



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

Distr.  
GENERAL

CAT/C/KHM/Q/2  
8 April 2008

Original: ENGLISH

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COMMITTEE AGAINST TORTURE

Fortieth session

28 April – 16 May 2008

**List of issues prior to the submission of the second periodic report of  
CAMBODIA**

**Article 1**

1. With reference to the previous conclusions and recommendations of the Committee, has the definition of torture contained in article 1 of the Convention been incorporated into Cambodian law and in particular into the new Penal Procedure Code and the draft penal code of Cambodia?<sup>1</sup> When is the draft penal code expected to be adopted?

2. Please provide information on the status of the drafting and adoption of the following laws: Organic Law on the Organization and Functioning of Courts; Law on Amendment of the Supreme Council of Magistracy; Law on the Status of Judges and Prosecutors and Law on Anti-Corruption.<sup>2</sup>

**Article 2**

3. Under the new Penal Procedure Code, please provide information on the rights of persons detained in police custody, in particular their right of access to a counsel and to a doctor of choice, to be informed of their rights and to inform their family promptly about their detention. Under the new Penal Procedure Code, how long may a person be held in police custody?<sup>3</sup> Please, provide information on the human and financial resources made available to ensure the adequate enforcement of the new Penal Procedure Code.

4. Please provide information on the use of the writ of *capias* (*deika bāngkoap aoy noam khloun*), which under Cambodian law should only be used if the accused fails to appear before court on a specific date after having received a properly communicated summons.<sup>4</sup>

5. Does the State party's domestic law, particularly the new Penal Procedure Code, specifically provide that no exceptional circumstances whatsoever may be invoked as a justification of torture?

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<sup>1</sup> CAT/C/CR/30/2, para. 7.

<sup>2</sup> CRC/C/15/Add.128, para. 10.

<sup>3</sup> CAT/C/SR.548, para. 34.

<sup>4</sup> E/CN.4/2006/110, para. 60.

6. There have been reports on arbitrary admission practice by the Bar Association of Cambodia as well as a significant increase in its membership fees. Please provide information on the current rules of the Bar Association as well as on the measures taken by the Government to guarantee its independence.<sup>5</sup>

7. Please provide information on the provision of legal aid in Cambodia and the availability of legal services to individuals and groups who are unable to pay for professional legal advice. Who is involved in the provision of these services and what support does the Government provide?<sup>6</sup>

8. Please provide information on the measures taken by the Government to ensure that the high standards set by the Extraordinary Chambers in the Courts of Cambodia, in particular with regard to detention procedures and practices, as well as the procedural guarantees afforded to defendants, are being applied with equal rigour throughout the Cambodian justice system.

### Article 3

9. Please provide information on the implementation of article 3 of the Convention in cases of expulsion or return (*refoulement*) of foreigners, indicating, in particular:

- (a) The number of persons seeking asylum and the number of returnees;
- (b) Whether and how the probable risk of torture is assessed in the determinations and the process to appeal the decisions;
- (c) The procedure for the examination of asylum requests submitted at the border.

What is the current situation of asylum-seekers in the country? Please provide statistics by region of the country and disaggregated by age, sex, gender and country of origin of the asylum-seeking population.<sup>7</sup>

10. What is the legal framework which provides for the protection of unaccompanied asylum-seekers and refugee children?<sup>8</sup> Please provide information about the conditions under which these minors live while in the State party.

11. There have been reports of arbitrary arrests and deportations of *Montagnard* asylum seekers back to Viet Nam by the local authorities in Cambodia's north-eastern provinces prior to their asylum requests being processed and heard. Please inform the Committee of the specific safeguards against non-*refoulement* which are in place and the practice of the State party in this respect. Provide examples of cases where the authorities did not proceed with extradition, return or expulsion because of fear that the persons might be tortured.

### Articles 5, 6, 7 and 8

12. Please provide information about the measures taken to establish the State party's jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention.

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<sup>5</sup> E/CN.4/2005/116, paras. 26 and 27.

<sup>6</sup> E/CN.4/2003/14 and CEDAW/C/KHM/CO/3, para. 15.

<sup>7</sup> CAT/C/SR.548, paras. 10 and 27.

<sup>8</sup> CRC/C/15/Add.128, para. 57.

### Article 10

13. Please provide detailed and updated information on the instructions and training provided for law enforcement officials and other public officials with respect to human rights and specifically the treatment of detainees and measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Is there training in areas such as non-coercive investigatory techniques and/or methods to detect signs of torture? What monitoring and evaluation techniques have been used to assess the impact of these programmes?<sup>9</sup>

14. Please provide detailed information on training provided for health personnel in the country, particularly with respect to the documentation, treatment and rehabilitation of victims of torture. In the context of the trials before the Extraordinary Chambers in the Courts of Cambodia, please indicate if the State party has envisaged establishing any scheme or programme to provide appropriate medical and psychological assistance to those victims of torture who will testify or provide testimonies before the courts. If so, provide detailed information about the scheme/ programme, its governing rules and the services provided, as well as disaggregated data on the type and number of victims to be assisted in the context of the trials.

