



Special Representative of the Secretary-General
for Human Rights in Cambodia

តំណាងពិសេសរបស់លោកអគ្គលេខាធិការទទួលបន្ទុកសិទ្ធិមនុស្សប្រចាំកម្ពុជា



Continuing patterns of impunity in Cambodia

October 2005

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Foreword

Overcoming impunity is perhaps the single most important undertaking facing Cambodia today.

This report traces forms and patterns of impunity which successive Special Representatives of the Secretary-General for human rights in Cambodia and other experts working under United Nations auspices have recorded in public reports over the past decade. The recommendations that they and others have made on measures that can and should be taken to address and end impunity remain relevant.

Overcoming impunity will require political determination and concerted effort from the Prime Minister and the Government of Cambodia, as well as commitment from multilateral and bilateral agencies that are assisting Cambodia and its people to build accountable institutions and a democratic and just society governed under the rule of law.

Most of the information presented in this document is already in the public domain. The intention has been to prepare a report that will be accessible to a broad audience. It is hoped that the report will lead to consultation and dialogue in Cambodia on the nature and impact of impunity and what must be done to end it.

This report draws extensively upon the reports to the Commission on Human Rights and the General Assembly of former Special Representatives Michael Kirby and Thomas Hammarberg. They have read this report. In so far as it relates to their investigations, findings and recommendations during their respective mandates, they fully associate themselves with this document.

Peter Leuprecht
Special Representative of the Secretary-General for human rights in Cambodia

Section I: Introduction

On 21 June 1997, Prime Ministers Ranariddh and Hun Sen wrote to the UN Secretary-General, Kofi Annan, asking for assistance in bringing to justice those responsible for crimes committed during the rule of the Khmer Rouge from 1975-1979.¹ This put in motion a political and legal process which culminated in April 2005 in an agreement between the Cambodian Government and the UN to conduct prosecutions before the Cambodian courts.² This first step towards ending impunity for crimes committed under the Khmer Rouge was seen as a matter 'not only of moral obligation but of profound political and social importance to the Cambodian people'.

'By having those who committed the abuses identified and punished, Cambodians can better understand their own past, finally place this most tragic period and those responsible for it behind them, and work together to build a peaceful and better future. And accountability can play an important preventive role in Cambodia - demonstrating to those contemplating offences that punishment is at least possible, and promoting an awareness among the people about the meaning of justice and the rule of law'.³

This report is written with the object of tracing different and more recent patterns of impunity which have been recorded by UN representatives and experts over the last decade. It relies primarily on the reports of the Secretary-General's Special Representatives for human rights in Cambodia to the General Assembly and to the Commission on Human Rights as the basis for a brief examination of the situation when the first democratically elected government took office in 1993, the forms taken by impunity since then, and some of the factors which have facilitated it.⁴ The report concerns only the years since the Paris Peace Agreements of 1991.

Simply put, with impunity there is no protection of human rights. It arises where the state fails in its duty to hold individuals accountable for rights violations which they have committed. The primary focus of this report is on impunity for those fundamental rights violations which are also offences under criminal law – killings and summary executions which violate the right to life are clear examples - and which should be investigated and sanctioned by state authorities, through the application of criminal law by independent courts. But impunity also arises where – for example – poor people are arbitrarily evicted from their land or homes without respect for their rights or compensation, and without any sanction on those who carry out the evictions.

Impunity does not only affect the individual whose rights are denied. Where party workers are killed before an election, this has an impact on the freedom of the democratic process. Where a journalist or editor is murdered, or a newspaper's offices attacked, this limits freedom of the press and of expression. Where someone charged with the criminal offence of human trafficking bribes a prosecutor or judge to drop the charges, the court in effect condones the act. Where police instigate or facilitate a mob killing, and no sanction is imposed, they become complicit in the crime. Where a union leader is killed and those responsible remain at large, this threatens wider labour rights and freedom of association. It also sustains a climate of fear and suppresses the voices of those who question existing policies and practices.

¹The Prime Ministers requested the assistance of the UN and the international community in bringing to justice those responsible for genocide and/or crimes against humanity.

² Agreement between the UN and Royal Government of Cambodia concerning the Prosecution under Cambodian law of Crimes Committed during the Period of Democratic Kampuchea.

³ *Report of Group of Experts for Cambodia*, A/53/850, February 1999.

⁴ See Note on Sources in Appendix A.

Since 1993, there have been three Special Representatives of the Secretary-General for human rights in Cambodia: Michael Kirby from Australia, Thomas Hammarberg from Sweden and Peter Leuprecht from Austria. They have submitted more than 20 reports to the Commission on Human Rights and to the General Assembly, plus some reports on thematic issues. Each contained recommendations for action to be taken by the Royal Government of Cambodia to protect human rights and to eradicate impunity. The Government has implemented very few of these recommendations.

Writing in 1999, Thomas Hammarberg noted that ‘the phenomenon of impunity and its institutional expression constitute the single most important obstacle to efforts to establish the rule of law in Cambodia. It includes the lack of response to acts of political violence but is also reflected in the almost daily reports of abuses by military and police officials against common people, including killing, rape, illegal arrest or kidnapping for extortion as well as beating and other violent acts. While the courts lack human and other resources, individuals within the security forces are armed, powerful and protected. People whose rights are violated by military personnel have no effective recourse to justice. This undermines the sense of justice.’⁵

Six years later, Peter Leuprecht reported that: ‘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. 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’.⁶

Donor countries and development agencies recognise that the rule of law is integral to improving good government, and is a key element in economic development and reducing poverty.⁷ Impunity is the antithesis of the rule of law. The measures to combat impunity, which are recommended in this report, thus have a clear relevance for Cambodia’s future economic well being, as well as for the protection of human rights.

Two Illustrative Cases

On 21 July 2001, two young men – Sung Veasna and Dy Hor – were arrested by police on suspicion of robbery. Veasna was taken to the 7 Makera police station for questioning. He was then brought back by police to the scene of the arrest and handed over to the crowd. He was beaten to death and his body was set on fire. Photographs show the violence with which he was killed, the burning of his body, and the active participation of a uniformed policeman. Dy Hor was taken away separately and shot by police, who said he had tried to escape. To the knowledge of the Special Representative, no disciplinary or other action has been taken against police involved.

Chuor Chetharith was a journalist. On 18 October 2003 he was shot dead in the back of the neck as he arrived for work at the Ta Prohm radio station in Phnom Penh. The station is affiliated with FUNCINPEC, and had been the subject of condemnation by

⁵ E/CN.4/1999/101, para.45.

⁶ E/CN.4/2004/105, para. 26.

⁷ The ‘importance of legal and judicial reform as the underpinning for improving governance, increasing growth, and reducing poverty’. Concluding remarks by co-Chair, 7th Consultative Group meeting for Cambodia, December 2004.

*the Prime Minister the week before. The gunman escaped on the back of a motorcycle, which had been seen travelling back and forth along the street several times that morning. It is believed by many that two military officials are responsible for the killing. To the knowledge of the Special Representative, no arrests have been made.*⁸

Section II: The International Framework

The protection of human rights in Cambodia, and the ending of impunity for human rights violations which is central to that protection, have been central concerns of the international community since the Paris Agreements of 1991.

In these Agreements, the Cambodian authorities undertook to protect human rights, including the right of citizens to defend their rights, and to ensure that the ‘policies and practices’ of the past would never return.⁹ Noting that Cambodia’s ‘tragic recent history requires special measures to ensure protection of human rights’, the Agreements set out in some detail the human rights provisions to be included in the new Constitution.¹⁰ It should contain a declaration of fundamental rights. These rights should be enforced by an independent judiciary, and ‘aggrieved individuals’ should be able to enforce their rights before the courts.

In the transitional period before the 1993 elections, assistance to promote and protect human rights was provided by the United Nations through UNTAC.¹¹ After the elections, the Secretary-General appointed a Special Representative for human rights in Cambodia, and a UN human rights office was established in Cambodia. Together they would combine monitoring, protection and public reporting functions with technical assistance and advisory services.¹²

In 1992, Cambodia took a formal step towards implementing the Paris undertakings when it acceded to six core international human rights treaties, which give legal effect to the rights proclaimed in the Universal Declaration of Human Rights.¹³ In so doing, Cambodia assumed an obligation both to its own people, and to other states parties, to respect and protect the rights of everyone in the country.

⁸ The Ministry of Interior said that the case was under further investigation. Ministry of Interior, Commissariat General of National Police, Response to Letter No. COHCHR/022/04.

⁹ Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, article 15.

¹⁰ ‘Therefore, the Constitution will contain a declaration of fundamental rights, including the rights to life, personal liberty, security, freedom of movement, freedom of religion, assembly and association, including political parties and trade unions, due process and equality before the law, protection from arbitrary deprivation of property without just compensation, and freedom from racial, ethnic, religious or sexual discrimination..... The declaration will be consistent with the provisions of the Universal Declaration of Human Rights and other relevant international instruments. Aggrieved individuals will be entitled to have the courts adjudicate and enforce these rights.’ Annex 5 ‘Principles for a new Constitution for Cambodia’, paras 2 and 5.

¹¹ UN Transitional Authority in Cambodia. UNTAC was given the responsibility of ‘fostering an environment’ in which respect for human rights was to be ensured.

¹² The Cambodia Office’s mandate, and that of the Special Representative of the Secretary-General for human rights in Cambodia, were set out in Commission on Human Rights resolution 1993/6. The Office is now under the direction of the High Commissioner for Human Rights.

¹³ They are: International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights, International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Elimination of All Forms of Racial Discrimination; International Convention on the Elimination of All Forms of Discrimination against Women, and International Convention on the Rights of the Child.

As a member of the United Nations, Cambodia is also under a general obligation to implement General Assembly and Human Rights Commission resolutions concerning its human rights record, as well as to respect universal human rights codes of conduct and other normative texts.¹⁴

One consequence of this complex set of international relationships is that where Cambodia's laws, policies and practices fail to respect human rights, this failure is a legitimate concern of both the international community and of other UN member states.

These laws, policies and practices are monitored by – on the one hand – the Special Representatives who have reported to the General Assembly and the Human Rights Commission, and – on the other hand – by the expert treaty bodies which oversee states' implementation of the human rights treaties. As well as monitoring the measures which Cambodia has taken, or has often failed to take, to protect human rights, the Human Rights Committee, the Committee against Torture, and other treaty bodies make recommendations for action to be taken by the Cambodian Government.¹⁵ Donor agencies and governments, which provide technical assistance for legal and judicial capacity building, recognising the close relationship between the rule of law and poverty reduction, also review performance in this area.¹⁶

Another consequence, which arises under international law is that Cambodia does not have an entirely free hand in deciding what laws, policies and practices it adopts, where these are likely to have a negative effect on the enjoyment of human rights, or to foster impunity.

Through its accession to the human rights treaties, Cambodia has undertaken to 'respect and ensure' the rights of everyone within its territory – men, women and children - and to ensure that their rights are protected in domestic law and policy. This means that it is required to take necessary steps to bring its domestic law and practice into conformity with international human rights law. This includes holding those responsible for human rights violations accountable, for example before independent and impartial courts, and ensuring that victims have an appropriate and accessible remedy. These legal obligations are binding on all branches of government – executive, legislative and judicial. They require the state to ensure that individuals are protected against violations not only by officials and members of the military and police, but also by the private sector: business corporations and traffickers as well as members of the public if they take part – for example - in mob killings.

