Land Allocation for Social and Economic Development

Cultural Heritage Protection Framework

December 2007
## List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>IDA</td>
<td>International Development Association</td>
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<tr>
<td>LASED</td>
<td>Land Allocation for Social and Economic Development</td>
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<tr>
<td>NGO</td>
<td>Non-Government Organization</td>
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<tr>
<td>OP</td>
<td>Operational Policy</td>
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<td>RGC</td>
<td>Royal Government of Cambodia</td>
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<td>SLC</td>
<td>Social Land Concession</td>
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</tbody>
</table>
1. Purpose

This Cultural Heritage Planning Framework applies to all local Social Land Concessions (SLCs) receiving financial or technical assistance from Land Allocation for Social and Economic Development project (LASED) and describes the approaches and measures that the National Committee on Social Land Concession (NSLC) and the National Committee on the Management of Deconcentration and Decentralization (NCDD) have decided to follow in order to avoid or mitigate adverse impacts by the LASED project on cultural heritage in Kingdom of Cambodia.

2. The LASED Project

The 2001 Land Law has created a legal mechanism called Social Land Concession (SLC) to transfer parts of State land to landless and land-poor families for residential and/or family farming purposes. Local SLC programs are initiated at commune level while national SLC programs relate to larger operations.

The LASED project will facilitate implementation of SLCs in communes undertaking a local SLC program. It will do so in two ways. First, the project will support establishment of local SLCs. Second, it will finance subsequent rural development in communes with SLC programs. At the time this policy framework was prepared, two provinces, Kampong Cham and Kratie, had been selected for piloting the social land concession projects and Kompong Thom has been selected as a third project. Second, LASED will support Royal Government of Cambodia (RGC) to develop an SLC Operations Manual, which to be adopted for use nationwide for LASED. The manual is expected to create a standard approach for future commune-initiated SLC programs that will be developed with support from RGC, other development partners or NGOs. Initial national guidelines have been drafted during project preparation based on experience gained in 3 pilot communes preparing a total of 2 SLC programs.


The Constitution of the Kingdom of Cambodia provides a strong protection of all national culture, heritage, quote “The State shall preserve and promote national culture. The State shall preserve ancient monuments and artifacts and restore historic sites (Article 69) Any offense affecting cultural artistic heritage shall carry a severe punishment (Article 70). The perimeter of the national heritage sites as well as heritage that has been classified as world heritage, shall be considered neutral zones where there shall be no military activity. (Article 71)

The 1996 Law on the Protection of National Cultural Heritage defines provisions for the “protection of national cultural heritage and cultural property”, including the “natural world”, against “illegal destruction, modification, alteration, excavation, alienation, exportation or importation”. It states that “when construction work or any other activity brings to light cultural property such as monuments, ruins, ancient objects, remains of inhabited sites, ancient burial sites, engravings or any property likely to be of interest to human sciences in general, the person finding the property and the owner of the site where it was discovered are obliged to stop the
construction work and immediately make a declaration”. Authorities may announce the temporary suspension of the work and the safeguarding measures to be taken. Permanent measures are also taken concerning chance discoveries. According to the law, reporting is done to the local police and the police transmits the information to the Provincial Government.

The Ministry of Culture and Fine Arts is in fact the agency that takes charge of national cultural heritage. Province-level Culture Departments are the operational agencies in cultural heritage protection (outside of the Angkor/Siem Reap region that is directly under the national Apsara agency). There are also a number of local museums at provincial and district level that are active in cultural heritage protection. The district-level culture office has a more limited role.

The law defines two steps of protection: inventory and classification. Cultural heritage is so far in the inventory stage. The provincial culture departments keep inventories and a comprehensive national inventory has been completed in 2006. Local museums or projects also carry out specific inventories. The provincial culture departments and museums, despite very limited or uncertain resources, carry out a policy of direct contact with local communities to (a) continue field inventory and (b) build public awareness and inform the general public about their duty to report any finds.

The cultural heritage policy carried out by the departments and museums covers both archeological heritage and indigenous cultural heritage. In the second case, some villages are inventoried as having rich cultural heritage. The activities of these agencies are limited by resource constraints. Only a small number of “priority villages” are currently covered.

These various efforts have built a fair level of awareness among communities. Some of the finds are reported. The law makes provision for a reward to the finder of the discovery but this is actually limited, for example to transportation costs from village to province. The belief that keeping a statue in a home might bring misfortune contributes locally to the reporting of finds. Commune authorities are also aware of the economic potential of cultural heritage for tourism development. Direct sales of finds to dealers however remain common practice.

