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NGO Committee for the Monitoring of CG Indicators

NGO Committee

Phnom Penh. February 7, 2007



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NGO Statement on the Monitoring of CG Indicators

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Executive Summary

NGOs welcome this week's quarterly meeting of the Government-Donor Coordination Committee as an important opportunity to monitor progress on Joint Monitoring Indicators (JMIs) agreed at last March's Consultative Group (CG) meeting. The Royal Government of Cambodia (RGC) has made positive steps during the last three months towards achieving targets agreed upon during the recent CG in March 2006. For instance, progress has been made in improving cash disbursements to the operational level in health and education and a certain amount of progress has been noticed in bringing court cases against persons accused of corrupt acts.

As in the last quarter, NGOs observe that Government has yet again failed to meet the June 2006 deadline for completion of the draft *Anti Corruption Law* based on international best practices and send it to the National Assembly, raising serious questions as to the sincerity of earlier anti-corruption rhetoric. Government has also yet to integrate major suggestions and comments from civil society and international experts. At the same time, NGOs welcome completion of the draft Criminal Procedures Code, which has been forwarded to the National Assembly. Nevertheless, NGOs view the Government's excuse that the Anti Corruption Law must be harmonized with the Penal Code as a delaying tactic and urges Government to either expedite the passage of the Penal Code or pass the Anti Corruption Law ahead of it.

Concerning *Economic Land Concessions* (ELCs), NGOs have observed that due to the lack of public information, there is no clear picture of how many ELCs have been granted, where, and to whom. Further it is noted that many new ELCs have been

granted since the adoption of the Sub-Decree on ELCs, but do not comply with the requirements of the Sub-Decree, in particular the requirements to undertake public consultations and environmental and social impact assessments prior to approving concessions. It is noted that the Government's attempts at regulating ELCs have failed. We know this because several ELCs have been granted post ELC sub-decree, all blatantly illegal.

It is recommended that there should be a publication (on the MAFF ELC website) of information on ELCs granted (location, to whom, size, purpose), cancelled (where signed contracts have been cancelled), and proposals under consideration. The Government should publish all relevant information on the progress of canceling or reviewing existing ELCs, especially those that clearly exceed the 10,000-hectare limit and that do not comply with the law or deposit procedures. Moreover, the process for granting ELCs, including all pre-requisites, should be strictly adhered to and no ELC should be granted if it does not meet the requirements specified by the law and the Sub-Decree on ELCs. Information should include ELCs under 1,000 hectares granted by provincial authorities.

The NGOs welcome the efforts from the Ministry of Planning on the progress made on drafting the National Strategic Development Plan's (NSDP's) *Annual Progress Report (APR)* and have been informed that the Ministry of Planning has received annual reports from all ministries. Despite this progress, the NGOs remain concerned that the APR will not comment on the efficiency or effectiveness of NSDP implementation, as the current NSDP monitoring framework fails to mention input and output indicators. It is recommended that these indicators should be defined and made publicly available.

Extractive industries including oil, gas and minerals are expected to become a major source of revenue for the Kingdom of Cambodia in the near future, by more than quadrupling the country's current government revenue and potentially lifting millions of Cambodians out of poverty. The annex to this statement provides six recommendations from civil society that would contribute to avoiding the 'resource curse' experienced by other resource-rich countries and to promote long-term sustainable economic development in Cambodia, including: 1) signing on to the Extractive Industries Transparency Initiative as soon as possible, and 2) committing to new Joint Monitoring Indicators (JMI) for extractive industries during the CDCF meeting in June.

Anti-Corruption

i) Joint Monitoring Indicators monitored by NGOs

| Target | Actions Needed | Responsible Government Institution | | Time Frame |
|-----------------------------|---|------------------------------------|--------|---------------|
| 3. Combat Corruption | 3.1 Finalize and approve Anti-corruption Law, based on best international practices, and: | MNASRI | Leads, | End June 2006 |
| | a. Prepare an implementation plan to enforce and manage the implementation of the Anticorruption Law. | COM | Leads, | Oct. 2006 |
| | b. Disseminate information on reported cases on corruption and conviction on semi-annual basis. | COM | Leads, | On-going |

ii) Monitored progress on Actions Needed

3.1 The government has failed to meet yet another (fourth) deadline for an Anti-Corruption Law to be finalized. The latest version, dating from September 29, still does not integrate most of the suggestions and comments by civil society and international experts that would bring the law up to international standards, as agreed upon by the Government with the donors at the CG meeting in 2005. While civil society acknowledges that there is a need to ensure that the Law on Anti-Corruption is consistent with the draft Criminal Code and Criminal Procedures Code, political will to push these essential pieces of legislation through is absent. And yet the government has recently shown itself capable of moving fast when it comes to the passage of other laws – including laws on adultery, on conscription and on limiting parliamentarians’ right to speak. NGOs view the Government’s excuse that the Anti Corruption Law must be harmonized with the Penal Code as a delaying tactic and urges Government to either expedite the passage of the Penal Code or pass the Anti Corruption Law ahead of it. As we know that the Criminal Procedure Codes is a huge piece of legislation that may need quite a lot of time for review and debate before it can be passed, the most effective solution is to debate and pass the Anti-Corruption Law first, and if necessary, changes could be made later for the law to be harmonized with the Criminal Procedure Codes when it is passed.

3.1a. Civil society esteems that no progress on the preparation of an implementation plan has been made, apart from the rehabilitation of the Anti-Corruption Unit with training abroad for a few staff members. Because the passage of the Anti Corruption Law is a prerequisite for progress of an implementation plan, it is even more imperative that a draft anti-corruption law based on international best practices be moved forward with no further delay.

3.1b. A certain amount of progress has been noticed in bringing court cases against persons accused of corrupt acts. However, the cases being prosecuted tend to involve either low-level officials, members of selected political parties or cases with limited impact. NGOs appreciate the Government's Ministry of Environment for bringing court cases against a number of corrupt officials implicated in illegal logging in Ratanakiri. Unfortunately, some of the major players in the scandal remain at large and are not behind bars.

