



Concept of Pre-Resettlement Implementation

## (2) Work Steps

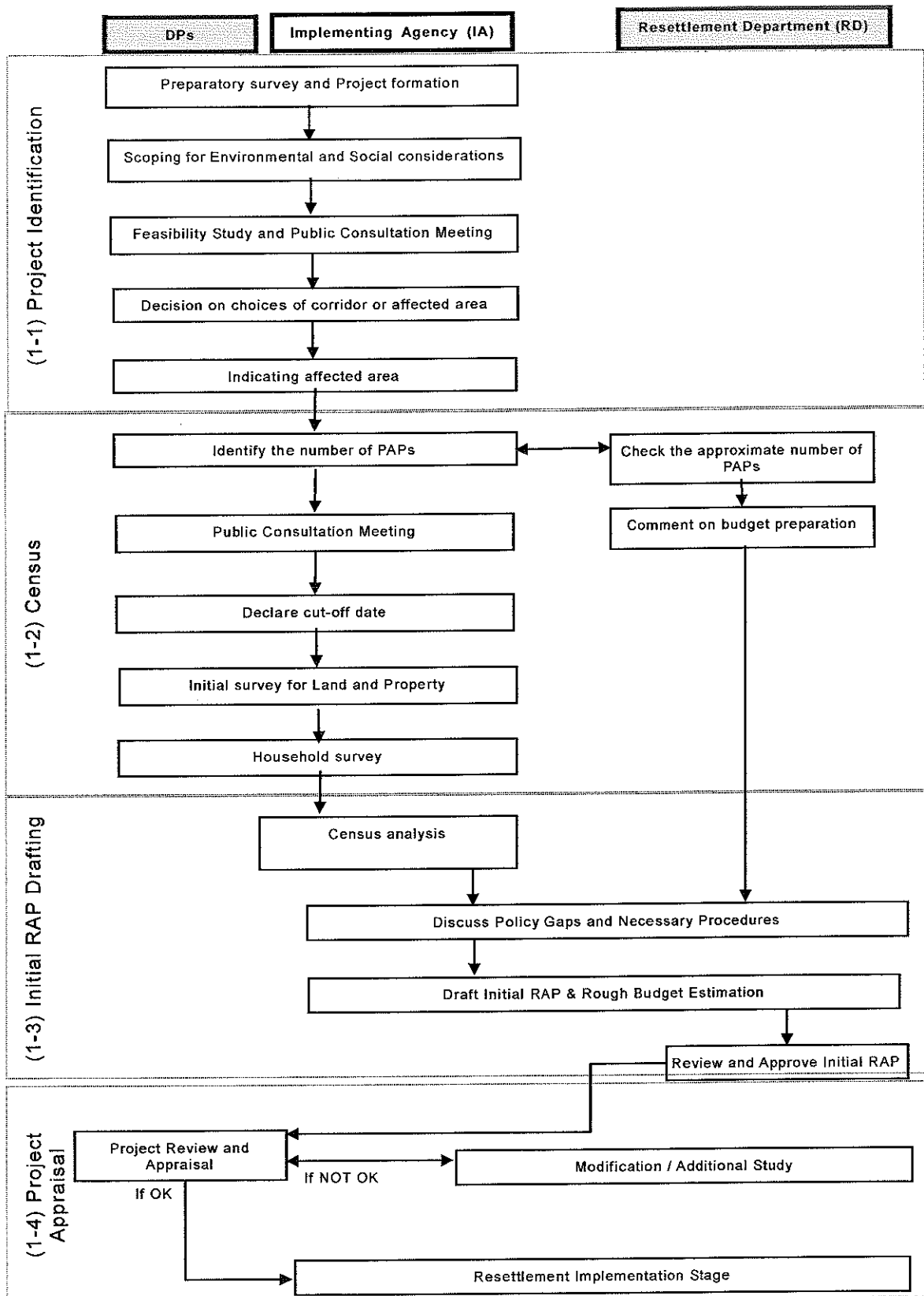
<b>(1-1) Project Identification</b>	<ol style="list-style-type: none"> <li>1) Scoping for environmental and social considerations</li> <li>2) Public Consultation Meeting</li> <li>3) Decision on choices of corridor</li> <li>4) Indicating affected areas</li> </ol>
<b>(1-2) Census</b>	<ol style="list-style-type: none"> <li>1) Identify the number PAPs</li> <li>2) Declaration of Cut-Off date</li> <li>3) Conduct surveys including: <ul style="list-style-type: none"> <li>• Initial survey for Land and property;</li> <li>• Interview with PAPs;</li> <li>• Household survey (Socioeconomic survey if necessary)</li> </ul> </li> </ol>
<b>(1-3) Initial RAP Drafting</b>	<ol style="list-style-type: none"> <li>1) Implementing Agency draft Initial RAP based on items below: <ol style="list-style-type: none"> <li>(1) Project Outline</li> <li>(2) Result of Census and Socio Economic Survey</li> <li>(3) Country Legal Framework</li> <li>(4) Development Partner's Resettlement Policy or Guidelines</li> <li>(5) Initial Budget Estimate</li> <li>(6) Recommendations from Development Partners and MEF</li> </ol> </li> <li>2) MEF approve RAP and submit to Development Partners</li> </ol>
<b>(1-4) Project Appraisal</b>	Project review and Appraisal by Development Partners

## (3) Role and Responsibility

<b>Organization</b>	<b>Roles and Responsibilities</b>
Implementing Agency	<ul style="list-style-type: none"> <li>● Consider minimization &amp; mitigation measures</li> <li>● Confirm the drawing from consultants</li> <li>● Identify the approximate number of PAPs</li> <li>● Conduct a census and an initial survey for land and property</li> <li>● Estimate budget</li> <li>● Draft Initial RAP with Development Partners Consultant</li> <li>● Submit Initial RAP to MEF</li> </ul>

Resettlement Department (RD)	<ul style="list-style-type: none"> <li>● Check the approximate number of PAP</li> <li>● Review the initial RAP</li> <li>● Provide comments and recommendations</li> <li>● Submit Initial RAP to Development Partners</li> </ul>
Consultants	<ul style="list-style-type: none"> <li>● Conduct feasibility study</li> <li>● Propose minimization &amp; mitigation measures</li> <li>● Analyze Census and Socio Economic Survey</li> <li>● Draft Initial RAP with Implementing Agency and MEF</li> <li>● Check conditions according to Development Partner's Resettlement Policy and Country Legal Framework</li> </ul>

#### (4) Work-Flow





## (5) Socioeconomic information in RAP

Socio-economic information is part of an initial RAP if resettlement impact is significant and it is required at the time of project appraisal. After the project appraisal by development partner, the initial RAP must be updated by precise information by DMS including an updated socioeconomic survey and a valuation of assets.

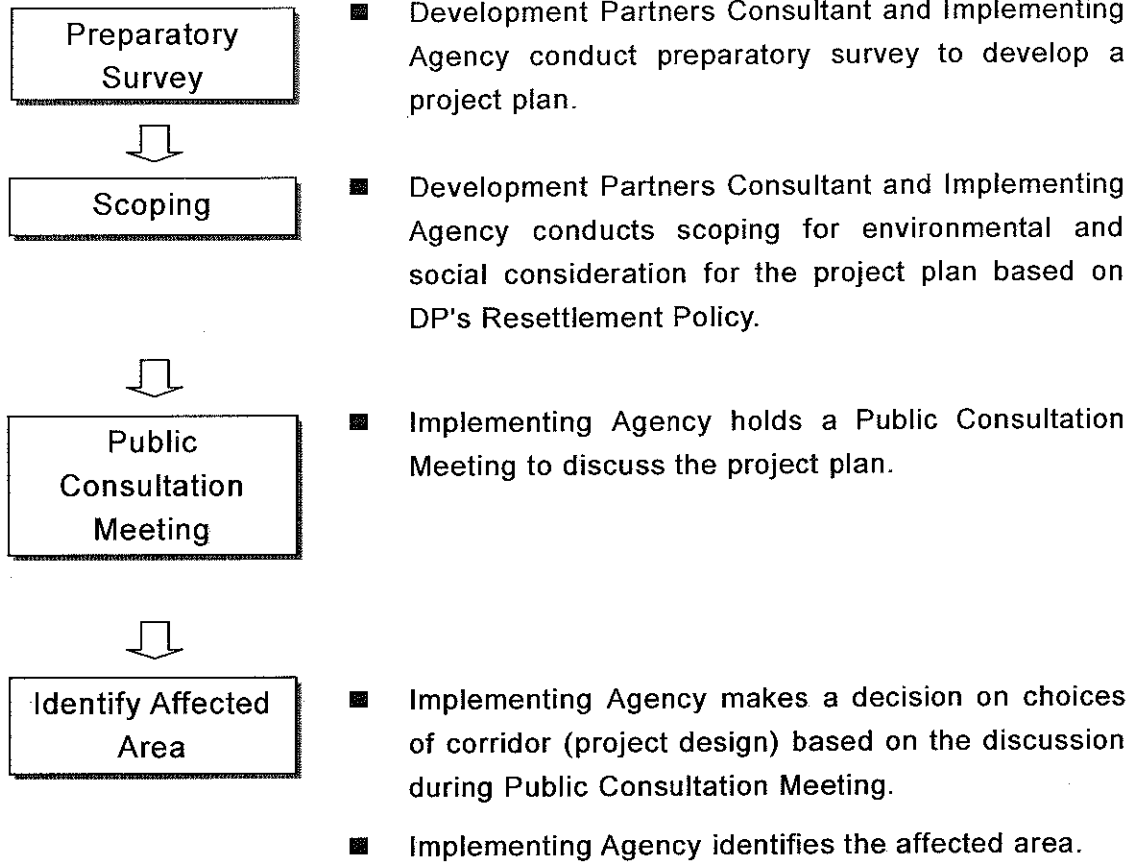
Survey	Contents
<b>Census*</b>	<ul style="list-style-type: none"> <li>● Current occupants of the affected area</li> <li>● Standard characteristics of displaced households               <ol style="list-style-type: none"> <li>1) Description of production system, labor, and household members</li> <li>2) Baseline information on livelihood (production level and income)</li> </ol> </li> <li>● Magnitude of expected loss of assets (total or partial)</li> <li>● Information on vulnerable groups or persons</li> </ul>
<b>Other Studies (Land records)</b>	<ul style="list-style-type: none"> <li>● Public infrastructure and social services</li> <li>● Social and cultural characteristics of displaced communities</li> </ul>

### \*Sample of Census data

Information	Information
1) ID #	000017
2) Name of head of household	Mr. XXX xxx
3) Names of other eligible household members	Miss. YYY yyy
4) Total # of household members	6
5) Address	313 Sisowath Quay, Phnom Penh
6) Total land owned by PAPs	Irrigated 100 a, Unirrigated 30 a
7) Impact (affected area)	Irrigated 3 a, Unirrigated 2 a
8) House area	60 m <sup>2</sup>
9) Other cash entitlements	-
10) Other non-cash entitlements	-
11) Monthly Average Income	\$200 (Farming \$150, Repair \$50)
12) House type and quality	Type2: Good

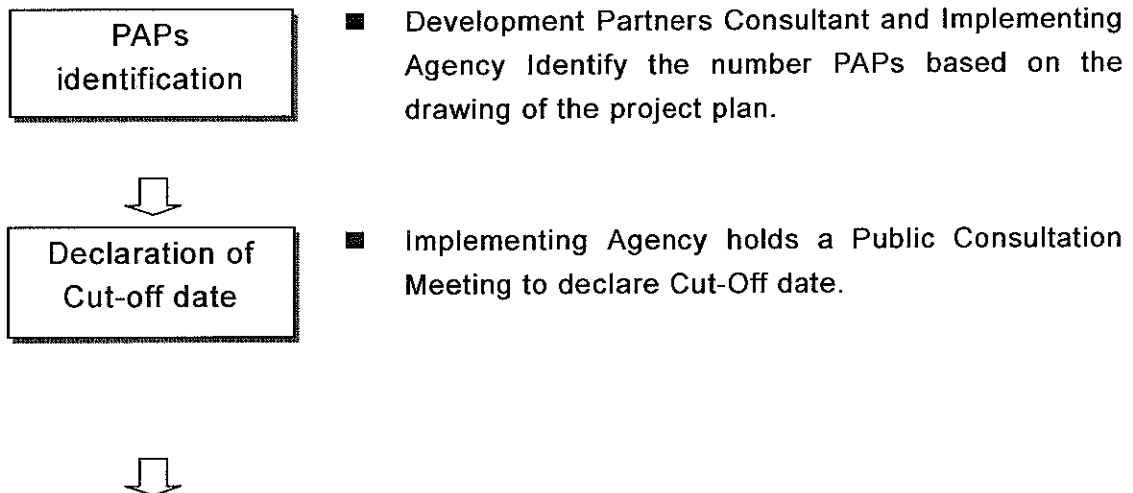
## **(1-1) Project Identification**

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## **(1-2) Census**

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Census

- Implementing Agency conducts a census/survey including:
  - Initial survey for Land and property;
  - Interview with PAPs
  - Household survey (Socioeconomic survey if necessary)

### (1-3) Initial RAP Drafting

---

Analysis

- Development Partner Consultant analyzes the result of Census as a part of Feasibility Study.



Policy Gaps

- Development Partner Consultant and Government discuss relevant Country Legal and Policy Framework.
- Development Partner Consultant considers Development Partner's Resettlement Policy
- Development Partner Consultant drafts Entitlement Matrix.



Draft Initial RAP

- Development Partners Consultant and Implementing Agency integrate above discussions and draft initial RAP.



Budget Estimation

- Development Partners Consultant and Implementing Agency estimate rough budget for resettlement and provide the results for initial RAP drafting.



Review and Approve Initial RAP

- MEF review and endorse initial RAP and submit it to Development Partners for approval.

## (1-4) Appraisal

---

Submission



- MEF submit initial RAP to Development Partners.



Project Review

- Development Partners confirm initial RAP as a part of project review before the appraisal.
- Development Partners feedback comments and insufficient points in the initial RAP (if any).



Modification

- Implementing Agency and RD/MEF discuss comments and requirements as a result of Development Partners' project review process.
- MEF submit revised initial RAP to Development Partners.



Appraisal

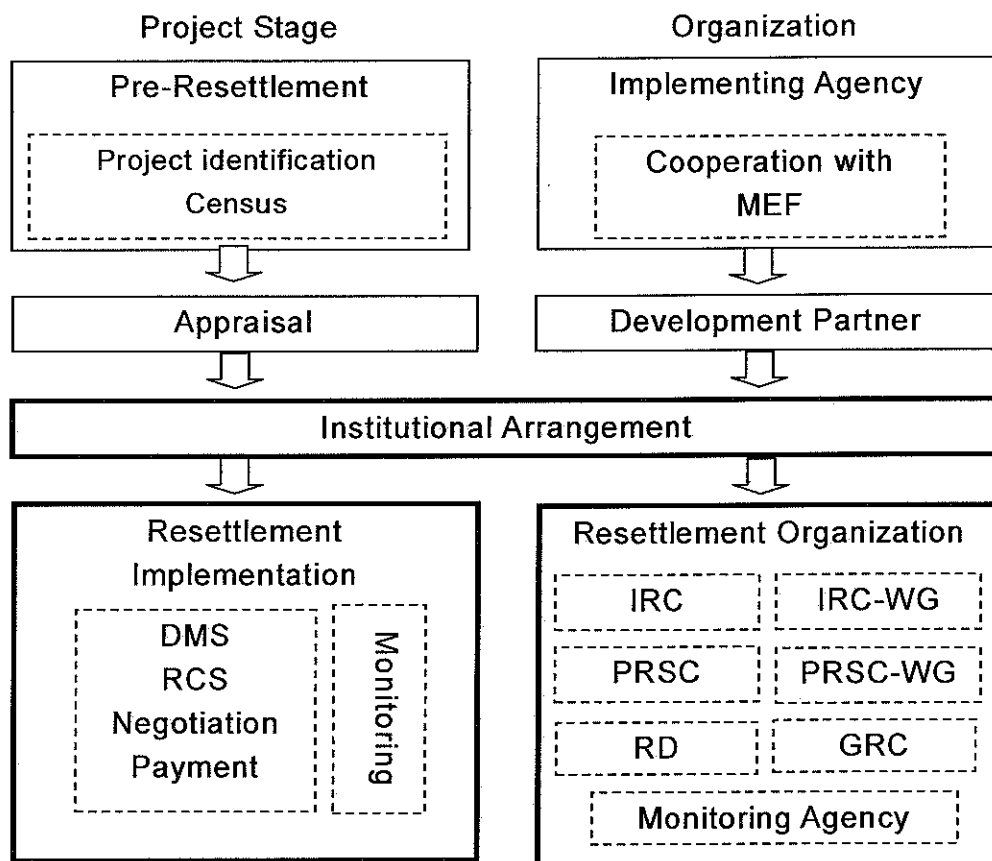


- Development Partners make a decision for the project appraisal with materials including initial RAP.
- Loan or Grant Agreement will be prepared by both the Government and Development Partners.

## Step 2. Institutional Arrangements

### (1) Outline

The purpose of Institutional Arrangements is to conduct effective resettlement by clarifying institutional role and responsibility. Effective resettlement depends on the commitment of organizations responsible for resettlement preparation and implementation. It is necessary to ensure the close coordination of all the organizations involved in resettlement activities, because these organizations are not under the administrative control of the Implementing Agency.



Concept of Project Stage and Organization

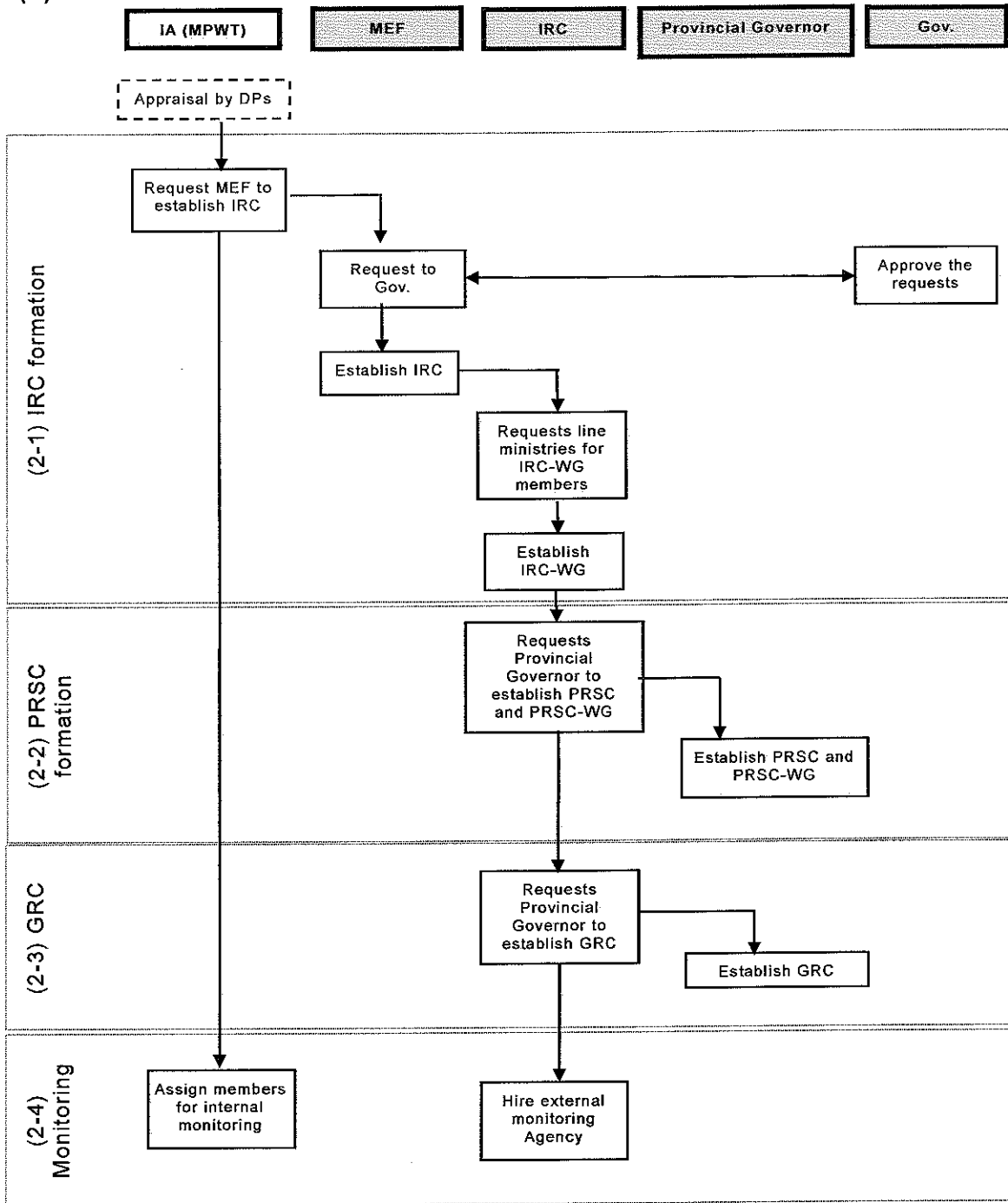
## (2) Work Steps

<b>(2-1) IRC and IRC-WG establishment</b>	<ol style="list-style-type: none"> <li>1) Implementing Agency requests MEF to establish IRC.</li> <li>2) MEF requests the head of the Government and the head of the Government approves the request.</li> <li>3) IRC is established.</li> <li>4) IRC requests line ministries to assign members for IRC-WG.</li> <li>5) IRC-WG is established.</li> </ol>
<b>(2-2) PRSC and PRSC-WG establishment</b>	<ol style="list-style-type: none"> <li>1) IRC requests Provincial Governor to establish PRSC and PRSC-WG.</li> <li>2) PRSC and PRSC-WG are established by Provincial Governor based on the IRC's request.</li> </ol>
<b>(2-3) Provincial Grievance Committee establishment</b>	<ol style="list-style-type: none"> <li>1) IRC requests Provincial Governor to establish Grievance Redress Committee.</li> <li>2) Grievance Redress Committee is established by Provincial Governor based on the IRC's request.</li> </ol>
<b>(2-4) Internal and External Monitoring Agency establishment</b>	<ol style="list-style-type: none"> <li>1) Implementing Agency assigns responsible members to conduct internal monitoring.</li> <li>2) IRC hires external monitoring agency.</li> </ol>

## (3) Role and Responsibility

<b>Organization</b>	<b>Roles and Responsibilities</b>
Implementing Agency	<ul style="list-style-type: none"> <li>● Request MEF to establish IRC.</li> <li>● Assign internal monitoring members.</li> </ul>
Ministry of Economy and Finance (MEF)	<ul style="list-style-type: none"> <li>● Request the Government to set up IRC.</li> <li>● Establish IRC.</li> </ul>
Inter-ministerial Resettlement Committee (IRC)	<ul style="list-style-type: none"> <li>● Request line ministries to assign members for IRC-WG.</li> <li>● Request Provincial Governor to establish PRSC, PRSC-WG and Grievance Redress Committee.</li> <li>● Hire external monitoring agency.</li> </ul>
Provincial Governor	<ul style="list-style-type: none"> <li>● Establish PRSC, PRSC-WG and Grievance Redress Committee based on the IRC's Request.</li> </ul>

**(4) Work-Flow**



## Institutional Arrangements

---

**(2-1) IRC and  
IRC-WG  
Establishment**

- Implementing Agency requests MEF to establish IRC.
- MEF requests the head of the Government and the head of the Government approves the request.
- IRC is established.
- IRC requests line ministries to assign member of IRC-WG.
- IRC-WG is established.



**(2-2) PRSC and  
PRSC-WG  
Establishment**

- IRC requests Provincial Governor to establish PRSC and PRSC-WG.
- PRSC and PRSC-WG are established by Provincial Governor based on IRC's Request.



**(2-3) Grievance  
Redress  
Committee  
Establishment**

- IRC requests Provincial Governor to establish Grievance Redress Committee.
- Provincial Grievance Redress Committee is established by Provincial Governor based on IRC's Request.



**(2-4) Internal and  
External  
Monitoring**

- Implementing Agency assigns responsible members to conduct internal monitoring
- IRC hires external monitoring agency



**Table 2-1 : Role and Responsibility for Each Organization and Work-steps**

Organization		Work	Roles and Responsibilities
Central	RD (MEF)	DMS	<ul style="list-style-type: none"> <li>● Assign staff for IRC-WG.</li> <li>● Manage DMS.</li> <li>● Prepare Budget Disbursement.</li> </ul>
		RCS	<ul style="list-style-type: none"> <li>● Make a contract with IE for RCS and Check the RCS Report.</li> <li>● Obtain approval for using RCS result from MEF higher management.</li> </ul>
		N&C*	<ul style="list-style-type: none"> <li>● Provide instruction to IRC-WG.</li> </ul>
		B&P*	<ul style="list-style-type: none"> <li>● Verify and Prepare documents for disbursement.</li> <li>● Notify to the PRSC that disbursement voucher is ready for withdrawing.</li> </ul>
	Implementing Agency (MPWT)	DMS	<ul style="list-style-type: none"> <li>● Demonstrate the project area.</li> <li>● Provide detailed alignment.</li> <li>● Assign staff for IRC &amp; IRC-WG.</li> <li>● Verify DMS Result.</li> </ul>
Committee	IRC	DMS	<ul style="list-style-type: none"> <li>● Manage and Supervise DMS.</li> </ul>
		N&C*	<ul style="list-style-type: none"> <li>● Present solutions to requests raised from PAPs during the negotiation.</li> </ul>
		B&P*	<ul style="list-style-type: none"> <li>● Approve budget for disbursement.</li> </ul>
	IRC-WG	DMS	<ul style="list-style-type: none"> <li>● Conduct DMS training.</li> <li>● Conduct Public Consultation Meeting.</li> <li>● Conduct DMS.</li> <li>● Make DMS Report.</li> <li>● Calculate compensation amount.</li> </ul>
		N&C*	<ul style="list-style-type: none"> <li>● Negotiate with PAPs and Contract with PAPs.</li> <li>● Report progress to IRC/RD.</li> </ul>
		B&P*	<ul style="list-style-type: none"> <li>● Prepare necessary documents for payment and Join payment activity.</li> </ul>
	PRSC	DMS	<ul style="list-style-type: none"> <li>● Cooperate with IRC-WG and Assist Public Consultation Meeting.</li> </ul>
		B&P*	<ul style="list-style-type: none"> <li>● Manage payment activities.</li> <li>● Send payment documents to RD after payment and Liquidation for the payment.</li> </ul>
	PRSC-WG	DMS	<ul style="list-style-type: none"> <li>● Conduct DMS with IRC-WG.</li> </ul>
		N&C*	<ul style="list-style-type: none"> <li>● Conduct Negotiation and Contract with IRC-WG.</li> </ul>

		B&P*	<ul style="list-style-type: none"> <li>● Notify PAPs the date and venue and prepare necessary documents for the payment.</li> <li>● Implement payment.</li> </ul>
	Grievance Redress Committee	GRM	<ul style="list-style-type: none"> <li>● Receive and resolve grievance.</li> </ul>
Other	Court	GRM	<ul style="list-style-type: none"> <li>● Make a final decision.</li> </ul>
	Independent Consultants	RCS	<ul style="list-style-type: none"> <li>● Conduct RCS based on the TOR and submit RCS report to RD.</li> </ul>

\* N&C: Negotiation and Contract, B&P: Budget Disbursement and Payment

**Table 2-2 : Timing of Institutional Arrangements**

Organization	Title	Original Organization	Timing	Time Line							
				Pre-Resettlement		App.	Resettlement Implementation			After resettlement	
				Plan	RAP		DMS, RCS	NG, Payment	Relocation	BPF	APF
National	MEF, RD	Director	RD	Permanent							
		Deputy Director	RD								
		Chief	RD								
		Deputy Chief	RD								
		Members	RD								
	IA (MPWT)	Chief	MPWT	Permanent							
Sub-National		Provincial DEF	-	Permanent							
		Provincial DPWT	-								
		Land Management	-								
		District Office (DO)	-								
		Commune	-								
Committee	IRC	Chairman	MEF	After project appraisal							
		Vice Chairman	IA								
		Members	Line ministries								
	IRC-WG	Chief	RD	After IRC established							
		Deputy Chief	IA								
		Members	RD, IA								
	ERSC	Chairman	Governor	After IRC established							
		Vice Chairman	Cabinet of Governor								
		Members	DEF								
	PRSC-WG	Chief	Appointed by Governor	After IRC established							
Deputy Chief											
Members											
Grievance Redress Committee	Chairman	Governor	After IRC established								
	Members	Appointed by Governor									
Other	Independent Consultants	-	RCS								
	Internal monitoring Unit	Members	IA or IRC-WG	After Appraisal							
	External Monitoring Agency	-	-	After Appraisal							

6-12 months after resettlement

Note: Straight Arrow shows the full-time involvement in resettlement activities.

Dotted Arrow shows the part-time involvement in resettlement activities, if necessary.

## B. Resettlement Implementation Stage

### Step 3. Detailed Measurement Survey (DMS)

#### (1) Outline

Detailed Measurement Survey (DMS) is conducted following the agreed policy in the Resettlement Action Plan (RAP) / Resettlement Plan (RP) and the detailed alignment of the project impact. DMS is basically consisted of:

- 1) Land Demarcation
- 2) Household Interviews, and;
- 3) Property Measurement.

Based on the final detailed alignment and coordination, IRC-WG and PRSC-WG demonstrate exact project area at site by Land Demarcation and implements Property Measurement referring to the Simple Survey/Census. Properties picked-up by the DMS are the target for compensation. Household interviews aim at determination of eligibilities for cash allowances, such as widow, elderly, disability, poorness and so on defined in RAP/RP.

The Socio-Economic Survey (SES) is also conducted during the Household Interview, if the project has a negative and large scale impact on people livelihood.

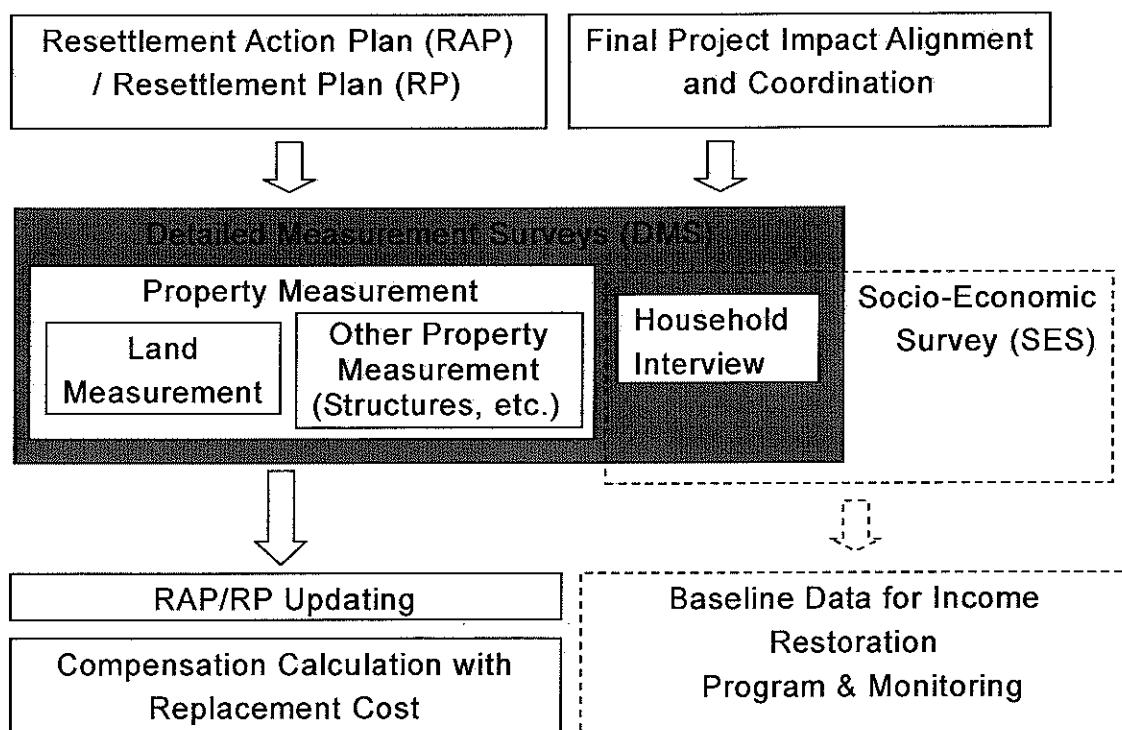



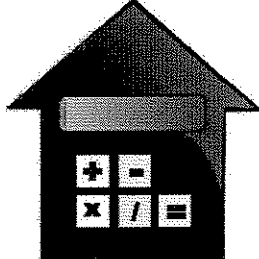




Image of DMS Procedure

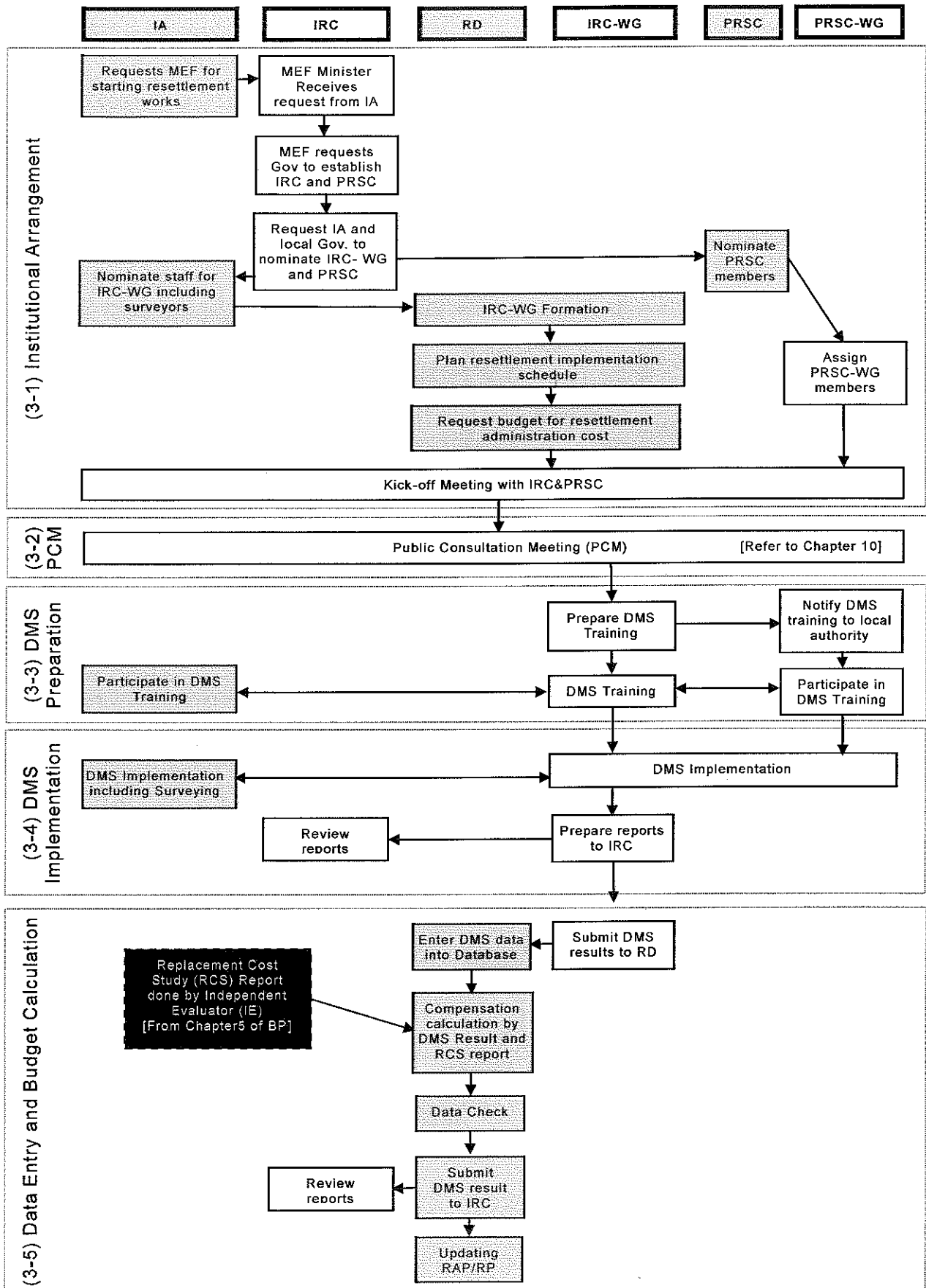
## (2) DMS Work Steps

<p><b>(3-1) Institutional Arrangement</b></p> 	<ol style="list-style-type: none"> <li>1) Implementing Agency's Preparation</li> <li>2) IRC-WG Formation</li> <li>3) PRSC &amp; PRSC-WG Formation</li> <li>4) DMS Schedule</li> <li>5) Kick-Off Meeting</li> </ol>
<p><b>(3-2) Public Consultation Meeting</b></p> 	<ol style="list-style-type: none"> <li>1) Arrangement</li> <li>2) Preparation</li> <li>3) Implementation</li> <li>4) Follow up</li> </ol>
<p><b>(3-3) DMS Preparation</b></p>	<ol style="list-style-type: none"> <li>1) Questionnaire</li> <li>2) Logistics</li> <li>3) DMS Training Preparation</li> <li>4) DMS Training</li> </ol>
<p><b>(3-4) DMS Implementation</b></p> 	<ol style="list-style-type: none"> <li>1) Entry Permission</li> <li>2) Boundary Demonstration</li> <li>3) Land Demarcation</li> <li>4) Other Property Measurement</li> <li>5) DMS Result Confirmation</li> </ol>
<p><b>(3-5) Data Entry and Budget Calculation</b></p> 	<ol style="list-style-type: none"> <li>1) Data Collection</li> <li>2) Data Entry</li> <li>3) Compensation Amount Calculation</li> <li>4) Data Check</li> <li>5) Data Submission</li> </ol>

### (3) Role and Responsibility

Organization	Roles and Responsibilities
<b>Implementing Agency</b>  etc.	<ul style="list-style-type: none"> <li>● Demonstrate the project area.</li> <li>● Provide detailed alignment.</li> <li>● Assign staff for IRC &amp; IRC-WG.</li> <li>● Entry DMS Data and set up database.</li> </ul>
<b>Inter-Ministerial Resettlement Committee (IRC)</b>	<ul style="list-style-type: none"> <li>● Manage and Supervise DMS.</li> <li>● Prepare DMS Budget.</li> <li>● Approve DMS result.</li> </ul>
<b>Resettlement Department (RD)</b> 	<ul style="list-style-type: none"> <li>● Prepare DMS questionnaire.</li> <li>● Disburse DMS budget.</li> <li>● Assign staff for IRC-WG.</li> <li>● Manage DMS Data from IRC-WG.</li> <li>● Calculate compensation amount.</li> </ul>
<b>IRC-Working Group (IRC-WG)</b>	<ul style="list-style-type: none"> <li>● Schedule DMS at site.</li> <li>● Conduct DMS training for PRSC/IRC-WG.</li> <li>● Organize Public Information Meeting.</li> <li>● Conduct DMS.</li> <li>● Make DMS Report.</li> </ul>
<b>Provincial Resettlement Sub-Committee (PRSC)</b>	<ul style="list-style-type: none"> <li>● Cooperate and Assist Public Consultation Meeting.</li> </ul>
<b>PRSC Working-Group (PRSC-WG)</b>	<ul style="list-style-type: none"> <li>● Conduct DMS with IRC-WG.</li> </ul>

#### (4) Work-Flow



### (3-1) Institutional Arrangement

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IA's Preparation

- Implementation Agency receives drawings with exact boundary of construction area from consultants engaged by Implementing Agency/Development Partners.
- Implementing Agency demonstrates the project area.
- Implementing Agency sends a letter to IRC for:  
(1) requesting for starting resettlement work, and;  
(2) notifying the deadline for land clearance.



IRC-WG Formation

- IRC sends a letter to Implementing Agency to nominate IRC-WG members.
- Implementing Agency assigns its officials including topographic surveyor to be member of IRC-WG.
- RD assigns IRC-WG members including Team Leader.



PRSC and PRSC-WG Formation

- IRC sends a letter to the Provincial Government to nominate members for the Provincial Resettlement Sub-Committee (PRSC) and PRSC-WG.
- Provincial Government sends a letter to IRC with a list of nominated members.



DMS Schedule

- RD prepares DMS Schedule
- RD informs DMS Schedule to Implementing Agency and PRSC.



Kick-Off Meeting

- IRC organizes DMS Kick-off Meeting with PRSC at Capital/Provincial Office, Municipal/District/Khan Office or Commune/Sangkat Office of the project location.



### **(3-2) Public Consultation Meeting**

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Arrangement

- RD sets the dates and appropriate venue for Public Consultation Meeting according to the availability of key persons.
- RD invites relevant stakeholders.
  - (1) Target participants are PAPs, local authority, Development Partners, and other relevant organizations.
  - (2) If target participants include indigenous people whose dominant language is NOT Khmer, special Public Consultation Meeting in their language is planned.
- \* The number of participants for a Public Consultation Meeting should be considered to encourage communication.
- RD confirms meeting attendance.
- RD confirms role and responsibility.
- IRC-WG informs the date of Public Consultation Meeting to PRSC-WG.
- Local authorities Informs PAPs of Public Consultation Meeting date & venue at least one week before the Public Consultation Meeting.



Preparation

- IRC prepares Public Consultation Meeting Agenda and Public Information Booklet (PIB).
- IRC-WG prepares presentation materials (PowerPoint slide, CG, FAQ memo)
- IRC-WG prepares presentation equipment (PC, Projector, Microphone, Whiteboard)
- IRC-WG prepares attendance sheets.



Implementation

- PRSC-WG sets up a venue (seating, whiteboard, screen, projector, and etc.)
- IRC-WG makes reception with attendance sheets.
- IRC-WG distributes PIB, agenda and other materials.





- IRC-WG implements Public Consultation Meeting based on agenda.  
**(Refer to Step 10 "Public Consultation Meeting")**

*(sample for DMS)*

**AGENDA**

- (1) Opening Speech
- (2) Project Outline
- (3) Resettlement Procedure
- (4) Compensation and Entitlement
- (5) DMS (Objective, Process, Schedule, Necessary Document to be prepared by PAPs)
- (6) Grievance Redress Mechanism
- (7) Question and Answer
- (8) Closing Remark

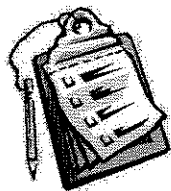


Follow-up

- IRC-WG writes Minutes of Meeting (MM).
- RD confirms the contents of MM (Q&A session).
- IRC-WG visits PAPs and answers the question which was not able to answer at Public Consultation Meeting.

### (3-3) DMS Preparation

#### Questionnaire



#### Logistics



#### DMS Training Preparation



#### DMS Training

- IRC prepares draft DMS Questionnaire with the assistance from consultants.
- RD update/revise DMS Questionnaire if needed before the DMS commencement.
  
- IRC-WG Prepares:
  - Questionnaires for DMS (Socio-Economic Survey (SES), if needed).
  - Survey equipment (e.g. Total Station).
  - Measurement equipment (e.g. Measuring Tape).
  - Operation Cost (e.g. Transportation fee, per-diem).
  
- IRC-WG sets the dates of DMS Training.
- IRC-WG informs PRSC-WG of the DMS Training Plan and requests PRSC-WG to invite local authorities.
- Trainer (Leader & Deputy Leader of IRC-WG) should understand and learn RAP/RP and Questionnaires.
- IRC-WG prepares,
  - 1) RAP/RP (entitlement matrix).
  - 2) Public Information Booklet (PIB) of last Public Consultation Meeting.
  - 3) Questionnaires for DMS & Socio-economic survey.
  
- IRC-WG (Leader & Deputy Leader) conducts DMS Training.

*Sample*

#### Contents of Training

- (1) Introduction
- (2) Outlines of the Project and its Scope
- (3) DMS Process and Work Schedule
- (4) Explanation on each item of the Questionnaire
- (5) Explanation on how to conduct measurement and prepare sketches
- (6) Question and Answer

### (3-4) DMS Implementation

---

Entry  
Permission



Boundary  
Demonstration



Household  
Interview



Land  
Measurement



Other Property  
Measurement



DMS Results  
Confirmation



- DMS-Team (IRC-WG & PRSC-WG) obtains permission from PAPs for DMS implementation.

- IRC-WG (Surveyors) installs wooden peg along with the boundary of the project area (e.g. PRW/COI) as well as other benchmarks (e.g. road center).

- DMS-Team explains the objective and process of DMS.
- DMS-Team makes interview by questionnaire and records answers in the presence of local authorities.

- IRC-WG (Surveyors) installs wooden peg for land demarcation and area calculation.
- DMS-Team classifies the land with its purpose.
- DMS-Team confirms the type of land and calculates affected areas by Heron Formula.

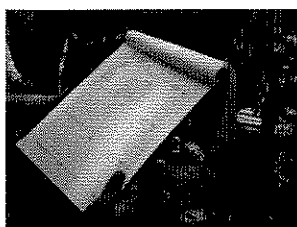
- DMS-Team measures properties (Structures, Fruit trees, and etc.)
- DMS-Team fulfills the DMS Questionnaire.
- DMS-Team takes photos of the Structure (Houses and Other Structures) from all four dimensions.

- DMS-Team presents results (DMS Questionnaire and other documents) to PAPs.
- DMS-Team explains methods and results of calculation.
- DMS-Team obtains thumbprints from PAPs and a representative from local authority (commune/village) to confirm principle agreement among parties.

### (3-5) Data Entry and Calculation

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#### Data Collection



#### Data Entry



#### Compensation Amount Calculation



#### Data Check



#### Data Submission

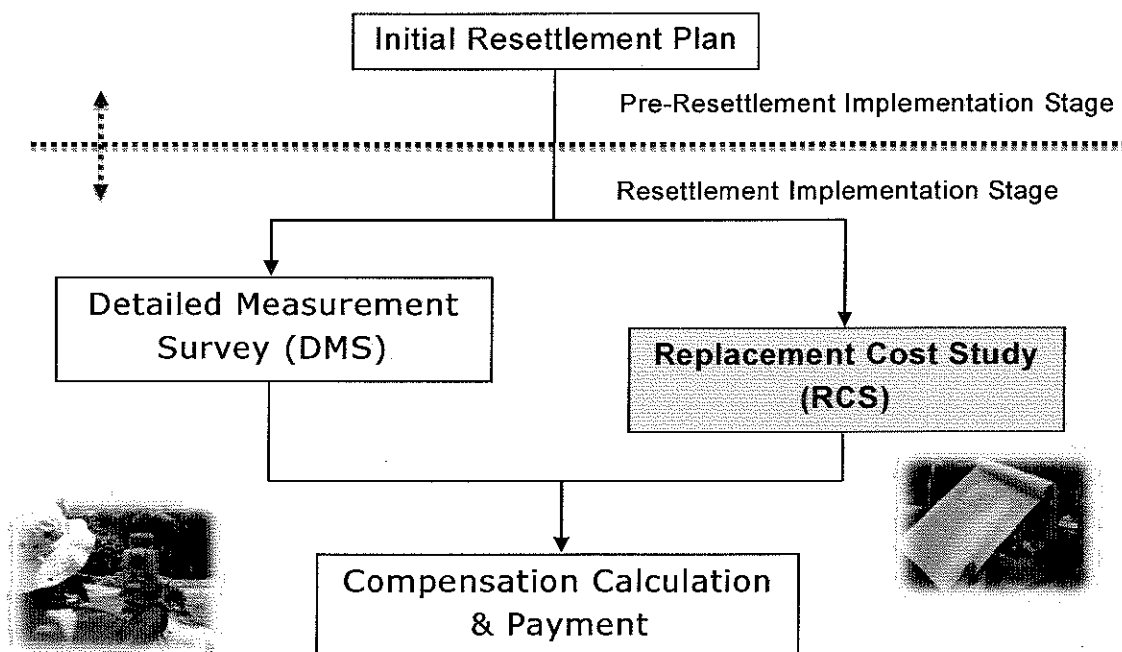
- IRC-WG hands over DMS result (Questionnaire and other documents) to RD (Planning and Data Management Office) as document.
- Chief of Planning and Data Management Office assigns officials as Database Clerk to review the DMS result.
  
- IRC-WG Members from Implementing Agency entries DMS result into Datasheets (MS Excel/ Access etc.) entitled 'Detailed PAPs List from DMS of xxxx (Project Name) ', prepared by Implementing Agency (or Consultants engaged by Development Partner).
  
- Independent Evaluator submits Replacement Cost Study (RCS) Report to RD.
- RD re-categorizes structure types according to RCS Report. If needed, RD requests IRC-WG/PRSC-WG to revisit structures for confirmation and/or consult with Independent Evaluator.
- RD enters the RCS result (unit price) into DMS Datasheet for calculation of compensation amount.
  
- Database Clerks confirms DMS Datasheet to the Chief of Planning and Database Management Office and to the Team Leader of IRC-WG for further process.
- RD confirms the DMS Datasheet and submits to IRC for approval.
  
- DMS Datasheet is used in RAP/RP updating and budgeting for compensation.

## Step 4. Replacement Cost Study (RCS)

### (1) Outline

The objective of Replacement Cost Study (RCS) is primarily to provide basis for 'fair and just' compensation of the replacement structures, land and other fixed property affected by the proposed project based on market value or other alternative measures.

Detailed Measurement Survey (DMS) is conducted by the Government (IRC-WG). However, RCS is implemented by the Independent Evaluator entrusted by the Resettlement Department (RD) in prior to DMS or in parallel.



### (2) Work Steps

<b>(4-1) Contract with Independent Evaluator</b>	<ol style="list-style-type: none"> <li>1) Prepare Terms of Reference (TOR)</li> <li>2) Contract Making</li> <li>3) Initial Meeting</li> </ol>
<b>(4-2) Replacement Cost Study by IE</b>	<ol style="list-style-type: none"> <li>1) Mobilization</li> <li>2) Pre-Study</li> <li>3) Preparation</li> <li>4) RCS Implementation</li> <li>5) Reporting</li> </ol>
<b>(4-3) RCS Report Submission</b>	<ol style="list-style-type: none"> <li>1) RCS Report Submission</li> <li>2) Check Report</li> <li>3) Compensation Calculation</li> </ol>

### (3) Roles and Responsibilities

Organization	Roles and Responsibilities
Inter-Ministerial Resettlement Committee (IRC)	<ul style="list-style-type: none"> <li>● After obtaining approval in principle from MEF higher management, particularly from the Senior Minister, Minister of MEF, IRC makes a contract with Independent evaluator for RCS.</li> <li>● Check the RCS Report.</li> <li>● Obtain approval for using RCS result from MEF higher management.</li> </ul>
Independent Evaluator	<ul style="list-style-type: none"> <li>● Conduct RCS based on the TOR.</li> <li>● Submit RCS Report to RD.</li> </ul>

#### [Reference] Definition of the Replacement Cost

In accordance with the "Expropriation Law" [Article 22] and the development partners' safeguard policies, all affected assets are to be compensated at their replacement cost. According to 'Safeguard Policy OM F2 (2006)' of the Asian Development Bank (ADB)', replacement cost is the method of valuing assets to replace the loss (1) at market value, or (2) at its nearest equivalent, plus any transaction costs such as taxes, registration, and so on. In the absence of functioning property markets, replacement cost should be equal to the cost of constructing/purchasing a new structure, without making any deductions for depreciation of structures and assets.

#### [Reference] Definition of Replacement Cost in World Bank OP 4.12

A. For agricultural land, it is the pre-project or pre-displacement, whichever is higher,

- ✓ market value of land of equal productive potential or
- ✓ use located in the vicinity of the affected land,

plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes.

B. For land in urban areas, it is the pre-displacement

- ✓ market value of land of equal size and use, with similar or improved public infrastructure facilities and services and located in the vicinity of the affected land,

plus the cost of any registration and transfer taxes.

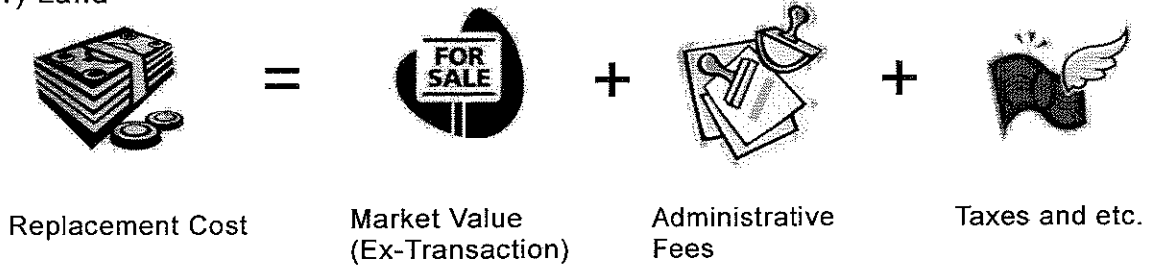
C. For houses and other structures, it is

- ✓ the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure,

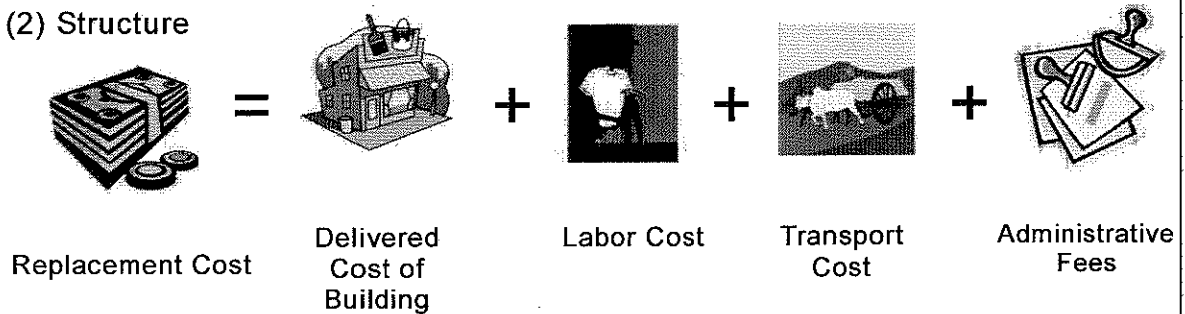
plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors' fees, plus the cost of any registration and transfer taxes.

[Reference] Image of Replacement Cost

(1) Land

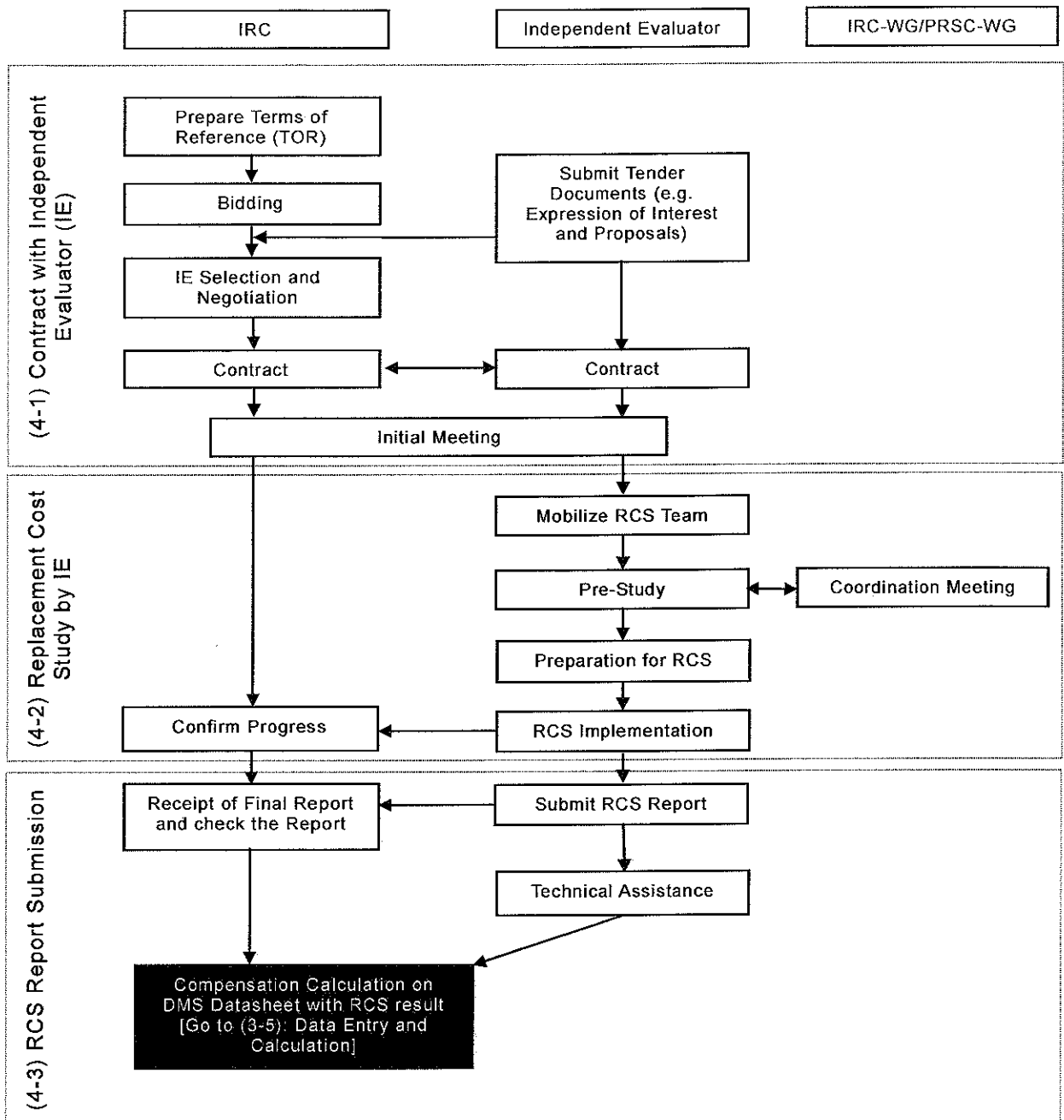


(2) Structure



*\*Under the Expropriation Law (2010): Article 25 states that "The amount of compensation shall be calculated as total amount of compensation minus the amount of stamp tax and/or tax on unused land that have not been paid to the State from the total amount of the compensation, and the Expropriation Committee shall deposit the withholding taxes into the State budget in accordance with procedures in force."*

### (5) Work Flow for RCS





## **(4-1) Contract with Independent Evaluator**

---

Prepare Terms  
of Reference  
(TOR)



Contract Making

- IRC prepares Terms of Reference (TOR).
- IRC calls for bidding (or Negotiated Contract).
- Independent Evaluator Candidates submit relevant documents.
- IRC evaluates and selects an Independent Evaluator.
- IRC makes a contract with selected Independent Evaluator.



Initial Meeting

- IRC confirms RCS schedule with Independent Evaluator.
- IRC provides necessary documents (e.g. RAP, Public Information Booklet (PIB), DMS data).

## **(4-2) Replacement Cost Study by Independent Evaluator**

---

Mobilization



Pre-Study



Preparation



RCS  
Implementation



Reporting

- Independent Evaluator mobilizes necessary RCS Team.
- Independent Evaluator holds coordination meeting with DMS Team (IRC-WG/PRSC-WG).
- Independent Evaluator Learning relevant documents (e.g. RAP) provided by IRC.
- Independent Evaluator settles implementation schedule and report to IRC.
- Independent Evaluator prepares necessary equipment.
- IRC/IRC-WG informs RCS implementation schedule to local authorities for asking assistance.
- Independent Evaluator implements RCS by:
  - 1) Structure Categorization.
  - 2) Sampling survey.
  - 3) Market price survey (e.g. Construction Material, fruit tree seedling, crops).
  - 4) Land transaction/interview.
- Independent Evaluator reports progress to IRC, if needed.
- Independent Evaluator makes RCS Report for submission to RD.

