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**TECHNICAL ASSISTANCE AND CAPACITY-BUILDING**

**Role and achievements of the Office of the United Nations High Commissioner  
for Human Rights in assisting the Government and people of Cambodia in the  
promotion and protection of human rights**

**Report of the Secretary-General\***

**Summary**

The present report is submitted pursuant to Human Rights Council resolution 9/15, in which the Council requested the Secretary-General to report to its twelfth session on the role and achievement of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights.

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\* Late submission.

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## I. INTRODUCTION

1. This report is prepared pursuant to resolution 9/15 of the Human Rights Council, in which it requested “the Secretary-General to report to the Council at its twelfth session on the role and achievements of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in assisting the Government and the people of Cambodia in the promotion and protection of human rights”.

2. In the same resolution the Council welcomed efforts made by the Government of Cambodia in promoting legal and judicial reform, in bringing to justice the leadership of the Khmer Rouge, in combating corruption and trafficking in persons, in resolving issues of land reform, in improving the situation in prisons and in pursuing the ratification of international instruments, notably the Optional Protocol to the Convention against Torture. The resolution further called for stepped-up action to strengthen the rule of law, including through the adoption and implementation of essential laws and codes; to address the problem of impunity for recent human rights violations, and enhance its efforts to investigate and prosecute all those who have perpetrated violations of human rights; to ensure the independence, impartiality and effectiveness of the judiciary; to continue to combat human trafficking, domestic violence and sexual exploitation; to resolve equitably and expeditiously land ownership issues in accordance with the Land Law; to foster an environment conducive to the conduct of legitimate political activity, and to support the role of non-governmental organizations (NGOs) in order to reinforce social and democratic development in Cambodia.

3. The Council welcomed the extension on 1 November 2007, for 18 months, of the memorandum of understanding between OHCHR and the Government and encouraged “both parties to cooperate constructively with each other for further improvement of the situation of human rights”. This extension was agreed to by the High Commissioner on the understanding that a new agreement, better reflecting her mandate, would be considered through renewed efforts to redevelop dialogue and cooperation. On 24 April 2009, the High Commissioner submitted a new draft cooperation agreement to the Government for its consideration.

4. In the past 18 months, OHCHR in Cambodia has stepped up its efforts to engage in effective dialogue and cooperation with the Government. Building on its experience in the country, it has developed initiatives with government institutions critical to the protection of human rights. This has been done in a spirit of partnership whereby issues of human rights concern are jointly assessed and discussed with the relevant authorities, solutions are explored, and support is offered in the form of technical and other assistance to implement them. In doing so, OHCHR has carried out its protection mandate as an integral part of its technical cooperation. This approach, which is based on direct dialogue with government interlocutors, aims at building working relationships with them based on mutual confidence and joint cooperation so that issues of concern can be addressed in a constructive and effective manner. At the same time, OHCHR has continued to draw public attention to certain issues of concern, when avenues for dialogue were exhausted and insufficient to address the situation. The success of this approach requires an honest commitment to recognizing issues and seeking practical solutions.

5. While this approach has translated into fruitful partnerships with several government institutions, including the Ministries of Interior, Justice and Social Affairs, the Phnom Penh Municipality, and the Cambodian Human Rights Committee, other institutions have shown little or no interest in dialogue and cooperation, much to the regret of OHCHR.
6. During the same period, OHCHR also developed its cooperation with community-based organizations, non-governmental and other civil society actors, as well as with the United Nations country team, and multilateral and bilateral development cooperation agencies.
7. This report gives an overview of the activities undertaken by OHCHR to support the Government and people of Cambodia in the promotion and protection of human rights.

## **II. ACTIVITIES**

### **A. Support to correctional reform**

8. Discussions with the General Department of Prisons (GDP) of the Ministry of Interior resulted in the development and launch in 2008 of the joint Prison Reform Support Programme. It aims to improve prison conditions and the treatment of prisoners, to strengthen prison management and reinforce the link between prisons and the rest of the criminal justice system. The Programme supports the GDP reform to transform the system from a security-centred incarceration system into a civilian one geared towards the rehabilitation of prisoners.
9. OHCHR prepared a draft cooperation framework document, outlining the areas of cooperation, the approach and methodology, as well as the respective commitments of the Ministry of Interior and OHCHR, which was submitted to the Government in November 2008. It provides for four specific areas of support jointly identified with the GDP, namely: (a) support for the drafting of the new law on the management of prisons consistent with international standards; (b) support for the professional training of prison personnel; (c) assessment of conditions of detention and treatment of prisoners through a comprehensive programme of prison visits, with confidential reporting to the prison authorities; and (d) assistance to ensure a regular supply of potable water to prisoners and improved sanitation.
10. From August 2008, OHCHR conducted seven visits to provincial prisons in Battambang, Siem Reap, Kampong Thom, Kampot, Pursat and Banteay Meanchey, and to Correctional Centre No. 1, which then accommodated a total of 5,940 prisoners - around 50 per cent of the total prison population countrywide. These visits were conducted in line with standard prison visit methodology, including confidential interviews with prisoners and staff.
11. Confidential reports were submitted after each visit to the Director of each prison visited, to the Director of the GDP and to the Minister of Interior. These reports are aimed at providing to these authorities an independent objective assessment, based on reliable data, of conditions of detention and the treatment of prisoners in each prison, highlighting positive aspects, issues of concern and recommendations for improvement. They are regarded by OHCHR as tools for raising awareness of existing problems, discussion, joint exploration of solutions and cooperation to implement these solutions. At a national conference of all prison chiefs and their deputies organized by the Ministry of Interior in February 2009, the Secretary of State in charge of prisons highlighted the OHCHR reports as useful sources of feedback to help reform the system.

