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COMMISSARIAT AUX

REFERENCE:GH/fup-123

1 August 2018

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 11, 13, and 21 of the concluding observations on the report submitted by Cambodia ([CCPR/C/KHM/CO/2](#)), adopted by the Committee at its 113th session in March 2015.

On 11 January 2017, the Committee received the reply of the State party. At its 123rd session, held in July 2018, the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (see [CCPR/C/123/2](#)). I hereby attach a copy of the relevant section of the said report (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Taking into account that the next periodic report of the State party is due by 2 April 2019, the Committee requests the State party to provide this information in the context of its next periodic report.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

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



Mauro Politi
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

His Excellency
Mr. Samol Ney
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
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Report on follow-up to concluding observations of the Human Rights Committee, CCPR/C/123/2:

New assessment of replies¹

- A Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.
- B Reply/action partially satisfactory:** The State party took steps towards the implementation of the recommendation but additional information or action remains necessary.
- C Reply/action not satisfactory:** Response received but actions or information not relevant or do not implement the recommendation. The action taken or information provided by the State party does not address the situation under consideration.
- D No cooperation with the Committee:** No follow-up report received after reminder(s).
- E Information or measures taken are contrary to or reflect rejection of the recommendation**
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Cambodia

Concluding observations:	CCPR/C/KHM/CO/2, 31 March 2015
Follow-up paragraphs:	11, 13 and 21
Follow-up reply:	CCPR/C/KHM/CO/2/Add.1, 11 January 2017
Committee's evaluation:	Additional information required for paragraphs 11[C], 13[C] and 21[C][C][C][B]
Non-governmental organizations (NGOs):	Joint submission by Cambodian Human Rights Action Committee, Cooperation Committee for Cambodia, Cambodian Human Rights and Development Association, and Housing Rights Task Force, 23 February 2016; Cambodian Center for Human Rights and Centre for Civil and Political Rights, 2016

Paragraph 11: Impunity for serious human rights violations

The Committee recalls that the State party has an obligation to investigate all cases of past human rights violations (see CCPR/C/79/Add.108, para. 11), in particular violations of article 6 of the Covenant, prosecute the perpetrators and, where appropriate, punish them and provide compensation to the families of the victims.

Summary of State party's reply

Murder is prohibited by law under any circumstances, including if committed by military and police officers and members of the gendarmerie, even if committed in connection with the performance of their duties. The State party acknowledges that police and gendarmerie officers may cause incidents resulting in death in the course of some of their duties. The State party provides examples involving actions taken in self-defence on

¹ Adopted by the Committee at its 118th session (17 October – 4 November 2016). The full assessment is contained in CCPR/C/119/3.



the part of police and gendarmerie officers, which were not considered acts of murder in the legal sense.

Information from non-governmental organizations

Cambodian Human Rights Action Committee, Cooperation Committee for Cambodia, Cambodian Human Rights and Development Association, and Housing Rights Task Force

Little progress has been made in investigating the deaths of journalists. Some 12 such cases have remained unresolved since 1994, with no new developments. Examples of non-action on the part of the State party are provided, which suggest that perpetrators may enjoy impunity if they are well-connected to government or commercial interests.

In March 2015, a court upheld an earlier conviction and sentenced six men to 13 years' imprisonment for the murder of Suon Chan, a journalist who had been investigating illegal fishing activities in the region and died after being attacked by a group of about 10 local fishermen in 2014. Five of the six convicted persons were never apprehended by the police, despite their whereabouts being reported to the police by Mr. Chan's family.

Committee's evaluation

[C]: The Committee notes the information provided, but regrets the lack of concrete information on prompt, independent, impartial and thorough investigations into all cases of past human rights violations, prosecution and punishment of perpetrators, and full reparation provided to victims. The Committee requires that information and information on the case of Suon Chan, in which six persons were convicted in March 2015, including with regard to the actual apprehension or detention of these persons. The Committee reiterates its recommendations.

Paragraph 13: Prohibition of torture and ill-treatment

The State party should establish an independent complaints mechanism with the authority to investigate all reported allegations of and complaints about acts of torture and ill-treatment. It should also ensure that alleged perpetrators of these crimes are prosecuted and that the victims are adequately compensated. The State party should take the steps necessary to ensure that confessions obtained under torture or ill-treatment are inadmissible in court in all cases, in line with its domestic legislation and article 14 of the Covenant. In addition, the State party should speedily establish or designate a national mechanism for the prevention of torture, as provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Summary of State party's reply

The court system is independent and empowered to conduct investigations in response to all complaints. Confessions obtained under torture or ill-treatment do not have any evidentiary value.

