



# គណៈកម្មាធិការអង្កេតការងារមិនមែនរដ្ឋាភិបាល ដើម្បីតាមដានទូទៅ

## សូចនាកររបស់វេទិកាកិច្ចសហប្រតិបត្តិការអភិវឌ្ឍន៍កម្ពុជា

### NGO Committee for the Monitoring of CDCF Indicators

Phnom Penh. March 4, 2008

#### NGO Committee



## NGO Statement on the Monitoring of CDCF Indicators

### Table of Contents

Executive Summary.....	1
Combat Corruption .....	3
Legal and Judicial System.....	6
Education.....	9
Decentralization and Deconcentration.....	11
Land Reform.....	13
Forestry Reform.....	16
Domestic Violence and Exploitation.....	18
Rural Water Supply and Sanitation.....	20
Monitoring of NSDP .....	21

ANNEX 1: Results of public consultation on the draft Sub-Decree on Land and Property Acquisition and Addressing the Socio-Economic Impacts by the State's Development Projects .....	23
ANNEX 2: NGOs' recommendations on the draft organic law.....	26
ANNEX 3: Hydropower Development in Cambodia.....	27

## Executive Summary

NGOs welcome this week's quarterly meeting of the Government-Donor Coordination Committee as an important opportunity to monitor progress on Joint Monitoring Indicators (JMIs) agreed at the Cambodia Development Cooperation Forum in June 2007.

Good progress has been made during the last five months following the GDCC meeting on 4 October on the JMIs related to finalizing the **draft organic law** with some inputs from civil society organisations<sup>1</sup>. NGOs also strongly recommend that consultations be undertaken with a broad range of stakeholders during the preparation of subsidiary legislation following the approval of the organic laws in order to make the laws just and effective as well as enhance public support and ownership. The NGOs also recommend that the finalization and approval of D&D implementation framework should be updated and should be set after the passage of the Organic Laws by the National Assembly.

**Concerning the JMIs related to Anti-corruption**, NGOs observed absence of progress during the period under review in all related JMIs. A recent public statement made by one Member of Parliament and a senior member of the ruling party that the Anti-Corruption Law (ACL) could be handed over to the National Assembly to be passed around April are

<sup>1</sup> See annex 2 for the detailed NGO recommendations on the draft laws

welcomed but a similar statement by lawmakers were made during the previous reporting. Civil society strongly believes that, whether or not the Penal Code needs to be passed first before the ACL can come out, this does not require much time as the Draft Penal Code is ready and only needs a couple days or weeks to be passed. In the meantime, the draft Anti-Corruption Law needs to be reviewed and improved on the outstanding issues<sup>2</sup> to ensure that it meets international standards before it is submitted to the National Assembly for debate and enactment.

In terms of the **JMIs related to land and forest reform**, NGOs observed some specific progress. A small number of Economic Land Concessions issued at the provincial level are now listed on the MAFF website; contracts of support between Conservation Organizations, the Forestry Administration and the Ministry of Environment have been signed to begin forest demarcation in targeted areas; and the drafting of the sub-decree on “indigenous communal land title” nears completion. Nevertheless, the overall progress on these priority areas for reform has been disappointing in the face of continued alienation of Cambodia’s rural and urban poor from their land and resources. Of particular concern is the lack of progress made to review the over-size Economic Land Concession or effectively respond to reports of illegal concession operations. The negative impacts of these non-compliant Economic Land Concessions are especially strong in areas of indigenous peoples and further undermine the progress made towards JMI 8.1’s goal of “interim protective measures to safeguard indigenous community’s land”.

Civil society groups decided to use this quarterly meeting to disseminate the **results of public consultations on the draft Sub-decree on Land and Property Acquisition and Addressing the Socio-Economic Impacts by the State’s Development Projects** (full details are provided in Annex 1. Within the overall goal of JMI target 8, this sub-decree will become the definitive legal framework for governmental involuntary acquisition of land and property to advance the public interest. Therefore public consultation with affected peoples and civil society groups is essential to ensure the legal framework will protect, respect and fulfill Cambodia’s housing rights obligations. Protecting these rights is especially pertinent given the escalating use of violence during unlawful forced evictions over disputed land in urban locations across Cambodia, which has occurred since the previous reporting period.

Another area that deserves the attention of the GDCC meeting is **Hydropower Development** in Cambodia for which more details are provided in Annex 3. To date, two major hydropower projects have been approved for construction and feasibility studies are known to be underway for a further six projects. This development has proceeded in the absence of meaningful public consultation and with a lack of transparency in the decision-making process. For projects already approved for development, key documents including Environmental Impact Assessment reports, have not been made available to the public. Despite requests for meetings, NGOs have struggled to discuss hydropower development with the relevant government authorities

At this critical stage in Cambodia’s energy sector development, NGOs urge the Government to establish a multi-stakeholder process to examine the recommendations of the World Commission on Dams (WCD) report and to discuss how these recommendations could be adopted in Cambodian law. To ensure NGO participation in the process, an NGO representative should be invited to join the Technical Working Group on Infrastructure and Regional Integration.

---

<sup>2</sup> Independence of the anti-corruption body; Advisory role of the Supreme National Council against Corruption vs. the executive function of the General Secretariat; Asset declaration; Whistleblower/witness protection

## Combat Corruption

### i) Joint Monitoring Indicators monitored by NGOs

Target	Action Needed	Responsible Government Institution
17. Combat corruption	1. Finalize and approve Anti-Corruption Law, based on best international practices.  2. Prepare an implementation plan to enforce and manage the implementation of the Anti-Corruption Law.  3. Disseminate information on reported cases on corruption and conviction on semiannual basis.  4. Develop a clear policy framework on Access to Information.	MONASRI COM

### ii) Monitored Progress on Actions Needed

#### ***JMI 17.1: Finalize and approve Anti-Corruption Law***

There remains lack of progress with the draft Anti-Corruption Law not just after the last GDCC meeting, but even after the CDCF. The Draft Anti-Corruption Law still reportedly sits on the desk of the Council of Ministers, not just months but year after year, without any update on whether any change has been made to it or what is going to happen to it etc. What can be even more worrisome is the absence of any progress with the development of the Penal Code, which is now strongly linked by the Government to the development of the Anti-Corruption Law. Civil society learns that, at least the main part of the draft Penal Code has reportedly been completed already by the technical team, but there is no indication that any further action is going to be taken by the Government with regard to it. Despite a report that Government officials have visited Hong Kong to meet and discuss with the anti-corruption experts about whether the current Anti-Corruption Draft Law is good enough or any further improvement should be made to it, no information is available as to how far or whether or not the process is going forward. In the absence of any progress, civil society is deeply concerned that the Government is not serious enough and is just playing around the issue again and again. Civil society is further concerned that without setting a deadline for the JMI at the last CDCF for the draft anti-corruption Law to be finalized by the Government and an open statement that the Government would finalize the Law at an appropriate time is just something to leave the Government with more room to further delay the process.

Nevertheless, just recently, an MP and a senior member of the ruling party stated publicly that the Anti-Corruption Law could be handed over to the National Assembly to be passed around April. This should be of course applauded if it is proved. However, it should be recalled that such a comment by lawmakers, was made also during the previous quarter, and nothing had happened. This type of comment or announcement has never been formally heard from the Government. Anyway, civil society still anxiously expects to see that those rhetoric be turned into real actions, especially at a time that is running up to the forthcoming general election.

With some level of expectation as mentioned above, more serious consideration needs to be taken in order to bring the draft anti-corruption law up to international standard, just as agreed upon by the Government at the Consultative Group (CG) meeting in December 2004. That means the suggestions and comments made by civil society, particularly with regard to the outstanding issues of independence of the anti-corruption body: the advisory role of the Supreme National Council against Corruption versus the executive function of the General Secretariat and the independent budget for the ACB, the asset declaration, and the whistleblower/witness protection, must be considered and reviewed.

