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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 12/25 in which the Council requested the Secretary-General to report to the twelfth session on the role and achievements of the Office of the 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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I. Introduction

1. This report was prepared pursuant to Human Rights Council resolution 12/25 of 2 October 2009. It describes the activities of the Office of the High Commissioner for Human Rights (OHCHR) in Cambodia from June 2009 to June 2010.

2. During this period, the OHCHR programme of cooperation with the Government, civil society and the development community focused on the protection of rights related to land and housing, support for legal and judicial reform, correctional reform, and the protection of fundamental freedoms and development of civil society. It has continued to do so in a spirit of constructive dialogue which consists of discussing issues of concern directly with the relevant authorities, to draw their attention to applicable human rights standards, to explore possible solutions with them and to provide assistance to implement these. This approach builds on working relationships based on mutual confidence, and the search for durable solutions. In this spirit, OHCHR has been implementing its protection mandate within its technical cooperation programme. It has also drawn public attention to certain issues deemed critical, or when avenues for dialogue have been exhausted or proved ineffective. Human rights cooperation is complex and sensitive. It requires tact, dialogue, mutual understanding, the acknowledgement of issues and a willingness to address them.

3. The Office welcomed the exemplary cooperation of the Government with United Nations human rights mechanisms. In January 2010, it extended the OHCHR Memorandum of Understanding for another two years, thus acknowledging the value of the Office's cooperation. It cooperated closely with the new Special Rapporteur on the situation of human rights in Cambodia, who has visited the country three times since June 2009 and will be submitting his second report to the Human Rights Council in September 2010. The Government fully cooperated with the Subcommittee on the Prevention of Torture, which carried out its first mission in the country in December 2009. It presented its human rights record before the Universal Periodic Review (1 December 2009) of the Human Rights Council and accepted all the recommendations resulting from the process. Noteworthy also is the strengthened cooperation between OHCHR and the Cambodian Government's Human Rights Committee (CHRC) on treaty reporting, which resulted in the Government's clearing nearly all its pending reports to the United Nations Human Rights Treaty Bodies.

4. Since June 2009, important steps that will impact on human rights have been taken to strengthen the country's legal and institutional framework: adoption of the Penal Code, the Law on Peaceful Demonstrations, the Law on Expropriation, the Anti-Corruption Law, a Housing Rights Policy and a circular to regulate evictions; drafting of a new correctional law and a law on a national human rights institution; and steps towards developing a national mechanism to prevent torture. The Office welcomed these initiatives, which, in the course of their development, it has actively sought to bring closer to human rights standards. It also welcomed the completion of the first trial in November 2009 by the Extraordinary Chambers in the Courts of Cambodia (ECCC).

5. During the same period, however, many poor rural and urban communities, including minority peoples in north-eastern provinces, continued to be dispossessed of their lands with little or no remedy, the political space for critical debate was further eroded due to threats of, or the abusive use of, defamation, disinformation and incitement lawsuits, the reform of the correctional system faced enormous pressure, and the judiciary serious challenges to the effective delivery of justice.

II. Rule of law

6. Few people in Cambodia have access to justice for violations of their rights, because they are poor and disempowered and, too often, when they turn toward the courts, justice is rarely delivered. The Office's rule of law programme aims to assist the Government in strengthening an institutional framework within which people can obtain an effective remedy, through the promotion of human rights standards, the strengthening of institutions responsible for protecting human rights, and their effective functioning.

7. The Office supported the Government's commitment to the international human rights treaties, both through new ratifications and compliance with existing obligations. In August 2009, a law to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was promulgated. OHCHR has been encouraging the Ministry of Social Affairs to consider ratification of the Convention on the Rights of Persons with Disabilities in the light of the adoption of the Law on the Rights of Persons with Disabilities in 2009. A plan of action for implementation of the law is being drafted and it is hoped that ratification will be part of it.

8. The Office welcomed the adoption of the new Penal Code¹, replacing the criminal provisions enacted by the United Nations Transitional Authority in Cambodia (UNTAC) in 1992. The Code was drafted with significant support from the Government of France, and represents a considerable improvement in the legal framework for the administration of criminal justice. The Office analysed key provisions in order to contribute to an informed debate on the draft code as it passed through Parliament. The analysis focused on the extent to which the provisions conformed to international standards applicable in Cambodia with regard to sentencing, especially non-custodial alternatives, detention, torture and child exploitation, as well as their potential for restricting freedom of expression. Parliament missed an opportunity to improve the Code in order to strengthen Cambodia's adherence to other international human rights treaty norms, for instance by including a definition of torture under the provision on torture in line with the 2003 recommendation of the Committee Against Torture², or ensuring better protection of children against sexual exploitation in line with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. OHCHR's comments highlighting these concerns were shared with the Government and all parliamentarians but no amendments were made.

9. The tightly controlled adoption process by Parliament with no amendments accepted at any stage of the process highlighted that institution's limited effectiveness in scrutinizing legislation prepared by the Executive. Whilst the National Assembly had begun to assert its independent role when it sent the draft Law on Peaceful Demonstrations back to the Council of Ministers in early 2008, important laws, such as the Penal Code, the anti-corruption law, and the law on expropriation, were adopted with almost no debate, no amendments, and little or no consultation. The Government has responded that some Cambodian laws take many years to draft and are sent back and forth between executive and legislative bodies for modifications after being submitted to the legislative body. The Government is of the view that no law in Cambodia has been drafted or passed without debate either at drafting or passing level.

