
amnesty international

Cambodia

Submission to the UN Universal Periodic Review

**Sixth session of the UPR Working Group of the
Human Rights Council**

November - December 2009



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Under section B, Amnesty International raises concern at the lack of implementation of Constitutional guarantees to protect human rights, the slow pace of judicial reform, as well as a range of concerns related to the Extraordinary Chambers in the Courts of Cambodia, including political interference in the work of the court, the scope of investigations, persistent allegations of corruption involving Cambodian staff in the Court, and lack of resources for the Victims Unit.
- Section C highlights Amnesty International's concerns at lack of integrity and independence of the judicial system leading to long-standing impunity for human rights violations, the killings of trade union activists, forced evictions, harassment and intimidation of human rights defenders, restrictions of the rights to freedom of expression, association and assembly, and sexual violence against women.
- In section D, Amnesty International makes a number of recommendations for action by the government each area of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

The Constitution

Article 31 of the 1993 Constitution of the Kingdom of Cambodia gives the force of law within Cambodia to the Universal Declaration of Human Rights and the international human rights treaties that Cambodia has ratified, which include the core international human rights instruments:

"The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights."

This was reaffirmed in a landmark ruling on 10 July 2007 by the Constitutional Council, which instructed courts to consider "international conventions that Cambodia has recognized" as domestic law alongside the Constitution and other applicable law.²

The Constitution specifically guarantees, among others, the rights to life, to equality before the law and to actively participate in public life. It provides for the right to form and join independent trade unions, and other human rights, including freedom of movement, expression, religion, assembly and association. It provides guarantees against all forms of discrimination against women, and that the rights of children as stipulated in the Convention on the Rights of the Child shall be protected (Article 48). Article 128 provides that the Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.

Key provisions in the Constitution include guarantees that no one may be prosecuted, arrested or detained except in accordance with the law; fair trial guarantees, including that confessions obtained by force shall not be admissible as evidence of guilt, that the accused shall be presumed innocent and that every citizen has the right to defence; the right of all citizens to own land, and that property may only be confiscated in the public interest as provided for by law, with fair and just compensation provided in advance. However, as detailed below, the provisions for human rights in the Constitution are seldom implemented or used to protect human rights in practice.

In April 2007, Cambodia ratified the Optional Protocol to the Convention against Torture, but it has yet to establish an independent National Preventative Mechanism as required by the Protocol. In 2008, the government engaged in discussions about such a mechanism, and agreed to receive a visit by the UN Sub-Committee on Prevention of Torture during 2009.

² Decision No. 092/003/2007, 10 July 2007. The Constitutional Council was asked to consider whether Article 8 of the 2002 Law on Aggravating Circumstances for Felonies was unconstitutional as it seemed to violate article 37 of the CRC. The Constitutional Council ruled that the article was constitutional as there was no intent to apply it to minors and remove the protection provided to juvenile offenders by earlier domestic law, and that judges should continue to consider the age of an offender in accordance with the CRC.

Legal reform

In 2007, the Code of Civil Procedure and the Code of Penal Procedure entered into force, and in February 2008 the Code of Ethics was adopted by the Supreme Council of Magistracy.

However, the pace of long-awaited judicial reform has been slow and incomplete. Neither the new Penal Code, still being drafted after 14 years, nor the anti-corruption law – a high priority of the international donor community – have been promulgated by April 2009. Other laws still in the drafting stage are the Law on Court Functioning and the Law on Judges and Prosecutors. A law on associations (NGO law) is also being drafted. In September 2008 the Prime Minister stated his intention to ensure that this would be passed, partly in order to increase control over non-governmental organization (NGO) funding and objectives. NGOs in Cambodia have expressed serious concern that the law will place further restrictions on their activities.

A proposal for the establishment of a National Human Rights Institution (NHRI), independent of the government, has been under discussion since 2006. In December 2008, representatives of the government and civil society met and agreed to establish a timetable for consultation on an enabling law, drafted by an NGO working group, to put to the National Assembly. The mandate and powers of a Cambodian NHRI have yet to be agreed. Given the well documented lack of independence of government institutions in Cambodia, there is widespread scepticism that the government has the political will to agree to an NHRI which lives up to the Paris Principles, despite a commitment by the Prime Minister.

