

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

ISHR's summaries of documents for the 5th session of the Human Rights Council

Report of the Special Representative of the Secretary-General for human rights in Cambodia

Mandate holder

Yash Ghai

Mandate

The mandate of the Special Representative was established by the Commission on Human Rights resolution 1993/6 to assist the Government of Cambodia in the promotion and protection of human rights.¹ It was recently extended by Human Rights Council decision 1/102.² The mandate is particularly focused on the areas of the justice sector and the rule of law; freedom of association, assembly, and expression; land; the role of civil organisations in promoting social justice; and the country's Constitution.³

Annual Report ⁴

Scope:

The Special Representative provides an account of his second mission to Cambodia in March 2006 and details areas of continuing concern. In his report the Special Representative has taken a longer-term view, concentrating on problems of a systemic nature. The main purpose of the mission had been to discuss his report and recommendations to the Commission on Human Rights at its sixty-second session, and to update himself on issues that had been the focus of his analysis in the report.

Activities:

- The Special Representative had discussions with senior officials of the Government of Cambodia during his second mission to Cambodia, met members of the Constitutional Council and judiciary, leaders of political parties, representatives of human rights, legal aid and trade union organisations, the

¹ Available at <http://www.ohchr.org/english/countries/kh/mandate/index.htm>

² A/HRC/4/36, Introduction, para. 1.

³ Available at <http://www.ishr.ch/>

⁴ A/HRC/4/36, 30 January 2007.

United Nations Country Team, bilateral and multilateral development cooperation agencies and the diplomatic community.

- The Special Representative visited Kompong Speu and Battambang provinces, where he met with victims of land disputes and with representatives of NGOs and provincial authorities.
- He has raised his concerns in public statements, communications to the Government and a report of the Special Rapporteur on adequate housing about the eviction of poor people from settlements along the Bassac River in Phnom Penh.
- He provided a public statement at the end of the mission where he welcomed the mid-January 2006 releases from prison and the return to Cambodia of several persons active in public life.

Summary and key conclusions:

The Special Representative expressed disappointment that human rights continued to be violated on a systematic scale. He regretted the ruling party's dominance of the political sphere, the entrenched corruption and the impact of illegal land grabbing on the rural poor. He emphasized the responsibility of the international community to support the people of Cambodia in their quest for justice and accountability.

Adherence to International Human Rights instruments

The Country's Constitution incorporates the core international human rights instruments, to which it is a party⁵, but it has been massively disregarded and its safeguards have been weakened.

Effective Remedy for Human Rights Violations under the Constitution

In practice, neither the constitutional guarantees of human rights, nor the institutions created to enforce them, provide an effective remedy for violations of human rights; moreover they have shown a marked reluctance to challenge government legislation on the grounds that it violates human rights guarantees. Individuals have very restricted rights under the Constitution to seek the Council's assistance to claim their constitutional rights.

Independence of Judges and lawyers

The lack of independence and integrity of the judiciary, the prosecutorial authorities and the legal profession, and its inability to secure effective remedy for violations of human rights, have been matters of continual concern. Judges have continued to be subject to political interference. Ministers and senior government officials enjoy wide immunities for breaches of the law. Corruption has continued to be widespread.

Fundamental freedoms of expression, association and assembly

The Government has generally reacted harshly to activities that are critical of its policies and practices. It has been hostile to organizations defending, advocating and monitoring human rights. The development of the media has been negatively affected in Cambodia by unresolved murders of journalists, threats against editors, and attacks on newspaper offices.

Impunity and accountability

Impunity for serious human rights violations remained deeply rooted in Cambodia. This has other far-reaching effects insofar as it allows official authority to be abused for personal enrichment. It also results in the distorted allocation of economic resources, further exacerbating existing inequalities and perpetuating poverty.

