

**COMPLAINT AND INFORMATIONAL SUBMISSION
TO THE COMMITTEE AGAINST TORTURE**

**ON NON-COMPLIANCE BY THE GOVERNMENT OF
CAMBODIA WITH CONVENTION AGAINST TORTURE
STANDARDS**

**Submitted by Cambodian
Political Opposition and Human Rights
Non-Governmental Organizations
for Consideration at the CAT Committee's
Review of the Cambodian Government's
Compliance Report Under the Torture Convention**

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NON-COMPLIANCE BY THE GOVERNMENT OF CAMBODIA WITH PROVISIONS OF THE CONVENTION AGAINST TORTURE PROHIBITING TORTURE AND CRUEL AND INHUMAN TREATMENT AND PUNISHMENT

I. Summary Overview

A number of human rights and political opposition groups in Cambodia have been compiling information on policies and practices of the Government of Cambodia that violate core provisions and standards embodied in the Convention Against Torture that prohibit on an outright basis, with no exceptions permitted, torture and other forms of cruel and inhuman treatment or punishment that inflict severe pain and suffering. Cambodia is bound by these standards and prohibitions by virtue of their having ratified the Torture Convention on 15 October 1992, and by having ratified the Optional Protocol to the Convention on 30 March 2007. This non-governmental submission is being made to the Committee Against Torture so that the information and documentation that has been compiled can be properly considered by the Committee Against Torture in conjunction with their review of the latest report submitted to them by the Government of Cambodia, and the review session where representatives of the Government of Cambodia can be questioned by the members of the Committee on specific policies and practices that raise significant questions under CAT.

We request that the Committee and the individual Members of the Committee:

1. take the information we are submitting into account as they assess the accuracy and completeness of the Government of Cambodia's compliance report;
2. use the information we are providing as the basis for specific inquiries and questions that can be posed to the representatives of the Government of Cambodia when they appear before you to defend their report, and that can be incorporated in specific requests for the submission of additional and more detailed information and responses from the government in written form; and,
3. incorporate the questions and concerns we are raising in the final observations and recommendations that the CAT Committee will be issuing at

the conclusion of their hearing on Cambodian compliance with the requirements of CAT.

Reflected and discussed in this non-governmental submission are prior submissions made to the CAT Committee by a number of Cambodian non-governmental groups and by a number of international human rights organizations, observations and recommendations made on Cambodian torture issues by the CAT Committee itself in previous reviews as well as by the United Nations Special Rapporteur for Human Rights in Cambodia, and reports on human rights compliance in Cambodia made by several highly credible organizations such as Human Rights Watch and Amnesty International. A thorough review of these extensive materials, together with an updated compilation and analysis of the current policies and practices of the Cambodian Government, provide the foundation for this 2010 NGO submission to the CAT Committee. In general, and as reviewed in detail in specific sections below, a strong pattern and practice exists in Cambodia that violates Convention Against Torture standards in a number of core respects.

First, the well-known genocide practices of the Khmer Rouge regime, involving many instances of torture and executions, are not being adequately investigated and prosecuted, despite the forming of a special war crimes and crimes against humanity tribunal (called the "Extraordinary Chambers") for this purpose in 2003 under an agreement with the United Nations. As important, recent and current policies and practices of the Hun Sen government appear to be heavily focused on obstructing and restricting the efforts of the Extraordinary Chambers (or Tribunal) to secure justice by prosecuting the perpetrators of the genocide abuses, thereby contributing to a continuation of the impacts of the genocide violations. Largely because of continued interference with the effective operation of the Tribunal by the current Government of Cambodia, very few perpetrators of these widely acknowledged atrocities have been prosecuted despite the passage of over seven years since the tribunal was established, and the one conviction that has resulted produced a woefully inadequate sentence that was reduced because of interference by the Government. In addition, there are very recent reports of government obstruction of justice that has prevented the calling of witnesses essential to the case.

Although the genocide crimes were committed many years ago, the present Government of Cambodia is complicit in the mass tortures and deprivations of life that took place on two counts. First, because they continue to obstruct justice and prevent the effective operation of the special tribunal. Second, because many of the officials currently in high positions of authority, including Prime Minister Hun Sen himself, were members or supporters of the Khmer Rouge regime, and therefore are heavily implicated in the atrocities that took place. This fact helps explain why the present Government seeks to obstruct the effectiveness of the Special Tribunal. As a result, major instances of torture and extra-legal executions that rose to the level of genocide during the Khmer Rouge

regime, continue to be supported by the present Government of Cambodia, and constitute continuing violations of the torture prohibitions of CAT. As this Committee well knows, genocide and other major instances of crimes against humanity and torture are not subject to time limits or statutes of limitations for prosecution purposes. For this reason, the continued and ongoing efforts of the Cambodian Government to prevent effective prosecution of the perpetrators of the Khmer Rouge genocide constitute present violations of the Convention Against Torture that this Committee Against Torture must address.