12. The GDP also highlighted several OHCHR concerns in its own 2009 annual report. Prisons are severely overcrowded, impacting adversely on the health of prisoners living in congested cells, as well as on the ability of the GDP to provide rehabilitation activities and rely more on dynamic security methods as opposed to simply containing prisoners. The GDP is faced with a growing prison population, without a corresponding increase in the prison budget, leading to insufficient quantity and quality of food provided to prisoners, poor health services, and a lack of maintenance of prison facilities.

13. Constructive dialogue with the GDP and engagement with other outside actors involved in the prison sector enabled OHCHR to start supporting the Department in addressing these and other serious issues identified during prison visits. Four of the main OHCHR recommendations were accepted and are in the process of being implemented: (a) a review and update of the sub-decree regulating prisoners' rations and cell equipment to increase the daily food allocation per detainee from 1,500 to 2,800 riels (US\$ 0.37 to US\$ 0.70); (b) a review of the function and role of the prisoners' committees, the bodies originally set up in prisons to improve the control and management of prisoners, but which have been implicated in the abuse and ill-treatment of prisoners; (c) recognition of the need to address issues of corruption within the prisons, as manifested inter alia by staff charging money for family visits or access to other services; and (d) the need for minimum design standards for construction of prisons.

14. In recent years, several new prisons have been built to replace old ones, but the GDP has had little say regarding construction standards. These prisons rapidly proved to be poorly designed and/or built. This has burdened the Department with additional infrastructural and management concerns, directly impacting on the conditions of detention. In 2008 OHCHR coordinated cooperation between the GDP, the International Committee of the Red Cross and the Australian Agency for International Development to help the GDP to adopt minimum standards for prison construction to guide future projects. Draft minimum standards were jointly developed and submitted to the GDP in May 2009.

15. The increasing prison population places enormous pressure on existing facilities. Access to water and sanitation is poor in many prisons: prisoners lack water for drinking and washing, while some sewage systems pose serious health and environmental hazards. OHCHR has begun conducting needs assessments and making proposals to improve water and sanitation facilities in selected prisons. It is working with the GDP and provincial authorities to connect the prison in Battambang (and neighbouring communities) to the city water supply system and is assessing water supply conditions in Correctional Centre No. 1 in Phnom Penh, and in several other prisons.

16. OHCHR regards this prison support programme as exemplary of the new spirit of constructive cooperation that it has been seeking to develop with interested governmental institutions.

## **B. Rule of law**

17. The rule of law programme seeks to promote adherence to international human rights standards within Cambodia; to promote and strengthen State institutions responsible for providing individuals with an effective remedy for human rights violations; and to encourage the

State and its institutions to respect these standards. Ultimately, the programme seeks to assist the Cambodian Government to build an institutional framework which will allow Cambodians to obtain an effective remedy for violations of their rights - something which for most of them is still lacking.

### **1. Promotion of international treaty standards**

18. OHCHR has assisted the Government in meeting its existing treaty obligations and has encouraged it to ratify new treaties. The 2009 legislative programme includes a law to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. OHCHR translated and published the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in Khmer within weeks of its adoption in December 2008.

19. The 2007 Constitutional Council ruling clarifying the status of treaties in Cambodian domestic law, which OHCHR was instrumental in promoting, has had a positive impact. On the issue of sentencing of juveniles which the Council had been asked to address, research by the Centre for Social Development found that most judges were complying with the ruling when sentencing juveniles - an important positive shift. OHCHR co-sponsored a series of workshops organized by the Ministry of Justice and the United Nations Children's Fund (UNICEF), aimed in part at raising awareness of the Council decision amongst judges and legal practitioners. OHCHR published a compilation entitled "Cambodian Human Rights Law", which collected the declaration of human rights in the Constitution, the provisions of the Paris Peace Accords related to human rights and Khmer translations of the core human rights treaties to which Cambodia is a party. The book includes the text of the Constitutional Council ruling and aims to clarify its significance by compiling the human rights provisions to which the Council said judges should refer when interpreting laws.

20. OHCHR, together with the Ministry of Social Affairs, the International Labour Organization (ILO) and UNICEF organized an awareness-raising workshop on the Convention on the Rights of Persons with Disabilities and its Optional Protocol in March 2008. It encouraged the Government to follow up on its signing of the Convention and Protocol in October 2007 with full ratification, as well as ratification of ILO Convention No. 159 (1983) concerning Vocational Rehabilitation and Employment (Disabled Persons). A Cambodian delegation attended a two-day workshop organized by OHCHR and ILO in Bangkok in June 2008 on the Convention and the right to work. A national law on the rights of persons with disabilities, which has been drafted over more than 10 years, was adopted by the National Assembly in June 2009. OHCHR understands that the Government does not intend to ratify the Convention before 2013.

