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技术援助和能力建设

2009 年 9 月 29 日柬埔寨王国常驻代表团致联合国
人权事务高级专员办事处的普通照会

柬埔寨王国常驻联合国日内瓦办事处、世界贸易组织及日内瓦其他国际组织代表团向联合国人权事务高级专员办事处致意，并谨随函附上柬埔寨王国政府对柬埔寨人权状况特别报告员将提交理事会第十二届会议的报告(A/HRC/12/40)的意见(见附件)^{*}，作为第十二届会议的文件分发。

^{*} 本函以所有正式语文分发。本函附件则只以原文分发。

Annex

KINGDOM OF CAMBODIA

**Comments on the Report by Mr. Surya Subedi, Special Rapporteur for
Human Rights in Cambodia**

SEPTEMBER, 2009

I. THE IMPLEMENTATION OF LAND POLICY OF THE RGC OF CAMBODIA

1. In implementing the administrative law and land policy, the RGC of Cambodia (RGC) has taken measures to:

- Expand the system of administering land use and land allocation in an equitable manner;
- Expand land ownership rights through land registration;
- Eliminate anarchic acts of illegal land tenure;
- Prevent the buying in collection of land (for speculative purpose) without using ;
- Review unused state land and state land being occupied by private individuals not consistent with legal standards;
- Provide social concession land for residential buildings for poor families and vulnerable groups;
- Continue to resolve land disputes through courts and outside court mechanisms [ADR];
- Set appropriate priorities for land ownership rights for residential buildings for poor families.

2. To ensure effective implementation of the above, the RGC has had plans to:

- Foster the development of plans for land use to allocate land for the development of agriculture, industry, tourism, urban, rural, residential, conservation and reserved areas to avoid misuse of land;
- Review the implementation of economic land concessions to conform with the priorities set by the RGC and to ensure that economic concession land provided is cultivated and to avoids the keeping of land without using [land speculation];
- Continue to implement no-tax policy on farm land used by farmers for family purposes.

3. In regard to land allocation for economic and social purposes, the result has yielded as follows:

- In 1989, the state provided specially acquired possession rights [unclear in original] to families [of general people], through which the state recognised actual land occupation, [and this continues] up to the present day;

- In 1992, the state provided land to repatriated people in the framework of the Paris Peace Accords;
- In 1992, the state recognised the land ownership rights of people in the framework of integrating those who live in the areas controlled by the Khmer Rouge.

4. Moreover, the Government has successively provided social concession land for residence to poor communities as their new legal resettlement;

The Social Land Concession Policy of the RGC of Cambodia

5. The social land concession is defined as:

- a mechanism to legally transfer state private land for social purposes to poor people who need land for residence and for family agriculture;
- land subject to social concession;
- family agriculture, such activities as planting crops and breeding animals to subsidize their basic needs.

6. The purposes for which social concession land may be provided are:

- poor families who have no land for building residence;
- poor families for the purpose of family agriculture;
- families displaced as a result of public infrastructural development;
- families affected by natural disasters;
- repatriated families;
- demobilized soldiers and veterans' families;
- to contribute to economic development;
- to contribute to social concessions by providing plots of land to workers on large plantations for building residence or for family agriculture;
- to develop areas that are not properly developed.

7. The social land concession programs are:

- for social land concession at the local level;
- for social land concession at the national level.

8. Types of land and conditions for occupying the social concession land:

- The social concession land may be provided for building residence and/or for family agriculture;
- The social concession land may be provided for building residence with a maximum size of 1200 m². However, in the rural areas where there is more unused land available, the size may be up to 3600 m²;

- For the cases deemed appropriate, especially in urban area, the social concession land may be provided in the form of co-ownership;
- The social concession land may be provided for family agriculture with a maximum size of 2 hectares. However, in some areas the size may be up to 5 hectares, according the type of land and its potentiality for cultivation, and the labour force of the families who are requesting [the land].

I. LAND ISSUES

9. The political programme of the RGC for the fourth legislature has set forth the government's policy relating to land issues. The Khmer Rouge genocidal regime had completely abolished and overturned private ownership rights. Given that land is an important natural resource which could be used for economic and social development and for poverty reduction, especially in the rural areas, the RGC has gradually reformed land administration [and this continues] up to the present day.

10. In implementing the land law and its land policy, the RGC has taken measures to expand the system of administering land use and land allocation in an equitable manner, by ensuring the effectiveness of the economy through land registration to expand land ownership rights, to eliminate anarchic acts of illegal land tenure, to take appropriate measures to prevent the buying in collection of land and keeping it without use and cultivation [land speculation]. The RGC has been reviewing unused state land, or state land being occupied by private individuals not consistent with legal standards and the current determined procedures. The RGC has given high priority to enhancing the right to land ownership for people who need land for residential buildings and for family agriculture, in the framework of social land concessions, which aims to help poor families and vulnerable groups.

11. An assessment of the above policy can be divided into three parts, land administration, land management and land allocation at the provincial and municipal levels.

