

**UN COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL
RIGHTS**

(42ND SESSION 2009)

THE RIGHTS OF INDIGENOUS PEOPLES IN CAMBODIA

Submitted by

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SUBMISSION TO THE UN COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS (42ND SESSION 2009)

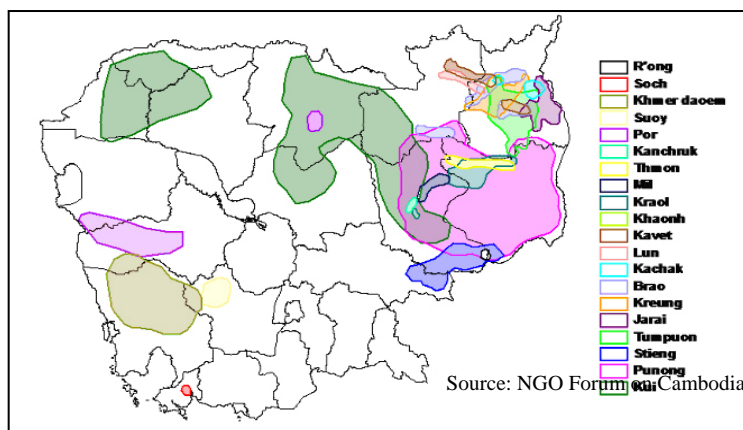
THE RIGHTS OF INDIGENOUS PEOPLES IN CAMBODIA

I. SUMMARY

1. Two indigenous peoples and support organizations in Cambodia, together with an Asia regional indigenous peoples' federation and an international NGO, ('the submitting organizations') (see Annex A for a description of these organizations) have the honor of submitting this report to the Committee on Economic, Social and Cultural Rights ('the Committee') for consideration at its 42nd session. It focuses on the rights of indigenous peoples and is intended to aid the Committee when it reviews Cambodia's initial periodic report (E/C.12/KHM/1).

2. This report provides specific facts and documentation related to ongoing violations of the economic, social and cultural rights of the indigenous peoples of Cambodia. The information contained herein looks in detail at a number of areas in which the rights of indigenous peoples are currently and have historically been violated by Cambodia. These areas, which correspond to Articles 1, 11, 12, 13 and 15 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), are: (i) the right to self-determination; (ii) land and resource rights; (iii) forced displacement; (iv) the right to education; and (v) the right to health.

3. Indigenous peoples are estimated to be the traditional owners and managers of over 4 million hectares of Cambodia's forest lands and have been responsible for preserving stable environmental conditions for many other parts of the country (forest conservation supporting flood control, for example).¹ The 1998 Cambodian Population Census identified 17 different indigenous groups.² Population estimates for indigenous people range from 101,000 to 190,000, or around 1.4 percent of Cambodia's population, and as the map indicates, their customary lands are overwhelmingly found in the north-eastern provinces.



4. Whilst indigenous peoples welcome development opportunities in their communities, there are rapid changes now occurring in an environment where many indigenous people are functionally illiterate in the national language (Khmer), and where weak local governance and transparency are significant barriers to indigenous peoples' effective participation in decision-making processes. In this environment, it is of paramount importance that the civil, political, economic, social and cultural rights of indigenous peoples are recognized and protected by the State, including in relation to the acts of private companies and organizations. However, as discussed herein, the State has failed to comply with its obligations with respect to indigenous peoples' rights and violations thereof are common in Cambodia today.

II. SELF-DETERMINATION

5. Article 1 of the ICESCR guarantees the right of all peoples to self-determination, including indigenous peoples.³ This right has been further contextualized to indigenous peoples in the 2007

¹ Community Forestry International internal reports 2006.

² *Population Census*, National Institute of Statistics, Cambodia 1998, available at: <http://statsnis.org/CENSUSES/Census1998/index.htm>

³ See for instance Russian Federation, 12/12/2003. E/C.12/1/Add.94, at para. 39 (stating that "recalling the right to self-determination enshrined in article 1 of the Covenant, [the Committee] urges the State party to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence").

UN Declaration on the Rights of Indigenous Peoples. This Declaration was supported by Cambodia and highlights, *inter alia*, self-determination in relation to the ownership and control of traditional territories and resources; the maintenance and development of indigenous political, economic and social systems; the right to free, prior and informed consent in connection with development projects, resettlement and the adoption of legislation; and the preservation and promulgation of culture. The Committee on the Elimination of Racial Discrimination has observed that the Declaration should be used by states to interpret their obligations under the human rights treaties to which they are party.⁴ This submission will therefore address the obligations of Cambodia with reference to both the ICESCR and the UN Declaration on the Rights of Indigenous Peoples.

6. Despite the extant international guarantees for the right of self-determination, the lived experience of indigenous peoples in Cambodia is of violations of the most fundamental aspects of their basic human rights and their right to self-determination. We will address below violations of the right to an adequate standard of living (Article 11); the right to traditional and customary land and the right to be secure in the means of subsistence (Article 1(2)); the right to be free from involuntary resettlement (Articles 1(1), 1(2) and 11); the right to equal access to education (Article 13); and the right to medical attention and services in the event of illness (Article 12).

III. LAND

7. The UN Declaration on the Rights of Indigenous Peoples unequivocally affirms the territorial rights of indigenous peoples.⁵ The Committee has also recognized the centrality of secure rights to traditionally owned lands, territories and resources, including the protection of traditional land tenure systems, to the maintenance of indigenous peoples' ways of life and culture.⁶ Moreover, it has related recognition and protection of these rights to the exercise and enjoyment of the full range of the rights guaranteed by the Covenant.⁷ The Committee has, for example, observed that indigenous peoples are especially vulnerable to violations of the right to food in cases where "access to their ancestral lands may be threatened."⁸ In Cambodia, indigenous peoples are routinely denied access to their traditional lands, territories and resources and, in many cases, their lands have been simply taken from them. Such takings are ongoing and constitute a major threat to indigenous peoples' security and well being.

8. Cambodian law does recognize communal ownership of land. The Constitution, for instance, describes ownership of land within Cambodia as being understood as both collective and individual,⁹ although collective ownership rights for indigenous peoples are dependent on a concomitant recognition of legal personality through a process that is not adequately defined and which may be contrary to indigenous peoples' internationally guaranteed rights.¹⁰ The 2001 Land Law also recognizes communal and traditional tenure, again subject to registration as a legal

⁴ *Concluding Observations of the Committee on the Convention for the Elimination of Racial Discrimination: United States of America*, UN Document CERD/C/USA/CO/6, May 2008: para 29.

⁵ The UN Declaration on the Rights of Indigenous Peoples, Article 32 provides that:

(1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

(2) States shall consult and cooperate in good faith with the indigenous peoples concerned through their won representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

(3) States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

⁶ See *inter alia* E/C.12/PRY/CO/3, 4 January 2008, para. 29 and 34; E/C.12/IND/CO/5, 10 May 2008, para. 44; E/C.12/BOL/CO/5, 08 August 2008, para. 23 and 36; and E/C.12/KEN/CO/1, 1 December 2008, para. 12 and 31.

⁷ See *inter alia* E/C.12/CO/FIN/5, 16 January 2008.

⁸ *General Comment No. 12, The Right to Adequate Food (Art. 11 of the Covenant)*, adopted at Committee's Twentieth session, 1999, at para. 13.

⁹ Constitution of the Kingdom of Cambodia, Article 44 ("All persons, individually or collectively, shall have the rights to ownership").

¹⁰ See 2001 Land Law, Arts. 8 and 23 and; the 2008 draft *Sub-Decree on Procedures of Registration of Land of Indigenous Communities*, Art. 3 (providing that "General principles that shall be applied in the registration of land of an indigenous community are as below: - Only communities established as a legal entity which have registered community by-law and legal recognition can apply for registration of collective title. ...").

person.¹¹ As discussed below, these guarantees do not adequately protect indigenous peoples in practice. This is due to a lack of political will as well as limitations within the implementing laws.

9. While the 2001 Land Law contains provisions for the titling of communal ownership of land, the required implementing decrees are still in draft form (see Annex C containing the draft *Sub-Decree on Procedures of Registration of Land of Indigenous Communities*). These provisions are thus presently unavailable in fact despite the passage of almost eight years since the Land Law was adopted in 2001. The provisions for communal land titling are also restricted to the recognition of common property held by a recognized legal entity (Article 8), rather than the communal property or customary tenure of an indigenous people or of any collective that has not been registered as such by the State. Requiring legal registration and legal identity prior to the recognition of land rights is tantamount to vesting in State authorities the power to determine who is 'indigenous' in direct violation of the rights of indigenous peoples to self-determination and to juridical personality.¹²

10. However, although the 2001 Land Law is problematic in some respects, Article 23 does contain some measure of protection for the residential and cultivatable lands of indigenous peoples, titled or otherwise, at least pending a determination of their legal status.¹³ The former Special Rapporteur on Adequate Housing, Miloon Kothari, opined in his 2003 report on Cambodia that this provision, at a minimum, "should provide indigenous peoples with protection against displacement."¹⁴ However, as discussed below, this protection has not been apparent or effective for indigenous peoples in Cambodia.

11. Indigenous peoples have confirmed that the sale or transfer of land to outsiders is contrary to their traditions and customary laws. However, there have been and continue to be widespread reports of indigenous communities being told that: 'the land is state land. You have no rights. It will be taken from you. You can sell it now and get some money now or it will be taken anyway and you will get nothing'.¹⁵ The appropriation and alienation of the lands and resources of indigenous peoples in Cambodia have reached extraordinary proportions, despite the protections provided in the letter of the laws cited above. It is not possible to provide clear information about the extent of that alienation because of lack of transparency in many of the land and concession deals. However studies on land alienation in the northeastern provinces have estimated that the majority of land transfers in these provinces are illegal and, in particular, contravene the protections afforded to indigenous peoples under Cambodian law.¹⁶

12. The serious nature of the issues of land and food security facing indigenous peoples in Cambodia has not escaped the attention of the international community. The Special Representative of the Secretary General to Cambodia noted in his 2007 report that the existing laws in Cambodia are not applied, and without the exercise of political will to correct the situation, the alienation of indigenous peoples' lands would continue.¹⁷ He recommended that the sale of land and the granting of 'economic land concessions' and other concessions in areas occupied by indigenous communities be banned pending the registration of indigenous claims over traditional lands and the collective titling process; that other mechanisms be put in place to protect indigenous land pending the registration of collective title; and that the process of registration of collective title

¹¹ See full text of the 2001 Land Law in Annex B.