In relation to the Land Policies versus Cultural Heritage, the law states that “listing in the inventory consists of keeping a record of public and private cultural property”. Current land administration practice is that no land titling is allowed on inventoried sites. This means that potential heritage screening for LASED needs to be carried out before land is allocated to individual households so that land titling after 5 years is not an issue.

Article 15 of Land Law of 2001 stipulates that Archeological, cultural and historical patrimonies are state public properties. And Article 5 of the 1992 Land Law stipulates that private right shall not be given in cultural and historical patrimonies.

The 1994 Law on Land Management, Urban Planning, and Construction stipulates that archeological and historical sites are public areas. The 2005 Sub-decree No. 118 on the State Land Management has categorized “the Archeological, cultural and historical patrimonies” as public state assets which is strictly prected and can not be used for any development including for the social land concession purpose. From this sub-decree, under the Decision No. 52 on the criteria for classifying state lands, of 2006, further states that “If such a patrimony is found in or on a private land, and its removal would not affect its value, the patrimony must be removed from the private land. However, if its removal would affect the value of the concerned patrimony, it is then necessary to keep the concerned patrimony on such land and shall issue order or regulation to limit the use right to the land to an a specific extent which
will not harm or damage the patrimony or shall declare the private land as a subject of lawful expropriation for public interest purpose and fair and just compensation must be paid in advance. The expropriated land shall be classified as state public land.

The **2002 Forest Law** allows the RGC to designate as Protection Forest any of the Permanent Forest Reserve, which may qualify as a special ecosystem valuable, an area of scientific, cultural, or tourism value or an area for biodiversity soil and water.(Article 22). The law also recognizes the traditional use and practice of the local communities as protected forest serving cultural purpose, quotes “Ministry of Agriculture, Forestry and Fishory shall recognize the religious and/or spirit forest of a community, living within or near the forest, as Protection Forest serving religious, cultural or conservation purposes” (Article 45)

The **1999 Prakas on the roles, duties and structures of provincial and municipal departments** of land management, urbanization, construction and cadastre, and offices under the department provides that “The Provincial and Municipal Departments of Land Management, Urbanization, Construction and Cadastre shall have the following roles and duties: .. to protect natural resources and cultural heritage;... and repairing, maintaining, using the building structures and heritages in the provinces and municipalities”

Declaration (Sechkday Prakas) of the Council of Ministers No. 06, dated 27 September 1999, on Measure to eliminate anarchy in land encroachment, forbid private rights over cultural heritage places. This is to protect the cultural heritage from being also used for any development purpose rather than preservation and protection for the cultural interest.

**Policy Paper on Social Concessions in the Kingdom of Cambodia, of 2002,** provides that “The preparation of regulations for the granting of social land concessions shall focus attention on a set of questions relating to state land management. Before land can be granted for social purposes, state land needs to be identified and classified and plans for its use need to be adopted. State land includes forests, waterways, roads and other transportation infrastructure, parks, protected areas, cultural heritage sites, public facilities and areas for military use, as well as unutilized areas.”

**Consistency with the World Bank Safeguard Policy**

The World Bank recognizes that the development projects it finances should avoid or mitigate any impact on sites or objects with historical, religious, aesthetic or other cultural significance. These resources are called cultural heritage in Cambodia.

The legal basis for this requirement is the World Bank’s safeguard policy on Physical Cultural Resources (Operational Policy 4.11). OP 4.11 is available in English at www.worldbank.org (open “topics” on home page, then “social development”, then “safeguard policies”, then “physical cultural resources”, then “operational policy”) and in Khmer language at the World Bank Phnom Penh office.

Under the World Bank’s safeguard policy, cultural heritage protection is expected to require a sequence of steps including screening, developing terms of reference, collecting baseline data, impact assessment, and formulating mitigating measures and a management plan. **The legal framework in Cambodia is broadly consistent with this safeguard policy.**
4. Cultural Heritage in the Project Area

The density of Angkorian and pre-Angkorian sites and objects in Cambodia is high along lower rivers, water bodies and major communication ways. It becomes low as one moves towards forested areas. Only 4 Angkorian temples are recorded in Kratie and Kampong Cham Provinces, all along the Mekong River:

- 2 in Kratie Province: in Srae Chis Commune and Khsuem Commune;
- 2 in Kampong Cham Province: in Chob Commune and another commune.

