DEVELOPMENT PARTNER'S CONSENSUS STATEMENT

ON

GOVERNANCE

FOR

THE CAMBODIAN DEVELOPMENT COOPERATION FORUM

(JUNE 19-20, 2007)

DISCUSSION STATEMENT

Excellencies, colleagues, ladies and gentlemen. It is an honor to deliver on behalf of the Royal Government of Cambodia's (RGC's) development partners the remarks on Governance. These remarks and the accompanying document include the progress and problems in achieving the goals in Anti-Corruption Reform, Legal and Judicial Reform, Public Administration Reform, and Decentralization and De-Concentration Reform. I encourage the RGC to read closely the written statement that contains a comprehensive list of governance issues. We the development partners would like to highlight the following issues that we hope to discuss during this session of the Cambodian Development Cooperation Forum.

Regarding Legal and Judicial Reform, we the development partners congratulate the RGC on the enactment of the Civil Procedures Code, adoption of the Penal Procedures Code by the National Assembly, and the adoption of a Code of Ethics for Judges by the Supreme Council of Magistracy. We now anticipate that this momentum will lead to the prompt adoption of the Civil Code and submission of the Penal Code to the National Assembly. We welcome the recent agreement to develop "Performance Indicators" for the Legal and Judicial Reform Strategy for this moves this sector beyond the discussion of laws to establishing a tool to measure the impact that the legal and judicial reforms are having on the lives of the Cambodian citizens. We also applaud last week's adoption of the Internal Procedural Rules by the Extraordinary Chambers in the Court of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (ECCC), as a significant step to accelerate the process of the Trials, which, we believe, will provide a good model for strengthening Cambodia's judicial system in general.

Continued momentum on the drafting of the fundamental laws, including the promotion of consistency between laws, will remain a focus. We would like to discuss increasing the priority given to the passage of the Law on Judges and Prosecutors and the Law on the Administration of the Courts. Progress on these remaining fundamental laws would provide an important foundation for strengthening the judiciary and the functioning of the courts. Related to this, we acknowledge the initial results of the training at Royal Academy for Judges and Prosecutors in improving the quality and availability of judicial professionals and would like to explore how to increase access to justice, particularly for the poor and vulnerable.

As part of the legal and judicial reform framework the development partners place highest priority on the passage of the draft Anti-Corruption Law. Since early 2005 the RGC has worked to revise the draft Anti-Corruption Law with technical assistance from development partners.

As of September 2006, we understand that additional modifications have been made that further improve the draft law by ensuring the inclusion of investigative authority for members of the anti-corruption body and harmonization with penal procedure code recently adopted by the National Assembly.

However, in all candor, we believe that we are at impasse regarding the two remaining issues of asset declaration and independence of the Anti-Corruption Body that would be overseen by the Supreme National Council against Corruption (SNCAC). It has now been almost exactly a year since we had anticipated passage of an Anti-Corruption Law and the delays in its enactment do not well serve the interests of the Cambodian people. We the donor countries believe it is crucial to acknowledge this impasse and to move decisively along with the RCG to find compromise provisions that will enable the RCG to speedily enact an Anti-Corruption Law that would still meet minimal international standards. In order to resolve this impasse and facilitate passage of such a law, we request that an immediate dialogue with Deputy Prime Minister Sok An be established. Regional examples demonstrate that the independence of the Anti-Corruption Body is paramount to effectively fighting corruption. Regarding the asset declaration provision, there are various options for resolving this issue that the development partners would like to discuss with the RGC. Once these issues are resolved the development partners strongly believe that the draft Anti-Corruption Law should be promptly submitted to the National Assembly for debate. We see no technical reasons to link the passage of this law with the adoption of the draft Penal Code. We look forward to entering a dialogue on these important issues.

Regarding Public Administration Reform - The state of the civil service is one of the key binding constraints on public sector performance, growth, and poverty reduction in Cambodia. Virtually all aspects of governance are reliant on the work of Cambodian Civil Servants. Given the seriousness of the problems afflicting the civil service - low pay, low skills, low representation of women, and poor management - reform is needed, and it is needed more quickly. The development partners would like to discuss the resource allocation and the pace of decision making regarding public administration reform. Unfortunately, the pace of public administration reform and the resources that the Royal Government has devoted to it do not appear to match the seriousness of the problems caused by Cambodia's weak civil service. Specifically, the past year has seen little progress on two of the most important JMIs agreed in March 2006 -- the development of a medium term strategy to enhance remuneration and the expansion of Merit Based Pay Initiatives to the line ministries. The development partners are concerned about the lack of progress and respectfully request a meeting with Deputy Prime Minister Sok An to discuss how we can work together to support civil service reform.

