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The UN Human Rights Special Rapporteurs and the Impact of their Work: Some Reflections of the UN Special Rapporteur for Cambodia

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Abstract

As one of only 12 UN country specific mandate holders and as the longest serving UN Special Rapporteur for human rights in Cambodia, my work has had a significant impact on the situation of human rights in the country with many of my recommendations having been implemented by the Government. The parliament of Cambodia has enacted three fundamental laws designed to enhance the independence and capacity of the judiciary and amended the Constitution of the country to make the National Election Commission a constitutional, independent, and autonomous body, in line with my recommendations. In this article I examine the role of the UN country-specific mandate holders, the approach that I took to implement my mandate in Cambodia, and the impact of my work in the country.

I. Introduction

The UN Special Rapporteurs for human rights, operating under the scheme known as special procedures, have been in existence for nearly six decades and their number has been growing all the time. They now number around 14 country or territory specific mandates and 37 thematic mandates. The total number of such mandate holders is about 75 and they generate a large number of reports on the situation of human rights in different states.

The main function of the UN Special Rapporteurs for human rights is to monitor the situation of human rights in a given country and report publicly to the UN. It is about holding governments to account for violations of human rights, asking sensible and often difficult questions, and probing into the situation. In common parlance, it is about poking your nose into the “internal” affairs of a state. Therefore, Special Rapporteurs are rarely welcomed with any degree of enthusiasm in any country, but they have to work with the government of a given country to have their recommendations implemented – a difficult balancing act in itself.

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The endeavour is to induce governments towards compliance with their international human rights obligations.

However, one of the major weaknesses of the institution of Special Rapporteurs is the absence of an effective follow-up procedure to the reports submitted and to the communications sent to governments alleging violations of human rights or even to urgent appeals made as a preventative measure. Many of the recommendations of the Special Rapporteurs remain unimplemented and their communications to governments are not often even responded to. Therefore, the question that arises is what actual impact their work has had on situation of human rights in a given country and how should their impact be assessed.

It is within this context that this article aims to examine the role of Special Rapporteurs, the impact their work has had on the situation of human rights in the countries concerned, and how should their impact be measured. In doing so, the author will reflect on his own experience of work as the UN Special Rapporteur for Human Rights in Cambodia, the longest and perhaps the strongest of all mandates.

II. IMPACT OF THE WORK OF SPECIAL RAPPORTEURS

It is difficult to measure the impact of the work of the Special Rapporteurs as it varies from one mandate to another and from one mandate holder to another.¹ It also depends on what is meant by impact and who measures it and applying which benchmark. A report of the UN Office of the High Commissioner for Human Rights seems to include the number of country visits, the communications sent to governments, and reports submitted to the UN Human Rights Council in its definition of impact, albeit it goes on to list some examples of recommendations from special procedures which resulted in concrete and positive changes.² Indeed, evidence of a “concrete and positive” change should be regarded as having made an impact.

There have been various suggestions of indicators of impact that range from number of references to the work of the Special Rapporteurs in UN publications or major UN reports on human rights, number of civil society organizations making use of the reports of the Special Rapporteurs, number of references made to the reports of Special Rapporteurs by the UN treaty bodies, General Assembly, the Security Council and other international organizations, to the release of prisoners, change in law and policy by governments, or change in other activities of states resulting from the work of the Special Rapporteurs.

¹ See generally Philip ALSTON, “Hobbling the Monitors: Should U.N. Human Rights Monitors be Accountable?” (2011) 52 Harvard International Law Journal 561; David WEISSBRODT, “The Three ‘Theme’ Special Rapporteurs of the UN Commission on Human Rights” (1986) 80 American Journal of International Law 685; Helena M. COOK, “The Role of the Special Procedures in the Protection of Human Rights: The Way Forward After Vienna” (1993) 50 Review of the International Commission of Jurists 31 at 31-55; Marc J. BOSSUYT, “The Development of Special Procedures of the United Nations Commission on Human Rights” (1985) 6 Human Rights Law Journal 179 at 179-210; Surya P. SUBEDI, “Protecting Human Rights Through the Mechanism of UN Special Rapporteurs” (2011) 33 Human Rights Quarterly 201 at 201-28.

