



## **PRESS STATEMENT**

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

Phnom Penh, 23 January 2015

I am about to complete my 12<sup>th</sup> and final mission to the Kingdom of Cambodia as the UN Special Rapporteur on the situation of human rights in the country. It has been a privilege to serve the people of Cambodia over the past six years.

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. While I was not able to meet with the Prime Minister this time, I very much appreciated the dialogue I had with the Government interlocutors which was candid, cordial and informative throughout.

During this mission, I met with HE Bin Chhin, Deputy Prime Minister, HE Sar Kheng, Deputy Prime Minister and Minister for Interior, and HE Mak Sambath, President of the Cambodian Human Rights Committee. I also met, at the National Assembly, with the leaders of the minority party, including HE Sam Rainsy and HE Kem Sokha. As with all of my previous missions, I also interacted with a broad range of stakeholders, including ordinary citizens, youth groups, trade unions, disabled persons' organizations and other civil society organisations, as well as the President of the Bar Association, the President and members of the the Cambodian Chamber of Commerce, and members of the international community including development partners and the United Nations Country Team. I conducted site visits to Boeung Kak Lake and Borei Keila and also received a number of individual and group petitioners coming from as far as Preah Vihear to bring their cases to my attention. In all of my interactions, I have been humbled by the welcome and appreciation that I have received for my work from the people of Cambodia.

I was appointed by the UN Human Rights Council in March 2009, and by April this year I will have had the privilege of serving as the Special Rapporteur on the situation of human rights in Cambodia for the maximum term of six years. Over this time, I submitted five substantive reports to the Human Rights Council, each with a thorough analysis of the situation of human rights at each juncture, and taking a macro approach with particular focus on judicial, parliamentary, electoral and land reform. Each of my reports came with a series of recommendations designed to assist the Government with its reform agenda and the process of democratization in the country. It is gratifying to report that many of my recommendations have been acted upon and that some others are in the process of being implemented.

My latest and final report to the Human Rights Council, submitted in September 2014, focuses on the independence of State institutions, including the possibility of establishing a national human rights institution in compliance with the Paris Principles. In my interactions this week, several interlocutors have asked me to identify key recommendations as I reach the end of my

mandate. If I am to choose one recommendation as the sum of all others, it would be that the Government should reconsider its aversion to independent institutions.

I regret to note however that many of the State institutions responsible for upholding people's rights are unfortunately still lacking accountability and transparency needed to command the trust and confidence of the people. Reform has not come to them fast enough, although I recognise noteworthy progress in some select areas. The foundation of the liberal democracy foreseen in the Paris Peace Accords requires a different configuration, whose time I believe has now come in Cambodia. At the foundation of liberal democracy lie the doctrine of separation of powers and the principle of checks and balance; in other words, the institutions of the executive that are responsible for implementing government policy and protecting human rights must be held to their responsibilities by independent institutions responsible for monitoring their performance. This is the critical juncture at which I believe Cambodia now stands.

I am keenly aware that my mission took place in the aftermath of the shocking events in Paris. No one – least myself – would dispute the need to combat terrorism. I would stress however that in doing so we must be mindful of the lessons of 9/11. Combating terrorism through blatant disregard for human rights only fuels hatred and extremism. Independent national institutions of oversight are the best guarantees against potential abuse of authority in the fight against terrorism.

This is why early in my mandate, I decided to focus on the State institutions responsible for upholding human rights. I was often asked by Government officials and some others why I was recommending the reform of institutions that are not broken. I was told that there was nothing wrong, for instance, with the National Election Committee. Today, the veil has been lifted and the weaknesses exposed. The calls for accountability are stronger now than ever, and I am convinced that they will not diminish. The ongoing proceedings at the ECCC is a case in point. It has taken over twenty years since the Paris Peace Accords for accountability to become a priority in Cambodia. The urgency at that time was the establishment and consolidation of peace itself. The natural progression of a country that, having achieved peace and stability, finds itself facing increasing claims for better governance and justice for all will be to make meaningful steps toward that. I am confident that Cambodia will ultimately follow this route and I believe I have contributed to laying the path for it.

