

# NGO Position Papers on Cambodia's Development in 2009-2010 to the 3<sup>rd</sup> Cambodia Development Cooperation Forum



## Monitoring the Implementation of the National Strategic Development Plan and the 2008 CDCF Joint Monitoring Indicators



May 2010

**NGO Position Papers on  
Cambodia's Development in 2009-2010  
to the 3<sup>rd</sup> Cambodia Development  
Cooperation Forum, 02-03 June 2010**

*Monitoring the Implementation of  
the National Strategic Development Plan and the 2008  
CDCF Joint Monitoring Indicators*

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## Preface

For more than a decade, Cambodia's NGO community has been involved in the high level forums between the Royal Government of Cambodia and its Development Partners. Their engagement has ranged from joining the International Committee on the Reconstruction of Cambodia (ICORC) beginning in 1995 to participating in the Consultative Groups (CG) meetings from 2002 to 2006 and lastly being involved in the Cambodia Development Cooperation Forum (CDCF) in 2007 and 2008. The involvement serves as a mechanism for discussing Cambodia's development progress and aid mobilization. In the upcoming Third CDCF, to be held in June 2010, NGOs have taken this opportunity to submit their detailed statements on issues and recommendations for the development of Cambodia as seen from the national and grassroots perspective.

This publication is the compilation of information from local and international NGOs working in a wide variety of sectors in Cambodia. It provides observations and recommendations based on the performance of the Royal Government of Cambodia, along with support received from its Development Partners, in working to achieve the Joint Monitoring Indicators (JMIs) as well as on progress made in the implementation of the National Strategic Development Plan (NSDP) Update 2009-2013, during the period of 2009 and in the first half of 2010.

Based on the day-to-day operation and experience of many of these local and international NGOs working at Cambodia's grassroots level, these NGOs are able to make genuine observations of the impacts of development and bring the voice of the poor and marginalized communities to the attention of policy makers and decision makers both in the Royal Government of Cambodia and its Development Partners.

The NGO community would therefore like to show their appreciation of their inclusion in the assessment process by sharing their observations and subsequent recommendations for each associated policy development. The NGO community strives to ensure that its input is presented in a constructive, credible and supportive manner, and would like to incorporate common ideas, which will help achieve poverty reduction within their own work agenda.

This publication, along with the NGO Statement on the priority issues to the Third CDCF 2010, is intended to contribute to this policy dialogue and help inform the discussions that will take place during the CDCF meeting to be held at the Royal Government Palace in Phnom Penh from 2-3 June 2010. The NGO community in Cambodia strongly hopes that this publication will be used as a significant reference tool for all stakeholders, whether they are from NGOs, the Royal Government of Cambodia (RGC) or Development Partner agencies, as long as they are working to reduce poverty in Cambodia.

## **Acknowledgments**

The NGO sectoral and issues papers were prepared voluntarily by lead local and international NGOs in broad consultation with their network members and/or working groups. The development of this work would not be possible without the assistance of numerous individuals and organisations. Information presented in these papers is based on their experience in development work at the national and sub-national level (and grass root level), as well as their engagement in policy dialogue at the Technical Working Levels in Cambodia. The editing and summary of this publication and the NGO statement on the priority issues for the Third CDCF in 2010 was coordinated by the Cooperation Committee for Cambodia (CCC), MEDiCAM, and The NGO Forum on Cambodia (NGOF).

The list of contributors below states the organizations and individuals who took a lead role in coordinating, collating and drafting their respective sectoral and issues paper. CCC, MEDiCAM and NGO Forum would like to formally recognize the time, energy and input that was given by all contributors to the development of these papers and express our deepest appreciation for all of the valuable input.

## Acronyms and Abbreviations

3S	Sesan, Srepok, Sekong rivers
4Ms	MEDiCAM Membership Monthly Meeting
ABC	Association of the Blind in Cambodia
ACB	Anti-Corruption Body
ACL	Anti-Corruption Law
ACU	Anti-Corruption Unit
ADB	Asian Development Bank
ADD	Action on Disability and Development
ADHOC	Cambodian Association for Development and Human Rights
AFD	French Development Agency
AGM	Annual General Meeting
AIDS	Acquired Immune Deficiency Syndrome
ANC	Antenatal Care
API	Advocacy and Policy Institute
ARV	Antiretroviral
ASEAN	Association of Southeast Asian Nations
AusAID	Australian Agency for International Development
B-EmONC	Basic Emergency Obstetric & Neonatal Care
BMC	Budget Management Center
BTC	Belgian Technical Cooperation
CAR	Council of Administrative Reform
CBHI	Community-Based Health Insurance
CBO	Community-Based Organizations
CC	Cadastral Commission
CCC	Cooperation Committee for Cambodia
CCHR	Cambodian Centre for Human Rights
CCRF	Code of Conduct for Responsible Fisheries
CDC	Council for the Development of Cambodia
CDCF	Cambodia Development Cooperation Forum
CDHS	Cambodia Demography and Health Survey
CDPO	Cambodian Disabled People's Organization
CDRI	Cambodia Development Resource Institute
CEDAC	Cambodian Center for Study and Development in Agriculture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
C-EmONC	Comprehensive Emergency Obstetric & Neonatal Care
CESCR	Committee on Economic, Social and Cultural Rights
CFS	Child Friendly School
CG	Consultative Group
CHRAC	Cambodian Human Rights Action Committee
CISA	Coalition for Integrity and Social Accountability
CLEC	Community Legal Education Center
CLP	Council for Land Policy
CLUP	Commune Land Use Planning
CMDG	Cambodian Millennium Development Goal
CNCC	Cambodian National Council for Children
CNCW	Cambodian National Council for Women
CNMC	Cambodian National Mekong Committee
COHRE	Centre on Housing Rights and Evictions
CoM	Council of Ministers
COMFREL	Committee for Free and Fair Elections in Cambodia
CPA	Complementary Package of Activities
CPI	Corruption Perception Index
CPP	Cambodian People's Party
CPP	Community Participation Policy
CPWP	Committee to Promote Women in Politics
CRRT	Cambodians for Resource Revenue Transparency
CSARO	Community Sanitation and Recycling Organization

CSES	Cambodia Socio-Economic Survey
CSO	Civil Society Organization
CTN	Cambodian Television Network
D&D	Decentralization and De-concentration
DAC	Disability Action Council
DDP	Deaf Development Program
DFID	UK Department for International Development
DPA	Development Partnership in Action
DTMT	District Training and Monitoring Team
ECCC	Extraordinary Chambers in the Court of Cambodia
EDN	Economic Development Network
EFA	Education For All
EIA	Environmental Impact Assessment
EISEI	Extractive Industry Social and Environmental Impacts
EITI	Extractive Industries Transparency Initiative
ELC	Economic Land Concession
EMIS	Education Management Information System
ERW	Explosive Remnants of War
ESIA	Economic and Social Impact Assessment
ESP	Education Strategic Plan
EVN	Electricity of Vietnam
FA	Forestry Administration
FACT	Fisheries Action Coalition Team
FAO	Food and Agricultural Organization
FiA	Fisheries Administration
FPCS	Family Planning Commodity Security
FPIC	Free, Prior and Informed Consent
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia
GAD/C	Gender and Development for Cambodia
GADNet	Gender and Development Network
GAVI	Global Alliance for Vaccines and Immunization
GDCC	Government Donor Coordinating Committee
GDP	Gross Domestic Product
GHG	Greenhouse Gas
GMO	Genetically Modified Organisms
HCMC	Health Center Management Committee
HEF	Health Equity Fund
HI-F	Handicap International French Section
HIS	Health Information System
HIV	Human Immunodeficiency Virus
HRP	Human Rights Party
HSP2	Health Strategic Plan 2008-2015
HSSP2	Health Sector Support Program Phase 2
ICMM	International Council on Mining and Metals
ID Poor	Identification of Poor Households
ILO	International Labour Organization
IMCI	Integrated Management of Childhood Illness
IMR	Infant Mortality Rate
JMI	Joint Monitoring Indicators
KID	Khmer Institute of Democracy
KRT	Khmer Rouge Tribunal
LAC	Legal Aid of Cambodia
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
LMAP	Land Management and Administration Project
M&E	National Monitoring and Evaluation
MAFF	Ministry of Agriculture, Forestry and Fisheries
MDG	Millennium Development Goals
MEF	Ministry of Economy and Finance

MIME	Ministry of Industry, Mines and Energy
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MLVT	Ministry of Labor and Vocational Training
MMR	Maternal Mortality Ratio
MoC	Ministry of Commerce
MoE	Ministry of Environment
MoEYS	Ministry of Education, Youth and Sports
MoH	Ministry of Health
MoI	Ministry of Interior
MoInfo	Ministry of Information
MoJ	Ministry of Justice
MoNASRI	Ministry of National Assembly–Senate Relations and Inspection
MoP	Ministry of Planning
MoSAVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation
MoU	Memorandum of Understanding
MoWA	Ministry of Women's Affairs
MoWRAM	Ministry of Water Resources and Meteorology
MP	Members of Parliament
MPA	Minimum Package of Activities
NAA	National Audit Authority
NAPA	National Adaptation Program of Action
NCDP	National Centre of Disabled Persons
NCHADS	National Center for HIV/AIDS Dermatology and STDs
NEP	NGO Education Partnership
NFP	National Forest Program
NGO	Non-Governmental Organization
NGOCRC	NGO Committee on the Rights of the Child
NPA	National Plan of Action
NPAR	National Public Administration Reform
NRP	Norodom Ranariddh Party
NSDP	National Strategic Development Plan
OD	Operational District
ODA	Official Development Assistance
PFM	Public Financial Management
PFMRP	PFM Reform Program
PHD	Provincial Health Department
PNC	Postnatal Care
POC	Priority Operating Cost
PPRPD	Protection and the Promotion of the Rights of Persons with Disabilities
PRN-C	Pesticides Reduction Network in Cambodia
PRSP	Poverty Reduction Strategy Paper
RCAF	Royal Cambodian Armed Forces
RGC	Royal Government of Cambodia
RHMC	Referral Hospital Management Committee
SAW	Strategy for Agriculture and Water
SCM	Supreme Council of Magistracy
SHI	Social Health Insurance
SMART	Specific, Measurable, Achievable, Realistic and Time-bound
SNEC	Supreme National Economic Council
SPF	Strategic Planning Framework
SRP	Sam Rainsy Party
STD	Sexually Transmitted Disease
SY	School Year
TOFE	Table of Financial Expenditures
TVK	National Television of Cambodia
TWG	Technical Working Group
TWGAW	Technical Working Group on Agriculture and Water
TWGF	Technical Working Group on Fisheries
TWG-PFM	Technical Working Group on PFM

U5MR	Under-Five Mortality Rate
UK	United Kingdom
UN	United Nations
UN CERD	UN Committee on the Elimination of Racial Discrimination
UNCRC	UN Convention on the Rights of the Child
UNCRPD	UN Convention on the Rights of Persons with Disabilities
UNDP	UN Development Program
UNESCAP	UN Economic and Social Commission for Asia and the Pacific
UNFPA	UN Population Fund
UNICEF	UN Children's Fund
UNIFEM	UN Development Fund for Women
UNOCHR	UN Office of the High Commissioner for Human Rights
UNODC	UN Office of Drug Control
UNTAC	UN Transitional Authority in Cambodia
US	United States
WHO	World Health Organization
WWF	Worldwide Fund for Nature
YRDP	Youth Resource Development Program

## List of Contributors

No.	Sectoral Papers	Contributor
1.	Combat Corruption	Coalition for Integrity and Social Accountability (CISA)
2.	Access to Information Policy Framework	Freedom of Information Working Group
3.	Legal and Judicial Framework	Cambodian Human Rights Action Committee (CHRAC)
4.	Public Financial Management Reform: Budget Transparency and Public Oversight	The NGO Forum on Cambodia Development Issues Program
5.	Extractive Industry Revenue Management	Cambodians for Resource Revenue Transparency (CRRT)
6.	Election Reform and Democracy	Committee for Free and Fair Elections in Cambodia (COMFREL)
7.	Impacts of the Economic Downturn on Households and Communities and Essential Policy Responses	Economic Development Policy Project and Economic Development Network of The NGO Forum on Cambodia
8.	Agriculture and Water	Pesticides Reduction Network in Cambodia (PRN-C)
9.	Land Reform	Resettlement Action Network, Land Action Network for Development and Indigenous People NGO Network of The NGO Forum on Cambodia, Land and Livelihoods Program
10.	Fisheries Issues	Fisheries Action Coalition Team (FACT)
11.	Environmental and Social Impacts of Expansion of the Extractive Industries Sector	Development and Partnership in Action (DPA) and Extractive Industry Social and Environmental Impacts (EISEI) Network
12.	Forestry Reform	The NGO Forum on Cambodia Land and Livelihoods Program and Forest Livelihood and Plantation Network
13.	Environmental Protection, Conservation and Climate Change	The Environment Forum Network of the NGO Forum on Cambodia
14.	Hydropower Development and Energy Sector	Rivers Coalition in Cambodia (RCC) and the NGO Forum on Cambodia
15.	Education	NGO Education Partnership (NEP)
16.	Health	MEDiCAM
17.	Gender-Based Violence	Gender and Development Network – GADNet – and the Committee to Promote Women in Politics – CPWP
18.	Disability and Development	NSDP Inclusive Committee
19.	Child Rights	NGO Committee on the Rights of the Child (NGOCRC)
20.	NGO Participation in National Planning and Technical Working Groups	The NGO Forum on Cambodia, MEDiCAM and Cooperation Committee for Cambodia (CCC)

## **Executive Summary**

### **Introduction**

Non-governmental organizations (NGOs) appreciate their inclusion in the third Cambodia Development Cooperation Forum (CDCF). The Position Papers summarized below represent their observations and recommendations on progress made since the second CDCF in December 2008 with regard to implementation of the National Strategic Development Plan (NSDP)<sup>1</sup>, achievement of the Joint Monitoring Indicators (JMIs) and other development strategies.

The period since the second CDCF meeting has been hard for most Cambodians. With food prices still high after the food price crisis, the economic crisis hit communities hard through losses of jobs in the construction, garment and tourism industries. In the current depressed economic climate, immediate assistance, together with alternative incomes for poor and vulnerable households in rural areas, in both agriculture and other sectors, is crucial to address the negative impacts of the recent crises on the income and health of Cambodia's poor as well as to spur poverty reduction.

With past gains in poverty reduction being reversed, current practices alienating the poorest and most vulnerable from their livelihoods and rights need to end as they undermine the goals of the Rectangular Strategy and the National Strategic Development Plan. In this respect, NGOs urge the Royal Government of Cambodia (RGC) and its development partners to include discussions on strengthening implementation of Cambodia's laws, especially the land law, forestry law, and the law on mineral resource management and exploitation. In addition to stricter law enforcement and continuation of land reforms, NGOs recommend that the protection of the rights of indigenous peoples are discussed during the CDCF and included in the new set of JMIs.

The 20 NGO Position Papers recognize recent progress made by the RGC, with positive developments in health and education and increasing public availability of budget information, for instance. Grounded in their daily work with communities throughout Cambodia, NGOs recognize the need for further improvements in the implementation of existing laws, policies and reform programs, as this has the potential to improve the lives of millions of Cambodians, aid their recovery from the crisis and provide opportunities for future development.

As part of civil society's contribution to strengthening democracy and as a constructive partner in government–development partner dialogue, NGOs stand ready to engage in further discussions with all participants in the CDCF.

### **Good Governance**

While pressing governance concerns are highlighted in the Enhancement of the Agricultural Sector section, the Good Governance section highlights observations by NGO networks working on the national governance agenda.

### **Anti-Corruption**

NGOs genuinely regret the lack of civil society organization (CSO) participation in the preparation of the recently passed Anti-Corruption Law (ACL) and the limited discussion on the draft in the National Assembly. As the ACL falls short of international standards, NGOs call on the RGC and the National Assembly to consider recommendations for amendments to the law to combat corruption. These proposed amendments include: more protective measures to protect potential whistleblowers, ensuring the independence of the Anti-Corruption Unit (ACU) and including provisions against the removal of the ACU chairperson.

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<sup>1</sup> NGO comments are based on the first draft NSDP 2009-2013 (December 2009).

With the ACL passed, steps need to be taken to finalize and approve its implementation plan. NGOs stress that education and dissemination of the ACL can occur immediately and do not need to wait for the ACL to become effective at the end of this year. Much can be done now to ensure greater knowledge and understanding of the ACL and its implications for stakeholders. Meanwhile, NGOs stress the need to improve the existing mechanism to be more transparent and to enable tracking, prosecution, exposure and reporting of corrupt acts to the public.

### **Access to Information Policy Framework**

While some progress has been observed in the development of the Policy Framework on Access to Information, which serves as the guiding principles for drafting the Law on Access to Information, there have not been any steps forward towards its approval, even though access to information is a part of the anti-corruption JMIs. Findings of access to information workshops and forums conducted in 2009 clearly revealed that people want to be better informed about a wide number of topics. Areas of interest include development policies or sub-decrees, commune development plans and budgets and expenditure.

NGOs appreciate that the drafting process in 2007 of the Policy Framework on Access to Information was conducted in a participatory manner through consultation with various stakeholders and recognize that the RGC has the intention to approve this policy framework, as highlighted in the draft NSDP Update 2009-2013. In this Position Paper, NGOs would like to strongly request that the Law on Access to Information be developed and passed during this fourth legislature, with a clear implementation framework. In addition, the RGC is encouraged to make more information publicly available, including on Cambodia's policies and budgets.

### **Legal and Judicial Framework**

The Position Paper on the Legal and Judicial Framework notes that the Penal Code is the only law that has been approved out of the four outstanding fundamental laws. NGOs fully support the development, approval, dissemination and implementation of the outstanding fundamental laws and further strengthening of the framework for legal and judicial reform. Opportunities for study at the Royal Academy of Judicial Professions should be increased to include all individuals with a legal education background, from the provinces and from Phnom Penh. In addition, sufficient scholarships should be provided to students from poor backgrounds.

### **Public Financial Management Reform: Budget Transparency, Public Oversight and Extractive Industry Revenue Management**

NGOs involved in national budget monitoring welcome the increased availability of budget information through the publication of the 2006 Audit Report by the National Audit Authority (NAA) in October 2009. Progress on the Public Financial Management Reform Program (PFMRP) also led to the publication of monthly revenues from oil, gas and mining in the Table on State Financial Operations (TOFE) on the website of the Ministry of Economy and Finance (MEF). NGOs monitoring the progress of the PFMRP recommend the RGC and its Development Partners that reforms in the second half of 2010 and 2011 give more priority to budget transparency. NGOs would like to see that published data are more up-to-date, more frequent and further disaggregated. Within this, figures on estimated revenue from oil, gas and mining should be included in the Budget Law 2011. NGOs would also like to urge the RGC to engage the public in discussion on the legal framework and revenue management mechanism for oil, gas and mining.

In addition to continuation of the PFMRP, including management of revenue from oil, gas and mining, NGOs stress the need for a strong NAA that continues to publish its reports in a timelier manner, as well as more independent budget analysis by CSOs and the National Assembly. The National Assembly's approval of the NSDP comes with a responsibility to monitor implementation and use of the National Budget and all development aid. Further budget analysis, discussions in Parliament and parliamentary oversight would further strengthen Cambodia's democracy through participatory and meaningful consultation. Within this, it will help ensure checks and balances between the Executive and the

Legislature, along with greater transparency and accountability of the Executive on the use of public funds in the National Budget process.

## **Environment for Implementation of the Rectangular Strategy**

### **Election Reform and Democracy**

The Position Paper on Election Reform and Democracy notes that these issues were not discussed in great detail in the draft of the NSDP Update 2009-2013. The Position Paper highlights key issues with regard to the indirect election system for sub-national councils which, based on citizens' surveys, is recommended to be replaced by a system of direct elections. The paper includes recommendations on more press freedom, equal access to the media across political parties and better functioning of the National Assembly through checks and balances on the Executive.

## **Enhancement of the Agriculture Sector**

### **Agriculture and Water**

NGOs applaud the RGC's efforts to ensure that the functions of the Technical Working Group (TWG) on Agriculture and Water are both transparent and accessible to the public. Although information should be updated more regularly, the TWG's website is appreciated and a very valuable source of information. In this Position Paper, NGOs kindly recommend to the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of Water Resources and Meteorology (MoWRAM) that they hold national consultations on the draft Strategy for Agriculture and Water (SAW) prior to its finalization and implementation.

In addition, NGOs emphasize the need for funding priority in the SAW to be allocated towards Cambodia's farmers, poverty reduction and food security, as the draft SAW 2010-2013 has a heavy bias towards promoting agri-business, large irrigation schemes, increasing export of agricultural products and improving access to capital and markets. NGOs kindly recommend that the concept of sustainable and equitable agriculture be better integrated. Recommendations raised by NGOs on this subject include: reduce the use of illegal pesticides and encourage the use of botanical/organic pesticides; give priority to small-scale irrigation systems and small-scale farmers; and continue support to community-based organizations (CBOs) through training local farmers to maintain local resources and protect local seeds.

### **Land Reform**

Issues in the land sector, including indigenous communal land, land tenure, possession rights, economic land concessions (ELCs), land titling, land disputes and international land deals remain NGOs' major concerns. This Position Paper addresses these as well as including case studies on the efforts of Group 78 in Phnom Penh to first obtain legal title in 2004 and their forced eviction in July 2009 and the recent land dispute in Omlaing commune, Thpong district, Kampong Speu province.

NGOs and *indigenous communities* remain concerned and frustrated at the lack of progress on protecting the rights of Cambodia's indigenous peoples. There are continuing severe violations of indigenous people's land and resource rights across the country. Concessions for industrial, agricultural, mineral and resource exploitation continue to be granted in a non-transparent way, and plans continue for the construction of large-scale dams in many indigenous areas. Poor Cambodians, indigenous and non-indigenous alike, continue to bear significant costs while seeing little benefit from such development.

The Sub-Decree on Procedures for Registering Land of Indigenous Peoples was passed in April 2009 but falls short of international standards. NGOs hope to see problems with the procedures addressed when the piloting of indigenous land registration commences. NGOs hope to see continued specific JMIs concerning indigenous peoples, including on interim protection (protective measures) of indigenous land.

NGOs welcome the commitment by the RGC to introducing a *Housing Policy*. While the draft policy contains many positive elements, recommendations are included in the Position

Paper. NGOs also welcome the idea of a *Spatial Planning Policy* as a means to create a foundation for planning and zoning of land ownership or possession throughout the country. The draft policy raises key issues, including the need to take environmental and social impacts into account, in addition to the document's emphasis on "economic imperatives."

Although the progress that the RGC and its development partners have made towards drafting and passing key legislation and regulations for the administration and management of land is acknowledged, NGOs continue to have concerns that the *Land Law* and associated sub-decrees and prakas are still not being implemented appropriately. The most serious concerns raised in the Position Paper include the fact that possession rights are still not being consistently recognized by authorities and the continued granting of legally dubious ELCs. The paper also addresses the continued need to discuss and develop a legal framework for effective implementation of the Land Law. In this regard, NGOs would like to see: development of a National Resettlement Policy and corresponding regulations; improved procedures for systematic and sporadic land titling; implementation of the Sub-Decree on State Land Management; and strengthening of the Cadastral Commission (CC).

NGOs in the land sector are increasingly worried about the increase in the frequency of violent land disputes across the country, the intimidation of human rights defenders and villagers, the increasing involvement of military personnel in land disputes and the lack of clear information on international land deals. NGO recommendations on these issues for consideration of the participants of the CDCF meeting are included in the Position Paper.

### **Fisheries Issues**

Cambodia's fishery communities have faced increasing hardship in 2009-2010, fuelled by declining fish catches, continued high food prices and lack of alternative income sources. The sector's nutritional and economic contribution is under-recognized and undervalued in the NSDP Update 2009-2013 and all forms of national accounting practices, including real gross domestic product (GDP). NGOs recognize that, despite significant progress by MAFF, Cambodia is facing household fish catch declines and, as a result, full-time fishing communities such as floating communities face increasing food insecurity. In addition, the destruction of flooded forests and plans for large-scale hydro-power dams are threatening fisheries.

The Position Paper also argues for management of natural resources with full and effective participation of local resource users. Effective participation by civil society is needed to assist the RGC in meeting its responsibilities on the conservation and sustainable management of fisheries resources on behalf of all citizens of Cambodia. The paper includes a study of a case that is typical of the complex conflicts over resources occurring not only around the Tonle Sap Lake but also all over Cambodia, highlighting the privatization of valuable common pool resources. These problems also exist along with other forms of unsustainable practices in the Cambodian coastal zone. Cambodia has both fresh and marine fisheries concerns, and both play a valuable role with regard to communities' sustainable livelihoods and food security needs.

### **Environmental and Social Impacts of Expansion of the Extractive Industries Sector**

In this Position Paper, NGOs provide an assessment of the current status of Cambodia's mining sector. The paper recognizes the encouraging signs of the RGC's commitment to publicly detailing information about some ELCs, in accordance with JMI 9.1 from the 2nd CDCF of December 2008. However, little progress has been made with regard to publicly detailing extractive industry information related to licenses or environmental and social impacts. Furthermore, the draft NSDP Update and draft JMIs for the 3rd CDCF do not adequately address governance in the sector. The paper provides a comprehensive overview of NGO concerns in terms of the legal framework for mining in Cambodia, including: inadequacy and lack of clarity of the existing Mining Law, such as in the framework for granting "mining concessions"; relocation and compensation issues; lack of enforcement of existing laws and access to information; and inadequate or non-existent environmental impact assessments (EIAs). To begin addressing these concerns, NGOs recommend, among other things, that a TWG on Extractive Industries be established, led by the Ministry of

Industry, Mines and Energy (MIME), to improve RGC and donor partners' performance in this critical area.

In addition to issues regarding the legal framework, the paper highlights other concerns from local communities. For example, it notes that mining licenses are allocated inside protected areas and estimates that half of Cambodia's protected areas/forests have had exploration licenses granted within their boundaries. In addition, research has so far not identified any cases where free, prior and informed consent has been sought by the government or a mining company before mining has begun. Moreover, consultations fall far below international standards. Other highlighted trends include: militarization of mining operations leading to threats and intimidation; the need to strengthen institutional capacity to coordinate mineral resource extraction; and numerous reports of environmental and social impacts from exploration or illegal exploitation activities of mining companies. Significant cultural impacts from mining on indigenous peoples are also documented in a case study on mining near Phnom Yanang, Ratanakiri province.

### **Forestry Reform**

In the paper, NGOs congratulate the RGC and the Forestry Administration (FA) for recent action to eliminate forest crimes and note that MAFF, the Ministry of Environment (MoE) and MIME have actively implemented activities towards achieving relevant JMIs and priorities set out in the NSDP. NGOs note that ELCs are the root cause of forest disasters and land conflicts in the country, with generally negative impacts on affected communities. In addition, it is noted that if the government continues to grant ELCs, the Cambodian Millennium Development Goal (CMDG) to conserve 60% of forest cover by 2015 will not be achieved, especially where concessions have been granted in protected areas, forest areas or indigenous peoples' areas.

NGO recommendations for the forestry sector include: ensure public disclosure and regular updates of the log book on ELCs, especially on implementation progress made by companies involved; stop issuing ELCs in forest areas and protected areas; disclose the number of approved community forestry sites; continue taking legal action against forest crimes; demarcate community forestry boundaries; and review the effectiveness of community forestry in the current situation.

### **Environmental Protection, Conservation and Climate Change**

NGOs working on environmental protection, conservation and climate change write about the fast rate with which the RGC has approved many development projects, such as ELCs, hydropower projects, coal-fired power plants and mining concessions. NGOs are concerned that insufficient attention is being paid to negative impacts on the environment and biodiversity, human and animal health and the rich natural resources on which many Cambodians depend for their livelihoods and food security. While Cambodia has a number of pieces of environment-related legislation, implementation remains problematic.

Moreover, quality of management and monitoring on water pollution, air pollution and solid and liquid waste management remains limited. In addition, quality of the EIAs carried out for development projects remains poor. Recommendations include: collaboration between MoE and the Council for Development of Cambodia (CDC) to review projects under implementation or in operation without EIAs and the suspension of these projects until EIA reports have been submitted, commented on by relevant stakeholders and approved, in order to ensure environmentally sustainable development. Further recommendations relate to the treatment of solid and liquid waste and implementation of greenhouse gas (GHG) reduction projects.

## **Rehabilitation and Construction of Physical Infrastructure**

### **Hydropower Development**

In 2009, continued priority was given to hydropower development. Since 2005, five large dams have been approved for construction and 29 other dams are being planned. These dams have been approved behind closed doors and without adequate public participation, cost-benefit analyses or full EIAs, and with insufficient consideration given to alternative

energy. In the Position Paper, it is recommended that the negative impacts of reducing fish catches and species associated with hydropower construction and operations be carefully studied and taken into account in the decision-making process. At the same time, existing and available decentralized alternative technologies to generate energy should be promoted.

Other recommendations include: install a proper flood notification system for local communities on the Sesan and Srepok Rivers to warn villagers of sudden and hazardous water fluctuations caused by upstream dams in Vietnam; demand mitigation measures from the Vietnamese government to reduce risks caused by deteriorating water quality of the Sesan River; and promote decentralized power generation. The Position Paper shows the impacts on communities living along the Sesan from waters released by upstream dams in Vietnam: the lack of a flood warning system has resulted in loss of life and damage to property and crops, contributing to poverty and food insecurity.

## **Capacity Building and Human Resource Development**

### **Education**

NGOs strongly support the government's commitment to the global objective of Education For All (EFA), which ensures inclusive and quality education for all children of Cambodia. NGOs recognize progress made in the sector. Their recommendations for improvements include: expand the policy on local teacher recruitment; provide incentives for teachers, especially those who are assigned to teach in remote areas; and strengthen school management to be more transparent and accountable in order to attract more community engagement.

To further improve the quality of education, teachers' professional development needs to be considered and good quality textbooks should be made available in time and in sufficient quantity. In addition, mechanisms to support the expanding Child Friendly School (CFS) initiative and the acceleration of school construction are highlighted. Special attention is given to the elimination of informal school fees, which teachers continue to charge despite a prakas on their elimination. NGOs note that these fees are a heavy burden for the poor and that Cambodia will not realize needed increases in enrolment and survival rates if the practice continues. Therefore, it is emphasized that teacher salaries should reflect the cost of living, while good collaboration from rural communities is needed to assist teachers.

### **Health**

This Position Paper highlights progress in the health sector and key issues/challenges in the implementation of the Health Strategic Plan 2008-2015 (HSP2). Recent improvements in health outcomes and improvements in policy, strategy and financial resources are summarized. NGOs also recognize that many health indicators in Cambodia continue to lag behind those of many other countries in the region. The paper emphasizes 10 key issues, giving recommendations on the way forward for each of them.

These include: 1) strengthening community participation; 2) improving access for the poor to health care services; 3) retention of qualified health care work forces in the system; 4) improving logistics and the supply management system and procurement of pharmaceutical and health products; 5) improving the quality of health care services; 6) improving maternal, newborn and child health; 7) improving the referral system; 8) calling for more external support for non-communicable diseases; 9) improving public-private partnership; and 10) building trust and confidence between users and public health care providers.

### **Gender-Based Violence**

NGOs note that gender equality is well integrated in national and sector policies/plans. NGOs observe progress made by the Ministry of Women's Affairs (MoWA) and participants of the TWG, although cooperation could be further improved. However, they express concern that the government's decision to adopt a guideline instead of a sub-decree on the administrative decision on domestic violence will weaken its strength.

NGOs are concerned about persistent violence against women and children. The paper quotes published evidence that this violence worsened in 2009, providing case studies on the horrific consequences of domestic violence, rape and trafficking. While recognizing progress made in the past, the paper calls for increased action to accelerate gender equality in Cambodia by improving laws and policies, strengthening law enforcement and policy implementation, strengthening the court system and changing social attitudes to eliminate discrimination in families, communities and institutions. The paper lists a set of recommendations and calls for specific attention to be given to women and children with disability and Cambodia's indigenous women and children.

### **Disability and Development**

The Law on the Protection and the Promotion of the Rights of Persons with Disabilities (PPRPD) and the National Plan of Action for Persons with Disabilities including Landmine/ERW (Explosive Remnants of War) Survivors (NPA) was adopted in 2009. Despite this, while persons living with disabilities are overrepresented among the poorest in Cambodian society, disability is not specifically included in Cambodia's development plans, monitoring frameworks, National Budget or JMIs. This Position Paper recommends a future revision of the NSDP Update to include specific targets, programs and monitoring indicators on disability.

The paper also raises the general lower school participation and income of persons living with disabilities compared to the non-disabled. In addition, it notes that only 77% of medical staff are aware of the Prakas on free health care for the disabled while only 8% of disabled persons have received the service. It is recommended that this be addressed in relevant sector strategies. The paper also raises issues concerning: enforcement of the disability law, ratification of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) and the need for inclusion of disability in decentralization and de-concentration (D&D) reform and social safety net programs.

### **Child Rights**

Progress is being made on the promotion and protection of children's rights in Cambodia, although there are several areas where continued improvements are necessary. In addition to education, this Position Paper expresses concern regarding drug abuse and provides recommendations related to awareness raising on the dangers of drug use, strengthening law enforcement and the need to improve treatment and rehabilitation.

Other areas covered are: the need to finalize the Law on Juvenile Justice and its subsequent implementation, as Cambodia still does not have a separate juvenile justice system and children are housed in adult prisons after appearing in the same courts and being judged as adults. Other issues related to the risks faced by children include child trafficking and sexual exploitation of children; HIV/AIDS as a result of drug usage; and implementation of mechanisms for monitoring the UN Convention of the Rights of the Child (UNCRC).

## **Monitoring the NSDP Update Formulation Process**

### **NGO Participation in National Planning and Technical Working Groups**

NGOs applaud the RGC's attention to partnership with development partners, including NGOs and wider civil society, expressed in the draft NSDP Update 2009-2013, which follows its commitments made in the Cambodian Declaration on Aid Effectiveness and international commitments made in the Paris Declaration and the Accra Agenda for Action. NGOs appreciate their current inclusion in the RGC-led aid coordination mechanism including the Cambodian Development Cooperation Forum (CDCF), Government Development Partner Coordination Committee (GDCC) meetings and TWGs, and value these meetings as useful sources of information. However, it is generally felt that space for constructive discussions and meaningful consultation among all stakeholders could be further improved.

Recommendations included in this Position Paper include continued cooperation between all partners in the TWGs and clarification of the roles and responsibilities of NGOs in the TWGs. The paper also reviews the experience of NGOs participating in the drafting process of the

NSDP Update and includes suggestions as to how to improve participation of NGOs and wider civil society in the planned preparation of the Mid-Term Review of the NSDP Update in 2011.

## Introduction

The work of Non Governmental Organizations (NGOs) and civil society organizations (CSOs) in Cambodia spans a broad range of development issues and involves close engagement with Cambodians from all walks of life and socio-economic statuses. The common ground of these organizations is the shared objective of advancing the position of poor and vulnerable groups in Cambodian society. Through our combined knowledge of what is occurring at the grassroots level, civil society is well placed to assist the Government in its policy-making and implementation by sharing and providing valuable feedback and suggestions regarding the country's development policy and implementation.

Like previous years, the NGO community has produced sectoral and issue papers on topics ranging from agriculture, land reform, forestry and good governance, as their input for the third Cambodia Development Cooperation Forum. This year, the NGO community has brought together 20 sectoral and issues papers, prepared by sectoral NGOs/groups with contributions from and consultation with their network. In January 2010, sectoral NGOs/groups gathered to discuss the preparation of the position paper and statement. At the meeting, NGOs agreed that the 2010 NGO Position Papers should continue to focus on the monitoring of the JMIs, implementation of the NSDP Update 2009-2013, while also raising other important issues, based on observations made during the period of 2009 to mid 2010. In addition to observations and recommendations from NGOs, some Position Papers include case studies reflecting on real events happening at the grassroots level.

These papers present NGOs' views regarding the current situation of Cambodia's development, with the aim of providing constructive feedback and recommendations on the progress made during the implementation of the NSDP Update and JMIs since the meeting of the Second CDCF in December 2008. It should be noted that the first draft NSDP Update 2009-2013 as circulated by the Ministry of Planning in December 2010 was used in these position papers, as the final version was not available during the preparation of these position papers.

This publication is the NGO input for the third Cambodia Development Cooperation Forum and should be read in conjunction with the "NGO Statement on priority issues towards the 4<sup>th</sup> CDCF" which has been separately submitted to the Third CDCF meeting. The NGO Statement identifies priority and cross-cutting issues. While detailed NGO views and recommendations on these issues can be found in individual position papers, the statement stresses that the implementation of the existing legal framework has the potential to positively contribute towards the improvement and upgrading of the lives of millions of poor and vulnerable Cambodians.

# **Good Governance**

## Combat Corruption

### 1. Introduction

The Coalition for Integrity and Social Accountability (hereafter "the Coalition"<sup>2</sup>, which has been transforming and now consists of 31 major international, national and provincial non-governmental organizations (NGOs), has closely monitored on an annual basis implementation by the Royal Government of Cambodia (RGC) of the Joint Monitoring Indicators (JMIs) related to combating corruption. The Coalition meets several times a year to monitor the legislative process of enacting the Anti-Corruption Law (ACL), to discuss different advocacy approaches and to take action to combat corruption. These approaches have included: writing and submitting position papers to and seeking meetings with the RGC and Parliament to express the Coalition's position on corruption issues, in particular the development of the draft ACL; taking the lead on the "Clean Hand Symbolic Treaties"; raising public awareness through the media; holding public forums and meetings; and implementing anti-corruption initiatives all across the country.

Civil society has been playing an active role in raising public awareness of endemic corruption issues, forms of corruption and measures to prevent corruption all around the country. One of the major highlights of the Coalition's activities has been the well-known Million Signature Campaign, which started in December 2007. The campaign collected at least a million signatures in support of the immediate passage of an ACL that meets international standards without any further delay, also expanding the outreach of public awareness on the cost and impact of corruption to local communities all across the country.

Progress has been made, especially in terms of raising public awareness on how corruption affects people's daily lives and its impact on society as a whole. Much of this progress owes to the commitment of civil society to combating corruption. It remains of deep concern to the Coalition that the ACL just passed by the National Assembly does not meet international standards.