## (4-3) RCS Report Submission

---

RCS Report  
Submission



Check Report

- Independent Evaluator submits RCS Report to IRC.

- IRC checks the RCS Report with;
  - Categorization for structures.
  - Methodology for Sampling [statistical validity].
  - Logics for compensation rate calculation (e.g. construction material, labor cost).
  - Methodology and procedure for calculating 'Replacement Cost'.
  - Other simple errors and misunderstanding.



Compensation  
Calculation



- IRC combines the result of RCS Report (unit compensation price) with DMS Datasheet for calculating compensation amount [Go to (4-5) Data Entry and Calculation].

## Step 5. Updating Resettlement Action Plan (RAP)

### (1) Outline

The approved initial Resettlement Action Plan (RAP) shall be updated based on the results of Detailed Measurement Survey (DMS) and Replacement Cost Study (RCS). Compensation rate and exact number of PAPs are included in the updated RAP. After Ministry of Economy and Finance (MEF) approves Updated RAP, Inter-ministerial Resettlement Committee (IRC) submits it to Development Partners for review and approval.

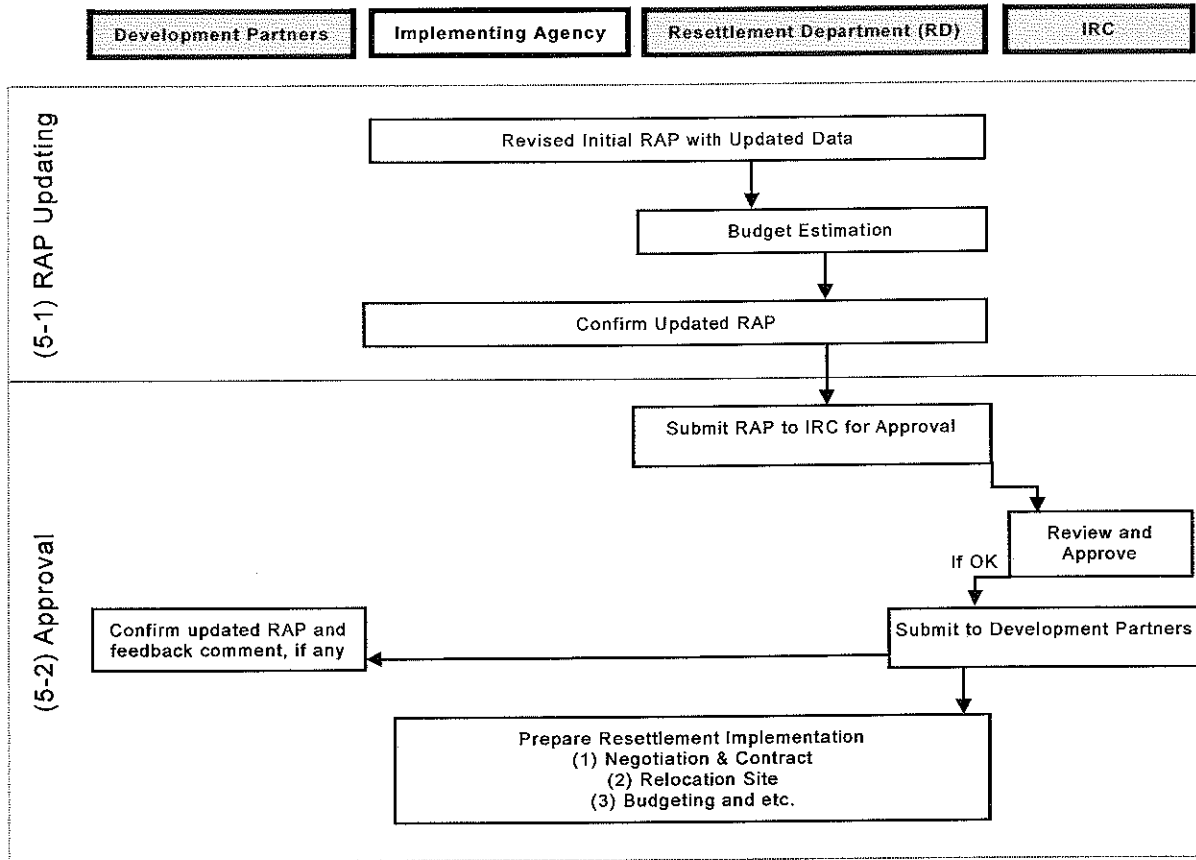
### (2) Work Steps

Stages	Work Steps
<b>RAP Updating</b>	1) RD revised Initial RAP by updated data as below: <ul style="list-style-type: none"> <li>● Compensation Rate based on RCS.</li> <li>● Latest Number of PAPs based on DMS.</li> <li>● Relocation Site Preparation.</li> <li>● Elaborated budget estimation.</li> </ul>
<b>Approval</b>	1) Implementing Agency prepares Updated RAP and submits to IRC for review and approval. 2) IRC Submits Updated RAP to Development Partners. 3) MEF approves Budget. 4) IRC plans resettlement implementation schedule.

### (3) Role and Responsibility

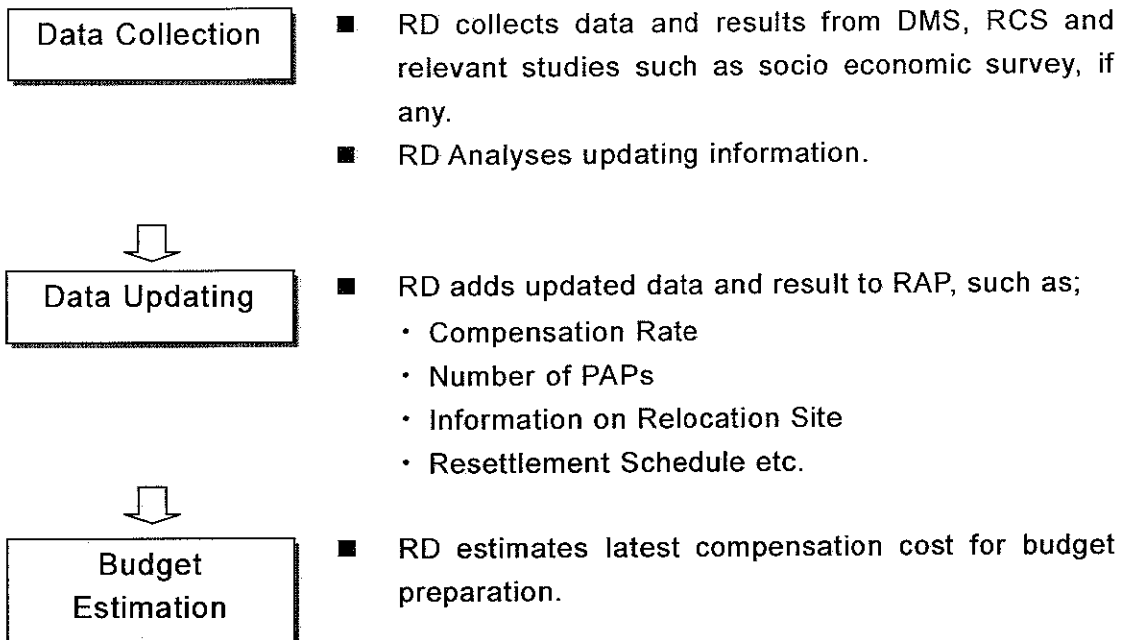
Organization	Roles and Responsibilities
Implementing Agency	<ul style="list-style-type: none"> <li>● Update RAP based on the result from DMS and RCS.</li> <li>● Submit updated RAP to RD for review.</li> </ul>
Resettlement Department (RD)	<ul style="list-style-type: none"> <li>● Cooperate with Implementing Agency in updating RAP.</li> <li>● Review and Submit Updated RAP for IRC approval.</li> </ul>
Inter-ministerial Resettlement Committee (IRC)	<ul style="list-style-type: none"> <li>● Review and approve updated RAP.</li> <li>● Submit Updated RAP to Development Partners.</li> </ul>

#### (4) Work-Flow



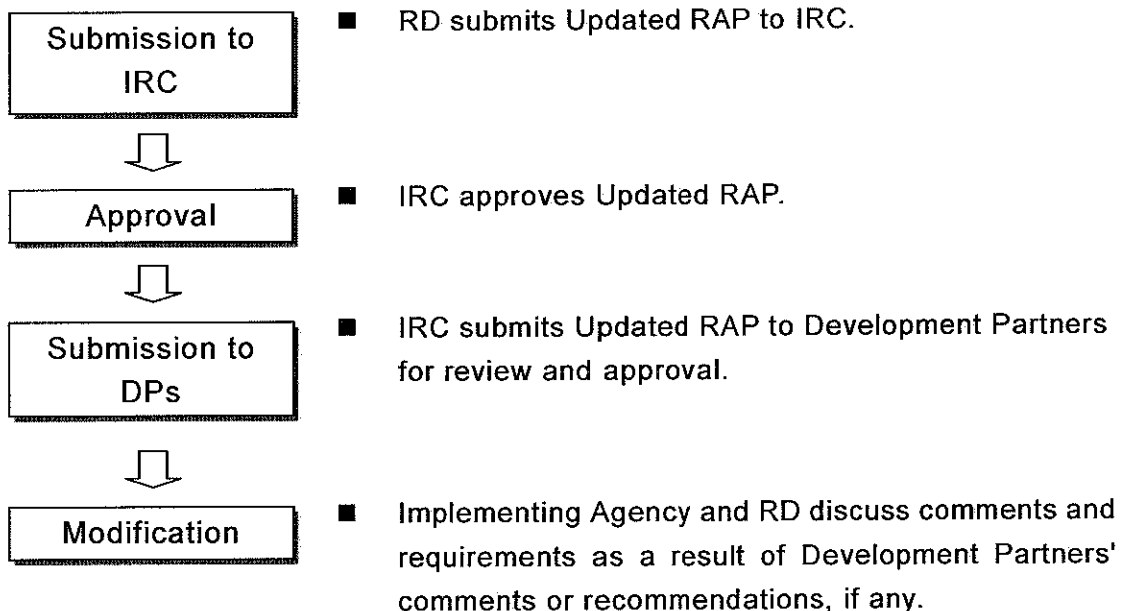
## (5-1) RAP Updating

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## (5-2) Approval

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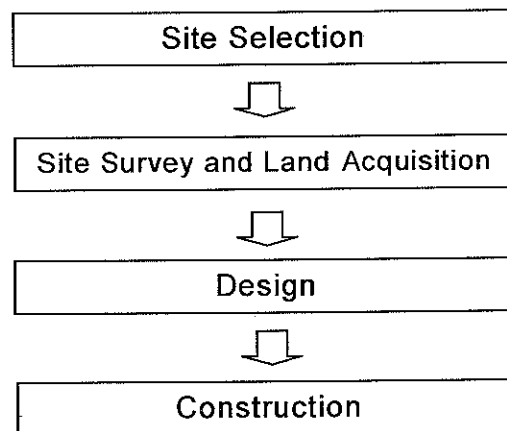


## Step 6. Relocation Site Preparation

### (1) Outline

Relocation site preparation is important for successful implementation of resettlement action plan (RAP). The most important thing is to select the relocation site properly so that Project Affected Persons (PAPs) could improve their livelihoods and standards of living or at least restore them to levels prior to the beginning of project implementation. And the relocation site, including community infrastructure and services, should be prepared before PAPs are relocated.

Relocation site preparation steps can be divided into four stages, 1) Site Selection, 2) Site Survey, 3) Design and Land Acquisition, and 4) Construction.



Work steps for Relocation Site Preparation

### (2) Work Steps

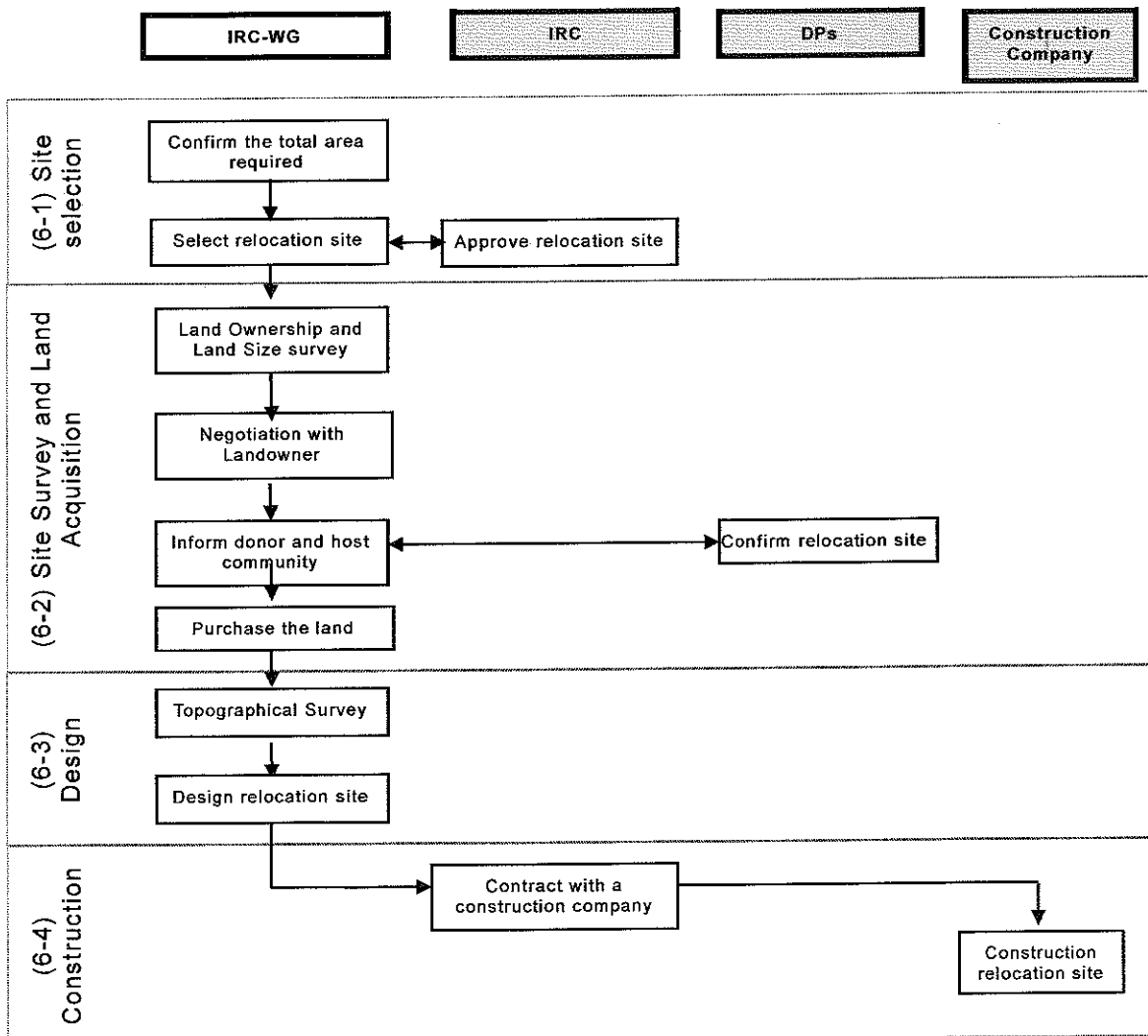
<b>(6-1) Site Selection</b>	<ol style="list-style-type: none"> <li>1) Confirm the total area (m2) required.</li> <li>2) Select relocation site according to the following criteria.               <ul style="list-style-type: none"> <li>● Be as close as to the affected area.</li> <li>● Be easily accessible via existing roads.</li> <li>● Be easily accessible to public facilities, such as school, health center and pagoda.</li> </ul> </li> </ol>
<b>(6-2) Site Survey and Land Acquisition</b>	<ol style="list-style-type: none"> <li>1) Survey the ownership and size of the land.</li> <li>2) Acquire the land.</li> </ol>
<b>(6-3) Design</b>	<ol style="list-style-type: none"> <li>1) Conducts a Topographical survey.</li> <li>2) Design relocation site.</li> <li>3) Inform Development Partners and host community.</li> </ol>

<b>(6-4) Construction</b>	1) Make a contract with a construction company 2) Land filling and construction of infrastructures.
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### (3) Role and Responsibility

Organization	Roles and Responsibilities
Inter-Ministerial Resettlement Committee Working Group (IRC-WG)	<ul style="list-style-type: none"> <li>● Confirm the total area (m2) required.</li> <li>● Select, survey and design relocation site.</li> <li>● Inform Development Partners and host community.</li> <li>● Negotiate with the landowner.</li> <li>● Purchase the relocation land.</li> </ul>
Inter-Ministerial Resettlement Committee (IRC)	<ul style="list-style-type: none"> <li>● Approve the relocation site.</li> <li>● Make a contract with a construction company.</li> </ul>

### (4) Work-Flow





## Relocation site preparation

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### (6-1) Site Selection

- IRC-WG confirms the total areas (m<sup>2</sup>) required for all Affected Households (AHs).
- IRC-WG selects relocation site according to the following criteria.
  - 1) Be as close as to the affected area (if possible).
  - 2) Be easily accessible via existing roads.
  - 3) Be easily accessible to public facilities and services such as school, health center and pagoda etc.



### (6-2) Site Survey and Land Acquisition

- IRC-WG surveys the ownership and size of the land.
- IRC-WG negotiates with landowner.
- IRC-WG informs donor and host community.
- IRC-WG acquires the relocation land.



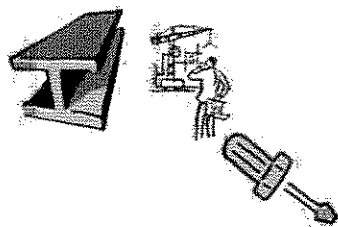
### (6-3) Design

- IRC-WG conducts a topographical survey.
- IRC-WG designs the relocation site.



### (6-4) Construction

- IRC makes a contract with a construction company.
- Construction company constructs the relocation site (Land filling and construction of infrastructures).




## Step 7. Negotiation and Contract

### (1) Outline

With calculated compensation amount based on Detailed Measurement Survey (DMS) and Replacement Cost Study (RCS), Inter-ministerial Resettlement Committee Working Group (IRC-WG) prepares contracts with Project Affected Persons (PAPs). After Public Consultation Meeting (PCM), IRC-WG meets with each PAP household for negotiation. If PAPs agree with the contents of compensation, IRC-WG makes contract with PAPs. If PAPs disagree with the proposed compensation, IRC-WG continues negotiation and conciliation which might be followed by Grievance Redress Mechanism (GRM).

### (2) Work Steps

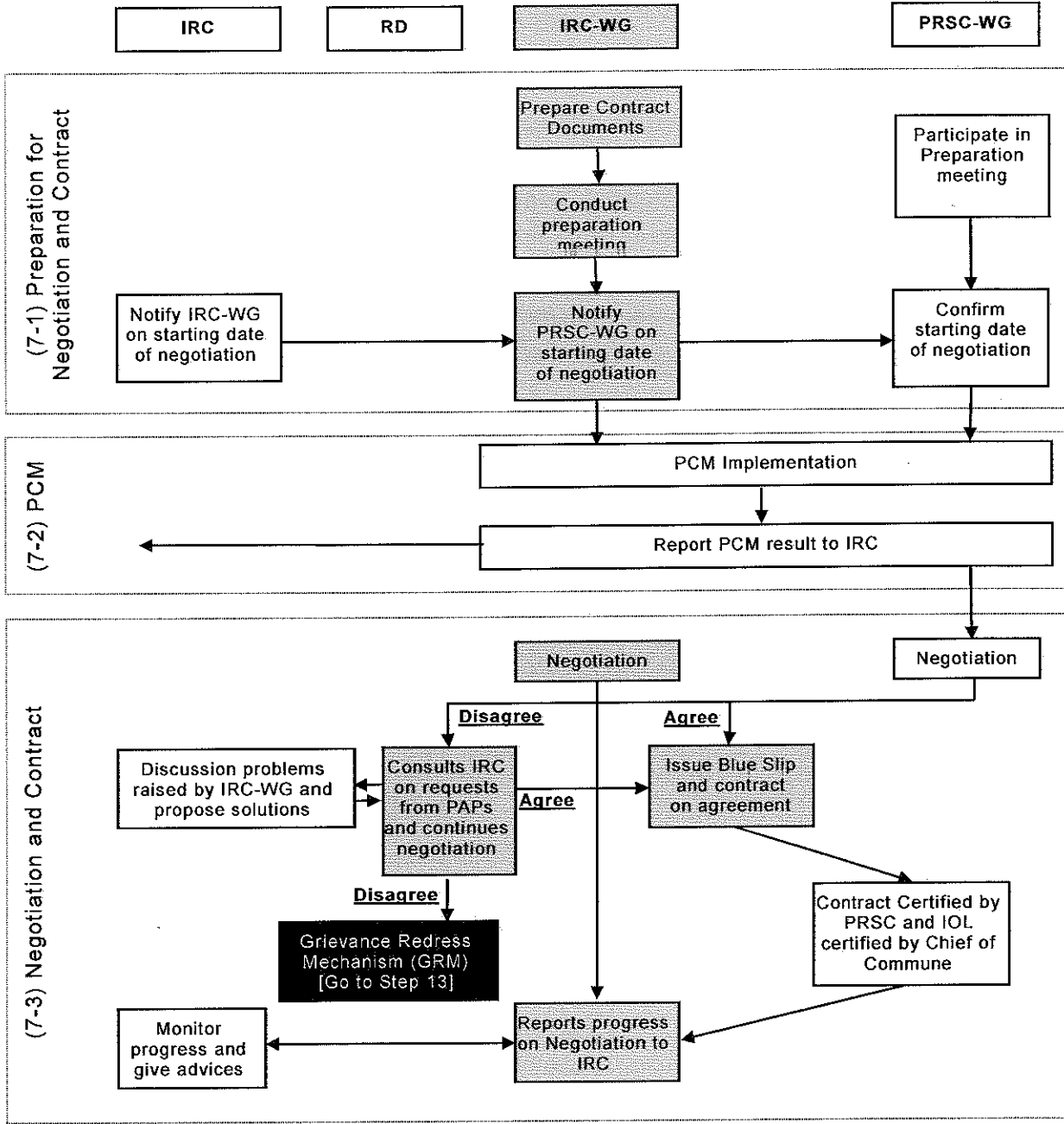
<b>(7-1) Preparation for Negotiation and Contract</b>	<ol style="list-style-type: none"> <li>1) Set Dates</li> <li>2) Preparation meeting</li> <li>3) Document preparation</li> </ol>
<b>(7-2) Public Consultation Meeting (PCM)</b>	<ol style="list-style-type: none"> <li>1) Arrangement</li> <li>2) Preparation</li> <li>3) Implementation</li> <li>4) Follow up</li> </ol>
<b>(7-3-1) Negotiation and Contract [Agree]</b> 	<ol style="list-style-type: none"> <li>1) Appointment with PAPs</li> <li>2) Negotiation</li> <li>3) Inventory of Loss and Contract Signing</li> <li>4) Contract Certification</li> <li>5) Prepare for Payment</li> </ol>
<b>(7-3-2) Negotiation [Disagree]</b>	<ol style="list-style-type: none"> <li>1) Appointment with PAPs</li> <li>2) Negotiation</li> <li>3) Following Negotiations</li> </ol>

### (3) Roles and Responsibilities

Name of Organization	Roles and Responsibilities
Inter-Ministerial Resettlement Committee (IRC)	<ul style="list-style-type: none"> <li>● Present solutions to requests raised from PAPs during the negotiation.</li> </ul>
Resettlement Department (RD), MEF	<ul style="list-style-type: none"> <li>● Provide instruction to IRC-WG.</li> </ul>
IRC-Working Group	<ul style="list-style-type: none"> <li>● Negotiate with PAPs.</li> <li>● Contract with PAPs (Issues Payment Slip to PAPs).</li> <li>● Report progress to IRC/RD.</li> </ul>

PRSC Working-Group (PRSC-WG)	<ul style="list-style-type: none"> <li>Implement Negotiation and Contract with IRC-WG.</li> </ul>
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**(4) Workflow**



## **(7-1) Preparation for Negotiation and Contract**

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Set Dates

- IRC-WG sets dates for 'Negotiation and Contract'.
- PRSC-WG notifies local authorities for further notification to PAPs.



Preparation Meeting

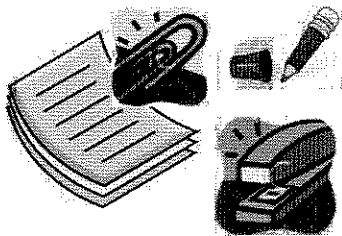
- IRC-WG organizes the internal meeting with PRSC-WG to discuss 'Negotiation and Contract' implementation policy.



Document Preparation

- IRC-WG prepares relevant documents and stuff such as;

- (1) DMS questionnaire sheets with other documents
- (2) Blue Slip for compensation payment
- (3) Contract Documents
- (3) Stationary (i.e. stamp ink, blue pens)



## (7-2) Public Consultation Meeting (PCM)

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### Arrangement

- RD sets the dates and appropriate venue for PCM according to the availability of key persons.
- RD invites stakeholders.
  - (1) Target participants are PAPs, local authority, Development Partners, and other relevant organizations.
  - (2) If target participants include indigenous people / ethnic minority whose dominant language is NOT Khmer, special PCM in their language is planned.
- \* The number of participants for a PCM should be considered to encourage communication.
- RD confirms meeting attendance.
- RD confirms role and responsibility.
- IRC-WG informs the date of PCM to PRSC-WG.
- Local authorities Informs PAPs of PCM date & venue at least one week before the PCM.

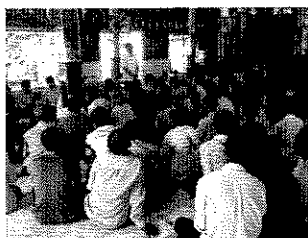


### Preparation

- IRC prepares PCM Agenda and Public Information Booklet (PIB).
- IRC-WG prepares presentation materials (PowerPoint slide, CG, FAQ memo)
- IRC-WG prepares presentation equipment (PC, Projector, Microphone, Whiteboard)
- IRC-WG prepares attendance sheets.



### Implementation



- PRSC-WG sets up a venue (seating, whiteboard, screen, projector, and etc.).
  - IRC-WG makes reception with attendance sheets.
  - IRC-WG distributes PIB, agenda and other materials.
  - IRC representatives implement PCM based on agenda.
- (Refer to Step 10 "Public Consultation Meeting")**

*(sample for Negotiation)*

**AGENDA**

- (1) Opening Speech
- (2) Project Progress
- (3) Compensation Rate
- (4) Compensation Schedule
- (5) Grievance Redress Mechanism (GRM)
- (6) Question and Answer
- (7) Closing Remark



**Follow-up**

- IRC-WG writes Minutes of Meeting (MM).
- RD confirms the contents of MM (Q&A session).
- IRC-WG visits PAPs and answers the question which was not able to answer at PCM.

## (7-3-1) Negotiation [Agree]

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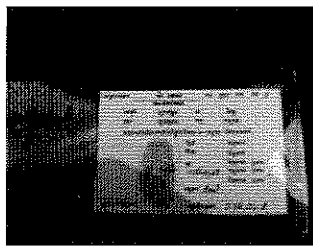
Appointment  
with PAPs



Negotiation



Contract



Contract  
Authorization



Payment  
Preparation

- PRSC-WG makes appointments with PAPs.
  
- IRC-WG/PRSC-WG shows relevant documents to PAPs
- PAPs confirm in Contract Documents
  - (1) Category of entitlement (Land Ownership Status)
  - (2) Category of structures
  - (3) All affected properties (Items, Numbers, etc.)
- IRC-WG/PRSC-WG and PAPs confirmed compensation amount and write down the result in contract documents
  
- In case that PAPs agree with the contract;
  - (1) PAPs put thumbprint on the contract documents
  - (2) Local authority signs the contract documents for confirmation
  - (3) IRC-WG/PRSC-WG put a date on the contract documents
- IRC-WG/PRSC-WG issue receipt (Blue Slip) with contents of;
  - (1) Agreed compensation amount
  - (2) Date of agreement
  - (3) Thumbprint from PAP
- Put Blue Slip into a plastic holder and give it to PAPs
- IRC-WG/PRSC-WG and PAPs signed on Inventory of Loss (IOL) and confirmed by Commune Chief
  
- IRC-WG/PRSC-WG sends the contract documents to PRSC for approved by PRSC Chairman.
- PRSC sends the contract documents to IRC for approved by IRC Chairman.
  
- RD updates DMS Datasheet.
- IRC/RD prepares for payment.

## (7-3-2) Negotiation [Disagree]

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Appointment  
with PAPs

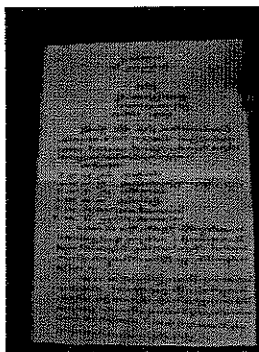


First Negotiation

- PRSC-WG makes appointments with PAPs.
- IRC-WG/PRSC-WG shows relevant documents to PAPs
- PAPs confirm in Contract Documents
  - (1) Category of entitlement (Land Ownership Status)
  - (2) Category of structures
  - (3) All affected properties (Items, Numbers, etc.)
- IRC-WG/PRSC-WG and PAPs confirmed compensation amount and write down the result in contract documents.
- In case that PAPs Disagree with the contract;
  - (1) IRC-WG/PRSC-WG take note reasons for disapproval
  - (2) IRC-WG report and discusses cases with IRC/RD
  - (3) IRC-WG/PRSC-WG proposes the date for continuous negotiation.
  - (4) IRC-WG/PRSC-WG explains PAPs the Grievance Redress Mechanism (GRM).



Following  
Negotiations



- IRC-WG/PRSC-WG revisit the disagree PAPs and negotiate again.
- If PAPs agree with the contract, IRC-WG/PRGS-WG follow the process in (7-3-1): Negotiation [Agree].
- If PAPs still disagree, IRC-WG/PRGS-WG repeat negotiation at least two more times.
- IRC-WG/PRGS-WG explains PAPs Grievance Redress Mechanism (GRM).
- If PAPs want to use GRM, IRC-WG/PRSC-WG confirms commencement of GRM by written document with PAPs [Go to Step 11: GRM].
- IRC/RD starts monitoring the proceeding of GRM.
- IRC/RD discusses with IRC-WG for finding solutions.



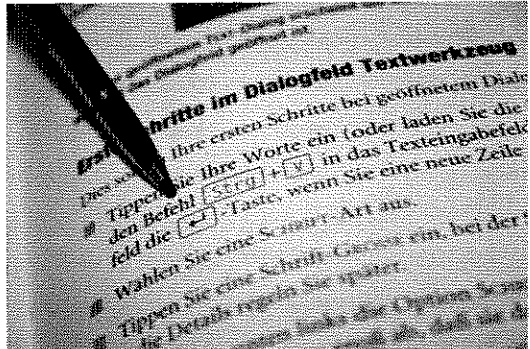


## Step 8. Budget Disbursement and Payment

### (1) Outline

Following the approval of compensation contract, Inter-ministerial Resettlement Committee (IRC)/ Resettlement Department (RD) takes necessary measures for budget disbursement. After the budget disbursement in project site area, Public Information Meeting (PIM) with contracted Project Affected Persons (PAPs) is held for payment.

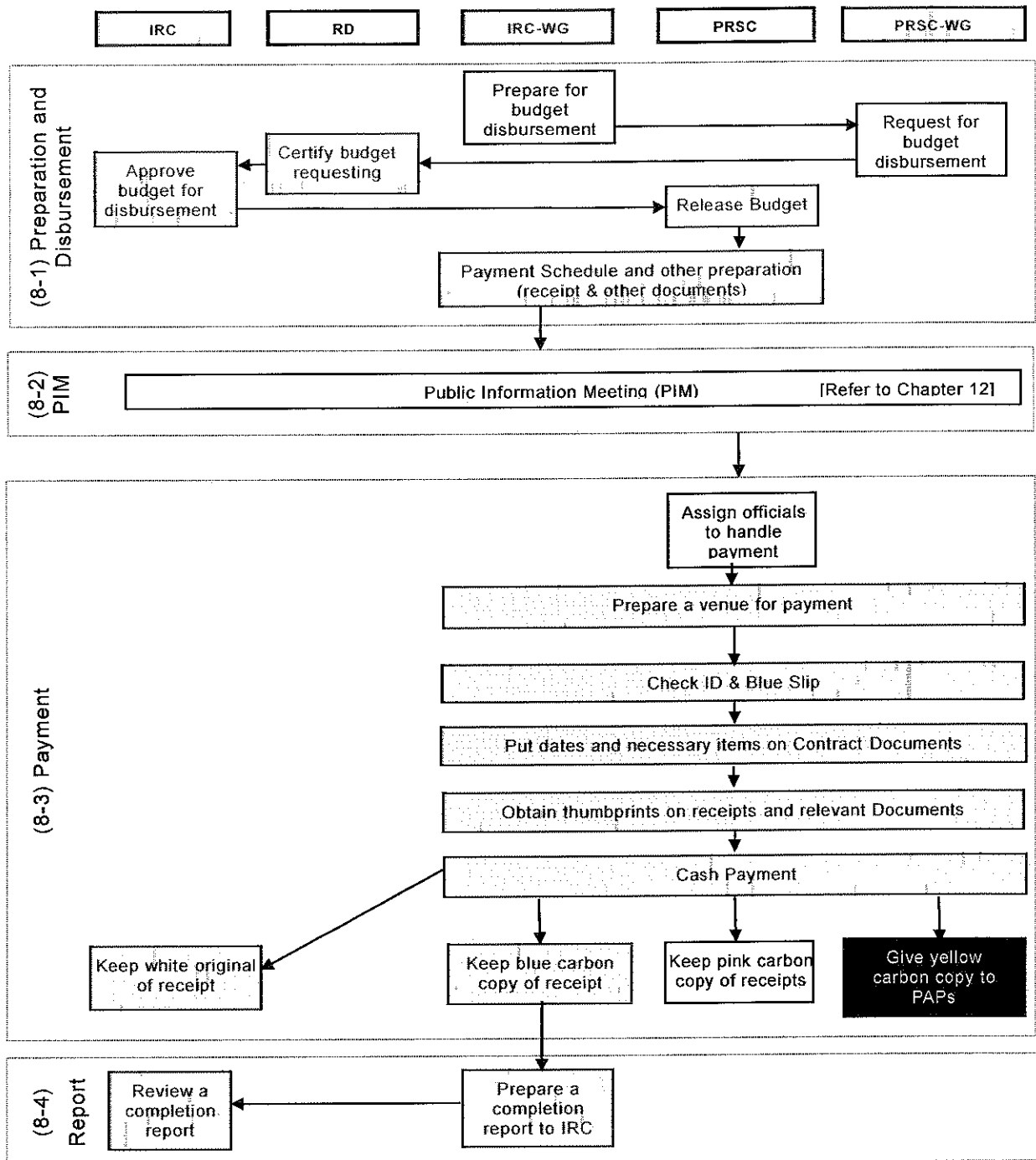
### (2) Work Steps

<b>(8-1) Preparation and Disbursement</b>	<ol style="list-style-type: none"> <li>1) Document Preparation</li> </ol>
<b>(8-2) Public Information Meeting (PIM)</b> 	<ol style="list-style-type: none"> <li>1) Set Dates</li> <li>2) Arrangement</li> <li>3) Preparation</li> <li>4) Implementation</li> </ol>
<b>(8-3) Payment</b> 	<ol style="list-style-type: none"> <li>1) Set Dates for Payment</li> <li>2) Notification of Payment Dates</li> <li>3) Venue Arrangement</li> <li>4) PAPs Identification</li> <li>5) Receipt Confirmation</li> <li>6) Documentation</li> <li>7) Payment</li> </ol>
<b>(8-4) Report</b> 	<ol style="list-style-type: none"> <li>1) Completion Report</li> </ol>

### (3) Roles and Responsibility

Name of Organization	Roles and Responsibilities
Inter-Ministerial Resettlement Committee (IRC)	<ul style="list-style-type: none"><li>● Approve budget for disbursement.</li></ul>
Resettlement Department (RD), MEF	<ul style="list-style-type: none"><li>● Verify and Prepare documents for disbursement</li><li>● Notify to the PRSC that disbursement voucher is ready for withdrawing.</li></ul>
IRC-Working Group	<ul style="list-style-type: none"><li>● Prepare necessary documents for payment.</li><li>● Join in payment activity.</li></ul>
PRSC	<ul style="list-style-type: none"><li>● Dispatch administration officials to Phnom Penh for withdrawing budget.</li><li>● Receive a check / payment voucher from RD.</li><li>● Withdraw cash from the bank.</li><li>● Set the date and venue for payment.</li><li>● Assign administration officials for payment.</li><li>● Send payment documents to RD after payment.</li><li>● Liquidation for the payment.</li></ul>
PRSC-WG	<ul style="list-style-type: none"><li>● Notify PAPs the date and venue for the payment</li><li>● Prepare necessary documents for payment implementation.</li></ul>

#### (4) Workflow



## **(8-1) Preparation and Disbursement**

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Preparation

- IRC-WG prepares budget disbursement.
- PRSC-WG requests for budget disbursement.



Disbursement

- RD certifies budget requesting.
- IRC approves budget for disbursement.
- IRC releases budget to PRSC.
- PRSC prepares cash for compensation.



Set Dates for  
Payment

- RD proposes dates for compensation payment.
- IRC approves dates.



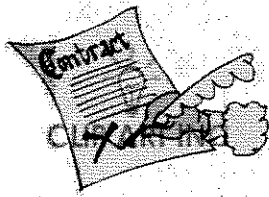
Notification of  
Payment Dates

- IRC/RD inform IRC-WG/PRSC-WG of dates for payment.
- PRSC-WG informs local authorities of dates for payment for further notification to PAPs.



Document  
Preparation

- IRC-WG/PRSC-WG write down the name of PAPs and the payment amount on receipts.
- IRC-WG/PRSC-WG finalize and prepares contract documents and payment documents.



## **(8-2) Public Information Meeting (PIM)**

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### Arrangement

- RD sets the dates and appropriate venue for PCM according to the availability of key persons.
- RD invites stakeholders.
  - (1) Target participants are PAPs, local authority, Development Partners, and other relevant organizations.
  - (2) If target participants include indigenous people / ethnic minority whose dominant language is NOT Khmer, special PCM in their language is planned.
- \* The number of participants for a PCM should be considered to encourage communication.
- RD confirms meeting attendance.
- RD confirms role and responsibility.
- IRC-WG informs the date of PCM to PRSC-WG.
- Local authorities Informs PAPs of PCM date & venue at least one week before the PCM.



### Preparation

- IRC-WG prepares PCM Agenda and Information paper on;
  - (1) Right way for using compensation money
  - (2) Prohibition against Illegal Encroachment
- IRC-WG prepares presentation materials (PowerPoint slide, CG, FAQ memo)
- IRC-WG prepares presentation equipment (PC, Projector, Microphone, Whiteboard)
- IRC-WG prepares attendance sheets



### Implementation

- PRSC-WG sets up a venue (seating, whiteboard, screen, projector, and etc.).
  - IRC-WG makes reception with attendance sheets.
  - IRC-WG distributes PIB, agenda and other materials.
  - IRC-WG implements PCM based on agenda.
- (Refer to Step 10 "Public Consultation Meeting")**



*(sample for Payment)*

**AGENDA**

- (1) Opening Speech
- (2) Update on progress of the project
- (3) Prohibition on Illegal Encroachment
- (4) Right way for using compensation money
- (5) Payment procedure and Schedule
- (6) Information on deadline of resettlement and relocation
- (7) Question and Answer
- (8) Closing Remark



Follow-up

- IRC-WG writes Minutes of Meeting (MM).
- RD confirms the contents of MM (Q&A session).
- IRC-WG visits PAPs and answers the question which was not able to answer at PCM.

### (8-3) Payment

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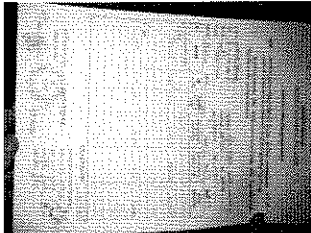
Venue  
Arrangement



Identification



Receipt  
Confirmation



Documentation



Payment



- PRSC-WG/IRC-WG prepares desks and chairs.
- PRSC-WG/IRC-WG lays out contract documents, payment documents, stationary and cash.
  
- PRSC-WG/IRC-WG checks PAPs name on ID card, Blue Slip and the contract.
- PRSC-WG/IRC-WG writes down (a) the date of payment; (b) the deadline for relocation/set-back.
  
- PRSC-WG/IRC-WG confirms the payment amount on the receipt.
- PRSC-WG/IRC-WG requests PAPs to put thumbprint on one original and three carbon copies of the receipt.
- PRSC-WG/IRC-WG staples the yellow carbon copy of the receipt with the contract paper to PAPs.
- PRSC-WG/IRC-WG issues a pink carbon copy of a receipt to Department of Economy and Finance for payment.
  
- PRSC-WG/IRC-WG obtains a thumb print on the necessary documents.
- PRSC-WG/IRC-WG hands over contract documents to PAPs.
  
  
- PRSC-WG/IRC-WG receives contract documents stapled with a yellow carbon copy of the receipt and a pink carbon copy of the receipt from PAPs.
- PRSC-WG/IRC-WG checks the payment amount on the receipt and prepares cash.
- PRSC-WG/IRC-WG gives cash payment and the contract stapled with a yellow carbon copy of the receipt to PAPs.
- Provincial Department of Economy and Finance keeps a pink carbon copy.
- IRC-WG keeps a blue carbon copy and submit a white original to IRC.

## **(8-4) Report**

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Completion Report
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- PRSC-WG/IRC-WG bind and safe-keep the receipts and relevant documents.
- PRSC-WG/IRC-WG prepares a payment completion report and submits to IRC.
- After IRC approve the payment completion report, RD reports to a development partner and Implementing Agency that compensation payment has been completed



## Step 9. Relocation and Clearance

### (1) Outline

The relocation of the Project Affected Persons (PAPs) and their families needs to be carefully planned. The relocation should take place only after the sites are ready with basic infrastructure.

After the relocation of all PAPs, the relocation site will be handed over to the community for use and maintenance, and the corridor of impact (COI) will be also handed over to Implementing Agency.

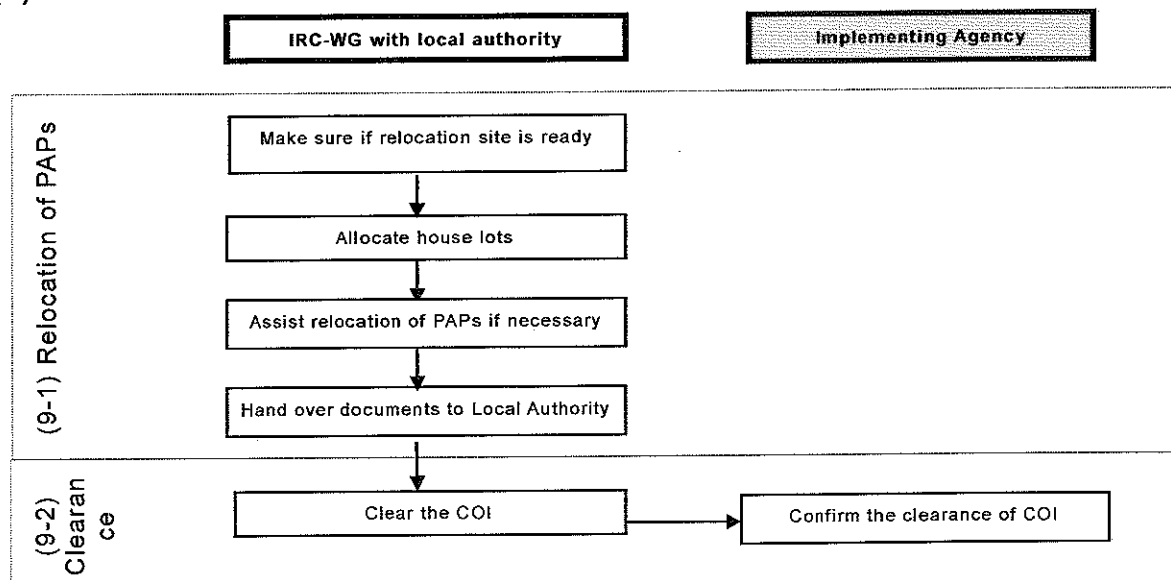
### (2) Work Steps

<b>(9-1) Relocation of PAPs</b>	<ol style="list-style-type: none"> <li>1) Make sure if relocation site is ready with basic infrastructure</li> <li>2) Allocate plots of land by lucky draw</li> <li>3) Assist the relocation of PAPs and their belongings if necessary</li> <li>4) Hand over the related documents to local authority for the integration to the village.</li> </ol>
<b>(9-2) Clearance of the COI</b>	<ol style="list-style-type: none"> <li>1) Confirm and hand over the COI to Implementing Agency.</li> </ol>

### (3) Role and Responsibility

Organization	Roles and Responsibilities
IRC-WG with local authority	<ul style="list-style-type: none"> <li>● Manage the relocation of PAPs</li> </ul>
Implementing Agency	<ul style="list-style-type: none"> <li>● Confirm the clearance of the COI</li> </ul>

### (4) Work-Flow



## Relocation and Clearance

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**(9-1) Relocation  
of PAPs**

- IRC-WG makes sure if relocation site are ready with basic amenities, such as water supply, access roads and toilet.
- IRC-WG allocates plots of land by lucky draw.
- IRC-WG may assist the relocation of PAPs and their belongings if necessary.
- IRC-WG hands over the related documents to local authority for the integration to the village.



**(9-2) Clearance of  
COI**

- IRC-WG confirms if all PAPs are relocated.
- IRC hands over the COI to Implementing Agency.
- Implementing Agency confirms the clearance of the COI.

## C. Cross-Cutting Issues

### Step 10. Public Consultation Meeting (PCM)

#### (1) Outline

Public Consultation Meeting (PCM) is the process by which public concerns, needs, and values are incorporated into governmental decision-making. The purpose of Public Consultation is to improve the quality of decision and to ensure transparency and accountability of decision-making process. PCM will be organized several times during resettlement process as below:

Timing		Main contents	Organizer	Materials
<b>Pre-Resettlement Implementation stage</b>	<b>PCM-Simple survey/Census Survey</b>	- Project outline - Simple Survey/Census	Implementing Agency	Project Information Materials (if any)
<b>Resettlement Implementation Stage</b>	<b>PCM-DMS</b>	- DMS Process - Grievance Redress Mechanism	IRC / IRC-WG/PRSC-WG	Public Information Booklet (PIB)
	<b>PCM-NEGOTIATION</b>	- Negotiation Process - Grievance Redress Mechanism	IRC/ IRC-WG/PRSC-WG	Updated PIB including compensation rate
	<b>PIM-PAY (Public Information Meeting)</b>	- Payment Process -Warning regarding ROW and encroachment	IRC/ IRC-WG/PRSC-WG	Flyer or Brochures

#### 1) Time and Place of Meetings

Meetings should be held at a time and place convenient to the public. Date, Time and Place of Public Consultation Meeting should be notified in advance (hopefully more than a week before Public Consultation Meeting date) to all related public without exception). Public Consultation Meeting venue should be public neutral facilities, such as Pagoda, School, and so on.

#### 2) Stakeholders (Participants)

The Public Consultation Meeting will be focused during the resettlement implementation stage, and the target participants will be basically PAPs. The number of participants for Public Consultation Meeting should be considered to encourage communication among participants by the staff of commune or district office.

#### 3) Vulnerable Groups

Information should be provided in an understandable and accessible way to the vulnerable groups, especially indigenous peoples or ethnic minorities. If they don't

understand Khmer language, a special Public Consultation Meeting for such peoples with their dominant language is necessary.

#### 4) Public Information Materials and Contents

The following information materials will be often used during Public Consultation Meeting.

- Public Information Booklet (PIB) / Brochures / Flyer  
Project Outline, Compensation Rate, Payment Process, Grievance Redress Mechanism.

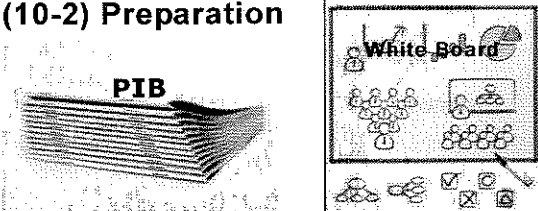


Basic Contents of Public Information Booklet (PIB)

Chapter	Main contents
1. Brief Information of Project	- Project Background - Project Description
2. Scope of Land Acquisition Resettlement and Entitlement	- Project Impact Minimization - Entitlement Cut-Off date - Entitlement Matrix
3. Compensation Rate	- Result of Replacement Cost Study
4. Resettlement Schedule*	- Date to move and relocate - Relocation Site(for landless PAPs)
5. Grievance Redress Mechanism	- Grievance Redress Framework - Grievance Redress Committee and Contact Information

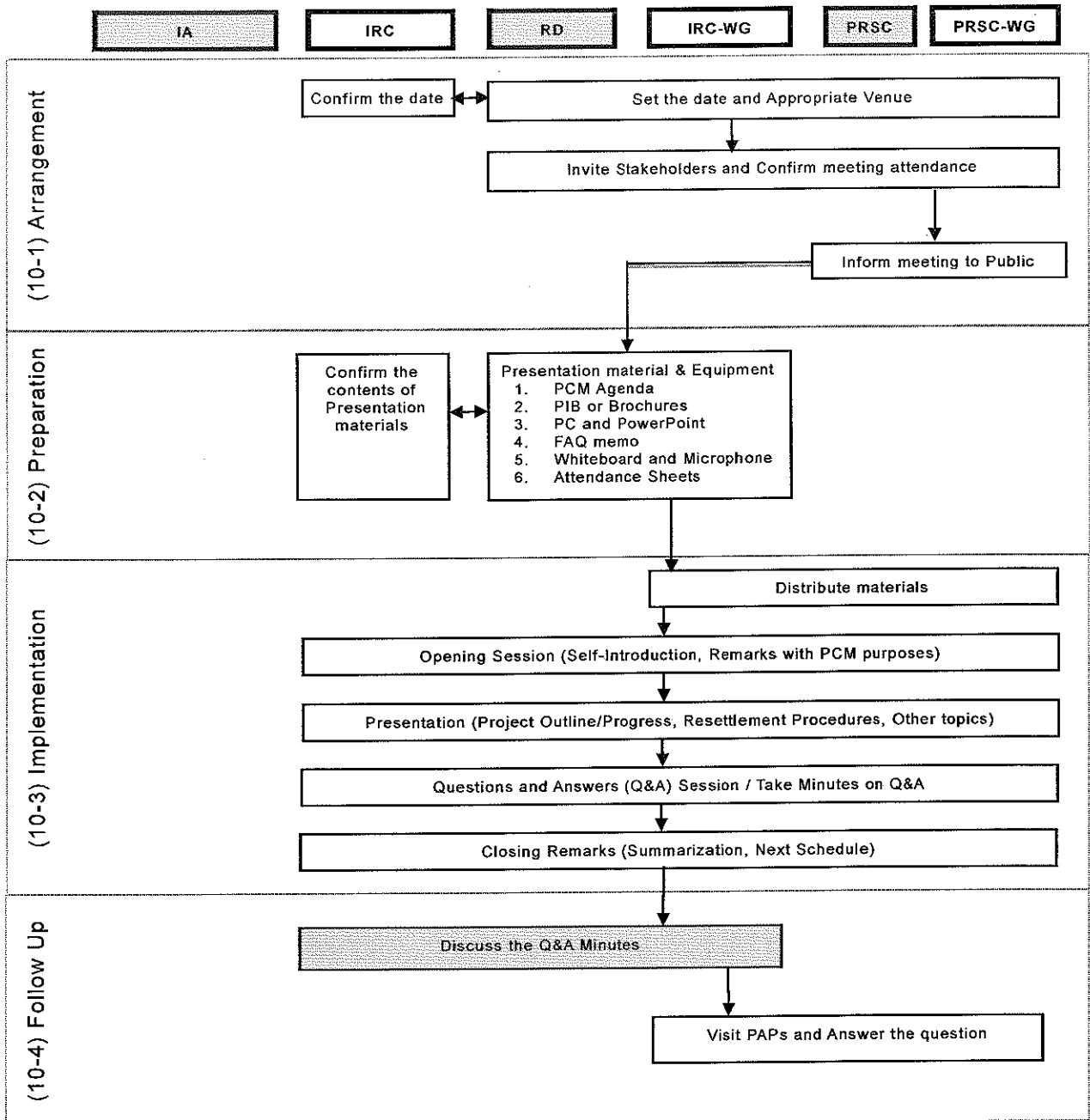
\*This shall be included in the updated PIB.

- Power Point Presentation  
Project Outline, Resettlement Procedures (SS, DMS, Negotiation schedule), Compensation Policy, Grievance Redress Mechanism
- Exhibit and Display  
Agenda, Map of Project Location, Drawing of Project (ROW), Project Site Photos, Computer Graphics

## (2) PCM Work Steps

<p><b>(10-1) Arrangement</b></p>	<ol style="list-style-type: none"> <li>1) Set Date and appropriate Venue of Public Consultation Meeting.</li> <li>2) Invite stakeholders</li> <li>3) Confirm meeting attendance (IRC-Chairman, Local Authority)</li> <li>4) Confirm role and responsibility</li> <li>5) Inform Public Consultation Meeting to PAPs.</li> </ol>
<p><b>(10-2) Preparation</b></p> 	<ol style="list-style-type: none"> <li>1) Agenda for Public Consultation Meeting Brochures (PIB)</li> <li>2) FAQ memo</li> <li>3) White Board and Microphone</li> <li>4) PC and PowerPoint</li> </ol>
<p><b>(10-3) Implementation</b></p> 	<ol style="list-style-type: none"> <li>1) Distribute PIB and agenda.</li> <li>2) Start PCM (Opening Speech, Project Outline, etc.)</li> <li>3) Q&amp;A session</li> <li>4) Write memo</li> </ol>
<p><b>(10-4) Follow up</b></p> 	<ol style="list-style-type: none"> <li>1) Write minutes of meeting (MM).</li> <li>2) Confirm the contents of MM.</li> <li>3) Visit PAPs and Answer the question individually.</li> </ol>

**(3) Workflow (PCM / PIM)**



## **Tip1: Speech and Remarks**

---

- Opening Speech and following remarks must be brief and short to avoid distraction on participants (PCM is prepared for participants' good understanding).
- Speaker from IRC representatives should not give pressure, threat, or any other uncomfortable words and voice tone to participants.

## **Tip2: Presentation**

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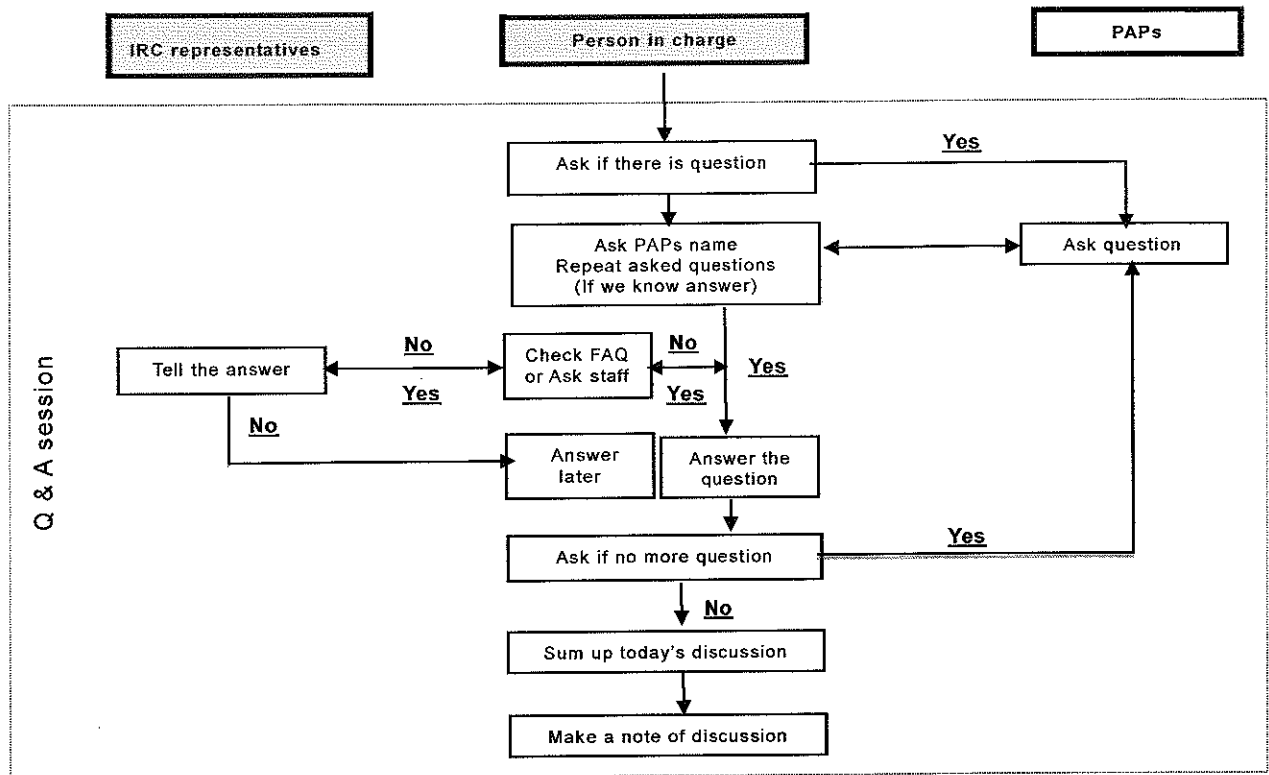
- Persons in charge give brief and easy to understand presentation.
  - 1) Use visual aids (handouts, power point, CG etc.) to help participants focus on the presentation
  - 2) Make sure if all participants can hear your voice,  
(Microphone system is strongly recommended)
  - 3) Speak slowly and clearly.
- Speak in an atmosphere free of tension or pressure.

## **Tip3: Q & A session**

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- IRC representatives asks questioner's name.
- IRC representatives repeats asked question for all participants understanding.
  - 1) If IRC representatives can answer immediately, do it.
    - *Answer should be given back to participants each by each to avoid confusion, although some questions can be bound as similar group*
    - *If necessary, use a whiteboard to explain.*
  - 2) Check FAQ memo and if you find the answer on it, make answer.
  - 3) If there is no answer in FAQ memo, discuss among Government side.
  - 4) If IRC representatives cannot make responsible answer at the venue, reply "Let us check. We will answer it later."
  - 5) IRC representatives take note and make a Q&A Minutes.
- Sum up Q&A and discussions.

# Q&A management chart:





**Table10-1: Example of Frequently Asked Questions (FAQ)**

No.	Question	Answer
1	When do you start DMS?	We start DMS on XXX.
2	Who is responsible for conducting DMS?	IRC-WG is responsible for DMS.
3	How do you calculate compensation rate?	We calculate compensation rate based on replacement cost study.
4	Who is responsible for compensation rate?	IRC asks an independent consultant to evaluate compensation rate without any intervention from government agency.
5	When are you going to hold next public consultation meeting?	We are going to hold the next meeting on XXX.
6	I live within Right of Way. Can I get fair compensation?	<p>You will be entitled to get fair compensation for structures, fruit trees and so on, within ROW recorded during the DMS stage before cut-off date.</p> <p>Any new structures, fruit trees and so on, which exist after cut-off date will not be entitled to compensation. There is no compensation for land within ROW.</p>
7	Where is relocation site?	We do not decide the relocation site yet, but it is not so far from your current residence. As soon as we decide the location, we will let you know.
8	When do we have to move after the payment of compensation?	You have one month to move out to relocation site.
9	Is there any clean water provision at relocation site?	It depends on the resettlement site location.

