

NCDD-Secretariat / GIZ

Developing decentralization and local governance policies through the IP3 implementation

Mission Report
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Preface

This consultancy was meant to help draft the work-plan of the NCDDS “Policy Division”, a key unit in the “new” NCDDS as envisaged by the IP3.

An attempt has been made to clarify *why* policy development is needed, map out *what* policies need to be developed, and suggest *how* the policy development process should be managed, through a combination of central-level policy dialogue and field-level experimentation. The outline of a first policy output of the IP3: a “District Charter” to build confidence and leadership of District Councils, has also been suggested.

Yet the development of a full-fledged work-plan, confirming and sequencing the tasks already outlined in the IP3 document, will have to wait for the NCDDS Policy Division to be actually established and staffed.

The ability of the NCDDS (as IP3 program coordinator) to deliver the policy outputs of the IP3 will eventually depend on the proper resourcing of the Policy Division, but also, more generally, on the RGC-wide recognition and support for the new role that NCDDS is meant to play in policy formulation.

A source of concerns is that the very idea of a “new” NCDDS¹ one with much greater responsibilities for formulation of democratic decentralization, improved local governance and local development policies, while generally endorsed by the NCDD with the approval of the IP3, has not yet been the object of a more formal agreement within the RGC and has not resulted in a new NCDDS constitutive Sub-Decree.

Nevertheless, pending the approval of such Sub-decree, the enhanced role of NCDDS in originating policies and monitoring and evaluating the delivery of the IP3 policy outputs, could be implemented by introducing appropriate provisions (on the NCDDS role in policy origination and evaluation) in the Memorandums of Understanding (MOU) that NCDD is about to sign with MOP, MEF, MOI, SSCS, and C/S League to assign responsibilities for implementation of the IP3 Sub-programs.

¹ as developed in Appendix 1.2 (p.229) of the IP3 document

Executive summary

The National Program, and its IP3, has been primarily designed to implement the sub-national governance and public administration systems foreseen by the Organic Law and its regulations.

But the IP3 was also explicitly designed to deliver *not only* “institutional development” outputs (the development of organizations, procedures and capacities of the SNA) or “sector outputs” (the actual benefits of local development) , *but also* “policy outputs”, which clarify, complete and further develop the policy and legal framework of decentralization reforms, good local governance practices and local development promotion.

These policy outputs fall in two categories:

- *Decentralization reform policies*, (to be adopted by the State), which (i) bring clarity to the extent of autonomy and accountability of the new SNA, and accordingly (ii) improve the sub-national planning system (iii) change the sub-national financing system (iv) start reassigning functions across the public sector and (v) empower SNA to manage and develop their own human resources.
- *Local governance and development policies*, (to be adopted by the SNA) which (i) promote informed representation and deliberation practices in local Councils,(ii) establish participatory governance and social accountability systems, (iii) promote gender equality,(iv) address the challenge of climate change and last, but not least (v) promote local economic development

To move forward, a fundamental clarification of the very nature of the SNA, is needed to inform all policy development. Three points need attention.

- *The first* is to elaborate the concept of *local autonomy* and stress that SNA are empowered by the O.L. with a “*general mandate for democratic development*”, which means that, within the limits of their discretionary resources, they can undertake *any activity* for local development, which are neither prohibited, nor *exclusively* assigned to another public sector agency, by national law. Simultaneously it should be stressed that, in the exercise of their general mandate, the SNA *should be free* to take initiative without detailed opportunity controls and related bureaucratic requirements by State agencies, whose intervention should instead be limited to codified legality controls.
- *The second* is to clarify that the SNA and the Central State Administration (CSA) systems *are two distinct systems and the first is not a component of the second*. The two systems operate within a Unitary State and under national law, which must define for the first the scope of its autonomy and accountability and for the second the responsibilities of *oversight and the powers of intervention*. The concept of “unified administration” advanced in the O.L. should be clarified. It cannot be interpreted as the structural unity of the two administration systems (CSA and SNA), but as a requirement for strong and effective mechanisms for inter-governmental cooperation and integrated action of the two systems, in full respect of their relative autonomy.

- *The third* is to recognize, manage and eventually resolve, the contradiction created by the “form of government” proposed by the O.L. This assigns all legislative and executive powers to the Councils and suggests what in international practice is known as the “weak executive” model. However, in practice the “weak executive” role is assigned to a “strong governor”, who is also the head of a de-concentrated State administration increasingly unified and accountable to him. This, combined with a lack of clarity on what executive powers of the Councils are actually delegated and which ones are kept, introduces the risk of an inversion of roles, which would make the Councils function more as advisory boards of the Governor than as policy makers whose decisions must be implemented by the Governor under the strict accountability principles indicated by the O.L. (ref. art 158)

Based on the above, policy development work under the IP3 could be initiated and should be carried out through two concurrent approaches:

- **Central-level policy formulation.** This is the task of a new and well resourced Policy Division of NCDDS, whose scope of work however will have to be endorsed by NCDD. An NCDD-wide consensus is necessary on the new role for NCDDS as *originator* of policy proposals for discussion in the NCDD Sub-Committees. The actual policies to be developed have been identified in the NP and IP3 and are summarized in this report, but prioritization and work-planning will have to wait for the actual establishment of the Policy Division.
- **Field-level policy experimentation.** This is the task of the Program Division of NCDDS, which should promote policy experiments in selected Districts/Municipalities on any of the decentralization and local governance policies indicated above (and more in detail in the report). Special attention should be given to experimentation with active citizenship initiatives, gender mainstreaming in local government, improved planning and programming processes, innovative service delivery modalities, and promotion of local economic development.