In some cases, claims of the use of torture to obtain a confession were made, but the suspects had no evidence to substantiate their claims. In such cases, attempts are made by the court to find evidence to verify the claim. If evidence is obtained, the confession is not used. In cases of doubt, the court is to rule in favour of the accused. The State party provides examples of cases where the court found that police officials had committed acts of intentional violence.

A victim of torture who files a complaint before the court can also request compensation by bringing a civil action in order to receive reparation.

In 2009, the State party set up the National Committee for the Prevention of Torture to control and regularly examine all detention and correctional centres. In addition, prosecutors, investigating judges of courts of first instance, the general prosecutor attached to the Appeal Court, and the Chamber of Investigation of the Appeal Court have the power



to oversee and examine places of detention where the use of torture has been alleged. The Cambodian Human Rights Committee is also able to oversee and examine all detention and correctional centres.

Information from non-governmental organizations

Cambodian Human Rights Action Committee, Cooperation Committee for Cambodia, Cambodian Human Rights and Development Association, and Housing Rights Task Force

There is still no legislative process for prisoners and detainees to complain about acts of torture or ill-treatment in prison or police detention. The only complaint process seemingly in place is to inform the prison governor of the alleged violation. There are also no legislative frameworks for compensating victims of torture and ill-treatment, and no progress has been made on establishing an independent national preventive mechanism. Furthermore, confessions obtained under torture and ill-treatment are allegedly still used in court, as often judges do not believe that the confessions were obtained through these means.

Committee's evaluation

[C]: While noting the information provided by the State party, the Committee regrets that no measures have been taken since the adoption of the Committee's concluding observations to ensure that confessions obtained under torture are inadmissible in courts in all cases, to ensure that all alleged perpetrators of torture are prosecuted and that the victims are adequately compensated. In addition, the Committee notes the information provided by the State party regarding the independence of the court system and its ability to conduct investigation in response to complaints on torture, but notes that such guarantees already existed when the concluding observations were adopted. The Committee regrets that the State party has not provided information on new measures taken to ensure that the National Committee for the Prevention of Torture fully complies with the Committee's recommendation and with the Optional Protocol to the Convention against Torture. The Committee reiterates its recommendation.

Paragraph 21: Freedom of expression and association

The State party should ensure that everyone can freely exercise his or her right to freedom of expression and association, in accordance with articles 19 and 22 of the Covenant and the Committee's general comment No. 34 (2011) on freedoms of opinion and expression. In doing so, the State party should:

- (a) **Take immediate action to investigate complaints of killings and provide effective protection to journalists, human rights defenders and other civil society actors who are subjected to intimidation and attacks owing to their professional activities;**
- (b) **Refrain from prosecuting journalists, human rights defenders and other civil society actors as a means of deterring or discouraging them from freely expressing their opinions;**
- (c) **Consider decriminalizing defamation and bring any other relevant provisions of the Criminal Code into line with article 19 of the Covenant;**
- (d) **Review its current and pending legislation, including the draft laws on cybercrimes and on associations and NGOs, to avoid the use of vague terminology and overly broad restrictions, to ensure that any restrictions on the exercise of freedom of expression and association comply with the strict requirements of articles 19(3) and 22 of the Covenant.**

Summary of State party's reply

- (a) Investigations are conducted by judicial police officers into all criminal offences. If someone is murdered, a police inquiry will immediately be initiated,



even if there is no complaint. Regarding intimidation, the Criminal Code penalizes threats, threats accompanied by extortion, death threats and death threats accompanied by extortion. It also penalizes intentional acts of violence, less severe acts of violence and involuntary bodily harm. Any person who suffers from one of these acts can file a complaint requesting protection and a judicial police officer will either immediately initiate a police inquiry or send the complaint to the Prosecutor, who will decide how to proceed;

(b) Expressing an opinion is not considered an offence, but doing so in order to commit a prohibited act is an offence. Journalists, human rights defenders and civil society activists have not been convicted to scare or discourage them, but rather because they used their professions to commit offences (the State party provided examples);

(c) Defamation has not been removed from the Criminal Code, as it is in accordance with article 19 of the Covenant;

(d) All legislation that might be inconsistent with the Constitution is reviewed by the Constitutional Council, upon request. If the Council deems a provision contradictory to the Constitution, the provision will not be enforced.