### 2. Joint Monitoring Indicators

The relevant JMIs for the anti-corruption sector are as follows:

Target	Actions Needed	Responsible Government Institution
17. Combat corruption	1. Finalize and approve ACL, based on best international practices	Ministry of National Assembly–Senate Relations and Inspection (MoNASRI) Council of Ministers (CoM)/Anti-Corruption Body (ACB)/Anti-Corruption Unit (ACU)
	2. Prepare an implementation plan to enforce and manage implementation of the ACL	
	3. Disseminate information on reported cases on corruption and convictions on a semi-annual basis	
	4. Develop a clear policy framework on access to information (see paper on Access to Information)	

NGOs have the following comments to make on the above JMIs:

<sup>2</sup> Previously the Coalition of Civil Society Organizations against Corruption.

## **Monitored progress on JMI implementation**

### ***JMI 17.1: Finalizing and approving the ACL***

During the year, the RGC has shown commitment to reducing corruption. This was exemplified by a broadcasting spot on National Television of Cambodia (TVK) focusing on United Nations Transitional Authority in Cambodia (UNTAC) law and articles concerning the punishment of corrupt persons as well as a recommendation by the Prime Minister. This was followed by the approval by the CoM on December 9, 2009 of the draft ACL. However, the legislative process did not allow for public participation in reviewing and providing recommendations. Even though the Coalition received a copy of the draft ACL only at the last minute, it made a concerted effort to provide several key comments in joint statements issued on March 9 and March 10, 2010, when the National Assembly convened to debate the ACL.

The joint and several efforts of the Coalition are aimed at ensuring that the proposed ACL is an effective piece of legislation able to combat endemic corruption in Cambodia. Combating corruption is crucial to the economic and social development of Cambodian society, and to improving the living environment and livelihoods of Cambodian citizens in the long term. During the past year, the Coalition has conveyed its message through various radio talk shows and press conferences. In addition to its joint statement to the National Assembly, the Coalition submitted a letter requesting that parliamentary debate and adoption of the draft ACL be deferred until a later date to allow adequate time for public input into the discussions at the National Assembly. NGOs are deeply disappointed that this request was not heeded. Within three days of the draft ACL being made available to the public, the National Assembly adopted it. Therefore, we call on the RGC and the National Assembly to consider NGOs' recommendations with regard to amendments to the ACL. These amendments will concern public participation, witness and whistleblower protection and the independence of the ACU.

### ***JMI 17.2: Implementation plan for the ACL***

Taking steps to finalize and approve the implementation plan for the ACL will enable early preparatory work to ensure effective rollout. Education on and dissemination of the ACL should be carried out without waiting for the ACL to come into effect at the end of this year. Much can be done now to ensure greater knowledge and understanding of the ACL and its implications for stakeholders.

This will require the development of practical action plans to assist with the set-up of the ACB (to be established under the ACL), including planning for ACB staff and their training, office equipment, budget formulation for initial set-up and operational costs. As such, the implementation plan would provide pragmatic steps for the RGC to take to ensure the efficient establishment of a functioning ACB once the ACL becomes effective. The UN Development Program (UNDP) has suggested a three-pronged anti-corruption measure, to address education, prevention and investigation.

### ***JMI 17.3: Dissemination of information on reported cases***

NGOs acknowledge the RGC's attempts early last year to report certain corruption cases involving public officials. However, since then there have been no more reports by the RGC on any cases. It has been observed also that serious actions, such as court convictions of corruption cases, remain selective or are limited within certain political considerations. Ideally, corruption cases should be brought against all offending actors, whatever their political affiliation, in order to increase public confidence in the RGC's anti-corruption strategy and to ensure that all potential offenders are fearful of being caught. Generally, the few actions taken by the rehabilitated ACU under the CoM to crack down on what it claims to be "corruption" are seen as selective acts and/or one-off activities without any serious follow-up strategy. Moreover, tracking of these cases has been lost owing to a lack of systematic reporting.

### 3. Key Actions/Strategies from the NSDP Update

The relevant sections of the National Strategic Development Plan (NSDP) for this sector are as follows:

Section	Message
321	Strengthen and speed up work on education on and dissemination of corruption-related regulations
321	Minimize opportunities for corruption
321	Enforce the law against offenders
325ii	Strengthen the inspection sector and complaints handling in order to fight corruption

#### Monitored progress on NSDP Update implementation

##### ***321: Strengthen and speed up education on and dissemination of corruption-related regulations***

NGOs observe that no substantial actions have been taken so far by the RGC towards this target. Public education/awareness campaigns on anti-corruption tend to be organized largely by non-governmental actors; these are sometimes even challenged by local authorities. The NSDP Update 2009-2013 states that campaigns have been launched by the RGC to provide information, educate the public and disseminate knowledge on all aspects of corruption, including causes, effects and consequences. However, the RGC has limited knowledge, skills and experience in fighting corruption as well as lacking the tools, materials and techniques to be effective in fighting corruption. In 2009, Transparency International's Corruption Perception Index (CPI) ranked Cambodia 158 out of 180 countries (moving up from 166). This suggested that corruption in Cambodia improved slightly between 2008 and 2009. NGOs would like to urge the RGC to take greater steps to combat corruption by developing an effective action plan to increase public awareness through education and dissemination of corruption-related regulations.

##### ***321: Minimize opportunities for corruption***

Corruption is a cross-cutting issue, permeating all aspects of Cambodian life. To combat corruption, a strategy is needed to minimize opportunities for corruption. In August 2006, the ACU was structured and a Corruption Complaints Office was created, with the aim of enhancing public participation in the supply and receipt of corruption-related information. For example, window services have been established and expanded to some provinces/cities to ensure that public services are provided promptly and accurately and in a timely manner. Additionally, disciplinary actions have been taken against civil servants and against customs, police and judicial officers reported to have indulged in corrupt practices. However, it has yet to be seen whether these mechanism and actions have been effective in encouraging public participation in fighting corruption.

##### ***321: Enforce the law against offenders***

The NSDP Update 2009-2013 states that the RGC has adopted a holistic approach to fighting corruption. The RGC recognizes the limitations of the existing legislative framework as well as the limited capacities of its institutions, in particular the legal and judicial system. Failure by the judicial system to effectively punish corruption offenders has caused a lack of public confidence in the judiciary and limited the public's willingness to report cases of corruption. NGOs look forward to seeing, when the ACL becomes effective, the RGC taking steps to ensure its proper implementation and making amendments to the law when necessary, to make sure that it is an effective piece of legislation in combating corruption.

**325ii: Strengthen the inspection sector and complaints handling in order to fight corruption**

MoNASRI has conducted several investigations of public institutions, including four cases of irregularities in World Bank-funded projects. It has received 298 complaints from the public, investigating 92 itself and referring the remaining cases to other concerned public institutions. NGOs appreciate MoNASRI's efforts in this regard. However, in the future these cases should be handled in accordance with legal procedures that are fair and just and that punish offenders appropriately for offence/s committed. Importantly, there should be a formal system for inspection and complaints handling to ensure a more transparent process.

## 4. Recommendations

### Recommendations to the RGC

The Coalition would like to make the following recommendations to improve the effectiveness of the RGC in combating corruption:

- Allocate resources and develop a clear plan of action towards achieving the goal of public education and awareness on anti-corruption.
- Given that the RGC has limited resources and that partnership with non-governmental sectors is important, consider and approve a joint effort by means of which both the RGC and NGOs can work together and support each other towards the common goal.
- Develop and improve a systematic mechanism of reporting, by which it will be possible to report quarterly to the public on progress made in the fight against corruption. Actions against corruption must be taken systematically and regularly. Data should be reported through a public information mechanism and should include (but not necessarily be limited to): number of corruption investigations conducted; number of arrests; number of administrative actions taken; number of convictions and/or administrative dismissals; length of administrative suspension or sentence of convicted criminals; and estimated monetary impact of the crime committed.
- Finalize the implementation plan of the ACL and ensure effective enforcement. Amendments should be made to the ACL if it is found to be ineffective in fighting corruption, or if any gaps become apparent. The RGC should accept recommendations made by NGOs and donors on this point and incorporate these into the law for it to be efficient, effective and acceptable to the public. A failure to do so could be perceived as non-participation by the public, given that NGOs work closely with people of different backgrounds and represent different communities. Given the following concerns and recommendations, civil society organizations (CSOs) hope that the RGC will implement the ACL effectively in order to promote the livelihoods of the people for the benefit of the whole of society, in the further promotion of good governance, respect for human rights, democracy and social justice.
  - *Public involvement.* The current draft of the law was released only on March 4, 2010, coinciding with the weekend of International Women's Day, leaving insufficient time for any significant public involvement and comment. Consequently, we believe that there has been inadequate public consultation with respect to the new draft. Further, we note that the proposed National Council for Anti-Corruption, referred to in the draft, is not fully independent and notably excludes non-governmental representatives. There are also no provisions requiring either the National Council or the ACU to produce a public report on their findings and activities. This may result in a loss of public confidence in these institutions, which should be accountable to the people.

- *Witness and whistleblower protection.* These provisions are extremely vague, potentially contributing to putting any person who brings forth complaints on corruption and/or serves as a witness in a life-threatening situation. More express protective measures must be included, as the current provisions are too limited to offer any real protection to potential witnesses or complainants.
- *Independence of the ACU.* This provision does not guard against the removal of the chairperson. Given that anti-corruption is a highly politically sensitive issue, the chairperson's work must be free of political influences. Similarly, the chairperson must have only one role, that of chairing the ACU, in order that s/he can gain the confidence and trust of the public. S/he must be completely independent and above the politics.
- *Oversight.* Who will oversee the ACU to ensure that this body is accountable for its roles? The National Council for Anti-Corruption should audit any complaints received that the ACU decides not to investigate and should audit investigation reports on cases not resulting in prosecution. However, it should not interfere with ongoing investigations.
- *An independent budget.* It should be clearly stated in the law which organ should control the budget. There should also be a clearly stated minimum amount for the yearly budget and guarantees should be provided that the budget will not be reduced from year to year, to ensure that the National Council and the ACU have adequate operating funds.
- *Asset declarations.* To ensure that the ACU has the capacity to actually carry out its functions, asset declarations should focus on the most senior government officials, and not on all levels of government or NGO leaders. To be truly meaningful, asset declaration provisions should be extended to include spouses and children of high-ranking officials. The law should also include a "catch-all" clause to include any assets under the subject's control.
- *Gifts.* In the current draft, "gifts" are not properly defined. Also, the term "tradition" should not be a barrier preventing action against any corrupt person. While it is customary to give gifts in Cambodia, the law should clearly define the permissible level or amount of such gifts. Cambodia should look at other comparable laws, such as that of Hong Kong, which provides for a maximum gift amount (\$100), ensuring that the giver and the receiver are not engaged in corruption.
- *Petty corruption.* No corruption act is excusable. It is widely known that teachers, police, health care workers and other public servants are underpaid. There should be moves to improve the situation for such actors to ensure that there is no official excuse for their behavior.
- *Illicit enrichment.* Currently, all that a person needs to do is declare ill-gotten assets on a declaration form. Instead, the offence of illicit enrichment should facilitate prosecution of corrupt offenders when it is difficult to find actual evidence of their corruption (when it is hidden). The fact that a person has unexplained wealth should raise a rebuttable presumption that this has been derived from corrupt sources.
- *Broader reform of public administration and procurement processes to mainstream anti-corruption.* The earlier draft ACL provided for a sweeping framework to encourage transparency and mainstream anti-corruption throughout government. These provisions have been dropped from the current draft ACL and should be reinstated.

We aim to provide constructive criticism in the effort to properly fulfill our role as civil society in a democratic nation. We also truly believe that our work will continue to contribute to the building of a democratic Cambodian society for all. This should not be a serious challenge as long as the RGC has the political will to do it.

### **Recommendations to the development partners**

Development partners should continue to be unified in holding the RGC accountable to its promises and obligations, as reflected in the agreement with international donor community in the Consultative Group (CG) meeting in 2004, with regard to the following outstanding issues:

- Strongly recommend to the RGC that the existing operational mechanism be improved in great measure and used to track and prosecute any exposed corruption acts, which should be reported systematically to the public.
- Press for the expedition and finalization of the implementation plan, to be ready in 2010 before the eventual passage of the ACL.
- Push the RGC to move further with the establishment of a legal framework on access to information.
- Show strong support for civil society's position and encourage a constructive partnership between the RGC and civil society, particularly on the anti-corruption front (including on amendment to the law in the case of gaps or ineffective implementation).

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# Access to Information Policy Framework

## 1. Introduction

The Royal Government of Cambodia (RGC) views good governance as a core and essential component of its Rectangular Strategy to achieve its development goals. Access to information is a crucial ingredient in achieving this key goal of good governance. It allows people to acquire government-held information and for the government to operate with more transparency and accountability. To promote such transparency and accountability, Cambodia needs an Access to Information Law. Such a law would help encourage trust and confidence between the RGC and the Cambodian people, and would empower more people to engage with the political and development processes that contribute to the sustainable development.

The Freedom of Information Working Group, formed in 2003 with 19 national and international organizations in cooperation with the RGC, plays a particularly crucial role in supporting the passage of an Access to Information Law. The group has cooperated with the Ministry of National Assembly–Senate Relations and Inspection (MoNASRI) to produce an Access to Information Policy Framework, fundamental to guiding and supporting government institutions as they draft an Access to Information Law to an international standard. It has also worked with the 11 political parties to help them integrate an access to information component in their political platforms. Some progress has been observed on the development of an Access to Information Policy Framework, but there have been no steps towards its approval, even though access to information is part of the Anti-Corruption Joint Monitoring Indicators (JMIs).

Non-governmental organizations (NGOs) appreciate the opportunity offered by the Cambodia Development Cooperation Forum (CDCF) to share their observations and concerns as outlined below.

## 2. Joint Monitoring Indicators

Target	Action Needed	Responsible Government Institution
17. Combat corruption	... 4. Develop a clear policy framework on access to information	MoNASRI Council of Ministers (CoM)

### Monitored progress on JMI implementation

NGOs appreciate that the drafting of this valuable Access to Information Policy Framework has been conducted in a participatory manner through consultation with various stakeholders. NGOs also recognize that the RGC intends at some stage to approve the policy framework. However, to date the draft remains with MoNASRI.

### Recommendations to the RGC

- Submit an Access to Information Policy Framework consistent with international standards to the CoM to approve as soon as possible. NGOs need to participate in the whole process.

## 3. Key Actions/Strategies from the NSDP Update

Section	Message
325ii	Strengthen institutions and human resources development in order to increase institutional capacity at headquarters and in provincial and municipal departments to continue drafting laws on inspection, procedures on inspection and policy on access to information

## **Monitored progress on NSDP Update implementation**

NGOs acknowledge that the RGC has the intention of promoting the freedom to seek and obtain information and to promote transparency, accountability and good governance. Based on the first draft of the National Strategic Development Plan (NSDP) Update 2009-2013, the RGC has taken some action to ensure transparency. For instance, the Access to Information Policy/Law is now a priority policy for drafting by MoNASRI, along with a set of activities to ensure its approval. However, the NSDP Update does not report what progress has been made in developing an Access to Information Policy. NGOs note that there are no specific output indicators to confirm delivery of the policy/law.

In the mean time, public access to information is still limited. A World Bank assessment report in February 2009<sup>3</sup> found that there was extremely limited access to detailed or broken down information about revenues, budget and expenditure. Although this situation improved with the publication of the 2006 report of the National Audit Authority on October 28, 2009, this issue deserves continued attention (and audit reports need to become more current).

Through workshops and forums<sup>4</sup> conducted by the Freedom of Information Working Group in 2009, it became clear that people want more information on a wide number of topics. Areas of public interest include policies, sub-decrees, commune development plans, budgets and expenditure, among others, related to and protecting their livelihoods. Participants also expressed concern that lack of access to such information leads to negative effects on livelihoods, such as loss of assets, wrong decisions, poor health, lack of knowledge and understanding and loss of trust, confidence and good linkages between citizens and the RGC.

NGOs support a statement by the Ministry of Planning (MoP) and the United Nations Development Program (UNDP) in the 2007 Cambodia Human Development Report which states that: '... important is the need for much greater transparency, equal access to relevant information and genuine participation by rural people and communities in land related decisions that affect their livelihood, security and well-being'<sup>5</sup>. To realize this, the Access to Information Law is necessary, so that citizens can participate in the development process in a meaningful and sustainable way.

## **Recommendations to the RGC**

- Ensure that the Law on Access to Information is a priority for this fourth legislature, including clear and specific output indicators and a timeframe for output delivery.
- Increase and make more regular and publicly accessible any publication of accurate information on policy and financial issues, among others, that gives an indication of their importance/relevance to the Cambodian people.
- In cooperation with the Freedom of Information Working Group, formulate strategies, procedures and mechanisms enabling the effective implementation of the Access to Information Law once it is enacted.

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<sup>3</sup> World Bank (2009) Linking Citizens and States: An Assessment of Civil Society Contributions to Good Governance in Cambodia.

<sup>4</sup> The Freedom of Information Working Group organized forums and workshops on access to information in nine provinces (2008-2009), with the participation of 910 people (220 women) representing local government, NGOs, the private sector, students and communities. These identified similar access to information issues between 2008 and 2009.

<sup>5</sup> MoP and UNDP (2007) Expanding Choices for Rural People: Cambodia Human Development Report 2007.

### **Recommendations to the development partners**

- Allocate resources to promote people's awareness of their right to access public information and of the need for a law in Cambodia to endorse this in order to broaden transparency and accountability.
- Encourage partners to focus and integrate access to public information concepts/principles into projects/programs as a cross-cutting issue.

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## Legal and Judicial Framework

### 1. Introduction

The Cambodian Human Rights Action Committee (CHRAC) is a coalition of 23 non-governmental organizations (NGOs) working to promote respect for human rights, democracy and rule of law in Cambodia. CHRAC is concerned with the legal and judicial framework being implemented by the Royal Government of Cambodia (RGC), which is vital in ensuring the proper functioning of the rule of law and respect for human rights in Cambodia. CHRAC is working on these issues very closely by monitoring progress as specified in the actions needed of the Joint Monitoring Indicators (JMIs) and progress made in implementing the National Strategic Development Plan (NSDP) Update 2009-2013.

### 2. Joint Monitoring Indicators

Below are the JMIs related to legal and judicial reform that the RGC and its development partners committed to implementing and monitoring in the period between the second and third meetings of the Cambodia Development Cooperation Forum (CDCF).

Target	Actions 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	1. Legal and Judicial Reform System Strategic Objective 2. Complete the drafting and approval of the remaining fundamental laws (Penal Code, Law on the Statute of Judges, Law on the Organization and Functioning of the Court, the Law on the Amendment to the Law on the Organization and Functioning of the Supreme Council of Magistracy (SCM))	Ministry of Justice (MoJ) leads
	2. Implementation of the framework for legal and judicial reform through a) implementation of court registers in all four model courts; b) ongoing training of judicial professionals to improve the supply of judicial services and the functioning of the courts	

#### Monitored progress on JMI implementation

##### ***16.1: Complete drafting and approval of four remaining fundamental laws***

This JMI has not yet been fully achieved, since only one of the four fundamental laws has been completed and approved by the National Assembly.

- *Penal Code.* The draft Penal code was approved by the National Assembly in late 2009.
- *Law on the Statute of Judges.* This draft law is currently in the Office of the Council of Ministers (CoM). The Jurist Council of the CoM has finished its technical

discussions and review but the draft has an outstanding issue with regard to oversight: the current government has the Office of Prosecution under the guidance and inspection of the MoJ, whereas judges come under the guidance and inspection of the SCM. In general, it is thought that both prosecutors and judges should now come under the guidance of the SCM. The Deputy Prime Minister/Minister of the CoM and Chairman of the Council for Legal and Judicial Reform has created a small working group of legal experts to further review the draft law and seek a good resolution to this issue, taking into consideration the independence of judges and prosecutors. No further information on the future progress of this draft law is available.

- *Law on the Functioning and Organization of the Court.* This law is currently in the CoM. According to an official in the CoM, progress depends on the political will of the RGC. It has not been possible to confirm when CoM will be able to approve the draft law.
- *Law on the Amendment to the Law on the Organization and Functioning of the SCM.* To date, no progress has been made on this draft law, which remains at the MoJ. The government is considering whether the Secretariat of the SCM will be put under the inspection of the Inspection Department of the MoJ or whether it should be independent, under the inspection only of the SCM, with an autonomous budget. Civil society organizations (CSOs), especially those that work in the fields of law and justice, are looking forward to seeing progress on this vital draft law, which will enable the SCM to strictly monitor the conduct of all judges and prosecutors in performing their judicial tasks, to monitor judicial systems and to respond to all kinds of complaints, such as those on corruption and any other irregularities in the courts.

## **16.2: Implementation of the framework for legal and judicial reform**

### *a) Implementation of court registers in all four model courts*

Under this action, the four model courts are the Municipal Court of Phnom Penh and the Provincial Courts of Kandal, Kampong Cham and Banteay Meanchey. The main purpose of the model courts is to encourage the Cambodian people to believe in and use the Cambodian legal and judicial system. Court registers are very important for the management and measurement of court task fulfillment, such as the number of cases received during each month or of incoming registered cases on which actions have been taken by court officials.

This action has been achieved, as court registers are being implemented. As a general observation, all four model courts are performing better. With support from donors, the court infrastructure has been modernized and courts are more professionally organized. It is fair to say that general enforcement of legal and judicial procedures is also better in these four courts, such as the regular registration of case files. The right to receive a fair trial and other human rights are being enhanced. For instance, every accused person, when standing trial, is allowed to wear normal clothes as a result of the presumption of innocence.

However, there is a continued need to build the public's trust in the court system. It is generally observed that the Cambodian people do not yet feel encouraged in any great measure by the model court project, given a lack of general awareness on their importance.

### *b) Ongoing training of judicial professionals to improve the supply of judicial services and the functioning of the courts*

Since its establishment by the RGC, the Royal Academy of Judicial Professions has run five training rounds. The outcomes and current status are as follows:

Round 1:                    55 student judges graduated and joined the judicial service.

Round 2:	55 student judges graduated and joined the judicial service.
Round 3:	63 student judges graduated and joined the judicial service.
Round 4:	63 student judges finished their internships and are studying their last four month specialty course, to be assigned to join the judicial service.
Round 5:	55 student judges are now doing internships in the provincial courts.
Round 6:	The Royal Academy is calling for applications from those with a legal education background. 55 student judge candidates will be recruited and 5 student judge candidates will be appointed from among civil officials by the CoM for automatic admission.

Within the framework of the Royal Academy of Judicial Professions, the RGC has established schools for judicial specialties, namely the School of Bailiffs, the School of Notaries, the School of Clerks and the School of Lawyers (formerly the Training Center for Legal Professions). Progress in these schools is as follows:

School of Bailiffs:	Round 1 currently has 35 student bailiffs, with more being recruited.
School of Notary:	Round 1 currently has 15 student notaries, with more being recruited.
School of Clerks:	In Round 1, 81 student clerks graduated and joined the judicial service. Round 2 recruited 63 student clerks, now on internship in judicial institutions around the country.
School of Lawyers:	Since establishment, this institution has produced more than 620 lawyers, working throughout the country. The school recently finished Round 9 of training to 34 student lawyers. It is currently calling for applications, with an assumed recruitment of 34 student lawyers.

As such, this action has been achieved, although ongoing effort will be necessary.

## **Recommendations**

### ***3.1: Complete drafting and approval of the four remaining fundamental laws***

- *Penal Code.* This has ready been approved but has not yet entered into force. Since this is a fundamental law, carry out broader dissemination to ensure that the Cambodian public and especially legal enforcement officials are able to apply and enforce the new code properly and effectively.
- *Law on the Statute of Judges and the Law on the Organization and Functioning of the Court.* Although the fact that these two laws are in the Office of the CoM signifies some progresses on these two draft laws, accelerate their adoption to ensure the effectiveness, impartiality, competence and independence of the courts throughout Cambodia.
- *Law on the Amendment to the Law on the Organization and Functioning of the SCM.* To ensure the independent functioning of the judiciary and also to punish judicial officials who commit wrongdoings, accelerate the adoption of this law. Moreover, the RGC should not place the Secretariat of the SCM under the inspection of the Inspection Department of the MoJ: its independence and its autonomous budget package should be maintained.

### ***3.2: Ongoing training and transparent selection of judicial professionals to improve the supply of judicial services and the functioning of the courts***

- Along with efforts made through the establishment and operations of the Royal Academy of Judicial Professions, continue to facilitate, further encourage and open up wider opportunities to all persons with a legal education background, both from the provinces and in Phnom Penh, to continue their education in legal and judicial skills in the Royal Academy of Judicial Professions. In addition, the RGC should provide sufficient scholarships to poor students who pass the admission examination.

- Keep fighting all forms of corruptions and other irregularities occurring during the selection of persons or candidates with a legal education background for further education in the Royal Academy of Judicial Professions.

### 3. Key Actions/Strategies from the NSDP Update

Section	Message
329	Legal reforms: Continue to promote the adoption of the major fundamental laws, namely the Penal Code, the Anti-Corruption Law, the Law on the Organization and Functioning of the Court, the Law on the Amendment to the Law on the Organization and Functioning of the SCM.

#### Monitored progress on NSDP Update implementation

##### **329: Legal reforms**

Even though a number of *fundamental laws* among the original eight have been adopted, still three fundamental laws remain in draft, as mentioned above. Lack of progress on passing these fundamental laws has caused a delay in the development of other laws, such as the Law on Law Court Clerks, the Law on Notaries and the Law on Bailiffs. Delay on the draft Law on the Organization and Functioning of the Court has led to a postponement of the establishment of special tribunals such as the Labor Tribunal, the Commercial Tribunal, the Administrative Tribunal and the Juvenile Tribunal.

The RGC has established mechanisms for *confliction resolution outside of the courts*, especially in response to current widespread land issues (the National Authority for Land Dispute Resolution), but it is fair to report that these are not working effectively.

#### Recommendations

- Ensure the independence of the judiciary by adopting as soon as possible all fundamental laws agreed between the RGC and donor countries.
- As soon as possible, create and pass relevant laws that will be used as the basis for the establishment of specialized tribunals.
- Improve the quality of land dispute resolution mechanisms in order to effectively address land issues in the best interests of affected communities (see Position Paper on Land Reform for more).

### 4. Important Issues Not Covered by the JMIs or the NSDP Update

NGOs appreciate the many issues raised in the NSDP Update but are concerned about some others not covered by this or by the JMIs. Two issues in particular are considered important:

- With the donor community, continue ensuring the smooth functioning of the Extraordinary Chambers in the Court of Cambodia/Khmer Rouge Tribunal (ECCC/KRT), supported by the United Nations (UN), to provide justice to victims of crimes committed during the Democratic Kampuchea regime (April 17, 1975 to January 6, 1979). So far, both Cambodian and international observers have noted some corruption in the tribunal, as well as a lack of funding.
- As a part of legal and judicial reforms, in the long run the Appeals Court should be expanded to promote justice and the speedy resolution of cases up for all parties.

## Recommendations

- Help by all possible means the ECCC/KRT to move forward smoothly without disruption, especially resolving financial issues and ensuring the tribunal's independence.
- Help the ECCC/KRT's Administration Office prevent corruption, which has the potential to jeopardize the pursuit of justice for victims and to create mistrust among donors.
- In the short term, NGOs should keep lobbying for an increase in the number of judicial officials in the Appeals Court as a part of legal and judicial reforms.

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# Public Financial Management Reform: Budget Transparency and Public Oversight

## 1. Introduction

The Royal Government of Cambodia (RGC) has made substantial progress in its Public Financial Management Reform Program (PFMRP), which started in 2004. Non-governmental organizations (NGOs) appreciate the importance, complexity and long-term nature of the reform process and are aware of recent discussions to make implementation more realistic. Besides the many intra- and inter-ministerial coordination challenges, NGOs believe that progress can continue to be made in improving transparency throughout the budget process and recommends that this be prioritized in the reform program implementation in the second half of 2010 and 2011.

While access to information is a necessary first step towards a more informed debate on spending public resources, NGOs would like to see the National Audit Authority (NAA) "close the gap" of the current far to date published audit report and publish both the 2007 and 2008 Audit Reports later this year. The publication of the 2006 Audit Report was important in this regard. Besides strengthening the NAA, NGOs would like to work closer with the National Assembly in monitoring the National Budget, as well as the new National Strategic Development Plan (NSDP) Update 2009-2013.

Key recommendations are:

- Put more existing information in the public domain (including documents already listed in the objective 25 of PFMRP Phase II).
- Strengthen the role of the NAA (not mentioned in the current PFMRP or the NSDP Update 2009-2013).
- Strengthen parliamentary oversight in preparing and monitoring the National Budget (not included in the current PFMRP or the NSDP Update 2009-2013).

This paper has been prepared by the National Budget Project, which aims to promote understanding on the National Budget among Cambodian civil society organizations (CSOs). The project is part of the Development Issues Forum<sup>6</sup> coordinated by the NGO Forum on Cambodia and has the status of observer in the Technical Working Group on Public Finance Management (TWG-PFM). This paper needs to be read in conjunction with the Position Papers on NGO Participation in National Planning and TWGs and on Extractive Industry Revenue Management.

## 2. Joint Monitoring Indicators

Target	Actions Needed	Responsible Government Institution	Concerned TWG
19. Continue implementation of Stage 2 of the PFM Reform Program with the objective of improving accountability for effective financial management	Continue implementing the PFMRP by: a) implementing and monitoring the Stage 2 consolidated action plan; and b) achieving agreed milestones and indicators under the Stage 2 performance monitoring framework	Ministry of Economy and Finance (MEF) Line ministries	TWG-PFM

<sup>6</sup> The Development Issues Forum consists of 25 lead sectoral NGOs, of which 11 are umbrella & network organizations.

## Monitored progress on JMI implementation

NGOs monitor activities and targets in PFM reform related to budget transparency. Progress below is based on information received during meetings of the TWG-PFM, the 2009 Progress Report produced by the PFM Steering Committee<sup>7</sup> on implementation of PFM reform and the experience of NGOs trying to access budget information from the RGC.

### *Cambodia's debt*

Information on Cambodia's debt is currently not published by the RGC. The National Budget Law monthly and annual execution reports provide information on amortization on external debt, but an overview of debts is not publicly available. Objective 12 of the PFMRP addresses the need for further improvements of debt management and sets a target to produce complete and up-to-date debt monitoring statements by 2009.

This target has not been met. The 2009 progress report on the PFMRP makes no mention of any quarterly or annual debt monitoring statements and a review of government budget documents shows no improvements on the RGC's provision of debt statistics to the public.

### *Public procurement*

Objective 14 in the PFMRP outlines activities to work towards improvements in public procurement. For 2009, the reform set itself a target to have a website developed where the RGC announces bidding opportunities and contract awards information. In 2010, 50% of all public procurement should have been published on this website.

This target has not been met. The 2009 progress report on the PFMRP mentions that the procurement website is under development and does not provide an estimated time when the website will become operational.

In the mean time, the current draft NSDP Update does not include any statements relating to public procurement. This is of particular note in the section on anti-corruption and good governance.

### *Reporting budget information to the public*

Ultimately, Cambodian citizens are in charge of the National Budget, exercising control by taking part in elections. Outside the elections, citizens' involvement in the budget process is currently limited, despite all the positive contributions that could be made in, for instance, expressing needs in terms of public spending, monitoring of expenditure and service delivery.

By providing timely and relevant information to the public, the RGC can play its part in empowering Cambodian citizens to find the space to make a positive contribution to the National Budget. In 2008, the RGC gave a clear commitment by including a provision in article 84 of its Law on Public Finance System stating that *"...all accounting and financial reports must be transparent and publicly disclosed"*. The PFMRP also shows a clear commitment to realizing this in the targets set under Activity 25.4: *"Improve forms of reporting to and communication with the public"*.

For 2009, the PFMRP set a target to make four of the following documents available: budget documentation; in-year Budget Reports; year-end Financial Statements; external Audit Reports; contract awards; and resources available to Primary Service Units.

<sup>7</sup> Accessed on March 11, 2010 from [www.pfm.gov.kh](http://www.pfm.gov.kh).

This target was met in 2009 but data are still at aggregate level. As mentioned in the 2009 PFMRP progress report, the monthly and annual public financial operations reports (the Table of State Financial Operations–TOFE) is being put on the MEF website. In addition, the NAA published the 2006 Audit Report in October 2009, the first since its establishment in 2000.

The increasing amount of information in the public domain is a very positive step, and NGOs look forward to seeing one more type of document in the public domain this year, as highlighted in the PFMRP targets for 2010.

### **Recommendations**

- Prioritize publication of debt information in 2010 and 2011 and add publication of monitoring statements to the TOFE.
- Prioritize the target of improving public procurement and agree on a realistic date to launch the website on bidding opportunities and contract awards information (with development partners).
- While putting more information in the public domain is important, also put emphasis on improving the quality of existing information. The TOFE does not include a breakdown by line ministry, although this information is available at MEF. Including this information is feasible and bears little or no cost. Meanwhile, the NAA needs to close the gap and make sure that its Audit Reports are published within one or two years after the fiscal year. NGOs are looking forward to seeing both the 2007 and the 2008 Audit Reports published in 2010.

### **3. Important Issues Not Covered by the JMIs or the NSDP Update**

In the NSDP Update, NGOs note the omission of a section on strengthening the role of the NAA in ensuring demand for executive accountability on the use of public funds. In addition, the National Assembly, which has the role of adopting and providing oversight of the implementation of the NSDP Update, did not have an active role in the formulation of the NSDP Update. In the view of NGOs, this limits the National Assembly's oversight capacity and its ability to ensure accountability from the Executive.

Every year, the RGC prepares its annual budget and submits it to the National Assembly for approval. NGOs observe that stakeholder participation in the budget process, from formulation to adoption, remains restricted to government line ministries, agencies and relevant institutions. Cambodian citizens, who are the real contributors to and owners of public funds, are not well informed and are not provided any opportunity to express their opinion and participate in the process.

In addition, NGOs observe that discussions in the National Assembly on the National Budget would benefit from more independent analysis of the draft. This would further strengthen the position of the National Assembly in its demand for financial accountability from the RGC.

Unlike earlier budget laws, the 2010 (draft) Budget Law did not include a column with estimated budget execution (capital expenditure) for the previous fiscal year (2009) and attach summary of budget implementation figures (especially recurrent expenditure) with explanatory statement. This exclusion causes difficulties for parliamentarians and other interested stakeholders in their analysis of the (proposed) law.

## **Recommendations**

- Give more attention to the role of the National Assembly and the NAA in the NSDP Update 2009-2013.
- Using NGO experience, organize national workshops or public hearings on the annual draft budget law so that CSOs and the general public can participate in the debate and raise their concerns with regard to priorities for the next budget law.
- Strengthen parliamentary oversight capacity in terms of preparation and monitoring of the National Budget (this is not included in the current PFMRP or the NSDP Update). This is also noted in a recent independent review of PFM reform.
- Ministry of Economy and Finance should maintain the column with expected budget execution figures of previous budget law when submitting the draft budget law to the Council of Ministers (CoM) for approval and to the National Assembly for Adoption. In general, MEF should include as much detail as possible for discussion, including a further breakdown of the capital side of the budget law.

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# Extractive Industry Revenue Management

## 1. Introduction

Cambodians for Resource Revenue Transparency (CRRT) is a coalition consisting of three non-governmental organizations (NGOs): Development Partnership in Action (DPA), the Youth Resource Development Program (YRDP) and the NGO Forum on Cambodia.

CRRT is committed to engaging constructively with the Royal Government of Cambodia (RGC) to help ensure that revenues from oil, gas and mining are managed transparently in a way that is understood by the general public. Contact details of the CRRT Secretariat can be found below, as well as its website and the e-mail address to subscribe to its bimonthly newsletter.

## 2. Joint Monitoring Indicators

The relevant Joint Monitoring Indicator (JMI) for resource revenue transparency is the JMI on the implementation of the Public Financial Management Reform Program (PFMRP).

Target	Actions Needed	Responsible Government Institution
19. Continue implementation of Stage 2 of the PFMRP with the objective of improving accountability for effective financial management	Continue implementing the PFMRP by: a) implementing and monitoring the Stage 2 consolidated action plan; and b) achieving agreed milestones and indicators under the Stage 2 performance monitoring framework	Ministry of Economy and Finance (MEF) Line ministries

### Monitored progress on JMI performance

There is clear recognition by the RGC, at the highest political level, that revenues from oil, gas and mining need to be managed well. The Cambodian Prime Minister called this "the most salient issue" in his speech at the Cambodia Economic Outlook Conference in 2008. The RGC's PFMRP addresses this well and lays out important elements for proper management of such revenues.

Objective 11 in Part 1 of the PFMRP Stage 2 recognizes the need to further improve the RGC's revenue policy and administration. Activity 11.2 of the PFMRP relates directly to RGC preparations for managing revenues transparently and sets itself targets for 2008, 2009 and 2010. These targets are the implementation of the Extractive Industry Transparency Initiative (EITI) and the Oil/Gas/Mining Revenue Management Legal Framework.

### *Extractive Industry Transparency Initiative*

CRRT considers implementation of EITI part of the solution with regard to managing future revenues from our oil, gas and mineral resources.

Targets set by the PFMRP Part 1 include Objective 11.2 "to initiate implementation of EITI" in 2009 and "EITI implemented" in 2010. This target has been partly met. The RGC's 2009 progress report on the implementation of the PFMRP Stage 2 details the creation of an "Inter-ministerial Technical Working Group [TWG] to mobilize and manage revenue from oil, gas and other mineral resources" under the PFMRP, in charge of studying and implementing EITI principles. This committee, established by sub-decree on February 4, 2009, has not yet reported its recommendations on EITI implementation in Cambodia to the TWG-PFM.

In verbal statements, senior government officials have stated that the RGC is still considering EITI and that some EITI principles can be applied in the Cambodian context. While it is encouraging that EITI is still under consideration, CRRT continues to favor full implementation of EITI within the next two or three years.

#### *Recommendations*

- The Royal Government of Cambodia should prioritize implementation of EITI in 2010/11, with other policy measures that strengthen transparency in oil, gas and mining, most notably transparency in licensing.
- Development partners need to be fully responsive to challenges highlighted by the RGC in the 2009 PFM progress report and:
  - Provide technical support to prepare the policy, legal and management framework on revenue from oil and gas.
  - Build capacity/support relevant staff.
  - Provide other necessary information related to oil and gas business operations.
- In addition, development partners need to provide support to the establishment of multi-partner stakeholder mechanisms where the RGC, the private sector and civil society can hold dialogue on the development of the extractive industries sector.

#### ***Oil/Gas/Mining Revenue Management Legal Framework***

Targets set in the PFMRP Part 1- Objective 11.2 of the Public Financial Management Reform for 2009 are that: **i)** Oil/Gas/Mining Revenue Management Framework will be developed, and subsequently **ii)** the Revenue Management Legal Framework will be implemented in 2010.

