

End of Mission statement
Professor Vitit Muntarbhorn, UN Special Rapporteur on the situation of human rights in Cambodia, to the Kingdom of Cambodia:
21-26 July 2024

There is much to admire about Cambodia. Its monumental architecture and historical wonder, Angkor Wat, is renowned worldwide. Its extensive vaccination against COVID-19, its de-mining skills, and its contribution to UN peace-keeping are well appreciated. Its move towards more comprehensive social protection for the population is welcome. It is a country which has emerged from the armed conflict of the 1980s to enjoy the peace of today.

Yet, there lingers the question: can it fulfill the promises of a broader spectrum - human rights, democracy and sustainable development - which go hand in hand with the aspiration of peace? In such context, since August 2023, there is a new generation of politicians in power. **Can this administration ensure transformative change to leave behind the minefields of the past, and to construct the milestones of the future? Much depends upon how it can pluralize the setting with a variety of stakeholders, especially to demonopolize - to share more and to respect the range of voices and choices that interlink with that broader spectrum. And the clock is ticking, still waiting for the hour of credibility.**

The UN Special Rapporteur on the situation of human rights in Cambodia, Professor Vitit Muntarbhorn, paid two visits (part one and part two) from 4-8 December 2023 and 21-26 July 2024 to Cambodia. The first visit was to meet the new Government and other stakeholders in Phnom Penh and the second visit was aimed at accessing the field, especially Rattanakiri province and nearby provinces, with special attention to the status of indigenous peoples. He conveys his deepest thanks to the governmental authorities, the UN and members of civil society for their kind assistance. This Press Statement is thus a reflection of key issues and findings which interrelate with those two visits and the evolving situation during the period. **They embody the architecture for human rights implementation which is critically important for the country, as follows:**

1. Follow-up

The UN Special Rapporteur recalls that at the end of his first visit to the country in 2022, he issued the **Cambodian Human Rights Action Agenda** highlighting the need to implement effectively recommendations from the UN system; open up civic and political space; ensure pluralism in the national elections; end prosecution of the political opposition and dissidents; address land issues in a participatory manner; respond to the vulnerabilities of key groups; improve the quality of law enforcers and reform the criminal justice system; ensure broader social protection; overcome injustices caused by debt and microfinance; underline gender-responsiveness to counter discrimination and violence; and synergise the links with international standards.

Many of these elements have not yet been fulfilled, and follow-up action should thus be pursued with vigour and commitment - with evidence to convince.

2. International Instruments and UPR Process

Recently, the country appeared before the Committee on Enforced Disappearance for the first time under the Convention for Protection of All Persons from Enforced Disappearance. The Committee recommended, inter alia, the need for more effective law and investigation system, support for victims and affected families, adjustment of the statute of limitations, and establishment of a centre for missing persons. There are some local and transnational cases awaiting remedies.

The country also engaged with its fourth round of the Universal Periodic Review (UPR) under the United Nations Human Rights Council. It can be recalled that the country accepted 173 recommendations at the previous review (third cycle of the UPR). **However, it merely took note and did not accept some 25 key recommendations from the world community, many of which concern the most poignant areas needing reform, especially to open up the civic and political space and release political/human rights detainees.**

It is hoped that with this fourth cycle, there will be recognition of the need to address those issues effectively.

3. Elections

The past 2 years have witnessed 3 elections at different levels in Cambodia. There were elections for the National Assembly in July 2023, Senate elections in February 2024 and Capital/provincial/municipal/district/town (Khan) elections in May 2024. The majority of the seats went to the ruling party which has enjoyed a monopoly of power since 2017. These incisive words from the top of the UN human rights system aptly describe the situation: (per UN press release):

“(The) UN High Commissioner for Human Rights has expressed regret that the Cambodian general elections held on 23 July (2023) were conducted in a severely restricted space that negatively impacted on the rights of Cambodians to participate fully and equally in all aspects of the electoral process. Restrictive laws and policies hampered the registration and participation of opposition political parties and candidates, and opposition parties, trade unions, non-governmental organizations (NGOs) and media were targeted through criminal and other legal processes, threats, intimidation, and on occasion physical attacks.

“It is concerning that Cambodia has witnessed a constant shrinkage of democratic space in recent years, undermining fundamental freedoms and the right to participate in public affairs,” said (The High Commissioner).

“Opposition political parties, activists, members of the media and others have faced numerous restrictions and reprisals that appear intended to curb political campaigning and to hinder the exercise of fundamental freedoms essential for free and fully participatory elections.”

In the lead up to the elections, the National Election Committee disqualified two leading opposition political parties, including the Candlelight Party. Immediately prior to election

day, the government telecoms regulator ordered internet service providers to block the social media accounts of three media organizations deemed critical of the Government.”

Disconcertingly, the elections were far from being free and fair, and the new administration needs to address this issue openly and effectively. Another clock is ticking in that it now has three years (plus) until the next Commune elections in 2027 - to prove whether it can pluralize in keeping with the democratic imperative.

