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Cambodian Defenders Project



34th ASIA-EUROPE LECTURE TOUR ON Human Rights in Criminal Justice System

25 November 2010

At Sunway Hotel, Phnom Penh, Cambodia

Organized by the **Cambodian Defenders Project**

Cooperated with **The Asia-Europe Foundation**

REPORT

Introduction:

On the occasion of the first meeting of ASEM Foreign Ministers in Singapore in February 1997, Sweden and France had suggested that informal seminars on human rights shall be held within the ASEM framework. The aim of this initiative was to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues. Since that time, The Asia-Europe cooperated with several partners organized several seminars discussing on many issues.

From 18 to 20 February 2009, the French Ministry of Foreign Affairs and the Raoul Wallenberg Institute (Delegated by the Swedish Ministry of Foreign Affairs) and the Asia-Europe Foundation (ASEF) organized the 9th Informal ASEM Human Rights Seminar discussing on “Human Rights in Criminal Justice Systems”. The seminar brought together 95 participants from 39 ASEM partners (including official government representative and civil society). The four working groups were engaged in a dialogue on how to improve human rights protection at the different stages of criminal justice systems both in Asia and Europe. The outcomes of the Seminar are reflected in the Seminar Report.

In order to disseminate the seminar report, the Asia-Europe Foundation organized several lecture tour to each state member. Asia-Europe Foundation decided to take the Cambodian Defenders Project as partner to organize the lecture seminar in Cambodia.

On 25 November 2010, the Cambodian Defenders Project cooperated with the Asia-Europe Foundation organized a Lecture Seminar on the Human Rights in Criminal Justice System in Phnom Penh, Cambodia. The participants of the seminar were from Judiciary, police, NGOs, Private Company and law colleges.

The Seminar:

The seminar was held for whole morning of 25 November 2010 at Sunway Hotel, Phnom Penh, Cambodia. The lecture was given by Prof. Dr. Manfred Nowak and facilitated by

Att. Mr. SOK Sam Oeun. The participants were from Judiciary (4), police (9)¹, NGO (39), Private Company (1), Lawyers (14) and law students (25) (92 in total excluding Prof. Dr. Manfred Nowak and Mr. SOK Sam Oeun, CDP Director).

Agenda:

- 7:30-8:30 Registration
- 8:30-9:00 Opening remarks by Att. Mr. SOK Sam Oeun, Executive Director of the Cambodian Defenders Project.
- 9:00-10:15 Lecture presentation by Prof. Dr. Manfred Nowak
- 10:15-10:30 Coffee Break
- 10:30-11:15 Continue Lecture by Prof. Dr. Manfred Nowak
- 11:15-12:00 Questions and Answered facilitated by Att. Mr. SOK Sam Oeun
- 12:00-12:10 Closing remarks by Att. Mr. SOK Sam Oeun.
- 12:10 Lunch

Topics of the Lecture:

After the opening remarks of Mr. SOK Sam Oeun, Prof. Dr. Manfred Nowak started his lecture.

1. *Criminal Justice Systems*: In this topic, Manfred described about the legal systems in the world (Common Law, Civil Law, Religious Law, Indigenous Tradition System, Communist System) , the two types of criminal procedural systems (Adversarial and inquisitorial systems) and Stages of Criminal Justice (such as, Investigation, Prosecution, Sentencing and Punishment).
2. *Crime and Punishment*: In this topic, Manfred raised two theories related to punishment: Retributive Justice and Restorative Justice. He showed a table of Prison Population. The source of the table is the World Prison Brief 2009, King's College London. According to the table, the United States has highest rate of prison population in the world. It can show the judicial system of the United States more likely the retributive justice.
3. *Human Rights in Police Custody and Pre-Trial Detention*: The person under detention or in custody shall be deprived of his or her liberty but in theory not all liberties. But in practice, most of human rights of detainees are deprived, in particular the vulnerable and discriminated people such as women, children, elderly, drug users, sick (HIV/AIDS, TB, hepatitis), lesbians, gays, bi-, and transsexuals, foreigners, sex

¹ Police from some department could not come because they were busy for the funeral of victims at Diamond Bridge.

offenders, and the poor. Dr. Manfred showed many articles of the ICCPR. He reminded that the pre-trial detention shall only as an exceptional measure and with due regard to the implementation of necessary safeguards against **arbitrariness** and **ill-treatment**. The due investigation and prosecution of crime must balance with the protection of the right of the people.

4. *Conditions of Detention*: He showed many pictures of different and many kinds of bad conditions of detention around the world and told the participants about his experiences while he was the special rapporteur of the United Nation on Torture.
5. *The Right of the Accused to a Fair Trial*: **Principle of fairness** is the core of human rights guarantees in criminal proceedings. **Equality of Arms** is also another important concept to assure the fair trial. According to this principle, both parties must be afforded a reasonable opportunity to present their cases under conditions that do not place them at a disadvantage vis-à-vis their opponent, right of the accused vs. right of the prosecution, e.g. access to a lawyer. These principles are embedded in many resources in the UN human rights instruments.
6. At last, Manfred showed and explained the conclusion of the 9th Informal Asia-Europe Human Rights Seminar which have three types of recommendations as following:
 - a. To uphold the rights of the accused in Pre-trial Detention,
 - b. To uphold the international standards of conditions of pre-trial detention, and
 - c. To uphold the fairness of judicial proceedings.

Questions to the Lecturer:

After finishing the representation there were only 45 minutes left for the questions and answers. The questions-and-answers session was facilitated by Attorney Mr. SOK Sam Oeun. Many people raised many questions. However, the main key questions are following:

Definition of Torture in Cambodian Penal Code: The new penal code of Cambodia had been passed and would be in force in December 2010. In this code, there is a term of "Torture" but does not give clear definition of torture. Will Cambodian Judge dare using the definition in CAT to use in local practice or not? If not, the penal code must be amended and give more clear definition.

Request for clarification of the meaning of Restorative and Retributive Justice: The concepts of restorative and retributive justice are new Cambodia and not mentioned in law school. Many people perceive that United States' justice system is the restorative one. Manfred said that it was the misunderstanding and explained that the higher rate on the table of prison population is more retributive.

How to balance between torture for true confession and collecting evidence: One participant said that police said that mostly the confession can help their investigation and without confession they may be very difficult to find evidence against the accused. He also asked Manfred to give any advice or recommendations for that. Manfred accepted that some confession may help the investigation but we must balance between rights of the people, in particular any rights that enshrined in the UN human rights mechanism. In this case, police shall build their capacity and other skills of collecting evidence.

Conclusion:

Because time was out the seminar was terminated at 12:30. Professor Dr. Manfred Nowak and Attorney Mr. SOK Sam Oeun promised that any participants who have any questions relating to the presentation can send questions to them and they tried to answer.

The seminar was finished and all of us have lunch together. Many of them still talked about the presentation during lunch.

Date 29 November 2010

Att. Mr. SOK Sam Oeun,
Executive Director of CDP