² UN Office of the High Commissioner for Human Rights, “OHCHR Report 2013” (May 2014), online: UN Office of the High Commissioner for Human Rights <http://www2.ohchr.org/english/OHCHRReport2013/WEB_version/allegati/downloads/1_The_whole_Report_2013.pdf> at 94-6.

However, measuring success on the basis of the first three criteria is not necessarily a measure of success as such - it relates more to the profile of the work of a particular Rapporteur, although of course that profile could have a positive impact upon the attention given to the matter and subsequent action made. The real test should be on the basis of impact on the lives of people. The difficulty is that there will be a number of actors or stakeholders that would have contributed to bringing about specific positive change in a country that can all legitimately claim some credit for any success story whether it is to do with the release of a prisoner, enactment of a new law, or amendment of an existing law or change in government policy. What is certain is that the Special Rapporteurs, especially country-specific mandate holders, act as a focal point for human rights activity in the country concerned or on the human rights theme they are responsible for.

The work of many mandate holders has resulted in human rights standard setting on the subject matter concerned whether through the adoption of a resolution or declaration by the UN General Assembly or in a few cases conclusion of a new treaty. When the recommendations made by Special Rapporteurs are implemented by states this can be evidence of *opinio juris* giving rise in due course to the crystallization of the norms recommended by the Special Rapporteurs into rules of customary international law. Thus, while the actual role of Special Rapporteurs is to do no more than monitor human rights situations, the impact of their work could be the development of international law through the elaboration of their recommendations, through an international instrument or through their development as a rule of customary international law.³

The country visits of Special Rapporteurs succeed in having a considerable impact on the situation of human rights in the country concerned. As stated in a study prepared by the Brookings Institute:

[T]he very fact that a mission is taking place tends to have a salutary impact on the human rights situation in a given country...Such visits tend to elevate human rights on the national agenda, bring public attention and debate through the media, validate allegations of human rights violations in a credible way, and allow human rights concerns to be raised and discussed at the highest level of government.⁴

Even if the work of Special Rapporteurs has no visible direct or tangible impact the educational value of their reports cannot be underestimated. Their reports are cited by national and international courts and tribunals, civil society organizations, development partners or donor agencies, academics, researchers, human rights defenders, and governments. Their reports can be and have been used by prosecutors in international criminal courts. Thus, the impact of the work of Special Rapporteurs can be direct as well as indirect, immediate as well as longer term. For instance, the present author was credited for a number of changes in Cambodia. He began his work by assessing the whole political structure of the country and produced four substantive and substantial reports focussing on judicial, parliamentary, and electoral reform and on the impact of economic and other land concessions on people's lives. Many of his recommendations and especially those relating to judicial and electoral reform were implemented by the Government by enacting new laws and

³ See generally Surya P. SUBEDI, "Human Rights Experts in the United Nations: A Review of the Role of the United Nations Special Procedures" in Monika AMBRUS, Karin ARTS, Ellen HEY and Helena RAULUS, eds., *The Role of 'Experts' in International and European Decision-Making Processes* (Cambridge: Cambridge University Press, 2014), at 241-62.

⁴ Marc LIMON and Ted PICCONE, "Human Rights Special Procedures: Determinants of Influence", Brookings Institution, Policy Report, March 2014, at 23.

even amending the Constitution of the country. In addition, these four reports, collectively, provided an analytical picture of democracy, human rights and the rule of law in the country and quickly became a primary source of reference for human rights defenders, UN agencies, donor agencies and the ordinary citizens.

III. THE UN MANDATE IN CAMBODIA

The UN human rights mandate in Cambodia is one of the oldest and strongest. It is a country still coming to terms with a tragic past, i.e., nearly 30 years of conflict caused by both internal and external factors. The trial of some of the Khmer Rouge rulers before a hybrid, i.e., a national court with international (UN) involvement, is still ongoing. The Tribunal has already convicted the head of detention and torture camp and two of the most senior leaders of the Pol Pot regime on charges of crimes against humanity. While the country suffered from the rivalry and proxy war between the major international powers of the day, it also witnessed one of the most brutal regimes of the twentieth century – the Khmer Rouge between 1975 and 1979 – resulting in the huge loss of life and the destruction of the state apparatus. The legal, institutional, and political systems had to be rebuilt effectively from scratch when the country began to pull itself together after the end of the Khmer Rouge rule in 1979.