## Step 11. Grievance Redress Mechanism





### (1) Outline

Grievance Redress Mechanism (GRM) is a mechanism by which Project Affected Persons (PAPs) concerns, complaints and grievances are settled in a transparent and fair manner. PAPs will be able to access to this mechanism at no costs.

So far, the Royal Government of Cambodia has applied "Guideline No 004/MEF dated 28 June 2006 on the Functions and Duties of Grievance Committee under the Development Project", and now is preparing new grievance mechanism in accordance with the Expropriation Law. Under this law, the types of grievances covered by GRM are the following:

- (a) Involuntary Land acquisition/Expropriation procedures including resettlement procedures that are not properly implemented;
- (b) Involuntary Land acquisition/Expropriation that is not for the public or national interests, and
- (c) Unfair and unjust compensation.

The grievances from PAPs in connection to resettlement plan implementation will be handled through negotiation or mediation aiming at achieving consensus. GRM includes the following four stages and **every grievance must be started from 1st Stage\***. During Public Consultation Meeting, APs shall be clearly informed that the grievance must be necessarily firstly filed to the Provincial Resettlement Sub-Committee Working Group (PRSC-WG); Inter-ministerial Resettlement committee Working Group (IRC-WG) or to the Commune/Sangkat.

Stage	Organization in charge		Status
1st	PRSC-WG, IRC-WG or Commune/Sangkat		PAPs submit grievance to 1st Stage organization whichever they want.
2nd	Districts/Khan Office (DO)		The grievance could not be settled at 1st Stage and move on to 2nd Stage.
3rd	Provincial/City Grievance Committee (PGC)		The grievance could not be settled at 2nd Stage and move on to 3rd Stage.
4th	Court		The grievance could not be settled in administrative stages (1st to 3rd) and transfer to court decision.

#### \* Notes

If PAP's bring their grievance directly to DO or PGC, the DO/PGC shall advise PAPs to file the grievance to the 1st stage (PRSC-WG, IRC-WG or Commune).

## (2) Work Steps

<b>(11-1) Settlement by PRSC-WG, IRC-WG or Commune/Sangkat [1st Stage]</b>	<ol style="list-style-type: none"> <li>1) Receive grievances.</li> <li>2) Settle grievances within 15 working days.</li> <li>3) If not, tell PAP's to move on to the next stage.</li> <li>4) Report the unsolved case to the 2<sup>nd</sup> stage.</li> <li>5) Send the unsolved case to the 2<sup>nd</sup> stage on demand of PAPs.</li> </ol>
<b>(11-2) Settlement by Districts/Khan Office (DO) [2nd Stage]</b>	<ol style="list-style-type: none"> <li>1) Receive the unsolved case.</li> <li>2) Settle grievance within 15 working days.</li> <li>3) If not, tell PAP's to move on to the next stage.</li> <li>4) Report the unsolved case to the 3<sup>rd</sup> stage.</li> <li>5) Send the unsolved case to the 3<sup>rd</sup> stage on demand of PAPs.</li> </ol>
<b>(11-3) Settlement by Provincial/City Grievance Committee (PGC) [3rd Stage]</b>	<ol style="list-style-type: none"> <li>1) Receive the unsolved case.</li> <li>2) Settle grievance within 30 working days.</li> <li>3) If not, implement administrative procedures.</li> <li>4) Tell PAP's to move on to the next stage</li> </ol>
<b>(11-4) Settlement by Court [4th Stage]</b>	<ol style="list-style-type: none"> <li>1) Receive the unsolved case lodged by the PAPs.</li> <li>2) Make a final decision.</li> </ol>

## (3) Role and Responsibility

Organization		Roles and Responsibilities
1 <sup>st</sup> stage	Provincial Resettlement Sub-Committee Working Group (PRSC-WG)	<ul style="list-style-type: none"> <li>● Receive grievance and Solve complaints.</li> <li>● Report the unsolved case to the 2<sup>nd</sup> stage.</li> <li>● Send the unsolved case to the 2<sup>nd</sup> stage on demand of PAPs.</li> </ul>
	IRC-Working Group (IRC-WG)	
	Commune/Sangkat	
2 <sup>nd</sup> stage	District/Khan Office (DO)	<ul style="list-style-type: none"> <li>● Receive the unsolved case and solve the case.</li> <li>● Report the unsolved case to the 3<sup>rd</sup> stage.</li> <li>● Send the unsolved case to the</li> </ul>

		3 <sup>rd</sup> stage on demand of PAPs.
3 <sup>rd</sup> stage	Provincial/City Grievance Committee (*1)	<ul style="list-style-type: none"> <li>● Receive the unsolved case and solve the case.</li> <li>● Implement administrative procedures, if necessary.</li> </ul>
4 <sup>th</sup> stage	Court	<ul style="list-style-type: none"> <li>● Make a final decision.</li> </ul>

(\*1) Member of Provincial Grievance Committee (to be updated)

1. Provincial Governor and/or First Deputy Provincial Governor	Chairman
2. Director/Deputy Director of Relevant Provincial Departments	Vice Chairman
3. Chief/Deputy Chief of State Property Office of MEF	Member
4. Chief/ Deputy Chief of Light Criminal Office of the Relevant Provincial Commissariat	Member
5. Chief/Deputy Chief of the Relevant Military Police Headquarter	Member
6. Relevant District Governor	Member
7. Relevant Commune and Village Chief	Member
8. Representatives of NGOs	Member

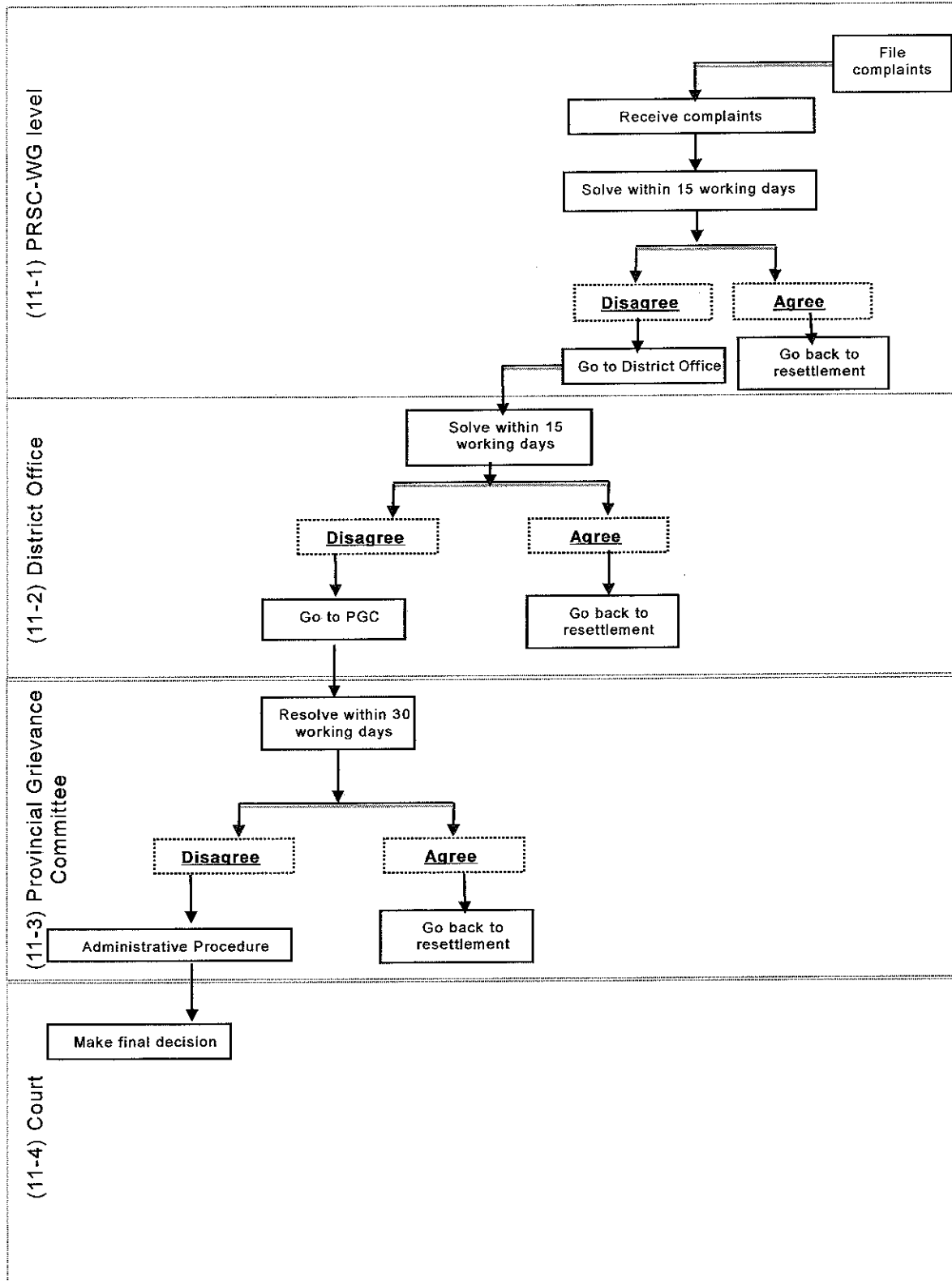
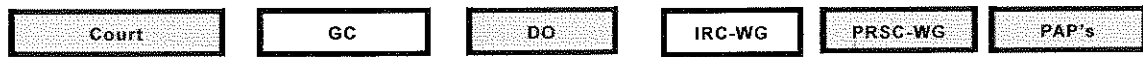
#### (4) Forms and necessary items of grievance

The grievance shall be filed in a written\* form with minimum items as below;

- Name of the owner of and/or holder of real right to the immovable property, address and telephone number;
- Reason for the complaint (elaboration of the grievance);
- Description of the legalities regarding the property; and
- Interests of the owner of and/or holder of real right to their property

\* In case of illiteracy of PAPs, local authority or 1<sup>st</sup> stage organizations shall help the PAPs to prepare grievance documents.

**(5) Work-Flow**



## Grievance Redress Mechanism

---

### (11-1) [1st Stage]

Grievance redress  
by PRSC-WG,  
IRC-WG,  
Commune/Sangkat

- PRSC-WG, IRC-WG or Commune/Sangkat receives grievances (1st Stage Window).
- PRSC-WG, IRC-WG or Commune/Sangkat consults with PAP's for settling the grievance.
- If the grievance could not be settled within **15 working days**, PAP's can bring the grievance to District/Khan Office (2nd Stage).
- PRSC-WG, IRC-WG or Commune/Sangkat reports the unsolved case to District/Khan Office.
- PRSC-WG, IRC-WG or Commune/Sangkat sends the unsolved case to the 2<sup>nd</sup> stage on demand of PAPs.



### (11-2) [2nd Stage]

Grievance redress  
by District/Khan  
Office (DO)

- DO receives the unresolved case.
- DO consults with PAP's for settling the grievance.
- If the grievance could not be settled within **15 working days**, PAP's can bring the grievance to the Provincial Grievance Committee (3rd Stage).
- DO reports the unsolved case to Provincial/City Grievance Committee.
- DO sends the unsolved case to the 3<sup>rd</sup> stage on demand of PAPs.



### (11-3) [3rd Stage]

Provincial/City  
Grievance  
Committee (PGC)

- PGC receives the unresolved case.
- PGC consults with PAP's for settling the grievance.
- If the grievance could not be settled within **30 working days**, PGC implements administrative procedures with participation from a provincial/City prosecutor.
- PAP's can bring the grievance to the provincial/City court (4th Stage).



**(11-4) [4th Stage]**  
Court

- If PAPs are not satisfied with the administrative decision, PAPs can file the complaint to the competent court\*.
- Court will make a final decision.
- Both Government side and PAPs follow the decision.

\* Under the Expropriation Law, the Court cannot be appealed against the detailed design of the project (art.34).

## Step 12. Monitoring and Evaluation

### 1) Outline

The purpose of monitoring is to verify the compliance to Resettlement Action Plan (RAP), and identify any issues during resettlement implementation, and possible recommendation for successes as early as possible so that the implementation arrangements can be adjusted.

Monitoring is the responsibility of the government and can be divided into internal and external monitoring, depending on the role and monitoring methods.

Internal monitoring on overall progress of the projects is conducted by Implementing Agency, including regular monitoring and evaluation of implementation of RAP. External monitoring is conducted by an external monitoring agency (EMA), an independent institution or group hired by Inter-ministerial Resettlement Committee (IRC) to carry out external monitoring and post-evaluation study.

### (2) Work Steps

Type	Stage	Work steps
Internal Monitoring	Resettlement implementation	<ol style="list-style-type: none"> <li>1) Assign members for internal monitoring [Internal monitoring unit (IMU) is established]</li> <li>2) Conduct internal monitoring on the progress of the resettlement activities.</li> <li>3) Submit internal monitoring reports to Development Partners and IRC.</li> </ol>
	(12-1) Pre-Resettlement implementation	<ol style="list-style-type: none"> <li>1) Prepare the Terms of Reference (TOR) for the engagement with consent of Development Partners.</li> </ol>
	(12-2) Resettlement implementation	<ol style="list-style-type: none"> <li>1) Hire external monitoring agency (EMA)</li> <li>2) Conduct external monitoring on the resettlement activities according to TOR.</li> <li>3) Submit monitoring reports to Implementing agency, IRC and Development Partners according to TOR.</li> <li>4) Advise Implementing Agency , IRC and Development Partners regarding possible improvements</li> </ol>
	(12-3) After resettlement	<ol style="list-style-type: none"> <li>1) Submit completion report to IRC, Implementing Agency and Development Partners.</li> </ol>

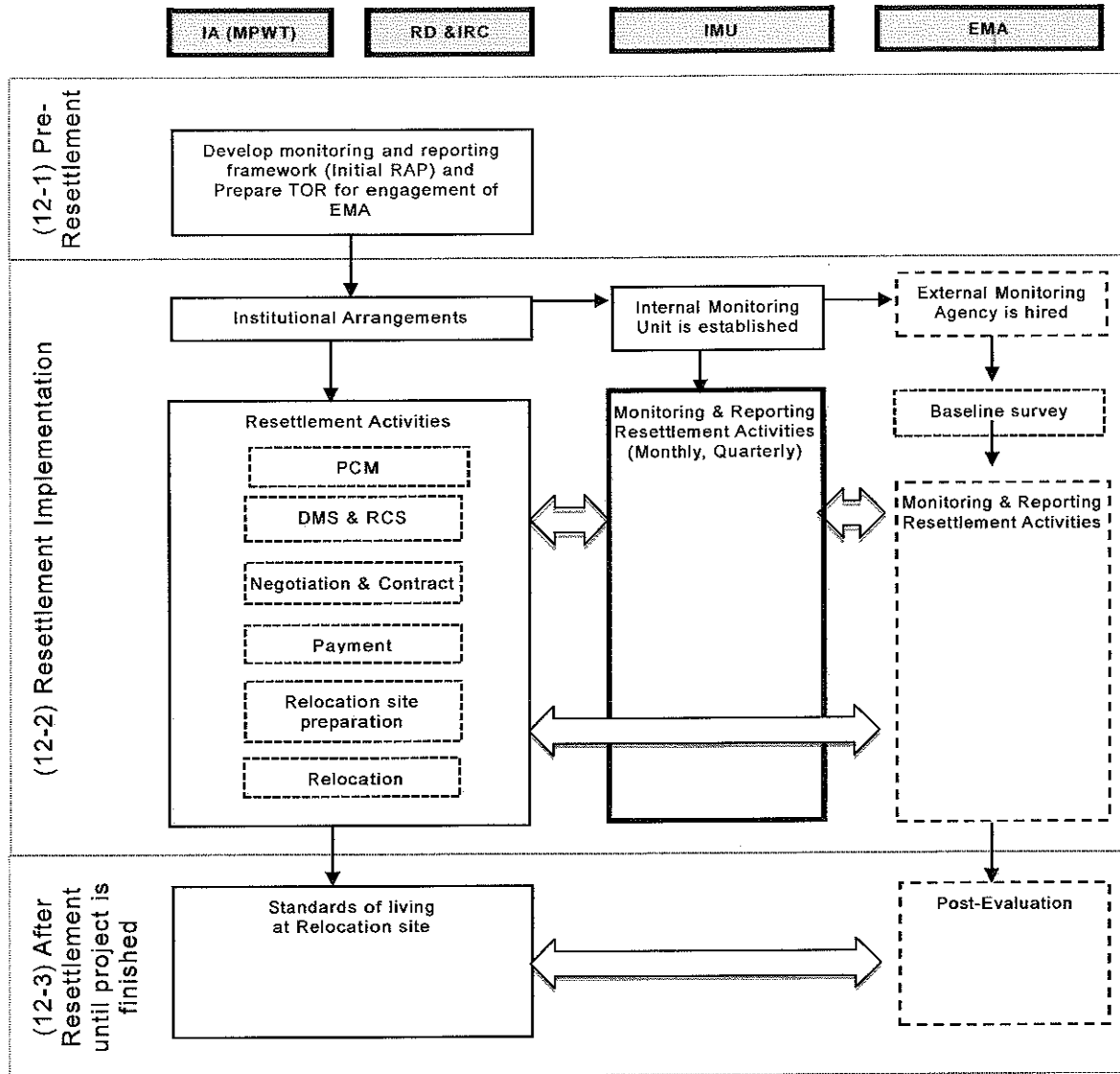


		2) Conduct Post-Evaluation Study within a reasonable period of time (6-12months) after the completion of resettlement activities.
--	--	---

### (3) Role and Responsibility

<b>Organization</b>	<b>Roles and Responsibilities</b>
Implementing Agency (IA)	<ul style="list-style-type: none"> <li>● Assign members for internal monitoring.</li> </ul>
Inter-ministerial Resettlement Committee (IRC)	<ul style="list-style-type: none"> <li>● Prepare TOR for the engagement of EMA</li> <li>● Make a contract with EMA.</li> </ul>
Internal Monitoring Unit (IMU)	<ul style="list-style-type: none"> <li>● Conduct internal monitoring.</li> <li>● Submit monitoring reports to Development Partners and IRC.</li> </ul>
External Monitoring Agency (EMA)	<ul style="list-style-type: none"> <li>● Conduct external monitoring.</li> <li>● Propose possible improvements.</li> <li>● Conduct Post-Evaluation Study.</li> </ul>

**(4) Work-flow**



## Monitoring and Evaluation (Internal)

---

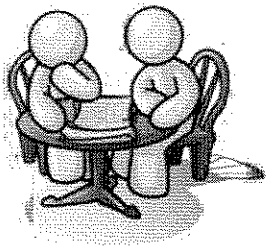
**IMU  
establishment**

- Implementing Agency assigns members for internal monitoring unit (IMU).



**Conduct internal  
monitoring**

- IMU conducts internal monitoring in cooperation with IRC and IRC-WG and evaluates by following indicators;
  - 1) Public consultation procedures.
  - 2) Transition between resettlement and civil works.
- IMU submits internal monitoring reports to Development Partners and IRC.



## Monitoring and Evaluation (External)

---

**Hire external  
monitoring  
agency**

- IRC prepares TOR for the engagement of external monitoring agency (EMA) with consent of Development Partners.
- IRC makes a contract with external monitoring agency (EMA).



**External  
Monitoring**



- External Monitoring Agency (EMA) conducts external monitoring and evaluates by the following indicators;
  - 1) Public consultation and awareness of compensation policy.
  - 2) Coordination of resettlement activities with construction schedule.
  - 3) Payments of compensation.
  - 4) Process of providing allowances to all entitled PAPs.
  - 5) Facilitation of access to income restoration program and restoration of income.
  - 6) Level of satisfaction of PAPs and trends in living standards.
  - 7) Functioning of grievance redress mechanism.
- EMA advises Implementing Agency, IRC and Development Partners regarding possible improvements.



**Post  
Evaluation**

- EMA submits completion report to IRC, Implementing Agency and Development Partners.
- EMA conducts Post-Evaluation Study within a reasonable period of time (6-12 months) after the completion of resettlement activities.

**(別添 8)**

**情報管理関連資料**

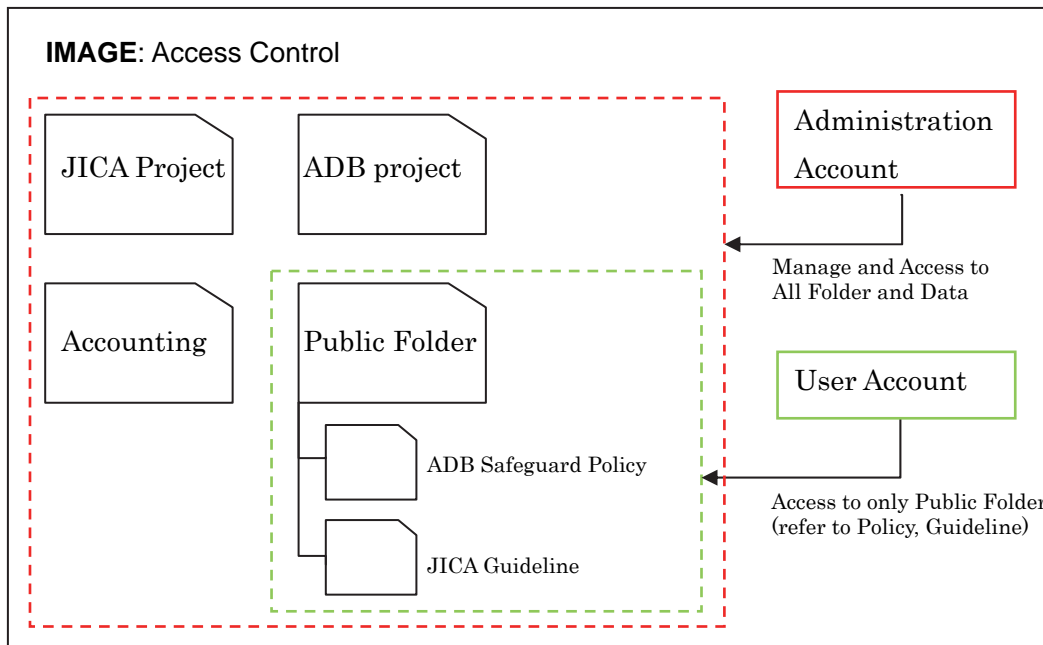


# Share Folder User Manual for Administrator

## 1. Access Control

There are restricted access account into Administration and User in order to ensure data management as below,

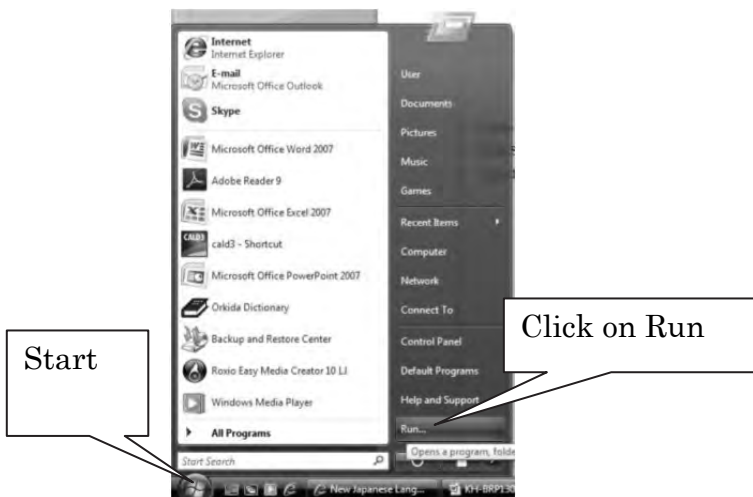
- (1) Administration Account: Full Management on Share Folder (Access Control, Folder Management, Data Collection)
- (2) User Account: Limited Access to Share Folder (Data Reference, File Copy)



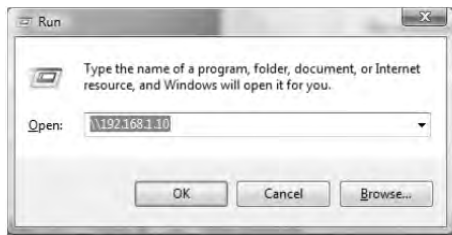
## 2. How to Connect to Share Server

2-1 Connect to TCP-COR network

2-2 Click Start => Run

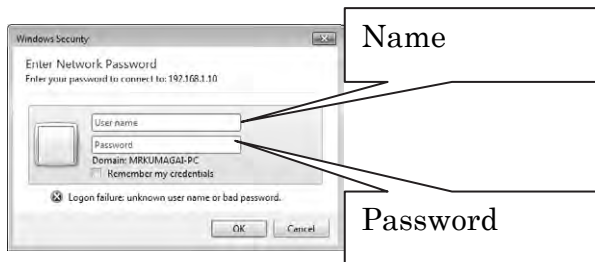


2-3 Type the code number: ¥¥192.168.1.10 in the box of Run Window



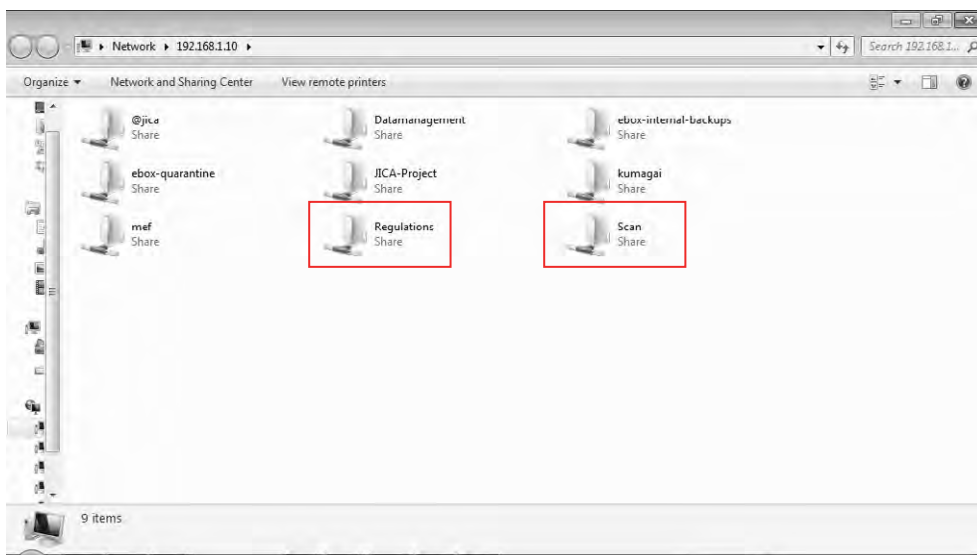
2-4 Click "OK"

2-5 Type your name and password`



2-6 On a network window, you can open your folder or some folders which was allowed by Administration Account.

Ex: "User Account" can open Regulation and Scan Folder only.

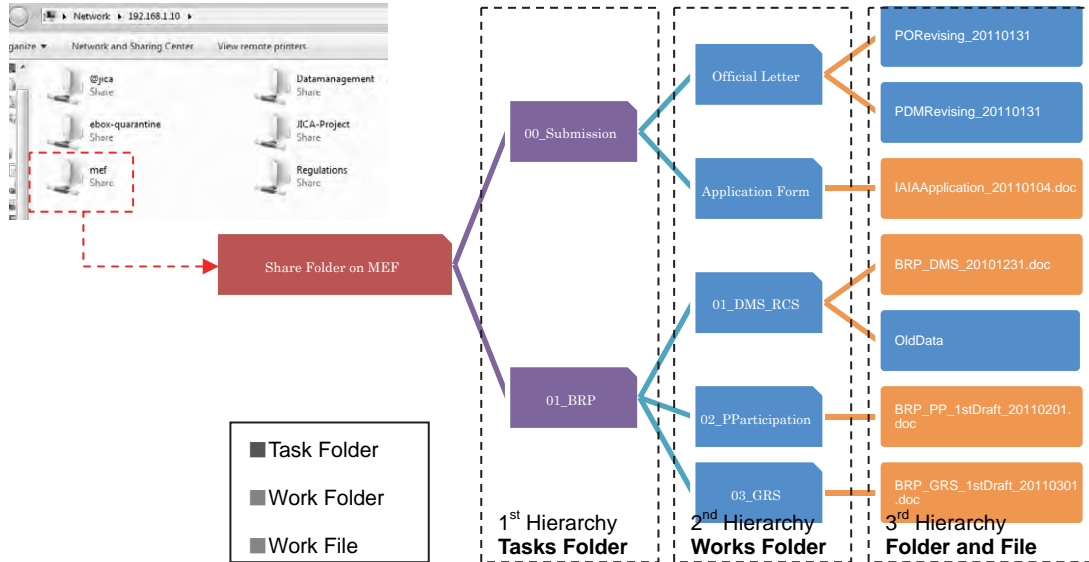




### 3. Folder Management

#### 3- 1 Folder Structure Management: Sort by works and Classify in folder

IMAGE: Folder Structure Management



#### 3-1-(1) Categorize Rule

- First (1st) and Second (2nd) Hierarchy: Categorize by **Task Folder** and **Work Folder**.
- Under Work Folder (3rd Hierarchy): Stored **Work File**, Set “**OldData**” Folder into Work Folders.
- \* When the same Work Files are stored in Work Folder, and the Work Files are different date. Old date file should be moved to “**OldData**” Folder for keeping final (latest) file.

#### 3-1-(2) Name Description Rule (Create, Add)

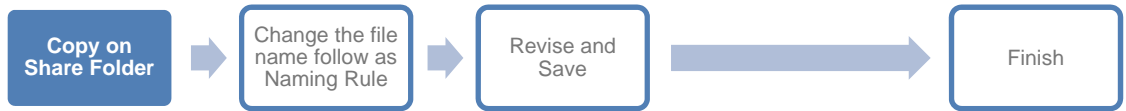
- **Tasks Folder:** 01 BRP  
(1st Hierarchy)      Number    Task Name
- **Works Folder:**      01 BRP DMS      and      BRP Seminar 20110311  
(2nd ,3rd Hierarchy) Number    Work Name                      Work Name    Organize date
- **Works File:**              RegularmeetingAgenda \_ 20110208 \_ KT.doc  
(3rd Hierarchy)              Work Name                      Create date    Person Name

### 3-2 File Management Rule

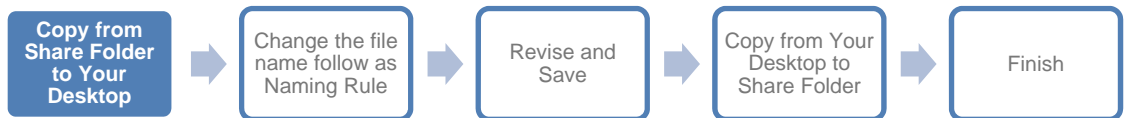
#### 3-2-(1). Revise File Rule

When work files are revised, you follow the flow chart.

1) The file is revised on Share Folder.



2) The file is revised on your computer.



#### 3-2-(2). Disposal Rule

Unnecessary files are deleted.

Only final files are kept on Share Folder.

\* When necessary file was deleted, you should remember File name and to refer to [4 Backup].

#### 3-2-(3). Copy Rule

No limits to copy from Share Folder to your computer.

But you should care to be complicated by overlapped file.

#### 3-2-(4). Refer Rule

Reference file should not be carelessly saved on Share Folder.

### 4 Data Backup

- (1) Backup made automatically from Share Folder to External HD in 1 time/week (every Friday). It is saved different file only between current time and 1week before.
- (2) Deleted file can be restored within 1 week. When you need to restore, you should request to Data Management Office.

(別添 9)

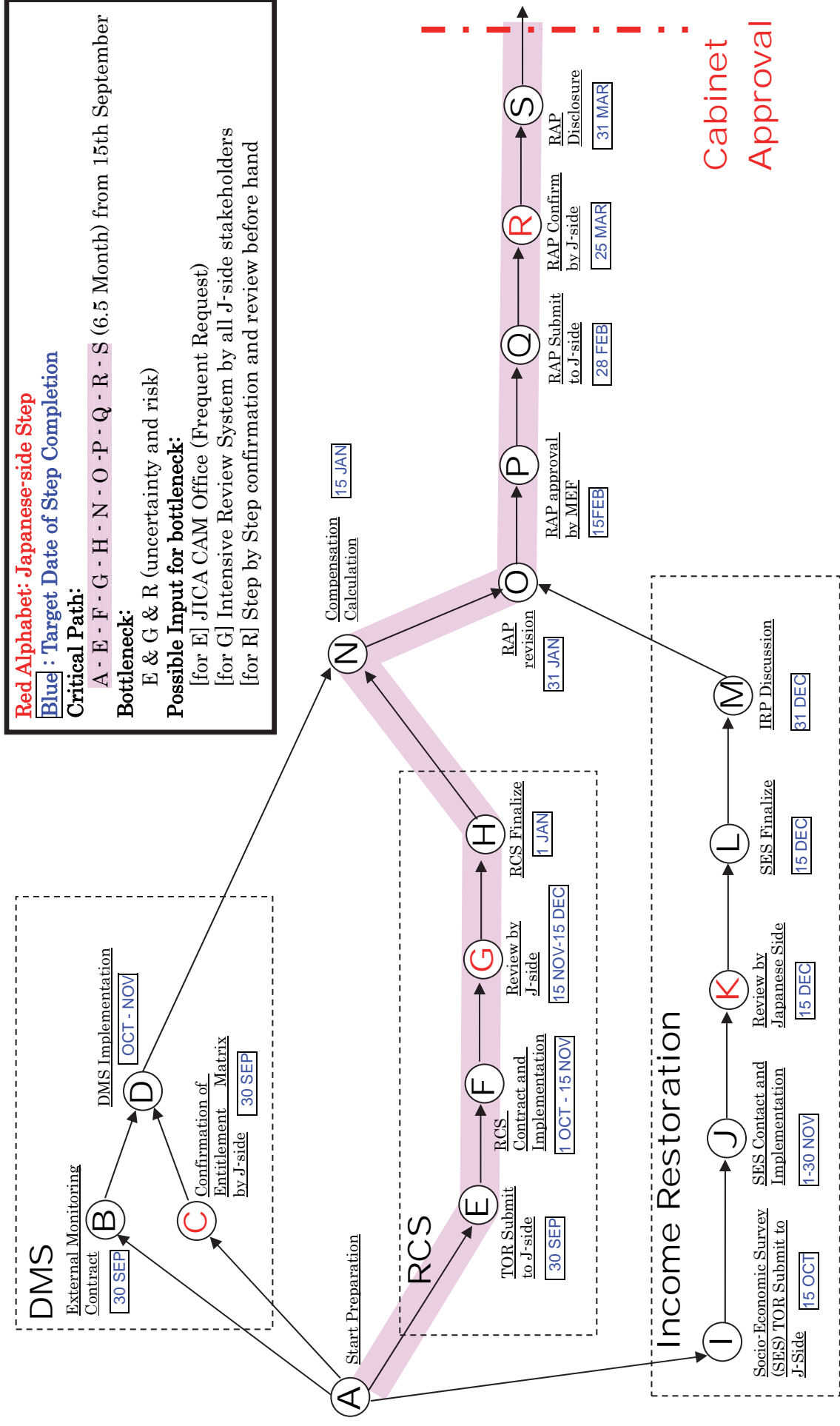
事業管理ツール



# Arrow Chart for Resettlement Flow for NR-1 (Stage 4)

As of 6 September

Where is the bottleneck? What is the critical path? What should be shortened with more input? How many float (margin) days?





**(別添 1 0)**

**住民移転の法制度**





(別添10)

## カンボジア 用地取得及び住民移転に関する法制度



住民移転のための環境社会配慮  
能力強化プロジェクト TCP-COR)

注意：

本資料は、カンボジア国「住民移転のための環境社会配慮能力強化プロジェクト」の執務参考資料として技術協力専門家が取りまとめたものであり、その如何なる内容も、特定組織の公式見解等を示すものではございません。また、本資料に掲載された情報により生じた損害等について、いかなる責任も負わないことと致します。

# 目 次

<b>第一章：法制度及び政策</b> .....	<b>1</b>
1. 土地管理制度 .....	2
1. 1 所有権と占有権 .....	2
1. 2 土地管理制度の変遷 .....	3
1. 3 土地法制定の経緯 .....	5
1. 4 土地登記制度 .....	6
1. 5 土地の種類 .....	6
1. 6 土地使用権譲渡（コンセッション） .....	7
2. 収用・不法占拠・住民移転制度 .....	8
2. 1 収用の根拠 .....	8
2. 2 公用地及び不法占拠の根拠 .....	9
2. 3 住民移転政策 .....	11
3. その他の法令 .....	12
3. 1 環境保護及び天然資源管理法 .....	12
3. 2 環境影響評価プロセス・サブデクリー .....	13
3. 3 環境影響評価報告実施に際するガイドライン .....	13
<b>第二章：開発パートナーの政策と現状</b> .....	<b>14</b>
1. 国際協力機構（JICA） .....	15
1. 1 JICA 環境社会配慮ガイドライン（2004） .....	15
1. 2 環境社会配慮のための国際協力銀行ガイドライン（2002） .....	16
1. 3 JICA 環境社会配慮ガイドライン（2010） .....	16
2. アジア開発銀行（ADB） .....	17
3. 世界銀行（WB） .....	18
4. 他の開発パートナー .....	19
付属資料 1	Constitution (1993)
付属資料 2	Land Law (2001)
付属資料 3	Prakas on Collection of Tax on Unused Land (1996)
付属資料 4	Sub-Decree on Social Land Concessions (March 19, 2003)
付属資料 5	Sub-Decree on Economic Land Concessions (December 27, 2003)
付属資料 6	Sechkdey Prakas No. 6: Measures to Crack Down on Anarchic Land Grabbing and Encroachment (Sep 27, 1999)
付属資料 7	Letter No. 961 (Sep 6, 2000)
付属資料 8	Circular on Settlement of the illegal construction on the state land in cities and urban areas (May 31, 2010)
付属資料 9	Sub-Decree on Right of way of National road Channels and Railroads of the Kingdom of Cambodia (Nov 23, 2009)
付属資料 10	Sub-decree on the Granting of House Ownership SD No.25 (April 22, 1989)

# 第 1 章：法制度及び政策

カンボジアの住民移転政策に関する制度は、憲法（1993）と土地法（2001）、ならびに収用法（2010）を頂点とする法体系でカバーされている。これら上位法の施行令として機能する下位の法令は、副法令（Anukret/Sub-Decree）、省令（Prakas/Declaretaion）、通達（Sarachor/Circulra）等で構成され、経済財務省（Ministry of Economy and Finance, MEF）や土地管理都市計画建設省（Ministry of Land Management, Urban Planning and Construction, MLMUPC）等の省庁が主務官庁を担っている。

カンボジアの住民移転に関連する法令及び政策は、大きく以下の3つに分類することができる。

- (1) 土地管理制度
- (2) 収用・不法占拠・住民移転制度
- (3) 開発パートナーの政策

このうち、国内の法令が対象とする（1）及び（2）の制度を表-1.1、及び表-1.2に示し、以降に上記の分類に応じた法制度の概要を取りまとめる。

表-1.1 住民移転政策に関わる法令一覧

機能	名称
憲法	Constitution (1993) *付属資料 1
民法	Civil Code (2007)
土地管理・登記	Land Law (2001) *付属資料 2
	Prakas on Collection of Tax on Unused Land (1996) *付属資料 3
用地収用	Expropriation Law (2010)
コンセッション	Sub-Decree on Social Land Concessions (March 19, 2003) *付属資料 4
	Sub-Decree on Economic Land Concessions (December 27, 2003) *付属資料 5
住民移転	Sub-Decree on Addressing Socio-Economic Impacts caused by Development Projects [DRAFT]
	Compensation Price List of Affected Property (Feb 3, 2000)
不法占拠	Sechkdey Prakas No. 6: Measures to Crack Down on Anarchic Land Grabbing and Encroachment (Sep 27, 1999) *付属資料 6
	Letter No. 961: (Sep 6, 2000) *付属資料 7
	Circular on Settlement of the illegal construction on the state land in citeis and uban areas (May 31, 2010) *付属資料 8
道路公用地 (ROW)	Sub-Decree on Right of way of National road Channels and Railroads of the Kingdom of Cambodia (Nov 23, 2009) *付属資料 9

表-1.2 住民移転政策に関する法令と省庁の分担

法令起草元	法令及び機能
国	憲法（所有権、収用等の基本的な定義）
司法省 (MOJ)	民法（民法上の原則、JICA 支援で起草）
首相府	無秩序な土地の不法占拠取締りに関する省令 （道路・鉄道等公用地幅の宣言）
経済財務省 (MEF)	収用法 開発事業による社会経済影響対応令（ドラフト、ADB 支援）
土地管理都市計画建設省 (MLMUPC)	土地法 都市市街地における国有地での不法建設にかかる通知 社会的土地権利譲渡（コンセッション）にかかる副法令
農林水産省 (MAFF)	経済的土地権利譲渡（コンセッション）にかかる副法令
公共事業運輸省 (MPWT)	国道及び鉄道用地にかかる副法令

## 1. 土地管理制度

### 1. 1 所有権と占有権

カンボジアの土地管理制度にかかる変遷と現状の理解には、土地の保有や使用に関する二つの権利概念を整理する必要がある。

- 1) 所有権 (ownership) : 絶対的・排他的な土地の所有権
- 2) 占有権 (possession) : 継続的利用に基づく土地の占有権

土地に関する私的所有権はフランス植民地下で導入されたが、民主カンボジア政権（ポルポト政権、1975-1979）により白紙撤回された。その後、憲法（1993）により私有財産権が再び認められ、現在は土地に対する私的所有権が認められている。同じ仏領インドシナから独立を果たしたベトナムとラオスが、社会主義思想の下に土地の私的所有を認めない（土地は国家に属し、国民は使用権の売買を認められる）政策を採用したのとは対照的に、カンボジアでは土地管理に自由主義的な発想が導入されている。

他方、伝統的占有権（占有に基づく事実上の土地所有：Acquisitive Possession）は、民主カンボジア政権下の時期を除き、慣習的な権利として認識されていた。伝統的占有権は、土地の耕作、抜開、フェンス囲い等の実態により確認されるもので、仏領下の民法（1920）によるシステムを受け継いでいる。しかし、2001年に土地法が施行されて以降、新たな占有実態に基づく土地の所有は認められていない。

## 1. 2 土地管理制度の変遷

カンボジアの土地管理制度は、旧宗主国フランスが導入した「私的所有」の概念と「伝統的な占有権」の共存を基本としたが、ポルポト政権により私的な権利が白紙撤回され、後続の政権により共産主義的な土地（農地）の再配分が行われた。その後、和平成立（1993）と前後して自由主義的な法体系が導入され、旧土地法（1993）に所有権と占有実態に基づく所有権への権利変換が明記された。現在は、新土地法（2001）に基づく土地管理が行われている。

以下に、土地管理制度に関する歴史的な変遷を取りまとめる。

- 1) 仏領統治開始（1863）以前のカンボジアでは、国土は王に属するが私的な占有権は継続的な耕作や居住の実態で担保され、占有し続けることが事実上の所有状態を意味した
- 2) フランス統治下の土地条例（Land Act, 1884）により私的所有概念が導入されたが、農民の抵抗により完全な実施に至らなかった
- 3) 1912年頃までには土地条例が浸透し、農地の多くは私的財産として登録され、自由に売買された<sup>1</sup>
- 4) 「所有権」と「伝統的な占有に基づく所有」は共存を続け、民主カンブチア政権樹立まで継続した
- 5) 民主カンブチア（ポルポト）政権（1975-1979）は、土地を含む一切の私的財産を否定し、占有権を含む土地に関する全ての記録が無効とされ、破棄された
- 6) ポルポト政権崩壊（1979）後、カンブチア人民共和国は、共産主義的な集団農業組織（クロムサマキ）へ共有農地を配分。失敗した班の農地は、農民に分配された<sup>2</sup>。
- 7) ベトナム軍撤退（1989）の年に憲法改正で土地の所有が認められた。土地制度に関する副法令と指針により、条件付きで宅地と家屋の所有権、及び農地の占有権が明記された。
- 8) クロムサマキは公式に解体し、多くの共有農地は事実上、農民に再分配された
- 9) 私的土地所有権を認める民主的な政策の先駆けとして土地法（1993）が成立。ポルポト政権以前の権利白紙化と、仏領下の民法に習った土地の所有権と占有権の共存が再開する
- 10) カンボジア王国憲法（1993）で、国家財産の規定や、土地収用の実施が明記される
- 11) 改正された土地法（2001）で、占有権を所有権化する手続きや条件が規定され、民法（2007）においても、土地の占有実態に基づく所有権化の条項が明記される。

表-1.3(a)及び(b)に、土地管理制度の歴史的な変遷を、所有権と占有権の視点で取りまとめる。

<sup>1</sup> Land Ownership, Sales and Concentration in Cambodia, Cambodia Development Resource Institute (CDRI), 2000

<sup>2</sup> カンボディア国別援助研究会報告書—復興から開発へ—（国際協力事業団、2001）

表-1.3(a) 土地管理制度の歴史的変遷

時期	法制度	私的な土地所有権／占有権
仏領植民地以前	伝統的(王室)制度	所有権: なし(国土は王に属する) 占有権: あり(3年以上の放棄で無効となる)
仏領植民地 (1863-1953)	民法(1920)	所有権: あり(フランスによる導入)
	憲法(1947)	所有権: あり
カンボジア王国 (1953-1970)	—	仏領下と同等のシステムを適用
クメール共和国 (1970-1975)	憲法(1972)	
民主カンブチア (1975-1979)	憲法(January 5, 1976)	所有権: なし(土地は国家共同体の共有財産) 占有権: なし(私的財産権の否定、白紙化)
カンブチア人民共 和国 (1979-1989)	憲法(Jun 27, 1981)	所有権: なし(私的所有権の否定) 占有権: あり(黙認による事実上の権利)
	家屋所有権付与に関する副法令 Sub-decree on the Granting of House Ownership SD No.25 (April 22, 1989) *付属資料 10	宅地所有権: なし(宅地は共同体財産) 家屋所有権: あり(譲渡、売買可能) 農地占有権: あり
	土地利用管理政策の実施指針 Instruction on Implementation of Land Use and Management Policy No.03, SNN (June, 1989)	宅地所有権: あり(2,000m <sup>2</sup> 以下) 農地占有権: あり(5ha未滿。これを超える農地はコン セッション(使用権)として付与)
カンボジア国 (1989-1993)	憲法改正(May 5, 1989)	土地所有権: あり
	土地法(October 13, 1992) * 民主的な私的財産権の導入	※1979年(ボルボト政権)以前の財産権白紙化 所有権: あり(仏領時代の民法同様。私的所有権の対 象は宅地のみで、都市部を除く) 占有権: あり(5年の占有が所有権に繋がる)
カンボジア王国 (1993-)	憲法(1993) * 私的所有権(44条)の完全な回復	(1) カンボジア市民のみが土地所有権を有する (2) 公共の福祉に伴う土地収用の規定 (3) 国有財産の規定
	土地法(August 30, 2001)	(1) 5年を下回らない占有をもって土地所有権の申請権 利が発生する(土地法施行前) (2) 土地法施行以降に開始された占有による所有認定 の停止 (3) 完全な所有権を待つ間、法律に従った占有は不動 産に対する物権を形成する
	民法(2008年 公布版)	(1) 所有の意図を伴う20年の占有は所有権に繋がる (2) 所有の意図を伴う10年の善良な占有は所有権に 繋がる

表-1.3(b) 所有権と占有権の歴史的な変遷

時代	仏領以前	仏領下	戦後独立	ボルボト 政権	カンブチア 人民共和国	カンボジア国	カンボジア 王国
年次	- 1863	1863 - 1953	1953-1975	1975-1979	1979-1989	1989-1993	1993-
宅地所有権	無	有	有	無	無	有	有
農地所有権		有	有		無	有	有
占有権	有	有	有		有	有	有

### 1. 3 土地法制定の経緯

#### (1) 旧土地法 (1992)

旧土地法では、その第一条及び第二条に、以下のような要点が記され、土地の私的所有と内戦前の権利関係の白紙撤回が明言された。

- (1) 土地は国家のものであること
- (2) 1979年（クメールルージュ政権崩壊の年）以前の土地所有権を認めないこと
- (3) カンボジア国民が土地を所有し使用する権利の確保と継承権

[Article 1] All the land in Cambodia belongs to the State and shall be governed and protected in agreement by the State. The State does not recognize the land property right existing before 1979. The property right and any other rights related to the land shall be governed by this law.

[Article 2] Cambodians have the full right to possess and to use the land and have the right of inheritance of the property provided by the State for living and for doing business.]

#### (2) 土地法 (2001)

カンボジアの土地管理制度支援目的に、アジア開発銀行（ADB）は、旧土地法（1992）の改定を農業政策改善支援プロジェクト(Loan No. 1445-CAM, 1996)の融資条件（コンディショナリティ）とし、新土地法ドラフトの技術支援（TA-2591）をパッケージ化した。<sup>3</sup> 同法のドラフトには世界銀行（WB）やドイツ政府連邦技術協力機構（GTZ）も協力し、1999年に設立された土地管理都市計画建設省の下で、新土地法（2001）が施行された。

新土地法の第30条では、公布前に5年を下回らない占有事実を証明できれば、その者に土地の所有を認めることが明記された。一方で、土地法施行よりも後に開始された伝統的な“占有による事実上の所有権”承認の停止が宣言され、土地管理都市計画建設省の通達<sup>4</sup>により、関係各省に厳格な運用が指示された。その後、多くの国家私有地が民間に払い下げられることとなった。<sup>5</sup>

また、第39条では「土地登録証明書」の所有者が正規の所有者としながらも、証明書の発行が行政サービスの不備から困難であるため、申請書（所有権取得申請書）を暫定的な証明書と認め、これに基づく土地取引を肯定している。

[Article 30] Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership.

[Article 39] While waiting for the possession to be transformed into full ownership, possession in compliance with this law constitutes a right in rem over the immovable property. Such property may be the subject of exchange, transfers of rights and transactions.

<sup>3</sup> ADB Policy on Indigenous Peoples and Poverty Reduction in Asia, Indira Simbolon, Social Development Specialist (ADB), 2005

<sup>4</sup> No. 43 SCFIN KBCH Notification (Sechkdey Choundamnoeng) On Cessation of acquisitive possession on immovable property (September 6, 2001)

<sup>5</sup> Capacity Building for Resettlement Risk Management: Cambodia Country Report, ADB, 2007



土地法は農村における貧困削減を目的とした土地配分の促進をターゲットにしたものの、土地登記の加速度的な達成はなされず、むしろ大規模なコンセッション（経済的土地使用権譲渡）や“不法占拠者”の罰則規定に関する根拠として機能している側面もある。また、日本（JICA）が支援した民法典（物権法規定等）との十分な調整がないままに、土地法が先行する形で実態規定として成立したため「土地所有秩序の形成」や「伝統的権利の保護等」に相違を含む結果となった。<sup>6</sup>しかしながら、その後、民法を受けた、土地法の改定が実施された。

#### 1. 4 土地登記制度

土地登記を実施促進する目的で、カンボジア政府はLAMDP（Land Administration, Management, and Distribution Program）を企画し、その第一フェーズとして世界銀行が、土地管理運営プロジェクト（Land Management and Administration Project, LMAP, No. 3605-KH）を融資し、フィンランド及びドイツが技術協力を実施した。事業対象となったプノンペン市及び10州では、100万件を超える土地権利書の発行が促進された一方、プノンペン市内での登記が民間開発に阻害されている問題が指摘された。協議の末カンボジア政府がLMAPの融資を停止し、NGO及び住民が世銀インスペクションパネルへの申し立てを実施した。<sup>7</sup>

土地登記の状況は、1990年代に450万ヘクタール（国土の14%相当）が正式に登記された<sup>8</sup>が、2001年の土地法によりあらためて登記が開始されて以降は、2008年時点で国土の5%相当、百万件程度しかカバーしていないとされる。<sup>9</sup>農村では、クロムサマキ以降に配分された際の弱い保有権や占有実態しかなく、何らかの書面を保有する世帯は25%以下とされている。他方、カンボジア国家開発戦略計画（2009-2013）では、全国の土地区画（600-700万区画）のうち、20数%が土地登記済みとされている。

このように、過去の政権が発行した異なるレベル（州政府、コミューンオフィス等）の土地に関する権利書や、新しい土地法以降に開始された正式な土地登記書類など、権利関係書類の認定と統一的な土地登記の作業が喫緊の課題となっている。カンボジアのミレニアム開発目標（CMDGs）に設定された「2010年までに32%、2015年までに65%」の土地登記目標は、LMAPの中断などもあり困難な状況にある。

#### 1. 5 土地の種類

憲法及び土地法に基づき、カンボジアの土地は、大きく以下の3種類に区分され、それぞれに私的な利用や譲渡（売買）の条件が異なる。

- 1) 国家公用地（State Public Land）：譲渡不可
- 2) 国家私有地（State Private Land）：譲渡（コンセッション）可能
- 3) 私有地（Private Land）：譲渡可能

<sup>6</sup> 法整備支援における政策判断に資する立案・評価手法の検討（JICA 客員研究員報告書）、金子由芳、2006

<sup>7</sup> Final Eligibility Report and Recommendation, World Bank Inspection Panel, March 2003

<sup>8</sup> カンボジアにおける土地登記の進展と女性の権利、龍谷大学アフラシア平和開発研究、佐藤奈穂、2007

<sup>9</sup> 土地法改革における法的多元主義の克服—日本・インドネシア・カンボジアの比較検討—、国際協力論集（神戸大学）、第16巻第3号、金子由芳、2009

国家公用地は、所定の手続きを経て国家私用地に転換できるため、理論的には全ての土地が譲渡や取引の対象となりうる。他方、明確な所有関係を示す書類のない土地が“みなし国有地”として取り扱われ、当該地に占有実態のある住民が土地を失う問題等が指摘されている。国有地の定義に関しては、道路公用地（Right of Way, ROW）が後付けで宣言されるなど、みなし国有地に加えて“後付け国有地”における住民の権利も社会問題化している。表-1.4に憲法及び土地法で定められた国家公有地の例を示す。

表-1.4 国有地及び国有公有地の範囲

国有地（憲法58条）	国有公有地（土地法15条）
土地、鉱物資源、山、海、地下水、大陸棚、海岸線、空域、島、川、水路、小川、湖、森、天然資源、経済文化センター、国防基地及び施設	森林、航行可能な水路、自然湖、航行可能な水路の河岸、海岸、埠頭、鉄道、鉄道駅、空港、道路、庭園、公園、保護区、公立学校、教育施設、行政施設、公立病院、文化歴史的施設、王室の私的所有ではない不動産資産

## 1. 6 土地使用权譲渡（コンセッション）

土地法（2001）第48条以降において、土地使用权の譲渡（ランドコンセッション）が認められており、その目的から経済的（Economic）なコンセッションと社会的（social）なコンセッションに区分されている。それぞれのコンセッションには、サブデクリー（副法令）以下、実施細則に相当する法令が整備されている。

### （1）経済的土地使用权譲渡

経済開発を目的としたコンセッションは、主に農地などを対象としたプランテーションが対象となることから、農林水産省の管轄で副法令（Sub-Decree on Economic Land Concession）が制定、運用されている。土地法で規定された通り、1万ヘクタール未満の土地に対する99年以下の契約を条件にコンセッションが実施されている。民間投資を活用した産業誘致と雇用創出による税収が見込まれるため、カンボジア政府としても利点の多いシステムである一方、土地所有権に関連して、地方農民の権利が侵害される例も報告されており、社会問題化している。

### （2）社会的土地使用权譲渡

国家私有地を貧しい土地なしの住民に譲渡する趣旨で、副法令（Sub-Decree on Social Land Concession）が制定され、土地管理都市計画建設省（MLMUPC）の管轄で制定、運用されている。社会的土地使用权譲渡は、家を持たない貧困層や災害被災者などに加えて、社会基盤整備事業に伴って発生した住民移転の被影響住民を対象としている。道路公用地内に居住する住民が拡幅によって土地なし住民となり、移転代替地へ移住する政策は、この社会的なコンセッションを根拠にしている。また、コンセッションには土地だけでなく必要なインフラ整備等が含まれている。また、土地を譲渡された住民は、5年間その権利を売却、貸与、譲渡しないことを条件に、正式な所有権の申請を行うことができる。

## 2. 収用・不法占拠・住民移転制度

### 2. 1 収用の根拠

カンボジアにおける私有財産の収用は、公共の福祉を目的とした場合に限り憲法及び土地法で認められており、収用法（2010）及び下位の法令等により実施される。収用法の雛型として、90年代後半より「所有権の収用に関する法」が検討されたものの、ポルポト政権下の強制的な財産収奪というトラウマ的な背景があり、最終的に「収用法」という名前での制定に至った。

#### (1) カンボジア王国憲法（Constitution, 1993）

第44条において、カンボジア国民の私的所有権を前提として、法に基づいた公共の福祉を目的とする場合にのみ、事前の公平で公正な補償の下に政府が土地を収用する旨、明記されている。

[Article 44] All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land. Legal private ownership shall be protected by law. The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation in advance.

#### (2) 土地法（Land Law, 2001）

第5条において、公共の福祉に関わらない限り所有権の収奪（収用）がないことを前提に、収用を実施する際には、事前の公平で公正な補償と法制度に則った手続き及び形式で所有権の収用がなされる旨、明記されている。

[Article 5] No person may be deprived of his ownership, unless it is in the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and after the payment of fair and just compensation in advance.

#### (3) 収用法（Expropriation Law, 2010）

収用の原則、メカニズム、手続きを規定した法律で、合法的な土地等の所有者からの収用行為を対象としている（違法占拠者に対する収用的な手続きについては、別途、住民移転政策（サブデクリー）として検討中）。収用法の下位には、「収用委員会」「苦情処理委員会」等の関連組織の制定と機能を規定する施行令（サブデクリーレベル）が準備される予定になっている。

収用法の第2条には「公平で公正な私的財産権の収用」「事前の公平で公正な補償」「国家及び公共の福祉」「公共事業インフラの促進」が謳われている。他方、第3条の記載では、収用法が国内の公共事業全般を対象とする一方、カンボジア政府と開発パートナーが合意文書を取り交わして実施する事業は対象外とされている。（開発パートナーとの合意文書に収用に関する取り決めがない場合には、収用法が適用される）

[Article 2]

This law primarily aims to:

- Ensure just and fair deprivation of legal rights to private property,
- Ensure a fair and just compensation in advance,
- Serve the national and public interest, and
- Develop public physical infrastructures.

[Article 3]

This law shall be applied to expropriations involving public physical infrastructure projects in the Kingdom of Cambodia. This law does not govern any issues on expropriation in any agreement or memorandum on supporting investment between the Royal Government of Cambodia and partner countries. In case there is no such agreement or in case the agreement or the memorandum does not deal with expropriation, any expropriation shall be governed by this law.

## 2. 2 公用地及び不法占拠の根拠

(1) 無秩序な土地の不法占拠取締りに関する省令 (1999年9月、フンセン首相署名)

(Sechkdey Prakas No. 06: Measures to Crack Down on Anarchic Land Grabbing and Encroachment)

土地の不法占拠に対する首相府令 (プラカスレベル)。旧土地法 (1992) 以降の土地管理制度を無視した違法占拠に対する政府の対応が示されている。第5条では、地方政府の要請に応じて、軍や警察の協力があり得ることを示唆している。

[5] Commander of the Royal Cambodian Arm Force, General Director of the National Police, Country Military Commander, Commander at every division and other related ministries/entities should facilitate and cooperate of time with the provincial and city authority according to the requests.