Rehabilitation and reconstruction with full respect for human right for all

⁵ Cambodia was party to the CEARD and in 1992 it acceded to five of the remaining six core international human rights treaties. It ratified the two optional protocols on children's rights. It is not party to the second Optional Protocol to the ICCPR, and it has not accepted individual communications or inquiries under the treaties which provide for these procedures. In November 2006 the National Assembly started the process of ratifying the Optional Protocol to the CAT signed earlier in 2005. A/HRC/4/36, 30 January 2007, para 15.

While the National Strategic Development Plan 2006 to 2010 commits the Government to key principles such as participation, non-discrimination and accountability, it does not include concrete measures to translate these principles into practice. There is a little evidence of significant reduction in income poverty, human deprivation and inequality.⁶

Access to land and livelihoods

Land grabbing continued to deprive the rural poor and indigenous communities of their land and livelihoods. Cambodia's rural populations find themselves increasingly displaced from the land, forests and other resources. The judicial system has upheld unlawful land deals leading rural Cambodians to mistrust the judicial system as a means to claim their rights and to provide effective redress and remedy.

Economic land concessions have not had tangible benefits in rural areas but instead have deprived communities of vital sources of livelihoods, and increased the accumulation of property and wealth in the hands of those with political or economic influence.

Transparency and availability of information on economic land concessions is incomplete. NGOs advocating for equitable **access to justice in relation to land and natural resources** face an increasingly repressive environment.

The international community

The Special Representative underlined the moral and legal responsibility of the international community and its members to support Cambodia in its quest to strengthen human rights and accountable democratic institutions.

Key recommendations:

The Government should take steps in the following areas of concern:

Rule of law and protection of human rights and fundamental freedoms

- Ensure independence, impartiality and effectiveness of the judicial system as a whole;
- Implement the laws in accordance with the Constitution and international instruments;
- Conduct impartial investigations into grave violations of human rights, past and present.
- Uphold the right of all Cambodian citizens to promote and protect human rights and fundamental freedoms;
- Establish an independent commission to investigate complaints on military or police conduct;
- Protect freedoms of expression, peaceful assembly, and association.
- Ensure that demonstrations are dispersed only if absolutely necessary.
- End forced evictions.
- End forced confessions as evidence in trials. Institute a system of regular visits of NGOs to police cells and detention centres. Complete ratification of Optional Protocol to the *Convention Against Torture*;
- Introduce non-custodial options as an alternative to imprisonment, first of all for children;
- Ensure that lawyers, family members and human rights organisations have regular access to prisoners and detainees.

Access to land and livelihoods

- Make publicly available details of all approved concessions;
- Undertake public consultations and impact assessments prior to granting land concessions;
- Cancel concessions that do not comply with the requirements of the Land Law;

⁶ Draft study by the Cambodia Development Resource Institute, a research institute in Phnom Penh. A/HRC/4/36, 30 January 2007, para. 63.

- Ban the granting of economic land concessions in areas of primary forest;
- Ban the sale of land and the granting other concessions in areas occupied by indigenous peoples;
- Protect indigenous land pending the registration of collective title, and finalize the process of registration of collective title over indigenous land;
- Protect the rights of NGOs to advocate for equitable access to land and natural resources.

Adherence to international instruments

- Ratify the Optional Protocols to the ICCPR and the CEDAW.
- Accede and comply with the UN Convention against Corruption.
- Submit Cambodia's initial report on its compliance with the ICESCR;
- Uphold and comply with the 1951 Convention on the Status of Refugees and its 1967 Protocol.

COUNCIL MONITOR STAFF

Gareth Sweeney, Human Rights Officer, Information Program

Michael Ineichen, Fellow, Information Program

Tony Morris, Information Program

Eléonore Dziurzynski, Communications Officer, Information Program

Contributors

Shushan Khachyan, Intern

ABOUT THE PUBLICATION

The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at www.ishr.ch/hrm/council

SUBSCRIPTION

If you wish to receive Council Monitor reports by e-mail during the Council session, please e-mail information@ishr.ch with 'subscribe' in the subject line. Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

COPYRIGHT AND DISTRIBUTION

Copyright © 2007 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

DISCLAIMER

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on or any use of this publication. We are however happy to correct any errors you may come across so please notify information@ishr.ch.