A passage of an anti-corruption law that fails to meet international standard would not mean anything, as it could not be an effective tool to address corruption.

Meanwhile, civil society would like to congratulate a major progress made by the Government in acceding to the United Nations Convention Against Corruption (UNCAC) later last year and strongly encourages that the Government does its best to fulfill all its obligations under the Convention. Civil society is always ready to support and cooperate with the Government in upholding the Convention.

***JMI 17.2 Prepare an implementation plan to enforce and manage the implementation of the Anti-Corruption Law***

Civil society would like to congratulate the Ministry of National Assembly Senate Relation and Inspection (MoNASRI) for drafting an implementation plan for the Anti-Corruption Law. We understand that it has gone through the internal review for months but there has been no information available to us on possible progress of the process or whether it has been yet approved. Civil society therefore would like to call on the Government to provide as much information as possible as to where the Plan stands by now and give a specific timeline when it is expected to be finalized and approved.

The approval of the implementation plan for the anti-corruption law will enable early preparatory works for an effective implementation of the law on anti-corruption, once it is passed. Failing to do so will result in a potential time gap between passage of the law and its implementation. The implementation plan would provide pragmatic steps for the government to take to ensure the efficient establishment of a functioning Anti-Corruption Body once the law is passed.

***JMI 17.3 Disseminate information on reported cases of corruption and conviction on semi-annual basis***

Unlike in the previous quarter, within this monitoring period (which is from the previous GDCC meeting up to now), civil society have not heard of any official report by the Government on corruption cases in which public officials were involved, when there were hundreds of cases reported by the media (this is presented in the monthly review of corruption-related stories reported by certain number of newspapers and radio stations, called The Corruption Monitor). Acknowledging that most of those cases reported by the media were neither substantiated nor reliable, civil society has observed that there were still many cases that were serious enough to be addressed and should have been reported by the Government. Therefore, whether or not it is the Government's intention, civil society assessment is that this indicator has not been fully met.

***JMI 17.4 Develop a clear policy framework on Access to Information***

While civil society congratulated the RGC's Ministry of National Assembly Senate Relation and Inspection (MoNASRI) for taking action in the drafting of an Access to Information Policy Paper which will be the foundation of a future Access to Information Law, despite a delay in the previous period, a further serious step has never been made since the draft FOI Policy Paper was completed by MoNASRI in August last year. The draft FOI Policy Paper was supposed to be submitted to the Council of Ministers once completed by the MoNASRI. However, the fact that the Policy Paper is still with the MoNASRI and never goes to the Council of Ministers makes it questionable again about the real political will of the Government to move forward with the Access to Information. Civil society would therefore like to call on the Government to take the issue seriously by finalizing and approving the draft FOI Policy Paper, which is seen by civil society as well as international experts as a very good paper in one or two months.

**iii) Recommendations**

***JMI 17.1: Finalize and approve Anti-Corruption Law***

The fact that the Government has previously joined the other Southeast Asian countries to sign an anti-graft pact aimed at preventing and combating corruption in the region is a

very good sign, and the most recent accession of the RGC to the UNCAC is another milestone that is warmly welcomed by the civil society. Nevertheless, the Government should move further with its obligations both internally and externally. Internally, the Government should translate rhetorical approach to real actions by finalizing the draft Anti-Corruption Law without any further delay, using the existing mechanism to address corruption without discrimination pending the enactment of the ACL, and partnering with civil society in any areas that are suitable, such as public awareness raising and monitoring etc. Civil society strongly believe that, whether or not the Penal Code needs to be passed first before the ACL can come out, there is no much time required, as the Draft Penal Code is ready, and so, would only need a couple days or weeks to be passed. It would be even quicker, if the Government does have the political will to move with the ACL first, since so many legislations, that are relevant to the Penal Code esp. with regard to criminalization, have passed so far with no need to wait for the Penal Code.

In the meantime, the draft Anti-Corruption Law needs to be reviewed and improved, particularly the three outstanding issues mentioned above, to ensure that it meets international standards before it is submitted to the National Assembly for debate and enactment. Failing to meet international standard means the indicator is not met and that the Law, if passed, would not be accepted particularly by civil society as a tool effective enough to address corruption.

***JMI 17.2 Prepare an implementation plan to enforce and manage the implementation of the Anti-Corruption Law***

The Government should move further with the draft Implementation Plan that had been prepared by the MoNASRI to meet the indicator and to ensure that it is designed strictly as a tool for enforcement and implementation of the ACL that meets international standards, once it is passed. Therefore, it should not be just something that would compromise the principle of international best practices of the Anti-Corruption Law, but it is a tool to enable the Government to start well in advance preparing the foundation for a smooth implementation and enforce of the anti-corruption law.

***JMI 17.3 Disseminate information on reported cases of corruption and conviction on semiannual basis***

The RGC should develop a systematic reporting tool through it will be used to regularly report to the National Assembly and the public on the progress made in the fight against corruption. The data to be reported through a public information mechanism should include (but not necessarily be limited to): the number of corruption investigations conducted; the number of arrests; the number of administrative actions taken; the number of convictions and/or administrative dismissals; length of administrative suspension or sentence of convicted criminals, and; estimated monetary impact of the crime committed.

***JMI 17.4 Develop a clear policy framework on Access to Information***

While congratulating MoNASRI for moving ahead with the drafting of a policy paper on FOI, NGOs would like to recommend that the RGC completes its internal review of the Access to Information Policy Paper as quickly as possible, approves it, and then starts to work on the Policy Paper this year to develop an Access to Information Law. Noting that an FOI workshop held for dozens of lawmakers at the National Assembly just recently received vast support of the participating lawmakers, esp. for the draft Policy Paper. It sounds even more encouraging that the Government would also enjoy similar support of the public for the policy paper and subsequently for an FOI law at a later stage.

## Legal and Judicial System

### i) Joint Monitoring Indicators monitored by NGOs

Target	Action Needed	Responsible Government Institution
16. Establish a well functioning, transparent and accountable legal and judicial system that protects individual rights as defined in the Constitution	<p>1. LJRS Strategic Objective 2. Complete the drafting and approval of the remaining fundamental Laws (Penal Procedure Code, Penal Code, Civil Code, Law on the Statute of the Judges, Law on Court Organization and Functioning, Law on the Amendment of the Law on the Organization and Functioning of the Supreme Council of the Magistracy).</p> <p>2. LJRS Strategic Objectives 2 &amp; 7. Review and finalise guidelines for the legislative drafting process that draws on lessons from past experience. Guidelines should seek to inform externally mobilised TA, with an emphasis on building the capacity and ownership of the relevant Ministry's legal unit.</p> <p>3. LJRS Strategic Objectives 7 &amp; 4. Ongoing training and transparent selection of judicial professionals to improve the supply of judicial services and the functioning of the courts.</p>	MoJ

### ii) Monitored Progress on Action Needed

#### ***JMI 16.1: Complete the drafting and approval of the remaining fundamental laws.***

- Penal Code Procedure has already been adopted by the National Assembly and has been put into force. It was noticed that, during the making process of this law, the government did not offer any official opportunity for consultation with the publics and in particular with Civil Society Organizations (CSOs). However, with the private contacts with some parliamentarians, CSOs have managed to send legal recommendations to them for their consideration of inclusion.
- Penal Code still has not been adopted by the National Assembly. Ministry of Justice has sent this draft law to Council of Ministers (COM) on December 22, 2007. With the information from an official en-charging of legal affairs of the Ministry of Justice, the draft law is under the review and discussion of Jurist Council of COM, so far the Jurist council of COM reviewed and discussed some of 100 articles already. However, there still no clear schedule yet whether when the draft penal code could be submitted to the inter-ministries' meeting and to the meeting of COM for final approval prior to the submission to the National Assembly.
- Civil Procedure Code has already been adopted by the National Assembly and has been put into force as well. However, during the draft process of this law, it was the same case before the adoption of Penal Procedure Code.
- Law on the Statute of Judges is currently in the Office of Council of Ministers and waiting to be submitted to the inter-ministries' meeting for discussions. However, there is not schedule for submission of the draft law for discussion by the inter-ministries' meeting. With the information from an official working in the Jurist Council of COM that recently the Deputy Prime Minister/Minister of COM met with French Diplomat discussing the technical assistance from France for supporting the process of this legislation.

