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AIMAD Land Titling Pilot Project - Research on Post Clearance Land Titling

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AIMAD Land Titling Pilot Project
Research on
Post Clearance Land Titling

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Phnom Penh, February 2007

ACKNOWLEDGEMENTS

This paper is the result of research activities undertaken by Austcare on the post-demining clearance land titling certificate. The objective of the research is to develop a procedure or procedures to integrate both the established procedures of *Sub-decree 70 on Socio-Economic Management of Mine Clearance Operation* and those of *Sub-decree 19 on Social Land Concession*, as well as other relevant legal instruments, leading to legal land allocation and titling for the poor population living in mine affected areas.

Findings, recommendations and proposed harmonized procedures were the result of consultation with stakeholders, documentation review and technical workshops. They have not been field tested. It is expected that more changes will take place as the recommendations are implemented.

We would like to acknowledge the contribution made by participant stakeholders, namely: Mr. Oum Sang Onn, Country Director of Austcare and his staff; Dr. Saret Boramy, Team Leader of Land Allocation for Social and Economic Development (LASED) and General Cadastre and Geography department of the Ministry of Land Management, Urban Planning and Construction (MLMUPC) and his officers; H.E. Leng Sochea, Deputy Secretary General of Cambodian Mine Action Authority (CMAA) and his staff; the Mine Action Planning Unit (MAPU) Battambang and Banteay Meanchey; Cambodian Mine Action Centre (CMAC) staff; Mine Advisory Group (MAG) staff; HALO Trust staff; Norwegian People's Aid (NPA); Australian Volunteers International (AVI); CARE; World Vision; Banteay Meanchey Governor and Cabinet; Provincial Land Management Urban Planning and Construction Department of Banteay Meanchey; Provincial Environment Department of Banteay Meanchey; Svay Chek District Chief and Deputy; Svay Chek Commune Council; Damnak Kokoah Village Chief; and the land beneficiaries of activities in Damnak Kokoah.

TABLE OF CONTENTS

- ACKNOWLEDGEMENTS..... 2**
- TABLE OF CONTENTS..... 3**
- ACRONYMS AND ABBREVIATONS..... 4**
- EXECUTIVE SUMMARY..... 5**
- BACKGROUND 6**
 - LAND OWNERSHIP SITUATION IN CAMBODIA 6
 - THE SYSTEM OF LAND REGISTRATION AND TITLING 6
 - CURRENT LEGAL FRAMEWORK..... 7
 - LAND RIGHTS ISSUES IN POOR AND MINE AFFECTED AREAS 7
 - LAND MINE SITUATION IN CAMBODIA..... 8
- OBJECTIVE OF THE RESEARCH..... 9**
- APPROACH TO THE RESEARCH..... 9**
- LIMITATIONS OF THE RESEARCH 9**
- SITUATION ANALYSIS 10**
 - PROCESS FOR SELECTION OF MINE CLEARANCE TASKS..... 10
 - MINE AFFECTED LAND ALLOCATION AND TITLING 11
 - POST-CLEARANCE LAND CERTIFICATION 12
 - MINE ACTION PLANNING..... 13
 - SOCIAL LAND CONCESSION 14
 - EXISTING COMMITTEES 15
 - BENEFICIARY AND LAND USE RECORDS 16
- RECOMMENDATIONS..... 18**
 - 1. *Implementation of Sub-decree 70 and Sub-decree 19..... 18*
 - 2. *Changes to Current MAPU Process 18*
 - 3. *Beneficiary and Land Use Records..... 19*
 - 4. *Austcare Integrated Mine Action & Development (AIMAD) Project..... 20*
- REFERENCES..... 22**
- APPENDICES..... 23**
 - Appendix 1: Proposed Harmonizing Procedure 23*
 - Appendix 2: Membership of Committees relating to Sub-decrees 19 and 70..... 26*

ACRONYMS AND ABBREVIATIONS

AIMAD	Austcare Integrated Mine Action and Development Program
BMC	Banteay Meanchey Province
CC	Commune Council
CDRI	Cambodia Development Resource Institute
CIDA	Canadian International Development Agency
CMAA	Cambodia Mine Action Authority
CMAC	Cambodia Mine Action Centre
DWG	District Working Group
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
LASED	Land Allocation for Social and Economic Development
LIS	Landmine Impact Survey
LMAP	Land Management and Administration Project
MAG	Mine Advisory Group
MAPU	Mine Action Planning Unit
MLMUPC	Ministry of Land Management Urban Planning & Construction
NGO	Non-Governmental Organization
NPA	Norwegian People's Aid
NSLCC	National Social Land Concession Committee
PLMUPC	Provincial Dept of Land Management Urban Planning & Construction
PLUAC	Provincial Land Use and Allocation Committee
PLUP	Participatory Land Use Planning
PMAC	Provincial Mine Action Committee
PSLC	Provincial Social Land Concession
RCAF	Royal Cambodian Armed Forces
SMA	Suspected Mine Area
TST	Technical Support Team

EXECUTIVE SUMMARY

Background

- During the Democratic Kampuchea regime (1975-79), all cadastral records were destroyed. This disrupted continuity of land titling and caused many uncertainties.
- Currently there are a range of laws relating to land ownership that must be considered in the context of allocating demined land to beneficiaries.
- It is important that beneficiaries are able to secure legal title to the land they are allocated, to ensure their future security and long term benefits of the demining process overall.

Objective

- The objective of this research is to pave the way for Austcare to develop a procedure or procedures to integrate the relevant legal instruments into the overall demining and land allocation process.
- The intended goal is the clear land allocation and titling of land for the poor population living in mine affected areas.

Situation Analysis

- The current demining process focuses only on demining and allocation of the land, not what subsequently happens with that land as regards legal titling of the land for beneficiaries.
- Some current occupants are eligible to receive legal title to their land; others are not because of the way that the land was allocated to them.
- In some areas beneficiaries have received certificates or other documentation recognizing them as the beneficiaries who were allocated that land. However, this is not a secure legal title and needs to be replaced with a legal title.
- Not all parts of the demining processes and procedures currently appear to be fully compliant with all of the legal requirements that should be incorporated.
- In particular, the process of Social Land Concessions has not been fully implemented and this is the primary obstacle that prevents many beneficiaries from being able to receive legal title to the land they are allocated through the demining process.
- Records relating to beneficiaries and allocation history are not readily available and accessible to demining operators, NGOs, or other interested parties. This hinders the ability to monitor and plan their activities using historical data as support.

Recommendations

- Government bodies at all levels, demining agencies and development partners all need to collaborate to ensure that key laws are fully implemented in the near future: in particular, Sub-decree 70 on the Socioeconomic Management of Mine Clearance Operations, and Sub-decree 19 on Social Land Concessions. This will require some changes to be made to the way things are currently done.
- Particular amendments to the MAPU process need to be made to account for the Social Land Concession process and make it easier for beneficiaries receiving allocations of demined land to receive legal title to that land.
- Available beneficiary and land use records data should be compiled in a standard format and made accessible in a shared system so that this information can be used by all parties who would benefit from it.
- Specific recommendations outlining a pilot program that could be conducted, to develop and test changes to the operating procedures of various agencies, are outlined in the recommendations section. Currently Austcare has plans to implement this pilot program as part of their ongoing Integrated Mine Action and Development Project.

