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Technical assistance and capacity-building


Comments received from the Government of Cambodia on the Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi*

* Reproduced as received.

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I. Legal and Judicial Reform

1. Designing draft laws is under the competence of related individual institution by preparing a legal text related to its institution before submitting to the council of ministers for review and approval while there is no principle to allow this legal text to be publicized and consulted by civil society. Upon review and approval, the draft is submitted to the National Assembly (NA) for review and approval, chapter by chapter, by the members of the parliamentarians (those who were elected by vote of confidence by the citizens) with a simple majority of vote 50% +1, as stipulated in the constitution of Cambodia. Upon the approval by the NA, the draft is submitted to the Senate, then to the King for his Royal signature to enter into effect. Civil society is obviously important and useful partners for the rehabilitation and the building of the country, especially for the developing countries like Cambodia. However, in making laws or other legal instruments at national level, Cambodia has its full-fledged rights to maintain itself as a sovereign state as stipulated in the constitution of Cambodia, independent of civil society organizations and development partners working under foreign support.

2. The preparation of the three fundamental laws is an important starting point for the NA of its fifth legislative mandate on legal and judicial reform, which is one of the cores in the government's rectangular strategy, while the three laws will constitute a base to realize the vision of the government in strengthening good governance and rule of law. Moreover, the three laws are laid out in the constitution and considered important organic laws regarding the organization and the management of the process of the judicial power, one of the three state's powers, stipulated in the constitution. In the draft law on the statute of judges and prosecutors, it ensures independence of the judicial power in accordance with the constitution. Moreover, Chapter 2 states about the decision of the judges which is to be done without bias under any pressure, threat/intimidation, or order. And the Supreme Council of Magistracy (SCM) determines about the appointment, change, termination, placing out of the framework or deletion of names of judges. Furthermore, Chapter 4 states that judges and prosecutors are incompatible with public function, parliamentarians, senators, government members, and other mandated functions through election or advisory functions of all ranks. They also cannot be working as lawyer or doing business of any kind. For the draft law on the organization of the court, not only it states about independence of the court's power and ensures effective public services, but it also states about the creation of specialized courts of different fields, in order to strengthen the capacity of judges, prosecutors and legal officers. Moreover, it states about the establishment of the specialized chambers at the appeal court to ensure accuracy in judgment. For the third draft law on the organization and the functioning of SCM, it states about its organization and the functioning in order to assist the King to guarantee the court's independence, and it also states about the functions of members of SCM, which are incompatible with functions of judges and prosecutors.

3. Therefore, the three above-mentioned laws obviously ensure court's independence in compliance with international standards, in promoting rights of citizens and in improving the court's working process in promoting justice service for the public.

II. Parliamentary Reform

4. The National Assembly of Cambodia, through the existing applicable laws, provides possibility to parties with majority and minority seats with full rights to express their opinions. According to the constitution and the internal rules of the NA, all parliamentarians are entitled rights to expression without any prohibition. All

parliamentarians in the NA either from the ruling party or the opposition party have immunity and have equal rights to oppose or to support policies or principles.

5. The constitution and the internal rules of the NA states clearly about the provision of rights for the parliamentarians to track and monitor the implementation by the government, rights to pose questions for debate, rights to issue admonition letter to the ministers and rights to dissolve the government. Expert commissions with members from parties with seats in the NA receive the draft laws or proposal of laws, so that they can comment and make conclusions to propose to the NA to refute the drafts.

6. According to the agreement on the 22nd July 2014 between parties with seats in the NA, parliamentarians from the parties with majority and minority seats will continue to work together in the reform of the NA structure to make it more transparent on all matters by allocating the leading roles as follows:

7. Party with majority seats to be charged as the president of the NA, second deputy of the NA, heads, deputy heads, secretaries of five expert commissions and 45 members of the expert commissions.

8. Party with minority seats to be charged as the first deputy of the NA, heads, deputy heads, secretaries of five expert commissions and 45 members of the expert commissions.

9. Overall, the Cambodia's NA have been and is implementing its roles strictly in accordance with the laws in Cambodia, especially the constitution and the internal rules of the NA. Cambodia's NA never restricts the rights to freedom of expression of its parliamentarians.

