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Assistance technique et renforcement des capacités

Note verbale datée du 29 septembre 2009, adressée au Haut-Commissariat des Nations Unies aux droits de l'homme par la Mission permanente du Royaume du Cambodge

La Mission permanente du Royaume du Cambodge auprès de l'Office des Nations Unies, de l'Organisation mondiale du commerce et des autres organisations internationales à Genève présente ses compliments au Haut-Commissariat des Nations Unies aux droits de l'homme et a l'honneur de lui faire tenir ci-joint, pour distribution en tant que document de la douzième session, les observations du Gouvernement royal du Cambodge (voir annexe*) sur le rapport du Secrétaire général sur le rôle joué et le travail accompli par le Haut-Commissariat pour aider le Gouvernement et le peuple cambodgiens à promouvoir et protéger les droits de l'homme (A/HRC/12/41), qui doit être présenté au Conseil à sa douzième session.

* La présente lettre est distribuée dans toutes les langues officielles. L'annexe à la lettre est distribuée telle qu'elle a été reçue, dans la langue originale seulement.

Annexe

KINGDOM OF CAMBODIA

Comments on the Report of OHCHR in Phnom Penh

AUGUST, 2009

A. PRISON

1. **Paragraph 10:** The report of OHCHR raises some minor difficulties in relation to prison issues from the 7 visits by OHCHR to a number of provincial prisons in August 2009. The Royal Government of Cambodia, on behalf of all citizens of Cambodia, expresses its thanks for the attention paid by the national, international communities as well as development partners relating to prison issues. In fact, the Cambodian Human Rights Committee has, so far, inspected 24 provincial and municipal prisons, and found out that the current situation of management in prisons is much better than in the previous years, although there remain some minor points that the RGC is trying to improve further.

2. **Paragraph 12:**

(a) The increase of prison population does not occur in all provincial and municipal prisons; this occurs only in a small number of provincial prisons, because the relevant authorities in those particular areas have cracked down on many crimes. Moreover, the conditions of detention of prisoners in some provinces represent the best that Cambodia can possibly do; we are not yet able to apply international standard; however, Cambodia will continue to make efforts to conform to that standard. At present, we have transferred convicted prisoners from overcrowded prisons to prisons with less population, in order to improve their living conditions. In particular, the RGC is developing a plan to build CC-4 in Pursat province to address this issue.

(b) The overcrowding in prisons is a threat to prisoner's health, and the RGC expresses its thank to the international community for paying attention to this issue. The RGC also pays strong attention to the health of prisoners through the Cambodian Human Rights Committee, which acts as the direct government body responsible for prison visits, providing for medical kits, foodstuff and sport materials to all provincial and municipal prisons.

(c) Regarding the budget for prisons, the RGC has issued sub decree No. 86 on food rations, daily use of materials, health and rehabilitation services. The sub decree has increased the allowance of food rations for prisoners from 1,500 riel to 2,800 riel per day, provided food supplies to children with incarcerated mothers, and has doubled allowance during major public holiday.

3. **Paragraph 13:** The recognition of the requirement to resolve corruption issues in prisons is an unreasonable concern. Prison officials are under the control of the Ministry of Interior and are administered by laws, regulations, international standards and codes of ethics, especially the internal rules and regulations of each prison. If a prison official breaches the above conditions, s/he shall be subjected to a disciplinary punishment in the form of educational punishment, verbal warning, written warning, forcible transfers and dismissals, or being brought to court for conviction in accordance with the law.

4. **Paragraph 14:** The RGC has strived to build new prisons with Khmer technicians, architects and engineers, who have a good understanding of the health issues of detainees and convicted persons. Especially, we take the prisoners' health into account properly. In fact, the General Department of Prisons is collaborating at present with development partners and other national and international NGOs to improve the living conditions of prisoners as well as to enhance the capacity of prisons to provide a more appropriate level of service in cooperation with the Australian Embassy, ICRC, PFS and other international organizations.

5. At present, we have constructed and renovated the following prisons:

- 5 provincial prisons have been newly constructed in the same place with financial support from Australia: Kampot, Kampong Speu, Kampong Chhnang, Kandal and CC-2 prison;
- Prisons have been constructed in new places: Siem Reap, Battambang, Banteay Meanchey, Kampong Cham, Koh Kong, Preah Vihear and PJ prisons;
- 5 prisons have been renovated: Prey Veng, Svay Rieng, Pursat, Preah Sihanouk and CC-1 prisons;

- In the future, the RGC will construct new prisons in Kampong Thom and Takeo provinces.

