

nonofficial translation:

KINGDOM OF CAMBODIA
Nation-Religion-King

Royal Government of Cambodia
No.: 05 ONKR-BK

SUB-DECREE ON
THE FOREST CONCESSION MANAGEMENT

THE ROYAL GOVERNMENT

Having seen the Constitution of the Kingdom of Cambodia (1993);

Having seen the Royal Decree No. NS/RKT/1198/72 dated November 30, 1998 on the formation of the Royal Government of Cambodia;

Having seen the Law on the Organization and Functioning of the Council of Ministers promulgated by Kram 02 NS 94 dated July 20, 1994;

Having seen the Law on the Establishment of the Ministry of Agriculture, Forestry & Fishery promulgated by Kram NS/RKM/0196/13 dated January 24, 1996;

Having seen the Law - Decree on Forest Management No. 35 Kr-C Dated June 25, 1988;

Having seen the Law on Environmental Protection and Natural Resource Management promulgated by Kram NS-KRM 1296-36 dated December 24, 1996;

Having seen the Law on Investment of the Kingdom of Cambodia promulgated by Kram 03 NS 94 dated August 4, 1994;

Declaration No. 01, dated January 25, 1999 on Measure of forest Management and the Elimination of Forest Illegal Activities.

Having seen the Sub-Decree on the processing of Environmental Impact Assessment No. 72 ONKR-BK Dated August 11, 1999;

Having approved by the plenary session dated February 04, 1999 of the Council of Ministers.

IT IS HEREBY DECIDED AND ORDERED

CHAPTER I
GENERAL PROVISIONS

ARTICLE 1

- 1.1 This Sub-Decree applies to all forest harvesting activities, investment agreements, and forest concession approved by the RGC.

ARTICLE 2

The purposes of this Sub-Decree are to:

- 2.1 Develop a forest concession planning, implementation and control system which will lead to balanced, sustainable and technically competent management of production forests in the Kingdom of Cambodia;
- 2.2 Ensure that forest concession tenure are in the public interest and meet long-term integrated resource management objectives, and that the process by which concessions are granted and managed is fair and transparent;
- 2.3 Ensure that concession forest management regimes conserve and protect natural biodiversity, ecosystem function and important forest services such as soil conservation and watershed regulation;
- 2.4 Ensure full communication, cooperation and coordination in concession management between all Ministries and Agencies whose responsibilities and mandates may be impacted by the establishment and management of concessions;
- 2.5 Protect and maintain rights of access to those forest resources occurring on concession areas that are of economic, subsistence and spiritual value to Local communities;
- 2.6 Ensure regular consultation with, and participation by local communities and other relevant stakeholders in the development of concession management plans and the monitoring of operational activities over the life of the concession; and
- 2.7 Establish a competent forest management planning and control system that will provide a context for and encouragement to applications by the Cambodian Timber Industry for International Forest Management Certification.

ARTICLE 3

The Ministry of Agriculture Forestry and Fisheries (Department of Forestry and Wildlife) has the whole function to follow up control, monitoring and manage all activities of the forest harvesting for forest sustainable management.

The meaning of technical terms where used in the sub-decree will be mentioned in the appendix of this Sub-Decree.

CHAPTER 2

FOREST CONCESSION APPLICATION AND APPROVAL

ARTICLE 4

- 4.1 Upon recommendation of the Ministry of Forestry and Fisheries (Department of Forestry and Wildlife), following consultation with all relevant institutions and local communities. The Council of Minister can decide to put the vacant forest areas to become a forest concession and open for public competitive bidding. Application for forest concession was built up must coincide with the national and provincial development goals and existing local land used plans.
- 4.2 4.2 Tenders will only be accepted from commercial entities that are included in the name list of " Pre-Selection " kept and arranged by the Ministry of Agriculture Forestry and Fisheries (Department of Forestry and Wildlife). Only those commercial entities who been pre-selected and complied with the conditions and proof below are allowed to apply:
- (a) Demonstrated competence in all aspects of forest management including planning, harvesting, forest regeneration, stand management, environmental protection and community relations;
 - (b) A good compliance record, with an absence of serious technical violations in all jurisdictions in which it has been engaged in forestry operations;
 - (c) Adequate financial and professional staff resources to carry out effective forest operations.
- 4.3 Tendering documents prepared by MAFF relating to the invitation to bid shall:
- (a) Define the criteria of selection by a practical book for the concession bidding;
 - (b) Identify the extent of forest boundary allocated for the purpose bidding as forest concession;
 - (c) Identify the forest resources available for harvesting and the prohibited or specially protected areas for environmental and social/cultural values with the use of satellite or aerial remote sensing and rapid rural appraisals;
 - (d) Describe the management goals, objectives, requirements and applications of the concessionaires and the RGC's expectations from the concessionaire: including, forest planning, forest protection and management, environmental protection and conservation, consultation and cooperation with local communities, implementation of customary rights in the territory of the concession and its vicinity,

infrastructure development, recruitment and employment (particularly of local people), human resource development, procurement of goods and services, monitoring and evaluation, permits and other regulatory controls, and penalties for non-compliance;