- Law on the organization and functioning of court, the progress on this draft law is that, after having received the comments from Supreme Council of Magistracy (SCM), Ministry of Justice has already sent the draft law to COM. It is currently under the review of Jurist Council of COM. So far, no clear plan for submission to the meetings of inter-ministries' meeting and of COM.
- Law on the Amendment of law on the organization and functioning of Supreme Council of Magistracy (SCM), there is no progress on this important draft law, the draft law remains in the Ministry of Justice (MOJ). According to an official en-charging of legal affair revealed that the progress on this draft law will be according the working speed of MOJ's internal Working Group. With this non-progress action on this draft law, it is possible to state that the Royal Government seems to have lack of clear willingness to push this draft law forward for the adoption. Civil society organizations especially those who work in the field of legal and judicial aspects are looking forward to seeing the progress on this draft law because under this law, the Supreme Council of Magistracy will be the national institution working to strictly monitor the conducts of all Judges and Prosecutors in performing their judicial tasks, overall judicial systems, and to respond to all kinds of complaints such as corruption and any other irregularity in courts.

#### ***JMI 16.2: Review and finalize guidelines for the legislative drafting process***

- The Guidelines for Legislative Drafting Process is currently at the Office of Council of Ministers and under the review by the legal and judicial reform unit headed by H.E. Sum Manith, Secretary of State of Council of Ministers. The legal and judicial reform unit will bring this guideline to be discussed and approved by the Office of Council of Ministers but so far there is no clear plan yet for Council of Ministers to meet and approve the guidelines.

#### ***JMI 16.3: Ongoing training and transparent selection of judicial professionals***

- **As part of ongoing training and transparent selection of judicial professionals**, the Royal Government has established a Royal Academy of Judicial Professions and will offer opportunity for those who have legal education background to sit for examination and pursue more skills/specializations training there to become judge, prosecutors, greffiers and other court officials. Since its establishment, the Royal Academy has conducted three-promotion judicial trainings in which 55 Judge students were in the first promotion, 55 judge students were in the second promotion and 63 judge students were in the third promotion. Currently, the Royal Academy is preparing the fourth promotion of the training and will select a number of 58 judge students for attending in this fourth promotion.

**First promotion:** all 55 graduated judge students have been already been employed in the judicial institution.

**Second promotion:** 55 judge students will finish their skills training during the next four-month period.

**Third promotion:** 63 judge students are doing their internship in the judicial institution.

In addition, within the framework of Royal Academy of Judicial Profession, the Royal government has approved in principle to create the School of Bailiff and School of Notary to ensure that there would be enough legal skilled human resources the judicial services in Cambodia. Council of Ministers is preparing to create the legal framework for these two schools.

### iii) Recommendations

#### ***JMI 16.1: Complete the drafting and approval of the remaining fundamental laws.***

- The government shall continue to increase a wide range of publication and dissemination of new ***Penal Procedure Code, and Civil Procedure Code*** to ensure that the Cambodian general public and especially enforcement officials are aware of existence of these new fundamental laws of the country.

(Observation of government effort by NGOs: the ministry of Justice has conducted some trainings on these new fundamental laws after their adoption. The trainings were only for judicial officials such judges and prosecutors).

- The government shall provide appropriately ongoing trainings for all enforcement officials to ensure that they have at least basic knowledge and understanding on fundamental laws so that they will be able to effectively and properly implement these new laws.
- The government shall accelerate the adoption of ***Law on the Statute of Judges*** and the ***Law on the organization and functioning of the court*** to ensure the effectiveness, impartiality, competence and independence of the courts throughout Cambodia.
- To ensure the independent functioning of the judiciary and to punish judicial officials committing wrongdoings, the government shall accelerate the adoption of ***Law on the Amendment of law on the organization and functioning of Supreme Council of Magistracy.***

#### ***JMI 16.2: Review and finalize guidelines for the legislative drafting process***

- The government shall speed up the adoption of ***Guidelines for Legislative Drafting Process*** so that each legal unit of all governmental ministries will have guidelines in place and they will receive capacity building on the due process for legislative drafting.

#### ***JMI 16.3: Ongoing training and transparent selection of judicial professionals***

- The government shall facilitate, further encourage and open a wider opportunity for all persons with legal backgrounds both from provinces and in Phnom Penh to have their education continued in legal and judicial skills the Royal Academy of Judicial Profession.
- The government shall keep fighting against all forms of corruptions or any other irregularities occurred during the selection of persons with legal backgrounds for their further education in the Royal Academy of Judicial Profession and during the selections of judicial professionals to serve in judicial services in the courts.



## Education

### i) Joint Monitoring Indicators monitored by NGOs

Target	Action Needed	Responsible Government Institution
3. Improved opportunities for primary education	1. Increase the net enrolment in primary school (total, and by sex). 2. Increase the survival rate from grades 1 to 6.	MOEYS

### ii) Monitored Progress on Action Needed

The Royal Government of Cambodia is committed to implementing strategies aimed at improving: i) access to education; ii) quality and efficiency of services; and iii) institutional development and capacity building for decentralization. It has set clear policy directions, with concrete targets for the realization of stated strategic goals.

#### ***JMI 3.1: Net Enrolment Rate***

While NEP is pleased to see an incremental increase in net enrolment, over-crowded classrooms, a significant undersupply of teachers, teachers' salaries and other education quality issues remain among the key obstacles to the government's ability to realize more significant enrolment increases.

According to EMIS, there was a slight increase in the net enrolment rate in primary schools from 91.3% in 2005/2006 to 92.1% in 2006/2007. The female net enrolment ratio rose from 89.7% in 2005/2006 to 91% in 2006 /2007 while the male net enrolment ratio increased from 93% 2005/2006 to 93.2% 2006/2007.

#### ***JMI 3.2: Survival Rate***

Challenges associated with late student entry, accessibility and inclusion are among the issues that are preventing the national government from realizing greater success with survival rates.

According to the latest available EMIS statistics, the total national survival rate for students in grades 1 to 6 is 49.28% in 2005/2006. This represents just over a 1 percentage point increase from the 2004/2005 index of 48.15%.

Monitoring progress towards these goals is a collective responsibility that needs to be undertaken in the spirit of openness and cooperation.

### iii) Recommendations

While good progress has been made in the education sector reform in recent years, a great deal of work still needs to be done to achieve universal access to education in Cambodia. Statistics points to progress nationally but regional statistics are sobering, particularly in the more remote areas of Cambodia and among marginalized and vulnerable groups such as persons with disability, girls and young women, and minority groups.

- MoEYS, in partnership with its development partners, needs to increase its efforts to achieve universal primary education for all children by recruiting and training more teachers. Additionally, the RGC needs to undertake fair and sufficient salary reforms to increase and maintain its supply of teachers. The practice of offering salary incentives to teach in rural and remote areas should be continued.