This target has been partly met. During the process of development, the Inter-Ministerial TWG produced an "Action Plan for mobilization and management of revenue from oil, gas and other mining resources" as a tool to ensure transparency and disclosure in extractive industries sector revenue management. Senior officials from the Supreme National Economic Council (SNEC) presented the plan to the National Assembly on November 20, 2009 and to representatives from CRRT on December 1, 2009.

In 2009, the Inter-Ministerial TWG produced a format for administrating revenue collection from oil, gas and other mineral resources and initiated that all revenues be published in the Table of Financial Expenditures (TOFE) – RGC's monthly revenue and expenditure report that can be downloaded from MEF's website. While public reporting on resource revenues is currently at the aggregate level (all revenues from all oil, gas and mining companies lumped together), tables presented to CRRT are detailed and contain information on the different types of revenue, with separate tables for revenues from mining and oil/gas.

The Law on Petroleum Taxation was not completed in 2009. The PFMRP progress report states that the draft law has been submitted to MEF for finalizing.

#### *Recommendations*

- The Royal Government of Cambodia hold a discussion about whether the current aggregate reporting of revenue streams from oil, gas and mining in the TOFE can become more detailed over time.
- CRRT recognizes positive steps towards full revenue management and a legal framework and at the same time wishes to urge the RGC to engage in public

discussions on these, in particular the Law on Petroleum Taxation and Petroleum Law, as mentioned in the Inter-Ministerial TWG's Action Plan.

- Making information publicly available on both overviews of the oil/gas/mining industry and industry revenue management is one step; open discussions, explaining proposals and taking feedback into account, are an important next step to promote transparency and accountability among concerned stakeholders. EITI provides a mechanism for this, but there are other forums in which the RGC and civil society can hold dialogue also.

### 3. Key Actions/Strategies from the NSDP Update

Section	Message
457	The Royal Government considers oil and gas resources as a unique potential to ensure energy security and as valuable resources for long term economic development of Cambodia. In this sense, the Royal Government will develop policy, legal and regulatory framework for the sector in order to ensure efficient management and resources utilization for economic development and improvement in livelihoods of the Cambodian people.

#### Monitored progress on NSDP Update implementation

In the view of CRRT, the oil, gas and mining sectors do not receive sufficient attention in the NSDP Update 2009-2013. Although these revenues are recognized as a valuable resource for long-term economic development, the NSDP Update does not elaborate on what systems will be put in place to assure this.

#### Recommendations

- Through the JMIs on PFM reform, attention is being paid to managing revenues. To ensure that this resource benefits long-term economic development, more attention needs to be paid to management throughout the value chain.
- CRRT urges the RGC, with support from its development partners, to improve transparency in: bidding rounds, licensing, contracting, revenue management and expenditure of these funds on the public good and poverty reduction.

### 4. Important Issues Not Covered by the JMIs or the NSDP Update

In the RGC's TOFE, actual collected revenues from the extractive industries are already reported at the aggregate level. However, these revenues are not reported in the Law on Finance for 2010 Management (2010 Budget Law), where only "Revenues from mining concessions" are clearly stated.

#### Recommendations

- MEF should include its estimated revenue from the extractive industries in the Law on Finance for 2011 Management (2011 Budget Law), at a disaggregated level. This will facilitate greater awareness of the increasing importance of the sector and stimulate discussion on how these revenues need to be spent for the long-term benefit of Cambodia.

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# **Environment for Implementation of the Rectangular Strategy**



Celebration of 2009 International Human Right Day

# Election Reform and Democracy

## 1. Introduction

The Committee for Free and Fair Elections in Cambodia (COMFREL) has been playing a critical role in contributing to the overall improvement of Cambodia's elections. COMFREL focuses on not only the election process, regarding the legal and regulatory framework, but also community education, monitoring of the political platform of elected officials and public forums to encourage citizens to participate in politics and decision making.

In 2009, the Voter Workshop on Benchmarks for Priority Sectors in 24 Provinces and Municipalities, Parliamentary Watch and the Media Monitoring program, etc., enabled COMFREL to highlight the failures of the Royal Government of Cambodia (RGC) related to democracy and the fundamental freedom to promote democracy, reform and improvement in upcoming years.

COMFREL calls on the RGC to enact key reforms in the electoral system and protect the democratic environment, in order to fully realize the right to participation of Cambodian citizens.

## 2. Key Actions/Strategies from the NSDP Update

Section	Message
305	Sustainability, peace, political stability, security and social order to promote the rule of law and protect human rights and dignity and multiparty democracy
327	The RGC has improved legal and judicial systems by focusing on the development of a sound legal framework and modernization of the law, as well as by laying out necessary strategies and measures to enhance the competence, independence and impartiality of the judiciary, which are crucial to strengthening the rule of law

### Monitored progress on NSDP Update implementation

COMFREL finds that election reforms and democracy are not discussed in great detail in the NSDP Update 2009-2013.

## 3. Important Issues Not Covered by the JMIs or the NSDP Update

COMFREL is using this statement to provide an assessment of five important issues.

### Indirect election system of sub-national councils

In 2009, the government changed the system to have district and provincial councils elected by commune councils. Rather than holding a general election in which the Cambodian voters selected their representatives to these councils, commune councilors, selected by the public in 2007 (totaling 11,353 councilors), formed the electorate in these indirect elections.

This system is not democratic and does not reflect the principal of universal suffrage. Universal suffrage emphasizes inclusiveness and non-discrimination within the group of persons to whom the right to vote is granted. Under the current system, ordinary Cambodian citizens, except at commune level, cannot choose their representatives at sub-national council level and therefore do not enjoy universal suffrage. Through surveys and forums, COMFREL has found that the public has no confidence in this electoral system. Citizens have asked for a system of direct elections to select the provincial, municipal, district and khan levels of government.

Additionally, this system does not reflect the objective of democratic development, which is a stated goal in the decentralization and de-concentration (D&D) reforms of the RGC. With no choice offered to the ordinary voter, this system cannot strengthen the accountability of elected officials towards their constituencies.

The proportional system used stipulates that the political parties prepare their candidate list and that eligible voters are drawn from existing commune councilors (for Senate elections, 123 votes are added, cast by members of the National Assembly). This system enables commune councilors to elect candidates from the party with which they are affiliated. Commune councilors had to elect their political party's candidate rather than the candidate of the people's choice in both the 2006 Senate elections and the 2009 sub-national council elections. Hence, the number of seats is proportional to the current number of commune councilors of the major parties from the Cambodian People's Party (CPP), the Sam Rainsy Party (SRP), the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) and the Nationalist Party (formerly the Norodom Ranariddh Party – NRP).

This kind of indirect election system, in which the voters consist of elected members from the major political parties, gives the National Assembly and the commune council majority party a disproportionate amount of control.

### **Right to vote**

Results of the 2008 Voter List Audit and Voter Registration Survey Report conducted by COMFREL in July 2009 revealed that, during the 2008 National Assembly elections, approximately 440,000 eligible voters who went to cast their vote on polling day could not vote because they could not find their name on the voter list or could not find their polling station code (indicating the polling station location) or its location.

Declining public participation in elections is also a cause for concern. Voter turnout for the direct National Assembly elections has declined markedly, from 93.74% in 1998 to 75.08% in 2008. The direct commune council elections, first conducted in 2002, have seen a similar decline, from 87.55% in 2002 to 67.87% in 2007.

The loss of voters' rights has had great impacts on the process and results of elections and represents a form of human rights violation (loss of the right to vote, the right to candidacy and the right to participate in political activities). At the same time, issuing Form 1018 (an alternative identification document for voters without a legitimate document or a national card) contrary to procedure was a critical issue that led to a number of irregularities and complaints.

### **Freedom of expression of Members of Parliament**

In September 2008, the new Parliament was sworn in and new internal rules were adopted. According to Articles 48 and 55, MPs must be seated and arranged in groups, each of which must be composed of at least 10 members, with a leader and a deputy leader. MPs from parties with fewer than 10 seats must join a group with other MPs. An MP cannot speak in Parliament unless s/he is a member of a group, makes a request to speak through the group leader and gets permission from the National Assembly Chairman. These rules have prevented the three Human Rights Party (HRP) MPs from speaking in Parliament: they have not joined a group because they want to retain their independence from other parties.

In addition, the Statute of Parliamentarians was introduced, similar to the 1992 United Nations Transitional Authority in Cambodia (UNTAC) Law, used to detain government critics on charges of criminal defamation. The new statute contradicts the Constitution, which states that no Assembly member shall be prosecuted, detained or arrested because of opinions expressed while exercising his or her duties. Article 5 takes away this protection if a parliamentarian is found to be abusing an individual's dignity, social customs, public order or national security – without clarifying what constitutes these acts. When parliamentarians

fear arrest, they are limited in the exercise of their duty to express opinions and advocate for their constituents.

### **Functioning of the National Assembly**

The RGC was intended to function as a liberal democracy in which the three branches of government – executive, judicial and legislative – act as a limit or check on the power of the other branches. However, in practice, the National Assembly and judicial branches have failed to exercise much limitation on the power of the executive branch of government. This results from the control over MPs by their political party, various strategies to obstruct opposition parties, limitations on debate and the large ruling party majority in the current mandate.

Debate in the National Assembly is currently limited further by two factors – a boycott of National Assembly committees by the opposition and limitations imposed on debate in plenary sessions by the government/ruling party. COMFREL's parliamentary watch reveals that two MPs resigned from the CPP in 2009, but the reason for their resignation is not clear<sup>8</sup>.

In addition, in some cases the RGC requests that certain laws be passed quickly and without significant debate. This request is usually conveyed to the National Assembly by the committee chair when introducing a bill. On the other hand, in 2009 MPs sent requests to the government to answer questions on only three occasions. On two of these occasions, the government complied and sent representatives to appear in the National Assembly. In the third case, a request by an SRP MP for more detail on the budget, the Minister of Finance answered by letter, saying that the information requested was available on the government website.

In several instances, the amount of debate in the National Assembly concerning draft laws is rather limited, especially considering the importance of the laws in question. For example, the government's Law on Expropriations (of private citizens' land) was debated for a total of only six hours. The Law on Demonstrations, which contains several clauses seriously restricting the right to freedom of speech, was debated for a total of only seven hours. The Penal Code, for which the Cambodian public has waited for years, was debated for just over 13 hours, despite its contentious clauses related to defamation.

In terms of gender, women fared well as speakers in the National Assembly, with 11 out of 26 female MPs speaking during National Assembly sessions (42%). This compares favorably to male MPs, of whom 34 out of 97 spoke during National Assembly sessions (35%). Nevertheless, female MPs still make up only 21% of the total number of MPs, short of the goal of 30% female MPs and far short of gender parity.

### **Freedom of the press and media access and content**

Access to the media for major political parties, and an impartial presentation of events in the country, is an important part of the functioning of the democratic system, in which voters make decisions based on information about the performance of the parties, as well as the overall situation in the country.

In 2009, on from previous years, the media in Cambodia, including print, radio and TV media, continued to be structured in ways that place opposition parties at a severe disadvantage and limit the information and perspectives available to Cambodian citizens.

In 2009, 31 journalists were arrested<sup>9</sup>, double the amount in 2008 (only 14 journalists). Two of the 31 journalists were charged with defamation and disinformation.

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<sup>8</sup> COMFREL (2009) Parliamentary Watch Report, May.

<sup>9</sup> The Club of Cambodian Journalists reported this in a meeting on December 26, 2009.

Radio media is one of the most effective tools to reach people in Cambodia, most of whom live in rural areas with no television coverage or even newspaper distribution. Despite this, radio access is very limited for the opposition parties, which can access only a few channels with limited coverage in the provinces. In Phnom Penh, the SRP controls two radio stations, and there are two independent stations that sell air time to the opposition<sup>10</sup>. FUNCINPEC controls two radio stations but it is currently part of the ruling government coalition. In contrast, the CPP can access at least 39 channels<sup>11</sup>, including private and state channels reaching across the country. In 2009, the Ministry of Information (MoInfo) has announced that it will not sell any more radio licenses, meaning that opposition parties will have great difficulty gaining access to more radio channels than they can access now.

The television media is dominated by the ruling party or its allies in the business community. Opposition parties cannot access television coverage, except possibly in a single TV show, such as "Equity Weekly", on National Television of Cambodia (TVK) funded by the UN Development Program (UNDP), in which opposition MPs are sometimes interviewed related to debates on draft laws in the National Assembly. COMFREL's monitoring of this program from April to December 2009 found that the SRP and its MPs were shown more than other political parties – with 48 appearances. The CPP and its MPs were covered in 16 appearances, the HRP and its MPs in 18 appearances and FUNCINPEC and the Nationalist Party (formerly the NRP) combined in 12 appearances<sup>12</sup>.

All television stations are owned by the government itself, by a hybrid of government and private sector actors, by members of the ruling CPP or by tycoon allies or family members of the government and the CPP. As a result, the news broadcast on television has little real newsworthy content. Cambodian television news regularly covers conferences that show government officials speaking at meetings. Recurrent land conflicts, for example, find no place on the news at all. Television media also promote the ruling party by showing officials distributing gifts to the poor or to the soldiers at Preah Vihear Temple. The Prime Minister's speeches are often broadcasted at great length, taking up vast amounts of media air time and reinforcing his domination of the country's political landscape. The Cambodia Television Network (CTN) and Bayon in particular have also been used by the government and the CPP to discredit and criticize opposition parties and civil society/non-governmental organizations (CSOs/NGOs) on talk shows, with the latter given no chance to reply.

## 4. Recommendations

COMFREL would like to make some priority recommendations for reform, as follows:

- Generate a law on political party finance delineating disbursement and/or ban in the National Budget any benefit to political parties in order to increase the transparency of the budget used in election campaigns.
- Strengthen the legal framework for the media to ensure compliance with equal and equitable principles and a balance of information in elections for all political parties.
- To promote women's participation, adopt a minimum quota of 30% in all government institutions and in membership regulations of all political parties, to be achieved next year.
- To reform the electoral system, implement a mixed system which allows independent and/or individual candidates as well as political parties (using party lists) to run for posts at all levels of government

<sup>10</sup> Cambodian League for the Promotion and Defense of Human Rights (LICADHO) (2009) Restrictions on the Freedom of Expression In Cambodia's Media, May.

<sup>11</sup> Prime Minister Hun Sen (2008) Speech at the Opening Ceremony of the Latex Harvesting and Inauguration of the Dharma School of Kirivanaram Pagoda, Kampong Cham province, 21 May.

<sup>12</sup> This information is derived from COMFREL's media monitoring of TVK.

- Change the system of election of the new provincial/municipal/district/khan councils so that the Cambodian citizenry directly elects these, rather than them being elected by existing commune councils.
- In order to improve the function of the National Assembly, reform the internal rules and statutes of Parliament to allow all parties to speak during sessions and remove clauses that enable prosecution of MPs for expressing opinions in the conduct of their duties.
- Cease making charges against opposition MPs, journalists, human rights defenders and villagers on the grounds of defamation and other charges, and allow them to freely criticize and challenge the government and the ruling party, as is their right and duty.

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# Impacts of the Economic Downturn on Households and Communities and Essential Policy Responses

"Only 30% of the total surveyed households facing difficulties received assistance from the Royal Government, Development Partners and NGOs in the first semester of 2009. This showed that the coverage and targeting of current basic social safety net programs that addressed to the impacts of economic downturn on the households and communities were still low and limited."

## 1. Introduction

It has been over a year since the global economic crisis hit the Cambodian economy (in late 2008), leading to a drop in gross domestic product (GDP) growth to 0.1% in 2009<sup>13</sup>. The economic downturn has had severe impacts on the poor and vulnerable in Cambodia. Even though there are signs of recovery in the global economy, the Cambodian economy seems not to be recovering to the point it was at before the crisis hit. Impacts on households and communities remain a significant issue, pointing to the need for effective and vibrant short- and long-term policy responses from the Royal Government of Cambodia (RGC), with support from its development partners.

The Economic Development Network (EDN) consists of 25 non-governmental organizations (NGOs) under the coordination of the Economic Development Policy Project of the NGO Forum on Cambodia, established to analyze and monitor the effects of current economic policy on the poor and vulnerable. EDN has been working actively to monitor the impact of high food prices and the economic downturn on poor and vulnerable groups since 2008 and to coordinate the voices and immediate needs of affected groups to be heard by policymakers and decision makers. This paper highlights the impact of the economic downturn on households in specific communities as well as recommended policy responses. It is based heavily on a research report conducted by the Cambodian Economic Association in July 2009 on the impact of the economic downturn on households and communities in Cambodia<sup>14</sup>.

## 2. Key Impacts on Households and Communities

The soaring food price crisis, which hit the vulnerable communities in the country hard, had not subsided when the global economic downturn presented itself. The two crises put a great deal of pressure on the livelihoods of affected households and communities. Job losses in the garment, construction and tourism sectors and limited opportunities with regard to income-generating activities severely affected the economic power of those households that were dependent on remittances from family members working in these sectors. The global financial crisis put

*"89% of the respondents reported to have faced difficulties (reduced food consumption, limited health spending and increase loan outstanding etc) during the phenomenon of economic downturn in the first semester of 2009"*

<sup>13</sup> H.E. Dr. Hang Chuon Naron, Secretary General of the Ministry of Economy and Finance (MEF), Presentation in a Workshop on Governance of the Extractive Industry in Southeast Asia, March 30 to April 1, 2010.

<sup>14</sup> The research was commissioned by Oxfam America, Oxfam Great Britain and the NGO Forum on Cambodia in July 2009. The findings revealed that almost all communities across villages in 11 provinces and municipalities in Cambodia had been badly affected by the downturn. The evidence was taken from 1,070 households in 15 villages selected from diverse economic occupation backgrounds in various parts of the country, representing eight communities in Cambodia. The research findings supplement the studies already conducted by other institutions, such as the United Nations Development Program (UNDP), the International Labour Organization (ILO), the World Bank and the Cambodia Development Resource Institute (CDRI).

at least 63,000 workers<sup>15</sup>, mostly young female workers from rural areas, out of jobs in 2009. Even though there has been no accurate indication of the number of job losses in construction and tourism, sluggish movement in these sectors caused a great depression with terms of job opportunities and income security for those depending on wage earnings.

The survey showed that the pattern of impacts of the economic downturn on communities was similar to that of the impacts of the high food price phenomenon. During both crises, 89% and 88% of surveyed households, respectively, reported having faced great difficulties in terms of reduced food consumption, reduced health expenses and high levels of indebtedness as a result of an imbalance in income and expenditure. In the former case, impacts were fueled by steady incomes having to rally against soaring food prices; in the latter case, impacts were fueled by a loss of or reduction in income as a result of the economic downturn and very limited income-generating potential.

The severity of the impact varies according to the resilience, capacity or economic status of each community. The research showed that the communities that experienced the most difficulties as a result of the impacts of the economic downturn included: 1) urban poor and tourism-dependent villages, as the majority lost jobs in garments, construction and tourism and/or suffered from a drop in sales in tourism-related business; and 2) cash crops villages<sup>16</sup>, as their net profits decreased significantly compared to the previous year because of a decline in the sale price of these products, with production costs high during the planting season.

The poorest rural and land-abundant villages were also affected by the economic downturn. The latter still face difficulties because of drought, lack of irrigation, low productivity and limited technical skills. As with households in the poorest rural villages, which are mostly landless and land poor, households rely mainly on income from small farming, selling labor (jobs in garments, construction, agriculture, forest clearing) and remittances. A drop in the demand for labor led to the incomes of these households declining significantly.

Fishing villages faced great difficulty as a result of high food prices and the economic downturn. The severity of their hardship was deep. Being landless and land poor, and lacking other income sources, fishing households depend on fishing. Falling fish catches led the income of these households to decline. Of all surveyed fishing households, 77% reported that their income had decreased in 2009 compared to 2008.

The decrease in household income undermined households' ability to repay debts, forced households to take loans (more so in some cases), limited spending on health care and other non-food items and reduced food consumption (households either ate less food or bought less preferred/less expensive food). Reduced food consumption further threatened their already low nutritional status, which had been affected by high food prices during 2008.

### 3. Coping Strategies

One of the core concerns of coping strategies is food security and people's nutritional status as they might face with lack of not only food ability, but also food accessibility when the food prices keep high and their income fall down remarkably. Even though Cambodia has been a paddy surplus country for many years, distribution remains a challenge, with many parts of the country in food deficit. Only 65% of farm households produce surplus paddy<sup>17</sup>. As Cambodia's agriculture is largely rain fed, the sector is very vulnerable to weather conditions. Small landholdings, poor soil fertility, limited access to irrigation and lack of agricultural extension services lead to low rice production and productivity, leading to a food deficit that threatens food security within the country.

<sup>15</sup> UNDP (November 2009) The Global Economic Downturn: Opportunity or Crisis?

<sup>16</sup> Cash crops villages refer to maize, cassava and soybean production villages.

<sup>17</sup> CDRI (2008) Impact of High Food Prices.

To survive crises with dramatically reduced incomes, households across the villages adopt different strategies, ranging from cutting down on their food consumption, relying on less expensive (and less nutritious) food and purchasing food on credit. The report showed that 42% and 44% of surveyed households decreased their food and non-food consumption, respectively, whereas 31% and 41%, respectively, could just manage to maintain the level of consumption in July 2009 as compared to March 2009. Women, as the main household income distributors, disproportionately took on the burden of the crises and maintained household livelihoods by sacrificing their food in favor of children and men (the latter are said to need energy to earn an income to support the family).

Besides re-budgeting on household expenses and rearrangement of consumption, households are forced to take debt-related measures such as purchasing food on credit and taking loans to fill in shortages. According to the findings of the study, 71% of surveyed

*"71% of the surveyed households reported having fallen into outstanding loans during the first half of 2009"*

households were already in debt in July 2009 – a 15% increase compared to the year before. Moreover, 70% of the debt was incurred during the first half of 2009, following the impact of the economic downturn in late 2008. The figure was very high for surveyed fishing households, of which 91% were in debt.

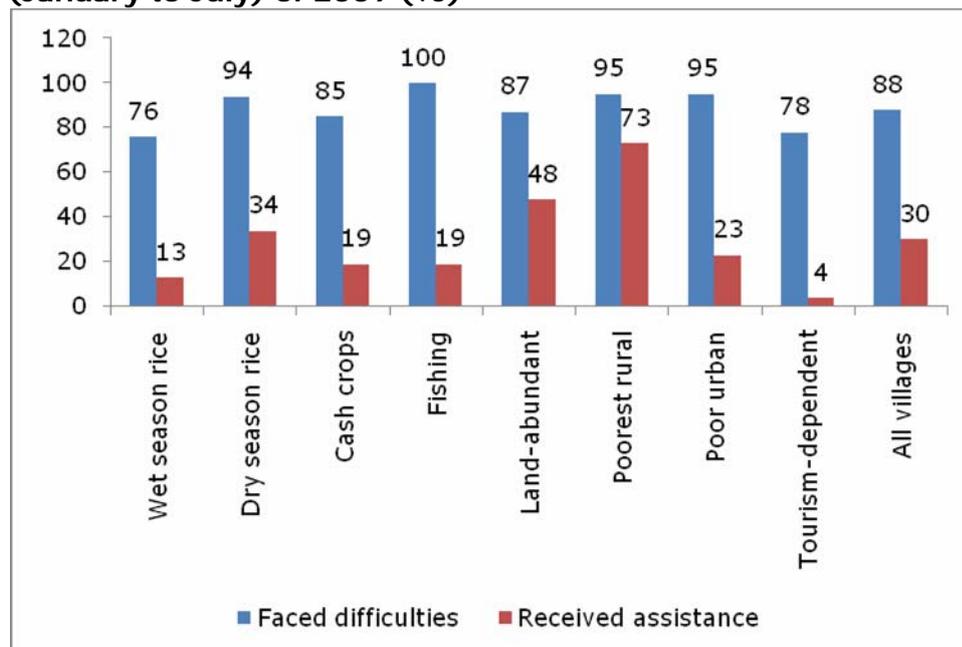
The first reason for debt was for agricultural production and business expansion, which at least had the potential to help households improve their livelihoods. However, only one-third of loans taken by households were reported as making families better off during the first half of 2009. The second reason for debt was for food expenses, health expenses and settlement of old debts. These were non-productive loans – they would not provide returns but rather it would be even harder for people to pay them back in the near future, in particular given the high interest rate on current accessible loans. Reductions in income for households plus existing debt put more pressure on households' ability to repay their debts. The negative consequences of debt may become worse in the near future and put people into deeper poverty in the absence of timely and effective responses by government.

#### **4. Coverage of Existing External Assistance**

Despite facing difficulties, not many households reported having received aid from external sources during the first half of 2009, such as the government, NGOs and development partners, among others. The most common forms of assistance received were: free health care service (36%), school meals (26%), microcredit (14%) and food for work (10%). Aid from the government and NGOs was often mutually reinforcing.

Only 30% of all surveyed households reported receiving assistance in the first semester of 2009, down from 48% following the impact of high food prices in 2008. Aid was better targeted, as both government and NGO social assistance was concentrated in the poorest rural villages and land-abundant villages. Nevertheless, the percentage of aid-recipient households in fishing and urban poor villages that were affected significantly by the downturn was quite low – only around 20% of surveyed households confirmed receiving external assistance from the RGC, development partners and NGOs. This shows that there are still limits to the current coverage and targeting of basic social safety net programs to address the impacts of the economic downturn on households and communities.

### Households facing difficulties and receiving assistance in the first semester (January to July) of 2009 (%)



Source: Survey of 1070 households by CEA in 15 target villages (July, 2009)

## 5. Recommendations

To mitigate the impact of the economic downturn on communities, broader and more effective policy responses are needed. Social safety net programs are seen as an effective immediate response to current impacts. Long-term policy measures will not only address impacts on poor and vulnerable groups but also boost economic growth and reduce the country's vulnerability to external shocks in the future.

The NGO Forum and EDN members in Cambodia would like to provide the following recommendations to the RGC with support from its development partners.

### Short-term policy recommendations

- Look more seriously at immediate responses with regard to expanding existing social safety net initiatives, focusing on education, health and emergency food assistance, particularly for affected groups as shown in the survey.
- Increase public investment in physical infrastructure in rural areas so that it can help create jobs for households with job losses related to the crisis.
- Extend and expand skills training programs to garment and construction workers to stimulate alternative job opportunities, as well as to those who lost their jobs as a result of the downturn.
- Consider providing input support to smallholder farmers to ensure that food production is made possible, thus ensuring food security.

### Medium and long-term policy recommendations

- Link most-affected groups with sustainable agriculture through small-scale agricultural development, helping build their resilience to crises, promoting income generation and improving food security, in the long run leading to poverty reduction.
- Recognize that investment in small-scale irrigation projects, extension services and the agriculture value chain is necessary to respond to the needs of farmers.

- Recognize also that there is a desperate need for additional low interest credit as well as increasing investment that benefits small-scale farmers.
- Work together to increase capacity in storage, processing and export by empowering and creating a favorable environment and support (i.e. loans with low interest rate) for the private sector for investment in agriculture.
- Understand that access to land and water is crucially important to ensure food production. As such, ensuring land ownership rights for farmers should be the center of attention for the RGC.

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# **Enhancement of the Agriculture Sector**



Photo by the NGO Forum on Cambodia (2008)



Photo by Susanne Hasman (2009)

## Agriculture and Water

### 1. Introduction

Approximately 80% of 13.8 million Cambodians (2008) live in rural areas. About 70% of the population depends on agriculture and animal husbandry for their livelihoods. While agriculture, fisheries and forestry absorb about 60% of the total labor force across the country, the contribution of these sectors to the country's gross domestic product (GDP) has accounted for only 30% in recent years. While crop production has grown by 7.5%, this rate is lower than the 9.7% rate for the entire economy.

The Royal Government of Cambodia (RGC) is improving crop productivity in the agriculture sector. Farm land used for food crops grew from 1.57 million hectares in 2000 to 2.84 million hectares in 2007, of which rice fields covered over 90%. Cambodia has the potential to generate significant increases in rice outputs and to strengthen its own food security, which can contribute greatly to growth in the short term. Overall, increases in agricultural productivity and value-added crops have the potential to be an effective and rapid means to alleviate poverty and enhance the quality of life of the citizens of Cambodia. The RGC addresses rural food security within its rural development policies and strategies.

However, based on past evidence, the agriculture sector is unlikely to achieve a growth rate higher than 5% and is able to contribute less than 2% of annual GDP growth<sup>18</sup>. Meanwhile, key documents, such as the Rectangular Strategy Phase II and the Strategy for Agriculture and Water (SAW) 2006-2010, do not refer to pesticide usage. In general, agricultural chemicals are still a new technology for Cambodian farmers, introduced in the 1980s by various countries as a form of aid. Management and use of chemicals have the potential to generate grave obstacles to the growth of Cambodia's agriculture and to its position vis-à-vis regional and international markets, as lack of quality control (pesticide residues) can cause importing countries to reject products, leading to losses in export income<sup>19</sup>.

The Pesticides Reduction Network in Cambodia (PRN-C) was established in 1999 by the NGO Forum on Cambodia and is composed of local and international non-governmental organizations (NGOs). It works in cooperation with the national government to monitor and reduce chemical pesticide usage in Cambodia, while promoting better alternatives for sustainable agricultural practices and lifestyles.

### 2. Joint Monitoring Indicators

Target	Actions Needed	Responsible Government Institution
7. Progressive implementation of the SAW	1. Completing the design of National Programs 2, 3 and 4 by December 2008	TWGAW – Ministry of Agriculture, Forestry and Fisheries (MAFF) and Ministry of Water Resources and Meteorology (MoWRAM)
	2. Completing the design of National Programs 1 and 5 by June 2009	
	3. Implementation mechanisms (including management and funding arrangements) are designed and operational by June 2009	
	4. SAW providing strategic framework for all RGC and development partner activities in the agriculture and water sector	

<sup>18</sup> Ministry of Environment (MoE) (2010) Mainstreaming Safe Management of Chemicals in National Development Plans in Cambodia based on the Millennium Development Goals, Economic Analysis Report, January.

<sup>19</sup> MoE (2009) Mapping Report for Mainstreaming Priority Issues into Safe Management of Chemicals in Planning Processes in Cambodia, December.

	<p>5. Continue to improve donor and government coordination: ensure relevant stakeholders have up-to-date information on donor and government activities in the agriculture and water sector by updating the project database on the Technical Working Group on Agriculture and Water (TWGAW) website twice each year (January and July) drawing data on donor activities from the Cambodia Official Development Assistance (ODA) Database</p>	
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## Monitored progress on JMI implementation

### ***7.1: Completing the design of National Programs 2, 3 and 4 by December 2008***

National Programs 2, 3 and 4 have been completed and were harmonized in the Draft SAW 2010-2013 in January and July 2009. It is unclear whether the public was consulted on program design.

**Recommendation:** In order to ensure that the draft SAW 2010-2013 meets its goals, hold a national consultation on the draft prior to its finalization and implementation (MAFF and MoWRAM).

### ***7.2: Completing the design of National Programs 1 and 5 by June 2009***

National Programs 1 and 5 have been completed and were harmonized in the Draft SAW in January and July 2009. The development of the draft SAW lacked public participation and consultation with sectoral NGOs.

**Recommendation:** In order to ensure that the draft SAW 2010-2013 meets its goals, hold a national consultation on the draft prior to its finalization and implementation (MAFF and MoWRAM).

### ***7.3: Implementation mechanisms are designed and operational by June 2009***

According to the September 2009 Progress Report of the TWGAW, a common framework and implementation mechanism will be developed after harmonization of the five National Programs has been finalized and finished.

**Recommendation:** Add more baseline information into the draft SAW's ten indicators, in order to effectively evaluate whether quantifiable indicators have been met at the end of the program's four-year implementation period.

### ***7.4: SAW providing strategic framework in the agriculture and water sector***

A harmonized SAW Program, developed from the five National Programs under the draft SAW 2010-2013 (dated December 2009), was discussed by the TWGAW in January 2010, with the overall goal of improving food security status and reducing the poverty rate in Cambodia.

#### **Recommendation:**

- Give funding priority to activities within the SAW that will be directed towards poverty reduction and the benefit of Cambodia's farmers and food security. Better reflect the draft SAW's overarching goal in program activities, goals and quantifiable indicators: "To contribute to poverty reduction, food security and economic growth through enhancing agricultural productivity and diversification and improving water resources development and management." Within the strategy, there is a heavy

emphasis on promoting agri-business, irrigation, increasing export of agri-food and improving access to capital and markets. In order for these strategies to meet the needs of Cambodia's farmers, while reducing poverty and ensuring food security and economic growth, we recommend better integration of the concept of sustainable and equitable agriculture. This means the overall goal should entail the promotion of livelihood and ecological security in addition to food security.

- Additionally, fully integrate Cambodia's National Adaptation Program of Action to Climate Change (NAPA) into the SAW to ensure activities are consistent with NAPA's priority projects.

**7.5: Continue to improve donor and government coordination**

We applaud the efforts of the RGC to ensure that the functions of the TWGAW are both transparent and accessible to the public. Strategic plans and minutes of meetings are posted twice a year on the TWGAW's website.

**Recommendation:** Ensure that postings on the website occur in a timelier and more regular basis in the future and that all information is available in both Khmer and English. Information is sometimes not posted in a timely manner (information from the January 2010 TWGAW meeting has not yet been posted)<sup>20</sup>.

**3. Key Actions/Strategies from the NSDP Update**

Section	Message
96	Program 3: Strengthening institutions, legal framework and human development
100	Develop appropriate legal and regulatory tools and competency in law enforcement to monitor and regulate agricultural inputs and soil resources and soil fertility management
395	The value-added of agriculture increased on an average by 7.2% per annum between 2003 and 2007, compared to 1.6% during 1998-2002 and 4.9% during 1993-1997. Cambodia achieved 2.5 tons per hectare of rice yield during the period 2005-2007
396	This is to increase production, employment and rural incomes, and to ensure food security, as well as to increase export of agricultural production
397	Moreover, the RGC will create an enabling environment to attract private investors, domestic and foreign, and welcomes the contribution from NGOs to ensure the transfer of know-how and new technology to farmers with regard to crop farming and animal rearing
398	Expand the system of technical and agricultural extension services by rolling them out to the district level and creating linkages with a community-level volunteer network as well as with agricultural services being provided within the framework of various development projects

**Monitored progress on NSDP Update implementation**

**96: Program 3: Strengthening institutions, legal framework and human development**

We would like to congratulate MAFF for creating Program 3: "Strengthening institutions, legal framework, and human development" which can be seen as a role model for implementation

**Recommendation:** Work towards improving agricultural research and extension and promote the right to access agricultural information, in order to ensure public wellbeing (MAFF).

<sup>20</sup> Website accessed April 5, 2010.

**100: Develop appropriate legal and regulatory tools and competency**

Owing to a lack of control of imports and trading and limited capacity to enforce laws, about 30% of pesticides in Cambodia do not meet international standards<sup>21</sup>.

**Recommendation:**

- Seek to reduce the use of illegal pesticides by ensuring that all pesticides have proper Khmer labels that farmers are educated about risks related to pesticide use and management and that pesticide imports into Cambodia are controlled<sup>22</sup>.
- On the other hand, continue to encourage usage of pesticides made from plants (botanical pesticide) and organic fertilizers to ensure sustainable agriculture. MAFF should also establish a common sustainable agricultural principle, good agricultural practice or organic agriculture to disseminate to rural farmers, in order to reduce the use of chemicals in this sector.

**395: The value-added of agriculture**

The RGC strongly promotes improving the irrigation system in Cambodia, a key factor in increasing rice production for export. Through improved irrigation, the RGC plans to increase the export of agricultural products to 3.1 million tons of rice in 2009-2010 for export and to increase the total area of paddy rice cultivation from 2.6 million to 3.5 million hectares<sup>23</sup>.

**Recommendation:** Give priority to the development of small- and medium-scale irrigation systems with international funding in rural areas in Cambodia. A master plan should be produced entailing a clear study of water sources and effective distribution of water, along with the identification of poor communities in greatest need of improved irrigation in order to improve their livelihoods and reduce poverty. The quality of irrigation structures should also be strengthened.

**396: This is to increase production, employment and rural income and to ensure food security as well as to increase export of agricultural products**

While the RGC has worked to increase the export of rice, through improved agricultural inputs, agricultural extension remains poor. We are concerned that information on how to use improved technology is not reaching farmers, but rather is targeted towards agro-industries.

**Recommendation:**

- Continue to support and strengthen agricultural enterprises on credit services, rice mills and rice storage in order to reduce unauthorized rice export, to secure food security for the country and to increase rice exports to over 3 million tons.
- Define the targeted beneficiary farmers of each activity, with an emphasis on small-scale farmers and farmers promoting mixed crops and organic farming, rather than large-scale monoculture production, which relies heavily on chemical pesticides and fertilizers or high-yielding varieties of seed. This will help ensure that the poorest farmers benefit from the strategy, while also ensuring long-term sustainability of Cambodia's agricultural production.

**397: Enabling environment**

We are impressed by the RGC's commitment to create an enabling environment to ensure the transfer of skills and new technology to farmers in regards to crop farming and animal rearing. However, by using the term "new technology," confusion may be created among

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<sup>21</sup> MoE (2009) Report on Chemical Management Status in Cambodia.

<sup>22</sup> MoE (2010) Country Situation Report on Chemical Accident Prevention and Preparedness in Cambodia.

<sup>23</sup> Deum Ampil (2010) Vol. 4, 3438, 19 March.

farmers, who associate the word with the introduction of chemical inputs and genetically modified organisms (GMOs).

**Recommendation:** Fit the introduction of new technology with international standards for agricultural products, while at the same time ensuring ecological security. The concept should be clearly explained with clear wording to farmers in rural areas. The term "new technology" should be replaced with "innovation" (skills, approach and process).

***398: Expand the system of technical and agricultural extension services***

In terms of specific actions, we are pleased with MAFF's action to link with community-level volunteer networks, as well as with agricultural services being provided within the framework of various development projects.

**Recommendations:**

- Strengthen and continue support to community-based organizations (CBOs), such as the Farmers' Association of Agricultural Supply, to train farmers to purify and take care of seeds themselves (purified seeds, natural fertilizers, botanical pesticide, post-harvest management, etc) in order to maintain local resources and protect local seeds.
- Increase funding for agricultural technology research, compilations of good experience, encouragement of experienced people in rural areas and encouragement of research by experts and skilled farmers in local areas.

**4. Important Issues Not Covered by the JMIs or the NSDP Update**

Rural youths are facing an increasingly uncertain future, because they do not have the basic skills and knowledge needed to take over and manage the rural economy, as there are few non-agricultural employment opportunities in rural and urban areas.