¹² See for instance Inter-American Court of Human Rights, *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172 (discussing the rights of indigenous and tribal peoples to juridical personality, including recognition as peoples, for the purposes of the recognition and exercise of their collective rights). Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf.

¹³ Article 23 provides "An indigenous community is a group of people that resides 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." The law on communities referred to in Article 23 has yet to be enacted.

¹⁴ *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, 21 March 2003. E/CN.4/2006/41/Add.3. Para 21.

¹⁵ *Land Alienation in Indigenous Minority Communities - Ratanakiri Province, Cambodia*. Cambodia NGO Forum, August 2006. Available at: [www.ngoforum.org.kh/Land/Docs/Indigenous/Land Alienation draft.pdf](http://www.ngoforum.org.kh/Land/Docs/Indigenous/Land%20Alienation%20draft.pdf).

¹⁶ *Ibid.*

¹⁷ A/HRC/4/36.

over indigenous land be finalized.¹⁸ Notably these are existing requirements in Cambodian law, yet they remain unimplemented and ineffective. Until today, no registration of indigenous peoples' lands and resources has been completed under the 2001 Land Law. Despite this, Cambodia lauds the development of rubber plantations and oil and gas exploration on economic land concessions in their report to the Committee.¹⁹

13. In his report of 2008, the Special Representative further recommended that Cambodia protect the rights of indigenous persons and others who, due to illiteracy, customary practices or other reasons, are not familiar with the law or its procedures, the rules for making of economic transactions or the market economy.²⁰ It is clear that Cambodia has been provided with expert advice and has developed through its legislative process a law that provides, to some extent, protections for the communal lands of indigenous peoples. It is equally clear that such protection is not available in practice²¹ and the alienation and exploitation of indigenous peoples' lands continues unabated.²²

IV. FORCIBLE EVICTION AND DISPLACEMENT

14. Article 1 of the ICESCR commits Cambodia to protect the rights of indigenous peoples to “freely dispose of their natural wealth and resources” and to ensure that “in no case may a people be deprived on its own means of subsistence.” Article 11 further details the obligations of the State to protect the rights of indigenous persons and peoples to an adequate standard of living, including adequate food, clothing and housing. The Committee has previously interpreted this in the context of indigenous peoples as being particularly important in contexts where forced displacement may, has or will occur.²³

15. Involuntary or forcible resettlement “is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities.”²⁴ The Committee frequently expresses concern about forcible relocation and has urged states to abandon the practice as being incompatible with the obligations assumed under the Covenant.²⁵ In its *General Comment on the Right to Adequate Housing*, the Committee states that it “considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”²⁶ Article 10 of the UN Declaration on the Rights of Indigenous Peoples restates ‘the relevant principles of international law’ pertaining to indigenous peoples, explicitly stating that “Indigenous peoples shall not be forcibly removed from their lands or territories,” and that “[n]o relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”²⁷

16. Forced displacement and the ongoing denial of effective rights over traditionally owned lands, territories and resources are serious and ongoing threats to the survival and well being of indigenous peoples in Cambodia. Successive Special Representatives of the UN Secretary-General

¹⁸ Ibid.

¹⁹ Cambodia State Report, para. 77 and 81.

²⁰ A/HRC/7/42.

²¹ *Land Alienation in Indigenous Minority Communities*, supra.

²² *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2. Briefing Paper Prepared by members of the NGO Forum on Cambodia*, November 2008.

²³ See *General Comment 7, The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions*, at para. 10 (stating that “Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. ... The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved”). See also E/C.12/PRY/CO/3, 4 January 2008, para. 29 and 34.

²⁴ *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Final report submitted by Mr. Theo van Boven, Special Rapporteur*. UN Doc. E/CN.4/Sub.2/1993/8, at 10.

²⁵ *General Comment No. 4, The Right to Adequate Housing (Art. 11(1) of the Covenant)*, adopted at the Committee's Sixth session, 1991.

²⁶ Ibid. at para. 18. See also *General Comment No. 7, The Right to Adequate Housing (Art. 11(1) of the Covenant): Forced evictions*, at para. 1.

²⁷ UN Declaration on the Rights of Indigenous Peoples, Article 10.

have expressed grave concern over the semi-official 'economic land concessions' and their impacts on the human rights of indigenous peoples,²⁸ and the Cambodian Office of the High Commissioner for Human Rights has highlighted that such land alienations stem also from large-scale illegal land acquisition by both private actors and the State.²⁹ Further, the Special Representative of the Secretary General on the human rights of internally displaced persons has emphasized that indigenous peoples in Cambodia require specific protections if they are to be adequately protected from being displaced, whether from conflict or from land alienation.³⁰

17. The Committee has recently expressed its deep concern “about the reports of displacement and forced evictions in the context of land acquisition by private and state actors for the purposes of development projects.”³¹ Further, the Committee on the Elimination of Racial Discrimination has highlighted the need to obtain informed consent prior to any decision affecting the rights and interests of indigenous peoples.³² Given the lack of transparency and the amount of misinformation that is presented to indigenous peoples' communities under threat of relocation, the requirement for 'informed consent' is particularly resonant in Cambodia.

18. As stated above, some measure of legal protection for the land rights of indigenous peoples in Cambodia is provided for in the 2001 Land Law. Customary use rights are recognized in the 2002 Forestry Law, and indigenous peoples' rights are further acknowledged by a specific Prime Ministerial Order and a Provincial *Deika*.³³ However, studies into land acquisition in Ratanakiri Province have concluded that the *majority* of land transfers are illegal, being in contravention of these national laws.³⁴

19. The impact of such illegal land transfers on the livelihoods of indigenous peoples in Cambodia can hardly be overstated. In some areas entire communities have disintegrated and there is a progressive and deepening loss of cultural and social resources.³⁵ Community members report that illegal land transfers usually begin with powerful and influential people developing relationships with individuals within communities and either coercing communities into accepting one-off cash payments or negotiating land transfers with individuals on behalf of entire communities.³⁶ The alienation of indigenous communities' lands through the granting of 'economic land concessions', including mining permits, also directly violates the rights of indigenous peoples to assert and gain recognition of their collective ownership of their traditional lands, as provided for under the 2001 Land Law.

20. Indigenous peoples' representatives report a rising level of misinformation with regard to their rights. During 2007 and 2008, NGOs and community groups have also noted an ongoing and increasing level of disempowering and incorrect information provided to communities by government officers. Indigenous community representatives have reported in land forums and conferences that they are repeatedly told by Government officials that they have no rights.³⁷ Communities have also reported that they are told by local officials that indigenous peoples must make way for rapid economic development.³⁸

²⁸ *Economic land concessions in Cambodia - A human rights perspective*. Cambodia Office of the High Commissioner for Human Rights, June 2007.

²⁹ *Ibid*.

³⁰ *Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, submitted pursuant to Commission on Human Rights resolution 2004/55*. UN Doc. E/CN.4/2005/84. Para 43.

³¹ See E/C.12/IND/CO/5, 10 May 2008.

³² Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII on Indigenous Peoples*, August 1997, para. 4(d) and 5.

³³ The Prime Minister's order No. 01 on the prevention, suppression and elimination of forest clearance, burning, earth working and encroaching of forest lands to claim ownership, dated June 2004. A Ratanakiri provincial *deika* in support for order No.001 dated, March 2005 and a further provincial *deika* in Ratanakiri in January 2006.

³⁴ Land Alienation in Indigenous Minority Communities - Ratanakiri Province, Cambodia. August 2006, *supra*.

³⁵ *Ibid*

³⁶ *Ibid*

³⁷ Workshop Reports from: a) Ratanakiri Land Forum (19-20 March, 2008), available from Indigenous Community Support Organisation; and b) National Indigenous Peoples Forum (27-28 October 2008) available from NGO Forum on Cambodia.

³⁸ *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2. Briefing Paper prepared by members of the NGO Forum on Cambodia*, November 2008.

**Extract from “Land Alienated from Indigenous Minority Communities in Ratanakiri”,
NGO Forum on Cambodia, 2006**

A comparison of the situations in November 2004 and January 2006 lead to the following conclusions:

■ In accordance with the 2001 Land Law, participants of the “Workshop to Seek Strategies to Prevent Indigenous Land Alienation” in March 2005 publicly acknowledged that both selling and buying of indigenous peoples’ land is illegal. Participants included provincial governors, representatives from the Ministry of Land Management Urban Planning, and commune councils. The illegality of the vast majority of land sales in Ratanakiri has also been confirmed by national and international legal experts.

■ Communities report that, if this situation is allowed to continue, it will lead to a severe disruption of community processes and destroy the solidarity and cohesion within communities. This transforms communities into groups of people or individuals who are selling land and forest and the situation becomes very difficult to control.

21. Of greater concern are the increased threats and intimidation against indigenous community members trying to protect indigenous peoples’ land and natural resources. Indigenous peoples and NGOs report an increasing level of court cases and other threats against indigenous community leaders involved in resisting land concessions and land acquisitions³⁹. Examples include:⁴⁰

- a) in March 2007, an economic land concession was given to the Sopheak Nika Investment Company which overlapped with indigenous community land. On 3rd March 2007, armed soldiers were deployed to break-up a protest by affected communities and allegedly used verbal and physical threats;
- b) in July 2007, in the Kong Yu case, the Provincial Criminal Prosecutor allowed 41 statements made by villagers stating that they willingly sold the disputed land to be filed in the criminal investigation in July 2007. At the time of the statements, the villagers were not formally summonsed for questioning but driven to court in a truck belonging to the business woman’s association. The Jarai speaking villagers were then asked to thumb print written Khmer statements they did not understand and were threatened by the association representatives if they refused. Eleven of the 41 statements were made by villagers who were from outside the village and not involved in the land dispute and who made statements in return for money. The General Prosecutor at the Court of Appeal however, has subsequently ordered the Provincial Criminal Prosecutor to act in accordance with the law;
- c) in November 2007, in Kompong Cham, military soldiers acting on behalf of a private company grabbed 4,000 ha of land used by an indigenous community. The soldiers were armed and fired shots in the air to threaten any community members who attempted to reclaim their rice-fields;
- d) in March 2008, two indigenous Community Forestry leaders in Kratie Province were victims of serious verbal threats and attempted killings after confiscating logging equipment during forest patrols in communal areas. One of their ‘field houses’ was also set on fire & burned down⁴¹. To this day, local authorities have failed to investigate or arrest perpetrators;
- e) in February 2008, an indigenous community in Preah Vihear was intimidated by the provincial court as they attempted to protect their forest from illegal gold mining, which they allege was causing environmental pollution and killing their livestock; and
- f) on 27 May 2008, an economic land concession was given in Snoul District, Kratie Province to CIV Development Agro Industry Company. This overlapped with indigenous land. This concession was granted without any public consultation and was therefore not in line with the sub decree on economic land concession. On 5th September community members staged a protest to halt the clearing of their lands. A week later 4 community representatives involved in the protest were summonsed to court by the prosecutor after the company filed

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Indigenous people often have two houses, one in the village and one near their agricultural fields, where they stay during the planting and harvesting seasons.

criminal complaints the representatives for infringements against private ownership, destruction of private property and robbery after community people surrounded an excavator as part of the protest. An NGO team monitoring the event found that nothing was destroyed and/or stolen. The company relies on the (illegal) economic land concession contract documents, statements of its supervisor and workers to and photographs of the peaceful demonstration to support these charges. However, in the view of the NGO lawyers, there is insufficient evidence to support these serious charges and the company and prosecutor are using judicial mechanisms to intimidate the villagers.