6. **Paragraph 15:** The report raises the issue of lack of water in prisons. The RGC has paid serious attention to this issue, as it affects the prisoners' right to life. In August 2009, a delegation from the Cambodian Human Rights Committee visited all municipal and provincial prisons, and found that all prisons have adequate clean water (water tanks/water filters). Apart from these prisons, only CC-1 prison has slightly faced water shortage this year due to the increase of prisoners. However, the management board of CC-1 prison is trying their best to resolve this problem, and at present, a request has been submitted to Samdech Prime Minister Hun Sen, through the MOI, to equip prisons with clean water. In particular, the General Department of Prisons has closely cooperated with ICRC to resolve this issue.

B. Building Institutions

7. **Paragraph 21:** Regarding the establishment of the National Human Rights Institution, the RGC had previously decided to establish a Cambodian National Human Rights Institution. We organized a first joint workshop on 26-27 September 2006 in Siem Reap, under the highest presidency of Samdech Prime Minister Hun Sen, and the task of drafting the law for this institution has been assigned to civil society. The second workshop, held on 06-07 December 2008, was intended to push forward the process of drafting this law. We agreed to issue a joint press release setting out an appropriate schedule for civil society to continue the process of drafting this law, but as of this date we have not yet seen any progress. In meetings with OHCHR (with Margo), a number of embassies, and especially with civil society, it appears as though they intent to prolong the process of establishing this institution based on the grounds that it is not the right time to have a national human rights institutions in Cambodia. In this regard, if the RGC was to draft this law, we may have spent only three months to finish this law in proper compliance with the spirit of the Paris Principles.

8. **Paragraph 22:** Regarding the creation of a national preventive mechanism, Cambodia is the first country in ASEAN to have ratified OPCAT on 30 March 2007, and officially became a state party on 29 April 2007. The RGC has taken this into serious account, and assigned the duty to establish this mechanism to the MOI. After receiving guidance from the RGC, the MOI cooperated with OHCHR to organize a national workshop on the implementation of OPCAT on 22-23 January 2009 at Phnom Penh's Imperial Garden Hotel, with the participation of members of the SPT in Geneva. At the end of the workshop, the MOI's Legislation Council was tasked with the duty to draft a sub decree on the creation of NPM, and the Council duly submitted it to the Council of Ministers' Council of Jurists for further review. Following a thorough review, Samdech Prime Minister Hun Sen signed on the sub decree No. 122 on 07 August 2009 for implementation.

9. **Paragraph 25:** The RGC finds it unacceptable concerning the issue of impunity raised by OHCHR.

10. The Kingdom of Cambodia has seParagraphted power into three branches: executive, legislative and judiciary. These three branches work independently to ensure citizen's rights and freedom.

11. Regarding the problem of torture, at all provincial and municipal prisons, there are always representatives from Licahho, Adhoc, ICRC, PFS and other organizations routinely monitoring and inspecting on this issue. All prison officials shall respect and apply Prakas No. 001 and regulations for administration of prisoners. If any prison officials breach the rules, they are subjected to disciplinary action by verbal waning, written warning, forcible transfer, or dismissal and being brought to justice (the RGC has already applied these measures in such cases). Regarding the police forces, the MOI has developed internal regulation No. 006 on the discipline of the national police forces, within which Point 15 states that national police forces are not allowed to extort answers by torture of any kind, coercion, or directing the answers (forced confession). In the case of members of the armed forces (police, military police and concerned officials) who commit an offence, they are also subjected to the same disciplinary action as the prison officials above.

12. **Paragraph 27:** According to Article 208 of the new criminal procedure code, pre-trial detention in the case of felony may be carried out for a period of 6 months and may be extended twice (for six months each time) but not exceeding 18 months in total. Article 249 of the code states that pre-trial detention in the case of misdemeanor may be carried out for a period of 4 months and may be extended for two more months but should not exceed 6 months in total.

(a) In Cambodia, in principle, the hearing shall be conducted in the presence of the accused; therefore, pre-trial detention is necessary to ensure the presence of the accused during the hearing and to protect the safety and personal security of the accused.

(b) If there are any cases of excessive detention regarding felonies or misdemeanors, please provide us with explicit details of the cases and places of detention in order that the RGC may take necessary measures in such cases.

13. At present, the MOJ and the Court of Appeal are cooperating with development partners to develop procedures to promptly reduce the number of appeals pending at the Court of Appeal.

