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مجلس حقوق الإنسان

الدورة الرابعة والعشرون

البند ١٠ من جدول الأعمال

المساعدة التقنية وبناء القدرات

مذكرة شفوية مؤرخة ١٢ أيلول/سبتمبر ٢٠١٣ موجهة من البعثة الدائمة لكمبوديا لدى مكتب الأمم المتحدة وسائر المنظمات الدولية في جنيف إلى مفوضية الأمم المتحدة السامية لحقوق الإنسان

تهدي البعثة الدائمة لمملكة كمبوديا لدى مكتب الأمم المتحدة ومنظمة التجارة العالمية وسائر المنظمات الدولية في جنيف تحياتها إلى مفوضية الأمم المتحدة السامية لحقوق الإنسان، وتشرف، إشارة إلى المذكرة الشفوية للبعثة الدائمة رقم ٥٠٥ المؤرخة ٦ أيلول/سبتمبر ٢٠١٣، بأن تحيل طيه ترجمة انكليزية حديثة للتعليقات التي بعثت بها اللجنة الكمبودية لحقوق الإنسان بشأن بعض أجزاء تقرير المقرر الخاص المعني بحالة حقوق الإنسان في كمبوديا، البروفسور سوريا ب. سوبيدي (A/HRC/24/36).

وفي هذا الصدد، ستكون حكومة كمبوديا ممتنة لو تفضلت أمانة مجلس حقوق الإنسان بتعميم هذه المذكرة والتعليقات المرفقة* باعتبارها وثيقة من وثائق الدورة الرابعة والعشرين للمجلس.

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

Annex

[English only]

Comments on the draft report of Mr. Surya Subedi, Special Rapporteur on the situation of Human Rights in Cambodia

1. The Government should commit to a clear time frame to implement the Special Rapporteur's recommendations, identifying areas of difficulty wherever relevant.

The long-term strategic goal of the Royal Government of the Kingdom of Cambodia is “to move the country forward with strong progress in every sector, promoting solid solidarity, respect for human rights, moral value, equity, freedom and justice and democracy, which is deeply rooted to enable people to live with happiness and harmony both in their family and community as well as in the society as a whole.”

The Royal Government has laid out the fundamental principles for its political platform, in which the principles on building and strengthening rule of law are stated very clearly, i.e. “Protect the constitutional monarchy and pluralistic, liberal democratic political system, continue to strengthen and expand democracy both at national and sub-national levels according to the needs for economic and social development. Continue to build and strengthen rule of law with adequate legal system, broad law education and dissemination, proper and effective law enforcement, ensured equity and justice for every individual in front of the laws. Prevent all forms of power abuses, impunity and violence.

In order to implement the above principles on building and strengthening rule of law, the Royal Government continues to implement public administrative reforms to promote the sense of ownership and loyalty among public administrations and professional conscience among civil servants to transform public administrations as effective public service providers.

The Royal Government will continue to place emphasis on the implementation of the three strategies of the National Administration Reform Program:

- Strengthening quality and effective public service provision through the introduction and implementation of public service standards;
- Developing capacity, improving management and development human resources through the introduction and implementation of human resource policies in the public administrations and performance management system;
- Reforming payroll and incentive system to strengthen performance effectiveness as well as civil service management and civil servant deployment.

The Royal Government has been implementing legal and judicial reforms more deeply.

2. The Government should accelerate the implementation of its promised reform agenda of State institutions responsible for upholding people's rights, including enacting the three fundamental laws concerning enhancing the independence and capacity of the judiciary.