### **2. Institution-building**

21. OHCHR continued to advise on the establishment of a national human rights institution (NHRI). Following his visit in December 2007, Brice Dixon, former Chief Commissioner of the Northern Ireland Human Rights Commission, prepared a commentary on the draft law on an NHRI, which OHCHR shared with the working group of NGOs responsible for the draft. There was little progress on the draft during the reporting period, in part due to the national elections

which preoccupied national counterparts. The working group attempted to revive the process in December 2008 with a workshop which OHCHR attended. The workshop revealed a still weak understanding of the concept of institutional independence and unrealistic expectations of what a NHRI can and should achieve. OHCHR has sought to clarify the fact that the NHRI should not be a substitute for effective legal and judicial reform.

22. Under the terms of the Optional Protocol to the Convention against Torture which Cambodia ratified in April 2007, the Government should have created an independent national preventive mechanism (NPM) by April 2008. The draft instruction of the Ministry of Interior to create the institution falls short of the basic requirements, proposing an inter-ministerial committee with no independence and no participation from civil society. OHCHR held discussions with Ministry officials to clarify the treaty requirements. In January 2009, it co-sponsored, together with the Danish Rehabilitation and Research Centre for Torture Victims, a national workshop on the Optional Protocol, which a member of the Subcommittee on Prevention of Torture, Hans Petersen, attended. The workshop was significant as a platform at which both the Minister of Interior and the Prosecutor-General publicly endorsed Cambodia's rejection of torture and ill-treatment before an audience of prosecutors, police and prison officers. A joint press statement was issued by the Ministry of Interior and OHCHR pledging continued cooperation to establish a proper NPM, compliant with the Paris Principles, by way of a law in the coming two years. The adoption of this law is regarded by the Subcommittee and OHCHR as a significant step towards the Government's prevention of torture. The Subcommittee will conduct its first visit to Cambodia in December 2009.

23. The establishment of a NPM provides an opportunity to test the Government's understanding and commitment to establishing truly independent scrutinizing bodies in the context of the NHRI process. Hitherto, the NPM and NHRI establishment processes have proceeded in isolation from one another. OHCHR believes that both should be developed alongside other existing or proposed independent institutions, including the judiciary, as part of the Government's strategy on legal and judicial reform.

### **3. Respect by State officials for legal standards and procedures**

24. In parallel with efforts to strengthen national torture prevention measures and the work of its own prison support programme, OHCHR has provided technical advice and training to the Prosecutor-General and his staff to support his responsibilities under article 509 of the Penal Procedure Code to conduct prison inspections. OHCHR aims to improve the methodology of visits to prisons and detention facilities and hopes to develop guidelines for prison inspections by prosecutors. OHCHR staff accompanied the Prosecutor-General on visits to several provinces in April and May 2009.

25. Impunity remains a major challenge to the rule of law in Cambodia. OHCHR has investigated several cases of alleged torture and ill-treatment perpetrated by police, prison, military and fisheries officials. Although evidence of a prima facie case can be readily established, and in some instances officials will admit to breaches of the law, cases rarely move beyond disciplinary measures and successful prosecutions of torture are exceptional. OHCHR routinely recommends to the authorities that they investigate allegations of torture and other abuses of the law by law enforcement officers, but with limited success.

26. Cambodian law contains specific guarantees against arbitrary or illegal detention, yet numerous cases of unlawful detention are reported each year and fail to be addressed by the competent institutions. One noteworthy case involved the enforced disappearance and illegal detention of a policeman on the orders of the National Police Commissioner in order to coerce him into conceding his claim to property in Kep to a prominent public figure. Although the man was released after intervention from OHCHR, he was subsequently charged and convicted of criminal damage with regard to the disputed property.

27. Cases of excessive pretrial detention, excessive detention pending appeal and tardy release at the end of sentence are commonplace. Limited capacity at the Court of Appeal is a major cause of excessive pretrial detention since many accused people, whether convicted or acquitted, wait long periods for appeals to be heard. OHCHR is working with the President of the Court of Appeal, alongside several development partners, on ways to increase capacity and reduce the backlog of appeals pending.

28. In the context of the implementation in early 2008 of the new anti-trafficking law, sex workers were arbitrarily arrested by the police, assisted by Ministry of Social Affairs personnel, during night-time “sweeps” in Phnom Penh. Together with the homeless, beggars, street children, drug addicts and people with disabilities they were sent to two rehabilitation centres (Koh Romduol and Prey Speu) run by the Phnom Penh Department of the Ministry of Social Affairs. These sweeps have occurred for years in Phnom Penh ahead of important holidays and events for “beautification” purpose, but were exacerbated in the context of the enforcement of the new law. People in the centres were illegally confined and subject to a variety of abuses of power by the staff that included sub-humane conditions of detention, extortion, beating, rape, sometimes resulting in death, and suicide. OHCHR worked closely with the Ministry of Social Affairs, as well as with NGOs, in response to these serious allegations in order to verify them and recommend appropriate action. It visited these centres and observed the appalling conditions in which people were held. It submitted its initial findings confidentially to the Ministry of Social Affairs, which took prompt steps to release the estimated 60 people being held and, on 8 August 2008, the Minister issued an internal instruction ordering Ministry staff to stop involvement in the police sweeps. The instruction also reiterated the principle that admissions to the centres should be on a strictly voluntary basis. OHCHR was authorized by the Ministry to visit these centres on a regular basis, so as to report to the Minister any concerns it might have. By September 2008, it observed that no further abuses were being reported, that Ministry staff had stopped their involvement in the police sweeps, and the practice of rounding up poor people in the streets had come to a halt. In March 2009, it submitted a confidential report to the Minister, confirming some of the most serious allegations of abuses prior to July 2008. In May, it discussed these concerns confidentially with the Secretary of State at the Ministry. It welcomed the measures taken to prevent further abuses and recommended that past abuses be investigated and sanctioned in order to deter further abuse.