A second major category of Convention Against Torture violations that the Cambodian Government has been heavily engaged in involves the practice of engaging in a pattern and practice of arrests and long-term detentions of critics and political opponents of the government, often under very harsh and severe conditions of treatment. Baseless, politically motivated criminal prosecutions and convictions, long-term detentions, extra-judicial executions in custody, and severe treatment and punishment of detainees, all constitute practices that violate CAT. These practices, which have been extensively documented and criticized by the United Nation's own Special Rapporteur on Human Rights in Cambodia and many other human rights observers, are being used by the government of Cambodia as part of a determined strategy to suppress criticism of government policies, and to punish and intimidate those who speak out on a wide variety of issues and concerns related to government actions.

In addition, there are a number of other areas where human rights abuses by the Cambodian government violate Convention Against Torture standards. Among the types of practices that frequently have been cited as involving torture abuses are the increasing problems associated with human and sex trafficking. Although some of these practices are carried out by private parties, they are aided, abetted and made possible in substantial ways because government officials are deeply involved in these abuses. "The government and judiciary are prime accomplices to torture in Cambodia ... by failing to adequately investigate and prosecute" violations, and by failing to hold "powerful groups ... such as police, soldiers and other government agents accountable to the law." ("Less Than Human: Torture in Cambodia," Report of the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), June 2000, page 112.)

All of these problems are compounded by the failure of the Cambodian government, despite clear and legally binding assurances to do so embodied in the Convention Against Torture, and again in the Optional Protocol of the Convention that was ratified by Cambodia in 2007, to develop and implement effective mechanisms for assuring and enforcing compliance with CAT's anti-torture standards as part of domestic law. Although the Constitution of Cambodia prohibits torture, the criminal laws have not implemented this promise in a meaningful way, and independent and effective monitoring and enforcement mechanisms have not been established domestically. As the United Nations Special Rapporteur has indicated to the U.N.'s Human Rights Council, as

recently as September, 2010, the lack of an independent judiciary in Cambodia that is not heavily influenced and controlled by political considerations means that as a practical matter there is no meaningful way to enforce anti-torture standards at the domestic level.

Set out below are specific facts and documentation regarding these major forms of torture abuses that are inconsistent with CAT standards. We explain in this submission how the Government of Cambodia does not address these issues in its report to the CAT Committee, and has not adequately responded to prior findings and recommendations made by the CAT Committee on these matters. Indeed, the report submitted by the government of Cambodia to the CAT Committee does not constitute a detailed or adequate analysis of the torture situation in Cambodia today, but rather consists of short answers to a list of specific questions posed by the Committee as a result of the prior review process in 2003, updated to reflect current concerns. While the willingness of the government of Cambodia to respond to the CAT Committee's questions is certainly a positive step, its failure to provide the Committee with a comprehensive review of the nation's compliance status is regrettable, and is a further indication of the unwillingness or inability of the government to properly address its legal obligations under the Convention to prevent torture and cruel, inhuman and degrading treatment and punishment.

This failure takes on added significance given the ratification by Cambodia of the Optional Protocol in 2007. In that Protocol, the government of Cambodia took on a legally binding obligation to establish internal monitoring and compliance mechanisms to assure observance of the CAT standards. These steps have not been taken, further compounding the non-compliance status of the government of Cambodia with CAT requirements.

We hope that the Committee Against Torture, in their questioning of the Cambodian government officials at the upcoming hearings, through specific requests to the Cambodian Government for more detailed and information on particular problem areas, and in the concluding observations and recommendations issued by the Committee at the end of the Cambodia hearing, will help to correct the record, will note the inadequacies of the reports filed with the Committee, and will highlight a number of violations of CAT that require further attention and remedial action.

In this regard it is important to note that the Committee Against Torture, in its previous review and hearings in 2003 and 2004 on Cambodian compliance with CAT, issued conclusions, observations and recommendations that highlighted many of the same types of problems and abuses that have now been documented as being continuing violations to this date. This suggests that the Government of Cambodia has not responded adequately to previous findings and recommendations made by the Committee, and that more forceful remedial action needs to be recommended and taken to assure a higher level of