The Royal Government has deepened the implementation of legal and judicial reforms. As of 2013, we have formulated and adopted 416 laws, aiming at introducing a more stable and reliable legal framework and strengthening competency, independence and

impartiality of the judiciary, which are essential for the strengthening rule of law, separation of power, respect for the rights of the individual and ensuring justice for general population. To meet this end, key activities will be actively promoted including, for the case of legal reform, formulating new laws needed for state management and in line with the process to establish ASEAN Community by 2015, strengthening applicable law enforcement more effectively, scaling up law education, dissemination and training for law enforcement officials at all levels and people in general. For judicial reform, key activities include promoting the formulation of laws related to the courts including: the Law on the Organization of the Courts, the Law on the Status of Judges and Prosecutors and Amending Law on the Organization and Functioning of the Supreme Council of Magistracy. The Royal Government will push for the adoption of the three laws at the beginning of the fifth mandate. As of 2012, there are 425 judges across the country successfully graduating from the Royal Academy for Judicial Professions and 734 court clerks and 818 lawyers.

3. **Regardless of the results of the elections to the National Assembly, due to take place on 28 July 2013, appropriate measures should be taken to enhance the independence and capacity of the National Election Committee to enable it to command the full trust and confidence of the entire electorate within the country in future elections. In particular, much greater efforts to enable all eligible voters to exercise their political rights in a meaningful way must be made.**

Every political party registered with the Ministry of Interior is entitled to perform any activities at all times according to the Law on Political Party and under the supervision of the Ministry of Interior. In addition, during election campaign, every activity of political party registered in political party list and candidates standing for the election according to the Election Law shall be under the supervision of NEC. The Royal Government of Cambodia as well as NEC has firm political commitment to taking every action to ensure that all political parties registered for the election are able to carry out their activities without any intimidation and threat. The Election Law, regulations and election procedures also prohibit the use of state fund, materials and means to serve any political party's election campaigning activities. Individuals violating this provision are punishable by the law.

4. **Freedom of expression of all stakeholders in Cambodian society should be respected at all times, including prior to, during and after elections.**

Freedom of expression refers to freedom to communicate, freedom to think, freedom to adhere to one's truth or freedom to share one's understanding or perspectives. Freedom of expression is the right not to be worried because of one's ideas and messages. Freedom of expression is the essential foundation of pluralistic, liberal democratic society in Cambodia and a requisite for the progress of the society.

Freedom of expression is the foundation of the pluralistic, liberal democracy regime adhered to by the Kingdom of Cambodia. Article 41 of the Constitution provides that "Khmer citizens shall have the freedom to express their personal opinions, the freedom of press, of publication and of assembly. No one can take abusively advantage of these rights to impinge on dignity of others, to affect the good morals and custom of society, public order and national security."

Every individual has the rights to adhere to certain perspective without any interference and has the freedom of expression. This right includes freedom to do research and disseminate information without limitation to verbal, written or any other means as one chooses. Political platform for the fourth legislature of the National Assembly provides broad openness on the freedom of the press and freedom of expression by stating that "The Royal Government promotes freedom of the press, freedom of work and expression, right to peaceful demonstration and right and freedom to assembly within applicable laws and

regulation, which are factors promoting development with freedom, conscience and political conviction of the society.”

The Royal Government has encouraged public forum in order to gather inputs of citizens at all levels and from all political affiliation in social development. Establishment of political parties and associations and freedom of assembly are opened broadly in the Kingdom of Cambodia. Cambodia has not yet had the Law on Association but the Royal Government has allowed civil society organizations to organize public forums freely. Indeed, some non-governmental organizations including Cambodian Center for Human Rights, Adhoc, Licadho, especially National Democratic Institute (NDI) and IRI have been providing education, dissemination and training on human rights in provinces and capital.

721 print media outlets including newspapers, news bulletins and magazines, 139 radio stations, 104 TV stations and another 127 TV stations and cable TVs as well as vast number of social media have carried out their activities without censorship. Those who insult and accuse the Royal Government as a dictator without democracy and freedom of expression are instead witnessing that Cambodia has democracy and respect for human rights.

Freedom of expression, in particular, is expressed through commune/sangkat election campaign 2012 and the recent general election in 2013.

5. Human rights defenders and especially those defending land rights should be allowed to carry on with their work without intimidation and harassment.