Impunity is the opposite of accountability. It exists where individuals who commit violations are exempt from any punishment, and are not brought to account in any proceedings – whether criminal, civil, administrative or disciplinary – or made subject to any penalties, and where no reparation is made to the victims.¹⁷

¹⁴ These include: Standard Minimum Rules on the Treatment of Prisoners; Code of Conduct for Law Enforcement Officials; Basic Principles on the Independence of the Judiciary; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Basic Principles on the Use of Force or Firearms by Law Enforcement Officials.

¹⁵ See e.g. CCPR/C/79/Add.108.

¹⁶ The elements of the rule of law, for example, identified by the World Bank are: that (a) the government itself is bound by the law; (b) every person in society is treated equally under the law; (c) the human dignity of each individual is recognised and protected by law; and (d) justice is accessible to all. *Initiatives in Legal and Judicial Reform*, World Bank, 2004, p.2.

¹⁷ Impunity is defined as '(the) impossibility, de facto or de jure, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any enquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced

The fundamental human rights enshrined in the International Covenant on Civil and Political Rights include: the right to life; the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment; the right to liberty and security of the person; freedom from arbitrary arrest and detention; the right to freedom of thought, conscience, religion and opinion; and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, with due process guarantees. These due process guarantees require, at a minimum, that the individual is promptly informed of any charges against him or her, has a representative of his or her own choosing, is tried without undue delay, has legal assistance, is able to examine witnesses, and to appeal against conviction/sentence to a higher court.

International human rights law sets out the steps which must be taken by the state through its police, other law enforcement officials, and the judiciary, to protect rights and prevent impunity. There is an obligation to investigate any incident in which fundamental rights may have been violated. Where the investigation indicates that there has been a violation, the government must ensure that those responsible are brought to justice. A failure to investigate, and a failure to hold those responsible accountable, can in and of itself give rise to a separate breach of the Covenant by the state.

This does not imply that poor countries, with weak judicial and legal systems¹⁸ must respond to every rights violation through a sophisticated legal proceeding. But some investigation must be made, and some sanction imposed, and some measures must be taken to prevent recurrence

The rights and duties are most commonly, and most easily, understood in respect of those violations of civil and political rights which are normally defined both as criminal acts under domestic law, and are also human rights violations under international law. The most obvious examples are torture and other cruel, inhuman or degrading treatment or punishment, enforced disappearance and summary killing and extra judicial execution which violate the right to life. It follows that where public officials or state agents have committed violations of these rights, international law does not allow – indeed forbids – the authorities to relieve individual perpetrators of their personal responsibility. Furthermore, the fact that they may be officials – for example, police or military officers – can never justify their immunity from legal responsibility.¹⁹ But there is also impunity where, for example, corruption is unchecked and/or scarce medical resources are diverted from the most needy without oversight and accountability, or where land is acquired in breach of the law, and results in the dispossession of rural populations and the loss of basic livelihoods.

No measures were included in the Paris Agreements to end impunity for the crimes against humanity and other gross violations of human rights committed by the Khmer Rouge during the period 1975 to 1979. In a separate but parallel initiative in 1997, the Special Representative therefore encouraged Cambodia to ask for international assistance to end impunity for individual Khmer Rouge leaders.

to appropriate penalties, and to making reparation to their victims'. E/CN.4/2005/102/Add.1 Report of Diane Orentlicher, independent expert to update the Set of principles to combat impunity - *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*.

¹⁸ See subsections iv-vi of section VI.

¹⁹ See generally Human Rights Committee, General Comment 31, *The Nature of the Legal Obligations Imposed on States Parties to the Covenant*, HRI/GEN/1/Rev.7. The Comment is attached in Appendix C.

Section III: Impunity in 1994

In 2005, Peter Leuprecht reported to the Commission on Human Rights that impunity was a ‘continuing’ and ‘systemic’ problem’ in Cambodia. He called for an analysis of developments since the 1991 Paris Agreements, and stressed the need to draw lessons for the future from the past.²⁰

Many of the elements of impunity identified in the 2005 report had been reported by UNTAC in 1993, when it left Cambodia after overseeing the transition to democratic elections,²¹ and again by Michael Kirby in 1994, in his initial report to the Human Rights Commission.²² These reports are therefore the starting points for such an analysis. Although more than a decade has passed, they remain important as accounts of the situation which faced the newly elected Cambodian Government in 1993, and as records of the flimsy foundations on which the Government was supposed to construct human rights protection, foundations which, where they existed, needed to be completely dismantled, removed and rebuilt.

UNTAC reported that it found a society which lacked the basic institutions and processes upon which respect for human rights depended. These included an independent judiciary, an independent media, viable state institutions, a broadly educated professional class, and national and local non-governmental organisations able and willing to promote the interests of civil society. Existing institutions were geared towards rigid political control by an authoritarian state backed by active military force and unwilling to accommodate alternative sources of authority. In those areas administered by the State of Cambodia, the Cambodian People’s Party and the state were intertwined, with informal patron-client relations complementing party control from the centre right down to the village level.

The Cambodian legal system had historically been based on the French legal system, but after 1975 laws and institutions, such as the courts, were abolished, and most intellectuals died, became rural labourers or fled the country. In 1979, when the People’s Republic of Kampuchea regime came to power, there were few, if any, persons with legal training, and no law enforcement personnel trained in a rule of law tradition. Reinstitution of old legal texts was not attempted due in part to the political ‘line’ of the regime and in part to the traumatic aftermath of the Khmer Rouge regime in which ‘detailed legal codes would have been useless as guides to conduct’.²³

In the decade of the 1980s, Revolutionary Peoples’ Courts were created in all provinces. Under the 1989 Constitution these provincial courts were composed of a judge sitting with two Peoples’ Assessors appointed by local party officials. The Assessors had equal rights and responsibilities with the judges, and verdicts were decided by majority. Provincial courts were subject to direction not only by the Supreme Court but also by the Public Prosecutor, the National Assembly and the Council of Ministers. Before deciding on each case, judges were required to request the advice of the Supreme Court and/or Ministry of Justice. There was no procedure for public

²⁰ E/CN.4/2005/116, p.2 and para.77.

²¹ See generally UNTAC *Human Rights Component Final Report*, September 1993. UNTAC’s human rights mandate included a programme of human rights education, general human rights monitoring, the investigation of human rights complaints and the taking of appropriate corrective action. This was linked to UNTAC’s primary role to hold free and fair elections and to oversee a transition to a democratic government; they thus centred on election related political violence and restrictions on political freedom.

²² E/CN.4/1994/73.

²³ E/CN.4/1994/73, p.70 para 22.

hearing of appeals and the Supreme Court was not required to give any reasons for reversing a decision of a provincial court. This 'tradition of judicial subservience to the Ministry of Justice'²⁴ created patterns of behaviour which became obstacles for UNTAC, and which have proved difficult to change in the longer term.

The legal and institutional structures existing in 1992 were essentially those which had developed over the previous decade. There were inadequate or no legal texts, whether on civil law, contracts and property, criminal law and procedure, rules of court, evidence, or labour law. Institutions such as the police and courts were not fully organised or properly functioning.

UNTAC defined the fundamental justice issue as the complete breakdown in the legal system, and saw the criminal courts as the main focus of its concern. It drafted a transitional criminal law, which it saw as a stopgap measure, which would quickly be replaced by more permanent legislation. Through the Transitional Criminal Law, UNTAC sought to introduce the notion of independence into the legal system. The first article provided that 'the judiciary must be independent of the executive and legislative authorities and of any political party'.²⁵

But, as UNTAC later noted, 'the mere passage of legislation does not ensure an independent judiciary. Despite the framework created by the law no real attempt was made to adapt the existing courts to that framework. Thus while the courts were technically independent of the executive arms of government, they remained totally subject to executive direction.'²⁶ The Minister of Justice explained to UNTAC that judges who did not follow his instructions and thus "disobeyed the law" must be punished. The courts also operated under pressure from the police and the Ministry of National Security. For example, police were not required to attend court for the trial of prisoners they had arrested, as the court accepted without question the information presented to it on police files. Nor could the police be challenged on this evidence since they were not in court and not available for cross-examination.

In the course of its short mandate, UNTAC investigated more than 1,300 allegations of violations of civil and political rights, notably politically and ethnically motivated killings, arrests, abductions, as well as patterns of violations, such as harassment and intimidation against political parties by local police, military or administrative authorities. Some were in territory under the control of the Government of the State of Cambodia, while some others took place in areas still outside Government control, and administered by, for example, the National Army of Democratic Kampuchea.

²⁴ Michael Kirby refers to passage in the Supreme Court's 1989 report to the National Assembly, in which the Court comments that it is not 'competent to resolve "suits itself"', and has only examined them 'so that they may be turned over to the competent organs to be dealt with. This is because we feel that the work of receiving and resolving suits is a matter of ideology'. E/CN.4/1994/73, page 19.

²⁵ 1992 Transitional Criminal Law: Article 1(i) The independence of the judiciary must be guaranteed in accordance with the Basic Principles on the Independence of the Judiciary....Judges must decide in complete impartiality, on the basis of facts which are presented to them, and in accordance with law, refusing any pressure, threat or intimidation, direct or indirect, from any of the parties or any other person. (ii) The judiciary must be independent of the executive and legislative authorities and of any political party. Persons selected for judicial functions must be honest and competent. (iii) The principle of the independence of the judiciary entitles and requires judges to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. They must have decent and sufficient material conditions for the exercise of their functions. Judges must receive suitable training and be remunerated adequately to ensure their impartiality and independence.'

²⁶ UNTAC Human Rights Component Final Report, September 1993. page 16.

UNTAC initially sought to persuade Cambodian authorities to investigate allegations and to prosecute those responsible for serious rights violations in the courts. While this was effective in minor cases, UNTAC found a “reluctance” to take action against senior officials, and particularly to act in cases involving human rights violations. In many such instances, the administrative authorities refused to conduct investigations, and senior officers expressed the view that they did not have the capacity either to investigate or prosecute such matters. While the Transitional Criminal Law provided a formal framework to address this problem through the criminal law, it became clear that such offences would not be prosecuted in practice by state appointed prosecutors, who faced not only the threat of interference, but also physical danger should they seek to institute penal action against the will of the political authorities.

It was against this background that a Special Prosecutor’s Office was established in January 1993. Initially UNTAC hoped that if the Office operated within the existing court structure this might, by the public nature of such prosecutions, play a role in altering the legal and official ‘culture’ of the courts. The Office had the power, *inter alia*, to prosecute criminal offences involving officials, police or military officers in Cambodian courts. But this proved to be impossible when the Minister of Justice instructed the President of the Phnom Penh Municipal Court that he would be ‘punished’ for a violation of the law if he were to hear cases brought by the Special Prosecutor. UNTAC was thus forced to recognise that it would be impossible to conduct cases with political overtones in the Cambodian courts.

UNTAC identified other obstacles to judicial independence. The authorities opposed the limitations on their own power which would necessarily follow the establishment of an independent judiciary, and were unwilling to co-operate in the investigation, arrest and prosecution of serious human rights violators. Elements of the Cambodian administration, particularly the security forces, were complicit in politically motivated violence. Both meant that the courts were not allowed to operate independently or impartially. The law, and the courts in particular, was still regarded as a tool of the governing political parties – to be paid lip service on occasion but ignored when inconvenient. Further, during the election period, judges in many provinces were obliged to campaign for the Cambodian People’s Party during working hours.

In its Final Report, UNTAC concluded that the inability of legitimate state authorities to prevent continuing and increasing violence, including summary executions and the related and spreading culture of lawlessness, remained a principal human rights concern. The protection and promotion of human rights rested on the re-establishment of civil administration and law and order throughout the country. ‘Many acts of violence are believed to be perpetrated by elements of the police and military; their current lack of accountability and growing autonomy, if unchecked, could seriously undermine progress on all other fronts.’²⁷

By the time UNTAC’s mandate ended, two measures to protect human rights had been taken by Cambodia, both envisaged in the Paris Agreements: accession to the six international human rights treaties, and the adoption of a new Constitution in September 1993.