The rehabilitated Anti-Corruption Unit based in the Council of Ministers has taken limited actions to crack down on smugglers or individuals implicated in the smuggling of right-hand drive cars. However, the application of punishment does not seem to be serious and no reports have been made available on the number of smugglers or individuals who have been punished for these crimes.

Legal action was taken against an official of the Ministry of Rural Development accused of being implicated in the World Bank project fraud. However, this person was released on bail and no follow-up action has been reported. In the meantime, there is some question as to the political motivation of some cases, such as the arrest of a former (Funcinpec) Kampot Governor over possible-corruption offense related to land issues.

iii) Recommendations:

- The Government should adhere to the agreement at the CG meeting to ensure the Anti-Corruption Law meets international best practices, taking into account the recommendations by civil society and international advisers.
- The Government should try to ensure that the Criminal Procedure Code and the Anti-Corruption Law are passed without further delay.
- The Government should take serious action to prepare an implementation plan to enforce and manage the implementation of the Anti-Corruption Law.
- Further action should be taken by the Government to address corruption issues based on existing laws, particularly current cases of corruption, in order to prove the Government's commitment and seriousness.
- The Government should move ahead with the establishment of a legal framework on access to information as stated in the CG indicators, as so far, no progress has been made at all against this indicator.

Legal and Judicial Framework

i) Joint Monitoring Indicators monitored by NGOs

| Target | Actions Needed | Responsible Government Institution | Time Frame |
|--|---|------------------------------------|---------------------------|
| 4. Establish a well-functioning, transparent and accountable legal and judicial system that protects individual rights as defined in the Constitution. | 4.1. Develop a clear policy framework on access to information. | MoNASRI | Dec. 2006 |
| | 4.2. Complete the drafting and approval of the remaining fundamental Laws (Penal Procedure Code, Penal Code, Civil Code, Law on the Statutes of the Judges, Law on Court organization and functioning). | MOJ Leads | To be agreed by L & J TWG |
| | 4.5. While the priority setting process is being put in place, priority will be given to: | | |
| | a. Complete the Draft Law Against Trafficking of Person and Sexual Exploitation and submit to COM. | MOJ Leads | Sept. 2006 |
| | b. Complete and adopt a National Plan to enforce the Law on Domestic Violence and Protection of the victims. | MOWA Leads | June 2006 |
| c. Complete preparation of regulations to enforce State Land Management Sub-Decree. | MLMUPC | June 2006 | |
| d. Elaborate and implement Article 18 of the Land Law. | MLMUPC/CLP | Nov. 2006 | |
| e. Adopt RGC's strategy and regulations for the indigenous people. | CLP | Nov. 2006 | |

ii) Monitored progress on Actions Needed

4.1. Besides organizing a workshop that aimed to disseminate information about the progress to participants, highlight the role of public information, and show universal principles to be put in the draft law, the MoNASRI has not made any progress to develop a clear policy framework on access to information. To support future work on the policy framework, the MoNASRI is currently seeking support from the United States Agency for International Development (USAID) and is in the process of drafting a Memorandum of Understanding.

4.2. The Civil Procedure Code has not been adopted during this reporting period. However, the draft code is reportedly being discussed by the Legislation Commission of the National Assembly. As of today, the Ministry of Justice (MoJ) is still reviewing the Penal Code and adding some additional articles related to new crimes on forestry and fishery. The Penal Procedure Code is now at the Office of the Council of Ministers for further discussion and review.

The Law on the Statutes of the Judges and the Law on Court Organization and Functioning remain under discussion in the Technical Working Group of the Ministry of Justice (TWG-MoJ), which still has to finalize drafting these two laws. One critical problem for the Law on court organization and functioning is the intention to establish the controversial Commercial Court which had been initiated by the Ministry of Commerce.

4.5a. The draft Law Against Trafficking of Persons and Sexual Exploitation has not yet been submitted to the COM. Currently the Ministry of Justice is incorporating the final comments from the Ministry of Women Affairs and expects the Law to be adopted by the National Assembly in 2007.

4.5b. The sub-decree on domestic violence law has been finalized by the Inter-Ministerial Working Group consisting of the MoJ, MoWA, MoI and experts, and the sub-decree has been submitted to the Ministry of Interior. The sub-decree is mostly related to the roles and responsibilities of commune councilors.

4.5c. It is hoped that demarcation of state land will put an end to illegal land acquisition by local and international opportunists and that the currently prevailing attitude favouring short term gains will shift towards long term sustainable use and management of natural state assets with meaningful

participation of resource dependent local people and the general public. NGOs are concerned, however, that the identification and mapping of state land is not sufficiently linked to other mapping processes, such as forest cover mapping, locally developed participatory land use plans and the mapping of the collective lands of indigenous communities.

4.5d. Regarding attempts by the Royal Government of Cambodia to reclaim authority over land transactions involving state land, NGOs note that the Ministry of Land Management Urban Planning and Construction (MLMUPC) has not taken any noticeable action in this respect. Action on clarifying the scope and implementation of Article 18 of the Land Law is urgently needed, since indigenous peoples, in particular, are facing severe hardship as a consequence of increasing land alienation within their communities.

