

KINGDOM OF CAMBODIA

Nation Religion King

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Royal Government of Cambodia
Circular No. .02.SR

**CIRCULAR
ON
MEASURES AGAINST ILLEGAL HOLDING OF STATE LAND**

So far most of State land, both State public land and State private land, have not been identified, mapped with clear boundary and demarcation, classified and registered in the Land Register yet; that State authority of all levels are confronting with difficulties in the land management such as preventing State land illegal encroachment.

Occupation of land in a form of possession is ended on 30 August 2001; while the State has not yet carried out large scale social land concession for poor people and disadvantaged group to meet their increasing need of land due to the increase of newly married couples, soldiers demobilization, land loss due to natural disaster etc causing anarchical illegal state land taking. At the same time opportunists, land speculators and some powerful persons are taking illegal holding of State land through various means.

Confronting with this situation and in accordance with the Constitution of the Kingdom of Cambodia and existing Laws and regulations in relation to land such as the Land Law, Forestry Law, Fishery Law, Law on Environmental Protection and Natural Resource Management, Preah Reach Kret of 1-Nov-1993 on Protection of Natural Areas and Preah Reach Kret NS/RKT/0401/070 of 10-April-2001 on Creation and Management of Tonle Sab Bio-Diversity Conservation, the Royal Government is of opinion that in solving the issues of illegal State land holding by private persons, besides law enforcement it is also required to address each case of infringement separately and some compromises are needed for solutions, especially to the real poor families and to the land that are being truly exploited. However, for the economic land concessions, in a case that the concessionaire is not developing the land in accordance with the contract or is holding a total land concession in excess of the ceiling limit under the Land Law, withdrawal or reduction shall be made in accordance with the procedures specified in the Sub-Decree on Economic Land Concessions.

To contribute to the policies of poverty reduction and socio-economic development of the Royal Government of Cambodia, through enabling security of land holding, granting of social land concession, increasing revenue from the use of state land, prevention and reduction of state land encroachment, especially forest land, and to ensure sustainable protection of natural resources and environment, the Royal Government issues the measures and procedure for reclaiming state land under illegal holding as following:

1. The following is considered as illegal holding of state land:

- any entering into possession of state land after the Land Law 2001 come into force;
- any possession of state land that has already been determined as state public land;
- any continuation of state land holding after the land use permit or contract expiration date and the holder fails to secure proper extension in accordance with existing procedure;
- any state land holding in excess of or on wrong location, as specified in the land use permit or contract;
- any transfer of state land use rights contrary to the terms specified in the permit or contract;
- any illegal transformation of state land holding into private ownership such as through fraud in acquisition of ownership certificate on economic concession land or on land with permission limited to use or cultivation or exploitation, or transformation of state land that has been determined as state public land;

2. For the land that has been registered in the Land Register as State Land

2.1- The State Land Trustee Authority shall issue a Letter to Reclaim State Land with a clear specification of the land parcel number, location of the land parcel and map showing the land parcel location, the name of the current land occupant, period for response or complaint by any person having interest in the land parcel (using the form # 1).

2.2- The Letter to Reclaim State Land must be publicly posted at the Commune/ Sangkat hall, on the land which is the subject of Reclaim and must be delivered to the land holder if s/he is residing in the commune/sangkat. The State Land Trustee Authority must use all means to inform the land holder if the land holder is not residing in the commune/sangkat of land location.

2.3- In case the State Land Trustee Authority cannot find out who is the land holder, it shall issue a Letter to Reclaim State Land without naming the land holder and publicly post it at the commune/sangkat where the land located and on the land which is the subject of Reclaim.

2.4- The State Land Trustee Authority shall provide 30 days, from the date of receiving or posting the Letter to Reclaim State land, to the land holder to response or to any person having an interest in the land parcel to complaint to the authority issuing the letter.

2.5- Within such period the land holder shall response by showing: agreement to unconditionally return the land to the State; or agreement to return the land to the State with specific conditions; or refusal to return and claiming rights to the land (using form # 2) and attach all available relevant documents and evidences.