The Paris Peace Accords concluded in 1991 paved the way for political reconciliation and the establishment of a democratic Cambodia.⁵ The United Nations Transitional Authority in Cambodia (UNTAC) created under the Paris Peace Accords led the transition. Consequently, Cambodia adopted the 1993 Constitution founded on the rule of law, respect for human rights, the independence of the judiciary, separation of powers, and the democratic governance of the country. However, Cambodia remains a complex country in terms of the protection and promotion of human rights, as democratization has not yet fully taken root. The major areas of concern are those relating to access to land and housing rights, freedom of expression, and the numerous challenges faced by the judiciary. These issues continue to dominate the legal and political landscape.

Given the tragic past of the country and confrontational relations between my predecessors and the Government, when I was appointed I had to tread a careful path; I started to build bridges and restore lines of communications with the Government, adopting a constructive approach designed to bring about positive results by engaging the Government in reform and employing diplomatic skills to this effect.

A. Painting a Picture on a Bigger Canvass

When I began my work in Cambodia I thought I should grapple with the broader picture in the country and decided to examine the whole structure of governance which led to human rights violations rather than limiting myself to examining the situation of human rights in a

⁵ The Paris Peace Accords of 1991 consist of the following main agreements concluded by 19 countries which included all major powers of the day, the neighbouring countries of Cambodia, some regional powers, and other states which had a significant interest in Cambodia: The Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, the Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia, the Declaration on the Rehabilitation and Reconstruction of Cambodia, and Annexes 1 to 5 to the Paris Peace Accords. See United States Institute of Peace, “Peace Agreements: Cambodia” (February 2000), online: United States Institute of Peace <www.usip.org/library/pa/cambodia/agree_comppol_10231991.html>.

narrow thematic area. There was a liberal democratic constitution in Cambodia and there were in existence all national institutions to protect the rights of the people. But human rights violations were a daily occurrence and these national institutions had not been effective in protecting the rights of people. I thought there was something fundamentally wrong at the heart of governance in Cambodia which led to human rights violations. Accordingly, I proposed to the government that I would like to examine the effectiveness of states institutions responsible for upholding people's rights such as the judiciary, parliament, national election committee, and the national institutions responsible for land management and resolution of land disputes. Whether the people in the government understood my approach or not, they consented to it. I began my work by assessing the whole political structure of the country and produced four substantive and substantial reports focussing on judicial, parliamentary, and electoral reform and on the impact of economic and other land concessions on people's lives.

B. Judicial Reform

After conducting two fact-finding visits to the country focussing on the judiciary I identified a number of shortcomings in the functioning of the judiciary and made recommendations to address them. The purpose of this assessment was to identify the ways and means of strengthening their capacity to protect and promote human rights. After my two fact-finding missions, I realized that the reasons why the judiciary was not able to enjoy the reputation it should were manifold. While some of the roadblocks were attributable to the historical legacy of the Khmer Rouge period during which the judiciary was dismantled and judges and lawyers killed, there were a variety of other factors that contributed to it.

First, the absence of law on the status of judges and prosecutors that would provide them with the protection, security of tenure, and independence that they needed in order to discharge their responsibilities in an effective and independent manner.

Second, the absence of the (subsequently enacted) Law on the Organization and Functioning of the Courts seems to have had a detrimental impact on the effectiveness and independence of the judiciary in providing speedy and impartial justice. This law was needed to achieve a degree of unity, cohesion, and certainty within the system of justice. The legal and judicial reform programme, part of the Government's "Rectangular Strategy" provided for the enactment of this law, but it had not yet materialised.

Third, many judges and lawyers, particularly of the older generation, seemed to have had no proper grounding in the fundamental principles of the rule of law and international legal standards expected of a judge. There were relatively few eminent senior jurists in the country. Inadequate legal education or training of judges and prosecutors about the fundamental principles of natural justice, the rule of law, and international standards of fair trial seemed to have contributed to making the judiciary a weak institution in the structure of governance.

Fourth, much of the population seemed generally fearful of courts, partly due to corruption and partly due to the manner in which the court system operated.

Fifth, corruption seemed to be widespread at all levels in the judiciary. Because no laws needed to protect the judges were in place, the judges were treated as civil servants and

seemed to rely on patronage and political protection rather than on the law for the security of their jobs. This had resulted in individual judges' and prosecutors' compromising their independence.