compliance in the future. Special note is taken of prior observations and recommendations made by the CAT Committee in its previous reports on CAT compliance for each of the issue areas highlighted and addressed in detail in this report. For example, the 27 May 2003 report of the CAT Committee (CAT/C/CR/30/2) notes among the subjects of concern regarding Cambodia non-compliance the problem of "ongoing and consistent allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel in police stations and prison," many of which have been associated with repressive actions and punishment taken against advocates criticizing government policies. Also of special significance, and deserving of particular attention by the CAT Committee, is the CAT Committee's prior criticism of the absence and/or inadequacy of effective domestic monitoring mechanisms to properly deal with citizen complaints and assure compliance. Since Cambodia has ratified the Optional Protocol of the Torture Convention since those findings were made there is an even stronger basis for enquiring into why these domestic laws and monitoring mechanisms implementing the Torture Convention prohibitions still have not been put in place on an effective basis, despite the clear and detailed mandates in the Optional Protocol that these steps be taken. For example, the CAT Committee 27 May 2003 report notes that domestic penal law has not incorporated and implemented many of the standards and prohibitions contained in the Convention, and has not produced the creation of "an independent body competent to deal with complaints" and monitor compliance at the domestic level. The "lack of independence of the judiciary" and the "ineffective functioning of the criminal justice system" also are mentioned as contributing heavily to the failure of domestic compliance. This remains true, despite ratification of the Optional Protocol containing even more specific requirements along these lines. None of these observations and findings were adequately addressed in the Cambodian government's report responding to the CAT Committee's questions that was filed in anticipation of the CAT Committee's hearings on Cambodia being held this year.

We look forward to the CAT Committee's November 2010 hearing on the Cambodian Government's compliance report, and to having the opportunity for further communications and discussions with the Committee members in order to make that hearing more meaningful and productive.

**II. Genocide and Torture Abuses Committed By the
Khmer Rouge Regime Are Being Compounded By Actions
of the Present Cambodian Government to Obstruct and
Interfere With the Work of the Extraordinary Chambers, and
to Otherwise Support the Impunity of Genocide Perpetrators**

**[Violation of Article 2(1) of CAT, prohibiting torture and other forms of
cruel and inhuman treatment and punishment.]**

The widespread nature of the highly abusive genocide practices committed under the Khmer Rouge regime are very well known and extensively documented.

While these abuses took place thirty years ago, and therefore are not themselves subject to the present monitoring and compliance responsibilities of the Committee Against Torture, the policies and practices of the current government to continue to prevent justice from being done regarding these atrocities, and to actively participate in obstruction and interference with efforts to hold the perpetrators accountable, including the prosecution efforts of the United Nation's sanctioned Extraordinary Chambers, is a matter that the CAT Committee must address. These present, continuing and ongoing violations of the requirements of CAT that torture abuses be identified and remedied cannot be overlooked. Indeed, the CAT Committee's 2004 observations and recommendations included a specific reference registering concern about the problem of "Impunity for past and present violations of human rights ... and, in particular, the failure of the State party to investigate acts of torture ... and to punish the perpetrators." (CAT Committee Consideration of Reports Submitted, CAT/C/CR/30/2, 27 May 2003, Item D (6) (d)).

As recently as January of this year the Working Group of the Human Rights Council of the United Nations noted the continuing nature of the failure of the Cambodian government to address and remedy the Khmer Rouge genocide atrocities, and the relevance of these failures to the obligations of the present government. (U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, Cambodia, A/HRC/13/4, 4 January 2010) The Netherlands, in particular, noted numerous credible "reports of corruption and political interference in the [operation of the] Extraordinary Chambers," and Denmark "expressed concern at ... the general atmosphere of impunity" that applied to torture practices in Cambodia. (*Id.*, *Human Rights Council UPR Working Group Report*, items 44 and 59) The United Nations Human Rights Council Working Group ended up recommending further actions to "Guarantee the independence of the Extraordinary Chambers and allow them to prosecute and try offenders (*Ibid.*, Recommendations Section, Item 44), ... to support the important work and independence of the Extraordinary Chambers (*Id.*, Item 43) ... [and to] continue and strengthen the activities of the Extraordinary Chambers (*Id.*, Item 43).

The fact that the government of Cambodia and the United Nations agreed in 2003 to establish the Extraordinary Chambers as a special "hybrid" tribunal made up of both international and domestic elements to investigate and prosecute Khmer Rouge genocide atrocities is to be applauded as a positive step forward, consistent with the requirements imposed under the Torture Convention and its Optional Protocol to prevent and remedy major torture abuses. The reality that the Cambodian government has actively obstructed the efforts of the Tribunal to carry out its functions and to remedy these past instances of massive torture and

extra-judicial executions, amounting to what is widely recognized as constituting genocide, must be condemned as a current, ongoing and continuing violation of the Torture Convention's (and the Optional Protocol's) requirements.