2.6- When the 30 days period determined above has lapsed, if there is a response showing refusal to unconditionally return the land to the State or any complaint is received, the Trustee Authority shall make a written request to the chief of commune/sangkat and district/khan governor for collaboration and participation of territorial authorities in discussion and coordination meeting to seek solution based on the policy set forth in point 5 and 6 with the illegal state land holder or complainant. The request letter shall specify the date, time and place of the meeting and be attached with a copy of the response or complaint.

2.7- If the meeting with the illegal state land holder or the complainant fails to reach an acceptable solution for both sides, the State Land Trustee Authority who is the competent authority shall issue an order against the illegal state land holder to remove, repair any damage to the land and leave the land within 45 days (using the form #3).

2.8- If the illegal state land holder fails to leave as per deadline, the State Land Trustee Authority shall file a case to the court within 15 days requesting a judicial order on eviction measure and shall attach the document showing the land belongs to the state and relevant documents including the result of the discussion and coordination meeting for the court's consideration.

2.9- If the illegal state land holder has leaved the land, but fails to repair any damage to the land, the State Land Trustee Authority may file a case to the court demanding that a repair or compensation for the damage to the state land be made.

2.10- After the land holder, voluntarily or upon successful enforcement of eviction measure, leaved the land, any existing land use plan must be implemented or the process for state land classification and/or land use planning shall be undertaken if it has not yet been done.

2.11- For the state land which could not identify the illegal occupant, exceeding 30 days from the date of public notice is served, the trustee authority has the right to automatically confiscate that land.

Those illegal occupants that have received letter to reclaim state land but fail to response neither contest, exceeding 30 days starting from the date of reception, the trustee authority has the right to automatically confiscate that land.

3. For State land listed in the State Properties Inventory or State land already identified and mapped and consensus agreement on trustee mandate has been reached:

3.1- The State Land Trustee Authority shall issue a Letter to Reclaim State Land specifying the location of the land parcel, map showing the land parcel location, approximate size of the land parcel, GPS information related to the approximate boundary of the land parcel, the name of the current land holder, time period for response or complaint by any person having an interest in the land parcel (using the form #1). The State Land Trustee Authority shall also perform the duties as stipulated in point 2.2, 2.3, 2.4, 2.5, 2.6 and 2.11.

3.2- After the meeting with the land holder or complainant seeking a solution acceptable to both parties (minutes of the meeting must be taken) the State Land Trustee Authority shall report and recommend to the Provincial/Municipal State Land Management Committee and send a copy of the report to the commune/sangkat council and the District/Khan governor who is the chief of the District/Khan State Land Working Group.

3.3- In case of disagreeing on the content of the report produced by the State Land Trustee Authority, the commune/sangkat council or the district/khan governor has the right to make their written dissenting opinion attaching with the report or may directly send to the Provincial/Municipal State Land Management Committee.

3.4- After receiving the report, the chief of the Provincial/Municipal State Land Management Committee may, as necessary, assign official(s) to investigate or conduct further discussion with the land holder or complainant at the site and shall convene a meeting of the Provincial/Municipal State Land Management Committee to review and consider the report as well as comments received to seek a consensus agreement based on the policy provided in point 5 and 6 as well as solution for each specific land holder or complainant.

3.5- After finishing the review and consideration meeting for the case (minutes of the meeting must be taken) the chief of the Provincial/Municipal State Land Management Committee shall report, on each land holder and complainants attaching their names and the size relating to the land which is occupied or claimed along with the comments of the Provincial State Land Management Committee toward each claimant, to National Authority for Land Conflict Resolution seeking its comments.

3.6- After receiving decision from the National Authority for Land Conflict Resolution, the provincial/municipal governor shall issue a decision Deika specifying the name of the land holder or complainant, the location and size of each concerned land and open for objection complaint of 60 days from the date of issuance of the decision.

3.7- In case the land holder agrees with the decision to unconditionally return the land to the state, the State Land Trustee Authority shall apply to the district/khan Office of Land Management, Urban Planning, Construction and Geography for registration of the land.

3.8- In the registration process, if there is any dispute concerning rights to the land with any private individual or collective body other than those named in the list as referred to in point 3.5, the dispute shall be submitted to the National Cadastral Commission for decision.

3.9- After having been registered as state land, if the illegal land holder continues the occupation, the State Land Trustee Authority who is the competent authority shall issue an Order against the illegal land holder to remove, repair any damage and leave the land within 45 days (using the form # 3).