**Recommendations**

- Prioritize training programs and vocational training centers for high school students and uneducated youth in rural communities.
- Incorporate this issue into the Mid Term Review of NSDP Update 2009-2013.

**5. Recommendations**

The following recommendations focus on strategic plans, regulations and cooperation to address the issues of food security, poverty reduction, development of small- and medium-scale agri-businesses and social issues among farmers in rural Cambodia.

- Integrate pesticides management into the draft SAW, including ensuring favorable conditions and building labor and opportunities (especially MAFF and MoWRAM). This requires strong commitment by decision makers, relevant ministries and agencies as well as development partners and donors in support to the SAW and the Rectangular Strategy Phase II.
- Publicly disclose and finalize the draft Law on Agricultural Pesticide Management through meaningful public consultation processes. This law has the scope to provide a basis for strengthening effective implementation of requirements for companies and product registration, along with the proper labeling of pesticides.
- Continue to promote and strengthen cooperation between MAFF and the Ministry of Commerce (MoC) on the assessment and control of chemicals at border checkpoints,

while also training police and customs officials to improve data collection and information sharing.

- Stop subsidies for chemical and pesticide purchases provided with donor money. This practice does not help improve the lives of small farmers in the long run. In contrast, it makes farmers dependent on external assistance and inputs and causes soil degradation, thus impacting long-term environmental security. Rather, skills training, such as on management, business, marketing, savings, credit, etc, should be emphasized. Donors should support law enforcement in order to eliminate illegal pesticide usage, while also supporting research on the impacts of pesticides and chemicals.
- Commit to cooperation and improving information sharing among development partners, the RGC and civil society with regard to education and awareness raising among rural farmers.

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## Land Reform

### 1. Introduction

In December 2008, the Royal Government of Cambodia (RGC) committed to implementing the legal framework established by the Land Law in Target 8 of the Joint Monitoring Indicators (JMIs). Non-governmental organizations (NGOs) working on land and housing welcome this opportunity to comment on progress made towards achieving the previous round of JMIs. In doing so, we acknowledge the progress made towards developing key components of the legal framework, and also positive signs regarding consultation on and content of the draft National Housing Policy. However, we note considerable shortcomings in achieving meaningful progress towards the protection of the rights of indigenous peoples, and also concerns that the following round of JMIs related to land are inadequate.

NGOs so far acknowledged RGC on passing the sub-decree on the procedures for registration of communal land titling and other commitment to pass laws and procedures to ensure land tenure security. Therefore, NGOs value the government commitment toward the development of legal frameworks to ensure the land tenure security in Cambodia which include sub-decree on procedures for indigenous communal land titling, housing rights policy, spatial planning policy, circular for urban resettlement and others. However, NGOs comment has been raised to reflect in those legal frameworks and others in order to meet the requirement within Cambodia context.

Despite the RGC's commitment, national and international organizations and people's groups and networks continue to be very concerned about the ongoing crisis in the Cambodian land sector. Urban poor communities continue to face tenure insecurity, and in the past 18 months, hundreds of families have been evicted from their homes and land without the protection of legal safeguards or fair and just compensation paid in advance. Economic land concessions (ELCs) continue to deprive rural communities of the land they have lived on or farmed for many years, and land grabbing and speculation continue largely unabated. Legal remedies are generally unavailable to those involved in land disputes with powerful or well-connected actors.

### 2. Joint Monitoring Indicators

Target	Actions Needed	Responsible Government Institution
8. Implement the legal framework established by the Land Law	1. Indigenous communal land: a) a sub-decree on the procedures for registration of lands of indigenous people's communities is adopted in 2009 and a fully financed work and staffing plan is in place for scaling up indigenous communal titling to the communities; b) interim measures to safeguard communal land are evaluated	Council for Land Policy (CLP) Ministry of Interior (MoI)
	2. Land tenure – urban poor: a Housing Policy that includes the provision of secure land tenure for the urban poor is drafted with high priority and given as input into the Comprehensive Land Sector Policy ("White Paper")	CLP Ministry of Land Management, Urban Planning and Construction (MLMUPC) Phnom Penh Provincial Governor's Office
	3. Land management: a Spatial Land Planning Policy that spells out the hierarchy of land use planning and zoning is drafted and given as input into the Comprehensive Land Sector Policy ("White	MLMUPC CLP

	Paper"), including a legal framework to support implementation	
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## Monitored progress on JMI implementation

### ***8.1: Indigenous communal land***

NGOs and indigenous communities remain concerned and frustrated at the lack of progress on protecting the rights of Cambodia's indigenous peoples as enshrined in the Constitution, national legislation and international covenants and declarations. This situation has been recognized on many occasions by national and international NGOs, indigenous people's networks and United Nations (UN) bodies. As stated in the observations of the UN Committee on the Elimination of Racial Discrimination (UN CERD):

"The Committee recognizes the recent and significant economic growth experienced by the State Party and the benefit such growth brings to the country. The Committee is concerned however that the quest for economic growth and prosperity is pursued, in some cases, to the detriment of particularly vulnerable communities such as indigenous peoples. The Committee is particularly concerned about reports of the rapid granting of concessions on land traditionally occupied by indigenous peoples without full consideration, or exhaustion of procedures provided for, under the land law and relevant sub-decrees."<sup>24</sup>

Earlier this year, Cambodian civil society submitted a report on the rights of indigenous peoples in Cambodia to UN CERD. In its preface, the report states:

"Indigenous peoples, whilst seeing some improvements in the situation with regard to education, infrastructure and health, are reporting extensive and serious problems with regard to natural resources. They are reporting that their lands are being removed, often with little or no consultation, that the forest resources they depend on are being removed and the water resources they live by and rely on are being dammed or otherwise degraded. They report that this is to the stage where Cambodia and the world could see the end of at least one indigenous group. This is an issue at least for all Cambodians. It is a loss of a culture, a language and a way of life."<sup>25</sup>

Despite the fact that the rights of indigenous peoples in Cambodia are recognized by both national and international law, across the country there are severe violations of indigenous peoples' land and resource rights. Such abuse is being driven by a development agenda that prioritizes the development of industrial agriculture and resource exploitation. Concessions for agro-industrial, mineral and resource exploitation continue to be granted in a non-transparent way, and plans continue for construction of large-scale dams in many indigenous areas<sup>26</sup>. Poor Cambodians, indigenous and non-indigenous alike, continue to bear significant costs while seeing little benefit of such development.

With these concerns in mind, civil society is pleased to see indigenous issues regularly discussed in government–development partner meetings. We hope to continue to see specific JMIs concerning indigenous peoples, however: as explained below, these JMIs have so far been weak and have not been fully achieved. There is a real concern that almost all indigenous land in many areas will be lost before it is possible to proceed with land titling.

<sup>24</sup> UN CERD (2010) Concluding Observations of the 76th Session. See also Committee on Economic, Social and Cultural Rights (CESCR) (2009) Concluding Observations on Cambodia of the 42nd Session: "The Committee notes with concern that the 2001 Land Law, which provides for the titling of indigenous communities' communal lands, has not been implemented effectively and that so far, no indigenous community has received any land title. The Committee also notes with concern the adverse effects of the exploitation of natural resources, in particular mining operations and oil exploration that are being carried out in indigenous territories, contravening the right of indigenous peoples to their ancestral domains, lands and natural resources."

<sup>25</sup> UN CERD (2010) The Rights of Indigenous People in Cambodia, Report to the 76th Session.

<sup>26</sup> Baird, I.G. (2009) Best Practices in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Project in Northeastern Cambodia (Rivers Coalition in Cambodia).

With these concerns in mind, NGOs and indigenous representatives note with alarm that a number of stakeholders wish to drop the JMI for interim protection of indigenous land.

*8.1a): Registration of indigenous community land*

The Sub-Decree on Procedures for Registering Land of Indigenous Peoples was finally passed in April 2009, but over a year on it has yet to be implemented. As presented in the NGO Position Papers of December 2008, civil society had serious concerns with the process of consultation and the content of the sub-decree. It is surprising that, despite the breadth of concerns with the draft sub-decree, consultations were not extended and no further input was possible before it was finalized and passed. As a result, several of these concerns remained unaddressed in the final version of the sub-decree. It is widely felt by indigenous communities and the organizations supporting them that the sub-decree as passed does not conform to international standards. Key concerns that remain in the final sub-decree include<sup>27</sup>:

- *Failure to recognize traditional ownership.* Articles 6 and 7 effectively state that *all* indigenous land is currently state land. Rather than acknowledging the traditional ownership of indigenous communities over their land, the sub-decree refers to it as "state land which has traditionally been used by indigenous communities" (Article 7).
- *Registering as legal entities.* Articles 3, 5 and 6 all state that the sub-decree is only applicable to communities that are already registered as legal entities with the MoI. Three communities have successfully been registered in Mondulkiri and Ratanakiri using an *ad hoc* administrative procedure, and there are currently plans to use the procedure developed in these cases to register more villages, in the absence of a legal framework. It is hoped that 13 more communities will be registered by the end of 2010<sup>28</sup>. However, there are hundreds of indigenous communities in Cambodia, and there are concerns that there will be little land left by the time a significant number of communities can complete the lengthy registration process.
- *Communities involved in disputes.* The combined effect of Articles 9 and 10 of the sub-decree imply that any indigenous communities involved in land disputes over *part* of their land may in fact not be able to register *any* of their land. Given that there are a very large number of indigenous communities with land conflicts over part of their lands, this is impractical, especially when considering the shortcomings of dispute resolution mechanisms. The effect is likely to be that communities are left exposed to further land alienation while they wait indefinitely for any disputes to be resolved.
- *Spiritual forest and burial forests.* Under the sub-decree, amounts of burial and spirit forests that can be registered are restricted. Each can measure only up to 7 hectares in total (Article 6). This is not in line with traditional practice, which does not measure land in this arbitrary way; nor does it recognize such restrictions.
- *Leaving members.* A key concern with the original draft of the sub-decree was that members leaving the community had the "right" to cut a piece of land from the communal land for their own private property. This was adjusted in the final version, which now states that leaving members "may receive" a cut of the land. This is welcomed, but ambiguities in the article still leave this provision open to manipulation.

Despite the shortcomings of the sub-decree, civil society accepts that this component of the legal framework is now in place. Rather than dwell on the shortcomings of the final draft, NGOs hope to see problems with the procedure addressed as the piloting of indigenous land registration commences.

<sup>27</sup> For more discussion on the sub-decree see Centre on Housing Rights and Evictions (COHRE) (2009) *Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector* (pages 17-24).

<sup>28</sup> According to a MoI source.

JMI 8.1a) also includes the commitment to "a fully financed work and staffing plan [...] for scaling up indigenous communal titling to the communities." NGOs are unaware of progress towards this part of the JMI and would like to seek clarity on this issue.

*8.1b): Interim protection for indigenous land*

In the previous JMIs, the RGC committed to evaluating interim protection measures for indigenous land. Civil society is aware of little progress being made on this JMI. No public consultations have been conducted with NGOs, people's organizations or civil society on this issue. NGOs seek clarity on any progress made by the RGC towards achieving this JMI.

The current situation for indigenous communities living around Cambodia is becoming more and more precarious and desperate with each passing year. Considering this, Cambodian civil society is shocked and indigenous community representatives are extremely disappointed to hear that in the following round of JMIs there may be no JMI that specifically refers to interim protection of indigenous community land.

The previous JMI on interim protection was weak, but its inclusion did provide acknowledgment that indigenous land is in need of extra protection. In agreeing to JMI 8.1b), the government committed to *evaluating* interim protection measures. To the best of our knowledge, this JMI was not met, and it is of serious concern that there is a risk that it will be quietly forgotten. If an evaluation of interim protection was deemed necessary, this should have been conducted in a transparent manner, and followed up in the next round of JMIs with a *commitment to implement* these interim measures.

We acknowledge that progress has been made in registering indigenous communities in pilot projects in Mondulkiri and Ratanakiri, and believe this is a positive step forward for these communities. We continue to monitor the situation of these communities and hope to see the full and speedy registration of their traditional lands. It must be remembered that there are indigenous communities present in 15 of Cambodia's provinces. Despite progress being made towards completing the legal framework for indigenous land registration and registering several communities as legal entities, in the current context of land grabbing and widespread granting of concessions across indigenous areas it is essential that interim protections be implemented over *all provinces*. This does not require new legislation, as there are already significant protections for indigenous community land in national legislation<sup>29</sup> and international law<sup>30</sup>. It simply requires the political will to implement existing legislation and to honor commitments made by the RGC to protect the rights of indigenous peoples.

Interim protection for indigenous land can only be achieved by interim protection of indigenous peoples' land for all communities that are predominantly indigenous, *regardless* of whether or not they are registered. Applying interim protection only to registered communities disregards international standards of respect for self-determination (a cornerstone of the UN International Declaration on the Rights of Indigenous Peoples).

**8.2: Land tenure – urban poor**

*Draft Housing Policy*

This JMI was newly introduced in December 2008. NGOs welcome the commitment of the RGC to introducing a Housing Policy – a much-needed policy document in the fast-

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<sup>29</sup> See, for example, the 2001 Land Law, which protects the right to continue to manage traditional lands until such time as communities are registered (Article 23). See also the Sub-Decree on Economic Land Concessions.

<sup>30</sup> See, for example, the right to self determination under the International Covenant on Economic, Social and Cultural Rights (Article 1) and also the Universal Declaration of the Rights of Indigenous Peoples, which Cambodia has agreed to follow.

developing and changing Cambodian housing sector. A first draft was shared with NGOs in March 2010. In particular, NGOs welcome the inclusion of the following points:

- The recognition that all citizens have the right to adequate housing as an integral component of the right to adequate living that guarantees the privacy of households' lives and tenure security.
- The introduction of a moratorium for secure tenure for three to five years to ensure that legal rights under the law can be determined and housing needs assessed and planned for before any action is taken (although NGOs call for this to be reworded as a "moratorium on relocation").
- The realization that urban poor communities need immediate attention to resolve housing and tenure security issues.
- The inclusion of the guiding principle "survey before plan and plan before develop" to ensure that plans are based on needs and can be developed in consultation with communities.

Based on the February 2010 draft Housing Policy, NGOs consider that significant progress has been made as of March 2010 towards the implementation of JMI 8.2. NGOs also welcome the invitation by the RGC to attend a consultation meeting in late March. Consultative processes in the drafting of policies are crucial to ensure that government has all the relevant information and input to draft a comprehensive policy that is well suited to the Cambodian context. NGOs urge the government to continue to develop and expand the recent consultative practices.

While the draft Housing Policy contains many positive elements, a preliminary review has also revealed some concerns, which NGOs will raise at the consultation meeting. These include inconsistent use of language that leaves the application of some aspects of the policy unclear.

At this initial stage, the draft Housing Policy appears to focus exclusively on housing for low-income and poor households. While welcoming the focus on the urban poor, NGOs would also like to see a wider vision for housing in Cambodia, based on long-term aims that provide a vision and principles for the development of the Cambodian housing sector as a whole.

Although civil society is encouraged by progress on the Housing Policy, especially the inclusion of a moratorium on resettlement, a number of developments and unresolved issues threaten the policy's ability to achieve its vision of providing adequate housing to all citizens.

The urban poor continue to face pervasive tenure insecurity and are routinely subjected to forced evictions. The year 2009 saw the high-profile urban evictions of Dey Krahom, Group 78, Reak Reay and several villages around Boeung Kak. These evictions were characterized by inadequate consultation, notice, compensation or resettlement. When compensation is offered, in almost all cases residents are subjected to pressure and intimidation to accept inadequate sums for their homes and land. These communities, and many more, have been unable to utilize the existing legal and regulatory framework to secure their land rights, and as a result have become more impoverished. For these reasons, it is also essential that mechanisms are set up to monitor implementation of the National Housing Policy.

Questions also remain with regard to the timeliness of the draft Housing Policy and the safeguards it contains guaranteeing security of tenure. JMI 8.2 requires that a Housing Policy be drafted in order to achieve land tenure for the urban poor. The actual timeline for its adoption and entry into force left unaddressed. In the meantime, other documents are being developed in a shorter period of time that threaten to undermine the visions and principles contained in the draft Housing Policy.

In particular, the Circular on Resolution of Temporary Settlements on Illegally Occupied Land in City and Urban Areas, to be adopted by mid-2010, raised serious concerns; at the request of NGOs, consultation was extended. The language and tone of the first draft gave the impression that all urban poor settlements in Phnom Penh were being seen as "temporary," and thus were subject to the Circular. It originally made no reference to the Land Law and possession rights, or the various regulations on state land mapping and classification. Revisions were made to the draft but, although improved, it is still inadequate and does not appear to compliment the Housing Policy. While recognizing the urgent need for a framework to deal with urban poor settlements, the Circular must be in line with the existing legal framework (particularly the Land Law and the Sub-Decree on State Land Management), and it should also complement the National Housing Policy. Civil society specifically calls on the RGC to incorporate the three- to five-year moratorium on resettlement until the legal status of each urban poor settlement is assessed. Of course, such legal status must be based on existing law, and nobody should be deprived of their land if they meet the requirements of legal possession as set out in the Land Law. Land should be demarcated as belonging to the state only when it fits the definition of state land as provided in the Land Law, and identification, demarcation and classification should be carried out according to the Sub-Decree and Prakas on State Land Management.

The Circular in its current form contravenes pre-existing higher legislation. The declared vision and principles of the draft Housing Policy, in particular the moratorium and the principle of "survey before plan and plan before develop", would become futile if the Circular were to be implemented in its current form. NGOs therefore urge the government to include policy provisions related to security of tenure and the moratorium in the Circular, in order to immediately make those safeguards effective, and continue with the development of the Housing Policy through consultative processes with civil society and communities directly. Any future policy or regulation related to housing and resettlement must be drafted in line with international standards and note the UN Comprehensive Human Rights Guidelines on Development-Based Displacement.

### ***8.3: Land management***

NGOs again welcome the idea of a Spatial Planning Policy as a means to create a foundation for planning and zoning throughout the country. However, the draft policy raises key issues.

The document's vision states: "its entire territory shall be used, organized, developed and protected by integrative, strategic territorial planning and the harmonization of regionally significant instruments and measures." This is not a clear vision, and the document as a whole fails to grasp the essential elements of spatial planning. NGOs see that spatial planning refers to the methods (such as tax initiatives, funding, infrastructure development, conservation zoning, etc) used by the government to influence the distribution of people and activities in spaces of various scales. Spatial planning includes all levels of land use planning, including urban planning, regional planning, environmental planning and national spatial plans,

NGOs feel that the draft Spatial Planning Policy fundamentally fails to address these key intentions and contains many statements that need clarification. In addition, the emphasis of the document is on "economic imperatives" whereas a valid Spatial Planning Policy would look not only at economic issues but also at environmental and social impacts on an equal footing.

NGOs welcome the idea of decentralizing decisions to commune level through commune land use planning (CLUP), but would also like to raise queries around the CLUP's ability to implement spatial planning policy and urge the RGC to look at a program of training around the Spatial Planning Policy.

Above all, a document such as this is highly dependent on accurate data. It should be accompanied (in an addendum) by statistics and maps; if these are not available, a cornerstone of the document should be that this type of information is required as a

foundation for creating spatial plans. A research unit would need to be set up or assigned within an existing department to carry out the necessary data collection and mapping.

### 3. Key Actions/Strategies from the NSDP Update

Section	Message
406	<ul style="list-style-type: none"> <li>▪ Developing and strengthening law practice and regulatory framework such as Law on Expropriation, Law on Demarcation and Mapping, Law on Construction, Code of Urbanization, Law on Pre-emption, Disaffecting Law,..... law on land management, urbanization and construction pursuant to the nation's progress.</li> <li>▪ Creating and enhancing the performance of National housing policy, Land management and Resettlement; legal framework....limitation of building height in urban area.</li> <li>▪ Conduct land registration throughout the country in a transparency and effective way for both State Land..... by insuring that the legal rights and benefits of female are properly protected.</li> <li>▪ Enhance the subsequent registration through a Single Window with a Land Valuation System created in form of participatory approach, transparency, public accessibility, reliability, and coordination with to Land Use Mapping, Registration and State Land Inventory..... existing legal and regulatory framework, in particular with Sub decree on State Land Management.</li> <li>▪ Proceed out court solving land dispute through the administrative and cadastral commissions of all levels (national, city/province, town/district and mobile group) and national authority for land dispute solution; particularly, for the case of multi party disputes.</li> </ul>

#### Monitored progress on NSDP Update implementation

##### *Implementation of the Land Law*

Although we acknowledge the progress that the RGC and its development partners have made towards drafting and passing key legislation and regulations for the administration and management of land, civil society continues to have concerns that the Land Law and associated sub-decrees and prakas are still not being *implemented* appropriately. Various reports have highlighted increases in the number of landless and land poor, as well as the increasingly inequitable distribution of land<sup>31</sup>. Below are the most serious concerns.

##### *Possession rights*

As raised in the position paper for 2007-2008, possession rights are still not being consistently recognized by authorities. For the majority of Cambodians, who lack titles on the land registry, possession rights are their only means of protection. However, in many urban and rural areas the government has effectively rendered possession rights meaningless, by repeatedly refusing to grant titles or to allow clear means by which to determine their validity.

By way of example, we note with concern that seven poor communities were excised from the systematic adjudication of the Tonle Bassac district of Phnom Penh<sup>32</sup>. This is likely to affect over 2,500 families. It is vital that all areas be adjudicated according to the procedure set out in the Land Law and relevant sub-decrees. Excising areas without a full and transparent assessment of ownership rights violates the spirit of the Land Law and the Sub-Decree on the Procedures to Establish Cadastral Index Map and Land Register<sup>33</sup>. If residents

<sup>31</sup> According to the World Bank, the percentage of landless and land poor (owning less than 0.5 ha) is 46%, and land distribution is among the most unequal in Asia. World Bank (2007) *Sharing Growth: Equity and Development in Cambodia*.

<sup>32</sup> MLMUPC (2009) Letter No: 372 PPMO/PHN to the Administrative Committee of Phnom Penh, 6 October.

<sup>33</sup> Land Law (2001) Article 248, and Sub-Decree No. 46ANK.BK on the Procedures to Establish

in the seven areas are indeed non-lawful occupants, this should come out in the adjudication process, or during the process of state land mapping. However, preliminary information gathered by NGOs suggests that there are in fact many lawful possessors in these areas. We strongly urge the RGC to ensure that all relevant laws and regulations are followed in assessing the rights of these residents.

*Article 248 of the Land Law*

Directly relevant to the issue of possession rights is Article 248 of the Land Law, which states that it is an offence to commit any "act or conduct, in fact, that is a hindrance [sic] the peaceful holder or possessor of immovable property in an area not yet covered by the cadastral index maps, the ownership rights of which have not yet been fully strengthened under this law." In other words, until an area is adjudicated according to the law, and ownership rights are conferred, there should be no interference with peaceful occupation. If the adjudication process shows that residents have legitimate possession rights they should be issued titles; if they are deemed to be non-lawful possessors, they should be dealt with in line with Cambodian law and with respect for Cambodia's international legal obligations to protect the human rights of all citizens. As the framework for dealing with non-lawful possessors is not yet complete, the moratorium on evictions should be respected until adequate solutions are available for these people.

One community that should be benefiting from the protections of this article is the community living around Boeung Kak Lake in central Phnom Penh. The situation at Boeung Kak is still dire, and many hundreds of families have already been forced to accept inadequate compensation in the face of forced eviction. Hundreds more are being pressured to do the same and, as the lake continues to be filled, many families' houses are being flooded with waste water and sewage<sup>34</sup>. Civil society urges the government to work with its development partners to find an adequate solution to this serious situation. Many residents favor onsite upgrading, as this would allow them to continue to make a living working in the city and would not harm their access to health care and education for their children. Onsite upgrading could go on alongside the commercial development of the area and, if done in an appropriate manner, would be a clear demonstration on the part of the RGC of respect of its obligation under international law to protect the right to adequate housing owed to all citizens under Article 11 of the International Covenant on Economic Social and Cultural Rights. We note that the RGC has officially committed to providing Boeung Kak residents with the option of resettlement onsite; however, in practice this has not been presented to residents as a viable option. The RGC should immediately commence meaningful consultations with affected residents to find an acceptable solution.

Although we discuss here the more high-profile eviction cases in Phnom Penh, there are many smaller or less well-known ongoing disputes. This situation continues in the absence of a complete legal framework for relocation and compensation, with the National Housing Policy yet to be completed and implemented. This is exacerbated by the shortcomings of dispute resolution mechanisms (see below). For this reason, we support the Committee on Economic Social and Cultural Rights, which in 2009 called for the RGC "to implement a moratorium on all evictions until the proper legal framework is in place and the process of land titling is completed, in order to ensure the protection of human rights of all Cambodians, including indigenous peoples."<sup>35</sup> We also note that, in July of 2009 various development partners called for a similar moratorium<sup>36</sup>.

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Cadastral Index Map and Land Register Article 9.

<sup>34</sup> Phnom Penh Post (2010) 'Boeung Kak Lake Residents Rally over Rising Wastewater', February 3.

<sup>35</sup> CESCR (2009) Concluding Observations on Cambodia of the 42nd Session.

<sup>36</sup> The joint statement, signed by 11 different development partners, said that: "Development Partners are calling upon the Royal Government of Cambodia to stop forced evictions from disputed areas in Phnom Penh and elsewhere in the country until a fair and transparent mechanism for resolving land disputes is put in place and a comprehensive resettlement policy is developed."

*Economic land concessions*

Civil society notes with great concern that the granting of legally dubious ELCs continues at pace. This is despite commitments to implementing the Land Law and associated sub-decrees. ELCs that are over the legal limit still exist and have not been reduced in size, and many concessions sit idle over a year after being granted, which is in clear contravention of the Land Law. Concessions are being granted on land already occupied or farmed by Cambodian citizens, and also on indigenous lands, again in contravention of the Land Law and the Sub-Decree on Economic Land Concessions. ELCs also block people's access to agricultural land and forest products, divert water and pollute the local environment.

In 2008, the RGC committed to JMI 9, which stated that:

"With the aim of stopping the loss of Cambodia's forest resources responding to CMDG [Cambodian Millennium Development Goal] and Rectangular Strategy to support Sustainable Forest Management for rural poverty reduction and climate change mitigation. The legal frameworks established by the Forestry Law, Protected Area Law, Land Law, Mining Law, and in particular the Sub-Decree on Economic Land Concessions must be fully implemented at all levels of Government agencies, whilst prioritizing the finalization of National Forest Program and Community Forestry development."

As already stated, the RGC is still to implement these laws in their entirety and with consistency. It is the opinion of NGOs working in the land and housing sector that this JMI has not been met, specifically in relation to the Land Law and the Sub-Decree on Economic Land Concessions. The RGC also committed in this JMI to "create a logbook of Economic Land Concessions, Mining Concessions and other concession forms under the jurisdiction of MAFF, MoE and MIME [Ministry of Industry, Mines and Energy]." There is some information posted online on MAFF's website<sup>37</sup>, but it is out of date, incomplete and available only in English. This does not satisfy the requirement of a public logbook, as required by the Sub-Decree on ELCs and, again, civil society puts forward that this JMI has not been achieved.

***Continue to develop the legal framework for effective Land Law implementation***

As discussed above, and as acknowledged by the RGC's development partners, key elements of the legal and regulatory framework for land are still lacking. One of the most critical missing elements is a comprehensive National Resettlement Policy and corresponding regulations.

NGOs seek clarity on the next steps for the draft Sub-Decree on Property Acquisition and Addressing the Socio-Economic Impacts of Development Projects, and hope to have the opportunity for meaningful public consultation on the next draft. Importantly, the sub-decree also needs to cover households subject to resettlement for reasons other than land expropriation for public development projects. Failure to promulgate and implement a National Resettlement Policy that is in line with international standards and obligations will burden Cambodia, especially the economically marginalized, with inadequate protection from legal safeguards in the face of resettlement. Experience in Cambodia and around the world has shown that, when resettlement is carried out without these safeguards, it leads to deeper impoverishment of affected persons. This policy is thus crucial to the RGC's poverty reduction strategy as it continues to pursue economic growth and development.

***Improve registration procedures for systematic and sporadic titling<sup>38</sup>***

NGOs acknowledge the formidable achievement of issuing well over 1 million titles, mainly in rural areas of Cambodia. However, as the Land Management and Administration Project (LMAP) came to a premature end in 2009, numerous issues were highlighted with the current titling system. As already discussed above, in many systematic titling areas communities are routinely excised from the adjudication process, effectively denying

<sup>37</sup> [www.elc.maff.gov.kh/profiles.html](http://www.elc.maff.gov.kh/profiles.html).

<sup>38</sup> A detailed analysis of the titling system under LMAP can be found in the COHRE (2009) Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector, 2009.

residents the right to land titles and increasing the tenure insecurity of those areas. This was acknowledged by the World Bank in its analysis of the project in 2009<sup>39</sup>. The same report also highlighted the problem of avoiding areas of likely dispute and of unclear status.

The sporadic registration system is still widely seen as inaccessible to the majority of Cambodians owing to the high informal fees involved. LMAP developed a sub-decree and manual for implementing an improved and transparent sporadic titling mechanism, but this is being implemented only in areas that have already been systematically adjudicated<sup>40</sup>. People living outside LMAP provinces and outside adjudicated areas still have to rely on the old and costly system.

We are pleased that the draft for the next round of JMIs includes specific reference to strengthening land registration, with the focus on poor and vulnerable households. However, the output/indicator for this JMI is a simple numerical target for issuing 2 million titles. We have already seen that issuing titles alone does not necessarily protect the vulnerable, as the most vulnerable are routinely excluded from the titling system. Issuing a further million titles in relatively "safe" areas will not have an immediate and marked impact on tenure security: simultaneous to MLMUPC producing over a million land titles, the rate of evictions and landlessness in Cambodia has continued to grow. Although these land titles may well reduce the likelihood of future land disputes, or increase the chances of households being offered better compensation in case of relocation in the future, it is crucial that titling takes a more targeted approach in order to improve the tenure security of those most immediately vulnerable to displacement.

### ***Implement the Sub-Decree on State Land Management***

NGOs repeat their strong support for the proper demarcation of state land. We note that there has been no progress towards this vital goal of the National Strategic Development Plan (NSDP). Without comprehensive and transparent state land management, land grabbing and speculation will continue, as will the granting of illegal concessions and the associated degradation of the natural environment and the violation of the rights of indigenous and non-indigenous Cambodians.

Unfortunately, lack of transparency and access to the state land map has led to the Sub-Decree on Reclassification being used as a *de facto* land concession granting mechanism. Rather than conducting methodological and harmonized mapping of state land with all responsible agencies, property is classified or reclassified when the government wishes to sell, lease or grant a concession on the land. NGOs note that sub-decrees are passed on a monthly basis that transfer formerly state public land to state private land for the purpose of development. This reclassification is done almost entirely without public consultation, as required by the Sub-Decree on State Land Management.

This lack of transparency and violation of the Land Law and related sub-decrees has disproportionately affected the poorest and most vulnerable. Rural communities have been deprived of farmland that provided them with a means of subsistence. Indigenous communities have had their spirit forests and burial grounds razed, preventing them from carrying out traditional ceremonies and contributing to the threatened extinction of ancient cultures. Communities in both urban and rural areas are being denied the opportunity to secure land tenure to which they are entitled.

State land management was a key component of the terminated LMAP project but, as acknowledged by the World Bank, apart from the passing of a prakas on procedures for identification, demarcation and classification of state land, no progress was made on this component<sup>41</sup>. A lack of comprehensive progress on state land management seriously

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<sup>39</sup> World Bank (2009) Cambodia Land Management and Administration Project, Enhanced Review Mission.

<sup>40</sup> According to discussions at the Technical Working Group (TWG) Land in 2009.

<sup>41</sup> World Bank (2009) Cambodia Land Management and Administration Project, Enhanced Review Mission.

jeopardizes the RGC's aims to improve tenure security, issue land titles across the whole country, protect indigenous land, sustainably manage natural resources and protect the natural environment.

### ***Strengthen Cadastral Commissions and other mechanisms on land dispute resolution***

A key component of ensuring pro-poor access to land is a functioning dispute resolution system that resolves disputes in accordance with rules and procedure and without regard for socioeconomic or political status. NGOs continue to raise concerns about the effectiveness of Cambodia's dispute resolution mechanisms and, as such, it is disappointing that there is no JMI dealing with this crucial area.

There is a well-documented backlog of cases at the CCs, in 2009 was at 2,000 cases<sup>42</sup>. The decision to delegate decision-making power to the provincial/municipal level is welcome; however, this new role must be conducted transparently and according to the spirit of the Land Law, with the regulations set out by sub-decree.

Vulnerable communities involved in disputes with powerful and well-connected individuals continue to find their complaints to the CC unresolved, rejected or simply ignored, and departures from the legal process are common. This is illustrated by the case of Group 78 in central Phnom Penh.

#### **Group 78, Phnom Penh**

In 2004, when households applied for sporadic title based on their documented legal possession rights, the case was found to involve a dispute and requests for title were rejected. A complaint filed by the community to the municipal CC in 2006 was ignored. The community subsequently complained to the national level, which referred the case back to the municipal CC. Over two and a half years later, the municipal CC had still not investigated or reported on the case, and had yet to arrange a meeting between the parties in dispute.

When a final eviction notice was issued by the Municipality of Phnom Penh in April 2009, the community filed another complaint with the CC, as well as applying to the court for an injunction to postpone the eviction until a decision was made on its legality. The court refused to issue an injunction, ruling that the matter was beyond its jurisdiction and should be resolved by the CC. In July 2009, almost three years after filing the first complaint at the CC, the community was forcibly evicted. The CC finally issued a response 10 days later, stating that it had "no competence to resolve the issue."

## **4. Important Issues Not Covered by the JMIs or the NSDP Update**

### **The growing threat of violence**

Civil society is growing increasingly worried about the increase in land dispute-related violence across the country. Since the start of 2010, the number of reported cases of arrests, beatings, and even shootings has shocked many<sup>43</sup>. With no remedies available to them, threatened communities are becoming more and more desperate, and with this comes the risk of serious social unrest. Already this year, demonstrators and security forces have been injured in fiery clashes. In many of these cases, those threatened with eviction have strong claims to the land that they reside on, and have lived or farmed there for decades. This is a direct result of the culture of non-transparency that surrounds the granting of concessions, and the failure of dispute resolution mechanisms, courts, police and

<sup>42</sup> COHRE (2009) Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector.

<sup>43</sup> Phnom Penh Post (2010) Land Disputes Flare in Kampong Speu, March 19.

the RGC to ensure that the law is upheld and the rights of citizens are respected and protected.

### **Intimidation of human rights defenders and villagers**

We again highlight our concerns that those citizens who act within their constitutional rights to resist unjust forced evictions continue to be intimidated and arrested. These people are rarely afforded a fair trial as the Constitution requires. CESCR acknowledged this in 2009, stating:

"The Committee expresses its deep concern about the culture of violence and impunity prevalent in the State party and the repression of human rights activists defending economic, social and cultural rights, particularly those defending housing and land rights. The Committee is also concerned about reports that the court system has been used to legitimize forced evictions and falsely prosecute housing rights defenders."<sup>44</sup>

UN CERD stated as follows:

"The Committee is concerned by reports of intimidation and acts of violence against indigenous peoples during forced evictions or land disputes affecting them. The Committee is also concerned with reports of a tendency to press charges against and arrest indigenous villagers, when they protest against their forced eviction or contest the granting of a concession on indigenous land."<sup>45</sup>

### **Growing militarization of land disputes**

Various civil society groups have raised concerns over the previous year regarding the growing involvement of the military in land disputes. In many cases, military are being deployed to patrol private concessions, which are often granted in a way that is not in line with the law and is in direct violation of the rights of Cambodian citizens.<sup>46</sup> A recent report to UN CERD raised this concern and referenced a letter from provincial authorities to the Forestry Administration requesting armed guards to protect a rubber plantation in Kratie. In the face of widespread illegal deforestation, it is of concern that the Forestry Administration would post guards around a rubber plantation, when it could be patrolling and protecting old growth forest from illegal logging.

Recent news stories regarding cooperation between the private sector and the military are also cause for serious concern<sup>47</sup>. Financing of the military by private business creates serious conflict of interest issues and opens the door to serious corruption. A document was released that gave details of the relationships between some private companies and military units. Several of these relationships exist between plantation and mining concession owners, which is cause for alarm in the face of considerable evidence that such concessions are being granted in contravention of the law. See the case study below for an illustration of the impacts of such military–private sector cooperation.

### **Transparency in international land deals**

The media continues to report on agreements between Cambodia and various other countries for cooperation in agricultural development (recent examples include Kuwait, South Korea, Sudan and Australia). There is a lack of clear information on these agreements and a growing fear that deals are being signed for agro-industrial development of huge tracts of Cambodia's arable land. Such agreements must conform to the law but, without any information made available to the public, no monitoring of the situation can take place.

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<sup>44</sup> CESCR (2009) Concluding Observations on Cambodia of the 42nd Session.

<sup>45</sup> UN CERD (2010) Concluding Observations of the 76th Session.

<sup>46</sup> See, for example, UN Office of the High Commissioner for Human Rights (UN OHCHR) (2007) Economic Concessions in Cambodia – A Human Rights Perspective.

<sup>47</sup> Phnom Penh Post (2010) Document Shows Ties among RCAF [Royal Cambodian Armed Forces] Government and Private Sector, March 4. See also Cambodia Daily (2010) Businesses Tie Official Knot with Military, February 26.

**Omlaing commune, Thpong district, Kampong Speu province**

This dispute came to prominence in the national press on March 1, 2010, when over 1,000 people protested in front of the Omlaing commune offices demanding officials meet to hear their concerns regarding encroachment of an ELC on their farmland. Although residents were given no formal eviction notice, they were alarmed by the increased presence of bulldozers and excavators close to their land<sup>48</sup>. The concession in question was granted to the Phnom Penh Sugar Company, owned by Senator Ly Yong Phat. The concession covers 9,000 hectares. Community members claim that they are now losing land to the concession, despite the fact that some people have lived and farmed on the land since 1979. The concession is directly adjacent to another 10,000 ha concession granted to the Kampong Speu Sugar Company – owned by Senator Ly Yong Phat's wife<sup>49</sup>.

