

## **Special Representative of the Secretary-General for human rights in Cambodia concludes fourth official visit**

### **United Nations, Cambodia Office of the High Commissioner for Human Rights**

*Phnom Penh 10 December 2007* - The Special Representative of the Secretary-General for human rights in

Cambodia, Yash Ghai, concluded his fourth official visit to Cambodia today. The purpose of the visit was for the Special Representative to update himself on recent developments in advance of preparation of his next report to the United Nations Human Rights Council which will focus on the issues of rule of law and access to justice.

The Special Representative regrets that no members of the Royal Government of Cambodia were available to meet with him during the mission. The Special Representative is aware that he has been criticized by the Government for not taking its version of events sufficiently into account in his reports and presenting a view which it considers overly sympathetic to the Government's critics. In advance of this mission, meetings were requested with the Prime Minister, the Ministers of the Interior, Agriculture and Justice, the Co-Chairs of the Council for Legal and Judicial Reform, as well as the Chairman of the Government's Human Rights Committee. None of these meetings materialized. It is difficult to see how the Government's criticism of the Special Representative can be sustained, when it declines all opportunities to present its view. Nevertheless, the Special Representative remains willing to meet with the Government to discuss the human rights situation in Cambodia in a spirit of impartiality and openness.

During his stay, Mr Ghai was able to meet with representatives of civil society, political parties, members of the legal profession, Cambodian and International Judges at the Extraordinary Chambers in the Courts of Cambodia, United Nations agencies and the diplomatic community.

The Special Representative paid particular attention to the courts, the legal profession, and the prison system. He focused on the extent to which these institutions meet international norms and are able to uphold the rule of law and protect the rights of Cambodian citizens, especially vulnerable and disadvantaged groups. The Special Representative examined some aspects of criminal procedure. He looked in some detail at the Extraordinary Chambers of the Courts of Cambodia, as much for their expected contribution to raising criminal procedure standards—and awareness of these standards amongst the general public—as for their contribution to ending impunity for human rights atrocities committed by the Khmer Rouge from 1975 to 1979.

Mr Ghai sought to obtain an in-depth understanding of the issues of housing evictions and land disputes, especially cases alleged to involve the unfair acquisition of land from communities. He traveled to Rattanakiri to obtain first-hand information on land disputes in the province and meet with community activists and their lawyers, as well as court and provincial government officials. He also paid a visit to the prison in Banlung to get a sense of the conditions in which prisoners are kept, and of the resources made available to the prison administration.

The Special Representative visited the Phnom Penh communities of Dey Krahorm and Group 78 who face the threat of being forced from their homes. He was deeply distressed to see the conditions in which people live, even in the heart of the capital city, and to learn of the fears of those faced with imminent eviction. The Special Representative regrets that his earlier recommendations for more equitable procedures to protect the rights of vulnerable groups had not been acted upon. State authorities as well as companies and politically well-connected individuals show scant respect for the law. This unprincipled approach to law has undermined the foundations of the rule of law.

It is not for the Special Representative to pronounce on the merits of cases before the courts. But it is very striking to note the people's lack of trust in those courts. People have little faith that they will get justice even if their case is heard. Ironically, even the rich and powerful apparently have little faith or patience—for they often meet legal claims with counter-charges of defamation or incitement, rather than allow the normal legal process to take its course. The Special Representative is gravely concerned at recent attempts to place restrictions on the ability of lawyers to represent their clients' best interests. In particular, the charges of incitement against legal aid lawyers represent an unwarranted attempt to criminalize the lawful activities of lawyers.

The courts and the legal profession have, or should have, a key role in protecting the rights of citizens. It is a cardinal principle that all are equal before the law. In reality, all countries face challenges in living up to the ideal. But in Cambodia that shortfall seems to have the proportions of a gulf. The system has failed the people of Cambodia woefully.

The Special Representative has been struck by the extent to which non-governmental organizations' space for action has been restricted in recent months. He heard many complaints of increased executive interference. This makes it harder for these bodies to play their own important role in upholding the rule of law—a role made even more important given the official court system's ineffectiveness in protecting rights. The NGO sector is not alone in living with fear and a sense of repression by an almost all-powerful executive.

The appropriation of land and evictions are sometimes justified as making way for “development”. The reality seems to be that the poverty of some is worsened, while the wealth of others grows apace. The legal system seems to be the tool of the rich and the powerful, while the poor are further impoverished as the courts show no willingness to take a stand against manipulation and bribery.

These matters are not for Cambodians alone. The international community plays a very important role in the country. It is not enough to say “we must not interfere”. It already “interferes” by its support for development projects, and its very significant financial support for the government's budget. The United Nations and the international community have an obligation to ensure that the system they are supporting does not violate the very norms that the international community purports to stand for.

On a more positive note, the Special Representative is pleased that the long-awaited Codes of Penal and Civil Procedure have finally entered into force and hopes that the implementation of the new procedures will provide an opportunity for the courts to apply international standards of justice in accordance with Cambodia's international obligations. Laws alone are not enough of course. The Special Representative hopes that the authorities will allow the law to be used to convict the guilty. Similarly, it is not for lack of laws that Born Samnang and Sok Sam Oeun were convicted and remain in detention, despite convincing evidence that they are not guilty of the murder of Chea Vichea.

He also welcomes the recent accelerated progress at the Extraordinary Chambers. At the same time, certain developments, including the re-assignment by the Executive branch of government of one judge to another post and the allegations of corrupt recruitment practices, are causes for concern. The Special Representative hopes that the ECCC, as an integral part of the Cambodian court system, will strictly apply international standards and thereby set a positive example to be followed in the domestic courts. He discussed with judges and officials ways in which to make this a reality so that the ECCC positively influences the consciousness of the people as well as the functioning of the legal system. He feels, however, that the effectiveness of the ECCC in terms of ending impunity will be blunted if it limits its proceedings to a politically-agreed number of individuals.

The Special Representative will issue his next report early in 2008 and will present it to the Human Rights Council in Geneva in March 2008.