3.10- If the illegal land holder fails to leave by the deadline, the State Land Trustee Authority shall file a case to the court for legal action to be taken.

3.11- If the illegal occupant agree to leave and vacate the land but fail to repair damages caused to the land, then the procedures rule out in section 2.9 shall be applied. After the occupants leave voluntarily or by legal measure, the trustee authority shall act in accordance with section 2.10.

4. For state land that is neither listed in the State properties inventory nor identified and mapped or state land that has been identified and mapped but trustee mandate has not been agreed upon or unknown:

4.1. Any State land parcel that is not yet identified, mapped, neither included in the state inventory list; the Provincial State Land Management Committee shall collect information concerning the land parcel such as location, size and approximate boundary and the current land holder. Afterward, the provincial/municipal governor shall bear the duties of competent authority in issuing a Letter to Reclaim State Land. The procedure set forth in section 3.1 through 3.7 shall be applied, thereafter; the State Land Trustee Authority becomes the competent authority and takes charge of carrying out the remaining steps and procedures of section 3.

4.2. Any State land parcel that is already identified, mapped, but trustee authority is not yet known nor agreed and it is not yet included in the state inventory list; the Provincial State Land Management Committee shall collect information concerning the land parcel such as location, size and approximate boundary and the current land holder. Afterward, the provincial/municipal governor shall bear the duties of competent authority in issuing a Letter to Reclaim State Land. The procedure set forth in section 3.1 through 3.7 shall be applied, thereafter; the State Land Trustee Authority becomes the competent authority and takes charge of carrying out the remaining steps and procedures of section 3.

5. All types of forest land that been objected or confiscated in accordance with Governmental Order No. 01 dated May 10, 2006; on suppression of clearance of all types of State forest land to be illegally owned.

5.1. After receiving the complaint against the objection Deika and confiscation by Order No. 01 dated May 10, 2006; provincial / municipal authority shall conciliate with the complainant, the minute of conciliation shall be made, in order to preliminarily find a solution. The conciliation shall be base on the forest map of 2002 and the policy set forth in section 6 and 7 of this Circular, especially the actual situation on the land.

5.2. In case that the complainant does not agree with the conciliation, the provincial / municipal authority shall issue a decision Deika objecting the complaint following the conciliation date.

5.3. In case that the complainant does not agree with the objection Deika of the provincial/municipal authority over his/her complaint, Ministry of Agriculture, Forestry and Fishery and/or Ministry of Environment shall cooperate with Attorney

General of the Royal Government lodge a complaint against respective complainant to the court seeking for legal measure to be taken.

5.4. The forest land that the complainant agrees with the objection Deika of the provincial/municipal authority over his/her complaint or there is no complaint was made, Ministry of Agriculture, Forestry and Fishery and/or Ministry of Environment shall confiscate that forest land and it automatically become a State property.

5.5. Provincial / Municipal authority shall, monthly, report the conciliation over the complaints as mention above to the National Authority for Land Conflict Resolution so that the National Authority could report further to the Head of the Government. If necessary, National Authority would inspect the conciliation if it found any irregularities.

5.6. All types of forest land that have been confiscated as mention in section 5.3 and 5.4, Ministry of Agriculture, Forestry and Fishery and/or Ministry of Environment shall propose to the Ministry of Land Management Urban Planning and Construction for registration in the registrar index map in accordance with the procedures in place.

5.7. Provincial / Municipal Governor shall urgently continue to issue objection Deika and confiscate all types of forest land that have been illegally occupied.

6. For illegal state land holder(s):

6.1- Generally, the illegal state land holders, especially the land speculators, are not entitled for compensation and may subject to penalty as stipulated in the Land Law 2001.

6.2- For illegal state land holders who are poor families and landless or lack of land and disadvantaged person, they are not entitled for compensation but may receive preferential treatment in obtaining appropriate size of land for making their livelihood based on their actual situation.

6.3- In case of involving indigenous people whose traditional authority asserted that the land parcel or part of the land parcel which is the subject of reclaim is under a collective use in accordance with their traditional practice, in such case land reclaim must be postponed until the land is registered as state land (not land of an indigenous community). However, for individual holding or claiming of right to the land, the process of state land reclaim shall be processed normally as in the case of general illegal occupation of State land too.

