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مجلس حقوق الإنسان

الدورة الخامسة عشرة

البند ١٠ من جدول الأعمال

المساعدة التقنية وبناء القدرات

مذكرة شفوية مؤرخة ٢٢ أيلول/سبتمبر ٢٠١٠ موجهة من البعثة الدائمة لكمبوديا لدى مكتب الأمم المتحدة في جنيف إلى مفوضية الأمم المتحدة السامية لحقوق الإنسان

تهدي البعثة الدائمة لمملكة كمبوديا لدى مكتب الأمم المتحدة والمنظمات الدولية الأخرى في جنيف تحياتها إلى مفوضية الأمم المتحدة السامية لحقوق الإنسان ويشرفها، بالإشارة إلى مذكرتها رقم ٤٠٤/٠٩/١٠ المؤرخة ١٣ أيلول/سبتمبر ٢٠١٠، أن تحيل الملاحظات الإضافية المرفقة* التي أبدتها حكومة مملكة كمبوديا على تقرير المقرر الخاص المعني بحالة حقوق الإنسان في كمبوديا، البروفيسور سوريا سوبيدي (A/HRC/15/46)، مع طلب إدراج هذه الملاحظات ضمن وثائق الدورة الخامسة عشرة لمجلس حقوق الإنسان ونشرها على الموقع الشبكي لمفوضية حقوق الإنسان بوصفها جزءاً لا يتجزأ من موقف حكومة مملكة كمبوديا.

وتغتتم البعثة الدائمة لكمبوديا هذه الفرصة لتجدد لمفوضية الأمم المتحدة السامية لحقوق الإنسان أسمى عبارات تقديرها.

* ترد مستنسخة في المرفق، كما وردت وباللغة التي قُدمت بها فقط.

Annex

Summary of comments of Cambodia on the report of Professor Surya Subedi, Special Rapporteur on the situation of human rights in Cambodia

I. Land rights

The Kingdom of Cambodia has provided every race with full rights to land ownership, which is guaranteed by the Constitution. In addition, 2001 land law has also provided and guaranteed the rights to land ownership for all Cambodian citizens.

As part of its ongoing efforts, the Royal Government has established and strengthened institutional and legal frameworks to deal with land problems. It established a National Authority for Land Disputes to look into the land issues and complaints. The government also established the Land Committee at every municipal, provincial and district level. The Committees have been tasked to look into the land issues/problems and provide recommendations and solutions to the government on each issue how it should be appropriately solved. In addition, the government established the Council for Land Policy and National Land Concession Committee to formulate an appropriate land distribution policy.

In addition to the 2001 land law, the Royal Government has adopted and implemented a number of sub-decrees and regulations/instructions to ensure fully implementing the 2001 land law in an effective manner in order to secure the rights to land ownership and guarantee for all Cambodian citizens. Those include:

- Sub-decree No. 83 on Land Registration for Indigenous Community's land
- Instruction No. 03 on temporary stay dated May 2010
- Sub-Decree No. 118 on the management of State land and instruction dated November 8, 2007 on the programs for the distribution of social land concessions;
- Instruction No. 02 dated February 26, 2007 on the issue of illegal grabbing of State land;
- Land registration procedure

The Royal Government of Cambodia has placed land issues as one of its most important agendas and is committed to solving land issues in a comprehensive manner as it will indeed have great impacts on poverty reduction programme being carried through the implementation of national development and rectangular strategy Phase II in order to make sure that land distribution and retribution are made available to people who are in real needs, in particular for the poor and vulnerable people. Housing Policy is being drafted with the long term vision, which aims at securing that every Cambodian citizen will have an appropriate accommodation for their stay and living.

The Royal Government of Cambodia has an obligation to guarantee social stability for the benefits of all Cambodian citizens; and therefore tackling illegal settlements must be addressed with an appropriate solution striving to make sure that people will have appropriate accommodations for their stay before they leave their illegal settled places. All people in Cambodia must respect and be responsible before the law.

