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## **INDIGENOUS' Cambodia NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia**

Prepared through country visits and meetings with Khmer and  
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## **General Overview**

Torture is recognized as a violation in international human rights law. Torture is explicitly prohibited under various international declarations and treaties. Specific articles as well as entire conventions outline the major components of torture in international human rights law.

The Universal Declaration of Human Rights adopted in Paris by the governments of the world in 1948 prohibits torture under Article 5. The subsequent International Covenant on Civil and Political Rights in 1966 condemn practices of torture and cruel, inhuman or degrading treatment or punishment under Article 7. While recognition in two instruments of the International Bill of Rights places torture at the core of the global human rights movement, the UN Convention Against Torture in 1984 and its subsequent Committee provide a structure and system to eliminate this practice from the planet. Subsequently, the Optional Protocol and its procedure reflects another evolution to end this practice against people by the member governments of the United Nations.

The nation of Cambodia survived genocide. The people continue to strive for self-determination and human security in the aftermath of such atrocities. Unfortunately, one of the main tools to perpetuate the dehumanizing of the citizens and destroying the will of the people for a better future is the practice of torture. Too often, the government of Cambodia's policies and practices result in violations of various articles of the UN Convention Against Torture. The UN Convention Against Torture provides a tool to measure if the government is gearing toward a repeat of the past dooming another generation to genocide. This is the main focus of this report to recognize this UN treaty as well as other international instruments ratified by Cambodia can provide a path to prevent human harms and a roadmap to realize human rights in the every day life of Khmer.

Unfortunately, the lack of diligence from the simple action of reporting in a timely manner to the dedication of the government to establish legal and political processes to prevent the most detrimental practices to deny the humanity of its citizens through torture and other cruel inhuman or degrading treatment or punishment.

On a recent visit of the UN Special Rapporteur on the Situation of Human Rights in Cambodia, Professor Surya Prasad Subedi noted the discrepancy for the emerging democracy in regards to the judicial system in the government structure and specific situations regarding human rights relating to upholding international standards to secure civil and political rights regarding access to justice and accountability by government to its citizens.

Unfortunately, Prime Minister Hun Sen response reflects the inability to initiate a countrywide system to serve its people and prevent human rights violations. The comment of "Don't tell me it is raining when I am standing in the rain" by PM Hun

Sen claimed he is aware of the obvious state of affairs and conditions in the country. The government must recognize the instrument of the Convention Against Torture and the institution of the Committee Against Torture to provide a mechanism to move the country to institutionalize national actions that chart a new direction for the democracy dedicated to human rights.

Consider this report, an umbrella to shield citizens from the rain of impunity and inhuman treatment reaching the level of torture too often targeting the citizens taking action to create the country the government should be aspiring toward.

Human rights are the necessary and normative articulation of the rules mediating the fundamental freedoms in society specifically the individual citizens and collective communities of indigenous peoples with the state. Torture constitutes one of the most grave violations of this sacred trust of human rights through purposeful and precise practices to terrorize specific representatives of society sending a signal of tyranny toward those thinking of standing up for human rights.

Torture takes many forms from physical to psychological painful suffering at the hands of the state and its agencies through representatives tasked to protect the people. From the initial pain to the person and the post-traumatic stress disorder and subsequent syndromes resulting from the torture, the results are the humiliation of human rights defenders that serves the larger purpose of preventing more actions that would challenge the power of the state to live up to its international responsibilities to its people. This systematic infliction inhibits individuals from standing in solidarity against the state.

The trend indicates that during the time period when Cambodia should have submitted its second report in 1997, the severe pain and sufferings continued and created a culture of impunity and a climate of inaction against human rights violations.

Prevention is the most important principle in combating torture. Prevention is the primary philosophy that government must base its policies to end the practice of torture. The first action is to have a proper definition of torture incorporated into the domestic legislation of Cambodia. The lack of a clear definition of torture in the legal framework is problematic even though the penal code recognizes torture as a crime. The recommendation from international human rights institutions must be adhered to by the government by bringing about legislation that incorporates a clear definition. The lack of a definition prevents the courts to implement the penal and constitutional code relating to torture in Cambodia.

## **Specific Cases Illustrating Systematic Violations of CAT**

The string of specific situations represent the wider systematic violations that create a climate of terror ignited by practices of torture and gross human rights violations that coerce citizens.

