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COUNCIL UPDATE – ITEM 10 – SPECIAL RAPPORTEUR ON CAMBODIA HUMAN RIGHTS COUNCIL, 12TH SESSION 1 OCTOBER 2009

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Overview

On 1 October 2009, the Special Rapporteur on the situation of human rights in Cambodia, Mr Surya Prasad Subedi, presented his first report to the Council. All States that spoke showed general support for the progress being made in Cambodia, and acknowledged that the country was still coming to terms with its tragic past. However States and NGOs voiced several concerns including regarding freedom of expression, the independence of the judiciary, land and housing rights, impunity, and prison reforms. Most participants wished to see further progress and welcomed future cooperation between the Government of Cambodia and the Special Rapporteur.

Special Rapporteur on Cambodia

The Special Rapporteur on the situation of human rights in Cambodia, Mr Surya Prasad Subedi, presented his first report to the Council.¹ Mr Subedi was appointed to the position on 1 May 2009, so his report covered the five months that had elapsed since then and was primarily based on his first mission to Cambodia between 16 and 26 June 2009, as well as information received from ‘various independent and credible source and the communications received from the Government of Cambodia. The Special Rapporteur thanked the Government and all of his ‘interlocutors’ for the cooperation he had received during his mission. He seemed very positive about the Government’s willingness to work together, but stated that a number of issues would be the focus of his future work, including freedom of expression, independence of the judiciary, land and housing rights in urban and rural areas, impunity, and prison reform. He also expressed his readiness to assist the Government in the elaboration of its draft penal code, to ensure that it complies with international standards, particularly in the field of freedom of expression and defamation. He ended by encouraging the Council to use the UPR of Cambodia in December 2009 to encourage the Government to implement its obligations under international human rights law and recommendations by treaty bodies.

¹ A/HRC/12/40.

Interactive Dialogue

Cambodia, as the concerned country, welcomed the report of the Special Rapporteur and stated that the concerns and challenges in the report had been taken into consideration. Cambodia noted that there had been some discrepancies of views on certain issues that needed further consultation for understanding and that the Government had replied regarding these issues. However the replies had not been explicitly reflected in the report. Cambodia affirmed its belief in the universality of human rights and stated its intent to continue working with the Special Rapporteur ‘to address and advance human rights and any related challenges ahead.’

The interactive dialogue that followed was very constructive. All States that took the floor² commended the Government of Cambodia for its progress in guaranteeing human rights and in particular for its cooperation with the Special Rapporteur. However, there it was clear that ASEAN members were far less critical of Cambodia than their Western counterparts and NGO’s. All States were cohesive in welcoming the report of the Special Rapporteur and urged the Government to continue its cooperation with Mr Subedi. The United Kingdom and Human Rights Watch showed strong support for the **renewal of the mandate**.

A large part of the debate focused on **land issues**. ASEAN members focused on the progress made with land reforms and the eradication of poverty,³ Myanmar commented specifically on the Social Land Concession Policy intended to distribute land to poor households. In contrast, other commenting States and NGO’s addressed reports of land grabbing, evictions and an overall negligence regarding property rights.⁴ Australia expressed specific concern about the relocation of communities to ‘ill-prepared’ resettlement areas and was not alone in inquiring about the quality and effectiveness of existing land laws.⁵

There was an overall sense of alarm, as expressed by several States and NGOs, due to the existing defamation and disinformation laws resulting in restrictions on **freedom of expression**.⁶ Sweden (on behalf of the EU) raised the overall implications of this on the country and its impact on the ability of lawyers, NGOs, the media and politicians to perform their duties in legal system. Furthermore, cases of the Government using criminal charges to silence criticism were repeatedly cited and the use of intimidation to force legal representatives into withdrawing their services was of grave concern.⁷ The Asian Forum for Human Rights and Development addressed intimidation of the media, journalists, and human rights defenders and illustrated this by recalling the killing of Khim Sambo in July 2008.

