

**Mandates of the Special Rapporteur on the situation of human rights in Cambodia and the
Special Rapporteur on the rights of persons with disabilities**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Cambodia and Special Rapporteur on the rights of persons with disabilities, pursuant to Human Rights Council resolutions 42/37 and 44/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the plan to adopt **the Draft Law on The Protection of the rights of Persons with Disabilities**.

At the outset, we wish to welcome the decision by Your Government to draft a new law on the rights of persons with disabilities, and your stated intention to ensure that it is fully aligned with the Convention on the Rights of Persons with Disabilities (CRPD).

We also welcome that the Disability Action Council (DAC) has held extensive consultations with relevant stakeholders, including civil society and organizations of persons with disabilities, as well as United Nations agencies and bodies. We consider this effort an important opportunity for the rights of persons with disabilities, but also for Cambodia as a whole.

According to the information received:

The "Law on the Protection and Promotion of the Rights of Persons with Disabilities" (hereinafter "the Law"), currently in force, was adopted in 2009, before Cambodia ratified the CRPD on 20 December 2012.

In 2020, the DAC, the government institution in charge of streamlining national efforts on the rights and welfare of persons with disabilities, started the process of amending the Law to bring it in compliance with the provisions of the CRPD. The DAC has led the drafting process since April 2020, and decided to draft an entirely new law given the extent of the amendments foreseen, which included, *inter alia*, the expansion of the rights in line with the CRPD, and a revision of the institutional framework supporting persons with disabilities in Cambodia. The drafting process included various consultations with stakeholders, including with organizations of persons with disabilities, government entities and ministries, development partners and United Nations agencies.

Despite the comprehensive drafting and consultative process, to date, we are concerned that the current draft of the new legislation is not in full compliance with international human rights law. We understand that a number of inputs received by stakeholders and partners, including United Nations agencies and civil society, have not been taken onboard by the DAC.

We are concerned, in particular, about the fact that the draft law does not include a number of rights recognized by the CRPD, nor does it articulate the State's responsibilities as duty bearer to implement such rights. Additionally, we note that the draft law also contains a number of penalty provisions that do not align with international human rights standards.

We wish to bring to the attention of Your Excellency's Government that the provisions contained in the draft law raise multiple concerns vis-à-vis international human rights law and standards. In particular:

- In Chapter I ("General Provisions"):
 - o Article 1 on the purpose of the law focuses mainly on inclusion of persons with disabilities, but does not incorporate the principle of active participation, non-discrimination or reasonable accommodation, as per article 2, 3 and 5 of the CRPD.
 - o Article 2 on the scope of the law seem to be limiting, as it "applies to persons with disabilities and any activity related to persons with disabilities in the Kingdom of Cambodia". This provision does not capture the general obligations and responsibilities of duty bearers to apply the law, in line with, among others, article 4 of the CRPD.
 - o Article 3 refers to definitions contained in the glossary, which means that the draft law itself does not contain the definition of disability, in line with the CRPD. Additionally, this chapter does not outline many of the overarching principles of the CRPD as contained in its article 3, including: respect for the inherent dignity, individual autonomy and independence of persons with disabilities; equality and non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.
- Chapter II ("Types and Levels of Disabilities") of the law reflects a medical approach to disability, which focuses on a person's limitations, rather than the limitations within society and the necessary requirements of support measures in view of the barriers in society.
- Articles 6, 7 and 8 under Chapter III ("Competent institution") establish and regulate the Cambodian National Council for Persons with Disabilities (CNCD). The draft law envisions the CNCD as having a wide range of functions, including monitoring, as well as receiving and adjudicating complaints. We wish to highlight that this body is not independent from the government and cannot replace any independent monitoring body as provided under article 33(2) of the

CRPD. In this regard, we also wish to highlight that article 47 of the draft law requires that “public and private legal entities shall provide progress report on disabilities to CNCD that will consolidate for Royal Government and for the United Nations”. It is unclear for what purpose the CNCD would request progress reports, but private entities, especially civil society organizations, should not be obliged to report to a government entity on their activities.

