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Functional Assignment in Land and Natural Resource Management: Medium to Long Term Options

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Contents

INTRODUCTION.....	3
BACKGROUND AND CENTRAL QUESTION	3
AREAS FOR LOCAL LAND AND RESOURCE MANAGEMENT	5
LAND REGISTRATION AND INFORMATION SYSTEMS	5
LAND USE REGULATION	5
LAND DEVELOPMENT AND THE PROVISION OF SHELTER.....	7
PROPERTY TAXATION	8
ADJUDICATION AND MEDIATION	9
LOOKING AHEAD.....	9

Introduction

A number of functions in the land and natural resource management 'sectors' could be handed over to commune/sangkat councils (c/s councils) in the short term. It concerns functions that have not been formally transferred to c/s councils – even when they are already implementing these functions - as well as future potential functions that have been recommended by Ministries and sector experts. These have been summarized in the table in annex 1.

What are the long-term options for decentralization? This brief note will outline the main areas where further change is possible, and what the nature of change could be. The areas for change are land registration and information, land use regulation, land development, property taxation, and possibly adjudication and mediation. To determine the nature of change, the brief will argue that more data are needed to ensure that any recommendation is based on solid facts and insights. The areas suggested could form the contours of a more detailed and highly timely review.

Background and central question

In its policy statements, the Royal Government of Cambodia (RGC) is keen to ensure that disadvantaged groups share in society's output. Land and natural resources are a key concern. Responding to Cambodia's explosive population growth will require the conversion of large areas of (prime) agricultural to urban land, and a massive investment in services and infrastructure. However, the supply of land and resources is limited; they cannot be reproduced except marginally. Therefore, land tenure and land use issues touch deep feelings of inter-dependency: how the activities and possessions of one affect another. The present land management system creates a number of challenges that are well-documented. Appropriate land for housing and/or farming exists, but it is inaccessible to growing sections of society. This is true also of urban areas. The demand for any type of shelter is increasing, if the problems of squatter populations and evictions are taken as indicator. Much of the new urban development is not adequately serviced. Essentially, for the land market to produce more equitable outcomes, private and social costs and benefits should be better aligned. This is also the key to better management of forests and fisheries.

At the local level, planning is currently the mandated response to many situations in Cambodia. It is now generally recognized that physical planning and monitoring should, at least partly, take place at the local level, which is more sensitive to local needs¹. C/s councils have a general mandate to promote local development, and are directly accountable to their

¹The United Nations Economic and Social Commission for Asia and the Pacific (UN/ESCAP) recommended at the Conference on the "State of Urbanization in Asia and the Pacific 1993" that provision of urban infrastructure and services should be the responsibility of the local government and that their financial, technical and human resources should be strengthened.

constituents in doing so. It could be argued that one of the main functions of local governments is land management. Without a doubt, c/s councils have an important role to play in protecting significant natural, agricultural, and scenic areas and encouraging land stewardship in general. Equitable development at the local level requires more effective ways to organize both private and public resources, complemented by community self-help mechanisms. This makes it essential that local councils take responsibility to manage their limited supply of land and resources in a professional manner. The overall role of central government in land and resource management should be to provide the policy and administrative framework and ensure the smooth operation of local administration and the local land market. Therefore, land and resource management are areas strongly – if not most strongly – in need of robust devolution. Currently, policy coherence which provides guidance on national land allocation priorities is wanting. For instance, commune councils are expected to protect the environment, but find they have no authority whatsoever over forests. This creates confusion and immobility and restrains c/s councils from exploring their mandate to the full. This immobility contrasts sharply with the rapid and significant redistribution of access to resources and land happening simultaneously.

The question is how to enable c/s councils to promote the most appropriate use of limited land resources. Efficient administrative frameworks as well as a pool of capable local administrators are certainly critical. However, it is even more important to depart from clear long-term objectives to guide the use of land and resources. Much of the planning deals with problems after they have emerged. C/s councils should have options to influence physical development at an earlier stage, by defining objectives and adopting clear land and resource use policies. In practice this will mean moving from a concept of land management as land administration, with an undertone of recording past actions, to land management as a dynamic and active process. It is dynamic because the most appropriate land use is constantly changing. What then are the options for more dynamic local land management? Possible areas include zoning, development and infrastructure provision, and property taxation. Mechanisms include the use of dynamic land use planning tools, public-private partnerships, low-cost technologies, minimum or appropriate standards etc. To move from administration to active management, it is crucial to link planning with implementable mechanisms to control land use and guide and prioritize investment.