A. The Land Administration, Management and Allocation

1. Land Administration

12. The main objective of which is to enhance the security of private land tenure, while promoting the administration of state land through land registration, resolution of land disputes, elimination of anarchic phenomenon in illegal land occupation; prevention of the buying in collection of land and keeping it without using [land speculation] . This is to ensure the efficiency of land market and land use at the provincial and municipal level;

13. The provincial/municipal Governors' offices has contributed to enhancing the security of land tenure through Cadastral Commissions of all levels by resolving disputes over unregistered land through reconciliation procedures outside the court system. Moreover, during the process of systemic land registration, the Administrative Commissions have also managed to resolve a number of land disputes through reconciliation procedures.

2. Land Management

14. The work of which is to focus on the development of plans for effective use of land, to ensure a balance between urban and rural development, and 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 in the places where land use is urgently required at municipality, khan/district, commune/sangkat levels, within the prioritized areas such as tourist, downtown areas and areas along important roads.

3. Land Allocation

15. The main objectives of which is to allocate land for economic and social purposes, to foster equitable land allocation and economic growth by increasing effective usage of unused land and labour force. Land allocation also contributes to improve social relations at local level. Besides the major tasks of land allocation, the RGC has continuously provided land for building residence to poor communities for social purposes within the framework of legal resettlement.

4. The RGC's Policy Regarding the Peaceful Resolution of Land Disputes

(a) The Case of People Settling on the State or Public Land

16. Regarding the case of people settling on land registered in the state inventory, streets, parks; reserved land along the river side, etc., the RGC has chosen two options as solutions:

(i) On-site Residential Development

[This is] the way in which land is allocated on-site, and for this the RGC examines the feasibility to provide a part of social land to the people for building residence and for land titles, such as [in the examples of] 366 families at the train station A-B, 100 families at the proximity of a TV antenna, and 1,776 families at Borei Keila, etc.

(ii) Voluntary resettlement

Some areas are not suitable for implementing the first option, and therefore the RGC has negotiated with the residents to move to the relocation sites, and for that the RGC has coordinated resettlement arrangements in the form of establishing new communities or providing compensation in cash, such as [in the example of] 1465 families in Dey Krahorm communities.

17. Before moving to a relocation site, the representatives of Dey Krahorm communities had negotiated with several companies including Panimex, Mong Rithy, Ving Huor, Xim Cat Cambodia, Camparimex, but produced no result. Finally, the representatives of Dey Krahorm communities agreed with 7NG Company for the building of residence on a relocation site in Damnak Trayeung village, Sangkat Choam Choa Sangkat, Khan Dangkor, Phnom Penh, by entering into agreement with 7NG Company to construct 1,472 flats, each 4mx10m in size, for 1,465 families and 7NG Company shall whereby construct concrete and tar roads, markets, vehicle parking space, garment factories on 20 hectares of land with water and electricity systems already in place. At the present time, 1,465 families are already living there.

(b) The Case regarding People Living on Lands belonging to Private Individuals

18. The RGC has negotiated with the land owners to buy land and divide it into plots and allocate to the residents, such as [in the examples of] people living at Sambok Chap village on land belonging to Oknha Su Srun. We have coordinated with the land owners and all 6 communities, and as a result all parties have agreed to move to a relocation site in Trapang Anchanh village, Sangkat Trapang Kasaing, Khan Dangkor, Phnom Penh, on 15 hectares of land, of which each family receives 5mx12m-sized land with infrastructures such as roads, sewage system, markets, schools, health centres, etc. At the present time, 1352 families are already living there.

B. Objectives

19. With clear understanding of the importance of land for social development in Cambodia, especially for poverty reduction, the RGC has included land reform as an important agenda in the Rectangular Strategy (while other areas of this strategy still remain important priorities for continuous implementation in the fourth legislature), especially matters relating to land administration reform through strict implementation and adherence to this agenda. The provincial/municipal governors' offices have obtained remarkable achievements in the area of land administration reform, including the development of legal infrastructure and institutional building mechanisms, registration of state land and private land, land titling, resolution of land disputes, administration and allocation of social concession land to the people and investors, suppression and prevention of illegal land grabbing, etc.

20. The RGC recognises the challenges faced in the area of land administration, which requires political will, the commitment to implement the legal framework, institutional mechanisms, human resources, financial resources and adequate time to resolve the disputes. Land registration, land titling requires long term efforts to reach a final result.

III. FREEDOM OF EXPRESSION

21. Freedom of expression is a fundamental right in the liberal multi-party democracy regime adhered to by the Kingdom of Cambodia, and this freedom is being increasingly and widely expanded and promoted. The exercise of this freedom is also promoted and protected by:

A. International law

22. Article 19 of the International Covenant on Civil and Political Rights states that:

- (a) Everyone shall have the right to hold opinions without interference.
- (b) Everyone shall have the right to freedom of expression.

23. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his/her choice.

- (a) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (i) For respect of the rights and reputations of others;
- (ii) For the protection of national security, public order, well-being and morality of the society.

