



PRESS STATEMENT

Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia, Professor Surya P. Subedi

Phnom Penh, 11 May 2012

I am about to complete my seventh human rights fact-finding mission to Cambodia. The focus of this mission has been an assessment of the human rights impact of economic land concessions (ELCs) and other land concessions in Cambodia. During my mission I also endeavoured to assess progress on the implementation of recommendations contained in my previous reports to the Human Rights Council. I have also taken the opportunity to continue to monitor and address other ongoing human rights issues in the country, such as freedom of expression and assembly, the protection of human rights defenders and the preparations for the upcoming elections (which was the focus of my previous mission).

During this mission I was able to visit the provinces of Ratanakiri, Stung Treng and Kratie. In each province I met with communities affected by land concessions, as well as with the provincial authorities. I endeavoured to contact the businesses to whom the relevant concessions have been granted. I will continue my efforts to interact with these businesses, who are central to how land concessions operate and are key beneficiaries. I was also able to meet a broad range of civil society actors, with the Minister of Environment, the Ministry of Land Management, Urban Planning and Construction, diplomatic representatives and donors, and the United Nations Country Team. I regret that I was unable to meet the Ministry of Agriculture, Forestry and Fisheries, given that they are the pre-eminent government entity involved with land concessions.

What follows are my preliminary thoughts and findings and a summary of the matters that have been brought to my attention during this mission. I will assess the large amount of information that I have received, and prepare my report to the Human Rights Council in September 2012.

I understand that Cambodia as a developing country wishes to make the most of its land and natural resources in order for the country to develop and to bring prosperity to its people. I acknowledge that historical circumstances, including policies of the Khmer Rouge regime, have led to the proliferation of land disputes which the Government is trying to manage. I also recognize that there are social land concession programmes involving the distribution of land to the landless. That being said, I am of the view that land concessions should be granted and managed within a sound legal and policy

framework, including respect for people's rights especially the rights of indigenous peoples.

Cambodia has a relatively well-developed legal framework governing the granting and management of land concessions, including the 2001 Land Law, the 2005 Sub-decree, and the 2008 Protected Area Law, among many others. I am also informed that a draft law on Environmental Impact Assessments is being considered by the Government. As I have noted in relation to other sectors in Cambodia, the existence of the legal framework on paper is one thing; the implementation of the law is another. I have been consistently informed that the formal framework relating to land concessions is not being applied properly in some cases.

The very nature of concessions raises the role of the private sector, and - in the context of my mandate - their role in respecting human rights. Clearly the Royal Government has the primary responsibility for respecting, protecting and fulfilling the rights of its people. However business also has a role to play. In 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights. These principles build on existing human rights obligations, including those enshrined in the international treaties that Cambodia has ratified. These standards apply to both Cambodian and foreign companies operating in Cambodia, regardless of sector, size or structure, and also imply the Cambodian Government's duty to exercise oversight over business activity.

Let me turn to some reflections on the current state of land concessions in the Kingdom. Some of my interlocutors during this mission outlined the economic and social benefits that land concessions have brought to Cambodia. They pointed to the jobs created, tax revenue generated and some associated benefits for communities in concession areas such as new roads, health posts and schools.

Others, however, painted a different picture.

Some people who I interacted with spoke of a system in which a very low level of transparency means that communities are often not aware when and how a concession is being granted near them. Nor do they know much about the company to whom the concession is granted, its track record, whether it is foreign or domestic, or even, in some cases, its name. My own assessment confirms this situation. Access to information is paramount.

Communities have also informed me that they are rarely consulted by the authorities or businesses in a meaningful way (or indeed sometimes at all) on the impact of concessions on their lives and livelihoods. This also means there is often no avenue for their concerns to be raised in a structured and meaningful way, with some communities being obliged to seek redress in the courts, to petition provincial and national authorities, or take to the streets.