Major revisions of current policies and practices regarding land and resource use are ongoing or planned. This makes it a very opportune time to discuss the options for decentralized land and resource management. However, at this stage it would be premature to make very specific long-term recommendations as to candidate c/s council functions. Recommendations need to be carefully supported with data, which are scarce. Therefore, more study is required to understand the effectiveness of the possible instruments for decentralized land and resource management. This implies a more extensive review of evidence looking at relevant practice, both in Cambodia and internationally. This evidence then needs to be weighed using two criteria: the potential for reaching consensus, and the potential for effective implementation and evaluation. The first will depend on the possibility to formulate unambiguous recommendations. The second deals with capacity, alignment with

national objectives etc. However, it is possible at this stage to clearly indicate the potential areas where local councils could definitely be more active and what would be the nature of the functions they could take up. These should then be the areas for further study.

Areas for local land and resource management

Land registration and information systems

Land registration and information systems in Cambodia are an important obstacle to improving land management. A functional land registration system provides tenure security and support for property taxation. It also facilitates physical planning and the setting up of a land information system. This is a means of storing, extracting and sharing information on land, such as transactions, land use, land ownership and land values.

Currently, the land registration system in Cambodia faces many complications and delays. These contribute to the delay in responding to changing demands and needs of the population and to making land speculation rampant. The potential role of c/s councils should be the starting point for the registration of state land (public and private) as well as private land. This includes permits and approvals that condition how private land is used and state land is accessed. Currently, this role is limited; its scope does not extend beyond a number of tasks to do with registration of private land titles. More specifically, c/s councils confirm the exactness of certifications proving the identity of a parcel and/or owner within their boundaries. After approval, the communes register them in the '*certification registration book*', which basically constitutes the land information system accessible for local public scrutiny. The goal of decentralized land administration should be to qualify communes to keep up the land registers once systematic registration has been done. Currently, subsequent registration is done at the district office which then sends copies of cadastral documents to the commune. Essentially, this should be reversed. As to the registration and information related to state public and state private land (economic concessions, the permanent forest reserve etc.), c/s councils play no role of importance. Their functions in this area could be greatly expanded to make the system more transparent, efficient and cost-effective.

Land use regulation

Problems to do with land and soil deterioration are on the rise in rural Cambodia, causing a loss of biodiversity. To a degree, these are negative spill-over effects created by decisions of private land-owners within the commune. Land use regulation is an instrument allowing to influence private decisions; it conditions how private land is used. It includes planning tools, zoning ordinances, building regulations and by-laws, permits, inspections and penalties.

The broad objective of land use planning is to guide development for a specified period and promote the land-use pattern which fulfils the objectives of (local) government. The RGC has formulated its own approach to local land use planning: "*Commune Land Use Planning*" (CLUP). CLUP is a potentially powerful tool to move from assessing an existing situation to

outlining a desired future situation. It remains to be seen how dynamic and effective this planning instrument will be; more specifically, whether it can respond to the consequences of economic demand for space, particularly in a context of rising prices. For a local land use planning tool to become fully effective, the interaction between various levels of geographic planning must be clear: should land use planning essentially be bottom-up, top-down, or a combination of national and sub-national objectives? In the latter case, it must be clarified how CLUP is to interact with land use planning objectives and measures pronounced nationally by the RGC; for instance the stated objectives to greatly expand community fisheries and forestry, or the granting of large economic concessions. Planning can only be effective if the method is transparent and the outcome unambiguous.