- Intervention strategies should be undertaken in the following areas to address enrolment: implementing early child development and school readiness programs, completing incomplete schools, promoting right-age entry in grade 1, and expanding access to lower secondary schools.
- Given such a small increase in the survival rate at primary levels, NEP recommends that the Ministry of Education Youth and Sport make this a priority. NEP hopes that this review will identify new strategies that will, upon implementation, reduce repetition and drop-out rates and improve the survival rate.

## Decentralization and Deconcentration

### i) Joint Monitoring Indicators monitored by NGOs

Target	Action Needed	Responsible Government Institution
18. Preparation made for full Implementation of the RGC's Strategic Framework for Decentralization and Deconcentration (D&D) reforms.	1. Continue preparation and initiate broad stakeholder consultations on the organic laws on democratic development at sub-national level during Q4 of 2007.	NCDD
	2. National programme design process and modalities developed, agreed, and resourced for implementation to begin in 2nd quarter of 2008.	NCDD
	3. RGC and development partners design the principles of engagement in support of D&D reform in Cambodia.	NCDD

### ii) Monitored Progress on Action Needed

#### ***JMI 18.1: Broad Stakeholder Consultation***

NGOs would like to welcome the government's efforts in having finished the draft Law on 'Administration and Management of the Capital, Provinces, Municipalities, Districts and Khans (hereafter, Organic Law)' and in inviting about 400 NGOs representatives and other stakeholders to a consultative workshop in Sihanoukville for comments and recommendations **(Please see Annex 2 for the detailed NGOs recommendations on the draft laws)**. The organic law and the draft law 'on elections of Phnom Penh Council, Provincial Council, Municipal Council, District Council, and Khan Council' were released simultaneously in the consultative workshop. Following the broad policy outlines established by the RGC's June 2005 "Strategic Framework for Decentralization and De-Concentration Reforms", these documents brought greater clarity to the Government's decentralization agenda in defining the attributes and powers of government structures between the local (Commune) and national level.

The government's response to some of these demands of the NGO community came during the CSO-Government quarterly meeting organized on 15 January 2008 at Department of Local Administration, Ministry of Interior (OLA-MOI) meeting hall. During that meeting the Director of DOLA, HE Leng Vy updated the progress made in the finalization of draft organic laws. He informed that some points raised by the NGO community during the consultation workshop are currently being considered for adjustment **(Please see Annex 2 for more details of the presented points)**.

Following the Sihanoukville workshop and the CSO-Government quarterly meeting at MOI, the Committee for the Promotion of Women in Politics (CPWP) hosted a workshop focusing on the development of recommendations on gender mainstreaming to be included in the organic laws. These recommendations were duly submitted to the Ministry of Interior and Ministry of Women's Affairs for consideration.

It was learnt that National Committee for the Management of Decentralization and Deconcentration Reform (NCDD) met at MOI on 28 January 2008, and approved the draft Organic Laws following revisions in some articles. It was also learnt that the draft has been planned to send to the national assembly at the end of February. NGO community has raised concern regarding appropriate inclusion of its comments and recommendations in the draft organic laws. It also firmly stands to its demand for consultation with broader stakeholders during the preparation of supplementary laws [decrees, guidelines] following the approval of the organic laws.

### ***JMI 18.2: National Program***

Following the circulation to the donors of the draft implementation framework of the preparatory phase [2006-07] of the Sub-national Democratic Development in June 2006, the RGC had indicated to bring out the implementation strategy for this phase. To that end NCDD has approved the TOR of international consultants. The preparation of the programming framework is still ongoing.

In the reporting period, it is observed that the RGC also carried out the followings:

- NCDD capacity building training plan-2008 has been approved.
- The new updated CDP and CIP and its guidelines have been enforced nationally since 2008.
- Following some changes suggested in the study made by the international consultants, the Commune/sangkat Fund Accountability Working Groups have been reactivated nationally.
- Five sub-committees of NCDD have been formed and their structure prepared.
- NCDD approved the draft of Organic Laws and Law on the elections of Phnom Penh capital, Provincial, District, and Khan Councils
- NCDD has discussed and approved with donors suggestion, to provide allowance to NCDD officials as standard formulated by Ministry of Economy and Finance, from 2009;
- The Technical Working Group of the NCDD are currently updating the PIM;
- NCDD has approved its Annual Workplan and Budget 2008, and has allocated the budget to line ministries for the year 2008.

NGO community has raised serious concerns regarding program design and implementation in relation to some of above stated activities. It firmly believes that the development of implementation modalities and activities should be based on the clear policy direction to be provided by the proposed organic laws.

### ***JMI 18.3: The Principles of Engagement***

Following the launching of the Project to Support Democratic Development through Decentralization and Deconcentration [PSD4] during the 1<sup>st</sup> quarter of 2007, the NCDD expects to bring out the programming framework for the project that will provide basis for multi-donor support for D&D implementation. As mentioned earlier, the ToR for international consultants to work on the said programming/implementation framework was approved and the preparation work is still ongoing.

### **iii) Recommendations**

- NGOs recommend that the RGC should devote further attention to strengthening the institutional basis for downward accountability of Councils to citizens, as well as ensuring the accountability of sub-national administrative structures to elected councils. It also strongly recommended that consultations be undertaken with a broad range of stakeholders during the preparation of subsidiary legislation [sub-decrees, guidelines] following the approval of the organic laws. NGOs firmly believe that such public consultation and review not only contributes to make the laws just and effective but also ensures and enhances public support and ownership. The expansion of NCDD permanent membership to include relevant line ministries should also be considered.
- NGO community recommends that the finalization and approval of D&D implementation framework should be updated and should be set after the passage of the Organic Laws by the National Assembly.
- NGOs recommend that the principle of subsidiarity, affirmed by the draft organic law, should be actively applied as the principle guiding decisions on functional assignment by line ministries. This will provide an objective basis of expenditure assignments across sectors.

## Land Reform

### i) Joint Monitoring Indicators monitored by NGOs

Target	Action Needed	Responsible Government Institution
8. Implement the legal framework established by the Land Law	1. To adopt RGC's Policy on Registration and Use Rights of Indigenous Communal Land and pilot interim protective measures (identification, mapping, classification and provisional endorsement of indigenous land legal claims) to safeguard the indigenous community's land in two provinces within the framework of provincial level state land management committees and district working groups as per Sub-Decree #118).  2. To improve the livelihoods of the rural poor, i.e. 500 eligible households are settled on social land concessions with livelihood support and at least 10,000 hectares of suitable land confirmed as available for social land concessions	MLMUPC

### ii) Monitored Progress on Action Needed

#### ***JMI Action 8.1: Indigenous Peoples Land Rights***

Since the previous GDCC Meeting (October 2007) the Council of Land Policy and Ministry of Land Management, Urban Planning and Construction (MLMUPC) have renewed their efforts to draft the sub-decree on "indigenous communal land title", so that it can be adopted together with the Policy on Registration and Use Rights of Indigenous Communal Land. NGOs strongly welcome this determination to complete the legal framework protecting land tenure of Cambodia's Indigenous Peoples. We urge the Council of Land Policy to conduct a consultation on the substance of the sub-decree with affected populations and civil society stakeholders which allows sufficient time to ensure that indigenous peoples understand this legislation and thus are empowered to provide informed commentary on its content. This will ensure that the sub-decree, once adopted, will adequately accord with national Laws and Cambodia's obligations under international law; will have the genuine understanding and support of indigenous communities; and also that it can successfully be implemented to provide them with secure and effective land tenure.

To this end, civil society groups reiterate our offer to provide direct assistance to this consultation process and additionally we welcome the clear statements of interest and support from some donors to support this consultation.