### **Parliament and the NEC**

I am moved by the major political developments that have taken place in the country. I had repeatedly called, both in public and private, for the creation of a political environment that would enable the leader of the opposition to return to the country from his exile in Paris, and H.E. Sam Rainsy was granted royal pardon to enable him to return in time for the elections for the National Assembly in July 2013. Owing to the disputes around the outcome of the elections, the country went through yet another year of political instability. I was pleased and relieved when the two sides reached a political deal on 22 July 2014 to make way for the opposition to join the National Assembly. It gives me a sense of satisfaction that my recommendations on electoral reform seem to have now truly become part of the national agenda, the most noteworthy one being that of granting a constitutional status to the National Election Committee. As a next step, I encourage the two parties to work together to resolve the

outstanding differences so that the next elections will not be marred by similar disputes that plagued the July 2013 elections. While the Government and the ruling party have a greater responsibility towards ensuring that the promised political, judicial and social reforms will be delivered, the minority party has to take its responsibility equally seriously and ensure that the position that it takes is a principled one and not driven by short term gains.

One of the concerns I have for the future of the country is the possibility of racial tension between different ethnic groups and I have thus called upon all sides to do their utmost to make their contribution towards building a tolerant, inclusive, and cohesive society. After coming this far in the journey towards good governance, stronger democracy, rule of law and greater respect for human rights, there should be no room in Cambodian politics for racism, xenophobia and discrimination of any kind on any grounds of race, gender, ethnicity, sexual orientation or belief.

I believe that the new bi-partisan Parliament understands that the people expect it to function more transparently. A number of new draft laws are reportedly in the pipeline that could potentially have profound implications for democratic expression and participation, including on NGOs, on trade unions and on cybercrime. I urge the Parliament once again to ensure openness and transparency in the legislative process.

### **The judiciary**

Convinced that the judiciary is a key institution to ensure the protection of human rights, I dedicated my first thematic report back in 2010 on strengthening the independence and the capacity of the judiciary. The enactment of three fundamental laws on the judiciary, namely the Law on the Organisation of Courts, the Law on the Status of Judges and Prosecutors and the Law on the Supreme Council of Magistracy, constituted the core of my recommendations on judicial reform. While there were some shortcomings both in the process and the content of these laws, I am very pleased that the Cambodian court system can finally operate within a clear legal framework.

So far, the courts of Cambodia have not delivered justice in the way demanded by all Cambodians. There have been too many human rights violations taking place without anyone being held responsible. I only need to refer to the events of 2 and 3 January of last year, during which at least five persons were killed, one disappeared and many were injured.

Yesterday was the anniversary of the murder of trade union leader Chea Vichea. Eleven years on, no serious investigation has been undertaken and nobody has been held responsible. The two men convicted were eventually found to be innocent and released in 2013, after many years in prison.

There is a general perception that the rich and powerful still avoid justice. I am told that to this day, former Bavet city Governor Chouk Bandith is openly enjoying a free life, despite his conviction and sentencing for the shooting of three striking factory workers in 2012, of which he has not served a single day in prison.

These are but a few well known cases that illustrate why the term “impunity” continues to be used whenever Cambodian justice is discussed. The culture of impunity in this country has been

a troubling issue for me, which I have repeatedly raised to the Government. I was reassured once again during this mission that the violent incidents of January 2014 have been investigated and that they will soon be referred to the courts. I, of course, welcome this development, but hope that I will not end my mandate in April without seeing those responsible brought to justice.

I am saddened to see the courts continue to be used as a means to intimidate those perceived to be critical of the Government, such as human rights defenders, land activists, journalists and trade union leaders, as well as members of the opposition. Threats of, or the actual prosecution and imprisonment of people, sometimes veiled behind the cover of “anti-terrorism measures” or “insurrection”, can only be described as “judicial harassment”. Some of the examples are as follows:

Several Members of Parliament-elect from the opposition party were arrested on 15 July 2014. They were speedily arrested for incitement and insurrection. In contrast, no investigation has been launched to date to identify those security guards who were seen beating demonstrators. The MPs were subsequently released as soon as a political agreement was reached, leading to speculation that the two events were linked. Land activists are taken to court all over the country. On 10 November 2014, seven women from Boeung Kak Lake were arrested for protesting in front of Phnom Penh Municipal Hall. Their homes were flooded and when they protested they were arrested and prosecuted. They were tried and convicted within one day. I went to the Court of Appeal yesterday to attend their appeal hearing. I very much hope that these women and their co-defendants will receive fair treatment from the legal system. These cases are symptomatic of how the courts are being used for political ends.

The courts are also being used to protect the economic interests of the rich and powerful. For instance, Ly Srea Kheng and his family have endured years of threats, attacks and imprisonment, including having a bag of venomous cobras thrown into their house. Despite several complaints filed before the courts, no action has been taken against the perpetrators. By contrast, Ly and his family have been arrested following complaints by the company pressuring him to sell his land. His 23-year-old daughter remains in prison today.