29. In May 2009, the Phnom Penh police began again to forcibly round up sex workers and other poor people “to clean the streets” and take them to rehabilitation centres ahead of a high-level summit with the European Union. The Ministry of Social Affairs did not participate in these actions and respected the principle of voluntarism set out in its August 2008 policy. OHCHR is exploring with the Ministry further solutions to address the difficult issue of poor people living on the streets.



30. OHCHR continued its long-standing work of promoting adherence to international trial standards in domestic courts, focusing on the higher instances, where precedents may influence first instance practice. In a new approach to the issue, the High Commissioner submitted to the Supreme Court in June 2008 an *amicus curiae* brief in relation to the men convicted of murdering trade union leader Chea Vichea. The brief focused on breaches of basic procedural guarantees and the use of forced confessions against the two men convicted of the murder and detained since 2004. Both are widely considered to be innocent and the case has become a cause célèbre in the effort to curb impunity and political assassinations in Cambodia. In an unprecedented move, on 31 December 2008, the Supreme Court ordered the release on bail of the two men and sent the case back to the Court of Appeal for review.

31. OHCHR continued to follow the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in order to explore how good practices set by the trials could be used as examples to nurture the reform of wider judiciary and curb present-day impunity. As a Cambodian court bound to observe international trial standards, ECCC has the potential to set an example for the domestic criminal justice system. OHCHR is exploring how best to highlight best practices emerging from ECCC and ensure that these practices are mirrored in improved practices in the domestic courts. This process runs in parallel with the implementation of the new Penal Procedure Code promulgated in 2007.

32. In recent months, a number of lawyers involved in defending prominent cases have been targeted for prosecution merely for representing the interests of their clients. OHCHR has previously reported on the charges of incitement filed against legal aid lawyers representing an indigenous community in a land dispute in Rattanakiri.<sup>1</sup> In January 2009, defence lawyers acting for defendants at ECCC were threatened with possible legal action by Cambodian judges for having called for allegations of corruption at the Chambers to be properly investigated by the Phnom Penh Municipal Court. In May, a lawyer, acting for an opposition member of the National Assembly who alleged that she had been defamed by the Prime Minister, was himself targeted for possible criminal defamation charges and threatened with expulsion from the Cambodian Bar Association. OHCHR made representations to the Bar Association in this last case. It raised the matter with the Special Rapporteur on the independence of judges and lawyers and issued a public statement relating to this and other related concerns.

### **C. Fundamental freedoms and civil society**

33. OHCHR continued to strengthen the capacity of individuals and civil society organizations to exercise their fundamental freedoms of association, expression and assembly. OHCHR has sought to assist the Government in the development of legislation and policies that would enable groups and individuals to organize themselves and participate in public affairs in a free and informed manner.

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<sup>1</sup> A/HRC/7/56, para. 45.

34. The most significant political development of 2008 was the general election on 27 July and the formation of a new Government. OHCHR limited its role to monitoring instances of violence related to the elections. Its main findings were summarized in a press release on 29 July. The elections passed without significant violence - a welcome change to previous elections which have been marred by widespread human rights abuses. It noted, however, the impact on the political climate of the assassination of journalist Khim Sambor and his son on 11 July 2008. Khim Sambor was a reporter for the newspaper *Moneaksekar Khmer* (Khmer Conscience), affiliated with the opposition Sam Rainsy Party (SRP). While the murder appeared unrelated to the elections, it clearly had a chilling effect on an already frightened local media. To date there has been no meaningful investigation into the case. This murder follows eight actual or attempted assassinations of journalists in Cambodia since 1994, and three other fatal instances which remain unclear, for none of which the perpetrators have been punished.

35. During the months preceding the election, OHCHR observed an organized effort by the ruling party to pressure, intimidate and offer rewards to influential individuals belonging to opposition parties to persuade them to switch allegiance, the mobilization of civil servants to campaign for the ruling party, and the use of threats and intimidation. One illustrative example was the arrest of Tout Sarorn, a commune chief and member of the opposition Sam Rainsy Party in Kompong Thom province. He was accused by a fellow party organizer, who had been pressured to defect, of placing her in confinement on 16 February 2008. OHCHR interviewed witnesses at the time of the alleged action, including the plaintiff herself, but found no evidence to support her claim. Its efforts to share its information and discuss the case with the Provincial Court, the Supreme Court, the Cambodian People's Party (CPP) and the SRP yielded no result. Tout Sarorn was convicted and sentenced to three years in prison on 20 March 2009. Three others, co-accused in the same case went into hiding to escape arrest.

36. Despite restrictions on freedom of expression largely being lifted during the month-long election campaign period, OHCHR, as well as all other observers, noted the overwhelming dominance by the CPP of both broadcast and print media, and the continuing attempts to silence critical voices. In this context, an illustrative case was the arbitrary closure by the Ministry of Information of the Angkor Ratha radio station in May 2008 because of fears by provincial authorities that it would sell airtime to opposition parties. OHCHR raised the case with the Minister of Information, who explained that the concern was the selling of airtime to "foreign interests". He assured OHCHR that he would reissue the licence before the elections, which he did not do. The repeated attempts of OHCHR to persuade the Minister to reissue the licence were in vain. The radio station remains closed.