A new anti-trafficking law adopted in March 2008, was criticized by NGOs for focusing on the arrest and detention of sex workers instead of traffickers.

Extraordinary Chambers in the Courts of Cambodia

Under an agreement between the United Nations and the Cambodian Government, the Extraordinary Chambers in the Courts of Cambodia (ECCC) were finally set up in Phnom Penh in 2006. They were established to prosecute “senior leaders of Democratic Kampuchea and those who were most responsible” for gross human rights violations during the Khmer Rouge (Democratic Kampuchea) period from April 1975 to January 1979. The ECCC became operational in June 2007 when the internal rules were adopted. By the end of 2007, five suspects were in ECCC detention. They were Kaing Guek Eav, also known as Duch, the commander of security prison S-21 (also known as Tuol Sleng); former head of state Khieu Samphan; former Foreign Minister Ieng Sary; former Minister of Social Affairs Ieng Thirith (f); and so-called Brother No 2, a former senior official in the Communist Party of Kampuchea, Nuon Chea. All five were charged with crimes against humanity, and four of them also with war crimes.

The historic start of the first trial — the first substantive hearing of Duch’s case — began on 30 March 2009. The trials for the other four accused are still in preparation.

In 2008, the international Co-Prosecutor identified six additional cases for investigation. Citing political reasons, the Cambodian Co-Prosecutor refused. In December 2008, the Pre-Trial Chamber was tasked to settle the dispute, which highlighted concerns over interference by the executive branch of the government with the ECCC. The Prime Minister increased such concerns on the second day of Duch’s trial when he stated that there should be no further prosecutions because it would raise the threat of “war”. Amnesty International believes that further prosecutions are necessary if the ECCC is to fulfil its mandate and address the full scope of the crimes under its jurisdiction.

Persistent serious allegations of corruption involving Cambodian staff in the ECCC paying “kickbacks” to government officials have cast doubts on the ECCC competence, independence and impartiality. So far, the government and the UN have failed to respond to such allegations in a decisive and transparent way, which risks undermining the credibility of the court.

The Statute and the rules of the ECCC provide for victims to participate and seek “collective and moral” reparations. In June 2007, the ECCC set up a Victims Unit to administer participation, coordinate outreach to victims and provide them with legal services. However, external funding was not made available to the unit until December 2008, so only then could it start recruiting with a view to become fully operational.

C. Promotion and protection of human rights on the ground

The justice system and impunity

The systemic lack of protection of human rights in Cambodia is a consequence of long-standing impunity for human rights violations, the absence of the rule of law and seriously delayed legal and judicial reform.

The legal system remains biased against the poor and marginalized. Frequent reports of failure to uphold the presumption of innocence; lack of independence of prosecutors and judges; corruption; and serious failures to apply and enforce the law have emerged from trials. Surveys by civil society groups have shown that coerced confessions, mostly through beatings or threats, continue to be widespread. Courts appear to accept such confessions without questions.

Lack of integrity, independence and equal treatment within the court system deprive ordinary Cambodians of the protections that the legal system is set out to guarantee. On the contrary, the legal institutions play a central role in violating the very human rights they are meant to protect. Forced evictions further impoverish the marginalized, who are routinely deprived of redress. Violence against women goes unpunished. Freedoms of expression and association are compromised and human rights defenders, opposition journalists, and community activists defending land and natural resources are increasingly imprisoned on baseless charges, physically attacked, or murdered. The perpetrators are rarely prosecuted.

The killing of prominent trade unionist Chea Vichea in January 2004 illustrates many shortcomings of the criminal justice system. Irregularities in the conduct of the case included a confession extracted under torture which was used to convict; political interference with the judiciary; intimidation of witnesses; and lack of evidence presented in court. Two men – Born Samnang and Sok Sam Oeun - spent almost five years in prison after being found guilty of the killing, despite both having alibis and the fact that the prosecution presented no evidence against them. They were each sentenced to 20 years’ imprisonment in August 2005, but were finally released on bail on 31 December 2008, after Appeal Court judges ordered a new investigation into the murder. The perpetrators of the killing of Chea Vichea remain at large.