14. **Paragraph 29:** Phnom Penh Municipal Police has begun to round up prostitutes, beggars, street children, glue sniffers/drug addicts, disabled persons, and other vagrants with the following purpose:

(a) To beautify the city as to attract national and international tourists to visit and enjoy Phnom Penh, and to keep public order, which is part of economic development through the promotion of tourism.

(b) The street vagrants are also human power for agricultural sector, and they should be encouraged and pushed to return home to their provinces or municipalities to do their farming.

(c) The round up of street children to the rehabilitation centers is the consideration of the RGC to train them with knowledge to earn their living appropriately.

(d) The round up of street children prevents them from becoming drug consumers or traffickers, or getting infected with HIV. Moreover, these street children are systematically organized to beg every corner of the city, and thus the authorities of the Phnom Penh Municipality are searching for the ring leaders of these children as such organization is a crime harmful to the public order in the municipality and is a crime of child labour exploitation.

15. **Paragraph 32:** This Paragraphgraph alleges that Samdech Prime Minister has threatened and disbarred lawyer Kong Som On from the Cambodian Bar Association. This allegation is not correct at all as the writer of the OHCHR report failed to properly study the code of ethics of lawyers.

(a) Mr. Kong Sam On himself committed mistake(s) disrespecting the code of ethics for lawyers by making decisions as though he were a judge, which is contrary to new Article 129 of the Constitution of the Kingdom of Cambodia, which states that only judges have the power of adjudication. The mistake of not respecting the code of ethics for lawyers was that Mr. Kong Som On had sat beside Mrs. Mu Sochua in a press conference before reporters and foreigners; it is wrong because he had not advised his client to file a complaint to the court but instead had held a press conference with his client.

(b) During the press conference, Mr. Sam On had raised the facts of Mrs. Mu Sochua's allegation that the prime minister had committed wrongdoings on different counts, and Mr. Sam On is not a judge (this breaches the code of ethics for lawyers). If he is defending Mrs. Mu Sochua, he should not allege the prime minister.

(c) During the press conference, he used insulting terms against the prime minister by saying that the latter was immoral and impolite, and that the latter should therefore apologize to Mrs. Mu Sochua for his speech, which the former said to be a coward speech using impolite words. He asked the prime minister to apologize to Mrs. Mu Sochua like the apology made by Thai prime minister to Samdech Prime Minister Hun Sen.

16. These above three points indicate that lawyer Kong Sam On had actually breached the code of ethics for Cambodian lawyers. The fact that Samdech Prime Minister had filed a complaint against this lawyer does not violate the competency of the Bar Association as he just asked the Bar Association to seek justice for him. This was to ask the Bar Council to examine whether the press conference made by Kong Sam On contained any mistakes or violations against the internal rules and the law of the Bar Association as these tasks falls within the competence of the Bar Association. The RGC did not put any pressure at all on the Association, contrary to what is written in the report which alleged Samdech Prime Minister Hun Sen, but we conferred the task to the Bar Association for examination, and the RGC has no power in this regard. Now, lawyer Kong Sam On has admitted his mistakes and has written a letter of apology to the prime minister, and the latter had then initialed on that letter asking his lawyer Mr. Ky Tech to withdraw the complaint. All these are being done in the most proper procedures and no one is threatening the other.

17. **Paragraph 34:** Regarding the case of Khim Sambo and his son, who were killed, the OHCHR report said that there was no thorough and meaningful investigation into this case. With regard to this Paragraphgraph, we would like to inform you that the writer of the report was aware that the case of the killing, and that the case is not only busily and constantly being investigated to find the killer(s) by the MOI, but also with participation from FBI.

18. **Paragraph 10:** Regarding the case of Tuot Sarorn, he was charged by the prosecutor of Kampong Thom Court with illegal confinement. He had confined a lady and transported her in a car to the headquarters of Sam Rainsy Party in Phnom Penh advising her to make an allegation against the Cambodian People's Party that they had confined her and threatened her life if she refused to join the CPP, as this lady was previously an SRP activist. This lady did not agree to follow that advice as she requested to join the CPP on her own free will without any coercion. The result of the case was that the lady filed a complaint to Kampong Thom Court against Tuot Sarorn and the Court convicted him to 3 years in prison.

19. **Paragraph 11:** OHCHR report stated that the CPP dominates the media, waves (radios) and TVs, with the purpose of silencing critical voices. In this regard, the RGC has actively promoted the media broadcasting in order to provide up to date, true and accurate information and pictures of the events to the people at all levels. Until the present, broadcasting media has been developed significantly in the Kingdom reaching out to people of every stratum.