NGOs recall their recommendations to the previous GDCC Meeting (October 2007) and note with concern that none of these have been formally responded to, in particular:

- That JMI 8.1 must be interpreted to safeguard indigenous community land throughout the two provinces of Mondulkiri and Ratanakiri, rather than just the three Indigenous Communities which have been registered as Legal Entities, as in line with the 2001 Land Law;
- An end to the use of terminology such as "registration and **use rights**" and return to the terminology used in the 2001 Land Law and NSDP such as "registering indigenous peoples **land rights**" in order to ensure that indigenous territory obtain protections at least equal to that of private property;
- Further consultation and revision of the "Policy on Registration and Use Rights of Indigenous Communal Land" to address concerns of affected peoples' (namely that it limits opportunities for shifting cultivation, limits the size of spirit and burial forest

which can be claimed and that its criteria would make many indigenous communities in-eligible for communal title);

- Rapid completion of the Preliminary Action Plan in consultation with all members of the TWG-Land.

This JMI falls under broad Target 8 to “implement the legal framework established by the Land Law” which, together with NSDP 4.50, identifies implementing the existing legal framework and observing the rule of law to be the most effective means to ensuring both interim and permanent protection of indigenous lands. However, there is increasing disillusionment within civil society about the commitment of the government and donor community to fulfill this target indicator given the lack of progress made and lack of response to previous recommendations, despite escalating alienation of indigenous peoples from their land and natural resources. This is particularly evident in the ongoing expansion of illegal Economic Land Concessions in areas eligible for indigenous title; see the commentary on JMI 9.1 for further details.

### ***JMI Action 8.2: Social Land Concessions***

NGOs working in the pilot provinces of Kratie and Kampong Cham were not able to report any significant progress made against this JMI since the previous NGO Statement sent to the GDCC Meeting in October 2007.

NGOs working on Social Lands Concessions (SLCs) at the national level were encouraged by the results of the World Bank Mission visit to Cambodia (December 3<sup>rd</sup> to the 7<sup>th</sup>, 2007) to review the appraisal requirements of their proposed Land Allocation for Social and Economic Development (LASED) project<sup>3</sup>. In the context of concerns raised by NGOs in previous GDCC and CDCF statements relating to the SLC JMIs, we particularly welcome its focus on:

- scaling up locally initiated SLCs to reach 3,000 direct and a further 6,000 in-direct beneficiaries;
- incorporating environmental and social safeguards within SLC planning and commune contracting procedures;
- preparing a “civic engagement framework” and updating the Good Governance Framework.

NGOs are also optimistic about the increasing number of funding opportunities and NGOs becoming involved in supporting locally initiated SLCs (such as the proposals submitted to the Japanese Social Development Fund). However we note that interventions supporting locally initiated SLCs (apart from those within the LASED project) are guided only by the provisions of the Sub-decree on Social Land Concessions itself. This overall lack of environmental and social safeguards to ensure good governance may limit the potential for coordination of support between responsible Government Agencies at differing administration levels, and additionally restrict the options for monitoring, transparency and accountability.

## **iii) Recommendations**

### ***JMI Action 8.1: Indigenous Peoples Land Rights***

- The Council of Land Policy and MLMUPC must work in partnership with the donor community and civil society groups to allocate sufficient time and resources to ensure that the consultation process on the draft sub-decree on “indigenous communal land title” is undertaken with the full and informed involvement and support of Indigenous Peoples’.

---

<sup>3</sup> World Bank (2007) “Proposed Land Allocation for Social and Economic Development Project, December 2007 Mission to Review Appraisal Requirements”, Aide Memoire.

- In addition, NGOs call on the Donor Community, specifically those with membership on the Technical Working Group on Land, to increase their support and involvement in the drafting of this sub-decree in order to assist the Council of Land Policy and MLMPUC to ensure that it fully accords with Cambodia's obligations under international law.
- All Government Agencies must scale-up their focus on the implementation of the existing legal framework. NGOs strongly recommend that the "Kong Yu- Kong Thom" case in Pate Commune, O'Yadao District, Ratanakiri Province be selected for specific support because it is expected to go to trial in Ratanakiri Provincial Court during the next GDCC reporting quarter. This case is viewed as the test case for implementation of the existing legal framework protecting indigenous land rights, it would therefore not only prove the Government's commitment to achieve JMI 8.1, but would also act as a strong deterrent to future land grabbing.
- In addition, active steps must urgently be made by Government Agencies to protect areas eligible for indigenous title during the registration process from external threats such as illegally operating Economic Land Concessions.
- To reiterate a recommendation made in the previous NGO Statement to the GDCC, a clear timeframe for implementation of the sub-activities required under JMI 8.1 must be prepared and disseminated in order to monitor progress before the deadline of the next CDCF meeting in December 2008.

***JMI Action 8.2: Social Land Concessions***

- To reiterate the main recommendation made in the previous NGO Statement to the GDCC, the Royal Government of Cambodia must speed up implementation of the pilot SLC projects in Kratie and Kampong Cham and urgently identify the third pilot site.
- Use the safeguards and frameworks of the LASED project as the basis for discussions to develop mechanisms to guide and monitor the implementation of SLCs across Cambodia.
- A clear timeframe for implementation of the sub-activities required under JMI 8.2 must be prepared and disseminated in order to monitor progress before the deadline of the next CDCF meeting in December 2008.

## Forestry Reform

### i) Joint Monitoring Indicators monitored by NGOs

Target	Action	Responsible Government Institution
9. With the aim of stopping the loss of Cambodia's forest resources, the legal frameworks established by the Forestry Law and in particular the Sub-Decree on Economic Land Concessions must be fully implemented at all levels of Government agencies.	<p>1. Implement all provisions of the sub-decree on ELCs, including establishing and making public log book of ELCs, including those issued at provincial level, and review a minimum of 5 economic land concessions over 10,000 hectares, taking appropriate action consistent with Chapter 6 of the Sub-Decree on ELCs.</p> <p>2. Rapid implementation across Cambodia of forest demarcation in accordance with the sub-decree No. 53, dated 1 April 2005.</p>	<p>MAFF</p> <p>TWG-F&amp;E</p> <p>TWG-Land</p>

### ii) Monitored Progress on Action Needed

#### ***JMI Action 9.1: Economic Land Concessions***

NGOs welcome the updating of the Ministry of Agriculture, Forestry and Fisheries (MAFF) website to include 23 ELCs issued at the provincial level in 7 provinces<sup>4</sup>, thereby partially meeting the December 2007 deadline. However, beyond this development, no further progress was reported by NGOs relating to the implementation of this JMI.

Since the previous GDCC meeting (October 2007), NGOs have continued to receive reports from local level partners that concessions larger than the maximum size limit are being approved by provincial and national authorities. An additional problem noted is that companies continue to begin operations such as clearing and fencing land, although their concession applications are still "pending" approval from the national level and before they have fulfilled the legal requirements of the sub-decree on ELCs. In one example province, the MAFF website reports to have granted 5 concessions under 1,000ha and 2 concessions between 1,000 and 10,000ha in size. However, recent investigations by local and national organizations identified a total of 14 ELCs in the province which were either operational or had submitted applications, covering a potential land area of 76,111.21ha, including areas managed under Community Forestry projects. Reports from another province have been received that indigenous peoples are being pressurized to "sell" or "lease" their ancestral agricultural land to companies owning ELCs.

#### ***JMI Action 9.2: Forest Demarcation***

Although no significant progress in terms of implementation was noted since the previous reporting period, NGOs strongly welcome the agreement of contracts and procedures between Conservation Organizations, the Forestry Administration and the Ministry of the Environment to undertake demarcation within specific areas of Cambodia's Forest Estate. There is particular interest in the opportunities for civil society and local community involvement in this process and to this end NGOs look forward with interest to the results.

### iii) Recommendations

#### ***JMI Action 9.1: Economic Land Concessions***

- Speedily finalize the review of the 5 selected ELCs currently over the legal 10,000ha size limit and undertake appropriate action in accordance with the provisions of the sub-decree on ELCs.