Sixth, judicial proceedings were being used by the rich and powerful in many cases to dispossess, harass, and intimidate the poor as well as their own lawyers and those working for them in the civil society sector.

Seventh, the lack of human, budgetary, and physical infrastructure-related resources seemed to be seriously hindering the work of the judiciary. The judiciary was chronically underfunded, under-resourced and understaffed in Cambodia. Prosecutors had insufficient funds to order proper scientific investigation of crimes.

Eighth, although the Constitution of Cambodia provided for the separation of powers between the three main organs of state, in practice the distinction between these organs was blurred: the executive branch dominated the judiciary whether by providing resources to the judiciary or in making appointments to various judicial positions. This remained a key challenge for the country in implementing the rule of law and in promoting and protecting people's rights.

On the basis of the above analysis I wrote a report on enhancing the independence and capacity of the judiciary and made a series of recommendations to the Government including enacting three different sets of laws to this effect. I recommended that two new laws, i.e., the Law on the Status of Judges and Prosecutors and the Law on the Organization and Functioning of the Courts should be enacted, and the Law on the Organization and Functioning of the Supreme Council of Magistracy should be amended.⁶

C. Parliamentary Reform

After examining the judiciary I turned my attention to Parliament which had been operating basically as a rubber-stamp institution subservient to an all-powerful executive. The Cambodian Parliament had faced the same institutional and structural upheavals faced by the country as a whole in the preceding 40 or so years. Like the judiciary, Parliament and parliamentary culture had to be rebuilt from scratch following the systematic destruction of all democratic institutions during the Khmer Rouge period. After conducting two further fact-finding missions, I identified a number of shortcomings in the workings of Parliament in general and the National Assembly in particular and made recommendations to address them.

D. Electoral Reform

After my work on parliamentary reform, the focus of my activity was on electoral reform. This is because free and fair elections are underpinned by respect for international human rights norms. Indeed, Article 25 of the International Covenant on Civil and Political Rights (to which Cambodia is a state party) provides that everyone has the right to take part in the conduct of public affairs in the country, and to vote (and to be elected) "at genuine periodic

⁶ Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, Report of the Fifteenth Session of the United Nations General Assembly Human Rights Council, finalized by Surya P. SUBEDI, UN Doc.A/HRC/15/46 (2010).

elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”.

During my fact-finding missions I received a large amount of information from people and institutions that included allegations of irregularities or of systemic problems that undermined the country’s ability to hold free and fair elections. I carried out my own independent assessment of the situation. I argued that reforms should be carried out to ensure that elections in Cambodia are free and fair and that Cambodians can exercise their right to democratic governance in a free political environment. I stated that free and fair elections could take place only when there was a free political environment and the people were able to exercise their rights and freedoms, such as freedom of expression and assembly and the right to stand for election. To hold credible elections, the Government must ensure high standards in line with its international human rights obligations before, during, and after the casting of votes. It must also ensure the independence of the National Election Committee. There were major flaws in the administration of elections in Cambodia and urgent and longer-term reforms were needed to give Cambodians confidence in the electoral process and in the workings of the National Election Committee. Accordingly, I made a series of recommendations for electoral reform and the main one was to grant constitutional, independent and autonomous status to the National Election Committee.

IV. IMPACT OF THE WORK OF THE UN MANDATE HOLDER FOR CAMBODIA

It is difficult to measure the impact of the work of any Special Rapporteur. This is because while some impact is visible and short-term, others are not easily visible and may have a longer-term impact. Furthermore, along with the Special Rapporteur, various other stakeholders would be working on any given human rights issue, thus any change in the Government’s policy or any positive action generally would be the result of a collective endeavour. Having said this, the Government of Cambodia takes seriously what the Special Rapporteur does or says in public. Often the response from the Government of any criticism of governmental policy is quick and is made through the media. On most occasions the Prime Minister himself reacts to the work or comments of the Special Rapporteur; on other occasions it is the Foreign Minister⁷ or the spokesperson of the Ministry of Foreign Affairs or of the Cabinet. It could also sometimes be another leading figure within the ruling political party – Cambodian People’s Party (CPP) – who would express the views of the Cambodian Government.