The 1993 Constitution makes a break with the past by incorporating the Universal Declaration of Human Rights and the human rights treaties. It protects the right to life, to strike, to take part in non-violent demonstrations, freedom of belief, expression and association, and to establish political parties. It does not proscribe torture as such, but it contains guarantees against physical abuse generally, and against ill treatment in prison and in places of detention, and it states that confessions obtained by ‘physical or mental force’ shall not be admissible in court.

²⁷ *Ibid.*, at page 70.

Discrimination is prohibited. There is provision for separation of powers, and an independent judiciary which is to 'protect the rights and freedoms of the citizens'. Judges may not be dismissed, and any disciplinary actions against judges or prosecutors are to be taken by a Supreme Council of the Magistracy.

Michael Kirby's first reports to the Commission on Human Rights described the situation as he found it.²⁸ While he confirmed UNTAC's analysis of obstacles in the way of human rights protection,²⁹ he also noted that progress had been achieved in a comparatively short time since 1991, against a background of Cambodia's recent history of 'the terrible suffering of its people and grave derogations from human rights'. Examples of this progress included the new Constitution, improvement in the functioning of some courts, training for judges, prosecutors and police, and the creation 'and multiplication' of NGOs. He commented on the 'desire and will for change' following the 1993 elections, and evident in the 'flourishing' of a relatively free press, 'in the new confidence of Cambodian citizens, often from remote villages, who travel to the capital to speak out...for their rights', and in the 'deluge of complaints', often relating to official abuse, received daily by the Human Rights Commission of the National Assembly'.

But when he reviewed the overall situation, Kirby noted specific security related problems which arose from the ongoing civil conflict, the ready availability of mines, grenades and other weapons which were on sale in the markets, the abuse of power by some military and police, and the lack of effective and just means of resolution of complaints by civilians. These should be seen in the context of an almost total destruction of the justice system and of the infrastructures of a civil society necessary to realise and protect human rights.

He saw strengthening the rule of law as one means of challenging the impunity of the Cambodian armed forces which continued to enjoy 'wide and effectively uncontrolled powers of arrest, detention and even execution' in disregard of existing laws, including internal army regulations, as well as international human rights and humanitarian law. In many parts of the country, village communities, which were deprived of any recourse to civil protection, experienced, on a daily basis, the 'law of the gun'. Often the police, the civilian authorities and the courts and judges, are 'afraid and unable to take effective, or any, measures to curb the abusive and arbitrary practices by the military and bring them within the discipline of the law'.

Both UNTAC and Kirby illustrated the impact of impunity by reporting individual cases.

1. On 1 April 1993 in Romeas Hek district, Svay Rieng province, FUNCINPEC member Suern Sour was at home with his wife, Hong Shur, and their children. At about 11.30pm a local policeman Nquim Chanarith and two local militia members, Kau Chhong and Sor Vor, entered the house. NC was armed with an AK-47 assault rifle. They demanded gold from the family and then started to beat Suern Sour in front of his wife. One of the militiamen hit him with an axe. They then chained his arms behind his back, and shot him in the leg. The house was dark, but the two militiamen were carrying torches, and witnesses could identify them as they knew them personally from the village. After shooting Suern Sour, the militiamen struck Hong Shur on the head with a rifle butt. The men then stripped her to search her for gold. Finding none, they searched the house and stole one earring, a chicken and some clothes. As they were leaving the house, NC turned to Suern Sour, who was lying on the floor crying for help, and shot him in the head, killing him. UNTAC investigators recommended that arrest

²⁸ E/CN.4/1994/73 & A/49/635.

²⁹ As above.

warrants be issued for the arrest of Nquim Chanarith, Kau Chhong and Sor Vor, and concluded the killing was politically motivated. UNTAC recorded that no warrants were issued.

2. On 13 April 1994, a military officer, Sok Tha, whose parents had been found guilty of an offence, but not yet committed to prison, invaded the Sihanoukville Court building (Kompong Som) in the company of other armed military personnel. The Judge and Prosecutor were forced to flee in fear of their lives. The military prosecutor took no action to prosecute the soldiers before a military tribunal, nor were proceedings taken in a civil court. Sok Tha's parents remained at liberty. There were reports [which were disputed] that he had been demoted in rank and transferred. The Special Representative commented that 'the steps taken to respond to this attack were inadequate to its gravity'.³⁰

3. On 29 March 1994 a group of armed men, apparently military personnel from the Fourth Military Region, stormed Battambang Prison threatening the lives of guards and other prisoners and forcing the release of a prisoner, Te Sokhuntea, who had been convicted of smuggling antiques from Cambodia into Thailand. Te Sokhuntea remained at large. The Special Representative commented that 'this interference in the carrying out of a lawful sentence imposed by a court is an affront to the authority of the court'.³¹

Section IV: The Need to Rebuild the Foundations

In his first report,³² Kirby also set out an agenda for change, and identified some of the areas which required most urgent action by the newly elected Government; these included the creation of new institutions called for by the Constitution, and the enactment of new laws to give effect to Constitutional guarantees.

He urged the immediate establishment of two institutions envisaged in the Constitution as central to the rule of law: a Constitutional Council and a Supreme Council of Magistracy. Interpretation of the Constitution and constitutional review of all draft legislation was placed in the hands of the Constitutional Council, which would have power to identify any unconstitutional provisions, including infringement of fundamental rights, in laws to be enacted by the National Assembly. The Supreme Council of Magistracy would have power to recommend the appointment of judges by the King, and would be the institution with sole power to oversee and discipline judges and prosecutors.

Laws were also required in many key areas. A law was needed on the status of judges and prosecutors in order to establish and regulate a new judicial service tenure system, including an appointment process, service conditions and benefits, remuneration, retirement, codes of conduct, and procedures for disciplinary action. A Penal Code, an Evidence Act and a new Criminal Procedure Code, revised to reflect the new Constitution, were all necessary to create a

³⁰ The Ministry of Interior acknowledged that Sok Tha had threatened the prosecutor but denied that there had been any interference with the trial proceedings. *Ibid.*, note 8. Follow-up suggests that Sok Tha was later dismissed as a result of a complaint by the chief judge to the commander.

³¹ In response, the Ministry of Interior said it had an arrest warrant for, and was still seeking to arrest, Te Sokhuntea. No mention of sanctions being taken against the attackers was made. *Ibid.*, note 8.

³² E/CN.4/1994/73.

comprehensive legal foundation for the criminal justice system, the work of the police, the operation of the courts and the rights of defendants. A law on the organisation and functioning of courts, and a restructuring of the court system, were needed to establish and clarify the jurisdiction of the various levels of courts.

Kirby also pointed out that the rights which were now formally protected in the new Constitution would exist in a vacuum unless implementing legislation was passed. He drew attention to situations in which existing Cambodian laws did not conform to the international human rights principles which had been incorporated in the Constitution, and needed to be changed.

- The Constitution guaranteed the right to form and join trade unions, to strike and engage in non-violent demonstration, but no laws or regulations existed to govern such essential elements of an industrial relations regime as minimum wage, working hours, health and safety.
- The Constitution recognised the right to life, personal freedom and security, and Cambodian criminal law required that crimes should be prosecuted.³³ But in order to enforce the law, detailed rules and procedures were needed to ensure that investigations took place, notably in cases involving killing and arbitrary deprivation of life.
- The Constitution recognised the right of citizens to take legal action against human rights violations by officials, but in practice such action could not be taken because Cambodian law did not make adequate provision for criminal or civil remedies, so – for example - those arrested were not able to institute legal proceedings to challenge the lawfulness of their detention.
- The conduct of trials under Cambodian law did not comply with basic due process guarantees. Although the Constitution recognised the right to the presumption of innocence, and provided that confessions obtained by ‘physical or mental force’ should not be admissible as evidence, Kirby reported that the organisation of trials was such that it compelled the accused to prove innocence and not vice versa. In practice courts relied on confessions as the primary evidence of guilt, even when defendants claimed they were obtained under torture. The criminal procedure rules invested police reports with a presumption of truth; and defendants had no right to examine prosecution witnesses, so that most trials take place without any examination of witnesses.

Kirby concluded that until the Cambodian Government enacted legislation and adopted regulations in these different areas, Cambodia would not meet the requirement to ‘respect and ensure’ the rights in the International Covenant on Civil and Political Rights to ‘all individuals within its territory’. Expressed in another way, if the fundamental rights in the Constitution were to be respected, Cambodia needed to make, in effect, a clean break with many of its laws – in so far as laws existed - and with the practices which had fostered impunity.

³³ Code of Criminal Procedure, Articles 7 and 10.

Section V: Forms of Impunity 1995 – 2005

Since 1995, Special Representatives Thomas Hammarberg and Peter Leuprecht have drawn repeated attention to individual cases, instances and situations in which fundamental rights had been violated, either by state officials or with their complicity, and in which no effective steps had been taken to investigate and prosecute those responsible.

The range and the gravity of these cases are evident from the illustrative examples given by Hammarberg in his report to the Commission on Human Rights in 2000, when he called for investigation into recent cases by the then newly elected government. They included: assassinations of four journalists; a grenade attack against the Buddhist Liberal Democratic Party congress in September 1995; the assassination of Keo Samouth, of the Economic crimes Department of the Ministry of Interior, in late 1996; a grenade attack against a peaceful and legal demonstration on 30 March 1997 which killed more than 14 people and injured 142; a rocket attack against a television station in Sihanoukville on 4 May 1997; a grenade attack on the office of a daily newspaper *Koh Santhepheap* on 15 October 1997 and a subsequent attempt on the life of the editor; the killings and disappearances of military and civilian members of opposition political parties in July 1997 at the time of a military coup and in subsequent months; killings reported prior to the 1998 elections; and deaths related to post election demonstrations.³⁴ Hammarberg had raised these and other cases in memoranda which he submitted to the Government.

These cases were later included in a representative list of 178 cases submitted to the Government in February 2004. The cases had been brought to the attention of the Government in the course of the preceding 12 years by UNTAC and the Special Representatives. The Government was asked for its assistance in reviewing the list, and advising on the current status or outcomes of criminal investigations or judicial processes, and on any administrative actions that might have been undertaken, where applicable. The co-Minister of the Interior provided a written response to the Special Representative in November 2004.³⁵

Some broad categories of cases can be identified from the Special Representatives' reports in which very serious human rights violations have taken place, but where there has been no effective investigation to hold those responsible to account in criminal or other proceedings.

A. *Killings of military and civilian members of opposition parties.* In a Memorandum, dated 22 August 1997, Hammarberg had presented information on – inter alia – politically motivated executions committed after the military coup in July 1997.³⁶ One case was that of Ho Sok.

Ho Sok was Secretary of State at Ministry of Interior and a senior member of FUNCINPEC. On 7 July 1997, he was arrested at approximately 4.00 pm in Crown Road, Phnom Penh by four plain clothes personnel of the Serious Criminal Department of the National Police, headed by Colonel Mao Dara and Colonel Ten Borany. He was taken to Ministry of Interior, where he was executed at approximately 5.00 pm. At approximately 3.00 am on 8 July, a body later identified as Ho Sok, with

³⁴ E/CN.4/2000/109 para. 22.