Finally, consideration must be given to the role of the SNA themselves in contributing to, and building “from below” a constituency for, policy development. This requires a new understanding of *capacity building* as political and administrative *empowerment*.

It's true that Councils' capacity must be built, **but this takes more than guidelines/manuals and related training.** These are important and should eventually be provided, **but the danger exists that relying only on strictly prescriptive manuals, may entrench among Councilors an attitude of dependence and passivity, rather than confidence and initiative.**

Many councilors currently come from the ranks of the central state administration. Their culture is one of bureaucratic compliance, not political initiative. They are used to strict hierarchical controls and are concerned first and foremost about “not making mistakes”. They are neither claiming for autonomy nor are inclined to take initiative (and inevitably also risks), mobilize local resources and promote *local* development as an *additional* contribution to the CSA efforts. So, **while training is essential and manuals are useful, the critical task is to build Councils' confidence** encouraging them to make use of their general mandate, take initiative and show leadership.

A useful step in this direction would be to empower the Councils to discuss, vote and adopt *their own Charter* (or statute) and based on that, develop and approve their internal operating rules and regulations. The act of discussing, refining and approving the Charter would provide a “new foundation” for the SNA and would be, in and by itself, a major capacity building exercise.

The Charter, building on the existing legal framework, clarifying it and making it more specific, should regulate the way in which the legal entity “District” or “Municipality” is organized and functions. For example, a District / Municipality Charter could specify:

- a. The prerogatives and mutual relations of the organs of governance (Council, Board of Governors, Governor), including the extent, and modalities for exercise, of the executive powers of the Council delegated to the Board of Governors and Governor.
- b. The guarantees and rights to participate in the Council's activity that are extended to the members of the minority groups within the Council
- c. How to exercise the legal representation of the District/Municipality, including representation in a court of law.
- d. How participatory governance and social accountability should be implemented and in particular how active citizenship and popular initiative should be promoted.
- e. How the planning and programming activities of the District/Municipality should be organized and what documentation should be produced
- f. How local finances should be managed and to which extent and under which form, responsibility for such management should be shared between the District/Municipality and the departments of the MEF (Treasury and others).
- g. How the policy-making and administrative action of the Districts/Municipalities should be made responsive to the needs and priorities expressed by the constitutive Communes and Sangkats
- h. How the District/Municipality should collaborate with other entities, including the de-concentrated State administrations, the provinces and private, community and volunteer organizations.
- i. How the District's and Municipality's own administration should be organized and function, how its human resources should be hired, managed and developed and what modalities should be used to deliver services and promote local development.

Model Charters could be developed by the NCDDS and made available to Districts / Municipalities, indicating those issues that lend themselves to local adaptation, for discussion and deliberation by the Councils.

The Charter should be deliberated with a vote of two thirds of the Councilors. A similar majority should be required to modify it if necessary. The Charter should become effective after its legality has been certified by the Ministry of Interior. It might be introduced first in a set of **pilot districts** selected also for advanced policy experimentation within the IP3 as indicated above, but it should quickly be extended to all districts and municipalities in the country starting possibly in late 2011.

An outline of a model District Charter is annexed to this report..

PART 1: Why policy development is necessary?

In Cambodia, the policy and legal framework of decentralization reforms, as well as the policies and legislation that may enable or constrain better sub-national governance and greater local development, are still in the making and *must evolve* to ensure that decentralization reforms deliver their intended democratic development benefits.

While the Strategic Framework of 2005, the Organic law of 2008 and the spate of regulations of 2010 do provide a starting point, they are clearly the product of uneasy political and bureaucratic compromises that were possible at specific points in time. As a consequence the current legal framework remains characterized by both ambiguities and incompleteness.

Ambiguities affect the architecture (the structures and systems) of sub-national governance and public administration. They refer mainly to (i) the scope of the Councils' autonomy, (ii) the forms of their accountability to citizens and to the State and, critically, (iii) the very nature of their own administrations and their relation to the Central state administration.

Here, to move forward, three main points must be addressed

First there is a need to clarify the concept of local autonomy.

In the lexicon of the Organic Law (OL), this is defined as “*a situation in which councils themselves can effectively administer the work assigned or delegated by this Law*”. A restrictive interpretation of this language would actually limit the sub-national Council to act as “*effective*” implementers of the State functions, as and when “*assigned or delegated [to them] by the Law*”. In other words their role would just be that of “*effectively administer*” policies, programs and projects in which the Central State Administration involves them through assignment or delegation.

Instead, a more progressive interpretation, should stress that sub-national administrations are also empowered by the OL with a “*general mandate for democratic development*”, which means that they can autonomously, and within the limits of their own resources, undertake any activity that promotes sub-national democratic development, as long as these activities are not prohibited, or exclusively assigned to another public sector agency, by national law. This clarification is not just for the sake of conceptual clarity, but for *the very practical reason* that Councils should be encouraged to show initiative and leadership and contribute to national development, not just by better implementing State policies in the localities, but by actually developing *their own policies programs and projects*, in response to a local political constituency, mobilizing additional local resources from such constituency and bringing genuine *local* development (that is development that leverages *local* resources of all kinds) to bear on the national development effort.

Second there is a need to clarify the concept of unified administration

This is a most critical point and lack of clarity on it is at the root of most other difficulties to move forward with functional assignments, sub-national public sector planning and financing

and sub-national personnel management. The fundamental question is about the nature of the sub-national administrations. Are these a component of the Central State Administration (CSA) system? Or they belong to a distinct Sub-National Administration (SNA) system?