The United Nations High Commissioner for Human Rights has explained that the Optional Protocol to the Torture Convention requires by its clear terms that "each State party is obliged to create an independent national mechanism for the prevention of torture" and for remedying past abuses. U.N.H.C.H.R. Cambodia Office, Information Note 2, titled "Prevention of Torture in Cambodia," May, 2007, page 1. These mandated domestic implementation actions have not been taken, particularly in the context of securing justice for the victims of the Khmer Rouge atrocities, and bringing the perpetrators of those atrocities to justice, despite the creation of the special tribunal designed to carry out these functions.

Since the Extraordinary Chambers Tribunal was created in 2003, only one Khmer Rouge official has been prosecuted, brought to trial, and convicted of his crimes, although four additional perpetrators were indicted less than a month ago, in September, 2010. Kaing Guek Eav (referred to as "Duch") was indicted in August, 2008 and sent to trial for Crimes Against Humanity and grave breaches of the Geneva Conventions, as well as homicide and torture, in 2009. He directed the operations of one of the principal Special Branches (S-21) of the secret police (Santebal) in charge of carrying out genocide efforts, with the trial concluding in November, 2009. Over 15,000 detainees reportedly were executed or died from torture at the S-21 Center. But his initial 40 year sentence was inexplicably reduced in a judgment issued on 26 July 2010 to what was widely characterized as a very light sentence given the horrific nature of his crimes. Many human rights groups and journalists attributed the sentence reduction to the active interference and influencing of the judges by Cambodian government officials. Government interference also is cited as the reason why so few prosecutions have taken place, and for how long it has taken for perpetrators to be brought to trial.

Special attention was given to this problem of government interference in the 2008 report of the Special Rapporteur for Human Rights in Cambodia that was delivered to the Human Rights Council of the U.N. Human Rights Council Report on Cambodia, A/HRC/7/42, 29 February 2008. His report noted that while the Extraordinary Chambers were established in 2003, it was not until 2007 that they began their work to secure prosecutions of "senior Khmer Rouge leaders and those most responsible" for crimes against humanity associated with the genocide on a meaningful basis (*Id.*, Item 74). He also noted that concerns were thoroughgoing throughout the process that based on "a careful assessment of the Cambodian judiciary ...that endemic corruption and political influence would make it impossible for Cambodian prosecutors, investigators and judges to be free from political pressure and that decisions on 'whom to investigate and indict, and to convict and acquit would be based on political considerations rather

than the evidence." (*Id.*, at Item 81) He noted, in addition, that these concerns were "overruled by political expediency." (*Id.*, at Item 82)

The Special Rapporteur's report to the Human Rights Council cites a number of specific instances of political interference with the operation of the Tribunal that justified these concerns, including appointment of judges and removal of the President of the Appeal Court based on political considerations, despite objections voiced by U.N. officials describing the government's actions as a "partisan political exercise." (*Id.*, at Items 83 and 84) It also linked political interference with the work of the Extraordinary Chamber to the more thoroughgoing problem of the failure of the government to prevent impunity for acts of torture and other major human rights abuses, noting that, "It is particularly ironic that the international community should spend so much effort and money to end the impunity of [Khmer Rouge abuses] committed 30 years ago while turning a blind eye to the present violation of rights" that the judiciary and the government refuse to address. (*Id.*, at Item 89) Special mention was made of how political considerations and governmental interference affected the Duch prosecution and its results. (*Id.*, at Items 87-89)

Human Rights Watch has voiced similar concerns about interference by the government of Cambodia with the operation of the Extraordinary Chambers. In a statement issued on December 5, 2006 it called for an "end to interference" and "obstructionist tactics" in the activities of the Tribunal, noting that from the outset of the Tribunal's establishment and operation the government of Cambodia "delayed adoption" of the court's rules and undermined its ability to "launch investigations or prosecutions in accordance with international standards or even Cambodian law." As early as 2003, when the tribunal was first created, Human Rights Watch warned flaws in the agreement that would prevent the tribunal from providing "a measure of justice to the millions of victims of the Khmer Rouge," citing the failure to provide "guarantees of judicial or prosecutorial independence," and to prevent the "exercise of direct control" over the judicial process by the government of Cambodia. Human Rights Watch Report, "Serious Flaws: Why the U.N. General Assembly Should Require Changes to the Draft Khmer Rouge Tribunal Agreement, April 30, 2003.