II. Freedom of expression

- Cambodia is a country that has emerged from the tragic past through political arrangements to adapt a democratic system. It has since then adhered to the principles of freedom of expression which is the basic foundation for democracy, multi-parties system and pluralism. The exercise of democracy and human rights are fully protected by the 1993 Constitution. With political commitment and efforts made by the Royal Government of Cambodia, freedom of expression and democracy has grown progressively for over the last decade. Freedom of expression shall be taken for review from that perspective. It should be seen and analyzed in the whole picture of its making as part of the democratic process that has been promoted in the historical context of the country – where the country has endured a long period of social division left by its legacy which it has addressed thereafter through national reconciliation due to win-win policy of the government.
- In fact Cambodia is emerging from the past as a post conflict country, upholding national reconciliation process over the years, striving to ensure stability and peace and then overcoming all other dimensions associated with the legacy toward the process of reconstruction and development and promotion of unity and pluralism. Those bold challenges have been acknowledged by the Special Rapporteur himself when the efforts has been made in continue building a free society where freedom of expression is one of the core elements of the democratic foundation. Therefore since 1993 the accomplishment of the Cambodia's young democracy has brought about the progressive change through the promotion for the enjoyment of all spectrums of human rights (political, economic, social and cultural) including freedom of expression as inspired by the Constitution.
- In this context, progress has been made so far. Currently, there are 2567 domestic civil society organizations and numerous union organizations that are operating freely in Cambodia among which 100 of them operating their activities related to human rights and democratic advocacy. In addition, Cambodia has 11 international organizations which are carrying their works focusing on human rights activities (these include, among others, a number of national democratic institutes and international republic institute). Cambodia has also an office of the Office of the High Commissioner for Human Rights and has received regular visits by the United Nations Special Rapporteur on the situation of human rights in Cambodia.
- For freedom of media, there are 600 news papers/magazines, 40 radio stations and 9 TV stations currently operating in Cambodia freely. Also, the Cambodian people can have free access to international news/information broadcast by Voice of America, Radio Free Asia and a great number of international cables News Networks such as CNN, BBC and others. Newspapers that are leaning to or in support of opposition parties are also allowed to publish freely their articles in the country. These newspapers have always criticized the Royal Government on a daily basis. Therefore Cambodian people have been entitled to enjoy greater their rights including freedom of expression and freedom of media within the context of country development.
- In this context, it should be appropriate and fairer, if one should look at the practices of freedom of expression in Cambodia in the whole picture taking into account the historical context in the country. It is an evolving process with considerable progress that has been made as compared to other countries in the region. It would not be fair for criticism on selective approach, while the efforts have been made, especially through continued commitments of the government toward pragmatism in the promotion of the freedom of expression even with greater tolerance. These are

challenges faced by the government as any individual needs to adapt not only to upholding his or her rights but also to assume his or her responsibility while exercising it for the sake of democracy. Cambodia believes in the continued process of better understanding with an enhanced capacity building of all stakeholders to promote and enhance all the basic rights but with responsibilities—including freedom expression.

III. Strengthening of legal system:

A. Establishment of legal system and Court:

I/. Cambodia has made great strides in strengthening human rights in recent years. It is a forward looking society as mentioned by the Special Rapporteur. It is in this context that the Cambodia government continues with greater efforts to accelerate the reform process including in the judiciary namely the establishment of the legal framework and the Court that aim to ensure the full independence and credibility of the courts and for protection of all individuals according to the existing laws that establish the principle of separation of powers (executive, legislative and judiciary) with the ultimate goal of strengthening the rule of law under the liberal democratic system. As mentioned in the UPR report of Cambodia, it is acknowledged the shortcomings of the judiciary due to many reasons/challenges associated with its tragic past (and these have been highlighted by the Special Rapporteur in the report). However there were many progressive and positive steps taken by the government with the efforts and willingness to address the issue of judiciary including the enactment and enforcement of legislations in the country. To this end practical consideration is needed in the overall assessment.

