



PRESS STATEMENT

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

Phnom Penh, 24 June 2014

I am about to complete my 11th human rights fact-finding mission to the Kingdom of Cambodia, the second since the National Assembly elections took place in July 2013. What I propose to outline are my initial findings and thoughts about the human rights situation in the country since my last mission. My final conclusions and recommendations will be contained in my report that I will present to the United Nations Human Rights Council in September this year.

During this mission, I met with HE Sar Kheng, Deputy Prime Minister and Minister for Interior, HE Om Yen Tieng, Senior Minister and Chair of the Human Rights Committee, HE Im Chhun Lim, Senior Minister and Minister of Land Management, Urban Planning and Construction, HE Ith Sam Heng, Minister of Labour and Vocational Training, senior members of the judiciary, Governor and Deputy Governor of Sihanoukville province. As with my previous missions, I also interacted with a large number of other stakeholders in Cambodia, including ordinary citizens, groups of youths and students, civil society organisations, leaders of the opposition party, as well as members of the international community including development partners and the United Nations Country Team. I also received numerous delegations that came to submit their petitions to me.

I was able to reach out this time to more human rights related organisations across a broad spectrum of activities and gauge the situation of human rights across the board, including women's rights, disability rights and Lesbian, Gay, Bisexual and Transgender and Intersex (LGBTI) rights. I also was able to travel outside of Phnom Penh and see for myself the real situation of people affected by the impact of land concessions and evictions in Koh Kong and Sihanoukville provinces.

At the outset, I wish to express my appreciation to the Royal Government of Cambodia for the positive and constructive cooperation extended to me during this mission. The dialogue I had with the government interlocutors was frank, cordial and informative.

In my overall assessment of the evolution on the situation of human rights, I note that progress in some areas has been in a generally positive direction, and I remain convinced that there is reason for optimism for the long-term development of the nation. The dialogue to resolve the political deadlock between the Government and the opposition party seems to be on-going with a view to creating an environment conducive to the assumption by opposition party members of their seats in the National Assembly. The large number of petitions I receive at each mission, including the present one, attests to the greater awareness among the people of their human rights. Indeed, democracy is about dialogue, debate and accommodation of competing interests for the greater good of the country. I welcome the release, even though on suspended prison sentence, of the 25 arrested and detained in relation to events in November 2013 and January 2014. Even though the general situation appears to have stabilised, the space for freedom of peaceful assembly and of speech

seems to have shrunk in the aftermath of the most unfortunate violent incidents of the first week in January 2014. When visiting Freedom Park - a symbol of democracy – I was sorry to see it surrounded by barbed wire, preventing people from going there and exercising their freedom of speech and assembly. It gives the impression that there has been an attempt to put democracy in a cage in Cambodia! I hope that this situation will be remedied, and that the constitutional right to peaceful assembly, including at Freedom Park, will be promptly and fully reinstated for all Cambodians.

Judicial reform

The first substantial report that I submitted after assuming the position of the UN Special Rapporteur for the country was focused on judicial reform. The enactment of three fundamental laws on the judiciary constituted the core of my recommendations. Therefore, I welcome, in principle, the passing of these three fundamental laws by both houses of parliament. These laws contain a number of provisions designed to strengthen the mechanisms relating to the workings of the judiciary, for instance, in regard to case management. However, I am concerned by certain provisions in these laws which are detrimental to the independence of the judiciary and to the doctrine of the separation of powers. For instance, there is a provision for a strong presence and influence of the Executive in the Supreme Council of Magistracy, a body entrusted with the overall supervision and management of the judiciary. I was also concerned by a number of provisions which give undue influence to the Ministry of Justice in matters relating to other activities of the judiciary. While the three laws as they stand today seem to fall short of the corresponding international standards, I view the enactment of these laws as the first step towards further reform. The process of judicial reform should be an on-going one in any country. Laws by nature are forever evolving - they can be, and should be amended whenever there are deficiencies. I sincerely hope that the members of the judiciary would sever their ties with the political parties, which is not conducive to the independence of the judiciary nor to the perception of independence, and that the Government would provide the additional resources needed for the new mechanisms created by these new laws to work effectively. On the process, I note that despite repeated requests from civil society, development partners, and including from myself, the Government missed the opportunity to consult on these texts. Such consultations could have led to some improvements in the drafting, which would have addressed some of the concerns expressed earlier. The lack of transparency and participation in the elaboration of the three laws on the judiciary sets a worrying precedent for future laws. The Government has expressed the intention of passing a number of laws which could have implications for the protection of human rights, such as the Law on Associations and NGOs and the Cybercrime Law. In this regard, I strongly encourage the Government to ensure that there are opportunities for relevant stakeholders to express their views on draft legislation.