On March 16, around 100 community members protested in front of the offices of the Phnom Penh Sugar Company, saying that company staff in bulldozers had encroached on 2 hectares of community land<sup>50</sup>. Violence broke out on March 18 and, during the altercation, buildings of the Phnom Penh Sugar Company were burned down. According to media reports, up to 500 people from 11 villages came to the offices to speak with the company, but when nobody came to see them violence erupted and five company buildings were burnt down. According to one representative, the company offered compensation of \$200 per hectare of rice farmland and \$100 per hectare of plantation land, which community members rejected as inadequate<sup>51</sup>. One community member stated that the company representative who made the offer of compensation advised that if people did not take it "they would get air instead."<sup>52</sup>

After this violent incident, over 100 soldiers were sent to guard the disputed land. It was soon reported that the troops deployed to guard the disputed land were in fact Battalion 313<sup>53</sup>. A document released in February which showed links between the RCAF, the RGC and private companies shows that there were ties between this battalion and Phnom Penh Sugar<sup>54</sup>.

On March 22, 16 community members were summonsed to appear before the Provincial Court<sup>55</sup>. On Wednesday March 24, two of the 16 community members were questioned and then arrested. According to Judge Keo Mony, the community members were charged with "persuading the villagers to protest, inciting them to commit arson, destroying company property and uniting together."<sup>56</sup>

Community members attempted to travel to the court and show solidarity with the representatives who were called for questioning. Around 400-500 community members tried to attend the court, but their movements were restricted by police, who had set up several checkpoints on route. On arriving at the court, community members found 100 police with shields and batons preventing them from entering. Community members camped out at the court and refused to leave until the representatives were released<sup>57</sup>. Around 400 community members sustained their protest for the rest of the day outside of the court.

The Phnom Penh Post reported that 10 people were injured the following day (Thursday March 25) while trying to travel to the provincial court to again demand that two arrested

<sup>48</sup> Phnom Penh Post (2010) Kampong Speu Villagers Protest Eviction for Plantation, March 1.

<sup>49</sup> Cambodia Daily (2010) K Speu Villagers Questioned over Eviction Protest, March 11.

<sup>50</sup> Phnom Penh Post (2010) Kampong Speu Villagers Protest at Phnom Penh Sugar, March 17.

<sup>51</sup> Phnom Penh Post (2010) Land Disputes Flare in Kampong Speu, March 19.

<sup>52</sup> Cambodia Daily (2010) Shelters Torched at Concession Site in K Speu, March 19.

<sup>53</sup> Phnom Penh Post (2010) Troops Linked to Sugar Firm, March 24.

<sup>54</sup> Phnom Penh Post (2010) Document Shows Ties among RCAF Government and Private Sector, March 4.

<sup>55</sup> Phnom Penh Post (2010) 16 Omlaing Commune Villagers Summonsed, March 23.

<sup>56</sup> Phnom Penh Post (2010) Two Held over Kampong Speu Conflict, March 25.

<sup>57</sup> Phnom Penh Post (2010) Two Held over Kampong Speu Conflict, March 25.

community members be released<sup>58</sup>. Despite this, community members maintained a presence at the court, and on Friday afternoon blocked National Route 4 for two hours<sup>59</sup>.

The legal grounds for the arrest of the two community representatives and the treatment of other community members who tried to attend the court were condemned in a joint statement by Cambodian human rights NGOs<sup>60</sup>. According to the statement:

"Numerous eyewitnesses claim that the pair were not present when the workers' shelters were burned. On Wednesday, the court refused to listen to defense witness. The prosecution, meanwhile, failed to offer any evidence of the defendants' 'guilt'. The prosecutor justified the detention of the two leaders by citing 'their obvious crimes and other basic reasons.' In accepting this statement as 'evidence,' the court clearly demonstrated that it was operating with a presumption of guilt, rather than innocence."

## 5. Recommendations

The following recommendations are suggested to the RGC and Development Partners to implement before the next CDCF as a means to remedy the specific issues described above. As in the Land Reform Position Paper of December 2008, we make the over-riding recommendation that the RGC, with the assistance of the development partners, ensure **each** of the fundamental components of land reform are adequately and holistically addressed, with inter-component coordination a high priority.

### Indigenous land

- Share plans for implementing the sub-decree for registering indigenous lands. Included in this, NGOs would like to see which geographical areas will be targeted, the timeframe and what technical/financial support will come from development partners (if any).
- Share information on how civil society organizations (CSOs) will be involved in the process of collective land titling in terms of awareness raising and monitoring.
- As a matter of the highest priority, implement interim protection measures for indigenous land. Under Article 23 of the Land Law, all indigenous communities are owed to this protection, regardless of whether they are yet to be recognized as legal entities by the government. Civil society urges the RGC and development partners to add *implementation* of interim protection of indigenous land to the next round of JMIs.
- Devise concrete measures to ensure the implementation of Article 23. For example, improved processes for consultation prior to granting permission for any development projects, improved framework for conduct of economic and social impact assessments (ESIAs), enhanced monitoring of land transactions in areas where indigenous peoples live and a freeze of ELCs and land sales in areas where indigenous communities live.
- Share plans for scaling up the registration of indigenous communities as legal entities. Again, this should include information regarding how CSOs will be involved in the process in terms of awareness raising and monitoring.
- In order to streamline the process of registering the community and registering its land, evaluate how the two processes can be conducted simultaneously and thus

<sup>58</sup> Phnom Penh Post (2010) Police, Villagers Clash in Kampong Speu, March 26.

<sup>59</sup> Voice of America Khmer (2010) Land Demonstrators Briefly Close Main Road, March 26.

<sup>60</sup> Cambodian Centre for Human Rights (CCHR), Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and Community Legal Education Center (CLEC).

provide the protection of a collective title in a shorter timeframe (RGC and development partners).

#### **Land tenure: urban poor**

- NGOs are encouraged by the progress of consultations and the progressive elements of the draft Housing Policy. Maintain the productive and open environment that has so far characterized the consultation process.
- Bring the Circular on Temporary Settlements into line with the existing legal framework and the draft Housing Policy.
- In the absence of a complete legal framework and housing policy, implement a moratorium on all evictions until the legal framework is complete and a statutory moratorium on any interference with peaceful possession that has not yet been properly adjudicated, in conformity with Article 248 of the Land Law.
- Make a renewed commitment to implement all aspects of the legal framework related to land, especially regarding recognition of possession rights. All legal possessors must have access to the titling system, including those living in so-called "disputed areas."
- Review the decision to excise the seven communities in Tonle Bassac from the adjudication process. If there are indeed non-lawful settlers in those areas, this should be determined in a transparent and open manner, according to existing legal procedures.
- Continue to seek an adequate resolution to the situation of residents at Boeung Kak. The most desirable outcome would be adequate onsite upgrading for existing residents, which would be a strong indication of the RGC's commitment to honor its international law commitments and protect the rights of Cambodian citizens.

#### **Land management: Spatial Planning Policy**

- NGOs feel that in its current form the Spatial Planning Policy is not workable. As passing of this policy is not imperative, allot more time for dialogue with civil society and for research on regional examples of spatial planning models.
- Clearly define the roles of civil society and community-based organizations (CBOs) in the Spatial Planning Policy, particularly in the decision-making process at different administrative levels.

#### **Economic land concessions**

- Make a renewed commitment to implement the legal framework concerning ELCs. In line with the Sub-Decree on Economic Land Concessions, and commitments made in the last round of JMIs, the RGC must urgently review existing concessions for compliance with the law.
- Prioritize the publication of a complete and up-to-date logbook of existing ELCs. This should be printed in Khmer and made freely available in local government offices.

#### **Develop the required legal framework for effective implementation of the Land Law**

- Provide an update on the process of drafting the Sub-Decree on Land and Property Acquisition and Addressing the Socio-Economic Impacts by the State's Development Projects, or any other regulations planned to facilitate the implementation of the Law on Expropriation. We urge the RGC to reopen consultations with civil society, in the

same open environment as has characterized the consultations regarding the Housing Policy.

### **Improve registration procedures for systematic and sporadic titling**

- Prioritize an end to the process of arbitrarily excising areas from systematic adjudication zones. If it is thought that some occupants are on state public land, this should be determined according to the principles and procedures set out in the Land Law and relevant sub-decrees. No one should be denied access to the titling system by an executive decision.
- NGOs welcome the commitment to target vulnerable communities for titling. Consult with development partners and civil society to conduct systematic titling that is more targeted, and therefore able to provide enhanced tenure security to those most vulnerable to eviction.
- Scale up widespread information dissemination on the systematic and sporadic land titling processes. Civil society can play an active role in disseminating such information.

### **State land management**

- Renew efforts to implement the Sub-Decree on State Land Management and associated prakas, involving affected communities in a transparent process of state land identification, mapping, demarcation and classification. In line with this sub-decree, as a matter of urgency the RGC should make the state land database available to the public.

### **Strengthen Cadastral Commissions and other dispute resolution mechanisms**

- As millions of Cambodians without land titles rely on the CCs to resolve land disputes, prioritize a renewed effort to process all cases on their merit – regardless of whether or not a powerful individual is involved in the dispute.
- In all cases brought before the CCs, follow legal procedure and stop the practice of passing difficult cases between the different levels of the CC and the courts to avoid making a decision. In the absence of a final decision in line with the procedures set out by law, there should be no eviction of households involved in disputes.
- Move swiftly to provide legal aid to poor households who seek to use the CCs to resolve their land disputes (RGC and development partners).

### **Transparency in international land deals**

- Publicize information regarding deals with other countries for agricultural development and food export. Any such deals must be conducted in a transparent environment; if concessions are granted, they must comply with national legislation.

### **Regarding the JMI process**

- Clarify what should happen in the case of non-achievement of the JMIs. We note with great concern that, year after year, many JMIs go unfulfilled yet there are no clear repercussions. Of particular concern is the JMI regarding interim protection for indigenous land. All indications suggest that this JMI was not achieved, and it may be dropped completely in the next round of JMIs. This seriously harms the credibility of the JMI process.
- It is right that JMIs emphasize developing policy and legal framework but it is equally essential that they cover *implementation* of policy and the legal framework. Develop

concrete JMIs that show whether or not policies and legislative documents are actually being followed in the spirit in which they were created.

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## Fisheries Issues

### 1. Introduction

Recent years have been difficult for fishing communities. Fishing and poor fishing households continued to face the greatest difficulties as a result of high food prices and the economic downturn. Being landless or land poor, fishing households depend largely on fishing. Declines in fish catches and increasing food prices have led to declining incomes of fishing households. Of fishing households in one survey, 77% reported that their income had decreased as compared with the previous year<sup>61</sup>.

The nutritional and economic contribution of Cambodia's fish and fisheries-based livelihoods is significantly under-recognized, and is thus undervalued in current drafts of the National Strategic Development Plan (NSDP) Update 2009-2013. Civil society organizations (CSOs) through the Technical Working Group on Fisheries (TWGF) should work to ensure that fisheries are given fully recognition in the policies of the Royal Government of Cambodia (RGC). Fisheries sector non-governmental organizations (NGOs), development partners and government agencies are all working together to develop and maintain mechanisms that support sustainable fisheries and their contribution to national food security and economic development. Sustainable fisheries and associated livelihoods are key to Cambodia's national food security.

The Fisheries Action Coalition Team (FACT) together with NGO members works directly with Cambodian fishers and their organizations to ensure that their voices on key fisheries decisions affecting their environments and livelihoods are heard. FACT and partner NGOs are vigilant on the processes of implementing the 10-year Strategic Planning Framework (SPF) in full recognition of fishers' rights and the participation of fishers and/or their legitimate representatives. FACT will work directly alongside the Fisheries Administration (FiA), development partners, CSOs, line agencies, other ministries and the private sector to develop sustainable inland, marine and aquaculture systems for the benefit of all Cambodians. FACT is the only Cambodian NGO member of the TWGF.

### 2. Joint Monitoring Indicators

Target	Actions Needed	Responsible Government Institution
10. Take appropriate action to reflect the priorities of the fisheries sector to improve the livelihoods of the rural community in commune, district and provincial development plans as well as donor funding levels	1. At least 80% of the FiA funded by development partners through sector-wide programmatic support by end-2009	Ministry of Agriculture, Forestry and Fisheries (MAFF)
	2. CamCode agreed, approved and operational by end-2009	

#### Monitored progress on JMI implementation

The JMIs developed for the fisheries sector are based on the sector-wide implementation of the RGC's 10-year SPF and the final passing of the CamCode, which is a Cambodian adaptation of the Food and Agricultural Organization Code of Conduct for Responsible Fisheries – including aquaculture (FAO CCRF).

The SPF, developed and passed in 2009-2010, will be the overall guiding framework for the FiA and the fisheries sector. When finalized, the SPF and the implementation by the RGC of cantonment planning will signal a major attempt on the part of the FiA and development

<sup>61</sup> NGO Committee for the Monitoring of CDCF Indicators (2009).

partners to seriously address the issues facing Cambodian fisheries and the millions who depend on sustainable fish production.

As the SPF has not yet been finalized, passed or signed by the RGC, and implementation has not yet begun, all NGOs including FACT will continue to engage with the implementation process to ensure that the JMIs are fulfilled.

It will be a major challenge for the FiA to develop a participatory mechanism to foster partnerships with CSOs in order to effectively and equitably implement the SPF, in the difficult institutional context of devolution to provincial/cantonment, district, sangkat, commune council and community-based organization (CBO) levels of governance.

Meanwhile, the CamCode is still in final draft form. It has been circulated to development partners but not yet passed to any operational level. It is being translated into Khmer and hopefully will be submitted to MAFF in 2010.

**Recommendations to the RGC:**

- Engage Cambodian CSOs in full partnership to sustainably implement the SPF.
- Ensure that any RGC fisheries policy reflects clear actions to assist fishers to develop sustainable livelihoods and promotes effective integrated conservation and development planning that contributes directly to poverty alleviation.

**3. Key Actions/Strategies from the NSDP Update**

Section	Message
95vi	Fisheries reform – sustainable access
97	Significant progress has been made by MAFF in increasing the land area for crops, paddy cultivated area, yield per hectare, <i>fishing lots and area released to fishing communities, fish catch (from all sources), forestry cover and percent of land area reforested</i>
409-415	Fisheries reform: policy priorities for the fourth legislature and planned actions to implement the prioritized policies

**Monitored progress on NSDP Update performance**

***95: Fisheries reform – sustainable access***

Fisheries and agriculture share many common social and environmental impacts, especially to do with climate change, food security and nutrition, and so effective mechanisms should be developed in cooperation. However, by placing fisheries within agriculture, the NSDP Update continues to severely underemphasize the importance of Cambodian fisheries. It is widely known that the fisheries sector makes a disproportionately large contribution to Cambodian social health and welfare compared to its financial contribution to gross domestic product (GDP). This should be recognized by MAFF in its efforts to support the development of the fisheries sector in more sustainable ways.

***97: Significant progress by MAFF***

In spite of progress made, the fisheries sector still faces many challenges:

- Fishing communities are facing a household fish catch decline and therefore full-time fishing households such as floating communities face food insecurity. There is high poverty incidence.
- Fisheries are being seriously threatened through the destruction of the flooded forests and the clearing of land for ownership by both ordinary and powerful people, which require timely and effective intervention by the government. Another threat is

the change in the environment of the Mekong River owing to hydropower development.

- Community fisheries have limited capacity and lack the resources to fully manage their community areas. At the same time, there is a shortage of resources for the FiA to carry out its functions: for transportation, equipment, budgets and gasoline for management, research and studies to develop and conserve fisheries resources.
- Many fisheries communities are not provided support by the RGC, development partners or NGOs.
- Illegal fishing using electrocution fishing gear and long tubular mosquito nets and the destruction of fish hatching sites in flooded forests are still taking place and are supported by powerful people.

#### ***409-415: Fisheries reform: policy priorities and planned actions***

The RGC will need to show a strong and vital commitment to the implementation of the 10-year SPF in partnership with NGOs and other members of civil society. Implementation of fisheries policy needs to be a strong priority for the RGC.

There is plenty of documented evidence to show that numbers of fishers have risen dramatically in conjunction with a dramatic decline in the individual catch per unit effort in the freshwater fisheries of Cambodia<sup>62</sup>.

**Recommendation:** The RGC in conjunction with Cambodian CSOs, develop effective and just mechanisms that allow for CBOs/commune councils and all other relevant fisheries stakeholders to register, develop and implement effective community fisheries plans in a timely fashion where deemed appropriate by local consensus.

## **4. Important Issues Not Covered by the JMIs or the NSDP Update**

Real and effective management plans need to be developed that accurately reflect the social and ecological conditions found in the Tonle Sap. Management solutions must be generated with the full and effective participation of local resource users. Participatory fora are needed in order to provide a mechanism to assist the RGC in meeting its responsibilities in the conservation and sustainable management of fisheries resources on behalf of all citizens.

The Community Fisheries Law should ensure that rural communities have a voice in the timely and effective management of their fisheries resources. This is crucial foundation for establishing "sustainable" fisheries.

Below is a brief synopsis of a very recent case study being investigated by FACT. It is typical of the complex resource conflicts found not only around the Tonle Sap but also all over Cambodia as valuable common pool resources are privatized. The current Community Fisheries Law has proved ineffective to resolve these types of conflicts and to stop the destruction of *prey roneam* forests around the Tonle Sap as well as of coastal mangroves and sea grasses in the coastal zone. These three ecosystems are some of the most important habitats driving fish production in Cambodia, and they still go effectively unprotected.

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<sup>62</sup> Allan, J.D. et al. (2005) Overfishing of Inland Waters *BioScience* 55(12): 1041-1051; Hortle, K.G. et al. (2004) An Introduction to Cambodia's Inland Fisheries (Mekong River Commission).

### **Flooded forest clearance in the community fishery of Kampong Ko commune, Kampong Svay district, Kampong Thom province**

Kampong Ko commune is located in the west of Kampong Svay district, Kampong Thom province, with an area of more than 10,000 ha. It has about 1,178 households, with a population of 6,477 (3,378 female). There are five villages in this commune: Khsach Chiro, Kampong Ko Leu, Kampong Ko Krom, Koh Kraob Bay and Bopeung. Households are located along the Steung Sen River (Fishing Lot 1 of Kampong Thom). The villagers depend mainly on rice cultivation. In the past, floating rice cultivation was very popular, but since 2004 dry rice cultivation has predominated: MAFF and the Provincial Governor told villagers to increase dry rice cultivation because it provides greater yields than traditional flooded rice. People fish to supplement their livelihoods. It is difficult to say whether growing rice or fishing is the main occupation, as the two occupations are integrated. However, the commune chief indicates that about 40% of the total population is dependent primarily on fishing.

In 2001, the RGC released Fishing Lot 1, located along the Steung Sen River, for community use. The commune established its community fishery on September 17, 2007. Approved by the FiA, the community covers 2,595 ha of land. There are nine persons on the committee and about 973 members in total. Two important lakes, Boeung Real and Boeung Peak Snaeng, are the property of the community fishery and are important to it, as well as a number of ponds that are not dry during the dry season. The community fishery was established to counter flooded forest clearance by both villagers and wealthy/powerful people, driven by land speculation. Three dikes have been built that cross the community fishery area.

Clearance of the flooded forest has escalated in recent years. Today, it is possible to see many rice fields inside the community fishery. Flooded forest clearance has now become the primary concern and source of conflict in Kampong Ko. Villagers claim that now only about 30% of the commune's original flooded forest remains.

However, about 1,800 ha of this remaining flooded forest in the community fishery have now been cleared. In particular, since 2007 the increase in the coverage of rice fields in the area has pushed many wealthy/powerful people to build dikes to provide irrigation inside the community fishery. This has affected the fishing activities of the villagers. Both villagers and the community fishery say that dike owners have grabbed the community fishery land and pushed villagers into clearing more forest, leading to villagers, Dry Rice Association members and some community fishery members being accused of forest clearing. One dike owner now claims that all the land that has been cleared around the dike is his and does not belong to members of the Dry Rice Association. The community fishery does not agree with this and has submitted a complaint.

The community fishery is not happy with the privatization of this common property. Members have filed a complaint at provincial level and with the provincial Senate office to stop two dike owners grabbing community fishery land. No immediate solution has been forthcoming.

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# Environmental and Social Impacts of Expansion of the Extractive Industries Sector<sup>63</sup>

## 1. Introduction

Cambodian civil society first reported on the environmental and social impacts of the extractive industries sector in December 2008. Unfortunately, since then little has changed, except for an escalation in the number of licenses issued to mine mineral resources. The legal framework remains inadequate, as does understanding of and response to potential social and environmental impacts. The inclusion of intent to publicly detail information about mining concessions in Joint Monitoring Indicator (JMI) 9.1 at the December 2008 Cambodia Development Cooperation Forum (CDCF) and the recognition of concerns in the sector through the 2008 annual review of the National Strategic Development Plan (NSDP) were encouraging. Unfortunately, progress made to achieve JMI 9.1 has been very slow, especially with regard to extractive industries information. Similarly, the NSDP Update drafted during 2009 and 2010 does not adequately address governance in the extractive industries.

Civil society groups have therefore prepared this position paper as a means to share concerns on the subject with the Royal Government of Cambodia (RGC), development partners and companies involved in the extractive industry in Cambodia. Specifically, this paper aims to:

- Identify issues within the existing legal framework related to the extractive industry.
- Summarize concerns relating to social and environmental impacts associated with the extractive industry.
- Make recommendations for improving the capacity of all stakeholders to respond to the challenges presented by the growth of the extractive industry in Cambodia.

In addition, a brief case study highlights the impact of the extractive industry on indigenous people in Cambodia.

Although important throughout the country's history, recent decades have seen the mining sector grow steadily in Cambodia. Unfortunately, the growth in extractive industry activity has not been matched by advances in government or private sector accountability or transparency. Thus a significant gap has formed between current laws enacted to protect the environment and the rights of citizens and an unmanaged extractive industry potentially creating significant and irreversible social and environmental impacts. The Extractive Industry Social and Environmental Impacts (EISEI) Network was formed to facilitate community, government and private industry responses to these challenges.

## 2. Joint Monitoring Indicators

While none of the JMIs from the second CDCF explicitly target extractive industry activities, two of them relate to it indirectly. Given that progress towards these has been unsatisfactory during the implementation period, civil society organizations (CSOs) strongly recommend that extractive industry issues are specifically addressed in the 3<sup>rd</sup> CDCF by developing a Technical Working Group for Extractive Industry, overseen primarily by the Ministry of Industry Mines and Energy.

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<sup>63</sup> While this paper deals with mining, there are similar concerns regarding the potential social and environmental impacts of oil and gas extraction.

Target	Actions Needed	Responsible Government Institution
9. Stop the loss of Cambodia's forest resources... The legal frameworks established by...Mining Law...must be fully implemented at all levels of Government agencies...	1. Implement all provisions of the applicable laws and regulations, including establishing and making public the logbook of Economic Land Concessions, <b>Mining Concessions</b> and other concession from under the jurisdiction of the Ministry of Agriculture, Forestry and Fisheries (MAFF), Ministry of Environment (MoE) and the Ministry of Industry, Mines and Energy (MIME)	MAFF MoE MIME
12. Create an enabling environment for the development of the private sector	1. Make progress on the legal agenda to improve the enabling environment for the private sector	

## Monitored progress on JMI implementation

### **9.1: Implement applicable laws**

At present, while MAFF has made some achievements with regard to the logbook related to economic land concessions (ELCs), MIME has not made the same progress with documentation on mining concessions. We strongly urge all stakeholders to work hard to ensure this logbook includes all information relating to mining concessions and memoranda of understanding (MoUs) on mine use by mine companies, as well as any use, development or exploitation concessions granted to mining companies. It is also important that this logbook be publicized widely and made easy to access for the public .

#### **12.1: The legal agenda to improve the enabling environment for the private sector**

It is clear that the extractive industry in Cambodia needs a more coherent and comprehensive mineral policy and legal framework if the key elements of security of tenure, social stability and government transparency are to be guaranteed. JMI 12.1 implicitly holds the promise of a review of the framework of the mineral policy and the law. This should be undertaken as soon as possible and all stakeholders should engage in the review process to make sure that all stakeholders agree on the best way forward for the sector in Cambodia.

### **The extractive industry in the 3rd CDCF**

Donors and the RGC should work hard to formulate a Technical Working Group (TWG) on extractive industry issues, and specific related JMIs for MIME and other relevant line ministries, to better manage impacts; publicly disclose all government-private sector licenses, concessions and MoUs related to extractive industry activities; and publicly disclose all information related to any revenue generated (including taxes, signature bonuses, etc).

Minutes and related documents from meetings of the TWG should be forwarded to the Inter-ministerial Extractive Industry Working Group, currently under the Ministry of Economy and Finance (MEF). Such a TWG would provide opportunities for donor and civil society stakeholders to collaborate with the government to help improve governance and coordination, and increase *sustainable* investment in the sector. Currently, the Inter-ministerial Working Group does not permit participation from these key non-government stakeholders.

### 3. Concerns about the Legal Framework for Mining in Cambodia

Under Cambodia's Constitution, all mineral resources are the property of the state and should be regulated by law (Article 58). The two most prominent laws that cover the management and exploitation of mineral resources are the Law on Mineral Resource Management and Exploitation (2001) and the Law on Environmental Protection and Natural Resources Management (1996). The Land Law (2001) also impacts on extractive industry operators, by determining the status of the land under which mineral resources are located. These laws are complemented by regulation such as sub-decrees, prakas and circulars, issued by various departments of the RGC to support their implementation.

Civil society has a number of concerns about the legal framework governing mining operations in Cambodia. Many of these concerns remain from the December 2008 Position Paper on the same subject: as they remain unaddressed they are repeated and developed here. There are also some additional concerns in the following list, which have become more prominent in the period since the 2008 paper was drafted.

#### ***Inadequacy and lack of clarity of existing mining law***

There is currently no clear legal structure outlining the process for the issuance of mining concessions and mining licenses. Generally speaking, in other countries with an active mining sector, a company requires both a *concession* marking out the area it can work in and a *license* setting out how the concession may be used. But Cambodia's existing legal framework guiding the granting of "mining concessions" is not clear. The Land Law makes reference to "use, development and exploitation concessions" but states clearly that mining concessions "do not fall within the scope of" the Land Law<sup>64</sup>. At present, it appears that a concession takes the form of an agreement or MoU between the concessionaire and MIME. Despite there being no known official and transparent protocol for granting concessions for mining operations, companies are still being granted concessions, often for areas far greater than 10,000 hectares (which is the maximum size permitted for other licenses governed by the Land Law). In short, without a clearly communicated policy in place, the current system is creating confusion and concern within communities and with other stakeholders impacted by mining operations.

According to the Law on Mineral Resource Management and Exploitation, before the holder of an exploration license can apply for an industrial mining license, s/he must "submit technical, financial, environmental, social and economic analysis to determine the socio-economic feasibility of proceeding with a mining operation" (Article 11(6)). However, neither the law nor the related environmental impact assessment (EIA) regulations (Sub-Decree or Prakas) includes any clear standard or guidance on what must be included in these documents. Specific details regarding the RGC's expected content and the associated conditions for granting the license should be set out by sub-decree, but this vital aspect of the legal framework is still not in place.

#### ***Relocation and compensation***

There is also a lack of clarity regarding legal protections available to those displaced by mining operations. The Law on Mineral Resource Management and Exploitation states that, before entering any privately owned land for exploration or mining, the concessionaire must first obtain consent from and compensate the "private land owner" for any intended or accidental damage done to the land. Since most communities, especially indigenous peoples, are still without full legal title, inadequate legal protection leaves most communities exposed to significant vulnerabilities. It should be made clear that everyone with a legal claim to the land where they live should have these rights respected. This should be applied equally to *owners* with full legal title, *legal possessors* who meet the

<sup>64</sup> Article 50: "There may be several other kinds of concessions such as authorizations for the use, development or exploitation of State land, whether or not rendering a public service, such as mining concessions [...] These concessions do not fall within the scope of the provisions of this law."

conditions of legal possession as set out under the Land Law and *indigenous peoples* whose right to manage their traditional land is protected by the Land Law<sup>65</sup>.

### ***Lack of enforcement of existing law***

As mentioned above, exploration and exploitation require specific licenses, which can be revoked if breached. Although it is not clear if any industrial mining licenses have yet been issued, several local communities allege that *exploitation* is being conducted by companies who have only an *exploration* license. According to the Law on Mineral Resource Management and Exploitation, this is an offence, one which carries a penalty of a fine or even imprisonment (Article 33). Legally, this should result in the suspension and potential revocation of the mining operator's license<sup>66</sup>.

Many mining operations breach the rights of Cambodia's indigenous peoples. For example, the Land Law gives indigenous communities the right to continue to live on and manage their traditional lands according to traditional customs, "prior to their legal status being determined."<sup>67</sup> Hence, any exploration or mining license granted on areas of land eligible for indigenous communal title can be considered unlawful.

### ***Access to information***

The 1996 Law on Environment Protection and Natural Resource Management states that "an EIA shall be done on every project and activity, private or public, and shall be reviewed and evaluated by MoE before being submitted to the Royal Government for decision" (Article 6). Additionally, on request from the public, the law provides that MoE make public information on its "activities and shall encourage public participation in environmental protection and natural resource management" (Article 16)<sup>68</sup>. However, the Law on Mineral Resource Management and Exploitation specifically states that all applications, reports, plans and notices concerning exploration and exploitation are confidential, except for "information related to the environment and social matters", should the "Minister in charge of the mineral sector" (i.e. MIME) give permission for its public release (Article 20). This basic conflict in the law shows how the legal framework for mining significantly complicates efforts for greater transparency and access to information.

### ***Inadequate and non-existent EIAs***

Despite the promising environmental legal foundation for transparency and dialogue, in the cases reviewed by EISEI members there was insufficient consultation during the EIA process, and frequently no evidence that an EIA had ever been conducted. Furthermore, in 2007 MoE declared that mining companies were no longer required to conduct an EIA prior to conducting exploration<sup>69</sup>. This was a very worrying development, one that contradicts Article 21(2) of the Law on Mineral Resource Management and Exploitation and global standards for best practice in this area.

<sup>65</sup> Non-lawful occupants should also have protections, as the RGC has ratified the International Covenant on Economic, Social and Cultural Rights, which includes the obligation to respect citizens' right to adequate housing (Article 11). Non-lawful occupants should not be evicted unless absolutely necessary, and their situation should not be made worse by the eviction.

<sup>66</sup> MIME Circular No. 1 on Suspension and Revocation of Mineral Licenses, II, 10.

<sup>67</sup> Article 23: "Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law."

<sup>68</sup> The 1999 Sub-Decree on Environmental Impact Process supports this 1996 regulation by making an EIA mandatory for all mining operations. It requires the RGC to encourage public participation in the EIA process and requires that MIME and the Council for the Development of Cambodia (CDC) first consider MoE's recommendations before approving a mining project.

<sup>69</sup> H.E. Mok Mareth, Minister for Environment (2007) Public Statement at a World Bank/MoE Conference.

## **Current trends, potential impacts and implications**

Reports from civil society and from government sources indicate that the granting of concessions is proceeding at a rapid pace across Cambodia<sup>70</sup>. The following points discuss some of the problems and community impacts related to this rapid growth in the extractive industries sector.

### ***Allocation of mining licenses inside protected areas, protected forests and ecologically sensitive areas***

Chapter 8 of the 2008 Protected Area Law restricts use of natural resources in the core and conservation zones. However, research indicates that more than half of Cambodia's protected areas/forests<sup>71</sup> have had exploration licenses granted within their boundaries, as seen in the 2008 Position Paper. An Australian Company, Indochine Resources, was granted an exploration license for mineral resources across 54% of Virachey National Park, Ratanakiri province, in mid-2007<sup>72</sup>. It is estimated that 21% of the total area of six protected areas/forests in Mondulakiri has been allocated for mining exploration<sup>73</sup>. Without addressing the freedom of information concerns outlined above, it will remain very difficult to assess compliance with Chapter 8 of the Protected Area Law. Similarly, without much greater commitment on behalf of the RGC to formally zone all of the existing known protected areas, these environmentally and socially important areas remain under threat from significant damage by extractive activities.

### ***Known mining licenses***

Despite JMI 9.1, there is still no publicly available mining database containing all information related to known mining licenses in Cambodia. Efforts by civil society to undertake mapping of this kind have proven difficult because, without publicly available data, it is impossible to verify whether available documents and reports are complete, accurate and/or up to date.

### ***Lack of consultation with affected people or free, prior or informed consent***

EISEI Network research has so far been unable to identify any case where the consent of an indigenous community has been sought by either the government or a mining company before an operation has begun. Where consultation has occurred, communities report that it has frequently been only done with commune and/or village chiefs, who cannot be assumed to represent the entire community's concerns in a discussion with the company or government. Some affected communities allege that their chiefs have personally accepted finances from companies in exchange for community consent without consulting them.

Other communities have reported that they have been consulted with soldiers present and that this environment intimidated them into agreeing to less than acceptable terms. Overall, field evidence reveals that the standard of community consultation falls far below the international standards espoused for seeking a community's free, prior and informed consent before initiating mining operations. We look forward to working with the RGC to clarify any questions or concerns regarding this important matter.

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<sup>70</sup> Voice of America Khmer (2010) After a Long Wait, Cambodia Opens to Mining, March 18.

<sup>71</sup> Defined in the Protected Area Law (Article 7) as national parks, wildlife sanctuaries, protected landscapes, multiple use area, Ramsar sites, biosphere reserves, natural heritage sites and marine parks.

<sup>72</sup> Gillison, D. (2007) After Stripping Cambodia of Almost All Its Natural Resources, Now Comes the Mining Invasion ... When Will It Stop? Cambodia Braces for a Mining Invasion.

<sup>73</sup> In the 2008 Forest, Concessions and Plantations Position Paper. Although it is difficult to verify the accuracy of this, field investigations and anecdotal evidence suggest that it is an underestimate.

**What is Free, Prior and Informed Consent (FPIC)?**

FPIC can be summarized as consent that is obtained free of coercion or manipulation:

- Securing such consent *prior* to any authorization by the government or third parties, and prior to commencement of activities by a company affecting indigenous peoples' lands, territories and resources; and
- Consent that is *informed* by meaningful participation and consultation of indigenous peoples based on the full disclosure of relevant aspects of the proposed project by the company and permit-granting authority in a form that is understandable and accessible to indigenous peoples and local communities<sup>74</sup>.

It is important to realize that, according to FPIC, communities can refuse to give their consent<sup>75</sup>. Communities should be free to consider all possible alternatives to the extractive industry before they decide whether to give their consent.

In a 2004 publication, the Forest Peoples Program provided additional input as to the practical elements of operationalizing FPIC<sup>76</sup>:

"In its procedural form, FPIC is an administrative process which enables both the affected indigenous people(s) and the project proponent(s) to put all their concerns on the table and identify solutions to problems before the affected people(s) decide on whether to give consent. It may be required in a number of project stages, i.e., options assessment, social, cultural and environmental impact assessment, exploration, exploitation or closure."

Finally, "the concept of FPIC captures and provides a context for all other social considerations in the relationship between a mining company and Indigenous Peoples and their communities. FPIC is premised on the understanding that Indigenous Peoples have the right to determine their own development path."<sup>77</sup>

***Militarization of mining operations leading to threats and intimidation***

On March 16, 2010, Development Partnership in Action (DPA) staff on a field monitoring visit spoke with local artisanal miners at Phnom Lung, an indigenous Kuy village in Rom Tom commune, Rovieng district, Preah Vihear province. Recently, these miners have seen access to mines formerly used to support their communities restricted by soldiers. On March 14, 2010, an artisanal miner was allegedly shot in the calf by a member of the Royal Cambodian Armed Forces (RCAF) while attempting to resume mining at night. At the time, the soldier was allegedly protecting the area surrounding the mine for a Chinese company.

While civil society understands the need for companies to employ guards for security reasons, it remains concerned about the increased military involvement reported at many mining sites. This militarization is associated with several problems local communities face: restricted access to forests (which often impedes the ability to generate income and collect food and other non-timber forest products); restricted access to artisanal mine sites (another key source of income); and restricted access to sacred sites such as spirit forests. In addition to restrictions of access, militarization of mining areas poses severe threats to people's individual wellbeing. There have been instances reported to CSOs of local people being intimidated by armed service officials and, in at least one case, people being shot by members of the military (see box above).

In early 2010, the RGC announced formal, sponsorship-based relations between the armed services of the government and some businesses in Cambodia<sup>78</sup>. The extent of existing

<sup>74</sup> Miranda, M. et al. (2005) Framework for Responsible Mining: A Guide to Evolving Standards.

<sup>75</sup> Oxfam Australia (2007) Free, Prior and Informed Consent: The Role of Mining Companies.

<sup>76</sup> Mackay, F. (2004) Indigenous Peoples' Right to Free, Prior and Informed Consent.

<sup>77</sup> Miranda, M. et al. (2005) Framework for Responsible Mining: A Guide to Evolving Standards.

<sup>78</sup> Cambodia Daily (2010) Businesses Tie Official Knot With Military, February 26.

militarization around mine sites already poses a serious threat to people in Cambodia's rural areas. Further formalizing military involvement in mining operations creates the potential to increase community tension and conflict.

***Lack of institutional capacity to coordinate mineral resource extraction and its implications for management***

Research indicates that the increased number of licenses issued by the RGC has not been matched by an equivalent increase in the institutional capacity of the government. There are significant institutional and capacity gaps within the agencies responsible for coordination, contracting and monitoring of the extractive industries sector. Additionally, no overall land use planning framework or sector-wide land use policy guides operations, meaning that areas under exploration face simultaneous expansion in other projects, such as road construction, hydropower dams and agro-industrial plantations.

***Social and environmental impacts reported by local communities***

Without access to EIAs, assessment of potential environmental impacts and analysis of the efficacy of the mitigation measures proposed by companies is not possible. Negative impacts are already being reported by local communities resulting from the exploration or illegal exploitation activities of mining companies. In the provinces of Banteay Meanchey, Preah Vihear, Mondulakiri, Kratie and Ratanakiri, local communities allege that, since 2008, large numbers of cattle have died as a result of upstream mining-related use of hazardous materials. In Mondulakiri and Ratanakiri, local communities have made numerous allegations of surface water pollution sourced in illegal small- and large-scale mining operations<sup>79</sup>. Affected communities also claim that loss of access to cultural sites, agricultural lands and forest resources has already undermined food and water security. Additionally, mining activities increasingly involve the threat of relocation without resettlement plans or just compensation. Large-scale mining in Cambodia is also expected to require significant infrastructural support. Iron and bauxite mining needs to be conducted on a large scale to be economically viable, and both require significant commitments with regard to electricity, water and transportation. These additional developments will potentially exacerbate impacts such as community displacement, deforestation, destruction of watersheds and valuable habitats, lack of availability of water for irrigation and increasing demand for energy.

**Impacts on indigenous peoples: the case of Phnom Yanang, Ratanakiri province**

Phnom Yanang is a natural rock outcropping located in Kuon Mom district of Ratanakiri province. Phnom Yanang is believed by the indigenous Kreung and Tumpun peoples to be an eminent source of supernatural power and as such is venerated as an essential feature of both groups' traditional belief systems. In particular, Phnom Yanang is a crucial place to make the seasonal offerings believed by the Kreung people to ensure community health, sufficient rainfall and good harvests.