- (e) Contain a copy of the Forest Concession Agreement (Section 5.1 below);
- (f) Define the criteria on which bids will be evaluated by RGC.

4.4 Where a forest concession is offered for public competitive bidding under this sub-decree, the tendering process shall be defined by Prakas of the Ministry of Agriculture Forestry and Fisheries (MAFF) and include the following considerations:

- (a) The bidding procedure must be administered by a joint committee nominated by the RGC;
- (b) Public notice of the time and place at which the bids must be tendered shall be given at least 90 days in advance on radio, television, and at least one national newspaper;
- (c) The public notice shall define the form and content of the bidding submissions; such documents to comprise a financial bid and a statement of commitment to fulfill the specifications and expectations referred to in Article 4 Section 4.3 (c) and (d) above;
- (d) All tenders shall pay a deposit to the national treasury, thru DFW upon submission of their bid, the amount of such deposit to be set by the joint committee referred to in Section 5.5. The Committee will meet first to decide on the amount of the deposit and such deposit should commensurate to the concession;
- (e) The public notice described in (b) above shall specify the time and place where bids are to be opened and officially invite bidders and other interested individuals to be present at the opening of the bids;
- (f) Prior to the opening of the bids, and upon the recommendation of the MAFF, the Council of Minister shall fix a reserve price, which may or may not be disclosed, for the forest concession on offer.
- (g) Place where full documentation relating to the process of tendering for the concession may be consulted and obtained, and the fees payable, the date and time where a tender for a concession must be submitted;
- (h) At the time and place advertised according to paragraph 4.4 (f) above, the Minister of MAFF shall open all the financial bids received and shall disclose to all persons present the financial bids offered by each bidder. The Joint Committee will classify the financial bids in a final list to be sent to the MAFF.

- (i) Following the disclosure of the financial bids, the Minister of Agriculture, Forestry & Fisheries shall announce the tentative selection of the successful bidder until approval has been made from the Royal Government.
- (j) The bid submissions referred to in Section 4.4 (c) here above shall be made freely available for public review for a period of six weeks after identification of the approved bidder, during which time any concerned parties in the bidding processes may appeal the bidding decision to the Royal Government of Cambodia;
- (k) At the expiration of the six weeks appeal period and upon the decision by the Royal Government of Cambodia, the successful bidder shall be confirmed;
- (l) Upon confirmation of the successful bidder, deposits referred to in Section 4.4 (d) above shall be returned to the unsuccessful bidders;
- (m) If the successful bidder fail to sign the Forest Concession Agreement or fails to pay the additional amount to reach their bidding price within thirty (30) days of the confirmation decision referred to in (k) above, the deposit shall be forfeited in favor to the RGC.

ARTICLE 5

- 5.1 The new forest concession shall be governed by the new forest concession agreement sample which will be organized by the Ministry of Agriculture Forestry and Fisheries (DFW). For the existing forest concession it shall be also governed by the new concession agreement with approval by two parties through negotiation or when the existing forest concession agreement was expired.
- 5.2 The forest concession agreement shall follow the procedures identified by the Ministry of Agriculture Forestry & Fisheries, and shall conformed to:
 - (a) Date and duration of forest concession must be provided;
 - (b) Identified forest area shall be provided as a forest concession;
 - (c) Define the extent of the forest areas, forest type and forest product to be allowed for harvesting,
 - (d) The needs for the concessionaire to prepare all documents, Planing reports, research projects, data and information relative to effective forest resource management and protection,
 - (e) Identify other necessary condition to ensure sustainable forest concession management,