Electoral and parliamentary reform

The political deadlock that has crippled the country for the past year continues to be of serious concern to me because of the direct impact it has on the enjoyment of human rights by all in Cambodia.

Among the items of negotiation between the CPP and CNRP, I note that there seem to be two main issues: (1) an agreement for power sharing in a number of areas and (2) the reform of the NEC and

the entire electoral process. However I have yet to learn about any discussions about fundamental parliamentary reforms. On the first item, I have recommended earlier that the internal procedures of Parliament in general and the National Assembly in particular should be revised to encourage equitable or proportionate sharing of power and responsibility in parliamentary activities and especially in the leadership positions in the various parliamentary Commissions. That said, I recognise that in a democracy the winning party is to govern the country while paying due regard to the views of the opposition. Other than this general statement of principle, as this matter is being addressed by the two parties, I consider it to be entirely up to the two political parties to agree on a power sharing agreement acceptable to them.

On the second item, I am encouraged by the acceptance of the rationale and the need for electoral reform contained in my report on the subject by both the ruling and opposition parties. I welcome the commitment of the Government to take account of a number of long standing demands for reform. I am pleased that the recommendations that I made on electoral reform have now become part of the national agenda, including according an independent constitutional status to the National Election Committee, and that the political dialogue is on-going in this regard. I hope that the two parties will reach a logical conclusion on principled grounds rather than be guided merely by the political expediency of a temporary character. This is an opportunity to carry out a comprehensive reform of lasting character informed by international standards so that the situation since the last elections to the National Assembly in July 2013 will not repeat itself. I remain hopeful that the discussions about the selection of the NEC members will be made in a transparent way and in consultation with all the stakeholders.

At the same time, electoral reform is not confined to the appointment of the members of the NEC or its constitutional status. I strongly support the establishment of a new accurate system of voter registration that remains essential to exercise the right to vote. A more neutral and transparent mechanism to resolve election related complaints will increase trust in the election process. The reform of the NEC should also include a revision of its structure, role and activities. The value of such an exercise will depend, in part, on how and when it is conducted. I would therefore recommend that the parties involved commit to a concrete plan and timeline.

While taking note of the nature of the on-going negotiations between the ruling and opposition parties, I am of the view that speedy parliamentary reform as detailed in my report on the subject is essential to enable the opposition to play a meaningful role as an opposition in Parliament. By virtue of the fact that it is the ruling party, the CPP and the Government itself have the greater responsibility to demonstrate maximum flexibility, leadership, and seriousness and embrace the demands for reform to ensure a smoother functioning of democracy in the country.

The opposition party as well, the CNRP, must be reasonable and realistic in its approach to negotiations and promote tolerance and harmonious race relations in a complex society such as Cambodia. I have highlighted during my meetings with the CNRP leaders the need and benefits of their joining the National Assembly for the greater good of the country.

A functional Parliament capable of giving voice to the multitude of demands in society and able to hold the executive to account is the embodiment of a healthy democracy. For that to occur, Members of Parliament must be accessible to their constituencies and capable of promoting their

interests. They must be able to fulfil their roles, not only as members of a party but also as individuals. Parliamentary Commissions must assume their roles in reviewing the compliance of domestic laws with international standards and regularly review Government regulations and practices against the scope of the original laws to which they were intended to give effect. Democracy can work well in Cambodia if everybody were to pay due regard to the rights of others when claiming and exercising their own rights.

Reform of the Constitutional Council

When amending the Constitution with a view to accommodating the reform of the NEC, I encourage the political parties to use the opportunity to also consider reforming the Constitutional Council to make it truly independent and non-partisan rather than all-partisan or bipartisan. This is important for this body to command the trust and respect of the entire population in crucial matters of national importance, such as the handling of electoral disputes and the interpretation of the Constitution, including the status of human rights in the Cambodian constitutional architecture.