22. Additionally, NGO human rights defenders who are trying to protect indigenous communal land are also increasingly under threat.⁴² An Amnesty International report released in September 2008 confirms this, stating that

Human rights workers also find themselves at risk for their defense of land and housing rights. Security forces are known to have cut off access for lawyers to the villages of their clients, and in Ratanakiri and Mondulakiri, provincial authorities have required written application for permission to pay visits to communities at risk of forced eviction or to monitor peaceful protests.⁴³

V. EDUCATION

22. Article 13 of the ICESCR commits Cambodia to providing primary education free of charge to all Cambodians without discrimination. Article 13 further commits the State Party to make secondary education generally available and accessible to all, including through the progressive introduction of free education, and working towards the provision of equal access to tertiary education, including through the provision of free high school education. Article 14 of the ICESCR commits the State Party to establishing a concrete plan towards the realization of the right to education.

23. The Committee has previously explained that under Article 13(2) of the Covenant, states must take “positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples...”⁴⁴ The UN Declaration on the Rights of Indigenous Peoples also clarifies that this right extends to the provision of culturally appropriate and bilingual education systems and curricula.

24. There have been some positive steps towards the expansion of bilingual education in the formal education system with the Ministry of Education, Youth and Sport (MEYS) supporting such initiatives. In Stung Treng, Mondulakiri and Ratanakiri, the Ministry has set up bilingual community schools and, in Ratanakiri, a number of state schools have adopted bilingual education in the Kreung, Tampuan, Bunong and Kavet languages. The Royal Academy and the MEYS have approved over 80 readers in different languages to be used in formal education. The 2007 Education Law allows for a '*prakas*' (an implementing order or proclamation) to be promulgated for the use of non Khmer languages as the language of instruction in indigenous areas. The MEYS has also indicated that a bilingual education policy can be developed under the Child Friendly Schools policy which came into effect March 2008.⁴⁵

25. However, the situation for indigenous peoples in Cambodia with regards to effective access to appropriate education remains dire. The proportions of indigenous people who can not access school or leave school functionally illiterate continues to remain far higher than the national average. Despite the efforts described above, which are welcomed and supported by indigenous peoples in Cambodia, the lack of educational services in indigenous peoples' areas is a serious issue that needs to be addressed.

⁴² Ibid.

⁴³ Amnesty International, *A Risky Business – Defending the Right to Housing*, 2008, p. 13. Ratanakiri and Mondulakiri are the two provinces most heavily populated by indigenous peoples and the disputes referred to herein all concern traditional occupied and used indigenous lands.

⁴⁴ *General comment No. 13: The right to education (art. 13)*, at para. 50.

⁴⁵ The Child Friendly Schools policy was promulgated by the MEYS in December 2008.

VI. HEALTH

26. Article 12 of the ICESCR commits Cambodia to take steps to realize the right to the enjoyment of physical and mental health, while Article 2 confirms that this right must be recognized without discrimination. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of mental and physical health, Paul Hunt, has also explained that the provision of health services must be culturally appropriate and specifically designed to meet the health needs of indigenous peoples.⁴⁶ However, the health status of indigenous peoples in Cambodia remains below the national average. For instance, mortality rates for children under the age of 5 in Monduliri and Ratanakiri provinces, both having majority indigenous populations, are 165 deaths per 1,000 live births compared with the national average of 83 deaths per 1,000 live births.⁴⁷

27. The right to health and well-being, according to the World Health Organisation (WHO), not only means being free from disease, but also having access to preventive health education and counseling.⁴⁸ In Cambodia, language barriers and cultural differences between indigenous people and the public health service providers form major obstacles. Money, transportation, language, discrimination, low levels of education and traditional beliefs/obligations are all cited as major barriers to accessing health services and information.⁴⁹

28. There is still a significant imbalance in the distribution of public health service staff, with most staff in these provinces coming from the majority population. An obvious impact of this imbalance is the continued restrictions on access to health services and information. Observations in Ratanakiri also indicate that some of the previous indigenous staff in health centers have been replaced by majority Khmer staff.⁵⁰ In Monduliri Province, where the Phnong make up a majority of the population, only 27 of 121 health service staff are Phnong, and most of these are employed as 'floating staff' (those not necessarily in full-time employment), at the health facility.⁵¹

29. In early 2007, the United Nations Population Fund (UNFPA) funded extensive research in Ratanakiri into priority issues as identified by indigenous peoples. These priority issues included social issues such as domestic violence and inter-generational conflict (as younger people no longer or rarely use traditional medicines), as well as issues more strictly associated with health such as maternal health and malaria. The research concluded that insufficient action is being taken by national and provincial health authorities to meet the needs of Cambodia's indigenous peoples and to ensure that they have equal access to government provided services.

30. Last but not least, the Committee has recognized that indigenous peoples' health is threatened by activities including displacement that affect their traditional territories. In a statement that is very relevant to the situation in Cambodia today, the Committee explains that

in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.⁵²

⁴⁶ *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health Report of the Special Rapporteur, Paul Hunt.* UN Doc. E/CN.4/2004/49, at para. 41.

⁴⁷ Cambodia Demographic and Health Survey 2005.

⁴⁸ Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

⁴⁹ Personal communication with Health Unlimited staff, Ratanakiri Provincial office.

⁵⁰ *Ibid.*

⁵¹ Personal communication with Healthnet International staff, Monduliri Provincial office.

⁵² General Comment 14, *The right to the highest attainable standard of health: 11/08/2000.* UN Doc. E/C.12/2000/4, 11 August 2000, at para. 27.

VII. CONCLUSION AND REQUEST

31. In the light of the information provided herein, the submitting organizations respectfully request that the Committee recommends that Cambodia:

- a) takes immediate steps to ensure that the lands of indigenous peoples are protected in the interim period prior to the completion of the titling of indigenous peoples' lands required under the 2001 Land Law;
- b) ensures that the draft *Sub-Decree on Procedures of Registration of Land of Indigenous Communities* is consistent with indigenous peoples' rights as defined by international law. In particular, that registration requirements are not prejudicial to indigenous peoples' rights to self-identification, self-determination and juridical capacity, and that lands in addition to those used for residential or agricultural purposes are included in the titling programme;
- c) takes immediate steps to ensure the proper and just resolution of cases of alienation and loss of customary lands in indigenous peoples' areas, including through restitution of lands taken without indigenous peoples' free, prior and informed consent, and the effective prosecution of offenders, including people of power and influence in Cambodian society and the authorities involved in promoting, endorsing, supporting, or benefiting from land transactions in areas of indigenous peoples' communities;
- d) establishes a mechanism whereby indigenous peoples who have lost their lands due to the creation of economic land concessions, mining permits, the sale of lands to or by politicians, or any other means, can attain full restitution of their lands and rehabilitation of lands negatively impacted by subsequent development;
- e) suspends all land, tourism, mining and other concessions and other large-scale development projects (such as large hydro-electric dams and highways) in indigenous peoples' areas until such a time as registration of lands under the 2001 Land Law has been completed and ensures that respect of the right of free prior and informed consent is applied to any activities to be undertaken on indigenous peoples' lands and territories;
- f) takes concerted action to ensure that the titling of indigenous peoples' lands under the 2001 Land Law takes place quickly and effectively, with the full and effective involvement of the traditional authorities of the concerned indigenous peoples and in accordance with the relevant norms of applicable international law;
- g) continues to develop and expand bi-lingual and inter-cultural education for indigenous peoples;
- h) provides immediate political and financial resources to establish an effective health outreach programme in rural and remote areas in Cambodia, including the provision of culturally appropriate services in the languages of the indigenous peoples of Cambodia; and
- i) takes immediate steps to recognize, empower and build the capacity of traditional and customary authorities to participate effectively in national decision-making processes relevant to indigenous peoples, including the drafting of laws and regulations on issues impacting on indigenous peoples' communities.

VIII. Annexes

Annex A: Submitting Organizations

1. **Indigenous Community Support Organization.** Address: House 244 AEo, Street 376, Sangkat Boeung Keng Kang III, Khan Chamkar Morn, Phnom Penh, Cambodia Telephone: (855) 23 997 657. Email: Vansey@icsso.org.kh Website: www.icsso.org.kh.
2. **NGO Forum on Cambodia.** Address: #9-11 Street 476, Toul Tompong, P.O. Box 2295, Phnom Penh 3, Cambodia. Tel: (855)23-214 429/(855)23-213 482 Fax: (855)23- 994 063. Email: ngoforum@ngoforum.org.kh. Website: <http://www.ngoforum.org.kh/>
3. **Asian Indigenous Peoples' Pact Foundation.** Address: 108, Moo 5, Soi 6, Tambone Sanpranate, Amphur Sansai, Chiang Mai - 50210, Thailand Telephone: +66 (0)53 380 168. Email: joan@aippnet.org Website: www.aippnet.org
4. **Forest Peoples Programme.** Address: 1c Fosseway Business Park, Moreton-in-Marsh, GL56 9NQ, UK. Telephone: +44(0)1608 652893. Email: fergus@forestpeoples.org Website: www.forestpeoples.org.

Annex B

Document prepared by the MLMUPC Cambodia,
supported by ADB TA 3577 and LMAP TA GTZ.

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¹ Note: This Table of Contents is not part of the Land Law itself, but has been included to make the law more accessible. Editors

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NS/RKM/0801/14

PREAH REACH KRAM

*We, Preahbath Samdech Preah Norodom Sihanouk
Reach Harivong Uphato Suheat 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:

Notes on Changes to Translation: This note explains the changes that have been made since the October 18, 2001 translation was released.

