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NATIONAL CONFERENCE ON LEGAL AID

29 November 2013

Cambodiana Hotel, Phnom Penh

Co-organised by the Ministry of Justice and the Bar Association of the Kingdom of Cambodia, with support from UNICEF and OHCHR-Cambodia

**Welcome remarks by Ms. Wan-Hea Lee,
Representative, OHCHR-Cambodia,
on behalf of UNICEF and OHCHR-Cambodia**

Excellencies,

Ladies and gentlemen,

Let me first pay my respect to H.E. Bun Honn, President of the Bar Association of the Kingdom of Cambodia, and H.E. Kem Santhipheap, Under Secretary of State at the Ministry of Justice, and thank their respective institutions for organising today's conference with our support. I am delivering these welcome remarks on behalf of both UNICEF and OHCHR-Cambodia.

This morning, I would like to welcome all participants to this important conference. This is the first time that officials from the Government (in particular the Ministry of Justice), the Bar Association, court presidents, chief prosecutors, legal aid lawyers, including NGO lawyers, and donors are gathered to discuss possible strategies to improve access to justice for the poor and vulnerable people, including women and children, in Cambodia. I know that you have come from all provinces of Cambodia to attend this conference and I would like to thank you for taking the time and making the effort to join us today.

Let me start with a simple and personal story which illustrates the importance of legal aid. During a visit to this country last year, I went to CC1, the main prison in Phnom Penh. While I was there, I came across a young boy who clearly shouldn't have been detained in an adult prison. He seemed completely lost, he came from a very poor family. He had very little understanding about the legal process and had already been detained in CC1 for several months for a minor offense. He also had some health problems. One can imagine how frightened he must have been during that time, or what he might have endured in that adult prison with hardened criminals. Without the assistance of a lawyer, he may have stayed there

for many more months, even years. We found a legal aid lawyer who was willing to defend his case before the court. As result, the trial could take place with proper defense, and the boy was released soon afterwards. Although I was pleased about the result in this case, I could not help thinking about the many other prisoners who should also benefit from some legal assistance, but could not afford it. This example illustrates why we place so much importance in this conference - because legal aid is an essential equalizer of justice. It places poor and rich defendants on more equal footing, improving their chances for equal protection to the full extent of the law. Without it, justice in Cambodia will only be for the rich, powerful, and the well connected.

Before we start discussing strategies to improve legal aid, we need to be clear about the concept of legal aid. When people talk about legal aid in Cambodia, they often refer to just legal representation before the courts. I challenge you today to take a much broader approach to the concept of legal aid which includes legal advice, assistance and representation for persons arrested, detained or imprisoned, suspected, charged with or accused of a criminal offence and who are poor or vulnerable for any other reason. Victims and witnesses should also receive legal aid services. In short, every stage of interaction of the people with the justice system is need of legal aid.

From a human rights perspective, legal aid is a fundamental human right in and of itself. It is an element of a fair and effective criminal justice system that is based on the rule of law. It is also essential for the enjoyment of other human rights, including the right to a fair trial, particularly for the poorest who cannot afford legal services. Increased access to legal aid services may, among other things, prevent ill-treatment in police stations, reduce prison overcrowding and reduce wrongful convictions. There is no doubt that a more effective legal aid system would increase protection for children within the criminal justice system. It would help ensure that children are treated as children.

In this regard, the situation in Cambodia raises serious concerns. I ask each of you to consider how satisfied you are that legal aid services in Cambodia should be mainly provided by lawyers from NGOs funded by foreign donors. At one point in time, it could be said that this was the best that could be done. But we know that most donors are reducing their support to legal aid NGOs and that this trend will continue. The Government provides some funding to the Bar Association of the Kingdom of Cambodia for this purpose, but the budget allocated to legal aid is wholly inadequate. The number of legal aid lawyers is small and diminishing. Back in 2010, the number of legal aid lawyers in Cambodia was 119. According to recent research conducted by OHCHR, this number has fallen to 76 in the last 3 years. UNICEF supported the Bar Association to produce a national directory of legal services, copies of which are available today. In several provinces of Cambodia, there isn't a single legal aid lawyer. Access to lawyers in police stations is extremely limited, especially in rural areas. The provision of legal aid services in the country is neither effective, nor sustainable. For many Cambodians, justice is a luxury that they cannot afford.

Action is urgently needed. I hope that today's conference will lead to a number of recommendations and commitments which will move Cambodia towards developing a national legal aid system with a clear vision on how to ensure that legal aid is provided in a systematic way for all who need it. A number of steps have been taken in the past and I want to draw your attention to the papers contained in your folders. The first one is a survey of legal aid in Cambodia conducted by the Council for Legal and Judicial Reform and the East-West Management Institute in 2006. The second is a study of legal aid services in Cambodia conducted by CHRAC in 2010. And the third is an options paper prepared by DANIDA for

the Council for Legal and Judicial Reform in 2011. I note here that the responsibility for legal aid has now shifted to the Ministry of Justice. These three papers provide detailed information on the situation of legal aid in Cambodia. We should keep them in mind in our discussions.

Over the last year, the UN has paid increasing attention to the issue of legal aid. Building on the International Covenant on Civil and Political Rights, last December, the UN General Assembly in New York adopted the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Our Office has translated these principles into Khmer and all participants should have a copy.

These Principles and Guidelines reaffirm the primary duty and responsibility of the State to provide legal aid and to allocate the necessary human and financial resources to the legal aid system. They emphasise that persons suspected of or charged with a criminal offence are entitled to legal aid at all stages of the criminal procedure. Children should be prioritized in the provision of legal aid. The UN Principles and Guidelines also reaffirm the right to be informed about legal aid – this is especially important in Cambodia where many people are not aware of even the existence of legal aid services, much less their right to benefit from them. There is also a detailed section on special measures for children. As you will see when you read the UN Principles and Guidelines on Legal Aid, they provide useful and practical guidance to States seeking to establish effective and sustainable national legal aid systems.

The UN human rights mechanisms have also recently focused their attention on legal aid. The Special Rapporteur on the independence of judges and lawyers has devoted her last thematic report to the Human Rights Council on the issue of legal aid. We have brought copies of the report today and translated the most relevant sections into Khmer. Also, just a few weeks ago, the UN Committee on the Elimination of Discrimination against Women recently recommended to Cambodia to “develop a comprehensive legal aid scheme in order to ensure effective access by women to courts and tribunals, in accordance with the UN Principles and Guidelines on Access to Legal Aid”. Legal aid is a central concern to the Special Rapporteur on the human rights situation in Cambodia, as reflected in his report on the justice sector few years ago.

I have full confidence that participants today will succeed in finding solutions to ensure that legal aid becomes a reality in Cambodia. Other countries in the region, such as Indonesia, have done so successfully. If we share the conviction that it is not only possible but is imperative, then in this time where national priorities are being newly defined and when the responsiveness of Government services to the people are being re-examined, there is no reason why Cambodia could not do the same. I believe that if all the Government services share this vision, that boy's release might have spared him from more than just a few more years in prison. It might have been the start of a new life. Ladies and gentlemen, this is your role. It is not to merely wrestle with obscure legal provisions, it is to prevent injustice. It is to save lives.

I sincerely hope you will bear this in mind, today, and on the long road ahead toward building a solid legal aid system. We here hold the key. I wish you all a very fruitful discussion. Thank you for your attention.