10. The process of establishing a national human rights institution (NHRI) has moved forward slowly since it started over a decade ago. The non-governmental organization (NGO) group delegated to draft the law and the CHRC are moving towards a consensus on

¹ Part of the Code came into force in December 2009; the balance entered into force in December 2010.

² CAT/C/CR/30/2, para. 7.

a draft strengthening the basic requirement of the independence of the future institution. The process is ongoing. The difficulties in establishing effective independent bodies in Cambodia are illustrated by the Government's timid efforts to establish an independent national preventive mechanism (NPM) as required under the Optional Protocol to the Convention against Torture (OPCAT) to which it is a party. In August 2009, a body was established by sub-decree which falls short of the basic OPCAT requirements. It is an inter-ministerial committee consisting of senior officials, chaired by the Interior Minister. There are no independent members or participants from civil society. The Subcommittee on Prevention of Torture (SPT) confirmed the earlier advice of OHCHR that this body could not be regarded as a credible NPM. The Ministry of Interior has acknowledged this fact and signalled its intention to draft a law to formally establish an NPM with a supporting Secretariat. OHCHR has offered support, which the Ministry has accepted, to help draft the law, train the Secretariat and coordinate with other actors.

11. The Office provided support to the SPT during its mission to Cambodia in December 2009. OHCHR assisted the inter-ministerial committee to prepare the visit. The delegation spent ten days visiting prisons, police stations, drug and rehabilitation centres and meeting key Government officials. The Government granted the SPT unfettered access to detention facilities and demonstrated an exemplary openness to discussing its findings. OHCHR was invited to participate in the end-of-mission discussions with the Government. Wider lessons can be drawn from this visit in terms of the value of opening up government activities to scrutiny by independent professional bodies. The SPT methodology, which includes unfettered access to places of detention and detainees, together with confidential interviews and reporting, has been promoted by OHCHR through its prison programme in the past two years. These lessons may serve to inspire Cambodia's reform of existing or proposed independent institutions, including the judiciary and the NPM.

12. Despite Cambodia's renewed commitment to preventing torture, prosecutions for acts of torture remain the exception. OHCHR investigated allegations of torture and ill-treatment and raised them with the appropriate authorities but has yet to see any prosecution. The new Penal Code provides for more effective action against perpetrators.

13. Ongoing collaboration between the Office and the Court of Appeal and the Prosecutor-General's Office has developed. The Court of Appeal hears appeals for criminal and civil cases from all 22 provincial and municipal courts. Thousands of appeals have been pending which, with the court's current capacity, will take many years to clear. OHCHR has been encouraging donors to support the construction of extra office and courtroom space in order to increase its capacity to address this large backlog. This infrastructure intervention could have a significant and measurable impact on cases of human rights violations related to excessive detention pending appeal, the right to speedy judicial review and overcrowding in prisons. In March 2010, the Office supported a small donors' conference at which the Appeal Court President and the Prosecutor-General set out their plans to improve the functioning of the Court, which stands at the apex of the court structure. Two donors expressed interest in supporting the project.

14. Arbitrary detention remains a serious problem. The Office continued to monitor unlawful and arbitrary detention of people removed from the streets of Phnom Penh in the context of Government efforts to deal with homelessness. Their arbitrary detention had given rise prior to 2008 to human rights abuses, such as inhuman conditions of detention, ill-treatment sometimes leading to death, and sexual violence. The Office has consistently advised the authorities that detention is an inappropriate response to social deprivation. It has regularly monitored the issue and worked with the Ministry of Social Affairs to inform it of these concerns and to encourage corrective measures. The Ministry instructed its staff to cease participation in police round-ups of poor people in the streets, re-established the principle of voluntariness for admission to its centres and improved its rehabilitation

services, but has not taken any serious steps to investigate and sanction the instances of serious abuse brought to its attention. In early 2010, the Office offered to the Ministry and the Phnom Penh Municipality to convene a meeting of Government and other stakeholders to look for long-term solutions, but received no response.

15. A notable exception in the widespread pattern of impunity has been the trial of Kang Guek Eav, alias “Duch”, before the ECCC. The Office has carefully followed the ECCC proceedings and is currently promoting a project aimed at encouraging the use of the good practices observed at the ECCC across the broader Cambodian court system (the ECCC is a Cambodian court, but one bound through international participation to implement international fair trial standards).

16. The ECCC proceedings are taking place in the context of a legal system which continues to face major challenges despite the comprehensive Legal and Judicial Reform Strategy. Impartial monitoring can play an important part in improving the quality of judicial services. The introduction of the new Penal Procedure Code in 2007 has provided an opportunity to raise standards within the court system as judges, lawyers and clerks familiarize themselves with the new Code. In 2009 the Office began to support a court monitoring project established by the Centre for Justice and Reconciliation, a Cambodian NGO, in five courts. The aim is to collect basic data on the extent to which the courts comply with international trial standards and the provisions of the Penal Procedure Code, and to work constructively with court authorities and the Government to encourage good practice, identify problems and seek solutions. Constructive collaboration between the authorities and civil society monitors can contribute to improving compliance with international standards. Eventually the data from this monitoring effort could feed into a review of the implementation of the Penal Procedure Code by judges and lawyers.