BACKGROUND

Land Ownership Situation in Cambodia

Prior to the French protectorate (1863-1953), all land belonged to the Sovereign with usufruct rights issued to individual farmers. During the French protectorate era, land tenure shifted towards private ownership. However, during the Democratic Kampuchea regime (1975-1979), private ownership of all property was abolished and all cadastral records were destroyed; farmland was reorganized to fit in with a massive irrigation system.

After the end of the Democratic Kampuchea regime, land was redistributed under the rule established by the People's Republic of Kampuchea (1979-1989), on the basis that farmers in each village received an equal share of land according to household size and the condition that they collectively form a farmer group (or 'Krom').

However, whilst residential, ricefield and farm ('chamkar') plots were distributed amongst the general population, there remained vast areas of land that were classified as state land. During this period, most farmers and village communities were not interested in or conscious of having land surveyed to conduct proper demarcation of boundaries.

During the transition to a market economy that began in 1986 and was further accelerated in 1989, much of the state land areas have gradually come under private control. Furthermore, during the 1980s much of the northwest of Cambodia was still engaged in civil war and therefore the agricultural land was not available for allocation and cultivation, and was kept under the control of the various military groups. Presently, some of these land areas are still under such control.

Subsequent to the peace agreement brokered in 1990, land areas in the northwest of Cambodia were allocated to refugees, IDPs and others by the controlling groups and local authorities. This process continued even after the promulgation of the new 2001 Land Law, which does not allow such an allocation approach. The 2001 Land Law Article 29 stipulates '...any occupation for possession shall cease when this Law comes into effect'. All social land concessions should instead be allocated under the provisions of Sub-decree 19 (Social Land Concession)

The System of Land Registration and Titling

During 1989-94, the Department of Cadastre was a part of the Ministry of Agriculture. The provincial and district offices of the Department of Cadastre carried out the cadastral work and the provincial Governor was the final authority to issue land certificates¹ for both agricultural and residential land.

During 1995-98, the Department of Cadastre was moved to the Council of Ministers; the final authority for issuing land certificate was shifted from the Provincial Governor to the Director of the Department of Cadastre.

In 1998, the Department of Cadastre (now referred to as the General Department of Cadastre and Geography) was again moved, this time to the newly established Ministry of Land

¹ The Government issued over 4 millions certificates, with 10-20% overlap of ownership, according to H.E. Lim Hor, Deputy General Director of General Department of Cadastre and Geography, 7 February 2007.

Management, Urban Planning and Construction (MLMUPC). One of the main tasks of this Ministry is to undertake a comprehensive survey, mapping and registration of all land in Cambodia.

To date, there have been land registration activities in all provinces, however only some provinces have undergone systematic registration. The LMAP has implemented systematic land registration in Phnom Penh, Kandal, Takeo, Kampong Speu, Kampot, Sihanoukville, Kampong Thom, Kampong Cham, Siem Reap and Battambang provinces, issuing a total of approximately 1,000,000 titles.

CIDA/GeoSpatial International Inc (Cambodia) and Melhanny Ltd. had implemented systematic registration in the project 'Land Administration in Mine Affected Areas (LAMAA)' in Svay Check District of Banteay Meanchey Province: in four villages in Svay Check commune and one village in Treas commune; with a total of approximately 4,000 land titles issued in 2003.

PLMUPC/NPA have implemented a sporadic land registration at Prachea Thom Village, Poipet Commune, O'Chrou District, Banteay Meanchey Province, with a total of 1,407 land titles issued.

After all of these activities, the majority of land holdings in Cambodia still do not have formal legal titles associated with them.

Current Legal Framework

The most relevant laws and regulations relating to the land titling issue are:

Land Law 2001 (30 August 2001)

Sub-decree 48 (31 May 2002) Sporadic Registration System

Sub-decree 46 (31 May 2002) Systematic Registration System

These two sub-decrees stipulate formal mechanisms of land titling and registration

Sub-decree 19 (19 March 2003) Social Land Concession

Prakas 200 (9 November 2003) Implementing Social Land Concessions

These stipulate the process for the granting of state private land to the very poor.

Sub-decree 70 (20 October 2004) Socioeconomic Management of Mine Clearance Operations

This relates to the overall demining process, including selection of land to be demined and treatment/allocation of land post-clearance.

Sub-decree 118 (7 October 2005) State Land Management

Prakas 42 (10 March 2006) Identification, Mapping and Classification of State Land

These relate to the designation and classification of state land as state public land and state private land.

Land Rights Issues in Poor and Mine Affected Areas

Land is one of the most basic of all resources available for the social and economic development of Cambodia. As a result of years of war and civil unrest, landlessness in Cambodia is widespread and a major cause of poverty. Securing title to land for the landless poor is therefore of vital importance to Cambodia's development. By assisting the process of land allocation, and strengthening land tenure rights of the landless poor in mine affected

areas, organisations can work to promote social stability and reduce the vulnerability of Cambodia's poorest communities.

Access to agricultural land for the poor and vulnerable is limited in many of the poor villages, particularly those more remote villages near the Thai border, due to a number of reasons: fragmentation as a result of population pressure, forced sale of land as a poverty reduction coping strategy, limited land tenure, land grabbing, and contamination by landmines. Many villagers, especially new internal migrants, newly married couples and the poor, do not have access to land or they have very limited areas of land upon which they can farm.

Land grabbing has been reported in several areas cleared of landmines, which deprives the poor who live in these villages of agricultural land. This land grabbing may have been a result of the inability of the Government bodies (namely, the Ministry of Land Management (MLMUPC) and its Provincial Department, and the MAPU) to officially allocate and demarcate cleared land, the majority of which is state private land, and failure of the appropriate government authorities to enforce allocation. Such state private land should be allocated to the poor under the Social Land Concession Sub-decree 19; however, to date the criteria and requirements for allocation under this sub-decree have not been integrated into the MAPU process managed under Sub-decree 70 on the Socio-Economic Management of Mine Clearance Operations.

Land Mine Situation in Cambodia

The prolonged period of civil conflict has left Cambodia as one of the most mine-affected countries in the world. It was not until the completion of the Landmine Impact Survey (LIS) in 2002 that a comprehensive picture of the contamination emerged. Among the findings were that 46 per cent of Cambodia's 13,900 plus villages suffered some sort of landmine or cluster-bomb contamination, and this contamination currently had adverse impacts for 20 per cent of all villages. In total, approximately 4,500 km² of land is known or suspected to be contaminated with mines and/or UXO – about 2.5 per cent of Cambodia².