Zoning involves the use of ordinances to demarcate land in areas for residential, commercial, industrial, agricultural, protection or other land use. It also involves regulating the use of the zoned (private) land. In urban areas rules may concern location, height, plot ratios, shape and use of structures within each zone. In rural areas rules may concern erosion and the integrity of surface soils (windbreaks or planting certain cover crops for instance), the building of structures that affect waterways and hydrology, measures to protect watershed areas etc. One could think of land use restrictions for instance². Local government could use restrictions to link separate land titles³, ensure land use is restricted to a specified purpose, retain buffer areas around industrial zones, preserve a native animal or plant or a natural, physical or scenic feature. The function implies the right of council to impose fines in the event of non-compliance with zoning regulations. Zoning may also involve the reclassification of state public to state private land, and state private to private land⁴. Ideally, the need for reclassification should emerge from the CLUP process. It therefore appears commonsense that local councils should hold some right of initiative in this regard. This right is implied in the provisions governing local social land concessions. It could and should however be clearly stipulated, as well as the conditions that govern such right of initiative.

Minimum standards governing the use of zoned land are a way to link higher and lower level planning concerns. They circumscribe the authority of local councils, without telling them exactly what to do or how to do it. In the case of Cambodia, sectoral ministries and/or higher level councils (district, provincial) could monitor the achievement of minimum standards by c/s councils. It is evident that minimum standards are not only a means of control, but also a means to activate local councils to take up responsibility and achieve expected levels of performance. Minimum standards stipulate outputs rather than inputs or spending levels; for instance, the minimum proportion of forested to total area for rural communes in a particular region, or the minimum ratio of parks or other green areas to total area for sangkats.

² A land use restriction is a written agreement in a prescribed form that may be registered on title. The holder of the title gives up some of the rights associated with the land. It aims to ensure that the obligation to comply with the restriction is transferred with transfer of title to the land. Future owners will also be bound by the terms. The restrictions may apply to all or a portion of the property, and need not require public access.

³ This could allow a group of small landholders for example, to qualify for a conservation concession on their (amalgamated) private land. Such approaches exist in Costa Rica.

⁴ Commune Councils may initiate the reclassification of State Land by filing a written request with the relevant Provincial State Land Management Committee (Sub-decree on State Land Management, art. 15).

Formulating minimum standards would create a relation between the size of the general allocation (C/S Fund) and the real cost of local government (services) at expected levels of performance. This also means that defining functions and corresponding minimum (service) standards would have to be adequately costed. These data can then be translated into expenditure norms and integrated into transfer mechanisms.

Land development and the provision of shelter

Registering land, defining conditions for access and use, and providing information on these actions and their effects, are ways of local political engagement. Governments may also be called upon to actually supply land to implement some of the other duties with which they are typically charged. These duties include the provision of an infrastructure network, public services (schools, hospitals, parks etc), provision of low-income shelter, the creation of green zones etc. Population growth, the effects of environmental degradation, as well as the increasing incidence of migration and resettlement make this also a relevant question for local councils. Should c/s councils be enabled to supply land at the right time, in desired locations? This depends on the availability of public land, their power over it, and their capacity to acquire private land. In urban (and some rural) areas, land acquisition would often be the only method available. Local government is, or will increasingly be responsible for service delivery. The intention of public land acquisition is to reduce the costs to the public for delivering intended government services. Because of development pressure, the general land value increase is substantial. It calls into doubt the future ability of government to provide the services without being forced to pay excessive land prices.

Some of the pressure can be alleviated through public-private partnerships, where the private sector brings in the capital and (co-)manages the service provision, subject to oversight. The concept is usually thought of in fairly standard ways. For instance, the public sector brings in public land and oversight, and the private sector the capital and management to create and run infrastructure such as roads, bridges, piped water etc. Some limited experience with such approaches exists in Cambodia, even at the local level. However, it could be used creatively in instances where the private sector also brings in land. For example, in view of local water provision, c/s councils could make contracts with landowners to preserve critical forest cover and grassland and protect sources of drinking-water. Experiences such as these exist in a number of countries (e.g. Costa Rica). More analysis would be needed to make useful relevant recommendations in this regard.