17. In August 2009, the Office and the International Labour Organization (ILO) issued a joint press statement welcoming the Appeal Court’s decision to reinvestigate the murder of trade unionist Chea Vichea in 2004 following the Supreme Court ruling in December 2008. The statement recommended a transparent investigation to determine the identity of those responsible. The Office forwarded copies of the High Commissioner’s *amicus curiae* brief on the case, originally submitted to the Supreme Court in June 2008, to the Appeal Court prior to the hearing.

III. Fundamental freedoms and civil society

18. The Fundamental Freedoms and Civil Society programme aims to strengthen the capacity of individuals and civil society organizations to exercise their fundamental freedoms of expression, association and assembly. The programme works with the Government, civil society and development actors towards the development of legislation and policies - and in monitoring their implementation - that would enable groups and individuals to organize and participate peacefully in public affairs in a free and informed manner.

19. The Office continued to observe the narrowing of the space for the peaceful exercise of fundamental freedoms. Opposition parties, community activists and leaders, civil society organizations and the domestic media – but also United Nations agencies and donors – have faced growing pressure and threats following public expressions of concern about issues of public interest. A dozen defamation and disinformation lawsuits filed during the summer of 2009 against journalists and members of the opposition resulted in convictions with prison sentences for three people. This reflected a growing intolerance by the Government towards public criticism of its policies and practices, and public demands for transparency and accountability. Civil society actors, notably those involved in protecting the rights of poor

urban or rural communities dispossessed of their lands, have increasingly been accused of “inciting” people to violence or “opposing the authorities” or “acting as political parties”. Some of their members have been intimidated, threatened or prosecuted. Official rhetoric has continued to associate critical voices with the political opposition, and to imply that civil society groups are acting outside of their legitimate role, thus giving rise to a need for stricter regulation. In this context, the plan to adopt a law on NGOs and associations during this legislature has been widely received with concern, by civil society, the United Nations and donors.

20. OHCHR observed the exercise of the right to freedom of expression. It worked with journalists and journalists’ associations, United Nations agencies, NGOs and donors to look for ways to improve the professional ethics of journalists and the protection of their profession. No one has been brought to justice for the murders of journalists since 1994. Similarly, the investigation into the latest killing – the murder of an opposition newspaper editor and his son on 11 July 2008 – has remained inconclusive. A number of persons affiliated with opposition parties or who simply criticized Government action were convicted either of defamation or disinformation. Examples of issues raised by these individuals included the possible adverse effects of a new lighting system on Angkor Wat (in the case of Moeun Sonn), allegations of corruption of senior officials (in the case of Hang Chakra) or the validity of diplomas distributed to army officers (in the case of Ho Vann). The Office monitored almost all high-profile defamation and disinformation trials, and provided interpretative and legal advice about relevant applicable international human rights standards to lawyers representing defendants, the defendants themselves, and the judges and prosecutors whose rulings were deemed incompatible with these standards.

21. The Office circulated a briefing note on freedom of expression, defamation and disinformation which sought to clarify the limits of the permissible restrictions on freedom of expression under international human rights law. The note cautioned that the use and abuse of defamation and disinformation lawsuits could dangerously undermine the constitutional freedoms of opinion and expression and the democratic development in the country. The note was submitted to the Phnom Penh Municipal Court in August 2009 together with an offer to meet the judges and prosecutors to help clarify the issue, to no avail.

22. The Office supported the initiative of the Cambodian Center for Independent Media, to develop a Code of Ethics for journalists. It co-organized with UNESCO a conference to mark World Press Freedom Day on 4 May 2010, at which some 250 journalists participated, to discuss freedom of information and access to information. The journalists drafted a public statement calling for the adoption of an Access to Information Law, which was submitted to the Government. The Office encouraged the Government to adopt such a law, which with the Anti-Corruption Law could have a positive effect on press freedom.

23. The provisions of the new Penal Code relating to freedom of expression were examined by the Office in terms of their compliance with human rights standards. Legal comments were submitted to the Parliament prior to its discussion of the law, and the Office proposed briefings to present its analysis and encourage lawmakers to improve the draft. The National Assembly did not take up the offer, but the Senate did. The Office shared its analysis with civil society, the United Nations and donors, as well as interested individual members of Parliament, to inform and stimulate discussion. The Penal Code was adopted without amendment. Opposition parliamentarians’ suggestions were rejected and the National Assembly refused proposals for consultation with civil society.

24. A positive provision of the Penal Code is the explicit reference to the media being subject to the Press Law, a combination of civil and criminal law, explicitly protecting opinions expressed by journalists. Once in force, the Penal Code may result in more

concerted efforts on the part of the judiciary to apply the Press Law to the media. Another positive aspect is that the crime of “disinformation” no longer seems to exist.