A great deal of actions by state authorities is regarding practices by political party leaders demanding accountability in government and responsible behavior to uphold basic human rights. The leaders are expressing the will of citizens raising issues regarding the realization of civil and political rights in Cambodia. The response by the current leadership is acts of torture that focus on terrorizing the citizens of Cambodia to not challenge the dominant party that has held power for decades denying the true development of democracy and rule of law in Cambodia.

Sam Rainsy is at the center of many responses of torture by Cambodia. However, Rainsy represents in the many situations various constituencies requesting respect for fundamental freedoms. The stances and statements made by Sam Rainsy reflect the challenges the citizens of Cambodia pose to the government. Instead of responding with policies and new laws that would improve the daily living conditions, the government resorts to acts of violence and torture that continue climate of tyranny instead of democracy.

One peaceful protest on 30 March 1997 mobilized over 200 supporter to denounce the lack of independence and corruption in the judiciary across from the National Assembly. The response was a grenade attack at the crowd killing and maiming innocent civilians in broad daylight sending a powerful message that opposition will result in consequential killings and murder. Even worse, there will be no judicial response prosecuting those responsible for such gross acts of torture and cruel, inhuman punishment for standing up for one's political beliefs.

These actions illustrate the violations of most articles of CAT by the current Cambodia Peoples Party. It also shows how Articles 12 – 14 are not realized.

The people of Cambodia continue to challenge the human rights violations such as the right to participate in electing one's government representatives. The July 1998 national elections resulted in many people facing threats and acts of torture for those opposing Cambodia Peoples Party under Hun Sen. There were peaceful protests again with a response of brutality with deaths and disappearances. The violent crackdown in September 1998 resulted in at least 200 democracy protesters arrested yet after a decade still unaccounted for. From democracy movement leaders to Buddhist monks, the reason for the peaceful protest was investigations of irregularities in the electoral process. The response is another string of violations of CAT articles against the citizens of Cambodia.

The cases of unresolved torture deny Khmer the right to life. The desire for a better life through democratic means is denied on many levels by government. The

economic, social and cultural rights denied are exemplified by the assassination of Chea Vichea to organize garment workers for improved labor conditions. Instead of investigating the allegations or enacting laws to support the worker's rights. Chea Vichea was attacked and beaten by a military colonel in charge of security at the garment factory. However, that was not the end of the torture campaign, he was shot in broad daylight in Phnom Penh on 22 January 2004. The message to all that stand up for human rights is a pattern of torture and cruel punishment at the hands of the state with no response to protect human rights defenders.

Investigation without intimidation regarding complaints of torture doesn't happen. Instead, the response has been an increased climate of violence and criminal cruel actions by the state as well as denying basic civil liberties. Mu Sochua, a Sam Rainsy Party member of parliament, and also Sam Rainsy himself are denied parliamentary immunity. Other actions such as denial of legal representation and also swift state response to peaceful marches prevent any examination of the state machine of torture. Sam Rainsy's case regarding the border demarcation with Vietnam has received broad attention as he was sentenced to prison in proceedings denying basic universal human rights. However, the result is the same with Rainsy fleeing to France to avoid the court sentence and jail time.

Khmer Kampuchea Krom endure gross systematic human rights violations from torture to extrajudicial killing in neighboring Vietnam. Unfortunately the influence of Vietnam over Cambodia is evident in relation to the Khmer Kampuchea Krom. Khmer Kampuchea Krom endure torture in various forms at the hands of the Cambodia government due to pressure from Vietnam from systematic abuses of recognizing identity when fleeing as a political refugee in Cambodia to escape persecution and even death to being arrested by Cambodia officials and even sent illegally across the border of Cambodia to Vietnam to be tried, tortured and even imprisoned against one's will for trumped up charges such as the case of Reverend Tim Sakhorn.

The situation regarding the acquisition of Khmer ID cards and how the Khmer Krom can enjoy protection under the refugee law and specific national legislation is an important issue denying the identity. The forms and conditions for the card create a situation of discrimination. The UN CERD committee requested information regarding this practice. Cambodia admitted problems in the past. However they persist insisting that Khmer Krom possess permanent address and a Khmer birth certificate. Also, the identity is changed through this process.

Tim Sakhorn's case illustrates the violation of many articles of CAT. The violation of Article 3 is quite evident with Cambodia sending Tim Sakhorn to Vietnam to face trial in a country where he didn't live facing charges he couldn't have conducted in Cambodia.