³⁵ The response from the Ministry of Interior provided details on the status of the cases. The Ministry indicated that 64 cases were still under investigation, and no arrests had been made; that 25 cases occurred 'in connection with the events of July 1997' and – by implication – were not being investigated; that four cases occurred in areas then controlled by the Khmer Rouge, and were not investigated; in two cases the event 'did not occur'. In the remaining cases, investigations had been undertaken and 'final solutions' found. See Appendix B for further detail.

³⁶ Memorandum: *Evidence of Summary executions, Torture and Missing Persons since 2-7 July 1997.*

two visible bullet wounds, was brought to Wat Langka pagoda by a group of heavily armed men in combat fatigues. They ordered the body to be cremated immediately, without question and without a cremation certificate, despite the legal and customary practice that no cremation can be carried out without a proper certificate. Later in the morning, after the cremation, a certificate in the name of Ho Sok, stating that he had died 'by bullets', was issued by Phnom Penh Municipal Health Department.³⁷

Another case involved the execution of FUNCINPEC soldiers:

On 15 July 1997, the Cambodia Office discovered a large cremation site on National Route 4, at Pich Nil pass, where burned human bones and two pairs of manacles were found. Subsequent accounts indicated these were the remains of four FUNCINPEC soldiers whose bodies had been delivered on 10 July at 9.30pm by soldiers from Division 44, and cremated on 11 July. Subsequently a shallow grave was discovered containing the bodies of two men, who had been blindfolded, hands tied at the back, with a bullet wound to the head. A leather belt was found near the grave. Corroborating accounts indicate that on 9 July, a large number of FUNCINPEC soldiers – from 15 to 22 persons – were taken in military vehicles by soldiers from Military region 3 based in Kompong Speu and executed and burned in the region of Pich Nil pass. The victims were described as being 'ring leaders' loyal to Prince Ranariddh, and included senior FUNCINPEC officers. The pass is under the exclusive military authority of Division 44 based in Srae Klong.

In a later Memorandum, dated 13 May 1998, Hammarberg recorded – inter alia – an additional 24 instances of summary killings and murder, involving members of opposition political parties.³⁸ He said he believed that there had been no proper investigation of these cases; police and government authorities had simply concluded that many were 'robberies', 'personal disputes' or acts of revenge. He commented that while many might indeed contain these elements, motives may also have been mixed, and it was possible that killings were political but arranged to suggest other motives. 'Only rigorous investigation will allow determination of motive'. He also noted that a failure to punish well-publicized crimes would encourage members of the armed forces and police in the belief that they will enjoy impunity for any crimes they may commit.

One of these cases was Inn Phuong, and his daughter Chan Sorya.³⁹

On the evening of 27 January 1998 Inn Phuong, his wife and their two daughters were at home. At 9.15 pm three men, one armed with an AK-47, broke into the house. Inn Phuong was rocking his younger daughter, Chan Sorya, who was sleeping in a hammock. His wife was outside the house taking care of the pig. Four rounds were fired at Inn Phuong, injuring him and also his daughter. They tied him up with a kramma and asked for money. They took away two suitcases containing clothes, books and teaching materials and political documents including FUNCINPEC membership cards, and a picture of Sam Rainsy, but did not find Inn Phuong's KNP membership card. They also took away the family's cow. These items, except the cow, were subsequently thrown away. Inn Phuong and his daughter both died from their injuries. Inn Phuong was a primary school teacher and pagoda committee member in his village. He had no known quarrel with anyone in the village, and was a respected

³⁷ The official investigation into Ho Sok's death is considered in Section VI.

³⁸ Memorandum to the Royal Government of Cambodia 13, May 1998, Section III and IV.

³⁹ In Kang Neang Village, Preah Sdach district, Prey Veng province

*community elder. He had been a FUNCINPEC member, and in 1995 he joined the Khmer National Party, and was about to be appointed by the KNP as a party candidate when he was killed.*⁴⁰

The fact that none of these cases was fully investigated within a reasonable timeframe led the Human Rights Committee to express its ‘alarm’, and to call for immediate action by the Government to prevent further occurrence, to investigate all allegations, and to bring those alleged to have violated Covenant rights to trial.⁴¹

B. Politically related murders and violence during election periods have been recorded at each election, and were documented in particular detail at the time of the 1998 elections.⁴² One typical case was that of Em Iem.

*On the morning of 10 June 1998, Em Iem left his home by bicycle to go to the district headquarters of the Sam Rainsy Party where he was working. He was seen to be arrested by six men, including the village chief, commune police and the militia chiefs. He was searched and party documents were seized. He was then handcuffed, blindfolded and taken in the direction of a nearby rubber plantation, where his body was later found. It was identified on 19 June. It showed damage to the left side of the head, to the back of the neck and to the right hand. Several teeth had been broken, the right jaw was broken and the nose was smashed. Witnesses said that on 9 June the village chief had invited people to his home, and said that anyone joining a political party other than the CPP would be killed. He repeated this several days after the murder, stating that Sam Rainsy Party members would be killed one after the other.*⁴³

Murders where a political motive was suspected were also recorded in the context of the commune council elections of February 2002 and the National Assembly elections of July 2003. Leuprecht reported in 2005 that the Office of the High Commissioner for Human Rights in Cambodia had documented 43 such murders during the election period, and that in a majority of these cases no one had been convicted and imprisoned.⁴⁴

⁴⁰ The Ministry of Interior reported that two suspects were later arrested, Sorn San and Sornn Sann and that police were also seeking two other suspects, Khman Koy and Kong Dok, for whom arrest warrants had been issued, but who had escaped. *Ibid.*, note 8. Kong Dok was eventually arrested in 2005. The Prey Veng court later informed the Cambodia office that the court heard the case on 27 June 2005, and that Sorn San, Sornn Sann and Khman Koy were convicted *in absentia* and sentenced to 7 years imprisonment. Kong Dok was sentenced to 10 years imprisonment. The verdict also ordered the prosecution of a person under the *alias* ‘Chantha’. However police reported that this person could not be found.

⁴¹ ‘The Committee is alarmed at reports of killings by the security forces, other disappearances and deaths in custody, and at the failure of the State party to investigate fully all these allegations and to bring the perpetrators to justice. It is particularly concerned at the lack of action in regard to the many deaths and disappearances that occurred during 1997 and during the 1998 elections, and in regard to the delay in completing the investigation of the grenade attack on demonstrators on 30 March 1997. Action should be taken without delay to prevent the further occurrence of such incidents, to investigate all such allegations, and to bring those alleged to have violated Covenant rights to trial’. CCPR/C/79/Add.108, para. 11.

⁴² See, for example, Special Representative reports *Monitoring of Election-related Intimidation and Violence*, June – October 1998.

⁴³ Special Representative *Monitoring of Political Intimidation and violence*, 28 June – 5 July 1998. The Ministry of Interior said that investigations have been concluded, the case sent to the court on July 7 1998 and seven suspects identified. However, no further action has been taken. *Ibid.*, note 8.

⁴⁴ E/CN.4/2005/116 para.13 Although in 18 of the 43 cases there were convictions, in several of these cases, serious concerns exist about the reliability of the convictions in view of the quality and conduct of the investigations and prosecutions, as well as failure to meet minimum standards of fair trial.

Some cases had the characteristics of ‘contract’ killings in which hired men – usually on motorcycles - shoot the victim in a public place and in broad daylight. Victims included public figures and union leaders. Judge Sok Sethamony was killed on 23 April 2003:

*Sok Sethamony was a judge in the Phnom Penh Municipal Court. He was shot dead in Phnom Penh by two gunmen, travelling on a motorcycle which pulled alongside his car at a traffic intersection, and opened fire. Three suspects were later arrested by the Municipal Gendarmerie. One was released when it was established that he had been in prison at the time of the murder. The two others were later released when the investigating judge found no there was evidence against them. When asked about the status of the investigation, the Police Commissioner said that the Municipal Gendarmerie had carried out the initial arrest, and the police were no longer investigating the case. Peter Leuprecht issued a statement on 16 May raising concern over the killing and other incidents undermining judicial independence, and called for a thorough and impartial investigation.*⁴⁵

Other such ‘contract’ killings carried out in Phnom Penh from February 2003 to May 2004 included those of senior monk Sam Buntheon, FUNCINPEC advisor, Om Radsady, Chuor Chetharith, a radio journalist, Kim Sinoun, the mother of popular singer Touch Srei Nich, who was also shot and has been left paralysed, and trade unionists Chea Vichea and Ros Sovannareth.⁴⁶

C. Unfair trials and denial of due process in court proceedings. In those cases where murders with a probable political motive have been investigated, and suspects arrested and charged, the trial proceedings have often been marked by serious shortcomings of due process. These have included convictions made solely on the basis of confessions which reportedly had been made under duress; or trials in which the defence was not permitted to call witnesses, or cross-examine police and other prosecution witnesses; where judges had shown evident bias in their conduct of proceedings; and where civilians had been tried in military courts. All these are serious legal and procedural defects which have cast doubt on the actual culpability of those convicted. Two examples are the trials of Cheam Channy, and of the two men, Born Samnang and Sok Sam Ouern, accused of the murder of Chea Vichea.

1. Cheam Channy, a parliamentarian of the opposition Sam Rainsy party, was arrested on 3 February 2005 hours after the National Assembly voted to lift his immunity. On 8 August 2005, the Military Court sentenced him to seven years imprisonment. He was found guilty of committing acts punishable under Article 36 (“organized crime”) for having organized an illegal army and Article 45 (“fraud”) of the 1992 Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (UNTAC Law), in connection with Article 6 (3) and Article 42 of the Law on Political Parties. Under Cambodian law, the Military Court has jurisdiction only over military offences committed by military personnel. The Office of the Military Public Prosecutor and the Military Court therefore lacked the required jurisdiction to issue an arrest warrant and to try Cheam Channy, a civilian. The

⁴⁵ On 3 November 2003, Chhun Chetra was arrested for the murder of the judge while another man, Mol Meat, 41, was arrested the next day. Both suspects were former members of the Cambodian Freedom Fighters who had served time in prison over their role in the CFF attack in November 2000. On 4 April 2004, the investigating judge issued an order to release the suspects citing insufficient evidence, and both men were released on 10 April.

⁴⁶ See Appendix B for further details

conduct of the trial raised serious doubts about the impartiality of the court and the court's ability to apply the 'presumption of innocence' principle. The lawyers for the defence were prevented from questioning all witnesses for the prosecution. They were not allowed to call their own witnesses, and their questioning of the defendant was interrupted for no apparent reason. The judge interfered repeatedly when a witness made statements that might have been detrimental to the case of the public prosecutor. No evidence was provided by the prosecution to substantiate the charges that the defendant had created an illegal army. Leuprecht said that the trial lacked any credibility.

2. Chea Vichea was President of the Free Trade Union of the Workers of the Kingdom of Cambodia. He was shot dead on 22 January 2004 by gunmen on a motorcycle, while he was at a newspaper stand in Phnom Penh. Two suspects were arrested, but on 19 March 2004 the investigating judge of the Phnom Penh Municipal Court ordered their release for lack of evidence. The Prosecutor appealed. On 22 March the Supreme Council of Magistracy took disciplinary action against the investigating judge, purportedly on other grounds, and he was transferred. The Court of Appeal upheld the Prosecutor's appeal, and returned the case to the Phnom Penh Municipal Court for further investigation. On 1 August 2005 the two accused were convicted and sentenced to 20 years imprisonment. The trial has been criticised on a number of grounds: the judge relied on a confession which the previous investigating judge had rejected as 'irregular'; the prosecution witnesses did not appear in court and could not be examined on their evidence; no forensic or eyewitness evidence was produced by the prosecution, and defence alibis were not considered by the judge. Leuprecht said that the prosecution had failed to present any evidence linking the defendants to the crime, and had disregarded fundamental principles of fair trial such as the presumption of innocence and the impartiality of the court.⁴⁷

D. *Mob killings.* In 2002, Peter Leuprecht drew attention to the rising numbers of mob killings.⁴⁸

In one case, on 28 December 1999, a senior police officer, in Phnom Penh's Chamcar Morn district, led a suspect out of the police station, unlocked his handcuffs and handed him over to a waiting crowd. The suspect was dead in minutes. Neither his name nor other details of the incident found its way into police record, and no disciplinary/criminal action was taken in the case.