The Asian Legal Resource Center (ALRC) underlined the need for implementing provisions of the 1993 Constitution of Cambodia, specifically Article 135 that includes ‘a law on the statute of judges and prosecutors and a law on the organization of the judiciary.’ ALRC stressed that outdated laws were still being applied by judges and courts that had no legal basis and therefore the judiciary was neither independent nor did it comply with international standards. Japan was the only State to say that it believed the rule of law was being strengthened and cited the Khmer Rouge Tribunal as an example of this, while Human Rights Watch cited the Tribunal as being an obstruction to justice. The United Kingdom and the United States wanted to know if Mr Subedi was following up on the issue of an **independent judiciary** because his predecessor, Mr Yash Ghai, had already sited many instances where it had broken down and individual rights had been abridged.⁸

² Japan, Sweden (on behalf of the EU), Singapore, Canada, India, Malaysia, Ireland, Lao People’s Democratic Republic, Myanmar, UK, Nepal, Australia, United States, Thailand, Philippines, and China.

³ Lao People’s Democratic Republic, Myanmar, Philippines, Singapore.

⁴ Japan, Sweden (on behalf of the EU), UK, US, Human Rights Watch, Asian Legal Resource Center, International Federation of Human Rights Leagues

⁵ Sweden (on behalf of the EU), UK, US.

⁶ Sweden (on behalf of the EU), Australia, Canada, UK, US, Human Rights Watch, Asian Forum for Human Rights and Development (Forum-Asia), and the Asian Legal Resource Center.

⁷ Sweden (on behalf of the EU), Australia, UK, US, Human Rights Watch, Forum-Asia, and the Asian Legal Resource Center.

⁸ ALRC also asked if Mr. Subedi had taken this issue up with the Cambodian Authorities.

Ireland addressed the **role of civil society** in Cambodia and requested that the Special Rapporteur keep the Declaration on Human Rights Defenders in mind and use it in his dialogue with the Government, while Sweden (on behalf of the EU) inquired on ways to improve relations with civil society. Sweden (on behalf of the EU) also wanted to know how implementing the purported **NGO Law**⁹ would affect civil society. Forum-Asia was very clear in its position on the NGO Law and believed that there had not been adequate consultation on the law and its implementation would only serve to limit the work of human rights defenders.

Other comments made on the **human rights situation** in Cambodia included questions on the challenges of establishing a national human rights institution and a possible timetable for this,¹⁰ the impact on the livelihoods of landmine victims,¹¹ and combating human trafficking.¹² Several Asian countries noted the consequences of the financial crisis on Cambodia and expressed support in achieving its developmental and economic goals despite this situation.¹³

Response

In his concluding remarks the Special Rapporteur was careful to address the main issues that had been brought up during the dialogue. He began by stating that the biggest challenge in Cambodia was balancing the country's developmental efforts with human rights and that the economic plan in the country must also incorporate human rights. It was in achieving this balance he wished to play a role. He briefly touched on the **NGO Law** saying it was still being established and that the international community could influence it.

Mr Subedi clarified his position on **land issues** and said that there needed to be national guidelines so people would know what they 'could and couldn't do' when carrying out development projects. He was careful not to question any existing land laws when speaking of developing such national guidelines and specified that they should 'compliment and supplement' any existing laws.

On the issue of **defamation and disinformation laws** he expressed concern over the intensification of the lawsuits being filed against political opposition. However he assured the Council that as this dialogue was taking place the process of establishing a new penal code was under way and that he intended to give advice on how to bring the new penal code into line with international standards during the process.

Further information

For further information on the Human Rights Council, please consult the following resources:

- Follow ISHR on Twitter: [@ishr_geneva](https://twitter.com/ishr_geneva).
- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to information@ishr.ch.
- Oral statements made at the Council, as well as other informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.

⁹ Law on Local Associations and Non-Governmental Organizations.

¹⁰ United Kingdom and Ireland.

¹¹ Canada.

¹² China, Malaysia, and UN Watch.

¹³ Indonesia, Malaysia, China, Lao People's Democratic Republic, and Nepal.

- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 12th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/12session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/12session/reports.htm>.

NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.

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