- 5.3 While it remain in force the Forest Concession Agreement shall confer exclusive rights to carry on:
- (a) Harvesting and management operations in the concession area in respect of any forest products specified in the agreement; and
 - (b) Such other operation and execute other works as may be approved as necessary for the harvesting and management activities referred to in (a).
- 5.4 The termination of the Forest Concession Agreement may be revoked due to non-compliance of its terms and conditions or allowed to resume before expiration by the RGC. The forest concession agreement with none or incomplete compliance as implemented under the law, the forest concession shall be revoked or cancelled, and reverted to natural forest protected areas. Said forest area shall be re-group and cannot be awarded to other companies.
- 5.5 All concessions, the Ministry of Agriculture Forestry and Fisheries (DFW) in collaboration with the competent governor and local authorities, shall establish permanent Community Consultation Committees (CCC's). These will serve as a focal point for discussing and consultation on all issues of joint concern between the Concessionaire and communities inside and within the vicinity of the concession. The Consultation Committee Members shall be elected by the local communities, drawn either from chairpersons of Village Development Committees (where this exist) or from other elected forms of traditional social organization.
- 5.6 The Ministry of Agriculture Forestry and Fisheries (DFW) may grant licenses or permits to parties other than the Concessionaire to collect other non-forest product inside the forest concession area. Provided that such collections do not conflict with the rights and responsibilities of the concessionaires as mandated in the Forest Concession Agreement. In granting permits and licenses for the collection of those non-forest product shall be granted for a period not exceeding one year and may be renewed upon application. Those licenses or permits to be issued for collection of non-forest product for business purposes and does not include the customary rights due to traditional existence and personal use by local people.
- 5.7 All concession documents shall be made available to pertinent government institution and related parties as requested.
- 5.8 The management of other natural resources, produce inside forest concession areas shall be governed by the law of the state.

CHAPTER 3

FOREST CONCESSION PLANNING AND MANAGEMENT

ARTICLE 6

- 6.1 For an effective forest management operations and activities, it is a requirement to develop a detailed and workable Plans in accordance with the degree, scope and schedule. The forest concessions therefor shall prepare and arrange their whole area into management area, annual coupe operation and harvesting block.
- 6.2 Every establishment of forest concession planing are defined by as classification below:
- (a) Develop a management plan as terms-of-reference in a multi- stakeholder forum, defining forest management, social, environmental and financial planning criteria;
 - (b) Delineate forest zones, based on participatory rural appraisals and broad forest resource and environmental inventory and mapping, to define:
 - Non-operable areas (bio-diversity reserves, buffer zones and corridors, watershed protection areas, riparian reserves, fragile areas, critical degraded areas, and community forest areas); and
 - The net operable forest.
 - (c) Prepare a medium-term Concession Management Plan for the operable forest based on a management-level inventory, which prescribes:
 - Appropriate silvicultural systems and harvesting techniques for different forest and terrain types, based on a detailed assessment of natural disturbance regimes;
 - A medium and long-term sustained yield, derived both from growth and yield information and from cutting constraints designed to maintain forest composition, structure and ecological function;
 - Environmental and social impact management and monitoring programs;
 - On-going community consultation and participation programs and community agreements; and
 - Monitoring and evaluation systems.
 - (d) Prepare annual operational plans at the coupe and block levels guided by "Codes of Practice" prescribing:-
 - Harvesting methods and equipment;
 - Timber volumes to be removed;
 - Log marking and tracking procedures,

- Location and design of forest access;
- Regeneration and stand-tending activities;
- Site-specific environmental and cultural resource protection,
- Annual community consultation.

ARTICLE 7

7.1 In the development, preparation and implementation of the Forest Concession Management Plans, the Concessionaires are required to apply the following Cambodian Forest Management Code of Practice at all various levels of Forest Concession Management Planning. No any plan shall be approved for non-compliance to the principle of forest management code of practice.

7.2 The Forest management Codes of Practice will served as a guide for the development of forest concession management plan as referred to article 6 as stated above are the following:

- (a) Guidelines for Forest Concession Management Planning;
- (b) Inventories in the Forest Management Cycle;
- (c) Bio-diversity Conservation Guidelines for the Managed Forest;
- (d) Social Forestry Guidelines for Forest Concession;
- (e) Timber Theft Management Guidelines;
- (f) The Cambodian Forest Harvesting Codes of Practice;
- (g) Construction Guidelines of Forest Engineering Works;
- (h) EIA guidelines for Forest Concession Management; and
- (i) Guidelines for Special Management areas.

7.3 The MAFF (DFW) shall develop and notify any other guidelines and Codes of Practice, as deem necessary such as : forest sivilculture, forest improvement, forest residue growing stock management, wildlife habitat management, water course protection and forest monitoring.