B. Cambodian Constitution

24. To facilitate the exercise of the right to freedom of expression consistent to the above international standards, and since Cambodia is a member state of the United Nations, this right and freedom is reflected in the Cambodian Constitution as stipulated in Article 41 that: “Khmer citizens shall have freedom of expression, press, publication and assembly”. Moreover, the Constitution, which is the supreme law of Cambodia, has also abolished capital punishment.

C. Law and sub-legislations

25. In the legal framework subject to Constitutional laws and international law, such as in the Criminal Procedure Code and Criminal Code (adopted by the Council of Ministers on 19 June 2009), Civil Procedure Code and Civil Code and other sub-legislations created to facilitate the exercise of competency, it also states in detail and specifically gives clear definition [of freedom of expression] in the sense that “No one shall exercise this right to infringe upon the rights of others, to effect the good traditions of the society, to violate public law and order and national security”.

D. The RGC policy to promote the right to freedom of expression

26. The RGC policy has also opened widely the freedom of expression and press, as stated [in the policy] that “The RGC encourages the exercise of freedom of expression and press, right to strike and to non-violent demonstration, freedom of assembly in the legal and normative frameworks”, and all these are the factors that promote free development of conscience and promote trust in politics within the society.

1. Freedom of Assembly

27. The RGC has encouraged in every public forum to gather ideas and opinions of people from every level and political tendencies to participate in the development of society. Establishment of associations and freedom of assembly are extensively embraced everywhere in the Kingdom of Cambodia. Although Cambodia has yet to create law on NGOs and establishment of associations, the RGC still allows all persons to establish associations or organizations as well as to assemble freely by simply filling in necessary formalities and submitting to the competent institutions. Presently, Cambodia has more than 2000 national and international organizations working in all fields and sectors.

28. The RGC has allowed civil society to conduct public forums that allow the people to freely express their ideas or opinions. For instance, a number of NGOs such as the Cambodian Centre for Human Rights (CCHR), Adhoc, Licadho and especially the Institute of International Organization (NDI) and IRI have been working smoothly to educate, disseminate and provide training on human rights to people at the provincial/municipal levels. The other organizations have also been conducting activities on specific rights such as child rights, women’s rights, and economic and social rights.

2. Freedom of the Press

29. Freedom of the press has been widely recognized in Cambodia since 1992. [There are two types] of press: in writing (in print) and broadcasting, and the freedom of the press is protected by the Press Law.

- ***The written Press***

The RGC has widely supported and extensively allowed this form of press. Presently, in Cambodia the expression of opinions is growing through all means, such as newspapers and magazines. The right to freedom of expression is a genuine right, subject to no prior censure by the RGC on the pictures and texts to be published as long as the authorization has been already sought for from the Ministry of Information. The expression of ideas or opinions through the press has significantly increased as the representatives of various press have jointly created organizations and associations such as the Association of Journalists, the League of Journalists and Club of Journalists, etc. which have been working actively to protect their own objectives by establishing a Code of Conduct to ensure the legitimate freedom of the press.

- ***Broadcasting Media***

The RGC has actively promoted broadcasting media 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. The radio-TV stations and cable TV have been remarkably developed in both quantity and quality, and all radio and TV stations is operating regularly by broadcasting their respective programmes.

In 2008, particularly, the state-run TVK had broadcasted an Equity programme for registered political parties. A number of radios have sold their broadcasting time to political parties such as Radio FM105, FM93.5, FM102, etc., and especially RFA and VOA also contributed their broadcasting time during the electoral campaign. Currently, some radios still make their broadcasting time available for political parties to attack the RGC. Five political parties namely SRP, HRP, NRP, FUNCINPEC and ADP, have bought the broadcasting time from the above radios to air their respective political voices even though it is beyond the period of electoral campaign determined by the National Election Commission (NEC).

Regarding the cases of two individuals—one is the President of an NGO and another one is an editor of a newspaper—and the case of a member of the National Assembly raised by the Special Rapporteur in his report, these cases should be under the jurisdiction of the court, which is an independent institution entitled to seek justice for every citizens without discrimination. In fact, these cases have been proceeding accordingly.

3. Right to Personal Security

30. Fundamental peace that covers the whole country and bettered political stability are the basis for development, the respect of human rights and the right to freedom of expression, and have enabled remarkable progress in the development of economic and social fields and beyond.

- ***Security Issues***

Security is a crucial issue to ensure safety of the livelihood of people, to which the RGC has paid extensive attention to successfully prevent a number of major events aimed at provoking instability, causing fears, and creating insecurity for the livelihood of the people. In particular, the government has made efforts to prevent threats and intimidation against the freedom of expression, and had withdrawn imprisonment from the punishment of defamation, and had also abolished the capital punishment. Up to the present, the RGC has been able to ensure security for the country and the people to live in harmony embracing freedom and happiness.

- ***Securing Public Order***

Securing public order is the strategy to maintain peace and order for the livelihood of the people, and the RGC has paid high attention in ensuring the right of the people to live in enjoyable environment, and in ensuring the effectiveness of the implementation of law and the respect of human rights.

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