Any arrest or detention as punishment for the legitimate exercise of rights as guaranteed by international human rights law, including the freedom of assembly, of association and of expression, as well as the right to participate in political life, is arbitrary. I cannot stress enough that the rule of law requires accountability. It requires courts to deliver justice and to do so independently of any external influence. It would be a disservice to the Cambodian judiciary to focus only on improving its efficiency, when the damage to its credibility comes from more fundamental problems. The way to remedy this would be to ensure that all court decisions are based on material evidence and sound legal reasoning, taken by judges who have no ties (personal, financial, and other) to the executive or to either party in the cases they adjudicate.

#### **Land dispute mechanisms**

The lack of effective judicial remedies has had a tragic effect on the nation’s poorest, dispossessed, marginalized and those belonging to minority and indigenous groups, none more so than those driven off their homes and lands. For a number of historical and other reasons,

issues associated with land rights have been and remain the number one human rights issue in the country. When I assumed this position, I was concerned by the impact of economic land concessions on human rights. I was pleased that the week I began my mission in the country in May 2012 focusing on economic land concessions, the Government issued a new decree imposing a moratorium on new concessions and promising a review of existing ones, both being measures which I had recommended. Efforts to formalise the land rights of the rural poor through systematic land registration and the land titling campaign under Directive 01 are commendable. However, the reality is that these efforts continue to exclude contested plots of land where land disputes rage. The number of land disputes and families affected by them reportedly rose sharply in 2014. A great number of long-standing disputes also remain unsolved, many dating back nearly a decade.

I have been overwhelmed this week and during my last few visits with petitions from communities who have filed claims to the courts, the cadastral commissions, the Parliamentary human rights commissions and the National Authority for Land Dispute Resolution, and who have been consistently denied access to justice. This includes indigenous communities from across the country, many of whom have approached me for support during all my missions. The lack of progress in protecting the land rights of indigenous Bunong communities in Bousra, Monduliri province, for example, and the unbridled instances of land grabbing in areas formally inhabited by these and other communities threatens to wipe out entire indigenous cultures.

The exploitation of the nation's natural resources, its arable land, forests and rivers, seem to be benefiting the few and not the many. Private companies clear contested land, burn down homes and engage in illegal logging with immunity from prosecution. Those brave enough to stand up and report on such matters are prosecuted by the very same courts which should be protecting their land and housing rights.

The Government must step up its efforts to exercise proper oversight of business enterprises developing land or to provide redress for harm done by these private companies. On Wednesday, I again visited the Borei Keila site, where families continue to live in conditions that are simply unacceptable in the 21<sup>st</sup> century and in the capital of a country boasting such strong economic growth. When speaking with representatives of the Cambodian Chamber of Commerce this week, I outlined my concerns and underscored the fact that I – and I believe all Cambodians – recognise the need for more energy for homes and businesses. I am pleased that we readily agreed that such a need should be met through a participatory process of proper consultation, compensation, and voluntary resettlement. Standards of free, prior and informed consent must be rigorously applied when consulting with communities, including indigenous peoples; that includes for projects of national importance such as the construction of hydropower dams. No one should be pushed into extreme poverty because of national energy needs.

I am concerned that the management and ongoing review of economic and other land concessions continues to suffer from a lack of transparency, accountability, independent monitoring or public scrutiny. Land grabbing and the lack of legal remedies available to victims of such violations continue to undermine the development of Cambodia. I am convinced that this

issue, more than any other, erodes public trust and confidence in both the judiciary and the Government as whole. Land conflicts will persist unless an independent, competent and trusted institution, either the judiciary or a reformed National Authority for Land Dispute Resolution, is able to deal with complaints effectively and fairly.

### **Independent police complaints commission**

With the public confidence so low in the judiciary and in the existing state institutions for the reasons outlined above, my view is that a number of independent institutions with specific mandates could help fill the gap. I believe firmly that in a nation like Cambodia, where so many Government agencies have judicial or quasi-judicial powers to arrest people and where evidence is so easily disregarded by courts of law, such oversight will prove invaluable in preventing abuse of authority. It will be effective and credible, however, only if it is guaranteed full independence from the forces that it is mandated to monitor.

In light of the apparent lack of investigations into police actions that exceed the standard norms, including into last year's shootings and many other incidents that have come to my attention, the establishment of an independent police complaints commission would be helpful to restore public trust in the police. Where traditional accountability mechanisms are ineffective, external civilian oversight can help to fill the gaps. In some countries, such external civilian oversight is exercised through an independent national human rights institution. In others, the mechanism may take the form of an independent police complaints commission. Such a body could receive complaints about police abuse, investigate these complaints, refer cases to the courts where appropriate, impose disciplinary measures and propose reforms of the police services.