As recently as 13 September 2010, a news article in the *Cambodia Daily* reported that the international judges who are members of the Extraordinary Chambers are among those "to acknowledge ... [that] the government may have illegally acted to deny the tribunal necessary witness testimony and made fair trials less likely." The article indicates that the government is given final say as to who is able to be called as a witness, and that the policy that the government follows in this regard is that "except for individuals who volunteer" to be witnesses, the government's position is that they will refuse to allow them to be called. The international judges are quoted as indicating that they "will return home" if this approach continues, because fair and effective trials can not take

place under these circumstances, given the fact that a number of "senior Cambodian lawmakers and government officials" who had been identified as potential witnesses, "including the presidents of the Senate and National Assembly, and the ministers of finance and foreign affairs" are among those who would be able to "flout" summonses if the government's control over witness availability is permitted. One of the defense lawyers noted that "The big question is whether the ECCC [the Extraordinary Chambers] is going to deliver a fair international trial or another Cambodian trial in which the outcome is known beforehand." ("Government Contempt Ruling Divides KRT Judges," *Cambodia Daily*, Sept. 13, 2010, pages one, two and four.)

As the Special Rapporteur's 2008 report to the Human Rights Council recognized, and his report to the Council in 2010 reconfirmed, the operation of the Extraordinary Chambers and their treatment of the Khmer Rouge atrocities are inexorably linked to the broader issue of governmental interference in, and control of, the actions of the judiciary more generally. Unless the problem of government interference with the administration of justice is addressed and resolved more generally, the government of Cambodia cannot be viewed as effectively or adequately carrying out its obligations under the Convention Against Torture and its Optional Protocol to prevent and remedy instances of torture. The Committee Against Torture must act forcefully to bring this issue to the attention of the State party government, and to secure more effective indicators of how the government plans to address and prevent the problem of governmental interference in the judicial process. This is important not only for the operation of the Extraordinary Chambers, but for judicial proceedings more generally, if the domestic mechanisms are to be capable of identifying, investigating and punishing acts of torture, as the Convention and the Optional Protocol require.

III. The Cambodian Government Engages in a Pattern and Practice of Torture Related Human Rights Abuses Against Government Opponents and Critics Designed to Suppress Opposition and Prevent Reform

[Violation of Articles 2(1), and 11 of CAT prohibiting torture and cruel and inhuman treatment and punishment, requiring systematic review of detention policies and arrangements.]

A second major category of abuses widely engaged in by the Cambodian government consists of a determined policy and practice to suppress critics, human rights advocates, and political opponents through a variety of officially sponsored repressive actions. Victims of these abuses have included representatives of political opposition groups, critics of various forms of governmental corruption such as unlawful confiscation of land and property, representatives of human rights organizations and labor groups, and journalists.

Among the types of abuses these advocates and opposition leaders have been subjected to are the filing of politically motivated and baseless criminal charges against them, arbitrary arrest and imprisonment, and torture and extra-legal execution in custody. These practices have been widely documented and criticized by human rights observers, and widely reported by the media. Numerous cases have been reported of government critics being arrested on trumped up charges, subjected to beatings and torture while in detention, and even executed.

Typical of the practice is the case of Leang Sokchouen, a staff person with the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), who was arrested and sentenced to prison for two years, and likely torture, on charges of "disinformation" for distributing leaflets critical of the government on 30 August 2010. A coalition of international human rights groups, including Amnesty International, Human Rights Watch and the World Organization Against Torture condemned his arrest and detention on false and politically motivated charges, indicating that "This conviction once again highlights the lack of independence and impartiality of the courts, which all too often are used as a tool against the less powerful." The groups noted that "Unfounded charges of disinformation or defamation are well-worn tactics used by the Cambodian government to create a climate of fear." Human Rights Watch Alert on Cambodia: International Groups Condemn Sentencing of Local Rights Staffer; Arbitrary Arrest, Unfair Trial Marked by Flawed Legal Proceedings, 1 September 2010.

A written statement by Amnesty International to the United Nations Human Rights Council meeting in September, 2010 decries "the systemic lack of protection of human rights in Cambodia," based on "long-standing impunity for human rights violations" and other "very serious shortcomings in the rule of law." The United Nations' own Special Rapporteur for Human Rights in Cambodia, in his latest annual report to the Human Rights Council notes the widespread misuse of the criminal justice system to punish and intimidate "opposition political parties and other political activists" whose voices the government does not want to hear. Extensive documentation of these repressive practices, and the instances of torture that are linked to them, has been provided by human rights groups in Cambodia, and by highly reputable international human rights organizations. As far back as June, 2000, in its report, *Less Than Human: Torture in Cambodia*, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), documented the widespread use of torture and the "wall of silence and denial" that is used to maintain these practices. More recent reports of how these practices have been used to intimidate critics of the government and to stifle dissent and opposition have been noted by the international anti-torture network, the World Organization Against Torture, which issues "human rights alerts" documenting these cases of torture related abuses.

