

Statement to the UN Human Rights Council by the Special Representative of the Secretary General in Cambodia for human rights on 12 June 2007

I made my third official visit to Cambodia from 29 to 31 May 2007. The main objective of the visit was to discuss my report and recommendations with the Government before presenting them to the Human Rights Council. I also wished to update myself on the human rights situation. I had fruitful discussions with representatives of civil society, political parties, the National Election Commission, trade unions, United Nations agencies and the diplomatic community. Towards the end of my visit I had the opportunity to meet the Minister of Interior and Deputy Prime Minister, H.E. Sar Kheng, the one Government official who accepted my request for a meeting, for which I am grateful. I welcome the comments of the Government which have been circulated to this Council, which were transmitted to me last week. Although they do not address the core issues that I have raised in my report and recommendations, I believe that the comments provide a basis for further consultations and discussions with the Government and civil society.

My report was finalised at the end of 2006, the year which marked the 15th anniversary of the Paris Peace Agreements that ended the war and civil strife. Since then considerable progress, with significant international assistance, has been made in rebuilding Cambodia. The country has been brought under unified administration. Starting from a low base, there have been improvements in access to education and health. In recent years the rate of economic growth has been impressive.

Elections have been held, with varying degrees of fairness. The most recent were the elections to commune councils which were relatively peaceful. However, the electoral process is still not fully independent of government control and further steps are needed to ensure that voter registration and voting are not prone to manipulation at local levels. National elections are due next year and there are considerable advantages in a review of the electoral system to ensure its independence. The President of the Electoral Commission, with whom I had a useful meeting, told me of the intention of the Commission to examine and remove some weaknesses that had been highlighted during the commune council elections.

Also on a positive note, Cambodia ratified the Optional Protocol to the Convention against Torture in January 2007. This is a welcome development and a good occasion for the Government to review its reporting under the Convention and to renew efforts to implement all the recommendations of the Committee against Torture. It must now establish within a year an independent national mechanism, in accordance with Paris Principles, for the prevention of torture and other forms of cruel, inhuman and degrading treatment or punishment.

I understand that at long last the Code on Penal Procedure has been adopted. I welcome this and hope that it will be speedily implemented. I also hope that other long awaited laws will be adopted in the near future.

I welcome these positive developments. However, in most areas covered in my mandate, progress has been disappointing. A key concern of the Paris Peace Agreements was the full establishment of democratic values and practices, and the central importance of the protection and promotion of human rights in restoring and maintaining peace and prosperity for all Cambodians. In these Agreements, the Cambodian authorities undertook to protect

human rights and to ensure that the policies and practices of the past would never be repeated. The Agreements set out in detail the human rights provisions to be included in the new Constitution, and require that human rights be enforced by an independent judiciary and that 'aggrieved individuals' should be able to enforce their rights before the courts. Adherence to international human rights instruments was also a core part of the Agreements. There was provision for the office of a Special Rapporteur on human rights.

Legal and judicial reform

In my present and previous reports, I have urged fundamental legal and judicial reforms. The reason for this is that without a proper system of remedies, of protection against state or non-state oppression, and an impartial judiciary which ensures equal treatment for all, human rights will be violated and the legal system will be used to cover up the violations. With copious illustrations, I have reported that this is precisely what is happening in Cambodia. In the face of my recommendation that the Constitutional Council should be allowed the independence guaranteed in the Constitution, the President of the Council was elected as a member of the Standing Committee of the Cambodian People's Party in March this year, although I understand that his term on the Council is due to come to an end soon.

In my report I discuss the case of two persons who were charged with the murder of trade union leader Chea Vichea in January 2004. They were convicted in August 2005 without any substantial evidence; the 'confession' of one of them, allegedly secured under duress, was retracted, and the trial failed to meet basic standards of due process. They also lost on appeal in April this year, despite the conclusion of the prosecutor that 'there were huge gaps in the police investigation'. The court failed to examine strong exculpatory evidence and alibis that neither accused was near the scene of the crime. It is widely believed that the two were picked in order to hide the killer in a murder that seemed politically motivated.

Another politically motivated prosecution, this against the a former prime minister and president of the National Assembly, Prince Norodom Ranariddh, held in absentia, also ended in conviction, and prevented him for campaigning for his party in the commune elections.