A literal interpretation of the “unified administration” language of art.8 of the OL, could suggest that the Sub-national administrations (Salakhet, Salasrok, Salkrong, etc.) are indeed part of the CSA system, and that this arrangement is adopted because it *“aims at strengthening the unity of the State in order to facilitate all public administrative activities within its territory”*².

A more progressive interpretation, drawing also on the language of the OL glossary³, would instead stress that sub-national Councils should *coordinate* (through the Governor as their delegated CEO) the action of their own administration with that of the central State, without implying that these two administrations are, or should be, “unified”. In fact the sub-national administrations (the administrations of the new legal entities established by the OL) do not belong to the CSA system but to a distinct Sub-national administration (SNA) system cooperating with the CSA agencies (ministries and their de-concentrated departments and offices) in the frame of the national law of a Unitary State. As such there cannot be a “unified administration”.

As elaborated in Annex 2, the ambiguities concerning the “unified administration” concept stem from the confusion of a dynamic process by which, in the long run, most services delivery functions of the State and related administrative agencies, may end up being “absorbed” by the sub-national administrations, with the fact that such absorption is already a reality (which is clearly not the case) or can ever be a reality (as demonstrated by very decentralized countries where the State nevertheless keep certain functions and agencies⁴ operating in the territory of the local authorities). Said differently, where local authorities are established as separate legal entities under the public law, and entrusted with a set of public administration functions and responsibilities, there simply can no longer be a single or “unified” administration.

Again this is not a matter for academic discussion, but one that has serious and immediate practical consequences. It is precisely the lack of clear distinction between SNA and CSA systems that generates the current confusion about the planning and financing systems of sub-national authorities. Considering SNA as just territorial articulations of the CSA justifies (i) proposing a sub-national planning system which is actually about “localizing national planning” rather than about “local planning”, as in the current guidelines and (ii) conceiving SNA as budgeting units of the State rather than autonomous local authorities⁵

² (Art.8) This language seems to imply that a unified administration is a necessary feature of a Unitary State. This is obviously contradicted by all decentralized Unitary States around the world where multiple administrations co-exist and cooperate under the national law, and where in particular the administrative structures of autonomous local authorities are legally distinct from those of the Central State Administration.

³ See the definition of “unified administration” given in the glossary. While not completely clear, the definition suggests that Councils should “effectively coordinate” all services delivery in their jurisdiction “including services and development delivered by various ministries and institutions of the Royal Government aiming at responding to the needs of local residents”. It does not say that the Councils’ administrations and the departments and offices of the Ministries and institutions of the Royal Government are parts of the same “unified” administration system.

⁴ Depending on the country, these may be functions related to defense, justice administration, national treasury, etc.

⁵ It should be observed that, if indeed SNA were articulations of the CSA and their budgets were just items of the State budget (as are those of Ministries or other agencies of the RGC), the Councils would have no legal powers to actually “approve” such

Third, and perhaps most importantly, there is a need to recognize, manage and ultimately resolve the tensions and potential contradictions created by the sub-national “form of government” adopted under the OL.

With reference to international practice, such “form of government” could be assimilated to the “weak mayor” model. In fact, contrary to the “strong mayor” systems where executive powers are vested in a directly elected “mayor” (or chief executive), in Cambodia all legislative and executive powers are vested in the Council, which then exercises its executive powers through a board of governors headed by a Governor, who remain strictly bound to the Councils decisions and authorizations for any of their acts. Art. 158 of the OL, for example states that *“Where the board of governors or governor, makes a decision or performs any activity within the jurisdiction of the Council, but it has not been authorized by the Council, that decision or activity shall be invalid”* ⁶

The tension that this legal provision creates however is obvious, as the “weak mayor” position, is in reality assigned to *an unelected and very strong governor*. This in practice may turn the relationship around and introduces the very real risk of making the Council more an advisory body of the governor, than the policy making institution that defines what the governor should or should not do.

Managing this tension, and defending the spirit and the letter of the OL, will require a huge and sustained investment into building the confidence and capacity of the Councils, which are essential for them to play the leading role in local policy making that the OL wants them to play. But ultimately, the tension will be resolved only when the functions of the CEO of the Council (whether appointed or elected) will be *separated* from those of the Governor as head of the State administration in the locality. This should and could be considered first at District and Municipal level.

Besides addressing and resolving the above ambiguities and contradictions, there is a need to (i) complete and move forward the policy and legal framework of decentralization reforms with new or revised policies and regulations on functional assignments, sub-national planning and financing and local personnel management as well as (ii) develop policies for improved local governance and local development like gender mainstreaming, climate change management and LED promotion. These are discussed below.

PART 2: What policies need to be developed?

Policies to be developed throughout the implementation of the NP/IP3, may be broadly categorizes as :

budgets. They could propose them, influence them, etc., but the authority to finally approve them (as any other item in the State budget) would continue to belong only to the National Assembly, not to local Councils.

⁶The law however, contrary to what the “weak mayor” model usually implies, is not explicit about the fact that the delegated executive powers of the governor , must be specific (codified by Councils), can be modified and can be taken altogether back at the discretion of the Council.