7. For land withdrawn or subjected to withdrawal:

7.1- A land subject to withdrawal or has been withdrawn from illegal holder and is part of state private land may be a subject of sale, lease, gift, usufruct (right to use and enjoy the fruit from the land for a life time), social land concessions, economic land concessions, or use permit in other lawful manners. A decision on

specific option must be made based on the coordination of the territorial authority between the State Land Trustee Authority and the land holder or complainant and based on the land use plan.

7.2- A land subject to withdrawal or has been withdrawn from illegal holder and is part of state public land may be subject to:

- Short term lease with renewable,
- Usufruct,
- Temporary and precarious revocable use permit,
- Community agreements, other forms of agreement or
- Request for reclassification.

However, such state land cannot be a subject of sale, long term lease, land concession or grant of ownership.

8. In case the competent authority cannot proof regarding the timing of possession starting after the Land Law 2001 become effective or regarding the possession abandonment and there is a stringent struggle of the land holder in claiming the land, the land may be granted to the claimant, if :

- It has no public interest neither public interest characteristics,
- It is not yet registered as state land, and
- It is truly exploited and meets other legal requirements for lawful possession.

After receiving this circular, all ministries, institutions and territorial authorities of all levels, the Provincial/Municipal State Land Management Committee shall effectively implement this circular from the date of signature.

Phnom Penh, 26 February, 2007

**Prime Minister
Hun Sen**

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- Ministry of Royal Palace
- General Secretariat of the Senate
- General Secretariat of the National Assembly
- Cabinet of the Prime Minister
- Cabinet of the Deputy Prime Ministers
- General Secretary of the Royal Government
- All ministries and institutions
- All Provincial/Municipal Halls
- All District/Khan Halls
- All Commune/Sangkat Halls
- File and chronology

Form # 1

Kingdom of Cambodia
Nation – Religion – King
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(Name of the Authority issuing the Letter)
No.:

Letter to Reclaim State Land Under Illegal Holding

- Referring to the Circular No., dated, 2006 of the Royal Government of Cambodia on Illegal State Land Holding.
- Referring to the result of the identification, mapping and classification of State land in the commune/sangkat, district/khan, province/municipality, which was completed on
- Referring to the Land Register No. on page
or referring to the State Properties Inventory No. on page
or referring to

We would like to inform Mr./Mrs. (full name, I.D/Family Certificate No., and current address)
..... as well as every member of the family and any person having an interest in the land parcel located as in point 1 below that:

Land Parcel No. (if any), located at commune /sangkat, district/khan, province/municipality (please refer to the attached land parcel location map) has been declared/asserted or registered as State land.

- 1- It is assumed that you or your family members have illegal holding of the above land parcel.
- 2- In the name of I hereby reveal the intent to reclaim the State land under illegal holding and place as a subject of land use and allocation in accordance with the existing procedure.
- 3- You have an obligation to respond to this reclaim of State land within 30 days from the date of receiving this Letter. In responding to this Letter (use the form #2), you must specify agreement to return the land without or with any condition or refusal to return and claiming rights to the land that must be specified and attached with available relevant evidence and documents.
- 4- If you fail to response, I will issue an Order against you to leave the land within specified period or may file a case to the court requesting order on measure for eviction.

Therefore would you please be informed and respond to us within the determined deadline and to the following address (address of the Letter issuer)
.....

Note: If you or any member of your family would like to know the detail of the circular on illegal state land holding, you may request for a review at the commune/sangkat hall, and for further information you may inquire with our officer whose name is at (office of the Notice issuer)..... or by telephone

....., day/month/200.....

C.C-

Signature and Seal

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"for information"
- Commune/sangkat council
"for posting at the commune/sangkat hall"
- file-chronology

Form #2:

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Response to the State Land Reclaim

- Referring to the Letter No., dated which has been received or posted on

I, (Name)....., holding I.D/Family certificate No.
....., current address,
commune/sangkat,
..... district/kahn, province/municipality, telephone
No., hereby specify that:

I and/or my family member(s) is not holding the land parcel with location as described in the Letter and/or the land parcel location map attached with the Letter, thus I am of opinion that I have no involvement nor any interest in the land parcel.