In its 2008 report, "Defending Economic and Social Rights in Cambodia: A High-Risk Activity, the World Organization Against Torture noted increasing numbers of attacks on land rights and trade union leaders as part of the government's efforts to suppress dissent and opposition to government approved policies, concluding that the "rights to freedom of assembly and expression are being seriously violated" on a widespread basis to prevent criticism of land redistribution and other policies favored by the government. OMCT, "A High-Risk Activity, page 28. OMCT noted and condemned the government's practice of "using disinformation and incitement charges to curb freedom of expression" by "community leaders, journalists and human rights defenders reporting on forced evictions, or supporting evicted communities ... trade unionists" and others critical of government policies. *Ibid.*

Human Rights Watch has condemned the filing of "politically motivated criminal charges against at least three" political opposition leaders in 2008 as a means of weakening and undermining "political rivals prior to national elections." Human Rights Watch Statement of March 23, 2008, "Cambodia: Opposition Officials Arrested to Sway Elections." In the Statement, Human Rights Watch Asia Director, Brad Adams, characterizes these politically motivated arrests as a "divide-and-conquer strategy" that "is a well-known tactic of Prime Minister Hun Sen to subdue his opponents."

United Nations' human rights agencies and officials are among those who have documented and condemned these practices. Most recently, at the Human Rights Council session in September, 2009, several statements and observations were made about the government of Cambodia's practice of arresting and detaining its opponents and critics. France criticized the practice of "the frequent lifting of the immunity of opposition parliamentarians" so that they could be prosecuted for their opposition. The Netherlands and Switzerland noted reports of "legally dubious land concessions, land-grabbing and forced evictions," and the use of the criminal process to undermine the freedom of expression of those criticizing these practices. Norway "remained concerned about reports of a lack of judicial independence and ... the vulnerable situation of human rights defenders." Austria "noted several reported cases of intimidation and violence against trade unionists, staff of non-governmental organizations and journalists ... [and] the use of excessive force by police and soldiers in evictions taking place outside of a proper normative framework...." Germany and Ireland "noted with concern reports on intimidation of human rights defenders, non-governmental organizations and the media ... [and] lifting of immunity of parliamentarians in order to prevent them from raising their voices to protest human rights violations (Human Rights Council, Report of the Working Group on the Universal Periodic Review of Cambodia, A/HCR/13/4, 4 January 2010, Items 43, 44, 60, 74, 75, 76 and 77.)

These examples of a widespread policy and practice by the government of Cambodia to misuse of the legal process to punish, arrest and detain opponents

and critics, and to stifle dissent and freedom of expression, deserve careful consideration by the Committee Against Torture because of the great likelihood that these abuses are linked to torture practices carried out on a systemic basis against detainees in prison, particularly those who are detained for political reasons.

IV. Other Torture Related Abuses

[Violation of Article 2(1) of CAT prohibiting torture abuses.]

There are many other areas where serious human rights abuses committed by the government of Cambodia include torture related violations. One that deserves special attention in this submission to the CAT Committee, because of the increasing frequency and severity of the torture abuses, concerns the rapidly expanding problems associated with human trafficking in general, and sexual slavery practices against women and girls in particular.

In its report, "Less Than Human: Torture in Cambodia," the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) gives prominence to the practices of human trafficking and forced prostitution as areas where government supported torture is becoming a more frequent and widespread practice. LICADHO notes that "human trafficking and forced prostitution is a form of slavery" that by its nature involves serious "physical and mental abuse" that meets the definition of "torture" under the Convention Against Torture because of its severity, and because it is condoned by, and acquiesced in, by government officials, even though it is carried out by private parties. LICADHO's report points out that "sexual slavery is probably the fastest-growing form of torture in Cambodia in recent years," and that "unlawful detention and severe violence" and abuses are inherent parts of the practice. It also notes that "Cambodia's lucrative sex trade ... is perpetrated or protected at all levels by police, military or other officials," and that government involvement and protection "is the single largest barrier to the enforcement of the law, punishment of offenders, and rescue and rehabilitation of victims."

The LICADHO report goes on to specifically point out that the prohibitions against torture "are violated with impunity" by government officials involved in the slave trade, particularly through the practice of failing or refusing "to properly investigate allegations of torture" associated with sex trafficking, and to "charge perpetrators with applicable criminal offences." (Less Than Human report, page 113.)

The connection between sex trafficking issues in Cambodia and violations of CAT also have been recognized by international human rights groups, and by the United Nations human rights monitoring and enforcement entities. For example, the Human Rights Council Working Group in its January 2010 report on

Cambodia recognized the widespread nature of the trafficking problem and its connection with human rights abuses. (Human Rights Council Working Group on the Universal Periodic Review Report on Cambodia, A/HCR.13/4, 4 January 2010.) Austria noted the importance of "sexual and domestic violence" issues, and their connection to the widespread problem of impunity (*Id.* at Item 75), and several Working Group members, including Slovakia, Italy, Malaysia, Spain and Germany called for steps to more effectively enforce human and sex trafficking laws (*Id.* at Item 32).