1. **Decentralization reform policies.** These are policies to be adopted by the State, to move forward the decentralization process. Here NCCDS should focus on:
 - a. Lifting ambiguities in the OL, with respect to the autonomy and accountability of the new Councils as a pre-requisite to build their capacity
 - b. Changing the sub-national planning system
 - c. Changing the sub-national financing system
 - d. Moving forward with functional reassignments
 - e. Empowering SNA to manage and develop their own Human Resources
2. **Local governance and development policies.** These are cross-cutting policies that should be adopted by the SNA themselves, They include for example:
 - a. the development of informed representation and deliberation practices in local government,
 - b. the establishment of participatory governance and social accountability systems, including the promotion of civic engagement,
 - c. the mainstreaming of gender considerations,
 - d. the mainstreaming of climate change considerations, and..... last, but not least,
 - e. the promotion of local economic development

To move forward and develop all other policies in the above list above, the first and most important task is that of lifting ambiguities in the OL with respect to the very nature of the legal entities established by the law (see discussion above) and building the Councils' confidence and leadership.

The argument is often made that Councils' capacity must be built, and the common answer is that they need guidelines/manuals and related training. These are important, but the danger exists that such approach might entrench among Councilors an attitude of dependence and passivity, rather than confidence and initiative. Most Councilors currently come from the ranks of the central state administration. Their culture is one of bureaucratic compliance, not political initiative. They are used to strict hierarchical controls and are concerned first and foremost about "not making mistakes". They are not claiming the space of autonomy (power of initiative and immunity from opportunity controls) which the law would actually grant them and which they would need in order to take initiative (and inevitably take risks), mobilize local community resources and promote local development as an *additional* contribution to the development efforts made by the State. So while training is essential and guidelines/manuals are useful, the very first thing that Councils need is confidence, based on a proper understanding of their own autonomy, the understanding that they can take initiatives and are protected from invasive controls by the State and that they must only respond to the citizens for the results of their choices and to the State for the legality (not the opportunity) of their acts.

Before rushing to produce another set of guidelines and manuals (hopefully meant to help Councilors do a better job, and not just to protect them from potential "punishment" from the State), what NCCDS should do is to send a clearer message to the newly established SNA (immediately to Districts and Municipalities) on the scope of their autonomy, the way in which their legislative and executive powers can actually be exercised, the forms of their accountability to citizens and the to the State. The critical task is that of building confidence in

the newly created Councils encouraging them to make use of their general mandate for sub-national democratic development, in a pro-active way , showing initiative and leadership.

A way of doing that is to first empower the Councils to discuss, vote and adopt their own Charter (or statute) and based on that, develop and approve their internal operating rules and regulations. The discussion and adoption by the Councils themselves of a legal text (the Charter) which reflects their own understanding of the Organic Law and establishes the general rules by which they intend to operate, should be the initial step, and a major piece, of the capacity building effort to be carried out under the NP/IP3.

The Charter, building on the existing legal framework, clarifying it and making it more specific, should regulate the way in which the legal entity "District" or "Municipality" is organized and functions (see Annex 3 for an annotated outline)

A model Charter could be developed by the NCDDS and made available to Districts / Municipalities for discussion, local adaptation and adoption. The Charter should be deliberated by the District Council with a vote of two thirds of the Councilors. A similar majority should be required to modify the Charter if necessary. The Charter should become effective after its legality has been controlled and certified by the Ministry of Interior, and from that point on, should be seen as a State-approved, locally owned legal foundation of the District/Municipalities operation. It might be introduced first in pilot districts selected also for advanced policy experimentation in democratic development planning, financing and implementation (see below), but it should quickly be extended to all districts and municipalities in the country.

Importantly, the local discussion and adoption of the District/Municipalities charters could be a major step forward in building a constituency "from below" for broader decentralization policy development.

As discussed in the following section, new legislation and regulations are needed to start transferring regulatory powers as well as services delivery and development management functions to the SNA, and to the Communes and Sangkats. But the process cannot be imposed on District and Municipal Councils that are not only unprepared, but are actually "scared" and may be "unwilling", to assume the broader local development responsibilities associated with functional reassignment.

Similarly, the current sub-national planning process must be revised to introduce a critical difference between (i) a strategic visioning exercise which the Council should sponsor and animate, but to which multiple local stakeholders must contribute, and (ii) the District/Municipality corporate planning process to guide the action of the Council in the areas that it chooses to prioritize and the allocation of the resources under its control. But only a Council confident of its prerogatives as reflected in its Charter and well aware of the difference between itself and the governor-headed de-concentrated State administration, will be able to set up its own planning and budgeting committee to oversee its corporate planning process and use the Technical Facilitation Committee (TFC) for what it should actually be, i.e. a device for negotiation and coordination of the action of the sub-national administrations with that of

the de-concentrated state administration, and not as the principal mechanism for recommending the priorities and allocate the resources of the Districts' and Municipalities.

While there is nothing wrong with the Councils choosing and financing priority programs and projects that are then delivered through the State line agencies operating in the localities, the conditions must be created for this to be indeed an autonomous choice of the Councils. For this to happen, district and municipal planning should not be essentially turned into a process for line agencies to appropriate SNA resources for implementation of the routine sector activities that the lack of central financing has made impossible in the past.

Similarly, Districts and Municipalities must be confident about their autonomous status vis a vis the Central State Administration, to effectively claim for the necessary changes in the SNA law. The whole point of this change is in fact the recognition of Districts and Municipalities as autonomous local authorities with their own budgets separate from the national one and not as budgeting units of the Central State Administration. Immediately, and while the current law is still in place, efforts must be made (and reflected in the District and Municipalities Charters) to allow "de facto" what the current S/N finances law does not recognize "de iure", that is to enable District and Municipalities to operate as autonomous legal entities, by (i) designing the DM Fund to function as close as much as possible as an actual fiscal transfer mechanism, as opposed to a negotiated budgetary allocation and (ii) designing a District/Municipality budgeting process isolated as much as possible from the routine negotiations with the MEF to which all State budgeting units are subjected.