20. Particularly, during the election campaign, the state-run TVK broadcasted an Equity programme for registered political parties without discrimination against any parties, big or small. All political parties that have legally registered with the MOI, such as SRP, HRP, NRP, FUNCINPEC, etc., were encouraged to broadcast their programme via radios (by buying broadcasting time from private radios) during election campaign. A number of radios that sold their broadcasting time to political parties were radio FM 105, FM93.5, FM102, and other radios, especially RFA and VOA. Currently, some radios still make their broadcasting time available to political parties to buy to attack the RGC.

21. **Paragraph 35:** The Rectangular Strategy Phase II of the RGC states clearly that the first point, which is the core of the strategy, is good governance focusing on four reform areas: (1) combating corruption, (2) legal and judicial reform, (3) public administrative reform including decentralization and deconcentration programmes, and (4) armed forces reform. This point reflects that the RGC did not target opposition parties or newspapers for charge of defamation as stated by OHCHR report, but rather the RGC was trying to promote the respect of law in the Kingdom of Cambodia based on the rule of law as Samdech Prime Minister has said: "I wish to defend my reputation even though I am a prime minister." (Quoted from the Cambodia Daily dated 18 June 2009, page 2). This also reflects that the writer of the annual report of OHCHR tends to take side of the opposition parties, and as for the RGC, no matter how much efforts we have done, they have never cited our achievement. Beside, the use of judicial system for dispute resolution is a proper action to make in a democratic and responsible society.

22. **Paragraphs 36-38:** It is not true that there is restriction to the freedom of expression through peaceful demonstration.

(a) The RGC congratulates any kind of expression except those forums of expression that incite people to commit violence, to stage war, to discriminate against other on basis of race, color, and religion, etc., which are prohibited by law and human rights instruments. The RGC has particularly focused on providing political rights, rights to security and public, rights to freedom of expression, and rights to participation in any democratic process. The organization of elections regularly, peacefully, and in secret, as well as the promotion of the right to free participation in a political movement through several political parties, as well as the right to freedom of expression and the right to access information broadly via national and international media available in Cambodia. This is the best form of freedom of expression for all citizens.

(b) Indeed, Cambodia has many kinds of tools for expression from electoral participation, media publications, broadcasting, telephotographing to demonstrations and strikes. All these tools enable those who wish to express dissent to have many possibilities to do so; even though the demonstration is sometimes not permitted, as it is harmful to security and public order, yet they have many other means to express their voice freely.

(c) Demonstrations staged in Cambodia shall respect the existing law of 1991 on demonstrations, in which the organizers are required to ask for permission in advance from the provincial and municipal authorities. However, civil society and a small number of citizens have been obstinate in organizing demonstrations without respect for the law and responsibility; as a consequence, after the demonstrations, the full responsibility for all damages falls on the RGC.

23. **Paragraph 37:** OHCHR is concerned that the development of NGO Law would undermine the relationship between the government and the civil society. The Kingdom of Cambodia is a country that abides by the rule of law as Paragaphmount; therefore, all citizens who wish to form associations or do anything must conform to the law. In fact,

there are around 2000 national and international NGOs working in all fields throughout the country. Although Cambodia does not have a law on NGOs, the RGC allows all citizens the right to form associations/NGOs and carry out their activities freely just by filling application forms for registration with relevant authorities. Currently, as the country has progressed in the legal sphere, and to facilitate civil society to be able to carry out their activities with transparency by avoiding any irregularities, the RGC understands that it is time to have an NGO Law like other developed countries in the world.

24. **Paragraph 40:** Regarding the three killing cases above, at present, in the case of Vuthy alias Hy Vuthy (2007), the police has already identified the killer(s) and is undertaking further investigation in order to arrest the perpetrator(s) and bring them to justice. Regarding the case of Ros Sovannareth (2004), the police and the court have identified killers already and, in fact, those suspects have been brought to the court, and are now being detained in prison, as per the application of the court procedure in accordance with the law of the country.