### **The Anti-Corruption Unit**

One of the most significant new institutions established in Cambodia is the Anti-Corruption Unit (ACU). Its creation was followed by several important initiatives, such as the drive to eliminate "ghost" public servants from the State payroll and payment of civil servants' salaries through bank transfers, which I am confident will bring enormous benefits if implemented correctly. However, the movement of funds remains difficult to trace. Widespread corruption has been well documented and, despite the existence of anti-corruption legislation, it remains the greatest obstacle to the achievement of the inclusive growth that the Cambodian people are demanding.

From the experiences of many countries which have successfully reduced corruption, independence is a key feature of effective anti-corruption bodies. The UN Convention against Corruption, to which Cambodia is a party, requires States to establish an anti-corruption body with the necessary independence to prevent and combat corruption without being influenced by politicians or other authorities. I regret to say that the governmental Anti-Corruption Unit of Cambodia does not meet this requirement. It will avoid accusations of bias and politicisation, unless measures are taken now to rectify its status.

### **National Preventive Mechanism (NPM) for torture**

Cambodia was a pioneer in the region when it decided to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2007. The Optional Protocol requires the establishment of an independent National Preventive Mechanism (NPM). An independent NPM would conduct regular visits to all places of detention, including police stations where allegations of ill-treatment remain too frequent. So far, the Government has established an intergovernmental mechanism which calls itself an “NPM”. I underscore in the strongest terms that a victim of torture cannot plausibly be expected to seek justice from the very institution that allowed him or her to be tortured in the first place. I encourage the Government to fulfill its voluntarily accepted legal obligation to establish an independent NPM and to seek technical assistance from the Subcommittee on the Prevention of Torture and OHCHR in so doing.

### **Independent national human rights institution**

Independent national institutions that conform to the Paris Principles, that monitor and advise the Government on all human rights matters and are empowered to investigate individual complaints have proven to be an effective protection mechanism in many countries. Given the failure to date of the Parliament to effectively represent its people and the judiciary in delivering justice, there certainly seems to be a need for such a mechanism, whether it is to protect the rights of women, persons with disabilities or other vulnerable groups.

The preferred approach of the Government has been to establish governmental rather than independent bodies. The Cambodian Human Rights Committee, which reports to the Council of Ministers, is one of them. As useful and necessary as such bodies are, they do not take the place of independent institutions since they cannot perform the essential checks-and-balance function.

I was therefore pleased to learn in the course of this mission that the efforts to draft the law on the establishment of a national human rights commission are being renewed once more. While I do not rush to welcome such initiatives prematurely, I would encourage all those involved to work together collaboratively for the good of the country. There are many issues such as xenophobia and racism, LGBT rights and disability rights which do not receive sufficient attention from the existing State institutions that would benefit from continuous monitoring and policy recommendations by an independent national human rights institution.

### **Conclusion**

The past six years have gone by very quickly. That I will be completing my mandate by becoming the longest serving Special Rapporteur for the country gives me a sense of both personal and professional satisfaction. The reform agenda is being ironed out, and both the majority and minority parties have made a public commitment to carry out electoral reforms. It is time to look at the whole system of governance more comprehensively. It has often taken a long time to implement the decisions and packages of reform. I hope this time there will be no excuses one after another to delay the implementation of the agreed package of political reform and derail the process of dialogue and reform currently underway in the country.

Cambodia is a forward-looking country. Starting from the Paris Peace Conference, the country has made huge strides, including economic development underpinned by political stability. As

the country began to accelerate its economic growth, this has brought its own challenges of inequitable development and a widening gap between the rich and poor. Major political developments have recently taken place from which I believe there is no turning back. The progress recently made seems to have instilled hope and confidence in the people, especially the youth in the country, for the future of democracy and human rights. The major difference between then and now rests in the people. They are no longer afraid to speak out. People know their rights and are ready to claim them. Nothing speaks better to Cambodia's maturing democracy than this. While there is still a considerable way to go toward realising the vision of a liberal democracy and the objectives set out in the Paris Peace Agreements of 1991 which heralded a new democratic dawn for the country, I conclude my final mission with full confidence that Cambodia will get there – its vibrant people will ensure it.

It has been an honour and a privilege to have been able to make a contribution to the strengthening of the rule of law, democracy and human rights in the country at this historical juncture. With the assurance that I will remain forever a friend of Cambodia, I wish the people of Cambodia all the best in accomplishing these objectives and in building a more prosperous, tolerant, cohesive, equitable and fairer society for all in the years to come.

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:  
<http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/KHIndex.aspx>

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