Finally an appropriate regulatory framework must be developed to enable the SNA to plan, and manage their human resources. While this framework is developed, and based on the general principles of the OL on this matter, The District and Municipal Charters could include interim provisions that enable Councils to develop autonomous plans with respect to their HR requirements and allow them to recruit contractual staff for key positions required to both strengthen the local administration and facilitate the policy analysis and policy making functions of the Council itself.

PART 3: How policy development can be undertaken?

The recognition of the ambiguity of the policy and legal framework is critical for both NCDDs to plan the scope and modalities of the work to be performed by its Policy Division, but also for DPs to shape their support to the IP3.

The very fact that the policy and legal framework remains substantially ambiguous and often contradictory, makes it difficult for DP to adopt a policy-based lending/granting approach, with aid disbursements tied to the implementation of agreed policies, first and foremost those supporting the autonomy and accountability of the Councils and the related sub-national planning and financing systems, or those concerned with gender mainstreaming or local economic development promotion, which are critical for the ultimate objective of DP assistance: poverty reduction through local development.

In practice, therefore, DPs are choosing a program-based support approach, aligning their assistance with the Government's NP and its IP3. This reflects a more realistic assessment, shared by both reform champions within the RGC and DP, that substantial policy development (not just implementation) is needed to make the ongoing reform of the sub-national governance and public administration system relevant for the objectives of local development and poverty reduction.

Having chosen the above approach, DP should actually (a) relax the request to "get the policy and legal framework right" upfront but (b) insist that the IP3 indeed produce "policy" and not only "institutional" and "sector", outputs and (c) ensure that such policy outputs are produced through a combination of "upstream" work with the NCDD Sub-Committees and "downstream" policy experimentation in pilot SNA.

This last point is of essence. In the implementation of the IP3, sufficient room should be made for critical "policy experimentation" in the field. Starting in a selected number of Districts and Municipalities new local governance and development practices (see below for priorities) should be introduced and adopted. This experimentation space should be used to make the concerned D/M Councils more self-confident and more assertive vis a vis the State Administration, claiming de facto the powers of direction and controls over the Governor and the local administration, that the OL gives them, but that in practice may be denied in the name of a misinterpreted "unified administration" model.

This would amount to building a constituency for policy reform from the bottom up and would be in line with how actually policy development has taken place in Cambodia since the late nineties. A lesson to be learned from experience in the last fifteen years is indeed that in Cambodia, (perhaps more than elsewhere) practice can shape policy at least as much as policy shapes practice. Then the key factor becomes the quality of the practice, as bad practice can indeed lead to bad policy.

A combination of bottom-up and top-down approaches might then be the best option for the development of a more progressive decentralization policy and legal framework. Action is needed at two levels.

- **Field-level policy experimentation.** To influence practice by providing SNAs (most urgently Districts and Municipalities) with proper guidance, support and encouragement to let them "breathe" and build their confidence as autonomous decision-makers and development managers, progressively freeing them from the subordinate position they currently experience vis a vis those very organs of local governance (governors and local administrations) that should implement their policies and be controlled by them.
- **Central-level policy formulation** To strengthen the capacity of NCDDs to develop the policy and regulatory framework of the reforms through a well resourced policy division, and continue to champion within the RGC the establishment of a genuine system of autonomous and accountable local authorities, overcoming eventually the crippling limitations of the "unified administration" model on which the OL is built.

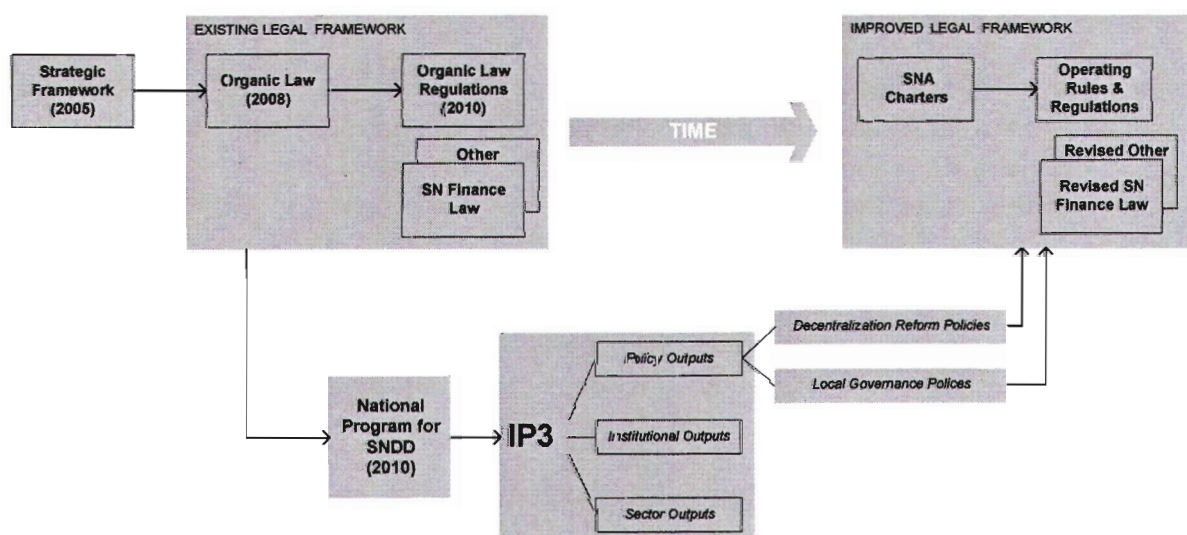
Through the first approach, the ambiguities and limitations of the OL may be resolved by developing "SNA Charters" and "Operating Rules and Regulations" that, based on a

progressive interpretation of the OL and subsequent regulations, would help build the confidence and capacity of Districts and Municipalities to both (i) claim and practice an autonomous role of the SNA in promoting local development and (ii) demonstrate the viability, and advantages for the Cambodia State, of a genuine system of autonomous and accountable SNA.