Interestingly, from the angle of women’s rights, the participation of women is still far too low. Currently, there are only 16 women out of 125 members in the National Assembly. In the most recent provincial elections, from information received, in the Capital/Provincial Councils: out of a total of 559 councilors, women councilors represent about 17%. In the District/Khan Councils: out of a total of 3,641 councilors, women councilors represent some 19,22%.

Much work thus needs to be done to augment women’s substantive participation in all walks of life, especially in the political domain.

4. Indigenous Peoples

The Special Rapporteur’s visits to several indigenous groups reveal the following scenario. The country should be commended for recognizing in law the notion of indigenous peoples and their rights. Yet, there remain various impediments in realizing those rights. At one level, while there is the possibility of self identification of those groups, several have not yet been listed by the authorities and the waiting period can be long. Another key concern is their claim to ancestral land. While the law provides for the possibility of collective title for community land, the registration process is longwinded and it needs to be expedited. In the meantime, indigenous peoples are faced with the negative impact of economic land concessions and encroachments on their land by vested interests, often business actors and outsiders, at times in collusion with officialdom.

Many communities suffer from debt, partly caused by predatory lending and moneyed sharks which prey upon them. Matters are aggravated by the use of community land as collateral for loans sought by some members of the community, even though this should not be done. This use of collective land title as a kind of “soft” title undermines the community holding that should not be for individual benefits.

A key concern is that there is inadequate consultation and participation of these peoples. The principle of “free, prior and informed consent” is very relevant to negotiations which should take place between the authorities and these groups to prevent pressure which might cause dislocation. There is a need to involve them in the mapping process of their land rather than to rely on satellite images which superimpose demarcations, inconsistent with community boundaries. Public inquiries should be organized involving indigenous and other groups before projects are initiated, impacting upon their livelihood and environment. This is all the more relevant since, in the context of global warming and climate change under the UN Framework Convention on Climate Change, the Conferences of States Parties (COP) now recognize the role of indigenous peoples as guardians of the forests and related environment.

The Special Rapporteur was also concerned that in one area, a company had come on to community land to fence the land with pillars, without the knowledge of the indigenous

community. The company also issued a threat to take action against the latter if it tried to remove the pillars. In another situation, the Special Rapporteur learned that the community was told to accept a smaller area of community land for collective titling, in exchange for the termination of criminal charges against its members. What a *quid pro quo*!

A new law in the form of the Environmental and Resources Code was criticized by many groups for its omission to mention indigenous peoples and their rights. The law is also linked with protected areas which might overlap with the ancestral land of these communities. One community added that they had been subjected to an agreement or “contract” with the authorities limiting their activities in protected areas overlapping with ancestral land and that they wished to see re-negotiation of the arrangement with fuller recognition of their rights.

Where they try to assert their rights, such as through demonstrations, regrettably they are prosecuted for incitement under the criminal law and related charges. In exercising their rights, paradoxically members of indigenous peoples are criminalized in the process. In the words of a member of that community: *“If we raise our land issues, we are called the “opposition””*

The Special Rapporteur was also briefed about various court cases facing representatives of indigenous communities, and the preferred solution is to drop the cases to ensure justice, based on broader respect for freedom of expression and peaceful assembly. In regard to the emergence of a new land law, it is hoped that indigenous peoples and their rights will be mentioned explicitly.

The communities are also marginalized in their access to education, health care and occupational opportunities. While multilingual education with space for indigenous languages is available to some extent, it is provided with a view to subsuming those languages under the national language rather than to preserve those indigenous languages for posterity.

It is essential that indigenous peoples have more access to decision-making positions; they should have the space to be their own advocates of change in their access to justice and the wherewithal of life. There should be more space for them in law enforcement and the political field from the local to the national level. One commentator added in the discussions: “Rangers should be drawn from indigenous communities rather than outsiders to patrol the forests and related resources.” Another added: “They should become sub-district officials, judges and members of political parties.”

While there have been policies on indigenous peoples, a national action plan on their rights is still missing. There should be a one stop-service to help these communities in their quest for indigenous rights. There is a need for a national forum or working group to enable them to dialogue with authorities, with concomitant budgeting. Social awareness on indigenous peoples can also be nurtured through more education on their culture, as well as possibly a national and or international festival on indigenous arts and culture. Cultural diversity derived from indigenous communities under the umbrella of international law should be part of cross-cultural education as their value added.

5. Prison System

The Special Rapporteur is conscious of the efforts of the authorities to support alternative methods of dispute resolution, as well as to reduce overcrowding in prison. Yet, much of the bottleneck is due to the tendency to detain pre-trial cases, when the preferred option should be to ensure bail and non-custodial measures. Many of the cases are also in relation to drugs offences which would be better dealt with via community based rehabilitation rather than incarceration.