In relation to the Extraordinary Chambers in the Courts of the Cambodia established for the trial of leaders of the Khmer Rouge, I look forward to the speedy adoption of its Internal Rules which have taken all of a year since the appointment of its judges. It is to be hoped that the trials can now get underway without further delay. I also want to emphasise the importance of independent international monitoring of the trials in accordance with article 12 of the Agreement and the right, indeed duty, of any monitor to bring matters of concern to the public attention.

Corruption continues to undermine the Cambodian court system. Serious allegations, including bribery and 'kickbacks', have been raised about the manner in which Cambodian judges and other officials were appointed to the Extraordinary Chambers. Instead of investigating the allegations, Government officials have threatened to deny entry to the staff of Open Society Justice Initiative which has pressed for these allegations to be credibly investigated. The allegations need to be investigated and resolved before they fatally undermine the integrity of the trial process and negate the role of the Extraordinary Chambers as a model for the rest of the court system in Cambodia.

Freedom of expression

Since the law repealed imprisonment as punishment for criminal libel, the Government has tended to use the offence of ‘disinformation’ for which the accused may be imprisoned. A conviction for ‘disinformation’ is possible only for information which is false, and the publication has disturbed or is likely to disturb the public peace. These elements have not existed in other recent cases; and the accusations and convictions are a total abuse of the law to suppress critical voices.

I give just two examples. A teacher was convicted of ‘disinformation’ for publishing a book strongly critical of the prime minister. The report of a court appointed medical examination, which could have been key to his release, was withheld from the court. The book alone was considered sufficient evidence for a conviction and the accused was sentenced to imprisonment for two and a half years early this year.

Three members of the Khmer Krom community were accused of ‘disinformation’ for allegedly distributing leaflets denouncing the prime minister. Although there was no evidence linking them to the leaflets, in February this year they were convicted and sentenced to prison. After serving their sentence, they were reportedly compelled to go into hiding.

Impunity

I and my predecessors have addressed the question of impunity for the friends of the regime in reports to the Council and the Commission on Human Rights. Yet, there is little evidence that the practice of impunity has improved, or that credible efforts are being made to end it. The judgement of the Appeal Court in the case of Chea Vichea was most disheartening in this regard.

My present report identifies several violations in the field of economic land concessions, which continue unabated, and where impunity prevails. Few prosecutions have been brought; while instead the victims of violations are punished.

A detailed report by Global Witness published on June 1 on logging concessions and the destruction of forests alleges the violations of numerous laws by those close to the highest authorities in the land. The report made a series of important recommendations to the Government to address and correct the problems. However, the response of the Government has been to ban the report and to blame Global Witness.

Trade union rights

The future of an independent trade union movement in Cambodia is under threat. I have mentioned the unresolved murder of Chea Vichea. I am sorry to have to report that another trade union leader, Hy Vuthy, was killed on 24 February 2007 in a manner very similar to the murder of Chea Vicheai. No one has been apprehended so far. Fears were expressed to me that once again innocent persons might be arrested and charged with the murder.

This murder is indicative of the threatening environment in which trade unions have to work. The impunity of this killing will confirm the state complicity in maintaining such an environment. In a report (‘Cambodia: Killings, Violation, Intimidation and Discrimination’, May 2007) the Free Trade Union of Workers of the Kingdom of Cambodia comments on the failure of the Government to protect the right of association, which it attributes to the lack of ‘political will and by confused and political relationships with employers and union

leaders'. Requests to hold peaceful demonstrations or strikes are routinely denied; and if demonstrations do take place, they are swiftly suppressed by excessive use of force. The report says that 'many workers, trade union leaders, activists and members have received injuries, intimidation and assassinations due to violent dispersal and forced arrests'.

When I raised with the Government my concerns about restrictions on and threats to the trade union movement, I was told that restrictions were sometimes necessary in order to encourage foreign investment and ensure profits for foreign investors. This despite the statement of an organisation, Business for Social Responsibility, an umbrella body of companies, that deplored the killing of Hy Vuthy and expressed its concern about, in its words, 'what appears to be a pattern of violence against trade union leaders'.