Sambour District in Kratie is also the site of a large pre-Angkorian city.

A majority of LASED-supported community SLC programs are expected to be located on land that was under forest in a recent past or is still under degraded forest. Existing and potential finds in the project area are accordingly expected to remain limited. Lower areas such as the Western part of Kampong Cham Province have conversely a much higher density of sites.

Kampong Thom has been selected as a third LASED project province. This province, in contrast with the two others, has a high density of sites from the Angkorian and pre-Angkorian periods including in its forested parts.

Memot District in Kampong Cham Province has a remarkable prehistoric heritage consisting in "earthworks", i.e. large circular land levees that used to shelter circular villages in the Stone Age. Most sites identified to date in Cambodia are located in Memot District. Among these 28 sites, one is located in the Choam Kravien pilot commune. Prehistoric tombs with artifacts were found in 6 sites in neighboring Ponhea Kraek District. The Memot Center for Archeology, currently funded under a German project, supports their preservation.

There are inventoried sites in the 3 pilot communes of LASED. This includes one inventoried village with a remarkable indigenous cultural heritage in Memot (within the pilot commune). Potential for subsequent change finds is assessed in the pilot communes to be low in Memot District and medium in Kracheh District.

The remaining sites and burial grounds in the pilot communes are located out of the land identified for the SLC programs. Many sites of spiritual significance for local communities have also been destroyed by war or deforestation.

Finally, a fair share of SLC sites is expected to be located on or around the location of late war episodes or conflicts. This may be one of the reasons why the land has remained sparsely populated. While these sites do not qualify as cultural heritage at present, it may be worth remembering their presence on the very land on which new, young, households will settle under the LASED project.

5. LASED Measures for Cultural Heritage

5.1. Approach

The existing approach of related agencies including the provincial culture department, local museums. The specific measures taken by LASED build upon this framework.
The LASED project will avoid concentrating efforts on a small number of villages. It will instead balance its efforts regarding cultural heritage among all sites where potential finds are expected. Just as in other project activities, the commune council, not individual village communities, is the basic unit for project management.

The following definition of cultural heritage in the project is included in the LASED project implementation manual and in the terms of reference of the technical assistance:

### Cultural heritage in LASED

LASED pays attention to cultural heritage in all project communes.

Cultural heritage is present in many communes applying for an SLC program. Households in the SLC program will settle on land without cultural heritage. It is also important to locate exactly cultural heritage so that it can be protected for the future of the commune (provide contact details of the agencies to which chance finds should be directly reported).

Existing joint attention to archeological heritage and indigenous heritage is an opportunity to increase attention to indigenous people in the project. The project will mainstream attention to these groups in any commune where they are present. It will not focus on a small number of typical villages. Vulnerability of these groups, not cultural heritage, remains the focus of the project’s policy on indigenous people.
5.2. Specific Measures

Measures for Cultural heritage in LASED Project

1. The provincial LASED project office maintains a copy of the recently completed national heritage inventory map (available from the Ministry of Culture and Fine Arts). The office communicates once a year with the provincial culture department to update this inventory.

2. The commune land use maps mention historical heritage based on updated guidelines/best local practice from the SEILA program.

3. The importance of cultural heritage is explained during community meetings before detailed survey. The importance of reporting chance finds in the future is also stressed (land identification).

4. Cultural heritage sites are carefully identified prior to detailed survey (land identification). A commune screening note is prepared for each project commune during Year 1.

5. Local village representatives take part in the actual survey work to show location of any additional sites including tombs and forest or trees of spiritual significance (land identification).

6. SLC programs taking place in provinces with a rich cultural heritage require an assessment by a qualified expert.

Measure 1 ensures availability of updated inventory data at provincial level. Measures 2 and 3 aim to mainstream attention to cultural heritage in the LASED project. Measure 4 allows to check whether additional screening is also needed. A screening note based on the attached format is used. The person in charge is the social and environment focal person in the provincial LASED office. The screening notes are reviewed at the end of Year 1 of project implementation. Provided all sites identified are already under protection through the provincial inventory and all commune councils are well informed about the procedure for chance finds, there will be no need for additional screening notes during subsequent years.

Measure 5 underlines the importance of participatory mapping in the identification of any site of cultural significance.

Measure 6 relates to the potential selection of Kampong Thom, or another province with dense cultural heritage, as project province. If such a province is selected, a qualified expert will produce a detailed assessment of sites and will propose specific reporting and protection measures.