In another case, also in Phnom Penh, on 13 October 1999, municipal police arrested and handcuffed a suspected thief named Bich Phoeun. After roughly 2 hours in police custody, Bich Phoeun's restraints were removed and police looked on while a group of men beat him with sticks. After sustaining several injuries, Bich Phoeun ran to escape the beating. While running, he was ambushed and shot dead by a group of 'Flying Tiger' police.⁴⁹

⁴⁷ Born Samnang and Sok Sam Ouern have appealed. The case of Chea Vichea has been well-documented and is currently before the ILO's Committee on Freedom of Association. See Interim Report of ILO Committee. Case No. 2318 Complaint Against the Government of Cambodia presented by the International Confederation of Free Trade Unions 2005.

⁴⁸ Street Retribution in Cambodia, 2002.

⁴⁹ The Ministry of Interior said that this case was under further investigation. *Ibid.*, note 8.

Leuprecht noted that the press sometimes referred to incidents of this type as ‘peoples’ courts’, and that members of the police seldom intervened.⁵⁰ Most mob attacks arose quickly, with victims allowed almost no chance to prove innocence. Simple accusations appeared to be sufficient, for example calling out ‘stop thief’. While some police had shown a willingness to intervene, there were ‘many’ cases in which police and others in positions of authority had refused to help people who were being killed, or had even actively participated in instigating mob violence. It was unclear whether police reports on cases of mob attacks were made; it seemed that court officials did not receive files from police; and courts had taken up cases in only two known instances, in neither of which had anyone been jailed.

In 2004, Leuprecht reported that over the past five years, well over 100 persons had lost their lives in mob killings, and many others have been seriously injured. In a number of cases, law enforcement officials had instigated crowds to attack individuals suspected of theft or robbery.⁵¹ He recommended the establishment of an independent board of inquiry, comprised of responsible representatives from political parties, NGOs and religious organizations, to examine all acts of mob violence, why these attacks occur and how to prevent them, and to scrutinize police and prosecutorial conduct in these attacks. No such inquiry has yet been established.

E. The use of torture during police interrogation. Hammarberg’s first case report to the Government, dated 16 June 1997, detailed 32 cases of torture in Battambang.⁵² He gave the example of Svay Por District Police Station where nearly all persons who did not admit guilt were tortured to sign confessions, including both those accused of criminal offences and those accused of Khmer Rouge activities. There was no evidence that those responsible had been punished or disciplined. He commented that the lack of action by provincial authorities promoted the suspicion that superior officers were protecting subordinates who perpetrate torture, which in turn encouraged torture by those whose responsibility it was to uphold the law.⁵³

The Committee against Torture has expressed concern at the ‘numerous, ongoing and consistent allegations of torture and other cruel, inhuman and degrading treatment or punishment committed by law enforcement personnel in police stations and prisons’.⁵⁴ It recommended that the authorities should ensure ‘prompt, impartial and full investigations and punishment of the perpetrators in order to end impunity for law enforcement officials and members of armed forces. It should also ensure that evidence obtained under torture was not used in court. An independent body should be established to deal with complaints. Action has yet to be taken to establish such a body.

In 2004, Leuprecht reported that torture continued to be a serious problem in police cells. He believed it had declined in prisons.

F. Excessive use of force by police. Lethal automatic weapons are reported to be standard issue for the national police. This has contributed to an excessive use of force by the police, sometimes resulting in deaths and outright executions, and a high incidence of deaths during arrest, and in custody, without any accountability. Where deaths occur in custody, investigation has been made the more difficult by failures to carry out post mortems before cremation of the bodies.

⁵⁰ See above.

⁵¹ E/CN.4/2005/116, para. 18.

⁵² See Section VI below.

⁵³ A more recent case is that of Eath Oern, a farmer from Prey Veng province, who was arrested on 26 July 2001 on suspicion of theft of several buffaloes and died three days later. See Appendix B

⁵⁴ Conclusions and recommendations of Committee against Torture, CAT/C/CR/31/7, 5 February 2004

G. Physical attacks on courts. In 2005, Leuprecht referred to a total of 18 attacks on the judiciary in the last decade, in a majority of which police or military involvement had been recorded.⁵⁵

In 1997, Hammarberg had recorded the ‘frustration’ of the provincial court in Battambang over the difficulty of prosecuting military or police offenders, in spite of evidence that they were responsible for most of the human rights violations in the provinces, and of the criminal offences dealt with by the court.⁵⁶ Members of the court had been subjected to threats, including death threats, and intimidation by both the military and the police. The court had conducted trials in absentia for serious crimes involving military and police personnel over the past two years, but none of the verdicts had been implemented, nor had the police and gendarmerie co-operated with the court when it came to the execution of court orders.

*In Banteay Meanchey province, the Chief of the Judicial Police stormed the provincial prison, with 30 heavily armed police officers and an armoured car, in order to release a police officer who had been arrested for beating and threatening to kill his wife. He later threatened the life of the prosecutor who had issued the arrest warrant. The police chief had since continued to ignore the orders of the court, and had threatened violence if legal action was taken against any of his officers. The court had reported this to the Ministry of Justice but - to the knowledge of the Special Representative - no legal or disciplinary action had been taken.*⁵⁷

H. ‘Reintegration ceremonies’ at a local or provincial level have given de facto exemption from prosecution for serious crimes. Hammarberg reported two separate ‘reintegration’ ceremonies in 2000.⁵⁸ They were held by provincial authorities, and attended by government officials and a member of the National Assembly. Waivers from prosecution were granted to 15 accused of armed robbery. Seven of the 15 armed robbers who were ‘reintegrated’ had court warrants outstanding against them, some for murder. He noted that such ceremonies undermine the functioning of judicial system.

Section VI: Factors which Facilitate Impunity

Impunity typically arises in situations where there is no clear framework of laws, where laws are not firmly and fairly applied, where systems do not exist to hold individuals to account, where there is a confusion about lines of authority, and about the jurisdictions of different institutions, and above all where breaches of human rights are not reported, investigated and sanctioned. It is facilitated by corruption, which obstructs the enforcement of law by police and prosecutors, and the application of law by independent courts.

The Cambodian Government does not deny the persistence of serious human rights violations. It explains the failure to investigate and sanction these violations largely in terms of the lack of training and experience on the part of officials, and of the country’s poverty and lack of resources. While the Special Representatives have clearly recognized the need for training and better resources, they have stressed that solutions to the problem require not only – for example -

⁵⁵ E/CN.4/2005/116, para. 16.

⁵⁶ A/52/489, para. 60.

⁵⁷ The Ministry of Interior acknowledged that the incident took place. However, it noted that the freeing of the police officer took place from the gendarmerie and not the prison. *Ibid.*, note 8.

⁵⁸ E/CN.4/2000/109, para. 49.

new laws and a better trained police, but also the political determination to ensure that no-one is above the law, and that this principle should inform all national institutions.⁵⁹ The judiciary should have effective authority to prosecute offenders regardless of their status or rank, and be allowed to discharge its duties in an independent manner.

Four areas offer scope for considering the often complex interplay between the main factors which facilitate impunity: resource and capacity constraints, legal and judicial weakness, and unwillingness at a senior political level to sanction officials who are responsible for human rights violations. These are the use of torture, the infliction of summary executions, the prisons, and the judiciary and legal system. Another element evident in both official statements and the reports of the Special Representatives is the pervasive fear which prevents most victims from seeking redress and reparation. Fear is an inevitable outcome of long standing impunity. It also means that violations are very seriously under reported, and that witnesses are often afraid of testifying.

i. Torture and cruel, inhuman or degrading treatment or punishment

In its report to the Committee against Torture in January 2003, the Cambodian Government recognized that torture was used to extract confessions by the police who considered ‘coercive confession’ to be the main form of evidence. They therefore forced the accused to confess, without relying on other interrogation and investigative techniques. The Government argued that better training would reduce reliance on confession evidence.⁶⁰

In his reports, Hammarberg made a very detailed analysis of the factors which have underwritten this situation, and of the laws and policies which have facilitated such widespread use of torture. In 1997, he reported:

‘torture is clearly forbidden in Cambodia, but the lack of detailed provisions relating to the punishment of acts of torture, the absence of a law on evidence, the weaknesses of the judiciary and the paucity of material and human resources available to the courts, the pervasive fear of prosecuting powerful or protected offenders, the lack of mechanisms within the police force for superior officers to control the activities of their subordinates, the abuse of power to arrest and interrogate and the inability of the courts to prosecute because of a system of institutionalized impunity owing to Article 51⁶¹ have all contributed to a situation where the law is made ineffective. The eradication of torture requires a clear and determined position (by) the political leadership of the country’.⁶²

He described a situation where individuals who were arrested by police or gendarmes were tortured to confess to crimes. The prosecution as its primary evidence then used these confessions. The problem had been acknowledged by the Ministry of Justice, which had encouraged prosecutors and judges to reject police evidence extracted under torture, to prosecute

⁵⁹ Thomas Hammarberg reported in 1997 a growing and increasingly powerful and well connected network of buyers, middlemen and brothels supporting trafficking in young girls, and that judges, local authorities, and even some high ranking government officials admitted that much of this trade was carried out by, or with the complicity and protection of senior police or military officials. With the exception of some well publicised but poorly enforced brothel closures, law enforcement officials had taken little action.

Hammarberg was of the view that making arrests required no further police training or material support and that what was lacking was the will. E/CN.4/1997/85. Further training has since been provided and is ongoing. However, monitoring shows that no trafficker of any significance has yet been prosecuted.

⁶⁰ CAT/C/21/Add.5, paras 173-182.

⁶¹ This refers to Article 51 of the Law Regulating Civil Servants which was amended in 1999.

⁶² A/52/489, para. 94.

interrogators who tortured detainees and to seek the co-operation of police, gendarmerie and Ministry of Interior to bring to justice those responsible for torture. But these efforts had had limited effect because of the reluctance of police and gendarmerie hierarchies to co-operate with courts in cases involving subordinates responsible for torture.

Noting that a first step in prevention was to take action to investigate as soon as credible reports of cases of torture were made, Hammarberg presented, as mentioned above, a report to the Government in June 1997 documenting 32 cases of persons who were reported to have been tortured while in police custody in Battambang. There was no immediate response.

Two years later, on 18 May 1999, Hammarberg met the Director-General of the National Police, who said he had initiated an investigation into the cases, and had announced that any police officer found responsible for torture in those cases would face sanctions. Instructions had been sent to police throughout the country to cease activity that might breach the law and violate the rights of citizens, and to warn that those police found violating would face sanctions.

This initiative broadly coincided with a visit by two UN criminal justice experts. The experts were told candidly by the police that most convictions were obtained through confessions, but also that human rights violations were the result of inadequate training. While acknowledging the need for training, the experts recommended action by senior officers to reduce reliance on confessions.⁶³

In September 1999, the National Police issued its report on the Battambang investigation. The report responded in detail to most of the cases, on the basis of interviews with both interrogating police and with victims of torture. It included victim statements alleging torture alongside police denials that torture occurred. It stressed the need for improvement in technical areas and recommended that police take responsibility for protecting detained persons from ill treatment, and that training be provided to police officers in investigation, interrogation and evidence gathering techniques. The report also recommended the creation of a criminal procedure team to strengthen the investigation, management and documentation of criminal cases.