In the Kingdom of Cambodia, human right protection is one of the main tasks that the Royal Government is placing attention on to unveil an effective measure to address liberal democratic political position the Royal Government is adhering to. In this regard, the State has introduced regulatory frameworks and jurisdictions to provide protection to all types of human rights.

5.1 Legal Framework for Human Right Protection

In addition to enshrining in the Constitution, which is the most supreme law, key contents of each human right convention as mentioned above have been quoted to incorporate into the National Legal System on Land, Criminal Law, Civil Code, Civil Procedure Code, Criminal Procedure Code, Land Law, Law on Marriage and Family, Law on the Prevention of Domestic Violence and Protection of Victims, Labor Law, Law on Political Party, Law on Nationality, Law on the Election of the National Assembly, Law on the Election of the Senate, Law on the Election of Capital, Provincial, Municipal, District and Khan Councils, Law on the Election of Commune Councils, Law on the Administrative Management of Capital, Province, Municipality, District and Khan, etc.

5.2 Jurisdiction Framework for Human Right Protection

The Royal Government of the Kingdom of Cambodia has regarded human right protection as one of important and indispensable obligations to ensure dignity and livelihood of every individual. Thus, the Royal Government of Cambodia has established and allowed the existence of human right protection mechanisms in every area of state’s management and leadership as well as in the private sector both within national and international framework.

- Within the legislative, both the National Assembly and the Senate have established Commissions on Human Rights and Reception of Complaints. This Commission is tasked to receive and address all suggestions of people who endure right abuses.

- Within the executive, the Royal Government has established a mechanism called Cambodian Human Rights Committee, which serves to assist the Royal Government in developing human rights sector and facilitate resolution of human rights abuse issues.
 - Within the judiciary, tribunals exist at all levels and have independent power to ensure the impartiality and the protection of all rights and freedoms of citizens from abuses.
 - In addition to human right protection mechanism, the Royal Government of the Kingdom of Cambodia has also openly allowed the existence of many other local and international non-governmental organizations to help facilitate the protection of human rights of every citizen in the territory of the Kingdom of Cambodia.
 - Those international organizations include United Nations Education, Science and Culture Organization (UNESCO), United Nations High Commission on Refugee (UNHCR), International Labor Organization (ILO), International Committee of the Red Cross (ICRC), United Nations Fund for Children (UNICEF), and especially United Nations High Commission on Human Rights (UNHCHR). In addition, there are many other local non-governmental organizations allowed to exist and authorized to facilitate and intervene to protect human rights, especially the rights of women and children in the Kingdom of Cambodia.
 - Tribunals at all level are responsible for overseeing human right protection. The judicial system has its own concrete mechanism to check, monitor and prevent abuses committed by competent authorities.
6. **The promised review of the existing economic and other land concessions should be carried out as a matter of priority and the interests of the people affected by such concessions should be at the heart of such review.**
7. **Further attention should be given to improving access to information and transparency on a range of issues, including consultation and oversight, in line with the recommendations contained in the Special Rapporteur's report on the granting and management of economic and other land concessions.**

In terms of the provision of economic land concession, Ministry of Agriculture, Forestry and Fishery has not had any principle to provide land which is legally owned by citizens to investment companies. According to the procedures on land economic concession, Ministry of Agriculture, Forestry and Fishery always assigns a joint task force composed of the Technical Secretariat for Land Economic Concession, relevant officials of Ministry of Agriculture, Forestry and Fishery in collaboration with local authorities to conduct assessment at the location of the requested land in order to collect information and data. If the assessment finds that the land is legally owned by citizen, the plots will be kept for citizens and cut from the requested land area.

The Ministry has worked with local authorities to ensure participation of indigenous people to understand about the evaluation of social, cultural and environmental impacts and other types of studies before providing economic and social land concession. According to Sub-decree No. 146 ANKr.BK dated Dec 27, 2005 on Economic Concession, request for economic land concession from a private company always requires the company to carry out preliminary environmental and social impact assessment for the location identified for the project. The assessment report highlights discussion meetings and consultation with stakeholders including citizens, provincial line departments. This can already clarify that there has been participation from citizens already.