25. The new Penal Code has the potential to be more restrictive of freedom of expression than the UNTAC law, especially in a context where courts are vulnerable to pressure. Under the UNTAC law, freedom of expression was primarily regulated by the provisions governing defamation, disinformation and incitement. The new Code, however, includes additional crimes that could be used to curtail freedom of expression, such as “falsification of information”; “public insult”; “slandorous denunciation”; “insult and resistance to public officials”; “publication of any commentaries to put pressure on the judiciary” and “discrediting the court decision”. These provisions include fines of up to ten million riel and prison sentences of up to three years and could seriously curtail freedom of expression. Moreover, many provisions remain open to arbitrary interpretation. For instance, the Office recommended that the concepts of “bad faith” and “putting pressure on the court” be precisely defined. This would facilitate the task for the judges and clarify the meaning of the law. OHCHR is exploring ways in which it can contribute towards assisting the judiciary in interpreting the Penal Code in line with the international human rights standards obligations of Cambodia.

26. The Office cooperated with the Ministry of Interior and other actors to contribute to fostering an environment whereby citizens can assemble and peacefully discuss and express their views. In recent years, peaceful demonstrations had been prohibited or restricted to the extent that they had become rare. The observation of several demonstrations showed undue restrictions imposed by local authorities on civil society actors for obtaining permission to demonstrate. This was the case when the subject of the demonstration was considered sensitive, such as corruption or land conflicts. Restrictions were usually justified on unspecified security grounds. Demonstrations that were authorized, however, ran smoothly, with minimal or no interference from the authorities. Good examples of this were the Human Rights Day march and the Labour Day march, where the cooperation between municipal authorities, police and organizers was exemplary.

27. In December 2009, a new Peaceful Demonstrations Law was adopted. A key improvement is that the law establishes a regime of notification rather than authorization to hold demonstrations. The law also contains provisions open to interpretation that could unduly restrict people’s ability to peacefully demonstrate. The Office shared its legal analysis with the Ministry of Interior and the relevant committees of the National Assembly prior to adoption of the law as well as opposition parliamentarians. Particular concerns remain about the impact of the law on demonstrations that occur spontaneously, for which there is no provision in the law and which are happening more frequently.

28. The Office worked with the Ministry of Interior and the East West Management Institute (EWMI) to develop an Implementation Guide on the new law, in consultation with civil society representatives. The project was launched through a jointly organized National Workshop in March 2010, at which approximately 170 participants, including Government and civil society representatives and donors discussed the law and areas that required clarification. The purpose of the Guide is to provide practical guidance to the authorities, civil society members and end-users to implement the law in accordance with international human rights standards. Once the Guide is finalized, the Office and EWMI will support regional training workshops on the law and the Guide to facilitate its understanding, interpretation and implementation.

29. As part of its objective to foster better cooperation between Government and civil society, the Office has been actively promoting the participation of civil society actors in activities and forums involving Government institutions and development partners, so as to help build mutual understanding, working relationships and trust and defuse mutual suspicion and tensions.

30. The Office brought to the attention of government authorities several instances where human rights defenders were being accused, investigated or charged with incitement and defamation. An emblematic case was that of Pen Bunna, the provincial coordinator of the Cambodian Human Rights and Development Association (ADHOC) in Rattanakiri, and Radio Free Asia Reporter Ratha Visal, who are being investigated by the provincial court for “incitement” to unspecified criminal offences, incitement of villagers to violence and to illegal occupation of land. The Office sought to discuss the case with the provincial authorities and the court to explore possible solutions, to little avail. It issued a statement in September 2009, calling for an end to the intimidation and harassment of human rights defenders in Rattanakiri Province. The same month, the Office proposed to the CHRC that a joint visit to Rattanakiri be made to assess the situation of human rights defenders and to jointly look for possible solutions. The Office did not receive a reply. Mr. Bonna remains under investigation.

31. In late 2008, the Government announced its decision to adopt an NGO law. As part of its effort to support the development of civil society and to foster an environment of cooperation between it and the Government, the Office analyzed the legal environment and context of this initiative. While respecting the Government prerogative to decide its legislative agenda, the Office questioned whether the law was legally necessary, since existing and planned legislation, in combination with self-regulation, appear to be sufficient to regulate the status and activities of NGOs. It also cautioned that the initiative could be premature, given the uneasy relationship between NGOs and the Government. The Government has responded that it perceives that some organizations in Cambodia have been operating anarchically under the name of “civil society”. The Office offered to facilitate dialogue between the Government and civil society prior to the development of the law. By June 2010, the Ministry of Interior was finalizing a first draft, and considering the convening of a national consultation to seek input from stakeholders. The Office proposed that it review the draft, and the Ministry accepted.

32. In this context, in January 2010 the Special Rapporteur on the situation of human rights in Cambodia, Surya Subedi, proposed to the Prime Minister that they, together with NGOs, explore avenues to improve dialogue between Government and NGOs. The Prime Minister accepted, expressing the view that cooperation from development NGOs was welcome but that other NGOs, such as human rights advocacy groups, should remain in their roles and not act as political parties or proxies for them. The Office has been facilitating discussion amongst civil society groups to develop concrete proposals.

33. The Office commented on several deportation cases which had undermined the refugee protective framework gradually established in the past decade, after Cambodia’s accession to the 1951 Convention Relating to the Status of Refugees.