Land and livelihood

On all my visits, I have paid special attention to land issues. Cambodia is a largely agrarian society dependent on land and its natural resources. At the same time land has become a critical, and controversial, factor in large scale agricultural and industrial developments. How Cambodia manages and distributes its land and natural resources, and for whose benefit, is one of the most pressing issues facing the country. My predecessor explored one important dimension of land policy, economic land concessions.

I have just released an up date of his 2004 valuable report on this subject. It finds that as a result of the failure to comply with the legal framework on land concessions, economic land concessions have encroached upon the land and forest resources of communities, with detrimental impact on their rights and livelihoods. The judicial system has failed to uphold the rights of affected communities and respect for the law.

The general situation as regards land has got worse. More people have been evicted from their lands, in rural as well as urban areas, with excessive force. Their basic rights and livelihoods have suffered. A recent research report found that involuntary landlessness is one of the main reasons for poverty in rural Cambodia. In particular, that female-headed households have considerably lower access to the land resources, despite the important role women play in the agricultural sector. There has been a massive, three-fold increase in the grant of economic land concessions from 2005 to 2006, contrary to my recommendations and those of my predecessor, increasing landlessness of rural people. In this context I would urge the Government to submit its first and long overdue report on the International Covenant on Economic, Social and Cultural Rights.

Rights of indigenous peoples

Indigenous peoples continue to suffer the loss of their traditional lands through land grabbing and the grant of concessions. I was assured during my visit in 2006 that a sub-decree on indigenous peoples' land would be issued shortly which would protect their rights. There is still no sub-decree but I understand that a policy paper is being prepared—an early draft is inconsistent with the protection of collective rights guaranteed in the Land Law. Meanwhile indigenous communities continue to lose their land, which is coming under increasing pressure from 'development' initiatives. The Government indicated its intention to make the north-eastern provinces of Cambodia (including the predominantly indigenous provinces of Ratanakiri and Mondulakiri) the 'fourth development pole' of Cambodia by 2015. Urgent measures are required to protect indigenous rights to land.

The Government tilts in favour of business companies whenever their interests clash with the interests of rural or urban people. Many favours to companies, some of the biggest of which are run by persons with considerable political influence, are granted in violation of the law. The violations of the law have become an important factor in the operations and profits of some companies, and have further weakened the rule of law.

Conclusion

In my first report to the Council, and in my remarks to the Cambodian Government and members of the international community during my visits, I emphasise the importance of using the rights-based approach to economic, social and political development. The examples I have given of so called 'development' in the forestry and law areas show that economic growth by itself does not solve the pressing problems of poverty and deprivation. Indeed, it has aggravated these problems. Human dignity, equity, meeting the basic needs of the people, participation and the development of people's capacity and choice are among the principal values and objectives of human rights. Economic and political policies and practices in Cambodia do not accord any particular importance to these values.

A wealthy and powerful social class has emerged on the back of the state— through the exploitation of the people and the country's resources, relying on access to, and accumulation through, the apparatus of the state. Disparities of wealth and access to income and opportunities among the people have widened at an alarming state. Confidence in the impartiality of the state has weakened. A country coming out of such intense conflict and oppression as Cambodia needs to build trust among communities and between them and the state. Trust can only be built on respect for equal rights of all the people.

The international community has long pushed for an end to impunity and the establishment of the rule of law, and has invested considerable financial and human resources in assistance for this purpose. But it has not succeeded in impressing on the Government the importance of the rule of law and respect for human rights under the rule of law. The failings of the rule of law, deliberately engineered, have provided fertile ground for corruption and the exploitation of weaker sections of society. Perhaps the imminence of the Khmer Rouge trials will help to highlight the weaknesses of the legal system and increase pressure for reform. But there are fears that as oil and other mineral resources in Cambodia come on tap shortly, the Government will become even more careless of legality, transparency and the human rights of people. I welcome the efforts of the international community to get the Royal Cambodian Government to implement revenue management measures set out in the IMF's Guide on Resource Revenue Transparency and to join the Extractive Industries Transparency Initiative.

I have made what I believe to be important recommendations in my report. I hope that the Council will take these forward and that the report and recommendations will become the subject of national dialogue within Cambodia. Fifteen years after the rehabilitation of Cambodia, important objectives and promises of the internationally negotiated Paris Peace Agreements remain unfulfilled. I trust that this Council will do all it can to ensure these objectives and promises are realised.