

(Unofficial Translation)

**Kingdom of Cambodia
Nation Religion King**

**Royal Government of Cambodia
No. 68 ANK.BK**

**Sub-Decree
On
General Processes of Transfer of Functions and Resources to the Sub-
National Administrations**

The Royal Government of Cambodia

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Royal Decree No. NS/RKT/0908/1055 dated 25 September 2008 on the Appointment of the Royal Government of Cambodia;
- Having seen the Royal Kram No. 02/NS/94 dated 20 July 1994 promulgating the Law on Establishment and Functioning of the Council of Ministers;
- Having seen the Royal Kram No. SN/RKM/0196/08 dated 24 January 1996 promulgating the Law on Establishment and Functioning of the Ministry of Interior;
- Having seen the Royal Kram No. NS/RKM/0301/05 dated 19 March 2001 promulgating the Law on Administrative Management of Communes/Sangkats;
- Having seen the Royal Kram No. NS/RKM/0508/016 dated 13 May 2008 promulgating the Law on Public Finance System;
- Having seen the Royal Kram No. NS/RKM/0508/017 dated 24 May 2008 promulgating the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans;
- Having seen the Royal Kram No. NS/RKM/0611/011 dated 17 June 2011 promulgating the Law on Financial Regime and Property Management for Sub-national Administrations
- Having seen the Royal Decree No. NS/RKT/1208/1429 dated 31 December 2008 on the Establishment of the National Committee for Sub-National Democratic Development;
- Having seen the Sub-Decree No. 23ANR.BK dated 27 January 2009 on Establishment and Functioning of the Secretariat of the National Committee for Sub-National Democratic Development;
- Having seen the Sub-Decree No. 234ANR.BK dated 19 January 2012 on the amendment to the Articles 4, 8, 12, 13, 15, 16 and 17 of the Sub-Decree No. 23ANR.BK dated 27 January 2009 on Establishment and Functioning of the Secretariat of the National Committee for Sub-National Democratic Development;

- Receiving the agreement from the Council of Ministers in the meeting dated 27 April 2012.

DECIDES

Chapter 1 General Provisions

Article 1:

This sub-decree aims to ensure that the transfer of functions and resources from ministries, Institutions, departments, units and authorities at all levels to the Sub-National Administrations shall be carried out in a systematic manner with phasing, rationale, coordination, consultation, transparency and equity in order to improve the effectiveness of public service delivery and development.

Article 2:

The purpose of this sub-decree is to determine the general process and timeframe for transferring functions and resources to the Sub-National Administrations as required under the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans and the Law on Administrative Management of Communes/Sangkats.

Article 3:

This sub-decree has a scope of application to the transfer of functions and resources from ministries, institutions, departments, units and authorities at all levels to the Sub-National Administrations, and between Sub-National Administrations.

Article 4:

For the purpose of this sub-decree:

- "Functions" refer to acts or activities including the provision of public services, infrastructures and other mechanisms.
- "Councils" refer to the Capital Council, Provincial Councils, Municipal Councils, District Councils, Khan Councils, Commune and Sangkat Councils;
- "Resources" refer to properties, finance, revenues, personnel and capacity.
- "Asset" refers to machineries, vehicles, equipment, furniture, materials, offices, letters, documents, public land, public real estates, public building or public infrastructures such as bridges, canals, roads or similar items.
- "Sub-National Administrations" refer to the Capital, Province, Municipality, District, Khan, Commune and Sangkat.
- "Obligatory Functions" refer to mandatory functions that shall be managed and performed by sub-national administrations according to standards and procedures defined by law, royal decree or sub-decree or legal instruments.
- "Permissive Functions" refer to optional functions that sub-national administrations may or may not choose to implement.

- “Transfer” refers to the assignment or delegation of functions.
- “Assignment of Function” refers to the transfer of the ownership of the function, authorities and resources to sub-national administrations to respond to community needs.
- “Delegation of Function” refers to the transfer of functions, responsibilities, power and discretions to sub-national administrations to administer and implement functions on behalf of the delegating authorities based the delegation requirement. The delegation authorities maintain the ownership of the delegated functions.
- “Systematic Transfer” refers to the transfer of functions accompanied by the transfer of appropriate resources.

Chapter 2

General Process of Transfer of Functions and Resources

Section 1

Principles

Article 5:

The transfer of functions and resources to sub-national administrations shall be carried out through an orderly, consultative, systematic, transparent and equitable process.

Article 6:

In the process of functional transfer priority shall be given to necessary activities which directly impact on poverty reduction, livelihood improvement of the people and local development.

Article 7:

Functions should be assigned or delegated by applying the following principles:

- Relevant to jurisdiction of the council;
- Manageable and practical for the council’s jurisdiction;
- Beneficial and useful for residents within the council’s jurisdiction;
- Capable of making a major impact within the council’s jurisdiction.