Despite this investigation, which was in many ways a thorough one, with useful recommendations, the police investigation did not find that torture had occurred in any one of the cases. It stated that 'beatings and harsh words' might have been used to extract confessions in a few cases, but did not consider that this substantiates allegations of torture. It recommended against any disciplinary action against any police interrogator, and no officer was subsequently prosecuted or administratively sanctioned for any of the acts of torture reported in the Memorandum.

In the light of these clearly contradictory findings, it is perhaps not surprising that the Cambodia Office has continued to receive reports of torture and ill treatment.

ii. Summary executions

A different investigative approach was evident in the police response to Hammarberg's second Memorandum reporting 40 cases of politically motivated extra judicial execution which had taken place after the military coup of July 1997. The cases had been submitted to the Government by

⁶³ See *Report of the High Commissioner for Human Rights Mission to Assess the Current Situation of Criminal Justice in Cambodia*, 10 – 22 May 1999; Arun Bhagat, former Director of the Indian Bureau of Investigation, and Eduardo Vetere, from the UN Drug Control and Crime Prevention Branch in Vienna.

Hammarberg in August 1997,⁶⁴ after the then second Prime Minister Hun Sen had appealed to human rights organisations to provide information to the Government in the aftermath of the July 1997 coup, so that ‘violations of law can be prevented’.

That no effective investigation into the cases took place is evident from the report of two UN police experts who visited Cambodia in May 1998. Their mandate was to clarify what progress had been made by the Cambodian police in investigating these cases, and in investigating an earlier grenade attack on a demonstration in March 1997 which had killed more than 14 people and injured 142.⁶⁵

The UN experts first considered how the police investigation into the grenade attack had been conducted and what other approaches could have been followed, for example the identification of eye witnesses present at the time, and the collection of ballistic evidence. They concluded that lack of resources was not the primary reason for inadequacies in the investigation, saying that ‘despite the handicaps of forensic training and experience in investigation a more determined and comprehensive approach would have yielded results by now’.

They then spoke with senior police about the death of Ho Sok,⁶⁶ whose case was mentioned earlier and was one of those listed in the Hammarberg memorandum. Ho Sok had been a Secretary of State at the Ministry of the Interior, and was a senior FUNCINPEC adviser.

The experts met one of the police officers who had arrested Ho Sok. Colonel Dara told them that after the arrest he had contacted the senior officers who had instructed him to make the arrest. He had asked what further action should be taken, as there was no case against Ho Sok, and he had not been charged with any offence. Meanwhile Ho Sok had been taken to a room in the Central Department of the Judicial Police, where two plain clothes unarmed police were present. A soldier in military camouflage uniform with a red stripe on his collar/shoulder then entered the room and shot Ho Sok with an AK-47 rifle, shouting that he was responsible for killing the soldier’s relatives. Although 50 to 60 soldiers were present outside the building, the assailant was able to jump over the perimeter wall and run away. That evening, a forensic team inspected the scene of the crime and recovered empty cartridges and a spent bullet. A medical officer examined the body, but no post mortem was carried out. The two policemen in the room at the time were said to be too shocked to give a cogent description of the accused. Early the next morning, the body was taken for cremation without the death or cremation certificates which are normally required before cremation can take place.

On 14 July a commission of enquiry was appointed. Although three senior members of the Central Department of the Criminal Police were suspended for negligence in providing security for Ho Sok, no further action was taken and one of the suspended officers was then appointed to a new commission.

The experts recorded their view that the investigation had not been conducted ‘with the vigour it deserves’. They felt it should have been possible for investigators to determine the unit of the

⁶⁴ See above, pages 14 and 15.

⁶⁵ See report of experts: *Grenade Attack in Phnom Penh 30 March 1997 and Extrajudicial Executions 2-7 July 1997: an assessment of the investigations*, May 1998. The experts were: Arun Bhagat, former Director of the Indian Intelligence Bureau, and Professor Peter Burns QC, Canadian member of the UN CAT Committee. Their mandate asked them to assist the Government to determine what may be needed to improve the quality of these investigations.

⁶⁶ See above, Section V.

military which was deployed that day in the Ministry of the Interior. In all likelihood, the assailant belonged to the unit itself. Once the unit was identified, forensic evidence would render it possible to identify the weapon which was used to kill Ho Sok as three empty cases and one spent bullet were recovered from the scene. The investigation had not gone into the suspicious circumstance of the cremation of the body by soldiers in uniform at 3.00 a.m. Death and cremation certificates were reported to have been issued, but this line of investigation had not been pursued, although the death certificate was irregularly issued after the cremation. The failure of the police and soldiers to chase the killer has not been explained given the number of police outside the building, and the fact that the nearest perimeter wall was 200 to 250 metres away. It is clear that these investigative failures were not primarily related to a lack of resources.

The experts then discussed the other instances of extrajudicial execution listed in the Hammarberg Memorandum with senior police officers as well as with officials of Gendarmerie, Public Prosecution Branch, and Military Prosecutor. They concluded that none of these cases had been, or were being, seriously investigated. They reported that they had been unable to establish whether the Military Prosecutor or the Public Prosecution branch had jurisdiction over military personnel who commit penal offences. While both had claimed jurisdiction, neither had investigated the cases. The Military Prosecutor stated that his branch had jurisdiction, but it could not act without the orders of the General Staff, and no orders had been received. The Public Prosecution Branch was clear that it had jurisdiction over all cases involving military personnel who had committed penal offences, but had not investigated any of the cases.

In their concluding remarks, the experts noted that investigations had been attempted in only two of the cases in the Memorandum, and arrests had been made in neither. They felt that both investigations had showed 'a lack of vigour and determination'.

Hammarberg was told that the investigation into Ho Sok's death 'had been stopped' and information was received from the Minister of Justice that he had not been instructed by the Council of Ministers to convene an inter ministerial committee to investigate the cases. Both may explain this 'lack of vigour'.⁶⁷

iii. Prisons

In their reports, Special Representatives have regularly drawn attention to the different parts played by inadequate resources, weak or absent prison regulations, and the actions of officials, in determining the degree to which human rights are respected in prisons.

They have drawn attention to the effect of inadequate budgetary provision with the result that prisoners had often gone hungry, medical problems had developed and guards had not been paid on time and had not come to work. With fewer guards present, hungry and desperate prisoners had attempted more escapes, and many had been shot and killed or wounded.⁶⁸ Lack of budgetary provision for transport had meant that prisoners had either had to pay the costs of their own transport and of transport for the police accompanying them, or had been unable to attend their own trials.⁶⁹ As a result, trials had been held in absentia. Prisoners had thereby been effectively denied their right to challenge their convictions on appeal.⁷⁰

⁶⁷ The Ministry of Interior said that this case continued to be under investigation *Ibid.*, note 8.

⁶⁸ A/53/498, para. 97.

⁶⁹ E/CN.4/2004/114, para. 35.

⁷⁰ Between August and November 1999, prisoners were present in only 6 out of 30 cases heard by the Court of Appeal.

In 1997 Hammarberg drew attention to the fact that no prison regulations existed in Cambodia.⁷¹ This had meant that Cambodian prisons were operating in a regulatory vacuum. There were no clear and basic rules and standards for food, health care, discipline and administration. As a result, some of the most serious human rights abuses, and instances of impunity, had occurred in prisons.

In 1999, new prison procedures were adopted. In 2002 Leuprecht led an exercise to review the state of the prisons, and compare this with the situation in 1994. He identified as major and persistent issues: poor health, lack of food, water and hygiene; excessive periods of pre trial detention; trial in absentia, and limits on the right of appeal; and seriously restricted access by lawyers, family and NGOs.⁷²

He also drew attention in his report to a ‘test case’ of impunity: the trial of five prison guards from Kompong Cham provincial prison charged with physical assault of five prisoners, in acts which took place in front of the Prison Director. Despite evidence which Leuprecht felt was clearly sufficient to secure convictions, the defendants had been acquitted at their trial in 2002. Although the court directed that administrative action be taken, three of the officers continued to work in the prison. In this case, an appeal against the verdict has been made to the Appeal Court.

iv. The Legal System: the Judiciary

The challenge which has faced the Cambodian authorities in the period since 1993 has been how to transform a weak, untrained, and impoverished judiciary, with a history of operating under political direction, into an independent judiciary as envisaged in the 1993 Constitution and as required by international law.

Progress towards meeting this goal was assessed in 1999, when a report on the state of the Cambodian judiciary and the legal system was presented to the Secretary-General by a group of experts mandated to explore legal options for bringing Khmer Rouge leaders to justice.⁷³ The experts considered whether it was ‘feasible’ to organise trials in Cambodian courts, or whether an international tribunal should be established outside Cambodia.

They concluded that trials should not take place in Cambodia because the Cambodian judiciary in its current state was unlikely to meet minimal international standards of justice, even with external assistance. They described the functioning of the judicial system as ‘deficient in most important areas’, and noted that the post-1993 Government had not enacted any detailed laws on the organization of the judicial system. The experts acknowledged the effects of history and poverty, describing the infrastructure of the legal system as poor ‘even for the developing world. Courts lack law books, typewriters and other basic necessities, especially in the provinces. The buildings are run-down. Jails are marked by deplorable conditions’.

But alongside this situation of acute impoverishment, they also noted that:

‘Cambodia still lacks a culture of respect for an impartial criminal justice system. Criminal justice receives only a fraction of a per cent of the national budget, with judges

⁷¹ A/53/498, para. 109

⁷² *The State of Cambodian Prisons, 1994; Towards a Humane Prison Policy for Cambodia*, November 2002.

⁷³ *Cambodia: Report of Group of Experts for Cambodia A/53/850*, February 1999.

paid as little as \$20 per month. As a result, despite the presence of persons of character in parts of the judiciary, it is widely believed that judges can easily be bought by defendants or victims. The vast majority of judges are also closely associated with the Cambodian People's Party. Powerful elements in the Government such as important political figures, the security apparatus and the Ministry of Justice are widely believed to exert overt and covert influence over the decisions of investigating judges and trial courts. These include threats and physical attacks on judges; or simply the realization among judges that their tenure, and often their prospect of future livelihood, depends upon the approval of political elements. Moreover, criminal defence attorneys, even if trained properly, are stymied in their work. Judges are said to pay little attention to their legal arguments, even in routine cases. The courts and police restrict their contact with clients, even during court sessions. Defenders can also face threats from victims' families or friends. Treatment of those jailed pending trial or those in prison remains far below international standards. In sum, Cambodia's system falls far short of international standards of criminal justice established in the International Covenant on Civil and Political Rights and other instruments'.⁷⁴

When the Human Rights Committee considered the steps that Cambodia had taken to implement the International Covenant on Civil and Political Rights, it broadly concurred in this harsh assessment. It also noted that the Supreme Council of Magistracy was not independent of governmental influence, and had not shown itself able to deal with the many allegations of judicial incompetence and unethical behaviour.⁷⁵ The Special Representatives and the Human Rights Committee have all consistently recommended – thus far without result – that membership of political parties by judges is incompatible with judicial independence and should be prohibited.⁷⁶

Cambodian prosecutors told UN experts – also in 1999 – that summonses cannot be served nor can warrants of arrest be executed, on armed forces personnel involved in criminal offences, and instances of successful prosecution of members of armed forces who commit crimes were thus 'negligible'. In 2002, Leuprecht met with the General Prosecutor of the Court of Appeal who also 'painted a bleak picture of the state of the judiciary, saying that its independence was often undermined by the executive and by 'powerful private entities'.⁷⁷

Two changes must be noted. Article 51 of the Law Regulating Civil Servants, which had been the object of sustained criticism by Special Representatives and the Human Rights Committee, was amended in September 1999. This provision – enacted in 1994 despite the fundamental rights provisions of the Constitution – had given effective immunity against prosecution not only to civil servants but also to police and – in practice – to the military. Courts were prevented by law from investigating and prosecuting criminal offences where the suspect was in the police or military unless there was prior authorization by the suspect's superior or, in the case of high officials, by the Council of Ministers. Article 51 had thus legalised impunity. The amendment dropped the requirement for consent for prosecutions by the Council of Ministers or the concerned ministry,

⁷⁴ Ibid, para. 129.