ARTICLE 8

Upon review and approval by MAFF on these plans, the Department of Forestry and Wildlife shall issue a cutting permit and charge book to the concessionaire as an additional condition to inter annual coupe for forest harvesting. These plans shall form part of the main body of permit with conditions and shall serve as the basis for the assessment of forest regulation compliance.

CHAPTER 4 MONITORING AND REGULATIONS COMPLIANCE

ARTICLE 9

9.1 Forest harvesting monitoring is established in to two types : forest condition monitoring and forest law compliance monitoring.

- Forest condition monitoring is to establish and observe the changes of --forest ecology system with land used, silvicultural works and forest harvesting,
- Forest low compliance monitoring is organized to evaluate forest laws implementation as referred to the approved plans and some conditions as mention in the charge book and cutting permit.

9.2 Forest condition compliance monitoring program shall be incorporated as one of the provision in the forest concession management plan. These will be sole responsibilities of the concessionaires. These monitoring are:

- (a) Landuse condition monitoring,
- (b) Seedling population monitoring during pre and post harvesting and trees standing condition,
- (c) Existing wildlife monitoring,
- (d) Forest vegetation monitoring during pre and post harvesting,
- (e) Comprehensive observation of biodiversity for 5-10 years in the concession area.

The type of this Monitoring need a high standard monitoring efficiency with science and statistics section that can carry Out with a technical assistance from other international organization as necessary.

9.3 For each concession, MAFF shall form a Compliance Monitoring Team with clearly assigned roles, responsibilities and authority. The team will carry out periodic concession boundary inspections and regular inspections of annual coupe and block operations, and shall bring forward non-compliance violations of enforcement action consistent with the terms. All inspections shall be documented using the standard monitoring forms contained in Chapter 14 of the Forest Harvesting Codes of Practice. The team will assess completed blocks and make recommendations to DFW on closure prior to approval of new blocks. The DFW-shall prepare an annual monitoring, compliance and enforcement report for each

concession and circulate these reports to interested parties and other relevant government agencies.

- 9.4 Concessionaires may establish their own compliance monitoring programs for internal quality control/quality assurance, and effective law enforcement purposes.
- 9.5 Every five years during the Forest Management Plan period, MAFF (DWF) shall consult with the Concessionaires and Community Consultation Committee to:
- i) Review the compliance record;
 - ii) Evaluate the effectiveness of regulations, codes and guidelines and other forest management prescriptions;
 - iii) Determine what improvements are necessary to improve overall performance.

Chapter 5

ENFORCEMENT MECHANISM

ARTICLE 10

- 10.1 In case of non-performance of the obligations defined in the Forest Concession Agreement and the Forest Management Plan, the DFW of MAFF shall give a written notice of such breaches to the Concessionaire. If any damage occurred as a consequence of such breaches, the Concessionaire shall advise for a cure period of ninety (90) days to repair any such damage. If the concessionaire fails to repair such damages, the MAFF shall assess liquidated damages.
- 10.2 Notwithstanding the application of any applicable laws and other regulations, in case of any violations of all applicable laws and regulations of Forest Concession Agreement and the Forest Management Plan, the RGC may require the Concessionaire to pay liquidated damages that shall be assessed by the MAFF.
- 10.3 In case of repeated violations of the terms of the Forest Concession Agreement and Forest Management Plan, if such violations continue un-remedied after ninety (90) days, the RGC shall deliver a notice of intent, to declare suspension or termination of his forest concession operation.
- 10.4 The concessionaire shall be required to relinquish in favor of the State any claim of right or position of any timber or other natural resources taken in the course of any breach of the forest concession agreement and the forest management plan.

CHAPTER 6

FINAL PROVISIONS

ARTICLE 11

11.1 All provisions contrary to this law shall be abrogated

ARTICLE 12

does not appear –

ARTICLE 13

The Minister in charge of the Council of Ministers, the Ministry of Agriculture, Forestry and Fisheries, all Ministers and State Secretaries of Ministries and institution concerned and Governors of provincial cities shall be responsible for the implementation of this Sub-Decree.

ARTICLE 14

This Sub-Decree shall become effective on date of its signature.