15. Please provide information on the status of the United Nations code of conduct for police officers under the UNTAC law now that this law is being superseded by new provisions in the draft penal code and in the new Penal Procedure Code.

### Article 11

16. According to national law and the new Penal Procedure Code, how long can pre-trial detention last?<sup>10</sup> How does the State Party ensure that there are no instances of unwarranted protraction of pre-trial detention? Please provide information on how national legislation regulates the use of incommunicado detention.<sup>11</sup>

17. What measures has the State Party taken to improve conditions in prisons, including overcrowding, as well as food provision and hygienic conditions?<sup>12</sup> Please provide data on prisons in the country, including names, location and population disaggregated by crime, age, sex, ethnicity and geographical region of the country.<sup>13</sup>

18. Do the rules and instructions issued regarding the duties and functions of police officers and prison staff contain any information on the prohibition of torture and inhuman, cruel or degrading treatment?<sup>14</sup> Please provide information on Circular No.006, Discipline of the National Police Forces, 1995, according to which a police officer who commits torture of a detained person can only be sent to court if the person dies. What happens in cases of torture by the police which do not lead to death?

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<sup>9</sup> CAT/C/SR.548, para. 17 and para. 29.

<sup>10</sup> CAT/C/CR/30/2, para. 6 (i).

<sup>11</sup> CAT/C/SR.548, para. 14.

<sup>12</sup> CAT/C/CR/30/2, para. 7 (i).

<sup>13</sup> CAT/C/SR.548, para. 37.

<sup>14</sup> CAT/C/SR.548, para. 23.

19. What steps has the State party taken to ensure that the supervision of prisons and police stations is conducted effectively and independently? Are places of detention periodically visited? By whom? How is the situation monitored and how has the Government addressed shortcomings?

20. Are convicted prisoners separated from those held in pre-trial detention? Are minors in detention/ prisons held in separate facilities/ premises from adults? Are women prisoners held in separate facilities/premises from men and are they guarded by female personnel? Please provide information on sexual violence in prisons, on measures taken to prevent it, complaints procedure, investigations, witness protection and disciplinary measures taken.<sup>15</sup>

21. What is the minimum legal age of criminal responsibility?<sup>16</sup> Please provide information on the juvenile justice system, including special legislation, policies and programmes.<sup>17</sup> Also, please provide information on how the provisions in the new Penal Procedure Code comply with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

22. What measures has the State party taken to ensure that provisions in the Constitution and in the international human rights conventions, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which Cambodia is party, are taken into account by judges when considering cases before them and interpreting legislation?

23. Please provide information on the treatment of people suffering from mental illness leading to diminished responsibility. Is the mental state of someone accused of a crime a mitigating factor during sentencing?

#### **Article 12**

24. Please provide detailed information about the specific measures taken to fight impunity for violations of human rights, including disappearances and torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel. What steps are being taken to ensure that law enforcement personnel and others accused of torture or ill-treatment are brought to justice, as well as to ensure prompt, impartial and full investigations and punishment of the perpetrators?<sup>18</sup>

25. Please provide information and statistics on how many prosecutions there have been of police officers or other law enforcement personnel for torture-related crimes in the past five years, how many convictions and for what crimes and the sentences given.

26. Please provide updated information on the work and functioning of the Supreme Council of the Magistracy, as well as on the Prime Minister's Sub-decree of 5 May 2005 by which the secretariat of the Council was dissolved and its functions transferred to the Ministry of Justice.<sup>19</sup>

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<sup>15</sup> CAT/C/SR.548, para. 39.

<sup>16</sup> CRC/C/15/Add.128, para. 23 and CAT/C/SR.548, para. 41.

<sup>17</sup> CRC/C/15/Add.128, para. 65.

<sup>18</sup> CAT/C/CR/30/2 para 7 (c) and report of the Special Representative of the Secretary-General for Human Rights in Cambodia, "Continuing patterns of impunity in Cambodia", October 2005, page 19.

<sup>19</sup> E/CN.4/2006/110, paras. 15-17.