- Article 1, ¶ 1, and Article 4, correct typographical errors.
- Article 5, add words from Khmer to indicate “advance” payment.
- Article 10, ¶4, insert words from Khmer, “named common parts”.
- Article 11, ¶ 2, clarify “derogation” rather than exemption to law.
- Articles 12, insert the word “or” in the third line, consistent with the Khmer.
- Article 13, delete the word “public” from “public legal entities,” to conform with the Khmer.
- Articles 14, 15 ¶2, 17 ¶2, and 19 ¶2, technical and typographical corrections.
- Article 19 ¶ 3, change, consistent with the Khmer, to “cease illegal occupation” and that the authority “may begin the process to evict offender.”
- Articles 21, 22 and 23, correct technical and typographical errors.
- Article 47, Clarifications consistent with the Khmer and clarifications on the use of “shall” and “may.”
- Article 49 ¶ 2, and 51, change “or” to “and/or” consistent with the Khmer.
- Article 237, change translation note to be consistent with the words used in the law.

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 property 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 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 after the payment of fair and just compensation in advance.

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

The requirement under this article is based on Article 44 ¶3 of the Constitution.

Compare with the terms used in article 9.

Article 6

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.

All transfers or changes of the rights of ownership shall be carried out in accordance with the required general rules for sales, succession, exchange, gift or by court decision.

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

Ownership by a person, whether natural or legal, is individual ownership.

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

Ownership by several identifiable individuals collectively exercising their rights over the entire property is undivided ownership.

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

The types of each 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 derogate this law in order to meet socio-economic, land management and urban planning exigencies.

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, or 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 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 of public legal entities. Other property, which is managed as private property and may be the object of transactions, is private property of 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 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.

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 properly according to the law.

The conditions and procedures related to the sale and the management of the private property of the State and public legal entities shall be determined by 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 [លិខិតបញ្ជាក់] [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 cease his illegal occupation within the time limit set by the competent authority, the authority may begin the process 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.

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.

The protection of this property shall be ensured by a representative of the pagoda committee. 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 Religions.

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 that resides 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 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 determine 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. [ផ្លូវចិត្ត]

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 [សិទ្ធិគ្រប់គ្រង]. 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

Disputes over an immovable property between possessors shall be [neung trov] submitted for investigation and resolution under determined procedures. The results of the investigation shall be submitted to the Cadastral Commission created at the Ministry of Land Management, Urban Planning and Construction. This Commission shall make decisions [s'kedai samrach] on these disputes. In case of dissatisfaction with the result, the disputants may [ach] complain to the court. The organization and functioning of this Commission shall be determined by sub-decree.

Translation note: The phrase “shall be” in the first sentence is based on the Khmer term “neung trov.” see Article 237 regarding the role of the cadastral

officer and the Administrative Commission to conciliate [samroh samroul] disputes.

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 and/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 residences for themselves and/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

Article 63

The transfer of ownership of immovable properties between private persons by purchase, exchange, gift or succession shall be implemented in accordance with the provisions of the law.

Part 1 – Acquisition through Sale of Immovable Property

Article 64

The contract of sale of immovable property is a contract that allows the transfer the right of ownership of an immovable property from the seller to the purchaser in consideration of payment of a purchase price of the immovable property by the purchaser to the seller.

Article 65

The transfer of ownership can be enforceable as against third parties only if the contract of sale of immovable property is made in writing in the authentic form drawn up by the competent authority and registered with the Cadastral Registry Unit.

The contract of sale itself is not a sufficient legal requirement for the transfer of the ownership of the subject matter.

Article 66

A person with Khmer nationality and with capacity to enter into a contract may sell or purchase immovable property.

However, the following persons may not sell:

- a person who is not owner of the property offered for sale;
- a joint-owner of an undivided property without the consent of the other joint owners;
- a person whose immovable property is the subject of seizure.

The following persons may not purchase:

- a guardian cannot purchase the property of his ward;
- a curator cannot purchase the property he administers;
- judges or government officers cannot purchase the property over which they have jurisdiction or that they were charged to sell;
- A person whose property is under foreclosure cannot purchase this property.

Article 67

Any sale between spouses is null and void.

Article 68

The seller shall guarantee to the purchaser, by contract, that the immovable property sold is free of any significant latent defects [and] if not, such sale shall be subject to rescission.

Article 69

The transfer of ownership shall be considered valid upon the registration of the contract of sale with the Cadastral Registry Unit. The selling price shall be stated in the contract [and] if not the contract shall be considered null and void.

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

An exchange of immovable properties is a contract in which the parties agree to exchange immovable properties with each other.

An exchange of immovable properties leads to transfer of immovable property ownership. An exchange shall be conducted with the same conditions as a sale.

Part 3 – Acquisition by Succession

Article 71

A transfer may be made by way of intestate succession or by inheritance by will or by bequest, for the following immovable properties:

- immovable property the ownership title of which has been definitely established in accordance with the provisions of this law,
- any possession in compliance with the law, evidenced by a title, by a legal document or other kinds of evidence,
- any limited proprietary right and any right in rem over immovable property

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

When an inherited immovable property is used as a dwelling for the deceased's family or where the land is used to support the family's life, the successors may not demand a partition or a sale without the unanimous express consent of all co-successors. In case the partition of the succession is contested, the co-successors are entitled to file a complaint to the court to decide the case.

A partial transfer by any co-successor of his rights shall be considered null and void if there is no express consent of all co-successors. Further, any co-successor who sold part of his rights of succession shall lose his succession right in respect of the property sold. Any co-successor who violates the prohibitions of inherited immovable property sale shall be solely responsible for his action with the purchaser.

Article 76

A successor who cannot continue possessing inherited property, due to any legal or factual impediment, or who does not wish to be personally responsible for that part, may transfer such property to a third party.

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

The property of a person who dies without any successors or legatees shall revert to the State and shall be incorporated in its private property.

Article 79

Devolution of property by succession shall be governed by traditional rules on that subject matter pending the promulgation of a new civil code.

Part 4 – Acquisition by Gift

Article 80

A gift is a contract by which a person called a giver or donor, transfers his property ownership to another person called a receiver or donee, who accepts it.

Article 81

A gift of immovable property is only effective against third parties if it is made in writing in the form of an authentic deed and registered with the Cadastral Registry Unit.

Article 82

Immovable property may be the subject of a gift between living persons or gift by death or by legacy. If such a gift is a mutual gift, the operation constitutes an exchange.

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 [ពេញចិត្ត] . Compare this with article 32.

Article 84

Gifts of immovable property are irrevocable once they are accepted. The ownership right of such gifts can be transferred rapidly. However, the donor may retain the right of usufruct in the property, and the right of use and habitation of an immovable property. This has to be stated in the contract and registered in the Cadastral Registry Unit.

TITLE III – THE REGIME OF PRIVATE OWNERSHIP

Chapter 7 – Rights and Obligations of Owners

Part 1 – Enjoyment of the Benefits of Ownership

Article 85

The owner of immovable property has the exclusive and extensive right to use, enjoy and dispose of his property, except in a manner that is prohibited by the law.

Article 86

The owner of property may not use it for the purpose of harming or causing a nuisance or disturbance to third parties and particularly to his neighbors.

The normal and legitimate use of property is not considered as a nuisance obstructing the use of this property.

Article 87

The owner of land may plant, develop and construct anything he wishes, unless it is prohibited by law. Such development or constructions are his ownership, in accordance with the provisions of Part 3 of this Chapter.

Article 88

The owner of immovable property may freely carry out any development or alteration of the original type or structure of his property in accordance with his use purposes and in accordance with the provisions of the law.

Article 89

Modification of the original nature or structure of immovable property, in the terms of this law, include the clearing of lands and forests (logging) and their cultivation, the filling up of land, the leveling of hills or talus, the digging and hollowing out of land to extract earth, the exploitation of mines or quarries, the establishment or drainage of water reserves, the urbanization of agricultural land, and the development of industrial zones and factories.

Article 90

The owner of the land's surface shall be the owner of the under ground and of anything that may be extracted there from, provided it is not in contrary to the provisions of Article 88 and Article 89 of this law. The limit of the under ground shall be determined in a vertical line from the surface of the property.

However, the owner may not claim the ownership of statues, bas-reliefs and antiquities of any type that he found thereon. Such works form part of the national heritage and must be returned to the Ministry of Culture and Fine Arts.

Article 91

The owner of the land's surface is also the owner of the space situated directly above his property and of the things that are permanently fixed on his property, except electrical and telecommunication wires that shall be governed by separate law. . He may, in particular, cut the branches of neighbor's trees extending to his property or collect the fruit thereof.

He may not, however, prohibit any aircraft from flying over his property.

Article 92

The owner of immovable property may put up such property as surety for contracts in accordance with the provisions defined in Title 5 of this law.

Article 93

The owner of property may manage the production generated from such property and natural or artificial accretion that is combined or incorporated into his property according to the rules stipulated in Parts 2 and 3 of this Chapter.

Part 2 – Accession to Fruits and Products of Ownership

Article 94

The owner of immovable property is entitled to receive all types of fruits from such property, including natural fruits and civil fruits by way of accession.

The natural fruits are those fruits that are naturally generated from the land or that are created by human act.

The civil fruits are capital fruits [ផលមុន], profit [ផលពាក្យ] and interests.

Article 95

The fruits resulting from cultivation of land belong to the owner of such land, provided he pays third parties for the cost of plowing and harrowing works, labor done by them and seeds.

Part 3 – Accretion of Ownership

Sub-part 1 – Accretion by Human Acts

Article 96

Any construction, plantation and works carried out on the land or the under ground shall be considered to be done by the owner at his expense and the fruits thereof belong to him, save for any evidence to the contrary.

Article 97

The owner of land on which construction, plants or developments are made with materials that do not belong to the owner, shall pay the cost of the materials to the owner of the materials. The land owner may be punished for the payment of damages, but the owner of the materials has no right to remove the works done.

Article 98

If the plantations, constructions and developments have been made in bad faith by a third party with his materials, the owner of the land is entitled either to retain such materials or to force the third party to remove them.

If the land owner requests the removal of plantations and constructions made in bad faith, such removal shall be made at the cost of the third party, with no compensation; the latter may receive the penalty by paying the indemnity to the land owner if the removal caused any damage to the land owner. If the owner prefers to retain such plantations and works already done, he must reimburse the cost of the materials and labor costs, without considering whether the land will have more or less value.