Major powers and other international development partners, as well as human rights organizations and other sections of civil society, have referred to my work in formulating their own policy concerning Cambodia.⁸ For instance, according to the reports leaked by WikiLeaks, the American Ambassador to Cambodia Carol Rodley, had stated in her secret/sensitive report to the State Department assessing my work in the country that I was “off to a better start than could be expected” and she “was glad to see [my] optimism because

⁷ For instance, Foreign Minister Hor Nam Hong responded publicly in some details through a media interview to my work and my recommendations in January 2015: “Hor Nam Hong: By Keeping UN in Cambodia, We Want Further Enhancement of Democracy and Human Rights” Kampuchea Thmey Daily Newspaper (25-26 January 2015).

⁸ For instance, Lady Catherine Ashton, the head of EU’s Foreign Affairs Division (High Representative and Vice-President of the European Union) and Karel de Gucht, EU Trade Commissioner, made a reference to my reports on Cambodia when writing to the members of the European Parliament in a letter of 15 May 2013 (the letter is on file with me).

it would be needed.”⁹ Both members of the Government and in the opposition have picked and chosen bits and pieces from my report for their own purposes. The media, too, have done the same, selecting those snippets from my reports and statements that fit into their news stories and support their own perspective.¹⁰

International organizations have also referred to my reports in their work on Cambodia. For instance, the Inter-Parliamentary Union (IPU) made a reference to my report to the Human Rights Council in expressing its own concern¹¹ when the leader of the opposition in Cambodia was sentenced to 10 years’ imprisonment on some politically motivated charges. The IPU went on to urge the Government of Cambodia to “heed the recommendations made by the United Nations Special Rapporteur on the situation of human rights in Cambodia.” Similarly, the World Bank had frozen new loans in 2011 to Cambodia when I and many other stakeholders had highlighted the plight of the people forcibly evicted from their land and homes in the Boeung Kak Lake in the middle of the city of Phnom Penh to make way for foreign investors to develop the area for commercial use. It considered unfreezing the loans when the situation of human rights in the country improved, especially after the political deal was reached between the Government and the opposition party.¹²

A. Policy Impact

After I produced four substantial and substantive reports on judicial, parliamentary, and electoral reform and on the impact on human rights of economic land concessions in the country, I came under criticism from the Government. I had, in my reports, called for sweeping reforms to ensure the independence of the judiciary and free and fair elections in the country - this did not go down well with the Government. I was often asked by Government officials and some others why I was recommending the reform of institutions that were not broken. I was told that there was nothing wrong, for instance, with the National Election Committee. However, as the date of the Cambodian parliamentary elections drew closer in 2013, and when the elections took place, the veil had been lifted and the weaknesses exposed. I received widespread national and international support, including from President Barack Obama, in my dealings with the Cambodian Government.

While making the first ever visit by a U.S. President to Cambodia in November 2012 to attend the U.S.-ASEAN summit meeting in Phnom Penh, President Obama called Cambodia’s lack of respect for fundamental freedoms an “impediment” to deeper relations between the two countries, adding that countries that do not uphold certain universal

⁹ WikiLeaks, Report VZCZCXRO1246 of June 2009, O 291054Z Jun 09, E.O. 12958 (accessed on 20 August 2013 and is on file with me).

¹⁰ Some examples of international media that reported my work are as follows: “Cambodia’s Politics: The Vision Thing” The Economist (19 July 2014), online: The Economist <<http://www.economist.com/news/asia/21607876-opposition-does-not-know-what-do-except-obstruct-vision-thing>>; David PILLING and Michael PEEL, “Cambodia: Wave of Discontent” Financial Times (28 July 2014), online: Financial Times <<http://www.ft.com/cms/s/0/b01c354e-13f2-11e4-8485-00144feabdc0.html#axzz3d6A1nbgu>>; “UN Envoy Rebukes Cambodia Over Shooting of Protesters” BBC News (10 May 2012), online: BBC News <<http://www.bbc.com/news/world-asia-18015436>>.

¹¹ Resolution on Cambodia Adopted by the Governing Council of the Inter-Parliamentary Union at its 187th Session, 6 October 2010, CMBD/01 – Sam Rainsy, online: IPU <<http://www.ipu.org/hr-e/187/Cmbd01.htm>>.