Through the second approach the ambiguities of the OL should be recognized and faced by NCDD-S itself in the first place, and then gradually resolved in favor of a genuine system of Cambodian local authorities, confronting different views in the policy debate within the NCDD and its Sub-Committees.

Field-level policy experimentation

Eventually, the legal framework for the operation of SNA will need to be clarified and improved. However, to wait for that to happen, before supporting action on the ground would be a mistake. The diagram below summarizes the relation between the implementation of the National Program/IP3 and the development of the policy, legal and regulatory framework within which the Cambodian Sub-national Administrations are bound to operate.



In the next three years therefore policy development must be supported through **extensive policy experimentation** on the ground promoted by capable NCDDs-recruited change agents (the Provincial and District NPA) and financed and managed as an integral component of the IP3.

Experimentation in all 4 areas of the strategy (systems and structures, functions, resources, personnel) is going to be critically important:

1. With respect to **systems and structures** policy experimentation is critically needed in the following areas:

- a. Developing and adopting Councils Charters and Operating Rules and Regulations that enhance SNA Councils' confidence, leadership and autonomous operating capacity
 - b. Practicing innovative forms of participatory governance and social accountability, promoting, in particular active citizenship and people's initiative in local policy making
 - c. Developing dedicated structures and capacities that help Councils make informed deliberations, develop their own policies and programs, and evaluate the performance of the Board of Governors and Administrations in implementing them.
2. With respect to **functions** policy experimentation is critically needed in the following areas:
 - a. Design , and implementation of social services delivery and local economic development programs undertaken as part of the general mandate of the SNA and financed through their discretionary resources and/or beneficiaries/partners contributions
 - b. Delegation of specific functional responsibilities to District and Municipal administrations, and related contractual arrangements for central/provincial financing and oversight.
 - c. Assignment of some basic services delivery responsibilities (pre-schools, etc.) to Communes and Sangkats, as exclusive and mandatory functions, with related conditional transfer of resources.
 - d. Implementation of innovative modalities for local services delivery, including two-ways delegation arrangements between D/M and C/S, joint contracting of services and works and set up of district/municipal companies with or without private sector participation.
3. With respect to **resources** , and resources management , policy experimentation is critically needed in the following areas:
 - a. Set up and strengthening of Planning, Budgeting and Internal Controls (PBIC) Committees of the District and Municipal Councils
 - b. Improvement of development planning (as foreseen by the IP3 sub-program 5), including (i) distinct strategic community visioning and corporate SNA planning , (ii) identification of District and Municipal strategies for services delivery, environmental management and LED promotion, and (iii) preparation of *corporate* development plans, programs and budgets of Districts and Municipalities as autonomous legal entities of the Cambodia's public sector.
 - c. Development of Spatial Development Frameworks (SDF) as integral components of the District and Municipalities' 5-year development plans

- d. Use of District and Municipal discretionary funds to leverage additional local resources, and associate community and volunteer organizations to the design and implementation of District and Municipal programs, with particular focus on social services delivery and local economic development promotion.
4. With respect to **personnel** and human resources management and development policy experimentation is critically needed in the following areas:
- a. Integration of line agency staff into the District and Municipal administration, in conjunction with the piloting of delegation arrangements for decentralized services delivery (see above)
 - b. Recruitment and management of key contractual personnel of the District and Municipal Administrations, including personnel to service the Councils' policy analysis, monitoring and evaluation needs.
 - c. Design and piloting of innovative formal and on-the-job training programs for staff of the District and Municipal Administrations.

Central-level policy formulation

Policy experimentation at sub-national level, must be accompanied by an enhanced capacity of NCDDs to animate **a government-wide policy dialogue** and forge a progressive decentralization policy consensus among all agencies of the RGC. Most policy areas and issues on which the NCDDs Policy Division should focus its attention have already been identified in the National Program and the IP3. The following table summarize and complement the content of the IP3 document.

TABLE 1

<u>POLICY AREA</u>	<u>POLICY ISSUES</u>	<u>Guiding Principles and Long-Term Vision</u>	<u>Feasible Policy and legislation developments under IP3</u>
<u>SN A structures and system architecture.</u>	▪ How can the <u>difference</u> between the CSA and SNA systems be clarified and communicated across the RGC and to the Cambodian society at large? ▪ What is the, scope and importance of the SNA <u>autonomy</u> (Political, Administrative and Fiscal)? ▪ What are the forms of <u>accountability</u> of the Councils and how can they balance, but not negate local autonomy?	▪ The Sub-National Administrations (SNA) like the Communes and Sangkats from which they derive their democratic legitimacy, <u>ARE NOT</u> appendices of the Central State Administration (CSA), but constitute, together with the C/S a <u>distinct system of local governance and public administration</u> which is both <u>autonomous</u> from and <u>accountable</u> to the CSA , with which it <u>cooperates</u> within a Unitary State and under the National Law ▪ <u>Autonomy</u> is critical for "local development". Councils should be empowered to both : ○ influence the design and oversee the implementation of <u>national</u> policy/programs in their jurisdictions and ○ develop their own <u>local</u> policies and programs and mobilize additional resources to implement them ▪ SNA Autonomy should be balanced by their <u>Accountability</u> both downwards (to citizens) and upwards (to the CSA). The Law should establish	▪ An NCDD-endorsed policy paper on the scope of SNA <u>autonomy</u> and the forms of their <u>accountability</u> to citizens and CSA. ▪ Law and regulations on Conflict Resolution among SNA and between SNA and CSA ▪ Policy paper on the establishment of a Permanent Conference of CSA and SNA ▪ New guideline on the TFC of P/M/D to function as mechanisms of inter-governmental cooperation, <u>not</u> as "Committees" of the SNA's legislative Councils