Nevertheless, if the plantations, constructions and works were made by a third party in good faith as provided for in Article 38 of this Law, the owner may not demand the removal of the said works, plantations or developments. He will have two choices, either to pay the cost of materials and the labor costs, or to pay an amount of money equivalent to the increased value of the land.

Sub-part 2 – Accretion by Nature

Article 99

The silt that grows successively and imperceptibly out of the river, tributaries or channel beds can be recognized as alluvial soil. .

Alluvial soil shall benefit to the owner of the land abutting the bank of the river, whether it is accessible or floatable or not. If it is navigable or floatable, the owner shall keep a towpath in accordance with regulations.

Translation note: See translation note at article 15 for definition of “floatable.”

Article 100

With respect to land increases formed by water currents that successively and imperceptibly bring alluvial deposits from one shore to another one belonging to another person; the owner of the land abutting the discovered bank takes benefit from the alluvial deposits, without the riverside owner on the opposite side, who lost land, being able to claim back the land lost.

Article 101

If a river, tributary or channel, whether navigable or floatable or not, causes the removal, by sudden water force, of a big and recognizable piece of land from one side of the riverbank and joins it to land downstream or on the opposite side, the owner who lost the land can claim it back within the year following the event; beyond such time limit, the claim shall not be received unless the owner of the land to which the lost land was joined has not yet possessed the land.

Explanatory note: The legal term for this phenomenon is “avulsion,” which is “a sudden cutting off of land by flood, currents, or change in course of a body of water [especially] one that

separates a portion from one person’s property and joins it to that of another.”

This article is based on article 559 of the French Civil Code.

Article 102

Any land increases that newly form in tributaries or channels that are navigable or floatable shall belong to the State.

Translation note: See translation note at article 15 for definition of “floatable.”

Article 103

Any land increases that newly form in tributaries, channels or rivers that are non-navigable or non-floatable, shall belong to the owner of the land that abuts the shore or bank where the land grows. . If the land increase has not formed exclusively on this side, this land shall belong to the owners of both sides of the shore or bank using the median of the river as the dividing line.

Translation note: See translation note at article 15 for definition of “floatable.”

probably should read, “If the land increase has not formed exclusively on one side, it belongs to the owners of both sides”

Explanatory note: This article is based on article 561 of the French Civil Code. The second sentence

Article 104

If a river, tributary or channel creates a new watercourse that cuts and takes the land of an owner who owns the land on the shore or bank and then creates an island, that owner still has

the right of ownership over his land that was separated even if the island grows in a river, tributary or channel that is navigable or floatable.

Translation note: See translation note at article 15 for definition of “floatable.”

Explanatory note: This article is based on article 562 of the French Civil Code.

Article 105

If a river, tributary or channel that is navigable or floatable forms a new watercourse by abandoning its former watercourse, the owners who have land next to that shore or bank can acquire the ownership of the former area of the river, tributary or channel that is dried out, and each owner shall have its rights up to the line that crosses the center of the river, tributary or channel. The price of the land of such former watercourse shall be determined by an expert appointed by the provincial or municipal court of that place upon the request of provincial/municipal authorities or any party who has an interest in this issue.

If the owners of the land next to the former bank or shore do not want to acquire it at the price determined by the expert, the authority shall auction that former waterway to the public. The proceeds from that auction shall be shared among the owners whose land was submerged in proportion to the amount of land they lost.

Translation note: See translation note at article 15 for definition of “floatable.”

Explanatory note: This article is based on article 563 of the French Civil Code.

Part 4 –Leases on Immovable Property

Article 106

The owner of immovable property may lease it out to another person. A lease agreement is a contract by which the owner of immovable property makes such property temporarily available to another party in consideration for regular payment of rental, proportional to the time of possession. The contract to lease an immovable property is referred to as lease agreement.

There are two types of leases: lease for an indefinite period of time and lease for a definite period of time. A lease for a definite period of time includes a short-term lease with an option to renew and a long-term lease for 15 (fifteen) years or more.

Article 107

A lease for an indefinite period of time or a renewable short-term lease establish a personal relationship between the lessor and the lessee.

A sub-lease of the property can be made provided that there is an express agreement or the authorization of the owner.

Article 108

A long-term lease constitutes a right in rem over immovable property. Such right may be assigned for valuable consideration or transferred by succession.

Property leased under a long-term lease may be the subject of development and alterations provided that these works do not destroy or fundamentally alter its original nature, except as specifically determined in the lease agreement.

Upon expiration of the lease, the lessor or his successors acquire, without any requirement to indemnify the lessee, the full ownership of any construction, without providing any compensation for the developments or improvements which were made by the lessee. Provided that the lessee complies with the provisions in paragraph 2 of this article, the lessor or his successors has no right to compel the lessee to deliver the immovable property back in its original condition.

Article 109

Lease contracts shall be entered into according to the will of the parties and in accordance with the provisions of existing laws and general regulations in force.

Lease contracts shall be in writing. An oral lease shall be considered as a temporary lease and can be terminated at any time by providing a prior notice period equal to the period of rental payment.

Article 110

Before taking possession of immovable property, the lessee shall make himself aware of the condition of the immovable property and its fixtures according to the lease agreement with the lessor. Failure to inspect the conditions of immovable property and its fixtures before entering into possession presumes that the conditions stipulated in the lease are correct.

The leased property shall not contain any latent defects that render it unfit for its normal use.

Translation note: The phrase “before taking possession” is based on the Khmer that translates literally, “before entering into the enjoyment.”

Article 111

The lessee is responsible for the normal maintenance of the property and at the end of the lease he shall deliver it back in the original condition including the cost of damages resulting from abnormal use, except as otherwise provided by the lease.

Article 112

The lessor must refrain from any conduct contrary to the lease that may impede or suspend the quiet enjoyment of the lessee.

Article 113

The formalities of leases of immovable property for residential, commercial, industrial and agricultural purposes shall be determined by sub-decree.

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 – Limited Proprietary Rights

Article 117

A limited proprietary right exists when a person other than the owner enjoys the latter's property. The remaining right of the owner is then referred to as bare ownership.

Article 118

The forms of limited proprietary rights include usufruct, use and habitation, and easement.

Part 1 – Usufruct

Article 119

Usufruct is the enjoyment of immovable property by a person other than the owner for a period which cannot be longer than the life of the usufructuary.

Article 120

Usufruct is created by law or by agreement. It may be created with or without time restrictions or until the defined conditions are completed.

If there is no provision on time restriction the usufruct is deemed to last for the lifetime of the usufructuary.

The usufruct contract is valid if it is made in writing or in authentic form. The usufruct contract cannot be contested by third parties upon its registration with the Land Registry.

Article 121

The usufructuary has the right to enjoy all the fruits, either natural fruits or civil fruits, generated by the immovable property in respect of which he has the usufruct.

Article 122

Any natural fruits attached to the land at the time the usufruct begins will benefit the usufructuary. Any natural fruit attached to the land at the end of usufruct will benefit the bare owner without mutual compensation for plowing and harrowing, harvesting or the seeds. However, if there is a tenant farmer or sharecropper at the commencement or at the end of the usufruct, they shall not lose their shares of the fruits they are entitled to receive.

Article 123

Civil fruits shall benefit the usufructuary in proportion to the duration of the usufruct.

Article 124

The usufructuary may enjoy the usufruct personally, lease it out, sharecrop it, or he may assign his right for valuable consideration or gratuitously to another.

In case of lease or sharecropping agreement, the contract cannot exceed a period of three years. If he wants to renew a lease with a tenant farmer or a sharecropper, a new contract shall terminate at least one year before the expiration of the usufruct.

Article 125

The usufructuary enjoys the eventual increase of alluvial deposits on the property on which he has the right of usufruct.

Article 126

The usufructuary has all the easements and generally all rights that the owner may enjoy, except the right to dispose of the property.

Article 127

The usufructuary can use the rights, in the same manner as the owner, of the fruits of the quarries existing on the land under usufruct.

Article 128

The usufructuary collects any fee due and payable to the owner of the land by the concessionaire of mines exploited on the land under his usufruct right.

Article 129

The bare owner may not impede the rights of the usufructuary in any form whatsoever.

The usufructuary, at the end of the usufruct, may not claim any indemnity for immovable property improvements made by him during the usufruct, even if the value of the immovable property increases due to the improvements.

The usufructuary or his successors may further remove mirrors, paintings and other decoration installed by them in the existing buildings, as long as they restore the premises to its original condition.

Article 130

The usufructuary is responsible for maintenance repairs only. The bare owner is responsible for major repairs except damages caused by a lack of maintenance on the usufructuary's part from the beginning of the usufruct. In that case, the usufructuary is responsible for repairs himself.

Major repairs are, the repair of support walls, doorways, replacement of roof beams and roof covering entirely, repairing dikes, retaining walls and the entire fencing.

All other repairs are considered maintenance repairs.

Article 131

Neither the bare owner nor the usufructuary are obligated to reconstruct anything that has deteriorated or is destroyed by force majeure.

However, if an insured immovable property is destroyed by any possible catastrophe, the bare owner or the usufructuary can request that the insurance indemnity be used for repair or rebuilding.

Article 132

While benefiting from the usufruct, the usufructuary shall be responsible annually for the immovable property charges such as taxes and excise taxes, insurance premiums that have to be paid.

The usufructuary shall be responsible to execute and to renew insurance policies on the immovable property which is in his usufruct; this either means the existing contract at the beginning of his usufruct, or the contract which the bare owner requests to be made in the future.

Article 133

If, during the usufruct, a third party infringes upon the rights of the bare owner, the usufructuary shall notify the owner, and failing to do so, he liable for the damage that the bare owner may suffer, as if such damage were a result of damage that he himself inflicted.

Article 134

The usufruct shall end:

- upon the death of the usufructuary;

- upon the expiration of the time limitation or time specified in the contract;
- by agreement that the usufructuary waive his right;
- upon the complete destruction of the immovable property under usufruct; or
- by decision of the Court in conformity with the provisions of article 135 of this law.

Article 135

The usufructuary's rights can be terminated by court order upon the complaint of the bare owner where the usufructuary abused his rights of enjoyment, particularly if the usufructuary damages the immovable property or if he fails to maintain it.

The creditors of the usufructuary may, in such case, have a right to file a claim with the court to ask for the continuation of the rights of the usufructuary if they assume the repair of the damage inflicted and they may provide guarantees for the future.

The court may, depending on the seriousness of the circumstances or other reasons, declare the absolute extinction of the usufruct, or order only that the immovable property revert to the owner without usufruct under the obligation to pay a certain amount annually to the usufructuary or his beneficiaries until the end of usufruct's time limitation.