Functions should be assigned or delegated by:

- Ensuring that the transfer of commensurate financial, human and other resources follow the transfer of functions;
- Ensuring a transparent and consultative process with the participation of the Ministries and Institutions and representatives of the recipient sub-national administrations as facilitated by the National Committee for Democratic Development at Sub-National Level with an abbreviation “NCDD” and its Secretariat ; and
- Ensuring minimal disruption to the ongoing operations of the Royal Government.

Article 8:

The NCDD shall review the responsibilities and functions of ministries, institutions, departments, units and authorities at all levels to identify functions to be transferred to sub-national administrations.

Article 9:

The NCDD, assisted by its Sub-Committee on Functions and Resources and its Secretariat, shall oversee, coordinate, support and monitor the process of transfer of functions and resources, which will be the responsibility of the Ministries and Institutions.

**Section 2
Mapping of Functions**

Article 10:

Ministries, Institutions, departments, units and authorities at all levels shall carry out a mapping exercise to identify:

- All current actual functions, and units which manage and exercise functions that fall within their jurisdiction;
- The legal framework under which the functions are exercised;
- The current actual financial resources spent to exercise their functions;
- Current actual human resources assigned to the exercise of the functions;
- Equipment, materials and any other resources assigned to the exercise of the functions.

Article 11:

The NCDD shall produce a Functional Mapping Guideline which will be used by the Ministries, Institutions, departments, units and authorities at all levels as the basis for carrying out the mapping exercise.

Once the mapping exercise has been completed, the Ministries and Institutions shall submit a copy of the final report to the NCDD for review and approval.

**Section 3
Review of Functions**

Article 12:

Once the result of the mapping exercise has been approved by the NCDD, the Ministries and Institutions shall review the functions, related regulatory and service delivery responsibilities to establish what should be transferred to sub-national administrations.

Article 13:

The review of functions shall be carried out in accordance with:

- Articles 215, 216, 217, 218, 219, 220 and 221 of the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans;
- The approved function mapping report;
- The principles set out in Articles 5, 6 and 7 of this Sub-decree; and
- Any decisions or guidelines provided by the NCDD.

Article 14:

The NCDD, Ministries and Institutions shall ensure that there is coherence in the review of functions in any sector that involves more than one Ministry or Institution and must consult with involved Ministries, Institutions as well as other national and sub-national stakeholders.

Article 15:

Where functions are to be transferred to sub-national administrations, the review process shall also identify the resources that are to be transferred along with the functions, together with any capacity development plans that may be required to ensure proper management, supervision and implementation of these functions and resources.

Article 16:

The Ministries and Institutions shall determine their new roles and responsibilities after the transfer of functions.

The determination of the new roles and responsibilities include policy development, standard setting and oversight; and identifying of any capacity development requirements associated with these new roles and responsibilities.

Article 17:

The NCDD shall produce a Functional Review Guideline which shall be used by the Ministries, Institutions, departments, units and authorities at all levels as the basis for carrying out the review of functions.

Once the review of functions has been completed, the Ministries and Institutions shall submit a copy of the final report to the NCDD for review and approval.

Section 4

Capacity Development to Receive Functions and Resources

Article 18:

The Ministries, Institutions, departments, units and authorities at all levels shall be responsible for building the capacity of the sub-national administrations to receive functions and resources over time under the supervision of the NCDD as stipulated in Article 235 of the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans.

Article 19:

The Ministries, Institutions, departments, units and authorities at all levels shall formulate plans for capacity development to equip sub-national administrations

to properly receive functions; and to properly manage, supervise and implement those function to at least the same or above standards that currently apply.

Article 20:

The formulation of the plans for capacity development shall be carried out in close collaboration and consultation between national and sub-national levels.

Section 5
Transfer of Functions and Resources

Article 21:

The assignment and delegation of functions shall be done by law, royal decree, sub-decree or other legal instrument, in accordance with Article 238 of the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans.

Article 22:

The transfer of functions to sub-national administrations shall be carried out in accordance with Articles 233, 234, 235, 236, 237, 238, 239 and 240 of the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans.

The transfer of financial resources for performing functions transferred to sub-national administrations shall be carried out in accordance with the provisions of Section 6 of Chapter 5 of the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans, and the provisions of Section 2 of Chapter 3 of the Law on Financial Regime and Property Management for Sub-national Administrations.

The transfer of asset for performing functions transferred to sub-national administrations shall be carried out in accordance with the provisions of Section 7 of Chapter 5 of the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans, and the provisions of Chapter 4 of the Law on Financial Regime and Property Management for Sub-national Administrations.

Article 23:

The NCDD shall review all the draft laws, royal decrees, sub-decrees and other legal instruments that transfer functions and resources to sub-national administrations to ensure consistency with the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans and with this sub-decree.

Article 24:

The transfer of functions to Communes/Sangkats shall exclude the sectors stipulated in the Article 45 of the Law on Administrative Management of Communes/Sangkats.