¹² “World Bank Mulls Funds” The Phnom Penh Post (12 November 2014), at 1. See also “World Bank Promises Meetings Before Ending Funding Freeze” The Cambodia Daily (19 November 2014), online: The Cambodia Daily <<https://www.cambodiadaily.com/news/world-bank-promises-meetings-before-ending-funding-freeze-72615/>>.

principles, such as respect for human rights, will have more difficulty integrating with the international community.¹³ Similarly, the European Parliament,¹⁴ the Inter-Parliamentary Union (an inter-governmental organization of national parliaments of 162 countries),¹⁵ and the Senates of Australia¹⁶ and the Philippines¹⁷ passed resolutions calling on the Cambodian Government to implement my recommendations. It was a rare display of international support for my work which made the government reconsider its position.

Nevertheless, the general elections in July 2013 went ahead without implementing my recommendations for electoral reform. Consequently, the opposition party refused to accept the results which had declared the ruling party the winner and started a campaign of protests which was gaining momentum and receiving widespread support. Alleging electoral irregularities in the July 2013 general election and challenging the independence of the National Election Committee, the opposition party members refused to take their oath of office to join parliament and took to the streets.

Owing to the endeavours of those fighting for human rights, including myself, opposition party members were persuaded to join the National Assembly and the Government accepted the rationale for electoral reform contained in reports. Accordingly, on 1st October 2014 the National Assembly passed a bill turning the National Election Committee into a constitutional body, implementing one of my key and long-standing recommendations.¹⁸

Regarding judicial reform, three long overdue fundamental laws were enacted in autumn 2014. They were the Law on the Status of Judges and Prosecutors, the Law on the Organization and Functioning of the Courts, and the Law on the Organization and Functioning of the Supreme Council of Magistracy. Although these laws are by no means perfect, I believe that the laws provide a framework for improvement in the future. Therefore, I welcomed the enactment of these three laws, but pointed out the lack of consultation with civil society and transparency in the process of enacting these laws.¹⁹

B. Examples of Other Direct Impact

¹³ The Phnom Penh Post reported that the U.S. State Department in a letter sent on behalf President Obama to a group of leading U.S. senators concerned about the situation of human rights in Cambodia stated that the U.S. had called on the Cambodian Government to heed the recommendations of Professor Subedi: “Rapporteur Backed: Rights or a Rough Ride, Warns U.S.” The Phnom Penh Post (14 December 2012).

¹⁴ European Parliament Resolution on the Situation in Cambodia, 23 October 2012, 2012/2844(RSP), online: European Parliament <<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2012-0491&language=EN>>.

¹⁵ Resolution on Cambodia Adopted by the Governing Council of the Inter-Parliamentary Union at its 191st Session, 24 October 2012, CMBD/01 – Sam Rainsy, online: IPU <<http://www.ipu.org/hr-e/191/Cmbd01.htm>>.

¹⁶ Senate Daily Summary of the Parliament of Australia, 29 October 2012, online: Parliament of Australia <http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/sds/~link.aspx?id=33240456F8D24A20A5483E80D5A9ADC9&z=z>.

¹⁷ Senate Resolution No. 873 of the 15th Congress of the Republic of the Philippines, 17 September 2012, online: Senate of the Philippines <http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SRN-873>.

¹⁸ “Lawmakers Enshrine Election Panel in Constitution” The Cambodia Daily (2 October 2014), online: The Cambodia Daily <<https://www.cambodiadaily.com/news/lawmakers-enshrine-election-panel-in-constitution-68826/>>. The bill table before parliament was sent to my office by the Secretary-General of the National Assembly on 22 August 2014.

¹⁹ UN Office of the High Commissioner for Human Rights, “Cambodia: Lack of Consultation on Key Laws Sets Worrying Pattern for Future Legislation, Warns UN Expert” (27 May 2014), online: UN Office of the High Commissioner for Human Rights <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14648&LangID=E>>.