⁷⁵ Concluding Observations, CCPR/C/79/Add.108, para. 8(a). In its report to the Committee, Cambodia had acknowledged that its courts were 'not fully independent', due to 'interference and pressure' from other branches of government, and that some judges accepted bribes because they were 'unable to bear the difficulties of their daily living conditions', and then took 'biased decisions'. See Cambodia Initial Report to Human Rights Committee, CCPR/C/81/Add.12, para. 209.

⁷⁶ Through an amendment to Article 15 of the Law on Political Parties.

⁷⁷ E/CN.4/2001/103, para 38.

stipulating that prosecutors must only inform the head of the concerned institution about charges and arrests.⁷⁸ However, the amended article does not appear to have resulted in significant change when it comes to bringing civil servants, in particular the police and military, to account. Some judges and prosecutors have also reported that the duty to inform opens up the possibility of suspects evading arrest. The message that civil servants including police and military are above the law has proved difficult to undo.

The second change took place in 2002 when the Government announced an increase in judicial and prosecutorial allowances. While this was welcome, it does not appear to have reduced corruption in any significant way.

Peter Leuprecht has repeatedly urged the Government to commit to structural reform of the Supreme Council of Magistracy, and to secure its independence. On 30 March 2005, he wrote to the Prime Minister expressing concern about steps which had been taken in response to ‘allegations of wrong doing and corruption’ against judges and prosecutors of the Phnom Penh Municipal Court. He acknowledged the seriousness of the allegations; nonetheless he argued that the Ministry of Justice had exceeded its powers by suspending two deputy prosecutors, and drew attention to the procedures which should be followed in any disciplinary action by the Supreme Council of Magistracy and which should reflect the *Basic Principles on the Independence of the Judiciary*.⁷⁹ In these cases, he understood that, contrary to the Basic Principles, the judges and prosecutors would be summoned to defend themselves, that the burden would be placed on them to prove they did not commit any wrongdoing or that their judicial decisions were not incorrect, and that no witnesses on either side would be called.

‘Corruption charges would certainly merit ...disciplinary measures. However, judges and prosecutors should not be penalized for making wrong judicial decisions, or disciplined for bona fide errors in their decisions or for disagreeing with a particular interpretation of the law’.⁸⁰

v. *The Legal System: the Legal Framework*

The Special Representatives have frequently drawn attention to weaknesses in the Cambodian legal framework, noting that legal gaps and the mixed nature of the legal system create ‘some confusion’ in the application of relevant laws and procedures. While the National Assembly has filled a very few gaps in Cambodia’s unsettled legal order since 1994, for example, through the

78 The amended version of Article 51 reads as follows: “In case any government servant commits any criminal offence and the prosecutor has decided to charge him/her, the prosecutor shall inform of this charge within 72 hours at the latest. If there is an arrest or temporary detention or apprehension of any government servant, the competent judge or prosecutor shall inform the head of the concerned institution immediately. In case such offence occurs within the framework of performance of function in the public function, the State shall defend that government servant according to due process of the law.”

⁷⁹ *The Basic Principles on the Independence of the Judiciary* lay down principles to be observed in any proceedings to discipline, suspend or remove members of the judiciary [principles 17 – 20]. ‘A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed...fairly under an appropriate procedure. The judge shall have the right to a fair hearing’ [Principle 17]. ‘Decisions in disciplinary, suspension or removal proceedings shall be subject to an independent review’ [Principle 20]. Similar principles are to be found in the *Guidelines on the Role of Prosecutors*, guidelines 21 and 22.

⁸⁰ COHCHR/022/05.

2001 Land Law,⁸¹ there has been little law making in those areas which are essential to a settled civil and criminal justice system. In 2002, and again in December 2004, the Cambodia Consultative Group of donor countries for Cambodia called for the urgent adoption by the National Assembly of eight laws needed to create a fundamental legal framework; they are: a Penal Code, a Code of Penal Procedures, a Civil Code, a Code of Civil Procedure, an Organic Law on the Organisation and Functioning of Courts, a Law on the Status of Judges and Prosecutors, a Law against Corruption, and a law amending the law on the Supreme Council of Magistracy.⁸² This repeats the recommendation made by Michael Kirby in his first report to the Commission on Human Rights in 1994. The failure to enact these laws has meant that the status quo – including some laws and regulations which predate the 1993 Constitution and even go as far back as the 1980s, together with transitional legislation adopted by UNTAC – have continued to apply.

While it is true that the passage of laws does not ensure their implementation, the lack of basic laws has serious and specific consequences. Some situations were identified in Section IV, where the Constitution protected fundamental rights, but implementation of these rights required new legislation, without which they existed in an effective legal vacuum.

The negative consequences of Cambodia's failure to adopt most of the laws now prioritised by donors have been acutely evident in the case of the judiciary. Although a law was passed in 1994 to establish the Supreme Council of Magistracy, disagreements over the Council's membership delayed its formation, and even since then the Council has not played its constitutional role – as an independent institution responsible for appointing, transferring and disciplining judges. In the absence of detailed provisions for judges' appointment procedures and service conditions, which were to have been contained in a Law on the Status of Judges and Prosecutors, old administrative procedures have continued to apply. Thus powers continue to be vested in the Ministry of Justice, which has been able to usurp powers which should reside in the Supreme Council of Magistracy by virtue of the Constitution, and remains influential over – for example – judges' security and tenure.

Other consequences can be seen in relation to the police. The UN criminal justice experts noted the negative consequences which resulted from a lack of comprehensive basic laws which should be the foundation of a sound criminal justice system. These basic laws should include a Code of Criminal Procedure, an Evidence Act and a Penal Code. In the meantime, the UNTAC law and the 1993 Code of Criminal Procedure, which both pre-date the fundamental rights protections in the 1993 Constitution, continue to apply. This has meant that the National Police operates under a law which applies generally to the civil service, and has no clear and specific legislative basis for its police activities. One result is a lack of jurisdictional clarity: police officials told the experts that it was unclear even to them who had the power to order an investigation into a crime – the police or the prosecutor.

vi. *The Legal System: the legal profession*

Many accused are unrepresented in court, and the overwhelming majority of civil cases are conducted without representation for the most vulnerable parties. In 2003, Leuprecht reported that

⁸¹ The Land Law still requires the adoption of key sub-decrees for its implementation. Problems of implementation are described in the Special Representative's report, *Land Concessions for Economic Purposes in Cambodia: a human rights perspective*, 2004.

⁸² See website of World Bank <http://siteresources.worldbank.org/INTCAMBODIA/Resources/Monitoring-Indicators.pdf>.

there were fewer than 200 lawyers in legal practice, and only 20 practiced in the provinces. In November 2002, 'for the first time in the history of the Preah Vihear Provincial Court', legal representation in a criminal case was provided by a defence lawyer engaged by an NGO, the Cambodian Defenders Project.⁸³

One positive step has been the opening of a Centre for Training Lawyers which took in its first group of 60 young law graduates in 2002. Leuprecht has urged the Government to create a legal aid fund to provide legal services for indigents and the rural population.

But – and this raises again the interplay between questions of capacity and the exercise of political 'will' - Leuprecht has also expressed concern at reports that the Bar Association, hitherto seen as a building block in the development of a strong and independent legal profession and in the protection of human rights, had received substantial funds from senior government officials, and in September 2004 had admitted the Prime Minister and other leading political figures to its membership, with licenses to practice law, despite a lack of professional qualifications.

Section VII: Forces working against impunity

As noted in Section III, UNTAC reported that it found a society which lacked the basic institutions and processes upon which respect for human rights depended. These included an independent media and national and local non-governmental organisations able and willing to promote the interests of civil society.

Since the Paris Agreements, Cambodia has been blessed with citizens who have sought to overcome their country's tragic history through, for example, their work in non-governmental organisations advocating for human rights, women's rights and social justice; as individual activists, journalists, union leaders, environmentalists, community leaders, teachers and students. They have played an important role in challenging impunity; some have also been victims of it.

All Special Representatives have underlined the importance of informed and constructive dialogue with non-governmental organisations and other members of civil society. Peter Leuprecht has drawn particular attention to the UN Declaration on Human Rights Defenders,⁸⁴ which derives largely from the rights already guaranteed in the international treaties accepted by Cambodia. The Declaration provides that everyone has the right, individually and in association with others, to promote and strive for human rights and fundamental freedoms, and to draw public attention to matters of observance of human rights both in law and practice. It makes particular provision for freedoms of association, assembly and expression, also guaranteed in Cambodia's Constitution,⁸⁵ which lie at the heart of an active civic society and a functioning democracy.⁸⁶ In 2003, Peter Leuprecht stressed the importance of better understanding and observance of the Declaration to enable Cambodia's citizens to participate meaningfully in public

⁸³ E/CN.4/2003/114, para. 20.

⁸⁴ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly in 1999.

⁸⁵ Chapter III of the Constitution on the rights and obligations of Khmer citizens

⁸⁶ The 2004 report to the General Assembly of the Special Representative of the Secretary-General on human rights defenders gives particular attention to freedom of association -- the right of individuals to interact and organize among themselves to collectively express, promote, pursue and defend common interests -- because of its centrality, the multiple ways in which it is restricted and the obstacles faced in its exercise. A/59/401

affairs and in the government of their country, and asked 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. He said that 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.

Organisations working for human rights

In 1994, Kirby welcomed the large number and variety of human rights organisations which were active in several areas, including human rights education, legal counselling and defence, prisons, promotion of human rights of vulnerable groups such as women, children, elderly persons, minorities and disabled persons. He was impressed by their vitality.⁸⁷

Although initially human rights organisations focused on promoting understanding and awareness of human rights, the activities of several soon came to include monitoring government compliance with human rights standards and investigations of alleged human rights violations. In a situation where impunity has become an inherent problem, this work is especially important. However, it has also brought them into difficulties with the authorities, and incidents of abuse, threats and assault of activists have been regularly documented over the last decade for which corrective action has been rarely undertaken. They include cases of physical abuse, one case of murder recorded by the Cambodia office,⁸⁸ cases of arbitrary detention, and many serious instances of intimidation and threats.⁸⁹ The attacks have mostly been directed at organizations which are particularly outspoken about human rights violations, but increasingly local community leaders and activists have also come into difficulties for their advocacy work in relation to land, natural resource and environmental issues.⁹⁰

Statements by high government officials discrediting and criticizing the work of human rights organizations have not been helpful, and can even endanger the safety of these organisations and their members. On the other hand, statements in their support would send a positive message, and would help to promote better understanding of their work and role.

The Media

In the 1980s, all media were state controlled.⁹¹ At the time of UNTAC's arrival, there was no daily, private or opposition press in Phnom Penh.⁹² The international media interest in Cambodia

⁸⁷ 49th Session: Special Representative 1994 Report A/49/635

⁸⁸ Phuong Tong was shot dead on 18 December 1998 after having recently joined the human rights organisation ADHOC as an activist. The murder was related to a local land dispute in which the victim represented a group of villagers facing eviction. See Appendix B.