The heavy hand of law and order often results in people being arrested all too easily under the morass of laws, with the poor and less educated subjected to quick or summary justice, sending them to long prison terms without full access to legal aid and safeguards in their right to a fair trial and appeal.

Women deserve to be treated with greater dignity. Often, the programmes available in prison are gender-insensitive, relegating the training of women inmates to sewing and home economics, rather than offering the full spread of activities available to men, such as training of engineering and automotive repairs.

With regard to children, the general principle is that they should be separated from adults if they are to be housed in the same facility. Preferably, they should be in a separate facility with specially trained personnel to deal with them. The facility should not be run by those who are used to running adult prisons. A community based rehabilitation approach should be integrated into the preparations before the facility is operational, rather than to be added as afterthought later on. A more healthy mix would be to involve the Ministry of Health in cooperation with the Ministry of Social Development, rather than those accustomed to a heavy hand in running the facility. Corporal punishment and isolated detention as punishment must be prohibited and there should be consistent monitoring of the conditions in this setting. This is subject to the general child rights principle that children should only be detained as a measure of last resort.

As the country already has a Juvenile Justice law, it should introduce more measures to divert young people from the detention system, as well as to ensure more child-sensitive measures.

It should not pass unnoticed that closed institutions tend to have a sub-culture which is negative, linked with abuse of power. They might also be a breeding ground for corruption and exploitation of the inmates. This country should thus aim more strongly to comply with international human rights law on this issue and work towards more non-custodial and community-based measures, coupled with reform of the law enforcement system, and improved quality of the judiciary and related law enforcers. There should be more access to legal aid and members of civil society as helpers to open up space for accused persons and detainees, with support geared to empathy rather than retribution.

6. Civic and Political Space

With the formation of the new administration in 2023, the Special Rapporteur has been watching with keen interest to see whether there would be liberalization of the civic and political space. Regrettably, to date, this has not taken place. Political detainees continue to be detained, and human rights advocates and environmentalists continue to be prosecuted for incitement and related offences in exercising their right to freedom of

expression, peaceful assembly and their quest for justice. Even during the presence of the Special Rapporteur in the country, there were reports of some groups being intimidated in breach of their rights.

When there is call to shun the draconian nature of the law, the formulaic response from some official quarters tends to be that “everything is done in accordance with the national law”. It is thus hoped that the new generation can leave that cliché behind and opt for a more inspiring dictum, namely: “everything must be done in accordance with national law that complies with international law”.

7. Business and Human Rights

At a time when the country is moving towards its Vision to be a developed country by 2050, the advent of new local and transnational businesses invites preparation and precaution in regard to the impact of business on human rights. To guide the global community on the subject, there are the UN Guiding Principles on Business and Human Rights which underline three mutually reinforcing duties – the State’s duty to protect, the business sector’s duty to respect, and their shared responsibility to remedy harm. A key stakeholder which should be brought on board more directly is the range of businesses in the country which should adopt due diligence measures in their operations, such as to measure impact on human rights. This opens the door to interfacing with labour rights, investment law, environmental law and human rights defenders, including the various groups noted above such as indigenous peoples.

Momentum is needed to set apace a policy and practice on this issue which also opens the door to transparency which may also help to counter corruption. It is hoped that this issue can be taken up soon, as the Special Rapporteur raised this issue with the apex of the administration during his visit to the country in December 2023.

8. Stakeholdership

Official circles state that there are a myriad of media and NGOs in the country. The onlooker should assess the qualitative dimension rather than quantitative dimension. If various media or NGOs are seen as antithetical to the ruling elite, their work is often inhibited by officialdom, and there is the regrettable custom of using various laws, such as the incitement provisions of the Criminal Code and or the full range of draconian laws, to constrain press freedom and related internet channels. Reform of the now infamous law on associations and non-governmental organizations (“LANGO”) which imposes constraining conditions on the work of civil society, such as to prove that they are neutral and to subject them to excessive auditing, has been long in coming.

Indeed, there is a litany of laws, policies and practices of a restrictive kind which impede the broader stakeholdership - the imprint of a democratic society, and in the quest to reform them, the authorities should desist from applying them expeditiously.

9. Inter-generational Lens

At this moment in time, there is the meeting of the ASEAN Foreign Ministers in the nearby region, while later this is there will be the global Summit of the Future. The latter is aiming for not only a global blueprint for the future but also a Declaration on Future Generations and a Global Digital Compact.

Given that Cambodia is dedicated to both this region as well as to multilateralism, as seen its commitment to the UN backed Sustainable Development Goals, it is pivotal to bear in mind that a substantive people-based approach is an essential component of the panorama, while a key component of the Summit of the Future will be youth participation in an intergenerational perspective.

For Cambodia, there thus remains the challenge of synergizing between peace, human rights, democracy and sustainable development, for they are the true Pillars of Transformative Change.

With the clock ticking, they await a credible, inter-generational response from the top.

Thank You.