Forced evictions

For the last four years, the authorities have failed to protect – in law and practice – tens of thousands of Cambodians against forced evictions. Those with political or economic power are allowed to act with impunity in arbitrarily expropriating land. They often do so by colluding with local authorities in issuing dubious land titles and eviction orders and misuse the court system to prevent victims from defending their rights. As of early 2008, some 150,000 Cambodians were known to be at risk of being forcible eviction in the context of land disputes, land grabbing, and industrial and urban redevelopment projects. According to the World Bank, between 1998 and 2003 the Phnom Penh municipality forcibly evicted 11,000 families, mostly urban poor living in informal settlements in or near the city centre. Since then forced evictions have displaced over 30,000 people in Phnom Penh alone, according to civil society reports. Affected communities have often had inadequate or no prior consultation on alternative remedies before eviction and many have been left homeless. Others have been relocated to inadequate resettlement sites with poor infrastructure, lacking basic amenities including sanitation, and with limited access to work opportunities. During 2008, at least 27 forced evictions affected some 23,000 people.

An increasing number of forced evictions take place in rural areas as competition increase over land, aquatic and forest products and other commonly held resources. While the true scope of forced evictions and the number of persons affected remain unclear, these are some examples:

In November 2008, around 100 soldiers, police and forestry officials forcibly evicted 300 poor families in Anlong Krom village, Kampot province. Security forces burnt down their homes, making the people homeless. The villagers had received no warning and there was no legal eviction order. In April 2007, police and military police forcibly evicted more than 100 families of fisherfolk and beach vendors from Mittapheap 4 (Spean Ches) village on the outskirts of Sihanoukville. Two years later they are still living on the roadside under tarpaulins close to where they used to live.

Lack of legal protection from forced evictions and lack of detailed regulations for implementing existing laws have left an accountability gap, which in turn increases the vulnerability of marginalized people. The lack of security of tenure, particularly among people living in poverty, and incomplete implementation of the 2001 Land Law, are both contributing factors to the prevailing problem of forced evictions.

The government denies that forced evictions take place.

Human rights defenders

The rich and powerful increasingly use the criminal justice system to silence those seeking to protect their right to adequate housing as well as Indigenous Peoples seeking to protect their land rights and way of life. During 2008, police arrested around 150 land activists, many of whom now face trial on spurious criminal charges.

Community representatives, in both urban and rural areas, face arrest and further legal action, including prosecution. In a recent land dispute which on 24 January 2009 led to the forced eviction of 400 families at Dey Kraham in central Phnom Penh, 17 residents, including informal community representatives, were charged with criminal offences. Several of them have already been convicted; two of them to prison terms, while three others were given suspended sentences. Legal proceedings are ongoing.

Human rights workers seeking to protect the rights of communities facing forced evictions themselves face harassment and intimidation. Security forces have cut off lawyers' access to the homes of their clients, and the provincial authorities in Ratanakiri and Mondulakiri have required written application by human rights monitors to visit communities at risk of forced eviction or to monitor peaceful protests. The authorities routinely block human rights monitors from accessing eviction sites. There are numerous instances where the authorities, including security forces, have taken human rights workers in for questioning or threatened them. Local officials also often deny requests from civil society groups to hold public meetings or events.

Restrictions on freedom of expression, association and assembly

Restrictions introduced in early 2003 on the right to peaceful assembly continue to be enforced. The authorities regularly refuse requests for permission to hold demonstrations and have on numerous occasions used force to break up peaceful protests and demonstrations.

A controversial criminal defamation law was reformed in May 2006, when the provision for a custodial sentence was removed. That provision had been used in a crackdown in late 2005 to detain several union leaders and public opposition figures. The law against disinformation, which carries a custodial sentence of three years, has since been used in place of the defamation law.