10. Cambodia's NA with members from the Cambodian People Party (CPP) and the Cambodian National Rescue Party (CNRP) are working together to reform the NA's structure to make the body more transparent, based on the agreement on 22 July 2014.

III. Electoral Reform

11. During the national election for the fifth legislative mandate on the 28 July 2013, all political parties have rights to use the media to broadcast their information. In the process of the election, the National Election Committee (NEC) provided an enabling environment for the public in general to exercise their rights and freedom of expression and public gatherings. Furthermore, NEC always broadcast and encouraged national and international organizations to disseminate information in all forms of media, state and private, to ensure that every citizen receive sufficient information related to the election. Election campaigns were done in a smooth, safe and transparent atmosphere. All political parties organized campaigns and participated in observation during the election day and vote counting period. There were observers from national and international NGOs and embassies. Almost all the national and international observers have positively evaluated the election process.

12. After the national election on 28 July 2013, with some issues emerging, CPP and CNRP issued a joint statement on 26 September 2013 on electoral reform. Meanwhile, the Royal Government of Cambodia (RGC) issued an announcement numbered 14 Pr.K dated 22 October 2013, assigning Ministry of Interior (MOI) to organize this national workshop planned to be conducted in 2014 with participation of representatives from the Legislature, Executive, registered political parties, representatives from NEC, civil societies, international NGOs, development partners and other stakeholders to collect inputs, comments and recommendations towards building an electoral reform framework in line with the principles of multi-party democracy and rule of law, so that it will avoid any crises in future elections.

13. From 19-23 May 2014, a Japanese research team for electoral reform assistance arrived in Cambodia to meaningfully study and discuss in detailed with relevant stakeholders.

14. More especially, in accordance with the agreement on 22 July 2014 and the joint statement on 16 September 2013, the two political parties agreed to electoral reform by turning this election body into a fully independent body enshrined in the constitution, while members in the composition are to be elected by the simple majority vote of the NA.

15. Currently the technical working of the two political parties have met to discuss the procedures for electoral reform in Cambodia in order to make a good law which is acceptable for all in the future.

IV. Land Reform

16. With reference to the land reform, the Royal Government of Cambodia would like to provide the following comments on the Special Rapporteur's report:

17. Para. 46, line 11:.....a white paper on land policy **to be adopted by the end of 2014** and the drafting of.....

18. Para. 49 and 50: requested to be deleted and add a following new paragraph instead:

Based on the statistic of land titling database, there are only 0.4% disputes in the systematic land registration and 0.8% in the Directive 01 BB. Through the implementation of Directive 01 BB, the Royal Government has decided to donate land with the total side of 1.2 million hectares (cut off the land from economic land concession and other state land) for 500,000 households which are equal to 710,000 parcels. So far there are 550,000 titles have been distributed to the people. This contributes a lot to solving land dispute in Cambodia. Besides, there are adequate mechanisms in place to address land disputes. The Cadastral Commission (District/Khan/Municipal, Province and Capital and National levels) is mandated to address disputes related to unregistered land. To accelerate this resolution of unregistered land, Mobile Teams were also created to cope with more land dispute locations. Regarding the systematic land titling process, those disputes occur in the adjudication areas are solved by the administrative commission, which is mandated to conciliate the disputing parties at the site. While the National Authority for Resolution of Land Dispute (NARLD) composes of wide-range stakeholders, is in place to solve the complex land disputes which involves multi-parties and beyond the competence of the Cadastral Commission. In relation to land disputes associated with land which already registered in land register, it is under the competence of the courts. The process of land dispute resolution is a rule based procedures in compliance with human rights based approach, which enable the parties to tackle their disputes in a transparent manner. This is to assure the fairness of solving the disputes. Through these mechanisms, there are remarkable achievements in solving land disputes. Despite the fact of the efforts, the Royal Government is committed to improving the process and effectiveness of solving land disputes at all aspects, better information provided to and cooperation with stakeholders, capacity and institutional building.