Another example of indigenous peoples being forcibly repatriated to a significant economic and political power in the region is the case of the Uyghurs to China in

2009. By examining the human rights record regarding Uyghurs in China it was practically guaranteed there would be a violation of Article 3.

Land is life for the indigenous peoples of Cambodia. Land is the essence of existence. To be deprived one's connection to the collective conscious of the people rooted in the earth where one's ancestors practiced the cultural beliefs and exercised own unique cosmology is tantamount to torture. While the indigenous relationship to land cannot be easily calculated as it is sacred and spiritual based on reverence rather than revenue, the encroachment of multinational corporations and also migrating segments of society with support from the government to displace and disturb the traditional relationship to the land. The continuous denial of the right to land and the forced removal of indigenous peoples violates specific articles of the CAT such as Article 16.

There is psychological harm when indigenous peoples are knowingly removed from their land with no means to continue their traditional cultural practices. Indigenous peoples are condemned to

Land grabbing also happens to Khmer that find themselves where a resource is desired for profit. This practice also denies the community an opportunity to sustainable livelihood condemning them to the cycle of poverty in urban areas in search of survival.

Basic civil, political, economic, social and cultural rights are denied through practices of torture if communities don't support the current state power structure represented in the CPP.

Regarding development, the practice of the government to build basic infrastructure for local people is linked to support of ruling political party. A road or irrigation waterway is dependent upon voting for the current dominant political party. Communities that withhold support for the ruling party find no basic services and even a stop on all development programs including a recollection of agricultural machines, tools as well as even the very crops cultivated. The conditional rural development is another form of imposed torture to prevent Khmer people from exercising their legitimate right to freedom of expression illustrating the indivisibility or interconnectedness of human rights.

Land grabbing denies 80% of the Khmer living in rural areas the ability to survive. This large percentage of people depend on access to land and natural resources for livelihood and basic survival. People impacted by land grabbing are denied the basic chance to provide for their families and communities. One such notorious example is the Chi Kreng, Siem Rap province. A paddy field of 92 hectares in Tonub Soung, Anlong Samnor commune, Chi Kreng district in Siem Reap province has displaced 175 families resulting in violent confrontations on March 2009. There must be an investigation into this incident as it exemplifies the violations of torture throughout Cambodia regarding land grabbing.

Violence against women is also a violation of torture under Article 16. There are many forms of torture regarding violations of women's rights from trafficking to rape. The government must take a more active role to promote and protect women's rights.

### **Challenges to Cambodia's Report**

The report by the government is too tardy. More importantly, the lack of action beyond the reporting process is cause for alarm. INDIGENOUS has outlined specific articles of CAT that require attention.

Article 1 must still be realized with a definition of torture in national law. Both the personal penal code and the draft penal code do not include a definition of torture. Specific anti-torture legislation should be created with civil society in Cambodia.

Article 2 is important to implement instruments in Cambodia that prevent torture. However, the mechanisms that normally prevent torture in society are inadequate and ineffective. The courts as well as detention centers are recognized for corruption more than cooperation with citizens.

Article 2 is significant mainly due to the 24 hour period of custody possible due to Article 98 of the Code of Criminal Procedure. This must be challenged as the right to legal representation is crucial to prevent torture. Civil society must be allowed to play a positive role in monitoring and thus improving the situation regarding detention. NGOs could also build upon monitoring to provide international human rights training to police regarding Cambodia obligations that could promote prevention through education.

Article 2 is crucial to include legal aid services as well as legal defense for cases such as Sam Rainsy and other political dissidents.

Article 3 is important regarding indigenous peoples specifically. The Uyghur and also the Khmer Kampuchea Krom face persecution in China and Vietnam. Monk Tim Sakhorn is the case study for being defrocked, detained and disappeared. The need for article 3 to be understood and undertaken to protect the human rights.

Article 16 is essential to focus on land rights against land grabbing. The right to land must be understood in the indigenous understanding of stewardship with the land. It is also essential to examine the potential to thwart trafficking of women under this article. Violence against women can be challenged through education. LICADHO has produced amazing reports that use photos and captions instead of traditional texts.

## **Recommendations to Realize the Spirit of the Convention Against Torture in Communities Dotting the Nation and a New Dawn in the Kingdom of Cambodia**

The following recommendations provide a path to prevent the practices of the past regarding torture and promote the rule of law and a culture of conflict resolution and reconciliation rooted in human rights.