Much effort has been made to speed up clearance and reduce casualties of landmines and UXO. The Government of Cambodia has set its vision to render Cambodia accident free by 2012 and work toward being free from the negative humanitarian and socio-economic impacts of landmines/UXO by 2020³. Furthermore, recent research has further reduced the amount of suspected contaminated land requiring high priority clearance to 460 square kilometres⁴. Demining operators work relentlessly to address all aspects of demining needs and have achieved substantial results in putting land into productive use since they commenced operations. Notwithstanding these efforts, land titling post-clearance has attracted little interest, and thus remains a major issue to be addressed by the Government and relevant institutions, particularly in relation to the legal status of land holdings under the current Cambodian Land Law.

² Final Report National Level One Survey, 2002.

³ National Mine Action Strategy 2005.

⁴ UNDP Joint Evaluation of Mine Action in Cambodia for the Donor Working Group in Mine Action, Robert Griffin and Robert Keeley, 2004.

OBJECTIVE OF THE RESEARCH

The objective of this research is to pave the way for Austcare to develop a procedure or procedures to integrate both the established procedures of Sub-decree 70 and those of Sub-decree 19, as well as other legal relevant instruments. The intended goal is the clear land allocation and titling of land for the poor population living in mine affected areas.

APPROACH TO THE RESEARCH

Phase One: Consultation with national-level stakeholders such as the Ministry of Land Management Urban Planning and Construction (MLMUPC), Cambodia Mine Action Authority (CMAA) and Austcare Cambodia senior management. Also, a review of relevant legal documents.

Phase Two: Consultation with provincial stakeholders such as Provincial Governors, Provincial Departments, District Governors, Commune Councillors, Village Chiefs, beneficiaries of demined land, de-mining operators, and the Austcare field team. This phase included a field technical workshop in Sisophon, Banteay Meanchey to consider comments and inputs from those who work in the field.

Phase Three: Consolidation of preliminary findings, and presentation to the Austcare management team for comments and further input, before presenting to the wider group of stakeholders at a national workshop. This phase included a national technical workshop at the CMAA office to further solicit and consolidate inputs at the national level.

Phase Four: Report writing. Production of a draft report to be circulated for comment by relevant stakeholders.

LIMITATIONS OF THE RESEARCH

The consultant had only 21 days available to conduct the assignment. This constrained the scope of the research to just the legal aspects of land allocation and titling. It did not allow sufficient time for in-depth information analysis of the number of land allocations and certificates issued by relevant authorities to date. Findings and recommendations in this research report are based only on consultation with stakeholders, a literature review, and feedback from field and national technical workshops. The consulting team did not have time to test the recommendations, which would require extensive time to undertake.

SITUATION ANALYSIS

Keeping in mind that the key issue being considered is the lack of formal land titles held by people who live in mine-affected communities, issues that may influence this situation were considered.

Process for Selection of Mine Clearance Tasks

The process for selection of demining tasks by local authorities (namely Village Chiefs, Commune Councillors and provincial authorities) is essentially focused on the need for mine clearance for land use. It gives little concern for the application of the current Land Law and the possible future legal implications of allocation of land vis-à-vis land titling.

Statistics available at CMAA indicate that the majority of land is cleared for agriculture and resettlement. For example in 2005, land cleared of mines was 30.10% cleared for agriculture, 14.66% for resettlement and 14.26% resettlement & agriculture. This represents major efforts by all stakeholders involved to contribute to the poor and landless people living in mine affected areas. However, these allocated land plots have yet to be properly titled.

The current selection of mine clearance priorities are in four categories, (1) residential land, (2) agricultural land, (3) infrastructure development, and (4) safety.

Mine Clearance Priority

(1) Residential land	(2) Agricultural Land	(3) Infrastructure development	(4) Safety
New settlement Old resident	New agriculture land Current land use	Road, Irrigation, school, health center, ponds, boreholes, commune office, temple, historic site.	Community safety

The minefield selection and clearance task is only a part of the process. Sub-decree 70 refers to the application of Sub-decree 19 when it comes to the allocation of the demined land. The current MAPU process does not address this part of the legal requirement. As such, most land cleared for agriculture and resettlement purposes may face legal complications in the future, as the allocation procedure does not meet all legal requirements. This means that the efforts to support the landless and to reduce poverty will not be fully successful if the beneficiaries are faced with legal complications in the future regarding to the ownership of their allocated land. Moreover, for land that has been cleared for safety reasons, there has not been clear designation of beneficiaries or demarcation of land for community use purposes; this is likely to be ideal land for land grabbing.

The local authorities were partly aware of the current Land Law and other legal instruments⁵ but chose to ignore them because of the difficulty of understanding and applying the law. The CMAA with its great effort to assist the MAPU process has established and updated its Socio-Economic Guideline. This guideline makes reference to the application of Sub-decree 19 on land allocation. However, it does not provide technical guidance to the MAPU on how to implement it. It is important to note that legal allocation can only happen on land that is classified and registered as State Private Land. This is the primary obstacle relating to the current allocation process. Most land is legally State Public Land, not available for use or allocation in a Social Land Concession until it has been reclassified as State Private Land,

⁵ The 2001 Land Law, Sub-decree 19 on Social Land Concession, Sub-decree 118 on State Land Management and Sub-decree 70 on Socio-Economic Management of Mine Clearance Operation.

following the requirements of Sub-decree 118. Because that process has not occurred, all of the ‘downstream’ processes for allocation of the land cannot legally be undertaken.

In addition to this omission, the authorities, including MAPU and CCs, have limited capacity to comprehend the whole integration process of Sub-decree 70 and Sub-decree 19; therefore they have been unable to move the process forward, making any issuance of legal land titles or any legal document leading to legal titling on post-clearance land in the future difficult; and any issuance of some sort of land certificates that has been taking place for this type of land allocation is not compliant with the stated law.

In summary, the MAPU process for selection of mine clearance tasks does not incorporate essential elements of Sub-decree 118 and Sub-decree 19 to ensure that an area selected for demining will be eligible for subsequent Social Land Concession, and allocation of legal title to the land to beneficiaries.

Needs

The process for selection of mine clearance tasks needs to consider future impacts such as land titling, and incorporate these into the procedures.

- There are clearly gaps in linking the two applicable Sub-decrees (19 and 70); a mechanism needs to be established for that purpose. The CMAA as a national authority is in a unique position to bridge the gap. It should work to cooperate with the MLMUPC, and particularly with LASED, in providing clear guidance and appropriate documentation for the linking of the MAPU process with Sub-decree 19 and disseminate (including training) this guidance to the MAPUs and other relevant stakeholders.
- While this inter-agency coordination is in process, the MAPUs and Commune Councils should initiate, for future potentially selected minefields, the process of classification and registration of these minefields as State Private Land, by working in close collaboration with PLUAC. This should lift the first hindrance out of the way. Further, in selecting prioritized minefields to be cleared, CCs and MAPU should be mindful that these minefields are possibly able to be allocated under the Social Land Concession procedure.