This afternoon we highlight the most urgent issues and hope that if these are discussed in a forthright and timely manner the implementation of the RGC's reform agenda can be improved and development partner's resources can be more effectively coordinated. Thank You.

GOVERNANCE PROGRESS AND CHALLENGES

Governance is a broad and significant topic that incorporates the work of several Technical Working Groups and a number of interconnected reforms. The following provides the development partner's understanding of the progress made since the March 2006 Consultative Group meeting and the remaining challenges to achieving the goals agreed to in Legal and Judicial Reform, Anti-Corruption Reform, Public Administration Reform and Decentralization and De-Concentration Reform.

Legal and Judicial Reform

Strengthening the rule of law provides an important structural foundation for the development in Cambodia and is a key area of Governance reform (as recognized in the Rectangular Strategy and National Strategic Development Plan (NSDP).

Development partners welcome the efforts of the Royal Government of Cambodia in improving coordination across Cambodia's judicial institutions and with development partners engaged within this sector. This has been facilitated by the establishment of sub-working groups aligned with the strategic objectives of the Legal and Judicial Reform Strategy. While this is still in its early stages, the sub-working groups provide a valuable opportunity to improve coordination at the operational level and to promote alignment with the priorities articulated in the Legal and Judicial Reform Strategy and broader NSDP. We welcome the recent agreement to develop "Performance Indicators" for the Legal and Judicial Reform Strategy for this moves this sector beyond the discussion of laws to establishing a tool to measure the impact that the legal and judicial reforms are having on the lives of the Cambodian citizens. The Council of Legal and Judicial Reform (CLJR) Project Management Unit (PMU) has actively engaged the development partners in this process and we look forward to further dialogue in this area.

Progress in the drafting and eventual implementation of the fundamental laws continues to be the priority focus. Since the last Consultative Group meeting the development partners congratulate the RGC on the enactment of the Civil Procedures Code by the RGC (6 July 2006) and adoption of the Penal Procedures Code by the National Assembly. We now hope this momentum will lead to the prompt adoption of the Civil Code and submission of the Penal Code to the National Assembly. Continued momentum on the drafting of the fundamental laws, including the promotion of consistency between laws, will remain a focus for the Technical Working Group (TWG). A first and important step in the coming year is the development of a 'Road Map' for completing the remaining fundamental laws. The Government has agreed to review and finalize guidelines to help streamline the legislative drafting process. These guidelines should promote public consultation as a fundamental aspect of any legislative drafting process. Development partners particularly urge the Government to move forward on the Law on Judges and Prosecutors and the Law on the Administration of the Courts, which will provide an important foundation for strengthening the judiciary and the functioning of the courts.

The recent adoption of a Code of Ethics is an important anti-corruption measure. It is commendable that the Government is now engaged in a follow-up effort to disseminate the new code and to teach legal professionals how the code should influence their practice. However, effective implementation of that code requires an amendment to the Supreme Council of Magistracy (SCM) law to improve the functions and duties of the council, including that of the Disciplinary Committee of the SCM. Strengthening the authority of the SCM to effectively discipline judges and prosecutors is central to achieving progress in curbing corruption – a key task in the Legal and Judicial Reform Strategy's 'Plan of Action'. The process that is

implemented to discipline judges and prosecutors should be open, fair and transparent. Citizens should be able to make a complaint, and complaints should be handled effectively and decisions delivered in writing. Appropriate procedures should also be instituted to protect judges from frivolous and inappropriate complaints. Development partners encourage the Government to strengthen its efforts in this area.

The improvement of training for Judges, Prosecutors and Court Clerks at the Royal Academy of Judicial Professions (RAJP), with the cooperation and assistance of development partners, has been a significant development which provides for the practical implementation and application of the new codes. However, the lack of independence of the judiciary remains the major impediment to establishing a healthy justice system. Continued and sustained efforts are required to assure that the recruitment and appointment of judges is based upon an impartial, merit-based selection process. There is a continuing need to increase the number of qualified legal and judicial trainers at both the RAJP and the Lawyers Training School based on a clearly articulated strategy.