Another comprehensive long-term approach would be the creation of a small land bank with certain key plots. Essentially, land banking is the creation of a land reserve. It can be achieved in several ways. In rural areas, it can be done through land reclassification; for instance, the reclassification of economic concessions of excessive size, which is an existing legal provision. Since such concessions are already classified as state private land, an option could be to entrust some parts to local councils, in view of creating social concessions or land reserves for development or ecological purposes. The state may entrust the duty to administer and safeguard State Public or State Private Land to a c/s council, which is then called a trustee authority (Sub-Decree State Land Management, art. 2). State Private Land

may also be allocated for use by c/s levels in accordance with a Joint-Prakas of the Ministry of Interior and Ministry of Economy and Finance (Sub-Decree on State Land Management, art. 20). The implication is that the c/s council will subsequently be authorized to determine use within the limitations set. However, these legal mechanisms are rather ad hoc. The provisions for ownership or trusteeship of state land by local councils are vague and need clearing up before specific recommendations can be made. For instance, how secure are the conditions for trusteeship? If a higher authority can revoke a trusteeship by simple administrative decision, it serves no purpose as an instrument of long-term local land management.

Alternatively, communes could acquire private land. A thorough review should also bring clarity to the options available to local governments for compulsory and non-compulsory acquisition of private land as a method of land banking. This is relevant for rural but even more so for urban areas. Art. 44 of the Cambodian constitution allows the expropriation of private land for public purposes. A less controversial option for extending the land reserve could be pre-emption of land coming onto the market. It could be imagined that local government would have a first right to purchase land in critical areas. In all, the concept of local land banking in Cambodia would need more study. Public sector landowners should be models of best practice, but this has not been the case in Cambodia. An appropriate degree of control over land does not necessarily mean ownership. Local government ownership of land in itself does not unavoidably lead to more effective land use, if the purpose for its existence is unclear, or if the corresponding tools to effectively plan and control land use are missing.

Property taxation

Local governments have limited financial resources. As their responsibilities increase, it is important to provide them the opportunity to generate and administer the funds required, as well as attempt to attain partial or full cost-recovery for service delivery. In the case of land and natural resources, there are a number of options. In a context of rapid land development, a strong case can be made to recover part of the increase in values resulting from the land development process. Land zoning and the provision of infrastructure creates land values (betterment) which may or may not be charged to the landowners. The landowners have not earned the increased land values. The argument therefore is that these values should belong to the community which paid for them. For instance, the costs for the provision of infrastructure could be recovered through betterment taxes or levies. This is also a way to counter land speculation. It is very likely that anticipatory increases in land value will be lower, when government is known to collect the costs to the public for development and infrastructure provision.

Formulas to share between levels of government applicable land taxes and fees (e.g. the cadastral transfer fee), should be another important element of own source revenue for c/s councils. According to the Law on the Administration and Management of Communes/Sangkats, c/s councils should receive the mandate to collect land tax. So far, Unused Land Tax, Transfer Tax and registration fees have been introduced in Cambodia.

These do not remain at the local level. In addition, it appears relevant to argue for communes' rights to benefit from the fees collected for leasing state land within their boundaries for periods of up to 99 years⁵. For instance, councils could benefit from taxes or fees levied on economic land concessions (ELCs) and fishing concessions, (eco-)tourism infrastructure etc. This provision is also important for potential new categories. The draft REDD+ roadmap identifies a number of potential strategies to implement Cambodia's REDD+ Strategy, such as the creation of '*Local Forest Protection Contracts*' and '*Conservation Concessions*'. Other suggestions recommend the introduction of annual (performance-based) payments from commercial fishing concessions to adjacent communities for services rendered with regards to fish conservation. The recommendations are not specific in terms of commune functions, but they certainly deserve to be considered from this perspective.

As with the other functions, further study is needed. Issues to analyze would be the role of c/s councils in land valuation and the actual collection of taxes, fees and fines, benefit-sharing formulas and mechanisms, accountability and fiduciary concerns.

Adjudication and mediation

There is some argument that adjudication and mediation should be an important role for c/s councils. Further analysis should indicate whether and to what extent such a function can be reconciled with that of regulator. In principle, by regulating and developing land and resource use, the c/s council becomes a party to the process which other parties (for instance private landowners) may contest. It is very questionable whether it, rather than a third party, should then also mediate or adjudicate in these matters.