また、国有地の中でも、道路及び鉄道沿線の不法占拠をとくに問題視し、第8条に路線ごとの公用地幅 (ROW) が明記された (その後、公共事業運輸省の公用地副法令 (2009) で更新された)。ただし、道路の公用地幅については、人口密集地 (populous areas) に関して適用しないこととされている。

この省令は、道路改修事業に際して、カンボジア政府が違法占拠の法的根拠とする重要な法令である。他方、同省令以前の法制度には、具体的な公用地幅 (路線の中心線からの距離) が示されていないことから、具体的な公用地の定義が曖昧なままに公用地境界付近の私的土地利用が進められた経緯がある。したがって、その運用においては、個別の権利関係の確認など慎重な対応が求められている。

[8] Designate the right of way (ROW) for the road and railways for the development of Infrastructure as below:

- National Road (NR) with one digit number like NR 2, 3, 6, 7, the ROW is 25 meters both sides from the centerline, except NR1, 4, 5 the ROW is 30 meters from the centerline.
- National Road with two digit numbers like NR 11, 22, 64, 78 the ROW is 25 meters from the centerline.
- Provincial road is 20 meters from the centerline.
- Communal Road is 15 meters from the centerline

The above restriction of the ROW is not applicable to the populous areas.

- The railways ROW is 20 meters from the centerline for the city, provincial city and the populous places.
- The railways ROW is 30 meters from the centerline for the railroad located outside the city
- The railways ROW is 100 meters from the centerline for the railroad located in the mountain area where there are rock falling or tall forest.

(2) 国道、州道、コミュニケーション道及び鉄道の公用地幅 (ROW) 政策の運用に関する通知

(Regarding the Implementation of Right of Way (ROW) policy on National Roads, Provincial Roads, Communal Roads, and Railways in Cambodia, No.961, MEF, April 06, 2000)

省令 (Prakas 06) を受けて、経済財務省がプノンペン市及び地方州政府宛に発行した、公用地幅の適切な管理と運用に関する通達。ROWの範囲 (幅) を再確認した上で、カンボジア政府はROW内に存在する如何なる物 (私的財産) に対しても、一切の公的な補償は行わないことが明記されている。

しかし運用上は、原則として土地への補償を行わない一方で、家屋等の資産に関しては補償 (支援) を実施している。また、土地なし住民となる場合には、社会的土地使用权譲渡 (Social Land Concession) に基づいて、移転代替え金の提供が実施される。かかる対応が、省令 (Prakas 06) に内包されている法的根拠の曖昧さに対する緩和策として機能している。

(3) 国道及び鉄道用地にかかる副法令

(Sub-Decree on Right of Way of National Roads and Railways in Kingdom of Cambodia, Nov 23, 2009)

公共事業運輸省 (MPWT) が起草した副法令。道路 (MPWTが管理する一桁及び二桁国道) と鉄道軌道の事業用地を規定する副法令。第8条 (国道) 及び第9条 (鉄道) で、ROWが以下のように宣言されている。

- 一桁国道：中心線から片側30m
- 二桁国道：中心線から片側25m
- 首都や都市郊外の鉄道：中心線から片側30m
- 落石地帯や森林地帯を含む山間地の鉄道：中心線から100m

何れの場合においても、路線が首都や地方都市、市街地を通過する場合には、右規定によらず個別検討が行われる。Prakas06 (1999) では、一桁国道の一部 (2号線, 3号線, 6号線, 7号線) に対して25mのROWが明記されていたが、この副法令の施行に伴い、全ての一桁国道は片側30mのROWを有することが明示された。Prakas06の問題と同様に、副法令施行以前 (ROW変更前) の土地利用に対する規定や救済措置等が明記されていないため、新たな“後付け国有地”の発生も想定されるため、法令の実施段階において留意が必要となる。

表-1.5に、規模別の道路事業用地の範囲と根拠を整理する。

表-1.5 道路事業用地幅 (ROW)

道路の種類	ROW	根拠法令	道路管理者
国道(一桁)	片側30m	国道及び鉄道用地にかかる副法令	公共事業運輸省
国道(二桁)	片側25m	国道及び鉄道用地にかかる副法令	公共事業運輸省
州道(三桁)	片側20m	無秩序な土地の不法占拠取締りに関する省令	公共事業運輸省 ／農村開発省
地方(コミュニケーション)道	片側15m	無秩序な土地の不法占拠取締りに関する省令	農村開発省

## 2. 3 住民移転政策

カンボジアの住民移転 (Resettlement) は、1990年代後半に開始された国道一号線 (ネアックルンーバベト間) 改修事業 (ADBローン) で、初めて体系的な制度として実施された。その後、JICAあるいはADBやWBなどの国際開発金融機関が有するガイドライン及びセーフガード・ポリシーへのコンプライアンスが求められる過程で、個別案件の実施を通じて、カンボジア政府の住民移転政策は少しずつ改善されて来た。他方、住民移転の根拠となる国内法は、2010年現在、憲法及び土地法が定めた「公共の福祉に資する私的財産収用」及び収用法の適用のみに留まり、住民移転政策は依然として国内法制度化されていない。

こうした背景からカンボジア政府はプロジェクトの資金源に応じた柔軟政策をとっており、厳格なセーフガード・ポリシーを要求するドナー (JICA、ADB等) の事業と、配慮要求の低い新興ドナー (中国、ベトナム等) 及び政府予算による事業で、対応を異にしている。同様の傾向は、土地法の排除条項 (覚書に収用に関する取り決めのある開発パートナー事業を適用外とする項) などにも表れている。

### (1) 国家住民移転政策 (National Resettlement Policy, NRP)

ADBは、住民移転政策にかかる技術支援 (RETA 5935)<sup>10</sup>を採択 (2000年) し、国家住民移転政策のドラフトを行ったが、同政策が閣僚評議会で事実上の廃案となった。その後、ADBは新たな技術支援 (TA 4490-CAM)<sup>11</sup> で副法令 (Sub-Decree)<sup>12</sup> の立案に協力した (2005-2009年)が、カンボジア政府は収用法との整合を理由に、副法令のファイナルドラフト公開を拒否し審議を棚上げした。件の収用法は2010年に成立したものの、同副法令の取り扱いについては、引き続き政府内で継続検討されている (事実上廃案の状態にあり、ADBもさらなるTAによる再実施を検討している)。このドラフト段階の副法令には、

- (1) 開発プロジェクトは社会の特定の一部、とくに被影響住民に裨益するべきではない
- (2) サブデクリーはカンボジアの実情を反映するべきである
- (3) 手段は開発プロジェクトにおける負の社会経済的インパクトを適切に処理すべきである
- (4) 組織の調整は、複雑で他分野に及ぶ問題を含み、適切な手法で申し入れがされるべきである
- (5) 住民やコミュニティは提案された事業により適切な協議がなされ、情報を知らされるべきである

等の記載があり、移転補償は市場価格 (Market Price) に基づいた再取得価格 (Replacement Cost) で実施することなど、ADBのセーフガード・ポリシーを反映した内容になっている。

### (2) 被影響資産の補償単価表 (2000)

経済財務省発行のレター (Compensation Price List of Affected Property, No.339, MEF) で、住民移転の補償費用として固定単価が示され、2000年初期の案件を中心に運用された。カンボジア国内主要都市の市場価格等を参考にして設定されとされるが、その後、ADBの再取得価格導入等を経て、現在は使用されていない。表-1.6に単価の概要を示す。

<sup>10</sup> RETA 5935 (National Resettlement Policy Enhancement and Capacity Building)

<sup>11</sup> TA 4490-CAM (Enhancing the Resettlement Legal Framework and Institutional Capacity)

<sup>12</sup> Sub-decree on addressing social-economic impacts caused by the development projects

表-1.6 補償単価表 (2000) \*

No.	Affected Property name	Unit	Unit price (USD)
<b>I. Fixed Assets</b>			
1	Thatch/leaf wall (screen), bamboo floor, and thatch/leaf roof	m <sup>2</sup>	4.50
2	Wood wall, wood floor and zinc roof	m <sup>2</sup>	12.00
3	Concrete wall, and concrete roof (platform)	m <sup>2</sup>	85.00
4	Two-story concrete house (ground and first floor)	m <sup>2</sup>	140.00
<b>II. Well</b>			
5	Dig well	1	50.00
6	Pump well	1	75.00
<b>III. Fences</b>			
7	Wood stand, barbed wire	1m	0.75
8	Rock (concrete)	1m	4.86
<b>IV. Fruit Tree</b>			
9	Mango tree	each	25 – 30
10	Tamarind tree	each	5 – 10
11	Palm Tree	each	8.00
12	Coconut Tree (Milk-fruit tree)	each	15.00
13	Bamboo	shrub	10 – 15
14	Jackfruit tree	each	10 – 15
15	Soursop tree	each	5.00
16	Custard tree	each	3.00
17	Papaya	each	2 – 2.50
18	Wood tree	each	20 – 25
19	Banana	each	0.080
20	Lemon tree	each	3 – 5
21	Guava tree	each	2 – 2.50

\* 現在は使用されていない

### 3. その他の法令

#### 3. 1 環境保護及び天然資源管理法

(Law on Environmental Protection and Natural Resources Management, 1996年)

所謂カンボジアの「環境法」。その第3章に環境影響評価 (EIA) が規定され、第6条で「民間と政府のすべてのプロジェクトと活動に対して EIA が実施され、環境省が評価を行い、その後、政府の意思決定に供される」としている。第7条では、初期環境影響評価調査 (Initial Environmental Impact Assessment, IEIA : IEE 相当) の実施規定が定められている。

[Article 6] An environmental impact assessment shall be conducted on every project and activity of the private or public, and shall be approved by the Ministry of Environment before being submitted to the Royal Government for decision.

### 3.2 環境影響評価プロセス・サブデクリー (Sub-decree on Environmental Impact Assessment Process)

EIA の定義、対象事業の定義、公衆参加等を定めた環境省の副法令。巻末に EIA 対象事業が例示されている。表-1.6 にインフラ事業を中心とした EIA 対象事業の抜粋を示す。

表-1.6 EIA が要求されるプロジェクトと規模の事例

	プロジェクトや活動の形態	規模/能力の例
A	工業(食品、皮革、木工、製紙、化学、鉱物、金属等)	1MW 以上の水力発電、全ての鉱物採掘
B	農業(森林、木材、灌漑、養殖池等)	500ha 以上の伐採・植樹
C	旅行(観光地、ゴルフ場)	50ha 以上の開発、18 ホール以上
D	インフラ整備の項目	規模/能力
	都市化開発	全ての規模
	工業地域	全ての規模
	道路橋梁	荷重 30トン以上
	建物	高さ 12m以上あるいは床面積 8,000m <sup>2</sup> 以上
	レストラン	500 席以上
	ホテル	60 客室以上
	沿岸に立地するホテル	40 客室以上
	国道建設	100km 以上
	鉄道建設	全ての規模
	港湾建設	全ての規模
	空港建設	全ての規模
	浚渫	50,000 m <sup>3</sup> 以上
	廃棄物処分場	200,000 人以上対象の処分場

### 3.3 環境影響評価報告実施に際するガイドライン (2000 年)

環境省の Prakas (省令) として発行されたガイドライン。1999 年の環境影響評価サブデクリーを補強し、プライベート・公共事業を問わず、対象となる事業者には EIA 報告書の作成義務を課している。また、環境省の環境影響評価局 (Department of Environmental Impact Assessment Monitoring and Review) がその審査を担当することが記されている。



## 第2章：開発パートナーの政策と現状

カンボジア政府は、国内法と開発パートナーの政策に大きな乖離がある場合、後者を優先させる条件で借款契約を結ぶことを容認している。また、開発パートナーの政策を超える個別の要求（追加補償等）に対しても、一般に柔軟な対応を行っている。したがって、各ドナーが保有するセーフガード政策や環境社会配慮ガイドラインは、住民移転に関連する国内法と同等以上の制度的な意味合いを持っている。

カンボジアで支援を実施している国際開発金融機関（ADB及びWB）とJICA（旧JBICを含む）の住民移転政策にかかる変遷を取りまとめ表-2.1に示す。

表-2.1 開発パートナーの住民移転政策（変遷）

	JICA		世界銀行（WB）	アジア開発銀行（ADB）
	旧 JICA	旧 JBIC		
1980			Social Issues Associated with Involuntary Resettlement in Bank-financed Projects (Operational Manual Statement OMS 2.33)	
1986			Operations Policy Issues in the Treatment of Involuntary Resettlement (Operational Manual Statement No. 10.08.)	
1989		環境配慮のためのOECECガイドライン（初版）		
1990	環境配慮ガイドライン [20 セクター]		Involuntary Resettlement (Operational Directive OD4.03)	
1991	(1) ダム建設計画に係る環境インパクト調査に関するガイドライン (1990)			Environmental considerations into ADB's business process
1995	(2) 社会経済インフラ整備計画にかかる環境配慮ガイドライン (1992)	環境配慮のための OECEC ガイドライン（第二版）		Involuntary Resettlement Policy
1999	(3) 農業開発調査にかかる環境配慮ガイドライン (1992) など...	円借款における環境配慮のための JBIC ガイドライン		
2001			Involuntary Resettlement (Operational Policy OP4.12 & Bank Procedure BP 4.12)	
2002		環境社会配慮確認のための国際協力銀行ガイドライン	* One of the Safeguard Policies	Involuntary Resettlement (OM Section F2/BP)
2003				
2004	環境社会配慮ガイドライン			
2009				Safeguard Policy Statement (SPS)
2010	国際協力機構環境社会配慮ガイドライン			

住民移転政策の先駆けは1980年代の世界銀行による政策で、主に水資源開発（多目的ダム）の貯水池に伴う被影響住民への対応強化を目的としていた。他方、ADBの住民移転政策は1990年代半ばの「非自発的住民移転政策」から本格的に取り組み始めた。旧JICA及び旧JBICは、1990年代前半より環境配慮ガイドラ

インを制定したが、住民移転に特化した政策ではなく、主に環境影響評価に関する指針として運用されていた。2000年以降、各開発パートナーは、より具体的かつ踏み込んだ住民移転政策を公開している。

## 1. 国際協力機構（JICA）

独立行政法人国際協力機構法の改正（2007）により、改正法施行（2008年10月）後のJICAが技術協力、有償資金協力、無償資金協力を一元的に担うことになったことから、統合前の旧JICA及び旧JBICが運用していた環境社会配慮に関するガイドラインの統合作業が実施された。有識者会議による検討とパブリックコメントを経て、2010年4月に新しい「国際協力機構環境社会配慮ガイドライン」が公布され、2010年7月1日（施行日）以降に要請を受けた案件に適用されている。それ以前の案件は、無償資金協力及び技術協力に関してはJICA環境社会配慮ガイドライン（2004年4月施行）、円借款に関しては「環境社会配慮のための国際協力銀行ガイドライン（2002年4月制定、2003年10月施行）」の適用を受けている。

### 1. 1 JICA環境社会配慮ガイドライン（2004）

統合前のJICAは、1988年の分野別（環境）援助研究会における提言（環境アセスメントの実施）を受けて、1990年以降1994年までの間に、開発調査の主に事前調査段階を対象とした20のセクターを含む、以下のような「環境配慮ガイドライン」を作成し、スクリーニングとスコーピングを実施した。

1) ダム建設計画に係る環境インパクト調査に関するガイドライン（1990）

2) 社会経済インフラ整備計画にかかる環境配慮ガイドライン（1992）

※13セクター「港湾」「空港」「道路」「鉄道」「河川・砂防」「廃棄物処理」「下水道」「地下水開発」「上水道」「地域総合開発」「観光」「運輸交通一般」「都市交通」

3) 農業開発調査に係る環境配慮ガイドライン（1992）

4) 林業開発調査に係る環境配慮ガイドライン（1993）

5) 鉱工業開発調査に係る環境配慮ガイドライン（1993）

※3セクター「鉱業開発」「工業開発」「火力発電」

6) 水産開発調査に係る環境配慮ガイドライン（1994）

その後、環境問題を取り巻く状況の変化により、新たな環境協力に関する方針の必要性が高まり、1999年10月に設置された第二次環境分野援助研究会に基づき、情報公開、環境対処能力の向上、JICA事業の改善等が提言された。こうした背景から、JICA環境社会配慮ガイドラインが外部有識者等の専門家を含む委員会で検討され、2004年4月より施行された。同ガイドラインの「別紙1 相手国政府に求める環境社会配慮の要件」より、非自発的住民移転に関する該当部分を抜粋する。

#### 非自発的住民移転

1. 非自発的住民移転及び生計手段の喪失は、あらゆる方法を検討して回避に努めなければならない。このような検討を経ても回避が可能でない場合には、影響を最小化し、損失を補償するために、対象者との合意の上で実効性ある対策が講じられなければならない。

2. 非自発的住民移転及び生計手段の喪失の影響を受ける者に対しては十分な補償及び支援が、プロジェクト実施主体等により適切な時期に与えられなければならない。プロジェクト実施主体は、移転住民が以前の生活水準や収入機会、生産水準において改善又は少なくとも回復できるように努めなければならない。これには、土地や金銭による（土地や資産の損失に対する）損失補償、持続可能な代替生計手段等の支援、移転に要する費用等の支援、移転先でのコミュニティー再建のための支援等が含まれる。
3. 非自発的住民移転及び生計手段の喪失に係る対策の立案、実施、モニタリングには、影響を受ける人々やコミュニティーの適切な参加が促進されていなければならない。

## 1. 2 環境社会配慮のための国際協力銀行ガイドライン（2002年）

旧JBICが統合する前の海外経済協力基金（OECF）は、1989年に「環境配慮のためのOECFガイドライン（初版）」を施行し、1995年に同ガイドライン（第二版）に改定した。その後、1999年にOECFが日本輸出入銀行（JEXIM）と統合してJBICとなり、これを契機に「円借款における環境社会配慮のためのJBICガイドライン」が策定された。その後、国際社会の環境社会配慮に関する状況変化等を踏まえ、2002年に「環境社会配慮確認のための国際協力銀行ガイドライン」が制定された。同ガイドラインの非自発的住民移転にかかる記載は、JICA環境社会配慮ガイドライン（2004）における「別紙1 相手国政府に求める環境社会配慮の要件」と同じ内容である。

## 1. 3 JICA環境社会配慮ガイドライン（2010）

旧JICA及び旧JBICの統合を受けて、上記1. 1及び1. 2のガイドラインを踏まえた統合の議論が行われ、外部有識者による委員会とパブリックコメント等を経て、新しい環境社会配慮ガイドラインが制定された（2010年4月）。同ガイドラインは2010年7月より施行され、施行日以降の要請案件を対象に適用が開始されている。改定に際しての重要事項は以下の通り。

### 1) 有償、無償、技プロに共通の手続きを設定

JICAが取り扱う全スキームを対象とした統合的なガイドライン

### 2) 情報公開の拡充

円借款事業で従来から実施してきたEIA報告書の公開に加えた、住民移転計画書等の環境レビューに先立つ公開（3.2 有償資金協力、無償資金協力（国際機関経由のものを除く）、技術協力プロジェクト）

### 3) 環境社会配慮助言委員会の関与拡大

事業実施段階のモニタリングを含む委員会の関与（2.7 環境社会配慮助言委員会による助言）

### 4) 環境社会配慮要件の強化

世銀のセーフガード・ポリシーと大きな乖離がないことを確認する要件（2.6 参照する法令と基準）

また、「別紙1 対象プロジェクトに求められる環境社会配慮」で、非自発的住民移転について以下のよ

うな記載がなされている。

#### 非自発的住民移転

1. 非自発的住民移転及び生計手段の喪失は、あらゆる方法を検討して回避に努めねばならない。このような検討を経ても回避が可能でない場合には、影響を最小化し、損失を補償するために、対象者との合意の上で実効性ある対策が講じられなければならない。
2. 非自発的住民移転及び生計手段の喪失の影響を受ける者に対しては、相手国等により、十分な補償及び支援が適切な時期に与えられなければならない。補償は、可能な限り再取得価格に基づき、事前に行われなければならない。相手国等は、移転住民が以前の生活水準や収入機会、生産水準において改善又は少なくとも回復できるように努めなければならない。これには、土地や金銭による（土地や資産の損失に対する）損失補償、持続可能な代替生計手段等の支援、移転に要する費用等の支援、移転先でのコミュニティ再建のための支援等が含まれる。
3. 非自発的住民移転及び生計手段の喪失に係る対策の立案、実施、モニタリングには、影響を受ける人々やコミュニティの適切な参加が促進されていなければならない。また、影響を受ける人々やコミュニティからの苦情に対する処理メカニズムが整備されていなければならない。
4. 大規模非自発的住民移転が発生するプロジェクトの場合には、住民移転計画が、作成、公開されていなければならない。住民移転計画の作成に当たり、事前に十分な情報が公開された上で、これに基づく影響を受ける人々やコミュニティとの協議が行われていなければならない。協議に際しては、影響を受ける人々が理解できる言語と様式による説明が行われていなければならない。住民移転計画には、世界銀行のセーフガード・ポリシーのOP4.12 Annex Aに規定される内容が含まれることが望ましい。

## 2. アジア開発銀行 (ADB)

ADBは、1991年に「環境配慮ガイドライン (Environmental considerations into ADB's business process)」を策定し、全てのADB事業における環境アセスメント及び環境レビューの正式な導入を図った。その後、セーフガードに関する政策指針について「非自発的住民移転 (1995)」を皮切りに、「先住民 (1998)」「環境 (2002)」の個別課題ごとに制定した。また、個別の政策指針を補足し普及する目的で、ハンドブックやガイドラインを出版している。さらに、ADB職員及び関係者を対象にした実施マニュアル (Operational Manual) が2002年から順次制定され、2006年に統一的な改定が実施された。

これらの個別政策に関して、2004年より改定及び統合に向けた作業が開始され、2009年にセーフガード・ポリシー (Safeguard Policy Statement, SPS) として、一つのパッケージで政策化された。SPS策定までの経緯を表-2.2に取りまとめる。

表-2.2 ADBのセーフガード・ポリシー策定経緯

年次	非自発的住民移転	先住民	環境
1995	Involuntary Resettlement Policy		
1998	Handbook on Resettlement	Policy on Indigenous Peoples	
2002	Operational Manual Bank Policies (BP), OM Section F2/BP		Environment Policy
2003		Operational Manual Bank Policies (BP), OM Section F3/BP	Environmental Assessment Guidelines
2004			Operational Manual Bank Policies (BP), OM Section F1/BP
2006	OM Section Fs/BP [Revised]	OM Section F3/BP [Revised]	OM Section F1/BP [Revised]
2009	Safeguard Policy Statement (SPS)		
2010	(1) Operational Manual Bank Policies (BP), OM Section F1/BP - Safeguard Policy Statement (2) Operational Manual Operational Procedures (OP), OM Section F1/OP - Safeguard Review Procedures		

### 3. 世界銀行 (WB)

世界銀行は、以下に示す二つの機関から構成される国際開発金融機関で、日本国はアメリカに次ぐ世界第二位の資本金拠出国（議決権シェア国）である。

(1) 国際復興開発銀行 (International Bank for Reconstruction and Development, IBRD)

市場金利に準じた貸付条件で途上国に融資

(2) 国際開発公開 (International Development Association, IDA)

低所得国（一人当たりGNP895ドル以下の国）を対象にした贈与的な融資

世界銀行は国際開発金融機関や各国ドナーの中でも、早い段階から環境社会配慮の概念を取り込んできた。とくに住民移転政策は、1980年代のナルマダ・ダム（インド）での問題を契機に議論が開始され、環境アセスメント (EA<sup>13</sup>) 実施指針 (Operational Directive 4.00)

1999年にODが、OP、BP、GPに分割。

さらに1999年には業務政策と業務手順の大幅な改革にあわせて業務指令であったODは、OP (Operational Policies=業務政策)、BP (Bank Procedures=銀行内部手続き)、GP (Good Practices=模範的声明) の三つの文書に再編されることとなった。

<sup>13</sup> 世銀は EIA (Environmental Impact Assessment)の代わり EA (Environmental Assessment) を用語として使用する

表-2.3 世界銀行セーフガード・ポリシーの概要<sup>14</sup>

番号	政策	年次	概要
OP/BP 4.01	環境影響評価 Environmental Assessment	1999	・投資事業の環境・社会的な健全性と持続可能性の担保 ・意思決定過程に環境・社会的な側面を統合する支援
OP/BP 4.04	自然生息地 Natural Habitat		事前生息地及びその機能の、保護、保全、維持、再生支援による、環境的に持続可能な開発の促進
OP 4.09	害虫管理 Pest Management		殺虫剤の使用に関する環境と健康へのリスクを、最小化して管理し、安全で効率的で、環境に親和的な害虫管理の促進と支援をすること
OP/BP 4.10	先住民族 Indigenous Peoples		先住民族の尊厳、人権、文化的固有性を完全に尊重し、 (a)文化的に融合可能な社会・経済的利益が享受され、 (b)開発過程を通じた負の影響を受けないように、事業の設計と実施を行うこと
OP/BP 4.11	有形文化資源 Physical Cultural Resources		有形文化資源の保全及び、その破壊や破損の回避を支援すること。有形文化資源には、考古学的、古生物学的、歴史的、建築学的、宗教的(墓地や埋葬地を含む)、その他文化的に重要な資源を含む。
OP/BP 4.12	非自発的住民移転 Involuntary Resettlement	2000	非自発的住民移転を回避あるいは最小化し、それが実施可能でない場合には、移転する人々の生計及び生活水準が移転前の水準以上になるように支援すること
OP/BP 4.36	森林 Forests		森林が持続可能な手法で貧困を削減する潜在能力を認識し、森林を持続可能な経済開発に効果的に統合し、地球環境サービスと森林の価値を保護すること
OP/BP 4.37	ダムの安全性 Safety of Dam		新規ダムの設計、建設及び既存ダムの改修、ならびに既存ダムの影響を受ける事業の実施において、質と安全を担保すること
OP/BP 7.50	国際水路にかかるプロジェクト Projects on International Waterway		世銀が融資するプロジェクトで国際水路への影響がある事業は、 ・世銀、借入国及び関係国の関係と、 ・国際水路の効率的な利用と保護 に影響を及ぼさないことを担保すること
OP/BP 7.60	紛争地域におけるプロジェクト Projects in Disputed Areas		紛争地域におけるプロジェクトでは、 ・世銀とメンバー国間の関係に影響を与えず、 ・世銀と近隣国間の関係に影響を与えず、 ・世銀も関係国もともに損害を与えない よう、可能な限り早い段階で取り扱いがなされることを担保すること

#### 4. 他の開発パートナー

カンボジアで援助を行う新興ドナー（中国、韓国、タイ、ベトナム等）には、セーフガード・ポリシーやガイドラインに相当する要求事項がないため、収用法や関係法令に基づく住民移転手続きが実施される。

カンボジアのインフラ事業に新興ドナー（中国、韓国、タイ、ベトナム）が進出しており、とくに中国の借款供与額は2006年以降群を抜いている。新興ドナーには、世銀、ADB、JICAのような環境社会配慮ガイドラインや非自発的住民移転の政策等がないため、カンボジア政府の責任の下に住民移転が実施される。ドナーの違いによる環境社会配慮や住民移転政策の齟齬は、住民移転サブデクリー等の関連法令の整備により解消されるべき将来的な課題である。

<sup>14</sup> Safeguard Policies - An Overview, Stepen F. Lintner, World Bank

(付属资料 1)

**Constitution (1993)**





**CONSTITUTION  
OF THE KINGDOM OF CAMBODIA**

Preamble

WE, THE PEOPLE OF CAMBODIA

Having known a grand civilization of a prosperous, powerful, and glorious nation whose prestige radiates like a diamond,

Having endured sufferings and destructions and having experienced a tragic decline in the course of the two decades,

Having awakened, stood up with a resolute determination to strengthen the national unity, to preserve and defend Cambodia's territory and its precious sovereignty and the prestige of Angkor civilization, and to restore Cambodia into an "Island of Peace" based on a multi-party liberal democratic regime guaranteeing human rights and the respect of law, and responsible for the destiny of the nation always evolving toward progress, development, prosperity, and glory,

WITH THIS RESOLUTE WILL

We inscribe the following as the Constitution of the Kingdom of Cambodia:

<a href="#">CHAPTER I:</a>	SOVEREIGNTY
<a href="#">CHAPTER II:</a>	THE KING
<a href="#">CHAPTER III:</a>	THE RIGHTS AND OBLIGATIONS OF KHMER CITIZENS
<a href="#">CHAPTER IV:</a>	ON POLICY
<a href="#">CHAPTER V:</a>	ECONOMY
<a href="#">CHAPTER VI:</a>	EDUCATION, CULTURE, SOCIAL AFFAIRS
<a href="#">CHAPTER VII:</a>	THE NATIONAL ASSEMBLY
<a href="#">CHAPTER VIII:</a>	THE SENATE
<a href="#">CHAPTER IX:</a>	THE ASSEMBLY AND THE SENATE
<a href="#">CHAPTER X:</a>	THE ROYAL GOVERNMENT
<a href="#">CHAPTER XI:</a>	THE JUDICIARY
<a href="#">CHAPTER XII:</a>	THE CONSTITUTIONAL COUNCIL
<a href="#">CHAPTER XIII:</a>	THE ADMINISTRATION
<a href="#">CHAPTER XIV:</a>	THE NATIONAL CONGRESS
<a href="#">CHAPTER XV:</a>	EFFECTS, REVISIONS AND AMENDMENTS OF THE CONSTITUTION
<a href="#">CHAPTER XVI:</a>	TRANSITIONAL PROVISIONS

**Article 1:**

Cambodia is a Kingdom with a King who shall rule according to the Constitution and to the principles of liberal democracy and pluralism.

The Kingdom of Cambodia shall be independent, sovereign, peaceful, permanently neutral and non-aligned country.

**Article 2:**

The territorial integrity of the Kingdom of Cambodia, shall absolutely not to be violated within its borders as defined in the 1/100,000 scale map made between the year 1933-1953 and

internationally recognized between the years 1963 - 1969.

**Article 3:**

The Kingdom of Cambodia is an indivisible state.

**Article 4:**

The motto of the Kingdom of Cambodia is: "Nation, Religion, King".

**Article 5:**

The official language and script is Khmer.

**Article 6:**

Phnom Penh is the capital of the Kingdom of Cambodia. The national flag, anthem and coat-of-arms shall be defined in Annexes I-II and III

**Article 7:**

The King of Cambodia shall reign but shall not govern.  
The King shall be the Head of State for life. The King shall be inviolable.

**Article 8:**

The King of Cambodia shall be a symbol of unity and eternity of the nation.  
The King shall be guarantor of the national independence, sovereignty, and territorial integrity of the Kingdom of Cambodia, the protector of rights and freedom for all citizens and the guarantor of international treaties.

**Article 9:**

The King shall assume the august role of arbitrator to ensure the faithful execution of public powers.

**Article 10:**

The Cambodian monarchy shall be an appointed regime.

**Article 11- New (As amended March 1999):**

In the case that the King cannot perform His normal duties as Head of State owing to His serious illness as certified by doctors chosen by the President of the Senate, the President of the Assembly and the Prime Minister the President of the Assembly and Senate shall perform the duties of Head of state as "Regent"

In the case of the President of the Senate cannot perform his duties as the acting Head of State replacing the King as "Regent" when he is ill seriously as provided in the above paragraph the President of Assembly shall take them over.

In the case as stated in the above paragraph, other dignitaries as following hierarchy can perform Acting Head of State as Regent:

- A. First Vice-President of the Senate
- B. First Vice-President of the Assembly
- C. Second Vice-President of the Senate
- D. Second Vice-President of the Assembly

**Article 12- New (As amended March 1999):**

In case of the death of the King, the President of the Assembly Senate shall take over the responsibility as Acting Head of State in the capacity of Regent of the Kingdom of Cambodia.

In the case that the President of the Senate cannot perform his duties of the acting Head of State as "Regent" in the place of the King on the death of the King the responsibilities of Head of State in the capacity of regent shall be exercised in conformity with the second and third paragraph of new Article 11.

**Article 13- New (As amended March 1999):**

Within a period of not more than seven days, the Royal Council of Throne shall choose the new King of the Kingdom of Cambodia.

The Royal Council of the Throne shall consist of:

- The President of the Senate
- The President of the Assembly
- The Prime Minister
- The Chiefs of the Order Mohanikay and Thammayut
- The First and Second Vice-President of the Senate
- The First and Second Vice-President of the Assembly

The organization and functioning of the Council of the Throne shall be determined by law.

**Article 14:**

The King of Cambodia shall be a member of the Royal family, of at least 30 years old, descending from the blood line of King Ang Duong, King Norodom or King Sisowath. Upon enthronement, the King shall take the oath of allegiance as stipulated in Annex IV.

**Article 15:**

The wife of the reigning King shall have the royal title of Queen of Cambodia.

**Article 16:** The Queen of the Kingdom of Cambodia shall not have the right to engage in politics, to assume the role of Head of State or Head of Government, or to assume other administrative or political roles.

The Queen of the Kingdom of Cambodia shall exercise activities that serve the social, humanitarian, religious interests, and shall assist the King with protocol and diplomatic functions.

**Article 17:**

The provision as stated in the first clause of Article 7, "the King of Cambodia shall reign but shall not govern", absolutely shall not be amended.

**Article 18- New (As amended March 1999):**

The King shall communicate with the Assembly by royal messages.

These royal messages shall not be subject to discussion by the Senate and the National Assembly.

**Article 19:**

The King shall appoint the Prime Minister and the Council of Ministers according to the procedures stipulated in Article 100.

**Article 20:**

The King shall grant an audience twice a month to the Prime Minister and the Council of Ministers to hear their reports on the State of the Nation.

**Article 21:**

Upon Proposals by the Council of Ministers, the King shall sign decrees (Kret) appointing, transferring or ending the mission of high civil and military officials, ambassadors and Envoys Extraordinary and Plenipotentiary.

Upon proposals by the Supreme Council of Magistracy, the King shall sign decrees (Kret) appointing, transferring or removing judges.

**Article 22- New (As amended March 1999):**

When the nation faces danger, the king shall make a proclamation to the people putting the country in a state of emergency after agreement with the Prime Minister, the president of Assembly and the president of the Senate.

**Article 23:**

The King is the Supreme Commander of the Royal Khmer Armed Forces. The Commander-in-Chief of the Royal Khmer Armed Forces shall be appointed to command the Armed Forces.

**Article 24- New (As amended March 1999):**

The King shall serve as Chairman of the Supreme Council of National defense to be established by law.

The King shall declare war after approval of the Assembly and the Senate.

**Article 25:**

The King shall receive letters of credentials from ambassador or envoys extraordinary and plenipotentiary of foreign countries accredited to the Kingdom of Cambodia.

**Article 26- New (As amended March 1999):** The King shall sign and ratify international treaties and conventions after a vote of approval by the National Assembly and the Senate.

**Article 27:**

The King shall have the right to grant partial or complete amnesty.

**Article 28- New (As amended March 1999):**

The King shall sign the law promulgating the Constitution; laws adopted by the National Assembly and laws completely reviewed by the Senate and shall sign the Royal decree presented by the Council of Ministers.

In the case that the King is serious illness and is hospitalized abroad, the King has the right to delegate the power of signing of the above laws and royal decrees to the Acting head of State through delegating writs.

**Article 29:**

The King shall establish and confer national medals proposed by the Council of Ministers. The King shall confer civil and military ranks as determined by law.

**Article 30- New (As amended March 1999):**

In the absence of the King, the President of the Assembly Senate shall assume the duties of acting Head of State. In the case that the President of the Senate cannot perform his duties as the acting Head of State replacing the King due to his absence, the responsibilities as the Acting Head of State shall be exercised in conformity with second and third paragraph of new Article 11.

**Article 31:**

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.

Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.

**Article 32:**

Every Khmer citizen shall have the right to life, personal freedom, and security. There shall be no capital punishment.

**Article 33:**

Khmer citizens shall not be deprived of their nationality, exiled or arrested and deported to any foreign country unless there is a mutual agreement on extradition.

Khmer citizens residing abroad enjoy the protection of the State.

The Khmer nationality shall be determined by a law.

**Article 34- New (As amended March 1999):**

Khmer citizens of either sex shall enjoy the right to vote and to stand as candidates for the election.

Khmer citizens of either sex at least eighteen years old have the right to vote.

Citizens of either sex at least twenty-five years old, have the right to stand as candidates for the election.

Citizens of either sex at least forty years old, have the right to stand as candidates for the election of senators.

Provisions restricting the right to vote and the right to stand as candidates of the election shall be determined by law.

**Article 35:**

Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation.

Any suggestions from the people shall be given full consideration by the grant of the State.

**Article 36:**

Khmer citizens of either sex shall enjoy the right to choose any employment according their ability and to the needs of the society.

Khmer citizens of either sex shall receive equal pay for equal work.

The work by housewives in the home shall have the same value as what they can receive when working outside the home.

Every Khmer citizen shall have the right to obtain social security and other social benefits as determined by law.

Khmer citizens of either sex shall have the right to form and to be member of trade unions.

The organization and conduct of trade unions shall be determined by law.

**Article 37:**

The right to strike and to non-violent demonstration shall be implemented in the framework of a law.

**Article 38:**

The law guarantees there shall be no physical abuse against any individual.

The law shall protect life, honor, and dignity of the citizens.

The prosecution, arrest, or detention of any person shall not be done except in accordance with the law.

Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to the law.

Confessions obtained by physical or mental force shall not be admissible as evidence of guilt.

Any case of doubt, it shall be resolved in favor of the accused.

The accused shall be considered innocent until the court has judged finally on the case.

Every citizen shall enjoy the right to defense through judicial recourse.

**Article 39:**

Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts.

**Article 40:**

Citizens' freedom to travel, far and near and legal settlement shall be respected.

Khmer citizens shall have the right to travel and settle abroad and return to the country.

The rights to privacy of residence, and to the secrecy of correspondence by mail, telegram, fax, telex and telephone shall be guaranteed.

Any search of the house, material and body shall be in accordance with the law.

**Article 41:**

Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security.

The regime of the media shall be determined by law.

**Article 42:**

Khmer Citizens shall have the right to establish associations and political parties. These rights shall be determined by law.

Khmer citizens may take part in mass organizations for mutual benefit to protect national achievement and social order.

**Article 43:**

Khmer citizens of either sex shall have the right to freedom of belief.

Freedom of religious belief and worship shall be guaranteed by the State on the condition that such freedom does not affect other religious beliefs or violate public order and security.

Buddhism shall be the religion of the State.

**Article 44:**

All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land.

Legal private ownership shall be protected by law.

The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation in advance.

**Article 45:**

All forms of discrimination against women shall be abolished.  
The exploitation of women in employment shall be prohibited.  
Men and women are equal in all fields especially with respect to marriage and family matters.  
Marriage shall be conducted according to conditions determined by law based on the principle of mutual consent between one husband and one wife.

**Article 46:**

The commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women shall be prohibited.  
A woman shall not lose her job because of pregnancy. Woman shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits.  
The state and society shall provide opportunities to women, especially to those living in rural areas without adequate social support, so they can get employment, medical care, and send their children to school, and to have decent living conditions.

**Article 47:**

Parents shall have the duty to take care of and educate their children to become good citizens.  
Children shall have the duty to take good care of their elderly mother and father according to Khmer traditions.

**Article 48:**

The State shall protect the rights of children as stipulated in the Convention on Children, in particular, the right to life, education, protection during wartime, and from economic or sexual exploitation.  
The State shall protect children from acts that are injurious to their educational opportunities, health and welfare.

**Article 49:**

Every Khmer citizen shall respect the Constitution and laws.  
All Khmer citizens shall have the duty to take part in the national reconstruction and to defend the homeland. The duty to defend the country shall be determined by law.

**Article 50:**

Khmer citizens of either sex shall respect the principles of national sovereignty, liberal multi-party democracy.  
Khmer citizens of either sex shall respect public and legally acquired private properties.

**Article 51- New (As amended March 1999):**

The Kingdom of Cambodia adopts a policy of Liberal Democracy and Pluralism.  
The Cambodian people are the masters of their own country.  
All power belongs to the people. The people exercise these powers through the National Assembly, The Senate, the Royal Government and the Judiciary.  
The legislative, executive, and judicial powers shall be separate.

**Article 52:**

The Royal Government of Cambodia shall protect the independence, sovereignty, territorial integrity of the Kingdom of Cambodia, adopt the policy of national reconciliation to insure national unity, and preserve the good national traditions of the country. The Royal Government of Cambodia shall preserve and protect the law and ensure public order and security. The State shall give priority to endeavors which improve the welfare and standard of

living of citizens.

**Article 53:**

The Kingdom of Cambodia adopts a policy of permanent neutrality and non-alignment. The Kingdom of Cambodia follows a policy of peaceful co-existence with its neighbors and with all other countries throughout the world.

The Kingdom of Cambodia shall not invade any country, nor interfere in any other country's internal affairs, directly or indirectly, and shall solve any problems peacefully with due respect for mutual interests.

The Kingdom of Cambodia shall not join in any military alliance or military pact which is incompatible with its policy of neutrality.

The Kingdom of Cambodia shall not permit any foreign military base on its territory and shall not have its own military base abroad, except within the framework of a United Nations request.

The Kingdom of Cambodia reserves the right to receive foreign assistance in military equipment, armaments, ammunitions, in training of its armed forces, and other assistance for self-defense and to maintain public order and security within its territory.

**Article 54:**

The manufacturing, use and storage of nuclear, chemical or biological weapons shall be absolutely prohibited.

**Article 55:**

Any treaty and agreement incompatible with the independence, sovereignty, territorial integrity, neutrality and national unity of the Kingdom of Cambodia shall be annulled.

**Article 56:**

The Kingdom of Cambodia shall adopt the market economy system.

The preparation and process of this economic system shall be determined by the law.

**Article 57:**

Tax collection shall be in accordance with the law. The national budget shall be determined by law.

Management of the monetary and financial system shall be defined by law.

**Article 58:**

State property notably comprises land, mineral resources, mountains, sea, underwater, continental shelf, coastline, airspace, islands, rivers, canals, streams, lakes, forests, natural resources, economic and cultural centers, bases for national defense and other facilities determined as State property.

The control, use and management of State properties shall be determined by law.

**Article 59:**

The State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological system, mines, energy, petrol and gas, rocks and sand, gems, forests and forestry products, wildlife, fish and aquatic resources.

**Article 60:**

Khmer citizens shall have the right to sell their product. The obligation to sell products to the State, or the temporary use of private or State properties shall be prohibited unless authorized



by law under special circumstances.

**Article 61:**

The State shall promote economic development in all sectors and remote areas, especially in agriculture, handicrafts, industry, with attention to policies of water, electricity, roads and means of transport, modern technology and a system of credit.

**Article 62:**

The State shall pay attention and help solve production matters, protect the price of products for farmers, crafters, and find marketplace for them to sell their products.

**Article 63:**

The State shall respect market management in order to guarantee a better standard of living for the people.

**Article 64:**

The State shall ban and severely punish those who import, manufacture sell illicit drugs, counterfeit and expired goods which affect the health and life of the consumers.

**Article 65:**

The State shall protect and upgrade citizens' rights to quality education at all levels and shall take necessary steps for quality education to reach all citizens.  
The State shall respect physical education and sports for the welfare of all Khmer citizens.

**Article 66:**

The state shall establish a comprehensive and standardized educational system throughout the country that shall guarantee the principles of educational freedom and quality to ensure that all citizens have equal opportunity to earn a living.

**Article 67:**

The State shall adopt an educational program according to the principle of modern pedagogy including technology and foreign languages.  
The State shall control public and private schools and classrooms at all levels.

**Article 68:**

The State shall provide free primary and secondary education to all citizens in public schools. Citizens shall receive education for at least 9 years.  
The State shall disseminate and develop the Pali schools and the Buddhist Institute.

**Article 69:**

The State shall preserve and promote national culture.  
The State shall Protect and promote the Khmer language as required.  
The State shall preserve ancient monuments and artifacts and restore historic sites.

**Article 70:**

Any offense affecting cultural artistic heritage shall carry a severe punishment.

**Article 71:**

The perimeter of the national heritage sites as well as heritage that has been classified as world heritage shall be considered neutral zones where there shall be no military activity.

**Article 72:**

The health of the people shall be guaranteed. The State shall give full consideration to disease prevention and medical treatment. Poor citizens shall receive free medical consultation in public hospitals, infirmaries and maternities.

The State shall establish infirmaries and maternities in rural areas.

**Article 73:**

The State shall give full consideration to children and mothers. The State shall establish nurseries, and help support women and children who have inadequate support.

**Article 74:**

The State shall assist the disabled and the families of combatants who sacrificed their lives for the nation.

**Article 75:**

The State shall establish a social security system for workers and employees.

**Article 76:**

The National Assembly consists of at least 120 members.

The deputies shall be elected by a free, universal, equal, direct and secret ballot.

The deputies may be re-elected.

Khmer citizens able to stand for election shall be the Khmer citizens of either sex, who have the right to vote, at least 25 years of age, and who have Khmer nationality at birth.

Preparation for the election, procedure and electoral process shall be determined by an Electoral Law.

**Article 77:**

The deputies in the National Assembly shall represent the entire Khmer people, not only Khmers from their constituencies.

Any imperative mandate shall be nullified.

**Article 78:**

The legislative term of the National Assembly shall be 5 years and terminates on the day when the new National Assembly convenes.

The National Assembly shall not be dissolved before the end of its term except when the Royal government is twice deposed within a period of twelve months. In this case, following a proposal from the Prime Minister and the approval of the Chairman of the National Assembly, the King shall dissolve the National Assembly.

The election of a new National Assembly shall be held no later than 60 days from the date of dissolution. During this period, the Royal government shall only be empowered to conduct routine business.

In time of war or other special circumstances where an election cannot be held, the National Assembly may extend its term for one year at a time, upon the request of the King.

Such an extension shall require at least a two-third vote of the entire National Assembly.

**Article 79:**

The National Assembly mandate shall be incompatible with the holding of any active public function and of any membership in other institutions provided for in the Constitution, except when the assembly members (s) is (are) required to serve in the Royal Government.

In this circumstance, the said assembly member (s) shall retain the usual assembly membership but shall not hold any position in the Permanent Standing Committee and in

other assembly commissions.

**Article 80:**

The deputies shall enjoy parliamentary immunity.

No assembly member shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his (her) duties.

The accusation, arrest, or detention of an assembly member shall be made only with the permission of the National Assembly or by the Standing Committee of the National Assembly between sessions, except in case of flagrant delicto. In that case, the competent authority shall immediately report to the National Assembly or to the Standing Committee for decision.

The decision made by the Standing Committee of the National Assembly shall be submitted to the National Assembly at its next session for approval by a 2/3 majority vote of the assembly members.

In any case, detention or prosecution of a deputy shall be suspended by a 3/4 majority vote of the National Assembly members.

**Article 81:**

The National Assembly shall have an autonomous budget to conduct its function.

The deputies shall have received remuneration.

**Article 82:**

The National Assembly shall hold its first session no later than sixty days after the election upon notice by the King.

Before taking office, the National Assembly shall decide on the validity of each member's mandate and vote separately to choose a Chairman, Vice-Chairmen and members of each Commission by a 2/3 majority vote.

All National Assembly members must take oath before taking office according to the text contained in Annex 5.

**Article 83:**

The National Assembly shall hold its ordinary session twice a year.

Each session shall last at least three months. If there is a proposal from the King or the Prime Minister or at least 1/3 of the National Assembly members, the National Assembly Standing Committee shall call an extraordinary session of the National Assembly.

In this case, the agenda with the conditions of the extraordinary session shall be disseminated to the population as well as the date of the meeting.

**Article 84:**

Between the National Assembly sessions, the National Assembly Standing Committee shall manage the work of the National Assembly.

The Permanent Standing Committee of the National Assembly consists of the Chairman of the National Assembly, the Vice-Chairmen, and the Chairmen of National Assembly Commissions.

**Article 85:**

The National Assembly sessions shall be held in the Royal Capital of Cambodia in the Assembly Hall, unless stipulated otherwise in the summons, due to special circumstances.

Except where so stipulated and unless held at the place and date as stipulated, any meeting of the National Assembly shall be considered as illegal and void.

**Article 86:**

If the country is in a state of emergency, the National Assembly shall meet every day continuously. The National Assembly has the right to terminate this state of emergency whenever the situation permits.

If the National Assembly is not able to meet because of circumstances such as the occupation by foreign forces the declaration of the state of emergency must be automatically extended. During the state of emergency, the National Assembly shall not be dissolved.

**Article 87:**

The Chairman of the National Assembly shall chair the assembly session; receive draft bills and resolutions adopted by the National Assembly, ensure the implementation of the Internal Rules of Procedure and manage the assembly relations with foreign countries.

If the Chairman is unable to perform his/her duties due to illness or to fulfill the function of Head of State as interim or as a Regent, or is on a mission abroad, a Vice-Chairman shall replace him.

In case of resignation or death of the Chairman or the Vice-Chairman (men), the National Assembly shall elect a new Chairman or Vice-Chairman (men).

**Article 88:**

The National Assembly sessions shall be held in public.

The National Assembly shall meet in closed session at the request of the Chairman or of at least 1/10 of its members, of the King or of the Prime Minister.

The National Assembly meeting shall be considered as valid provided there is a quorum of 7/10 of all members.

**Article 89:**

Upon the request by at least 1/10 of its members the National Assembly shall invite a high ranking official to clarify important special issues.

**Article 90- New (As amended March 1999):**

The National Assembly is the only an organ which has legislative power, and performs its duties as provided for in the constitution and laws.

This power shall not be transferable to any other organ or individual.

The National Assembly shall approve the national budget, State planning, loans, financial contracts, and the creation, modification and annulment of tax.

The National Assembly shall approve administration accounts.

The National Assembly shall adopt the law on the general amnesty.

The National Assembly shall adopt or repeal treaties and International Convention.

The National Assembly shall adopt the law on proclamation of war.

The adoption of the above clauses shall be done by the absolute majority of all members of the entire National Assembly membership.

The National Assembly shall pass a vote of confidence in the Royal Government by a two-third majority of all members of the entire National Assembly membership.

**Article 91- New (As amended March 1999):**

The members of the Senate, the members of the National Assembly and the Prime Minister have the right to initiate legislation.

Deputies have the right to propose amendments to the laws but these proposals cannot be accepted if they aim at reducing public income or increasing the burden on the people.

**Article 92:**

Laws adopted by the National Assembly which run counter to the principles of preserving

national independence, sovereignty, territorial integrity, and affect the political unity or the administration of the nation shall be annulled. The Constitutional Council is the only organ which shall decide upon this annulment.

**Article 93- New (As amended March 1999):**

Any law approved by the assembly and finally reviewed by the Senate and signed by the King for its promulgation shall go into effect in Phnom Penh ten days after its signing and throughout the country twenty days after its signing.

Laws that are stipulated as urgent shall take effect immediately throughout the country after promulgation.

Laws that are signed by the King for its promulgation shall be published in the official journal and announced it to the public throughout the country.

**Article 94:**

The National Assembly shall establish various necessary commissions. The organization and functioning of the National Assembly shall be determined by the Internal Rules of Procedure of the National Assembly.

**Article 95:**

In case of death, resignation, or dismissal of an assembly deputy at least 6 months before the end of the mandate, a replacement shall be appointed in accordance with the Internal Rules of Procedure of the National Assembly and the Electoral Law.

**Article 96:**

The deputies have the right to put a motion against the Royal Government. The motion shall be submitted in writing through the Chairman of the National Assembly.

The replies shall be given by one or several ministers depending on the matters related to the accountability of one or several ministers. If the case concerns the overall policy of the Royal Government, the Prime Minister shall reply in person.

The explanations by the ministers or by the Prime Minister shall be given verbally or in writing.

The explanations shall be provided within 7 days after the day when the question is received. In case of verbal reply, the Chairman of the National Assembly shall decide whether to hold an open debate or not. If there is no debate, the answer of the minister or the Prime Minister shall be considered final. If there is a debate, the questioner, other speakers, the ministers, or the Prime Minister may exchange views within the time-frame not exceeding one session.

The National Assembly shall establish one day each week for questions and answers. There shall be no vote during any session reserved for this purpose.

**Article 97:**

The National Assembly commissions may invite any minister to clarify certain issues under his/her field of responsibility.

**Article 98:** The National Assembly shall dismiss a member or members of the Royal Government or the whole Cabinet by the adoption of a motion of censure by 2/3 majority of the entire National Assembly.

The motion of censure shall be proposed to the National Assembly by at least 30 assembly members in order for the entire National Assembly to decide.

**Article 99- New (As amended March 1999):**

The Senate is a body that has legislative power and performs its duties as determined in the

constitution and law.

The Senate consists of members the number of which does not exceed half of all of the members of the Assembly.

Some Senators shall be nominated and some shall be elected universally.

A Senator can be re-nominated and reelected.

**Article 100- New (As amended March 1999):**

The king shall nominate two Senators.

The Assembly shall elect two Senators by majority Vote.

Others shall be universally elected.

**Article 101- New (As amended March 1999):**

The organization and operating procedures concerning the nomination and election of the Senators and the determination of the electors, election organization and electoral constituencies shall be determined by law.

**Article 102- New (As amended March 1999):**

The term for Senators is six years and this term shall expire upon replacement by new Senators.

When the election of the Senator cannot be conducted due to war and special circumstances, the Senate can continue its term year by year upon the proposal of the King.

The declaration of continuity of its term shall be decided by at least a two-third majority of all members of the senate.

In the circumstance described above the Senate shall assemble everyday. The Senate has the right to terminate the above situation with good reason.

If the Senate cannot assemble due to the invasion of foreign troops the proclamation of the state of emergency shall be continuously in effect automatically.

**Article 103- New (As amended March 1999):**

The mandate of senators shall be incompatible with the holding of any active public function, with the functions of members of the National Assembly, and of any membership in other institutions provided for in the constitution.

**Article 104- New (As amended March 1999):**

The Senator shall enjoy parliamentary immunity.

No Senator shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his or her duties.

The accusation, arrest, or detention of a senator shall be made only with the permission of the Senate or by the Standing Committee of the Senate between sessions, except in the case of flagrant delicto. In that case the competent authority shall immediately report to the senate or to the Standing Committee for decision.

The decision made by the Standing Committee of the Senate shall be submitted to the Senate at its session for approval by a two-thirds majority vote of all senators. In any case, detention or prosecution of a Senator shall be suspended by a three-quarters majority vote of all senators.

**Article 105- New (As amended March 1999):**

The Senate shall have an autonomous budget to conduct its functions.

Senators shall receive remuneration.

**Article 106- New (As amended March 1999):**

The Senate shall hold its first session no later than sixty days after the election upon notice by the King.

Before taking office, the Senate shall decide on the validity of each member's mandate and vote separately to choose a president, Vice president and its members of each commission by a two- third majority vote.

All Senators must take the oath before taking office according to the text contained in annex 7.

**Article 107- New (As amended March 1999):**

The Senate shall hold its ordinary sessions twice a year. Each session shall last at least three months. If there is a proposal from the king or the prime Minister, or at least one-third of the senate, the Senate standing Committee shall call an extraordinary session of the Senate.

**Article 108- New (As amended March 1999):**

Between the senate sessions, the Senate Standing Committee shall manage the work of the Senate.

The permanent Standing Committee of the Senate consists of the President of the Senate and the Vice- presidents and the Presidents of the senate commissions.

**Article 109- New (As amended March 1999):**

The Senate sessions shall be held in the Royal capital of Cambodia in the Senate Hall, unless stipulated otherwise in the summons, owing to special circumstances.

Except where so stipulated and unless held at the place and date as stipulated any meeting of the Senate shall be considered as illegal and void.

**Article 110- New (As amended March 1999):**

The president of the Senate shall chair the Senate sessions, receive draft bill and resolutions adopted by the senate, ensure the implementation of the internal rules of procedure and manage the senate's relations with foreign countries.

If the President is unable to perform his duties owing to illness or to fulfill the functions of Head of State as interim or as Regent, or is on a mission abroad, a Vice President shall replace him.

In case of resignation or death of the president or Vice Presidents, the Assembly shall elect a new President or Vice Presidents.

**Article 111- New (As amended March 1999):**

The Senate sessions shall be held in public.

The Senate shall meet in closed session at the request of the President or of at least one-tenths of its members, of the King or of the Prime Minister or the President of Assembly.

The Senate meeting shall be considered as valid provided there is a quorum of seven-tenths of all members.

The numbers of votes which are required for the Assembly approval as provided for in the constitution shall be applied to the Senate as well.

**Article 112- New (As amended March 1999):**

The Senate has the duties to coordinate the work between the Assembly and the Government.

**Article 113- New (As amended March 1999):**

The senate shall examine and give a recommendation to a draft or proposed law that was firstly adopted by the Assembly and other matters that the Assembly submitted within no more than one month. If it is an emergency case that duration shall be reduced to seven days. If the Senate approves, or disapproves but not within the time limit stipulated above, the law

adopted by the Assembly shall be promulgated.

If the Senate calls for the modification of the draft and the proposed law the Assembly shall take that draft and that proposed law into account a second time immediately. The Assembly shall examine and decide whether to eliminate all or some of the provisions or any terms that the Senate calls for so doing.

The exchange of the draft or the proposed law between the Senate and the Assembly shall be done only within one month. This duration shall be reduced to ten days if it is the case of national budget or finance and the duration shall be reduced to only two days if it is an urgent case.

If the Assembly withholds for longer than the time stipulated or delays while inspecting the law the principle duration for the Assembly and the Senate shall be extended so that the time duration for both are equal.

If the Senate rejects the draft or the proposed law this draft or proposed law cannot be reviewed a second time by the Assembly before one-month duration. This duration shall be reduced to fifteen days in the case of the national budget and finance cases and to four days if it is an urgent case.

In the examination of the draft and the proposed law a second time the Assembly shall adopt same by open vote with an absolute majority.

The draft or the proposed laws adopted by the above method shall then be sent for promulgation.

**Article 114- New (As amended March 1999):**

The Senate shall establish necessary commissions. The organizing and the functioning of the Senate shall be provided for in the Internal Rules of the Senate. These internal rules shall be approved by a two-third majority vote of all senators.

**Article 115- New (As amended March 1999):**

In the case of a senator dying, resigning, or breaching the rules of membership of the senate, within at least six months before expiration of the term, the vacancy shall be filled by a person appointed or elected according to the procedures stipulated in the internal rules of the Senate and the law on the election and nomination of senators.

**Article 116- New (As amended March 1999):**

In the special case, the Assembly and the Senate can assemble as the congress to resolve the important issues of the nation.

**Article 117- New (As amended March 1999):**

The national issues mentioned above in new article 116 and the organizing and functioning of the congress shall be determined by Law.

**Article 118- New (Previously Article 99):**

The Council of Ministers is the Royal Government of Cambodia.

The Council of Ministers shall be led by one Prime Minister assisted by Deputy Prime Ministers, and by State Ministers, Ministers, and State Secretaries as members.

**Article 119- New (Previously Article 100):**

At the recommendation of the Chairman and with the agreement of both the Vice-Chairmen of the National Assembly, the King shall designate a dignitary from among the representatives of the winning party to form the Royal Government. This designated representative along with other members chosen from the political parties or represented in the National Assembly, then present themselves to the National Assembly to ask for a vote of



confidence.

After the National Assembly has given its vote of confidence, the King shall issue a Royal Decree (Kret) appointing the entire Council of Ministers.

Before taking office, the Council of Ministers shall take an oath as stipulated in Annex 6.

**Article 120- New (Previously Article 101):**

The functions of members of the Royal Government shall be incompatible with professional activities in trade or industry and with the holding of any position in the public service.

**Article 121- New (Previously Article 102):**

Members of the Royal Government shall be collectively responsible to the National Assembly for the overall policy of the Royal Government.

Each member of the Royal Government shall be individually responsible to the Prime Minister and the National Assembly for his/her own conduct.

**Article 122- New (Previously Article 103):**

Members of the Royal Government shall not use the orders, written or verbal, of anyone as grounds to exonerate themselves from their responsibility.

**Article 123- New (Previously Article 104):**

The Council of Ministers shall meet every week in plenary session or in a working session.

The Prime Minister shall chair the plenary sessions.

The Prime Minister may assign a Deputy Prime Minister to preside over the working sessions.

Minutes of the Council of Minister's meetings shall be forwarded to the King for His information.