I believe that my sustained efforts have brought about other tangible results for the people of Cambodia. They include the release from prison of a prominent journalist and human rights defender, Mr. Mam Sonando in March 2013, the granting of better treatment to another leading journalist in a prison in the outskirts of Phnom Penh, and the return of the leader of the opposition, Mr. Sam Rainsy, in July 2013 to the country from his long exile in Paris. Mr. Rainsy's return was allowed under a royal pardon, made in time to enable him to participate in the country's elections taking place that year.²⁰

I have also been credited for dissuading the Government of Cambodia from enacting a restrictive law on NGOs,²¹ for persuading the Government to impose a moratorium on economic land concessions that have a detrimental impact on human rights, and encouraging the Government to enact a law on expropriation to provide compensation to people affected by land evictions.²²

During my second mission to Cambodia in January 2010, I went to visit two journalists imprisoned on charges of defamation in the main prison known as Central Correctional Centre 1 (CC1) in the outskirts of Phnom Penh. They were Mr. Hang Chakra and Mr. Ros Sokhet. When I met the Minister for Interior after the prison visit I urged him to explore ways of releasing them from prison, arguing that in a democracy they would not be imprisoned for criticising the policies of the Government or of Government Ministers. Three months later, Mr. Hang Chakra was released from prison after being pardoned by the King of the country to mark the Khmer New Year in April 2010.

During my visit to the prison I had made a direct appeal to the prison Governor to improve the conditions under which these men were held in the prison. The day on which I completed my second mission to the country, the sister of Mr. Ros Sokhet published a letter in the main national daily newspaper of Cambodia, *The Cambodia Daily*,²³ under the title "UN Envoy should be praised for helping imprisoned journalist" since the prison Governor had started to accord both of them much better treatment from the day I visited these journalists.²⁴

V. THE APPROACH ADOPTED TO IMPLEMENT THE UN MANDATE

Many people both within and outside of the UN have asked me what are the lessons that we can draw for the institution of UN Special Rapporteurs from my experience as the longest serving rapporteur for Cambodia. Therefore, without meaning to be self-publicizing or self-aggrandizing, I would like to outline my own experience and the approach that I adopted in discharging my mandate. I believe the reason I was able to accomplish as much as I did in Cambodia and lasted in the UN mandate for the country as long as I did, i.e., full six years, and more than any of my predecessors was down to the following factors:

²⁰ A copy of the thank you letters to me from Mr. Mam Sonando for his release from prison, from Mr. Sam Rainsy for his return from exile and a letter to the editor of a main national daily English newspaper by the sister of an imprisoned journalist thanking me for my intervention are on file with me.

²¹ "Government Makes U-Turn on NGO Law" *The Phnom Penh Post* (28 October 2011), online: *The Phnom Penh Post* < <http://www.phnompenhpost.com/national/government-makes-u-turn-ngo-law>>.

²² Two feature articles highlighting my work to this effect were published by *The Guardian*, on 28 September 2011 and 14 May 2012.

²³ *The Cambodia Daily* (29 January 2010), at 12.

²⁴ See also Ted PICCONE, "Catalysts for Rights: The Unique Contribution of the UN's Independent Experts on Human Rights", *Brookings Institution, Policy Report*, October 2010, at 15, para. 19.

First, I took a constructive approach. In other words, I went beyond naming and shaming to offering suggestions. I saw it as more of a mandate to assist the government with the management of transition rather than finger-pointing. It is not easy to go to a sovereign country and tell the leaders of that country what the shortcomings are in their system of governance. But this is the job of a Special Rapporteur for human rights. If the task of pointing out the shortcomings is coupled with friendly constructive recommendations one can keep them engaged in the dialogue.

Second, as an international lawyer, I took a professional approach to the human rights problems facing Cambodia.

Third, utilising the flexibility of the UN mandate, I went on to define my own mandate and implemented it in the manner I thought it would be most effective. Rather than regarding myself solely as a human rights envoy focussed narrowly on thematic, technical, and mechanical aspects of human rights I took on the role of a political envoy as and when I deemed desirable to do so, expanding the scope of my work, and dealt with the totality of the political picture which had direct bearings on human rights. After all, we all know there is a very fine line between politics and human rights.

Fourth, when making my case for reform of state institutions responsible for upholding people's rights I relied on a comparative analysis that I had carried out of a number of developing countries from different continents with better and stronger democracies such as the Philippines, India, South Africa, Ghana, and Brazil as I knew that it would not go down well in Cambodia if I said that the British or the French or the Americans did things in this way. I also drew on my own experience of work during my earlier career for the Royal Commission on Judicial Reform in Nepal, a country comparable in so many respects to Cambodia.

