
II. National Laws and Policies on Land Acquisition and Compensation

A. Introduction

Cambodia has experienced severe social, economic, and political turmoil during the last 20 years. Before the Khmer Rouge came to power in 1975, private land ownership was widespread, governed by the Cambodia Civil Code of 1920. Under the Khmer Rouge from 1975 to 1979, however, private property was abolished and all records destroyed. Following the fall of the Khmer Rouge, the new government introduced usufruct rights to facilitate the orderly occupation, by people returning to the urban areas, of vacant land and structures. In the rural areas, the Government organized families into groups that collectively owned land and assets they used and occupied. Each group of families had a head, and land was distributed to the families according to household size. However, all land in Cambodia remained the property of the State. It was not until 1989 that private ownership was fully restored. The current legislation governing land ownership is the Land Law of October 1992 and of August 2001, which recognizes claims to land made after the downfall of the Khmer Rouge in 1979.

This section reviews Cambodian laws and policies relevant to involuntary resettlement. The Constitution, the Land Law, including derivative decrees and orders, vest in the Government the power of eminent domain; exercised within the general framework of serving the public interest in exchange for just and fair compensation. However, the power of eminent domain is confiscatory by nature, not rehabilitative as is being propounded by the resettlement policies of multilateral development partner agencies. This is not to say that there are no laws that could be invoked to address specific concerns of involuntary resettlement.

Sub-Decree No. 19 ANK/BK, for instance, provides the condition within which landless families displaced by public development projects may acquire land on which to shift (Article 3). However, relocation is just one facet of involuntary resettlement. As a stopgap measure, but only for projects assisted by foreign development partner agencies with resettlement policies, the Government has created the Inter-ministerial Resettlement Committee (IRC) that is tasked to spearhead the preparation and implementation of RPs.

B. Constitution

The September 1993 Constitution of the Kingdom of Cambodia includes provisions that are relevant to involuntary resettlement. For instance, the right of the State to acquire private land for public purposes is to be exercised within the bounds of Article 44, thus

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 (land) possession from any person shall be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance (underscoring provided by the author).

While not directly related to involuntary resettlement, Article 73 and Article 74 of the Constitution lend legal support to the special attention being given to vulnerable sectors of society who are displaced by development projects, thus

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 73).

The State shall assist the disabled and the families of combatants who sacrificed their lives for the nation (Article 74).

Although the Cambodia Constitution requires fair and just compensation for land acquisition, there are no further supporting procedures or regulatory frameworks that have been developed.

C. Land Law

A new Land Law was promulgated in August 2001, replacing the 1992 Land Law. Some provisions of the Land Law that are relevant to the issue of involuntary resettlement are the following:

- (i) *No person shall 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 fair and just compensation (Article 5, underscoring provided by the author).*
 - (ii) *All transfers or changes of rights of ownership shall be carried out in accordance with the required general rules for sale, succession, exchange, and gift or by court decision (Article 6).*
 - (iii) *Any regime of ownership of immovable property prior to 1979 shall not be recognized (Article 7).*
 - (iv) *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 of 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 (Article 15).*
- (v) *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 creation of possession or transformation; Any transformation of a land concession ... except for concessions that are in response to social purposes ... Any entering into possession of property in the private property of the State, through any means, that occurs after this law comes into effect (Article 18).*
 - (vi) *Any person whose titles or factual circumstances fall within the scope of Article 18 of this law shall not have the right to claim for any compensation or reimbursement for expenses made 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 (Article 19).*

- (vii) *Any person who, for no less than 5 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 30).*
- (viii) *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 36).*
- (ix) *An infringement against public property shall be fined from Khmer riel (KR) 5 million to KR50 million [between \$1,250 and \$12,500] and/or imprisoned from one (1) to five (5) 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 public property. In the case of a person who was in possession of State public property before this law comes into force and has document proving and attesting clearly that he bought the property from another person, he can request the competent authority to enforce legal measures 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 259).*

The Land Law of 2001 also recognizes the rights of indigenous peoples over their land and their traditional means of productions, thus

- (i) *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 23).*
- (ii) *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 land 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 of this law and relevant sub-decrees (Article 25).