Looking ahead

The areas for change have been outlined in this brief note. It concerns additional powers and functions for c/s councils in the fields of land registration and information systems, land use regulation, land development, property taxation, and adjudication and mediation (see table in annex).

Further assessment of the fields outlined should deliver the key features of a clear agenda for change. This is as far as 'what' can be done. It is then up to political consensus-building to transform such an agenda into a programme for policy development and legislative reform. Over the past years the need to address land and resource related issues moved from being a special interest topic to a popular groundswell in favour of change. What needs to be achieved in terms of building common ground across all actors is the realization that (i) the status quo cannot last and (ii) that the solutions need to be about something other than simply substituting one sort of external authority over local decision-making for another. It is

⁵ Sometimes covering large proportions of land situated within a commune.

also important to avoid framing functions as projects unfounded in policy and law, for instance ‘*partnership forestry*’, rather than legally-founded mandates⁶.

A critical strand of the consensus-building process is of course the work of the National Committee for Sub-National Democratic Development Sub-Committee on Powers & Functions. In its outlook, it is crucial that the sub-committee take an integrated approach to the key areas of economic, social and environmental policy. Land management is central to all of these.

10

Table: Areas for possible change and corresponding categories of functions		
Area	Category of functions	Important elements: potential role of c/s councils in...
Land Registration & Information	Control <ul style="list-style-type: none"> • M&E • Planning & Budgeting • Participating Operations <ul style="list-style-type: none"> • Conduct & manage surveys/statistics • Implementation of service Coordination	<ul style="list-style-type: none"> • Private land registration (cadastre): initial and subsequent • State land registration: initial and subsequent • Cadastral information system • State land information: ELCs, Permanent Forest Reserve, Fisheries Domain etc
Land Use Regulation	Policy <ul style="list-style-type: none"> • definition of objectives • definition of standards Planning & Budgeting <ul style="list-style-type: none"> • Defining Control <ul style="list-style-type: none"> • M&E • Enforcement Operations <ul style="list-style-type: none"> • Authorization • Communication 	<ul style="list-style-type: none"> • Land use planning • Zoning • Permits, certificates, fees and fines
Land Development	Policy <ul style="list-style-type: none"> • definition of objectives Planning & budgeting <ul style="list-style-type: none"> • defining Infrastructure <ul style="list-style-type: none"> • construction • maintenance Operations <ul style="list-style-type: none"> • service implementation • contracting • coordination • communication 	<ul style="list-style-type: none"> • Land banking <ul style="list-style-type: none"> • via Trusteeships • via acquisition • Housing development (social land concessions) • Other (future) categories of concessions (cf. REDD +)

⁶ That is, unless there is a clear concept and timeline of progressing projects into mandates (via piloting, assessing, and then mainstreaming into policy and law).

Table: Areas for possible change and corresponding categories of functions		
Area	Category of functions	Important elements: potential role of c/s councils in...
Property Taxation	Financing <ul style="list-style-type: none"> • Direct source of financial transfers • Asset management 	<ul style="list-style-type: none"> • Betterment levies • Other property related taxes and fees • Benefit-sharing on the lease of state private land
Adjudication & Mediation	Control <ul style="list-style-type: none"> • Enforcement Operations <ul style="list-style-type: none"> • Implementation of service 	<ul style="list-style-type: none"> • Private land conflicts • Conflicts involving state land

Annex 1

Functional assignment in land and natural resource management: short-term options in Land Use Management

In order to structure the table that follows, the following typology of functions is used:

Category	Sub-categories
Policy	<ul style="list-style-type: none"> • Participation in policy development • Definition of development policies • Definition of regulations & standards
Control	<ul style="list-style-type: none"> • Monitoring • Enforcement of sanctions
Planning and Budgeting	<ul style="list-style-type: none"> • Participation • Definition
Financing	<ul style="list-style-type: none"> • Direct source of financial transfer • Authorization of funding • Asset and personnel management
Operations	<ul style="list-style-type: none"> • Implementation of service • Conduct surveys/management of statistics • Authorization/contracting • Coordination • Communication
Infrastructure	<ul style="list-style-type: none"> • Construction/equipment • Maintenance/repair