		the proper balance, and ensure that SNA autonomy affirmed <i>in theory</i> is not negated <i>in practice</i> by excessive and invasive controls of the CSA, but remains subject to fundamental legality rules.	
	- How can the horizontal <u>accountability</u> of Governors and local administrations to SNA Councils be strengthened? - What are the options for replacing Governors with <u>elected/appointed D/M Mayors</u>?	- SNAs are <u>integral local authorities</u> with (a) a deliberative Council, (b) a CEO and (c) an Administration of their own. Since the CEO role is currently performed by Governors who also head the CSA agencies in the localities, mechanisms should be put in place to ensure that they remain strongly accountable to the Councils and help build their policy-making capacity. - Eventually, and starting at the D/M level, options (conditions, modalities and timeframe) for electing or appointing <u>District / Municipal Mayors</u>, distinct from the Governors, should be developed.	- Policy note on <u>internal SNA</u> accountability mechanisms - Policy note on <u>election/appointment</u> of District/Municipal Mayors [Clarification / Regulation/Amendment of the OL may be necessary]
	How to overcome "bureaucratic standardization" and support the different requirements of <u>Regional</u> (Provinces), <u>Metropolitan</u> (C+K+S) and <u>Local</u> (DM+C/S) systems?	- Policy should recognize that four types of territorial systems (Regional/Metro/Municipal/District) have different functions, different problems and different paths of future evolution. - There should be <u>no hierarchical subordination of one SNA to another SNA</u>. Instead <u>all should be subordinated to the State</u>, which may choose to delegate to one tier some of its control functions. (principle of non-subordination) - The <u>strategic priority</u> of decentralization reforms in Cambodia is the establishment of autonomous District/Municipality local authorities. The IP3 should keep firm the "District/Municipality Focus".	An NCDD-endorsed policy statement that breaks with the "bureaucratic standardization" approach and lays the foundations for "differential treatment" of 4 SNA Systems (C+K+S, P, D+C+S, M+S)
	What is the scope, and modalities for exercise, of the State responsibility for support and supervision of the SNA system?	- The CSA responsibilities of support (T.A. and Facilitation Services) and supervision (Legality Controls and Performance Monitoring) need to be <u>spelled out, distributed and formally assumed</u> by the concerned parties including MOI/DOLA, MEF/LFD, MOP, Sector Ministries (for delegated services delivery and regulatory powers) - In particular there must be a clear definition of the SNA matters subjected to ex-ante legality controls by the State - Clarity must also exist on the modalities through which such State responsibilities are going to be carried out, including the extent of their delegation to the Provinces (legal entities belonging to the SNA system, <u>not</u> the CSA). - Options for the re-engineering of MOI/DOLA or the establishment of a new Ministry dedicated to the oversight of the sub-national authorities should be studied	- A policy paper on the principles, scope and modalities for implementation (including delegation to provinces) of the State responsibilities for support and supervision of SNA - A study on the options for re-engineering of MOI/DOLA or the establishment of a Min. of Sub-National Authorities - A policy options paper on the scope and modalities of CSA monitoring of performance of the SNA.
	How to enable the collective voices of different types of SN authorities?	- SNA of a similar type should be able to form their Association for the purpose of: - Collective representation of their interests and negotiation with the CSA - Self-help and mutual support for development capacity building	Policy paper on the establishment, organization, functions and resources of Districts and Municipalities Associations
POLICY AREA	POLICY ISSUES	Guiding Principles and Long-Term Vision	Feasible Policy and legislation developments under IP3
SN Functional assignments	What is the SNA "General Mandate" for Sub-national democratic development and how is it best implemented?	SNA are given by the OL a "general mandate" for SNDD. This should be interpreted as <i>the power of the Councils to undertake, within the limits of their own resources, any activity deemed to be in the interest of their citizens, which the National Law does not prohibit and has not exclusively assigned to any other</i>	- Policy note clarifying the nature of the SNA General Mandate (and removing confusion with "permissive functions") - Policy guidelines for <u>autonomous</u> SNA action in the area of Social