Mine Affected Land Allocation and Titling

Initial research indicated that three categories of land in mine affected areas need allocation and/or legal titling:

1. Mined areas that have already been occupied and used by the local people with supported ownership documents before the 2001 promulgation of the current Land Law, which have been prioritized for mine clearing or have been cleared by a de-mining operator. Owners/beneficiaries of this land can and should apply for land titling. Clearance of this type of land should not have any land use conditions imposed (as noted in the current MAPU process) as it is already under private ownership;
2. Mined areas that local authorities (the Commune Council representatives) have, after the promulgation of the 2001 Land Law, allocated after clearance or claimed to have the authority to allocate to the poor and have been prioritized in the MAPU work plan for clearance. In most cases the CCs do not have legal authority to allocate these lands. A process needs to be undertaken to retrospectively apply for ownership by the occupants;
3. Mined areas as known as “state private land” (or “state public land” which needs to be reclassified as “state private land”) which local authorities have planned to submit for mine clearing and allocation to the poor post-clearance, and the allocations are to be undertaken under the Sub-decree 19 process for Social Land Concessions. These lands are generally

unoccupied. The correct process needs to be followed to ensure that beneficiaries are allocated land to which they can gain legal title.

For land described as (3) above, there will be a land titling issue in the future. First, the law did not allow allocation outside of the conditions set forth in Sub-decree 19. Occupation of state land after the 2001 Land Law came into effect, even with allocation made by local authorities, is not in accordance with the law. Second, there is no assurance that land which local authorities have prioritized to be cleared, but is not yet cleared, can be allocated legally unless it is classified and registered as state private land. The mine affected areas have not been clearly defined or classified according to the 2001 Land Law. Therefore, to ensure that allocation of this land can take place in accordance with the law, authorities should proceed to formally classify these areas as state private land (following Sub-decree 118 requirements) as the first step.

For mined areas already classified as state private land, which local authorities have planned to submit for mine clearing and allocation to the poor post-clearance, and the allocation is to be undertaken under the Sub-decree 19 process, these are ideal cases for land allocation. To allocate this land the authorities should follow Sub-decree 19 and its Prakas 200; however, the beneficiary selection process of the current MAPU process should be harmonized with the process of Sub-decree 19. It is noted however that Prakas 200 has not fully been implemented; as such there would be difficulty in applying it. Through discussion with the LASED team there is an expectation that it could be done and the LASED team has pledged their support.

Needs

To ensure that current land occupants and new beneficiaries of land in mine affected areas receive legal title to their land.

- With the classification of the number 1 category there is the need to encourage owners and beneficiaries to proceed with land titling application.
- In the category 2 type of mined land there is a need to fulfill the requirements of Sub-decree 19 (relating to classification of land and beneficiary selection). For land that has been prioritized in the MAPU work plan, relevant authorities should make a request to PLUAC to approve it for Social Land Concession, and the selection of beneficiaries of this land should follow Sub-decree 19. Although the current MAPU process does not follow Sub-decree 19 regarding making submissions to the proper provincial authorities, mainly PLUAC, there is scope for PLUAC consideration of the current MAPU process. It is noted that the PMAC and PLUAC committees and processes are quite similar (more discussion in the analysis of the committees, below).
- For category 3 type mined land, procedures need to be corrected before these lands go through the demining and allocation process, so that the end result of the process will be legally titled land for beneficiaries.

Post-Clearance Land Certification

Most post-clearance land areas throughout the northwestern provinces have yet to be registered. These land areas have primarily been allocated for agriculture and resettlement purposes, however some have been put to use as community infrastructure and others for safety purposes. For agriculture and settlement (residential land) there is the need for the beneficiary to receive some sort of legal ownership documentation. Discussions with MAPUs in all five mine affected provinces revealed that Battambang and Preah Vihear MAPUs have resorted to providing some sort of semi-formal recognition to beneficiaries. Pailin, Oddar Meanchey and Banteay Meanchey have not produced such documents. Specifically, the

reason cited as to why they can not issue the documents is because of the potential legal implications (the same complications between Sub-decrees 70 and 19 which gave rise to this pilot project).

The documentation issued in Battambang and Preah Vihear provinces are not consistent in their format, and more importantly they are not fully compliant with the legal requirements set forth in Sub-decree 70. This brings their legal status into question. The documentation identifies the selected beneficiary of the allocated land, but is not a formal legal title to the land. While this may serve as important documentation supporting occupants' claims to the land, it is not proof of ownership and cannot be used as such when applying for a legal land titling certificate. It is essential that these documents be replaced by a formal registered title to the land.

Needs

To replace informal "recognition" documentation and "temporary land ownership certificates" with legally compliant, official land titles for ownership.

There is the need for PLUAC and PMAC to come to an agreement either to accept or not accept the previous and current allocation of land to beneficiaries and documentation. PLMUPC should provide a standard format for this temporary documentation recognizing individual beneficiaries of cleared land, and this document should be consistent throughout all mine affected provinces.

Mine Action Planning

The annual planning cycle for mine action begins January-February with the commune meeting at the commune office, at which Village Chiefs present their priorities of suspected mined areas needing clearance. MAPU staff and Village Chiefs review village site sketches and complete necessary forms (such as village information and suspected mine area information forms). In April-May, during the District Workshop, Commune Chiefs present their priorities for clearance. In May-October, MAPU staff then conduct investigations to ensure that each area selected for mine clearance complies with certain criteria (intended land use, beneficiary selection, land ownership, and so on); an updated list of minefields targeted for clearance is the result. MAPU staff then prepare their proposed annual work plan for de-mining, presenting this in October-November to the PMAC, which also hears the views of the de-mining agencies on the various priorities. It approves some of the priority areas recommended by MAPU and may add some tasks based on provincial priorities emerging from the annual update of the Provincial Development Investment Program. The Governor (as Head of PMAC) then signs the Provincial De-mining Plan (sending a copy to CMAA).

The MAPU planning process is concerned only with minefield clearance and distributes cleared land to beneficiaries. However, the planning process is not fully compliant with the provisions of Sub-decree 70 which require that post clearance land distribution must follow Sub-decree 19 on social land concession.

Needs

To ensure that the MAPU planning process is compliant with relevant laws so that beneficiaries will ultimately be able to receive legal title to the allocated land.

The current MAPU planning process should be fully compliant with Sub-decree 70 and its updated guidelines, and give consideration to issues beyond just clearance criteria.

Social Land Concession

Social Land Concessions enable the Royal Government of Cambodia to transfer State Private Land to poor people for family farming and residential purposes. Sub-decree 19 on Social Land Concessions is the only mechanism by which the State can distribute land to poor people in Cambodia under the current Land Law 2001. The extent to which the government intends to make use of this mechanism is not yet clear. There is, furthermore, an inadequate legal and institutional framework for the identification of State Private Land; this may constitute a major barrier to proceeding with a program of Social Land Concessions.