37. Civil society organizations, remaining opposition newspapers, opposition parties and foreign-language media continue to enjoy considerable freedom of expression in the country, and more particularly in the capital. Since the beginning of 2008, however, OHCHR has observed a growing recourse by Government officials and individuals to criminal defamation or "disinformation" complaints to respond to public criticisms. In most cases, the targets have been opposition party figures, including Members of Parliament, as well as journalists and activists expressing views deemed critical of Government policies and practices. The recourse to such legal actions, which carry the threat of prohibitive fines or imprisonment, instead of engaging in public debates on the issues raised, threatens to undermine the exercise of freedom of expression

which is essential for citizens to be able to participate, without fear, in debates on issues of public interest. Similarly, defamation suits under the (United Nations Transitional Authority in Cambodia) criminal law have continued to be filed against journalists, despite provision in the Press Law for civil suits in these cases. In a number of cases, the courts have resorted to criminal law, notwithstanding the stipulation in the Press Law that “no person shall be arrested or subject to criminal charges as a result of expression of opinion”. With regard to opposition parliamentarians, criminal defamation complaints have been linked to threats to lift their immunity as a further means of intimidation, to deprive them of the necessary legal protection that they need to engage in legislative debate without fear. OHCHR has continued to advocate the removal of defamation and disinformation charges from the penal law (past and future); the recourse to civil action, including under the Press Law in the case of alleged defamation by journalists; the encouragement to all to engage in public debate and to use truth rather than threats as a defence; and a greater tolerance by public officials for criticism, while encouraging mutual respect in debating issues publicly. The complete decriminalization of defamation and disinformation would illustrate the Government’s formal commitment to protecting the right to freedom of expression, while protecting personal reputations through civil action for damages.

38. In the past two years, a number of NGOs and community organizations, particularly those involved in the protection of the land rights of the poorest urban and rural communities, natural resources management, and human rights advocacy, have come under increasing official pressure. Arbitrary restrictions on freedom of assembly, expression and movement, as well as intimidation, threats or use of legal action under various pretexts have been imposed on their activities, mostly by local authorities, who have increasingly accused them of incitement. Under the penal law, incitement must relate to the commission of a crime. However, the term has been usually taken on its own to deter or denounce the effort by these communities, or the organizations supporting them, to exercise their constitutional rights and freedoms to organize themselves to protect their right to their land and livelihoods. Whilst these accusations rarely lead to charges, their effect is to keep these civil society actors in fear of legal action by the authorities. While NGOs working with rural communities in Rattanakiri, Kratie and Battambang provinces have been the primary targets of these attacks, the accusation of incitement has become a frequent motto of government officials facing NGO criticism or popular protests against their policies or practices. OHCHR has interceded on a number of occasions with local and provincial authorities to defuse tensions and clarify the allegations concerned.

39. In September 2008, the Government announced its intention to promulgate an NGO law on the grounds that an additional law was required to regulate several aspects of NGO administration and activities so as to ensure transparency, accountability and legality of activities. OHCHR judged that existing or pending legislation could address these aspects and supported ongoing efforts by civil society to adopt self-regulation mechanisms to enhance transparency and accountability. OHCHR also recommended that, both in terms of legislative priorities and coherence, it would be preferable to expedite the enactment of the long-awaited remaining fundamental laws under Cambodia’s Legal and Judicial Reform Strategy. It was also concerned that given the deterioration of relations between the Government and NGOs and the prevailing mutual distrust, the current climate would not be conducive to the adoption of a law that would promote freedom of association and the further development of civil society. OHCHR believes that the nature of the NGO law to be adopted will be an indicator of the Government’s attitude towards civil society and its role in national development.

40. Arbitrary restrictions on peaceful demonstrations continue to be imposed to the point that in the past two years the exercise of the right to free assembly has considerably declined. Under the 1991 Law on Demonstrations, local authorities can approve or reject requests for demonstrations. In practice, most requests have been turned down on various unspecified security grounds, especially if the protests were deemed critical of government policies or practices or organized by the opposition or independent civil society actors. Decisions have often been delayed until the eve of the planned demonstration, making it difficult to organize. Local authorities have sometimes referred decisions to the Ministry of Interior. On several occasions, in response to intercessions by OHCHR, the Ministry has reversed decisions by local authorities and allowed demonstrations to take place.

41. The long-awaited draft law on peaceful assembly is currently before the National Assembly. OHCHR has since 2006 provided detailed commentary on the draft to the Ministry of Interior, the Council of Ministers and the National Assembly. The draft was submitted to Parliament in early 2008, but, in a rare example of assertiveness, the Assembly requested certain revisions of the text to meet several concerns raised by civil society and OHCHR. The revised text shows some improvement, as, for example, personal liability for damage caused during a demonstration is limited to the offender and not the organizer. OHCHR met with the Chairperson of the Human Rights Commission of the National Assembly to recommend further amendments to improve its consistency with international standards. These proposals include fair provision for spontaneous demonstrations, providing for judicial review of the decisions of the Ministry of Interior and clear definition of permissible restrictions on the right to avoid arbitrary restrictions in conformity with the International Covenant on Civil and Political Rights. The adoption of a law containing essential safeguards will be an important indicator of the commitment of the Government to regulating the constitutional right to freedom of assembly in accordance with its obligations under the Covenant.