Prevention is the most important principle in combating torture. Prevention is the primary philosophy that government must base its practices on to end the practice of torture. Cambodia must define and prohibit torture in national law according to the guidelines in the UN CAT. The first action is a commitment to a timely submission of the subsequent followup and future reports to CAT, as well as distribution of the current CAT documents for the citizens of Cambodia. If the government needs resources it should partner with civil society in Cambodia and the Asia-Pacific region to realize the rights in CAT. The second action is the immediate adoption of CAT in national institutions and also legislative, administrative, judicial and also popular education measures to prevent acts of torture. A domestic inspection and supervision mechanism is crucial and the new OP CAT and its Subcommittee would be a vital example of how to eliminate torture in Cambodia. The commitment to combat torture and protect peoples' absolute right to freedom from it effectively can be better guaranteed through a national preventative mechanism that meets the OP CAT requirements as well as the enactment of the Penal Code that clearly criminalizes torture and other cruel, inhuman or degrading treatment or punishment.

There must be an investigation into the specific cases mentioned as well as other related cases in the past decades haunting Khmer people in Cambodia. The articles of CAT must be realized to ensure proper investigations without intimidation.

After nearly two decades after Cambodia's accession, the definition of the term "torture" continues to be unclear under Cambodian law and there has been no positive actions provided under the new Penal code to include a definition of torture in line with Article of the UN CAT. Building on the lack of the definition is the lack of measures available to prevent acts of torture. The specific examples also exist in police custody. The government should prepare with participation of civil society anti-torture legislation incorporating the international definition in CAT into domestic law.

There is a lack for indigenous peoples, vulnerable populations to defend their basic rights. An effective legal aid mechanism could be established that would work toward resources to assist in cases and also to explore process for reparations for

people surviving torture. Equally important is medical services to rehabilitate people to be able to live in society. It should also be explored to build upon foreign forensic techniques to assist in domestic cases.

Another important recommendation regards practices by police while in custody including unlawful detention for prolonged periods of time as well as shackling persons. The conditions of detention should be improved.

We do recognize the ratification of the Rome Statute by Cambodia. The recognition of the International Criminal Court and its potential to punish for war crimes and crimes against humanity is significant. Cambodia's recognition of its jurisdiction is positive to prevent

There are many international agreements entered into by Cambodia from the historical Paris Peace Agreements to the most recent Universal Periodic Review.

The Paris Peace Agreements recognized the role of the 19 international signatories to "promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia" and equally significant "to prevent the recurrence of human rights abuses." Currently, the violations under CAT constitute a violation of the Paris Peace Agreements.

Another important action that contributes to a culture of rule of law and challenges the practices of torture relates to the 90 plus recommendations stated to Cambodia in the recent peer examination by states in the Universal Periodic Review. Cambodia must take political and legal actions to implement these recommendations to realize human rights in Cambodia today and prevent torture in the future.

## **Conclusion**

### **Potential Preventative Policies and Practices to Promote the Rule of Law and a Culture of Human Rights**

This report is an attempt to analyze and raise awareness about the current situation of torture in the Kingdom of Cambodia.

The records illuminated in this report recognize the rights can only be realized through proper preventative practices as well as redress and remedies.

There is a reliable record of the violations of the specific articles of CAT. The Kingdom of Cambodia must take immediate and effective measures to realize the provisions of CAT.

The Kingdom of Cambodia can reach this aspiration through partnering with civil society such as NGOs growing in the ground of Cambodia taking up the mandate to meet the basic human rights of its fellow citizens, regional and global NGOs coordinating together to provide a genuine voice to guarantee the government realizes its mandate of serving the people of Cambodia and also institutions of higher education in the region and the world appreciating the contribution of Cambodia civilization dedicated to the promotion and protection of human rights through training and production of materials including the distribution of the UN Convention Against Torture and copies of these core documents in the countryside to the people and capital of Phnom Penh. Article 10 can be realized together in positive, creative partnerships to educate Khmer about the CAT.

The analysis to prevent torture under Article 16 must be a priority of Cambodia. It is crucial to explore tactics and techniques to assist in recognizing indigenous peoples rights and perspective of land rights. It is also essential to include the focus of prevention of violence against women in all its forms from trafficking to rape.

Education is crucial to transform society in Cambodia and specifically to prevent torture in the future. Human rights education is essential tool to combat torture and create a rule of law that protects the inherent dignity of all Khmer.