Land rights

During my current mission I had a productive meeting with the Minister of Land Management, Urban Planning and Construction. I wholeheartedly welcome the progress made by the Government in policy development relating to land rights, including the adoption of the National Housing Policy, a White Paper on Land Policy and the drafting of an Environmental Impact Assessment Law. These long awaited initiatives, if implemented well, will go far in addressing many of the complaints that I have received from individuals and communities. However, I continue to be concerned by issues of transparency and accountability, and the absence of an effective dispute settlement mechanism associated with Directive 001 and the general land-titling programme. I am deeply concerned by the numerous reports of violent evictions conducted in 2014, including physical assaults and the burning and bulldozing of homes. They demonstrate the urgent need for a national resettlement policy that properly regulates eviction and resettlement processes, and a re-examination of how the Government deals with land disputes involving poor families living on state land, including those that cannot provide proof of their claims. Many other long running land disputes remain unresolved – including Boeung Kak Lake and Borei Keila in Phnom Penh, Srei Ambel and Botum Sakor in Koh Kong province, Spean Ches in Preah Sihanouk province, in Tromoung in Tbong Khmum province, in Khsem in Kratie province, in Lor Peang in Kampong Chhnang province, and in Stung Kach in Pailin province, whose representatives submitted petitions to me during the course of this mission.

I welcome the news that the moratorium on new economic land concessions will remain in place for the time being. It should continue until a sound policy that addresses the human rights impact of such concessions is properly implemented. Some of the interaction that I have had with communities affected by land concessions lead me to believe that the management of economic land concessions has not been handled well in this country and that generations of ordinary people have been made to suffer unnecessarily as a result. Even when the present generation of leaders will have moved on, the impact of economic and other land concessions will continue to harbour resentment. I have yet to see a comprehensive and credible study suggesting that the people of the country have been the net beneficiaries of the economic land concessions. The trauma and epic struggle for justice of ordinary people affected by land-grabbing has already been told and retold.

The sense of injustice may be passed on to new generations for a long time to come unless urgently remedied, not only in new cases but also for those who suffered forced evictions long ago.

Labour rights

I was able to interact this time with a broad section of the stakeholders working in the industrial relations area, a major source of dissent, confrontation and violence in the recent past. My meetings with the Minister of Labour, representatives of trade unions, buyers as well as representatives of factory managers/owners such as GMAC and CAMFEBA were productive. I was pleased to note that a consensus is emerging among all the principal actors in this industry on the procedure and criteria to be applied in setting the minimum wage. As a State party to the International Covenant on Economic, Social and Cultural Rights, the Government of Cambodia must work to ensure that the national minimum wage is set at a level sufficient to provide all workers and their families with a decent standard of living.

In my interaction with various stakeholders on labour issues, I was concerned to hear that some workers and trade union leaders have faced threats and acts of intimidations as a result of their involvement in industrial action. In this regard, I am alarmed by the upsurge of judicial intimidation of union activists in April and May which included arrests in Kandal, Kampong Speu, and Takeo provinces, as well as the imposition of an unprecedented bail bond of \$25,000 in the case against Ath Thorn, the leader of the country's largest independent union, who has been charged with incitement. Further, while I am pleased to see that the 25 individuals arrested and tried in relation to the events of 12 November 2013 and 2/3 January 2014 have been released, I am disturbed by the criminal convictions against these individuals which were unsubstantiated by credible evidence following trials which, according to many independent observers, did not meet international fair trial standards and, in many cases, were entered against individuals who did nothing more than exercise their fundamental rights to freedom of expression and assembly. I wish to call upon the Government and other stakeholders to take all necessary measures to ensure that the trade-union rights of all workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security. In this regard, I call upon the Government to ensure that any law on trade unions that is passed will enhance the rights to freedom of association of workers rather than restrict them. I am encouraged by the consultative process that the Government is pursuing with this draft law and by Minister HE Ith Sam Heng's assurances to me that the law will be in full compliance with ILO Conventions and the Cambodian Constitution. It appears to me that there is a need for significant overhaul of the current draft in order to ensure such compliance. I stress the importance of inclusive and meaningful consultations on the draft law.