42. OHCHR has continued to monitor the proceedings in relation to the murders of three trade unionists. In September 2008, the investigating judge closed the investigation in the case of the assassination of trade unionist Hy Vuthy because the police had not produced sufficient evidence. OHCHR and ILO encouraged the police to continue the investigation, apparently with no result. In the case of the murder in 2004 of trade union leader Chea Vichea, the two men who had been imprisoned for five years continued to appeal their conviction. In an unprecedented move, publicly welcomed by OHCHR, the Supreme Court on 31 December 2008 requested the Appeal Court to review the evidence in the case and released them on bail. In the case of the murder of trade union leader Ros Sovannareth (2004) the Appeal Court upheld on 11 February 2009 the conviction of Thach Saveth despite poor evidence and serious procedural irregularities.

43. OHCHR did not receive a response to its repeated requests to seek official clarification concerning the legal status and rights of the *Khmer Krom* (Khmer born in southern Viet Nam). It understands that the policy recognizes all *Khmer Krom* as Khmer citizens and that they are thus entitled to the same rights as any other citizen. A number of them, however, who have been active in publicly protesting against alleged human rights violations against their brethren in southern Viet Nam or in advocating self-determination rights for them have been under close police surveillance and denied their right to identity documents. Tim Sakhorn, a Buddhist monk who has advocated *Khmer Krom* rights, was defrocked and sent to Viet Nam in 2007 where he was imprisoned for a year for “undermining the solidarity between Cambodia and Viet Nam”.

He was released and temporarily allowed by the Vietnamese authorities to return to Cambodia where he expressed the desire to remain. In spite of Government assurances to the contrary, he was refused issuance of an identity card that would improve his protection under the law. Afraid of being returned to Viet Nam, he fled to Thailand in mid-April 2009 and sought political asylum. While this case is exceptional, it illustrates the difficulties that *Khmer Krom* face when advocating their rights or views. While OHCHR understands the political sensitivity of the issue in the context of the relationship between Cambodia and Viet Nam, all Cambodian citizens should enjoy the same protection under national law.

#### **D. Land and livelihoods**

44. The Land and Livelihoods Programme works with the Government, local communities, NGOs, the private sector and development actors: (a) to support the Government's responsibility to ensure compliance of its policies and practices with national law and international standards pertaining to land and housing; (b) to improve the protection of land and housing rights and find joint and fair solutions to land disputes; (c) to increase and improve access to justice and remedies for people claiming or defending land rights in urban and rural areas; and (d) to increase the integration of human rights into the work of United Nations agencies, international organizations and business enterprises in Cambodia.

45. Land conflicts and forced evictions affect large numbers of people in Cambodia. Over 150,000 people have been evicted in recent years and as many are estimated to be facing eviction nationwide. Poor people living in informal settlements in urban areas since the 1980s, small-scale farmers and indigenous communities are particularly vulnerable. Land conflicts are rooted in insecurity of land tenure and the lack of effective implementation of laws protecting land and property rights, in particular the Land Law of 2001. The slow pace of land title registration means that most people lack proper titles in a context of rising land prices and speculation, major urban and economic development, interference of private interests with the granting and sale of public land, and land grabbing by rich and powerful elements. This situation is aggravated by the lack of effective redress against land spoliation.

46. OHCHR considers that if the Land Law was effectively implemented, many land conflicts would not arise, those arising would find fair solutions, and that land conflicts require heightened attention on the part of the highest authorities.

47. In rural areas, OHCHR has continued to monitor the granting of economic land concessions (ELC) and their impact on the rights of local communities. In many cases, no environmental and social assessments are conducted prior to the granting of ELC, contrary to the sub-decree on ELC, and no consultation with affected communities takes place. The recommendations of the Special Representative of the Secretary-General for human rights in Cambodia in his 2007 study on economic land concessions<sup>2</sup> have been mostly ignored by the Government.

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<sup>2</sup> Available at <http://cambodia.ohchr.org>.

48. Communities and NGOs have continued to seek the advice and support of OHCHR in protecting their rights in the context of land disputes resulting from economic land concessions or land grabbing by private individuals or companies. It has encouraged them to use existing administrative and judicial mechanisms to ask for redress in cases of spoliation and encouraged the authorities to solve conflicts lawfully and peacefully. OHCHR has also supported the analysis and documentation of land disputes by communities themselves, which resulted in the submission of countrywide community complaints to national authorities in June and October 2008, thus far with no result.

49. OHCHR continued to draw the attention of the Government and development partners to the promotion and protection of the rights of indigenous peoples to their lands and natural resources. It emphasized the need for special measures to protect indigenous land from alienation due to illegal land deals and the granting of concessions, in the absence of clear and effective procedures on registering indigenous land collectively, which is a joint monitoring indicator agreed between donors and the Government. It also participated actively in discussions around a draft sub-decree on indigenous land registration, meant to set out the procedures for implementing rights to registration of indigenous collective land title according to the Land Law. OHCHR submitted a legal analysis of the draft to relevant ministries, coordinated a joint submission among donors and actively supported civil society discussions and comments on the draft. The sub-decree and a related policy were adopted by the Government on 24 April 2009. To the regret of OHCHR, the documents did not take into account many of the comments made by the stakeholders consulted. OHCHR will keep monitoring the extension to which the sub-decree is implemented in accordance with the Land Law and will report its findings to the Government and development partners.