Participatory Land Use Planning (PLUP) processes are being developed which are intended to enable every commune in the country to make a land use plan. This process is intended to be harmonized with the newly developed Commune/Sangkat Councils' responsibilities in development budgeting and planning. PLUP could include suspected minefields as an opportunity for the council to identify potential Social Land Concession sites. This could provide a valuable avenue for the program to include both mine action and social land concession activities.

The process goes as follows: the Commune Council initiates a proposal to use mined areas for social land concessions in its commune to the Provincial Land Use and Allocation Committee (PLUAC) for approval. If approved by PLUAC, the Commune Council and District Working Group⁶ with assistance from development partners and demining operators can proceed in the following manner:

1. Identifying, mapping and classifying state land as state private land in accordance with Sub-decree 118 on State Land Management and Prakas 42 on Identifying, Mapping and Classifying State Land;
2. Selecting beneficiaries in accordance with Sub-decree 19 on Social Land Concession and Prakas 200 on the Implementation of Social Land Concession; and
3. Integrating development activities in accordance with the procedures for the preparation of Commune Development Plans (Chapter 6 of the Law on Commune/Sangkat Administrative Management).

The process of Social Land Concessions requires substantial time to implement the various activities such as the identification and classification of state private land and selection of beneficiaries which can take approximately 10-12 months. These processes involve many stakeholders and are a costly exercise.

Sub-decree 19, Prakas 200; and Sub-decree 118, Prakas 42 have not yet been completely tested and enforced in practice. This will make it difficult for MAPU, Commune Councils and other stakeholders to apply and integrate into the MAPU process.

As mentioned above, the consultant team was encouraged by the LASED team to proceed with the application of the current Land Law (and other legal instruments); the LASED team has expressed interest in providing technical support.

⁶ The Provincial Governor should appoint the District Working Group which is comprised of: District Governor as chair person, District Cadastral Officer as permanent member, and other relevant district officers and forest administration officers at section level as members. The District Working Group is a technical support team to assist the Commune Council to implement the social land concession process.

Needs

With regard to AIMAD, the application of the Social Land Concession process is necessary when clearing a mine affected area occupied after the passing of the 2001 Land Law. So far, the Social Land Concession process has not been properly implemented, which has been preventing beneficiaries from applying for legal title to their land after it has been handed over to them.

The amount of time it takes for the SLC process is similar to the time required to undergo the current MAPU process. Moreover, the various steps appear similar, hence they can be harmonized and their simultaneous application practically tested.

Existing Committees

There are parallel committees and Technical Support Teams existing within the schemes of Sub-decree 70 and Sub-decree 19.

In Sub-decree 70 there are four key organizational bodies:

- (1) Cambodian Mine Action Authority, at the national level;
- (2) PMAC at the provincial level, its membership shall be nominated by the Provincial Governor, except for the representatives from the Secretariat General of CMAA, de-mining operators, and international organizations, whose members shall be appointed by their own organizations. The chairman of the PMAC may invite representatives from other concerned institutions to join the committee as member or observer as needed for specific tasks related to mine clearance;
- (3) MAPU, a permanent technical support unit to assist the PMAC; its composition shall be selected among the officers from the relevant departments in the province, which are the members of PMAC and other involved stakeholders in mine action. The MAPU officers shall be nominated by the Governor;
- (4) DWG comprised of stakeholders involved in mine clearance activities in the District; it is chaired by a District Chief. The DWG provides technical support to the CCs in the selection of mined areas to be prioritized for clearance and the selection of post-clearance land use beneficiaries.

In sub-decree 19, there are four key organizational bodies:

- (1) NSLCC comprised of Line Ministries chaired by the Minister of MLMUPC.
- (2) PLUAC whose chairman and members shall be appointed by the chairman NSLCC.
- (3) PLUAC has 3 technical support units. The members of the technical support units were selected from among the staff of the Provincial Governor's office and other Provincial Departments in the province which are the members of PLUAC. The chairman and staff of technical support units shall be appointed by the Provincial Governor. The three Technical Support Units for PLUAC are,
 - a. The Land Technical Support Unit** is headed by the PDLMUPC, which has the duties to identify land that may be appropriate for social land concessions and to ensure that selection of social concession land is fair and transparent.
 - b. The Target Land Recipients Selection Technical Support Unit** is headed by the Provincial authority which has the duties to ensure that selection of target land recipients is suitable based on selection criteria and to monitor the social land concession project and target land recipients.
 - c. The Development Technical Support Unit** is headed by the Provincial Department of Rural Development and has duties to oversee the general development issues and rationalize the amount of land to be granted with the number of applicants in the province as a whole,

and to ensure that infrastructure and facilities are included in the social land concession plan and will be in place in a timely manner.

(4) DWG comprising of the district officers from line departments that are members of PLUAC and local authorities representatives chaired by the District Chief.

In both Sub-decrees, there are references to the role and responsibilities of the Commune Councilors in the selection of land for concession and beneficiaries.

As mentioned above, the two Sub-decrees have similarly composed Committees and Technical Support Teams with very similar roles (see Appendix 2 for tables providing a more detailed breakdown of committee membership). As the same key organizations that are instrumental in the execution of both Sub-decree 19 and Sub-decree 70 provide the members for the committees, many individuals are in fact members of both committees.

- The two related Sub-decrees have similarities in terms of the key organizations which are instrumental in the execution of these Laws. At the national level, they have CMAA and NSLCC; at provincial level the PMAC and PLUAC; at district level they have DWG; and at the grassroots level the CCs. The key important decisions are made at the provincial level. Coincidentally, the chairman of PMAC and PLUAC are both the Governor of the province. The composition of the committees at the provincial and district level are similar. It is noted that PLUAC has fewer members of PMAC; however the chairman of the committee can call upon the other stakeholders to participate in PLUAC work; hence he/she can call upon those stakeholders in the PMAC to take a seat in the PLUAC for social concession land issues.
- In the current practice, the PMAC meetings and discussions are normally focused on the subject of demining. They give little consideration to the legal land titling issues and the harmonization between the two Sub-decrees. As such, the activities of PMAC and PLUAC have not been harmonized. It is possible that when PMAC meets about land mine issues, the same committee could play a role as PLUAC; it could discuss and make decisions concerning Social Land Concessions in mine affected areas (suspected areas requested for clearance for the purpose of allocation to poor people). As such, there is no need to have the two processes implemented independently (mine clearance prioritisation/Social Land Concessions). They could be combined as one process for more efficiency.

Needs

For the purposes of land allocation of land in mine affected areas which the community has requested for clearance and allocation, there is a need for the provincial authorities to combine the two committees (PMAC and PLUAC) into one. Effectively, this would require a series of combined sittings of both committees, annually, to deal with the issues of land allocation and social land concessions in mine affected areas.

Beneficiary and Land Use Records

Access to beneficiary and land use information would allow MAPU, development partners and Government agencies (NGOs/PLUAC/PMAC/DWG/PDLMUPC/CC/Villages) to monitor the beneficiaries of demined land and to assess the impact of funding, to plan for administration and support, and further assist beneficiaries to work toward receiving legal titling.