In addition to improved training, the Government has also engaged in a consultative process with a core group of development partners to refine the model court concept. Development Partners encourage the engagement of Civil Society in these deliberations. There are a number of NGOs that have been actively monitoring Court proceedings that could provide valuable insights in how to strengthen procedures and promote access to justice through the court system. Under RGC leadership, this is an area that is likely to gather momentum over the coming year, with a number of development partners committing resources to its development.

Providing qualified legal representation and access to justice to Cambodia's poor remains an immense challenge. There are too few lawyers available to provide that representation and advice to indigent and vulnerable persons. The Government is also encouraged to continue its support for activities of existing NGO legal aid providers by providing opportunities for their continued independent operations.

Lastly, we call on the RGC to review the allocation of national budget resources for supporting the Judicial Branch of government. We believe it is essential to ensure an appropriate increase in the national budget allocation to support the effective operation of the judiciary and fulfillment the duties of the Judicial Branch of government.

Anti-Corruption Reform

As the center of the Royal Government of Cambodia's Rectangular Strategy anti-corruption reform is rightfully recognized as a crucial element to securing Cambodia's future economic, social and cultural prosperity. As a growing commitment by the RGC to joint the international efforts to fight corruption the development partners would encourage the government to become a party to the United Nations Convention Against Corruption (UNCAC) so that it could officially become part of the global community in the fight against corruption and to facilitate effective international cooperation in this area.

Since early 2005 the RGC has worked to revise the draft Anti-Corruption Law with technical assistance from development partners. The draft law, as provided to development partners in September 2006, has many positive features if compared to the version forwarded to the National Assembly in 2003. As of September 2006, we understand that additional modifications have been made that further improves the draft law by ensuring the inclusion of investigative authority for members of the anti-corruption body and harmonization with penal procedure code, recently

adopted by the National Assembly. To facilitate discussion it would be helpful to share with the development partners the most current version of the law to confirm these improvements. However, there are two remaining points that have not been addressed related to asset declaration and the independence of Anti-Corruption Body who would be overseen by the Supreme National Council Against Corruption (SNCAC). It is of our grave concern that the government has now linked the passage of the draft law on anti-corruption to the adoption of the Penal Code. By linking it to the Penal Code, it might further delay the passage of the law on anti-corruption; it was always our understanding that this draft law is only linked to the adoption of the Penal Procedures Code.

The passage and immediate implementation of the Anti-Corruption Law remains a key challenge. Development partners seek to enter a dialogue with the RGC to better understand the issues that prevent the progress in adopting the law. In addition, fundamental operational challenges such as human and financial resources will need to be reviewed as the law is enacted. It will be important that the budgetary and staff resources are adequately planned in order for the Anti-Corruption Body to carry out its mandates under the Supreme National Council Against Corruption.

In recent months progress has been made on the development of the Anti-Corruption Law Implementation Plan. Understanding that the RGC through MONASRI has developed a draft implementation plan for the anti-corruption law, we would encourage the MONASRI to continue to have an internal discussion with various national stakeholders in order to finalize it and have it approved by the Council of Ministers even if the law on anti-corruption is still not passed. Early approval of this implementation plan will allow the government to start preparatory works for laying solid foundation for an effective implementation of the law on anti-corruption. Otherwise, there will potentially be a significant time gap between passage of the law and its implementation. As noted in the February 2007 GDCC Joint Donor Statement on behalf of the development partners the implementation plan, if finalized and approved, would provide pragmatic steps for the government to take to ensure the efficient establishment of a functioning Anti-Corruption Body once the law is passed.

Regarding the development of a policy paper for access to information, technical assistance from the development partners will begin in June 2007 to assist MONASRI in developing the policy paper. Our experiences and observation on the development of various legal frameworks such as this have shown in order to avoid delay in obtaining Council of Minister approval it is critical that a cross-ministerial drafting team be involved at the onset of the policy drafting process. We recognize the significant challenge this poses and anticipate the support required. We support the involvement of a cross-ministerial drafting team for the policy so that once the policy is approved the immediate drafting of the Access of Information Law can commence with broad cross-ministerial support.