34. In October 2009, with the Cambodian Human Rights Action Committee (CHRAC), the Office organized a one-week training course for 35 human rights NGO staff on the methodology of the documentation of human rights violations and the use of the United Nations human rights mechanisms to help them engage better with these. A follow-up training course is being developed focusing on further human rights monitoring methods, an area participants identified as a priority.

IV. Land and livelihood

35. The Land and Livelihood programme seeks to contribute to protecting the rights of the poorest urban and rural communities, which are being dispossessed of their land or housing in the context of land disputes, land grabbing by powerful individuals or groups, or

the attribution with little control of economic land concessions and rapid high-end urban development.

36. The Office has been working with affected communities, the Government, civil society organizations, United Nations agencies and multilateral and bilateral development actors, as well as private companies, to strengthen the legal framework protecting land ownership and housing rights, and improve its fair implementation. It recommended a moratorium on evictions until such a framework is in place. Evictions in rural and urban areas undermine the efforts by the Government to alleviate poverty, and to improve the rule of law and governance. If the Constitution, the land legislation and human rights standards were effectively implemented, many land conflicts or evictions would not take place, and others would be fairly resolved.

37. Although there are no reliable figures, land disputes and evictions affect large numbers of people. The urban poor, small-scale farmers and indigenous communities are the primary victims. Whilst the land management system has resulted so far in the granting of over a million land titles, mostly to small-scale farmers, it has not ensured adequate tenure security for others in dire need, notably poor urban and rural communities, including indigenous peoples. In the urban sector, OHCHR continued to promote a process whereby evictions and resettlement, if considered necessary in the public interest, are undertaken with respect for the rights of affected communities and procedural safeguards. In July 2009 “Group 78” residents were evicted from their land in central Phnom Penh. Many had official documentation proving their right to land titles under the law. Their attempts to obtain titles remained unanswered, as did their efforts to obtain redress. The Office worked with the Municipality in the months prior to the eviction, including supporting peaceful negotiations with the families right up to the day of eviction, thereby avoiding violence. The residents were nevertheless forced to leave their houses, albeit with financial compensation, before their claims to land ownership were determined by the relevant authorities, in violation of the law and procedural safeguards.

38. Together with the United Nations Country Team (UNCT), notably UNAIDS, the United Nations Children’s Fund (UNICEF), the United Nations Development Programme, the World Food Programme, and with civil society and humanitarian organizations, the Office worked with the Phnom Penh Municipality and national authorities to promote better standards of resettlement for 42 families whose members were living with HIV, and who were evicted and relocated outside the capital in mid-2009. The case provoked a public outcry, questioning Cambodia’s treatment of persons living with HIV. The UNCT and civil society organizations entered into a cooperation agreement with the Municipality to share the costs of the resettlement, which resulted in major improvements in the living and housing conditions of the families.

39. In July 2009, on the eve of the Group 78 eviction, a joint public statement by major development partners (including the United Nations) recommended that the Government stop forced evictions until a fair and transparent mechanism for resolving land disputes and a comprehensive resettlement policy are developed. These recommendations echoed those previously made by civil society, development partners, OHCHR, and United Nations bodies (the Human Rights Council, the Committee on Economic Social and Cultural Rights (CESCR), the Special Rapporteur on the Situation of Human Rights in Cambodia, and the Special Rapporteur on Adequate Housing). During the same month, the Government announced its plans to adopt a Circular to regulate illegal settlements, and to develop a law on expropriation and a housing policy. These initiatives were welcomed by the Office, which pursued its efforts to foster support to help bring them to fruition. The Government has drawn attention to these components of an emerging legal framework to regulate land issues, as well as the creation of mechanisms to resolve disputes linked to land (including the Inter-Ministerial Council for Land Policy, and the Cadastral Commissions).

40. The Law on Expropriation was adopted in February 2010, without sufficient consultation. The law offers some important protection to owners and “possessors” under the Land Law by limiting expropriation for public infrastructure that meets the definition of public interest. The Senate invited the Office to brief it on the human rights implications of the draft law and best practices elsewhere. The briefing was appreciated but the law was not amended.

41. The Office, together with civil society, supported and actively contributed to the development of the national “Circular on Temporary Settlements”. It advised development partners involved in the land sector on the Circular and closely cooperated with them to submit joint comments. The Circular was adopted in May 2010. It offers some solutions to support illegal settlers and ensure minimum standards for relocation, but remains unclear as to how to determine the legality or illegality of urban settlements subject to the Circular. The draft Housing Policy was released in early 2010. The Office welcomed its vision that all citizens have a right to adequate housing and its recommendation of a temporary moratorium on eviction for dwellers in informal settlements – a recommendation made by the United Nations and other experts referred to above. The Office submitted legal comments to improve the policy.

42. In addition, the Office continued to advocate for the adoption of a policy on resettlement to improve current practices and provide comprehensive solutions. This recommendation is in part based on a field study conducted by the Office in the last six months to assess the human cost of evictions at selected resettlement sites. OHCHR observed that – with notable exceptions – resettled families’ living conditions, especially regarding food security, housing, livelihoods, health and education were worse than prior to the eviction. The study will hopefully contribute to raising awareness and to policy discussions.