Article 136

The sale of immovable property under usufruct by the bare owner does not cause any change for the usufructuary, who continues to exercise his rights unless the usufructuary has expressly waived such rights.

Article 137

If the usufruct relates only to a building, and such building is accidentally destroyed, the right of the usufructuary ceases and he cannot claim right of usufruct on the remaining land or materials.

However, if the usufructuary is on both land and a building and the building is destroyed, the usufruct remains on the land.

Part 2 – The Rights to Use and Habitation

Article 138

The right to use is the right allowing the beneficiary to enjoy the quantity of fruits from a piece of land necessary for his own needs and those of his family.

The right of habitation is the right allowing the beneficiary to occupy a portion of a house necessary for himself and his family.

These two rights continue even when later on the beneficiary marries or has children.

Article 139

The rights to use and habitation are created and lost in the same manner as usufruct.

The rights to use and habitation of the user and inhabitant are determined by the provisions of the contract in the form of an authentic deed; or by provisions of law concerning these rights.

Article 140

The beneficiaries of the right to use or habitation may not transfer, or lease out their right to others.

The rights to use and habitation are strictly personal rights. They end upon the death of their beneficiary or pursuant to the clauses of the contract.

Article 141

If the beneficiary of the right to use takes all the fruits of the land, or if the beneficiary of the right to habitation occupies the entire house, he is liable to pay the costs of cultivation and to repair and maintain, and to pay taxes, excise taxes and insurance premiums in the same way as the usufructuary.

If he takes only a portion of the fruits, or if he occupies only a portion of the house, he shall contribute to such expenses pro rata in accordance with the portion enjoyed.

Part 3 – Easements

Article 142

A land easement is a burden on a land, referred to as servient or lower land for the use and benefit of another land, referred to as the dominant or upper land, belonging to another owner.

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

Easements may be created by nature, by law or by contract depending on the state of the premises, as determined by law or by agreement among the owners.

Sub-part 1 – Easements by Nature

Article 144

Lower land shall receive waters flowing naturally from upper land.

The owner of the lower land may not build dams, dikes, barriers, or other works to impede the water flow.

The owner of the upper land may not do anything that would aggravate the easement of the lower land.

Article 145

The owner of the upper land has the right to use and dispose of rainwater that falls on his land as well as waters from sources that are found thereon, except in the case of the provisions of the last paragraph of article 144.

Article 146

The owners of lands situated along running waters shall allow the waters to flow to the neighboring lands and the owners of neighboring land, in turn, are subject to the same obligation with respect to lands that are further away, depending on their agricultural needs.

Sub-part 2 – Easements by Law

Article 147

An easement by law aims to be used for public or private interests.

An easement by law for the public interest shall be determined by law or by specific regulations that bind the owners.

Easements by law for the benefit of private interests shall determine the limits within which an owner may perform certain acts on his own land, provided that he does not infringe the rights of owners of neighboring lands.

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

An owner who wants to do work on his land that is susceptible to harm or to being a nuisance for neighboring lands, such as drilling, boring or excavating, or storing dangerous substances that may cause a nuisance or affect health, shall comply with the provisions of special regulations concerning the determination of distances to be respected or concerning supporting works.

Article 150

An owner may not make a hole being a door or window or balcony or porch facing his neighbor’s land at a distance less than two meters.

Article 151

An owner may not plant big or small trees taller than two meters near the boundary of the neighboring lands at a distance less than two meters from the boundary, otherwise it [the tree] shall be forcibly removed upon the complaint of the interested owners.

Article 152

The owner whose land is enclosed and lacks access to a public road or whose access is insufficient for the industrial agricultural exploitation of his ownership, is entitled to ask for a passage through the neighboring land, provided that he pays an indemnity proportional to the damage caused due to opening the passage

Article 153

In principle, the passage as stated in article 152 shall be made in the place that is the shortest distance from the enclosed piece of land to the public road, but shall be determined at the place that causes the least damage to the owner who accepts the opening of the passage.

Article 154

If the enclosed land resulted from the division of land, following a sale, exchange or division of assets or any other contract, the passage may only be demanded over the remaining divided land.

However, in the case where the remaining divided land is not sufficient to establish a passage, the provisions of the article 152 and article 153 shall apply.

Article 155

An owner, who wants to use water that he has a right to use to irrigate his lands, may obtain the passage of the water through intermediary land against the payment of compensation for the damages caused to the land owners.

Article 156

The owner can evacuate waters that have irrigated his land over lower land against the payment of compensation for the damages caused to the land owners.

Article 157

The owner of submerged lands, in whole or in part, may allow the harmful water to be drained out of his land but he shall comply properly with hygienic methods.

Translation note: The phrase “harmful” is based the Khmer phrase [] that means dirty water but can also mean clean water causing a nuisance.

Article 158

Any riverside owner who wants to use the water for the irrigation of his land may obtain the right to put on the land of the opposing bank the necessary industrial equipment for the taking of water against payment of compensation.

Article 159

The owner of land who authorized works to be built on his land may always ask to share the use of the weir, provided he contributes half the cost of setting it up and its maintenance. No compensation is due in this case to this owner and any compensation already paid must be reimbursed.

Sub-part 3 – Easements by Contract

Article 160

Owners are allowed to establish on their own land, in favor of owners of other land, any easements as long as the easements are not contrary to public order. The use and scope of the easements shall be regulated by the contract that created them.

Article 161

Easements created by contract must be in the form of authentic deed. They are effective against third parties only after inscription with the Cadastral Register.

An easement relationship between servient and dominant land shall cease when one of the concerned pieces of land is transferred to a third party, if the preservation of the easement is not formally provided in the document that transfers the ownership.

Article 162

An owner who establishes an easement on his land is considered to consent to everything that is necessary for such easement. The right to draw water established in respect to a spring necessarily entails the right of passage on the land that encloses it.

Article 163

The owner of the dominant land has the right to construct any necessary work on the servient land in order to use and to preserve the easement.

Article 164

Works that are necessary to use and to preserve the easement shall be carried out at the expense of the owner of the dominant land, unless otherwise agreed.

Article 165

The owner of the servient land may not do anything that tends to reduce the use of the easement or make it unusable.

The owner of the servient land may not change the way to use the easement from that one originally designated.

If, however, maintaining the original situation would make the easement more expensive for the servient land owner, the servient land owner may offer to the owner of the dominant land a place that is equally useful for the exercise of his right, and the owner of the dominant land may not refuse.

Article 166

The owner of the dominant land may only use the easement within the limits determined by the contract and cannot make any change on the servient land, or on his own land, that may adversely affect the situation of the servient land.

Sub-part 4 – Cessation of Easements

Article 167

Easements end:

- by the termination of agreement that created the easement;
- when the dominant and servient land become owned by the same owner;
- by the total destruction of the land on which the easement was created.

TITLE IV – THE FORMS OF OWNERSHIP

Chapter 9 – Undivided Ownership

Article 168

Undivided ownership is the ownership on one specific property owned by several persons. Those persons are called undivided owners. Each of the undivided owners has a share of the property but this property cannot be divided among themselves.

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

The shares of undivided owners are presumed to be equal. In the case where the division of the property is unequal, each of the owners has rights and liabilities in proportion to his share. He may sell or enter into any kind of contract relating to his share and his share shall be subject to a seizure by his creditors.

Article 170

Undivided owners jointly administer the undivided ownership, save for any agreement to the contrary. Each of them has the capacity to undertake day-to-day management tasks, such as maintenance repairs and cultivating works, if the majority of them do not decide to the contrary.

The main significant acts such as the change of cultivation or major repairs can be decided by the majority of the undivided owners, representing ownership more than one-half of the entire property.

Article 171

Each undivided owner shall preserve and protect its common interest. Each undivided owner enjoys the property and uses it to the extent that such enjoyment does not infringe the rights of the other undivided owners.

The consent of all undivided owners is necessary for the alienation, constitution of rights in rem or changes to the intended purpose of the property, unless other contrary rules exist.

Article 172

Management costs, taxes and other charges on the undivided owned property shall be, borne by all undivided owners in proportion to their shares, except as otherwise provided.

Article 173

No person can be forced to remain in an undivided ownership. A division of property may be demanded at any time by any of the undivided owners.

The undivided owners may temporarily maintain a state of undivided ownership, but such state cannot be more than five years, unless there is a new agreement.

Article 174

The undivided ownership shall cease upon distribution of property based on its original nature or by the sale of the property with a distribution of the sales proceeds, or by the acquisition by one or more of undivided owners of the share of the others.

If the undivided owners disagree with the method of division of property, they shall file a complaint to the courts which will order the distribution of property or if the division causes a significant decrease in value, the court can order a sale to a third party or to any of the other undivided owners.

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 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

Joint ownership is a form of common ownership that applies to ramparts and walls dividing two adjoining ownerships.

Ramparts, within the terms of this law, refer to ditches, fences and dikes.

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

The repair and reconstruction of a jointly-owned wall are the responsibility of those who have rights over it, in proportion to the rights of each owner.

A concerned joint owner can avoid contributing to such repairs or reconstruction by abandoning his right of joint ownership, unless the jointly owned wall supports his own building.

Article 188

A joint owner of a jointly-owned wall may not make any deep hole into the jointly-owned wall or make any work likely to cause damage to such jointly owned wall without the prior consent of the other joint owners. In the case no agreement can be reached, an arbitrator shall be nominated as an expert to determine the necessary means to ensure that such new work does not infringe the rights of the other joint owners.

Article 189

Each owner may build against a jointly-owned wall and may place thereon beams and joists on the joint wall up to 5 cm from the other side, insofar as such work does not infringe the rights of the other joint owners. If the joint owner of the other side wishes to put such beams and joists in the same place, he has the right to claim to have such beams and joists reduced back to half the width of the wall.

Article 190

Any owner of immovable property adjacent to the wall of other owners has the right to make it in whole or in part a jointly owned wall by reimbursing the owner of the wall half of the value of the part that he wishes to make jointly-owned, plus half of the value of the ground on which the wall is constructed.

Article 191

Each owner may increase the height of a jointly owned wall at his own expense including the construction fee [and] maintenance of the part constructed taller than the original height. He must further pay a reasonable price for the expenses due to the burden coming from the additional increase of the height of the wall.

Article 192

If the jointly-owned wall is not strong [enough] to support the weight of the additional height, then the person who wishes to increase the wall may destroy it and reconstruct it entirely at his expense. The thickness of the wall, which shall be thicker than the original one, shall be constructed on his own land.