- Chapter IV (“Rights and duties”) of the draft law does not fully include the provisions of the CRPD.
 - Article 11, which is part of the section on “employment and economic security” provides for “reasonable accommodation” but does so only in relation to employment of persons with disabilities, while reasonable accommodation should be applied to all aspects of life. It also seems to equate reasonable accommodation with measures of “accessibility”, which may be restrictive.
 - Article 18 on the provision of inclusive health services does not fully address the right to health in all its aspects, in line with article 25 CRPD. For example, there is no mention of the right to free and informed consent and the right to the provision of the same range, quality and standard of free or affordable health care and programmes, as provided to other persons, through application of reasonable adjustments (in relation to information, communication, facilities, technology and equipment) to prevent discrimination, and by ensuring that workers in the health sector (clinical, administrative and management) have adequate knowledge of the rights of persons with disabilities and capacity (skills, knowledge and adequate financial resources) to make reasonable adjustments.
 - Article 19 on Rehabilitation Services seems to adopt a limited approach to rehabilitation, as it covers only physical rehabilitation (and not psycho-social and mental rehabilitation, among others and in line with article 26 of the CRPD). It also establishes a significant role for civil society organizations and the private sector to provide rehabilitation services, but fails to determine requirements and obligations of the State to regulate and monitor the provision of these services by third parties, with the participation of representative organizations of persons with disabilities.
 - We welcome that article 40 of the draft law, on legal assistance services, provides for free legal aid for persons with disabilities. We are concerned, however, that it does not enunciate the process of how such services may be accessed. Additionally, no complaint mechanism is provided to address cases when persons with disabilities cannot access good quality legal aid services free of charge.

- Section 3 of Chapter IV (“Technical, and Vocational Education and Training”) does not sufficiently address the provisions of inclusive quality education for persons with disabilities, as provided by article 24 of the CRPD.
- Chapter VIII (“Administrative Sanctions, provisional fines and Penalties”) appears to unevenly criminalize a certain range of behaviors and contains language that may be too vague, and may affect the practical application of the law and even have adverse effects, discouraging those willing to support to persons with disabilities. For example, we are concerned that the currently drafter provision criminalizing the wrongly translation of contents spoken in sign language, contained in article 67, without requiring malicious intent, could make accidental misinterpretation punishable, and discourage people from using sign language with persons who are deaf. It also provides for punishment in accordance with the provisions of the Penal Code, without further clarification, which makes this provision technically inapplicable.

We note that there are other provisions that provide for heavy and uneven punishment for different types of crimes against persons with disabilities. For example, article 41 of the draft law, which criminalizes insult, imitation of, and disguise as, persons with disabilities, provides for a possible punishment of one to three years imprisonment and a fine stemming from 100,000 Riel to 10,000,000 Riel (approximately USD 25 to USD 2,500). However, the draft law does not define discrimination nor criminalizes it, when, in practice, this may be a more frequent problem in the daily lives of persons with disabilities.

Further, the punishment under article 41 as mentioned above has a much broader range than the one established for other crimes. For example, the crime of exploiting or subjecting a person with disabilities to forced labour (article 62) carries a possible imprisonment from one month to one year, and a fine from 100,000 Riel to 1,000,000 Riel (approximately USD 25 to USD 250). International human rights law prohibits any forms of direct and indirect disproportionate punishment and requires authorities to exercise its coercive power in a way that is proportionate to the offender’s wrongdoing.

Finally, article 69 punishes any individual with obligatory care for persons with disabilities for putting them in isolation or abandonment with a heavy punishment from one to five years imprisonment and a fine from 2,000,000 Riels to 10,000,000 Riels (approximately USD 250 to USD 2,500), but only “if the abandonment act endangers the health or security of the persons with disabilities”. This provision is limiting the criminalization of forced isolation and abandonment of persons with disabilities to only a specific context, and is not in line with international human rights standards, including article 15 (freedom from torture, cruel, inhuman or degrading treatment or punishment) of the CRPD and article 2 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. Further, the term “person with obligatory care” should be defined in the law.

While welcoming the initiative and the stated intention of the Government to ensure compliance with the CRPD, we are nevertheless concerned that a number of provisions contained in the draft law are still incompatible with international human

rights norms and standards, particularly the CPRD. We are also concerned over the negative impact that the draft law may have on the enjoyment of human rights by persons with disabilities if the current draft should not be reviewed.

In this light, we wish to recommend to Your Excellency's Government to reflect further on the draft legislation with a view to optimizing its compatibility with the CRPD and other international human rights standards and obligations.

In this process of reflection, we stand ready to offer our support to Your Excellency's Government, together with the Office of the High Commissioner for Human Rights. We also recommend to Your Excellency's Government to actively seek the advice of the Committee on the Rights of Persons with Disabilities on the contents of the draft law, as provided by article 37 (2) of the CRPD.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.
2. Please provide information on measures taken to ensure the compliance of the draft law on persons with disabilities with Cambodia's obligations under international human rights law and standards.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would be grateful if a copy of this communication could be shared with the Disability Action Council.

Please accept, Excellency, the assurances of our highest consideration.

Rhona Smith
Special Rapporteur on the situation of human rights in Cambodia

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities