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**ADVISORY SERVICE AND TECHNICAL COOPERATION IN THE
FIELD OF HUMAN RIGHTS**

Situation of human rights in Cambodia

**Report of the Special Representative of the Secretary-General
for Human Rights in Cambodia, Peter Leuprecht**

Summary

The Special Representative's tenth visit to Cambodia was characterized by a particularly constructive atmosphere. The Special Representative highly appreciates the strong and unfailing support for his mission by His Majesty the King. In the course of his recent visit, the Special Representative had fruitful discussions with the Prime Minister, other members of the caretaker Government and leaders of political parties. The Special Representative continues to appreciate the cooperation shown by the Cambodian authorities and the freedom with which he can carry out his task.

In July 2003, Cambodia held its fourth national election since the Paris Peace Accords of 1991. As others have noted, standards associated with the technical conduct of campaigning and polling improved. Levels of political violence were lower than in previous elections, and political parties were allowed more equitable access to the electronic media and greater freedom of expression during the official campaign period. In these and other ways, there has been progress. Yet events in 2003 have also shown how far Cambodia's decade-old nation-rebuilding process still has to go. The restriction of freedom of assembly and association outside the official campaign period, the murders and intimidation that surrounded the election, particularly in rural Cambodia, and the failure to bring those responsible to account are longstanding problems. At the time of writing this report, nearly five months after the poll, Cambodians were still awaiting agreement between their elected leaders on a new Government.

Elections can be a useful yardstick by which democratic development is measured. But as with any momentary event, they offer an incomplete view. By relying too much on incomplete information, the decisions of policy makers, observers and analysts are biased in favour of the short term and to the detriment of the future. For this reason, it is important that the many underlying areas of concern that extend beyond the election not be overlooked. They include continuing restrictions on the freedoms of expression, assembly and association; impunity for those who commit serious crimes; and corruption, poor law enforcement and a weak judiciary. Together, they form the principal obstacles to building truly democratic institutions and advancing the enjoyment of human rights under the rule of law.

Reform of the legal and judicial sector continues to elude Cambodia. As the Special Representative has noted repeatedly, most recently in his last report to the General Assembly (A/58/317), a transparent, independent, competent and effective judiciary is of primary importance for securing human rights under the rule of law. Low levels of professionalism and problems with judges who are too ready to accommodate and too weak to withstand outside interference are part of the problem. Political will is also crucial. The success of this core reform hinges on the determination of Cambodia's political leaders to prioritize it and see it through. Among recent positive developments is the first intake of students at the new Royal School for Training Judges and Prosecutors. This is an investment in learning, hope and expertise that should not be squandered.

The many problems associated with impunity continue to make their presence felt. In June 2002, the Special Representative presented the Government and people of Cambodia with a report on mob killings, documenting some 65 attacks since mid-1999. Mob violence has

continued and may be increasing. At one level, it is related to the problems of poor law enforcement and a weak judiciary, but this is an insufficient explanation. That is why the Special Representative urged the Royal Government in 2002 to establish an independent and transparent board of inquiry to examine why these attacks occur and why so little is done to stop them. That recommendation is reiterated in the present report in the hope that members of the newly elected National Assembly will take the opportunity of a fresh parliamentary term to tackle this tragic problem properly.

Endemic impunity and weak law enforcement have not prevented Cambodia's prisons from becoming seriously overcrowded. Imprisonment remains the routine punishment for most crimes, even very minor ones. The extent of problems is worrying. Poor prison facilities and inadequate food and clean water together represent a significant threat to the health of inmates. Access to prisoners for lawyers, human rights groups and non-governmental organizations can be difficult. Too many people are subjected to excessive pre-trial detention, are convicted without legal representation and often in absentia, and are denied the right to appeal their sentence.

The Government's policy of granting large-scale agricultural and forestry concessions to private interests in a non-transparent manner continues to represent a serious threat to the poor. More than 80 per cent of Cambodians live in rural areas where poverty and subsistence farming make people especially vulnerable. The operators of these concessions have denied local people access to the natural resources on which their livelihoods depend. In places, conflict has occurred. The hardships for local communities have been exacerbated by the practice in several concession areas of using armed guards to pressure local people. The Government has recognized the problems, but its measures to rein in concessionaires and mitigate the impact of their activities - principally through provisions in the 2001 Land Law - have been insufficient or are not applied. The largest concessions are half the size, or more, of entire provinces.

High spending on health care is one of the main reasons for the impoverishment of, and accumulation of debt by Cambodian families. Equal access to health care should be ensured for all Cambodians.

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Introduction

1. The present report is submitted in accordance with resolution 2003/79 of the Commission on Human Rights. This is the Special Representative's fourth report to the Commission. It builds upon the Special Representative's earlier reports to the Commission and the General Assembly. The approach and methodology remain as described in the earlier reports.

I. TENTH MISSION OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA

2. The Special Representative's tenth visit to Cambodia (27 November-6 December 2003) focused on the general political climate in the wake of the National Assembly elections and on the political deadlock since the elections; justice sector reform and the ongoing problems in the criminal justice system; and the human rights impact of natural resource policies and practices in Cambodia. He also began discussions with interested parties about a human rights-based approach to health and to development. Meetings were held with His Majesty King Norodom Sihanouk and with representatives of the caretaker Government of Cambodia, including the Prime Minister, the Minister of the Interior and Deputy Prime Minister, the Minister for Agriculture, the Minister for Land Management, the Minister for Health, the Minister of Economy and Finance, the Minister of Commerce, leaders of political parties, court, law enforcement and prison authorities, the National Election Committee, the Supreme Council of the Magistracy, NGOs, Cambodian citizens whose human rights had been violated, the media, United Nations agencies and members of the diplomatic community. The Special Representative hosted a number of round-table discussions bringing together people in Government, international agencies and NGOs on issues relating to land concessions, health and justice reform. He also addressed a forum on human rights in development to commemorate Human Rights Day. The Special Representative travelled to Kompong Cham province, where he met with provincial prison authorities, the court, NGOs, and a number of victims of human rights violations. He also visited the C.J. Cambodia land concession in Kompong Speu, where he met local authorities and villagers.