Lastly we acknowledged that since the last Consultative Group meeting there have been additional attempts by the RGC to report corruption cases that involved public officials. However, this continues to be an ad hoc process. The development partners would support a systematic approach to regularly report corruption cases. For example, on quarterly basis, the RGC should conduct a press conference and deliver a public report to the National Assembly that provides data on the progress made to fight corruption. The data should include but not limited to the following: 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, estimated monetary impact of the crime committed.

Public Administration Reform

The state of the civil service is one of the key binding constraints on public sector performance, growth, and poverty reduction in Cambodia. Given the seriousness of the problems afflicting the civil service - low pay, low skills, poor management, and thus low capacity - more reform is needed, and it is needed more quickly. Unfortunately, the pace of public administration reform—and the resources that the Royal Government has devoted to it—do not appear to match the seriousness of the problems caused by Cambodia's weak civil service.

Effective civil service reform needs firstly to improve civil service pay, in order to attract and retain skilled staff, secondly, to strengthen civil service management, in order to guarantee transparent and accountable merit-based hiring and promotion, and to ensure that wage expenditures are subject to full budget control; and thirdly, to rationalize civil service employment, to ensure that human resources are deployed in priority sectors and functions.

The past year has seen no progress on two of the most important JMIs agreed in March 2006. The JMI on improving pay and employment conditions by developing a medium term strategy to enhance remuneration appears to have received little serious attention. The current policy of 10-15% annual increases in the base civil service salary does not constitute a realistic strategy to significantly improve pay for Cambodia's civil servants. For example, a civil servant earning $35 today and receiving a 12% annual increase would not see her salary increase to more than $100 per month until the year 2016—and that's not even considering the effect of inflation or increasing real wages in the private sector. That is too long to wait for civil service reform.

Given high rates of economic growth and rising tax collections, there are more resources available to increase civil service wages in a fiscally sustainable manner. Moreover, with oil revenue likely to become available, it is even more pressing to develop a credible medium term policy now. What is needed is a strategic approach that targets scarce resources in a way that actually makes a difference.

What is perhaps most disappointing is the failure of the Public Administration Reform TWG. Development partners feel that there has been no meaningful dialogue on how to address these important issues. Engagement on the Government side has been limited to the Council of Administrative Reform Secretariat. There is a need to revisit the TWG composition to include other key ministries such as the Ministry of Planning, the Ministry of Economy and Finance, the State Secretariat for Civil Service, and other ministries that are actively engaged in a range of public administration reform measures. Unfortunately, development partner support has been waning over the past year, due to the inability of CAR to engage partners in a meaningful dialogue. Resources in the form of grants and projects have been provided over the past several years, but there is a sense that they have not been used effectively: outputs have been minimal and of questionable quality.

The other JMI that is off-track is the establishment of Merit Based Pay Initiatives (MBPIs) in other ministries. The MBPI is a pilot initiative designed to spearhead civil service reform at the line ministry level. The essence of the MBPI is to introduce into the civil service higher pay coupled with meritocratic selection and performance management on a sustainable basis. The first MBPI was launched in MEF in 2005 and is proving to be an important incentive for moving forward the PFM Reform Program. Moreover, there has been some important learning by doing

taking place and MEF is improving the MBPI model over time, most recently by revising the MBPI management manual to incorporate lessons learned from the first years of implementation.

On the other hand, while there has been little progress on developing new MBPIs since 2005 there are now signs of promising developments. Serious discussions on developing and implementing MBPIs in a range of ministries, including the Ministry of Health, the Ministry of Interior, the Ministry of Commerce, and Ministry of Youth, Education, and Sport, and the Ministry of Land Management, Urban Planning, and Construction, are taking place.

Development partners stand ready to support implementation of the MBPI. Resources are available, but it is important that the Government bear an increasing share of the costs over time, or sustainability will be at risk. In the case of the PFM MBPI, the Government is currently bearing 11% of the costs of the MBPI, but its share will increase annually, arriving at 35% by 2011. If the Government were to adopt the same approach in other line ministries, the overall quality of the civil service could be improved greatly at reasonable cost. The current policy of dedicating an annual sum to small but across the board pay increases could be modified to dedicate increasing funds to rolling out MBPI while also preserving an across the board raise necessary to meet or slightly exceed inflation. This would guarantee an annual pay increase for all civil servants while allowing the Royal Government to use higher targeted increases through the MBPI to actually improve civil service performance and thereby provide better services to Cambodian citizens.