43. As part of its broader advocacy work to persuade the Government to integrate basic human rights standards into housing and resettlement policies and practices, the Office, together with NGOs, organized a public briefing by the former Special Rapporteur on adequate housing about the United Nations Guidelines on development-based Evictions and Displacement and facilitated the presentation of these guidelines to representatives of the Ministries of Land Management and Interior.

44. In rural areas, OHCHR has continued to monitor the granting of economic land concessions (ELCs) and their impact on the rights of indigenous communities and small-scale farmers. Generally the procedural safeguards prior to granting concessions are not adequately followed – most importantly, the requirements to consult with affected communities and conduct environment and social impact assessments. As of May 2009, according to the Ministry of Agriculture’s public information, ELCs had been granted to 85 companies over a total land area of 956,690 ha.³ The Office’s own monitoring and NGOs’ observations indicate that there might be up to 159 companies involved over a total area of 1,300,000 ha.

45. In this context, the Office’s assistance was requested in 31 land disputes between affected villagers and companies, 13 of which were due to ELCs (including five on indigenous land) while 18 others were due to land transactions (two on indigenous land). OHCHR provided assistance and legal advice to provincial and local authorities, affected communities and NGOs supporting them, in order to protect communities’ access to land and resources. Upon request, the Office also mediated or facilitated discussions or negotiations among stakeholders to solve disputes.

³ See: <http://www.elc.maff.gov.kh/index.html>.

46. In addition, the Office worked with selected companies to encourage them to apply human rights standards beyond merely obeying national law. For instance, it gave legal advice to a multinational rubber company. Prompted partly by this advice, the company conducted an extensive environmental and social impact assessment, including an analysis on how the United Nations Declaration on the Rights of Indigenous Peoples applied to its rubber plantation. The Office contributed to this assessment. Since then the company has been taking measures to mitigate the impact of its plantation on people's livelihood and land. Other companies have agreed to negotiate solutions with affected villagers, or to exclude the land used by villagers from their concessions.

47. At policy level, the Office continued to draw attention to the need to strengthen the protection of indigenous land. It participated in discussions on "joint monitoring indicators" between the Government and development partners in this regard. Since the adoption of the Sub-Decree on indigenous land registration in April 2009, the Government has taken important steps to legally register communities and facilitate the subsequent registration of their land. The pace of this land registration is however very slow. It is for this reason that the Office recommends that temporary measures be taken to protect those communities until they can effectively receive titles.

48. OHCHR also closely followed the work of NGOs and communities involved in land disputes and sought to defend their rights and seek remedies through cadastral administration and the courts. In most, if not all cases, these institutions failed to uphold their rights and deliver justice. Instead, criminal charges were brought against villagers and human rights defenders. For instance, in the 31 disputes mentioned above, 45 people were arrested and detained. The Office provided advice to the relevant authorities in several instances to ensure due process of law, which resulted in the release of several of the farmers. It supported the documentation of land disputes by communities themselves, which resulted in the submission of a third round of countrywide community complaints to national authorities in August 2009. These collective efforts in 2008 and 2009 have remained unanswered.

49. Together with the Cambodian Center for Human Rights (CCHR) the Office initiated a project to raise awareness among business enterprises and NGOs of their corporate social and human rights responsibilities. In November 2009, it conducted a two-day training course for 30 NGO representatives on human rights and business. It has been supporting the CCHR in conducting workshops with private businesses to raise their awareness about the human rights implications of their activities. This is the first time that such issues have been discussed in Cambodia

V. Prison reform

50. The Office continued to implement its Prison Reform Support Programme (PRSP), a partnership with the Ministry of Interior aimed at supporting the transformation of prisons from a system of confinement to one of rehabilitation, complying with the international human rights norms. Support is provided in four areas: (a) legal reform, (b) training of prison personnel, (c) assessment of prison conditions and prisoners' treatment, and (d) water and sanitation.

51. The programme looked at existing legislation. Prisons have been organized on the basis of a variety of secondary legislation, including a royal decree, governmental sub-decrees, ministerial proclamations and circulars, but no law. To address this shortcoming, the Government decided to adopt a Law on Prisons. The Ministry of Interior initiated a draft, which was shared with the Office for legal analysis and comments, so as to build in protection safeguards. In consultation with relevant stakeholders including UNICEF and

ILO, OHCHR prepared comments based on the international standards regarding the rights of prisoners and good practices in prison management, which were submitted in June 2010. The Office also provided advice for the review of the Royal Decree on the Separate Status of Prison Staff, and recommendations for amendments to specific Prison Procedures, such as those pertaining to health and sanitation or labour in prison.

52. Wider criminal justice legislation also impacts on detention. The Office drew to the attention of the authorities provisions of the new Penal Code which are likely to increase the growth rate of the prison population. Over the past 15 years, the prison population has grown at an annual rate of 8 to 13 per cent. Prison overcrowding is one of the main challenges faced by the prison authorities in carrying out their mission, threatening to undermine reform progress, and by prisoners who live in congested cells, with often less than two square metres per person and too little time outside their cells.