3. During meetings with His Majesty the King, the Prime Minister and political party leaders, the Special Representative expressed his hope for a prompt resolution of the political impasse that followed the National Assembly elections. He also expressed the view that freedom of assembly and expression must also be respected outside election periods. He met with the Chair of the National Election Committee (NEC) and discussed the contents of a final report that the Special Representative had prepared about the National Assembly elections. The discussion focused on the role of NEC in handling complaints relating to human rights violations during the election campaign, issues relating to freedom of assembly and association outside the campaign period, staff training and capacity-building. The Special Representative provided a copy of the draft report for comment and feedback. The report was finalized and released in mid-December.

4. The problem of impunity was a central theme in the Special Representative's meetings with law enforcement and court authorities, during which he raised the issue of recent murders in Phnom Penh, mob killings and violence on rubber plantations. In meetings with the Director of the National Police and the Minister of the Interior, the Special Representative also discussed issues relating to freedom of assembly, the need for investigation of and disciplinary action

against police officers found to have used excessive force against demonstrators, and the need for impartial and thorough investigations of all cases of violence and killing. The Special Representative also noted the importance of the conclusions and recommendations adopted by the Committee against Torture, at its thirtieth session in May 2003 (CAT/C/CR/30/2). At a meeting with the Director of Prisons, he discussed excessive use of detention, overcrowding in prisons and health issues. The Special Representative was encouraged by the acknowledgements he received of the role of non-governmental organizations in monitoring prison conditions; the need to separate pre-trial detainees from convicted inmates and juveniles from adults; problem of guards charging families to visit inmates and the need for more cooperation and dialogue between the health and prison systems.

5. The Special Representative's continuing interest in justice reform led to a round-table discussion on recent developments in this area. He also addressed a regional conference on legal aid and met a number of practitioners in the legal aid sector, with the longer-term hope of establishing a state-funded legal aid scheme in Cambodia. The Special Representative addressed a class on judicial independence to the first intake of student judges at the Royal School for Training Judges and Prosecutors and was impressed by the standard of the students. He also met with the Supreme Council of the Magistracy and raised a number of cases of serious judicial misconduct.

6. The Special Representative visited a land concession in Kompong Speu in connection with a study by the Cambodia Office of the High Commissioner for Human Rights into the human rights impact of large-scale agricultural plantations, and met local authorities and villagers. The following day, he raised the concerns of the local population with the Prime Minister and handed over their petitions, which contained a number of concerns about the impact of the land concession upon their rights and their livelihood. The Special Representative's discussions with the Ministers for Agriculture, Forestry and Fisheries and for Land Management focused on the lack of consultation with local populations and the lack of public access to information about concession ownership. They also discussed the need to draft and adopt several long-awaited subdecrees of the Land Law, and issues relating to legal compliance by concessionaires and the cancellation of existing land concessions.

7. As the Special Representative has stated in the past, the situation prevailing in Cambodia is a perfect illustration of the factual indivisibility of human rights. To ensure a life in dignity for Cambodians progress must be made with regard to respect for all human rights - civil, political, economic, social and cultural. In this spirit, the Special Representative has addressed the right to education in the past, and focused on the right to health during his tenth mission. Amongst the topics of discussion with the Minister of Health and at a round-table discussion were issues of equal access to health care and medicines and discrimination against those living with HIV and AIDS. The Minister of Economy and Finance welcomed the Special Representative's suggestion to comment upon the National Poverty Reduction Strategy and its implementation process.

II. MAJOR DEVELOPMENTS AND HUMAN RIGHTS ISSUES OF CONCERN

A. Elections

8. Cambodia's third general election since the signing of the 1991 Paris Peace Accords took place on 27 July 2003. As others have noted, overall levels of violence and intimidation were lower than in previous elections. In addition, standards associated with the technical conduct of campaigning and polling had improved. However, there remain worrying aspects of situations that do not correspond to a proper acceptance of democracy and pluralism. These are addressed in the pre-election and final reports of the Special Representative on the National Assembly elections, issued in July and December 2003 respectively.

9. At the time of writing this report, negotiations on the sharing of power and positions in the new Government had been deadlocked for nearly five months. His Majesty the King has assumed an active role in an effort to overcome the political impasse by convening the leaders of political parties to meetings under his chairmanship, which are broadcast on national television. At the first of these meetings the King referred very positively to the work of the Special Representative and perfectly characterized the spirit, objective and purpose of his mission, which is to help Cambodia on its way to democracy, the rule of law and respect for human rights.

10. In all his meetings with political leaders and in his public statements, the Special Representative strongly emphasized that Cambodia needs a democratic, transparent and accountable Government capable of tackling the many problems that face the country. He also appealed to political leaders to solve outstanding problems peacefully and to put the interests of the country and the people above the interests of their party and above their personal interests.

11. With respect to election-related violence, the Special Representative notes that convictions have so far been secured for 10 of the 17 murders and suspicious deaths of political activists that occurred in connection with the 2002 commune elections; however, poorly conducted investigations and prosecutions raise serious questions about the reliability of some of these convictions. In the period between the commune elections in February 2002 and Election Day in July 2003, a further 13 murders of special concern, all of activists from the main political parties, were brought to the attention of the Special Representative. Among the victims was Om Radsady, a senior adviser to the United National Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC). As of the time of writing only four convictions, all questionable, had been secured. And since July several more political party figures were attacked or murdered. On 29 September a civil servant belonging to FUNCINPEC was killed and another injured when a grenade exploded at a district government office in Kampot province. On 13 October a Sam Rainsy Party activist in Kompong Cham province was killed, and several members of his family wounded, by a grenade thrown into their home. On the morning of 18 October, a journalist working for pro-FUNCINPEC radio station was shot dead in Phnom Penh in a contract-style killing. Several days later a prominent singer, also associated with FUNCINPEC was shot in mid-morning in Phnom Penh in a similar fashion and critically wounded. Her mother was killed in the attack.

12. The absence of a level playing field continues to be a debilitating factor in Cambodian politics. Amendments to the Law on Election of Members of the National Assembly introduced in August 2002 failed to put in place a procedure for the selection of a truly independent NEC. However, the new NEC proved to be more competent and professional than its predecessor. During his visits to Cambodia in 2003, the Special Representative met on each occasion with members of the new NEC, and welcomed their efforts to open up to public consultation the drafting process for regulations and procedures for the conduct of the elections. Nevertheless, some chapters of the regulations remain overly complex and ambiguous, in particular those dealing with complaints and penalties.

13. The Law on the Election of Members of the National Assembly gives NEC considerable authority to impose fines and other sanctions for such acts as electoral fraud, vote buying, disruption of the polling and counting processes, and the use of and incitement to violence and threats against voters and candidates. The Special Representative has noted in his previous reports to the Commission on Human Rights and the General Assembly the failure of NEC and its provincial- and commune-level commissions to exercise these powers. The 2003 elections saw the first application of such penalties, but they were used late, in only a few instances, and were largely ineffective. In the majority of cases people who violated laws in relation to the election were protected from punishment.

14. Intimidation of voters and political activists was observed throughout the country in the months preceding the election, including during the official campaign period. It took many forms, including the collection or confiscation of voter registration cards or other identity documents by local officials, interference with and removal of party signboards, property destruction, economic threats, threats of renewed armed conflict, shots fired in the air, threats of physical violence and death threats. Information received by the Cambodia Office indicates that these acts were mainly directed at the voting population and activists outside the urban and provincial centres. All the major parties were involved in distributing gifts and in committing breaches of the Electoral Law.

15. The Special Representative welcomes the lifting, during the official election campaign period, of restrictions that had been placed on freedom of expression and assembly in the months leading up to the elections. For the most part, political parties were able to openly conduct rallies and other campaigning activity without unreasonable constraints being placed upon them by national and local authorities. Prior to the campaign period a number of gatherings were disallowed on public order or national security grounds, details of which were not provided. In a few cases where demonstrations took place without prior authorization, the authorities used excessive force to disperse them.

16. The Special Representative is concerned by the re-emergence of restrictions on freedom of assembly following the end of the official campaign period. The small Khmer Front Party sought to hold a demonstration in Phnom Penh in August 2003 to protest the election results and was denied permission by the authorities. When the gathering went ahead, police, armed with electric batons, dispersed it and 21 party members were arrested and forced to sign statements that they would not demonstrate again. During November 2003, armed riot police similarly dispersed a demonstration by garment factory workers through the use of excessive force. The unjustified restriction of freedom of assembly constitutes a serious threat to the wider democratic

process in Cambodia and contributes to a “disabling” environment for the conduct of legitimate political activity. The Special Representative welcomes the commitments he received from government officials during his tenth visit to discipline officers who use excessive force.

B. Legal and judicial reform

17. Reform of the justice sector has been a preoccupation of successive Special Representatives. The establishment of a rule of law framework in a post-conflict situation is a long-term process. However, progress has been painfully slow over the last decade, with fundamental parts of the legal framework such as the Civil and Criminal Codes and a law on the status of judges and prosecutors still awaiting enactment. Acknowledging that the process of institution-building is a long-term enterprise does not detract from the need for progress to be achieved and for prioritization. The reporting period has seen some progress towards meeting the benchmarks that were adopted by the Consultative Group of Donors in June 2002 in order to expedite the pace of reform. However, for real progress to be made, the gap must be bridged between reform ideals and the reality of the administration of justice in Cambodia. It requires demonstrated commitment by the Government to the reform agenda, better coordination amongst donors, broader support from civil society and the legal profession and ongoing efforts to seek creative solutions to existing problems.

18. Appropriate links must be made to the Government’s international human rights obligations and to other areas of government policy relating to economic and social development such as the National Poverty Reduction Strategy and private sector investment which are dependent upon competent, accountable and transparent legal institutions. There has been little evidence of voluntary compliance or internalization of the values contained in existing laws and espoused in policy documents; the focus must shift to effective implementation of existing laws rather than simply to their enactment.

19. Both the Government and donors must avoid a situation where the numerous problems in the regular court system are seen to be intractable, with funding moving towards ad hoc mechanisms and the establishment of parallel structures that operate outside the regular criminal justice system and undermine it. Similarly, in the process of establishing the Extraordinary Chambers for the trials of senior Khmer Rouge leaders, there must be a concerted effort to ensure maximum opportunities for a “ripple” effect on the administration of criminal justice in Cambodia. It is hoped that the establishment of a transparent process that complies with international standards will have an educational effect on existing formal institutions and create better awareness amongst the general population of the facts about Cambodia’s tragic past and further demand for a well-functioning judicial system.

20. The adoption of a time-bound legal and judicial reform strategy and action plan has been on the agenda for a decade and the Special Representative welcomes the strategy document adopted by the Government on 20 June 2003. This document has formed the basis of discussions amongst donors during the reporting period and a series of workshops commenced during the latter part of the year to prioritize the Government’s draft programme of action, which contains over 90 activities. The Special Representative welcomes the inclusion of a broader range of interested actors at this stage of the discussion, especially as a broad consultative process was not undertaken in preparing the strategy document. The reform process needs to be more inclusive, obtain the broader support of the Cambodian people and provide adequate

opportunity for an open dialogue. It is crucial that participants in the debate link the big-picture issues relating to the justice system to the reality of the administration of justice in Cambodia: the failure to enforce existing laws; impunity, compounded by the lack of neutrality and independence in judicial and law enforcement bodies, as well as low levels of professionalism; refusal by police to enforce court orders, sometimes acting in open defiance of their terms; a lack of understanding among those administering the criminal justice system of the role of the prosecutor and of fundamental notions such as the presumption of innocence. A thorough review of the conduct of prosecutions and the judicial police must also be undertaken.

21. The Supreme Council of the Magistracy is in need of restructuring if it is to become an independent and effective body and ensure judicial independence. Creative measures must address the issue of judicial corruption, the reality of executive interference with the judiciary and insufficient institutional checks on the power of the executive. The details of many laws in Cambodia are to be found in subdecrees, proclamations and other forms of delegated regulations, which provide unfettered discretion to administrative decision makers. In a context where there are insufficient institutional checks on the power of the executive, the practice of drafting laws in such a way as to hand over what should be legislative activity to the executive must be questioned.

22. While political deadlock effectively stopped legislative activity during much of the reporting period, the Special Representative is pleased to report that the foundation codes - the Civil and Penal Codes and the related Codes of Procedure - have been submitted to the Council of Ministers. These laws, in addition to laws on the Status of Judges and Prosecutors, the Organization and Working of Courts and the Status of Clerks and Bailiffs, were to be adopted within three years under a plan of action published in February 1995. None has yet been adopted. By way of contrast, there has been a sense of urgency in adopting the laws linked with accession to the World Trade Organization (WTO), and it is hoped that the patchwork of laws being enacted over the coming months will be consistent with each other. Concerns have been expressed about the risk that specialized laws will conflict with the general framework being established by the foundation codes. For instance, there is much duplication and inconsistency between the draft Code on the Commercial Court and the draft Code of Civil Procedure and between the Land Law and the draft Civil Code.

23. The Special Representative was impressed by the standard of the student judges whom he addressed during a class on judicial independence at the Royal School for Training Judges and Prosecutors, which began operating in November 2003. Students reflected a good understanding of professional ethics and the institutional preconditions for the observance of the rule of law. The Special Representative hopes that this new generation of professional, legally trained judges will significantly improve the quality of justice in Cambodia in the medium term. The Special Representative is also pleased to observe that the Centre for Training Lawyers and Professionals has started training its second intake of students. The Centre's first intake of students, who started their training in 2002, will now work as apprentices with practising lawyers for another year before obtaining licences for legal practice.

24. The Government of Cambodia should view the provision of legal aid as a State responsibility, in light of its treaty obligations under the International Covenant on Civil and Political Rights. The majority of the country's citizens are unable to pay for legal representation and advice, not just the 36 per cent of the population that live below the official poverty line.

Many accused persons are unrepresented in court and the overwhelming majority of civil cases are conducted without representation for the most vulnerable parties. While the Special Representative welcomes the Government's recent contribution to the Cambodian trust fund, a clear attitudinal shift must occur if legal representation and the broader provision of legal aid to Cambodia's poor is to be seen as a priority. Cambodia needs a comprehensive legal aid scheme which would probably include a legal aid fund financed by the State. There is also a need for a robust discussion about the most appropriate model for legal aid, as the types of legal aid schemes found in wealthier nations may be unrealistic and unattainable in the near future. Appropriate models from the region and from other parts of the developing world, especially from those countries that have relatively new legal systems established in a post-conflict situation, should be examined. A more strenuous effort needs to be made by donors to coordinate their work in order to progress towards a universal legal aid scheme.

25. The Special Representative would like to mention another area tainted by unlawful and corrupt practices and a regrettable lack of transparency, namely, international child adoption in Cambodia. Several countries have suspended adoption from Cambodia because they consider that there is too high a risk for foreign agencies, including qualified Government-licensed agencies, of becoming unwillingly involved in baby selling and human trafficking.

C. Impunity

26. Impunity is both a main cause and main result of Cambodia's many human rights problems. At its simplest level it is a reflection of absent or ineffective law enforcement and an absent or ineffective judiciary. However, it is also a political problem in the sense that democratic reforms that promote accountability also have the potential to threaten vested interests and established political- and economic-patronage orders. The longer impunity prevails, the harder it is to rein it in. It is inextricably linked to corruption and it erodes trust within society. Allowing impunity to prevail is immoral and dangerous. The problems that impunity causes are exemplified by the frequent failure of Cambodia's courts to provide elementary justice, especially in cases where powerful interests are involved, and in mob violence and murders. Among the cases brought to the attention of the Special Representative during the reporting period, the following are illustrative.

1. Kompong Cham trials

27. In his last report to the Commission (E/CN.4/2003/114), the Special Representative raised the case of five prison guards in Kompong Cham province who were tried in August 2002 on charges of torturing inmates. Despite overwhelming evidence presented before the court, including testimonies from victims and witnesses, all five defendants were acquitted. In an unusual move the court directed nonetheless that administrative action be taken, but as of the end of November 2003 the Prisons Department of the Ministry of the Interior had taken no such action. Three of the defendants continue to work at the Kompong Cham prison, although the prison director has removed them from active contact with inmates.