Category of function	Sub-category	Potential functions
Policy	Participation in policy development	
	Definition of development policies	
	Definition of regulations/ standards	<ul style="list-style-type: none"> • Issue land use restrictions⁷ (alternative formulation: regulate private land use) (Van Acker, 2010) • Regulate building of structures to impound or divert water (Van Acker, 2010)
Control	Monitoring and Reporting	<ul style="list-style-type: none"> • Monitor the award of ELCs and report to the District State Land Working Group (This would require the publication of a complete and up-to-date logbook of existing ELCs, printed in Khmer and made freely available in commune council offices) (NGO Forum, 2010)
	Enforcement	
Planning and Budgeting	Participating	<ul style="list-style-type: none"> • Implement CLUP nation-wide⁸; CLUP should: <ul style="list-style-type: none"> ◦ form the basis for improved procedures for systematic and sporadic land titling, by enabling the C/S Councils to collect applications for land registration for specific areas and forward these to the District Cadastral Administration ◦ link to demarcation and registration procedures relevant to State Land in other sectors (see 'forestry' and 'fisheries') ◦ be required as a foundation for approval of spatial plans (Master Plans etc.) ◦ inform the applications for economic concessions as well as actions to reconvert unexploited economic concession land to State Private Land. New concessions should be in conformity with the existing land use plan and registered property rights.
	Defining ⁹	
Financing	Direct source of financial transfer	<u>Land-related own revenue generation</u> <ul style="list-style-type: none"> • Collect Land Tax, fees for leasing state land as well as fines from those breaching building codes or land use plans (Wehrmann, 2004) • Initiate limited value capture (Thiel 2010) • Share benefits from taxes or fees levied on ELCs (Van Acker, 2005)
		<u>Land-related direct financing</u>

⁷ In the literature, such restrictions are also called conservation restrictions, conservation easements, statutory covenants etc.

⁸ A *Prakas* on 'procedures for preparing and implementing CLUP' must be completed, and a *Prakas* on 'funds transfer from the National Budget for CLUP activities' must be approved.

⁹ Is CLUP defining or participating, relevant to planning? Its defining characteristic is its participatory and cooperative nature, without which it cannot work.

Category of function	Sub-category	Potential functions
		<ul style="list-style-type: none"> Use own discretionary funds to finance easements (Oberndorf,2004) and land reserves (Van Acker, 2005) Exercise pre-emption rights to buy private land to satisfy planning purposes for public interests (Thiel, 2010)
	Authorization of funding	Various legal texts imply this role for the C/S council, without clarifying the exact nature of expenditures or source of funding; most notably <i>Commune Land Use Planning</i> and <i>Local Social Land Concessions</i>
	Asset management	<ul style="list-style-type: none"> Manage commune land reserves (Van Acker 2005)
Operations	Conduct & manage surveys/statistics	
	Implementation of service	<ul style="list-style-type: none"> Maintain and keep current land registration records after initial systematic registration has been finalized (Wehrmann, 2004) Undertake measures to promote soil conservation and ecological recovery (NCCD 2010, Van Acker 2010) Facilitate access to land conflict resolution (Wehrmann 2004, Van Acker 2005)
	Authorization/Contracting	<ul style="list-style-type: none"> Issue permits to occupy (Van Acker, 2010)
	Coordination	<ul style="list-style-type: none"> Assist in identification and delimitation of economic concessions, and verification of compliance (NGO Forum 2010, Van Acker 2010)
	Communication	<ul style="list-style-type: none"> C/S Councils should make the proposed logbook on ELCs available for public scrutiny ((NGO Forum 2010, Van Acker 2010)
Infra-structure¹⁰	Construction/Equipment	<ul style="list-style-type: none"> Provision of equipment for taxation and direct administration of cadastral register, commune land reserves etc (computer assets, supplies etc) (no particular recommendation in literature, but a logical follow-on from some of the other recommendations)
	Maintenance/ Repair	

¹⁰ Local social land concessions imply the construction and maintenance of infrastructure, such as roads, schools, health facilities etc. These should not be reflected here, but under the various relevant headings.