**Article 124- New (Previously Article 105):**

The Prime Minister shall have the right to delegate his power to a Deputy Prime Minister or to any member of the Royal Government.

**Article 125- New (Previously Article 106):**

If the post of Prime Minister is permanently vacant, a new Council of Ministers shall be appointed under the procedure stipulated in this Constitution. If the vacancy is temporary, an acting Prime Minister shall be provisionally appointed.

**Article 126- New (Previously Article 107):**

Each member of the Royal Government shall be punished for any crimes or misdemeanors that he/she has committed in the course of his/her duty.

In such cases and when he/she has committed serious offenses in the course of his/her duty, the Assembly shall decide to file charges against him/her with the competent court.

The assembly shall decide on such matters through a secret vote by a simple majority thereof.

**Article 127- New (Previously Article 108):**

The organization and functioning of the Council of Ministers shall be determined by law.

**Article 128- New (Previously Article 109):**

The Judicial power shall be an independent power

The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.

The Judiciary shall cover all lawsuits including administrative ones.

The authority of the Judiciary shall be granted to the Supreme Court and to the lower courts of

all sectors and levels.

**Article 129- New (Previously Article 110):**

Trials shall be conducted in the name of Khmer citizens in accordance with the legal procedures and laws in force.

Only judges shall have the right to adjudicate. A judge shall fulfill this duty with strict respect for the laws, wholeheartedly, and conscientiously.

**Article 130- New (Previously Article 111):**

Judicial power shall not be granted to the legislative or executive branches.

**Article 131- New (Previously Article 112):**

Only the Department of Public Prosecution shall have the right to file criminal suits.

**Article 132- New (Previously Article 113):**

The King shall be the guarantor of the independence of the Judiciary. The Supreme Council of the Magistracy shall assist the King in this matter.

**Article 133- New (Previously Article 114):**

Judges shall not be dismissed. The Supreme Council of the Magistracy shall take disciplinary actions against any delinquent judges.

**Article 134- New (Previously Article 115):**

The Supreme Council of the Magistracy shall be chaired by the King. The King may appoint a representative to chair the Supreme Council of the Magistracy.

The Supreme Council of the Magistracy shall be chaired by the King. The King may appoint a representative to chair the Supreme Council of the Magistracy.

The Supreme Council of the Magistracy shall make proposals to the King on the appointment of judges and prosecutors to all courts.

The Supreme Council of Magistracy shall meet under the chairmanship of the President of the Supreme Court or the General Prosecutor of the Supreme Court to decide on disciplinary actions against judges or prosecutors.

**Article 135- New (Previously Article 116):**

The statutes of judges and prosecutors and the functioning of the judiciary shall be defined in separate laws.

**Article 136- New (previously Article 117 and as amended March 1999):**

The Constitutional Council shall have the duty to safeguard respect of the constitution, interpret the Constitution and laws adopted by the National Assembly and reviewed completely by the Senate.

The Constitutional Council shall have the right to receive and decide on disputes concerning the election of deputies and the election of members of Senate.

**Article 137- New (Previously Article 118):**

The Constitutional Council shall consist of nine members with a nine-year mandate. 1/3 of the members of the Council shall be replaced every three years. 3 members shall be appointed by the King, 3 members by the National Assembly and 3 others by the Supreme Council of the Magistracy.

The Chairman shall be elected by the members of the Constitutional Council. He/she shall have a deciding vote in cases of equal vote.

**Article 138- New (Previously Article 119):**

Members of the Constitutional Council member shall be selected among the dignitaries with a higher-education degree in law, administration, diplomacy or economics and who have considerable work experience.

**Article 139- New (previously Article 120 and as amended March 1999):**

The function of member of the Constitutional Council shall be incompatible with the functions of members of Senate, deputies, members of the royal government, sitting Judges, any function in public service, President or Vice-president of a political party or President or Vice-president of a union.

**Article 140- New (previously Article 121 and as amended March 1999):**

The King, The Prime Minister, The President of the National Assembly, 1/10 of the members of National Assembly, The President of the Senate, or 1/4 of the members of Senate may send draft laws adopted by National Assembly to the Constitutional Council for review before promulgation.

Internal rules of the National Assembly, Internal rules of the Senate and other organizational laws shall be sent to the Constitutional Council for review before their promulgation. The constitutional council shall decide within thirty days (30) at the latest whether the above laws and internal rules of the National Assembly or the Senate are constitutional.

**Article 141- New (previously Article 122 and as amended March 1999):**

After promulgation of any law, the King, the President of the Senate, the President of the National Assembly, the Prime Minister, ¼ of members of Senate, 1/10 of members of National Assembly or the Courts may request the Constitutional Council to review the constitutionality of that law.

Khmer Citizens shall have the right to appeal against the constitutionality of any law through their representative or President of National Assembly or member of the Senate or President of the Senate as mentioned in the above articles.

**Article 142- New (Previously Article 123):**

Provisions in any article ruled by the Constitutional Council as unconstitutional shall not be promulgated or implemented.

The decision of the Constitutional Council is final.

**Article 143- New (Previously Article 124):**

The King shall consult with the Constitutional Council on all proposals to amend the Constitution.

**Article 144- New (Previously Article 125):**

An organic law shall specify the organization and operation of the Constitutional Council.

**Article 145- New (Previously Article 126):**

The territory of the Kingdom of Cambodia shall be divided into provinces and municipalities. Provinces shall be divided into districts (srok) and districts into communes (khum). Municipalities shall be divided into Khan and Khan into Sangkat.

**Article 146- New (Previously Article 127):**

Provinces, municipalities, districts, khan, khum and sangkat shall be governed in accordance with organic law.

**Article 147- New (Previously Article 128):**

The National Congress shall enable the people to be directly informed on various matters of national interests and to raise issues and requests for the State authority to solve.  
Khmer citizens of both sexes shall have the right to participate in the National Congress.

**Article 148- New (Previously Article 129):**

The National Congress shall meet once a year in early December at the convocation of the Prime Minister. It shall proceed under the chairmanship of the King.

**Article 149- New (Previously Article 130):**

The National Congress adopts recommendations the Senate the National Assembly and to the Executive branch for reflection.  
The organization and operation of the National Congress should be determined by law.

**Article 150- New (Previously Article 131):**

This Constitution shall be the Supreme law of the Kingdom of Cambodia.  
Laws and decisions by the State institutions shall have to be in strict conformity with the Constitution.

**Article 151- New (Previously Article 132):**

The initiative to review or to amend the Constitution shall be the prerogative of the King, the Prime Minister, the Chairman of the National Assembly at the suggestion of 1/4 of all the assembly members.  
Revision or amendments shall be enacted by a Constitutional law passed by the National Assembly with a 2/3 majority vote.

**Article 152- New (Previously Article 133):**

Revisions or amendments shall be prohibited when the country is in a state of emergency, as outlined in Article 86.

**Article 153- New (Previously Article 134):**

Revision or amendment affecting the system of liberal and pluralistic democracy and the regime of Constitutional Monarchy shall be prohibited.

**Article 154- New (Previously Article 135):**

This Constitution, after its adoption, shall be declared in full force immediately by the King of Cambodia.

**Article 155- New (Previously Article 136):**

After the entry into force of this Constitution, the Constituent Assembly shall become the National Assembly.  
The Internal Rules of Procedure of the National Assembly shall come into force after adoption by the National Assembly.  
In the case where the National Assembly is not yet functional, the Chairman, the First and Second Vice-Chairmen of the Constituent Assembly shall participate in the discharge of duties in the Council of the Throne if so required by the situation in the country.

**Article 156- New (Previously Article 137 and as amended March 1999):**

After this Constitution takes effect, the King shall be selected in accordance with conditions stipulated in articles 13(New) and 14.

**Article 157- New (Previously Article 138 and as amended March 1999):**

After this constitution takes effect, and during the first legislature, the King of the Kingdom of Cambodia shall appoint a First Prime-Minister and a Second Prime Minister to form the Royal Government after securing the consent of the President and the two Vice Presidents of the Assembly.

The Co-Presidents existing before the adoption of this Constitution shall participate as members of the Committee and in the Throne Council as stipulated in articles 11 and 13 above.

The first term of the Senate shall be 5 years and shall be ended after the new Senate taking over the office.

For the first term of the Senate:

The total number of members shall be sixty-one.

The King shall appoint two members including the President, the first Vice President, the second Vice-President of the Senate.

Other members of the Senate shall be nominated by the King upon proposal by the President of the Senate and President of National Assembly from among members of political parties which have seats in the National Assembly.

The joint meeting between the National Assembly and the Senate shall be conducted by both Presidents of these institutions.

**Article 158- New (Previously Article 139):**

Laws and standard documents in Cambodia that safeguard State properties, rights, freedom and legal private properties and in conformity with the national interests, shall continue to be effective until altered or abrogated by new texts, except those provisions that are contrary to the spirit of this Constitution.

This Constitution was adopted by the Constitutional Assembly in Phnom Penh on 21 September 1993 at its 2nd plenary session.

Phnom Penh, 21 September, 1993.  
The President,

Signed: **SON SAN**

This Constitutional law was adopted by the National Assembly of the Kingdom of Cambodia on the 4th March, 1999 in its 2nd plenary meeting.

Phnom Penh, 6 March 1999  
National Assembly President

**Norodom Ranariddh**

Sumber : <http://www.cambodia.gov.kh/unisql1/egov/english/organ.constitution.html>  
(Thursday, 31 Juli 2008, 14:50)



**(付属资料 2)**

**Land Law (2001)**





# LAND LAW 2001

AS AMENDED BY

**THE LAW ON THE  
IMPLEMENTATION OF  
THE CIVIL CODE**

(IN FORCE AND EFFECT AS OF  
DECEMBER 20, 2011)

**NOTICE**

This unofficial translation was prepared by the Ministry of Land Management, Urban Planning and Construction with the support of the World Bank, ADB TA 3755-CAM, GTZ and Finnmap. We are in the process of reviewing and improving this translation. The Ministry kindly requests your comments and suggestions. Please send them in writing to:

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Updated revisions will be made available on the Ministry's web page

[www.mlmupc.gov.kh](http://www.mlmupc.gov.kh)

NS/RKM/0801/14

*PREAH REACH KRAM*

*We, Preahbath Samdech Preah Norodom Sihanouk*

*Reach Harivong Uphato Suceat Visothipong Akamohaborasrat*

*Nikarosdom Thammik Mohareachcheathireach Boromaneat*

*Boromabopit Preah Chau Krong Kampuchea Thipdey*

*Referring to the Constitution of the Kingdom of Cambodia*

*Referring to the Royal Decree No NS/RKT/1198/72 of November 30, 1998 on the Formation of the Kingdom of Cambodia,*

*Referring to the Preah Reach Kram No 02/NS/94 of July 20, 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers,*

*Referring to Preah Reach Kram No NS/RKM/0699/09 of September 23, 1999 on the Establishment of the Ministry of Land Management, Urban Planning and Construction,*

*Referring to the proposal of the Prime Minister of the Kingdom of Cambodia.*

*It is Hereby Promulgated*

*The land Law which was passed by the National Assembly on July 20, 2001 during the sixth session of its second legislature and was adopted completely on the form and its legal substances by the Senate on August 13, 2001 during the fifth session of its first legislature the whole meaning of which shall be as follows:*

## General Provisions

*Editor's notes:* Definitions of English language words taken from Webster's Third New International Dictionary of the English Language, unabridged, Merriam-Webster, USA (1993), after this, Webster's International Dictionary.

Legal definitions taken from Black's Law Dictionary.

### Article 1:

This law has the objective to determine the regime of ownership for immovable properties in the Kingdom of Cambodia for the purpose of guaranteeing the rights of ownership and other rights related to immovable property, according to the provisions of the 1993 Constitution of the Kingdom of Cambodia.

### Article 2:

Immovable property within the meaning of this law includes immovable property by nature, immovable property by purpose and immovable property by law:

Immovable properties by nature means all natural grounds such as forest land, cleared land, land that is cultivated, fallow or uncultivated, land submerged by stagnant or running waters and constructions or improvements firmly affixed to a specific place created by man and not likely to be moved;

Immovable property by purpose means things fixed to the ground or incorporated into the constructions and which cannot be separated there from without damaging them or altering them, such as trees, decorative attachments, as well . .

Immovable property by law means all rights *in rem* over immovable and movable properties that are defined by law as immovable property.

#### *Translation notes:*

**Point 1:** This translation uses the word “construction” for the Khmer term [ ], meaning something that has been built, or structures.

The Khmer term [ ] literally translates “something made and firmly affixed to a specific place created by man and not likely to be moved.” This translation uses the term “improvement,” which means “a permanent addition to or betterment of real property that enhances its capital value and is designed to make the property more useful or valuable as distinguished from ordinary repairs.” Webster's International Dictionary.

**Point 2:** The common English term for “immovable property by purpose” is “fixtures.”

### Article 3

All persons shall respect the property of the State and legally acquired private property.

The management of the cadastral administration of immovable property belonging to the State and the competence to issue titles related to immovable property throughout the Kingdom of Cambodia are under the authority of the Ministry of Land Management, Urban Planning and Construction.

The regulations and procedures for the administration of State immovable properties will be determined by sub-decree.

*Translation note:* The word “persons” used in the first sentence is based on the Khmer word [ ], which includes natural and legal persons. Compare with the terms used in article 9.

*Explanatory note:* This article is based on article 50, paragraph 2 of the Constitution of the Kingdom of Cambodia.

## **TITLE I: PRIVATE AND PUBLIC OWNERSHIP**

*Explanatory note:* The words “ownership” and “property” can mean the same thing in English – the exclusive right to own, possess and dispose of something. The word “property” also means the thing or object that a person owns. In this translation, the word “ownership” is used for the Khmer word [ ] to mean the right to own, possess or dispose, and the word “property” is used for the Khmer term [ ] to mean the object (land, structures, etc.)

### **Chapter 1 – Principles of Ownership**

#### **Article 4**

The right of ownership, recognized by Article 44 of the 1993 Constitution, applies to all immovable properties within the Kingdom of Cambodia in accordance with the conditions or set forth by this law.

#### **Article 5**

No person may be deprived of his ownership, unless it is in the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and only after the payment of just and equitable compensation.

*Translation note:* The word “persons” used in the first sentence is based on the Khmer word [ ], which includes natural and legal persons. Compare with the terms used in article 9.

#### **Article 6 – amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

Only legal possession can lead to ownership.

The State may also provide to natural persons or legal entities of Khmer nationality ownership over immovable property belonging to the State within the strict limits set forth in this law.

## **Article 7**

Any regime of ownership of immovable property prior to 1979 shall not be recognized.

## **Article 8**

Only natural persons or legal entities of Khmer nationality have the right to ownership of land in the Kingdom of Cambodia.

Thus, the following persons or entities may be owners of land in Cambodia: Cambodian citizens, public territorial collectives, public institutions, Cambodian communities or associations, public enterprises, Cambodian civil or commercial enterprises and any Cambodian organization which is recognized by law as a legal entity.

A foreigner who falsifies national identity to become an owner of land in Cambodia shall be punished as determined under article 251 of this law. Any property bought under these circumstances will be seized as State property without compensation from the State.

*Explanatory notes:* This article refers to the ownership of “land,” as distinguished from other types of “immovable property.”

## **Article 9**

An enterprise registered in Cambodia, in respect of which 51% or more of the shares are held by natural persons of Cambodian nationality or by Cambodian legal entities recognized pursuant to the laws of Cambodia, may be the owner of land. Only percentages stipulated in the articles of incorporation are taken into account. Any private agreement signed by a shareholder that is contrary to this article is null and void.

If percentages stipulated in the articles of incorporation are changed in a way that it [the enterprise] ceases to be Cambodian, the enterprise has the obligation to amend the articles of incorporation to comply with the actual circumstances and shall inform to the competent institutions of such amendment according to the laws in force.

*Explanatory notes:* The phrase “articles of incorporation” refers to the written agreement that sets out the purposes and other terms and conditions of a business enterprise or corporation. Some jurisdictions use the phrase “statutes.” The phrase “articles of incorporation” is always used in the plural, and it should not be confused with the word “article” used in the last sentence of paragraph 1.

## **Article 10 - amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

Ownership by a group of persons exercising their prerogatives through a legal way regulated for such ownership is collective ownership.

Ownership by several persons exercising exclusive rights over certain parts of the property, and [where] the other parts are subject to legal rules or contractual agreement, is co-ownership.

Each type of ownership shall be determined by specific provisions concerning such ownership.

### **Article 11**

The legal regime for ownership of immovable property varies in accordance with the requirements of the Cambodian society, such as agricultural land, forests, waterways, lakes, reservoirs or expanses of water, seashores, riverbanks, urban immovable property, and land for construction of industrial development zones.

Specific laws shall supplement the provisions of this law or shall provide exemptions to this law taking into account socio-economic needs, land management and urban planning.

Regulations may, in compliance with legislative provisions, stipulate the details of these various property regimes.

## **Chapter 2 – Public Ownership**

### **Article 12**

The State is the owner of the properties in the territory of the Kingdom of Cambodia enumerated in Article 58 of the 1993 Constitution and of all properties that are escheat, or that are voluntarily given to the State by their owners, that have not been the subject of due and proper private appropriation or that are not presently being privately occupied in accordance with the provisions of Chapter 4 of this law.

### **Article 13**

Besides the State, public territorial collectives, public institutions and any public legal persons or entities recognized as such by public law may be owners of immovable property, within the conditions determined by this chapter.

### **Article 14**

Some of this property belonging to the State or to public territorial collectives, subjected to a special legal regime, is public property belonging to public legal entities.

Other property is managed as private property and may be the subject of transaction is private property belonging public legal entities.

## **Article 15**

The following property falls within the public property of the State and public legal entities:

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:

Any property that is specially developed for general use, such as quays, harbors, railways, railway stations and airports;

Any property that is made available, either in its natural state or after development, for public use, such as roads, tracks, oxcart ways, pathways, gardens and public parks, and reserved land;

Any property that is allocated to render a public service, such as public schools or educational institutions, administrative buildings and all public hospitals;

Any property that constitutes a natural reserve protected by the law;

Archeological, cultural and historical patrimonies;

Immovable properties, being royal properties that are not the private properties of the royal family. The reigning King manages royal immovable properties.

**Translation note:** The phrase [ ] has been translated as “floatable.” The literal translation of the Khmer term is “accessible by ship or raft.” The common meaning of the English term “floatable” is “a waterway suitable for the transport of floating objects.” Webster's Third New International Dictionary.

## **Article 16**

State public property is inalienable and ownership of those properties is not subject to prescription.

State public properties cannot be acquired by the special acquisition provisions of Chapter 4 of this law.

State public property may, however, be the subject of authorizations to occupy or use that are temporary, precarious and revocable in the case the various fee/tax obligations are not complied with except as permitted in Chapter 3 of this law. Such authorizations cannot be transformed into ownership or rights *in rem* for the benefit of the holder.

When State public properties lose their public interest use, they can be listed as private properties of the State by law on transferring of state public property to state private property.

**Translation note:** The word “precarious” in paragraph 3 is based on the French, and is used in the same sense as article 43, to mean the right to use or occupy the land can be revoked.

## **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 property 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 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.

### **Article 18**

The following are null and void and cannot be made legal in any form whatsoever:

any entering into possession of public properties of the State and public legal entities and any transformation of possession of private properties of the State into ownership rights that was not made pursuant to the legal formalities and procedures that had been stipulated prior to that time, irrespective of the date of the creation of possession or transformation;

any transformation of a land concession, into a right of ownership, regardless of whether the transformation existed before this law came into effect, except concessions that are in response to social purposes;

any land concession which fails to comply with the provisions of Chapter 5;

any entering into possession of properties in the private property of the State, through any means, that occurs after this law comes into effect.

*Translation note:* The term “formalities” in point one is based on the Khmer term [lixitbTdæan] [likhet botthan], which means literally, document, standard. One accepted meaning for this term is “document containing standards.”

### **Article 19**

Persons whose title or factual circumstances fall within the scope of article 18 of this law shall not have the right to claim compensation or reimbursement for expenses paid for the maintenance or management of immovable property that was illegally acquired.



Any illegal and intentional or fraudulent acquisition of public properties of the State or of public legal entities shall be penalized pursuant to article 259 of this law.

The penalties shall be doubled where any acquisition of land from the public properties causes damage or delay to works undertaken in the general interest, in particular any acquisition of roadway reserves.

In all cases, if an offender does not vacate his illegal acquisition within the time limit set by the competent authority, the authority shall begin proceedings to evict the offender from the land.

*Explanatory note:* The roadway reserves referred in the third paragraph are defined in Declaration of the Council of Ministers No. 6 on the eradication of anarchy related to encroachment on occupied land, dated 2 September 1999, paragraph 8.

## **Chapter 3 – Collective Ownership**

### **Part 1: Monastery Immovable Property**

#### **Article 20**

Immovable properties of land and structures existing within the premises of Buddhist monasteries are a patrimony allocated in perpetuity to the Buddhist religion and are available to its followers, under the care of the Pagoda Committee.

#### **Article 21**

Monastery immovable property cannot be sold, exchanged or donated and is not subject to prescription.

The protection of this property shall be ensured by a representative of the pagoda committee. Monastery immovable property may be rented or sharecropped on condition that the income from such rental or sharecropping shall be used only for religious affairs.

Procedures to select the pagoda committee and its representatives to protect the pagoda's interest shall be determined by a *Prakas* of the Ministry of Cults and Religious Affairs.

#### **Article 22**

Religious places and properties of other religious beliefs shall not be subject to the regime provided by Article 20 and 21 of this law. Those properties shall be managed by an association of persons of these religions created under the provisions of law.

## **Part 2: Immovable Property of Indigenous Communities**

*Translation note:* The literal translation of the Khmer is “original ethnic minorities.”

### **Article 23**

An indigenous community is a group of people who reside in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.

Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.

### **Article 24**

An individual who meets the ethnic, cultural and social criteria of an indigenous community, is recognized as a group member by the majority of such group, and who accepts the unity and subordination leading to acceptance into the community shall be considered to be a member of the indigenous community and is eligible to have the benefit of the rights, guarantees and protections provided by this law.

### **Article 25**

The lands of indigenous communities are those lands where the said communities have established their residences and where they carry out traditional agriculture.

The lands of indigenous communities include not only lands actually cultivated but also includes reserved necessary for the shifting of cultivation which is required by the agricultural methods they currently practice and which are recognized by the administrative authorities.

The measurement and demarcation of boundaries of immovable properties of indigenous communities shall be determined according to the factual situation as asserted by the communities, in agreement with their neighbors, and as prescribed by procedures in Title VI of this law and relevant sub-decrees.

### **Article 26**

Ownership of the immovable properties described in Article 25 is granted by the State to the indigenous communities as collective ownership. This collective ownership includes all of the rights and protections of ownership as are enjoyed by private owners. But the community does not have the right to dispose of any collective ownership that is State public property to any person or group.

The exercise of all ownership rights related to immovable properties of a community and the specific conditions of the land use shall be subject to the responsibility of the traditional authorities and mechanisms for decision-making of the community, according

to their customs, and shall be subject to the laws of general enforcement related to immovable properties, such as the law on environmental protection.

The provisions of this article are not an obstacle to the undertaking of works done by the State that are required by the national interests or a national emergency need.

#### **Article 27**

For the purposes of facilitating the cultural, economic and social evolution of members of indigenous communities and in order to allow such members to freely leave the group or to be relieved from its constraints, the right of individual ownership of an adequate share of land used by the community may be transferred to them.

Immovable property that is subject to such private individual ownership cannot fall under the general definition of public properties of the State.

#### **Article 28**

No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community.

## **TITLE II – ACQUISITION OF OWNERSHIP**

### **Chapter 4 – Reconstitution of ownership over immovable property ownership by extraordinary acquisitive possession**

#### **Article 29**

In the scope of reconstituting ownership over immovable property in Cambodia after the period of crisis from 1975 to 1979, and with no subordination to the general rules of prescription related to ownership of immovable property, on an exceptional basis, possession of immovable property which was recognized since 1989 may constitute a right *in rem* over immovable property and may lead to the acquisition of ownership by the holder of the property, in accordance with the conditions set by this law

Any beginning of occupation for possession shall cease when this law comes into effect.

### **Article 30**

Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership.

In case the granting of a definitive title to ownership is subject to an opposition, the claimant has to prove that he himself fulfills the conditions of peaceful, uncontested possession for no less than five years over the contested immovable property or to prove that he purchased the immovable property from the original possessor or his legal beneficiary or from the person to whom the ownership was transferred, or from their successors.

### **Article 31**

Any person who had been enjoying possession before this law came into force may be authorized by the competent authority, if such person fulfills all requirements to become an owner of the property, to extend his possession until he attains the legally prescribed period of five years, after which he will obtain a definitive title of ownership. The authorization to extend for the sufficient period of time cannot be denied by the competent authority if the possession is peaceful and uncontested.

A competent authority that improperly refuses an authorization to extend the time is personally liable.

The improper recognition by competent authority of a possession that is not in accordance with the legal requirements is considered null and void. The authority that has given the abusive recognition shall be personally liable before the law.

*Translation note:* The terms “improperly” and “improper” in this article are based on the French equivalents of “abusively” and “abusive.” The terms are used to convey the meaning of actions that constitute an abuse of authority.

### **Article 32**

Immovable property cannot become the ownership of the occupant under this law in a case where the possessor does not fulfill the conditions of the law because of his status of speculative possessor or because of his behavior as a possessor who hides himself or possessor by force.

Such immovable property will revert to the State and no person may any longer enter in its possession for acquisition of ownership under this chapter.

### **Article 33**

If the immovable property is taken violently or by abuse of power of the authorities, the property shall revert to the State and it cannot be the subject of any new possession if there is no claim from the lawful possessor of the immovable property of which he was dispossessed. The claim is barred at the end of 3 years from the date of proclamation of dispossession by the State.

**Explanatory note:** When property is taken by violence or by an abuse of power by authorities, the property reverts to the State. This article assumes that this reversion takes place after the State issues a proclamation that takes away the possession of the wrongful takers -- that is, a proclamation of dispossession. The property becomes the property of the State unless the lawful possessor files a claim asserting that he was violently or improperly dispossessed of the property. This claim must be filed within 3 years after the State issues the proclamation to dispossess the wrongful takers.

#### **Article 34**

After this law comes into force, any new occupant without title to an immovable property belonging to public bodies or private persons shall be considered as an illegal occupant and shall be subject to the penalties provided in Article 259 of this law.

#### **Article 35**

Only the competent authorities may, on behalf of the State and public legal entities, force occupants without title or insufficient titles to vacate the immovable property.

Individuals or authorities not acting on behalf of the State or public legal entities are not competent to remove forcibly a peaceful occupant holding valid title. Removal can only be made by court's order upon the claim of the person who claims the property.

Courts must verify the form, origin, date and conditions of the title presented. They may not, however, refuse to order the removal of an occupant in favor of a person who presents a valid and complete cadastral title.

#### **Article 36**

If the eviction ordered by a court is likely to give rise to instability or to have serious social repercussions, the competent authorities may request a temporary suspension of the execution of the order.

#### **Article 37**

The acquisition of ownership of immovable property through possession may only be obtained for the benefit of persons who have occupied the immovable property in compliance with the conditions of this law. The acquisition cannot be made for the benefit of a fraudulent possessor.

#### **Article 38**

In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, notorious to the public, continuous and in good faith.

The possessor shall occupy the land unambiguously means that, whether it is exercised by himself or by somebody else on his behalf, the possessor has to possess in his capacity as exclusive possessor acting on purpose for himself but not on the basis of some other rights. If the real possessor remains hidden behind an ostensible possessor, he cannot claim a title of possession allowing acquisition of ownership. His possession is null and void.

The possessor shall occupy the land and non-violently means that any possession originated through violence is not considered conform to the law. However, if violence is used against third parties that try to get the immovable property without right to do it, such violence does not interfere on the possession initially peacefully acquired.

The possessor shall occupy the land notoriously to the public means that the possessor has to possess without hiding himself to those who could want to contest his rights on the immovable property and are not able to see him or to determinate who he was.

The possessor shall occupy the land continuously means that the possessor has to act in a normal expected regular way during the required time to claim acquisition of ownership. The fact that occupation is interrupted for short periods of time or that the land is left uncultivated to recover fertility does not constitute an obstacle to acquisition of ownership.

The possessor shall occupy the land in good faith means that the possessor is not aware of any possible rights of third parties over the property that the possessor has been possessing.

#### **Article 39**

While waiting for the possession to be transformed into full ownership, possession in compliance with this law constitutes a right *in rem* over the immovable property. Such property may be the subject of exchange, transfers of rights and transactions.

#### **Article 40**

While waiting for the reconstitution of the cadastral plan and land register, the competent authorities shall continue to issue titles of possession to the immovable property.

The title is evidence of possession but is not in itself a title of ownership and is not indisputable. [lixit]

The titles of possession shall only constitute definitive and indisputable title of ownership of the property in the absence of any dispute as to the ownership of the property at the time the land register is created.

In case of a disputed claim, the determination of the lawful possessor of the immovable property shall be based on the additional investigation of all relevant evidence. A title of possession to an immovable property is one kind of evidence but is not in itself determinative.

**Translation notes:** In paragraph 2, the term “indisputable” is used for the Khmer term [lixit]. This term can refer to a document or act that is official, the validity of which cannot be challenged.

**Explanatory notes:** The “land register” referred to in this article is created at the time of systematic registration under article 229. In paragraph 3, definitive and indisputable title can be obtained only at the time the land register is created (and then, only in the absence of a dispute).

#### **Article 41**

The issuance of a title of possession to immovable property, which cannot be privately appropriated or which is not possessed in accordance with the law, is prohibited.

#### **Article 42**

Notwithstanding the foregoing, any person who, due to ignorance or negligence, failed to register his possession has the right to the protections of Article 29, Article 30, and Article 31 of this law.

#### **Article 43**

In no case can the public property of the State be the subject of acquisition of ownership.

The situation of an occupant of State public property remains precarious and illegal if such occupation was not authorized in the manner determined by this law.

An illegal occupant shall be forced to vacate the premises immediately and shall be punished in accordance with Article 259 of this law.

An illegal occupant is not entitled to any indemnity for any works and improvements carried out on the immovable property.

*Translation note:* The word “precarious” in paragraph 2 is based on the French, and is used in the same sense as article 16, to mean the right to use or occupy the land can be revoked.

#### **Article 44**

A title of possession to immovable property, which is the public property of the state or public legal entities, issued by the competent authorities to a private person is null and void.

Any official who issues such title shall be liable under civil and criminal codes. Any authority that is aware of such illegality and fails to take an action shall be considered an accomplice and is liable to the same penalties as the person who commits the offence.

#### **Article 45**

If the competent authorities refuse to issue a title of possession to immovable property, the holder of the immovable property may file a complaint with the Ministry of Land Management, Urban Planning and Construction.

#### **Article 46**

The issuance of a title of possession to immovable property by the competent authorities to any person other than the real possessor occupying the land, constitutes an offense and shall be subject to the penalties specified in Article 261 of this law.

#### **Article 47**

Any dispute over immovable property between possessors shall be submitted for investigation and resolution under the established procedures. The results of the investigation shall be submitted to the Cadastral Commission established at the Ministry of Land Management, Urban Planning and Construction. This Commission shall make a decision on the dispute. In case of dissatisfaction with the result, the disputants can file complaint to the court. The organization and functioning of this Commission shall be determined by sub-decree.

## **Chapter 5 –Land Concessions**

#### **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.

*Translation note:* The term “mining concession” is based on the Khmer words that mean “pit and quarry.” The Khmer term fishing “licenses” has been translated to fishing “concessions.”

#### **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.

*Translation note:* The phrase “provisions of public order” is based on the French, and refers to provisions that are mandatory and may not be derogated in any way. Government officials and courts may not disregard public order provisions.

## **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.

## **Chapter 6 – Means of Acquisition of Ownership** (amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011)

**Article 63 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

### **Part 1 – Acquisition through Sale of Immovable Property**

**Article 64 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 65 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 66 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 67 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 68 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 69 – amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

A contract of sale of immovable property shall be registered only when all parties have proven by evidence that all taxes on the subject property have been paid.

## **Part 2 – Acquisition by Exchange of Immovable Properties**

**Article 70 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

## **Part 3 – Acquisition by Succession**

**Article 71 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 72**

In the case of succession, the necessary duration of possession of an immovable property for the acquisition of full ownership, as provided by Article 30 and Article 31 of the present law, shall be calculated from the time of entry into possession by the deceased.

**Article 73**

Immovable property that has actually been possessed only and has not been registered or recorded by a governmental certificate, but was legally occupied in accordance with the legal requirements, may transferred by succession.

**Article 74**

When a property was possessed without any title and is transferred by way of succession, the successor who is the new possessor of the property may continue to manage it and benefit from protection as long as he meets all other requirements of the law.

In such case, the competent authorities or any other persons may not use the deceased's possession as a de facto possessor or use the absence of a formal distribution of the estate as a pretext to infringe upon the rights of successors and, in particular, to refuse to acknowledge and certify their possession.

**Article 75 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 76 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 77**

If the person who receives a land concession responding to an economic purpose is not an enterprise, but a natural person possessing an immovable property title, upon his death, such concession shall not be subject to division without the approval of the administrative authority that granted the concession.

**Article 78 – amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

Property that reverts to the state based on the provision of Article 1300 of the Civil Code (Reversion of Succession Property to the State) shall be included in the private property of the state.

**Article 79 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

## **Part 4 – Acquisition by Gift**

**Article 80 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 81 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 82 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 83**

The State may only donate immovable property to natural persons and for social reasons in order to allow them to reside or carry out subsistence farming. The value of the immovable property donated must be limited in relation with the purpose sought and not allow scope for speculation, or disproportionate enrichment taking into account the social level of the beneficiary.

Gifts granted by the state prior to this law shall not be reviewed.

**Translation note:** The word “speculation” in paragraph 1 is translated from the Khmer word [ekgykkMér]. Compare this with article 32.

**Article 84 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

## **TITLE III – RULE OF LAND AND EASEMENT**

**(amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011)**

### **Chapter 7 – Rule of Land** (amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011)

**Part 1 – deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 85 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 86 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 87 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 88 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 89 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 90 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 91 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 92 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 93 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Part 2** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Article 94** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Article 95** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Part 3** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Sub-part 1** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Article 96** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Article 97** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Article 98** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Sub-part 2** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Article 99** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Article 100** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Article 101** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Article 102** - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011

**Article 103 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 104 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 105 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Part 4 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 106 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*See also Articles 38 and 52 of the Law on the Implementation of the Civil Code.*

**Article 107 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 108 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

*See also Article 41 of the Law on the Implementation of the Civil Code.*

**Article 109 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 110 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 111 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 112 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**

**Article 113 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011**



## **Part 5 – Land Rules**

### **Article 114**

Rights and obligations of owners shall be determined by all land rules with the purpose of ensuring the protection of the general interests determined by law.

### **Article 115**

The construction formalities and all conditions imposed on owners relating to land management and urban planning shall be determined by sub-decree.

### **Article 116**

Any use of ownership that does not comply with any land rules but that was binding by contract before this law came into effect shall not be affected. Such use may, however, not be extended after the promulgating of the land rules that restrict or prohibit it.

In the case of an emergency or to meet a public interest need, the law can additionally prescribe the immediate implementation of land rules, in the nature of public order, that restrict the use of ownership.

## **Chapter 8 – Easement** (amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011)

*See also Articles 38 and 80 of the Law on the Implementation of the Civil Code.*

**Article 117 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 118 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

## **Part 1 – Usufruct**

*See also Articles 38 and 42 of the Law on the Implementation of the Civil Code.*

**Article 119 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 120 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*See also Article 43 of the Law on the Implementation of the Civil Code.*

**Article 121 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 122 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 123 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 124 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 125 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 126 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 127 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 128 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 129 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 130 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 131 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 132 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 133 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 134 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 135 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 136 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 137 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

## **Part 2 – The Rights to Use and Habitation**

*See also the Law on the Implementation of the Civil Code, Article 38.*

**Article 138 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 139 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*See also the Law on the Implementation of the Civil Code, Article 43.*

**Article 140 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 141 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

## **Part 3 – Easements**

*See also the Law on the Implementation of the Civil Code, Article 38.*

**Article 142 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*Translation note:* The Khmer uses different phrases for dominant and servient land depending on whether the easement is natural or contractual. When the easement is natural, the phrase “*dey leu*” is used for dominant land, and “*day kraom*” is used for servient land. This classification seems to be based on the natural state of the land that causes the easement to be created. This distinction is maintained in this translation, which uses “upper” and “lower” land, respectively. When the easement is contractual, the phrase “*dey praeu*” is used for dominant land, and “*dey bomraeu*” is used for servient land. In these cases, this translation uses “dominant” and “servient” land, respectively. There is no similar distinction when the easement is created by law. The phrase “land” is used.

**Article 143 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

### **Sub-part 1 – Easements by Nature**

**Article 144 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 145 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 146 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

### **Sub-part 2 – Easements by Law**

*See also the Law on the Implementation of the Civil Code, Article 38.*

**Article 147 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

#### **Article 148**

Land demarcation and ownership of property situated along public roads shall be determined by the competent authorities based on actual needs of common interests, especially based on the traffic needs.

Before building a fence or constructing any kind of building next to a public road, the owner shall check the conformance of the proposed construction with the setback map, if any. Every construction permit shall follow the existing setback line.

The competent authorities can decide to change the size of roads according to the necessary needs for the public interests. If the authorities decide to extend a road size, all constructions situated along the setback line shall be moved back. If it is a simple fence or an easy-to-remove building, the authorities shall require the owner to move it. If it is an immovable property that cannot be subject to change or easily moved away, it shall remain in the same location until the competent authorities decide whether to extend as projected. The deprivation of partial or whole of ownership may be done according to the implementation of the proper procedures determined by law. Regarding legally possessed/occupied land, as well as fences and buildings legally built according to legal provisions, the owners shall be entitled to the compensation for their losses.

**Translation note:** The phrase “setback map” in the second paragraph is based on the Khmer phrase that translates literally, “plan/map rectifying the line.” The phrase “setback line” in this article is based on the Khmer phrase that translates literally, “rule/ruler rectifying the line.”

The word “deprivation” in the penultimate sentence is the translation of [ ] [*doc hot*], which is more general than “expropriation” as used in article 5. Expropriation is one kind of deprivation.

**Article 149 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 150 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 151 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 152 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 153 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 154 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 155 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 156 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 157 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 158 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 159 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

### **Sub-part 3 – Easements by Contract**

*See the Law on the Implementation of the Civil Code, Article 38.*

**Article 160 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 161 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 162 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 163 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 164 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 165 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 166 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

#### **Sub-part 4 – Cessation of Easements**

**Article 167- deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

## **TITLE IV – CO-OWNERSHIP** (amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011).

### **Chapter 9 –Undivided Ownership**

**Article 168 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*Translation note:* The Khmer term for “undivided ownership” used in this chapter [ ], is the same term as used in article 10, paragraph 3. Other translations have used the term “undivided joint-owners.”

**Article 169 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 170 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 171 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 172 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 173 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 174 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

## **Chapter 10 – Co-Ownership**

### **Article 175**

Co-ownership is the ownership of immovable property belonging to several persons divided by lots, of which each person has one part that is a private part and another part that is a share of common property.

*Translation note:* The Khmer term for the word “part” in article 175, “*chom naek*,” is the noun based on the verb “to share.” The noun can have the meaning of part or share. For consistency, we have used the word “part” throughout this chapter. This terminology is consistent with the French usage upon which this article is based, see note, below. In English, the word “area” likely would be used.

*Explanatory note:* This article is based on article 1 of *Loi n. 65-557 du 10 juillet 1965, fixante le statut de la copropriete de immeubles batis.*”

### **Article 176**

The co-owners may prepare internal regulations that define, in accordance with the provisions of this law, the methods of management and the rules for maintenance as well as the obligations of the co-owners, in particular for common parts.

In the absence of the regulations, the co-ownership shall be subject to various provisions determined by article 177 to article 185 of this law.

### **Article 177**

The co-owners exercise full rights on their own private part provided that they do not encroach on common parts and they do not cause any nuisance or impede the use by the other co-owners of the common parts. A co-owner may freely alienate his own private part, lease it out, establish a usufruct, establish the right of use or habitation, mortgage it, or use it as collateral. However, he may not establish an easement on his private part.

### **Article 178**

All parts of the building or the land reserved for the exclusive use of a certain co-owner are private parts. The certificate recognizing the owner of the immovable property shall define the type and size of those parts.

## **Article 179**

All parts of buildings or lands allocated for use or for benefit of all co-owners or certain co-owners among themselves shall be considered as common parts.

Common property includes, in particular:

the ground, courtyards, parks gardens and access ways

walls, main structure of the buildings, common facilities, including water, electrical and gas pipelines which can cross private parts

Flues and stacks of chimneys

common service areas

The following accessory rights are also deemed to be common property:

the right to excavate existing substances under the ground,

the right to erect new buildings on courtyards, parks or gardens constituting common parts,

the right to excavate courtyards, parks or gardens,

the right of joint ownership relating to common parts.

the right to build on top of a building allocated for common use or containing several premises that constitute various private parts. In no case is the owner of the top floor of the co-owned building permitted to build on top of his apartment for himself only or to sell such right to build.

These provisions are in the public order.

## **Article 180**

Any co-owner who alters the common parts of a building or a land in order to have the private use of them or for the purposes of selling them shall be liable to restore them to the original state. Such co-owner shall be subject to the penalties as stated in article 257 of this law.

Any person other than the co-owners who takes possession of a common part for himself shall be forced to return the premises wrongfully occupied and to restore it to its original state.

In no case may the competent authorities issue a title recognizing the rights of such a person. If they do so, they shall be considered as accomplices and shall also be held jointly liable. The authorities have the mission to ensure that such illegal occupant is evicted.



These provisions also intend to impose penalties on those who directly and fundamentally disregard ownership and requirements of public order and are applicable to infringements that occurred prior to the promulgation of this law. .

#### **Article 181**

Common parts are the undivided joint ownership of the co-owners. Co owners shall ensure the maintenance thereof. The responsibility for such maintenance shall be divided in proportion to the value of each lot.

#### **Article 182**

The wall separating neighboring private parts shall be considered a jointly-owned wall, prescribed by chapter 11 of this law.

*Translation note:* The phrase used in Khmer for party wall is “jointly-owned wall” or “joint ownership wall.” The phrase used here is the same phrase used in Chapter 11.

#### **Article 183**

Common parts and accessory rights in respect thereof cannot be the subject of an action for division of property or a forced sale independently of the private parts.

#### **Article 184**

The co-owners may establish a management entity that can be a management board or an executive committee. This management entity shall be appointed at a general meeting attended by all co-owners according to the proportional value of their respective lots. The management entity, by a majority vote, may make decisions relating to the maintenance of the co-ownership.

The co-owners shall be bound by decisions made by the general meeting of co-owners, especially decisions concerning the maintenance and requirements of public order with regard to common parts.

Any co-owner who refuses to comply with the decisions of the general meeting, and who refuses to fulfill his obligations resulting there from, may be sued to be forced to fulfill his obligations.

In the absence of a management entity, the management of the co-ownership shall be carried out directly by all co-owners who make decisions unanimously. If no agreement can be reached among themselves, and if, as a result, there is bad maintenance or a degradation in the co-ownership, every co-owner, after obtaining the consent of the others, may file to the court to nominate an administrator of the co-ownership. The fees of such administrator shall be borne by all co-owners.

## **Article 185**

The competent authorities may impose on co-owners any measures t to ensure the proper maintenance of common parts.

The costs of maintenance shall be at the expenses of co-owners based on the proportional costs of their part.

A co-owner who refuses to comply with his responsibilities or does not follow the provisions for public order shall be subject to punishment as stated in article 258 of this law.

## **Chapter 11 – Joint-Ownership**

**Article 186- deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*Translation note:* The Khmer word for "fence" can also express the concept of "hedge." The Khmer word for "dike" can also express the concept of "embankment."

### **Part 1 – Jointly-owned walls**

*Translation note:* The Khmer uses jointly owned wall, or joint ownership wall, which is commonly referred to as a "party wall" in English. The same term is used in article 182.

**Article 187 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 188 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 189 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 190 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 191 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 192 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 193 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

## **Part 2 – Jointly-owned ditches, fences and dikes**

**Article 194 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 195 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 196 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**TITLE V - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*See also the Law on the Implementation of the Civil Code, Article 54.*

**Article 197 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*Explanatory note:* See the note at chapter 13 for the explanation of the terms *antichrèse* and *gage*.

**Chapter 12 - Mortgage - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*See also the Law on the Implementation of the Civil Code, Article 54.*

**Article 198 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 199 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 200 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 201 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*See also the Law on the Implementation of the Civil Code, Article 54.*

**Article 202 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 203 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 204 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 205 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*Explanatory note:* The term *antichrèse* refers to a pledge of immovable property, which is discussed in chapter 13, below.

## **Chapter 13 – Antichrèse - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*See also the Law on Implementation of the Civil Code, Article 56.*

*Explanatory note:* Chapter 13 and chapter 14 concern two methods of securing debts by remitting property to be held by the creditor until a loan is repaid. In French, remitting property (whether immovable or personal) to secure a loan is called “*nantissement*” or “pledge.” There are two types of “*nantissement*”: (1) “*antichrèse*,” pledge of immovable property, and (2) “*gage*,” pledge of movable property, “pawn” in English.

Chapter 13 concerns “*antichrèse*,” or pledge of immovable property, where the creditor takes possession of the immovable property that secures the debt, that is the land, buildings, etc.

Chapter 14 concerns “*gage*,” or pledge of movable property, where the creditor takes possession of the movable property – title to the property – as surety for the debt.

Because the types of securities covered by chapter 13 and 14 are based on French law, and because there are no good English equivalents, this translation uses the French terms.

**Article 206 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 207 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*See Law on the Implementation of the Civil Code, Article 56.*

**Article 208 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 209 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 210 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 211 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 212 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 213 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 214 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 215 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 216 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 217 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 218 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Chapter 14 – Gage - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

*See also the Law on the Implementation of the Civil Code, Article 55.*

*Explanatory note:* See note on terminology at Chapter 13.

**Article 219 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 220 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 221 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 222 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 223 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 224 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

**Article 225 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

## **TITLE VI – CADASTRE**

### **Chapter 15 – Cadastral Administration**

#### **Article 226**

Ownership of immovable property shall be guaranteed by the State. For that purpose, the Cadastral Administration under the supervision of the Ministry of Land Management, Urban Planning and Construction shall have the competence to identify properties, establish cadastral index maps, issue ownership titles, register lands and inform all persons as to the status of a parcel of land in relation with its nature, size, owner and any relevant encumbrances over such parcel.

#### **Article 227**

A land parcel or cadastral unit is a specified land area that is situated within a single commune or *sangkat*, that is not divided by a joint, indivisible boundary, [that] belongs to one person or several persons having an undivided ownership, and that is used in a single manner.

A boundary is considered as joint and indivisible if it causes a division of the land into many plots, such as fences, public roads, canals and water routes that are at least two meters wide.

#### **Article 228**

The organization and functioning of the Cadastral Administration shall be determined by sub-decree in accordance with the provisions of this law.

## **Article 229**

The Cadastral Administration has the following tasks:

To carry out systematic land registration according to the provisions of a sub-decree on the procedure of establishing cadastral index map and Land Register;

To reinforce the sporadic registration system according to the procedures to be determined by sub-decree;

To do the necessary cadastral plotting for all parcels including the establishment of their boundaries, the division of parcels, the unification of parcels, the correction of parcel boundaries, and in general any change in their sizes whether caused by natural or voluntary acts;

To produce a Land Register and to register the names of the owners and all collected data relating to the physical features, area, and identity of the immovable properties;

To update any modifications/transformation concerning a right arising out of a transfer contract such as sale, gift, exchange or transfers through succession or related to change in nature or status of land such as a construction, filling in or digging up of land, etc;

To maintain all cadastral documents including cadastral index maps, lists of owners' names, the Land Register and all legal documents relating to each land parcel;

To issue to owners certificates acknowledging them as owners of an immovable property and other certificates relating to land parcels;

To compulsorily issue the photocopied plan and information related to the location, identification, land boundaries, and rights related to such parcel to the applicant at [the applicant's] request;

To register all mortgages, *antichrèse*, *gage*, long-term leases, or easements encumbering on immovable property and to provide information to any person who seeks information from the Land Register with regard to the situation of ownership that is the subject of such mortgage, *antichrèse*, *gage*, long-term lease or easement.

**Explanatory note:** A cadastral index map is a legal tool of the systematic registration process, and each parcel on the map has a Unique Parcel Reference Number (UPRN).

See the note at chapter 13 for the explanation of the terms *antichrèse* and *gage*.

## **Article 230**

The rates of fees that relate to the carrying out of the tasks that are stated above shall be determined by a joint *Prakas* of the Ministry of Land Management, Urban Planning and Construction and the Ministry of Economy and Finance.

### **Article 231**

The Central Cadastral Administration shall be the General Department of Cadastre and Geography that is responsible for the preparation, coordination and supervision of operations concerning cadastral measurements of immovable property within the Kingdom of Cambodia, and operations concerning the drawing up of cadastral index maps, to produce a list of owners' names and a Land Register, and to issue certificates acknowledging the owner of an immovable property or possession titles to immovable properties. In addition, the General Department of Cadastre and Geography must further determine the methods and standards relating to the documents.

### **Article 232**

The provincial/municipal and *srok/khan* Cadastral Offices shall implement all instructions issued by the Central Cadastral Administration. The provincial/municipal and *srok/khan* Cadastral Offices are responsible for conducting surveys in coordination with other local authorities, maintaining the Land Register, updating the Register on a regular basis under the supervision of the Central Cadastral Administration, maintaining documents and providing information to any person who requests information.

### **Article 233**

The *srok/khan* Cadastral Offices shall send copies of the cadastral documents to the concerned *khum/sangkat*. The commune chief or *sangkat* chief shall allow anyone to consult the copies and must notify the relevant *srok/khan* office of any change in the situation of ownership and of owners that occurred in their communes or *sangkats*.

## **Chapter 16 – Cadastral Surveys**

### **Article 234**

Cadastral surveys must be made according to techniques and methods specified by sub-decree.

### **Article 235**

Where necessary, the Cadastral Administration can request the civil, military or police authority to assist it in the conduct of the field cadastral surveys. There is no competence outside the Cadastral Administration that has the right to determine the owner of parcels, the nature of land, or measurement of land.



### **Article 236**

Any private individuals and in particular owners and concerned persons have the obligation to join and co-operate for the carrying out of the cadastral surveys. They must facilitate the physical operations relating to cadastral surveys, identify owners and give notice of any changes that have occurred concerning their own parcels, the situation of the premises and any transfers of ownership.

### **Article 237**

In the case of any dispute occurring at the time of the operations of the cadastral survey, concerning the measurements of a parcel or the name of its owner, the cadastral officer in charge shall invite the interested parties to conciliate themselves. For disputes occurring in an area that is being surveyed according to systematic registration system, an administrative commission has the duty to conciliate the dispute. If such agreement is impossible, the officer in charge shall continue the cadastral survey and make a record of the dispute, but he shall refrain from deciding the dispute.

When a dispute occurs at the time of the delivery of the title, the Cadastral Administration shall take into account only the name of the owner appearing on its registers. In no case shall the Cadastral Administration amend or deliver title to any other person.

*Translation note:* In the second sentence of paragraph 1, the Khmer term “*samroh samruol*,” was translated as “mediation.” There is considerable variation among ordinary citizens in the understanding of what is involved in *samroh samruol*, from simply making the dispute go away, to negotiation or arbitration. The term “mediation” was used here because it is consistent with the terminology used in conflict resolution literature, as well as training programs in Cambodia. Further, there is considerable legislative history – particularly materials prepared by the various legislative working groups – that the term *samroh-samroul* means mediation. Mediation is where someone (called a mediator) intervenes to help the parties to a dispute find a way to settle or compromise the dispute among themselves.

## **Chapter 17 –Cadastral Register and Documents**

### **Article 238**

The Cadastral Administration has the obligation to produce cadastral index maps and a Land Register.

Cadastral index maps cover the zones that have been systematically registered and the boundaries of all public and private properties demarcated and the classification of the land, such as cultivation land, forest land, submerged land, lands for industrial construction, etc. The production of cadastral index maps shall be implemented according to the procedures provided in a sub-decree on procedures for producing cadastral index maps and a Land Register. Each parcel of property shall bear its parcel number.

The Land Register shows, according to each parcel number of ownership, the name of owners and the means of identification of such land parcel, the description of the ownership, the size of land parcel, the easements and other charges that encumber it. Any subsequent changes in such data must be registered as soon as the Cadastral Administration is informed of such changes. Such register shall be maintained in three copies, one copy kept at the central Cadastral Administration Office and the other two copies kept at the provincial or municipal and *srok/khan* Cadastral Administration Offices.

The Land Register shows, by reference to the number of the title of ownership, the mortgages, *antichrèse* and *gage*, long-term leases that encumber the ownership.

#### **Article 239**

A cadastral index map and Land Register have legal value and precise effect. A cadastral map and Land Register shall not contain deletions, additions or any other modifications at the exception of those that have been expressly authenticated.

Cadastral offices at all levels are legally responsible to ensure the due and proper maintenance of such Land Registers and the accuracy of survey operations and to preserve the documents.

#### **Article 240**

The request for cadastral information by any person who has an interest in it may not be refused. Copies of the information appearing on such registers shall be provided against a payment of fee as determined in the article 230 of this law.

## **Chapter 18 – Cadastral Titles and Information**

#### **Article 241**

The Cadastral Administration can issue certificates acknowledging the owner of an immovable property, possession titles to immovable property, mortgage certificates, forms containing information and cadastral attestation documents relating to the nature, the legal situation, physical status and encumbrances of a land lot based on the cadastral documents and the Land Register.

#### **Article 242**

The certificates acknowledging the owner of an immovable property and possession titles to immovable property can be given only to the owner or the person who has legal rights over the immovable property.

### **Article 243**

Cadastral information forms may be delivered to any person who applies for them. The agent who provides such information shall be liable for inaccurate information the agent supplied. Such information shall not bind any liability upon the Cadastral Administration.

### **Article 244 - amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

Cadastral attestations constitute official confirmation of legal documents.

Ownership of immovable property can be established by written documents according to the form of notarial documents certified by competent authority. They must be filed with the Cadastral Administration.

### **Article 245 - amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

Contract transferring ownership over immovable shall be in writing in accordance with notarial documents certified by; competent authority in order to register this contract in the registry list of cadastral administration.

### **Article 246 - deleted by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

## **TITLE VII – PENALTY PROVISIONS**

### **Chapter 19 – Infringements on Ownership**

#### **Article 247 - amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

The infringements against ownership and the other rights relating to an immovable property can constitute a penal offense punishable in accordance with the provisions of this law.

#### **Article 248**

The following acts are considered as infringements on ownership and other legal rights to immovable property and constitute penal offenses under this law:

An act or conduct, in fact, that is an intentional violation of the occupation of an immovable property in breach of a title issued by the Cadastral Administration;

An act or conduct, in fact, that is a hindrance to the peaceful holder or possessor of immovable property in an area not yet covered by the cadastral index maps, the ownership rights of which have not yet been fully strengthened under this law;

An improper or illegal beginning of occupation of State public property or State private property that is not in accordance with the provisions of articles 17, 18 and 19 of this law;

A transformation of a concession into ownership except in the case of a land concession responding to a social purpose.

#### **Article 249**

An infringement against ownership within the scope of the preceding article may be committed by a competent authority or by an individual acting alone or in conspiracy with agents of the authority.

#### **Article 250**

An official or competent authority that infringes a lawful right to immovable property shall be liable for an administrative penalty in addition to a criminal penalty and civil damages.

## **Part 1 – Infringements against Public or Private Property Committed by individuals**

### **Sub-part 1 – Infringements against private ownership**

#### **Article 251**

Any person who falsifies a title with the intent to make an official use of it, regardless of its form, shall be subject to imprisonment from one (1) to five (5) years.

#### **Article 252**

Any person who misleads or deceives Cadastral Administration officials in the exercise of their tasks or the authorities in registration of land shall be punishable by a fine from 500,000 (five hundred thousand) Riel to 3,000,000 (three million) Riel and/or imprisonment from of 1 (one) month to 6 (six) months.

**Article 253 - amended by Article 80 of the Law on Implementation of the Civil Code effective December 20, 2011.**

Any person who uses violence against a possessor in good faith of an immovable property; whether or not his title has been established or it is disputed, shall be fined from 1,500,000 Riel to 25,000,000 Riel and/or imprisoned from six (6) months to two (2) years irrespective of the penalty for violence against a person.

If the violence was ordered by a person other than the perpetrator, who did not personally participate in the commission of such violence, he shall be subject to the same penalties as the perpetrators of the violence.

**Article 254**

Under no circumstances shall the use of private force be authorized in order to protect a person's title to property or to enforce a court order for the expulsion or forced removal of an occupant. Any person who uses private force for the above purposes shall be fined from three million (3,000,000) Riel to twenty five million (25,000,000) Riel and/or imprisoned from six (6) months to two (2) years.

**Article 255**

Any person who sells, or uses as a surety, immovable property that does not belong to him shall be punished by imprisonment from six (6) months to three (3) years, without prejudice to any civil damages caused by his.

*Explanatory note:* This article uses the term “*ban cham*,” which has been translated here to mean “uses as surety.” The term “*ban cham*” is used in chapter 13 to refer to *antichrèse*, or pledge of immovable property. However, the term “*ban cham*” has a more general meaning that includes all types of sureties – mortgages (chapter 12), *antichrèse* (chapter 13) and *gage* (chapter 14).

**Article 256**

An owner who cultivates on his own land, or who intentionally provides or rents land to a third person to cultivate crops that are prohibited by law or regulations, shall be fined from fifteen million (15,000,000) Riel to forty five million (45,000,000) Riel and shall be imprisoned under the law in force .

**Article 257**

A co-owner of undivided property who infringes on the commonly owned part of immovable property as stated in article 180 of this law, shall be fined from one million five hundred thousand (1,500,000) Riel to nine million (9,000,000) Riel. In case of repeated offenses, the infringing co-owner shall be subject to double fines.

**Article 258**

A co-owner who refuses to fulfill his obligation related to the maintenance of the common parts of co-owned property or who does not respect the public order restrictions as stated in article 185 of this law shall be fined from five hundred thousand (500,000) Riel to three million (3,000,000) Riel.

## **Sub-part 2 – Infringements against the Public Property**

### **Article 259**

An infringement against public property shall be fined from five million (5,000,000) Riel to fifty million (50,000,000) Riel and/or imprisoned from one (1) to five years.

The perpetrator must vacate the public property immediately. He has no entitlement to any indemnity for works or improvements that he made on the property.

In the case of a person who was in possession of State public property before this law comes into force and has documents proving and attesting clearly that he bought the property from another person, he can request the competent authority to implement the legal rules against the person who illegally sold public property of the State and in order to recover his damages caused by such act. Regardless of the circumstances, the aggrieved party has no right to continue his possession of the State public property.

### **Article 260**

Any person who removes, moves, or destroys a cement marker, a topographic points or the position of a cadastral sign shall be warned by the competent authority. In case of repeated offenses, the offender shall be fined from five hundred thousand (500,000) Riel to three million (3,000,000) Riel, and/or by imprisonment from one (1) to six (6) months, without prejudice to any civil damages caused by his act.

## **Part 2 – Infringements against public or private property by administrative authorities**

### **Article 261**

An official or authority, irrespective of whether acting under orders or not, who abuses his power to seize immovable property from a peaceful occupant shall be subject to a fine from ten million (10,000,000) Riel to twenty-five million (25,000,000) Riel and additional administrative sanctions.

The abuse may consist of the falsification or wrongful creation of titles or the use of pressure or physical measures of eviction against such occupant.