### **Article 13**

27. Please provide up-to-date information with reference to the previous conclusions and recommendations of the Committee regarding the establishment of an independent body competent to deal with complaints against the police and other law enforcement personnel. Please indicate what procedures are followed when complaints are lodged against police officers and/or prison staff, and what authorities are responsible for dealing with such complaints. Also, please indicate whether any such complaints relating to torture or cruel, inhuman or degrading treatment have been lodged in recent years, and if so provide information disaggregated by type of complaint as well as sex and age of the complainant.<sup>20</sup>

### **Article 14**

28. Does the State party have a national mechanism to provide fair and adequate compensation to victims of torture or ill-treatment by State agents?<sup>21</sup> If so, provide details on the number of cases of compensation, type of compensation, including rehabilitation, and any other relevant information. Do the provision of the new Penal Procedure Code allow for civil parties to join criminal prosecutions? Are the provisions of the Internal Rules of the Extraordinary Chambers in the Courts of Cambodia in this respect incorporated in domestic legislation?

### **Article 15**

29. Please explain the role of confessions under the new Criminal Procedure Code, including information that they have not been extracted by torture, that they are free and voluntary and on who has the burden of proof. Under the new Code, are confessions regarded as the primary/only source of evidence and to what extent must there be corroboration of the material particular to confessions with other evidence? Can confessions be revoked at any point during the proceedings?

30. Please provide information on the approximate percentage of cases during the last three years where the case for the prosecution and/or conviction rested solely on confessions. Please indicate whether derivative evidence following an inadmissible confession is admissible.

### **Article 16**

31. There have been reports of widespread phenomena of child prostitution and sale and trafficking of children in Cambodia, as well as of inadequate enforcement of legislation on these issues. In this connection, what is the status of the revision of the 2006 Law on Suppression of Kidnapping, Trafficking/Sale and Exploitation of Human Beings? Provide information on sanctions to offenders and protection measures for victims established,<sup>22</sup> including on the implementation and evaluation of impact of the five-year Plan of Action against Sexual Exploitation of Children, 2000-2004, as well as on any other measures taken to address this problem.<sup>23</sup> Please include information on rehabilitation programmes for children who have been exposed to trafficking.

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<sup>20</sup> CAT/C/CR/30/2, para. 7 (d).

<sup>21</sup> CAT/C/CR/30/2, para. 7 (k).

<sup>22</sup> CEDAW/C/KHM/CO/3, para. 19.

<sup>23</sup> CRC/C/15/Add.128, para. 63.

32. Please provide information on the number of reported rape crimes, those that have been investigated and the number of those brought to trial. What is the cost of a medical certificate required in cases of rape?<sup>24</sup> Is rape in marriage an offence under the Cambodian criminal system and is there a complaints mechanism for victims?<sup>25</sup>

33. What safeguards are there in place to prevent cruel, inhuman or degrading treatment, particularly corporal punishment in schools?<sup>26</sup>

#### **Other issues**

34. The Committee notes that, to date, it has not received a response from the State party to the letter dated 28 April 2006 (CAT/C/KHM/CO/1/LFP) from the Committee's Rapporteur for Follow-Up on Conclusions and Recommendations to Cambodia (CAT/C/CR/30/2). Please provide the requested information.

35. Please provide detailed information on relevant new developments in the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the initial report, including any relevant jurisprudential decisions and statistical data.

36. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the initial report, including on any national human rights plans or programmes, and the resources allocated to them, their means, objectives and results.

37. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the initial report in 2003, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention. Please include information on any difficulty which would prevent the State party from fully implementing the Convention and the Committee's recommendations.

38. Please provide information regarding the progress made towards meeting the Government's stated intention to create an independent national human rights institution in conformity with the Paris Principles on national human rights institutions,<sup>27</sup> and the proposed relationship between this institution and the national preventive mechanism required under the terms of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Cambodia on 30 March 2007.

39. Please provide updated information on the work of the mandate, human and financial resources of the Cambodian Human Rights Parliamentary Committee, including the number of cases of alleged human rights abuses investigated by this Committee, the number of cases where the intervention of the Committee led to prosecutions being undertaken and the specific methodology of the Committee for undertaking visits to prisons.

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<sup>24</sup> CEDAW/C/KHM/CO/3, para. 16.

<sup>25</sup> CCPR/C/79/Add.108, para. 17.

<sup>26</sup> CRC/C/15/Add.128, para. 43.

<sup>27</sup> General Assembly resolution 48/134.

40. Please provide information on the legislative, administrative and other measures the Government has taken to respond to the threats of terrorism, and please indicate if, and how, these have affected human rights safeguards in law and practice. In this respect, the Committee would like to recall United Nations Security Council resolutions 1456 (2003), 1535 (2004), 1566 (2004), and 1624 (2005) which stress that States must “ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.”

41. Please indicate the concrete measures that have been taken to widely disseminate the Convention and the Committee's conclusions and recommendations in all appropriate languages in the State party. What actions or programmes have been taken in cooperation with non-governmental organizations? Under what conditions do human rights defenders have access to places of detentions, and to information and statistics on Government policies?

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