53. Human resources determine any process of reform. While policies have been developed at a senior level, the General Department of Prisons (GDP) is faced with a gap at the operational level, where insufficiently trained or untrained personnel are required to translate these reforms into daily practice. In consultation with outside actors involved in the prison sector, in particular the Cambodia Criminal Justice Assistance Programme (CCJAP) of AusAID (the Australian Government's overseas aid programme), OHCHR has been working with the Steering Committee on Prison Staff Training, set up by the Ministry in January 2010. The Office started developing a comprehensive training plan and curriculum for all categories of prison staff, both for new recruits and for existing staff promoted to new responsibilities, for implementation from 2011 onwards. In parallel, it has also sought to help address more immediate needs such as developing a pool of prison trainers, or designing a short training plan for around 650 prison guards who have not had any training since their recruitment up to three years ago.

54. The primary goal of the programme is to ensure that the human rights of prisoners are promoted and protected. Regular monitoring of prisons is an essential tool for achieving this goal. The programme seeks to critically assess conditions of detention and prisoners' treatment, identify good practices developed in some prisons in order to promote them in others, understand the reasons behind specific problems or patterns of abuse in order to address them systemically, and draw the attention of prison authorities to these issues. The Office continued to enjoy the full cooperation of the prison authorities in accessing the prisons and holding confidential interviews with prisoners and staff. Between June 2009 and August 2010, it conducted five new assessment visits to provincial prisons in Prey Veng, Mondolkiri, and Kampong Speu, and to Correctional Centres No. 3 and 4, then accommodating a total of around 2,000 prisoners. During the same period, it also carried out over 35 follow-up visits to prisons in eight provinces and the four national Correctional Centres, accounting together for 70 per cent of the prison population. Prison authorities have welcomed OHCHR's constructive approach. The quality of dialogue on difficult issues raised by the Office as part of its confidential reporting to the Government has been constant.

55. Solutions to several problems identified have progressed over the last year, thanks to the commitment of governmental and non-governmental actors involved in the sector. The revised sub-decree regulating prisoners' rations and cell equipment, which almost doubled the daily food allocation per detainee (from the equivalent of US\$ 0.37 to US\$ 0.70), was issued in June 2009, and funds were disbursed from September onwards. The Ministries of Interior and Health also agreed in early 2010 that healthcare in prison fell under the Ministry of Health: prison dispensaries were officially considered as "health posts", to be supported by the relevant public health structures in terms of supply of medicine and medical training for prison health-care staff. While expected improvements at prison level have been slow, in part due to the limited resources of the public health system, this

development is nevertheless a step in the right direction. The draft Minimum Design Standards for Prison Construction, jointly developed by OHCHR, the International Committee of the Red Cross, CCJAP, and GDP were improved as a result of several discussions in the first half of 2010, and are to be adopted as an official document of the Ministry of Interior to guide its construction and renovation of prisons.

56. A number of initiatives were explored to address other recurrent concerns, such as excessive detention. During visits to Correctional Centre No. 3 in 2009, several hundred prisoners whose appeal was pending, in some cases for up to a decade, were identified. The Office has been discussing with GDP and the Court of Appeal ways to address the backlog of prisoners' cases. An estimated 1,000 prisoners have an appeal pending countrywide but the exact figure is not known. At the request of GDP, the Office drafted guidelines on how prisons could facilitate the processing of cases, through the production of a comprehensive list of prisoners awaiting appeal. This work has highlighted the need for improved communication and cooperation between the prisons and the courts in general. Documents which are essential for the effective implementation of pre-trial detention orders and prison sentences need to be properly requested, prepared, submitted and managed in a timely manner by the courts and the prison authorities. Only a coordinated strategy of all actors can help to reduce excessive detention. OHCHR has expressed its willingness to assist in the organization of a high-level meeting of all relevant stakeholders to table the issue and discuss collaborative solutions.

57. Dialogue has also continued with GDP on ways to prevent ill treatment in prison, be it in the form of physical abuse, lack of access to fresh air, or unlawful disciplinary actions. In 2010, initial changes were introduced by the authorities in the organization of the prisoners' committees, the bodies originally set up to assist the authorities in the management of prisons, but which have been implicated in the abuse and ill-treatment of prisoners. An internal inspection mechanism has been strengthened with assistance from CCJAP and has carried out a first series of visits. OHCHR has been exploring with GDP the need to clarify disciplinary rules and diversify the options available to the authorities. It hopes to facilitate a meeting of prison staff to map the recurrent disciplinary offences occurring in prisons and the sanctions currently applied by the authorities, in order to develop and agree on a scale of humane and lawful sanctions, proportionate to the offences, complying with Cambodia human rights obligations and reflecting the willingness of GDP to continue progressing towards dynamic security management for the secure operation of its prisons.

58. Following needs assessment in terms of water and sanitation in all prisons visited, OHCHR continued to support GDP in improving facilities in selected prisons. Water supply support has sought to deliver the most sustainable solutions for prisons. These have ranged from installing rainwater harvesting systems, drilling additional wells or helping connect the prison to the mains water supply, to improving existing water connections or providing water filters to improve the quality of drinking water. The programme has also looked at wider issues of sanitation: latrine windows were modified in CC3 to improve light and ventilation; material was provided to several prisons for the construction of metal clothes dryers, so that prisoners can dry their uniforms outside; toiletries were provided to prisoners during monitoring visits; options are being explored regarding treatment of waste water and sewage or setting up of biogas units.