Democratic Space

I am saddened to see democratic space in Cambodia shrink since my last visit in January. The barricading of Freedom Park has no justification in law and has a chilling effect on the fundamental rights of freedom of expression and assembly of all Cambodian people. At the conclusion of my current visit, I remain unclear as to the existence or otherwise of a ban on demonstrations and call upon the Government to publicly declare that the ban the Government announced in early January – which had no legal justification in the first place – is no longer in place. Moreover, I call upon the Government to publish the findings of investigations into the events of 15 September 2013, 12

November 2013, and 3 January 2014, which led to the confirmed deaths of seven people, injuries to scores more and the disappearance of one minor. In this latter regard, I call upon the Government to outline the measures taken to investigate the disappearance of this young boy, who was last seen bleeding from a bullet wound to the chest in Veng Sreng on 3 January.

In addition, I take note of legislative plans that may impact the democratic space in Cambodia. Civil society representatives outlined their concerns to me in relation to the draft Law on Cybercrimes and the draft Law on Associations and Non-Governmental Organisations. Any laws regulating freedom of expression online and the formation and operations of associations and NGOs are necessarily a direct concern for civil society. These concerns are exacerbated by the failure of the Government to provide information as to the contents and status of these drafts and the expected timeline for their passage into law. Secrecy in a polarised society breeds suspicion. I took the opportunity to discuss both draft laws with the Government. I wish to highlight the rights of the public, including members of civil society, to take part in the legislative process.

An independent national human rights institution

The approach I have taken to the delivery of my mandate has been to first and foremost assess the effectiveness of state institutions in promoting and protecting human rights in Cambodia. The judiciary was the focus of my first substantive report. In a well-functioning democracy, if people have grievances, they would take them to the courts. However, on the basis of the information I received, the judiciary did not seem to command the respect or trust of many people. For most ordinary people, the cost of accessing the courts was also prohibitively expensive. Many of the marginalised groups also told me of how they are discriminated by the very institutions that ought to be protecting and upholding their rights. After examining the judiciary, I then turned to the effectiveness of the Parliament and its ability to represent its constituents. My findings suggested that there was little direct linkage between the Members of the Parliament and the people. In functioning democracies, people either go to the courts or their MPs to highlight their grievances and to ask for help. However in Cambodia, members of the Parliament are not able to hold the executive to account and thus are not able to represent the interest of their constituents in a meaningful manner. I therefore followed the report on parliamentary reform with one on electoral reform. In each of these reports, I pointed out the deficiencies where they exist, and provided recommendations for the reform of these institutions.

I came to realise that the failure of the State institutions to uphold people's rights is why, in every one of my missions, there are ordinary people coming to see me out of desperation to highlight their plight and petition me to help. This is also why people gather and bring petitions directly to the Prime Minister's house, the UN and the Embassies, and why they take to the streets to air their grievances.

In this context, I thought it timely to make an inquiry on the need, or desirability of establishing an independent National Human Rights Institution in Cambodia. I explored with a wide range of stakeholders during my mission earlier this year as well as the current mission the possibility of creating an independent national human rights institution able to expand the scope of rights, act as a focal point to champion people's rights, make policy recommendations to the Government and defend and protect people's rights with the power to investigate cases of human rights violations. While there seemed to be a widely shared consensus on the need for such a mechanism in this

country, concern was expressed in different quarters on whether it was possible under current political conditions to create a truly independent national human rights commission and/or appoint truly independent people with the requisite credentials to serve as members of such a commission. People said to me that: “We can’t go to the courts, the parliament, or the executive. The system is broken. The system of public administration is not functioning. We do need such a commission to hold the public institutions accountable. But there is corruption, there is no independence of institutions, any new institution will be the same as all the others we have”. This was a view expressed by many of my interlocutors. The manner in which a number of draft laws were recently rushed through Parliament without genuine debate or consultation added to the scepticism by some civil society representatives.