The transfer of functions to Capital, Provinces, Municipalities, Districts and Khans shall exclude the sectors or functions which are exclusively reserved for national Ministries and Institutions.

Article 25:

Processes and procedures for the transfer of financial resources shall be defined by the laws, royal decrees, sub-decrees or Prakas transferring the functions.

**Section 6
Implementing Agencies**

Article 26:

The NCDD, assisted by its Sub-Committee on Functions and Resources and its Secretariat, has overall responsibility to the Royal Government for reviewing and transferring functions and resources in accordance with the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans.

The NCDD shall periodically report to the Royal Government on the progress of review and transfer of functions and resources.

The implementing ministries and institutions shall periodically report to the NCDD on the progress of review and transfer of functions and resources.

Article 27:

Ministries and Institutions have primary responsibility to the NCDD for mapping, reviewing and transferring functions and resources.

Article 28:

The sub-national administrations have responsibility for contributing to the functional transfer process whereby they receive and manage new functions and resources.

Article 29:

The Capital and Municipal Administrations have responsibility to review their functions in accordance with the principles set out in Article 5, 6 and 7 of this sub-decree in order to identify which of their functions together with corresponding resources should be delegated to Khan and Sangkat Administrations.

Section 7 Support mechanisms

Article 30:

The NCDD shall ensure that the transfer of functions and resources to sub-national administrations shall be carried out through a systematic, orderly, rational, consultative, transparent and equitable process.

Article 31:

The Sub-Committee on Functions and Resources has responsibilities to assist and advise as well as provide recommendations to the NCDD on all matters related to the duties and responsibilities of the NCDD in identifying and transferring functions and resources to the sub-national administrations.

The NCDD Secretariat are responsible for assisting the Sub-Committee on Functions and Resources and the NCDD on technical, coordination and consultative matters as well as technical and financial support to the functional transfer process.

Chapter 3 Transitional Provisions Section 1

Process of Transfer of Functions and Resources for Priority Sectors or Activities

Article 32:

The NCDD shall give priority over the period 2012-2013 to transfer of functions and resources in the following sectors or activities:

- Agriculture;
- Education;
- Forestry, fishery, natural resources and environment;
- Health, nutrition and services for people including other needs of women, men, youth, children, vulnerable groups and indigenous people;
- Industry and support to economic development;
- Land use;
- Cadastral Works and Constructions;
- Electricity production and distribution;
- Water management;
- Particular or special needs for the Capital, Province, Municipality, District, Khan, commune and Sangkat including tourism, historical sites and cultural heritage;
- Social Welfare;
- Rural Development.

It shall be paid close attention to the transfer of infrastructures, means, materials and facilities that are necessary to support the management and exercise of the above assigned or delegated functions.

Article 33:

Ministries, Institutions, departments, units and authorities at all levels responsible for functions in the priority sectors or activities as indicated in Article 32 shall complete and submit its functional mapping and review reports to the NCDD for review and approval no later than 2012.

After the NCDD has approved its functional mapping report and its report on review of functions, Ministries, Institutions, departments, units and authorities at all levels shall carry out a process of transferring functions, along with the transfer of necessary and appropriate financial and human resources and other resources, following phases to begin no later than 2013.

Article 34:

Ministries, Institutions, departments, units and authorities at all levels responsible for functions which are not in the above priority sectors or activities shall follow the same mapping and review process, and shall submit their functional mapping and review reports for transfer of functions not later than 2013.

Article 35:

The detailed timeframe, phases and processes by which Ministries, Institutions, departments, units and authorities at all levels start transferring functions and appropriate financial, human and other resources shall be determined by the decision of the NCDD.

Section 2 Transfer of Human Resources

Article 36:

In the absence of laws or regulations or a separate statute for personnel of sub-national levels, processes and procedures for the transfer of human resources shall be defined by the laws, royal decrees, sub-decrees or Prakas transferring those functions and in accordance with the provisions of the Section 8 of Chapter 5 of the Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans.

Chapter 4 Final Provisions

Article 37:

Any provisions that contradict this sub-decree shall be abrogated.

Article 38:

The National Committee for Sub-National Democratic Development, Minister in charge of the Office of the Council Ministers, Minister of the Ministry of Interior, minister of the Ministry of Economy and Finance, Chairman of the National

Committee for Democratic Development at Sub-National Level, ministers and secretaries of state of all ministries and institutions, and all Sub-national Administrations shall effectively implement this sub-decree from the date of its signature onward.

Phnom Penh Capital, 10 May 2012

Prime Minister

Samdech Aka Moha Sena Padei Techo **Hun Sen**

Copy to:

- Ministry of Royal Palace
- General Secretariat of Constitutional Council
- General Secretariat of Senate
- General Secretariat of Parliament
- General Secretary of Royal Government
- Cabinet of Prime Minister
- Cabinet of Deputy Prime Minister
- As Article 38
- Royal Gazette
- Archives