4.5e. NGOs observed that the General Secretariat of the Council for Land Policy (GSCLP) has made an effort to consult with stakeholders on the first draft of the Indigenous Peoples Communal Land Registration policy. However, this draft was rejected by the indigenous people. Further consultations on the policy between the GSCLP and representatives of Indigenous People and NGOs on 29 January 2007 resulted in little further progress. The policy is nevertheless scheduled to be adopted by the Council of Ministers before the GDCC meeting. In addition, no further progress has been made on the consultative process for the By-Laws necessary for indigenous communities to be recognized as a legal entity.

iii) Recommendations:

- (4.1) To help fight against corruption, the Government should move faster with the establishment of a legal framework on access to information as stated in the CG JMIs.
- (4.2) NGOs would like to urge the MoJ and stakeholders to make progress on the completion and approval of these fundamental laws.
- (4.5a) NGOs would like to urge the MoJ to incorporate the comments from the Ministry of Women's Affairs and submit the draft law to the COM.
- (4.5b) NGOs would like to urge the MOI to issue the sub-decree in the shortest possible time.
- (4.5c) It is recommended that the government should accelerate the adoption of other regulations linked to the Sub decree, so that the implementation of state land mapping, identification and classification would be operated effectively. The mapping process for state land carried out by the District/Khan Land Working Groups should be more adequately linked to other mapping processes such as demarcation of forest lands and protected areas and participatory land use planning (PLUP).
- (4.5d) Provide urgent clarification on the scope and implementation of Article 18 of the Land Law, especially in relation to protection of the land of indigenous people,
(4.5e) The Government should take a concrete step in terms of adoption of a policy paper to protect indigenous people rights which meets the aspirations and needs of indigenous people. In the light of rapidly increasing land alienation, NGOs would like to see the implementation of a mainstreamed process for the legal recognition of indigenous communities as the first necessary step towards the registration of their collective lands.

Improve Livelihoods of the Rural Poor

i) Joint Monitoring Indicators monitored by NGOs

| Target | Actions Needed | Responsible Government Institution | Time Frame |
|---|--|------------------------------------|------------------|
| 8. Improve livelihoods of the rural poor, reduce poverty in particular in rural areas, and enhance food security and nutrition based on priorities outlined in the National Strategic Development Plan for 2006-2010. | 8.1 Develop a medium term strategy for agriculture and water building on the NSDP and existing MAFF and MOWRAM strategy documents | MAFF and MoWRAM | Jan-Dec 2006 |
| | 8.2 Establish a mechanism and periodically disseminate information on economic land concessions in accordance with the notice issued by the Prime Minister on 30 June 2005. | MAFF | 2nd Quarter 2006 |
| | 8.3 Take appropriate action to reflect the priorities of the Fisheries sector to improve the livelihoods of rural communities in commune, district and provincial development plans as well as donor funding levels. | MAFF(Lead)/ Local Authority | 4th Quarter 2006 |
| | 8.4 To improve the livelihoods of the rural poor, 500 eligible households are settled on social land concessions with livelihood support and at least 10,000 hectares of suitable land confirmed as available for social land concessions. | CLP and MLMUCP | 2006 |

ii) Monitored progress on Action Needed

8.2. NGOs have observed that due to the *lack of public information*, there is no clear picture of how many ELCs have been granted, where, and to whom. As a result, ELC driven land disputes are threatening to become even more violent and widespread among local communities, including indigenous communities who are eligible to register collective title over their land. Recently, there was a demonstration in Kratie following the destruction of farmland, and there has been exceptionally disturbing (and continuing) violence that has coincided with ELC operations in Koh Kong. It is indicated that the local communities often become aware of ELCs affecting their land only when the company arrives, as public consultations are generally not undertaken before the decision to grant the ELC.

NGOs have noted that there has been *no progress regarding information dissemination* on economic land concessions as the MAFF ELC website has not been updated since August 2006. However, in December 2006, MAFF provided information on ELCs related to grant, cancellation and consideration of concessions to the Technical Working Group on Forestry and Environment. It does not appear that the ELC logbook has been established by the Technical Secretariat. There is also no consolidated information on ELCs under 1,000 hectares granted by provincial authorities.

In the mean time, many new ELCs have been granted since the adoption of the Sub-Decree on ELCs, but do not comply with the requirements of the Sub-Decree, in particular the requirements to undertake public consultations and environmental and social impact assessments prior to approving concessions. It is noted that the Government's attempts at regulating ELCs have failed. *We know this because several ELCs have been granted post ELC sub-decree - all blatantly illegal.*

There is no transparency in the way land and natural resources are being managed, even though these resources should be managed for the benefit of the Cambodian people. It is not clear who actually benefits from ELCs – it would seem that private interests and foreign companies are benefiting from the grant of ELCs at the expense of rural communities. Looking at the target to which this JMI relates, how is the Royal Government of Cambodia making progress against the aim of improving the livelihoods of the rural poor, reducing poverty and enhancing food security? Rather than improving livelihoods and food security, we have witnessed ELCs and other concessions leading to the loss of livelihoods for rural communities, and more tenuous food security as a result.

In addition to the above, ELCs are also interfering with ongoing development efforts. Recalling the negative effects on the Marubeni company and the threats to the power plant developments in Mondulhiri following the Wuzhishan last year, an ELC in Oddar Meanchey has also overlapped with a community forestry initiative this past year (eventually resulting in an excision of some 1,000 hectares from the community forest).

8.3. In order to reduce poverty in fishing communities, in 2000, the RGC released 56% of *commercial fishing lot areas* for local people's use. However, most of the fishing areas released for local people are less productive, valued at less than 30 million Riels, contributing insignificantly to poverty reduction due to the fact that community fisheries have been established on the less productive fishing grounds while the most productive fishing areas remain largely under the control of commercial fishing lots.

In the Tonle Sap region, the *Tonle Sap Environmental Management Project (TSEMP)* funded by the ADB and intended to tackle issues related to fisheries and to improve the livelihoods of rural people has made only slow progress and faced massive delay, such that many fishing communities around the Lake have not been established as required by the project's targets. The community fisheries that have been established are weak in many aspects and could not function on their own to support their community members. In the Mekong and Coastal region, where there is no major international funding support, actions taken to improve fisheries management and livelihoods of rural communities are greatly inadequate.

Further it is noticed that a numbers of *community fisheries* have been established on paper, but less on the ground, which poorly contributes to the reducing poverty and improving the livelihoods of rural Cambodians. The community fisheries that have been established are poorly recognized and in conflict with unestablished communities. The members of the established community fisheries who are active in protecting the fisheries resources have not been well-protected by the legal framework, but face threats to their life and threat of imprisonment as a result of their efforts, which discourages them from active involvement in community fisheries.

