



**Mandates of the Special Representative of the Secretary-General for human rights in Cambodia  
and the Special Rapporteur on the independence of judges and lawyers**

Téléfax: (41-22)-917 90 06  
Télégrammes: UNATIONS, GENEVE  
Téléx: 41 29 62  
Téléphone: (41-22)-917 92 55  
Internet www.ohchr.org

Address:  
Palais des Nations  
CH-1211 GENEVE 10



*Joint Public Statement*

**The United Nations Special Representative of the Secretary General for human rights in Cambodia  
and the Special Rapporteur on the Independence of Judges and Lawyers express concern over judicial  
independence in Cambodia in the light of recent judicial appointments**

*23 August 2007*

The Special Representative and the Special Rapporteur are concerned that recent judicial appointments appear not to have been made in accordance with the Constitution, casting doubt on whether the constitutionally-guaranteed principle of judicial independence is being fully respected in Cambodia.

According to Cambodian law, all judicial appointments, transfers, promotions, suspensions or disciplinary actions are decided by the Supreme Council of Magistracy and implemented by royal decree. Yet the royal decree of 9 August 2007 replacing the President of the Court of Appeal (NS/RKT/0807/339) appears not to have been made on the basis of a decision of the Supreme Council of Magistracy: prior to the issuance of the decree, no meeting of the Council was convened.

Instead, the decree states that the action was requested by the Chairman of the Supreme Council for State Reform, following proposals from the Co-Chairmen of the Council for Legal and Judicial Reform and the Minister of Justice. In other words, the replacement of the Appeal Court President was done at the request of the executive branch of government in contravention of the separation of executive and judicial powers specified in the Constitution.

Without commenting on the merits of the allegations made against the outgoing Appeal Court President, disciplinary action against judges is, according to the law, the prerogative of the Supreme Council of Magistracy, acting through of a Disciplinary Council. The United Nations Basic Principles on the Independence of the Judiciary, which form part of Cambodian law, state that judges, like all citizens, are entitled to a fair hearing and other guarantees of due process. The Executive should not have a role in deciding whether any judge has acted inappropriately and should be dismissed.

The appointment of four new members of the Supreme Council of Magistracy by another royal decree (NS/RKT/0807/340), also issued on 9 August 2007, appears to have been made similarly at the request of the Executive rather than in accordance with the law.

The Special Representative has already expressed concern that the composition of the Supreme Council of Magistracy, which includes a government minister and a member of the ruling party's Permanent Committee, does not inspire confidence that the judicial appointment process in Cambodia is free of political control. But these recent royal decrees actually sideline the Supreme Council of Magistracy, leaving it only a role in implementing, together with the Supreme Council for State Reform, a decision that it did not formally approve.

Three of the appointments to the Supreme Council of Magistracy were for positions which, according to the SCM Law, are reserved for members elected by the judges. No elections appear to have been held for these positions; indeed, no elections have ever been held for these three elected positions.

An independent judiciary is a fundamental guarantor for the protection of human rights in any country: without independent judges, it is not possible to ensure everyone's right to a fair trial. Unless the Supreme Council of Magistracy is, and is seen to be, free of government control, the Courts of Cambodia cannot be recognized as independent. And if the courts are not independent and impartial, they cannot administer justice fairly in accordance with international human rights standards.

The Special Representative and the Special Rapporteur call upon the Cambodian authorities to ensure that the provisions of the Constitution, the Law on the Supreme Council of Magistracy, as well as international human rights law, are respected so that the independence of the Cambodian judiciary can be ensured.

They also associate themselves with the concerns already expressed by the United Nations about the implications of the transfer of the Co-Investigating Judge at the Extraordinary Chambers in the Courts of Cambodia to the presidency of the Appeal Court. Legal and judicial reform is crucially important to the future development of Cambodia; but it should not be undertaken at the expense of the essential protections provided to judges, including guarantees of tenure, that enable judges to administer, and be seen to administer, justice efficiently, impartially and fairly, free of political interference.