Article 193

The other joint-owner who has not contributed to such increase of the wall, if he wishes that the construction be considered as his joint-ownership as well, must pay half of the expenses incurred for the additional height and half of the price of the ground supplied to support the additional width.

Part 2 – Jointly-owned ditches, fences and dikes

Article 194

The jointly owned ramparts formed either by ditches, fences or dikes shall be maintained by common expense. However, one of the owners may exempt himself from such obligation by waiving his entitlement to the joint-ownership. But, if the ditches or dikes usually serve the flow of water, the co-owners cannot waive their joint-ownership.

Article 195

The owner of land next to a ditch, fence or dike which is not jointly-owned cannot compel the owner of such a ditch, fence or dike put such ditch, fence or dike under joint ownership.

Article 196

A joint owner of jointly owned hedge/fence may destroy such hedge/fence up to the boundary of his own property, as long as he constructs another hedge/fence on the boundary of his land.

An owner of a jointly owned ditch or dike has the same right, provided such ditch or dike only serves as a partition.

TITLE V – IMMOVABLE PROPERTY USED AS SURETY

Article 197

Immovable property may be put up as surety by its owner to secure the payment of a debt by way of mortgage, *antichrèse* or *gage*.

Explanatory note: See the note at chapter 13 for the explanation of the terms *antichrèse* and *gage*.

Chapter 12 – Mortgage

Article 198

A mortgage is a surety in rem which, without dispossessing the owner of such immovable property allows the creditor to claim the sale of such immovable in court on the due date of the debt, irrespective of in whose hands such immovable property passes, so that himself and the others creditors having such privilege and preference to be paid from the purchase price.

Article 199

Only immovable property registered with the Land Registry may be the subject of a mortgage.

Article 200

The creditor cannot become the owner of the mortgaged property itself by way of payment.

Article 201

A contract of mortgage must be in authentic formula entered into before the competent authority or a duly authorized lawyer. The mortgage contract must be registered with a cadastral administrative body. The competent authorities to draft mortgage contracts and the registration formalities shall be determined by sub-decree.

Article 202

The mortgage contracts must clearly specify the state of the property, its nature, the easements or charges determined by any relevant regulations and its value.

Article 203

Several successive mortgages may be created on the same property. Each creditor shall exercise his rights in the order of priority of his mortgage registration.

Article 204

If the owner of the mortgaged property fails to pay his debt upon the due date, a creditor may seek the sale of the property irrespective of the order of priority of his mortgage. The various creditor mortgagees shall then be reimbursed at the same time according to the priority of their mortgage.

Article 205

Property that is the subject of *antichrèse* may not be mortgaged.

Explanatory note: The term *antichrèse* refers to a pledge of immovable property, which is discussed in chapter 13, below.

Chapter 13 – Antichrèse

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

Antichrèse is a contract pursuant to which the debtor delivers an immovable property to his creditor as a guarantee for the payment of his debt. The creditor has the right to cause the sale of the property to be reimbursed by privilege and in preference to other creditors who are not as secured as he is.

If the contract of *antichrèse* so authorizes, the creditor may use the charged property in lieu of the payment of the debt, either in payment of interest only or in payment of principal and interest.

Article 207

A contract of *antichrèse* shall be made in writing in authentic form before the competent authority and then be registered with a cadastral administrative body.

Article 208

Antichrèse shall be considered valid and no third party may claim against it after the *antichrèse* contract has been made according to the formalities stated in article 207 of this law.

Any failure to register an *antichrèse* contract with a cadastral administrative body will cause the creditor to lose his secured collateral rights and the creditor only has the right to bring an action for reimbursement under the law in force.

Article 209

The property subject to an *antichrèse* contract shall be delivered to the debtor as soon as the debtor pays the debt in full.

If no date of reimbursement is stipulated in the *antichrèse* contract and if, within a period of ten years from the date of creation of an *antichrèse* contract, the creditor fails to commence a legal action to claim the amount of his debt, he shall lose the guarantee of *antichrèse*.

If a date of reimbursement is stipulated in the contract and if, within a period of ten years from such stipulated date, the creditor fails to commence a legal action to claim the amount of his debt, he shall lose his guarantee of *antichrèse*.

The loss of the guarantee of *antichrèse* obliges the creditor to return the property to the debtor together with any titles handed over by way of guarantee but the debtor is not discharged of his debt [and] the creditor has the right to bring an action for reimbursement under the general law.

The inscription of the *antichrèse* shall be stricken from the Land Register upon the demand of the debtor or by itself.

Article 210

Whatever the case, the creditor cannot become the owner of the property. Any clause contrary to this provision shall be considered null and void.

Article 211

An *antichrèse* contract confers on the creditor the right to cause the forced sale of the immovable property by court decision to be paid in priority by privilege and in preference to any other creditor.

If during the term of an *antichrèse* contract, the creditor who is the beneficiary of the *antichrèse* purchases the secured property, the purchase contract shall be registered with the cadastral administrative body, [and] failing to do so, it shall be considered null and void.

Article 212

The creditor who occupies the property guaranteeing an *antichrèse* has the right to enjoy such property as a usufructuary and has the obligation to maintain and conserve the property as it if were his. If the property is damaged by his act or his fault, he has to pay an amount corresponding to the damage less the amount of the debt.

Article 213

At the end of an *antichrèse* contract, either due to the full payment of the debt by the debtor or estoppel as it is stipulated in the article 209 of this law, the creditor must restore the property or its value, if such property is destroyed through his act or fault, to the debtor.

Article 214

At the end of the contract of *antichrèse*, if the debtor proposes to redeem the property and the creditor refuses to deliver that property back to debtor, the creditor owes the fruits and revenues derived from the property encumbered by the *antichrèse* from the date that the debtor asked for the return of the property.

Article 215

If the property consists of land and the payment due date was not specified in the contract of *antichrèse*, the creditor shall continue to have the right to benefit from the fruits or revenues

generated from his labor and his capital from the time the debtor requests to redeem his property.

However, if the property is a house and the payment due time was not specified in the contract of *antichrèse*, the creditor shall deliver that property back to the debtor when the debt is completely paid off.

Article 216

Interest ceases to be due and payable from the date the debtor offers to repay his debt before the termination of the contract. The repayment shall indicate the amount and shall be recorded in a document signed by the Commune or Sangkat Chief with the signatures of the creditor, the debtor and two witnesses.

Article 217

The payment of any duties, taxes or levies shall be the responsibility of the debtor, unless otherwise agreed between the debtor and the creditor.

Article 218

Once the debts are completely paid off by the debtor, the creditor may not retain the property subject to the *antichrèse* on the ground that the debtor is liable under another debt, although such other debt is due and payable, unless a new contract of *antichrèse* relating to the same property is drawn up according to the form determined by law.

The debtor can exercise the above-mentioned rights against the successors or assignees of the creditor.

Chapter 14 – Gage

Explanatory note: See note on terminology at Chapter 13.

Article 219

Gage is a contract concluded in order to guarantee the payment of a debt, pursuant to which the debtor remits to his or her creditor not the property itself but the ownership title of the property that was recorded in the Cadastral Register.

Explanatory note: The reference in this chapter to “Cadastral Register” probably should be “Land Register.”

Article 220

The contract of *gage* must be made in writing in an authentic form and it must be recorded in the Cadastral Register

Article 221

In no case may the creditor become the owner of the property subject to a contract of *gage*. Any clause that is contrary to this provision shall be null and void.

The contract of *gage* only authorizes the creditor to have the right to claim for a foreclosure of the immovable property in court in order to be paid in priority by preference and privilege prior to other creditors.

Article 222

When the debtor discharges the debt, on the due date or prior to the due date, the creditor shall return the ownership title to the debtor by a release of an inscription about this encumbrance in the Cadastral Register

Article 223

The debtor retains the management and use of his property but is prohibited from any conduct that may decrease its value.

Article 224

The successors and assigns of the debtor and the creditor shall have the same rights and obligations as the debtor or creditor in whose positions they stand.

Article 225

The successors or assigns of the debtor as well as the members of the family, who may declare themselves as the co-owners of the property secured by a *gage*, shall have the same rights and obligations as the debtor.

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 [somroh samruol] themselves. For disputes occurring in an area that is being surveyed according to systematic registration system, an administrative commission has the duty to conciliate [samroh samruol] 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” [សំរុងសំរួល] was translated as “conciliation.” 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 mediation, negotiation or arbitration.

There is legislative history – particularly materials prepared by the various legislative working groups – that the term samroh-samroul means “mediation.” Other writers, including the editors of the Legal Dictionary prepared by The Asia Foundation, use the word “santeanakam” [សន្តោកកម្ម] to mean mediation. Regardless of the word in Khmer, mediation has a very particular meaning in the western context -- where a neutral third party

(called a mediator) plays a very limited intervention role to help the parties to a dispute find a way to settle or compromise the dispute among themselves.

This western concept of mediation is substantially different from the typical traditional samroh samruol in Cambodia, where the intervener – who may be a person with authority -- plays a very active role in helping the parties resolve the dispute. To avoid giving any particular meaning to “samroh samroul,” we have used a more neutral term, namely, conciliation.

See Article 47 regarding the role of the Cadastral Commission to decide disputes.

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

Cadastral attestations constitute official confirmation of legal documents.

Ownership of immovable property can be established by documents of sale, gift, exchange, succession made by any person authorized by article 65 of this law. They must be filed with the Cadastral Administration.

Article 245

A contract of sale, donation, exchange or succession that is made as a private document may not be registered. It shall be effective against third parties only if the contract meets the formalities determined in article 244 of this law.

Article 246

If the contract of sale, donation, exchange or succession has been made in authentic form by an authorized person but has not been registered with the Cadastral Administration, such contract remains ineffective against third parties, and the owners and assigns are personally liable for the failure of such registration.

TITLE VII – PENALTY PROVISIONS

Chapter 19 – Infringements on Ownership

Article 247

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 and the damages caused by such acts shall be compensated by civil remedies.

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 hinders 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

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.

In addition to the above penalty, the violator shall be liable for civil damages that were caused by his violent acts.

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) Riel 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.

Having submitted to the King

*Prime Minister
(Signature)
Hun Sen*

*Phnom Penh, August 30, 2001
(Signature)
Norodom Sihanouk*

for signature.