The NGOs welcome the adoption of the new *Fisheries Law*, but are concerned that the new Fisheries Law does not serve the interests of rural people and the poor whose lives are dependent on fisheries resources. The ten key concerns and issues raised by fisher representatives from all over Cambodia about the draft Fisheries have been completely rejected. The problem associated with the new Fisheries Law is that it will reorganize the Department of Fisheries into the 'Fisheries Administration' which will centralize the Fisheries Administration's power over the management of fisheries resources, limiting not only the roles and responsibility of fishing communities, but also the roles of other agencies such as commune councils, provincial authorities and the Ministry of Environment.

8.4. NGOs noted that Law, Sub-decree and regulations concerning the implementation of social land concessions (SLCs) have existed for years. However, *the exercises and operations in this sector have not adequately been performed*, despite a growth in the number of landless people. NGOs understand that there are lands available for the purpose of SLCs in the provinces, as their research study and findings were presented to all stakeholders through consultation meetings, seminars and workshops. But there has been no initiative or cooperation among local authorities or government agencies in order to develop a plan for SLCs.

NGOs are still very supportive and welcome the RGC's intention to facilitate social land concession projects, but have not seen any concrete progress yet. The two pilot projects in Kg. Cham and Kratie province are likely to be slow in beginning operation and are not responding to landlessness people needs. Various offers have been made by NGOs in several provinces to initiate support of such SLC projects, but the response from different levels of government and line agencies have been overall very discouraging.

Identification of available land to be classified and registered as private state land for SLC has taken too much time during the implementation of the pilot projects. This process does not respond to the demands of the rural poor, especially those who need land for farming or housing. In addition, the selection of target land recipients may not meet the criteria if there is no proper community consultation and if the poor families are not identified properly.

iii) Recommendations

- (8.2) It is recommended that there should be a publication (on the MAFF ELC website) of information on ELCs granted (location, to whom, size, purpose), cancelled (where signed contracts have been cancelled), and proposals under consideration. The Government should publish all relevant information on the progress of canceling or reviewing existing ELCs, especially those that clearly exceed the 10,000-hectare limit and that do not comply with the law or deposit procedures. Moreover, the process for granting ELCs, including all pre-requisites, should be strictly adhered to and that no ELC is granted if it does not meet the requirements specified by the law and the Sub-Decree on ELCs. Information should include ELCs under 1,000 hectares granted by provincial authorities.
- (8.3) NGOs would like to call on the Government and ADB to take appropriate steps to investigate the delay in implementation of the TSEMP, in a similar manner to recent World Bank investigations, before deciding on a new loan for the Tonle Sap.
- (8.3) NGOs and concerned donors should review the new Fisheries Law and examine its content, aiming at assessing the potential of this law to contribute to future poverty reduction.
- (8.3) Efforts should be made by the Royal Government of Cambodia and donor agencies to ensure that communities have ownership over community fisheries, including rights and responsibilities in deciding about the sustainable use of fisheries resources in line with the legal framework.
- (8.3) The decentralization of community fisheries should be conducted through integration of fisheries into the SEILA program.
- (8.4) NGOs recommend that the MLMUPC collaborate with other relevant ministries (MAFF) and the NALDR to identify vacant land for SLC purposes. This information should then be communicated to interested stakeholders in a transparent way.
- (8.4) The Government should encourage and accept social land concession (SLC) plans initiated through the expertise NGOs and interested organizations in the aim of promoting the implementation of SLCs. All processes and exercises related to the two pilot projects in Kg. Cham and Kratie should be concluded shortly, so the development of similar projects in other provinces should be highly considered. To be successful, simple and effective grievance mechanisms need to be in place to ensure that social land concessions will indeed benefit landless and land-poor farming families. NGOs would also like to recommend that only vacant and non-forested land should be allocated as social land concessions.

Sustainable Use of Natural Resources

i) Joint Monitoring Indicators monitored by NGOs

| Target | Actions Needed | Responsible Government Institution | Time Frame |
|--|--|---|---|
| 11.Ensure sustainable use of the natural resources taking into consideration the issues of livelihood and needs of the rural communities | 11.1 Develop and implement National Forest Program, by initial focus on: a. Strengthening the enforcement of the Forestry Law, especially combating forest land clearing and encroachment; b. Rationalizing and reclassify national forest lands to ensure sustainable use of these resources by further forest demarcation / demarcation of protected areas c. Completing Forest Cover Assessment 2005/2006. d. implementing Community Forestry program and develop Community Forestry e. Implementing capacity building for forestry sector program / tree planting for socio-economic purposes. f. Independent Monitoring in the forestry sector (Subject to donor grant funding) | FA/MAFF/MoE FA/MAFF/MoE FA / MAFF FA / MAFF FA / MAFF FA / MAFF | Qrtly Report 4th Qrt GDCC Qrterly Qrterly To be determ. |
| | 11.2 Strengthen transparency by disseminating all relevant sector information on the activities of government agencies, including information on mining concession and military development zones, as well as donors and NGOs by periodically postings on TWG-F&E website. | All stakeholder | 4th Quarter GDCC 06 |
| | 11.3 Develop and implement a Land Management Policy and associated legal framework to improve sustainable utilization of land resources. | MLMUPC | 2006 |
| | 11.4 Strengthen and expand the scope of land registration by: a. Issuing 300,000 land title certificates in 2006; b. Increasing the percentage of cases successfully resolved by the cadastral commission: 450 cases successfully resolved out of 800 cases handled in 2006; c. Revision of cadastral service fee structure, especially for sporadic and subsequent registration, public dissemination of the new fee structure and stamp duty for subsequent registration. d. State land mapping conducted in five districts and results placed in a publicly accessible state land data-base. cc | MLMUPC MLMUPC MLMUPC & MEF MLMUPC | Dec.06 Dec.06 Jun 06 Nov 06 |

ii) Monitored Progress on Action Needed

11.1a NGOs have not observed any progress on this indicator during this reporting period. The NGOs' previously expressed concern that powerful perpetrators of large-scale forest crime and related abuses are not being held accountable to the law therefore remain. The activities of the Asia World Agricultural Development Cambodia Co. Ltd (10,000 hectares in Rolus Meanchey and Kbal Damrei Commune), Global Agriculture Development Cambodia Co. Ltd (10,000 hectares in Kbal Damrei and O' Kreang commune) and Green Island Agricultural Development Cambodia Co Ltd (Sombo District, Kratie province) are especially notable in this regard, as these companies have never consulted with the local people nor have they provided information regarding their activities, which include large-scale forest clearing. Further it has been observed that local people who protested against the forest clearing by these companies have been threatened.