If the act of seizing immovable property is carried out with violence, the offender shall be imprisoned for six (6) months to two (2) years in jail in addition to the fine.

The person who gave the wrongful order shall be subject to the same penalties imposed against the offender.

## **Article 262**

A competent authority or any kind of armed forces who wrongfully acquire immovable property in the areas where they are in charge of maintaining public order and security to be this personal property shall be subject to a fine of three million (3,000,000) Riel to thirty million (30,000,000) Riel, and/or shall be imprisoned from two (2) to five (5) years and shall also be subject to administrative sanctions.

## **Article 263**

The authority, who ignores or allows private individuals to act wrongfully against the rights of owners, possessors, or peaceful occupants, shall be subject to a fine from one million (1,000,000) Riel to ten million (10,000,000) Riel and shall be subject to administrative sanctions.

## **Article 264**

Any abuse committed by cadastral officials shall be fined from one million (1,000,000) Riles to five million (5,000,000) Riel and shall be subject to administrative sanctions.

Such abuse includes the delivery of false official data, the delivery of false titles to property, concealment of mortgages or other charges, intentional deceptive demarcation and any negligence in the inscription of cadastral documents.

## **Article 265**

[Where] an infringement [is] committed against land rights of indigenous communities by an authority who is responsible for the management of the zone in which the immovable property is located, [the authority] shall be fined from one million and five hundred thousand (1,500,000) Riel to nine million (9,000,000) Riel and/or put in prison from 2-5 years and shall receive administrative sanctions in addition.

*Translation note:* The words in [brackets] were added to make the sentence grammatically correct.

## **Article 266**

[Where] an infringement [is] committed against monastery immovable property by a person who is in charge of the management, [the persons] shall be forced to return the property and shall be fined from one million and five hundred thousand (1,500,000) Riel to nine million (9,000,000) Riel.

*Translation note:* The words in [brackets] were added to make the sentence grammatically correct.

## **TITLE VIII – FINAL PROVISIONS**

### **Article 267**

Any provisions that are contrary to this Law are repealed.

### **Article 268**

This law is declared to be urgent.



*Phnom Penh, August 30, 2001*

*(Signature)*

*Norodom Sihanouk*

*Having submitted to the King for signature.*

*Prime Minister*

*(Signature)*

*Hun Sen*

*Having submitted to Samdech Prime Minister,*

*Minister of Land Management, Urban Planning and Construction*

*(Signature)*

*Im Chhun Lim*

*No. 197/C*

*for copying and distribution*

*Phnom Penh, September 30, 2001*

*Secretary General of the Royal Government*

*(Signature and seal)*

*Nady Tan*



**(付属资料 3)**

**Prakas on Collection of Tax on  
Unused Land (1996)**



The Khmer version is the official version of this document.

Document prepared by the MLMUPC Cambodia,  
supported by ADB TA 3577 and LMAP TA GTZ.

**INGDOM OF CAMBODIA**  
**Nation Religion King**

Ministry of Economy and Finance  
No.224

July 5, 1996

Prakas  
On  
Collection Of Tax  
On  
Unused Land  
\*\*\*\*\*

**State Minister**

**Minister of Economy and Finance**

- Having seen the 1993 Constitution of the Kingdom of Cambodia,
- Having seen Royal Decree of the King dated November 1, 1993 on Appointment of the Royal Government of Cambodia,
- Having seen the Law on Organization and Functioning of the Council of Ministers promulgated by Royal Kram dated July 20, 1994,
- Having seen Royal Decree NS/RKT/1094/83 dated October 24, 1994 on Revision of Composition of the Royal Government,
- Having seen Royal Decree NS/RKT /1094/90 dated October 31, 1994 on Revision of Composition of the Royal Government,
- Having seen the Law on Creation of Ministry of Economy and Finance promulgated by Royal Kram NS/RKM/0196/18 dated January 24, 1996,
- Having seen Financial. Management Law for 1995 promulgated by Royal Kram 11/NS/94 dated December 31 1994,
- Having seen the Law Revising the Financial Management Law for 1995 promulgated by Royal Kram CS/RKM/0995/01 dated September 1' 1995,
- Having seen Sub-Decree 58 on Creation of a Committee for Valuation of Unused Land dated July 25, 1995,
- Having seen Prakas 316 on Appointment of Composition of Committee for Valuation of Unused Land dated September 2, 1995,
- Having seen Decision 01 on Creation of Sub-Committees for Valuation of Unused Land at Municipalities/Provinces dated September 27 1995,
- Referring to necessity in collection of tax on unused land,

**DECIDES**

The Khmer version is the official version of this document.

**Article 1:** The taxable unused land is the land which does not have anyone of the following characteristics:

- 1) Land with construction located in the residential areas where the owner uses as his/her principal place of residence for 183 days or more starting from October 1 of the past year to September 30 of the tax collection year. If in the tax collection year, the owner can fulfill the residential requirement of 183 days for that tax collection year, such owner may apply for a refund of tax already paid.  
The principal place for residence of the owner is a place where such owner eats and sleeps everyday after returning from daily work. For this tax determination, an owner may not have more than one principal place of residence.
- 2) Possessed land rented with construction that generates a monthly income of more than 80% of one-twelfth of the land value in a tax collection year multiplied by coefficient which is determined by the Prakas of Ministry of Economy and Finance with land value determined by Committee for Valuation of Unused Land.  $\text{Income} > 80\% \text{ of } ((1/12) \times \text{land value} \times \text{coefficient})$
- 3) Land of legitimate economic activities as determined by the state with the monthly revenue from such activities of more than 80% of one-twelfth of the land value in a tax collection year multiplied by coefficient which is determined by the Prakas of Ministry of Economy and Finance with land value determined by Committee for Valuation of Unused Land.
- 4) Land belongs to the state which is leased to a legal entity or physical person, having anyone of the three characteristics stated above.
- 5) Land under the investment contract with which the performance has not been started due to a force majeure or suffered by any reason such as insecurity and such postponement is recognized by a competent institution and Ministry of Economy and Finance.

**Article 2:** This tax payment is not a condition for certifying legal ownership of the land.

**Article 3:** In Managing the collection of tax on unused land, the word "owner" refers to a person to whom the land survey unit or territorial authority of commune/sangkat level or above issued an official document in recognition of the rights of such person for the use of land in a region permanently or temporarily.

An owner is a single family "father, mother, himself, wife, and dependant children" or head of the household and dependant members whose names are listed on the family certificate issued by competent authority.

The owner of the taxable land and a land lessee of the state stipulated in point 4 of Article 1 has duties to calculate tax according to the tax declaration procedure provided by Tax Department and shall pay the tax on unused land no later than September 30 of each tax collection year to the tax unit in the region where such land locates. For each parcel of taxable land, tax declaration shall be filed separately.

The Khmer version is the official version of this document.

**Article 4:** Ministry of Economy and Finance shall make a public announcement on value of land per square meter determined by the Committee for Valuation of Unused Land so that the taxable persons can determine their tax bases. Such public announcement shall also specify the division of regions and land value per square meter in each region. This public announcement shall be posted at city/province halls, tax branch and post offices as well as published in at least two local newspapers.

**Article 5:** Failure to declare tax, inadequate payment of tax, or failure to pay tax on unused land shall be subject to implementation of Article 58 and other relevant Articles of Financial Law for 1994 and penalties stipulated in Financial Laws in force.

**Article 6:** This Prakas is in force from the date of signature.

State Minister  
Minister of Economy and Finance

Signed and Sealed

**Keat Chhon**

CC:

- General Secretariat of the National Assembly
- Office of the Council of Ministers
- Cabinet of First Prime Minister
- Cabinet of Second Prime Minister
- All ministries and central institutions
- All provincial and municipal offices (as information)
- All subordinate units of the Ministry of Economy and Finance (for actions)
- Committee for Valuation of Unused Land
- Sub-Committees for Valuation of Unused Land
- All tax units (for implementation)
- Chronos





**(付属资料 4)**

**Sub-Decree on Social Land  
Concessions (March 19, 2003)**



Document prepared by the MLMUPC Cambodia,  
supported by ADB TA 3577 and LMAP TA GTZ.

**The Royal Government of Cambodia**  
**No. 19 ANK/BK/ March 19, 2003**

**Sub Decree On Social Land Concessions**

- Referring to the Constitution of the Kingdom of Cambodia
- Referring to Royal Decree No. NS/RKT/1198/72 of November 30, 1998 on the Appointment of the Royal Government
- Referring to Royal Kram No. 02/NS/94 of July 20, 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers
- Referring to Royal Kram No. 04/NS/94 of September 10, 1994 promulgating the Law on the Land Management, Urban Planning and Construction
- Referring to Royal Kram No. NS/RKM/0699/09 of June 23, 1999 promulgating the Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction
- Referring to Royal Kram No. NS/RKM/0801/14 of August 30, 2001 promulgating the Land Law
- Referring to Royal Kram No. NS/RKM/0301/05 of March 19, 2001 promulgating the Law on Khum/Sangkat Administrative Management
- Referring to Sub Decree No. 62 ANK of July 20, 1999 on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction
- Referring to Sub Decree No. 88 ANK/BK of December 1, 2000, on Establishment of the Council for Land Policy
- Having been adopted by the Council of Ministers during the plenary session on 7 March 2003.

**Decides**

**Chapter 1. General Provisions**

**Article 1.**

This sub decree has the objective to define the criteria, procedures and mechanism for the granting of social land concessions for residential use and/or family farming.

**Article 2.**

The following terms have the meanings defined below:

- (a) "Social land concession" is a legal mechanism to transfer private state land for social purposes to the poor who lack land for residential and/or family farming purposes.
- (b) "Social concession land" is the land that is the subject of a social land concession.
- (c) "Family farming" refers to family cultivation or animal-raising to meet basic needs.

**Article 3.**

Social land concessions may be granted for one or more of the following social purposes:

1. Provide land for residential purposes to poor homeless families
2. Provide land to poor families for family farming

3. Provide land to resettle families who have been displaced resulting from public infrastructure development.
4. Provide land to the families suffering from natural disaster.
5. Provide land to repatriated families.
6. Provide land to demobilized soldiers and families of soldiers who were disabled or died in the line of duty.
7. Facilitate economic development
8. Facilitate economic land concessions by providing land to workers of large plantations (chamkar) for residential purposes or family farming.
9. Develop areas that have not been appropriately developed.

**Article 4.**

Social Land Concession Programs are --

- Local Social Land Concession Programs
- National Social Land Concession Programs

## **Chapter 2. Local Social Land Concession Programs**

**Article 5.**

A commune council is an initiator of a local social land concession program by preparing a social land concession plan in accordance with the requirements for social land concession plans as stated in Chapter 4 of this sub-decree.

One or more citizens or organizations working with or on behalf of citizens in a commune, may initiate a local social land concession program, that shall be done through the commune council, in which the social concession land is located, by preparing a social land concession plan in accordance with the requirements for social land concession plans as stated in Chapter 4 of this sub-decree.

The commune council shall annually review the social land concession plan in accordance with the procedures for the preparation of commune development plans in Chapter 6 of the Law on Khum/Sangkat Administrative Management.

**Article 6.**

The Commune Council shall submit the local social land concession plan, through the District Working Group, for approval of the Provincial/Municipal Land Use and Allocation Committee.

The Provincial/Municipal Land Use and Allocation Committee may approve a local social land concession plan if it meets the criteria of this sub-decree, and if it is seen that the land is vacant state private land and suitable for the social land concession plan.

The Provincial/Municipal Land Use and Allocation Committee shall inform the National Social Land Concession Committee about each plan that the Provincial/Municipal Land Use and Allocation Committee approves. Within sixty (60) days after receiving a social land concession plan, the National Social Land Concession Committee may adjust the plan or cancel the approval of the Provincial/Municipal Land Use and Allocation Committee if:

- (a) The social land concession plan contradicts national land use priorities, is technically flawed, or violates the provisions of this sub-decree or other laws.
- (b) If the plan is not compatible with the requirements of national social land concession programs.

Following approval, a local social land concession program shall be implemented by the commune council, with technical assistance from the District Working Group. An approved social land concession plan shall be open to the public in the relevant commune/sangkat

office (sala khum/sangkat) council and Provincial/Municipal Land Use and Allocation Committee office and the National Social Land Concession Committee during working hours.

### **Chapter 3. National Social Land Concession Programs**

#### **Article 7.**

A National Social Land Concession Program may be initiated by one or more concerned ministries or institutions in situations that are not suitable for a local social land concession program, in particular, in any of the following situations:

- Where there is a program to develop land in remote areas without 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 there is a social land concession program that may link to the economic concession in order to develop agro-industry.
- Where there is new or existing development program, such as a donor or investor supported program that is coordinated by the national level.
- Where there are requests for social land concessions that cannot be met by local programs.

The concerned ministry or institutions shall submit a social land concession plan that meets the criteria of a social land concession plan as stated in chapter 4 of this sub-decree to the National Social Land Concession Committee.

In initiating a national social land concession plan, there shall be participation from the concerned Provincial/Municipal Land Use and Allocation Committee, commune councils and area residents.

#### **Article 8.**

The National Social Land Concession Committee may approve the plan as proposed or, in consultation with the concerned ministry or institution, may adjust the plan.

A National Social Land Concession Program that has already been approved shall be implemented by the ministry or institution or proposer as specified in the National Social Land Concession Plan, in coordination with the Provincial/Municipal Land Use and Allocation Committee, commune council and residents in the involved area, unless the approved National Land Concession Program states otherwise. An approved national social land concession plan shall be open to the public in the relevant commune/sangkat office, Provincial/Municipal Land Use and Allocation Committee office, and the National Social Land Concession Committee, during working hours.

### **Chapter 4. Necessary Requirements for Social Land Concession Planning**

#### **Article 9.**

The requirements for social land concession planning include:

- (a) A description of the land and a land use plan that shall be prepared in accordance with the procedures for commune development plans as specified in Chapter 6 of the Law on Khum/Sangkat Administrative Management.
- (b) Information about the land identification, the ownership of the land and indicating whether the land is available for social land concessions or whether the land is suitable for the uses in the social land concession plan.
- (c) Detailed information about the selection of target land recipients, including

- Any preferences for vulnerable groups under article 11 of this sub-decree and
  - The means used for verifying that target land recipients meet the established eligibility and preference criteria.
- (d) Detailed plans for the allocation of land to the target land recipients, including any special conditions for occupancy and use of the land.
  - (e) Detailed information about the application process, including the place where applicants filed applications, the person who was responsible for publicizing the application process and the person who was responsible for posting the names of applicants, the place where the notices were posted and other administrative details of the application process.
  - (f) An assessment of the availability of infrastructures necessary to implement the plan, including such things as roads, water, electricity, schools, markets, , health care center, and tools and equipment to develop the land, other services, information about how and when to prepare these physical infrastructures and to provide those public services.
  - (g) An assessment of social and environmental impacts of the program and a description of appropriate actions.
  - (h) Other requirements shall be determined by the National Social Land Concession Committee.

**Article 10.**

An eligible applicant shall have the following qualifications:

- (a) Be a Cambodian national, with legal capacity to own land.
- (b) Be the head of the family, which consists of two or more individuals related by blood or marriage and residing in the same household.
- (c) Meet the financial criteria established by prakas of the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation, based on the comments of the National Social Land Concession Committee. The income guidelines shall take into consideration family size and age and health conditions of family members. The guidelines may be varied from region to region and from time to time in accordance with economic conditions and living standards.
- (d) Not be an owner or possessor of other land equal to or in excess of the size limitations for social land concessions in article 16 and 17 of this sub-decree.
- (e) Be ready, willing and able to participate in the social land concession program, in accordance with the approved social land concession plan.

No person may deny the right of participation in a social land concession program to head of family who is a female, a person with a disability [batbong samathapeap], a veteran with a disability [batbong samathapeap], or a demobilized soldier.

**Article 11.**

Where there are more applicants than available land, a social land concession plan may include reasonable criteria for giving preferential treatment in the selection of target land recipients or the allocation of social land concession land based on the following:

- large family size, having six (6) or more members
- time the family has lived in the social concession land area,
- the head of family is a woman, a person with a disability [batbong samathapeap], a veteran with a disability [batbong samathapeap] or a demobilized soldier.

**Article 12.**

The notice of the application process for social concession land shall be open and this work shall be publicized at least thirty (30) days prior to the deadline for making applications in one or more public places in the concession land area.

A person who lives in the social concession land area may file a social concession land application form, at the commune office as specified in the notice, by completing a standard [komru] application form.

The standard [komru] application form shall be determined by the MLMUPC.

The applicant shall specify if the request is for land for residential or family farming purposes, or both, as provided in chapter 5 of this sub decree.

Any family, who has not been selected as a target land recipient in a local social land concession plan, may apply to the National Social Land Concession Committee for social concession land in a national social land concession program.

**Article 13.**

A list of all applicants shall be posted in a public place at least thirty (30) days before the applications are evaluated. The posting places shall be defined in the social land concession plan.

The District Working Group specified in article 19 and article 26 of this sub decree shall provide technical assistance in evaluating all applications to determine that the applicants meet the selection criteria as stated in Article 10 and 11 of this sub-decree.

The decisions to approve or disapprove applications shall be in writing and shall state the reasons for approving or disapproving each applicant and these written decisions shall be publicized.

**Article 14.**

An applicant, whose name does not appear in the social land concession plan, and who believes that his application was not interpreted in conformity with the land law or other laws, may request review by the Provincial/Municipal Land Use and Allocation Committee or National Social Land Concession Committee by filing a written letter of request within twenty (20) days after the decisions to approve or disapprove applications are posted as provided in article 13 of this sub decree.

The Provincial/Municipal Land Use and Allocation Committee or National Social Land Concession Committee shall investigate and take appropriate action on the request within thirty (30) days after the Provincial/Municipal Land Use and Allocation Committee or National Social Land Concession Committee approves the relevant social land concession plan.

Each Provincial/Municipal Land Use and Allocation Committee and the National Social Land Concession Committee shall maintain a list of social land concession applicants who have filed applications.

The list shall be open to the public during office hours.

The Ministry of Land Management, Urban Planning and Construction shall issue instructions [s'kdei nairnoam] on the guidelines for establishing and maintaining the list of persons who apply for land.

## **Chapter 5. Types of Social Concession Land and Occupancy Conditions**

### **Article 15.**

Social concession land may be granted for residential purposes or for family farming purposes, or for both.

### **Article 16.**

The maximum size of social concession land granted for residential purposes is one thousand two hundred (1200) square meters, except in rural areas where land is available, the size of social concession may be increased up to three thousand six hundred (3600) square meters. In appropriate cases, particularly in urban areas, social land concessions for residential purposes may be granted in the form of co-ownership.

### **Article 17.**

The maximum size of social concession land granted for family farming purposes is two (2) hectares, but for some areas the size of social concession land may be increased up to five (5) hectares based on the characteristics and potentiality of the land or the type of crop, and labor.

### **Article 18.**

Each target land recipient shall make a written agreement with the competent granting authority that specifies the rights and responsibilities of the target land recipient in accordance with the social land concession program, and exceptions, such as force majeure or grave illness, which prevent the fulfillment of the obligations. The form and formality for the agreement shall be determined by prakas of the Minister of the Ministry of Land Management Urban Planning and Construction.

Unless an approved social land concession plan specifically provides otherwise, the occupancy and use rules in this article shall apply to all social land concessions.

If there is no residential structure on social concession residential land, the target land recipient shall build at least any part of a permanent shelter within three (3) months after receiving the land and a family member shall actually and permanently reside on the land at least six (6) months in each year.

The target land recipient of a social land concession for family farming shall actually cultivate that land within twelve (12) months after receiving the land and shall continue to utilize the land in accordance with the conditions of the concession program.

After correctly complying with the criteria of the social land concession program for five (5) years the target land recipient has the right to ownership of the land and may request ownership title according to procedures determined in the instruction of the Minister of MLMUPC.

If a target land recipient dies during the implementation of the social land concession program, the successors in the target land recipient's family may continue to implement the social land concession program to complete five (5) years and shall have the right to ownership of that land.

The target land recipient may not sell, rent or donate social concession land during the first five (5) years of the implementation of the social land concession program.

If a target land recipient fails to meet the occupancy and use conditions, the land shall revert to the state for reallocation.



Procedures for the reversion of the social concession land shall be determined by prakas of the MLMUPC that specifies:

- appropriate advance notice to the target land recipient who fails to meet the occupancy and use conditions of a social concession land,
- an opportunity for the target land recipient 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.

## **Chapter 6. Administration and Implementation**

### **Article 19.**

The social land concession mechanism has the duties to initiate and establish social land concession programs, make decisions on social land concession plans, and implement the social land concession programs aiming to allocate land to citizens with transparency and effectiveness.

The social land concession mechanism shall have the following structure:

1. The National Social Land Concessions Committee (NSCC) is located in the MLMUPC and uses the seal of the MLMUPC.
2. Provincial/Municipal Land Use and Allocation Committee (PLUAC) located in the provincial/municipal hall and use provincial/municipal hall's seal.
3. District Working Group (DWG) located in district/ Khan hall and use district/khan hall's seal.
4. Commune Council.

### **Article 20.**

The National Social Land Concession Committee is the institution to make national social land concession policy and shall be subject to the supervision of the Council for Land Policy.

The National Social Land Concession Committee shall have the following duties and tasks:

- Monitor the granting of social land concessions and adjust policies and other provisions if necessary.
- Adjust or cancel decisions on land use and allocation plans in provinces and municipalities in situations where the process:
  - is not in conformity with national land use priorities.
  - is technically flawed, or violates the provisions of this sub-decree or other laws
  - the approved plan is not in conformity with the requirements of national social land concession program.
- Provide technical support to implement social land concession programs.
- Rationalize the amount of available land with the need for social concession land.
- Facilitate the development of land development that lacks access to services and is unusable.
- Link the social land concession to the establishment, operation and reduction of economic land concession.
- Initiate its own national social land concession program
- Monitor the progress in the implementation of the use of social concession land.
- Facilitate all means and budget for the operation of all levels of social land concession mechanisms.

**Article 21.**

The members of the National Social Land Concession Committee include:

Minister Land Management, Urban Planning and Construction	Chairman
Secretary of State, Ministry of Interior	Member
Secretary of State, Ministry National Defence	Member
Secretary of State, Ministry of Economy and Finance	Member
Secretary of State, Ministry of Rural Development	Member
Secretary of State, Ministry of Agriculture, Forestry, and Fisheries	Member
Secretary of State, Ministry of Planning	Member
Secretary of State, Ministry of Women and Veterans Affairs	Member
Secretary of State, Ministry of Environment	Member
Secretary of State, Ministry of Water and Hydrology	Member
Secretary of State, Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation	Member
Director General of the Department General of Land Management and Urban Planning	Secretary General

The Chairman of the National Social Land Concession Committee may invite the representatives of the concerned ministries or institutions to participate as members based on the need of each case.

The National Social Land Concession Committee shall have a Secretariat General as its center of operations.

The Chairman and members of the National Social Land Concession Committee shall be appointed by a decision [s'keydey samrach] of the Royal Government.

**Article 22.**

This Secretariat General of National Social Land Concession Committee shall be headed by the Secretary General of National Social Land Concession Committee.

The Secretariat General shall have the following duties and tasks:

- Develop principles to monitor grants of social land concessions and to adjust policies and other provisions submitted to the National Social Land Concession Committee for review and approval.
- Develop principles to cancel decisions or adjust land use and allocation plans at the provincial and municipality level submitted to the National Social Land Concession Committee for review and approval.
- Provide technical support for identifying social concession land, rationalizing the available land with the need for land concessions.
- Develop the national social land concession program and submit to the National Social Land Concession Committee for review and approval.
- Develop activity plan of the National Social Land Concession Committee
- Implement the decisions of National Social Land Concession Committee.
- Stimulate the monitoring and evaluate the implementation of national social land concession programs and prepare regular reports on the outcome and submit to the National Social Land Concession Committee.
- Prepare and facilitate the meetings of the National Social Land Concession Committee.
- Fulfill other duties as assigned by the National Social Land Concession Committee.

The staff of the Secretariat General shall be appointed by a prakas of the Minister of LMUPC upon the request of the Secretary General of Secretariat General of the National Social Land Concession Committee.

**Article 23.**

The Provincial/Municipal Land Use and Allocation Committee is the Provincial/Municipal social land concession policy making body.

The Provincial/Municipal/Municipal Land Use and Allocation Committee shall have the following duties and tasks:

- Assure the standards for land classification and land use planning.
- Identify the state public land and state private land.
- Review and rationalize the amount of available land to the needs of the target land recipient in every district/khan of each province.
- Review and assess land use plans and social land concession plans proposed by the commune councils.
- Approve land classification, land use plans, and decisions about state land allocation at the provincial/municipal level.
- Assist the commune council to develop land use plans and land classifications.
- Approve, refuse or modify social land concession plans proposed by the commune councils. .
- Submit social land concession plans and approvals of social land concession plans for review of the National Social Land Concession Committee.
- Coordinate with various ministries on general land use planning for development.
- Cooperate with the de-mining authority for the areas with landmines.

**Article 24. Members of Provincial/Municipal Land Use and Allocation Committee**

The composition of the Provincial/Municipal Land Use and Allocation Committee includes:

Provincial/Municipal Governor or Deputy Governor	Chairman
Chief, Provincial/Municipal Sub-Commissioner of the Army	Member
Director, Provincial/Municipal Department of Land Management, Urban Planning and Construction	Member
Director, Provincial/Municipal Department of Economy and Finance	Member
Director, Provincial/Municipal Department of Rural Development	Member
Director, Provincial/Municipal Department of Agriculture, Forestry and Fisheries	Member
Director, Provincial/Municipal Department of Planning	Member
Director, Provincial/Municipal Department of Women and Veterans Affairs	Member
Director, Provincial/Municipal Department of Environment	Member
Director, Provincial/Municipal Department of Water and Meteorology	Member
Director, Provincial/Municipal of Social Affairs, Labor, Vocational Training and Youth Rehabilitation.	Member

The chairman of the Provincial/Municipal Land Use and Allocation Committee may invite representatives of other concerned departments to participate as members based on the needs of each case.

The chairman and members of the Provincial/Municipal Land Use and Allocation Committee shall be appointed by the chairman of National Social Land Concession Committee.

The chairman of the Provincial/Municipal Land Use and Allocation Committee shall appoint, with the approval of the Provincial/Municipal Land Use and Allocation Committee, one or more staff members to provide administrative support to the Provincial/Municipal Land Use and Allocation Committee.

The Provincial/Municipal Land Use and Allocation Committee shall establish 3 technical support units.

**Article 25.**

The technical support units of the Provincial/Municipal Land Use and Allocation Committee include:

1. The Land Technical Support Unit is headed by the Provincial/Municipal Department of Land Management, Urban Planning, Construction and Cadastre and has the following duties:
  - Identify land that may be appropriate for social land concessions
  - Ensure the selection of social concession land is fair and transparent.
2. The Target Land Recipients Selection Technical Support Unit is headed by the Provincial/Municipal authority and has the following duties:
  - Ensure the selection of target land recipients is suitable based on selection criteria.
  - Monitor the social land concession project and target land recipients.
3. The Development Technical Support Unit is headed by the Provincial/Municipal Department of Rural Development department and has the following duties:
  - Oversee general development issues and rationalize the amount of land with the number of applicants in the province as a whole.
  - Ensure infrastructures and facilities are included in the social land concession plan and will be in place in a timely manner.

The composition of the technical support units shall be selected from among the staff from the Provincial/Municipal governor's office and other departments in the province which are the members of Provincial/Municipal Land Use and Allocation Committee.

The chairman and staffs of technical support units shall be appointed by the Provincial/Municipal governor.

If there are existing structures that meets the requirements of this section, the Provincial/Municipal Land Use and Allocation Committee may use those existing structures.

**Article 26.**

The District Working Group shall have the following functions and duties:

1. Carry out all the work of Provincial/Municipal Land Use and Allocation Committee at the district level.
2. Provide technical assistance to the commune councils to identify and classify land, to develop land use plans, to select target land recipients and to implement social land concession programs.
3. Ensure that the allocation of social concession land at the local level is efficient and transparent.

**Article 27.**

The composition of the District/Khan Working Group includes:

Governor or deputy governor of District/ Khan	Chairman
Chiefs of district/khan offices representing the ministries and institutions that are the members of Provincial/Municipal Land Use and Allocation Committee as provided in article 21 of this sub decree	Member
Representatives of local authority	Member

The chairman and staff of District/Khan Working Group shall be appointed by the Provincial/Municipal governor.

**Article 28.**

The commune council shall have the following duties and tasks:

- Initiate and consider the social land concession plan in accordance with the procedures for commune/ sangkat development.
- Implement the local social land concession program with technical support provided by District Working Group.
- Be responsible for selection of target land recipients from among applicants.
- Be responsible for fair and efficient allocation of land.

## **Chapter 7. Resources**

**Article 29.**

The budget for the operation of the social land concession mechanism shall be in the budget package of the Ministry of LMUPC.

**Article 30.**

According to the unified budget system, the resource and budget of social land concession mechanism shall be generated from:

- the national budget.
- financing from local and overseas sources or international donor organizations.

## **Chapter 8. Final Provisions**

**Article 31.**

Guidelines to implement this sub-decree shall be determined by Prakas of the Minister of the Ministry of Land Management, Urban Planning and construction.

**Article 32.**

Any provisions contrary to this sub-decree shall be considered null and void.

**Article 33.**

The Minister in charge of the office of the Council of Ministers, Minister of the Ministry of Land Management, Urban Planning and Construction; the Council for Land Policy, Ministers; Secretaries of States and all concerned Provincial/Municipal governors shall be responsible to implement this sub-decree from the date of its signature.



**(付属资料 5)**

**Sub-Decree on Economic Land  
Concessions (December 27, 2003)**





## **Laws and Regulations**

### **Sub-Decree on Economic Land Concession**

Unofficial Translation

**Kingdom of Cambodia**  
**Nation – Religion – King**

= = = = =

Royal Government of Cambodia

No. 146 ANK/BK

#### **Sub-Decree**

on

#### **Economic Land Concessions**

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#### **The Royal Government**

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen Royal Kret No. NS/RKT/0704/124 of July 15, 2004 on the Appointment of the Royal Government;
- Having seen Royal Kram No. 02/NS/94 of July 20, 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen Royal Kram No.01/NS of December 28, 1993 promulgating the Law on Financial System;
- Having seen Royal Kram No. 04/NS/94 of August 10, 1994 promulgating the Law on Land Management, Urban Planning and Construction;
- Having seen Royal Kram No. NS/RKM/0196 of January 25, 1996 promulgating the Law on National Cultural Heritage Protection
- Having seen Royal Kram No.NS/RKM/1296/36 of December 14, 1996 promulgating the Environmental Protection and Natural Resource Management Law;
- Having seen Royal Kram CS/RKM/0298/03 of February 25, 1998, promulgating the Law on the Financial Regime and Property of Municipalities and Provinces;
- Having seen Royal Kram No.NS/RKM/0301/05 of March 19, 2001 promulgating the Law on Khum/Sangkat Administration Management;

- Having seen Royal Kram No.NS/RKM/0801/14 of August 30, 2001 promulgating the Land Law;
- Having seen Royal Kram No.NS/RKM/0802/016 of August 31, 2002 promulgating the Forestry Law;
- Having seen Sub Decree No. 46 ANK.BK of May 31, 2002 on Procedures for Establishing Cadastral Maps and Land Register;
- Having seen Sub decree No. 48 ANK.BK of May 31, 2002 on Sporadic Land Registration;
- Having seen Sub Decree No.19 ANK/BK of March 19, 2003, on Social Land Concessions;
- Having seen Sub Decree No. 53 ANK/BK of April 01, 2005, on Procedures, Creation, Classification and Registration of Permanent Forest Estate
- Having seen Sub Decree No. 72 ANK/BK of August 11, 1999, on Environmental Impact Assessment
- Having seen Sub Decree No. 118 ANK.BK of October 07, 2005, on State Land Management
- Having been adopted by the Council of Ministers during the plenary session on December 16, 2005.

## **DECIDES**

### **Chapter 1: General Provisions**

#### **Article 1**

The objectives of this sub-decree are to determine the criteria, procedures, mechanisms and institutional arrangements for initiating and granting new economic land concessions; for monitoring the performance of all economic land concession contracts; and for reviewing economic land concessions entered into prior to the effective date of this sub decree for compliance with the Land Law of 2001.

#### **Article 2**

The following terms have the meanings defined below:

- Economic Land Concession refers to a mechanism to grant private state land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation.
- Industrial-agricultural exploitation refers to:
  - cultivation of food crops or industrial crops including tree planting to be tree plantation.
  - raising of animals and aquaculture,
  - construction such as a plant or factory and facilities for the processing of domestic agricultural raw materials, or
  - a combination of some or all of the above activities.

- Contracting Authority refers to the authorities who have the legal power and exercise such power as granted by the Prime Minister to enter into Economic Land Concession Contracts on behalf of the Royal Government of Cambodia and who carries out duties in accordance with provisions of this sub-decree.
- Regulatory Institution refers to an authority who has the legal power to issue and enforce rules and regulations governing the activities or facilities that are the subject of the Economic Land Concession Contract.
- Technical Secretariat refers to the Technical Secretariat for Economic Land Concessions.

### **Article 3**

Economic land concessions may be granted to achieve the following purposes:

- To develop intensive agricultural and industrial-agricultural activities that requires a high rate and appropriate level of initial capital investment.
- To achieve a specific set of agreements from the investor for developing the land in an appropriate and perpetual manner based on a land use plan for the area.
- To increase employment in rural areas within a framework of intensification and diversification of livelihood opportunities and within a framework of natural resource management based on appropriate ecological system,
- To encourage small as well as large investments in economic land concession projects, and
- To generate state revenues or the provincial or communal revenues through economic land use fees, taxation and related services charges.

## **Chapter 2: General Conditions for Granting an Economic Land Concession**

### **Article 4**

An economic land concession may be granted only on a land that meets all of the following five criteria:

1. The land has been registered and classified as state private land in accordance with the Sub decree on State Land Management and the Sub decree on Procedures for Establishing Cadastral Maps and Land Register or the Sub decree on Sporadic Registration.
2. Land use plan for the land has been adopted by the Provincial-Municipal State Land Management Committee and the land use is consistent with the plan.
3. Environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects.

4. Land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected.

5. Land for which there have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality.

#### **Article 5**

Evaluating Economic Land Concession proposals shall be based on the following criteria:

- Increase in agricultural and industrial-agricultural production by using modern technology;
- Creation of increasing employment;
- Promotion of living standards of the people;
- Perpetual environmental protection and natural resources management;
- Avoidance or minimizing of adverse social impacts;
- Any linkages and mutual support between social land concessions and economic land concessions;
- Processing of raw agricultural materials, to be specified in the concession contract.

### **Chapter 3: Procedures for Initiating, Requesting and Granting Economic Land Concessions**

#### **Article 6**

There are two permissible ways to initiate economic land concession projects:

1. Solicited proposal, where a Contracting Authority proposes a project for solicitation of proposals from investors.
2. Unsolicited proposal, where an investor proposes a project proposal to the state for approval

#### **Part 1: Initiating Economic Land Concessions through Solicited Proposals**

#### **Article 7**

A Contracting Authority may initiate an economic land concession project by taking the following preparatory steps:

1. Develop initial project documents proposing an Economic Land Concession project in a form established by the Technical Secretariat, includes the information specified in Article 8 of this sub-decree.

2. Send the initial project documents to the Technical Secretariat for preliminary study and recommendations based on Article 3 and Article 5 of this sub-decree.
3. Consult with relevant Provincial Land Use and Allocation Committee and Regulatory Institution regarding the economic land concession project;
4. Arrange for the conduct of an initial environmental and social impact assessment of the proposed economic land concession project.
5. If the initial environmental and social impact assessment indicates a medium or high degree of adverse impact, arrange for the conduct of a full environmental and social impact assessment.
6. Prepare a complete set of project documents, which shall include all of the recommendations and reports from the steps enumerated above, and which shall be the basis for the Terms of Reference for Solicited Proposals.

#### **Article 8**

Initial project documents proposing an economic land concession project shall include the following:

1. Description of the proposed land, such as location, size, type, reference to the parcel number in the Land Register, and general information about the area in which the land is located.
2. General land use and development plan for the concession project.
3. Any necessary actions required to be completed by the concessionaire prior to undertaking the economic land concession activities.
4. Any necessary actions required to be completed by the Contracting Authority or any ministry or institution prior to undertaking the proposed economic land concession activities.
5. State obligation or state guarantee required for the economic land concession project.

#### **Article 9**

Upon receipt of the complete set of economic land concession project documents from a Contracting Authority, the Technical Secretariat shall prepare documents with solicitation for proposals, which shall include:

- o Notice
- o Terms of Reference; and

- Application form.

#### **Article 10**

The Technical Secretariat shall widely disseminate the Notice for Solicited Proposals and shall also send the Notice to the Council for the Development of Cambodia.

The Notice shall specify the manner, place and time for submission of proposals with specification of the commencing date of acceptance and the ending date of acceptance. Submission period shall not be less than 60 (sixty) days from the date of publication of the Notice;

#### **Article 11**

The Terms of Reference for Solicited Proposals shall include:

- Economic land concession project description and supporting documents that shall be attached with a proposal;
- Criteria for evaluating the technical, financial and commercial content of the proposals; and
- Necessary nonnegotiable contract terms.

#### **Article 12**

The application for Solicited Proposal shall include the following:

- A business plan detailing the planned use for the land, the investment plan, expenditure and revenue planned for the land development, and the sources of capital to support the proposed concession project;
- A description of the labor needs for the concession project and the source of the labor;
- Information about technology, equipment, machinery, fertilizer, pesticide, use plan for types of priority crops;
- Indication of the environmental and social impacts of the proposed investment activity and preventive or reduction measures the proposer will take;
- A description of any linkages and mutual support between social land concessions and economic land concessions;
- A description of any linkages to processing of raw materials which are domestic harvests;
- The proposer's land use fee offer to the state;
- Disclosure of any land concession holdings by the proposer as provided under article 59 of the Land Law; and
- Any guarantee sought by the proposer from the State.

**Article 13**

The Technical Secretariat shall at least 30 (thirty) days prior to the deadline for submission of proposal, organize a public meeting for clarification on any point of the solicitation documents, and shall prepare a public document of all the clarification made.

**Article 14**

The criteria for ranking and evaluating solicited proposals shall include the following:

- Technical soundness for the land use and development, including land suitability;
- Compliance with national environmental standards and provision of sound preventive or reduction measures for adverse environmental and social impacts;
- Operational feasibility of the proposal based on factors such as labor demand and supply requirements; financing sources; and market strategy of the business plan;
- Feasibility of employment creation and promotion of living standards of the people;
- Processing of raw materials or domestic harvests, to be specified in the concession contract;
- Feasibility of linkages and mutual support between social land concessions and economic land concessions;
- The amount and manner of payment of the fee offered by the proposer for the use of the land.

The ranking and evaluation criteria shall not be amended after the publication of Notice for Solicited Proposals under Article 10 of this sub-decree.

The Technical Secretariat shall develop and publish the scoring for ranking each proposal based on the criteria above.

**Article 15**

Proposal shall be submitted at the Technical Secretariat in a closed envelop under seal or signature of the proposer.

Proposals received after the deadline shall be returned unopened to the proposer.

All proposals or a single proposal received shall be opened publicly at the date set forth in the Notice for Solicited Proposals. Each proposer has the right to be present at the opening of the proposals.

The Technical Secretariat shall determine responsive proposals and shall review and make recommendations to the Contracting Authority on the basis of the criteria specified in Article 14 of this sub-decree and following the procedures set forth in the Terms of Reference for Proposals.

### **Article 16**

After considering the recommendations of the Technical Secretariat, the Contracting Authority shall evaluate and prepare short-list based on ranking of all responsive proposals, and shall prepare a report on the evaluation of the responsive proposals, and then shall provide a copy of the evaluation report to each proposer.

### **Article 17**

The Contracting Authority shall not negotiate certain necessary contract terms that were pre-determined as nonnegotiable in the solicitation documents.

The Contracting Authority shall invite the highest ranked proposer for negotiations of the Concession Contract. If Contracting Authority does not find the proponent's final offer acceptable, indicating that the negotiations will not result in a Concession Contract, the Contracting Authority shall terminate the negotiations with the proposer concerned and shall then invite for negotiations the other proposers in the order of their ranking.

If the negotiation leads to agreement on a draft Concession Contract, the Contracting Authority shall require the proposer to comply with Article 23 of this sub-decree.

In case, only one or two proposals submitted, the Technical Secretariat shall also observe the procedure specified in the above Articles.

## **Part 2: Initiating Economic Land Concession Projects through Unsolicited Proposals**

### **Article 18**

The prioritized method for granting economic land concessions is through competitive solicited proposals; however, a Contracting Authority may consider an unsolicited proposal where the proposer promises to provide exceptional advantages to achieving the purposes of economic land concessions in situations such as below:

- o the introduction of new technology
- o exceptional linkages between social land concessions and economic land concessions
- o exceptional access to processing or export markets

A Contracting Authority shall not consider an unsolicited proposal if the proposal relates to land that is the subject of Solicited Economic Land Concession Project for which a Notice has been published.

### **Article 19**

The Technical Secretariat shall develop an Application Form for Unsolicited Proposal that shall include a brief description of the proposer's business and financial background, the



economic land concession investment concepts, and information related to land size and location.

The proposer may submit the application at either the Council for the Development of Cambodia or at the Provincial/Municipal Investment Sub-Committee or at the Contracting Authority. If an application is submitted at the Council for the Development of Cambodia or the Provincial/Municipal Investment Sub-Committee, the Council for the Development of Cambodia or the Provincial/Municipal Investment Sub-Committee shall, within 7 (seven) working days from the receipt of the application, send the application to the Contracting Authority.

If the Contracting Authority chooses to consider the unsolicited proposal, the Contracting Authority shall conduct consultations as specified in Article 7, points 3 of this sub-decree. Then the Contracting Authority shall arrange to meet the criteria for selection of land for concession as provided in Article 4 of this sub-decree and request the proposer to submit a detailed proposal.

#### **Article 20**

The detailed unsolicited proposal shall contain the following:

- Information specified in Article 12 of this sub-decree, and
- A report of an initial environmental and social impact assessment. If the initial environmental and social impact assessment indicates a medium or high degree of possible adverse impact, the proposal shall also include a report of full environmental and social impact assessment.

#### **Article 21**

The Contracting Authority who has received an unsolicited proposal shall do the following:

- a. The Contracting Authority shall send a copy of the detailed unsolicited proposal to the Technical Secretariat or to the Provincial-Municipal State Land Management Committee for review and recommendations.
- b. The Technical Secretariat or the Provincial-Municipal State Land Management Committee shall make recommendation to the Contracting Authority on whether to accept the proposal for Concession Contract negotiation in compliance with the requirements of Articles 3 to 5 of this sub-decree.

#### **Article 22**

Contract negotiation for unsolicited proposal shall be made within a maximum period of 28 (twenty-eight) working days from commencement of negotiations. If the negotiation does

not lead to an achievement of a draft concession contract with the specified period the Contracting Authority may end the negotiation with the proposer.

#### **Article 23**

Prior to signing an economic land concession contract, the proposer shall register in the commercial register in compliance with the law on Commercial Rules and Commercial Register of the Kingdom of Cambodia.

#### **Article 24**

The Technical Secretariat shall prepare a Standard Form of Economic Land Concession Contract that shall be used for every economic land concessions, which shall consult with and be determined by a Joint-Prakas of the Ministry of Economy and Finance and the Ministry of Agriculture, Forestry and Fisheries.

### **Chapter 4: Management and Amendment of Concession Contract**

#### **Article 25**

The Contracting Authority shall be responsible for ensuring that a Concession Contract is enforced by establishing mechanisms and procedures for monitoring contract performance and for reporting on the management of the contract to the Ministry of Economy and Finance on regular basis and for informing the Technical Secretariat or the Provincial/ Municipal State Land Management Committee.

The Contracting Authority shall cooperate with relevant ministries or institutions to review the Concessionaire's Concession Contract performance and shall obtain information from the Concessionaire and from relevant ministries or institutions concerning the Concession Contract performance.

#### **Article 26**

Prior to amending any provision of a Concession Contract, the Contracting Authority shall consult with concerned ministries, institutions and contracting party in accordance with the existing laws and regulations.

#### **Article 27**

The matter of extension, suspension, or termination of a concession contract shall be determined in the concession contract.

### **Chapter 5: Administration and Implementation Mechanism**

#### **Article 28**

The economic land concession mechanism shall be the following:

- Contracting Authority
- Technical Secretariat
- Provincial/Municipal State Land Management Committee
- District/Khan State Land Working Group
- Commune-Sangkat Councils

### **Article 29**

The Minister of Agriculture, Forestry and Fisheries is authorized and responsible for granting economic land concessions with a total investment value of more than 10,000,000 (ten million) riels or more; or a total concession land area of 1,000 (one thousand) hectares or more.

The relevant provincial/municipal governor is authorized and responsible for granting economic land concession with a total investment value less than 10,000,000 (ten million) riels and a total concession land area of less than 1,000 (one thousand) hectares.

### **Article 30**

Contracting authorities have the following roles and duties:

- Initiate and develop project documents for economic land concession projects for solicited proposals or may consider unsolicited proposals for economic land concession projects;
- Evaluate and prepare short-list based on ranking of proposals;
- Negotiate terms of Concession Contracts;
- Enforce Concession Contracts;
- Monitor Concession Contract performance;
- Report on management of contract performance to the Council of Ministers every 6(six) months and as necessary;
- Coordinate with and collect information and data from the Ministry of Economy and Finance and the Ministry of National Defense on conditions that shall be incorporated into the Concession Contract for land within a military development zone;
- Review the recommendations from the Technical Secretariat on any contract amendment proposal; and
- Carry out other duties in accordance with the provisions of this sub-decree.

### **Article 31**

The composition of the Technical Secretariat shall be as follows:

- Representative of the Ministry of Agriculture, Forestry and Fisheries

Chair

- Representative of the Ministry of Economy and Finance	Member
- Representative of the Council for the Development of Cambodia	Member
- Representative of the Ministry Land Management, Urban Planning and Construction	Member
- Representative of the Ministry of Interior	Member
- Representative of the Ministry of Environment	Member
- Representative of the Ministry of Commerce	Member
- Member of the Council of Jurists	Member

The Chair and members of the Technical Secretariat shall be appointed by a decision of the Royal Government of Cambodia.

The clerical staff of the Technical Secretariat shall be appointed by a prakas of the Ministry of Agriculture, Forestry and Fisheries upon the request of the Technical Secretariat.

The office of the Technical Secretariat shall be located within the Ministry of Agriculture, Forestry and Fisheries.

### **Article 32**

The Technical Secretariat has the duties to provide comments to the Contracting Authority:

- o Develop economic land concession projects;
- o Develop solicitation documents;
- o Make recommendations on all economic land concession proposals;
- o Monitor performance of economic land Concession Contracts;
- o Make recommendation on the review of existing economic land concessions; and
- o Carry out other duties in accordance with the provisions of this sub-decree.

### **Article 33**

The Provincial/Municipal State Land Management Committee has the roles and duties as provided in Article 25 of the Sub decree No. 118 ANK.BK dated October 07, 2005 on State Land Management.

### **Article 34**

The District/Khan State Land Working Group has the roles and duties as provided in Article 28 of the Sub decree No. 118 ANK.BK dated October 07, 2005 on State Land Management.

### **Article 35**

After receiving the development of detailed economic land concession project document or detailed unsolicited proposal, the Contracting Authority shall organize public consultations with territorial authorities and representatives of local residents by sending

a copy of the document to each of the Commune Council(s) of the affected area for their review and recommendation within 28 (twenty-eight) working days from the date the Commune-Sangkat Council receives a copy of the detailed document for solicited economic land concession project or of the detailed unsolicited proposal. The Contracting Authority shall consider the comments of the affected commune council(s). If comments of the affected commune council(s) are rejected, specific reasons shall be given.

## **Chapter 6: Review of Existing Economic Land Concessions**

### **Article 36**

For economic land concession granted prior to the effective date of this sub-decree, and for which the Concession Contract is still valid:

- o Within 90 (ninety) days after the decision for appointment of the members of the Technical Secretariat is made the Technical Secretariat shall establish an Economic Land Concession Logbook and shall widely give a 30 (thirty) day-notice to all ministries or institutions or territorial authorities that have signed economic land concession contracts and all concession companies.
- o Any ministry or institution or territorial authority that has granted an economic land concession or signed a Concession Contract as well as the concessionaire shall provide information and a copy of relevant documents to the Technical Secretariat for recordation in the Economic Land Concession Logbook within 6 (six) months after the notice or the publication of the notice

### **Article 37**

The ministry, institution or territorial authority that granted or signed an existing economic land concession contract, with technical support from the Technical Secretariat, shall, based on the situation of each case, take the following review steps:

- o The concessionaire's contractual compliance with the terms of the existing Concession Contract in consideration of the investment made and to be made;
- o The land use fees and other revenue from the concession contracts;
- o Hold a public consultation to solicit comments on the land concession activities within communes(s) where the concession land is located;
- o If a concessionaire holds economic land concessions in excess of 10,000 (ten thousand) hectares, shall request that the concessionaire voluntarily reduce the concession land size or if the concessionaire will not voluntarily reduce the size, attempt to negotiate a reduction;
- o Request land regularization as provided in Article 42 of this sub-decree;
- o Recommendations from the Technical Secretariat on the draft review report;

- o Within 6(six) months after the Notice regarding the established Logbook, the ministry, institution or authority that signed contract shall submit, with attachment of recommendation of the Technical Secretariat, reports related to the review of existing economic land concessions contract signed by the ministries or institutions or territorial authorities, and then regularly submit such reports every 6(six) months;
- o Unless otherwise decided by the Council of Ministers, during the review as well as after the completion of the review, the ministry, institution or territorial authority that signed a contract shall continue to monitor the contract performance and shall not cancel or issue any suspension order and shall report on the performance of the contract.

### **Article 38**

The procedures for voluntarily reducing or conducting negotiation for reducing economic concession holding as provided in Article 59 of the Land Law shall be as following:

11. The ministry, institution or territorial authority that signed the land concession contract shall request that the concessionaire voluntarily choose the parcel of land in the concession land to return to the State in accordance with Article 40 of this sub-decree;
  12. If the concessionaire is not willing to voluntarily reduce the size, the ministry, institution, or territorial authority that signed the land concession contract shall invite the concessionaire for negotiations for a concession land use plan with assistance of the Technical Secretariat;
  13. If negotiations are not successfully concluded within 6 (six) months from the commencement of negotiations, the ministry, institution or territorial authority who signed the land concession contract shall report to the Council of Ministers through the Technical Secretariat;
  14. If the concessionaire fails to report for negotiations within a period of 45 (forty five) days from the date the invitation for negotiation was sent to the address or personally delivered to the concessionaire, the ministry, institution or territorial authority who signed the Concession Contract shall report to Council of Ministers for action.

### **Article 39**

The Council of Ministers may grant an exemption from the requirement to reduce economic land concession holdings of over 10,000 (ten thousand) hectares in the following situations:

- o The concession was granted prior to the effective date of the Land Law of 2001;

- A reduction in the holdings would compromise the exploitation in progress on the effective date of the Land Law. Tree cutting or shrub burning for land clearing purpose shall not be considered exploitation in progress or a demonstration of meeting land development requirements under the concession contract.

#### **Article 40**

The recommendations of the Technical Secretariat on draft report of the review for each existing concession to the ministry, institution or territorial authority that signed the economic land concession contract, shall specify the following:

- The Contract is being fully operated;
- Specific changes that should be made to the Contract, with specification of the work of the parties to the Contract to be carried out in a way that is acceptable to both parties;
- The existing Contract should be canceled because the concessionaire violated the Contract
- For economic land concession in excess of 10,000 (ten thousand) hectares, whether there is voluntary reduction of the size or whether negotiations for reduction are required or whether there are compelling reasons for granting an exemption. Selection of parcels for reduction shall include disputed areas, areas not yet cleared, areas not yet developed, and state public lands.

#### **Article 41**

The review reports, recommendation of the Technical Secretariat, and the final result of the review of each existing economic land concession shall be maintained as public documents at the Technical Secretariat and the Provincial-Municipal State Land Management Committee.

#### **Article 42**

In the existing economic land concessions review process, the Ministry of Land Management, Urban Planning and Construction shall regularize the land within the overall area of the economic land concession under review. Land regularization will include land parcel adjustments, adjudication of land rights of occupants of land parcels under review, and demarcation and registration of the land through existing procedures.

### **Chapter 7: Resources**

#### **Article 43**

The budget for the operation of the Technical Secretariat shall be under the budget package of the Ministry of Agriculture, Forestry and Fisheries. According to the unified budget system, the resource and budget of the Technical Secretariat shall be generated

from the national budget and from financing from local and overseas sources or international donor organizations.

## **Chapter 8: Final Provisions**

### **Article 44**

Any provision contrary this sub-decree shall be abrogated.

### **Article 45**

The Minister of the Office of the Council of Ministers; the Minister of Agriculture, Forestry and Fisheries; the Minister of Economy and Finance; the Minister of Land Management, Urban Planning and Construction; relevant ministers, secretaries of state, heads of institutions, and all provincial-municipal governors shall be in charge of implementing this sub-decree based on his/her respective duties from the date of signature.

Phnom Penh, 27/12/2005

**Prime Minister**

**Hun Sen**

c.c:

- Ministry of Royal Palace
- General Secretariat of the Constitutional Council
- General Secretariat of the Senate
- General Secretariat of the National Assembly
- General Secretariat of the Supreme Council for State Reform
- Cabinet of the Prime Minister
- General Secretariat of the Royal Government
- All central ministries and institutions
- All provincial/municipal halls
- As in Article 45
- File



(付属资料 6)

**Sechkdey Prakas No. 6:  
Measures to Crack Down on  
Anarchic Land Grabbing and  
Encroachment (Sep 27, 1999)**



The Khmer version is the official version of this document.

Document prepared by the MLMUPC Cambodia,  
supported by ADB TA 3577 and LMAP TA GTZ.

**KINGDOM OF CAMBODIA**  
NATION RELEGION KING

**ROYAL GOVERNMENT  
OF CAMBODIA**

Number: 06 BRK

Phnom Penh, September 27, 1999

**DECLARATION (SECHKDEY PRAKAS)**

**ON THE MEASURE OF ELIMINATING ANARCHICAL**

**LAND ENCROACHMENT**

Having seen that even though there are the policy on land management and use, the land law 1992, and other rules and regulations subsequently issued by the Royal Government in order to strengthen, as plan, the effectiveness of the management and use; there are still some speculators who continue to take the opportunity to create anarchy in land encroachment in the manner of the development areas or the individual ownership. In the last few years, there are land encroachment problems by building the house, huts, cottages, or planting [cultivating] on state land, water reservoirs, natural protected areas, national parks, wildlife sanctuary, reserved areas, road and railway corridors land of investment companies, and private land in many areas, especially along the main national roads and the railway. If such anarchy continues to exist , it will creates obstacles and serve impacts on the current and future development plan of all sectors .

Facing this problem, the Royal Government immediately needs to put in place the following measures:

- 1- Do not provide the private right on the state land such as reserved forestland, fishing area, water reservoir, natural protected area, national park, wildlife sanctuary , inundated forest area, mangrove land, forest plantation, rubber plantation, agricultural technical station and center, mine area, cultural patrimony, pagoda, school, public park, reserved area, road and railway corridors, as well as land of the investment company, and all legally private owned land and places throughout of the country and shall stop the land encroachment immediately on the abovementioned land and other land which are the state public property and the state private property.
- 2- Absolutely prohibit the subsequent issuance of the application form for land possession and the certificate of land possession obtained through the way of the abovementioned violence and shall take strict measure in accordance with the existing law.
- 3- All levels of local authorities shall investigate immediately and conscientiously on all illegal land encroachment occurring in their provincial/municipal territories and shall immediately put in place the prevention measures based on current principles of law.

The Khmer version is the official version of this document.

- 4- If such anarchy problem is still occurring in any questioned provincial/municipal territory, the territorial authority of that area shall be independently responsible to resolve it. If facing difficulty, the provincial/municipal authority shall request, as necessary, immediate intervention from the relevant competent institutions.
- 5- The General Commander in chief of the Royal Armed Force, the General Commander in chief of the National Police, the Commander in chief of the National Armed Force, the Commander in chief of all Military Region, and the concerned ministries/institutions shall facilitate and co-operate timely [on time] with the provincial/municipal territorial authority according to actual request.
- 6- If an individual or entity subordinating to any ministry/institution or any person conducts directly or indirectly the illegal land encroachment, the ministry/institution or the authority of that area shall give instructions and encourage that person or entity to stop the illegal activity and make them pull down the illegally built construction in accordance with the determination of local authority without any condition. If they fails to follow this instruction, the concerned ministry/institution and the competent authority shall penalize the person and deprive his position according to existing law and to the degree of the offence.
- 7- The Ministry of Agriculture, Forestry and Fisheries shall cooperate with the Council for the Development of Cambodia and the province/municipal authorities to actually investigate all land investment companies and land owners of large dimension, which previously obtained the legal investment principle for a long time ago, but keep that land in vacant without operating [exploiting] following the contract. The concerned competent authorities shall seriously take the measure in according to the existing law.
- 8- The road and railway corridors reserving for the infrastructure shall be limited as follow:
  - . National Road having one digit number like road No 2, 3, 6, 7 are limited to 25 m for both sides from axis of road, except the National Road number 1, 4, 5 *which* are limited to 30 m for both sides from the axis of road.
  - . National Road having two digit number like 11, 22, 64, 78 are limited to 25 m for both side from axis of the road
  - . Provincial Road : both sides from the axis of the road are limited to 20 m
  - . Commune Road : both sides from the axis of the road are limited to 15 m
  - These limitations shall not be applied to the urban area.
  - . Railway : both sides from the axis of the way are limited to 20 m for city, provincial town and urban area.
  - . Railway : both sides from the axis of the way are limited to 30 m for the way outside the City
  - . Railway : both sides from the axis of the road are limited to 100 m for the way in the forest and mountainous area with the sliding down rock or in the high wood area.

For other state public and private property shall be separately determined.

- 9- The Ministry of Interior in collaboration with the Ministry of Public Works and Transport, the Ministry of LMUPC, the Ministry of National Defence and the Ministry of

The Khmer version is the official version of this document.

Economy and Finance shall determine the appropriate time for the provincial/municipal authority to pull down the illegal construction and take it away from road and railway corridor. For the path shall be participated by the ministry of rural development.

10- The immediate challenge and urgent, the Royal Government authorizes all level of territorial authority to start carrying out their work along the national road number 1 and 4 and along the railway in Phnom Perth City and continue to implement in other areas in respect to priority.

11- The Provincial/Municipal Land Dispute Settlement Commission throughout the country shall investigate the implementation of the provincial/municipal territorial authority and report to the Royal Government about their achievement and the difficulties in the implementation, so the Royal Government could take the appropriate measure.

Upon receiving of this declaration, the concerned ministries/institutions, the Headquarter of the Royal Armed Force, the General Directorate of the National Police, and all level of territorial authorities shall widely disseminate and try the best to effectively implement this measure.

