



**Special Representative of the Secretary-General  
for Human Rights in Cambodia, Mr. Yash Ghai**

**Statement to the Human Rights Council  
26 September 2006**

I have undertaken two missions to Cambodia since my appointment in November 2005. In discharging my mandate, I have been guided by the recommendations of my three distinguished predecessors, the Commission on Human Rights and the General Assembly, and by relevant provisions of the 1991 Agreement on a Comprehensive Political Settlement of the Cambodia Conflict. I have seen as my primary responsibility entering into constructive engagement with the Royal Government and the people of Cambodia.

After my first visit last year I prepared a detailed report, analysing the state of human rights and democracy and making a number of recommendations. I wish to speak candidly to this Council, in the spirit in which the Council was established, to ensure the full enjoyment of human rights throughout the world.

I am concerned that few of my or my predecessors' recommendations have been implemented, and that human rights continue to be violated on a systemic scale. I consider that this is not because of carelessness, or lack of awareness of rights or the institutional and procedural rules to safeguard them, or the fact that Cambodia suffered so massively during the regime of Democratic Kampuchea, or because of poverty, although these are often the reasons given. One does not need expertise in human rights to recognise that many policies of the Government have subverted the essential principles of democracy and due process, deprived people of their economic resources and means of livelihood, and denied them their dignity. I have come to believe that these policies are integral to the political and economic systems through which the Government rules, which has manipulated democratic processes, undermined legitimate political opposition, and used the state for the accumulation of private wealth. The law or practice limits people's rights to associate, to assemble freely, or to freely express their views. All major constitutional institutions have been subverted, so that there is no effective separation of powers, a principle which was intended to underlie the 1993 Constitution. The legal system does not provide redress or protection to communities or individuals. The Government has used prosecutors and judges, while pretending to uphold their independence, to intimidate or punish those whom it dislikes or finds inconvenient. It has applied the law selectively and its supporters have enjoyed immunities from the civil and criminal process for blatant breaches of the law. In short, I believe that the deliberate rejection of the concept of a state governed by the Rule of Law has been central to the ruling party's hold on power.

My report and those of my predecessors provide ample evidence of this conclusion. I have time now only to refer to some recent instances which corroborate it.

### *The dominance of the political sphere*

The Cambodian People's Party has established dominance over the apparatus of the Cambodian state through several means, including firm control over the electoral commission, and the intimidation of its critics and political opponents. Following the formation of the new Government in July 2004, it used its majority in the legislature to exclude members of the main opposition party, the Sam Rainsy Party, from taking part in parliamentary committees, and to then remove the parliamentary immunity of the leader of the party, and two of his colleagues in early 2005. In the latter part of the year, critics of the CPP were arrested or forced into exile, charged with various offences, including criminal defamation. A deal struck with the Prime Minister early this year enabled them to return and led to the suspension of charges against them, although the charges remain. Sam Rainsy, convicted of defamation in absentia, was pardoned, as was a parliamentarian of his party, convicted after a trial which fell short of accepted standards of due process. The suspension or withdrawal of charges or the grant of pardon is the responsibility of the prosecutor and the King, respectively. Yet they were negotiated with and granted effectively by the Prime Minister.

In August 2006 the law was amended, putting parliamentarians at greater risk. In derogation of the Constitution as well as international norms, the Law on the Status of Parliamentarians has imposed extensive qualifications on their immunity in respect of the freedom of expression. It opens the way for Members whose comments are deemed to 'abuse an individual's dignity, social customs, public order and national security' to suffer the same legal penalties that already restrict the freedom of expression of ordinary Cambodian citizens. The same law authorises the arrest of parliamentarians without prior lifting of immunity.

Political control has been reinforced by prosecutions or threat of prosecutions under the law which criminalises defamation. Its extensive use in 2005 (against politicians, journalists, trade unionists and human rights activists) led to much criticism and pressure from local and international communities for its repeal. The law was amended in May 2006 to remove the penalty of imprisonment, but the offence was retained. Since then the Government has used another legal provision, on 'disinformation', so that persons who upset the government can still receive prison sentences and be held in custody pending trial. It has also used incitement which carries a prison sentence of up to five years.

Since 2003, the Government has banned nearly all peaceful protests, rallies and marches, to 'protect public order or security'. Peaceful meetings and assemblies have been broken up by state authorities, using arms and other forms of violence. A draft law on public assembly has yet to meet international standards that Cambodia has signed up to.

### *Subversion of the legal and judicial system*

The Government has subverted the scheme of the Cambodian Constitution for an effective legal system protecting the rights of the people and establishing the rule of law. Laws critical to the development of the legal system have not been enacted, although they have been on the agenda for several years and considerable foreign assistance has been provided. The Government has also undermined the independence of the judiciary and prosecutorial authorities, which were intended to be protected by the Supreme Council of Magistracy chaired by the King. It has removed the secretariat of that Council to the Ministry of Justice, and has effectively taken over decisions on prosecutions. Supporters of the Government are almost never prosecuted. My predecessors pointed repeatedly to the wide impunity given to

them for the most serious violations of the law. At the same time spurious charges are brought against opponents of the government or those who struggle for democracy and rights.