*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*

Annex C



KINGDOM OF CAMBODIA

Nation Religion King

Royal Government of Cambodia

No

SUB DECREE

ON

**PROCEDURES OF REGISTRATION OF LAND OF
INDIGENOUS COMMUNITIES**

The Royal Government

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen Preah Reach Kret No. NS/RKT/0704/124; dated July 15, 2004 on the Appointment of the Royal Government;
- Having seen Preah Reach Kram No. 02/NS/94; dated July 20, 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen Preah Reach Kram No. NS/RKM/0699/09; dated June 23, 1999 promulgating the Law on Land Management, Urban Planning and Construction;
- Having seen to Preah Reach Kram No NS/RKM/0301/05; dated March 19, 2001 promulgating the Law on Management of Commune/Sangkat Administration Management,
- Having seen Preah Reach Kram No.NS/RKM/0801/05; dated August 30, 2001 promulgating the Land Law;
- Having seen Preah Reach Kram No.NS/RKM/0802/016; dated August 31, 2002 promulgating the Forestry Law;
- Having seen Sub-decree No. 46 ANK; dated May 31, 2002 on Procedures for Establishing Cadastral Maps and Land Register;
- Having seen Sub-decree No. 47 ANK; dated May 31, 2002 on Organization and Functioning of the Cadastral Commission
- Having seen Sub-decree No. 48 ANK; dated May 31, 2002 on Sporadic Land Registration;
- Having seen Sub-decree No.118 ANK; dated October 07, 2005 on State Land Management;
- Pursuant to the approval of the full session of the Council of Minister on

D E C I D E S

CHAPTER 1

General Provisions

Article 1.

The purposes of this Sub-Decree are to determine principles, procedures, and mechanisms for the registration of land of indigenous communities as collective title.

The registration of land of indigenous communities has the purpose to provide legal land tenure, ensure and protect the community ownership and land tenure security by keeping the identity, culture, custom and tradition of each indigenous community.

Article 2.

The following terms used in this sub-decree are defined:

- **“Collective title”** refers to jointly owned land of an indigenous community and this ownership is not private individual ownership of the community member. Each member or family of the community does not have the right to dispose of any community ownership.
- **“Residential land”** refers to land used by members of an indigenous community for building residences for temporary (for shifting cultivation) **or** permanent living.
- **“Reserved land necessary for shifting cultivation or reserved land for rotational agriculture or swidden farm land”** refers to land used previously by indigenous community as rice field or farm for traditional shifting cultivation.
- **“Spirit forest land or Forest lands of guardian”** refers to the place that the community keeps for own traditional worship or celebrating rituals.
- **“Forest lands of cemetery or Burial forest land”** refers to the place that the community uses for traditional burial.
- **“Administrative authority”** means a local authority and authority that has mandate to manage state land or state natural resources in those areas.
- **“Traditional authorities or Chairman of Community Committee”** means a community leader who is selected by all members of the community.
- **“Neighbors”** refer to people, communities or authorities who occupy state land which have boundaries next to the land of the community proposing land registration.

Article 3.

General principles that shall be applied in the registration of land of an indigenous community are as below:

- Only communities established as a legal entity which have registered community by-law and legal recognition can apply for registration of collective title.
- The registration of land of indigenous communities is the registration of all pieces of land of a community as collective title on one title only. Parcels can be located in one or different communes.
- The collective title certificate shall be attached with one title indicating the location, size and boundary, clear coordinates of parcels which is the collective title and has reference number clarifying the land classification, land use and other remarks. Sample of the

collective title certificate of the community has a format as stated in annex 2 of this sub-decree.

CHAPTER 2

Land which is to be registered as collective title of indigenous community

Article 4.

Land which is to be registered as collective title for indigenous community includes:

- Residential land or land which is reserved for building residences;
- Traditional agricultural land, actual cultivated land, farm land and reserved land necessary for shifting cultivation recognized by administration authorities and neighbors;
- Spiritual forest land can have one or more places for each community, with the total land size not more than seven (07) hectares; and
- Forest land of cemetery can have one or many places for each community, with the total land size not more than seven (07) hectares.

CHAPTER 3

Procedures of Registration of Land of Indigenous Communities

Article 5.

The traditional authority or representative of each community shall apply for registration of collective title to District/Khan Office of Land Management, Urban Planning, Construction and Cadastre, using the sample as stated in annex 1 of this sub-decree. The application form shall have the verification from a commune chief that the applying community is really located in the respective commune.

The application shall be attached with:

- Letter delegating representatives of the community to sign the application form if the chairman of community committee can not participate;
- Community by-laws;
- Internal regulations related to land use of the community
- Letter which approves that the community is registered by Ministry of Interior
- Community by-laws are recognized by Commune Council's Deika
- Commune decision on the nomination of committee of indigenous community; and
- All documents related to the land proposed for registration, if there are any.

Article 6.

If the location, size and boundary of land of indigenous community are agreed by the neighbors, the administrative authority and without any dispute or resolving dispute going on the District/Khan Office of Land Management, Urban Planning, Construction and Cadastre shall raise after receiving the application a proposal to District/Khan Governor to issue public notice at least 20 days before the date of demarcation, surveying and adjudication. The announcement shall be displayed to the public in a visible place, for example village hall, commune hall, urban area and in the community itself.

After demarcation and actual surveying the public display of collected data shall take place for 30

days in the community of its own and in the respective commune hall.

After the public display period and completion of conflict resolution, if there were any, the Cadastral Administration shall issue a collective title certificate to the community according to the procedure as described in the article 8 of this Sub Decree.

Article 7.

If the location, size and boundary of land of indigenous community which is proposed for registration are not yet agreed by neighbors and administrative authority:

- 7.1 District/Khan Office of Land Management, Urban Planning, Construction and Cadastre shall make a request to District/Khan Governor to conduct land identification and mapping at the proposed place.
- 7.2 After receiving the request the District/Khan Governor should review and bring comments to Provincial/Municipal Governor, Head of Provincial/Municipal State Land Management Committee, within 15 days to request District/Khan State Land Working Group to conduct state land identification and mapping at the requested registration place.
- 7.3 The Provincial/Municipal Governor shall assign District/Khan State Land Working Group, if it is not assigned yet, to conduct state land and community land identification and mapping according to the procedure described in the articles 6 and 7 of Sub Decree No. 118 on State Land Management.
- 7.4 After receiving approval from Provincial/Municipal Governor the District/Khan State Land Working Group shall inform the people in the community, the neighbors and the stakeholders at least 20 days before conducting the state land and community land identification and mapping.
- 7.5 The District/Khan State Land Working Group shall hold a meeting to prepare a list of state land and the community land with participation of traditional authority and/or representative of the community to draw the location, the boundary and the size on a millimeter paper which is placed on a map with clear coordinates. The State land authority shall also draw the existing state land on another millimeter paper which is also placed on this map.
- 7.6 After reviewing the results of drawing on the millimeter paper the District/ Khan State Land Working Group shall mark overlapping or unclear points for discussion and set a date for joint field visit between a field team including officials of District/Khan Office of Land Management, Urban Planning, Construction and Cadastre, traditional authority, people and/or representatives of the community and the adjacent communities or its people to define a location, boundary and size which the community is occupying or using.
- 7.7 In the actual visit the field team can propose a correction if they found out that the location, the boundary and the size which the community has been occupying or traditionally using is contrary to the drawing on the map and agreed from the representative and members of the community. Every request for correction, with or without an agreement, shall be recorded and signed or thumb printed from all relevant stakeholders.
- 7.8 Results of land identification and mapping shall be attached with a report and other minutes and shall be submitted to the District/Khan State Land Working Group for a coordination meeting to seek an agreement.
- 7.9 Summarized results of the meeting about the map, the location, the boundary and the size of

community land and state land shall be displayed to the public for a period of 30 days at Commune/Sangkat hall to get comments.

- 7.10 After public display the results of state land and community land identification and mapping as well as the summary report of public comments shall be submitted to seek approval from the Provincial/Municipal State Land Management Committee within 15 days.
- 7.11 The Provincial/Municipal State Land Management Committee can nominate officials to conduct an investigation and get additional information in case of any inconsistent or unclear assertion.
- 7.12 After the agreement on the location, the boundary and the size of requested registration community land the Provincial/Municipal State Land Management Committee shall send the decision to the District/Khan State Land Working Group to solve other conflicts, if there are any.
- 7.13 After the agreed decision on location, boundary and size of the land and conflict resolution the District/Khan State Land Working Group shall submit documents related to the applying community for registration of community land to the District/Khan Cadastral Administration for surveying and registering other pieces of community land according to procedure described in the article 8 of this Sub Decree and data entry of state land into the state land database.

Article 8.

The District/Khan Cadastral Administration shall register the land of the community which applies for collective title based on the collected data as described in article 6 of this Sub Decree or based on the results of official land identification and mapping as described in article 7 of this Sub Decree.

The community land registration shall register all parcels of a community on a common title even if parcels of the land are located in different villages and communes and are used differently.

Parts of each land shall specify coordinates, size and reference number to clarify land classification and types of land use and other remarks.

Article 9.

If the District/Khan State Land Working Group implements state land identification and mapping at the area where the indigenous community reside, the District/Khan State Land Working Group shall inform established and officially recognized indigenous community to apply for registration of land of the community and participate to demonstrate the location, the boundary and the size of the land which the community has been using to District/Khan State land Working Group according to the procedure prescribed in article 7 and article 8 of this Sub Decree.

CHAPTER 4

Condition for receiving land when a member wishes to leave or to join the community and dissolving the community

Article 10.

Indigenous people who have legal land possession or have legal private ownership on land and if they have the purpose to be a member of any indigenous community they shall give up his or her private land by integrating it into community land. This new member shall receive same benefits

from the community as other members.

Article 11.

When any member intends and decides to leave the community the concerned person has rights to receive the appropriate piece of land which will be cut from the land of indigenous community.

The piece of land which is allocated to the member who leaves from the community can be residential land and/or land for traditional agriculture such as land for actual cultivation and rice field and/or land for shifting cultivation.

In cutting a piece of land from or integrating a piece of land into any indigenous community land because of leaving or coming in the community, the community representative shall request Cadastral Administration for updating all these transactions.

Article 12.

In case the community is dissolved, the allocation of property of community shall follow the conditions of community by-laws and internal regulation of community.

CHAPTER 5

Final Provisions

Article 13.

All the provisions that are contrary to this sub decree shall be repealed.

Article 14.

The Minister in charge of the Office of the Council of Ministers, the Chairman of the Council for Land Policy, the Minister of Interior, the Minister of Land Management, Urban Planning and Construction, the Minister of Economy and Finance, the Minister of Agriculture, Forestry and Fishery, relevant Ministers, Secretaries of State, all provincial-municipal Governors and all heads of relevant institutions shall be in charge of implementing this sub-decree based on his/her respective duties from the date of signature.

Phnom Penh, 2008

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 14
- Archive File