**Prime Minister**

**Hun Sen**

**CC:**

- . Cabinet of King
- . Secretariat of Senate
- . Secretariat of National Assembly
- . Ministry of Royal Palace
- . Ministries, Secretary of State, and Institutions
- . Cabinet of Prime Minister
- . Cabinet of Deputy Prime Minister
- . All Provinces/Municipalities
- . Documents



**(付属資料 7)**

**Letter No. 961: (Sep 6, 2000)**







**Kingdom of Cambodia**

**Ministry of Economy and Finance**

Nation Religion King

No. 961 MEF

\*\*\*\*\*

Phnom Penh, April 06, 2000

**Senior Minister, Minister of Economy and Finance**

**To**

**His Excellency of Government Delegate in Charge of Phnom Penh Administrator**

**All His Excellencies of Provincial Governors in Cambodia**

**Objective:** Regarding the Implementation of Right of Way (ROW) policy on National Roads, Provincial Roads, Communal Roads, and Railways in Cambodia

**Reference:** Prakas No. 06 Pr. K of Cambodian Government released on September 27, 1999

As mentioned in the above objective and reference, I am please to inform you that based on the experience in resettlement work on houses and land of the affected people living along National Road, the working groups of Inter-ministerial Resettlement Committee have met many complicated issues; for example, a number of people took advantage of that opportunity to anarchically encroach Right of Way (ROW) to make their own properties and then made the action of selling and buying continuously. Amongst those, some people built their business kiosks, cottages, houses and grew plants within ROW. Based on Prakas No. 06 Pr. K of Cambodian Government issued on September 27, 1999, it clarified ROW of roads and railways for infrastructure development as the following:

- National Roads with one digit number such as NR2, NR3, NR6 and NR7 have to be 25 meters from their central lines, excepting NR1, NR4, and NR5 which are 30 meters from the central line of the roads;
- National Road with two digit numbers such as NR11, NR22, NR64 and NR78 have to be 25 meters from their center lines;
- Provincial Roads have to be 20 meters from the their center lines;
- Communal Roads have to be 15 meters from their center lines;

- Railways have to be 20 meters from their center lines in the case of being in Capital City, Provincial City and City Center;
- Railways have to be 30 meters from their center lines in the case of being in suburban areas;
- Railways have to be 100 meters from their center lines in the case of being in mountain areas where there can be falling rocks or in the case of being in forest areas.

To implement Prakas No. 06 Pr. K with high effectiveness, the Ministry of Economy and Finance would like to inform that the Government will not use National Budget to compensate for all the things on the ROW of Roads and Railways.

Receiving this information, please all City-Provincial authorities announce it publicly and try to implement the above measures effectively.

As mentioned above, I would like you to get to know this information.

Please accept my high respect.

Senior Minister

Minister of Economy and Finance

*(Signature)*

**Keat Chhun**

Copied to:

- Bureau of Council of Ministers
- Ministry of Public Work and Transport
- Document-archive

**(付属资料 8)**

**Circular on Settlement of the illegal  
construction on the state land in  
cities and urban areas  
(May 31, 2010)**



**Kingdom of Cambodia**  
**Nation                      Religion                      King**

**Royal Government of Cambodia**  
**No. 03 SR**

**Circular**  
**on**  
**Settlement of the Illegal Construction on the State Land in Cities and Urban Areas**

This circular aims to provide the solution to the illegal construction on state land.

The Royal Government's policy states in the Preliminary Strategic Framework on Land Policy dated in September 2002 about the rights on temporary holding with limited duration of the illegal constructions frequently occurred in the municipalities, provinces and downtowns. According to the study results, the temporary and illegal constructions in the municipalities, provinces and downtowns in the past cause by some factors such as population increase, returnees of the migrations and victim of war in the period before 1998 when the country was still in the incomplete peace, the land loss of the natural disasters and other factors including the migration from rural to urban areas for employment opportunities in the growing industry, service and construction sectors.

The good example made by the municipal authority of Phnom Penh with the financial support from the Head of the Royal Government encouraged the movement of poor community and non-governmental organizations to build the fund called "Fund for Urban Poverty Reduction" which till May 2010 consists of the amount of 1,320 million riels. This fund is used for micro loans to the poor households for earning their living in a better welfare.

Solving the above mentioned problem, the Royal Government issues this circular to instruct all relevant local authorities and institutions at all levels in the municipalities, provinces and downtowns who are dealing with the illegal temporary constructions on the state land to implement the following measures:

1. collecting the data and information about the specific locations of the illegal constructions

The chairs of the Capital/Provincial State Land Management Committees must encourage the state land working groups in the municipalities, districts/khan to establish the commune/sangkat working groups including in as its members also the representatives of the communities, local people and civil society to collect data on the locations of the illegal constructions in their territories. The location deemed as illegal must be approved with the stamps of all working members of the related working group. The data must be compiled as the reference for discussing and approving the solution to the problem in case by case and according to the circumstances.

2. identifying, mapping and classifying the locations of the illegal constructions

After the data were collected, the working group on state land management at the municipality/district of which members include also the representative of the community, local people and civil society must conduct the meeting to review and discuss the accuracy of the statistics of each location before inputting the data to the district/sangkat map with larger scale measurement. Based on the actual situation of each location, the working group of state land management at the municipality/district including the representative of the community, local people and civil society must define the specific location using the physical characteristics of the land as following:

- land already in use as the public park, public space, private state land, private land or land of the company or land belonging to the pagoda etc.,
- land in the use plan for the public park, construction of drainage, road network, commercial areas, industrial park, residents, tourist places etc.,
- locations which can cause the dangers to the people including the dumping site, side of walk, side of drainage, right of way, rail road, flood protection dike, river bank, top floor and terraces of the buildings etc.,

The location map of the illegal construction must be demarked in different colors or by different technical signs to reflect their physical characteristics in according to the natures of the illegal constructions mentioned above. The recognition of the location must be provided with the stamps of the members of the working group of state land management at the municipality/district/khan including also the representative of the community, local



people and civil society. The recognition will be used as the tool for problem solving and discussion and must be published in public to prevent further illegal encroachment of the state land.

The working group in next step must call for the meeting among their members to agree on the ownership of the land, land classification for example state public land or private public land or private land and compile the report with map, attached documents, record of the meeting (agree or not agree) and the recommendations of the meeting for the decision of the Capital/Provincial State Land Management Committee. The identified state land with the map, classification with agreement or decision of the Capital/Provincial Land Management Committee must be registered in the land cadastral book. Therefore, in parallel to the case-by-case measures, the capital and provincial authorities must pay attention to the gradual mapping of state land with clear registration and documentation for using as the reference in finding the solutions to existing problems and the information must be publicly disseminated to prevent the illegal ownership in the future.

3. conducting census of the household and population living in the locations of illegal constructions

Based on the map of the location of the illegal construction, the chair of the working group on state land management at the municipality, district/khan level including also the representative of the community, local people and civil society must assign the commune/sangkat working group at targeted commune and sangkat to collect the data of the households of each resident with the photograph of the head of the families and all members attached with family statistics. The family statistics must indicate the owner of the temporary construction or its rental and the information must be endorsed by the stamps of all members and head of the family as the evidence.

The statistics tables must be published for 30 (thirty) days at the location of the illegal constructions, commune/sangkat hall to get the feedbacks from the local people.

4. providing solutions

Based on the collected information, the working group on state land management at the municipality, district/khan including the representative of the community, local people and civil society must meet to discuss the alternative solutions to the problem of each specific location. During the discussion, the members must regard the public interest as the high priority and use the actual physical characteristics of the location as the reference in consideration to the interest of majority of the people of the community and the local development needs. After the approval of the solution by its members- resettlement, or on-site development or other measure- the working group must set up the action plan and schedule for the implementation and must seek the approval of the Capital/Provincial State Land Management Community.

4-1- the owner of the illegal construction living on state land can be provided the possible solutions:

- resettlement in the case that on-site development is not feasible or
- on-site development with appropriate measure or
- other realistic policy options

4-2- the people, hiring the illegal construction, must deal directly with the owner of the construction and has no rights to be compensated by the working group or the committee or local authorities.

In the case that the discussion on the solution did not reach the agreement the working group with the members also from representative of the community, local people and civil society must report and request for recommendations of the Capital/ Provincial State Land Management Committee. The submission must be with record of the discussion, majority opinions of the meeting, opinions of the community and local people, and the civil society's suggestion and other publicly suggested solutions (if any).

The solution with agreement of the members of the working group must be published for 30 (thirty) days at the location of the illegal construction, district/sangkat hall as the public information to the local people.

5. coordinated consultation to define the policy measures

In the case that the on-site development is the feasible solution, the capital/provincial governor must discuss with relevant stakeholders to prepare the development plan of the physical infrastructures and define the procedure for house arrangement and planning and/or other related policy measures to facilitate the living of the local people.

In the case that the resettlement is necessary, there must be the clear plan before the implementation of the solutions and/or compensation policy to ensure less interruption to the living of the people.

In either case, the beneficiaries can have:

- ownership of the use of land based on agreement or



- real ownership after the continuous living in the place at least 10 years counted back from the date of the solution or
  - rent with specific period and favorable rental fee
6. providing necessary physical infrastructures and basic service at the resettlement place
- a- All solutions must consider the arrangement for physical infrastructures and basic services for the low income people based on some criteria such as small size of the land and/or size of the house to avoid future illegal settlement in other places.
  - b- The physical infrastructures and basic services must be prepared in advance. They include roads, water supply, drainage and other basic services such health, education and employment opportunities.
7. participating by the relevant development stakeholders

To implement the agreed solution, the working group on state land management at the municipality, district/khan must monitor and inspect the location before the implementation of the solution. All related stakeholders must continue to support the local people in either of on-site development or resettlement to ensure the sustainability of the existing community, to prepare the internal regulation and community saving based on voluntary basis. The internal regulation must define the management structure, rights, obligation and procedure for making key decisions of the community.

The local authorities and related stakeholders such as development partners, NGOs and civil society can perform their respective roles in the process of the solution with contribution of their efforts, materials or financial means from the beginning to the end of the process to find the possibility in physical infrastructures improvement, basic public service deliveries and employment opportunities for the resettlement.

In addition to the seven measures defined above, the Royal Government seriously instruct through this circular to all local authorities to cooperate with relevant institutions to prevent the reoccurrences of the illegal settlement in capital, provinces, municipalities, districts/khan and communes/sangkat.

All related ministries and agencies and local authorities at all levels, Capital/Provincial State Land Management Committees must implement effectively this circular from the date it was signed.

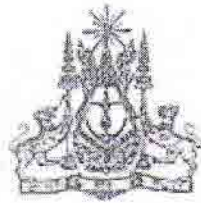
Phnom Penh.  
May 31, 2010

Seal and signature

Prime Minister  
Hun Sen

CC:

- Royal Palace
- Secretariat of Senate
- Secretariat of National Assembly
- Secretariat of Royal Government
- Cabinet of Prime Minister
- Cabinets of Deputy Prime Ministers
- All ministries/agencies
- All municipal/provincial halls
- Royal archive
- Archive



**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

រាជរដ្ឋាភិបាលកម្ពុជា

លេខ: ០៣ ស.រ

**សារថវ**

**ស្តីពី**

**ការដោះស្រាយសំណង់បណ្តោះអាសន្នលើដីរបស់រដ្ឋដែលត្រូវបានទម្រង់កាន់កាប់ដោយខុសច្បាប់**  
**តាមរាជធានី នីត្រុង និងនីប្រជុំជន**

សភាពនេះ មានគោលដៅដោះស្រាយចំពោះតែសំណង់បណ្តោះអាសន្នលើដីរបស់រដ្ឋដែលត្រូវបានទម្រង់កាន់កាប់ដោយខុសច្បាប់ ។

គោលនយោបាយរបស់រាជរដ្ឋាភិបាល ក្នុងឯកសារលេខស្តីពីក្របខ័ណ្ឌយុទ្ធសាស្ត្រគោលនយោបាយដីធ្លី នាខែកញ្ញា ឆ្នាំ២០០២ បានលើកឡើងអំពីសិទ្ធិកាន់កាប់ដីរបស់បណ្តោះអាសន្ន និងមានរយៈពេលកំណត់ចំពោះអ្នកកាប់ដីលំនៅខុសច្បាប់ និងសំណង់អនាថិបដេញដែលបានកើតជាបន្តនៅរាជធានី នីត្រុង និងនីប្រជុំជនមួយចំនួន។ តាមការសិក្សាសំណង់បណ្តោះអាសន្នដែលបានសាងសង់ដោយខុសច្បាប់តាមទីក្រុង និងនីប្រជុំជន ដែលបានកើតមានកងមក បណ្តាលមកពីកត្តាជាច្រើនដូចជាគោលដៅ កំណើនប្រជាជន ការធ្វើអាជ្ញាប័ណ្ណដីធ្លីនៃគ្រួសាររក្សាស្រែ និងក្រសួងក្នុងដំណាក់កាលមុនឆ្នាំ១៩៩៨ នៅពេលដែលប្រទេសជាតិពុំទាន់មានសុខសន្តិភាពពេញលេញ ការចាប់បង់ដីដោយស្រោចម្រាមជាតិ និងកត្តាផ្សេងៗទៀតជាពិសេសកត្តាចំណែកស្រុកកំណត់បង់ជនរទេះកាន់ដំបង់ ទីក្រុងនីប្រជុំជនរកការងារធ្វើនៅតំបន់ថ្មី ដែលមានការរីកចម្រើនគាត់រហ័សនៃវិស័យឧស្សាហកម្ម សេវាកម្ម និងឧស្សាហកម្ម ។

ជាបទពិសោធន៍មួយដ៏ល្អ ក្រោមការឧបត្ថម្ភគាំទ្រហិរញ្ញវត្ថុផ្ទាល់របស់ប្រមុខរាជរដ្ឋាភិបាល អាជ្ញាធររាជធានីបានបំផុសនឹកនាំចលនាសហគមន៍អ្នកក្រីក្រ និងអង្គការមិនមែនរដ្ឋាភិបាលមួយចំនួន កសាងបាននូវមូលនិធិមួយហៅថា " មូលនិធិអភិវឌ្ឍកាត់បន្ថយភាពក្រីក្រក្នុងទីក្រុង " ដែលមកដល់ខែឧសភា ឆ្នាំ២០១០ មានទឹកប្រាក់ ១ ៣២០ (មួយពាន់បីរយប្រាំពីរពាន់រៀល សម្រាប់ផ្តល់ជាប្រាក់កម្ចីមីប្រហិរញ្ញវត្ថុដល់គ្រួសារក្រីក្រ យកទៅប្រើប្រាស់ដើម្បីស្តារ និងបង្កើនចំណូលគ្រួសារ និងកែលម្អជីវភាព ។

ក្នុងគោលដៅដោះស្រាយបញ្ហាខាងលើ រាជរដ្ឋាភិបាលថាកំណត់ចេញនូវសារាចរនេះដើម្បីលើកដល់អាជ្ញាធរដែលដីគ្រប់ដំបាប់ផ្ទះ និងស្ថាប័នពាក់ព័ន្ធ អំពីនីតិវិធីដោះស្រាយសំណង់បណ្តោះអាសន្នលើដីរបស់រដ្ឋដែលត្រូវបានទម្រង់កាន់កាប់ដោយខុសច្បាប់ ដែលបានកើតនៅតាមទីក្រុង និងនីប្រជុំជន ដោយត្រូវអនុវត្តវិធានការដូចខាងក្រោម ៖

- ១- ការស្រង់ទិន្នន័យជាក់លាក់អំពីចំនួនទីតាំងសំណង់បណ្តោះអាសន្ន



**Circular on the Settlement of Illegal Temporary Buildings in Cities and Urban Areas  
(Approved by Prime Minister on May 31, 2010)**

ប្រធានគណៈកម្មាធិការគ្រប់គ្រងដីរដ្ឋថ្នាក់រាជធានី ខេត្ត ត្រូវជំរុញឱ្យក្រុមការងារដីរដ្ឋថ្នាក់ក្រុង ស្រុក ខណ្ឌ ឱ្យចាត់  
តាំងក្រុមការងារវាយតម្លៃ សង្កេត ដោយមានការចូលរួមជាសមាជិកចំពោះកិច្ច ពិពណ៌នាសហគមន៍ ប្រជាជនក្នុងមូលដ្ឋាន  
និងសង្គមស៊ីវិល ដើម្បីធ្វើការស្រាវជ្រាវទិន្នន័យចំនួនទីតាំងសំណង់បណ្តោះអាសន្នទាំងអស់នៅក្នុងដែនសមត្ថកិច្ចរបស់ខ្លួន ។ ទីតាំង  
នៃសំណង់បណ្តោះអាសន្ននីមួយៗ ត្រូវមានស្ថាប័នមេដឹកនាំគ្រប់សមាជិកនៃក្រុមការងារដែលត្រូវបានចុះស្រាវជ្រាវទិន្នន័យ ហើយ  
ចងក្រងជាស្ថិតិរួមមូលសម្រាប់ជាមូលដ្ឋានក្នុងការស្វែងរកដំណោះស្រាយទៅតាមករណី និង តាមដំណាក់កាល ។

២- ការធ្វើអត្តសញ្ញាណកម្ម ការធ្វើផែនទី និងការធ្វើចំណាត់ថ្នាក់ទីតាំងដីដែលសំណង់បណ្តោះអាសន្នទាំងនៅ

ក្រោយពីការស្រាវជ្រាវស្ថិតិគ្រប់ទីតាំងសំណង់បណ្តោះអាសន្ន ក្រុមការងារដីរដ្ឋថ្នាក់ក្រុង ស្រុក ខណ្ឌ ដោយមានការចូល  
រួមជាសមាជិកចំពោះកិច្ច ពិពណ៌នាសហគមន៍ប្រជាជនក្នុងមូលដ្ឋាន និងសង្គមស៊ីវិល ត្រូវជួបប្រជុំពិនិត្យ និង ពិភាក្សាលើ  
ភាពត្រឹមត្រូវនៃស្ថិតិទីតាំងដីមួយៗ ដើម្បីសម្រេចបញ្ជូនទិន្នន័យទីតាំងនោះទៅក្នុងផែនទីយុំ សង្កាត់ដែលមានមាត្រដ្ឋានធំ ។  
ផ្អែកលើទីតាំងជាក់ស្តែងនីមួយៗ ក្រុមការងារដីរដ្ឋថ្នាក់ក្រុង ស្រុក ខណ្ឌ និងតំណាងសហគមន៍ ប្រជាជនក្នុងមូលដ្ឋាន សង្គម  
ស៊ីវិលជាសមាជិកចំពោះកិច្ច ត្រូវធ្វើការកំណត់ទីតាំងដីមួយៗ ដោយផ្អែកលើលក្ខណៈរូបវន្តនៃដី ជា ៖

- ដីដែលបានប្រើប្រាស់ជា : សួនសាធារណៈ លំហសាធារណៈ ដីឯកជនរបស់រដ្ឋ ដីរបស់បុគ្គលឯកជន ឬរបស់  
ក្រុមហ៊ុន ដីវត្តអារាម ។ល។
- ដីដែលមានផែនការប្រើប្រាស់រួចហើយសម្រាប់ : ធ្វើសួនសាធារណៈ ធ្វើប្រព័ន្ធស្ទះ ឬប្រឡាយបង្ហូរទឹក បណ្តាញ  
ផ្លូវថ្នល់ តំបន់ពាណិជ្ជកម្ម តំបន់ឧស្សាហកម្ម តំបន់ជំនាញដី តំបន់ទេសចរណ៍ ។ល។
- ទីតាំងដែលអាចបង្កគ្រោះថ្នាក់ដល់អ្នកស្នាក់នៅ : ជិតទីវាលចាក់សម្រាម លើទីកើមផ្លូវ ជិតប្រឡាយបង្ហូរទឹក  
លើដីចំណីផ្លូវថ្នល់ ផ្លូវរត់ក្រែង លើទំនប់ការពារទឹកជំនន់ ត្រាំងទន្លេ ស្ទឹង ព្រែក លើដីបូល ទែរ៉ាស់ ។ល។

ចំពោះផែនទីនៃទីតាំងសំណង់បណ្តោះអាសន្ន ត្រូវសម្គាល់ដោយប្រើពណ៌ផ្សេងៗឬប្រើសិទ្ធិសញ្ញាហេតុអ្វីមេសដើម្បី  
បញ្ជាក់លក្ខណៈរូបវន្តនៃដីតាមប្រភេទដែលសំណង់បណ្តោះអាសន្នទាំងនៅ ដូចបានរៀបរាប់ខាងលើ ហើយត្រូវមានស្ថាប័ន  
មេដឹកនាំមូលដ្ឋានដោយក្រុមការងារដីរដ្ឋថ្នាក់ក្រុង ស្រុក ខណ្ឌ ពិពណ៌នាសហគមន៍ប្រជាជនក្នុងមូលដ្ឋាន សង្គមស៊ីវិលជា  
សមាជិកចំពោះកិច្ច សម្រាប់ប្រើប្រាស់ជាឧបករណ៍ក្នុងការពិភាក្សាស្វែងរកដំណោះស្រាយ និង ត្រូវផ្សព្វផ្សាយជា  
សាធារណៈ ដើម្បីទប់ស្កាត់ការចូលទម្រានកាន់កាប់ដីរបស់រដ្ឋដោយខុសច្បាប់ទៅទៀត ។

បន្ទាប់មក ក្រុមការងារដីរដ្ឋថ្នាក់ក្រុង ស្រុក ខណ្ឌ ត្រូវប្រជុំស្វែងរកការឯកភាពព្រឹត្តិការណ៍កាន់កាប់ និងលើ  
ចំណាត់ថ្នាក់ដី ជាដីសាធារណៈរបស់រដ្ឋ ឬជាដីឯកជនរបស់រដ្ឋ ឬជាដីរបស់បុគ្គលឯកជន និងធ្វើរបាយការណ៍ដោយ  
ភ្ជាប់ផែនទី ឯកសាររណប មតិឯកភាពព្រឹត្តិការណ៍ ឬមតិឯកភាពព្រឹត្តិការណ៍ និងយោបល់របស់អង្គប្រជុំ ដើម្បីសុំការសម្រេចពីគណៈ  
កម្មាធិការគ្រប់គ្រងដីរដ្ឋថ្នាក់រាជធានី ខេត្ត ។ ចំពោះដីរដ្ឋដែលបានធ្វើអត្តសញ្ញាណកម្ម ធ្វើផែនទី និងធ្វើចំណាត់ថ្នាក់  
ដីដោយមានការឯកភាពព្រឹត្តិការណ៍ ឬមានការសម្រេចពីគណៈកម្មាធិការគ្រប់គ្រងដីរដ្ឋថ្នាក់រាជធានី ខេត្ត រួចហើយអាចចរ  
ត្រូវធ្វើការចុះបញ្ជីដីនោះទៅក្នុងសៀវភៅ ពេលបញ្ជីដីថ្មី ។ ដូច្នេះ ទន្ទឹមនឹងការដោះស្រាយករណីជាក់ស្តែងនីមួយៗ

**Circular on the Settlement of Illegal Temporary Buildings in Cities and Urban Areas  
(Approved by Prime Minister on May 31, 2010)**

អាជ្ញាធររាជធានី ខេត្ត ត្រូវយកចិត្តទុកដាក់កសាងជាដំបូងរយៈពេល១១ខែនៃទីរួមរស់រដ្ឋ ដោយធ្វើការចុះបញ្ជីដីរដ្ឋទុកជាប់កសាង មូលដ្ឋាន សម្រាប់ការអនុវត្តដំណោះស្រាយ និងធ្វើការផ្សព្វផ្សាយជាសាធារណៈ ដើម្បីទប់ស្កាត់ការចូលទម្រានកាន់កាប់ដី របស់រដ្ឋដោយខុសច្បាប់នៅថ្ងៃខាងមុខ ។

**៣- ការធ្វើដំរើនចំនួនគ្រួសារ និងចំនួនប្រជាជនដែលរស់នៅក្នុងទីតាំងសំណង់បណ្តោះអាសន្ន**

ផ្អែកលើផែនទីដែលមានលើទីតាំងសំណង់បណ្តោះអាសន្ន ប្រធានក្រុមការងារដីរដ្ឋថ្នាក់ក្រុង ស្រុក ខណ្ឌ ដោយមានតំណែងសហគមន៍ប្រជាជនក្នុងមូលដ្ឋាន និងសង្គមស៊ីវិលជាសមាជិកចំពោះកិច្ចចូលរួមផង ត្រូវចាត់តាំងឱ្យ ក្រុមការងារវាយតម្លៃ សង្កេតគោលដៅ គ្រប់ស្ថិតិសមាជិកគ្រួសារនៅតាមខ្នងផ្ទះនៃទីតាំងដីមួយៗ ដោយមាន ឪពុកមេគ្រួសារ និងសមាជិកគ្រួសារទាំងអស់សម្រាប់ភ្ជាប់ជាមួយស្ថិតិគ្រួសារ។ ក្នុងស្ថិតិគ្រួសារនីមួយៗ ត្រូវមានបញ្ជាក់ ថាជាម្ចាស់សំណង់បណ្តោះអាសន្ន ឬ ជាអ្នកជួល និងមានឈ្មោះមេដៃពីគ្រប់សមាជិកក្រុមការងារដែលបានចុះផ្ទាល់ ព្រមទាំង មានស្នាមមេដៃមេគ្រួសារ ឬតំណែងគ្រួសារនីមួយៗទុកជាកម្លាំងភ្នាក់ងារ ។

តារាងស្ថិតិគ្រួសារដែលបានស្រង់រួច ត្រូវបិទផ្សាយជាសាធារណៈក្នុងរយៈពេល ៣០ (សាមសិប) ថ្ងៃ នៅក្នុង ទីតាំងសំណង់បណ្តោះអាសន្ននានា និងនៅសាលា ឃុំ សង្កាត់ ដើម្បីទទួលយកសំណើប្រជាពលរដ្ឋក្នុងមូលដ្ឋាន ។

**៤- ការវិវត្តរកដីណោះស្រាយ**

ផ្អែកលើមូលដ្ឋានព័ត៌មានដែលប្រមូលបានខាងលើ ក្រុមការងារដីរដ្ឋថ្នាក់ក្រុង ស្រុក ខណ្ឌ តំណែងសហគមន៍ ប្រជាជនក្នុងមូលដ្ឋាន សង្គមស៊ីវិលជាសមាជិកចំពោះកិច្ចចូលរួមផង ត្រូវប្រជុំពិធីប្រតិភាពក្រុមការងារច្រើនលើសដំណោះ ស្រាយចំពោះករណីជាក់ស្តែងរបស់ទីតាំងសំណង់បណ្តោះអាសន្ននីមួយៗ ដោយត្រូវចាត់ទុកជាអាទិភាពនៃប្រយោជន៍ សាធារណៈ និងដោយផ្អែកលើលក្ខណៈរូបវន្តនៃទីតាំង និងលើផលប្រយោជន៍របស់ប្រជាពលរដ្ឋតាមច្រើនក្នុង សហគមន៍ ព្រមទាំងរកចាំបាននៃការអភិវឌ្ឍរបស់មូលដ្ឋាន ។ ក្រោយការចាត់ទុកជាអាទិភាពនៃប្រយោជន៍ ដូចជាការប្តូរទៅកាន់ទីតាំងថ្មី ឬអភិវឌ្ឍនៅទីកន្លែង ជាគោលនយោបាយដទៃទៀត រួចហើយក្រុមការងារនេះ ត្រូវរៀបចំផែនការអនុវត្ត និងកំណត់ពេលវេលាសម្រាប់អនុវត្តជាក់ស្តែង ហើយត្រូវឆ្លើសុំសេចក្តីសម្រេចពី គណៈកម្មាធិការ គ្រប់គ្រង ដីរដ្ឋថ្នាក់រាជធានី ខេត្ត ។

៥.១- ចំពោះអ្នកស្នាក់នៅជាម្ចាស់សំណង់បណ្តោះអាសន្នលើដីរបស់រដ្ឋដែលទម្រានកាន់កាប់ដោយខុសច្បាប់ សព្វគ្រប់ ដោះស្រាយបាន៖

- ការប្តូរទៅទីតាំងថ្មី ក្នុងករណីដែលមិនអាចធ្វើការអភិវឌ្ឍនៅទីកន្លែងបាន ឬ
- ការអភិវឌ្ឍនៅទីកន្លែង ចំពោះទីតាំងសំណង់បណ្តោះអាសន្នលើដីរបស់រដ្ឋដែលទម្រានកាន់កាប់ដោយខុសច្បាប់ ដែលអាចមាន លក្ខណៈសមស្របសម្រាប់ការអភិវឌ្ឍនេះ ឬ
- ការដោះស្រាយគោលនយោបាយដទៃទៀតតាមការដាក់ស្តែង ។



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៤.២- ចំពោះអ្នកស្នាក់នៅដែលជាអ្នកជួលពីម្ចាស់សំណង់បណ្តោះអាសន្នមិនស្របច្បាប់ អ្នកជួលត្រូវដោះស្រាយ ជាមួយ ម្ចាស់សំណង់ខុសច្បាប់ ហើយគ្មានសិទ្ធិទាមទារសំណងពីអ្នកជួលក្រុមការងារដីរដ្ឋផ្ទាំង ក្រុង ស្រុក ខណ្ឌ ឬតំបន់ព្រំប្រទល់ការគ្រប់គ្រងដីរដ្ឋផ្ទាំងរាជធានី ខេត្ត ឬពិរាជធានីផងដែរឡើយ ។

ប្រសិនបើការពិភាក្សារវាងដីលោះស្រាយពុំមានការឯកភាពគ្នា ក្រុមការងារដីរដ្ឋផ្ទាំងក្រុង ស្រុក ខណ្ឌ និង ព័ត៌មានសហគមន៍ប្រជាជនក្នុងមូលដ្ឋាន សង្គមស៊ីវិលដែលជាសមាជិកចំពោះកិច្ច ត្រូវរាយការណ៍ស្នើសុំយោបល់ពីគណៈ អភិបាលរាជធានី ខេត្ត ដោយភ្ជាប់នូវរបាយការណ៍បញ្ជាក់អំពីលទ្ធផលនៃការប្រជុំដោះស្រាយមានជាអាទិ៍ មតិភាគច្រើន នៃអង្គប្រជុំមតិរបស់សហគមន៍មូលដ្ឋានផ្ទាល់ សំណើផ្ទេរទម្រង់សង្គមស៊ីវិល និងមតិសាធារណៈចំពោះសំណើដោះស្រាយណាមួយប្រសិនបើមាន ។

ចំពោះដីលោះស្រាយណាមួយដែលទទួលបានការឯកភាពគ្នា ត្រូវរឹតត្បែងជាសាធារណៈក្នុងរយៈពេល ៣០ (សាមសិប) ថ្ងៃ នៅក្នុងទីតាំងសំណង់បណ្តោះអាសន្នសាមី និងនៅសាលារៀន សង្កាត់ ដើម្បីជាភ័ក្តិមានជូនប្រជាពលរដ្ឋ ក្នុងមូលដ្ឋាន ។

**៥- ការពិភាក្សាសម្របសម្រួលដើម្បីកំណត់គោលនយោបាយ**

ចំពោះទីតាំងដែលអាចអភិវឌ្ឍនៅទីកន្លែង អភិបាលរាជធានី ខេត្ត ក្រុងត្រូវពិភាក្សាជាមួយភាគីពាក់ព័ន្ធ ដើម្បីរៀបចំផែនការអភិវឌ្ឍបេដ្ឋានធនាសម្ព័ន្ធ កំណត់វិធីដែលត្រូវរៀបចំទីតាំងជាដីឡូត៍ឬជាផ្ទះ និង/ឬគោលនយោបាយ ច្បាប់ ដែលជួយសម្រួលដល់ការអភិវឌ្ឍដីរាល់នៅ ។

ចំពោះទីតាំងដែលមិនអាចអភិវឌ្ឍនៅទីកន្លែងបាន ហើយត្រូវរុះរើទៅទីតាំងដីត្រូវរៀបចំផែនការច្បាប់សាស្ត្រ មុននឹងអនុវត្តដំណោះស្រាយ និង/ឬជួយជាគោលនយោបាយ ដើម្បីសម្រួលដល់ការកាត់ទីលំនៅផ្ទះរបស់ ប្រជាពលរដ្ឋ ។

- ក្នុងដំណោះស្រាយអភិវឌ្ឍនៅទីកន្លែង ឬការប្តូរទៅទីតាំងដី អ្នកដែលទទួលបានផលពីដំណោះស្រាយអាចទទួលបាន ៖
- ១- សិទ្ធិផលប្រភេទការព្រមព្រៀង ឬ
- ២- សិទ្ធិកម្មសិទ្ធិបញ្ចប់បានកាន់កាប់ផ្ទាល់ និងរស់នៅសិទ្ធិតាំងនោះមានរយៈពេលយ៉ាងតិច ១០ (ដប់) ឆ្នាំ ជាប់គ្នា គិតពីថ្ងៃទទួលបានដំណោះស្រាយ ឬ
- ៣- សិទ្ធិជួលមានរយៈពេលកំណត់ និងមានប្រាក់ឈ្នួលអនុក្រោះ ។

**៦- បេដ្ឋានធនាសម្ព័ន្ធ និងសេវាសាធារណៈមូលដ្ឋានចាំបាច់សម្រាប់គាំទ្រដល់ការរស់នៅ**

ក- ភាស៊ីណេស្រាយត្រូវតែត្រូវដល់ការរៀបចំបេដ្ឋានធនាសម្ព័ន្ធ និងសេវាសាធារណៈចាំបាច់ជាមូលដ្ឋានសម្រាប់ អ្នកមានប្រាក់ចំណូលទាបដូចជា កំណត់ទំហំដីនិង/ឬទំហំផ្ទះតូចល្មម រៀបរយការដោះស្រាយនៃបរិស្ថាន ការលើកទឹកចីប និងចាក់ចាតុឱ្យមានសំណង់បណ្តោះអាសន្នដី លើដីកាន់កាប់ដោយខុសច្បាប់ផងទៀត ។

**Circular on the Settlement of Illegal Temporary Buildings in Cities and Urban Areas  
(Approved by Prime Minister on May 31, 2010)**

ខ- ត្រូវរៀបចំជាមុននូវហេដ្ឋារចនាសម្ព័ន្ធនិងសេវាសាធារណៈពាក់ព័ន្ធ។ ទាំងសម្រាប់ទីតាំងអភិវឌ្ឍន៍នៅទីនេះ កន្លែង  
ទាំងឡាយទាំងអស់ មានជាអាទិ៍ ផ្លូវថ្នល់ ទឹកប្រើប្រាស់ លូបង្ហូរទឹក និងសេវាចាំបាច់ប្រើប្រាស់ដូចជាសេវាអប់រំ និងសុខភាព  
និងត្រូវជួយពិភពលោកប្រកួតប្រជែងការងារឡើងវិញ។

**៧- ការចូលរួមរបស់ភាពិពាក់ព័ន្ធក្នុងការអភិវឌ្ឍ**

ដើម្បីអនុវត្តដំណោះស្រាយណាមួយដែលបានទទួលការគ្រូមព្រៀងពិភាក្សាពាក់ព័ន្ធ ក្រុមការងារដឹកនាំក្រុង ស្រុក  
ខណ្ឌ ត្រូវពិនិត្យការរៀបចំទីតាំងមុននឹងឈានដល់ដំណាក់កាលអនុវត្តផែនការសកម្មភាពជាក់ស្តែង។ គ្រប់ភាពិពាក់ព័ន្ធ  
ត្រូវទទួលបានប្រជាជនរដ្ឋ ទាំងអស់ពិពាក់ព័ន្ធនៅទីតាំងទាំងនេះ ទាំងអស់អភិវឌ្ឍន៍នៅទីនេះកន្លែងឱ្យបង្កើតជាសហគមន៍  
ឬបន្តដំណើរការសហគមន៍ដែលបានរៀបចំរួចរាល់ ដោយជួយរៀបចំឱ្យមានបទបញ្ជាផ្ទៃក្នុង និងការងារសន្យាប្រាក់  
របស់សហគមន៍ ដោយផ្អែកលើគោលការណ៍ស្មើគ្រូទិញ។ ក្នុងបទបញ្ជាផ្ទៃក្នុងនោះ ត្រូវកំណត់កំរិតធនាសម្ព័ន្ធនៃការគ្រប់គ្រង  
សិទ្ធិ និងភាពត្រឹមត្រូវរបស់សមាជិក និងឱកាសវិធីក្នុងការសម្រេចបញ្ជាក់ខាងលើ។

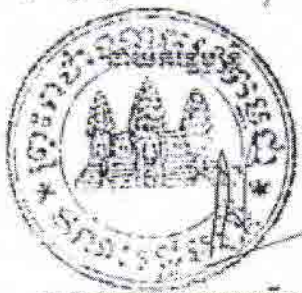
អាជ្ញាធរមូលដ្ឋានរួមជាមួយភាពិពាក់ព័ន្ធ ដូចជាដៃគូអភិវឌ្ឍ អង្គការមិនមែនរដ្ឋាភិបាល អង្គការសង្គមស៊ីវិល  
ពេទ្យមន្ត្រីនៃពាក់ព័ន្ធការងារនៅក្នុងដំណោះស្រាយ ទាំងស្រាយពី ទាំងសម្ភារៈ ទាំងហិរញ្ញវត្ថុ ចាប់តាំងពីពេលដំបូង  
ស្តែងរកលទ្ធភាពសាងកែលម្អហេដ្ឋារចនាសម្ព័ន្ធ ផ្តល់សេវាសាធារណៈពាក់ព័ន្ធដូចជា ទឹកស្អាត និងបណ្តាញលំហូរទឹកប្រើប្រាស់  
ការងារឱ្យជូនប្រជាជនរដ្ឋទាំងនោះ។

បន្ថែមលើវិធានការទាំងនេះដែលបានកំណត់ខាងលើ អាជ្ញាភិបាលខ្សែបណ្តាញយ៉ាងម៉ឺងម៉ាត់តាមរយៈសាធារណៈដល់  
អាជ្ញាធរដឹកនាំគ្រប់ជំនាន់ផ្ទៃក្នុង ត្រូវសហការជាមួយក្រសួង ស្ថាប័នពាក់ព័ន្ធទទួលខុសត្រូវទាំងស្រុងក្នុងការទប់ស្កាត់កុំឱ្យ  
មានសំណង់បណ្តោះអាសន្នឱ្យលើស ដែលកាន់កាប់ដោយខុសច្បាប់កើតឡើងជាថ្មីទៀត នៅក្នុងរាជធានី ខេត្ត ក្រុង ស្រុក ខណ្ឌ  
រ៉េ សង្កាត់។

ទទួលបានលទ្ធផលនេះ ក្រសួង ស្ថាប័នពាក់ព័ន្ធ និងអាជ្ញាធរដឹកនាំគ្រប់ជំនាន់ផ្ទៃក្នុង គណៈកម្មាធិការគ្រប់  
គ្រងដឹកនាំរាជធានី ខេត្ត ត្រូវអនុវត្តឱ្យមានប្រសិទ្ធភាព ចាប់ពីថ្ងៃចុះហត្ថលេខានេះតទៅ។

រាជធានីភ្នំពេញ ថ្ងៃទី ៣១ ខែ ឧសភា ឆ្នាំ ២០១០

- កន្លែងទទួល
- ក្រសួងក្រសួងប្រៃសណីយ៍
- អគ្គនាយកដ្ឋានប្រឹក្សាភិបាល
- អគ្គនាយកដ្ឋានការងាររដ្ឋបាល
- អគ្គនាយកដ្ឋានការងាររដ្ឋាភិបាល
- ទីភ្នាក់ងារយុវជនយុវនារីរដ្ឋបាល
- ទីភ្នាក់ងារយុវជនយុវនារី លោកជំទាវ ឧបនាយករដ្ឋមន្ត្រី
- គ្រប់ក្រសួង ស្ថាប័ន
- គ្រប់សាលារាជធានី ខេត្ត
- រាជកិច្ច
- ព័ត៌មាន- ព័ត៌មានប្រវត្តិ



សម្តេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន

(付属资料 9)

**Sub-Decree on Right of way of  
National road Channels and  
Railroads of the Kingdom of  
Cambodia (Nov 23, 2009)**



*(National Coat-of-Arms)*  
**KINGDOM OF CAMBODIA**  
**Nation Religion King**  
**3**

**Royal Government of Cambodia**  
**No. 197 S.E**

**SUBDECREE**  
**On**  
**Right of Way of National Road Channels and Railroads**  
**of the Kingdom of Cambodia**

**3**

**The Royal Government**

*Pursuant to*

- The Constitution of the Kingdom of Cambodia;
- Royal Decree No. NS/RD/0908/1055, dated September 25, 2008, on the Appointment of the Royal Government of the Kingdom of Cambodia;
- Royal Kram No. 02/NS/94, dated July, 20 1994, promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Royal Kram No. NS/RK/0196/03, dated January 24, 1996, promulgating the Law on the Establishment of the Ministry of Pubic Work and Transports;
- Royal Kram No. NS/RK/0801/14, dated August 30, 2001, promulgating the Law on Land Management;
- Royal Kram No. NS/RK/0508/017, dated May 24, 2008, promulgating the Law on Administrative Management in Municipalities, Provinces, Cities, Districts and Khan;
- Subdecree No. 86 S.E, dated December 9, 1997, on Construction Authorization;
- Subdecree No. 14 S.E, dated March 3, 1998, on the Organization and Functioning of the Ministry of Public Work and Transports;
- Approval from the Council of Ministers in the plenary session on November 6, 2009;

**Hereby Decides:**

**Chapter 1**  
**General Provisions**

**Article 1.\_**

The goal of the Subdecree is to determine the management and use of the pavements along national roads and railroads aligned with the development and growth of the Kingdom of Cambodia.

**Article 2.\_**

The objectives of the Subdecree are as follows:

- Eliminating the appropriation of pavements for the purpose of construction or planting;
- Preventing road accidents and maintaining social order which frequently occurs on road channels;
- Reducing any obstacles to road development;
- Reducing all state expenditures on the settlement of the impacts on residents' housing along road channels;
- Facilitating competent authorities involved in legalizing residents with ownership on road channels;
- Ensuring sustainable physical infrastructure development in the Kingdom of Cambodia.

### **Article 3.\_**

The scope of the Subdecree covers any national roads with 1 (one) digit and 2 (two) digits and railroads in the Kingdom of Cambodia, which is under the competency of the Ministry of Public Work and Transports.

The scope of the Subdecree does not cover development roads along the borders which are non-national road, national road in wildlife sanctuary and national parks, national roads in flora conservation areas, rural trails, paths with a canal in between, all of which are under the management and responsibilities of the Ministry of Environment, the Ministry of Agriculture, Forestry and Fisheries, the Ministry of Rural Development, and the Ministry of Water Resources and Meteorology, and other national roads built by communes, districts, communities and residents.

### **Article 4.\_**

Key terminologies used in the Subdecree are defined as follows:

- Pavement along national roads and railroads refers to pieces of land on both sides of national roads and railroads which have been developed or are to be developed and are under sole management and responsibility of the Ministry of Public Work and Transports by reserving aligned with the technical standard with the width from the axle based on the type of road as stipulated in article 8 and 9 of the Subdecree.
- National roads abbreviated as "Road" refers to the whole size of the road including the edge of the road and the pavement.
- Railroad refers to the road constructed to serve the locomotion of the train for all kinds of transportation, including artistic construction and railroad equipment.
- Middle of the road refers to the part of a road available for the traffic of all types of vehicles.
- Road edge refers to both sides of the middle of a road outside the public gathering and serves as parking space if necessary.
- Sidewalk refers to road edge in the public gathering kept for pedestrian but not for parking space.
- National road refers to:
  1. Road nationwide linking Phnom Penh with other cities of each province ;
  2. Road linking cities of one province with those of another one;
  3. Road linking a national road with another one;
  4. Crossroads from a national road to a city of a province;



5. Road linking a national road with such key areas as ports, rail stations, airports, special economic zones, tourist destinations, border gateways, and other economically potential zones;
6. Main roads of the country with heavy traffic which are determined by the Royal Government upon the request of the Ministry of Public Work and Transports.
  - National roads are divided into 2 (two) grades as follows:
    - o National roads grade 1 referring to national roads symbolized by 1 (one) digit;
    - o National roads grade 2 referring to national roads symbolized by 2 (two) digits
  - Regional roads refer to all national roads which link up with regional countries and are internationally standardized.
  - Public roads refer to roads which serve public traffic.
  - Private roads refer to privately-constructed roads to serve public traffic and are constructed or repaired by private sector under contract to the state.
  - Artistic construction refers to bridges, sewer pipe, drainage, water reservoir serving national roads, railroads, and other physical construction which provide safety and effectiveness, as well as stability of the national roads and railroads.
  - Equipment for national roads and railroads refers to fences, blocks, posters and sign boards, light, traffic light, platform, parking spaces, and other equipment and construction which are constructed on the pavements on the national roads and railroads to facilitate the use or serve the interest of the national roads and railroads.
  - National road and railroad development refers to the construction, restoration, and renovation of national roads and railroads in which national road and railroad maintenance are excluded.
  - Public gathering refers to a hub on which buildings and residential houses are built next to one another and sign boards saying "Public Gathering" are posted at its entrance or exit.

## **Chapter 2**

### **The Management and Use of Pavements on National Roads and Railroads**

#### **Article 5.\_**

The Ministry of Public Work and Transport has the authority to manage and use the pavements on national roads and railroads, plan the study of national road and railroad development plan or provide other services related to national roads and railroad to effectively serve the interest of the national road and railroad users.

#### **Article 6.\_**

Line competent ministries-institutions and local authorities at all levels shall join with the Ministry of Public Work and Transports in managing the pavements on national roads and railroads in accordance with the principles of the law in force.

## **Chapter 3**

### **The Determination of Pavements on National Roads and Railroads to Serve Physical Infrastructure Development**

#### **Article 7.\_**

Pavements on national roads and railroads are the state properties in compliance with article 15 of the law on land management.

#### **Article 8.\_**

Pavements shall be determined to serve physical infrastructure development as follows:

- National road grade 1: Symbolized by a number with 1 (one) digit for the pavement located 30 (thirty) meters from both sides of the road;
- National road grade 2: Symbolized by a number with 2 (two) digits for the pavement located 25 (twenty-five) meters from both sides of the road.

Pavements on the above 2 (two) kinds of national roads which cross the capital or city of a province or an urban area will be determined separately on the pavements on national roads of the capital and city of a province or an urban area.

#### **Article 9.\_**

Pavements on railroads shall be determined to serve physical infrastructure development as follows:

- Pavements on railroads outside the capitals, towns, and urban areas shall be 30 (thirty) meters from both sides of the road axle.
- Pavements on railroads in mountainous areas with falling rocks or in jungle shall be 100 (one hundred) meters from both sides of the road axle.
- Besides, land surrounding rail stations shall be determined in accordance with the plan in force.

Pavements on the railroads which cross the capital or city of a province or an urban area will be determined separately from the pavements on the railroads of the capital and city of a province or an urban area.

#### **Article 10.\_**

The determination of the above pavements shall be undertaken only once and remain the same in spite of further road development.

#### **Article 11.\_**

All line competent ministries-institutions shall not authorize any construction or cultivation along the pavements on national roads and railroads.

Some subsistence cultivation shall be authorized in principle by the Royal Government and shall be under contract with line ministries-institutions. In the event of road development, the state is not responsible for paying the compensation.

#### **Article 12.\_**

The Ministry of Public Work and Transports shall issue a Prakas or a notification to determine the use of the pavements on national roads and railroads to serve the public and private interest such as burying optical cable network, pure water pipe, setting up electrical poles, optical poles, and billboard pole, and other uses related to national roads and railroads.

The Ministry of Public Work and Transports shall conduct a study to display the illustration board on the determination of the pavements on national roads and railroads instead of setting up pavement poles.

## **Chapter 4 Separate Provision**

### **Article 13.\_**

The state shall pay the compensation in compliance with the policy of new resettlement and in accordance with article 148 of the law on land management to the lawful owner of the land which is re-determined as stipulated in article 8 and 9 of the Subdecree for physical infrastructure development more than the determination prior to the Subdecree as well as in accordance with the law and regulations in force.

### **Article 14.\_**

The compensation of the impact on the lawfully-occupied lands, crops, fences and constructions such as dams, water channels, rice paddies which is properly provided in compliance with the provision of the law shall be determined by the Royal Government.

## **Chapter 5 Punishment Provision**

### **Article 15.\_**

All the appropriation of the public properties as stipulated in article 8 and 9 of the Subdecree shall be subject to punishment in compliance with the law in force.

## **Chapter 6 Final Provisions**

### **Article 16.\_**

Any provisions which are contrary to the Subdecree shall be considered null and void.

### **Article 17.\_**

The Minister in Charge of the Office of the Council of Ministers, the Minister of Economy and Finance; the Minister of Public Work and Transports, the Minister of Land Management, Urban Planning, and Construction; ministers and secretaries of state of all line ministries-institutions, and all governors of the Board of Municipal-Provincial Governors shall be responsible for the implementation of the Subdecree from the date of its signature.

#### **CC:**

- Ministry of the Royal Palace
- General Secretariat of the Constitutional Council
- General Secretariat of the Senate
- General Secretariat of the National Assembly
- Secretary General of the Royal Government
- Cabinet of Samdech Prime Minister
- Cabinet of His Excellency and Lok Chumteav the Deputy Prime Ministers
- As mentioned in Article 17
- Royal Gazette
- Records-Archives

Phnom Penh, November 23, 2009

**Prime Minister**

*(Signed and Stamped)*

**Samdech Akka Moha Sena Padei  
Techo HUN SEN**



(付属資料 1 0)

**Sub-decree on the Granting of  
House Ownership SD No.25  
(April 22, 1989)**



The Khmer version is the official version of this document.

Document prepared by the MLMUPC Cambodia,  
supported by ADB TA 3577 and LMAP TA GTZ.

**PEOPLES COMMITTEE OF PHNOM PENH MUNICIPALITY  
CIRCULAR 05 SRC/05 JUNE 1989/**

**ON THE  
IMPLEMENTATION OF SUB DECREE REGULATING THE  
GRANTING OF OWNERSHIP ON THE HOUSE TO PEOPLE  
LIVING IN PHNOM PENH**

The Council of Ministers has issued a sub-decree No. 25 ANK dated 22 April 1989 aiming to grant ownership on the house to the people living in Phnom Penh. to correctly implement this sub-decree and obtain best result, the people committee of the Phnom Penh Municipality hereby instructs as follows:

1. House, land locating in Phnom Penh either they are held and used by a public institution or a collective entity such as central or municipal institution or a private, are considered as property commune of the people and are administered and divided according to the state policy, by the people committee of the Phnom Penh Municipality.
2. The People Committee of the Phnom Penh Municipality grants duties to the Municipal office of urbanism and construction to register, monitor, inspect house, land, resolve dispute, manage the distribution of ownership on all categories, the manner of using house, the collection of rental, payment of tax on land and house annually according to either the house is a residence or a place of handicraft or a place of service or place of small industry etc.
3. Government civil servants, workers, armed forces members who are chiefs of families and people who are chief of families currently are holding the house belongs to the state, to comply with the law on receiving ownership on land and house, to hold an use in compliance with the sub-decree No. 25 ANK dated 22 April 1989, shall possess certificate to hold house and land delivered by the people committee of the Phnom Penh Municipality.
4. The filing of application form to obtain Ownership on house and land shall be as follows
  - The Government civil servants, workers, armed forces members who are chief of families shall apply with urbanism and construction office through their ministry, office, unit. Attached to the application form are attestation of employment with salary level and Certificate of domicile delivered by local authority
  - The people who are chiefs of families shall apply through the People committee of Sanokat/Khum /district, With the urbanism and construction office.
  - Any persons who have constructed house by their own lost, shall also do as in both paragraphs above, to lawfully have ownership to the house and land.
  - Citizens of Phnom Penh Shall contact the Immoveable Administration Enterprise and its Branches at Khan or Srok and buy application form
  - For any construction affecting the public order, anarchic, the people committee of Phnom Penh Municipality will give certificate of ownership

The Khmer version is the official version of this document.

- The people committee of Phnom Penh Municipality will deliver certificate of ownership to anarchic construction or construction affecting public order provided that the owner of the construction complies with the instruction of the urbanism and construction office which is determined by the people committee of Phnom Penh Municipality.
5. Every citizen, after obtaining ownership on land and house, shall be liable to pay tax to the state, maintain, repair permanently according to the state principle aiming to keep beautifulness, public order, hygiene to the house in Phnom Penh and, to avoid damage or using the house in any purpose affecting neighbors health or causing loud sound or shaking the house structure.
  6. All structures of the house having space serving public purpose and all water draining systems, public big and small street, sewerage which are being used by the public shall not be appropriate by any individual or entity but shall be leave to the public.
  7. After receiving ownership on house and land, the owner shall carry out fences or wall which shall not be too much high damages the municipality beauty except sonic special houses authorized so by the people committee of Phnom Penh.
  8. People living in Plinoni Perih and having received ownership on land and house shall use this land and house as Place of residence. The use for other proposes shall have authorization from the people committee of Phnom Penh any breach to the law Shall Cause line or Court tail.
  9. The transfer of house, In liesitance may be done only provided that the house Is the own property of the transferor and when there is approval from the urbanism and construction office and there is certiticate or title delivered by the people committee of Phnom Penh Municipality.
  10. For people who are Currently living and running business, handicraft, service, small industry, he/she shall buy the house from the state to his/her exclusive ownership according to the price set by the state.
  11. Every citizen, upon receiving ownership to the house and land and wishes to sell, exchange, transfer, devise excluding the houses built by using his/her own fund, both parties shall pay the stamp fees of 10% (ten percent) of the house price pursuant to the type of houses such as living, business, handicraft, service, small industry.
  12. Any citizen who has a living house or land banned from any construction he/she shall not be allowed to sell or exchange in any manner to foreigners but if he/she does so, the property shall be confiscated to be state property.
  13. All government institutions, collective companies, private or joint venture between the state and private sector that use their houses and land for the purpose of running businesses, handicrafts, services, small industries shall pay the tax rates to the houses and land every month as fixed by the state.



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14. All classes of houses in Phnom Penh shall be assessed by the urbanization and construction office according to the actual situation, or area and be submitted to the People's Committee of Phnom Penh for reviewing and considering before selling to the qualified people in Phnom Penh.
15. The construction land and all classes of houses including factories, enterprises, hotels, cinemas, banks, petrol stations owned by individuals before 1979 can not be considered as his/her property or claim but they shall be considered as common properties of the people and shall be under the control and allocation by the People's Committee of Phnom Penh.
16. The construction land in Phnom Penh having technical Plan [title certificate], having title certificate to the allocated Plots and the development plan has been made then it shall be prohibited from dividing into small Plots which affect the service system etc.

The state will not authorize any citizen to construct on public interest serving land, public building(s), public culture and the city development plan areas and prohibits any digging Ponds, fish farming which ruin the land for; . , constructing houses.

17. All construction on land in Phnom Penh either by the central institutions or by the municipality shall require prior plan (title certificate) and occupation permit. After having received the title certificate to the land from the People's Committee of Phnom Penh and if the entity concerned leaves the land vacant from six(6) months to one (1) year, the People's Committee of Phnom Penh shall deprive such land for giving to other necessary institutions. Any citizen who uses the land in the wrong objectives required without paying tax to the state or leaves the land vacant from six (6) months to one (1) years commencing from the date receiving the occupation permit shall be suffered from warning, instruction, or fine.

If the land size is more than 5 ha the decision shall come from the council of ministers. If the size is 5 ha and less the decision shall come from the People's Committee of Phnom Penh. Any additional construction or new construction shall requires a blueprint [title certificate] approved by the construction and urbanization office for submitting to the People's Committee of Phnom Penh for decision making. However for small or medium renovations which do not destroy the original state of the house, the decision shall come from the construction and urbanization office.

18. All houses under renovation or reparation having no title certificate and wrongly People's Committee of Phnom Penh then the construction holding no permission from the operation with the local authority will confiscate temporarily all the urbanization office in tools and equipment and the owner and workers will be warned or fined the construction. from 5,000 Riels to 50,000 Riels or brought to the court
19. All relevancy Of Principles of the construction and urbanization office and other cases shall be settled before the People's Committee of Phnom Penh issues the title certificate. For disputed land, the Phnom Penh People's Committee will review and issue the certificate to the land or house upon the dispute has been settled by the competent body. For ruined and torn houses, the People's Committee of Phnom Penh shall not issue the title certificate to them.

The Khmer version is the official version of this document.

20. Any citizen who does not comply with the above-mentioned content of this circular shall be responsible before the applicable law.
21. In trying to carry out the sub-decree No. 25 S.D, for the first step, dated 22 April, 1989 the People's Committee of Phnom Penh will choose a Sangkat and Khum at each district or Khan to be a model for carrying out throughout the capital of Phnom Penh.

The People's Committee of Phnom Penh hopes and believes in this circular that all central institutions and cities within the geography of Phnom Penh city shall circular it widely to cadres, employees, workers and people under its control Khan for effective implementation.