However, generally this information is not readily available. Inability to access the information denies or restricts beneficiaries and stakeholders from engaging in the activities described above.

Since the introduction of the LUPU/MAPU process, allocation of demined land has been supported by LUPU/MAPU. Different MAPUs have different capacity levels for data management of post clearance land use beneficiaries. In general, MAPUs do not have readily available records of beneficiaries of post clearance land. Different provinces have different levels of capacity. Some provinces are more organized than others and may be able to compile the records for the most recent year. However, in general records are not retained in the long term by the MAPUs after they have handed over the land, leaving interested parties the task of regathering the information from Commune Councils where possible.

Needs

Records of the various beneficiaries of demined land from planned to actual allocation should be updated and made available; and capacity and systems within MAPU must be developed to perform the task of data management of beneficiaries and land use. This can be done as an ongoing activity within each MAPU or in a separate one-off project.

MAPU should work develop the needed capacity, and AVI who are currently working with MAPU should provide technical assistance and training.

RECOMMENDATIONS

1. Implementation of Sub-decree 70 and Sub-decree 19

There has not been harmonization between Sub-decree 70 and Sub-decree 19 in the current practice, although there has been instruction made in reference to the harmonization in the current update of the Socio-Economic Guidelines for Management of Mine Clearance Operations dated 14 December 2006. The implication of this shortfall renders land ownership recognition documents issued by the MAPU to post-clearance land use beneficiaries as non compliant with the law. Beneficiaries may have difficulty in applying for future land title certificates even when they meet all conditions of land use (e.g. 5 years occupancy) in their contract with the MAPU, because the land was not properly allocated in the first place.

Recommendation:

CMAA, PMAC, MAPU and development partners should work in consultation and collaboration with the MLMUPC, PLUAC, PLMUPC so as to harmonize their current procedures with those of Sub-decree 19.

- The CMAA needs to cooperate with the MLMUPC (particularly with LASED) in providing clear guidance and appropriate documentation for the application of the current MAPU process with regard to Sub-decree 19. Disseminate (including training) this guidance to the MAPU and other relevant stakeholders
- MAPU and the Commune Councils should initiate, for future potentially selected minefields, the process of classification and registration of these minefields as State Private Land. This should remove the primary obstacle to the Social Land Concession process and make the demining/land allocation process easier to implement. This should also ensure that, in selecting prioritized minefields to be cleared, CC and MAPU select minefields in which it is possible to implement allocation under the Social Land Concession procedures.

2. Changes to Current MAPU Process

The current MAPU planning process should be fully compliant with Sub decree 70 and its updated guidelines, and give consideration beyond just clearance criteria; particularly to the legal allocation and subsequent legal land titling of land being demined. The requirements of Sub-decree 19, Prakas 200, Sub-decree 118 and Prakas 42 are essential inclusions.

- **Mined area selection**
According to Sub-decree 19 and Prakas 200, a mined area must be classified as State Private Land in order to be able to allocate it legally to poor beneficiaries after it has been cleared of mines. Hence the selection of land must follow after or parallel the process defined in Sub-decree 118 and its Prakas 42 to classify the land as state private land. This activity can likely be done most efficiently when conducted concurrently with the normal process of MAPU during commune meetings and investigation. PLUAC, PMAC and their technical support units, together with interested development partners, should collaborate to develop workable supporting processes.
- **Beneficiary selection**
The selection of beneficiaries under Sub-decree 70 must follow the criteria of Sub-decree 19 and its Prakas 200 where the land is to be allocated as a Social Land Concession. This

activity should be done concurrently with the normal process of MAPU during commune meetings and investigation. Again, PLUAC, PMAC and their technical support units, together with interested development partners, should collaborate to develop workable supporting processes.

- For the selection of mined areas to be cleared and beneficiaries for cleared land:
 - (1) If the land has already been cleared and has already been allocated to beneficiaries under the MAPU process, local authorities (mainly the CC, the DWG and PLUAC) must proceed to produce documentation to legalize the allocations.
 - Commune Councils should initiate a request that these mined areas qualify for Social Land Concession to PLUAC. The first step is to dedicate this land as a State Private Land, then to gain approval from PLUAC to accept the already allocated beneficiaries.
 - MAPU, DWG and development partners should provide Commune Councils with technical assistance.
 - (2) For landmine affected areas prioritized for future clearance and those currently being demined for future allocation, MAPU must follow legally compliant processes from the start. This means that the PLUAC, PLUAC Technical Support Teams, PMAC, MAPU, DWG, CC and development partners must work together to develop procedures and processes.

3. Beneficiary and Land Use Records

Restricted access to beneficiary and land use information (due to the data not being appropriately collected, stored and retained) currently prevents MAPU, development partners and Government agencies from monitoring the beneficiaries of demined land and assessing the impacts of funding, from planning for administration and support, and from further assisting beneficiaries to work toward receiving legal titling.

- Records of the various beneficiaries of demined land, from planned allocation to actual allocation, should be updated and made available; and capacity and systems within MAPU must be developed to perform the task of data management of beneficiaries and land use. This could be done as an ongoing activity within each MAPU or in a separate one-off project. AVI, who are currently working with MAPU, may be able to provide technical assistance and training.

4. Austcare Integrated Mine Action & Development (AIMAD) Project

The consultant team were also asked to make recommendations with regard to Austcare's current AIMAD project "CA18".

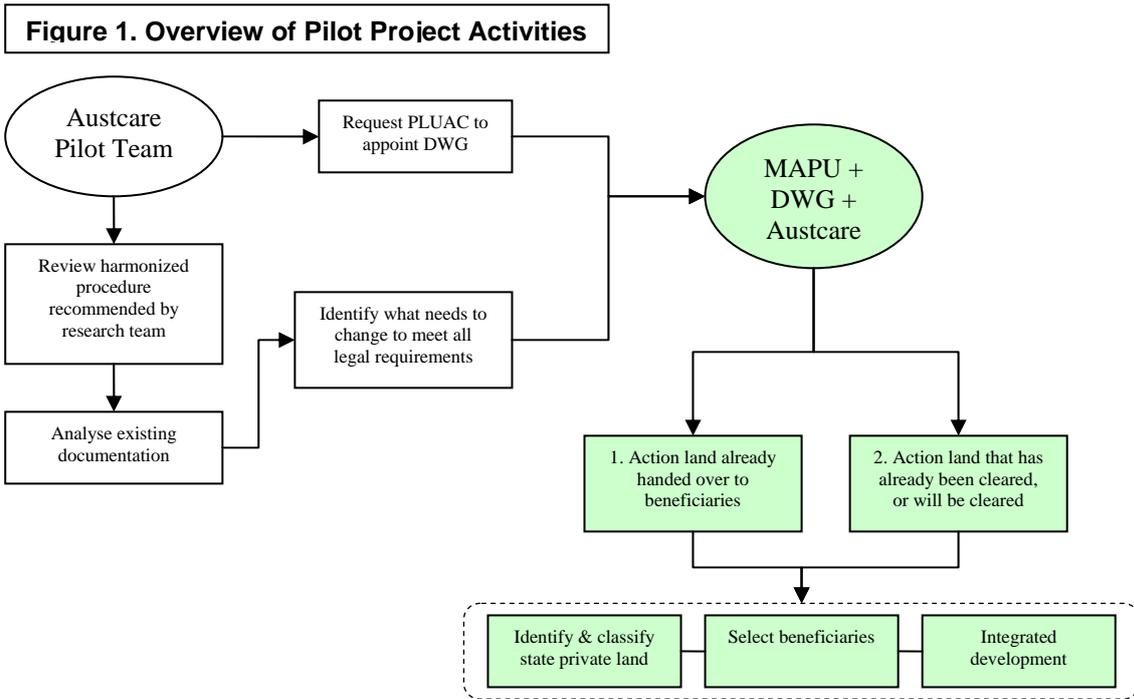
Under Project CA18 Output 3(iii), Austcare plans to undertake a pilot project for official allocation of cleared private state land in BMC to the poor in which the requirements of the Social Land Concession (Sub-decree 19) are incorporated in the MAPU process (Sub-decree 70). This pilot will provide a process for allocation of private state land that will benefit other parts of BMC and other mine affected provinces.