<sup>4</sup> Source: Ministry of Agriculture, Forestry and Fisheries website, as at 8<sup>th</sup> February 2008



- Urgently initiate a thorough review of all operational ELCs beginning with investigations of the reports submitted by NGOs (through this and the previous NGO Statements to the GDCC and CDCF Meetings), namely that:
  - A number of existing concessions vastly exceed the maximum size limit and / or remain inactive, but have not been targeted for review;
  - New ELCs continue to begin operations before they have officially been granted by national authorities, in locations which are over the legal size limit and before they have met the criteria described in Article 4 of the ELC sub-decree;
  - Escalating alienation of indigenous peoples land and natural resources by ELCs, is undermining the ability of the Government to achieve both this JMI 9.1 and also JMI 8.1, as described above.
- Improve disclosure of information relating to all concessions, in particular those issued at the provincial level. Disclosure must be updated more frequently, include proposals for ELCs under consideration and the results of the reviews of oversize concessions, and be in a format accessible to affected communities.
- A clear timeframe for implementation of the sub-activities required under JMI 9.1 must be prepared and disseminated in order to monitor progress before the deadline of the next CDCF meeting in December 2008.

***JMI Action 9.2: Forest Demarcation***

- Increase efforts across the country to rapidly implement forest demarcation, including furthering engagement with civil society groups working in the forestry sector.
- A clear timeframe for implementation of the sub-activities required under JMI 9.2 must be prepared and disseminated in order to monitor progress before the deadline of the next CDCF meeting in December 2008.

## Domestic Violence and Exploitation

### i) Joint Monitoring Indicators monitored by NGOs

Target	Action Needed	Responsible Government Institution
20. Adopt laws and sub-decrees and relevant legal documents, and implement plans against all forms of violence and exploitation against women and children, according to international standards	<ol style="list-style-type: none"> <li>1. Sub-decree on the administrative decision on domestic violence adopted. MoJ TWG Gender</li> <li>2. Law on suppression of human trafficking and sexual exploitation adopted, and in compliance with the UN Protocol on trafficking and UN convention on transnational organized crime, and the Cambodian draft penal code.</li> <li>3. National Action plan to combat violence against women implemented. The specific target for 2007 is to establish a working group in MoI/DOLA for training materials on the Sub-decree.</li> <li>4. Policy and legislation on migration reviewed. Specific targets for 2007 include: Adopt comprehensive Strategy Paper on Migration that links Migration with Trafficking, Smuggling and the Labour Law Reform and closes existing legal gaps to enhance legal protection of migrants.</li> </ol>	MoI MoWA MoLVT

### ii) Monitored Progress on Action Needed

#### ***JMI 20.1: Sub-decree on the administrative decision on domestic violence***

The drafted sub-decree on the Administrative Decision on Domestic Violence is currently at the Ministry of Interior (MoI). NGOs are not aware of the current status of the process and have not been informed of the timeframe for adoption of the sub-decree.

#### ***JMI 20.2: Law on suppression of human trafficking and sexual exploitation***

NGOs working group on gender wish to congratulate the National Assembly with adopting the draft Law on suppression of human trafficking and sexual exploitation on 20 December 2007. The next step now is that the National Assembly sends the Law to the Senate for approval.

#### ***JMI 20.3: National Action Plan***

NGOs welcome the effort of the MoWA and concerned institutions to revise a five Year National Action Plan (NAP) to combat violence against women based on the suggestions from Council of Ministers (COM). However, the process of actually taking the suggestions in account is slow. The suggestions from the Council of Ministers for NAP Working Group are:

- NAP should be based on the National Constitution and other National Development Plan and the logo of NAP needs to be the Royal Government of Cambodia logo, not MOWA logo.
- There are too many NAP aims/goals (40). Therefore, MOWA and concerned agencies need to reduce the number of goals to the main activities.
- Clarify the action plan, what are the ongoing activities and what are the new proposed activities, and who are responsible for fund to those activities (Including line ministries, NGOs and development partners).

### iii) Recommendations

- **20.1:** Concerning the sub decree which has been drafted by the Inter-Ministerial Committee. NGOs would like MOI to finalize their work on the sub-decree and inform the NGOs the date when the sub-decree will be sent to the Council of Ministers for review, comments, and approval.
- **20.2:** NGOs would like to urge the National Assembly to submit the draft law on the suppression of human trafficking and sexual exploitation to the Senate for final comments and approval, and then submit to the king for promulgation.
- **20.3:** NGOs would like to urge the MoWA, the TWG on Gender, and concerned agencies to act quickly to revise NAP, clarify the action plan, roles and responsibilities of line ministries, NGOs and Development Partners, and re-submit to COM because there is a need for an immediate adoption and implementation of this action plan in order to fully enforce the adopted law on the prevention of domestic violence and the protection of victims.

# Rural Water Supply and Sanitation

## i) Joint Monitoring Indicators monitored by NGOs

Target	Action Needed	Responsible Government Institution
14 Increase use of improved sanitation, hygiene and drinking water supply, especially in rural areas	Develop and adopt a rural water supply and sanitation (RWSS) strategy and budget that is based on the official RWSS policy and aligned to the NSDP	MRD

## ii) Monitored Progress on Action Needed

The RGC and MRD have successfully developed and adopted a rural water supply and sanitation strategy whose implementation is expected to achieve the national vision which states that “Every person in rural communities has sustained access to safe water supply and sanitation services and lives in a hygienic environment by 2025” which is in line with National Strategic Development Plan 2006-2010. This strategy aims to build understanding of rural people of health and hygiene, and to promote good practices in their daily lives. To implement this strategy, the MRD has established a technical working group for clean water supply and rural sanitation in cooperation with development partners and all concerned parties to share commitments on preparing and implementing clean water supply and rural sanitation’s policy and strategy to enhance the community’s sense of responsibility<sup>5</sup>.

The Ministry of Rural Development has cooperated closely with the Ministry of Economy and Finance to effectively use the state’s budget and co-operational funding provided by development partners. However, on request of NGOs the provincial RWS offices explained that there are insufficient funds available to implement the projects outlined in the strategy while also mentioning that more support from development agencies is required. The need for implementation became clear during recent surveys<sup>6</sup> which confirmed that in Cambodia only about 31% of rural populations have access to safe water supply services and 16% of rural populations have access to basic sanitation facilities.

## iii) Recommendations

Civil Society welcomes the adoption of the rural water supply and sanitation (RWSS) strategy and increased participation from other stakeholders such as LNGOs, IOs namely DPA, ADB, HU, JAA, UNICEF, PFD, etc and private companies. For further implementation of the strategy, the NGOs recommend that the Ministry of Rural Development shall:

- take the lead in promoting people participation and ownership in the use of safe water and sanitation facilities;
- improve coordination among relevant government institutions, NGOs, development partners and commune councilors in this area;
- promote rights of rural communities to have access to information, capacity building, safe water services, and sanitation facilities; and
- increase the allocation of budget for improving rural water supply and sanitation, especially in the remote areas and indigenous communities.