F. People's Committee of Phnom Penh  
Director  
Signature & Seal

**THANG KHON**

**(別添 1 1)**

**今後の協力の方向性**







**(別添 1 2)**

**資産評価手法**

**(短期専門家報告書)**





カンボジア王国

カンボジア国  
住民移転のための環境社会配慮能力強化  
プロジェクト  
(標準住民移転手順書策定指導業務)  
報告書

平成 24 年 1 月  
(2012 年)

独立行政法人 国際協力機構

阪神高速道路株式会社



## 活動概要

### 1. 1次派遣



2011年6月24日  
TCP-COR 第2回合同調整委員会(JCC)



2011年6月28日 現地調査

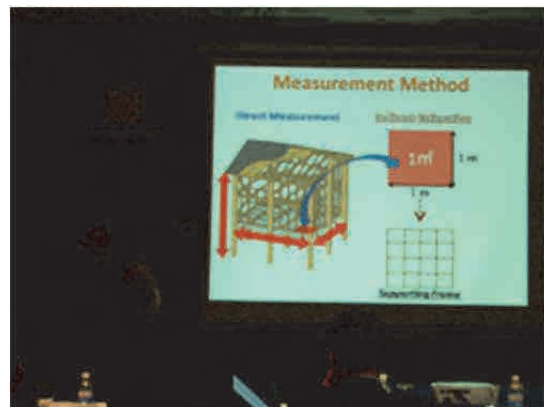
### 2. 2次派遣



2011年8月24日,25日 住民移転地におけるサンプル家屋調査



2011年9月21日 TCP-COR 第3回運営会議 (EC)及び住民移転セミナー



### 3. 3次派遣



2011年11月24日~28日 国道1号線改修事業（第4期）における試行物件調査



2011年12月8日 BRP Final Confirmation Meeting and ESC Examination

## 略語表

ADB	アジア開発銀行 (Asian Development Bank)
BRP	標準住民移転手順書 (Basic Resettlement Procedure)
C/P	カウンターパート (Counterpart of Government of Cambodia)
DMS	詳細資産調査 (Detailed Measurement Survey)
EM	外部モニタリング (External Monitoring)
GRM	苦情処理メカニズム (Grievance Redress Mechanism)
IE	独立評価者 (Independent Evaluator)
IM	内部モニタリング (Internal Monitoring)
IRC	省庁間住民移転委員会 (Inter-ministerial Resettlement Committee)
IRC-WG	IRCワーキンググループ (IRC Working Group)
JICA	独立行政法人国際協力機構 (Japan International Cooperation Agency)
NR-1	国道 1 号線改修事業 第 4 期 (National Road No.1)
MEF	経済財務省 (Ministry of Economy and Finance)
MPWT	公共事業運輸省 (Ministry of Public Works and Transport)
PAPs / APs	被影響住民 (Project Affected Persons / Affected Persons)
PRSC-WG	地方州政府住民移転小委員会ワーキンググループ (Provincial Resettlement Sub Committee Working Group)
RAP	住民移転計画 (Resettlement Action Plan)
RCS	再取得価格調査 (Replacement Cost Study)
RD	住民移転局 (Resettlement Department)
ROW	道路幅員 (Right of Way)
SAP/SAH	深刻な被影響住民 (Severely Affected Person/Household)
SES	社会経済調査 (Socio Economic Survey)
SS	初期調査 (Simple Survey)
TCP-COR	住民移転のための環境社会配慮能力強化プロジェクト (Technical Cooperation Project on Capacity enhancement Of environmental and social considerations for Resettlement)
WB	世界銀行 (World Bank)

## 目 次

業務概要 .....	1
1. はじめに .....	2
2. RAP に係る情報収集と分析 .....	3
3. 社会経済調査 / モニタリング手法にかかる情報収集と分析 .....	4
3-1. SS (Census), DMS, GRM, Monitoring 調査様式について .....	4
3-2. 深刻な被影響住民 / 世帯 .....	4
3-3. 住民移転地の準備と移転後のモニタリング .....	4
3-4. モニタリング調査 .....	4
4. 資産評価（家屋関係） .....	5
4-1. BRP における DMS と RCS の位置づけ .....	5
4-2. DMS と RCS の現状と課題 .....	6
4-3. 資産評価（家屋関係）に係る改善手法（案） .....	7
4-4. 資産評価（家屋関係）に関する今後の課題と対策（案） .....	13
5. 資産評価（土地評価関係） .....	15
5-1. 土地評価の3手法 .....	15
5-2. 取引事例比較法 .....	16
5-3. 土地評価の現状 .....	18
5-4. 資産評価（土地評価関係）における今後の課題と対策（案） .....	18
5-5. 資産評価（土地評価関係）に関する今後の課題と対策（案） .....	20

## 業務概要

本報告書は、カンボジア国（以下「カ国」という。）における無償支援事業において施行されている住民移転計画（RAP）、社会経済調査（SES）、モニタリング及び資産評価手法の現状を調査した結果をとりまとめたものであり、本業務においては、RAP における共通事項を確認し、社会経済調査における調査書式の提案を行い、モニタリング事例を収集し、資産評価に係る改善手法について検討することを目的としている。

本報告書では、公共事業における被影響住民（PAPs/APs）への補償内容に直接関連する詳細資産調査（DMS）や再取得価格調査（RCS）を実施するに当たっての改善手法の提案に関する内容に特に焦点を当てている。

現状としては、「サンプル調査」手法により、各対象家屋が分類・評価されており、本手法では各家屋の特性を反映することは難しいが、現行の本手法を改善した『個別調査』手法であれば、調査に係る所要時間が増える可能性があるものの、各家屋の資産内容を反映することが可能であることから、本報告書における提案手法とされた。

国道1号線改修事業（第4期）におけるDMSと並行して実施された『個別調査』手法による試行調査結果から、この『個別調査』手法による場合でも、従来のDMS調査に係る所要時間内での調査実施が可能であり、その際に特別な調査技能を必要としないことが判明した。

当該『個別調査』手法による調査実施をより簡素化し、実際のDMSの現場で活用できるように、当該手法を実施する場合の調査表の整理も行った。

## 1. はじめに

カンボジア国（以下「カ国」という。）では、急速な経済成長に伴い道路などの公共交通施設の整備が喫緊の課題となっており、その実施に際しては、カ国内の法制度や JICA 環境社会配慮ガイドライン(2010)を含む開発ドナーのセーフガードポリシーに沿った『非自発的住民移転』への適切な対応が求められている。

上記の背景の中で、カンボジア政府より独立行政法人国際協力機構(JICA)へ住民移転のための環境社会配慮能力強化プロジェクト(TCP-COR)の実施要請があり、TCP-CORは3名の長期専門家とプロジェクトにおける専門的技術検討のために派遣計画された短期専門家により構成され、2010年4月からプロジェクトが開始された。

本業務においては、RAPにおける共通事項を確認し、社会経済調査における調査書式の提案を行い、モニタリング事例を収集し、資産評価に係る改善手法について検討することを目的としている。



## 2. RAPに係る情報収集と分析

カンボジア、ベトナム、ラオスにおける JICA、アジア開発銀行(ADB)及び世界銀行(WB)が支援する線事業の中から事例を抽出し、比較検討した結果は、長期専門家及びC/Pが検討及び策定作業を進めていたBRPに適宜反映された。

### 3. 社会経済調査 / モニタリング手法にかかる情報収集と分析

RAP の収集と分析を実施し、生計等に深刻な影響を受ける住民 (SAP/SAH) の定義、及び被影響住民の生計回復に重要なモニタリングの手法について取りまとめた。

#### 3-1. SS (Census), DMS, GRM, Monitoring 調査様式について

プノンペン - ネアックルン間の国道 1 号線改修事業 (日本の無償支援事業) における調査票や調査様式を収集し、初期センサス(SS (Census))、社会経済調査(SES)、内部モニタリング(IM)、外部モニタリング(EM)及び苦情処理手順(GRM)の様式(案)の提案を行った。各提案様式については、基本様式として最低限必要となる調査項目について整理し、とりまとめた。

また、DMS の調査様式については、家屋に関する新たな評価手法 (個別調査手法) の提案の中に含めた。

#### 3-2. 深刻な被影響住民 / 世帯

ここでは、収集された RAP 事例における SAP/SAH の各定義付けの相違点について説明を行う。各事業施行者は、SAP/SAH に対して収入回復策も含めた特別手当や補助を行っている。

#### 3-3. 住民移転地の準備と移転後のモニタリング

住民移転地への現地調査時における C/P へのヒアリング結果については、BRP の策定において適宜反映された。

#### 3-4. モニタリング調査

モニタリング調査の目的としては、RAP 実施状況を確認することであり、内部・外部モニタリングから構成されており、前者は、事業施行者によるもので、後者は独立機関によるものである。ここでは、収集された RAP 事例におけるモニタリング実施内容を ADB の指針に沿って分析を行った。

## 4. 資産評価（家屋関係）

### 4-1. BRP における DMS と RCS の位置づけ

#### 4-1-1. カンボジアの用地取得手順における DMS と RCS の位置づけ

公用地の取得に際して不法占拠物件が認められる場合及び民有地の取得においては、DMS 及び RCS が同時またはいずれかが先行して実施され、その結果により算定された補償金額により、用地交渉、苦情処理対応（必要に応じて）及び補償金額の支払いがなされる。

#### 4-1-2. BRP における DMS の概要

DMS は RAP の指針や、事業影響範囲の詳細調整結果に基づいて実施される。基本的な構成は次のとおり。

- 1) 土地境界確認
- 2) 世帯主へのヒアリング調査
- 3) 資産調査

最終的な事業影響範囲に基づいて、省庁間住民移転委員会ワーキンググループ (IRC-WG) と地方州政府住民移転小委員会ワーキンググループ (PRSC-WG) により、土地境界確認時に正確な事業影響範囲の明示がなされ、初期センサスの結果を基に資産の調査がなされ、DMS の調査対象家屋が、補償対象家屋となる。世帯主へのヒアリング調査については、RAP で定められた社会的弱者への手当の有無を確認することを目的としている。

事業が住民の生計に多大な影響を与える場合及び（又は）被影響住民の生計についてモニタリングを行う場合は、社会経済調査 (SES) もまた世帯主へのヒアリング時に実施される。

#### 4-1-3. BRP における RCS の概要

RCS は、事業の実施に伴い移転が必要となる家屋や土地その他の物件に対して市場価格又はそれに相当する価格により適正な補償を行うために実施するものであり、DMS が政府 (IRC-WG) により実施されるのに対して、RCS は住民移転局 (RD) から DMS と同時か又は先行して業務委託された独立評価者 (IE) により実施される。

## 4-2. DMS と RCS の現状と課題

DMS と RCS の現行実施フローは次のとおり。

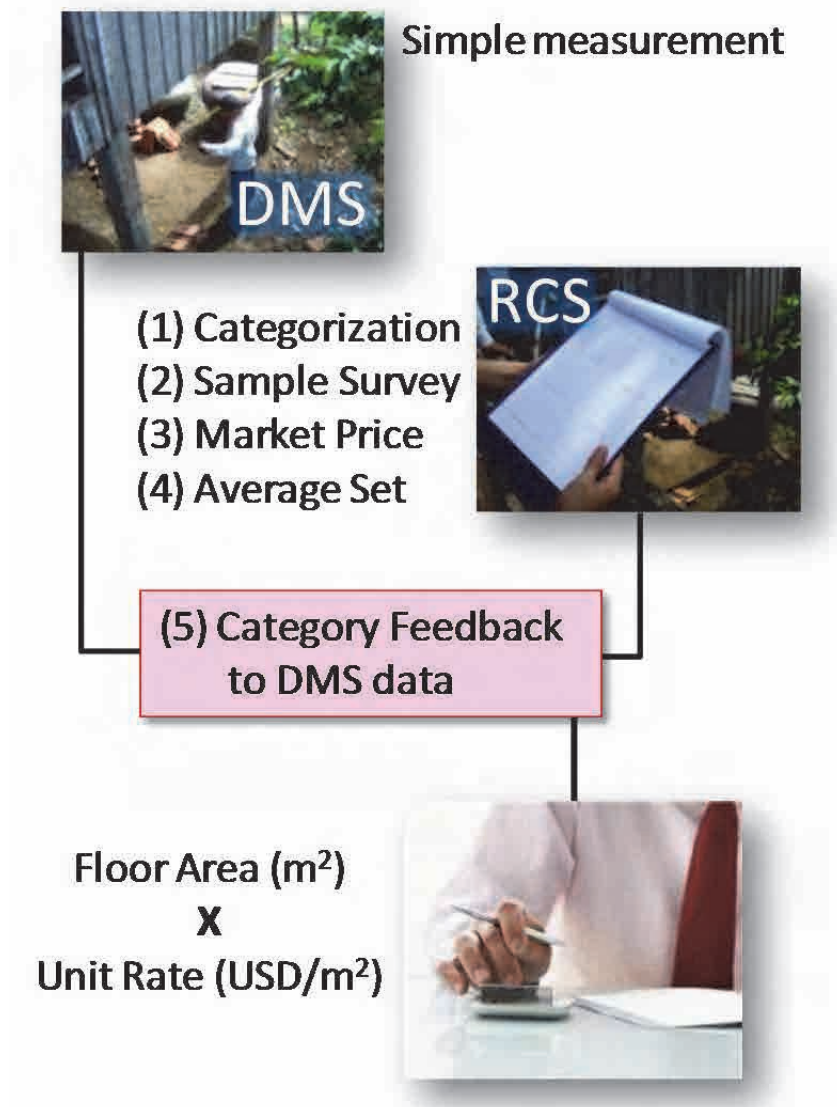


図 4-2. DMS と RCS の現行実施フローイメージ

上記フローにおける課題点は次のとおり。

- (1)明確な**分類手法**が定まっていない。
- (2)家屋分類及び再取得価格に係る単価設定のためのサンプル家屋の選定について**統計的な妥当性**がない。
- (3)再取得価格算定時の非木造家屋の建材数量や労務単価の設定が建材店舗や大工への**ヒアリング結果による価格設定**による。
- (4) 再取得価格は、個別の建材や家屋構造が反映されたものではなく、各家屋タイプにおける各サンプル家屋の建材費用や労務費用の**平均値により算出された単価により算出**

されている。

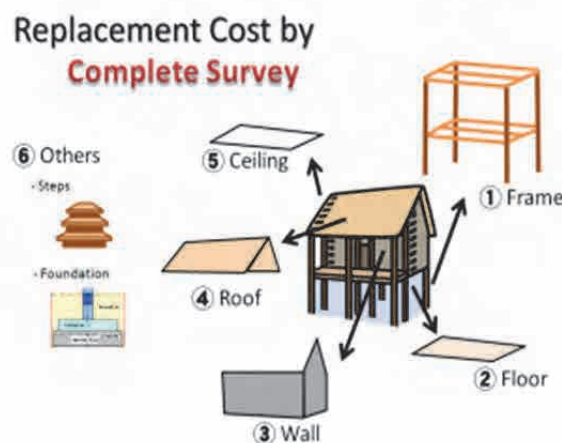
(5) **DMS と RCS 結果の整合性**においては、特に DMS 開始当初では、DMS 調査員が明確に分類できないような複雑かつ特殊な構造の家屋が数多く出てくることから、DMS 調査員は調査時の家屋分類に苦慮することとなる。

#### 4-3. 資産評価（家屋関係）に係る改善手法（案）

新たな家屋調査算定手法として、『個別調査』手法を提案する。この手法は、家屋を6つの部位（構造（柱・梁）、床、壁、屋根、天井、その他）に分けて調査算定するものであり、この手法において考えられるメリット・デメリットは次のとおり。

##### [メリット]

- 次の各検討が不要
  - 家屋分類の妥当性
  - 平均値による補償単価の妥当性
  - 上記の統計的妥当性
- 建材等の市場価格を適正に反映
- ここの家屋の特性を反映した再取得価格の算定が可能
- RCS 費用の削減にもつながる



##### [デメリット]

- (1) DMS 調査時間の増加
- (2) DMS 調査能力の向上

上記のデメリットについての調査検討結果は次のとおり。

##### (1) DMS 調査時間の増加

このデメリットについては、3次派遣時の国道1号線改修事業（第4期）の実際のDMS及びRCSの現場において実施した『個別調査』手法による試行調査結果により解決することができた。この試行調査時の全調査実施家屋において、現行のDMSに係る所要時間内に、『個別調査』手法により調査算定するために必要となる全てのデータ収集が可能であった。

次の図は国道1号線改修事業（第4期）における実際のDMSと試行調査の所要時間を比較した結果であり、ほとんど全ての箇所ですべて試行調査の方がDMSよりも早く調査を終了していることが分かる。

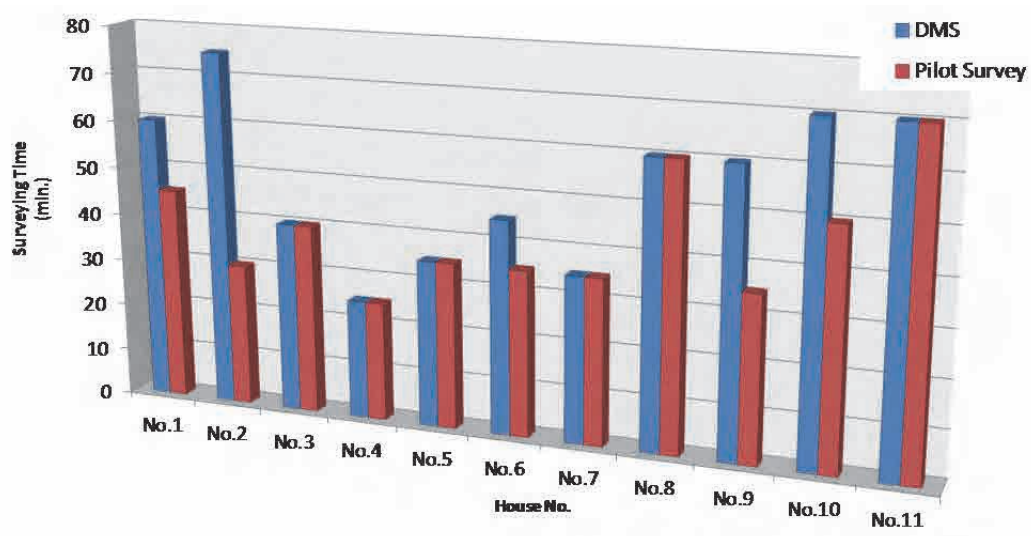


図 4-3. (1) 国道 1 号線改修事業（第 4 期）における DMS 及び試行調査時間の比較

(2) DMS 調査能力の向上

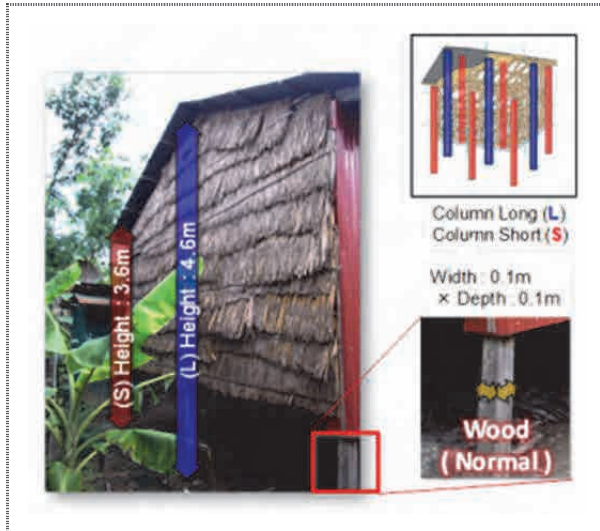
試行調査は 1～2 名の調査員により実施されたことから、『個別調査』手法による家屋調査対応においては、特殊な能力は必要とされず、従来から DMS に従事している調査員でも十分に対応可能であり、特に新たな訓練や能力向上は必要としないことが分かる。また『個別調査』手法による家屋の調査算定手順についての簡素化も検討した。

(3) 調査・数量計算サンプル

サンプル木造家屋（右の写真の家屋を想定）における『個別調査』手法による調査及び数量計算方法は次のとおり。



### ①-1 構造 (柱)



1. 建材と材質の選定
2. 幅・奥行き・高さ・柱数の計測
3. 柱の建材数量計算

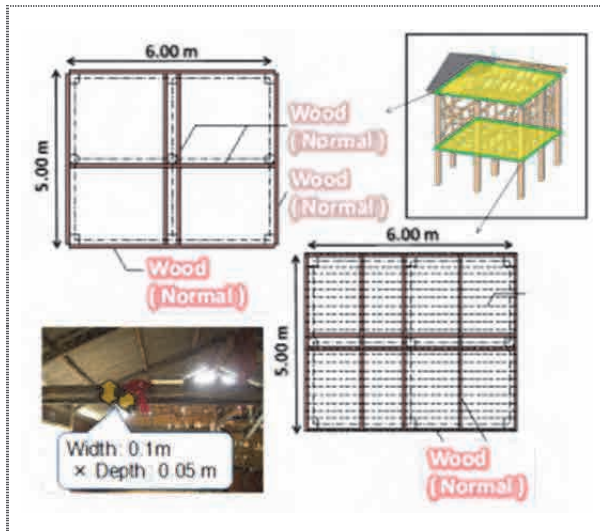
#### 建材数量計 (柱)

木材 普通

$$\{(4.60 \times 3) + (3.60 \times 3)\} \times 0.10 \times 0.10$$

$$\doteq 0.35 \text{ m}^3$$

### ①-1 構造 (梁)



1. 建材と材質の選定
2. 幅・奥行き・高さ・梁数の計測
3. 梁の建材数量計算

#### 建材数量計算 (梁)

木材 普通

$$\{(6.00 \times 7) + (5.00 \times 9)\} \times 0.10 \times 0.05$$

$$\doteq 0.43 \text{ m}^3$$

### ②-1 床 (仕上げ)



1. 建材と材質の選定
2. 長さ・幅・厚さ (□木材のみ) の計測  
※木材板の想定の厚さ [0.02m] も適用可
3. 床の建材数量計算

#### 建材数量計算 (床仕上げ)

Wood Normal Quality

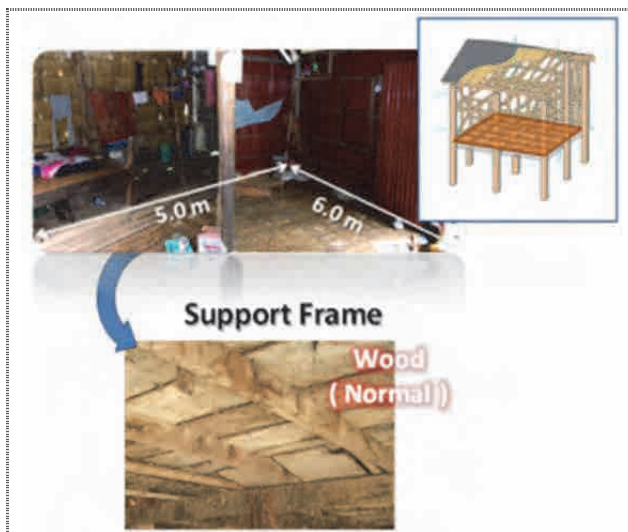
$$5.00 \times 2.50 \times [0.02] \doteq 0.25 \text{ m}^3$$

Bamboo

$$5.00 \times 3.50 \doteq 17.50 \text{ m}^2$$



## ②-2 床 (下地組)



1. 下地組の施行範囲の確認
2. 下地組の面積測定 (長さ・幅)
3. 下地組の建材数量計算.

※下地組係数 (m<sup>3</sup>/床 1 m<sup>2</sup>)  
= 0.010 m<sup>3</sup>

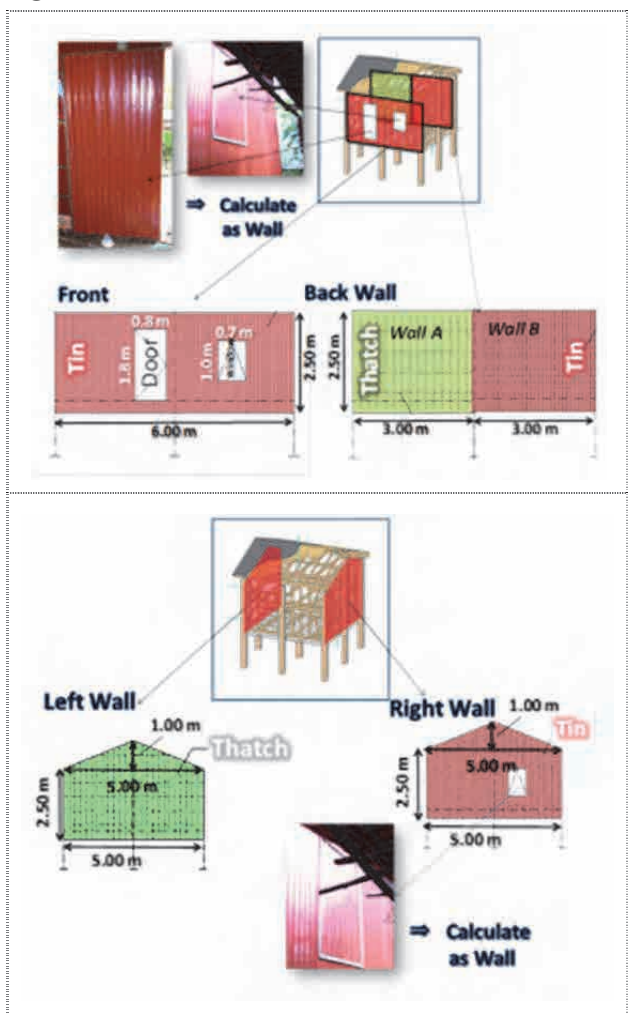
### 建材数量計算 (床下地組)

□木材 □普通

(下地組面積 = )5.00×6.00

× 【 0.010 】 係数 ÷ 0.30 m<sup>3</sup>

## ③-1 壁 (壁仕上げ)



1. 建材と材質の選定
2. 長さ・幅・厚さ (□木材のみ) の計測  
※扉や窓の開口部は「壁」とみなす。  
※壁高の測定が困難な場合は目測による推計結果も適用可  
※木材板の想定の高さ [0.02m] も適用可
3. 壁の建材数量計算

### 建材数量計算 (壁仕上げ)

□藁

3.00×2.50

+ 5.00×2.50 + 5.00×1.00×1/2

÷ 22.50 m<sup>3</sup>

□亜鉛鉄板

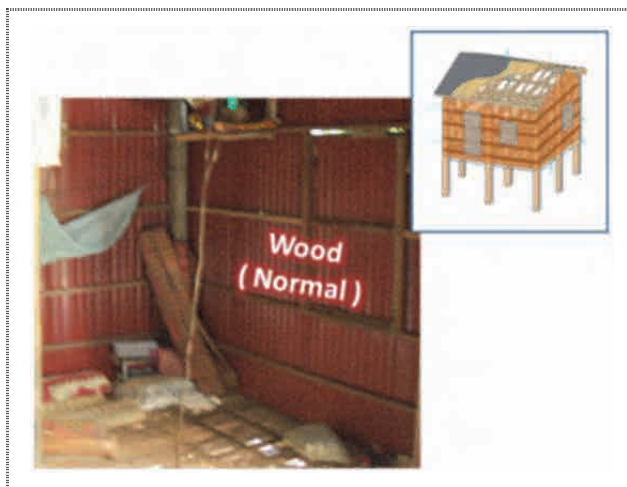
6.00×2.50 + 3.00×2.50

+ 5.00×2.50 + 5.00×1.00×1/2

÷ 37.50 m<sup>3</sup>



### ③-2 壁（下地組）



1. 下地組の施行範囲の確認
2. 下地組の面積測定（長さ・幅）
3. 下地組の建材数量計算.

$$\begin{aligned} & \text{※下地組係数 (m}^3 \text{/ 壁 1 m}^2\text{)} \\ & = 0.005 \text{ m}^3 \end{aligned}$$

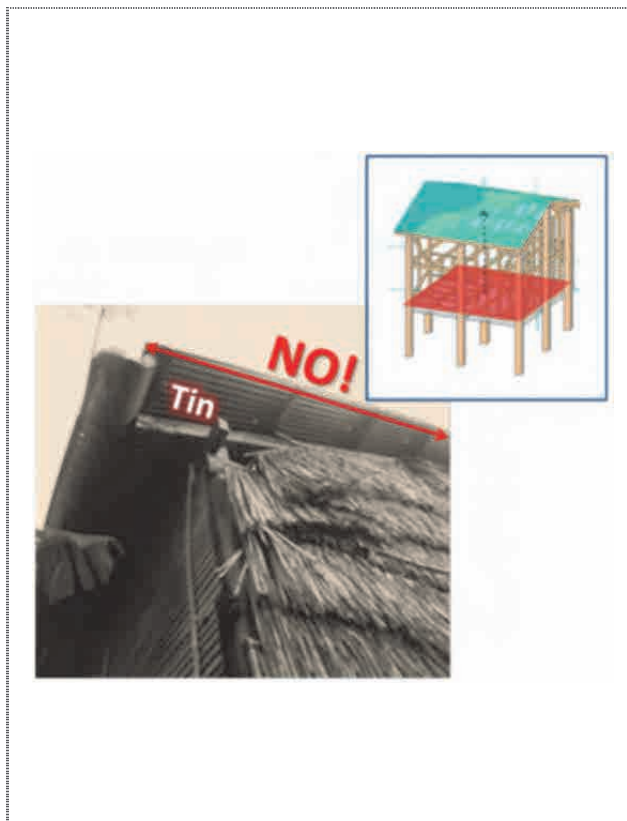
#### 建材数量計算（床下地組）

木材 普通

（下地組面積 = 壁全体面積）

$$60.00 \times \text{【 0.005 】 係数} \div 0.30 \text{ m}^3$$

### ④-1 屋根（屋根仕上げ）



1. 屋根面積の間接計測  
（調査算定の簡素化対応）  
= 屋根面積 × 【 1.5 ~ 】 係数
2. 必要に応じて屋根面積係数を屋根  
勾配に応じた調整を行う
3. 建材の選定
4. 必要に応じて屋根に使用されてい  
る各建材の割合を判定する。  
※屋根勾配や屋根に使用されている  
建材割合を判定しにくい場合は  
目測による推計結果も適用可
5. 屋根の建材数量計算

#### 建材数量計算（屋根）

亜鉛鉄板（100%）

床面積 = 5.00×6.00

$$\times \text{【 1.5 】 係数} \div 45.00 \text{ m}^2$$

#### ④-2 屋根（下地組）



1. 下地組の施行範囲の確認
2. 建材と材質の選定  
(□木材  
又は □金属 □ 軽量/ □重量)
3. 各建材の使用割合の判定
4. 下地組の建材数量計算  
※下地組係数 (m<sup>3</sup>/ 屋根 1 m<sup>2</sup>)  
= 0.010 m<sup>3</sup>

#### 建材数量計算（屋根下地組）

□木材 (100%)  
(下地組面積 = 屋根全体面積)  
45.00×【 0.01 】係数 ÷ 0.45 m<sup>3</sup>

#### ⑤ 天井

⇒ このサンプル家屋では天井施工なし

#### ⑥-1 その他（階段）



1. 建材の選定
2. □木製階段であれば階段の長さ  
と 箇所数を計測

#### 建材数量計算（階段）

□木材  
2.00m×1.00 = 2.00 m

#### ⑥-2 その他（基礎）

⇒ このサンプルでは基礎施工なし

『個別調査』手法における家屋の調査算定手法においては、次の前提条件に基づく検討・整理を行った。

(1) RCS における建材市場価格調査について

当該手法が想定している各建材単価に係る建材市場価格調査の実施が行われること。

(2) 労務単価の設定について

調査算定手法の簡素化のため、次の間接算出法を採用する。

〈 労務単価 〉

$$= \text{調査家屋における総建材価格費用} \times \text{【0.3】係数}$$

※ 当該係数については、統計的な調査による根拠整理が今後必要。

#### 4-4. 資産評価（家屋関係）に関する今後の課題と対策(案)

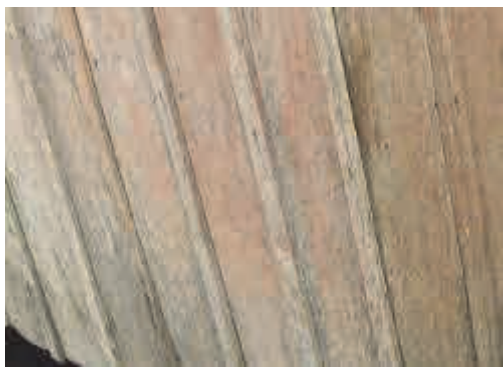
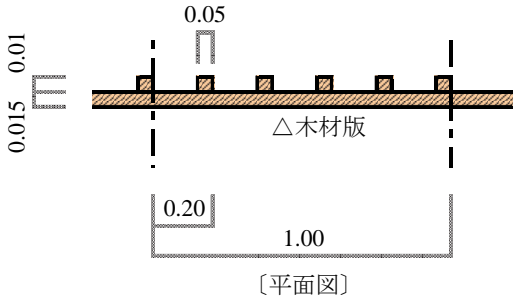
今回の業務における『個別調査』手法の提案に向けた検討においては、サンプル家屋の調査軒数が、2次派遣及び3次派遣を合わせても18軒のみであり、カンボジアにおける既存の各家屋分類 (Type1~4) から極力幅広いサンプリングを行ったものの、家屋の調査算定手法を更に改善させるためには、次の課題と各課題に対する対策(案)が考えられる。

表 4-4. 『個別調査』手法の課題と対策

課題	対策(案)
1. 係数及び簡素化モデル内容の精査 - 床の木造下地組 - 壁の木造下地組 - 屋根の下地組 - 屋根の面積計算 - 天井の木造下地組 - 階段モデル - 基礎費用割合	⇒Pilot Survey の継続 - 今後の新規事業区間において、既存のDMS及びRCSと並行した“Complete Survey” Method による調査算定の試行実施。 - RCS におけるサンプル家屋を調査対象とすることで、既存調査手法との詳細な比較検討を行う。 ⇒Pilot Survey 結果による 左記課題項目の精査・検討 ⇒複数のPilot Survey 実施によるデータの蓄積と分析
2. 各部位の使用建材の精査 (追加・簡素化)	- 既存の各家屋分類 (Type1~4) で各20~30軒程度を想定。 - 長期的には各家屋分類で125~250軒程度の調査を行い、それらの結果から分析を行うことが望ましい。

また、『個別調査』手法による家屋の調査算定に係る手順及び所要時間を更に簡素化させるための提案としては、家屋の各部位における各使用建材のモデル化（各部位の面積ベース）がある。

モデル化の具体的なサンプルイメージは次のとおり。

	
<p>一般的な壁仕上げ</p>	
<p><u>壁 1 m<sup>2</sup>辺りの建材数量計算 ... (A)</u></p>	
<p><input type="checkbox"/>木材 <input type="checkbox"/>普通</p>	
<p>⇒ <math>1.00 \times 0.015 + 0.01 \times 0.05 \times 5 = 0.018 \text{ m}^3</math></p>	
<p><u>壁 1 m<sup>2</sup>辺りの建材数量計算 ... (B)</u></p>	
<p>(<input type="checkbox"/>木材 <input type="checkbox"/>普通 の建材単価 = 306.67USD/m<sup>3</sup>を使用)</p>	
<p>⇒ <math>0.018 \text{ m}^3 \times 306.67\text{USD}/\text{m}^3 \doteq 5.52\text{USD}</math></p>	

(A)による数量計算であれば、壁の面積を測定し、木材（普通）の m<sup>3</sup>あたりの単価掛け合わせるだけで、上記の一般的な壁仕上げではあるが複雑な形状の木材から構成される壁仕上げの建材費用を調査算定することができるが、更に(B)によることができれば、壁面積の測定のみで、すぐにこの壁仕上げの建材費用を計算することが可能となる。

## 5. 資産評価（土地評価関係）

### 5-1. 土地評価の3手法

土地の評価手法としては、（1）原価法、（2）収益還元法、（3）取引事例比較法の3手法があり、世界的にも取引事例比較法が一般的に使用されている。



図 5-1. 土地の3大評価手法イメージ

#### (1) 原価法

原価法は「費用を投じて作る」ということが基礎となるため、建物のような建築をする場合にはとても有効性が高い。一方、土地は作るものでもともと存するものなので適用できないが、造成地・埋立地のように「土地を作る」場合には一定の有効性が認められる。

建物について適用する場合の考え方は、新築するのにどの程度のコストが投じられたかにより評価上の判断がなされる音となり、中古の建物となると、その使用分の劣化の程度等を減価することとなる。

#### (2) 収益還元法

収益還元法は、収益物件（賃貸マンション、賃貸ビル）の評価をする場合に有効性が高く、自用の建物（住宅）の評価の場合や賃貸市場が成熟していない場合には有効性が低い。収益還元法は対象不動産を使用することによりどれ程の収益を得ることができるのか、又はどれ程の便益を享受することができるのかを基に対象不動産の価格を査定することとなり、取引された価格を基に、対象不動産の価格を査定する。

#### (3) 取引事例比較法

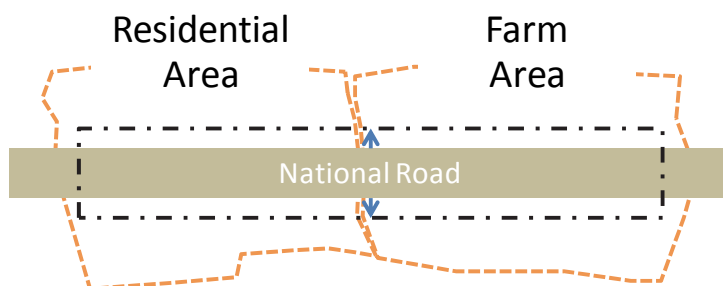
詳細は 5-2. 取引事例比較法を参照。

## 5-2. 取引事例比較法

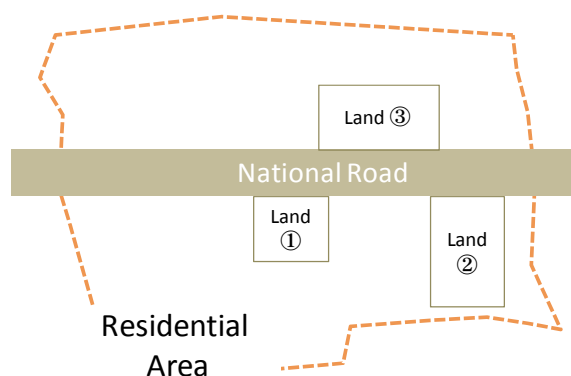
取引事例比較法は市場において多数の不動産取引が存する場合に有効性が高く。取引された価格を基に、対象地の価格を査定することとなり、取引に特殊な事情があれば補正し、取引の時点と価格時点（評価時点）に価格水準に変動があれば修正する。また、取引された事例の存する地域の地域要因（価格水準）と対象地の存する地域の地域要因（価格水準）に差異がある場合は格差修正し、取引事例の画地条件（角地、形状、高低差等）と対象地の画地条件に差異がある場合は格差修正する。

以下は、取引事例比較法による土地評価手順の概要を示したものである。

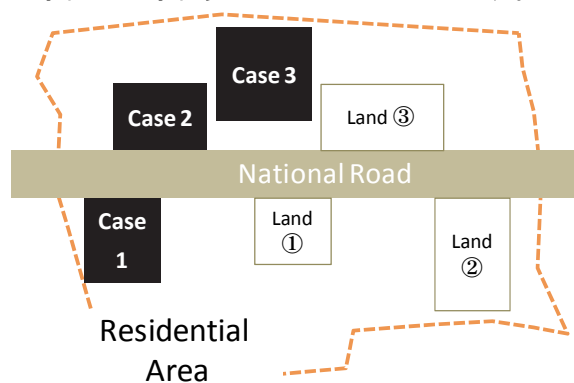
- ❖ この手法では、まず、同一状況地域を区分します。



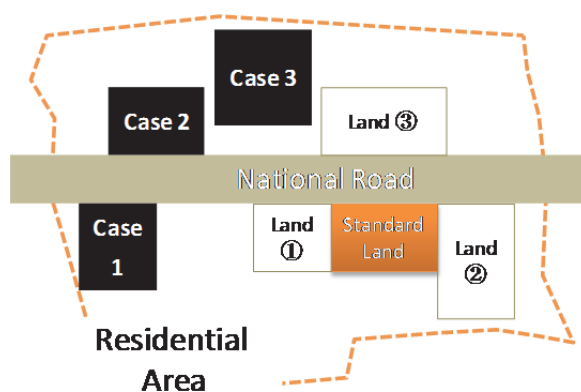
- ❖ このサンプルケースでは、評価対象地は、同一状況地域のうち、住宅地域にあることとします。



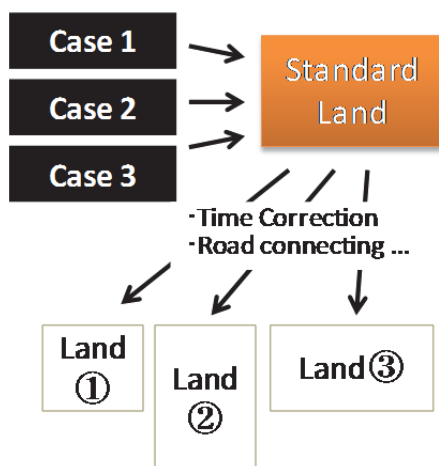
- ❖ 次に、評価者は当該住宅地域の中で、実際の土地の取引事例の有無を確認します。
- ❖ このケースでは取引事例が3事例見つかったこととします。



- ❖ 次に、評価者は当該住宅地域の中で『標準地』を設定し、取引事例の土地価格を基に『標準地』の評価を行います。



- ❖ 最後に上記の『標準地』評価額を使い、個別の評価対象地の評価を行います。評価に当たっては、交通条件や接道条、不整形などの各条件の比較により個別の各土地の評価額の違いを判定します。



### 5-3. 土地評価の現状

現行の RCS における土地評価手法は、基本的な考え方として、取引事例比較法に類するが、土地取引の価格が実際の土地取引事例ではなく、土地買取希望額の聞き取り調査に基づくという欠点がある。今後、取引事例比較法としての客観性を担保するための改善が望ましい。

Transaction Cases Comparison Method	
Level 3	Land Prices in the same situation area = Standard Land Price in the same situation area
Level 2	Land Prices = Simple comparison with the transaction cases
Level 1	Land Prices = Prices of transaction cases in the same situation area
Level 0	Land Price = Direct interview about the price

図 5-3. カンボジアにおける土地評価の現状イメージ

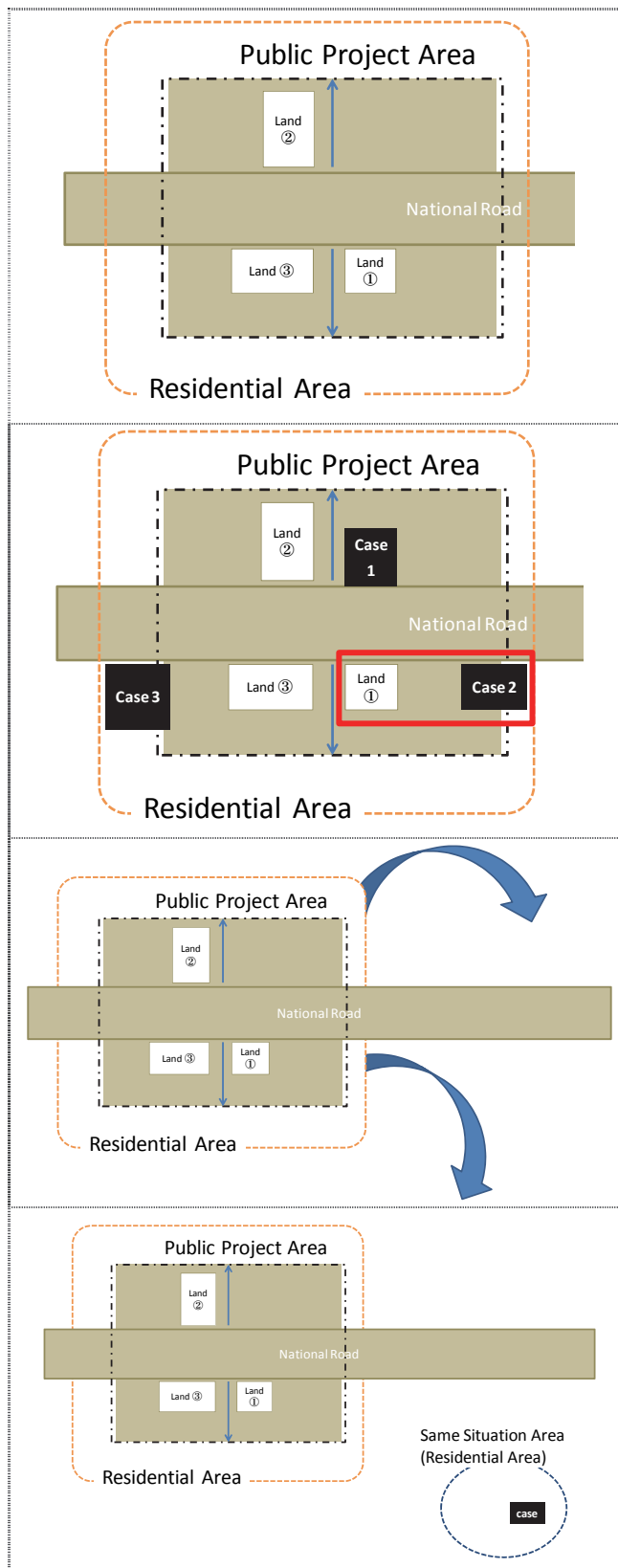
### 5-4. 資産評価（土地評価関係）における今後の課題と対策(案)

現行の取引事例比較法の適用レベルをより引き上げていくためには、まずは次の手順に沿った土地評価を実施することを提案する。

- (1) 公共事業予定地における同一状況地域の区分
- (2) 同一状況地域における実際の土地の取引事例の検索  
※事例がない場合は、検索範囲を広げて検索する。
- (3) 取引事例を基に評価対象地の土地単価を算定

具体的な上記提案に関するサンプルイメージは次のとおり。





1. このサンプルケースでは、評価対象地は住宅地域の同一状況地域にあるものとする。

2. 次に、まずはこの住宅地域のなかで土地の取引事例を検索します。

3. 取引事例が見つかった場合で、事例2が評価対象地③とかなり類似した土地である場合は、この事例2の土地単価を使って評価対象地③の評価を行う。

4. もしこの住宅地域に取引事例がない場合は、他の地域にも検索範囲を広げて取引事例の検索を行います。

5. 他の地域でもし事例が見つければ、上記3の手順により評価を行います。

今回の土地評価に係る改善手法の検討に当たっては、国道1号線改良事業（第4期）事業区間における土地の現状や取引事例の確認を行った結果によるもので、農地地域における取引事例の実態については、今後詳細な確認が必要となる。

また、今回の改善手法を実際のDMSやRCSの現場で具体的に活用するためには、同一状況地域の区分、近隣地域からの取引事例の検索、近隣地域に取引事例がない場合に、他の地域（周辺地域から他の幹線国道沿線地域などの遠方地域も含めて）において取引事例を検索する手順について、C/P及びRCSコンサルタントの理解を深め、実際に対応できるようにトレーニングする必要がある。

上記の具体的な土地評価対応をサポートする素材としては、今後の新規事業における土地評価事例（具体的な土地の所在地、面積、用途、価格、取引時点など）をデータベースとして蓄積していくことも、今後の有効な改善策と考えられる。

また、公共事業のみならず、民間での不動産取引の実態もデータとして蓄積できれば、別途カ国の現状を踏まえて簡素化した手法において用いる比準表の根拠としても活用でき、将来的には取引事例比較法そのものの適用を念頭においた比準表の策定も可能となり、土地評価の分野における補償の適正性、公平性が確保されるものと考えられる。

#### 5-5. 資産評価（土地評価関係）に関する今後の課題と対策(案)

2次派遣におけるカンボジアの不動産鑑定士業者（協会会長）へのヒアリング結果により、カンボジアにおける不動産鑑定士が、実際の土地取引の評価において、取引事例比較法による調査算定を行っていることも確認されており、カンボジア国内のこれらの専門家のスキルを最大限に有効活用することも今後の有効な改善策のひとつと考えられる。

具体的には、現行のRCSにおける土地評価部分を切り離し、カンボジアの不動産鑑定士による、同一状況地域の区分、近隣地域における取引事例の検索、標準地の設定・評価及び各個別画地への評価までの総合業務としての業務発注対応が(案)として考えられる。ただし、今回の3次派遣におけるDMSへの同行時に確認できた現状として、各個別の土地画地の判定が困難であるという実態もあることから、不動産鑑定士への業務発注内容に個別の土地画地の評価まで含めることが難しいと考えられることもある。この場合、標準地については想定設定も可能であることから、土地の評価対象となる近隣地域における標準地の想定設定及び評価までを不動産鑑定士に業務発注する

こととし、当該標準地価格を近隣地域内の土地単価として採用する手法も考えられる。

なお、カンボジアの現状を踏まえて簡素化した取引事例比較法による土地評価手法導入(案)、資産評価（土地評価関係）に係る長期的な提案事項も検討を行った。



**(別添 1 3)**

**プロジェクト紹介資料 (英文)**



# JICA Technical Cooperation Project on Resettlement Capacity Enhancement in Cambodia

- Assisting JICA Environmental and Social Considerations (ESC) -

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**Abstract:** JICA Technical Cooperation Project on Capacity Enhancement of Environmental and Social Considerations for Resettlement (TCP-COR) in Cambodia had been launched in April, 2010 with two years project period for assisting resettlement activities through discussing the standardized operating procedures, BRP (Basic Resettlement Procedures). TCP-COR is developing BRP based on "the things what you can do now" with the primary aim of quality control in work steps, such as "Property Measurement Survey", "Public Consultation Meeting" and so on. TCP-COR would like to share and discuss our challenges in terms of stopgap measures between Development Partners and recipient countries. We also would like to stress importance of capacity enhancement in technical level which may be the firm ground to realize safeguard policies' concepts.

**Keywords:** Resettlement, Environmental and Social Considerations (ESC), JICA Technical Cooperation

## 1. BACKGROUND

### 1.1 Development Partners' Policy

Resettlement issues in developing countries have been discussed for more than decades by development partners (DPs) such as Japan International Cooperation Agency (JICA), World Bank (WB) and Asian Development Bank (ADB). DPs have developed and updated their safeguard policy to address resettlement issues focusing on poverty reduction by creating new legal frameworks and guidelines. However, there remain many issues in the implementation of resettlement policy in developing countries.

### 1.2 Environmental and Social Considerations

JICA, the independent administrative corporation in charge of Japanese ODA implementation, proclaimed the new "JICA Guidelines for Environmental and Social Considerations" (herein after "the ESC Guidelines") on April, 1st, 2010, consolidated the different guidelines for "Environmental and Social Considerations (ESC)" used by former Japan Bank for International Cooperation (JBIC) and former JICA into a single set of guidelines, in accordance with the merger of two agencies.

The ESC Guidelines has similar functions to the safeguard policies in other international development organizations such as WB and ADB. Based on principle of the ESC Guidelines, the project proponents etc.<sup>1</sup> bear the ultimate responsibility for ESC and JICA supports and examines appropriate ESC operations.

<sup>1</sup> host countries and host country governments, including local governments, borrowers, and project proponents.

### 1.3 JICA's ESC in Cambodia

Government of Japan (GOJ) and JICA has implemented some key infrastructure projects in Cambodia, especially in the field of road rehabilitations and bridge constructions. The two on-going projects, National Road No.1 Improvement Project [Pic.1] and the Neak Loeung Bridge Construction, are the symbolic cooperation in the land transport sector. During the project implementation, appropriate land acquisition and resettlement were focused on parallel with the first integrated ESC Guidelines in 2004<sup>2</sup>.



Pic.1 National Road No.1 Improvement Project

In the initial stages, GOJ, JICA and Government of Cambodia (GOC) discussed ESC matters including resettlement issues in project based approach. JICA Cambodia Office and Inter-Ministerial Resettlement Committee (IRC), under Ministry of Economy and Finance (MEF) of Cambodia, launched regular meeting for coordination and discussion on technical issues on land acquisition and resettlement.

In addition to such project based activities,

<sup>2</sup> The Guidelines (2004) was prepared and applied by former JICA (before merged with former JBIC)

both Japanese and Cambodian side recognized necessity of capacity development in resettlement for relevant authorities. Based on GOC's request, GOJ decided technical cooperation project (TCP) and JICA commenced TCP-COR in April, 2010.

## 2. PROJECT DESIGN

### 2.1 Project Formulation Process

The Project formulation team takes into account that the legal framework on land acquisition and resettlement in Cambodia is incomplete. As a result, JICA decided to target on quality control (QC) at a practical level where changes in legal system will not affect on.

The gaps between domestic legal system in Cambodia and DPs' ESC/safeguard policy are unclear, because GOC's applies their own resettlement policies differently depending on the projects. However, there might be common work steps under their legal system. TCP-COR tries to build up such basement procedures in bottom-up policy to support ESC implementation.

### 2.2 Human Resources

#### (1) Cambodian Counter Part (C/P)

Target Group of TCP-COR is Resettlement Department (RD) of MEF and IRC members in relation to Japanese ODA Project, especially in Ministry of Public Works and Transport (MPWT) who is the project owner for road rehabilitation and bridge constructions. IRC and provincial governmental office organize Working Group (WG) as implementation bodies at site. Fig.1 shows brief institutional chart of RD.

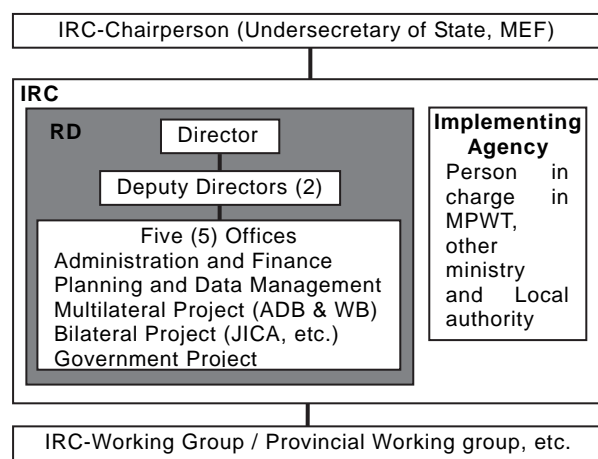


Fig.1 Institutional Image Chart for Cambodian C/P

#### (2) Japanese Experts

Three Japanese Long-term Experts (resident) and some Short-term Experts (shuttle) are dispatched during the project period of two years from April 2010 to March 2012, as Table.1.

Table.1 JICA Experts dispatched for TCP-COR

Long-Term [2 years]	Chief Advisor / ESC
	Participatory Planning and Development
	Project Coordinator
Short-Term [Several Months]	Capacity assessment, Resettlement Plan, Social consideration approach, Social Survey, Property evaluation

### 2.3 Project Design Matrix (PDM)

A JICA TCP is fundamentally operated along with its Project Design Matrix (PDM), a form of logical framework [Table.2]. The Project Purpose of TCP is achieved by outputs generated by project activities and inputs. After TCP completion, Overall Goal will be achieved by C/P around five years later.

Table.2 Basic Structure of TCP-COR PDM

<b>Overall Goal</b>
The Royal Government of Cambodia (RGC) is able to implement resettlement policy for the public works by consistent measures complying with the laws and regulations of Cambodia
<b>Project Purpose</b>
The Resettlement capacity of the RD, MEF and IRC is enhanced
<b>Output</b>
1. The initial situations and needs of RD are reviewed, assessed, and follow up
2. Capacity on understanding of Environmental and Social Considerations (ESC) is strengthened
3. Capacity on information management is improved
4. Capacity to plan and implement resettlement activities is strengthened
5. Capacity to promote effective PAPs Participation is enhanced

### 2.4 Project Phase and Schedule

The implementation schedule of TCP-COR is managed by Plan of Operation (PO) and lower work break down structures (WBS). Fig.2 shows project phases. At present, TCP-COR is in the middle of its second year, "Implementing Phase".

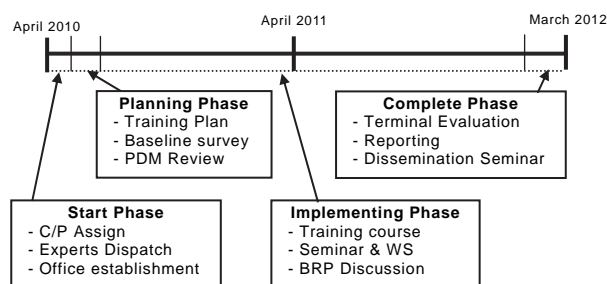


Fig.2 TCP-COR Project Phase

## 3. METHODOLOGY

### 3.1 Basic Resettlement Procedures (BRP)

One of the main outputs of TCP-COR is Basic Resettlement Procedures (BRP), which is a booklet, discussed among JICA Experts and C/P personnel as the same definition and functions of Standard Operational Procedures (SOP).



TCP-COR is developing BRP based on "the things what you can do now" with the primary aim of quality control in work steps, such as "Property Measurement Survey", "Public Consultation Meeting" and so on (Table.3). Common work steps in different (Development Partner's) projects might be the first challenge for capacity enhancement on resettlement procedures.

Table.3 Prospective Chapters of BRP [Temp.]

1	Institutional Establishment
2	Simple Survey / Census
3	Resettlement Action Plan (RAP/RP)
4	Detailed Measurement Survey (DMS)
5	Replacement Cost Study (RCS)
6	RAP/RP updating and budgeting
7	Relocation Site Preparation
8	Income Restoration Program
9	Negotiation and Contract
10	Budget Disbursement and Payment
11	Relocation
12	Public Participation
13	Grievance Redress System (GRS)
14	Monitoring and Evaluation

The most important characteristics of BRP is that C/P officials can easily understand their work steps, "When", "Who", and "What" at glance. TCP-COR eliminates every unnecessary "beautiful" phrases and academic viewpoint to avoid confusion in work process and to avoid making a thick and unreadable booklet with foreign experts' self-satisfaction.

Each BRP chapter in Table.3 consists of simple structure as Table.4 and user-friendly description [Fig.3] to promote practical use in daily resettlement works by C/P organizations.

Table.4 Prospective Chapters of BRP [Temp.]

1	Outline (Definition & General Knowledge)
2	Work Steps (Overview)
3	Role and Responsibility (Organization)
4	Work Flow (Flowchart)
5	Procedures (Operational Works)



Fig.3 Image of BRP (Procedures)

TCP-COR aims at "Knowledge Management" through BRP discussion with C/P. Their tacit (personal) knowledge in practice is transferred to common explicit (organizational / written) knowledge by BRP. The developing process of BRP will contribute to enhancing quality control for each resettlement steps. "If you work step by step following BRP, the result is always the same even if the workers are different".

### 3.2 Third Country Technical Exchange

Technical exchange in third countries especially in neighboring developing country is important opportunity to review Cambodian resettlement policies and procedures from an objective and comparative viewpoint. TCP-COR delegation led by Secretary of State from MPWT and Undersecretary of State from MEF visited Lao P.D.R. and Viet Nam in 2010 as Table.5 and Pic.2.

Table.5 Third Country Visiting Record

Lao P.D.R.	- Ministry of Public Works and Transport - Water Resources and Environment Administration (WREA)
Viet Nam	- Nhat Tan Bridge Construction PMU - People's Committee in charge of NR-2 - Can Tho People's Committee - Tien Giang People's Committee



Pic.2 Discussion at a relocation site of Can Tho Bridge

The knowledge and system used by neighboring countries are often more suitable to Cambodia than that of developed countries. These experiences encouraged government staff to enhance their capacity on resettlement in Cambodia.

### 3.3 Training Course in Japan

With assistance from stakeholder organizations in Japan, TCP-COR organized a two-week intensive training course in Japan as Tabel.6 and Pic.3. Cambodian C/P could learn integrated system regarding land acquisition in developed country and find some tools, such as the management of public information meeting, applicable to Cambodian system.

*Table.6 Record of Training Course in Japan*

Metropolitan Expressway Company	- Site visits around Tokyo - Public involvement process
Hanshin Expressway Company	- Site visits around Kobe - Land Acquisition and Compensation
JICA Headquarters	- JICA new ESC Guidelines - Case study in Nepal and Mongol - TV-conference seminar with other countries (India, Pakistan, Mozambique, Madagascar, etc.)
Other organizations	- Land Acquisition and Expropriation - Case study in Indonesia



*Pic.3 TV Conference Seminar at JICA HQ*

### 3.4 On the Job Training (OJT)

TCP-COR is implementing OJT in on-going infrastructure projects. OJT on site and BRP discussion at the table is the best way to encourage interaction between knowledge and experience each other.

One of the typical OJT is public consultation management. Visual equipments, microphone system, clear agenda, and etc. introduced by TCP-COR in a Public Consultation Meeting (PCM) for the Neak Loeng Bridge Construction Project contributed to help project affected persons (PAPs) for better understanding of the projects.



*Pic.4 Public Consultation Meeting as OJT*

### 3.5 Seminar and Workshop

Intensive seminar or workshop by C/P is the effective and efficient Off-JT to harmonize different quality of resettlement procedures in different project. TCP-COR organized specific seminar/workshop to promote knowledge management among C/P as Table.7

Knowledge and experiences coming from projects funded by different DPs, such as JICA,

ADB, WB, China, Viet Nam, are merged and reviewed in the seminar/workshop for finding the best way in present resettlement procedures in Cambodia. It might be the ground for confirming the starting point of domestic capacity for resettlement implementation, which should be examined by DPs' safeguard policies.

*Table.7 Themes in the Seminar/Workshop*

JCC and EC	- Joint Coordination Meeting - Executive Committee
ESC Understanding	- One day seminar and exam - Intensive one month lectures
Expropriation Law	- Dissemination seminar
DMS and RCS	- BRP dissemination

### 3.6 DPs Coordination

GOC keeps its flexible policy to DPs' requirement on resettlement. Therefore, donor coordination and information sharing among DPs are quite important for discussing ideal figure of resettlement in Cambodia. JICA and TCP-COR continued information sharing meeting at ADB headquarters and in Phnom Penh to discuss hurdles and measures for improvement in the future.

## 4. CONCLUSION

So far much discussion regarding resettlement in policy level including legal framework has been done among DPs and recipient countries. However, not so much attention has been paid on each technique, such as property measurement, replacement cost study, relocation site preparation.

The upstream discussions should be more careful about capacity for each resettlement step. It might be impossible to cover actual and practical resettlement procedures by advanced policy if we do not consider legal gap between domestic system and DPs policy. Human resources in recipient countries are also limited and it takes a long time for enhancing the implementing capacity along with regulations.

TCP-COR has just only two years project period. Therefore, we concentrate on the enhancement of practical capacity by developing BRP, which should be the basement for their capacity development to be independent in the future. During the transition period waiting for C/P's capacity enhancement, stopgap measures as countermeasures are required to fulfill conditions given by DPs' Guidelines and Safeguard Policy.

We hope TCP-COR's approach, capacity enhancement on practical level, will be able to provide good examples and tips for other countries, where domestic systems on land acquisition and resettlement are impractical and discussed only at the table as policy matter.

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## LINKS

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