Recommendation (n): Immediately **Continue to** solve the existing disputes relating to land rights as a matter of priority, and ensure in law and in practice that new land concession are granted only when the rights of the people affected by them are provided for. Review allmeet these standards.

Notes : 1-Cambodia proposed to delete the above phrases and paragraphs because they do not reflect the facts of the current situation in Cambodia).

2 -Bold and underline: propose to add.

3 -Strikethrough: propose to delete.

V. UPR Report of Cambodia

19. The Cambodian Human Rights Committee (CHRC) defended its UPR report from 28-31 January 2014 while 76 member states (out of 193) made 205 recommendations. On 26 June 2014, in its 32nd session, the Human Rights Council adopted the recommendations where Cambodia accepted 163 and noted 42.

20. Among the 163 Cambodia accepted, as some are similar in content, they were grouped into 48 recommendations.

21. For the 42 noted recommendations, Cambodia observes that: 4 recommendations go against Cambodia's constitution and laws, affecting Cambodia's sovereign and are not appropriate for Cambodia, while Cambodia still needs more time to consider and discuss with relevant ministries for the other 38 recommendations.

22. Cambodia welcomes recommendations on what Cambodia has not yet done or not yet done well. However, Cambodia is not going to accept recommendations on what Cambodia has already done or is taking actions smoothly. For most of the 205 recommendations, Cambodia has done or are getting positive results. At the meantime, a number of recommendations do not reflect reality in Cambodia, which Cambodia cannot accept.

VI. Independence of National Human Rights Institution

23. On the establishment of this institution, on 26 September 2006, RGC under the leadership of Samdech Hun Sen, opened a national workshop on the establishment of the National Human Rights Institution in Cambodia. Held in Siem Reap province. The workshop was participated by speakers from regional human rights working groups including the Philippines, Indonesia, Malaysia and Thailand to share their experiences. During that occasion, Samdech Hun Sen tasked civil societies to draft the law based on the Paris Principles on the Establishment of the National Human Rights Institution. In 2007, joint working group between the government headed by HE Om Yinteng, Senior Minister, and NGOs headed by Mrs. Pung Chhivgech started the process of making action plans to draft this law. After 5 consecutive meetings, and after the joint working group paid visit to the Philippines, draft law on the establishment of the NHRI was finalized on 6 February 2010 in Preah Sihanouk province. Recently, in the meeting with Professor Surya Subedi on 15 January 2014, Samdech Hun Sen urged for more discussion with civil society on this matter. Then there should be a national workshop to collect more inputs, comments and recommendations from legal practitioners, lawyers and other relevant stakeholders to produce a good draft law and submit this finalized draft to the Council of Ministers to proceed.

24. Regarding National Preventive Mechanism (NPM) against Torture, Cambodia signed to be a state party in New York city on 14 December 2005 and was promulgated through a Royal Kram number NS/NKM/0107/002, dated 19 January 2007. To comply with the spirit of this Optional Protocol, The RGC issued a sub-decree numbered 122 ANKr.PrK, dated 7 August 2009 on the establishment of the National Preventive Mechanism for temporary functioning. To make the mechanism an effective one, the MOI issue Prakas numbered 1177 PrK, dated 6 July 2010 on the establishment of the Secretariat for National Preventive Mechanism against Torture directly under the NPM.

25. From 1-11 December 2009, subcommittee for the prevention against torture (SPT) visited Cambodia for the first time. They visited prisons and police stations in a number of provinces, in line with the principles of SPT. From 12-17 December 2013, SPT visited Cambodia for the second time and they visited a number of prisons and police stations, as well as organizing a workshop on the establishment of the National Preventive Mechanism in Cambodia.

26. For the time being, the drafting process is under discussion between MOI and OHCHR, to ensure that it is in compliance with OPCAT.

27. Though we have not had the so-called NHRI in accordance with the Paris Principles, we still can ensure the promotion and the protection of human rights in accordance with our existing laws effectively, while, at the same time, being , willingly committed with firm stance to enhance national economic growth in order to move forwards to poverty reduction, social justice, and multi-party democratic process and rule of law in Cambodia.