The Government's commitment to enforce the Forestry Law is suspect when MAFF is granting ELCs over forested areas - particularly those which contain trees that local communities tap for resin, which is evident in the new ELCs in Kratie and in Kompong Thom province in the Tum Ring rubber plantation and in the Sopheaknika land concession in Khaos village.

11.1d. NGOs note that a series of national meetings on Community Forestry intended to set up a network on Community Forestry was completed after the provincial meetings in Kg. Thom, Pursat and Oddar Meanchay province. As observed, about 16 sites of Community Forestry were added to the Forestry Administration's Information Management Unit Database bringing the total number to 280 sites. It is also noted that the policies on Community Forestry boundary demarcation procedures and specifications were drafted and submitted to the Head of the Forestry Administration. Although there is sufficient legal basis to support the creation of Community Forestry sites, there are currently still no Community Forestry sites legally recognized.

11.2. NGOs realize that information on mining concessions is available on the Technical Working Group on Forestry and Environment website, but is only current as at June 2006. There is no information on the TWGFE website regarding concessions granted after that date. There have been numerous calls for information on military development zones, but this information has not been published.

Further there is no effective coordination between Government ministries and departments managing land and natural resources. As a result, there are frequent overlaps between ELCs, forested areas, protected environment areas, mining concessions and military zones. NGOs observe that unclear responsibility and lack of cooperation among the relevant institutions of the government have jeopardized natural resource management efforts.

Furthermore, it is noted that military zones have been the cause of threats, violence and intimidation in connection to disputes over local community livelihoods and rights. As observed, many military zones do not demonstrate a clear military purpose. In fact, many military development zones were easily sold or transferred to other usage.

Finally there appears to be an increasing number of proposals for mining exploration and exploitation in the northeastern provinces of Monduliri and Ratanakiri. In these provinces, where there is a majority indigenous population, there is a strong likelihood that these proposals, if approved, will impact upon indigenous land, livelihoods and culture, as well as upon the local environment. The grant of mining concessions in indigenous areas may also impact negatively on the registration of collective title over land traditionally occupied and used by indigenous communities.

11.4a. NGOs would like to congratulate the Ministry for issuing 94 percent of the target number of land certificates for 2006 and wish to encourage the Ministry of LMUPC to explore all collaboration opportunities with other relevant line agencies (MAFF or MRD for example) that could reinforce and hasten the process of land registration (private and public) in the country in the coming months. However it is noted that more than 10,000 land certificates still have to be delivered to the beneficiaries and that the total number of issued land certificates cannot be confirmed by an independent monitoring agency.

11.4b. NGOs recognize and welcome that 291 land dispute cases were successfully solved by the Cadastral Commissions which is roughly two thirds of the set target of 450 cases. However it needs to be noted that more efforts should be put into dissemination of information about land dispute resolution mechanisms in order to raise awareness of the roles and responsibilities of the provincial cadastral commission offices throughout the country. Further, the idea of creating a mobile cadastral team should be pursued. It is also noted that the capacity of Cadastral Commissions officials at district level have not been effectively strengthened for land case proceedings.

Since the National Authority for Land Dispute Resolution was established, due to a lack of regulations or guidelines to support its operations, many land complaints have accumulated and remain unsolved. However, NGOs welcome the actions of the National Authority for Land Dispute Resolution (NALDR) to confiscate thousands of hectares of illegally grabbed land.

NGOs observe that many land case proceedings, even where successfully resolved, have not been resolved through the procedures stated in the relevant Sub-decrees, Prakas and guidelines. Mandates and terms of cooperation between the NALDR and the Cadastral Commissions are still unclear. The composition of the NALDR suggests undue executive control over areas already contained within the jurisdiction of the Cadastral Commissions (which remain weak) and the Courts.

11.4d. During this reporting period, there has been no evident progress in state land mapping and registration. NGOs wish to see more efforts from the RGC in defining clearly which land is private and public state property.

iii) Recommendations

- (11.1a) It is essential that PM Order No 1 be fully implemented regardless of the social status of the violator. Official reports on compliance with prime ministerial orders such as this one frequently only focus on the number of confiscations and cases referred to the court. NGOs therefore suggest that the RGC and its development partners should measure progress according to the following criteria: a) cases in which there has been a full prosecution and imposition of penalties as opposed simply to a referral to the court; b) the number of cases in which such prosecutions are brought against individuals with official rank or public profile; c) enforcement of existing laws that target corruption, particularly Article 100 and Article 101 of the Forest Law.
- (11.1a) NGOs further recommend that efforts to reclaim forest land need to be harmonized with the implementation of Article 18 of the Land Law.
- (11.1b) Harmonization is needed between the processes of demarcation of forest land and protected areas, the identification and mapping of state land and the registration of the lands of indigenous communities. Forest land demarcation furthermore needs the active participation of all stakeholders, including local communities, provincial authorities and civil society organizations. NGOs therefore request the government to give a clear account of the methodology it intends to use for demarcating the forest reserve, what steps it will take to consult local inhabitants living close to the boundaries and the measures it will take to inform the general public of the boundaries once the exercise is completed. NGOs call on the government and donors to expedite this process without delay in order to counter the current rush of illegitimate claims by land concession holders and others to areas of forest not yet demarcated. Finally, the government should give a clear public undertaking that the demarcation process will not override the prior claims (as enshrined in the Land Law) of indigenous people to forest areas that they use for traditional agricultural practices.
- (11.1d) Community Forestry sites should be recognized by law from now onwards. The process of CF development and recognition should not be delayed any more. The cooperation among stakeholders on CF development work should be improved to encourage the Community Forestry Office of the Forestry Administration to assume a coordinating role in guiding the implementation of CF.
- (11.2) The Government should disseminate information on military development zones, mining concessions granted (location, size, scope, purpose and concessionaire), and proposals or applications for mining concessions. The Government should also put a moratorium on the granting of mining concessions in forest land areas or in indigenous areas until indigenous communities have been able to demarcate their land for the registration of collective title and commence the registration process. Mining concessions should only be granted where there have been public consultations with local communities, and participatory environmental and social impact assessments have been conducted. NGOs would recommend that proposals or applications