Fifth, I was prepared to give credit where it was due. This made them clamour for my praise and remain engaged with me. This is because any praise that I would give could be used for publicity, often in an amplified form, aimed at the domestic audience.

Sixth, I was sensitive to the Asian notion of "losing face" and did my utmost to be respectful to the people in the government personally and not put them publicly in any awkward position. I was more candid in the delivery of my message to the Prime Minister in private than in public and maintained a balance so as not to deviate from diplomatic niceties in public. I was aware that every nation had its own pride and I did my best to respect the pride of Cambodia with its rich ancient Hindu-Buddhist cultural heritage.

Seventh, I made every effort to keep the ambassadors to the UN from key countries in confidence so that they would know what was going on and would support me. After all, they were the decision makers within the UN Human Rights Council. So much so, I ended up making history within the UN system by having my mandate renewed for an unprecedented term of two years, twice. This is because there is a stated policy within the UN not to renew the mandate of country-specific mandate holders for more than one year at a time.

I knew I would come under sharp criticism from the Government of Cambodia after releasing a report stating that the National Election Committee was not independent and sweeping electoral reforms were necessary. I thought the Government would do its utmost to

abolish my mandate or make it harder for me to continue in the mandate. Therefore, I wanted to have my mandate protected for two years at a time taking it beyond the reporting period. Thanks to the support of the ambassadors from key countries, the Human Rights Council renewed my mandate for two years in 2011.

Indeed, as anticipated, the government became hostile to me after I released my report on electoral reform. I had a lot of explaining to do to the government and all other stakeholders. I was on the verge of being declared a persona-non-grata in Cambodia. If they had done so it would have done a lot of good to me since this status is regarded as a “badge of honour” within UN human rights circles. But this would have meant that I would not have been able to work with the Government any more or have my recommendations implemented. My reports would have gone to the shelves gathering dust, as do many UN reports.

VI. CONCLUSIONS

There are of course critics who doubt whether the institution of Special Rapporteurs actually produces any tangible results for the victims of human rights violations. Indeed, in the absence of an effective follow-up system, many recommendations of the Special Rapporteurs remain unimplemented. However, the effectiveness of Special Rapporteurs may vary from one situation to another and from one Special Rapporteur to another, depending on the approach they adopt for the implementation of their mandate, as well as the level of expertise and experience that they possess and the approach that they adopt in implementing their mandate. The overall impact of their work, though, seems to significantly impact the enjoyment of human rights by people around the globe and especially those living under oppressive regimes. Just the fact that someone is watching over their activities makes governments think twice before taking measures against their own citizens. It is harder for governments to violate the human rights of their populations under the watchful eyes of the Special Rapporteurs; this is especially true for the countries with a country mandate holder.

The fact that states do not respond formally to the communications by Special Procedures mandate-holders does not necessarily mean that the communications have no impact. In some cases, the very fact that the matter under consideration has been brought to international attention can deter governments from taking questionable actions and galvanize them into positive action. Furthermore, the effectiveness of the work of the Special Procedures cannot be measured by the rate of response alone. It is the quality of the response that matters. A state may respond, but the response may be no more than a formality. The effectiveness of the Special Procedures should thus be measured against the overall impact of their work on the government, on the victims of human rights violations, the position taken by local human rights organizations and so on.

Even if there is no visible tangible immediate impact of the work of the Special Rapporteurs the longer term impact on human rights education and awareness of their work on the population in general in a given country and on the civil society organizations, human rights defenders, and the youth in particular cannot be underestimated. Further, effectiveness of the work of Special Rapporteurs should be judged against their mandate and the powers that they have under the relevant resolution of the Human Rights Council.

As can be seen from the accomplishments of the UN Special Rapporteur for Human

Rights in Cambodia, some rapporteurs can have more success than others, depending on the approach adopted by the mandate holder and the combination and culmination of a number of political factors within the country. Cambodia has come a long way from where it was six years ago. The country is currently in the process of peaceful political transition. Of course, it still has a long way to go in order for it to meet the international benchmark on human rights. A great deal of what has been achieved in Cambodia, such as the enactment of three fundamental laws to enhance the independence of the judiciary or the amendment of the Constitution to grant constitutional status to the National Election Committee, has been on paper. As the cliché goes, the proof of the pudding is in the eating. The progress in the country will depend on the implementation of these laws with the degree of sincerity required.