Phnom Yanang is threatened by mining exploration currently being conducted by an international company without community consent. This case study is designed to give voice to the concerns of the Kreung and Tumpun people with regard to mining industry exploration associated with Phnom Yanang, and to highlight the responsibilities of the RGC and the private sector in terms of considering the social, cultural and environmental impacts of exploratory mining activity affecting indigenous peoples in Cambodia.

In November 2009, several elders (in Teun village, Teun commune) explained to the EISEI Network their fears if Phnom Yanang continues to be explored for mining. The mountain has a critical role in the Kreung people's worldview and the local people fear that its destruction will bring disease, drought and general misfortune and will result in the loss of a vital connection to the community's spiritual life.

<sup>79</sup> Beaumont, P. (2008) Extractive Industry "Mining" Study: Social and Environmental Impacts in Ratanakiri and Mondulakiri (DPA).



Left: Phnom Yanang. Center and right: test boring on Phnom Yanang, March 2010.

With the hypothesis that unchecked exploratory activities of the international mining industry are having significant and adverse impacts on the cultures and existing belief systems of indigenous peoples in Cambodia, an EISEI survey team visited Phnom Yanang on March 23, 2010. Evidence of test boring and hydraulic drill equipment were observed at the survey site, located immediately southwest of the mountain. Community members involved in agriculture on site told the survey team that the company involved was Vietnamese. Calls made by EISEI members on March 24 to the Department of Industry, Mines and Energy's Banlung office requesting more information have been unanswered, highlighting the difficulties of obtaining recent and accurate information on mining activities in Cambodia.

Given the serious concerns of indigenous peoples with regard to Phnom Yanang, the EISEI survey team also spoke with Kreung elders in Teun village about alternative ways Phnom Yanang could be used as a resource for community and national benefit while still respecting its religious significance to the Kreung and Tumpun people. All elders present agreed that development of trekking and ecotourism at Phnom Yanang would be advantageous to the village economy and a welcome way to make conserving Phnom Yanang more profitable for the government. Accordingly, the RCG is strongly urged to reconsider any licenses issued for mining at Phnom Yanang, as this could lead to the erosion of indigenous social, cultural and environmental management traditions and compromise the rights of indigenous peoples to maintain control over their land, culture and religion.

## 4. Recommendations

The following is a combination of recommendations made by EISEI members in February 2010 and those from the December 2008 position paper that have not yet been addressed.

### Recommendations to the RGC

- Design and implement a national policy for social and environmental responsibility in the extractive industries sector that includes the following:
  - An independent public agency established with the mandate, resources and expertise to oversee all aspects related to the awarding of concession rights, including the monitoring and investigation of all allegations of adverse social and environmental impacts arising from mining practices.
  - EIA guidelines that are revised to allow sufficient analysis of social and environmental impacts and require multiple stakeholder participation in the environmental planning process before licenses are issued.
  - Provisions that will enable full public access to information relating to the extractive industries sector, according to international standards for best management practice as set forth by the International Council on Mining and Metals (ICMM) and the Extractive Industries Transparency Initiative (EITI).
- In the interim, prioritize the following immediate measures:

- Stop granting concessions: 1) until a publicly available information resource is developed that details all pending and granted licenses for mineral resource exploration and exploitation, and any other "statistics related to the national mineral analyses", in line with Article 20 of the Law on Mineral Resource Management and Exploitation and the 2007-2008 JMI 9.1; 2) for extractive industry exploitation in protected forest areas; and 3) for all non-artisanal mining licenses in indigenous peoples' areas until indigenous communal land titling is complete.
- Avoid forced evictions at all costs. In case of voluntary eviction, affected communities must be compensated at a mutually agreed fair market rate.
- Allow communities historically involved in artisanal/small-scale mining to continue to support themselves through mining activity.
- Initiate a review of the Law on Mineral Resource Management and Exploitation, in close consultation with all impacted sectors of society, to ensure sufficient protection for people and the environment and abides by mining industry international best practice.
- Ensure that all stakeholders in the extractive industries abide by international and national standards and regulations concerning respect for indigenous peoples' rights.
- Pass the draft Sub-Decree on the Power and Roles of Officials Appointed to Control, to Inspect and Report Activities of Mineral Exploration, Mining, Researches and Analyze Management with appropriate powers to investigate allegations of abuse of mining license provisions and suspend and revoke licenses where necessary.
- Create a standardized national-level land use plan that must be consulted before issuing mining concessions. This plan should be accessible by the public and used to prevent problems arising from overlapping development interests, community holdings and national conservation lands.
- Formally apply to become a member of EITI.
- Draft legislation that protects the right to FPIC for all people impacted by extractive industry operations, especially indigenous peoples.

#### **Recommendations to the development partners**

- Development partners from countries that have mining companies operating in Cambodia should work with their own governments to ensure that these companies operate in accordance with the highest international standards for best practice.
- Work closely with the RGC to ensure there will be a joint commitment made at the 3rd CDCF to establish a TWG for MIME, and other relevant ministries.

#### **Recommendations to mining companies**

- Develop provisions for full public access to information including:
  - Formally request permission from MIME to make public any information "related to environmental and social issues," in accordance with Article 20 of the Law on Mineral Resource Management and Exploitation.
  - Publicly report on operations in compliance with international standards set forth by the ICMM and EITI.
- Companies operating in areas of significance to indigenous peoples should train all staff on the rights of indigenous peoples, especially on FPIC.
- Ensure that people impacted by company operations are consulted at every stage, including project design, implementation and closure (decommissioning).
- Train all security staff using the United Kingdom–United States (UK–US) Voluntary Principles on Security and Human Rights.
- Do not employ personnel of the RCAF.

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## Forestry Reform

### 1. Introduction

The Forest Livelihoods and Plantation Network of the NGO Forum on Cambodia includes 32 international and national non-governmental organizations (NGOs) working on forestry sector issues in Cambodia. These NGOs are work in cooperation with local communities, provincial authorities, local authorities and other institutions of the Royal Government of Cambodia (RGC) to protect natural resources and human rights.

NGOs would like to congratulate the RGC and the Forestry Administration (FA) for their recent action to eliminate forest crimes in Cambodia, through their efforts to crackdown on forest crime by confiscating chainsaws, seizing illegal wood and arresting businesspersons and government officers involved in illegal logging, in order to reserve the country's natural resources, especially forests. The Ministry of Agriculture, Forestry and Fisheries (MAFF), the Ministry of Environment (MoE) and the Ministry of Industry, Mines and Energy (MIME) have actively implemented activities towards achieving their relevant Joint Monitoring Indicators (JMIs), as well as priorities set out in the National Strategic Development Plan (NSDP) 2009-2013.

However, NGOs working closely in the forestry sector at grassroots level as well as at national level and members of the Forest Livelihoods and Plantation Network have observed that economic land concessions (ELCs) are the main root cause of land conflicts and forest disasters in the country. Currently, the RGC has issued hundreds of ELCs with the purpose of generating income for economic development and poverty reduction activities. This kind of development is found to be contributing more negative than positive impacts to affected communities. Based on observation, we have also found that the actual process of conducting environmental and social impact assessments (ESIAs) for ELCs in Cambodia has seen little involvement from communities living in or near forest areas. Owing to inadequate consultation with these communities, concessions have often led to conflict. We have also observed that some companies have been granted areas larger than what is stated in the law; after they are granted, the government has not monitored these projects on a regular basis, thus enabling some companies to violate their agreements by clearing forests outside of their concession area. Actually, development through issuance of ELCs of approximately 7 million hectares, which is about 70% of the forest area, has contributed to the destruction of the forests.<sup>80</sup>

### 2. Joint Monitoring Indicators

Target	Actions Needed	Responsible Government Institution
9. With the aim of stopping the loss of Cambodia's forest resources responding to the Cambodian Millennium Development Goals (CMDGs) and Rectangular Strategy to support sustainable forest management for rural poverty reduction and climate change mitigation. The legal frameworks established by the Forestry Law, Protected Area Law, Land Law, Mining Law and in particular the Sub-Decree on ELCs must be fully	1. Implement all provisions of applicable laws and regulations, including establishing and making public the logbook of ELCs, Mining Concessions and other concession forms under the jurisdiction of MAFF, MoE, MIME	MAFF MoE MIME
	2. At least 1,000 km of forestland boundary and two more protected areas demarcated both on the map and on the ground	FA MAFF MoE
	3. At least 100 community forestry sites and 10 community protected areas officially approved	FA MAFF MoE

<sup>80</sup> FA (2009) Cambodian National Forest Program, second draft.

implemented at all levels of government agencies, while prioritizing the finalization of National Forest Program and community forestry development	4. Finalize and approve the National Forest Program (NFP) in September 2009; start its implementation by the end of 2009	FA MAFF
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## Monitored progress on JMI implementation

### ***9.1: Implement all provisions of applicable laws and regulations***

MAFF has provided some information about the profiles of ELCs on its website. NGOs have used this information, as well as other information, to provide a fuller picture of the extent of concessions publically disclosed in Cambodia<sup>81</sup>.

It should be noted that the official MAFF website does not constitute what NGOs would regard as a full logbook of concessions, given a lack of regular updates. The MoE and MIME websites do not have any information related to mining concessions and ELCs in protected areas.

NGOs have seen a continuing issuance of new ELCs, many of them located in forest areas, in indigenous peoples' areas and on land with private rights, but this information has not been disclosed publicly, such as in the case between the Angkor Sugar Company and communities in Otdar Meanchey<sup>82</sup>, and in another disputed case in Omlaing commune, Kampong Speu province, between Phnom Penh Sugar Company and communities<sup>83</sup>, among others.

NGOs believe that if the government still continues to grant ELCs, the CMDG to preserve 60% of forest cover by 2015 will not be achieved. This is especially true in cases where concessions have been granted in protected areas, forest areas and indigenous peoples' areas.

### ***9.2: At least 1,000 km of forestland boundary and two more protected areas demarcated both on the map and on the ground***

Well-established boundaries for forestland are vital to preventing conflict. However, the FA appears to have made little progress in this area. As of March 2010, only 228.585 km of forestland boundaries had been demarcated. NGOs have witnessed conflicts occurring as a result of different understandings regarding forestland boundaries.

### ***9.3: At least 100 community forestry sites and 10 community protected areas officially approved***

NGOs would like to congratulate the FA and MoE for achieving their target on this JMI. Nevertheless, many requests submitted are still waiting for final approval by MAFF. To date, there are 175 community forestry sites pending MAFF's approval. NGOs see that the long process of reviewing and approving these sites has discouraged communities that have great commitment to conserving the forest. NGOs believe that community forestry is an important mechanism to help protect the natural resources and forests of Cambodia.

### ***9.4: Finalize and approve the NFP in September 2009 and start its implementation by the end of 2009***

NGOs welcome the initiative of the RGC through the FA to coordinate, compile and formulate the NFP, for long-term implementation over the next 20 years, to ensure the sustainable management of natural resources, as well as contributing to reducing climate change. In the past, some NGO members have been able to participate in NFP consultation

<sup>81</sup> [www.sithi.org](http://www.sithi.org).

<sup>82</sup> NGO Forum on Cambodia Land and Life Newsletter, Year 5, No 11 (pages 4-6).

<sup>83</sup> Cambodia Daily (2010) Villagers Protest as More Land Cleared in Dispute, April 8.

processes at provincial and national level, although participation of communities remains limited, especially of those living in or near forest areas. NGOs have asked the FA for more consultation with local communities before the NFP's approval, with no response as yet.

### 3. Recommendations

#### Recommendations to the RGC

- Continue taking legal action against perpetrators, without any political bias.

#### Recommendations to MAFF

- Ask the RGC to publicly disclose the logbook on ELCs and regularly update information on ELCs, especially in terms of implementation progress by such companies.
- Propose that the RGC stop granting ELCs that affect forest areas, because the country's remaining forest areas are an important source of subsistence for local communities and an important source of climate change prevention.

#### Recommendations to MoE

- Ask MoE to stop granting ELCs in protected areas because this leads to forest destruction. NGOs have commented on ESIA reports on some of these concessions and have witnessed the government granting concessions in protected areas, for instance the ELC of HLH Agriculture (Cambodia) Co Ltd. in Aural Wildlife Sanctuary.

#### Recommendations to the FA

- Publicly disclose the number of approved community forestry sites on the website, with information on each site's request date, approval date and location, plus a map.
- Demarcate the boundary for each community forest to avoid conflict.
- Ask the RGC to clearly and independently review the effectiveness of community forestry in the current situation. Some sites have experienced difficulty in implementing their own activities owing to nearby ELCs which break the law, leading to land and forest not covered by community forestry being destroyed or taken as concession land. Community forestry is ineffective under these conditions or under conditions where only land is small and disputed.
- Support, monitor and speed up the process of reviewing and approving community forestry sites from MAFF.
- Hold public reflection on the effectiveness of NFP implementation, with the participation of all interested stakeholders, including NGOs and communities.
- Through the new FA Director, strengthen willingness to effectively implement the law and ensure the preservation of the country's forests for future generations.

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# **Environmental Protection, Conservation and Climate Change**

## **1. Introduction**

The Environmental Forum Network of The NGO Forum on Cambodia, which consists of over 20 national and international member organizations, meets on a monthly basis to discuss and seek strategies to protect the environment and to reduce potential and existing negative impacts caused by development projects and climate change in Cambodia. The following comments were consulted with the Environmental Forum Network in a meeting held on March 12, 2010 and through e-mail discussion.

While Cambodia seeks to develop the country for poverty reduction through the encouragement of private sector investment, development projects can also pose negative impacts to the environment and biodiversity, human and animal health and the country's rich natural resources, on which many Cambodian people depend for their livelihoods and food security. It is observed that Cambodia's development is occurring at a fast rate, with the Royal Government of Cambodia (RGC) approving many development projects, such as economic land concessions (ELCs), hydropower projects, coal-fired power plants and mining concessions. There is a need for close attention to the impacts on those vulnerable to such investment projects, especially women, children and ethnic minorities. Environmental issues caused by development projects, such as deforestation, water pollution and air pollution, have led to ecological changes and contributed to global warming, which is of great concern for the future of Cambodia and the world.

While Cambodia has a number of environment-related pieces of legislation, such as the Law on Environmental Protection, the Law on Management of Natural Resources, the Sub-Decree on Environmental Impact Assessment, the Sub-Decree on Water Pollution, the Sub-Decree on Management of Solid Waste and the Control of Air Pollution and Noise Pollution, implementation remains problematic. Moreover, quality of management and monitoring on water pollution, air pollution and solid and liquid waste management remains poor.

In addition, quality of environmental impact assessment (EIA) reports carried out for development projects remains poor. Reports often lack appropriate environmental impact mitigation measures, broad consultation with local communities and stakeholders and comprehensive options assessments, and monitoring of project implementation does not occur on a systematic basis and rarely involves relevant civil society organizations (CSOs). In addition, the draft EIA Guidelines and Prakas has yet to be adopted and disseminated broadly, and input into the law from civil society has been limited.

Non-governmental organizations (NGOs) highly appreciate the opportunities that have been provided by the RGC, in particular the Ministry of Environment (MoE), to take part in the national development of the country and would like to continue to work together by providing comments, suggestions and recommendations, aimed at contributing towards poverty reduction in Cambodia and preserving the environment and natural resources.

## **2. Joint Monitoring Indicators**

The Joint Monitoring Indicators (JMIs) related to forestry and environmental issues focus mainly on forestry issues, ELCs, mining concessions and the demarcation of protected areas and community forestry. Indicators on other important environmental issues being implemented by MoE are lacking.

NGOs would like to request the MoE to develop additional JMIs, to help in evaluating the effectiveness of its performance. JMIs should be specific, measurable, achievable, realistic and time-bound (SMART). The comments below are based on the evaluation of the 2009 Environment Report, the 2010 Direction of the MoE and civil society monitoring of environmental issues in Cambodia.

### 3. Key Activities/Strategies from the NSDP Update

Relevant paragraphs related to the environmental work of the MoE based on the first draft of National Strategic Development Plan (NSDP) Update 2009-2013 are as follows.

Section	Message
421	To implement RGC's priority policies for the fourth legislature, MoE will: <ul style="list-style-type: none"> <li>▪ Ensure sustainable use of natural resources and implement measures that will require the carrying out of EIA of proposed development projects before implementation</li> <li>▪ Ensure the ecology system and environment of water is not polluted</li> </ul>
423	In the area of EIA, MoE will: <ul style="list-style-type: none"> <li>▪ Strengthen technical capacity on EIA among national city- and provincial-level technical staff</li> <li>▪ Prepare and edit legislation and policy relevant to EIA</li> </ul>
424	In the area of water pollution control, MoE will: <ul style="list-style-type: none"> <li>▪ Ensure the ecological system and water do not have a polluted environment</li> <li>▪ Control and reduce air pollution caused by noise and vibration</li> </ul>
425	In the area of natural resource management, MoE will: <ul style="list-style-type: none"> <li>▪ Accelerate implementation of the greenhouse gas (GHG) emission project</li> <li>▪ Prepare a national action plan to respond to climate change</li> </ul>

### 4. Monitored Progress on Performance

#### Guideline on Environmental Impact Assessment

The draft EIA General Guidelines and Prakas has not been approved. There is concern that civil society input and comments have not been adequately considered or incorporated into the draft.

Some development projects have been under implementation prior to submitting an EIA report to MoE for approval, e.g. that of HLH Agriculture (Cambodia) Co., Ltd and the Camko City Satellite City Development Project. The MoE does not have a list of projects being proposed in Cambodia, which must conduct an EIA.

Consultation on development projects with communities and other stakeholders is limited and not done in a meaningful manner, with adequate consideration of stakeholder input.

The quality of EIA reports is still limited. In particular, project cost benefit analyses, mitigation measures, comprehensive options assessments and environmental management plans are poor and inadequate to mitigate all of the negative impacts.

The monitoring and evaluation of the conformity of project implementation is not publicly assessable and lacks civil society involvement.

#### Recommendations

- The Ministry of Environment should collaborate with the Council for the Development of Cambodia (CDC) to review projects under implementation or in operation without EIAs and suspend them until EIA reports have been submitted, commented on and approved, in order to ensure environmentally sustainable development.
- Distribute the minutes of consultative meetings at district, provincial and/or inter-ministerial levels to participants to ensure accuracy of information and to inform them of decisions made. Moreover, a final EIA report should be distributed to all stakeholders for review and consultation.
- Review and revise the Guideline on EIA based on international standards and best practice. Important information that should be incorporated includes that on

procedures for cost benefit analysis, procedures for public engagement, all direct and indirect environmental impacts and procedures for monitoring the conformity of the project. All procedures should be detailed, legible and available for use for all MoE staff, including those at provincial and city level.

- Strengthen technical capacity of technical staff members at national, capital and provincial levels on the Guideline on EIA and project monitoring based on EIA reports to ensure more transparent and effective monitoring processes, which take measures for environmental protection and conservation of natural resources as well as addressing social impacts. Monitoring of development projects should involve civil society representatives as national and local committee members on an ongoing basis.
- Thoroughly study the real costs of projects prior to approval, including all environmental costs and costs leading to losses of income on which people depend. For example, a hydropower project needs to put an adequate cost value related to lost fish catches, reduction of fish species, lost agricultural products that people could obtain on land to be flooded, lost non-timber forest products, lost homes and cultural impacts.

### **Ensure no environmental, ecological or water pollution**

The RGC has not yet carried out proper monitoring of ecological, environmental and water pollution, which has resulted in negative impacts on biodiversity, natural resources and human and animal health. According to recent research by STRIVER, the hydropower dams on the Sesan River in Vietnam have caused the occurrence of toxic algae and E. Coli bacteria in a level higher than that of potable water standards set by the World Health Organization (WHO). In addition, a scientific research survey by the Worldwide Fund for Nature (WWF) on the Mekong Irrawaddy dolphins in Cambodia based on analyses of dead dolphins indicates chemical toxins (in particular, DDT and PCBs) and mercury as well as bacteria, especially *Heromonas hydrophila*, in the environment as the main threat to the dolphins.

#### ***Recommendations***

- Experts of MoE and other relevant technical agencies should regularly carry out water quality studies and seek to identify causes of water pollution, while also organizing workshops to present information and identify appropriate measures and solutions to mitigate impacts, and ensure public accessibility to all water quality data.
- Increase the parameters and number of samples used for water quality studies at locations facing both upstream and downstream pollution, as stipulated under the Sub-Decree on Water Pollution dated on April 6, 1999.

### **Solid waste management**

The RGC continues to lack appropriate measures for effective solid and liquid waste management. For example, the dumping area in Steung Meanchey does not meet technical and environmental standards. The waste is mixed up when it is burned, including plastic, which maybe harmful to human health owing to dioxin emissions.

#### ***Recommendations***

- Solid waste management needs to be improved. Improve solid waste management by separating types of waste (e.g. glass, aluminum, plastic, organism and paper) and require all households and businesses to recycle.

- Lobby the Ministry of Education, Youth and Sports (MoEYS) to develop a curriculum on waste management to educate students from primary to secondary levels at all state and private schools. Develop a master plan for solid waste landfill, with appropriate EIA reports for each location.
- Raise public awareness on solid waste management as part of RGC plans, to be disseminated broadly via various means, e.g. television, radio and other media.
- Make efforts to attract and encourage private investment to develop projects to generate power from waste at landfill sites in order to help generate electricity as well as implementing solid waste management and reducing GHGs in the atmosphere.
- Cooperate with NGOs and communities, such as the Community Sanitation and Recycling Organization (CSARO) and Community Genesis Transform, to reuse waste for other purposes.

### **Liquid waste management**

Liquid waste management is still limited. In many provinces there are no liquid waste treatment plants, so waste is released untreated into natural water bodies.

### ***Recommendations***

- Enhance standards for monitoring the quality of water released from industrial factories and other business centers.
- Seek appropriate technology for good management of recycled water for the purpose of watering public parks, urban agriculture and areas surrounding cities, etc.
- Ensure that sources of water used in local areas are not polluted.

### **Air quality**

Air quality tests are currently carried out at three locations in Phnom Penh, which is not adequate. Analysis equipment for these tests is also limited, with sulfur dioxide equipment able to detect concentration levels from 2ppm or more.

#### **Case study of a paper mill in Toul Roka village, Chak Angre Krom commune, Meanchey district, Phnom Penh**

According to news in Rasmei Kampuchea dated June 7, 2009, a paper mill located in Meanchey district, Phnom Penh, is a source of chronic disease. Mrs. Bin Bunny, aged 55, fell ill in 2007 with cancer and problems of the respiratory system. She said that doctors had told her that the disease had been caused by air pollution. Mrs. Bin Bunny has since passed away, causing increased concern among people living in the area.

In order to help ease the concerns of locals, we suggest that relevant technical departments examine and analyze the air quality in the area immediately and make this a regular location for air quality monitoring, as there are many factories located there. The results of the analysis should be made public. If the results show that the factories are involved in polluting the air, the factory should be held compensate the family of Mrs. Bin Bunny and other affected people, while also mitigating the negative impacts.

### ***Recommendation***

- Construct more air quality control stations in urban and industrial areas, in order to ensure that development activities do not pollute the environment.

## **Encourage implementation of GHG reduction projects**

The recent construction of coal-fired power plants in Cambodia appears to contradict Cambodia's goal to reduce GHGs, as these projects emit high levels of GHGs, which contributes to global warming.

### ***Recommendations***

- The Department of Climate Change should study Cambodia's potential for sustainable renewable energies through decentralized generation, which can be implemented as part of reducing GHGs while sustainably developing Cambodia.
- For coal-fired power plants, it is truly difficult to mitigate the adverse effects, as they require costly modern technology to reduce emissions into the atmosphere. Ash waste from factories will be dumped close to coastal areas. The RGC should ensure that ash waste is kept in a safe place and consider the possibility of sea level rises or natural disasters.
- Development partners should provide funding, expertise and technology so Cambodia can use clean energy and also contribute to reducing GHGs.
- Increase funding of projects that help reduce GHGs and reduce aid to projects that affect the environment, such as coal-fired power plants and large hydropower dams.

## **5. Important Issues Not Covered by the JMIs or the NSDP Update**

We would like to suggest that MoE lead the establishment of a Technical Working Group (TWG) on Environmental Issues separately from the TWG on Forestry and Environment, along with sub-working groups on specific topics affecting Cambodia's environmental protection, such as legal affairs, EIA, pollution management, solid and liquid waste management, climate change and conservation of protected natural areas. Sub-working groups should include relevant ministries and civil society to enhance the work of MoE, improving its transparency, accountability and efficiency.

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# **Rehabilitation and Construction of Physical Infrastructure**



Photo by Meun Nhean CSM (2009)



Photo by 3SPN (2009)

# Hydropower Development and Energy Sector

## 1. Introduction

The Rivers Coalition in Cambodia is an alliance of civil society organizations (CSOs) working to protect and restore river ecosystems and river-based livelihoods. Each of these NGOs works in cooperation with local communities, provincial or local authorities, the central government or a combination of these.

In 2009, civil society saw continued priority given to hydropower development. Since 2005, five large dams have been approved for construction and 29 others are being planned. These dams have been approved behind closed doors and without adequate public participation, cost-benefit analyses or full environmental impact assessments (EIAs). For example, the EIA report for the Lower Russey Chrum dam (338 MW), approved for construction in late 2008, was not released for review until March 2010. The EIA for the planned Lower Sesan 2 dam (400 MW) did not adequately consult local communities or adequately consider fishery impacts and compensation measures for upstream and downstream communities, which will be negatively affected by this dam if it is approved. Additionally, the first 10 MW of the Kamchay dam (193 MW) went online in December 2009 and has since caused reduced water flows affecting ecotourism projects and local water supplies in Kampot. Construction on the reservoir of the Stung Atay dam (120 MW) has begun and there have been reports in the media of illegal logging occurring near the project site. Currently in the planning stages are 29 other medium and large hydropower projects, located in the Sesan, Srepok, Sekong (3S) area, the Mekong River and the Cardamom Mountains. These include the Sambor dam (2,600 MW) and the Stung Treng dam (980 MW) located on the Mekong River, advancement of either of which may threaten the region's fisheries, ecosystem and food security, while also resettling approximately 30,000 people.

As Cambodia's poor and rural population relies on the country's natural resources and abundant fisheries as an important source of livelihood and food security, we are concerned about the significant damage that these projects will incur to countless people's health, property and livelihoods as well as the economic future of the country. With regard to damage already caused by dams under construction, the government has failed to protect the rights of affected people by failing to hold project owners accountable under Cambodian law for harm caused and by its lack of proper mechanisms for citizens to seek redress for uncompensated damages. Cambodians living along the Sesan River continue to remain uncompensated for the large-scale impacts that Electricity of Vietnam (EVN) has generated for more than a decade through its construction and operation of the Yali Falls dam. In order to prevent unsustainable hydropower from going forward, the Royal Government of Cambodia (RGC) must establish clear policies according to international best practice standards to ensure that transparency, public participation and accountability are upheld in hydropower planning, development and operation.

Greater consideration should be given to modernizing Cambodia's electricity system through improved energy planning processes and increased promotion of decentralized energy generation, especially as decentralized technologies can be quickly installed and deliver electricity to urban and rural consumers at lower cost and with less environmental damage.

## 2. Key Actions/Strategies from the NSDP Update

Comments here are based on the December 2009 draft of the NSDP Update 2009-2013, which is the latest version received by the NGO Forum has received from the Ministry of Planning (MoP).

Section	Message
415	It will take appropriate actions to: ensure effective management and utilization of fisheries resources in a sustainable manner in order to enhance food security and food safety and to contribute to poverty alleviation

446	Focus and alert populations in effected areas during emergencies related to drought, floods and storms in the short, medium and long term
448	Pay attention to affirm the rights of citizens to get clean water to ensure food security in people's daily life in the Tonle Sap River
455	In order to reduce poverty and ensure harmony in the lives of the people in the rural areas, the Royal Government will continue to attach priority to accelerating rural electrification, including the use of renewable energy
456	The Royal Government will accord high priority to encourage the private sector to invest in energy infrastructure, including generation, transmission and distribution
458	The Royal Government encourages the use of efficient energy with minimal impact on the environment

## Monitored progress on NSDP Update implementation

### *Food security and hydropower development*

Inland fisheries are estimated by the Mekong River Commission to contribute more than four-fifths of Cambodia's total animal protein intake, which equates to per capita consumption of 32.3 kg/year. Many of these fish are migratory species and rely on the river's natural flows and deep water pools as triggers for migration and places for spawning. Hydropower development on the Mekong River and important tributaries, such as the 3S Rivers, threatens to block these vital fish migration routes and could result in a decline in fish catches and species.

#### *Recommendation*

- Given the complex migratory patterns and the value of Mekong fish species, along with their vulnerability to hydropower construction and operation, as well as associated negative impacts on food security, the RGC should carefully and comprehensively study these factors in decision-making processes.

### *Flood notification systems*

Since Vietnam built the Yali Falls dam on the Sesan River more than 10 years ago, villagers in Cambodia have suffered sudden and hazardous water fluctuations. They were not given adequate warning by the authorities or compensation for damaged property, livelihoods and loss of life. The RGC has not yet fulfilled its duty to provide a proper notification system and compensation to affected communities living along Sesan River.

#### **Case study on lack of flood notification on the Sesan and Srepok Rivers**

In February 2009, communities living along the Sesan River faced a water surge caused by Vietnam's hydropower development. Riverside villagers had no advance warning that an upstream water release would occur, even though the Vietnamese authorities had notified their Cambodian counterparts on January 22, 2009 that the Yali Falls dam would be releasing water downstream at a rate of 200 to 400 square meters per second between February 1 and 28. Again, during September and October 2009, riverside communities along the Sesan and Srepok Rivers were inundated on two separate occasions by flood waters released from upstream dams in Vietnam. No prior warning was given on either of these occasions. Damage resulted in the loss of three lives and extensive damage to property, paddy rice fields and equipment, and there was a loss of livestock, further affecting livelihood activities and contributing to food insecurity, increased poverty and malnutrition in the region.

#### *Recommendation*

- Under the 1995 Mekong Agreement signed by Cambodia and Vietnam, Lower Mekong governments are required to follow certain protocols to notify downstream governments about any changes in flow or dam operations that affect Mekong

tributary flows. The RGC should ask EVN and the Vietnamese National Mekong Committee to install a proper notification system for local communities on the Sesan and Srepok Rivers.

### ***Water quality issues from hydropower dams***

For over a decade, communities living along the Sesan River in Cambodia have complained of deteriorating water quality related to upstream hydropower development in Vietnam. Poor water quality has contributed to increased water-related illness and disease among communities. In response to community complaints in 2009, the RGC carried out water quality testing in the Sesan River and detected dangerous levels of E. Coli. An additional report by STRIVER regarding its 2008 testing of the Sesan River noted high levels of E. Coli, along with cyanobacteria and algae toxin microcystin, and linked poor water quality to upstream developments in Vietnam. Despite evidence that the river's water quality is threatening the health of Cambodian communities, no action has been taken to resolve this issue.

#### *Recommendation*

- Reinstating dialogue with Vietnam's government and EVN to demand the implementation of mitigation measures focused on providing safe potable water for communities and seeking compensation for communities and their livestock that have been negatively impacted by poor water quality related to Vietnam's dams.

### ***Rural electrification and the promotion of alternative energies***

Energy policy seeks to supply electricity to urban and rural communities at reasonable and affordable prices, but electricity tariffs have increased for Cambodian households in 2010, while reductions have been granted to the private sector and international institutions.

Large-scale hydropower projects are located in rural areas where the majority of Cambodia's poor live, dependent on natural resources. Given the high costs of building transmission lines, impacted communities are unlikely to receive electricity from these projects.

#### *Recommendations*

- Cambodia should modernize energy planning through increased promotion of decentralized energy generation. Technological advances in energy generation make it much more economical to produce reliable and clean sources of power on a much smaller scale, closer to where the electricity is actually required.
- Decentralized technologies, including solar photovoltaics, biomass and micro-hydropower, can help increase power supply locally through quick installation and deliver affordable electricity without the need for expensive transmission lines and environmentally damaging technologies. In order to accelerate investment in renewable energies and cogeneration, Cambodia should look beyond its Rural Electrification Fund and work to enable the private sector to procure renewable energy equipment and deliver least-cost electricity services to rural households.

### ***Encouraging private sector investment in energy***

We applaud the RGC's reduction in and/or removal of import duties in 2009, helping to promote private sector investment in Cambodia by allowing the importing of renewable energy equipment. This move has helped open up Cambodia to the solar energy market. In order to continue to encourage private sector investment, the country should continue to move towards removing technical and regulatory barriers, while deploying promotional policies that will help accelerate private investment and create a more competitive market.

*Recommendations*

- As Cambodia already has the legal framework to promote competitive decentralized generation, we would like to encourage the RGC to incorporate environmental costs into electricity pricing, while also creating the following policy and regulatory initiatives in 2010:
  - Open up markets by announcing specific policies pertaining to the leading technologies, imposing no cap on the amount of power each produces.
  - Invite competitive bids for new decentralized generative capacity additions.
  - Give all power generators non-discriminatory access to local distribution grids and introduce interconnection standards.
  - Provide investors and project developers with the stability and price signals they need by providing a transparent and explicit mechanism for tariff setting and cost recovery.
  - Establish explicit and transparent step-by-step procedures for obtaining permits and public approval.
  - Make proof of community and land rights holders' approval for project siting a prerequisite for licensing by the regulatory authority.

***Sustainable energy development***

While the RGC's current policy is to encourage exploration and environmentally and socially acceptable development of energy while minimizing (negative) environmental effects, the RGC has prioritized mainly large-scale hydropower and coal power plant development, which is harmful to ecosystems, natural resources, livelihoods, food security and the health of local communities and contributes to climate change.

*Recommendation*

- Reconsider prioritizing modern technology generation that is environmentally and socially acceptable by subsidizing and encouraging more private investment in decentralized energy generation technologies, including gas turbine technology. For example, the total estimated cost of the Lower Sesan 2 hydropower project (400 MW) in Cambodia is \$816.23 million. This is much more expensive and more environmentally damaging than the Phu My 3 Complex, a gas combined-cycle power plant located in Vietnam, which costs \$412 million for 715 MW<sup>84</sup>.

**3. Important Issues Not Covered by the JMIs or the NSDP Update****Best practice legislation**

Cambodia should adopt legal requirements requiring fair and equitable compensation, benefit sharing and payment for ecological service schemes for all people who are negatively affected by power generation projects. According to international best practice, dam-affected communities are expected to receive a package of benefits that could include: access to electricity, monetary benefits that pay for mitigation measures and material benefits, etc and non-monetary entitlements to natural resources, which could include special rights to reservoir fisheries and the use of forests, etc.

<sup>84</sup> [www.power-technology.com/projects/phumy/](http://www.power-technology.com/projects/phumy/).

Moreover, if the RGC is interested in using large development projects as a means to alleviate poverty, a benefit-sharing and equitable compensation policy is essential to ensure that people are actually better off than they were before the dam was developed.

### **Resolving trans-boundary water disputes**

Hydropower development along the Mekong River mainstream and its tributaries is a cross-border issue. An explicit and accountable agreement among the governments of each regional country is required. The Standing Committee on the Coordination of Dam-Canal Along the Borders of Cambodia, Vietnam, Laos and Thailand, under the jurisdiction of the Ministry Of Water Resources and Meteorology (MoWRaM), along with the Cambodian National Mekong Committee (CNMC), plays a fundamental role in initiating and maintaining continued dialogue with neighboring governments to ensure that cross-border hydropower projects are not harmful to Cambodian citizens.

As the RGC has committed to a pro-poor policy, we recommend that the government resolve trans-boundary water disputes as follows:

- Seek a formal agreement with neighboring governments, especially the government of Vietnam, for fair compensation for communities that have suffered from past and current impacts of dam construction and operation.
- Ensure full and meaningful public consultation with communities that will be impacted by dam activities.
- Conduct scientific research and surveys, including cost-benefit analyses and EIAs.
- Make all agreements related to trans-boundary water usage publicly available in local languages, especially to riparian communities.

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# **Capacity Building and Human Resource Development**



Photo by Handicap International (2009)

## Education

### 1. Introduction

Cambodia's education sector non-governmental organizations (NGOs) (the NGO Education Partnership – NEP), development partners and government are working hard to improve education for the citizens of Cambodia. Education NGOs play a particularly crucial role in addressing gaps in education for disadvantaged groups – the very poor, ethnic minorities, girls, children with disabilities and those living in remote areas.

Education NGOs not only help to extend the reach of basic education in Cambodia; they also support the Ministry of Education, Youth and Sports (MoEYS) in its efforts to improve the quality of education services by broadening the scope of interventions. In line with the MoEYS Child Friendly School Policy (CFS), NGOs help with the development and implementation of a wide range of activities to contribute to the realization of child friendly schools. Activities include health education, vocational/technical training, life skills education, leadership training and management support at decentralized levels, bilingual language education, community support, scholarships, gender issues and provision of evidence-based suggestions for the national policy dialogue to increase effectiveness of schooling in Cambodia.

NEP is a membership organization, whose 85 members are committed to helping Cambodia and the Royal Government of Cambodia (RGC) develop an education system that ensures "that all Cambodian children and youths have equal opportunity to quality education regardless of social status, geography, ethnicity, religion, language, gender or disabilities."<sup>85</sup> NEP supports this goal through research and capacity-building work with education NGOs and ongoing dialogue with government and development partners.

In order to support the government's commitment to the global objective of Education For All (EFA), which ensures Inclusive and Quality Education For All Children of Cambodia, NEP proposes the following course of actions.

### 2. Joint Monitoring Indicators

Target	Actions Needed	Responsible Government Institution
3. Increase the promotion rate of students in primary education from 78.6% in school year (SY) 2006/07 to 84% in SY2008/09	1. Reduce the percentage of incomplete schools from 21% in SY2007/08 to 18% in SY2008/09 and deploy 95% of newly trained teachers to under-staffed schools and remote areas	MoEYS
	2. Revise the grade promotion regulation and ensure implementation in education programs by development partners	

#### Monitored progress on JMI implementation

##### ***3.1: Reduce the percentage of incomplete schools and deploy newly trained teachers to under-staffed schools and remote areas***

The percentage of incomplete schools reduced from 21% in SY2007/08 to 18% in SY2008/09. However, the numbers of incomplete schools is still high – 1,185 schools throughout the country<sup>86</sup>. This needs to be given consideration

<sup>85</sup> Extract of the National Strategic Development Plan (NSDP) 2006-2010 Section 4.85.