The draft law on cybercrimes is in the process of being reviewed and revised by the Ministry of the Interior in collaboration with the Federal Bureau of Investigation of the United States of America, so that the law will be more in accordance with article 19 of the Covenant. The object and purpose of the Law on Associations and NGOs is not to restrict the establishment and activity of associations and NGOs.

Information from non-governmental organizations

Cambodian Human Rights Action Committee, Cooperation Committee for Cambodia, Cambodian Human Rights and Development Association, and Housing Rights Task Force

(a) No action has been taken to investigate complaints of the relevant killings. For instance, there was no investigation into a recent case involving two journalists, Khut Sokun and Heng Viche, who were threatened and assaulted by security personnel while covering a protest by Boeung Kak land rights activists. In 2015, there was an increase in the number of attacks and acts of intimidation by government-aligned agencies, and no action has been taken by the Government to investigate these incidents;

(b) Between July and August 2015, 21 people were detained or convicted for criticizing the Government. As of January 2016, 24 people are being detained for exercising their right to freedom of expression;

(c) Defamation is no longer punishable by imprisonment, but it has not been decriminalized. The Government seems to have no plans to decriminalize defamation, as is evident from the increasing number of defamation cases brought since the 2015 recommendation;

(d) The new Law on Associations and NGOs was enacted without any further review or consultation. The law contains vague, discretionary rules that restrict the right to association, and it is unclear how the Government intends to apply this law.

The draft law on cybercrimes and telecommunications raises concerns about interference with freedom of expression. No information has been released on the latest draft.

Cambodian Center for Human Rights and Centre for Civil and Political Rights

(a) No adequate action has been taken to ensure that complaints of killings are appropriately investigated, including those of the 13 journalists who have been murdered since 1994, despite the Committee's recommendation. New incidents of harassment and violence against journalists and other civil society actors have occurred since March 2015, with no perpetrators held accountable. Examples were provided;



(b) Prosecutions and investigations of civil society actors continue to be pursued by the Government, such as the 11 activists who were sentenced in 2015 to lengthy jail terms because of their involvement in a rally;

(c) The crime of defamation continues to be used regularly, and no moves have been made to consider decriminalizing it;

(d) The Law on Associations and NGOs is vague and was adopted with worrisome requirements regarding reporting obligations, and broad and vague grounds for denial of registration and deregistration.

The draft law on cybercrimes has the potential to severely restrict freedom of expression. The Government has refused to publicly release an official version of the draft, but a leaked draft contains overbroad and vague terminology.

Committee's evaluation

[C] (a) and (b): While noting the information regarding investigations conducted by judicial police officers for all criminal offences under the Criminal Procedure Code, the Committee regrets that no measures appear to have been taken since the adoption of the concluding observations to investigate complaints of killings and provide effective protection for journalists, human rights defenders and other civil society actors. The Committee requests the State party to comment on allegations of harassment and violence against journalists and other civil society actors since 2015, including the case of two journalists, Khut Sokun and Heng Viche, who were allegedly threatened and assaulted by security personnel while covering a protest by Boeung Kak land rights activists. The Committee reiterates its recommendation.

The Committee notes continuing allegations of prosecutions and detention of journalists, human rights defenders and other civil society actors for criticizing the Government and for participating in protests. It regrets the lack of information by the State party on measures taken after the adoption of the Committee's concluding observations to ensure that journalists, human rights defenders and other civil society actors are not prosecuted as a means of deterring or discouraging them from freely expressing their opinions. The Committee reiterates its recommendation.

[C] (c): The Committee notes that the State party has not removed defamation from the Criminal Code and therefore reiterates its recommendation.

[B] (d): The Committee appreciates the information that the draft law on cybercrimes is being revised by the Ministry of the Interior in collaboration with the United States Federal Bureau of Investigation, so that the law will be more in accordance with article 19 of the Covenant. The Committee requests updated information regarding this process, as well as information on discussions and/or the adoption of the draft law on associations and NGOs, including measures taken to ensure its compliance with articles 19 (3) and 22 of the Covenant.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 2 April 2019.