The government is determined to further endeavor the process of the reforms in the years ahead. Therefore the government has set 07 strategic priorities for these purposes in order to ensure the goals as set above during the current mandate of the government under the following principles:

- To strengthen the protection of right and freedom of individual
- To modernize the legal framework, laws and orders
- To provide space for people to get sufficient access to receive information relating to laws and other regulations of the courts
- To improve the efficiency, quality of tribunal hearings and other relevant regulations and procedural services
- To strengthen the service of justice for the people, including the service office of the court and service office of prosecutors,
- To establish mechanisms of the conflict resolution outside of the court system
- To strengthen all relevant legal institutional systems and the court system in order to accomplish their mandate with efficiency,

The Council for Legal Reform and the country's Justice System has set out various strategies with its continued work to strengthen and improve the courts system. Those strategies have been gradually implemented to help improve the justice to promote and protect the human rights for the sake of an enhanced legal system of Cambodia.

2/. *The Implementation of Legal Reform and the Court:*

There are programmes that have been established by the Council for Legal Reform for the Courts for the implementation, including the programme activities for a short period (2 years) for medium term (3 years) and for a long term. The Council for Legal and Justice Reform clearly identifies the priorities and the challenges that need to be addressed in the strategic policy of the government in order to further respond to the urgent need for the country at this stage of development. Those challenges are described as follows:

- To continue taking the preventive measures on addressing the corruption in the court system (while the law on anti-corruption is now being at the stage of implementation);
- To address the workload of cases in the courts,
- To address the complaints on the civil cases.

3/. *Review on the implementation of reform of justice and the court system:*

In order to follow up the implementation policy on legal and justice reform, the Council for Legal and Justice Reform makes its assessment on two areas:

- To follow up the progress of the implementation process on legal reform (including in the courts),
- To assess the impact of legal reform process.

In general, the Council for legal and justice reform continue to carry out its review process of assessment on the activities as set out in its priorities in order to achieve the 07 strategic goals (namely the outcome of implementation, the success and the shortcomings).

B. *The Adoption of key legislations:*

The government has committed itself to advancing the process of drafting laws and other regulations that aim to strengthen the legal system in Cambodia. There are a number of important new laws have been adopted and promulgated by the Cambodian Parliament in recent years which has significantly contributed to the reform as they provide a positive impact on implementation on human rights such as:

- Civil Code and Code of Civil Procedure (2006)
- Law on Criminal Code (October 2009)
- Law on Peaceful Demonstration (February 2010)
- Law on Compensation of the State's land (February 2009)
- Law on Anti-Corruption (2010)

At present, the Ministry of Justice is being assigned to review and elaborate a number of laws such as the law on the organizations and functioning of the courts system, the law on the status of judges that are fundamental to ensure the effectiveness of work of the courts system as an independent institution.

C. *Introduction of Training Program of Human Rights:*

Capacity building remains one of top priorities at the forefront policy of the government toward the endeavoring of reform process, especially in judiciary. At present, the discipline of human rights has begun to be established in the curricular in the public high schools and public institutions including in all professional schools in the country.

- Royal Academy (for professional school of judges, prosecutors and clerks at the higher standard),
- Training Center for attorneys (for qualified lawyers of standard)
- Royal Academy of National Police.

IV. Conclusion:

It has been a long way for Cambodia to gain peace and stability and to achieve remarkable success in economic and social development along with the process of building a democracy where human rights are one of core elements of it. We are therefore of the view that the applicability of democracy, respect for human rights including the exercise of freedom of expression shall be promoted through an evolving process by taking into account the reality and particularity of the country under the existing laws and regulations, while acknowledging the upholding of the consistency with the international instruments. We appreciate the recommendations of the Special Rapporteur in the report that should be further examined with practical consideration and under the existing laws and regulations of Cambodia for the further advancement of human rights in Cambodia. For Cambodia, human rights have many dimensions. In this spirit, we appreciate the constructive approach of dialogues, mutual understanding and shared experiences regarding different views toward the common goals as described above.