[End]

### **Background Information**

The **Special Representative of the Secretary-General for human rights in Cambodia** is an independent expert mandated by the United Nations Human Rights Council to monitor and report on the human rights situation in Cambodia. The SRSG's mandate derives originally from the Paris Peace Accords and the General Assembly of the United Nations. The current mandate-holder has been Yash Ghai since November 2005. Professor Ghai is a constitutional lawyer and academic from Kenya.

The **Special Rapporteur on the independence of judges and lawyers** is an independent expert mandated by the Human Rights Council to monitor attacks on the independence of the judiciary, lawyers and court officials and progress achieved in protecting and enhancing their independence. The current mandate-holder has been Leandro Despouy since August 2003. Mr. Despouy is a human rights lawyer and academic from Argentina.

### **Relevant Cambodian Law**

Article 128 of the *Constitution* establishes the courts as independent and impartial protectors of the rights and freedoms of citizens. Article 130 says that "judicial power shall not be granted to the legislative or executive branches". Article 133 states that: "Judges shall not be dismissed. The Supreme Council of Magistracy shall take disciplinary actions against any delinquent judges." Article 132 establishes the King as "guarantor of the independence of the judiciary" assisted by the Supreme Council of Magistracy which, under article 134, has exclusive authority to make proposals to the King on the appointment of judges and prosecutors to all courts.

The 1994 *Law on the Organization and Functioning of the Supreme Council of Magistracy* requires that all judicial appointments, transfers, promotions, suspensions or disciplinary actions should be decided by the Supreme Council of Magistracy and implemented by royal decree (article 11). Article 12 *et seq* provide for the establishment of a Disciplinary Council to decide on disciplinary actions to be taken against judges and prosecutors. Article 2 establishes the composition of the Supreme Council, which include six *ex officio* members (the King, the Minister of Justice, the President and Prosecutor-General of the Supreme Court and the President and Prosecutor-General of the Appeal Court). The remaining three positions are to be elected by the judges from amongst their number; elections are required to be organized in accordance with articles 6

and 21, but only after a Law on the Status of Judges has been passed. In the thirteen years since the SCM law was passed, no Law on the Status of Judges has been passed.

### **United Nations Instruments related to the independence of the judiciary**

The *Universal Declaration on Human Rights*, which is guaranteed under article 31 of the Constitution, states that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in determination of their rights and obligations and of any criminal charge against them." (Article 10)

The *International Covenant on Civil and Political Rights*, to which Cambodia has been a party since 1992 and which is guaranteed by article 31 of the Constitution, provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." (Article 14)

The *United Nations Basic Principles on the Independence of the Judiciary*, which are incorporated into Cambodian law, provide *inter alia* as follows:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. [í ]
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. [í ]
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.
10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.
11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.
12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.
13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience. [í ]
17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.
18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.
19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.
20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

## **Translations of the relevant royal decrees.**

*Note: these English translations are unofficial and are provided for information purposes only.*

NS/RKT/0807/339

### **Royal Decree**

We,... the King of the Kingdom of Cambodia. [not as President of the SCM ]

- Having seen the Constitution of the Kingdom of Cambodia,
- Having seen the Royal Decree No NS/RKT/0704/124 of 15 July 2004 on the formation of the Royal Government of the Kingdom of Cambodia,
- Having seen the Royal Kram/Ordinance No 02/NS/94 Of 20 July 1994 promulgating the law on the organization and functioning of the Council of Ministers,
- Having seen Decree No 06 Kr dated 08 February 1993 promulgating the law on the establishment and functioning/activities of trial courts,
- Having seen Royal Decree No 09/NS/94 dated 22 December 1994 promulgating the law on the organization and functioning of the Supreme Council of the Magistracy,
- Having seen the necessity of legal and judicial reform,
- Having seen the principle of binding competency (competence lié),
- Having seen the submission of the Chairman of the Supreme Council for State Reform [Hun Sen], based on the proposal of the Co-Chairmen of the Council for Legal and Judicial Reform [Sok An and Dith Munty] and the proposal of the Minister of Justice [Ang Vong Vatthana],
- Having seen the submission of the Prime Minister of the Royal Government of Cambodia,