<sup>86</sup> Summary Report of the Education Congress, March 2010.

Although 95% of newly trained teachers have been deployed to under-staffed schools and remote areas, teacher shortages are still a big issue for education. Teachers' choices on where to teach do not correspond with requests from local schools. There are still not enough teachers in remote areas but more teachers than are needed in urban areas. As a result, some schools have only one teacher, playing the role of school director, teacher and librarian.

*Recommendations*

- MoEYS and development partners should accelerate the process of school construction to ensure that incomplete schools can offer the full range of primary grades (1-6) in the near future.
- Regarding newly trained teacher deployment, expand the policy on local recruitment.
- Reallocate education staff funding to allow for fair salaries for teachers to help reduce informal school fees, and encourage them to stay where they are sent.
- Enforce teacher deployment to ensure that no school is overstaffed and/or understaffed. This will also help reduce unnecessary budget spending.

**3.2: Revise the grade promotion regulation and ensure implementation**

A revised grade promotion regulation has been issued and is being implemented<sup>87</sup>. In this, those who score below average are given the chance to be tested again at the end of the same school year and at the beginning of the next school year. As a result, the promotion rate in primary education increased from 78.6% in SY2006/07 to around 83% in SY2008/09 (draft statistics from the Education Management Information System (EMIS), February 3, 2010). In spite of the significant progress made, the promotion rate is still slightly below the target set (84% in SY2008/2009).

*Recommendations*

- The revised grade promotion regulation is important to reduce repetition and the dropout rate. However, quality education is still a big concern, especially in Grades 1, 2 and 3. As such, we would like to recommend the following<sup>88</sup>:
  - Make available data on students who sat for exams at the end of the same school year and early the next school year, so that it is possible to study trends in education quality.
  - Enforce policy implementation, especially on the promotion rate and informal school fees. Although the survival rate from Grades 1-6 has increased, it is still low. More action is needed to raise it beyond 59.33% in 2008/09 (from 52.5% in SY2007/08).

**3. Key Actions/Strategies from the NSDP Update**

Section	Message
6.517	Ensure equal access to education services
6.517	Improve quality and effectiveness of education services
6.517	Enhance institutional development and capacity building of education officers for decentralization

<sup>87</sup> Prakas 258 issued by MoEYS, March 27, 2009.

<sup>88</sup> From the Summary Report of the Education Congress, March 2010.

## **Monitored progress on NSDP Update implementation**

### ***6.517.1: Ensuring equal access to education services***

#### *School building*

The number of primary, lower secondary and upper secondary schools increased from 8,628 in SY2005/06 to 9,834 in SY2008/09. Primary schools increased in number from 6,277 to 6,565. In order to improve accessibility to education services for poor children in remote areas, 547 primary schools were built in remote areas in 2008/2009.

However, even with this improvement, the number of incomplete schools is relatively high: 1,185 throughout the country. In addition, it is important to note that school construction alone is not a measure of success, because not all schools operate on a full-time, daily basis. The current shortage of trained teachers continues to be a significant problem in Cambodia.

#### *Recommendations*

- Continue current efforts to build new schools and provide incentives for teachers to teach in remote areas.
- Accelerate the process of school construction/repair to reduce the number of incomplete and disadvantaged schools in the near future.
- Strengthen transparent and accountable school management, in order to attract more community engagement.

#### *Number of teaching staff*

In response to the increase in the number of schools, MoEYS increased the number of teaching staff from 78,606 in SY2005/06 to 81,350 in SY2008/09, mainly at secondary level. The number of primary teachers decreased from 50,378 to 45,511 in the same period, owing to a decrease in the number of students.

The delivery of quality education requires well-trained and motivated teachers, with substantial resources. Teacher shortages<sup>89</sup> and de-motivation<sup>90</sup> of public school teachers as a result of low salaries and limited management capacity of school directors are still big challenges for improved accessibility and quality education (see also the JMIs above on teacher shortages).

#### *Recommendations*

- Enforce implementation of teacher recruitment at local levels and reallocate teachers in schools that have more teachers than are needed.
- Reallocate education staff funding to allow for fair salaries and build houses for teachers who are assigned to teach far away from their home.
- Build capacity of school directors to improve school management and increase teachers' motivation and community engagement.

#### *Reducing parental cost barriers and retain students in schools*

School operational budgets were increased, a prakas to eliminate informal school fees was issued and scholarships were provided to poor students, especially girls and the disabled.

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<sup>89</sup> Summary Report of the Education Congress, March 2010.

<sup>90</sup> NEP and Voluntary Service Overseas (2008) Valuing Teachers.

However, many children are still not fully benefiting from education, as a result of economic status, minority status, disability, low perception of the value of education of some parents, etc. The government's commitment to the elimination of unofficial payments in schools is commendable; however, the practice is still prevalent and urgently needs to be addressed to ensure equitable access to education for all children, especially the poor.

#### *Recommendations*

- Reallocate education staff funding to allow fair salaries for teachers to help reduce informal school fees and encourage them to stay where they are sent.
- Increase the scholarship budget for poor children and those who live in rural and remote areas.
- Build dormitories for girls throughout the country, in particular for poor and marginalized children, not only for higher education but also for secondary education and in very remote places where child labor and migration are high.

#### **6.517.2: Improve quality and efficiency of education services**

##### *Expanding the CFS initiative*

MoEYS has endorsed the CFS Policy, its master plan and policies on education for children and children with disabilities. MoEYS has also renewed its school curriculum, issuing guidelines on the implementation of the new curriculum for basic education, including curriculum standards and action plans to guide teachers. Guidelines on preparing school subjects and guidelines for students on elective subjects to study in upper secondary schools have also been introduced. MoEYS is developing a framework to supply core textbooks for the new curriculum.

Although significant progress has been made, quality and effectiveness of education cannot be guaranteed if textbooks and supplementary reading materials are not adequate and/or distributed to students on time. Loss of teaching and learning time may result from lack of classrooms and poor teacher attendance. Other challenges include lack of a professional career path for teachers and lack of improvement to standardized tests to assess student learning outcomes.

#### *Recommendations*

- Ensure textbooks produced are of good quality and quantity and distributed in a timely manner to students and teachers.
- Strengthen mechanisms to support the CFS initiative, such as district training and monitoring teams (DTMTs), with a focus on management, planning, reporting and monitoring.
- Consider the professional development of teachers.
- Ensure that (local) life skills education is part of the curriculum and that schools have the resources (human and material) to implement this to ensure a more relevant education program and preparation for participation in the labor market.
- Employ/strengthen and improve standardized tests to evaluate student learning outcomes, at least in Grades 3, 6, 9 and 12.
- The RGC should allocate MoEYS a bigger budget in the current financial year.

**6.517.3: Strengthen institutional development and build decentralization capacity**

MoEYS is engaged in strengthening the monitoring system as well as restructuring working procedures, developing legislative instruments and training education officers at all levels in technical skills. Efforts have been made to finalize and implement the Education Law and strengthen budget management centers (BMCs).

However, this objective cannot be achieved if the capacity of school directors to implement decentralization is not strengthened, e.g. in school-based management, classroom management, teaching and learning activities, student performance evaluation and effective use of budget resources.

In addition, decentralization depends strongly on engagement with communities and commune councils. Some commune councils have failed to integrate school development planning into commune planning<sup>91</sup>. Some communities and local authorities still consider education to be the responsibility of schools, teachers and MoEYS.

*Recommendations*

- Build capacity of school directors to improve school management, as this can increase teachers' motivation and community engagement.
- MoEYS should promote the decentralization of education to communities and commune councils in order to improve their engagement (on school development and quality education).
- Sensitize communities and ensure their participation in school affairs so as to add value to education and ensure appreciation of the work teachers do. This will boost teachers' morale and improve education quality. Support here should be directed particularly at areas that are still lagging behind.

**4. Important Issues Not Covered by the JMIs or the NSDP Update****Informal fees**

The practice of teachers demanding informal school fees to supplement low salaries places a heavy burden on families, particularly the very poor and other disadvantaged groups. As long as this practice continues, Cambodia will not realize a meaningful increase in enrolment and survival rates in all parts of the country.

The RGC has acknowledged this problem by ruling the practice illegal in Cambodia's Education Law. MoEYS committed to the abolishment of informal school fees by 2008 in its Education Strategic Plan (ESP).

**Corruption**

Finally, corruption is seen by teachers as a major de-motivating factor<sup>92</sup>. This affects the quality of education given students and, in turn, influences survival rates.

*Recommendations*

- Provide teachers with a fair income that reflects the cost of living and inflation so that they do not need to supplement their salaries through informal school fees. Encourage good collaboration with the community to assist teachers in remote areas.

<sup>91</sup> Summary Report of the Education Congress, March 2010.

<sup>92</sup> NEP and Voluntary Service Overseas (2008) Valuing Teachers.

- Justly enforce the Anti-Corruption Law (ACL) passed by the National Assembly as a top priority.

Action on all of these recommendations is urgently needed to help the RGC and MoEYS reduce barriers to EFA. Impacts on primary-level enrolment and survival rates will be significant.

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## Health

### Background

MEDiCAM, established since 1989, is a membership organization for NGOs active in Cambodia's Health Sector and currently represents 126 health NGOs (see MEDiCAM Website). The words "MEDiCAM" or "Health NGOs" which are used interchangeably in this Position Paper only represent the voice and perspective of health NGOs that are under MEDiCAM's umbrella. This number, however, represents approximately 90% of all International and local NGOs working in Cambodia's Health Sector.

The MEDiCAM Position Paper has been developed with broad, transparent, and open consultations with its NGO members. The NGO regional meetings at provincial level were the first place that grassroots NGOs met and discussed issues/challenges and recommendations in Cambodia's Health Sector. They then elected their representatives to raise their collective voice at the Annual General Assembly Meeting (AGM) of MEDiCAM. After hours of deliberation conducted during the AGM by Health NGOs at the national level<sup>93</sup>, NGO representatives voted to prioritize issues/challenges and recommendations which need to be addressed in the Position Paper.

Based on the voted list of priorities from the AGM, MEDiCAM Executive Director wrote the first draft of the Position Paper and submitted it to the MEDiCAM Steering Committee for review and comments. The steering committee held the meeting on 22<sup>nd</sup> April and had intensive debate on the first draft. The comments from the steering committee have been put into the second draft, which has been sent to all the steering committee members and full NGO members of MEDiCAM for comments through email. All comments have been consolidated into the final position paper.

MEDiCAM's Position Paper 2010 does not aim at advocating new priorities for the Health Strategic Plan 2008-2015 (HSP2) into which Health NGOs' comments have already been integrated. The purpose of the Paper however, is to highlight key issues/challenges and recommendations in the implementation of HSP2 so that the Ministry of Health and the Royal Government of Cambodia will be able to fulfill their Cambodian Millennium Development Goals (CMDGs), particularly CMDG 4, 5, and 6 in 2015. The Paper tends to look at this on a yearly basis.

### Introduction

Health NGOs congratulate the Ministry of Health for its continued achievements in improving people's health. The health outcomes have significantly improved — reduction of 30% infant and under-5 mortality rates in the past five years (IMR is 66 per 1000 live births and U5 Mortality Rate is 83 per 1000 live births)<sup>94</sup>; HIV Prevalence among general population aged 15-49 has considerably declined from 3% in 1997 to 0.9%<sup>95</sup> (0.6 in CDHS 2005) ; declines in both malaria and tuberculosis morbidity and mortality; sustained improvements in immunization coverage and control of vaccine-preventable diseases (polio, measles, hepatitis B); fertility has reduced from 4 to 3.5; exclusive breastfeeding for 6 months has considerably increased from 11% in 2000 to 60% in 2005 (CDHS 2005); (antenatal care) ANC visits up from 38% to 69%; an increase in birth delivery attended by skilled providers from 32% to 44% in 2005; and life expectancy improved to 60 for men and 65 for women (CDHS 2005).

Furthermore, health NGOs have observed great improvements in policy and strategy development. This includes the development of HSP2 2008-2015, National Framework for

<sup>93</sup> Please refer to AGM Report 2010

<sup>94</sup> Cambodia Demography and Health Survey 2005

<sup>95</sup> Expert Consensus Meeting on Estimation in HIV Prevalence 2007, NCHAD

Health Care Financing, the Health Information System (HIS) Strategic Plan 2008-2015, the Community Participation Policy (CPP) in Health, National Guidelines for Health Equity Fund (HEF) Implementation, National Guidelines for Health Insurance, Complementary Package of Activities (CPA) Guidelines, Minimum Package of Activities (MPA) Guidelines, National Family Planning Commodity Security (FPCS), Reproductive Health Costing, the Reproductive Health Strategy, Child Survival Costing, the Core Strategy for Child Survival, the National HIV/AIDS Strategic Plan II, the National Monitoring and Evaluation (M&E) Framework for HIV/AIDS, among others. Health NGOs would like also to appreciate the fact that the RGC and MoH have given more opportunity to health NGOs to provide comments and feedback on policy development. It has also been observed that several comments have been accepted into national policies or strategies.

Another important observation is the increased health budget from both the government and development partners. The paradigm shift in the aid architecture tends towards supporting the government and public systems. For instance, the Health Sector Support Program Phase 2 (HSSP2)<sup>96</sup>, a five-year project jointly supported by the World Bank, the Australian Agency for International Development (AusAID), the United Kingdom Department for International Development (UK DFID), the United Nations Population Fund (UNFPA), the UN Children's Fund (UNICEF), and the French Development Agency (AFD), worth \$144.9 million, is a pooling of funding to support the implementation of HSP2 through the RGC's financial system - the Ministry of Economy and Finance (MEF). Belgium Technical Cooperation's (BTC's) Provision of Basic Health Services Phase II<sup>97</sup> is a second example of an additional resource that injects directly into the public system. A third example is the newly signed Global Initiative in Health - the International Health Partnership - which Cambodia is among the first eight waiver countries to implement. Furthermore, Cambodia is one of a few countries in the world that has won the most rounds of the Global Fund — Rounds 1, 2, 4, 5, 6, 7 and 9 - totaling about \$400 million<sup>98</sup>. On the government side, the health budget has increased significantly as a result of an overall annual budget increase.

Despite all the abovementioned progress, Cambodia's health indicators still lag behind many countries in the region. This includes the following: a stagnant maternal mortality ratio (MMR) (472 per 100,000 live births<sup>99</sup>, 461/100,000 live births<sup>100</sup>); still very high U5MR and IMR; chronic diseases on the rise (diabetes prevalence is 5% rural, 10% urban, hypertension prevalence is 12% rural, 25% urban)<sup>101</sup>; very low level of access to improved sanitation: 17% (53% urban, 8% rural); increasing malaria drug resistance (artemisinin tolerance); increasing rates of motor vehicle accidents; disability prevalence of 4.0<sup>102</sup>-4.7%<sup>103</sup>; continued threats to blood safety; tobacco-related illnesses (50% of men smoke)<sup>104</sup>; inequitable health outcomes remaining very large; food safety and food security, anarchic use of antibiotics and other un-prescribed medicines in the private sector; unsafe birth deliveries and induced abortions at home and in the informal private sector; an unregulated private sector; high out-of-pocket health expenditures; a continued under-funded public system; etc. There are among the significant concerns with regard to achieving Millenium Development Goals (MDGs) 4, 5 and 6.

## KEY ISSUES & RECOMMENDATIONS

The issues and recommendations below are not intended to be comprehensive, nor are they able to be highly detailed. It is hoped they will articulate the NGO perspective on the important health topics that the health NGO community debated and selected by vote during its AGM on March 19, 2010.

<sup>96</sup> HSSP2 Document is available at MEDiCAM's website

<sup>97</sup> BTC-PBHS document is also available at MEDiCAM's website

<sup>98</sup> According to an MoH press release

<sup>99</sup> CDHS (2005)

<sup>100</sup> Census Survey (2008)

<sup>101</sup> According to MoH and the World Health Organization

<sup>102</sup> CSES 2004

<sup>103</sup> Knowles 2005

<sup>104</sup> WHO Report 2008

## 1. Strengthening Community Participation

MoH has demonstrated its commitment to strengthening community participation, as highlighted in the fifth cross-cutting pillar strategy of HSP2 - governance system - and in the development of the CPP in Health. Development partners talk about the importance of civil society and community participation. Funding resources to strengthen community systems, however, do not reflect full commitment to this necessary aspect of the dynamic and integrated health sector building process.

Communities are in a great position to strengthen the efficient and effective use of tax payers' and government resources in improving the provision of quality basic health care services. Currently, however, there is almost a complete disconnection between consumers and providers of health care service due to a number of financial, social and systematic problems. The energies of care, concern and compassion are often not available to the establishment of the provider-patient relationship. The absence of properly-functioning community mechanisms to participate in and lobby for better health services perpetuates this circumstance that opposes the mission of serving the public.

For instance, the roles of communities in reporting health care performance of health centers or referral hospitals (community score cards), in budget tracking, in access to accurate and relevant information, in understanding the rights to health, etc are among the key functions that could lead to better governance in managing the public health system. However, these are not likely to materialize without support from civil society organization (CSOs) or NGOs or without resources allocated from the government and development partners.

As an example, NGOs/CBOs have been vibrant catalysts to build bridges or mechanisms or systems such as community health forums or community health dialogues for increasing interaction and getting mutual understanding between consumers and providers.

MoH has established health center management committees (HCMCs) for each health center in order to encourage community participation. This is a commendable and appreciated move in the direction of community involvement, but the reality is that none of HCMCs is functioning well. One of the reasons for this is that local authorities (commune councils) and communities themselves do not have a sense of ownership. HCMCs seem to have been imposed by the health system, not by local authorities and communities. Another reason is that the resources needed for functional HCMCs are scarce.

Moreover, people also tend to have more problems accessing secondary care services. Therefore, HCMCs are not sufficient; more necessary are referral hospital management committees (RHMCs).

In order to establish the RHMC with a sense of ownership by local authority and communities, it will require intensive and meaningful consultation with them on organizational structure, roles and responsibilities, expected outputs and outcomes, annual operational plan, allocated budget within D&D to make them function.

Along with relevant government institutions, NGOs/CBOs should play very significant role in building capacity of members of both HCMCs and RHMCs as well as channeling funding to support them. This capacity includes facilitation, leadership, and advocacy sk

Community participation should not only cover the promotion of a healthy lifestyle or primary health care but also enhance social accountability, which will contribute to good governance in the health system.

The CPP was drafted in 2008 with the active participation of and consultation with all key stakeholders, including government, development partners, grassroots NGOs and regional

actors. Approval would allow NGOs and the government to seek funding for the policy's implementation.

**Recommendations on this issue are as follows:**

- Finalize of the National Community Participation Policy in health;
- Both government and IDPs should allocate more resources for strengthening community participation;
- Establish of Referral Hospital Management Committees (RHMCs);
- Build capacity of HCMCs and RHMCs members by relevant government institutions, NGOs/CBOs;
- Further development and expansion of Community Health Forums; and
- Development and implementation of community score card.

**2. Improve access for the poor to health care services**

"PAY or DIE" is the true voice of the Cambodian poor and vulnerable across the country.

MEDiCAM has worked in partnership with all its medical and non-medical grassroots NGOs to conduct community health forums in Battambang, Siem Reap, Otdar Meanchey, Kratie, Stung Treng, Ratanakiri, Mondulkiri and Phnom Penh<sup>105</sup>. Through these forums,, it has been possible to hear the voice of the people, who have stood up to reveal the real situation when seeking care at any public hospital or health facility in Cambodia., that is, "pay or die".

User fees and unofficial payments are a big burden on poor households. This is the main reason behind delays in care-seeking and increased use of private sector care. Formal and informal private practices have been an uncontrolled source of harmful practices and have caused additional health and financial strains on poor families.

So far, several schemes and many initiatives are being implemented in Cambodia but a clear long term vision is still lacking or hasn't been yet formulated. Health equity Funds and Community Based health Insurance are bringing some improvement in providing better access to services for the poor but these schemes show their own limits and are rather short term solutions.

MoH has an exemption policy and Health Equity Fund (HEF), which aim to lift the financial barriers for the poor in terms of access to health care services. HEFs have been more helpful, but sizeable problems and questions remain, including universal coverage, financial sustainability, true effectiveness for access and efficiency.

When the poor attended the community health forums in all the above mentioned provinces and Phnom Penh, they complained that they are treated poorly even if they access under the HEF. Some have to pay extra fees to ensure that they will be served when they come again. If the stated goal of the public health system is to be reached, this unfriendly and sometimes uncaring attitude of health providers needs to be eliminated.

Potential purchasing power of HEF should be better used. Performance-based contracts should be systemized where payment is linked to quality services provided. There should be regular and vigorous monitoring and supervision at the health facility level to ensure accessibility and a better quality of care.

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<sup>105</sup> All Community Health Forum Reports are available upon request from MEDiCAM

Pre-identification and post-identification of the poor is another complex and costly process. Lack of transparency in poor families' identification is sometime highlighted by the communities.

Lastly, there is a question related to required institutional arrangements. A difficult choice has to be made between multi-layer system (involving various stakeholders) that are extremely costly and not sustainable but may ensure better transparency and governance, and a system operated directly by the public health facilities that will cost less but may not guarantee good governance and transparency.

Community Based Health Insurance has also been initiated in Cambodia and is contributing to lift financial barriers for some targeted population. Constraints and limits are similarly observed. Convincing poor populations to become members and start mobilizing part of their revenue to anticipate potential health related needs is extremely challenging. As for HEF, clear contracts including performance review have to be established with health facilities involved in the scheme; otherwise quality of care is not ensured. The efficiency of the system and its adaptability to the Cambodia context is not yet demonstrated.

While applying and improving the implementation these useful but rather short term solutions, the Royal Government of Cambodia should formalize **clear long term health system financing** strategy keeping in mind global experiences and recommendations. The Global Action for Health collected experience around the world and recommends that developing countries should apply tax-based health care financing (free health care services at the point of delivery) or Social Health Insurance or a combination of both. Even though tax collection has to be further strengthened before moving to a **free health care service at the point of delivery**, the NGO community would like to recommend to look at this option as the only long term viable one for Cambodia. Commitments from IDPs will also be needed if the RGC make this its clear choice.

**Recommendations on this issue are as follows:**

- Based on the above and recommendation from Global Action for Health, commitment to remove user fees should be envisaged for Cambodia's Health Care System and short to medium term strategies adapted according to this long term vision.
- Existing schemes (HEF) and (CBHI) should be implemented very carefully to serve fully interest of the poorest (systematic performance based contracts with health facilities, transparent poor identification process, health providers' behavior...).
- To ensure free services at the point of delivery, a pooled fund-based health care financing system (government and development partner) or Social Health Insurance or a combination of both should be considered as future policy options for health care financing of health care system in Cambodia.

**3. Retain qualified health care work forces in the system**

The National Assembly has adopted 168.8<sup>106</sup> million US dollars for MoH for 2010 in the National Budget. Meanwhile, seven international development partners (WB, DFID, AusAID, AFD, BTC, UNICEF, and UNFPA) are pooling 144.9<sup>107</sup> million US dollars to support Health Sector Support Program Phase 2 (HSSP2) for five years from 2009-2013. Plus, various funds are coming in from the Global Alliance for Vaccines and Immunization (GAVI), the Global Fund, other bilateral and multilateral partners, NGOs, and user fees. The MoH Annual Operational Plan 2010 shows the total budget as \$ 273 million. Efficient and effective use of the resources in the health sector could benefit both health providers and patients/clients.

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<sup>106</sup> National Budget 2010

<sup>107</sup> Press release of MoH in 2009

The quick assumption is that there should be clear issue of efficiency and effectiveness of the resources used in the health sector. If this fund is properly used in the right way, this could benefit both health providers and patients/clients.

The health system will function well in the presence of qualified and adequate human resources, sufficient supplies, a functioning health information system, the right health care financing mechanism to make universal access for all, and good governance.

Being able to retain qualified human resources in the system will require decent wages. Government and development partners need to address this issue together. To reduce financial and manpower cost, dual practices with regard to those who work in the public sector and those who work in the private sector should be stopped.

The government and development partners, during the most recent High-Level Meeting on Salary supplements and Incentives, agreed to move forward along two tracks:

- Priority operating costs (a set of harmonized incentives, applicable across the civil service, based on agreed key principles); and
- Compensation reform, within the context of the RGC's National Public Administration Reform program (NPAR). A technical team made up of the Council of Administrative Reform (CAR) and development partners will develop implementation details for POC and the development of Compensation Reform Milestones.

**Recommendation on these issues is as follows:**

- Since the implementation of both POC and compensation reform milestones will affect the way NGOs/CSOs work as a joint partners in development in Cambodia, health NGOs would like to call on both government and development partners to consider their participation in the technical team for the development of the implementation details on these.

**4. Improve logistics and the supply management system and procurement of pharmaceutical and health products**

NGOs congratulate the RGC on its increased annual budget for the health sector as a proportionately as the overall growing National Budget, from \$ 56 million in 2007 to over \$ 80 million in 2008, about \$120 million in 2009, and \$168.80 million in 2010. They, however, are very concerned that there is still a shortage of medicines and health products every year in almost all public health facilities. This puts into question the procurement of pharmaceutical and health products and the management of these products to ensure better service delivery at all public health facilities. The increase in funding should allow product and service delivery to the health facilities to be addressed in a meaningful way.

**Recommendations on this issue are as follows:**

- Both RGC and development partners should work together more closely to find ways to improve logistics and the supply management system and improve the transparency and accountability of the procurement of pharmaceutical and health products. This is critical as no health system can function without adequate supplies.
- Ministry of Health should ensure that essential drugs, health commodities, and necessary medical equipment are available at health facility level.

**5. Improve the quality of health care services**

This is one of the biggest concerns in Cambodia's Health Care Industry. The issues include system-wide unethical, unfriendly, and uncaring behavior of health providers at all levels of care: limited technical skill, poor compliance with national standards or protocols of treatment, poor management and leadership skills and lack of training in compassionate delivery of healthcare. The previously-mentioned community feedback void also plays a

large role in improving quality of the delivery. Shortages of essential drugs, other health commodities and modern medical equipment also commonly contribute to poor quality of services.

Managing health care services with scarce resources will also require regular and rigorous supervision by Operational Districts (ODs), Provincial Health Departments (PHDs), and MoH. Low wages in the public system make staff's commitment very low. 90% of public health providers run their own private clinics. Dual practices make it almost impossible to improve quality health care services to the public sector due to benefits driven in the private sector.

To improve the quality of health care services in Cambodia, the RGC and MoH must consider short-term and long-term measures.

**Recommendations on this issue are as follow:**

Short-term measures would include:

- Active, regular, and rigorous supervision from ODs, PHDs, and the Ministry of Health of health facilities (including a reward and sanction system)
- Any incentive mechanism in the operational system must be linked to quality improvement. (communities or consumers must have a say to the performance appraisal of HCs or RHs before these mechanisms can be offered to extend)
- For those health facilities which are now put under special operation agency contracts, the Provincial Health Departments must set a very strict rule and regulation for applying clients-friendly service principles;
- NGOs and health partners should assist in continuous skill upgrading and support the implementation of quality improvement project

Long-term measures would include:

- Cambodia must improve its quality of training for all medical professionals—medical doctors, medical assistants, nurses, midwives, and public health professionals.
- An Accreditation System must be implemented effectively, to evaluate the quality of training of medical professionals in both private and public training institutions. The government must take action seriously because it affects our future for any investment we are making today.
- It is strongly recommended that development partners assist the RCG in taking care of the upstream issues — improving the quality of health professionals; in treatment, public health, leadership, and management, and strengthening institutional development and organization.

**6. Improving Maternal Newborn and Child Health**

The most recent Lancet publication on maternal mortality ratio in 181 countries around the world suggests that Cambodia's Maternal Mortality Ratio (MMR) has come down to 266<sup>108</sup> per 100,000 live births. The Cambodia Census survey of 2008 indicated 461 deaths among 100,000 live births.

Although the Lancet results based on secondary data raise the question of the interpretation of the data, given the differences with recent population based surveys results in Cambodia (CDHS 2005 and Census 2008) and different methodology used. The fact remains that Cambodia Maternal Mortality Ratio in the Lancet publication is still high in absolute as compared to countries in the region: behind East-Timor and Laos (respectively MMR at 929 and 339), just before Indonesia and Burma (resp. MMR at 229 and 219).

NGOs feel that it has to be very cautious to come into any conclusion on the data reported by Lancet. Complacency or impression of success would have political and financial implication on the efforts to improve maternal newborn and child health in Cambodia which remains a major health issue and priority. Those results should not lessen any efforts on improving maternal newborn and child health.

<sup>108</sup> Lancet report MMR in early April 2010

As stated in the Fast Track Initiative as well as in the Joint Annual Performance Review Report in March 2010, improving maternal, newborn and child health requires Comprehensive Emergency Obsteric & Neonatal Care (C-EmONC) and Basic Emergency Obsteric & Neonatal Care (B-EmONC) services, safe abortion and post abortion services, an improved referral system, a lifting of financial barriers, a scaling up of the implementation of Integrated Management of Childhood Illness (IMCI), improved neonatal care services and good nutrition.

But the question is how to put these interventions into concrete results. No solution is without its challenges, but the medical NGOs can offer some insights.

On the one hand, we need to put our resources and concerted efforts to make all these aforementioned medical services accessible and available to all people. On the other hand, improving maternal newborn and child health will require actions beyond the health system. This would include food security, quality of nutrition, water supply; sanitation and transportation which have all been proved to be components of this multi-sectoral problem.

It is crucial, therefore, that improving women newborn and child health must link to other socio-cultural and economic development agenda. We would like to call for a more integrated holistic approach for multisectoral interventions to improve maternal newborn and child health.

For the health sector, to make all 80 province/OD-based referral hospitals capable of providing C-EmONC services, it will need both medical equipment for those emergency obstetrical wards and skilled health staff to work 24 hours a day. Again, it needs to have adequate training and a strategy to retain them in the system—probably adequate POCs.

**Recommendations on this issue are as follows:**

- Improving these services at public facilities will have limited impact in term of reducing maternal, newborn and child mortality, if the poor people can not access them because financial barriers and lack of a functioning referral system.
- NGOs recommend a whole free package of priority interventions for pregnant women, newborn, and children under five. The package should include ANCs, delivery, safe abortion, PNC, post abortion care, and all scorecard interventions for children under five. Transportation should also be compensated for all the poor. The providers should be motivated by subsidized costs provided by the pooled funds from both government and development partners.
- Reproductive Health-HIV/AIDS integration intervention is strongly recommended as one of the triggers for improving reproductive maternal newborn and child health.

**7. Improve the referral system**

For all emergency cases for mothers, newborns and under-5 children, transportation should be compensated to all poor households. In the long run, NGOs recommend that referral system could function well if it is built within and owned by the community themselves with the support from the RGC and health partners. There are several NGO good practices in this area that MEDiCAM will collect and collate those practices for scaling up.

There should be a referral system continuum, including a community-facility referral system and facility-facility referral system. Ideally, there should be at least one locally available vehicle “ambulance” per health facility.

## **8. Calling for more external support for non-communicable diseases**

Cambodia is now seeing an alarming rise in the occurrence of cardiovascular diseases, diabetes, cancer, road accidents, mental health, disorders and disabilities. For example, Hypertension accounts for 25% of urban adult population, and diabetes is 10%<sup>109</sup> for the same population. Tobacco, alcohol, diet, chemical substances on produce and meats, traffic accidents, etc. are significant factors contributing to this alarming trend.

For tobacco control, Cambodia has signed and ratified the Framework Convention on Tobacco Control in November 2005 and therefore has an international commitment to implement a full national tobacco product advertizing ban regulation by February 15<sup>th</sup> 2011. Only two Countries in the ASEAN that have not yet adopted the law on tobacco control.

### **Recommendations on this are as follows:**

- NGOs would like to appeal to IDPs and government to seriously consider additional financial and technical support for intensifying interventions for both prevention and access to treatment for chronic diseases.
- NGOs would recommend that the RGC submit the draft law on tobacco control to the National Assembly for debating and passing the law as soon as possible.
- NGOs would like the RGC to take serious measures to strengthen the role of inter-ministerial committee, the TWG for Food Security and Nutrition to ensure at least the food safety, including the establishment of public health professional committees in order to ensure food safety in the country.

## **9. Improve the Public-Private Partnership**

21.6 % of the population used publicly provided health care services. The rest is using informal and formal private sectors, the services of which can be dangerous and expensive. As said earlier, user fees and unofficial payment in the public system is the main cause of growing anarchy of these sectors. Why should people go to public sector when they have to pay a lot of money for user fees, unofficial payment, and then they have to buy medicines from pharmacies? They would rather go to seek care at pharmacies, drugstores, quack doctors, traditional healers or private clinics where the total cost may be less and it is available at any time. People often come to public health facilities at the late stage. It has been witnessed again and again that the additional costs of multiple visits buys only a delayed diagnosis and a worse outcome. The patient, the family and Cambodia all lose in this scenario.

If public health facilities provide free services for poor people, private sector will continue to grow, but they will grow in a more professional way. Those people with the ability to pay will seek facilities with quality, competence and comfort. This environment supplies the necessary competitive forces to ensure a higher standard develops.

Dual practice also weakens the competence, accessibility and progress of the public system. There should be a clear cut between the two in order to strengthen efficiency and effectiveness.

### **Recommendations on this are as follows:**

- NGOs would recommend conducting comprehensive mapping analysis to identify the existing laws and policies in order to regulate private sector or to work in constructive partnership with them for strengthening quality of care. This analysis should include collecting and collating best practice on public private partnership.

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<sup>109</sup> MoH and WHO report

- Based on the mapping analysis, semi-annual public-private partnership forums should be conducted in order to reinforce regulation and partnership.
- Good practices should also be scaled up to bring better engagement for better quality and accessibility.

### **10. Building trust and confidence between users and public health care providers**

Extension of Community Health Forum as a way to increase interaction and mutual understanding between suppliers and consumers (health providers and clients) is one of the significant interventions required for building trust and confidence in the Cambodia's Public Health System. Efforts on several of the aforementioned points will also ensure an environment conducive to building trust and confidence.

It is important here to highlight again the need for a behavior change among health providers. Unfriendly and uncaring behavior of health providers is wide-spread. Nearly everyone attending the community health forums echoed this experience: rude, uncaring and unethical behavior of doctors, nurses, and midwives. Most of the time, Cambodian health providers' words and attitude toward patients, especially the poor, are socially unacceptable. If they want to rebuild trust and confidence among Cambodian people, politicians and policy makers should accept this truth in Cambodia's health sector. There should be conducive environment, inter-personnel communication skill, and professional responsibilities to make our public sector and health care professionals look good again. All health professionals when graduating from medical schools or the University of Health Science have sworn to comply with the principles of code of ethics. NGOs believe that these principles of code of ethics among public health providers and professionals should be reinforced and strengthened. The people's voice regarding this behavior and treatment is clear and is surprisingly uniform. Policy makers should listen with intent and provide a clear response.

#### **Recommendations on this issue are as following:**

- Nationwide Community Health Forum between providers, local authority, and community should be conducted regularly;
- All working conditions or environment conducive to ensure work forces in the system should be improved;
- Acceptance of the importance of the issues by policy makers and they should articulate clearly the strategy to reinforce the principles of code of ethics—including reward and sanction; and
- Improving inter-personnel communication skill and leverage community participation.

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## Gender-Based Violence

### 1. Introduction

Gender and Development Network (GADNet) and the Committee to Promote Women in Politics (CPWP) collaborated to produce this report. GADNet is composed of 62 members from non- governmental organizations (NGOs) and governmental agencies working together to advocate for laws and policies that are responsive to women's and men's issues and needs and to increase public awareness of gender issues, women's human rights, laws and related policies in order to change social attitudes and behaviors that discriminate against women. CPWP has eight members working to promote women in decision-making positions in public office.

Women's rights are guaranteed by the Cambodian Constitution and international laws ratified by Cambodia since 1993. Article 31 of the Constitution recognizes equal rights between men and women to participate in the economic, social, political and cultural life of the nation. The same article also provides legal leverage for the Universal Declaration on Human Rights and other international legal instruments, such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), stating that "Cambodia recognizes and respects human rights as stipulated in the United Nations' [UN] Charter, Universal Declaration on Human Rights, Covenants and Conventions related to human rights, women's rights and child's rights." In this spirit, gender equality is integrated into key national policies and plans such as the Rectangular Strategy for Growth, Employment, Equity and Efficiency, the National Strategic Development Plan (NSDP) and the sectoral plans of ministries/institutions.

GADNet and CPWP prepared this position paper as a part of its monitoring of Royal Government of Cambodia (RGC) progress on gender equality promotion, with a view to closing the gaps that have shown themselves during government policy implementation.

### 2. Joint Monitoring Indicators

Target	Actions 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	1. Sub-decree on the administrative decision on domestic violence revised and adopted and a working group established for training and implementation of the sub-decree	Ministry of Interior (MoI) with Ministry of Women's Affairs (MoWA)
	2. A common framework for monitoring the enforcement of the Law on Suppression of Human Trafficking and Sexual Exploitation developed	MoI with MoWA
	3. National action plan to combat violence against women revised and adopted	MoWA with Inter-Ministerial Group
	4. Policy and legislation on labor migration reviewed. Specific targets include: adopt comprehensive strategy paper on migration that links migration with trafficking, smuggling and the Labor Law reform and closes existing legal gaps to enhance legal protection of migrants	MoWA with MoI, Ministry of Labor and Vocational Training (MLVT) and Ministry of Justice (MoJ)

#### Monitored progress on JMI implementation

##### *20.1: Sub-decree on domestic violence and working group for its implementation*

MoI is in the process of developing legal instruments to further strengthen implementation of the Law on the Prevention of Domestic Violence and the Protection of Victims at local

level and, as part of this, decided to replace the sub-decree with a guideline. NGOs are concerned that a guideline will have less power to strengthen enforcement of the law by local authorities. Meanwhile, the guideline should strictly delineate the accountability of local law enforcers and concerned actors in relation to effective application of the law.

MoJ and MoWA have established a Technical Working Group (TWG) to formulate a standardized protection order form for judges. A standard for the implementation of the protection order is to be developed.

### ***20.2: Framework for monitoring enforcement of the Law on Suppression of Human Trafficking and Sexual Exploitation***

Although NGOs observe that cooperation among the different ministries and between the RGC and NGOs could be further improved, overall progress on this action has been satisfactory. Since the 2008 Cambodia Development Cooperation Forum (CDCF), significant progress in formulating a common framework to monitor implementation of the Law on Suppression of Human Trafficking and Sexual Exploitation has been made:

- The National Committee for the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation of Women and Children has been established, with MoI as Chair. The committee comprises municipal/provincial/city boards and six working groups. NGOs are represented in the working groups. A MoI/MoJ Joint Task Force has been formed under this committee to set up a national data system.
- An Explanatory Note on the law has been finalized and submitted to MoJ for review.
- A memorandum of understanding (MoU) on human trafficking between Cambodia and Malaysia has been drafted.
- The National Plan of Action to Combat Human Trafficking 2009-2013 has been reviewed and submitted to the Council of Ministers (CoM).
- The Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY) signed the Agreement on Standard Procedures for Identification and Repatriation of Victims with Vietnam in December 2009.
- MoSAVY has formulated minimum standards to assist trafficked victims.