While taking a due account of such views, I am of the opinion that if all sides were committed to making it a success, work could commence towards the establishment of such an institution. In many countries with fully-fledged independent National Human Rights Institutions, conditions for their initial establishment were not always optimal from the outset, but they witnessed progress in due course. Given the legacy of the tragic past and especially the range of impact of economic land concessions on the poorest of the poor and the indigenous communities and the range of human rights challenges this country is facing, I am convinced of the need for a truly independent national human rights commission in Cambodia. I stress, however, that it will bring added value to the human rights infrastructure today only if its independence is guaranteed both in law and in practice, in full conformity with the Paris Principles.

The situation of migrant workers repatriated from Thailand

The repatriation of over 225,000 Cambodian migrant workers and their families from Thailand, including over 74,000 women and over 15,000 children in a matter of less than two weeks, and the reports of several deaths in the process is a human rights concern. I have discussed it on several occasions during my mission, in meetings with the Royal Government of Cambodia and others. I commend the prompt efforts by the Cambodian government, at both national and sub-national levels, to transport people from the border areas back to their communities and to assist the returnees in the process of reintegration, in particular considering the enormity of challenges caused by this sudden and massive return. Although my mandate is to monitor the situation of human rights within Cambodia, I have received from the Thai government information on their position on the matter. I am of the view that the Thai Government should investigate the reported deaths of the Cambodians in Thailand and ascertain the reasons behind the sudden return of such large numbers of Cambodians. I take this opportunity to call on the Thai Government to similarly investigate the deaths of Cambodian loggers over recent years, which has been of concern to me.

As remittances from migrant workers are an essential source of income for many rural communities in Cambodia, I am encouraged that both Governments are willing to facilitate through legal channels the return to Thailand of the migrant workers who wish to do so, in a way that increases their protection against trafficking and other human rights abuses. The efforts taken by the Cambodian Government to facilitate the regularisation of the legal status of workers who go abroad, including by reducing the costs of obtaining new passports and facilitating their issuance, is commendable.

Conclusion

I reiterate my view that a real reform in the approach to governance is inevitable in Cambodia. But there seems to be some hesitation and lack of sincere will to recognise the message expressed so loudly and clearly by the people. The art of governing is the art of managing change. It is about demonstrating statesmanship and being able to carry others along. Those who resist change find that one day change has been forced upon them by developments beyond their control. This has happened throughout human civilisation. Having studied Cambodian society and its history carefully, and interacting with people from all walks of life, I see it as my duty to state that if real reforms are not effected soon, the country runs the risk of a return to violence. I sense a deep rooted frustration amongst the population, especially the youth, rural poor and other disfranchised and dispossessed people, about the lack of progress on some of the promised reforms. If timely and genuine reform is not carried out and if one party carries on with business as usual in the National Assembly, this may have wider ramifications, including frustrating the fundamental principles of the Paris Agreements which are premised on the values of a pluralistic liberal democracy.

The four substantial and substantive reports that I have submitted throughout my work in this country over the past five years were designed to assist the Government, the opposition and other stakeholders in the Cambodian society to embrace change. I am encouraged by the progress in the implementation of some of my recommendations, and the acceptance on the national agenda of those relating to electoral and parliamentary reform in particular. I note, however, that the latter have yet to see concrete progress, despite being the keys to resolving the current political deadlock. At this juncture what is needed is a clear assurance that the recommendations for electoral reform will be implemented with the degree of seriousness required to win the trust and confidence of the people, with a strict timeframe to design and implement the reform, including through amendment of the Constitution.

I have shared my views in a candid manner with some senior members in the Government as well as with the leaders of the opposition to whom I highlighted the need and the benefits of their joining the National Assembly. I will be departing with the hope that good sense will win the day in Cambodia and usher the country towards lasting peace, equitable development, greater democracy, genuine rule of law and greater respect for human rights.

Last but not least, I would like to thank the Cambodia and Geneva offices of the UN High Commissioner for Human Rights for the assistance rendered to me during my mission.

ENDS

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. As Special Rapporteur, he is independent from any government or organisation and serves in his individual capacity. He is currently Professor of International Law at the University of Leeds in the United Kingdom and a practising Barrister of the Middle Temple in London. He is the Vice President of the Asian Society of International Law and editor of its flagship publication – the Asian Journal of International Law published by Cambridge University Press.

(*) Check the Special Rapporteur's latest report to the Human Rights Council (A/HRC/24/36):
<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Pages/ListReports.aspx>

UN Human Rights, country page – Cambodia:

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