<sup>5</sup> Speech of H.E Yim Chhay Ly, First National Forum on Rural Sanitation 13-14 November, 07

<sup>6</sup> ([www.cdc.crdp.gov.kh/cdc/first](http://www.cdc.crdp.gov.kh/cdc/first))

## Monitoring of NSDP

### i) Joint Monitoring Indicators monitored by NGOs

Target	Action Needed	Responsible Government Institution
1. Approve final Ministry of Planning Strategic Plan (MPSP)	1. Approve final MPSP as a strategic document to be implemented with coordinated EDP support.  2. Bring together the NSDP APR and the alignment section of the CDC AER to document and assess progress on key NSDP indicators and resources committed/aligned to NSDP priorities.	MoP MEF CDC

### ii) Monitored Progress on Action Needed

#### ***JMI 1.1: Approve final MPSP***

NGOs welcome the efforts made by the Ministry of Planning (MoP) regarding the Strategic Plan of the Ministry (MPSP) which has been approved in July 2007, and urge the Ministry to do a realistic costing of the different elements and make it clear what parts of the MPSP are financed by the MOP and where donor-funding is required. Donors should support the MPSP in such a manner that minimizes the administrative burden in order to make time available for more pressing matters such as producing the Mid Term Report of implementation of the National Strategic Development Plan that includes the international good practices as presented and discussed during the recent MoP Joint Learning Event on monitoring and evaluation for national development strategies in Sihanoukville from 29-31 January.

#### ***JMI 1.2: Bring together NSDP APR and CDC AER***

No progress has been observed on this action however the concept-note for the Mid-Term Report mentions that the MTR will: "*follow the same format and structure (chapter headings and annexes) as for the APR 2006*".

### iii) Recommendations

(1.2) NGOs suggest that MPSP asks for inputs from all international participants in the TWG-PPR for a revision of the MTR concept note so some of the good practices can be included in the upcoming Mid Term Review of the National Strategic Development Plan:

- Use a more participatory approach that includes more stakeholders than the Ministries of the Royal Government such as Civil Society and Parliament;
- All Technical Working Groups should be actively engaged and informed about the process of drafting the MTR;
- Report on appropriate input and output indicators<sup>7</sup> as it has been established at the JLE that the current monitoring framework mainly includes impact and outcome indicators that are not suitable for measuring short term progress.
- Include a policy matrix summarizing policy announced in the NSDP and report on the progress made since 2006.

---

<sup>7</sup> This is not a new recommendation as the NSDP itself announced a revision of the M&E Framework in June 2006.

## **ANNEXES**

## **ANNEX 1: Results of public consultation on the draft Sub-Decree on Land and Property Acquisition and Addressing the Socio-Economic Impacts by the State's Development Projects**

In May 2007, the Ministry of Economics and Finance (MEF) and the Asian Development Bank (ADB) introduced the first draft of the Sub-Decree on Land and Property Acquisition and Addressing the Socio-Economic Impacts by the State's Development Projects (hereinafter: the sub-decree). The sub-decree will become the definitive legal framework for governmental involuntary acquisition of property to advance the public interest. Therefore, the sub-decree is an opportunity to ensure an effective and human rights compliant legal framework for governmental takings.

NGOs appreciate the efforts made by the MEF and ADB to extend the public consultation period to ensure that civil society and affected communities have meaningful commentary on the sub-decree. Based on this, NGOs conducted their own legal analysis of the content and facilitated a national community consultation on the substance of the most recent draft – an unprecedented step for a sub-decree. The most pertinent conclusion of these processes is that the people do not want the sub-decree to be passed if their concerns are not addressed. Additionally, the NGO review has found the current draft sub-decree falls substantially short of international standards and protecting the rights of Cambodian citizens. Our recommendation to the donor community is that they respect the will of the people. If the sub-decree must pass, we strongly urge the donor community to engage the drafting process and provide technical experts to ensure that future drafts will protect, respect and fulfill Cambodia's housing rights obligations.

### ***Community Concerns***

Coalition members also conducted a consultation on the current draft with citizens from 190 villages across Cambodia. The consultation resulted in the following consensus of recommendations (reprinted verbatim):

- Every taking of land and property, including granting of compensation, should be carried out with prior consent and agreement of the people, who own the property or who are affected, and without force.
- Before the government starts any development project and, if urgent, it should first provide the people, who own the property and are affected, with adequate information, conduct consultation with and get agreement from them.
- In any case of taking of land and property, the government should provide fair and acceptable compensation for the people, who own it and are affected, six months in advance before expropriation.
- If development projects affect the land of any particular indigenous community the government has to provide fair and acceptable compensation.
- In case development projects affect the collective interests of the community, the government has obligations to pay fair and acceptable compensation.
- If the people lodge any complaint against any development project, and if there is no decision from the prime minister within 45 days from the day the complaint is lodged, the development project in question must not be carried out.

If these six points are not incorporated, we ask that the sub-decree not be passed and that simply the land law be implemented.

### ***The Concerns as Expressed by the NGO Coalition***

The NGO legal analysis indicates that the current draft, like the prior draft, requires further improvement to meet internal ADB standards or promote the government's pro-poor policies. The current draft also fails to meet Cambodia's human rights obligations, particularly to halt and prevent illegal forced evictions under international law. The primary legal policy concerns include:

- Any project that is within the list of examples of general public interest provided in Article 6 (such as the construction of a bridge or hydropower dam) would be approved without proper consideration of the fiscal, social or environmental impacts (e.g. will it displace 10 or 10,000 people). Nor is there any requirement for the consideration of alternative project designs which would minimize or avoid such as evictions and other negative impacts. In other words, the body charged to approve projects lacks the capacity to reject a proposal that will cause large-scale relocation, public health concerns or harm to the environment so long as the project is on a list of generic examples of projects within the public interest.
- The proposed consultation mechanisms employ a top-down approach in which the developer merely informs the affected community of the project and its impacts. As well as lacking objectively measurable standards for monitoring the process, the current procedures make it difficult for affected people who oppose the project to have their voices heard. Furthermore, there is no capacity for people to propose alternative options to reduce the need for involuntary resettlement and other negative impacts likely to be caused by the project.
- An un-necessary degree of discretion is conferred on the executive branch of government. Thus, the sub-decree undermines the constitutionally required checks and balances. Examples include, amongst others, Article 64 which effectively grants the Prime Minister the *de facto* power to approve any acquisition of land within the country and the sub-decree's failure to include adequate safeguards against the use of force.
- The proposed transparency and accountability mechanisms fail to ensure that affected communities can require government to meet the obligations with the sub-decree. This is an exceptionally grave concern. Without strong transparency and accountability mechanisms, many of the provisions within the current draft may be not be utilized. As such, this could lead to the arbitrary enforcement of its provisions, which would violate international human rights norms.
- The sub-decree fails to ensure that each of its provisions are subject to judicial review. In fact, it limits the scope of judicial review to only a small set of specific issues after an administrative hearing has issued a decision. Moreover, it fails to recognize the capacity of affected persons to seek preliminary injunctions, which means land may be unjustly expropriated before the courts had an opportunity to review the merits of the case.
- Finally, the scale and scope of this legislation requires its issuance as a law rather than a sub-decree. Not only does the sub-decree provide when, how and why the government may forcibly expropriate individual or communal property, but it also creates the legal framework for, *inter alia*, the types of compensation received for the different types of land rights/interests, the mechanism for compensation, the roles of the different government agencies in ensuring just compensation, and all administrative and judicial appeals. As a matter of good governance, these topics require a fair and open debate before the National Assembly.

## Recommendations

It is the sincere hope of the NGOs and communities involved in this consultation process that the MEF and ADB will integrate our input in a final legal framework that enjoys the broad support of government, civil society and the public at large. We therefore recommend the following:

- In light of the gravity of concerns within the first two drafts of the sub-decree, the MEF and ADB should provide representatives of affected and potentially communities and our coalition members an opportunity to comment and respond to the 3<sup>rd</sup> draft of this sub-decree once it has been prepared by the MEF and ADB.



- The MEF and ADB should engage both community and civil society representatives on specific points of contention and work through open dialog to constructively develop a legal framework that is supported by all stakeholders.
- The donor community should become active participants within this process and provide their own technical advice on the best means of ensuring the protection of the land and housing rights of all Cambodians through a transparent and accountable land acquisition process, which is consistent with Cambodia's international human rights obligations.
- The donor community should call for a moratorium on public evictions until an adequate legal framework is in place.