50. In urban areas, and particularly in the capital, OHCHR pursued its effort with affected communities, government authorities, the municipality, private enterprises, United Nations agencies and interested donors to promote a process whereby evictions and relocations are legal, peaceful, negotiated and fairly compensated. OHCHR has regularly informed the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living of the situation, and sought her advice and intervention to prevent forced evictions. She has written to the Government and issued public calls to the authorities to express her concerns.

51. Several evictions took place during the reporting period, including the eviction on 24 January 2009 of around 150 families from the Dey Krohom site in Phnom Penh. While the municipality had taken positive steps to promote negotiations between the private developer (7NG Company) and the community, and had accepted the OHCHR recommendation that further delay be allowed in order to finalize them in a mutually satisfactory way, negotiations were abruptly stopped after three weeks and the eviction carried out without due notice, during the night, and with excessive use of force. Residents were given no other choice but to relocate to a site 20 kilometres away from their sources of livelihood, with inadequate basic services and facilities in place. OHCHR expressed public regret about the wasted opportunity of setting a good example for future evictions.

52. Following the adoption by the United Nations country team of a viewpoint on evictions in 2007, OHCHR is formulating a proposal to work jointly with the Government on the development of national guidelines on eviction and resettlement to improve current practices.

Several international donors, the country team and NGOs have supported this initiative, which is consistent with the recommendations of the Committee on Economic, Social and Cultural Rights in May 2009, and the Special Rapporteur on adequate housing, which called for a moratorium on evictions until a proper normative framework is in place.

53. OHCHR has continued to work on improving legal protections pertaining to resettlement. In 2008, it submitted comments to the second draft of the sub-decree on the socio-economic impact of development projects and supported civil society input to the sub-decree. In early 2009, a written response by the Ministry of Economy and Finance to comments by the United Nations, donors and NGOs seemed to indicate that many of the comments had been taken into account. However, the actual draft was not made public, and it is unclear when the draft will be adopted. The sub-decree would give crucial guidance to government officials implementing State development works.

54. In its work on land and housing, OHCHR has highlighted the importance of protecting the rights of freedom of expression, association and movement of affected communities and the NGOs supporting them, and the need for an effective judicial recourse for aggrieved individuals or communities. OHCHR has continued to monitor the environment for NGOs and communities to exercise their rights under the Constitution to seek the protection of land rights. It has documented that in a great number of cases, when people organized themselves to seek redress or claim their rights under national law, they were ignored, threatened, accused of a number of offences (including incitement) or - increasingly - imprisoned. As of June 2009, 55 to 60 individuals were reportedly detained in relation to land disputes. The number of criminal charges against individuals in this regard, and the number of arrests were considerably higher, as many charges were not acted upon or people were released on bail after initial detention. OHCHR provided advice to the relevant authorities in several instances to ensure due process of law, which resulted in the release of several individuals. It also approached the Prosecutor-General at the Appeals Court to encourage him to issue a ruling that a legal determination of the ownership of the land in dispute should be made prior to the bringing of any criminal charge.

#### **E. Assistance on reporting under the human rights treaties**

55. OHCHR undertook to comprehensively support the Government and civil society to engage with reporting procedures under human rights treaties and the Human Rights Council.

56. In 2008, Cambodia had 15 reports overdue to the treaty bodies and 4 others pending. By mid-2009, this backlog had been reduced to seven and the Government was on track to clear its backlog by the end of the year. Cambodia's initial report under the International Covenant on Economic, Social and Cultural Rights, overdue since 1994, was submitted in October 2008. In February 2009, Cambodia submitted reports to the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination. In April 2008, with the support of OHCHR, the Government agreed to a proposal from the Committee against Torture to pilot a new reporting procedure whereby its response to a list of questions prepared by the secretariat would constitute the State report. The response to the questions, which OHCHR translated into Khmer, is expected by 30 June 2009 and OHCHR is providing support to ensure timely submission. The draft of the next report under the Convention on the Elimination of All Forms of

Discrimination against Women, if submitted as planned in November, would be the first instance of Cambodia reporting to a treaty body within the treaty periodicity. The Government has signalled to OHCHR its intention to draft its next report under the International Covenant on Civil and Political Rights in the second half of 2009.

57. The secretariat of the Committee on Economic, Social and Cultural Rights informed the Government in October 2007 that it had decided to consider Cambodia at its session in May 2009 and requested its report by 1 August 2008. The Government began to work on a draft. The drafting committee within the Government Human Rights Committee established a close and productive relationship with OHCHR, which provided technical support and advice throughout. In May 2008, OHCHR invited a member of the Committee on Economic, Social and Cultural Rights, Virginia Bonoan-Dandan, to Cambodia to encourage the Government's engagement with the Committee. She reviewed the draft report with the drafting committee and provided advice on how to improve it. She also advised the Ministry of Foreign Affairs on the process. OHCHR assisted the Government with the costs of translating the report to ensure timely submission.

58. As a result, the report was submitted in time to the Committee, which reviewed the report in November 2009. OHCHR provided further technical advice to the Government on how to respond to the Committee's initial list of issues which it forwarded to the Government. The Government's written responses were submitted on time. Notwithstanding advice from OHCHR regarding the need for experts on the substantive issues covered in the Covenant to engage in a constructive dialogue with the Committee in Geneva, the Government decided at the last minute not to send a delegation from Phnom Penh to attend the session. This was a missed opportunity, given the convergence between the objectives of the Covenant and the Government's development strategies as outlined in its Rectangular Strategy and the considerable progress that has been made in many areas since 1992.