28. A case involving the murder on 6 August 2003 of an opposition activist's daughter highlighted the continuing problems with the administration of justice where politics is involved. The authorities arrested the sole suspect, a village chief, only after considerable pressure had been brought to bear. The first and obviously improper step taken by the judge was to broker a

compensation deal between the perpetrator and the family of the victim. The subsequent trial raised serious doubts about the integrity, professionalism and independence of both prosecutors and the judge, with allegations that witness statements were altered and that the judge displayed actual bias in the courtroom. Despite evidence of premeditated murder, the village chief was charged with voluntary manslaughter, acquitted of this charge, and then convicted of involuntary manslaughter, for which he was given a two-year suspended sentence. An appeal has been lodged, and it is hoped that the Supreme Council of the Magistracy will also pursue appropriate disciplinary proceedings against the judge and prosecutor.

2. Mob killings

29. In June 2002 the Special Representative issued a report entitled "Street retribution in Cambodia" documenting some 65 assaults and murders by mobs since mid-1999. The report noted that law enforcement officials frequently failed to stop such violence and had been directly complicit on several occasions. As of 1 December 2003 at least 23 further mob attacks had been recorded, 18 of them fatal. Furthermore, it appears that the frequency of such events is increasing. Of those recorded since June 2002, around half occurred in Phnom Penh.

30. In general, police efforts to halt mob violence are reluctant or inadequate, as witnessed by the continuing loss of lives. However, the Special Representative is encouraged by police interventions in some cases. Responsible intervention ought to be the norm rather than an exception and serve as models for the future; the concept of responsible intervention needs to be better understood.

31. Since publication of the report the first known convictions for involvement in a mob attack have been handed down. These relate to an incident on 31 December 2001 in which two schoolboys were killed when the parents of a classmate incited a crowd against them. The parents were arrested and warrants were issued for five other people. At a trial in Phnom Penh on 16 September 2002, all seven (the five others being tried in absentia) were found guilty and sentenced to prison terms of between 12 and 15 years. The absentees successfully applied for a retrial, which was held on 26 February 2003, but only one appeared in court. He was acquitted, but the prior judgements against the remaining four were upheld. The sentences against these individuals have not been enforced, indicating a worrying lack of interest on the part of the Phnom Penh police in arresting those responsible and illustrating a consistent pattern of failure to arrest even those convicted of very serious crimes.

32. The Special Representative has noted that there have been arrests in one other mob killing. On 20 August 2003, 35-year-old Ouk Ang was strangled and hacked to death by a crowd in Battambang province who suspected him of having murdered a local man. Five people, including the parents of the murdered man, were arrested by district gendarmes. As of December 2003 all were in pre-trial detention on charges of voluntary manslaughter or complicity. Two further suspects evaded capture.

D. Prisons

33. During his tenth visit the Special Representative continued a dialogue with prison authorities, government officials and NGOs on a more humane prison policy for Cambodia. The

dialogue began a year earlier and has proceeded on the basis of a draft discussion paper which summarizes changes in prison conditions since 1994, when the Cambodia Office issued a report entitled "The state of Cambodian prisons".

34. Since then the prison population has increased nearly threefold and continues to grow, exacerbating already endemic overcrowding. The prison in Kompong Thom province has a population more than three times larger than its designed capacity. Overcrowding problems are also affecting prisons in Takeo and Kandal provinces. These conditions put prisoners at heightened risk of illness.

35. The Special Representative notes an ongoing and pervasive tendency to use detention even when the circumstances of the defendant and the nature of the offence do not call for it. Of a total prison population of 6,092 people in September 2003, 1,838 were pre-trial detainees. The Special Representative has discussed the need for alternatives to custodial sentences with the Ministry of Justice, which shares his concern. However, imprisonment remains the standard punishment, even for minor and first-time offenders.

36. The number of people held in pre-trial detention after the legal period has expired has fallen, but overall, the issue remains a problem. Prison authorities have taken the initiative to gather systematically data on pre-trial detainees and communicate the data to the courts with requests for hearings to be conducted before the end of the legal pre-trial detention period. It is hoped that this will help improve matters. Over the past year the number of prisoners held illegally in pre-trial detention has ranged between 48 and 118. In addition, as of December 2003, 219 prisoners were awaiting appeal hearings, some of them since the mid-1990s. There are several cases of appeals having been withdrawn because the individuals concerned have already served their full sentences but continue to be kept in prison.

37. International standards require that prisoners in need of medical treatment be transferred to appropriate institutions or hospitals. In Cambodia, this is almost invariably done too late, resulting in the deaths of prisoners. Scarce funds for transportation and shortages of guards are often cited as the reasons. Many inmates rely on NGOs for basic health care. Improved cooperation on health and medical services in prisons was the subject of a 2002 draft agreement between the Ministries of the Interior and Health. The dialogue came to a halt in January 2003 when the Ministry of Health rejected the draft accord. These discussions should be resumed at the earliest moment.

38. Inadequate provision for transporting inmates and trial participants also has serious consequences for the functioning of the judiciary. Court hearings are often postponed because prisoners are unable to attend trials. In other cases, hearings are conducted in absentia. In practice, the problems relating to transportation also effectively deny many prisoners the right to appeal. Currently, Cambodia's only Appeal Court and the Supreme Court are based in Phnom Penh. There is a clear need for alternatives, such as regional or peripatetic appeal courts.

39. Available information indicates that torture and other cruel, inhuman or degrading treatment or punishment within prisons has declined since 1994, although it remains a serious problem in police detention cells. However, incidents continue to occur and deaths through torture have been recorded. The only known conviction involves a deputy director of Battambang prison who in 1993 was sentenced to one year's imprisonment for offences that

included burning a prisoner with hot irons. After completion of his sentence, he returned to his duties as deputy director in charge of the detention blocks. In 2003, he was finally retired following publicity surrounding his continued employment.