### **Hereby Order:**

**Article 1:** That the position of Madame Ly Vuoch Leng as the president of the Appeals Court shall be terminated and shall serve her work at the Ministry of Justice;

**Article 2:** That HE You Bunleng, currently a judge of the Appeals Court, be appointed president of the Appeals Court;

**Article 3:** That all provisions contrary to this Royal Decree be annulled,

**Article 4:** That the Supreme Council of the Magistracy and the Prime Minister of the Royal Government of Cambodia implement this Royal Decree to ensure its success;

**Article 5:** That this Royal Decree comes into force from its date of signature.

Done at the Royal Palace, Phnom Penh, 9 August 2007

Signed

Norodom Sihamoni

For copying and distribution  
Phnom Penh, 10 August 2007  
Khun Chen Ken

**Royal Decree**

We,... the King of the Kingdom of Cambodia. [not as President of the SCM]

- Having seen the Constitution of the Kingdom of Cambodia,
- Having seen the Royal Decree No NS/RKT/0704/124 of 15 July 2004 on the formation of the Royal Government of the Kingdom of Cambodia,
- Having seen the Royal Kram/Ordinance No 02/NS/94 Of 20 July 1994 promulgating the law on the organization and functioning of the Council of Ministers,
- Having seen Decree No 06 Kr dated 08 February 1993 promulgating the law on the establishment and functioning/activities of trial courts,
- Having seen Royal Decree No 09/NS/94 dated 22 December 1994 promulgating the law on the organization and functioning of the Supreme Council of the Magistracy,
- Having seen the necessity of legal and judicial reform,
- Having seen the principle of binding competency (*competence lié*),
- Having seen the submission of the Chairman of the Supreme Council for State Reform [Hun Sen], based on the proposal of the Co-Chairmen of the Council for Legal and Judicial Reform [Sok An and Dith Muntly] and the proposal of the Minister of Justice [Ang Vong Vatthana],
- Having seen the submission of the Prime Minister of the Royal Government of Cambodia,

**Hereby Order:**

**Article 1:** That the following names shall be appointed member of the Supreme Council of Magistracy:

- 1- HE. You Bunleng to replace Madam Ly Vuoch Leng
- 2- Mr. Chiv Keng to replace Mr. Oum Sarith;
- 3- Mr. Khieu Sameth to replace Mr. Ty Neng;
- 4- Mr. Sin Dim to replace Mr. Real Muon

**Article 2:** That all provisions contrary to this Royal Decree be annulled,

**Article 3:** That the Supreme Council of the Magistracy and the Prime Minister of the Royal Government of Cambodia implement this Royal Decree to ensure its success;

**Article 4:** That this Royal Decree comes into force from its date of signature.

Done at the Royal Palace, Phnom Penh, 9 August 2007

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**Notes:**

- 1- Judge You Bunleng, newly appointed president of the Court of Appeals, former judge at the Court of Appeals and also currently investigating judge at the ECCC;
- 2- Judge Chiv Keng, currently the president of the Municipal Court of Phnom Penh, and a member of the Council of Jurists
- 3- Judge Oum Sarith, currently judge at the Court of Appeals. This removal does not affect his position at the Court of Appeals.
- 4- Judge Khieu Sameth, currently president of the Provincial Court of Kandal.
- 5- Judge Ty Neng, currently deputy president of the Court of Appeals. This removal does not affect his position at the Court of Appeals
- 6- Judge Sin Dim, currently judge of the Supreme Court.
- 7- Judge Real Muon, currently judge of the Supreme Court. His removal from the SCM does not affect his position at the Supreme Court.