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TECHNICAL ASSISTANCE AND CAPACITY-BUILDING
Advisory services and technical assistance for Cambodia
Report of the Special Representative of the Secretary-General
for human rights in Cambodia, Surya Subedi*

* This report was submitted after the deadline so as to include the most recent developments.

Summary

The present report is submitted in accordance with decision 9/15 of the Human Rights Council. The present Special Rapporteur was appointed with effect from 1 May 2009 and he undertook his first mission to Cambodia a month later, from 16 to 26 June 2009. Given the lack of time to conduct an in-depth assessment of the situation of human rights in the country so as to be able to report about it in a credible manner, the Special Rapporteur decided that he would focus his first mission on familiarizing himself with the complex realities of the country, to re-establish conditions for a fruitful dialogue with the Government on human rights issues of concern, and to look for ways to strengthen cooperation between the Government, civil society representatives and the international community around these issues.

During his visit the Special Rapporteur met with the Prime Minister and other members of the Royal Government, members of the National Assembly and the judiciary, civil society representatives, as well as members of the United Nations Country Team and diplomats based in the country. The Special Rapporteur was encouraged by the openness of his Government interlocutors to engage in substantive discussions provided they were conducted in an objective and non-partisan manner and with the intention of looking for solutions.

A number of issues arose during his visit, namely: freedom of expression, independence of the judiciary, land and housing rights in urban and rural areas, and prison reform. Subject to his mandate, the Special Rapporteur intends to focus on these substantive issues during future visits.

During his mission, the Special Rapporteur invited the Government to clarify its own human rights priorities, so that he can take them into account during the implementation of his mandate. The Government is yet to respond to this offer and the Special Rapporteur looks forward to a response in this regard in order to develop a programme of action around which international cooperation could be encouraged.

Pending these further discussions, the preliminary view of the Special Rapporteur is that while Cambodia has made remarkable progress in a number of areas given its burdened legacy and high public expectations, there still are a number of serious challenges in promoting and protecting human rights in the country and the Special Rapporteur would like to work with the Government to address them in a constructive manner. What is needed in Cambodia is not only a formal commitment to human rights on the part of the Government, but their implementation through determined action in several key areas. It is in these areas that a meaningful and constructive dialogue and cooperation would be needed between the Government, civil society and the international community and it is here that the Special Rapporteur hopes to make a significant contribution in the years to come.

I. INTRODUCTION

1. The present report is submitted in accordance with Human Rights Council resolution 9/15, in which the Council decided to extend by one year the mandate of the special procedure on the situation of human rights in Cambodia through the appointment of a special rapporteur to carry out the former functions of the Special Representative of the Secretary-General. I was appointed by the Council on 25 March 2009 as the new Special Rapporteur to engage in a constructive manner with the Government of Cambodia for the further improvement of the situation of human rights in the country and to report on the implementation of my mandate to the Council at its twelfth session. I undertook my first mission to Cambodia from 16 to 26 June 2009. The present report is submitted in accordance with resolution 9/15.

2. The human rights situation in Cambodia has been the subject of extensive analysis by four former Special Representatives of the Secretary-General, as well as treaty bodies, most recently the Committee on Economic, Social and Cultural Rights. Their observations have outlined and illustrated the challenges that Cambodia has faced in promoting and protecting human rights and the dignity of each and every individual residing within its borders. The challenges ahead are many and of a serious nature, and the Government interlocutors have given the impression that they are not shying away from that reality. I intend to build on the work done by my predecessors and engage with the Government in a constructive manner aimed at achieving some tangible results for the people of Cambodia.

II. THE FIRST MISSION

3. The purpose of my first mission to Cambodia, conducted from 16 to 26 June 2009, was to lay the groundwork for a constructive dialogue with the Government and to explore a programme of action to improve the human rights situation in the country. I intended to make the first visit an opportunity to become familiar with the human rights situation in the country, to establish mutual understanding and channels of communication with the senior members of the Government and to listen to people from a broad cross-section of society.

4. I was pleased to have the privilege of meeting with H.E. Prime Minister Hun Sen, the Foreign Minister, Hor Namhong, the Minister of the Interior, Sar Kheng, the President of the Cambodian Human Rights Committee, Om Yentieng, and a number of other senior members of the Government, the President of the Supreme Court, leaders of the main opposition party in the National Assembly, several ambassadors based in Phnom Penh, the United Nations Country Team, the President of the Bar Association, the President of the Press Council, and representatives of civil society, indigenous groups and communities affected by land evictions in the recent past.

5. I was pleased with the cordial reception that I received from members of the Government and other stakeholders in the society. There was a general willingness to work with me to improve the situation of human rights, and I wish to build on this momentum of cooperation in the implementation of my mandate. I also had an opportunity to meet and have a constructive dialogue in a spirit of cooperation with the Prime Minister during his private visit to the United Kingdom of Great Britain and Northern Ireland in July 2009. I am grateful to the Prime Minister for his willingness to cooperate to implement my mandate.