The last four years have seen a pattern of attacks against trade union leaders and activists. The killing of Chea Vichea in 2004 was followed by the killings of two other officials of the Free Trade Union of Workers of the Kingdom of Cambodia, Ros Sovannarith in May 2004 and Hy Vuthy in February 2007.

Journalists working for media opposing the government are also at risk. Since 1994, nine journalists have been killed, and to date none of the perpetrators have been brought to justice. Journalist Khim Sambor and his son were killed on 11 July 2008 during the national election campaign. The killings followed an article by Khim Sambor in an opposition-affiliated newspaper alleging illegal actions by an unnamed senior government official.

Threats have also been made against international NGO *Global Witness* following the release of its report in 2007 alleging involvement of high-ranking government officials and armed forces in illegal logging. The authorities suppressed the report and warned media outlets against covering the story. *Global Witness* staff and two journalists who had covered the story subsequently fled the country.

Sexual violence against women

Rapists often enjoy impunity due to poor law enforcement, corruption in the courts and a widespread lack of confidence that the stronger party in any legal dispute can be effectively challenged in court. Since 2000, human rights groups in Cambodia have reported an increase in the number of rapes against women and girls, including young girls and gang-rapes.³ Rape and widespread prostitution are both manifestations of discrimination against women in Cambodia, and the two are intrinsically linked; rape of sex workers is ubiquitous. A 2006 survey of over 1,000 sex workers showed that over 90 percent of those surveyed had been raped at least once during the previous year, most of which were gang rapes.⁴ About a third of the gang-rapes reported involved the police.

Under Cambodian law, rape victims are entitled to pursue both criminal and civil action. A civil action may lead to the perpetrator paying compensation. However, such a payment does not obviate the victim's right – or the prosecutor's duty - to proceed with criminal charges against the perpetrator. However, law enforcement officials, including police and court staff, and representatives of local authorities commonly arrange out-of-court settlements between the victim or their family and the perpetrator. This typically takes the form of a financial settlement, and the victim is then expected to withdraw any criminal complaint and pay a share of the settlement to the mediators. Prosecution of suspected offenders is uncommon.

D. Recommendations for action by the State under review

Amnesty International calls on the government:

Protection of human rights in national legislation

- To complete the process of judicial reform and to enact key pieces of legislation, such as a new Penal Code, an anti-corruption law, and legislation to guarantee and safeguard the independence and impartiality of the court system, court personnel and judges in accordance with international standards;
- To ensure the independence of the Supreme Council of Magistracy, the body charged with guaranteeing the independence of the judiciary, by excluding members of the executive and legislative branches of government.

The Extraordinary Chambers in the Courts of Cambodia (ECCC)

- To guarantee the independence of the Extraordinary Chambers so that its prosecutors and judges can impartially and urgently pursue a comprehensive investigation strategy to bring to justice more alleged perpetrators than the five already charged. These cases should be representative of the scope of crimes committed, taking into account the types of crimes committed and the communities and groups affected;

³ See reports on violence against women by LICADHO, in March 2004, January 2007, and March 2007; and yearly reports by ADHOC.

⁴ Violence and exposure to HIV among sex workers in Phnom Penh, Cambodia, USAID, March 2006.

- To cooperate fully with the UN to ensure that all corruption allegations are promptly and thoroughly investigated by an independent and impartial mechanism and that, where misconduct is found to have occurred, cases are submitted to the authorities for the purpose of prosecution. Effective mechanisms must also provide for the protection of court staff who report misconduct;
- To enhance the ability of the Extraordinary Chambers to fulfil Cambodia's obligations to the victims of gross human rights violations, including their families, by ensuring that the Victims Unit receives the resources and cooperation from all organs of the Extraordinary Chambers it requires to perform its role, such as outreach to victims and provision of legal services;
- To cooperate with the ECCC, the UN and international donors, and in consultation with civil society, to develop a legacy strategy to ensure that the national courts benefit from the experience and capacity of the Extraordinary Chambers.