59. The Committee also benefited from the extensive written and oral submissions prepared by a coalition of NGOs, community activists and representatives of civil society including a comprehensive parallel report. OHCHR supported both government and civil society engagement with the process.

60. The Committee issued its concluding observations and recommendations on 22 May 2009. OHCHR translated them into Khmer for dissemination within the Government and amongst the wider public. It has offered technical assistance and support to the Government to encourage consideration and implementation of the recommendations. It has continued to support the activities of NGOs in raising the awareness of communities and the wider public of the concluding observations and their use as guidance to promote economic, social and cultural rights.

#### **F. Cooperation with the United Nations country team**

61. OHCHR is an active member of the country team, which is guided by a human rights-based United Nations Development Assistance Framework (UNDAF) (2006-2010), and has continued to support the integration of human rights within this framework. It has coordinated and advised activities undertaken by the country team, particularly in relation to land



rights which are among the main challenges affecting poverty reduction and social development in Cambodia. This work resulted in the adoption by the country team of a common viewpoint of evictions and resettlement, which in turn has translated into further advocacy and other strategic interventions by the United Nations in Cambodia. Briefings on current human rights developments were also given regularly to donors and the diplomatic corps. Other specific areas of cooperation with individual United Nations agencies have been described above. OHCHR is fully engaged in the development of a new UNDAF for the next 2010-2015 programme cycle.

62. OHCHR has also continued to cooperate with bilateral and multilateral donors, including under the auspices of the Cambodia Development Cooperation Forum. It is actively engaged in 2 of the 19 technical working groups set up under this framework, namely those focusing on legal and judicial reform and land.

### **G. Education, training and public information**

63. The sixtieth anniversary of the Universal Declaration of Human Rights provided OHCHR with an opportunity to undertake a comprehensive outreach and communication campaign aimed at increasing awareness of human rights. This campaign was carried out in partnership with the country team. The campaign made use of street banners, parades and open-air celebrations, distribution of publicity materials, and an event organized by the regional office in Battambang. It culminated in a well-attended cultural event held on International Human Rights Day at the Chaktomuk Theatre in Phnom Penh.

64. In connection with the sixtieth anniversary, a range of accessible new publications and promotional materials were developed to increase awareness of the Declaration and its significance for ordinary Cambodians. Posters, leaflets, and bilingual pocketbooks in both official and unofficial simplified text were produced, along with a full-colour illustrated storybook interpreting the rights in the Declaration.

65. In addition to these anniversary publications, OHCHR continued its programme of publishing Khmer translations of key treaties and international instruments, including a compilation of core international human rights treaties accepted by Cambodia, bilingual pocketbooks of the Declaration in the Cambodian Constitution, and United Nations instruments on the rights of victims of human rights violations.

66. With Cambodia scheduled for review under the universal periodic review (UPR) in December 2009, the training carried out by OHCHR was linked to building domestic capacity in this respect. From 18-20 May 2009, OHCHR cooperated with the British Embassy, the Swedish International Development Cooperation Agency and the Indonesian Embassy, to organize a workshop to familiarize the Government and civil society with the universal periodic review, help them prepare their cooperation with the process, and foster Government-NGO cooperation in this regard. The event was opened by the President of the Cambodian Human Rights Committee. Approximately 100 participants attended the workshop, including the Cambodian Human Rights Committee and relevant ministries. OHCHR also provided guidance to civil society organizations on drafting reports for the UPR stakeholders report and held a number of NGO briefings, mainly working through the Cambodian Human Rights Action Committee, which took on a coordinating role. Some 27 civil society reports were received by the secretariat.

67. A two-day training session for NGOs was held in Battambang on 8-9 September 2008 to help them in documenting human rights violations for special procedures. Forty-four NGO representatives participated from the north-western provinces, representing a variety of fields including human rights, legal aid, community development and environmental issues. A second similar training session was conducted on 15-16 December in Rattanakiri for participants from the north-eastern provinces. Briefings for NGOs, community networks and students were conducted on the OHCHR priority issues.

### **III. ASSISTANCE TO THE SPECIAL RAPPORTEUR**

68. On 10 September 2008, the Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, announced his resignation. Human Rights Council resolution 9/15 replaced the mandate with that of a Special Rapporteur. Under the resolution, the Special Rapporteur is to report to the Council's twelfth session. On 25 March 2009 the Council confirmed the appointment of Surya Prasad Subedi as Special Rapporteur on human rights in Cambodia. His first mission to Cambodia took place from 16 June 2009 and he will report on it to the twelfth session of the Council.

### **IV. STAFFING AND ADMINISTRATION**

69. OHCHR maintains a head office in Phnom Penh and a regional branch in Battambang. There are 8 international staff positions, 24 national posts and 1 international United Nations volunteer. Its management structure consists of a Representative, a Deputy Representative, four programme units, and an administrative unit.

70. The United Nations regular budget covers the operational expenses, including the salaries of 7 international and 20 national staff members. Voluntary contributions to the United Nations Trust Fund for the Human Rights Education Programme in Cambodia cover all other expenditures, including substantive programme activities and the salaries of the other staff members. The Trust Fund is administered by the United Nations Office at Geneva.

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