III. THE NATURE AND SCOPE OF THE FIRST MISSION

6. During my first visit of the country, I was made aware of the positive developments that have taken place since 1979 in general and since 1993 in particular, including stability after many years of conflict, economic growth and the holding of regular elections, including the one that took place in July 2008, which was peaceful. I took the opportunity to underline that the challenge for a country such as Cambodia was to continue with the process of reconstruction, reform and democratization with the degree of seriousness and sincerity required to implement the provisions of international human rights treaties, most of which embody universal values and which are part of Cambodian law. In this context, I was pleased to note that there was a willingness on the part of the authorities to acknowledge shortcomings and engage in a meaningful and constructive dialogue with me concerning change and reform.

7. During my meetings with the senior members of the Government, I outlined the desirability of fostering an environment of cooperation with the civil society sector, which has a crucial role in scrutinizing governmental actions and outlining the shortcomings, in an objective, impartial and non-partisan way. In a society still in transition the civil society has a great contribution to make in so many areas of activity to complement Government's action, maximize the potential of the people of Cambodia and realize the enjoyment of their human rights.

8. I stressed that by joining the United Nations and ratifying so many international human rights treaties Cambodia undertook to implement human rights standards and accepted the notion that the human rights situation in every country is the legitimate concern of the international community. I was reassured by the Government's receptivity to ideas and its commitment to work with my mandate in promoting human rights in the months and years ahead so that tangible benefits could be achieved for the protection of these rights in the country.

9. However, as of the time of writing this report, I had not received a response to my request from the Government concerning the priority areas for dialogue that could form the basis for a programme of action. Since returning from my mission to the country, I have joined a number of other special procedures mandate holders in expressing concern about the reported instances of lawsuits against the opposition party leaders brought by the Government and requested further information about such cases. The Government has not yet responded.

IV. INITIAL OBSERVATIONS BASED ON THE FIRST MISSION

A. Major achievements made by Cambodia

10. Cambodia is a country which still is coming to terms with a tragic past, and the progress made thus far is encouraging. The legal, institutional and political systems had to be rebuilt effectively from scratch when the country began to pull itself together after 1979. In recent years, the country has experienced improved political stability which has allowed rapid economic development, thereby bringing more people out of poverty and into a position to better enjoy their economic, social and cultural rights.

11. There have been periodic ballots to elect the Government. The latest general election, which was peaceful, took place in July 2008. There are several opposition parties in parliament.

Many national and international civil society organizations are operating in Cambodia in all sorts of areas of human activity; they support, often substitute for, but also scrutinize governmental activity. There are various media organizations, both print and radio, offering their services to the people in both Khmer and foreign languages.

12. Since 1993, the people have enjoyed an unprecedented degree of freedom of assembly, expression and movement, although people need by law to seek permission to hold public demonstrations, which is sometimes refused on unspecified security grounds, and arbitrary restrictions on travel or holding meetings have sometimes been imposed. The Government has responded positively to some of the recommendations made by former Special Representatives of the Secretary-General. One such example was the removal of prison sentences as a sanction for criminal defamation in 2006.

13. The Government has also faced the complex issue of land ownership, including by making an effort to improve land tenure security for the population. An ambitious project of land titling is under way in mostly rural areas. I was also pleased to see that noteworthy achievements had been made by the Royal Government in combating trafficking in human beings, especially women and children, for purposes of sexual exploitation by prosecuting offenders of the law against trafficking. Equally positive was the measure taken by the Government to close down a number of gambling places, although major casinos have remained opened. Efforts of the Government to combat HIV/AIDS have been widely commended, as have the mine removal efforts.

14. The Government has also taken a number of other progressive measures. One such measure was a 2006 law designed to combat domestic violence, especially against women. Measures such as these seem to have had an encouraging impact on the society. The Government has enhanced its engagement with the United Nations human rights treaty bodies. The National Assembly has passed a law recently to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Ministries of the Interior, Justice and Social Affairs have also engaged in a constructive dialogue with the Cambodia Office of the High Commissioner for Human Rights on prison, judicial and other areas of reform.

15. In sum, Cambodia has made remarkable progress over the last three decades, the last two of which with the help of the international community and the United Nations in promoting human rights and democratizing the system of governance. A country which was brought back from the ashes of a prolonged conflict not long ago is now enjoying high economic growth and relative political stability and a great deal of credit for these achievements goes to the leaders in Government.

B. Challenges

16. In spite of these achievements, one of the major challenges still remaining for the Government is the ability to strike a balance between economic development and human rights protection, and it is one of the areas to which the Government needs to devote serious attention while seeking the help of the international community, including the United Nations human rights machinery.

17. I began to examine the complex issue of land conflicts and sought information and advice from a variety of actors, including local communities, non-governmental organizations, international organizations, development partners and senior Government officials. Access to land in a rural country is of vital importance. I sensed a disconnect between national law that recognizes people's rights to own land and establishes clear property safeguards, and what appears to be widespread land grabbing and alienation, in both urban and rural areas. In the current context of economic growth, which has given rise to escalating land values and land speculation, evictions of communities which have been living for years in informal settlements appear to be commonplace, and mostly without fair compensation, to make way for high-end development. I am concerned that this trend undermines the rule of law and jeopardizes people's livelihoods.