## **ANNEX 2: NGOs' recommendations on the draft organic law**

The detail draft law itself was not circulated at the time when the consultative workshop was held, so participating NGO observers prepared comments and recommendations on the summaries and workshop presentations. These were submitted to the Ministry of Interior on 5 December 2007.

The main points can be summarized as follows:

- There are apparent inconsistencies between the Strategic Framework on D&D adopted by the Government in 2005 and the draft Organic Laws. The draft should follow the guidelines built in the Strategic Framework.
- Broad discussion with stakeholders is critical in developing coherent legislation. Therefore, such consultation should be continued before the passage of the organic laws as well as following its approval during preparation of various subsidiary legislations [sub-decrees, guidelines, etc.].
- There is ample confusion and inconsistencies between the roles of the councils and the boards of governors. There should be clear separation of roles and functions between these two statutory bodies.
- The draft organic laws contain weak lines of downward accountability but strong lines of upward accountability to Central government. Therefore, accountability of board to council must be clearly spelled out, and downward accountability to citizens must be strengthened.
- The proposed Commune Support Unit at district level in order to continue capacity building support to commune councils is positive. But, for ensuring necessary autonomy of commune councils, further clarification in the role of the district with regard to communes is likely needed, as is clarification in the relationship between district and provincial levels.
- The proposed proportional system of election of councils within an indirect electoral system does not serve the interests of democratic development. If an indirect system of election is adopted, candidacy should be on an individual basis. Also, the qualifications of candidate should include the residency requirement.

### ***The government's response***

During the CSO-Government quarterly meeting at MOI, the Director of DOLA, HE Leng Vy updated the progress made in the finalization of draft organic laws. He informed that following points raised by the NGO community during the consultation workshop are currently being considered for adjustment. Following are the stated main points:

- Regarding confusion between the roles of Councils and Board of Governors, for example in budget preparation and approval, he informed that the government has agreed to adjust the budgeting issue so that it is consistent with the law of Management of Public Finance.
- On overall confusion with respect to separation of role and functions between the councils and the boards, he informed that the Government has agreed that they are not clearly identified. However, he also added that in the law itself it can not be elaborated. Therefore, in order to make them clear and detail out the provisions and to avoid any problem within the implementation, subsidiary legislation [sub-decree] will be brought out following the approval of the law.
- About powers of the councils and the boards, he informed that the Government is considering adjusting the powers of the councils and the boards of governors in which the councils supervise the works of the boards, the councils call for the boards of governors to clarify and the councils can petition to terminate the boards of governors.

## ANNEX 3: Hydropower Development in Cambodia

Securing access to reliable, cheap electricity to supply Cambodia's expanding economy is a key challenge faced by the Royal Government of Cambodia (RGC). The "Rectangular Strategy for Growth, Employment, Equity and Efficiency" identifies the need for low-cost electricity to sustain Cambodia's economic growth. It outlines the RGC's support for constructing hydropower projects at Kamchay, Stung Battambang, Stung Atay and Stung Russey Chrum and states that "In developing hydropower resources, the Royal Government will carefully analyze all aspects involved, especially its economic benefits and environmental and social impacts."

Experience in neighboring countries and globally has demonstrated that large hydropower projects can incur significant environmental and social costs that risk undermining sustainable development. It is widely recognized that any decision to move forward with a large hydropower project warrants serious consideration from decision-makers, affected communities and the wider public.

To date, in Cambodia two major hydropower projects have been approved for construction and feasibility studies are known to be underway for a further six projects<sup>8</sup>. A number of these projects are already known to have significant environmental and social impacts associated with them:

- Cambodia's first large hydropower project, the Kamchay Dam, is located within Bokor National Park and will flood two thousand hectares of protected forest. This area is an important source of Non-Timber Forest Products to local residents, for many of whom it is an essential source of income. It is not known if the project developer, Sinohydro Corporation, will provide compensation or alternative livelihood options.
- The proposed Stung Cheay Areng Dam is located in a densely populated area close to the Central Cardamom Protected Forest. Its reservoir would flood nine villages with a combined population of 1,500 mainly indigenous people and would extend into the Central Cardamom Protected Forest area, inundating the habitat for 31 endangered fauna species.
- The proposed Sambor Dam would be located on the Mekong River mainstream. Environmental consequences could be severe, including blocking commercially important large fish migrations and destruction of deep pool habitats, which would seriously affect the well-being of those communities that depend on these resources.
- The proposed Lower Sesan 2 Dam would further compound impacts already suffered by communities living along the Sesan River due to hydropower dam construction upstream in Vietnam that to date has been neither mitigated nor compensated for.

To date, hydropower development in Cambodia has proceeded in the absence of meaningful public consultation and with a lack of transparency in the decision-making process. For projects already approved for development, key documents including Environmental Impact Assessment reports, have not been made available to the public. Despite requests for meetings, NGOs have struggled to discuss hydropower development with the relevant government authorities, including the Ministry of Industry Mines and Energy and the Cambodian National Mekong Committee.

---

<sup>8</sup> Kamchay Dam (Kampot Province) construction approved April 2005; Stung Atay Dam (Pursat Province) construction approved February 2007; Stung Cheay Areng Dam (Koh Kong Province) feasibility study approved October 2006; Sambor Dam (Kratie Province) feasibility study approved October 2006; Stung Tatay (Koh Kong Province) feasibility study approved January 2007; Lower Stung Russey Dam (Koh Kong Province) feasibility study approved April 2007; Lower Se San 1 Dam and Lower Se San 2 Dam (Stung Treng Province) feasibility study approved June 2007.

It is urgent that before large hydropower dams are developed, the RGC adopt international best practices in electricity planning. Many proposed projects are located within or close to protected areas. Furthermore, poorly conceived and developed hydropower projects could needlessly and irreparably damage Cambodia's river ecosystems with negative consequences for river-dependent rural populations. Cambodia has many options for meeting electricity needs including renewable and decentralized energy solutions that should be fully explored. Meaningful public participation in the planning process is necessary to ensure that Cambodia's electricity system is affordable, sustainable and accessible to all.

## **Recommendations**

At this critical stage in Cambodia's energy sector development, NGOs urge the Government to establish a multi-stakeholder process to examine the recommendations of the World Commission on Dams (WCD) report<sup>9</sup> and to discuss how these recommendations could be adopted in Cambodian law. Derived from the recommendations of the WCD report, NGO's also urge the RGC to implement the following recommendations:

- The RGC should implement a participatory, integrated energy planning process conducted according to international standards. The assessment would evaluate Cambodia's current and future energy needs and the best options for meeting these needs. Options for meeting rural and urban energy needs through decentralized energy solutions and renewable energy resources should be fully explored and integrated into the national energy plan.
- Where a hydropower project is determined, through the above process, to be the best solution to meet energy and water needs, the RGC and hydropower project developers should commit to ensuring the informed participation of all concerned stakeholders throughout the project's full development cycle.
- Where a hydropower project is determined to be the best solution, planning to mitigate environmental and social impacts should be treated as a priority by both the RGC and the project's developer. Before a project moves ahead, key documents including an Environmental Impact Assessment, Social Impact Assessment, Environmental Management Plan, Resettlement Action Plan and Livelihood Restoration Plan should be prepared and publicly disclosed. All stakeholders should have the opportunity to provide meaningful input on the draft reports' contents. Before a project moves forward there should be mutual agreement amongst stakeholders.
- NGO representatives should be invited to join the Technical Working Group on Infrastructure and Regional Integration.

---

<sup>9</sup> World Commission on Dams, (2000). 'Dams and Development: A New Framework for Decision Making' *Earthscans Publications Ltd. London, UK.*