for new military development zones should be carefully considered in relation to their social impacts. In addition, transparency of all sales and transformations of military zones should be improved.

- (11.4a) NGOs would like to recommend efforts to increase the public awareness of communities and an improvement in the transparency of the titling system by utilizing independent monitoring agencies in the land titling programme.
- (11.4b) NGOs would like to recommend i) efforts to improve the capacity of Cadastral Commissions officials at district level to deal with land cases, ii) formulation of a legal basis to support the NALDR's implementation, and iii) information dissemination about the current status of land complaints filed at NALDR.
- (11.4b) More efforts should be put into dissemination of land dispute resolution mechanisms in order to raise awareness of the roles and responsibilities of the provincial cadastral commission offices throughout the country.
- (11.4b) The idea of a creating a mobile cadastral team should be pursued.

The NSDP Monitoring Framework

i) Joint Monitoring Indicators monitored by NGOs

| Target | Actions Needed | Responsible Government Institution | Time Frame |
|----------------------------|---|------------------------------------|---------------|
| 1. NSDP monitored annually | 1.1 Develop and implement a framework to monitor the implementation of the NSDP and prepare an annual progress review of NSDP implementation. | MOP (Lead), MEF and CDC | End June 2006 |

ii) Monitored progress on Actions Needed

1.1. The NGOs welcome the continued opportunity to participate in the Technical Working Group on Planning and Poverty Reduction (TWG-PPR) and, as core-members of the TWG-PPR, NGOs are committed to positively contribute to the group's objectives. The NGOs welcome the efforts of the Ministry of Planning regarding the progress made on drafting the NSDP Annual Progress Report (APR) and have been informed that the Ministry of Planning has received annual reports from all ministries.

Despite this progress NGOs remain concerned that the monitoring framework for the NSDP will be unable to measure the efficiency (are we using the resources wisely?) or the effectiveness (are the desired outputs being achieved?) of the NSDP as the current framework fails to mention input and output indicators.

The NGOs also observe that the 2007 Budget Law broadly reflects the priority sectors set out in the NSDP and recognize more than average budgetary increases to the ministries of Health, Education, Agriculture, Rural Development, and Water Resources and Meteorology, although the format of the Budget Law only allowed comparisons between planned capital expenditure for 2007 against realized capital expenditure in 2006. For the NSDP to gain credibility, it will need to be better integrated in the financial planning of the Royal Government, especially the 2008 Budget Law and the Public Investment Program.

iii) Recommendations

- Input and output indicators for the different sectors in the NSDP need to be defined and made publicly available in order to create the setting for a meaningful Annual Progress Report that can serve as an input for discussions on improving the NSDP's implementation in 2007.
- Financial planning needs to be more aligned with the NSDP in order to provide insight to the funds that are allocated by the Royal Government for NSDP implementation, especially through the 2008 Budget Law and the Public Investment Program.

Decentralization and Deconcentration Reform

i) Joint Monitoring Indicators monitored by NGOs

| Target | Actions Needed | Responsible Government Institution | Time Frame |
|---|---|------------------------------------|-----------------------------|
| 6. The RGC's Strategic Framework for Decentralization and Deconcentration (D&D) reforms developed and initial preparation made for full implementation. | 6.1 Preparation, Consultation and submission for approval by the National Assembly a set of the organic Laws on democratic development at Sub-national levels. | IMC | First draft by end March 06 |
| | 6.2 D&D and organic law implementation framework/outline prepared (preliminary provisional pending the enactment-approval by the Nat. Assembly of the organic laws) | IMC | First and Second Quarter 06 |
| | 6.3 Review and formulate D&D support program for reform and Investment for Local Development | IMC | 3rd quarter 06 |

ii) Monitored progress on Actions Needed

6.1. The status of the proposed Organic Law(s) on Decentralization and Deconcentration remains unclear at the end of this reporting period, with Government interlocutors suggesting that a draft has not yet been finalized. In late 2006, the RGC indicated to the donor community that it intended to submit final versions to the National Assembly for consideration before the end of the calendar year. This target was not met, and there has been no further movement in the direction of public release of the draft laws during this period. NGOs welcome the periodic reaffirmation by officials of the RGC's intention to provide an opportunity for public discussion of the draft Organic Law(s) on decentralization and deconcentration prior to their submission to the National Assembly.

6.2. A draft "Implementation Framework for Sub-National Democratic Development Preparatory Phase 2006-2007" was circulated to the Donor community in June 2006. The draft framework outlined a three-phased implementation time-line, divided into a preparatory stage (2006-2007), an initial phase (2007-2009), and a transition phase (2009-2012). The RGC indicated at that time that an implementation strategy covering 2006-2007 would be finalized during 2006. There has been no further publicly visible movement against this indicator.

6.3. Based on the analysis presented in the April 2006 "Independent study of Donor Support for Decentralization and Deconcentration (D&D)" and subsequent consultations with a broad range of stakeholders, a "Project to Support Democratic Development through Decentralization and Deconcentration (PSD4) was developed during October and November 2006. The project is expected to take effect as of February 2007, and is intended to provide a mechanism for multi-donor support for the implementation of the RGC's national D&D program, with an initial six-year commitment spanning the first two phases of reform implementation.

iii) Recommendations:

- The NGOs recommend that, in collaboration with the RGC, the draft organic laws be subject to a broad public review process involving stakeholders at both national and sub-national levels prior to their finalization and submission to the National Assembly. NGOs reaffirm their belief that public review and systematic discussion of draft policies and legislation with citizens and relevant stakeholders contribute to more effective policies.