CAR has also developed the Priority Mission Group (PMG) model, and requested financial support from partners for PMGs. Development partners have, however, repeatedly expressed their concerns about weaknesses in the design and implementation of the PMG model—but there has been no progress on improving the model. Until the PMG model is improved, few partners are likely to support it financially.

The development partners believe that reform of public administration is essential if there is to be progress in implementing the Rectangular Strategy and NSDP. We are concerned that there has been such little progress, and appeal to the Prime Minister to consider how this important work can be reinvigorated.

Decentralization and De-Concentration Reform

The development partners recognise that there is a strong inter-dependence between D&D, legal and judicial reform, anti-corruption reform, and public administration and public finance reform. The success of the D&D reforms will fully depend on strong RGC intra-governmental cooperation on all reforms underway.

The second Commune Council elections on 1 April 2007 call for further optimism of advancing local democracy in Cambodia. While some issues remain (e.g. voter registration, equal access to media, and complaints processes) the elections were conducted in an atmosphere marked by less violence, threats, and confrontation than in previous elections. We encourage the RGC to address the issues that remain prior to the July 2008 National Elections. Recent research confirms changing popular perceptions on the commune councils. The perception of the vast majority of people is that the commune councillors respect ordinary people and think that they deal with problems that people present them with. Despite inadequate resources and that the reform of the rest of the sub-national state administration is lagging behind, important steps have been taken to rebuild political legitimacy and primary accountability at the commune level.

We welcome the Royal Decree of August 2006 establishing the National Committee for the Management of Decentralization and De-concentration Reform (NCDD), Chaired by the Minister of Interior and composed of select Line Ministries. This is an important start, but bringing the relevant Sector Line Ministries on board is of critical importance. We appreciate the guidance given by NCDD in the phasing out of Seila and transferring of the staff to MOI to maintain and further develop systems, structures and procedures that were established under the Seila programme in order to implement the 2007 NCDD annual work plan and budget of nearly $60 million. We urge the Royal Government of Cambodia to support the implementation of an effective NCDD structure where line ministries and institutions can engage more efficiently in the sub-national reform agenda. We are looking forward to the NCDD and its working groups taking the lead in the design of the National D&D Program that will promote greater alignment of government, civil society and donor support and enhance democracy and impact the Cambodian Millennium Development Goals.

The success of D&D reforms is dependent on RGC intra-governmental cooperation and establishment of robust systems of dialogue between various government stakeholders, including the development partners and civil society. The drafting of the organic law on sub-national governance and the design of a national D&D program are the key actions around which dialogue can occur on legal, institutional, financial, and planning issues. The time is right to create the necessary sub-committees and working groups as provided for in Articles 9 and 11 of the Royal Decree to advance the Decentralization and De-Concentration (D&D) reform agenda.

D&D is a thematic area where regular meetings between the RGC and development partners, in the form of a functioning TWG, are essential. Since the last Consultative Group meeting in March 2006 there has been one TWG meeting (May 2007). As a consequence the ability of development partners to communicate with the RGC in a structured manner on the JMIs and the substance and process of the D&D reforms have been adhoc and inadequate. An annual progress report was submitted from MOI/NCDD to the GDCC Secretariat ahead of the 9th GDCC Meeting in February 2007. It reports progress with references to a TWG Action Plan that was never consulted with development partners and the status of it remains unclear. The development partners view the TWG as the key for improved communication on substantive governance issues and aid effectiveness challenges. We recommend that the D&D TWG be used as a mechanism to engage in a substantive exchange of issues and options for the RGC's sub-national government reform agenda with the active involvement of key line ministries, development partners, and civil society.

The development partners stand ready to work closely with the government to further strengthen the voice of local people, to empower local institutions to become more responsive and accountable to the citizens and to continue to provide transparent and accountable investment for local development. We feel confident that the government will continue its commitment to D&D in its strategy to strengthen and expand local democracy, to promote local development, empowerment and to reduce poverty.