25. **Paragraph 16:** The policy of the RGC considers that Khmer Krom are Khmer citizens and shall have a Khmer nationality ID card properly recognized by the law of the Kingdom of Cambodia. “Khmer citizens have freedom of expression, freedom of media, freedom of publication and freedom of assembly” as stipulated in Article 41 of the Constitution and the law of the Kingdom of Cambodia. Regarding the case of monk Tim Sakhorn who breached the monk rules, the head monk had applied the rule by defrocking him. As monk Tim Sakhorn did not yet hold a Khmer nationality ID card and he has residence, parents and relatives in Vietnam, and therefore, after being defrocked he should return home. Cambodia did not know what wrongdoings monk Tim Sakhorn had committed under Vietnamese law, and the conviction made by the Vietnamese authorities is the sovereign matter of that country; Cambodia adheres to the principle of non-interference in the internal affairs of a country which is a fellow member of ASEAN. Currently, this monk was released by Vietnam and he now freely resides in Thailand by his own decision.

C. Land and Housing:

26. **Paragraphs 42-45:** The issues relating to land resolution and forced eviction of approximately 150,000 people as stated in the report of UNOHCHR are unacceptable. The policy of the RGC for the fourth legislature in relation to land is one of the important areas on the agenda for land reforms. The RGC ensures freedom and eliminates all forms of human rights violations, ensures political stability and social security as well as fosters economic development, provides proper land registration and pays attention to developing the areas of the indigenous people.

27. In the development of Land Law and land policy, the RGC has adopted the measures to expand the system of equitable land use and land allocation to ensure economic efficiency through land registration, to improve land ownership rights, to eliminate anarchic acts of illegal land grabbing, to take appropriate measures to prevent the buying land for speculation purpose without using or developing. The RGC is in the process of reviewing the unused State land or State land being occupied by private individuals without complying with determined legal standards and procedures. The RGC gives high priority to enhancing the right to land ownership of people who need land to build their houses and to do families’ farming, by providing them social land concessions, which aims to help poor families and vulnerable groups.

28. **Paragraph 47:** Within the Municipality of Phnom Penh, there are three principles in regard to land policy:

(a) **Land Administration:** is to secure private land tenure; administer land through land registration in the Municipality of Phnom Penh; resolution of land disputes; elimination of anarchic phenomenon in illegal land occupation; prevention of land speculation in order to ensure efficiency of land market and land use; as well as to focus on land demarcation and State and private land registration.

(b) **Land Management:** focuses on effective land use to ensure balances between urban and rural developments, to ensure effective and sustainable use of land and natural resources. The development of procedures and the establishment of plans for land management and urban planning have been attentively implemented at the places where land use is urgently required at municipality, district/khan, commune/sangkat levels and some prioritized areas as deemed necessary.

(c) **Land Allocation:** has its main objective to provide land for both the purpose of economic and social land concession in order to foster equitable land distribution and economic growth through the effective use of unused land and labour force.

29. Furthermore, the Government has successively provided land for housing construction to poor communities in terms of social concession within the framework of legal resettlement of poor communities.

30. **Paragraph 48:** Dey Krahorm is the State public land. This area is located near the National Assembly, the Ministry of Foreign Affairs and International Cooperation and the Russian Embassy, which are important institutions of the Kingdom of Cambodia and also are the tourism zone. In the past, this area has been used for plenty of negative activities such as drug use and drug smuggling, sexual trade, the shelters of gangsters and robberies that strongly affected the maintenance of local security, social law and order. In this regard, the Municipality of Phnom Penh has tried to coordinate the arrangement for resettlement in the form of establishing new communities or providing compensation in cash. Finally, we had agreed to choose 7NG company as a partner for housing development at Damnak Trayeng, Sangkat Choam Chao, Khan Dangkor, Phnom Penh. It is worth to notice that to resolve the housing problems for 1,565 families is not easy because we need to make sure that the people have good living conditions such as houses, roads, markets, schools, hospitals, etc. In 2006, there were 1,374 families, which is equal to 93% of the total population in this area, who had agreed to move to the new location and only 91 families remained. Although, the city hall and the company (7NG) have been trying for many years to negotiate with the remaining families, the attempts always failed. This was because they require excessive compensation and some families have already accepted the policy provided for but they sold their property to others. This makes the problems becoming complicated but the RGC always tries its best to facilitate until satisfactory result yielded.

31. **Paragraph 51:** According to the OHCHR report, 60 people have been reportedly detained without sufficient grounds in relation to the land disputes. With regard to land cases, the RGC has a policy to negotiate and not to put people in prison. So far, some people that were put in jail have claimed that their actions were related to land disputes in order to seek excuse to mitigate the offence they committed. For instance, according to the investigation of the above cases by the Cambodian Human Rights Committee, most of the accused were charged on account of destruction of private property, injury, threat of violence, forgery, breach of contract, etc. According to the same investigation, none of these accused were put in jail with connection to land disputes.