- (iii) *No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community (Article 28).*

While an individual's rights to ownership and compensation are protected, there are no clearly defined mechanisms and standards for land acquisition or for determining levels of compensation. IRC⁴ decides on entitlements, land values, and other forms of compensation; APs have no right to appeal and are obliged to sell their assets at values set by IRC. The law that will provide the framework within which expropriation of properties for public projects will be undertaken is being drafted by the government.⁵

D. Sechkdey Prakas No. 6 BRK

Sechkdey Prakas No. 6 (27 September 1999): Measures to Crack Down on Anarchic Land Grabbing and Encroachment orders an end to encroachment into public and private properties as well as state lands, including public gardens, land reserved for roads and railways. The Order directs municipal and provincial authorities, the Royal Cambodian Armed Forces, the National Police, Military Police, and all relevant ministries and institutions to participate in enforcing the *Sechkdey Prakas*.

The *Sechkdey Prakas* has set a right-of-way (ROW) of 50 meters (m) for national roads (NRs) with a one-digit number (i.e., NR Nos. 2, 3, 6, and 7), with the exception of NR Nos. 1, 4, and 5, which have a 60-m ROW. Similarly, NR Nos. 11, 22, 64, and 78 have a 50-m ROW. Urban areas traversed by the aforementioned roads will have narrower ROWs.

⁴ Created on 18 March 1997 by virtue of Government Order No. 13 to carry out the acquisition or affected private properties and the resettlement of APs in Highway 1 Project (under the ADB-assisted Loan 1659-CAM). For more on this, see Section 3.9.

⁵ ADB TA 4490 CAM: Enhancing the Resettlement Legal Framework and Capacity Building is assisting the Government to draft a sub-decree on Land Acquisition and Compensation.

The Government, however, failed to adequately inform the public about the ROW it has set for various types of roads; neither has the Government demarcated and mapped them. Prior to the issuance of the *Prakas*, the width of ROW was not legally defined, although the Government has assumed a 50-m de facto ROW for national roads based on pre-1975 practice.

The *Prakas* does not spell out how to acquire land from those who are living within the set ROW before its issuance in September 1999. The Land Law 1992 (Article 74) states that if any temporary possessor peacefully, honestly, publicly without ambiguity occupied a land (this land is referred to private state land, see Article 18 of the Land Law) for 5 consecutive years and the land is free with no record in the enrollment register and does not belong to anybody, the temporary possessor shall become a legitimate owner of that land. This Article is reiterated in Article 30 of Land Law 2001. The Land Law is silent on whether or not this applies to ROW land, but does not specifically state that it does not apply. Nevertheless, the Government is enforcing this Article selectively.

E. MEF *Prakas* No. 961

The Ministry of Economy and Finance (MEF) *Prakas* No. 961 (6 April 2000) is an Order issued to enforce *Sechkdey Prakas* No. 6. The *Prakas* disallows any payment to be drawn from the national budget for structures and other assets located within the ROW. The MEF *Prakas* is consonant with the position of the 2001 Land Law that individuals who have illegally occupied the ROW or public properties are not entitled to any compensation or social support, regardless of their being an AP or a member of vulnerable groups.

F. *Sechkdey Choundamnoeng* (Notification) No. 43 SCFIN KBCH

Notification No. 43 (6 September 2001): “*Cessation of Acquisitive Possession of Immovable Property*” enjoins all levels of government to prevent and prohibit new acquisition of public and State land by private entities following the effectivity of the 2001 Land Law. After the Notification, many state private lands were sold to private entities in the form of exchange with new locations.

G. Sub-Decree No. 19 ANK/BK

The Sub-Decree on *Social Land Concession*, issued on 19 March 2003, defines the criteria, procedures, and mechanism for granting and transferring private State land to the poor for residential and/or family farming purposes. This Sub-Decree is specifically directed to vulnerable groups as enunciated in Article 3 and Article 18, thus

- (i) *Social land concessions may be granted for one or more of the following social purposes: Provide land for residential purposes to poor homeless families; Provide land to poor families for family farming; Provide land to resettle families who have been displaced resulting from public infrastructure development; Provide land to the families suffering from natural disaster; Provide land to repatriated families; Provide land to demobilized soldiers and families of soldiers who were disabled or died in the line of duty* (Article 3, underscoring provided by the author).
- (ii) *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 ... 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...* (Article 18).