Additionally, as I have said before, the level of protests linked to land disputes - which are often violent - is a great cause of concern to me. Protests create enormous challenges for the authorities, particularly the provincial authorities. Some forms of

protest, for example road blockages by communities, greatly impact on other individuals who have no involvement in the dispute. People have a right to protest, but I urge all involved – communities, authorities and companies, to do their utmost to avoid violent protests. Dialogue is key.

I was struck by repeated calls for attention to be paid to the environmental degradation that has ensued from the alleged mismanagement of land under concession, unsustainable exploitation of natural resources, and the sheer size of forest cover that is affected by land concessions. These claims deserve immediate attention from the authorities.

In principle, land concessions should not impinge on individuals' or communities' land or property. I have been told by the Royal Government that it applies a leopard skin policy which aims to allow the communities to live side by side with the concessions, but I have also been informed by communities that this approach is often not applied or not applicable in some cases. I urge the authorities to ensure a workable and just solution for communities and concessions to coexist. If a concession seeks to take individual's land and property, the right to a remedy should be accessible and appropriate compensation must be offered.

The situation of indigenous populations is particularly important in this regard. I visited one indigenous community and received information on many others. The special bonds of indigenous Cambodians to their land are well known and documented. The Royal Government has paid particular attention to their situation in the setting up of a specific legal framework to deal with their land tenure, and this is to be applauded. I welcome the granting of the first three communal land titles to indigenous communities, and urge the speeding up of the process for the granting of others. In the meantime, and until these communities can secure their land titles, indigenous land should be protected and secured in accordance with the law.

All communities I encountered, and many more who provided written submissions, raised the issue of misconduct by concession companies or their subcontractors. This ranged from land grabbing and confiscation of livestock, destruction of homes and property, damage to burial grounds, and physical aggression and intimidation, including the use of firearms against specific individuals and communities. In some cases the authorities have held the companies to account for their actions. One example is the shooting incident at the TTY concession in Kratie province earlier this year. However, in many cases, there remains impunity for violations committed by the companies.

In some cases it is alleged that this situation of misconduct is taken one step further, with state agents (be they provincial officers, forestry officials or even police and military units) protecting the companies and their concessions. These allegations – which I have not verified - are serious and merit further investigation.

Finally, I have met a number of human rights defenders working on the issue of land concessions. These individuals assume great risk in undertaking their work and are entitled to protection by the State. I pay tribute to Mr. Chut Wutty who was killed along with Mr. In Rattana on 26 April 2012 in Koh Kong province. I paid my respects at Mr.

Wutty's grave in Kandal province and offered my condolences to his sister during my mission. I understand the investigation of the incident is ongoing by the provincial investigating judge. I look forward to a speedy and just resolution of this case. Let me say that in this and other cases in 2012, we have seen the use of live ammunition against human rights defenders. It is a worrying trend to say the least.

These are some preliminary reflections at the end of my week long visit. Let me reiterate my view that the development of Cambodia's land and natural resources can be positive if done in a sustainable and equitable manner. It is in this constructive spirit that I raise these initial concerns.

In this regard I welcome the Prime Minister's Regulation of 7 May 2012 imposing a temporary halt on the granting of new economic land concessions, and greater scrutiny of existing land concessions with a view to protecting the interests of communities. This is a good step in the right direction. As ever, the focus must be on the implementation of this new regulation.

Cambodia is currently in the midst of the campaign for communal elections scheduled for 3 June. I devoted my last mission to the country to the issue of human rights in elections, and again draw attention to my press statement of 9 December 2011. I again urge all parties and the National Election Committee to ensure free, fair and peaceful elections.

I would like to thank the Royal Government for the good level of cooperation extended to me during this visit, and in particular the authorities in Ratanakiri, Stung Treng and Kratie provinces. I thank the communities I visited for their welcome, as well as my other interlocutors, including civil society, the UN Country Team and donors. As ever, the Office of the UN High Commissioner for Human Rights has provided me with the logistical and technical support necessary to undertake my work, and I thank them.

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Professor Surya P. Subedi was appointed by the UN Human Rights Council as the UN Special Rapporteur for Human Rights in Cambodia in March 2009. He is currently Professor of International Law at the University of Leeds in the United Kingdom.

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