Socially cohesive, educationally advanced, and culturally vibrant society

i) Joint Monitoring Indicators monitored by NGOs

| Target | Actions Needed | Responsible Government Institution | Time Frame |
|---|---|------------------------------------|------------|
| 10. Foster the development of a socially cohesive, educationally advanced, and culturally vibrant society that is free of illiteracy and disease and follow the RGC's Strategic Plan – Neary Rattanak (women are precious gems). | 10.1 Increase the proportion of deliveries attended by skilled health personnel | MOH | On-going |
| | 10.2 Increase the net enrolment in primary school (total, and by sex). | MOEYS | On-going |
| | 10.3 Increase the survival rate from grades 1 to 6. | MOEYS | On-going |
| | 10.4 Implement the National Action Plan to combat violence against women. | MOWA | |

ii) Monitored progress on Actions Needed

10.1 The progress of this indicator could be known through the report of Health System Information, the Cambodia Demographic Health Survey, and the Midwifery Review. The data collection and analysis of these surveys are now in progress. However, accomplishment of this important indicator (among many other outcome indicators in the health sector) very much depends on the progress of public administration reform to serve people better and to become an effective development partners. The Merit Based Payment Initiatives design is being developed and discussed by MoH, CAR and health partners, and preparatory activities to formulate a draft joint Government-Donor action plan for phasing out salary supplements are underway.

10.2 Since the year 2000, the ESP/ESSP documents and the PAP funds have been essential tools in the effort to achieve universal primary education by 2015. Over the past six years there have been marked improvements in enrollment rates for all students (from 76% in 2000-01 to 91.3% in 2005-06). As well enrollment for girls in primary school has increased (from 75% in 2000-01 to 89.7% in 2005-06). While there is improvement in girl's enrollment, still only 47% of all students registered for primary school are girls. (Also see section on Public Finance Management on funding for the education sector).

10.3 While enrolment rates have increased, the more difficult issue is primary school completion. The completion rates for primary school (Grade 6) were 42.9% in 2004-2005, which is still far behind the projected target of 100% by 2010. Much work still needs to be done to realize this goal. The dropout and repetition rates remain high in primary schools, and also in lower secondary schools where enrollment rates are far behind those in other countries in the region. . (Also see section on Public Finance Management on funding for the education sector).

10.4 NGOs observe that while progress on the implementation of the National Action Plan to combat violence against women has been slow, the Government is taking action to prepare itself for its implementation. Progress has been made in the dissemination of laws through publication in the Royal Bulletin, make an inventory of all laws related to the law on domestic violence, broadcasting through the media, and dissemination to communities, districts, communes and villages in 24 province-cities. Further training on the Domestic Violence law has been provided to practitioners by several organizations: MoWA and Ministry of Interior together trained the police while GTZ trained

lawyers on the Domestic Violence law at the Royal School of Judges. MOWA has plans to also train commune councilors in 24 provinces-cities on the Domestic Violence law.

iii) Recommendations:

- (10.1) To effectively increase the proportion of deliveries by skilled health personnel, the deployment of midwives in all the remote rural areas is required. NGOs would like to welcome the fact that the Midwifery Review will be part of the Midterm Review so that incentives for health professionals, particularly midwives, should be resolved and moved forward soon.
- (10.2 & 10.3) Given the present primary completion rate, we still have far to go to achieve the universal primary education that the Ministry hopes for and the country needs. The MoEYS needs to continue to emphasize the integration of girls, disabled children, and minority children into the education system.
- (10.2 & 10.3) The government, in partnership with donors, needs to increase its efforts to make more schools and facilities available to all children. Government commitments to abolish informal payments in schools, recruit more teachers, and implement performance-based pay reforms may be difficult to achieve in light of inconsistent rates of disbursement of funds to the priority areas for which they were intended.
- (10.2 & 10.3) In addition, the Ministry needs to strengthen its monitoring systems so that the education data, upon which policy decisions are made, is consistent, complete and reliable.
- (10.4) NGOs would like MOWA to move fast to issue the national action plan to combat violence against women and take action in 2007, especially to strengthen the availability of services for victims of domestic violence.

Public Financial Management Reform Programme

i) Joint Monitoring Indicators monitored by NGOs

| Target | Actions Needed | Responsible Government Institution | Time Frame |
|---|--|------------------------------------|------------|
| 7. The RGC's Public Financial Management Reform Program Implemented | 7.1) Continue implementing the RGC's PFM Reform Program (complete Stage1/Platform 1 and begin implementing the action plan for Stage 2) and monitor impact through the agreed PFM Performance Management Framework/Indicators. | MEF | On-going |

ii) Monitored progress on Actions Needed

Health

NGOs, first of all, would like to congratulate the RGC on the overall improvements in cash disbursement to the operational level. Despite some progress, the cash release of Chapter 13 has remained unacceptably low at the provincial level, in particular in quarter 1 and quarter 2 of year—1.22%, and 6.78%, respectively. This still continues to affect the health service delivery at the community level. This main indicator is now under the PFM TWG. The meetings between MoH, MoEYS, MEF, and partners have made good progress regarding improving disbursements. NGOs would like to see that this discussion will continue until the cash release to the operational level is improved to all social sectors—health and education, in particular.