The Sub-Decree not only provides land; it includes provision of basic infrastructure and services in order to improve the living standards and livelihood of recipient families. Article 9 requires that

“... an assessment (be done) of the availability of infrastructures necessary to implement the (development) 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...”

While the Sub-Decree requires the preparation of a development plan, it does not spell out the framework and the procedures for preparing and carrying out the plan. Furthermore, concession land provided to people is smaller or of no value and far away from the town

or urban center. Past experience shows that most of the families abandon the land and move to places where there are job opportunities.

H. Sub-Decree No. 62 ANK

Sub-Decree No. 62 (20 July 1999): “*Organization and Function of the Ministry of Land Management, Urban Planning and Construction*” spells out the functions of the various offices that make up the Ministry of Land Management, Urban Planning and Construction (MLMUPC). It also mandates MLMUPC to recommend policies, plans of action, and measures to help address the problem of squatting.

The Sub-Decree describes the role and responsibility of MLMUPC in connection with the processing of applications and the granting of land titles, not to mention the issuance of construction permits and licenses to engage in the business of architectural design and construction. Additionally, MLMUPC is responsible for compiling and updating the market rates of construction materials, equipment, and labor in all the provinces and cities.

At present, MLMUPC is carrying out a huge project called the Land Management and Administration Project. The project is important to provide secure land tenure rights, improve the land administration system, and to develop capacity for land management, so that the entire population of Cambodia could benefit. The project is under the umbrella of the Royal Government’s Land Administration, Management, and Distribution Program (LAMDP), which is expected to be implemented over the next 15 years. The objectives of LAMDP are to (i) strengthen land tenure security and land markets, prevent and resolve land disputes; (ii) manage land and natural resources in an equitable, sustainable, and efficient manner; and (iii) promote land distribution with equity. So far, many landholders have received proper land titles free of charge.

I. Decision No. 13 and Prakas No. 098

Addressing involuntary resettlement is a recent phenomenon in Cambodia. Decision No. 13, issued on 18 March 1997, created the Inter-ministerial Resettlement Committee (IRC) that was tasked to

...conduct inspection in the field to quote the statistics of the impact on construction, houses and land of people along the National Road 1 (Loan 1659-CAM: Phnom Penh to Ho Chi Minh

City Highway Improvement), and then to make an appropriate assessment to be used for submitting to the Royal Government for consideration and approval of a budget amount as a policy for those people (Article 3).

Decision No. 13 was put on hold until 1999, however, because of the political instability that beset the country at that time. It was resurrected on 16 February 1999 through *Prakas* No. 098, entitled “Establishment of Inter-ministerial Resettlement Committee for Monitoring and Evaluation of Affected People along National Road No. 1 from Phnom Penh to Bavet”.

IRC is chaired by MEF with members coming from MPWT; Council of Ministers (COM); Ministry of Agriculture, Forestry and Fisheries (MAFF); Municipality of Phnom Penh; and the Governor or Vice-Governor of affected provinces. Initially, IRC was created to address resettlement issues in the Highway 1 Project. The Government later decided to extend the tenure of IRC to cover all infrastructure projects funded by the Government and foreign development partner agencies that had policies on involuntary resettlement. Now, IRC plays a dominant role in all resettlement activities both planning and implementation, the reason given by IRC being effective use of the government budget for resettlement spending.

In general, the policy and legal framework supporting resettlement is very limited although the Cambodia Constitution (1993) and Land Law (2001) protect the rights of individuals to possess and occupy land. The Laws, both the Cambodia Constitution and the Land Law, require fair and just compensation for land taken for public interest. In practice, for government- and private-funded projects, the law, on the one hand, has never been applied and people suffered from development. On the other hand, for ongoing projects funded by the Government, those APs get compensations according to negotiation approach (Willing-buyer-Willing-seller) with full public consultation. However, it has been accepted that the government projects have never prepared RPs. In past projects funded by multilateral and bilateral development partner agencies, fair and just compensation remained doubtful since the compensation cost was covered by the government national budget and IRC, led by the former management was the sole agency that fixed the compensation rates for all affected assets. The current IRC conducts replacement cost study jointly with representatives from line Ministries, NGO, local consultant, and provincial subcommittee to get acceptable compensation rates for all affected assets.