I and/or my family member(s) previously used to hold part of or the entire land parcel with location as described in the Letter and/or the land parcel location map attached with the Letter, however, I and/or my family member(s) has already sold, transferred, donated or abandoned the land, thus I am of opinion that I have no involvement nor any interest in the land parcel.

I and/or my family member(s) is holding the land parcel with location as described in the Letter and/or the land parcel location map attached with the Letter, and I and/or my family member(s):

- agree to return the land to state without any condition in observation of the deadline set for leaving the land;
- agree to return the land to state with the following conditions:

.....
.....
.....
.....

Refuse to return and hereby claim rights to the land (specify the claiming rights)

.....
.....
.....
.....

.....A copy of the relevant evidence/documents herewith attached includes (specify all the attached evidence/documents)

.....

....., day/ month / 200

Signature/Thumb-print

Name:

Form # 3:

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.....
(Name of the Trustee Authority)
No.:

Order to Leave the State Land

- Referring to the Circular No., dated, 2006 of the Royal Government of Cambodia on Illegal State Land Holding.
- Referring to the Letter to Reclaim State land under illegal holding No., dated
- Referring to the response of the state land holder, dated; and
- Referring to the decision or the judicial judgment No., dated of
-
- Referring to the Land Register No. on page

Decides:

Withdraw the land parcel No. (if any), located at,
 commune/sangkat,
 district/khan, province/municipality (please refer to the attached land parcel location map) to be a state land and order the land holder, Name as well as his/her family member(s) and any person having any interest in the land stop all use activities, disassemble and taking away and/or leaving the land by as the deadline.

Note: In case of failure to stop any land use activity without legal permit or to disassemble and take away and/or to leave by the deadline, we will immediately file a case to the court requesting an order on eviction measure.

We believe that you and your family as well as any person having an interest in the land will pay respect to this Declaration with the spirit of high responsibility and respect of laws.

....., day/ month / 200

c.c-

Signature and Seal

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“for information”

- Commune/sangkat council (at least 3 copies)
“for posting at the commune/sangkat hall”

- file-chronology

The Land Law 2001 provides:

Article 18: The following shall be null and void and cannot be made legal (cannot be regularized) in any form whatsoever:

Entering into possession of public properties of the State and public legal entities and any transformation of private properties of the State into ownership right that was not made pursuant to the legal formalities and procedures that has been stipulated prior to that time, irrespective of the date of creation of possession or transformation;

Any transformation of a land concession, into a right of ownership, regardless of whether the transformation existed before this law come into effect, except concessions that are in response to social purposes;

Any land concession which fails to comply with the provisions of Chapter 5;

Any entering into possession of properties in the private property of the State, through any means, that occurs after this law come into effect.

Article 43: In no case can the public property of the State be the subject of acquisition of ownership.

The situation of an occupant of State public property remains precarious and illegal if such occupation was not authorized in the manner determined by this law.

An illegal occupant shall be forced to vacate the premises immediately and shall be punished in accordance with Article 259 of this law.

An illegal occupant is not entitled to any indemnity for any works and improvement carried out on the immovable property.

Article 16: State public property is inalienable and ownership of those properties is not subject to prescription. ...

State public property may, however, be the subject of authorization to occupy or use that are temporary, precarious and revocable in the case the various fee/tax obligations are not complied with except as permitted in Chapter 3 of this law. Such authorization cannot be transformed into ownership or right in rem for the benefit of the holder.

When State public properties lose their public interest use, they can be listed as private properties of the State by law on transferring State public property into State private property.

Article 44: A title of possession to immovable property, which is the public property of the State or public legal entities, issued by competent authorities to a private person is null and void.

Article 259: In the case of a person was in possession of State public property before this law comes into force and has documents proving and attesting clearly that he bought the property from another person, he can request the competent authority to implement the legal rules against the person who illegally sold public property of the State and in order to recover his damages caused by such act. Regardless of the circumstances, the aggrieved party has not right to continue his possession of State public property.

Article 8: A foreigner who falsifies national identity card to become an owner of land in Cambodia shall be punished as determined under Article 251 of this law. Any property bought under these circumstances will be seized as state property without compensation from the State.