**V. The Cambodian Government Has Failed
to Adopt and Implement Standards and Mechanisms
at the Domestic Level That Would Assure Effective and
Independent Monitoring and Enforcement of CAT's
Anti-Torture Prohibitions**

[Violation of Articles 2(1), 4, 5, and 11 of CAT, requiring effective measures to prevent and punish torture as part of domestic law, including the right to file complaints, and Articles 3, 5, and 17-20 of the Optional Protocol of CAT, calling for the establishment of "several" domestic preventive and monitoring mechanisms whose independence is guaranteed, with specific complaint handling and investigative powers.]

As the CAT Committee has previously made clear, substantial questions and concerns need to be raised about the absence and/or inadequacy of steps that the Cambodian government has obliged itself to take under the terms of the CAT Convention and its Optional Protocol to develop and put in place effective domestic standards and monitoring mechanisms implementing the CAT anti-torture prohibitions in domestic law, and providing methods for dealing effectively and independently with citizen complaints so as to assure compliance. Since Cambodia ratified the Optional Protocol in 2007 the obligation to put these domestic standards and compliance mechanisms in place is even clearer and more legally binding, since the Optional Protocol includes very specific mandates to this effect that Cambodia accepted when it ratified the Protocol.

There is a long and troubling record of the Cambodian government's failure to incorporate the CAT standards into domestic law, and to create a reasonably effective enforcement mechanism at the domestic level to assure compliance. For example, the CAT Committee 27 May 2003 report notes that domestic penal law has not incorporated and implemented many of the standards and prohibitions contained in the Convention, and has not produced the creation of "an independent body competent to deal with complaints" and monitor compliance at the domestic level. The "lack of independence of the judiciary" and the "ineffective functioning of the criminal justice system" also are mentioned as contributing heavily to the failure of domestic compliance.

These problems remain largely true to this day, despite ratification of the Optional Protocol containing even more specific requirements along these lines, and a few institutional reforms that have taken place, including adoption of what is referred to as a "new Penal Procedure Code." It is worth of noting that the CAT Committee's observations, findings and questions on these issues were not adequately addressed in the Cambodian government's report filled with the Committee in anticipation of the CAT Committee's hearings on Cambodia being held this year, responding to the "list of issues" transmitted to Cambodia by the CAT Committee. For example, in its reply to the CAT Committee's question on implementation of the Optional Protocol, the Cambodian Government indicated that its National Report to the Human Rights Council under the Universal Periodic Review Process should be referred to for details about Optional Protocol implementation efforts. But the government's report to the Human Rights Council describes only one reform measure that has been taken to implement the Optional Protocol. Item 78 of the report indicates that Cambodia is working to develop "a National Preventive Mechanism" in compliance with the Protocol requirements, and that its first (and only) implementation measure listed was that "On 22 and 23 January 2009, the Ministry of Interior convened a workshop on the implementation of the Optional Protocol" to give "an opportunity for relevant agencies and other stakeholders to study in detail and clarify the requirements" of a National Preventive Mechanism, and "the Government has issued a Sub-Decree to establish the NPM." (United Nations Human Rights Council, National Report Submitted by Cambodia, A/HRC/WG.6/6/KHM/1, 16 September 2009, Item 78, pages 17 and 18)

In addition, in its "list of issues" to be addressed, the CAT Committee inquired as to whether the new Penal Procedures Code and domestic law in general contained a specific provision providing that no justification or "exceptional circumstances" could be invoked to permit torture (Question 5). The Cambodian Government indicated in its response to the CAT Committee that its national laws, including the Penal Procedure Code, "do not contain any provision that can be used as a justification ... for torture. But they did not respond specifically to the question as to whether a prohibition against justification was part of the law, suggesting the possibility that even if it was not specifically authorized in the law, a claim of exceptional circumstances justifying use of torture was not precluded. (CAT/C/KHM/2, item 10.) Nor, as the CAT Committee noted in Question 34, has the government of Cambodia responded to any of the Committee's Conclusions and Recommendations that were issued in 2003 and 2004 as a result of the Committee's review of the government's first compliance report under CAT and the hearings that the CAT Committee conducted on that report. These responses are seven years overdue. The government responded to that question by indicating that it did not receive the earlier requests for responses, and that it would provide them prior to the November, 2010 hearing.