Phnom Penh

Date: 07 February, 2000

Signed and sealed

Prime Minister

Hun Sen

Having inform to Samdech Prime Minister
Minister of Agriculture, Forestry & Fisheries
Signed

Chhea Song

cc:
The Cabinet of the King
General Department of Royal Palace Ministry
General Secretariat of Senate
General Secretariat of national Assembly
Cabinet of Samdech Prime Minister
General Secretariat of RGC
As Article 12
File

Copied from the original script
Phnom Penh, date 10 February, 2000
For- Director of DFW
Deputy director
Signed and sealed

Chea Sam Ang

Appendix of sub-decree No.05 ONKr.BK Dated February 07,2000

The following technical terms where used in the sub-decree shall have the meaning ascribed thereto in this Article:

"Annual Allowable Cut (AAC)" means the volume of wood that can be harvested each year from the concession, while maintaining ecological integrity and not exceeding the long-term sustainable yield. The AAC may vary from year to year but must balance at a sustainable level over a 10 years period.

"Annual Operation Plan (AOP)" means a document that regulates access development, forest harvesting, regeneration and stand tending activities at the annual coupe level in a manner consistent with the "Forest Management Plan".

"Bio-Diversity" means the diversity of plants, animals and other living organisms in all their forms and levels of organization, including genes, species, ecosystems and the evolutionary and functional processes that link them.

"Block" is the smallest unit of management and has function of being a unit of cutting control for harvesting operations.

"Charge Book" means a legal, contractual document between the MAFF and the concessionaire listing the terms and conditions of annual coupe operations.

"Codes of Practice for Forest Management" means a set of technical prescriptions for forest management intended to guide management planning and implementation at all levels.

"Coupe" means a geographically recognizable, area of forest forming the basis of each "Annual Operation Plan" and serving as a basis for permanent records of forest operations.

"Environmental Impact Assessment (EIA)" means the process by which the environmental and social impact of development activities are identified, assessed, managed and monitored as defined in the Law on Environmental Protection and Natural Resource Management of 1996.

"Forest" means a natural ecosystem dominated by woody plants, including dry land and wetland forest formations, all stages of natural forest succession, and any non-treed wetlands and open lands within a forest that form an integral part of that ecosystem.

"Forest Concession" means a tenure system by which the government provides to private companies, through negotiation or bidding, the rights and responsibilities for forest management and harvesting on a defined area of land subject to terms and conditions established in law and regulation.

"Forest Concession Agreement" means an agreement or contract between the RGC, and a person or commercial entity granting rights to occupy and manage an area of the permanent forest estate for the purpose of harvesting designated forest products, subject to conditions or prescription as established by the RGC.

"Forest Management Plan" means document that translates national forest and natural resource policies into a coordinated management program for the forest concession as a whole; defining forest "Zones" and regulating wood production and environmental and social activities for a set time period (i.e. 15 years) through the use of prescriptions specifying broad objectives management actions and monitoring and control arrangements.

"Forest Products" includes:

Timber, lumber, charcoal, firewood, bark and extracts of bark:

Latex, gums, resins, flowers, fruit, seeds, nuts, leaves, fibers, rattans, spices, tanstuffs, dyestuffs, moulds, fungi, medicines, drugs, cosmetics, fodder, cultural and ceremonial items, and building and thatching materials derived from wild growing trees, shrubs and plants (dead or alive); and

"Guidelines" means a set of forest planning and operational which are usually not, in-themselves, mandatory requirements but become enforceable when stipulated in a license, plan, permit or contract (synonymous with Codes of Forest Practice).

"Permanent Forest Estate" means legally and geographically identified lands of 1 tenure types comprising forests or areas capable of forest production to be managed by MAFF, concession holders, local communities or other forest users for the long-term objectives of sustainable production of forest products and the maintenance of forest compositions, structure and ecological function.

"Public Bidding" means commercially acceptable mechanism for making sales of standing timber by public competitive bidding.

Reserve Price means the minimum price that the RGC will accept in the bidding process for any particular forest concession. The reserve price may or may not be disclosed prior to commencement of the bidding process.

Development Committees (VDC's) are elected bodies at the village level established by decree under rural development legislation to advise the RGC on local development needs and activities.

Forest Concession means a sub-division of a "Forest Concession" with specific ecological (biophysical) characteristics or resource values that require a different management regime from adjacent zones.

* Other

* Excess

ARTICLE

TITLE

1.1

1.2

1.3

1.4

1.5

1.6

1.7

1.8

1.9

1.10

1.11

1.12

1.13

1.14

1.15

1.16

1.17

1.18

1.19

1.20

1.21

1.22

1.23

1.24

1.25

1.26

1.27

1.28

1.29

1.30