40. The Special Representative is concerned at the increasing difficulties that the Cambodia Office, lawyers and NGOs face in gaining access to prisoners. Authorization for private interviews with prisoners is denied, causing problems in collecting reliable information on their treatment. Defence lawyers complain that prison officials obstruct visits, imposing time constraints or requiring special authorizations that are difficult to obtain. Visits by family and friends are critical for prisoners, not only for compassionate reasons, but also for food and other essential materials. The regulations in force provide that all prisoners have the right to receive visits from families or friends for at least one hour each week. This provision is systematically ignored. In practice, most families are able to visit for little more than 15 minutes per week. The Special Representative will continue what he views as a constructive dialogue with the Government to improve the situation described here.

E. Land and forestry issues

41. At his meeting with the Special Representative on 1 December 2003, the Prime Minister stated that in his political life he had made two big mistakes, one concerning land policies and one concerning forestry policies. Indeed, human rights continue to be put at risk by the government policy of handing over large areas of Cambodia's countryside to commercial interests as forestry and other concessions. The impact on lives and livelihoods has been acute among the rural poor, many of whom barely survive. Recognizing many of these problems, the Government proposed measures to address them in its 2001 Governance Action Plan and the December 2002 National Poverty Reduction Strategy Paper, but implementation of these measures has been inadequate.

42. The Special Representative has now visited several concessions and one State-owned rubber plantation. He set down many of his concerns in his report to the General Assembly (A/58/317). Job creation from these projects has been disappointing and, where work exists, it tends to be low-paid. Most concessions pay neither the required deposit nor rental fees to the State, and it is hard to see what contribution they are making to the country and welfare of its people. The concessions have become focal points for rural conflict. Ownership details remain opaque and other basic information, such as contracts and maps, is not accessible to public scrutiny. For a country in which corruption is endemic, this fact alone ought to register as a worry.

43. Forestry and other concessions account for 2.7 million hectares of Cambodia's total territory of 18.1 million hectares. Significant international scrutiny of the forestry sector together with the continued depletion of resources have resulted in a fall in this figure since the mid-1990s, when around one third of the country's most productive land had found its way into private corporate hands. Demographic pressure and an accompanying rise in demand for land by a growing number of interests means that the problems associated with land have continued, and are growing. More than 80 per cent of Cambodia's population live in rural areas.

44. During his ninth and tenth visits to Cambodia, the Special Representative was informed by the Minister of Agriculture that approvals for five new concessions had been withdrawn and 11 more cancellations would follow. Given the problems that the concessions have created, this is welcome. However, several existing concessionaires have been allowed to continue operating despite their being in breach of contract and of Cambodian law. No known sanctions have been taken against these firms.

45. In 2001 Cambodia passed a new Land Law. This stipulated, among other things, that the size of concessions should be limited to 10,000 hectares. At the time of its passage 12 concessions had exceeded this limit. The largest, owned by Pheapimex Company, comprises two contiguous areas amounting to 315,028 hectares in Pursat and Kompong Chhnang provinces. As of December 2003 neither this nor any other concession exceeding the limit had been reduced in size. Furthermore, an area of 100,852 hectares was granted to Green Sea Industrial Co. Ltd. three months after the Land Law was enacted and in flagrant violation of article 59.

46. There are many other concerns regarding the concessions and the law. A large number of subdecrees of the Land Law and proclamations for full implementation of its provisions have still to be adopted. The Special Representative's report to the General Assembly, finalized in August 2003, mentioned the need for swift adoption and implementation of the Subdecree on Land Concessions for Economic Purposes and the Subdecree on Procedures for the Reduction and Specific Exemptions of the Land Concessions that Exceed 10,000 hectares. The Special Representative recognizes that the Government has set up a working group to draft these decrees, but he notes that as of December 2003 there had been little progress on these urgent measures. Of equal concern is that relevant government departments have yet to demonstrate a capacity to implement the law, to ensure that the concessionaires respect the terms of the contracts, and to terminate contracts where there are serious breaches of contracts or of the Land Law. The lack of transparency surrounding ownership and the way in which concessions have been granted stifles informed debate and better decision-making, and provides a permissive environment for corruption.

47. The Special Representative remains concerned at the severe impact of such concessions on the human rights of communities who live within or close to them. Often there has been no credible prior community consultation. Access to natural resources has been denied or restricted. Resin trees, an important traditional source of income for local families, have been felled. Conflicts over land have arisen and a climate of insecurity dominates, with concessionaires hiring armed guards who sometimes threaten and intimidate local villagers. The Special Representative has visited several concessions and one State-owned rubber plantation - Haining Cie, Flour Manufacturing Cie, C.J. Cambodia Cie and the State-owned Tumring rubber plantation - where he has seen these conditions at first hand. At C.J. Cambodia, residents of 11 local villages had been denied access to land they had previously used by the construction of water channels. Complaints filed with the authorities produced few results. The Special Representative welcomes the support of the Prime Minister, expressed during their meeting on 1 December 2003, for ensuring that the interests of local communities are better protected, including through proper consultation with concessionaires.

F. Refugees

48. Montagnard minorities and others from Viet Nam continue to face difficulties in seeking asylum in Cambodia following the collapse of the tripartite agreement and the closure and destruction in April 2002 of a camp operated by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Mondulhiri province. UNHCR continues to be denied free access to this and other border areas to examine the claims of those seeking asylum. A UNHCR office in Ratanakiri province remains unstaffed, meaning asylum-seekers must travel some 600 kilometres over land to reach Phnom Penh.