### ***20.3: National action plan to combat violence against women***

The National Plan of Action to Combat Violence against Women was adopted in February 2009. NGOs welcome the government's efforts to bring this action plan into force. We believe that the plan will provide line ministries and agencies with a basis to deal with gender-based violence. However, the plan must enable collaboration between sectors and between government and NGOs to contribute to the effective prevention of violence against women and children.

### ***20.4: Policy and legislation on labor migration***

There has been significant progress on this action, especially in the following areas:

- The Inter-Ministerial Working Group on Migration has held four meetings and discussed migration issues, policies and other measures to protect migrant workers.
- A review of the Labor Law has been completed and a series of meetings has been held to discuss the development of a migrant workers policy.
- A MoSAVY Working Group has been established to formulate standard guidelines and contracts to protect the rights of domestic helpers.

- A review of gender gaps in the Labor Law has been completed by MoJ with support from the United Nations Development Fund for Women (UNIFEM). The report on this study was submitted to the Minister of Justice for approval.

### Recommendations

- Government ministries/institutions (MoI and MoJ) and NGOs should work together more closely on the formulation of a data system on violence against women and children.
- MoI should accelerate the formulation of guidelines on the administrative decision on domestic violence and disseminate these widely at local level to ensure the effective enforcement of the Law on the Prevention of Domestic Violence and the Protection of Victims.
- Initiate the recruitment of policewomen for the national police force at national and local level. If needed, there should be a freeze in the recruitment of policemen, to be replaced by the recruitment of policewomen.

### 3. Key Actions/Strategies from the NSDP Update

This position paper will not cover the five priority areas of the Five-Year Strategic Plan 2009-2013 Neary Ratanak III, as included in the National Strategic Development Plan (NSDP) for 2009-2013. Instead, it will look into gender-based violence, as this is a major current concern in Cambodian society, affecting the life and dignity of all, particularly women and children.

Section	Message
540	Strengthen legal protection to counter all forms of discrimination against women and girls through implementation of the Law on the Prevention of Domestic Violence and the Protection of Victims, Law on Suppression of Human Trafficking and Sexual Exploitation, national plans of action to prevent violence against women and national plans of action to counter all forms of human trafficking and sexual exploitation, formulation of a data and information system on all forms of violence against women and girls and increasing public awareness
540	Enhance capacity of line ministries/institutions on the Law on the Prevention of Violence against Women and the Protection of Victims and increase the knowledge of authorities at all levels on laws and relevant documents, create a system of communication with police officers, courts officials and health staff, increase the number of female judicial police officers and prison staff, develop capacity of judicial police agents and arrangements for the implementation of necessary documents to enforce the law such as administrative decisions and protection orders for victims
540	Improve social services and increase victims' access to social and health services by increasing the number of safety centers and shelters to accommodate victims. Strengthen international and regional cooperation to prevent and suppress all human trafficking, smuggling, labor exploitation and sexual exploitation of women and children and support victims by implementing activities and monitoring national plans of action, continuing to implement international agreements

### Monitored progress on NSDP Update

GADNet appreciates the great efforts of the RGC in promoting gender equality through the implementation of the Five-Year Strategic Plan 2004-2008 Neary Ratanak II. This plan underlines the high level of attention by the RGC as a signatory of CEDAW and its commitment to achieving the Cambodian Millennium Development Goals (CMDGs) by 2015. Meanwhile, legal protection for women and children showed significant progress in 2009, through the establishment of the National Committee for the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation of Women and Children,

led by MoI, and the capacity development program for officials from relevant ministries/institutions on law and dissemination of the law and of issues related to discrimination and gender-based violence to the general public through public forums, mass media, radio, television and posters. However, we are concerned about violence against women and children, which is still occurring and seems to have worsened, e.g. domestic violence, rape, human trafficking and labor and sexual exploitation.

The Cambodian National Council for Women (CNCW) in its wrap-up report for 2009 claimed that there had been 165 cases of human trafficking and sexual exploitation of women. This was an increase of 54 on 2008. In this regard, municipal/provincial courts heard only 90 cases. There were 601 cases of rape, sexual assault and domestic violence. Of these, 462 cases were resolved. This was an increase of 150 on 2008. Out of these 601 cases, 285 were rapes (an increase of 54), with 242 resolved. There were five rape/murder cases, an increase of one on 2008; all five were resolved. There were 29 cases of sexual harassment; all were resolved. There were 195 cases of domestic violence, 90 more than in 2008; 111 cases were resolved.

The 2009 Human Rights Situation Report of the Cambodian Association for Development and Human Rights (ADHOC), which details an investigation of 24 provinces/cities, suggests that there were 541 cases of domestic violence in 2009. Of these, 261 cases were brought to the courts and 199 cases were reconciled through local authorities. In 18 cases, the victim died. This report also details psychological violence, mostly by husbands against their wives, such as returning home drunk to find fault with wives and children, having mistresses, raping own or stepdaughters, beating family members, coercing relatives, insulting, using scorn and not providing for the family. Despite a better understanding that domestic violence is not acceptable and is against the law, local authorities seemingly hesitate to intervene if a case does not involve severe injury, especially if there is no complaint from the victim. Dissemination of the Law on the Prevention of Domestic Violence and the Protection of Victims and of legal services was seen as not reaching people in remote areas. Limited law enforcement and lack of measures among authorities to separate perpetrators from victims, together with forced mediation, are the main reasons victims continue to live with violence until they commit suicide, are murdered by the perpetrator or kill the perpetrator. Some victims had difficulty obtaining protection orders because they lived far away and did not have enough money to travel to the courts and/or because the knowledge of some local authority members regarding the application process was limited.

On November 24, 2009, there was a suicide in Taop Siem village, Kok Thlok Krom commune, Chi Kreng district, Siem Reap province, of a 30-year-old woman with four children. She committed suicide because her husband used to consume alcohol, find fault with her, shout at her that she did not know how to hold onto money, chase her and beat her. Once he dragged her home by her hair when she ran to her mother's house for help and then beat her until her sarong came off, while she cried for help to no avail. After this, the victim took an overdose. There was often domestic violence in this family and the village authorities had conducted reconciliation many times but the husband had never stopped.

According to the ADHOC report, in 2009 alone there were 460 cases of rape, 41 more than in 2008. Gang rape jumped from 15 cases in 2008 to 26 in 2009. There were 36 cases of incest (where fathers raped and threatened their own daughters). Among these 460 cases, 66 were cases of rape of minors. In some cases, the perpetrator raped and murdered the victim because they knew each other; in other cases, the perpetrator threatened the victim with death not to file a complaint. In some cases, interventions by law enforcement officers were not in compliance with legal principles because the perpetrator or their family members were rich, powerful and influential. Meanwhile, victims or their family members were often not aware of law, which often led to informal payment of damages outside the courts. Assistance services for victims are not widespread and timely enough. For example, technical analysis of victims remains a challenge in remote areas. Poor victims do not have money to cover transportation to access medical treatment, psychological support and other social services. Discrimination in the community is also a factor.

In Svay village, Poreach commune, Svay Chrum district, Svay Rieng province, a 54-year-old father (a colonel) raped his own three daughters from 1992 to 2009; the first daughter was raped from when she was 12 until she was 29. The father raped his daughters without interruption because the mother did not dare to react after he threatened her. With ADHOC's assistance, the daughters filed a lawsuit but the offender escaped. The offender's brother and nephew, respectively a police chief and a journalist, colluded in threatening the victims and kept the incident undisclosed.

ADHOC in 2009 worked on 52 cases of trafficking, of which 35 were cases of sexual trafficking and 17 cases were cases of labor exploitation, both inside and outside the country. ADHOC's report notes many places where trafficking occurs, including hotels, karaoke parlors, massage parlors and nightclubs. Local police officers cracked down in some places but the most common result was sex workers being taken out of the location. Little punishment has been given to those who run such businesses; if they are punished, they are later released after paying money to the authorities. There is no effective mechanism to monitor the situation of overseas workers and there is no reliable and safe system for workers to report on their situation. Dissemination of information on labor rights and on the consequences of migration is limited. In addition, a new form of trafficking has just emerged: trafficking through brokers dealing with young girls in schools. Brokers lure girls with the promise of support from wealthy people. Meanwhile, there is little knowledge on and support to workers in the informal sector, such as domestic helpers. Such workers have access to neither legal protection nor social services under the current Labor Law. This puts them at high risk of exploitation with regard to wages and working conditions. To make it worse, workers may be raped by their employer/s.

On February 2, 2008, a couple convinced a 21-year-old woman to accept a job as a maid in Malaysia. She consulted her parents but they disagreed with the decision. Nevertheless, she decided to take the job with a promised salary of \$150 per month. She was beaten by the house owner and her head was banged against the wall, resulting in chronic pain through her backbone. Eventually, she escaped to the police station and was sent back to Cambodia on October 29, 2009. Today, she is receiving treatment at Banteay Meanchey Hospital.

Despite significant progress in the past decade with regard to protecting women and children against violence, many problems remain. Further attention by the RGC and civil society is needed to accelerate gender equality in Cambodian society, by improving laws and policies, strengthening law enforcement and policy implementation, strengthening the courts and changing social attitudes to eliminate discrimination in families, communities and institutions.

Cambodia has ratified a number of international legal instruments, including CEDAW, the UN Convention on the Rights of the Child (UNCRC), the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Under these, the RGC is obliged to respect, protect and fulfill human rights for all citizens. State agencies and other stakeholders recognize that all international legal instruments Cambodia has ratified have the same value as domestic laws and are valid for application in the courts' in the same manner as the Cambodian Constitution and other laws.

### **Recommendations**

- Strengthen law implementation and publicly punish perpetrators of gender-based violence. Severely punish any government officials who do not carry out their roles on human trafficking.
- Review the current situation with regard to raids and arrests in brothels and karaoke parlors. These activities should be closely monitored to avoid abuses and to ensure that women are not put at further disadvantage and further victimized by the authorities. If needed, the whole approach should be reviewed to give proper

consideration to the rights and economic needs of women, especially at this time of economic downturn.

- Continue to widely disseminate CEDAW to all judges, prosecutors and lawyers and integrate this into the human rights curriculum to ensure that everyone understands its spirit, purpose and provisions and uses it in court procedures.

Further improve support services for victims of violence, including shelters, health care and legal and psychological support services.

- Quickly adopt guidelines for local administrative decisions and disseminate them widely to all authorities.
- Focus attention on education of youth on sexual behavior in order to prevent sexual abuse.
- Set up a proper mechanism to document sexual violence in collaboration with the health system, local authorities and relevant civil society organizations (CSOs). We need accurate data for proper decision making on how best to address these issues.
- MoJ should expand dissemination of relevant laws more widely to remote, rural communities.
- Review Sub-Decree 57 on the dispatch of workers to foreign countries in order to protect the rights and wellbeing of workers employed in foreign countries. One of the important areas for focus regards ensuring that there is a mechanism to allow workers to file complaints about rights violations, a mechanism for workers use while signing employment contracts and a mechanism to monitor the practices of labor recruitment agencies and punish any agency that is behaving illegally, etc.
- Set up an effective monitoring mechanism and a reliable reporting system so that Cambodian workers in foreign countries can report their problems safely.

#### **4. Important Issues Not Covered by the JMIs or the NSDP Update**

Disabled persons, especially women and girls, experience discrimination because of their status. Attention is focused on disabled persons at both policy and program levels. We are concerned that the Law on the Protection and Promotion of the Rights of Disabled Peoples, passed by the National Assembly in 2009, does not ensure the full participation of women and girls in the national development process. The law appears to give little attention to the different gender obstacles of women and men with disabilities. According to the experiences of local NGOs working on the issue of disability, and some local newspapers, it is common to hear about disabled women and girls being sexually abused, particularly the mute, the deaf and the blind in rural areas. They have difficulty accessing justice, health care and legal and psychological support services.

Disability is a cross-cutting issue that requires attention in formulating policies, programs and plans to ensure that disabled persons, especially women and girls, are protected from all forms of discrimination, have access to social services and enjoy the rights to express their opinions, to ownership and to fully and equally participate in the development process like other citizens.

Moreover, indigenous women do not receive much consideration with regard to participation in their own development and in the country's governance. A study on Promoting Political Participation of Indigenous Women in Cambodia by the Heinrich Böll Foundation states that discrimination against indigenous women is widespread, within their communities and in the local and national policy system. Because of the changing economic and environment context, they are faced with less ability to protect their family livelihoods. They are affected

by land concessions that destroy their livelihoods. They face a triple burden (reproductive, productive and community), with many social and economic obligations, and are unable to access basic social services such as education and health care. Further, they are excluded from political meetings, which strips them of the opportunity to take part in political matters. For indigenous women, the main obstacle to their participation in commune councils is the requirement that they be able to read and write Khmer. Indigenous women elected to serve on commune councils feel disempowered and marginalized; others feel they are confined to "gender issues" and are never called to deal with other governance issues, such as financial management.

### Recommendations

- Mainstream or integrate disabled women into MoWA and create a department responsible for disabled women. To this end, MoWA should include disabled women in its Gender Mainstreaming Strategy and create a separate budget to aid disabled women to overcome the obstacles they face.
- Strengthen implementation of the law to protect and promote the rights of disabled persons. Great attention needs to be paid when formulating sub-decrees to implement this law to ensure that affirmative measures are employed so that women receive equitable benefits from all national developments.
- Consider indigenous women's knowledge, understanding and needs in organizing services in their communities. Approaches should be tailored to their specific situation.
- Instigate a special affirmative action to provide the opportunity for women to stand as commune councils candidates. Special literacy training should be started now. If necessary, seats on the council should be reserved for them.

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# Disability and Development

## 1. Introduction

War and genocide in Cambodia have had many consequences, including a high number of persons with disabilities. In addition, landmines/explosive remnants of war (ERW), traffic accidents, work accidents, malnutrition and disease, among others, have contributed to higher and higher numbers of persons with disabilities.

Research shows that, in low-income countries persons with disabilities belong to the poorest of the poor in society, at a disproportionately high rate compared with other groups of the population<sup>110</sup>. One World Bank study estimates the annual loss of gross domestic product (GDP) globally, as a result of persons with disabilities being excluded from economic income activities, at between \$1.37 trillion and \$1.94 trillion<sup>111</sup>. Given concern about the link between disability and poverty, the development of poverty reduction strategy papers (PRSP) represents a unique opportunity to reduce poverty within this part of the population. Disability is a cause and consequence of poverty alike; therefore, for PRSPs to be effective for all poor people, countries are advised to place disability in a prominent position.

According to the World Health Organization (WHO), there is an estimated 10% prevalence rate of persons with disabilities in each country's population. The Cambodia Socio-Economic Survey (CSES) of 2004 estimates a rate of 4% of persons with disabilities and the 2008 Census estimates that 629,279 persons are living with disabilities in Cambodia. An Asian Development Bank (ADB) survey in 1999 estimated disability prevalence in Cambodia at 15%. The majority of these live in poverty<sup>112</sup>.

So far, disability is not included in goals, indicators, specific budget allocations or monitoring of the 43 critical targets/indicators of the old National Strategic Development Plan (NSDP) 2006-2010 and its Joint Monitoring Indicators (JMIs), despite the adoption in 2009 of the Law on the Protection and the Promotion of the Rights of Persons with Disabilities (PPRPD) and the National Plan of Action (NPA) for Persons with Disabilities including Landmine/ERW Survivors and the signing by the Royal Government of Cambodia (RGC) of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2007.

The draft monitoring indicators in the NSDP Update 2009-2013, led by the Ministry of Planning (MoP) in collaboration with the UN Development Program (UNDP) and the World Bank, with approval from the Ministry of Economy and Finance (MEF) and the Council for the Development of Cambodia (CDC), do not include any related to disability.

With regard to the issues mentioned above and to ensure that persons with disabilities are benefiting from the NSDP, all development programs could better address the poverty situation of all Cambodian citizens through more coherent integration of disability in monitoring and strategies in accordance with Article 18 of the Law on PRRPD.

This Position Paper was prepared by the NSDP Inclusive Committee, consisting of the Disability Action Council (DAC), the Association of the Blind in Cambodia (ABC), Action on Disability and Development (ADD), Cambodian Disabled People's Organization (CDPO), Deaf Development Program (DDP), Handicap International French Section (HI-F) and the National Centre of Disabled Persons (NCDP). Contact details are provided at the end of this statement.

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<sup>110</sup> Metts, R.L. (2000) Disability Issues, Trends and Recommendations for the World Bank. See also International Labour Organization (ILO) (2002) Disability and Poverty Reduction Strategies – How to Ensure That Access of People with Disabilities to Decent and Productive Work is Part of the PRSP Process.

<sup>111</sup> Metts (2000).

<sup>112</sup> [www.un.org/disabilities/default.asp?id=23#current](http://www.un.org/disabilities/default.asp?id=23#current).

## 2. Joint Monitoring Indicators/NSDP Update

The invisibility of disability in the first draft of the NSDP Update 2009-2013 and its absence in the JMIs represent a major obstacle to monitoring whether impacts and activities are benefiting persons with disabilities. The NSDP Inclusive Committee would like to draw attention to and propose some disability indicators to line ministries and key development partners on the occasion of the upcoming Cambodia Development Cooperation Forum (CDCF) meeting for consideration and inclusion in the NSDP Update and its JMIs. The government and line ministries could clearly measure development and progress towards the Millennium Development Goals (MDGs).

## 3. Important Issues Not Covered by the JMIs or the NSDP Update

### **Accessibility of schools, health and employment services and physical infrastructure**

The gap in school participation between disabled and other children is twice that related to gender, income or rural location in Cambodia<sup>113</sup>. Meanwhile, activities of persons with disabilities are reported on much less than the paid employment activities of non-disabled persons<sup>114</sup>. The average income of persons with disabilities is half that of non-disabled persons (CSES 2004). Despite a prakas on free health care services for disabled persons, only 77% of medical staff are aware of and only 8% of disabled persons have received these services<sup>115</sup>. We are not sure what percentage of buildings or public spaces has been designed to ensure accessibility for persons with disabilities, as no study has been carried out on this so far.

#### ***Recommendation***

Promote disability-related adjustment and implementation of sectoral policies in education, health care, employment, gender, social safety nets, public transport, physical infrastructure and information, by integrating references and indicators on disability, as a cross-cutting issue, into the NSDP Update 2009-2013, other sectoral plans/policies, all development programs and the JMIs.

### **Existing promotion and enforcement of the Law on PRRPD and the NPA**

The Law on PRRPD and the NPA for Persons with Disabilities were adopted in 2009 but as yet cannot be implemented because no sub-decrees have been passed. A committee was formed recently to produce such sub-decrees, but the process seems to have taken several days and disability-linked non-governmental organizations (NGOs) and especially persons with disabilities have not been encouraged by the RGC to participate.

#### ***Recommendation***

The RGC should encourage the promotion and enforcement of the Law on PRRPD and the NPA for Persons with Disabilities including Landmine/ERW Survivors as the basis for indicators. Persons with disabilities should be involved meaningfully in policy development and implementation.

### **UNCRPD ratification**

To date, 144 countries are signatories to the UNCRPD and 84 countries have ratified it. In addition, 88 countries are signatories to the UNCRPD Optional Protocol and 52 have ratified it (to strengthen implementation and monitoring). The RGC has shown willingness by signing the UNCRPD and its Operational Protocol. However, signing is not legally binding on

<sup>113</sup> Filmer, D. (2005) Disability, Poverty and Schooling in Developing Countries: Results from 11 Household Surveys (World Bank).

<sup>114</sup> Knowles, J. (2005) Health, Vulnerability and Poverty in Cambodia: Analysis of the 2005 Cambodia Socio-Economic Survey (World Bank).

<sup>115</sup> According to ADD in 2007.

the need to apply and enforce the convention. Lack of ratification also means that the government is in a poorer position with regard to international support and global integration on disability.

***Recommendation***

The RGC should ratify the UNCRPD to show strong commitment to enforcing the convention and obtaining international support on disability in Cambodia.

**Governance, decentralization and de-concentration**

We appreciate the moves of the RGC in the NSDP 2009-2013 to support participative local development for increased decentralized and de-concentrated (D&D) service delivery at commune and grassroots level (three phases). However, we note that disability-related services and persons with disabilities are not mentioned in this section of the NSDP. The majority of persons with disabilities live in rural areas (5% of the rural population in comparison to an overall 4% national prevalence rate), according to the CSES 2004.

***Recommendations***

- Include targets to support awareness raising on disability issues and further expansion of the disability dimension in the 10-Year National Program for Sub-National Democratic Development (Point 349 of the NSDP Update).
- Include community-based rehabilitation programs and the Law on PRRPD in commune-level service delivery strategies and expand the program to all provinces.
- Raise awareness on targets and methods of community-based rehabilitation to prioritize commune-level needs.
- Support the development of a guideline on the integration of disability and awareness-raising activities about the rights of persons with disabilities in the actions of the Ministry of Interior (MoI) and its administrative reform process and related capacity development.

**Ensuring social safety nets**

As we have seen, the activities of persons with disabilities are reported on much less than the paid employment activities of non-disabled persons, and the average income of persons with disabilities is half that of non-disabled persons in Cambodia. We note that the NSDP Update 2009-2013 includes persons with disabilities in Priority 3 of the program of the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY). The provision of pension schemes to all persons with disabilities would enable them to participate greatly in economic activities. Persons with disabilities would be able to contribute to and participate in the economy and development if social safety nets and other measures ensured access to economic and social services, including impairment-related ones.

***Recommendations***

- Include a paragraph in the NSDP Update on social safety nets to support reintegration or integration of persons with disabilities into socioeconomic processes, favoring support for reintegration into economically productive activities.
- Promote community-based rehabilitation and disability mainstreaming into existing services (health and economic).
- Consider a review of Health Equity Fund (HEF) development and the Identification of Poor Households (ID Poor) process in consideration of the higher daily life expenses faced by persons with disabilities and their families owing to impairment-related medical costs. Include training on disability for related structures involved in assessing ID Poor entitlements and awarding HEFs.

- Ensure persons with disabilities and their families have equal access to services under the HEFs and other social safety nets.

### **Monitoring and evaluation**

The lack of visibility of persons with disabilities and lack of disability inclusion in the JMIs is hampering the development of knowledge on poverty reduction and effective action to reduce poverty among persons with disabilities. Without measurement, current actions cannot be readjusted in a concerted and empirically informed way. The current lack of data on disability also creates difficulty in planning poverty reduction strategies.

### **Recommendations**

- Include persons with disabilities in monitoring poverty reduction action and allocate sufficient disability-specific budgets and human resources in each key ministry based on the assumed percentage of persons with disabilities, using new figures from the 2008 Census. Consider the appointment of disability focal points or departments of planning at effective levels in ministries (health, education, labor, rural development, interior, Council of Ministers (CoM)) which could foster the mainstreaming of disability in monitoring and support the governmental National Disability Coordination Committee.
- Review and adjust the current disability definition and monitor and collect statistics in line with the UNCRPD and UN Economic and Social Commission for Asia and the Pacific (UNESCAP) recommendations. Distinguish between causes of impairment/functional limitations and causes of disabling situations/barriers to participation.

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# Child Rights

## 1. Introduction

Since Cambodia ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992, national and international organizations, UN agencies, development partners, government and children themselves have been working very actively to promote and protect child rights. As a result, progress has been made by all actors on improving the children's rights situation in Cambodia. However, we note that many areas still have gaps that need to be filled. In particular, there is no effective system to deal with the identification of violence, reporting, referral, investigation, treatment, follow-up and judicial involvement; there is no independent mechanism, such as an ombudsperson, by means of which children can seek redress for breaches of their rights; there is no mechanism to support and encourage children's participation in society; and there is no information management system with regard to monitoring implementation of children's rights, especially in terms of the law, national policies and child-related policies, and strengthening existing child-related policies and increasing resources for relevant institutions of the government working on children.

The NGO Committee on the Rights of the Child (NGOCRC) is a national coalition of 49 national and international organizations in Cambodia whose major commonality is their commitment towards the rights of the child. Established in September 1994 by nine elected non-governmental organization (NGO) members, NGOCRC endeavors to raise awareness on the UNCRC among children, their parents and all relevant institutions. It dedicates its efforts and resources to the efficient and effective implementation of the UNCRC by advocating for child rights. Specifically, it concentrates on the formulation and amendment of laws, policies and action plans pertaining to children.

Government agencies such as the Ministry of Justice (MoJ), the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY) and especially the Cambodian National Council for Children (CNCC) have called for cooperation from NGOCRC in reviewing the country's periodic report on UNCRC implementation, in drafting the Law on the Juvenile Justice and in selecting children's representatives to join the Inter-Country Child Adoption Authority and the Asian Children Forum. NGOCRC also monitors implementation of the UNCRC in Cambodia and submits a supplementary report on this to the UNCRC Committee. NGOCRC also aims to strengthen the capability of its Secretariat's staff and NGO members. Overall, NGOCRC fulfills its roles and duties to promote and protect child rights and child participation by cooperating with NGO members, networks, parents, international organizations, children and youth and government agencies, especially the CNCC.

## 2. Key Issues

Child rights are not specifically addressed in the National Strategic Development Plan (NSDP) Update. In this Position Paper, NGOCRC will instead like to draw attention to some key issues.

### Drug abuse

Drug abuse is an issue of increasing concern among Cambodians. Cambodia passed the Law on the Control of Drugs in 1997, which prohibits the cultivation, production, distribution and trading/trafficking of narcotics, stupeficients and psychotropic substances. Until recently, Cambodia was seen as a transit country for drugs from neighboring countries, but now it is starting to be known as a place where drugs are produced and distributed.

Drug use seriously affects the social security and welfare of users. There are concerns about the future spread of HIV/AIDS, mainly through unsafe sexual practices under the influence of amphetamine-type stimulants which are widely known for their sexually stimulating

properties. Increased usage of intravenous drugs will also lead to higher infection rates, not just of HIV but also of other blood-borne diseases.

The lack of adequate facilities for treating drug addiction is also a big concern. It is evident that the few NGO- and government-run rehabilitation centers do not have the capacity or the funds to adequately treat drug and substance abuse addiction. The RGC supports military police camps, where apprehended drug addicts are sent to take part in forced treatment regimes. The police and military are often the first and only point of call for desperate parents of drug-addicted children.

Drug use has spread to many areas where there were previously no drug users. More than 60% of young people in rural and remote areas have had no education on drugs<sup>116</sup>.

### ***Recommendations***

- Conduct national public campaigns to discourage the use of drugs.
- Strengthen and enforce the Law on the Control of Drugs through effective suppression of drug production, trafficking and delivery systems.
- Increase the budget and human resources available with regard to dealing with drug issues, especially promoting those with skills in treating drug victims.
- Ensure that drug treatment and rehabilitation are available for children addicted to drugs and that treatment therapies provided are appropriate for children.

### **Law on Juvenile Justice and other legislation and enforcement**

The Law on Juvenile Justice in Conflict with the Law is still being drafted. Cambodia still does not have a separate juvenile justice system and children are housed in adult prisons after appearing in the same court and before the same judges as adults. Since the law has not yet been passed, there are no provisions or guidelines stating that the arrest, detention or deprivation of the rights and freedom of children should be carried out as a last resort.

There are still no separate detention centers for children and no adequate rehabilitation programs are provided to child prisoners. Child prisoners learn how to commit serious felonies from adults in prison. At present, there are approximately 826 child prisoners in Cambodia, of whom 674 have committed felonies and 152 have committed misdemeanors<sup>117</sup>. Meanwhile, the Youth Rehabilitation Center aims to provide rehabilitation for children aged seven to 17 who "have committed themselves to perversity – thievery and robbery – throughout the country". Although the legislation to establish the center is somewhat unclear on whether it was set up in the intention of focusing on child welfare or juvenile justice, in practice the institution houses primarily street children and gang members rounded up by the Phnom Penh police. Approximately 100 children each year are held in the center without legal representation, with insufficient food and health care and with virtually no rehabilitation services: they receive periodic educational services and other forms of "rehabilitation" and are released when the staff determine that their behavior has improved. The length of the detention period varies but appears to be between three and six months. Children are not charged with any crime and do not receive basic due process protection.

Judges, prosecutors and judicial police have not been trained on the concept of a child-friendly justice system. Meanwhile, government is prioritizing further promotion of dispute resolution mechanisms outside the court system, which may lead to an increase in the number of crimes and violations committed, as perpetrators are unlikely to be sent to prison for their actions.

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<sup>116</sup> UN Office of Drug Control (UNODC) (2007).

<sup>117</sup> Legal Aid of Cambodia (LAC) (2008) Cambodian Law and the UNCRC: A Comparative Study.

### ***Recommendations***

- Incorporate the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice into legislation or guidelines developed for children in conflict with the law.
- Monitor the Youth Rehabilitation Center to ensure that all rights are protected.
- Separate children who are detained in any and all settings from adults immediately and ensure that the provision of education and rehabilitation for children in prison is appropriate and accessible.
- Immediately accelerate the adoption of the draft Law on Juvenile Justice in Conflict with the Law and strengthen its implementation.
- Accelerate the establishment of the Juvenile Courts separately from those of adults.
- Increase the number of judges and lawyers specializing in juvenile cases.
- Strengthen implementation of the law.
- Build a separate detention building for juvenile detainees.

### **Child trafficking and sexual exploitation of children**

In fighting against child trafficking and sexual exploitation of children, Cambodia has passed the Law on Suppression of Human Trafficking and Sexual Exploitation, and has put national mechanisms in place to support this. The government in August 2007 established the National Committee for the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation of Women and Children, led by the Deputy Prime Minister and Minister of the Interior and consisting of 14 ministries/institutions of government and also NGOs working on human trafficking.

Victims have various vulnerabilities to trafficking. Limited education, unemployment, poverty and family breakdown are found to be key factors. Lack of vigorous law enforcement is also seen as a major contributing factor. As few victims receive legal assistance and few offenders are sentenced, it is imperative that programs to improve law enforcement be carried out vigorously.

### ***Recommendations***

- Consider adoption of a Second Five-Year Plan against Sexual Exploitation of Children and revise as appropriate to set new goals to protect children from sexual exploitation.
- Actively pursue traffickers and other adults involved in sexual trafficking and exploitation.
- Aggressively enforce the Law on Suppression of Human Trafficking and Sexual Exploitation to ensure adequate protection for children, including rights to rehabilitation and reintegration.
- Strengthen education on social morality and take measures in communities with the participation of commune councils, police, village chiefs, monks and influential people.
- Get rid of obscene magazines and pornography films by strengthening of Inter-Ministerial Prakas 14 (February 9, 2000) on the Commercialization of Pornography.

## **Child Education**

NGOCRC supports the analysis and recommendations in the Education Position Paper and would like to add the following specific recommendations to improve the realization of the rights of the child in Cambodia.

- Amend the Law on Education to ensure that children in prison have access to education.
- Develop affirmative action programs to improve the participation of underrepresented groups, e.g. girls, children with disabilities, minority and indigenous children and rural children.

## **HIV/AIDS**

The government has made a great deal of progress related to the prevention of HIV/AIDS infection in Cambodia. However, some concerns still need to be highlighted. HIV/AIDS still accounts for approximately 3% of all childhood deaths. Discrimination against children whose parents have died from AIDS is noticeable in communities, even in schools and public places. Orphans are abandoned, ignored and discriminated against by communities and relatives.

### ***Recommendations***

- Continue and expand free provision of antiretroviral (ARV) drugs.
- Expand programs to support orphans whose parents have died of AIDS.
- Further solicit help for orphans from their communities and eliminate discrimination against orphans whose parents have died of HIV/AIDS and HIV-affected children.

## **Implementation mechanism and monitoring of the UNCRC**

The CNCC, the government body for the coordination of children's issue, established in 1995 by sub-decree to promote and monitor implementation of the UNCRC in Cambodia, states in the NSDP 2009-2013 that it has strengthened cooperation with relevant government ministries with the aim of helping children. However, networking in the provinces is limited, despite the institution having changed its structure by means of promulgation of a royal decree to employ government officials from MoSAVY. Moreover, CNCC lacks resources and its information management system cannot meet requirements in terms of monitoring the situation of children, which leads to long delays in the submission of the periodic report on UNCRC implementation in Cambodia to the UNCRC Committee.

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# **Monitoring the NSDP Update Formulation Process**

# NGO Participation in National Planning and Technical Working Groups

## 1. Introduction

The Cooperation Committee for Cambodia (CCC), MEDiCAM and the NGO Forum on Cambodia and their members actively participate in government's aid coordination mechanisms: the 19 Technical Working Groups (TWGs), Government Donor Coordinating Committee (GDCC) meetings and the Cambodia Development Cooperation Forum (CDCF). Non-governmental organizations (NGOs) support the Royal Government of Cambodia's (RGC's) commitments to the international aid effectiveness agenda, appreciate their inclusion in these mechanisms and are committed to constructive engagement with the RGC and its development partners.

Through a series of workshops in 2009 and 2010, CCC, MEDiCAM and the NGO Forum raised awareness of the global aid effectiveness agenda among Cambodian NGOs and came to an NGO position on a way forward for further improvements in the aid effectiveness agenda laid out in the Cambodian Declaration on Enhancing Aid Effectiveness (2006) and the more recent guideline of the Accra Agenda for Action (2008). This position paper is based on discussion in these workshops, which focused on:

- The felt need to clarify the role of NGOs in the TWGs, the GDCC and the CDCF.
- Improved participation of NGOs in discussions with the RGC and its development partners in the TWGs on national planning and monitoring processes and monitoring of the Joint Monitoring Indicators (JMIs).

## 2. Key Actions/Strategies from the NSDP Update

Section	Message
370	The RGC has made significant progress in strengthening partnership with all development stakeholders, including the development partner community, the private sector and civil society based on basic principles and global commitments to assure ownership of the RGC in leading the national development process
378	The GDCC and TWG mechanism will continue to provide the principle modes of dialogue between the RGC and its development partners. Their performance and structure will be monitored and reviewed to ensure that partnerships between the RGC and its development partners are based on strengthened government ownership and accountability for development results

NGOs applaud the RGC for its attention to partnership with development partners, including NGOs and wider civil society. NGOs appreciate their current inclusion in the aid coordination mechanism led by the RGC, the CDCF, GDCC meetings and the TWGs. NGOs currently participate in 15 out of 19 TWGs and have the role of observer in the TWG on Public Financial Management (TWG-PFM). TWGs with no current NGO participation are those on: Decentralization and De-concentration (D&D), Private Sector Development, Public Administration Reform, and Infrastructure and Regional Integration. Discussions among NGOs participating in TWGs highlighted that these meetings are a very useful source of information, but it was generally felt that space for constructive discussion and engagement among all stakeholders could be further improved.

## 3. Recommendations

- Representatives from government, development partners and NGOs should further strengthen their cooperation in the TWGs and continue to build trust as constructive partners in Cambodia's development.

- TWGs with participating NGOs should agree on a terms of reference that further clarifies the role and responsibilities of NGOs in the TWGs. This should be part of a wider update of the Cambodian Declaration on Aid Effectiveness, especially now that the National Strategic Development Plan (NSDP) Update 2009-2013 has replaced the NSDP 2006-2010. NGOs would also like to take this opportunity to kindly request that the role and function of the National Assembly in planning, monitoring and evaluating the NSDP, foreign aid and the National Budget be elaborated in more detail given its involvement in the process through adoption of the NSDP Update and Annual Financial Law.
- The Mid-Term Review of the NSDP Update 2009-2013 should build on the mechanisms used for developing the NSDP Update but with the full participation of relevant civil society stakeholders (see the case study below).

#### **Case study on NGO/civil society participation in the drafting of the NSDP update**

In the view of CCC, MEDiCAM and the NGO Forum on Cambodia, the participation of NGOs and civil society organizations (CSOs) in the drafting process of the NSDP Update was limited, as only a few TWGs held meetings to discuss draft sections of the NSDP Update and the final national consultative workshop to discuss the draft NSDP Update was cancelled. Key challenges faced by NGOs in providing inputs to government line ministries/agencies included:

- Timelines were too short and some NGOs faced difficulties identifying/getting access to relevant officials in line ministries/agencies of the RGC who are responsible for drafting their section for the NSDP Update.
- Only a few TWGs (Health, Education and Land) had meetings to discuss inputs into the first draft (July 2009) and comments on the first draft NSDP Update (January 2010). Other NGOs had to submit their proposals in writing and the majority received no feedback on suggestions and proposals sent to relevant line ministries/agencies.
- Besides NGOs, there was no engagement with wider civil society or discussions between government officials and representatives of specific disadvantaged groups.

NGOs kindly suggest that consultations on Mid-Term Review of the NSDP Update, planned for 2011, take the following recommendations into account:

- Make draft documents readily and widely available, with sufficient time for comment.
- TWGs should arrange meetings dedicated to the Mid-Term Review to discuss inputs. Line ministries/agencies should allow open interaction and mutual understanding with CSOs/NGOs by responding to their comments or inputs, which will help ensure that meaningful consultation has taken place.
- Beside NGOs, other relevant civil society actors (for instance community-based organizations (CBOs), academic institutions, religious institutions, labor organizations and research institutes) and the National Assembly are openly invited to participate in the process.

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*The NGO Forum on Cambodia*

Working Together for Positive Change



MEDiCAM is a membership organisation of over 100 NGOs active in the health sector in Cambodia. MEDiCAM acts as a bridge between NGOs in the health sector and the Royal Government of Cambodia, as its mandate is to exchange information, to facilitate advocacy, to build capacity for local NGOs, and to represent the voice of NGOs.

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The NGO Forum on Cambodia is a membership organization of over 80 local and international Non-governmental organizations (NGOs) grounded in their experience of humanitarian and development assistance to Cambodia. The NGO Forum exists for information sharing, debate and advocacy on priority issues affecting Cambodia's development.

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The Cooperation Committee of Cambodia (CCC) is a membership organization of around 116 NGOs. CCC is committed to facilitating the exchange of information and fostering productive and mutually beneficial relationships among NGO community. Member organisations united under the umbrella of CCC enjoy free access to the unique bank of information about NGOs and development in Cambodia, advice regarding NGO organisational practices and up to date directories, research studies and surveys compiled and conducted by CCC and its affiliated partners and projects.

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