Similarly, in response to the CAT Committee's question about reform of the human rights monitoring and compliance mechanisms (Question 37), the government of Cambodia cited creation a Human Rights Committee and a Human Rights Complaints Commission as part of the National Assembly as examples of its effort to establish a monitoring and enforcement mechanism that would satisfy CAT and the Optional Protocol's standards. But as recently as January of 2010, the Working Group of the Human Rights Council dealing with Cambodia human rights compliance issues as part of the Universal Periodic Review Process noted continued major deficiencies in this area, despite a few positive steps that had been taken by the government of Cambodia to address the need to improve domestic human rights compliance mechanisms. Morocco and Indonesia commended Cambodia for creating the Human Rights Committee and a Complaints Commission in the Cambodian National Assembly. But the high degree of politicization that remains with these institutions and with the Cambodian judiciary were noted and condemned by many Working Group members, including the Netherlands and France. France, for example, noted that the positive steps that had been taken "to strengthen the rule of law" would not be meaningful or effective given the failure to "fully guarantee ... the independence of judges. Netherlands "noted reports of corruption and political interference" in many of Cambodia's institutions, placing the legitimacy and effectiveness of domestic compliance efforts into question. Denmark "expressed concern" about the "general atmosphere of impunity" that continues to prevent effective compliance efforts despite the institutional reforms that had been made. (Human Rights Council, Working Group Report on Cambodia, 4 January 2010, Items 37, 38, 43, 44 and 59.) Given the thoroughgoing lack of independence of Cambodian judicial and compliance institutions in general, the effectiveness of the Human Rights Committee and Complaints Commission as methods for dealing with torture abuses must be questioned, especially given the political nature of the National Assembly itself, of which they are a part.

Much more detailed information needs to be obtained from the government of Cambodia about the adequacy of steps taken to establish and implement effective domestic human rights monitoring and compliance mechanisms pursuant to the Optional Protocol of CAT, and how the broader problem of politicization and lack of independence of Cambodian judicial institutions affect the legitimacy and usefulness of the reform measures that the government claims have been taken in this regard. The Human Rights Committee and Complaints Commission that have been established as part of the National Assembly would not appear to meet the required standard of being "independent" enforcement bodies, free of political control and influence.

VI. Conclusions and Recommendations

Many of the torture abuse problems raised in this report are not new ones. They have been described and documented by Cambodian and

international human rights groups. They have been widely reported in the media. They have been raised and discussed in various United Nations bodies in the past, including this Committee Against Torture, and more recently in reports by the Special Rapporteur for Human Rights in Cambodia to the Human Rights Council, and by the Human Rights Council itself and its Working Group as part of the Universal Periodic Review Process as recently as September of this year. But torture related abuses appear to have become significantly more widespread and more serious in recent years, as the government of Cambodia has more actively engaged in practices designed to stifle dissent and punish and intimidate opponents and critics using the practice of arbitrary arrest and imprisonment in institutions renowned for abusive treatment of detainees.

What is new is the opportunity provided by the United Nations' Periodic Review process and the reporting procedures of the CAT Committee under the Convention Against Torture to raise these issues in a constructive way with the government of Cambodia, and to engage them in a more meaningful exchange aimed at promoting more effective observance of the CAT Convention standards, and the establishment of ongoing, effective and independent monitoring and compliance requirements under the requirements of the Optional Protocol of CAT ratified by Cambodia just three years ago.

As this report makes clear, special attention needs to be given to the new requirements for institutional reforms mandated by the Optional Protocol, to the special set of concerns raised by the governmental interference with the operations of the Extraordinary Chamber dealing with the Khmer Rouge genocide atrocities, and to the government's misuse of the legal process, and the criminal detention system in particular, as a means for intimidating and punishing its opponents and critics, and eliminating free speech and the expression of critical views. Clear indications need to be given by the CAT Committee in the questions it poses to Cambodian government representatives, through its in-person review hearing in November, and through written requests, and in the observations and recommendations it makes at the end of its review process, that these practices violate basic elements of the CAT Convention and its Optional Protocol. More probing and specific questions need to be posed to the Cambodian government aimed at obtaining more detailed information and answers to questions related to these abuses. And, given the failure of the government to respond to CAT Committee requests in anything close to a timely basis in the past, more specific deadlines need to be established for the government's responses and submissions.

As human rights and democracy support advocates we welcome the opportunity that the CAT compliance review process and the CAT Committee review procedures have provided to raise these concerns, and to provide documentation on the serious non-compliance problems under the Convention Against Torture that currently exist in Cambodia. We look forward to additional opportunities to provide information to CAT Committee members in the context of

the compliance review hearing on Cambodia in November, and to seeing the results of the review process set out in a forceful and detailed set of observations and recommendations from the Committee at the conclusion of its Cambodia hearing.

Respectfully submitted this 15th day of October, 2010 by:

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