18. I have also been informed that in rural areas, indigenous and rural communities are often left without recourse to protect their land from being taken by powerful individuals, or for mining or land concessions. My initial impression is that there is a need to strengthen the implementation of the land law in a fair manner in this domain, both by the administration and by the courts. There seems also to be a need to clarify the rationale for and process of eviction and resettlement, perhaps through the adoption of binding national guidelines, and devise ways to ensure land tenure security for the most vulnerable. This is an area where I will be happy to offer my advice and seek to foster cooperation in the search for long-term solutions to this painful issue.

19. Another issue that arose prominently during my visit was a series of defamation and disinformation charges filed by or on behalf of the Government against members of opposition parties and other critics of public policies or practices. Several convictions were pronounced. Two men, the director of a non-governmental organization and a news editor, both close to the main opposition party, have been sentenced to prison terms. A senior leader of the same party, Mu Sochua, was stripped of her parliamentary immunity and convicted for having filed a complaint for defamation against the Prime Minister. She was not given any opportunity to present her case in parliament before action was taken against her. Her supporters were chased away by security forces outside the parliament and foreign ambassadors with permanent admittance cards to the public gallery were not allowed in. Worse, her lawyer also came under pressure for speaking out about the case in public and he eventually withdrew, leaving Ms. Sochua without a lawyer to represent her.

20. This is a disturbing trend which, if allowed to continue, could seriously undermine the exercise of the constitutional right to freedom of expression, which is essential to effective media freedom, pluralism, diversity and democratic debate. I have discussed this concern with the Prime Minister and hope to pursue my dialogue with him and the Government in order to foster a more tolerant environment allowing effective democratic, that is, free, respectful and contradictory debate. The treatment meted out to Ms. Sochua's lawyer is likely to have a detrimental impact on the independence and integrity of the legal profession.

21. The challenge for a country such as Cambodia is to continue with the process of reform and democratization with the seriousness and sincerity required to implement the provisions of international human rights treaties, most of which embody universal values and are part of

Cambodian law. My aim as Special Rapporteur is not merely to criticize the Government for its failings, but to offer expert, independent and objective advice to the Government and work with it to promote and protect human rights, strengthen the rule of law and foster international cooperation for that purpose, and support the efforts of the Government and civil society representatives in this regard. I am concerned about the deteriorating situation with regard to land evictions and freedom of expression/defamation and look forward to working with the Government and the representatives of civil society to address these issues.

V. FUTURE APPROACH

22. I wish to begin a new chapter of cooperation in the promotion and protection of human rights in Cambodia. I regard my mandate as part of the United Nations efforts to offer assistance to the people and Government of Cambodia. The impression that I formed during my first mission to the country was that the Government is willing to work with me, with the civil society and the international community in addressing some of the human rights issues facing the nation. I have offered my assistance to the Government in identifying the issues and in addressing them in a constructive manner and am looking forward to a positive response.

23. I hope that both the Government and civil society representatives will find in me a willing partner in their endeavours to improve the human rights situation in the country. I also will be a willing listener to concerns from both sides and offer my services as an independent and impartial special rapporteur of the United Nations, bringing together my own experience of work in the fields of international law, human rights law and constitutional law gained over a long period of time in both developed and developing countries. My approach would be to work in good faith, expecting the same from other sides, and reserve judgement, recognize achievements and acknowledge weaknesses honestly where necessary but in a constructive manner.

24. I was pleased with the work being carried out by the Cambodia Office of the High Commissioner for Human Rights to assist the Government and the civil society in promoting and protecting human rights in Cambodia. and with the level of cooperation extended to me during my visit. I intend to cooperate constructively with the Cambodia Office in the implementation of my mandate and hope that the Government will continue to work with this Office in several key and sensitive sectors through an approach based on dialogue, cooperation and constructive criticism, as this would facilitate immensely my work and that of the whole United Nations human rights machinery.

VI. CONCLUSIONS

25. In conclusion, I believe that the promotion and protection of human rights in Cambodia depends on making real and substantial progress in strengthening the rule of law, creating a clearer separation of power between the three main branches of the Government, protecting the independence of the judiciary, including that of the Extraordinary Chambers in the Courts of Cambodia, and addressing issues such as conflicts over land, impunity and control of corruption. I intend to focus my attention on these substantive issues during my future visits to the country and hope that the Government will be willing to engage in a constructive dialogue on these issues.

26. I was pleased with the opportunity that I had during my visit to outline my intention to engage in a constructive dialogue with the Royal Government of Cambodia and to offer my assistance in dealing with some of the human rights challenges facing the nation. I would be willing to act as a bridge between the Government and the civil society in order to foster an environment of cooperation rather than confrontation between them for the benefit of the people of Cambodia. I would also be willing to assist the Government in promoting a greater degree of clarity in the separation of power between the three main branches of the Government, in enhancing the independence of the judiciary, and in developing transparent national guidelines on land evictions.