49. There is information that people assisting Montagnards have been harassed by local authorities, and reports of forcible returns continue to circulate. This brings into question Cambodia's will to comply with its international obligations under the 1951 Convention relating to the Status of Refugees. As the Special Representative has stated repeatedly, Cambodia must comply with its international obligations under the 1951 Convention and its 1967 Protocol, in particular the core principle of non-refoulement. The forcible deportation of refugees and asylum-seekers to countries where they risk torture and ill-treatment also contravenes Cambodia's obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

50. During the reporting period UNHCR started discussions with the Government on the establishment of a national system for asylum determination. Work is currently being undertaken to establish a domestic legislative framework, which should be done through a law of the National Assembly and not by subdecree. The National Assembly has not delegated legislative authority to the executive regarding refugees and asylum. Even after the establishment of the relevant office to deal with asylum and appropriate training of officers, UNHCR needs to remain involved in refugee status determination until domestic officials and institutions are able to undertake this work in a reliable and independent manner. Cambodia's recent record of failing to comply with its international obligations regarding refugees makes the timing of this "handing over of ownership" particularly unfortunate.

G. Health, the budget and civil society

51. Despite medical advances, the numbers of Cambodian women dying in childbirth or children dying from easily preventable diseases remains alarmingly high. Pregnancy or pregnancy-related problems accounted for one in five deaths among Cambodian women in the seven years prior to 2000. Almost 1 in every 10 babies does not survive to his or her first birthday. Chronic malnutrition among Cambodian children is high, with 45 per cent suffering moderately stunted growth and more than one in five children severely stunted. These are distressing figures. Efforts to overcome the situation are affected by numerous structural problems. These include poor and unequal access to health care, inadequate budget disbursements, long distances and heavy transportation costs for patients, an unregulated private sector and a narrow focus of external aid on specific diseases.

52. The Special Representative welcomes the commitments he has received from the Ministry of Health to making the right to health a core value. He also welcomes efforts by the Ministry and its development partners to strengthen and deepen the health sector using a human rights approach. Health policies should be based explicitly on the norms and values of

human rights, which provide a compelling normative framework for the formulation of policies. The rationale derives from equal rights to health that give rise to obligations on the part of others, helping to strengthen accountability.

53. The Special Representative is troubled by the terms of Cambodia's accession to WTO and its potential impact on human rights, including the right to health. The opening of the country's health-care system to foreign health-care providers and drug companies could damage efforts to establish a viable health-care system for all. The introduction of intellectual property protection might also negatively affect drug prices and availability. There is a need for informed public debate on these issues, as they will potentially have widespread impact. As a norm, the Cambodian people should be given ready access to details of this and the other international agreements, treaties and conventions to which their Government commits itself. It is hoped that when members of the new National Assembly come to ratify the terms for WTO admission, a Khmer Rouge tribunal and other upcoming agreements, they will pay close attention to ensuring that the interests of all Cambodia's people are catered for. This means working harder to promote open and democratic government.

54. During his tenth visit the Special Representative was a guest at a public forum on human rights in development held to commemorate human rights day, which was organized by the NGO Forum. This was an especially valuable meeting, illustrating the importance of informed and constructive dialogue with NGOs and other members of civil society. At the meeting, the Special Representative recalled the importance of the right to information and the rights and responsibilities of citizens to promote human rights in development and poverty reduction programmes and policies. In that regard, he underlined the importance of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. He believes that the provisions of the Declaration, which derive largely from the rights already guaranteed in the international treaties accepted by Cambodia, must be better understood and observed to enable Cambodia's citizens to participate meaningfully in public affairs and the government of their country, and to contribute without fear to national and international efforts to build a society in which the human rights of Cambodia's peoples can be fully realized. The Special Representative asks international and donor agencies in Cambodia to take the provisions of the Declaration into full account in their efforts to promote consultative and participatory processes. Concepts such as consultation, participation and national ownership may fail, lose their meaning, or put citizens at risk if the provisions of the Declaration are not observed and respected.

III. CONCLUSIONS AND RECOMMENDATIONS

55. The national elections held in 2003 have to be seen as an important stage of Cambodia's road to pluralist democracy based on the rule of law and respect for human rights. To make further progress, the competent Cambodian authorities should build on the positive gains of the 2003 electoral process and eliminate the problems that are noted in this report and in the Special Representative's reports on the elections. There should be no backsliding as far as respect for human rights is concerned.

56. The constitution of the new Government presents an important opportunity to address the problems that the Special Representative has raised in the present report, his last report to the General Assembly and previous reports. He also urges the members of the newly elected National Assembly to take the opportunity of a fresh parliamentary term to better protect, respect and uphold human rights in Cambodia. To this end, the Special Representative will bring a consolidated set of recommendations to the attention of the incoming Government and National Assembly for their consideration and action.

57. As he said in his statement to the General Assembly in November 2003, the Special Representative believes that the United Nations has a special and heavy responsibility towards Cambodia. He regrets that the General Assembly dropped its consideration of human rights in Cambodia. The involvement of the United Nations in Cambodia is an expression of the international solidarity of the international community in the defence and promotion of human rights. He believes that Cambodia and its people must be able to continue to rely on the solidarity of the international community in their struggle for democracy, rule of law, human rights and a life in dignity. During his tenth mission to Cambodia, he met no one who wished to reduce United Nations involvement and assistance in the area of human rights. The support and assurances that he received from His Majesty the King were especially encouraging. He was also encouraged by the assurances he received from the Prime Minister regarding the continuation and future of the Cambodia Office, as well as the gracious reception accorded to him by senior ministers of Government and others. The Special Representative was encouraged by pledges he received from the Prime Minister and senior ministers with regard to human rights which, if pursued and implemented, would help to improve the human rights situation in Cambodia.