59. OHCHR has continued working collaboratively with GDP and the Ministry of Interior, as well as its other partners among development agencies and non-governmental organizations, to support successful prison reform. Development work was carried out to encourage relevant actors to initiate or develop work in prisons, in areas as varied as education, prison farming, or prisoners' legal awareness.

VI. Assistance on reporting under the treaty bodies and the Universal Periodic Review

60. The Office continued its comprehensive support to the Government and civil society with reporting procedures under human rights treaties and the Universal Periodic Review of the Human Rights Council. As part of its follow-up to the Committee on Economic, Social and Cultural Rights (CESCR) Concluding Observations of May 2009, the Office organized a workshop in June, with the CHRC, representatives of relevant ministries, and a member of CESCR, to seek to establish a system of focal points in key ministries to assist the CHRC in compiling future reports and ensure effective follow-up to concluding observations. The workshop reviewed the CESCR recommendations and agreed a workplan for drafting a common core document and Cambodia's next periodic report for the International Covenant on Civil and Political Rights (ICCPR). With a view to the preparation of these two documents, the Office initiated an in-depth training course on the ICCPR for CHRC staff and focal points from relevant Ministries. Seven one-day training sessions are being conducted, each on a group of articles, aimed at explaining the meaning of each article and how to report on them. This training supports the drafting by the CHRC of Cambodia's report under the ICCPR, expected to be submitted in 2011.

61. In February 2010, Cambodia's latest report was considered by the Committee on the Elimination of Racial Discrimination (CERD). The Office worked with the CHRC to prepare for the session and advised it on how to respond effectively to the Committee's list of issues. The Government did not send an expert delegation to Geneva to engage directly with the Committee, thus depriving itself of the full benefits of the process. In contrast, NGOs and civil society organizations took advantage of the opportunities to highlight their concerns. The Office supported civil society engagement, including that of indigenous communities, with regard to the reports for both the CESCR and CERD.

62. Reports from Cambodia are due to be considered by the Committee against Torture in November 2010 and the Committee on the Rights of the Child in 2011. While in 2008 Cambodia had fifteen overdue reports for the treaty bodies and four others pending, by May 2010, this backlog has been reduced to one – an impressive achievement to which OHCHR contributed.

63. In December 2009 Cambodia underwent the Universal Periodic Review (UPR). OHCHR assisted the CHRC with its preparations for this. The UPR resulted in 91 recommendations, ranging from land issues to freedom of expression, health, and children's and women's rights. In March 2010, the Government announced its decision to accept all recommendations. Cambodia is one of very few Member States to have made this important commitment. Both the Office and the Special Rapporteur welcomed the decision and offered support to assist in its implementation. By June, discussions were under way between the Office, the CHRC, the British Embassy and the Swedish International Development Cooperation Agency to convene a workshop aimed at developing a national action plan for implementation of the recommendations and those of the recent treaty body reviews (CESCR and CERD).

VII. Education, training and public information

64. The Office continued to produce and disseminate human rights information in both English and Khmer, including bilingual publications of the ICCPR, the Convention on the Elimination of All Forms of Discrimination against Women, CERD, United Nations commentary and guidelines on eviction and resettlement, and a supplement to the Office's Compilation of a Selection of Laws in Force in Cambodia. Seven of the eight core human

rights treaties are now available in bilingual booklets, and accessible, along with other materials, on the Office's bilingual website - the only United Nations website in Khmer. The Office also developed bilingual public information materials on its work, including its annual report, a leaflet introducing the Office, and a newsletter to contribute to topical human rights debates.

65. In addition to training offered to partners in substantive areas of work, the Office embarked on a new human rights education project with the Ministry of Education, UNESCO and UNICEF to further integrate human rights education into school curricula at primary and secondary levels. The first step in this process is a pilot human rights drawing competition in two provinces for children in grades five and six that will involve the production of government-approved human rights materials for primary schools. Human rights education projects are also supported through the provision of grants for the production and airing on national television of two human rights public service announcements, the broadcasting of an interactive radio series on the Universal Declaration of Human Rights, and a campaign on the rights of persons with disabilities. The Office supported celebrations of Human Rights Day 2009 and produced bilingual public information materials on the global anti-discrimination theme.

VIII. Support to the Special Rapporteur

66. The new Special Rapporteur, Mr. Subedi of Nepal, undertook three missions to Cambodia (June 2009, January and June 2010). As in the case of his predecessors, the Office helped organize and coordinate the visits of the Special Rapporteur and provided him with administrative and logistical support. The Special Rapporteur reports separately to the Human Rights Council.

IX. Staffing and administration

67. OHCHR maintains a head office in Phnom Penh and a regional branch in Battambang. The Office has eight international staff positions, 24 national posts and one international United Nations Volunteer. Its management structure consists of a Representative, a Deputy Representative, four programme units, and an administrative unit.

68. The regular budget of the United Nations covers the Office's operational expenses, including the salaries of 7 international and 20 national staff members. Voluntary contributions to the United Nations Trust Fund for a 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.