Forced eviction

- To immediately introduce a moratorium on forced evictions;
- To enact and enforce legislation clearly prohibiting forced evictions;
- To develop and adopt guidelines on evictions based on the Basic Principles and Guidelines on Development-Based Evictions and Displacement and in compliance with international human rights law;
- To ensure that all victims of forced eviction have access to minimum essential levels of shelter, clean water, sanitation, health services and education, including where necessary through the provision of humanitarian assistance;
- To respect the rights of all victims of forced eviction to an effective remedy, including access to justice and the right to reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition;
- To develop and adopt concrete and effective measures to ensure to the Cambodian people a degree of security of tenure sufficient to protect them from forced evictions, and other threats and harassment;

Human rights defenders

- To respect and protect the right of human rights defenders, including those working on economic, social and cultural rights, to conduct their work without hindrance, intimidation or harassment, in line with the UN Declaration on Human Rights Defenders;
- To ensure that those who seek to promote and protect the right to adequate housing and other rights associated with forced evictions and land disputes are able to work freely;
- To publicly condemn attacks against human rights defenders, and make public commitments that human rights defenders or other individuals will not be arrested purely for engaging in the peaceful exercise of their rights to freedom of expression, association and assembly;
- To ensure that all human rights abuses against human rights defenders, including community representatives, lawyers and human rights monitors, are promptly, impartially and effectively investigated, and the suspected perpetrators brought to justice;
- To invite the Special Rapporteur on Human Rights Defenders to undertake an official visit to Cambodia to investigate alleged violations against human rights defenders, including in the context of forced evictions and land rights.

Freedom of expression, association and assembly

- To ensure that the rights to freedom of expression, association and assembly provided for in the Constitution and in relevant international human rights instruments, are fully guaranteed in practice;
- To issue clear guidelines to law enforcement officials on the rights to freedom of expression, assembly and association, in line with international standards, and inform law enforcement personnel, at all levels, of their obligations to respect and protect human rights, and make clear that they will be held accountable for human rights violations perpetrated by them.

Sexual violence against women

- To ensure prompt, impartial and effective investigation of all reports of sexual violence against women, that those responsible are brought to justice in fair trials, and that victims are granted reparations;
- To publicly condemn violence against women and to exercise due diligence to prevent, investigate and punish such acts, whether perpetrated by state agents or by private individuals;
- To ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- To ensure greater awareness across the country of sexual violence against women and the means to end such violence.

Appendix: Amnesty International documents for further reference⁵

Cambodia: Briefing for the UN Committee on Economic, Social and Cultural Rights, 42nd Session, May 2009, 7 April 2009, AI Index: ASA 23/004/2009

Cambodia: After 30 years, Khmer Rouge crimes on trial, March 2009, AI Index: ASA 23/003/2009

Cambodia: A risky business – defending the right to housing, September 2008, AI Index ASA 23/014/2008

Rights Razed: Forced evictions in Cambodia, February 2008, AI Index: ASA 23/002/2008

Cambodia: Lake filling must not lead to forced evictions, 27 August 2008

Cambodia: Bracing for development, June 2008, AI Index: ASA 23/009/2008

Cambodia: Ignoring the rights of Indigenous Peoples, June 2008, AI Index: ASA 23/008/2008

Cambodia: Release jailed opposition leader, 11 June 2008

Cambodia: Making the poor homeless (Update), May 2008, AI Index: ASA 23/006/2008

Cambodia: Facing the threat of eviction, March 2008, AI Index: ASA 23/005/2008

Extraordinary Chambers in the Courts of Cambodia: Internal Rules must meet international standards, June 2007, AI Index: ASA 23/007/2007

Extraordinary Chambers in the Courts of Cambodia: Recommendations to address victims and witnesses issues in the Internal Rules effectively, January 2007, AI Index: ASA 23/001/2007

Cambodia: The murder of trade unionist Chea Vichea, Still No Justice, August 2006, AI Index: ASA 23/008/2006

Kingdom of Cambodia: Amnesty International's position and concerns regarding the proposed "Khmer Route" tribunal, April 2003. AI Index: ASA 23/005/2003

⁵ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/country/cambodia>