Implementation of this land titling pilot project will require a larger budgetary allocation than the currently available amount under Project CA18 (according to Austcare Country Director). This current budget may not cover all costs such as ongoing consultation with the many stakeholders at the national/provincial/local levels in order to develop the integrated procedure.

Based on discussions at the Field Technical Workshop on 26 January 2007 at Banteay Meanchey province and the National Technical Workshop on 16 February 2007 at Cambodia Mine Action Authority (CMAA) and recommendations from stakeholders, the Consultant team recommends the following:

1. It is recommended that Austcare management continue to advise the CMAA and consult with the MLMUPC/LASED team on the issue of the harmonization of relevant Laws, and to secure their interest in making necessary changes to processes and procedures.
2. It is recommended that the pilot project is conducted as broadly outlined below:
 - a) In consultation and collaboration with PMAC and PLUAC, proceed to develop documentation to legalize the allocation of the already allocated post-clearance land, in selected minefields (for example minefields 7107 and 7247 in the CA18 project area). The approach used should take account of the above recommendations.
 - b) Follow a similar process as for (a), for mined areas that are currently being demined (for example minefields 7122 and 7249), and for minefields that are planned for demining (for example minefield 2008) as part of the CA18 project. The objective here is to allow for land that is currently partly actioned already under the MAPU process to be prepared for legally compliant allocation to beneficiaries when the time comes.

Figure 1 (below) highlights some of the key steps that would need to be done, to action recommendations 2(a) and 2(b) above.



Notes to Figure 1:

- i) The Austcare team should review the proposed harmonizing procedure (see Appendix 1), and identify the existing documents relating to minefields which have already been cleared and allocated to beneficiaries, in order to uncover the gap between the current situation and the legal requirements of Social Land Concession; and develop documentation to bridge this gap. At the same time, they need to encourage PLUAC to appoint a District Working Group (DWG) and activate its committee and technical support units.
- ii) Once they the DWG is functional, it can work with MAPU, CCs and the Austcare team (together called Working Group (WG)) to fine tune the processes, proceed to complete the required documentation and submit to PLUAC for approval. It is advisable that this WG consult with MLMUPC/LASED and CMAA in all processes.
- iii) The process of application to PLUAC should be initiated by the Commune Councils, assisted by the Austcare team.

REFERENCES

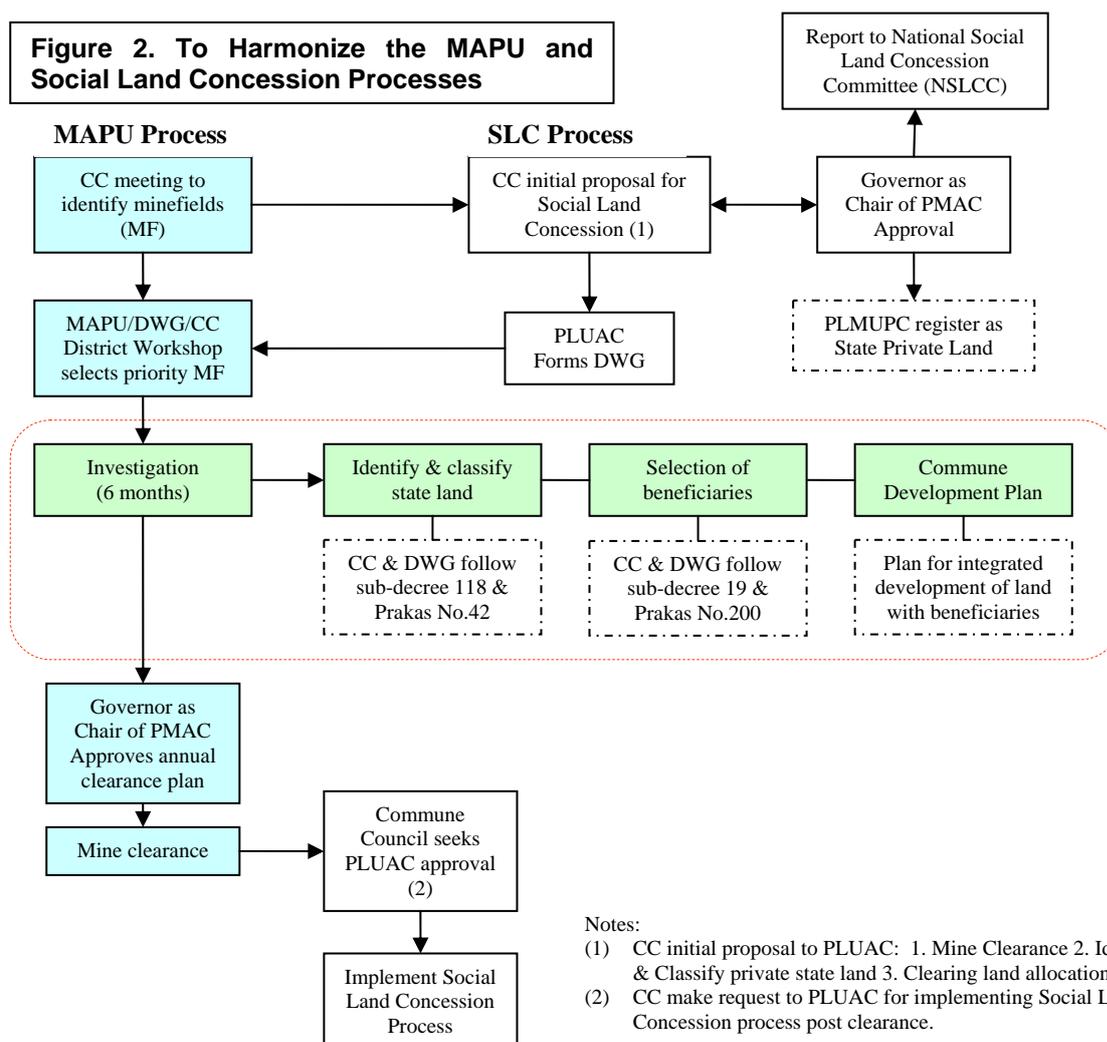
1. Land Law dated 30 August 2001.
2. Sub-decree 19, dated 19 March 2003 on Social Land Concession.
3. Sub-decree 46 dated 31 May 2002 on the Procedures to Establish Cadastral Index Map and Land Register.
4. Sub-decree 48 dated 31 May 2002 on Sporadic Land Registration.
5. MLMUPC/Prakas 200, dated 9 November 2003 on Implementing Social Land Concession.
6. Sub-decree 118 dated 7 October 2005 on State Land Management.
7. MLMUPC/Prakas 42, dated 10 March 2006 on Identification, Mapping and Classification of State Land.
8. Sub-decree 70, dated 20 October 2004 on Socio-Economic Management of Mine Clearance Operations.
9. CMAA/Guideline on Mine Clearance Operation Management for Socio-Economic Development dated 14 December 2006 .
10. AIMAD Land Titling Pilot Project (Austcare project document).
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Appendix 1: Proposed Harmonizing Procedure