A. Elections

58. The following recommendations summarize those made in the Special Representative's mid-December report on the 2003 elections:

(a) The police and the courts should ensure that investigations and prosecutions are conducted in a thorough and impartial manner in relation to all allegations of violence and intimidation, including the murder of political party activists and others connected to the election process. He urges that the minimum guarantees for a fair trial contained in article 14 of the International Covenant on Civil and Political Rights be respected;

(b) In the conduct of future elections, NEC and the Ministry of the Interior should repeat the consultative process used in preparing the regulations and procedures for the 2003 National Assembly elections;

(c) The role of NEC and its local-level commissions needs to be reviewed in relation to the investigation of complaints. The Electoral Law should clearly define what constitutes a minor offence that is suitable for conciliation by local-level electoral authorities. The Government should consider prohibiting the electoral authorities entirely from dealing with complaints that involve violations of the criminal law, and show greater commitment to and put more resources into ensuring that law enforcement authorities investigate and prosecute these cases thoroughly and impartially;

(d) The Government should amend the Electoral Law to define clearly and sanction vote-buying and to explicitly prohibit forced allegiance-pledging ceremonies. Further work is needed in educating voters to understand that they are under no obligation to vote for a party that gives them money or gifts;

(e) The Government should not use the concept of an official election campaign period to restrict political speech and activity at other times. Further efforts must be made through education and other means to ensure that government officials and the general public are aware of every citizen's constitutionally guaranteed right to freedom of expression, particularly political expression;

(f) The Government needs to ensure that restrictions on freedom of assembly are limited to those that are necessary in a democratic society and that they are proportional and narrowly tailored to meet legitimate objectives. Should such restrictions be necessary, the relevant authorities must provide clear and explicit justification. In the process of drafting a revised law on demonstrations, a consultative drafting procedure must be undertaken and due regard given to applicable international standards;

(g) The Government and law enforcement officials must ensure that all demonstrations are policed in a responsible and professional manner and that these gatherings are dispersed only if absolutely necessary and without the use of excessive force;

(h) The Ministry of the Interior is urged to initiate a fully consultative process on procedures for the appointment of village chiefs, in accordance with the Law on Commune Administration of 2001, and issue instructions on these procedures as a matter of priority;

(i) The Government needs to take steps to establish an independent broadcasting authority, as exists in many countries, to monitor issues of media access in order to ensure a genuine plurality of views in the electronic media at all times;

(j) The Government should revise electoral legislation to provide NEC or a specialized broadcasting commission with clearly defined powers to deal with relevant breaches of the Electoral Law by public and private media outlets during the electoral campaign period.

B. Legal and judicial reform

59. The Government is urged to study, with a view to adopting at the earliest possible time, the United Nations Convention against Corruption.

60. Donors should remind themselves of the need for close coordination and consistency when it comes to expert input and advice on the various laws that are adopted. A cohesive and focused approach by Cambodia's many partners is one of the best ways of promoting pluralistic democracy, rule of law and respect for human rights.

61. The Government needs to shift its emphasis from enacting laws to implementing them effectively. There is scant evidence that the Government is complying with existing laws or that it has internalized the values reflected therein.

62. **The Supreme Council of the Magistracy is not independent and needs deep and extensive restructuring.**

63. **The Government should view the provision of legal aid as a State responsibility, in light of its treaty obligations under the International Covenant on Civil and Political Rights.**

64. **The Government should put an end to unlawful and corrupt practices in connection with international child adoption and set up a transparent procedure that other countries can trust.**

C. Mob killings

65. **The Government should establish an independent and transparent board of inquiry to assess why mob attacks occur and suggest how to prevent them.**

66. **Allegations of police complicity or inaction in relation to mob attacks need to be thoroughly investigated and disciplinary or criminal charges brought against individuals where evidence of negligence or other misconduct arises.**

67. **The provisions of the United Nations Code of Conduct for Law Enforcement Officials should be made known to all members of the Cambodian police forces and enforced. Articles 2, 5, 6 and 8 of this document, which refer to the need for suspects to be protected from ill-treatment and for law enforcement officials to prevent violations of the law, are particularly relevant.**

D. Prisons

68. **The Royal Government should introduce non-custodial sentencing as an alternative to imprisonment.**

69. **The Royal Government should ensure access to prisons and inmates by lawyers, family members and human rights organizations.**

70. **The Ministries of the Interior and Health should resume their dialogue on the division of responsibilities to improve health care in prisons.**

E. Land and forestry issues

71. **The Government should reconsider the concession development model, which has failed to reduce poverty in rural areas or generate significant revenues for the State.**

72. **The Government and the courts should take action against those concession-holders that contravene the law or fail to fulfil the terms of their contracts.**

73. **The Government should consider the importance of non-timber forestry products to the livelihoods of poor people and ethnic communities and should make efforts to stop the illegal logging of resin trees.**

74. **The Government should ensure that local populations are informed and consulted prior to the granting of land and forestry concessions.**

75. **Inside the boundaries of land concessions, local populations should have rights of access to forest resources that concern their economic, social or spiritual values. The need for land for social concessions as well as land for future generations should be taken into account.**

76. **The Government should expedite the adoption of the Subdecree on Procedures for Granting Land Concessions for Economic Purposes and the Subdecree on Procedures for the Reduction and Specific Exemptions of Land Concessions that Exceed 10,000 Hectares.**

77. **At the national level, the Government should make public details of all approved land and forestry concessions, including the names of the contract holders. The procedure for granting land and forestry concessions must be fair and open. The terms of the contracts should be transparent and publicly known.**

G. Health, the budget and civil society

78. **The Special Representative urges the Government to take the necessary action to adequately regulate activities of private providers in the health sector.**

79. **Donors and the Government need to adopt policies towards economic development and poverty reduction that safeguard and take full account of the human rights of Cambodia's people. The aim should be a genuine participatory and consultative approach, which means upholding and respecting the freedoms of association and expression and assembly and giving a voice to the poor.**

80. **There is a continuing need to promote better access to information about human rights, land rights, contract procedures, and the law in general. The Special Representative continues to urge the Government and donors to recognize the positive role that civil society can play in promoting tolerance, rule of law and accountable government.**