		agency. While the principle can be evinced from the OL, the language (<i>permissive functions</i> of Councils' choice) needs to be clarified. Respecting the discretion of the Councils, guidelines on opportunities, and good practices for local autonomous action in SSD, NRM and particularly in promotion of LED should be disseminated (NB: these <u>are not</u> "national planning directives" but guidelines to build awareness and confidence in SN Councils)	Service delivery (SSD) Env. Protection and Nat. Resources Management (NRM) and promotion of local economic development (LED)
	What specific regulatory powers and services delivery functions should be transferred to SNA and through which modalities?	The IP3 asks that NCDD issue instructions to all Ministries on process and timeframe for the functional review and reassignment processes, including the integration of NCDD-S Advisers in the relevant Sector Working Groups The IP3 policy choice is to initiate the functional reassignment process by contractual delegation of selected powers and functions to D/M	- NCDD resolution on systematic RGC-wide functional review and reassignment process - Policy Notes on contractual delegation and contract templates for specific services
	What functions can be immediately transferred to Communes and Sangkats and under which modality?	The IP3 foresees the immediate transfer to C/S Councils of some functions. It requires that NCDD-S engage with concerned Ministries to identify functions that are doable for the vast majority of C/S, and do not require major funding or staff/organizational changes. It also requires that a pilot project be started in late 2011 and evaluated at the end of the IP3 with the purpose of extending the above functions' assignment to all Communes and Sangkats in the next phase of the NP-SNDD execution.	- Study to (a) identify functions transferable to C/S and (b) to design appropriate conditional transfer mechanisms. - Design, of pilot project and, based on their evaluation, drafting of policy on transfer of selected C/S functions.
	What modalities should be adopted by SNA for local services delivery to minimize bureaucracy and improve efficiency and quality?	Multiple modalities are possible and should be regulated, including: (a) By own forces when the set up of a dedicated institute or company is not warranted. (b) By concession to private or non-profit organizations (c) By local fully or partially publicly-owned company for revenue generating services (d) By set up of non-profit institutes for social services delivery	- Policy paper on services delivery modalities to be considered by SNA - Regulation of the OL on services delivery modalities that can be adopted by SNA and criteria for their selection
POLICY AREA	POLICY ISSUES	Guiding Principles and Long-Term Vision	Feasible Policy and legislation developments under IP3
<u>SN A revenue & expenditures management.</u>	- How should SNA be financed to deliver SNDD? - What financial management systems and procedures should be adopted by SNA to safeguard their autonomy and enhance their accountability?	A range of funding instruments is foreseen to be developed under the IP3. For D/M these include: (i) general-purpose transfers (ii) purpose-specific transfers, (iii) contractual payments for delegated functions, (iii) own sources revenue (tax and non-tax). These require to be regulated Provinces may continue to be funded through appropriations of the national budget. In other words <u>they may continue to be treated as budgeting units of the national system, rather than as autonomous local authorities.</u> The formula to distribute such appropriations could however be improved. Ultimately a new version of the Law on the Financial Regime and Management of Public Property of SNA, may need to be developed and a policy paper should be adopted by the NCDD at the end of the IP3 to guide such revision	- Regulation of the Districts and Municipalities (DM) Fund - Policy Note on the establishment of the SN Investment Facility (SNIF) - Policy note on conditional transfers (depending on functional reassignments) - Policy paper on SNA potential own-source (tax and non-tax) revenue sources - Policy note on Improved modalities for financing Provinces - Regulations and guidelines to implement the Law on the Financial Regime and Management of Public Property of SNA [list to be developed] - Policy Note on revision of the Law on the Financial Regime and Management of Public Property of SNA
	What planning system should the SNA adopt, to both allocate their own	the IP3 foresees a SN development planning system which: recognizes the difference between Regional,	Revised Inter-ministerial regulations on Development Planning and Investment Programs by SNA

	resources and help "localize" national plans and programs How can the sectoral and spatial planning approaches be combined in an integrated and strategic development planning approach at S/N level?	Urban, Metropolitan and Mixed-Areas Planning - establishes a clearer differentiation between the role of the SNA's and their Councils and deconcentrated administration in the planning process - supports an autonomous process of informed policy formulation by sub-national Councils. - stresses the identification of strategic priorities, based on both needs and opportunities, and the related mobilization of local and external resources - aims at integrating spatial-environmental considerations into the preparation of SNA strategic development plans	4 sets of Revised Guidelines for Provinces, Districts (and C/S) , Municipalities (and S) Capital (and K/S) - Policy paper on integration of Development and Spatial Planning in Cambodia
POLICY AREA	POLICY ISSUES	Guiding Principles and Long-Term Vision	Feasible Policy and legislation developments under IP3
<u>SNA Human resources management and development</u>	How should the HR of SNA be managed? What rules and incentives should be created to obtain a more efficient, dedicated and performing government labor-force in the SNA? How should the HR of SNA be developed?	The IP3 aims at building the competencies of the SNA HR to operate in an autonomous administration, under their elected Councils; To this end it supports: - temporary initial HR management arrangements, and incentives (POC) for officials with incremental duties associated with IP3; - a comprehensive HR development strategy and CD program , and ultimately - A separate Statute for personnel of the SNA under the civil service code, enabling SNA to better manage their own HR	- Policy paper on SNA personnel management and capacity development - Legislation covering SNA staff management , pending the enactment of the SNA separate civil service statute - Guideline on the Integration of Civil Servants of Capital, Provincial , Municipality Halls, into the SNA - legislation on Separate Statute for Personnel of the Sub National Administrations - Policy and technical options for establishing a National Training Institute for SNA personnel.

PART 4 – Recommendations to NCDDDS management

1. Draft and submit to the endorsement of NCDD **a new Anukret** (based on Appendix 1.2 in the IP3 document) reflecting the new structure and policy origination role of NCDDDS
2. Pending approval of the new organizational structure, recruit a high-level national professional as full-time **Head of the Policy Division** to be responsible for prioritizing and guiding the NCDDDS policy development work outlined in this report
3. Finalize the **Agreements for implementation of the IP3 sub-programs**, and reflect in the respective Annual Work-plans and Budgets for 2012 (and 2011 where feasible):
 - a. the policy and legal documents that NCDDDS should submit to the discussion of the NCDD Sub-Committees. *(prioritize from Sect.3.2 above)*
 - b. the scope of the policy experimentation to be carried out in the sub-programs *(prioritize from Sect.3.1 above)*
4. Finalize by August 2011, **model District and Municipalities Charters** (see outline in Annex 1), select a number (10?) of pilot Districts/Municipalities and initiate the process of adaptation and adoption of the Charter in late 2011/early 2012.