Proposed Harmonizing Procedure

The harmonizing of the MAPU and SLC processes is not simple, and will take time to put into practice and train relevant officers. In addition, several pilot projects are currently in progress in Kampong Cham and Kratie provinces, being conducted by by MLMUPC/LASED. As a result of the outcomes of these pilots, the procedures relating to social land concession may be amended in the future. Note that this increases the need for Austcare to collaborate with MLMUPC/LASED to ensure that changes to the SLC procedures can be anticipated, and if necessary, influenced.

The following flowchart showing the proposed harmonizing procedure has been developed with reference to Sub-decree 70, CMAA operation guidelines, Sub-decree 19, Prakas 200, Sub-decree 118, Prakas 42, and the 2001 Land Law. The Field Technical Workshop on 26 January 2006 at Banteay Meanchey province, the National Technical Workshop on 16 February 2007 at CMAA, and analysis of case study situations, including consultation with stakeholders on the harmonizing of the two processes, were also taken into consideration.



Note: The proposed process was not tested in the field in the period of research; the integrated process is intended to be tested as part of a pilot program in Austcare’s CA18 project area.

Field Testing Options

Option 1: Initiate and propose to dedicate all minefields in the village for Social Land Concession.

Option 2: Initiate and propose only selected minefields (those that are to be prioritized for clearance in the village for Social Land Concession).

Option 3: To complete legal allocation of the minefield already cleared and being cleared.

The following steps can be applied to Option1 and Option 2.

Step 1

The Commune Council makes a proposal to the Provincial Land Use and Allocation Committee (PLUAC) regarding (1) mine clearance; (2) identification and classification of private state land; and (3) selection of beneficiaries for all minefields or only selected minefields in the village; when the MAPU conducts commune meetings in January-February. The Commune Council shall seek to identify and classify minefields before the commune meeting.

Step 2

Where the PLUAC agrees to the request, the Commune Council, in consultation with the District Chief requests to the Provincial Governor to appoint a District Working Group (responsible for identification and classification of private state land and selection of beneficiaries) before the MAPU conducts a district workshop in April-May.

Step 3

During the District Integration Workshop, the District Chief shall seek cooperation from all stakeholders to support the DWG. The DWG is to draft a workplan in collaboration with MAPU and development partners.

Step 4

The DWG is to identify and classify all selected minefields as private state land through collaboration with MAPU and development partners during the MAPU and demining operators' investigations of the minefields during May-October. If the task is not completed, the DWG shall continue to work toward identifying and classifying all selected minefields in the village in accordance with Sub-decree 118 and Prakas no. 42.

Step 5

The DWG and MAPU shall seek to qualify beneficiaries according to the instructions in Sub-decree 19 and Prakas no. 200 and the integrated MAPU process.

Step 6

The DWG, with assistance from MAPU, demining operators and development partners, will prepare a package of social land concession plans to submit to PLUAC for approval during the Provincial Workshop (PMAC meeting).

Step 7

Where PMAC/PLUAC approve the selected minefield list for social land concession during the Provincial Workshop, the selected minefields on the list shall be registered as State Private Land. If the selected minefields were not approved to be registered as State Private Land, the DWG should consult with PLUAC and stakeholders after clearance and work toward changing their status.

Step 8

Commune Councils are to submit post-clearance social land concession plans to PLUAC before allocation of cleared land. PLUAC will forward these plans on to NSLCC for information purposes.

Appendix 2: Membership of Committees relating to Sub-decrees 19 and 70

Committee and Technical Support Team Sub-decree 70

Committee and Technical Support Team Sub-decree 19

1. National Authority (CMAA)	1. NSLCC.
2. PMAC	2. PLUAC
3. MAPU	3. Technical Support Team (TST)
4. District Working Group (DWG) Commune Council (CC)	4. District Working Group (DWG) Commune Council (CC)

Provincial Committees

	Membership	PMAC	PLUAC
1	Provincial-Municipal Governor or Deputy Governor Chairman	x	x
2	Director, Department of Land Management, Urban Planning, Construction and Cadastre, Vice Chairman.	x	x
3	Director, Department of Rural Development, Vice Chairman	x	x
4	Director, Department of Planning, Vice Chairman	x	x
5	Representative of the Secretariat General of the CMAA Member	x	
6	Commander of the Military Sub-region, or the Representative of the Regional/Division Commander Member	x	x
7	Commissioner, Provincial Police Member	x	
8	Commander, Provincial Military Police Member	x	
9	Director, Department of Agriculture, Forestry and Fisheries Member	x	x
10	Director, Department of Environment Member	x	x
11	Director, Department of Women Affairs Member	x	x
12	Director, Department of Labour and Vocational Training Member	x	
13	Director, Department of Social Affairs and Youth Rehabilitation Member	x	x
14	Director, Department of Public Works and Transportation Member	x	
15	Director, Department of Tourism Member	x	
16	Director, Department of Culture and Fine Arts Member	x	
17	Director, Department of Industry, Energy and Mine Member	x	
18	Director, Department of Information Member	x	
19	Director, Department of Religion Affairs Member	x	
20	Director, Department of Water Resource and Meteorology Member	x	x
21	Director, Department of Education, Youth and Sport Member	x	
22	Chief from relevant District or Khan Member	x	
23	Provincial Office of Local Administration Member	x	
24	Mine Clearance Operators operated in that Province-Municipal Member	x	
25	Representative from International Organizations Observer	x	
26	Director, Provincial/Municipal Department of Economy and Finance Member		x