- The Royal Government has designated Ministry of Agriculture, Forestry and Fishery as the competent and responsible authority to make decision on the provision of economic land concession.
- Every economic land concession provision has been undertaken in accordance with applicable procedures and laws including the Land Law 2001, Sub-decree No. 146 ANKr.BK dated Dec 27, 2005 on Economic Land Concession and other applicable regulations.
- The Land Law and Sub-decree No. 146 ANKr.BK dated Dec 27, 2005 on Economic Land Concession state clearly about transparent procedures.

8. Additional measures should be taken to further implement the access to remedy related to land disputes, whether through strengthening formal and dedicated national dispute resolution systems, ensuring improved oversight over business enterprises which are party to disputes, or through improving the conflict prevention and consultation capacity of officials and armed forces in their dealings with affected communities.

The Royal Government has exerted a lot of efforts including the introduction of policy and legal framework in the context of the applicable Land Law 2001, Civil Code and Civil Procedure Code as well as technical measures to ensure land ownership security, especially right to legal ownership of citizens based on the principles of economic, social and cultural right promotion in the context of market economy and democracy under the roof of the Constitution of Cambodia and applicable laws of the state. In response to this commitment, many projects have been implemented with technical, material and funding support and close and transparent cooperation from relevant institutions, development partners, non-governmental organizations, civil society and local communities including:

- (a) Promoting systematic and sporadic land registration, in which right to property ownership covering the right to land and/or structure ownership is ensured by the Constitution (Article 44) and the Land Law 2001 (Article 5-6), which provide strong support to individuals which have legal rights on the land and structures whether the ownership is in the form of legal title or ownership certificate.
- (b) Promoting the building of land information system to promote effective access to information on land and good governance on the provision and reception of land related services.
- (c) Promoting and strengthening mechanisms such as alternative dispute resolution of land disputes through cadastral commission to resolve disputes involving lands which have not been registered and through the National Authority for Land Dispute Resolution to solve and mediate multilateral disputes on state land.
- (d) Promoting, with clear annual plan, the implementation of land distribution program for social purposes for poor families, who do not have any land and really in short of land and former armed force personnel and their families who have been reintegrated into civilian communities so that they practice subsistence farming and/or build houses.
- (e) Promoting land management and use planning at national and sub-national levels, etc.

9. The Government should expedite its investigation of a long list of cases which have not been properly investigated in which no one has been brought to justice.

In Cambodia, there is no culture of violence and impunity. This recommendation is not valid. The Kingdom of Cambodia has clearly differentiated three powers: Executive,

Legislative and Judiciary. The three institutions do their job independently and ensure rights and freedom of the citizens.

The Kingdom of Cambodia has in place effective legal frameworks and human rights protection mechanisms including:

(a) About legal framework:

- Criminal Procedure Code promulgated on Nov 30, 2009
- Criminal Code promulgated on Nov 30, 2009
- Discipline for the National Police Force No. 006

(b) About operational framework:

- Every act of violence, intimidation or murder is investigated and suppressed and case is filed and sent to the court with any exception.
- Competent authorities are reprimanded, disciplined and punished for abusing rights and freedom of citizens. In their operation, competent authorities perform their duties without any discrimination.
- Competent authorities and tribunals at all levels are tasked to investigate all cases.

10. The Special Rapporteur expresses hope that all the political parties and the National Election Committee will have ensured free, fair and peaceful elections on 28 July 2013, with all sides enabled to play on a level playing field.

The Fifth Election of the National Assembly on July 28, 2013 has the following features:

- Election campaign, voting and vote counting of all political parties proceeded well with fairness, good environment, safety and transparency.
- All political parties campaigned and observed ballot casting and vote counting smoothly. Associations, local and international non-governmental organizations and embassies also took part in the observation.