Education

Since the year 2000, the ESP/ESSP documents and the PAP funds have been essential tools in the effort to achieve universal primary education by 2015. In terms of funding, at the JTWG-ED in January 2007, it was noted that as of December 31, 2006, 72.91% of the PAP disbursement for the fiscal year 2006 had been released. However, in some PAP areas the percentage of cash released is significantly lower than in others. For example, the Non-formal Education PAP received a mere 10.8 percent of its annual budget allocation and the Pedagogical Research Department PAP-7A and PAP-7B received less than 2 percent of its annual budget allocation.

iii) Recommendations:

Health

- NGOs active in Cambodia's Health Sector are pleased with the tremendous efforts and the progress that the RGC has made so far. However, we would like to encourage all partners to move towards finalization of the Merit Based Payment Initiative design, to ensure that payments will be based on qualifications and experience. Since this MBPI is at the moment targeting the central ministries, NGOs would like to also encourage all partners to strengthen the incentive and performance at the service delivery level, especially in the rural areas.

Education

- The NEP and EDUCAM, on behalf of their members, recommend that the Ministry of Education, Youth and Sport in close collaboration with the Ministry of Economy and Finance ensure the timely disbursement of funds to the schools through a proper budget management system so that the education service will be healthier and will outreach to marginalized children in order to achieve the targets to which the government has committed itself.
- The government, in partnership with donors, needs to increase its efforts to make more schools and facilities available to all children. Government commitments to abolish informal payments in schools, recruit more teachers, and implement performance-based pay reforms may be difficult to achieve in light of inconsistent rates of disbursement of funds to the priority areas for which they were intended.

ANNEX 1: Extractive Industries

Extractive industries including oil, gas and minerals are expected to become a major source of revenue for the Kingdom of Cambodia in the near future by more than quadrupling the country's current government revenue and potentially lifting millions of Cambodians out of poverty. The UNDP gave a rough estimate in June 2006 of US\$1.7bn per annum over 10 years based on recent upward preliminary estimates by Chevron of oil reserves in Block A, which they stated would represent 3 times current ODA (Official Development Assistance), 30% of the previous year's GDP for Cambodia and an additional \$130 per capita annual income¹. Exploration of valuable minerals in northeast Cambodia is projected also to have a significant impact on the country's economy.

Experiences from other countries suggest that discoveries of large reserves of natural resources in some developing countries such as Nigeria and Venezuela have not resulted in economic and social growth. These negative experiences have given rise to the term 'resource curse,' whereby countries rich in natural resources have failed to use profits from the sale of those resources to benefit key development sectors and the country's poorest citizens. Rather, the profits have benefited elite groups and individuals due to corruption and mismanagement of the funds. Cambodia should avoid the 'resource curse'. Strategic planning that includes civil society will assist in ensuring the profits benefit all Cambodian citizens.

Recommendations

To avoid the resource curse and promote long-term sustainable economic development, civil society urges the Government of Cambodia to establish clear policies, regulations and mechanisms to ensure that transparency and accountability prevail in the use of oil and gas revenues by:

- Disclosing the amount, timing and channels for the receipt of revenues so that they can be monitored by parties outside government to ensure there is no unlawful diversion, and to give citizens the basic information to ensure confidence in the appropriate management and use of the funds;
- Signing on to the Extractive Industries Transparency Initiative as soon as possible;
- Conducting informed and prudent decision-making about the management of the funds and their ultimate use;
- Allowing civil society to actively engage in the design, monitoring and evaluation process and contribute to public debate on oil and gas issues by partnering with the private sector to ensure the fund contributes to sustainable development and poverty reduction.
- Establishing a legal framework on extractive industries;
- Committing to new Joint Monitoring Indicators (JMI) for extractive industries.

¹ UNDP Insights for Action "Brief Advisory Note on Some Socio-Economic and Financial Implications of Cambodia Offshore Oil and Gas" June 2006

ANNEX 2: List of Acronyms

| | |
|----------|---|
| ADB | Asian Development Bank |
| APR | Annual Progress Report |
| A&W | Agriculture and Water |
| CCs | Cadastral Commissions |
| CDC | Council for the Development of Cambodia |
| CG | Consultative Group |
| CI | Conservation International |
| CLP | Council for Land Policy |
| COM | Council of Ministers |
| CSO | Civil Society Organisation |
| D&D | Decentralization and Deconcentration |
| ELC | Economic Land Concession |
| E/SIA | Environmental/Social Impact Assessment |
| ESP/ESSP | Education Strategic Plan / Education Sector Support Program |
| FA | Forest Administration |
| F&E | Forestry and Environment |
| FSC | Forest Stewardship Council |
| GDP | Gross Domestic Product |
| GDCC | Government Donor Coordinating Committee |
| GSCLP | General Secretariat of the Council for Land Policy |
| IMC | Inter Ministerial Commission |
| IMM | Inter-Ministerial Meeting |
| JMI | Joint Monitoring Indicator |
| L&J | Legal & Judicial Reform |
| MAFF | Ministry of Agriculture, Forestry and Fisheries |
| MBPI | Merit Based Payment Initiative |
| MEF | Ministry of Economy and Finance |
| MLMUPC | Ministry of Land Management Urban Planning and Construction |
| MNASRI | Ministry of National Assembly-Senate Relations and Inspection |
| MOE | Ministry of the Environment |
| MOEYS | Ministry of Education, Youth and Sport |
| MOH | Ministry of Health |
| MOJ | Ministry of Justice |
| MOP | Ministry of Planning |
| MOWA | Ministry of Women's Affairs |
| MoWRAM | Ministry of Water Resource and Meteorology |
| NA | National Assembly |
| NALDR | National Authority on Land Dispute Resolution |
| NCDD | National Committee for the implementation of the D&D Strategy |
| NEP | The NGO Education Partnership |
| NGO | Non Governmental Organization |
| NSDP | National Strategic Development Plan |
| ODA | Official Development Assistance |
| PAP | Priority Action Program |
| PFM | Public Finance Management |
| PPR | Planning and Poverty Reduction |
| PM | Prime Minister |
| PSDD | Project to Support Democratic Development" |
| RGC | Royal Government of Cambodia |
| SCM | Supreme Council of Magistracy |
| SLC | Social Land Concession |
| TSEMP | Tonle Sap Environmental Management Project |
| TWG | Technical Working Group |