There is considerable circumstantial evidence of the manipulation of the judiciary by the executive. In a well known case, two persons, widely considered to be innocent, were arrested for the murder of a prominent trade unionist. They were convicted and sentenced to 20 years imprisonment. Recent evidence reinforces the belief they are innocent, and that those responsible remain at large. A Phnom Penh Municipal Court judge appointed to investigate this case dismissed the charges as without foundation. He was removed from that office by the Supreme Council of Magistracy and subsequently assigned to a remote province, while charges against the accused were reinstated. In politically driven cases, judges convict on the most flimsy evidence or incorrect interpretations of the law. So convenient have the courts become, that other institutions and mandatory procedures are often bypassed in favour of litigation before the courts. An outstanding example of this practice is bypassing of cadastral commissions under the Land Law 2001, depriving many poor people of their land. There is also selective enforcement and use of the penal provisions in the Land Law. While they are rarely enforced to protect the land rights of powerless people, including indigenous people, they are often called upon to assert the claims of those with greater political and financial power, or links to people with influence.

#### *Corruption*

Corruption is widely viewed as an endemic problem which the Government has long been pressed to address, and about which it has itself expressed concern. In recent months convincing evidence of corruption on a wide scale within various government ministries has come to the surface. Why then does the Government continue to resist the enactment of effective legislation, under discussion since 1995, despite very considerable local and external pressure, and instead set up an administrative body to investigate corruption, headed by senior CPP-affiliated officials, in which there is little confidence?

#### *Social justice and natural resources*

Over the years, thousands of families have been illegally and forcibly evicted from their homes and land, in Phnom Penh and elsewhere, in a classic example of land grabbing, in which little regard is paid to the law and in which those who lose their land have no redress. The livelihood of families is affected, whether they are engaged in agriculture or urban employment. Their faith in the legal system is destroyed. I remember well talking to people who had been dispossessed of their land, who were desperate when they heard that their case had been taken to a court by those who had seized the land, for it was easy to predict the verdict. The sense of their own powerlessness deepens and becomes even more debilitating.

The indigenous communities face special problems of land grabbing. Land being central to the organisation of the community, the loss of land destroys the cohesion of the community and leads to social disintegration. The Government has not yet put in place legislation to protect their land, despite assurances. Nor has it paid any heed to recommendations to place a moratorium on further land sales or alienation pending such legislation.

The Government has given enormous land concessions to local and foreign companies and the military, without disclosure or transparency, or consultations with communities whose land is taken away. This leads me to ask what and how much will be left for ordinary Cambodians. Disclosure and access to information becomes all the more important with the discovery of significant oil reserves in the Gulf of Thailand. Foreign oil companies have

reportedly signed contracts for their exploitation, but I understand that these contracts have not been sighted by relevant government departments, let alone the public.

*Responsibility of the United Nations and international community*

The international community, through the United Nations and other multilateral and bilateral means, bears a special responsibility to support Cambodia and its people in their quest for justice and accountability. But its engagement must be based on a hard headed analysis of the underlying causes of the sorry state of human rights and social justice in Cambodia.

Cambodia's neighbours and influential governments in the Asian region should be far more active in discharging their responsibilities towards Cambodia and its people, as parties to the United Nations Charter and international human rights treaties, as well as the Paris Peace Accords. Some are also members of this Council.

With aid-giving comes the responsibility to ensure that it helps the people. The donor and international community in Cambodia must give far higher priority to human rights and actively advocate for their implementation. They must energetically support poor and powerless communities and Cambodian non-governmental organisations defending and working for human rights. It is not sufficient to rely on technical assistance and capacity building or emphasise adherence to human rights treaties and protocols (useful as these are). Nor are new laws or suddenly created institutions the panacea, for the Government has disregarded laws or, through abuse, turn them to its own partisan advantage, and it has set up new institutions instead of making existing ones work.

I am informed that this morning the Prime Minister opened a conference on establishing a national human rights institution in Cambodia. I hope that this will mark the beginning of a genuine dialogue for human rights in Cambodia, and agreement that basic laws and independent institutions, including a professional, impartial judiciary, need first to be in place. Without these, such an institution cannot be effective.

The Government will no doubt think I have been unfair in what I have said, but I would invite it to inform the Council about the concrete measures it has taken and intends to take to address the issues I and others have raised and to respond to the recommendations I and my predecessors have made, as well those of the international community through resolutions of the General Assembly and the Commission on Human Rights, and of the treaty bodies.

I first visited Cambodia in 1992, and saw the terrible state of the country as it was then emerging from years of war and civil strife. I recognise the progress that has been made in rebuilding Cambodia. However, fifteen years after the adoption of the Paris Peace Accords, the provisions relating to human rights have yet to be fulfilled. I believe that concern about the human rights record of the Government of Cambodia needs to be expressed in unambiguous terms if these promises are to be kept.

I look forward to continuing dialogue on the issues I have raised during my third mission to Cambodia in November.