⁸⁹ The Cambodia office has documented many such cases. The human rights organisation LICADHO has issued regular briefing papers and reports on the situation of human rights defenders in Cambodia since 2001.

⁹⁰ For example, in November 2004, eight villagers protesting renewed activities of Pheapimex Company in Pursat province were injured by a grenade thrown at the local mosque where they were sleeping. The Special Representative deplored the attack and called for a thorough investigation and for those responsible to be prosecuted. He also asked the Government to listen to the concerns of the people. No one has been arrested at the time of writing.

⁹¹ The printed news was comprised of the ruling party's biweekly publication *Pracheachon* (The People), a weekly party paper, *Kampuchea*, the weekly *Phnom Penh* owned by the *Phnom Penh Municipality*, and a weekly newspaper of the armed forces, *Kangtoap Padevoat* (Revolutionary Army). In addition, there was a radio station, a television station and a news agency.

that accompanied the Paris Agreements, the success of UNTAC's own broadcasting unit, Radio UNTAC, and the protection that UNTAC provided had a catalysing effect on the domestic media. By 1993 a lively media had appeared, albeit one that lacked professional training. Most newspapers that appeared around the 1993 election were subsidized by political parties or individual politicians. This remains the case today; very few Khmer newspapers achieve operating profit.

In 1994, Kirby reported that in many ways Cambodia enjoyed greater freedom of expression than other countries in the region. "In comparison to Cambodia's recent history, when it experienced under different regimes of one-party Government a single controlled media and stern limits on freedom of expression, the freedom now enjoyed in Cambodia is unique in its history."⁹³

A new press law was passed in July 1995. The law contains a number of welcome provisions. It prohibits censorship by the authorities prior to publication⁹⁴ and allows the press to protect the confidentiality of its sources.⁹⁵ At the same time, it contains a number of ill-defined provisions for fining and suing journalists, editors and newspaper owners. Contrary to the spirit of the Constitution and international norms it prohibits, for example, "humiliation of national institutions". It also allows for suspending publication and imprisoning journalists for publishing or reproducing information which "may affect national security and political stability", but it fails to provide any definition of these very broad terms.⁹⁶

A strong, professional and independent media able to serve as a watchdog over state institutions, and a cohesive professional body which would enable the media sector to regulate itself and operate freely without undue outside interference, have yet to develop. The development of the media has been negatively affected by threats against editors, suspension of opposition newspapers, grenade attacks, assaults and ransacking of newspaper offices.⁹⁷ At least eight media representatives have been killed since 1994, and another died in a suspicious traffic accident.⁹⁸ No one has been held to account for these murders and other attacks on media representatives or offices to the knowledge of the Special Representative.

To keep criminal charges pending, often for several years, has also been a common practice in trying to control journalists and other critical voices, as has use of the courts to bring defamation charges against journalists and others, a practice that has been recorded from 1994 on. At least eight defamation complaints were lodged against media representatives by the Government or government officials during the period 2004 to mid-2005. Article 63(3) of the 1992 UNTAC Criminal Law and Procedure provides that defamation and libel are punishable "by imprisonment of eight days to one year, a fine of one million to ten million riels, or both". The most recent cases include that of Mam Sonando, owner and director of an independent radio station, who was arrested on October 11 2005 for broadcasting an interview which criticised the Prime Minister's handling of border issues,⁹⁹ and Rong Chhun, President of the Cambodian Independent Teachers Association, arrested on October 15, for signing a statement that was similarly critical.

⁹² FUNCINPEC published a bulletin from the Thai boarder, and FUNCINPEC, the Khmer Rouge and the KPNLF broadcast radio programmes from stations in Thailand or near the Thai boarder.

⁹³ Recommendations of the Special Representative, A/49/635 Part IX, Section H.93

⁹⁴ Press law, Article 3

⁹⁵ Press law, Article 2

⁹⁶ Press law, Articles 13 and 12

⁹⁷ See Appendix B

⁹⁸ *Ibid.*

⁹⁹ Mam Sonando, owner of *Sambok Kmum* (Beehive) radio station, and In Chan Sivutha, editor of *Rasmei Angkor* (Light of Angkor) newspaper, were arrested on January 30 and 31 2003 on charges of inciting riots

Labour Unions

The emergence of labour unions has been another step forward. By the end of 2004 there were 675 registered factory unions, 18 national labour federations and one confederation.¹⁰⁰ According to the U.S. Department of State's human rights report for 2004, eleven labour federations had ties to Government or to CPP affiliated government officials, while two major federations and several factory unions were independent.

Cambodia has ratified most of the core International Labour Organization conventions. Its Labour Law, adopted in 1997, covers the formal employment sector but not civil servants, judges, military or domestic servants. The Law requires that all unions register with the Ministry of Labour prior to enjoying the rights and benefits of the law.¹⁰¹ Some unions have faced difficulties in registering. This has meant they have been prohibited, for example, from establishing offices in the provinces and from collective bargaining.

Cambodia's Law on Demonstration, adopted in 1991, contravenes the right to freedom of peaceful assembly, and is arguably unconstitutional. Article 37 and 41 of the Constitution guarantee the right to strike, to peaceful demonstration and freedom of assembly. These rights are fundamental to a 'pluralistic and liberal democracy'.¹⁰² Any restrictions must therefore be exercised with due care and subject to heightened scrutiny. Article 1 of the law categorically prohibits demonstrations that "might be detrimental to public tranquillity" as well as to public order and security. The now routine denial of demonstrations and public gatherings shows that the law has been used in an arbitrary and heavy-handed manner. The law also places too much discretion in the hands of the authorities, which are given far-reaching powers to deny demonstrations.¹⁰³ In spite of these objections, the Constitutional Council decided on 4 October 2004 that the Law was in conformity with the Constitution.

Some unions have experienced difficulties in exercising their right to freedoms of assembly and expression. Since the anti-Thai riots of 29 January 2003, almost all requests to hold demonstrations have been refused. It has also been common for police, as well as members of the security forces working as factory guards, to break up rallies, marches and demonstrations, citing public order and national security reasons. On several occasions, excessive force has been used. Association rights have also been curtailed; unions report that for public safety reasons they are required to obtain approval in advance to hold ordinary meetings, but that often their requests have met with no response or with one that comes so late that organizing the meeting by the proposed date is not possible.

against the Thai embassy and Thai businesses in Phnom Penh on January 29. The riots followed reports that a Thai actress had demanded Cambodia return the Angkor Wat temple complex to Thailand. They were arrested without warrant and charged with "incitement leading to commission of a crime," "incitement to discrimination," and "disinformation". They were released from detention on 11 February 2003, but the charges remain pending.

¹⁰⁰ U.S. Department of State, *Cambodia: Country Reports on Human Rights Practices – 2004*, 28 February 2005

¹⁰¹ Labour law, Article 268

¹⁰² Article 50 and 51 of the Constitution.

¹⁰³ Article 2(2) gives broad and arbitrary discretion to decision-makers. Article 4 grants disproportionate discretion to the police who can "take measures to forbid" unauthorised demonstrators and "disperse the demonstrators."

Although certain industries have developed a highly unionised system of workers, leaders of independent unions have received regular threats and their members have been arbitrarily dismissed or suspended. In recent years, the Free Trade Union of Workers of the Kingdom of Cambodia appears to have been particularly targeted. The unresolved murders in 2004 of Chea Vichea and Ros Sovannareth, now before the ILO's Committee on Freedom of Association, have had a particularly chilling effect on union activities.

Section VIII: Conclusions and recommendations

The persistence of impunity throughout the past decade in Cambodia, which the present report illustrates, shows that the legal and political steps needed to create a culture of respect for human rights, and to ensure the protection of rights through the rule of law, which were central to the Paris Agreements, have not been taken.

As noted in the introduction, all three Special Representatives have expressed serious concern over impunity as the key obstacle to the promotion and protection of human rights in Cambodia. In his 2005 report to the Human Rights Commission, Peter Leuprecht said it was 'increasingly obvious' that impunity was not only the result of low capacity within law enforcement institutions and a weak judiciary. Cambodia had yet to develop neutral State institutions, checks on executive power, and the means to enforce rights guaranteed in the law and the Constitution. The judiciary continued to be subject to executive interference and open to corruption. 'Efforts to reform the judiciary over the past decade have been ineffectual in achieving significant improvements in the administration of justice'. Members of the military, the police, the gendarmerie and other armed forces responsible for committing serious violations had not been arrested or prosecuted.¹⁰⁴

Although the failure to bring to justice those responsible is often attributed to scarce resources and poor capacity within law enforcement institutions and to the absence of a well functioning judiciary, the failure of these institutions to uphold the law can also be attributed to an accepted practice of impunity and collusion by police, military and security agencies.

Similar patterns have been outlined by the treaty bodies. All have accepted that fulfilling international obligations is difficult in a war-ravaged country that has suffered political instability and continues to experience severe economic constraints.¹⁰⁵ However, they also all note that these difficulties alone cannot account for the failings of Cambodia in meeting its international obligations. In particular each Committee has commented on the need to address impunity in order to move forward.¹⁰⁶ The concern regarding impunity is relevant no matter whether the issue under scrutiny is racial discrimination, the rights of the child, the elimination of torture or civil and political rights in general.¹⁰⁷

¹⁰⁴ E/CN.4/2005/116, para. 14.

¹⁰⁵ See for example, CAT/C/CR/31/7 (2004), Section C; CCPR/C/79/Add.108 (1999), Section C; CRC/C/15/Add.128 (2000), Section C; CERD/C/304/Add.54 (1998), Section B.

¹⁰⁶ For example the Committee on the Elimination of Racial Discrimination stated in 1998: "Concern is expressed over the lack of independence of the judiciary, the absence of the Constitutional Council called for by the Constitution, as well as the impunity of perpetrators of human rights violations, violations which in some cases include summary executions and torture. This contributes to the serious undermining of efforts to establish the rule of law in Cambodia without which full implementation of the Convention is not possible. CERD/C/304/Add.54 (1998), Section C.6.

¹⁰⁷ Each respective committee has called on the government to address impunity through the various methods outlined below by the special representative.

Donors have recognised that Cambodia is ‘at a crossroads’, and that in the absence of governance reforms, the ‘hard won’ development gains of recent years stand at risk. There is a need to strengthen ‘and in some cases build from scratch’ the systems of accountability of government to the people of Cambodia’. The necessary changes will be resisted ‘because they will hurt powerful vested interests. Moreover, to effect change, the government performance must rely on the very same weak underpaid bureaucracy and the fragile and easily corrupted institutions that are the objects of reforms’.¹⁰⁸

Although many draft laws in many areas have been prepared since the Constitution was adopted in 1993, there has been little real legislative progress in building a legal framework within which human rights protection will be effective and secure. New laws require not only technical assistance for their drafting, but also – and pre-eminently – a determination on the part of the Government and the main political parties that they should be enacted and enforced. In the absence of such determination, continuing deficits in laws and in institutions have underwritten a protection vacuum, and have created an enabling environment for rights violations.

Individuals and groups which have committed serious crimes, including violations of human rights, and in particular members of the military, police, gendarmerie and other armed forces, have not been arrested or prosecuted or convicted. This situation has led to a loss of faith in Cambodia's system of justice, undermined the moral authority of the courts and the Government, and has made it possible for those responsible for such crimes to continue to act in breach of the law, and beyond its reach. It effectively means that Cambodia's citizens are not protected by law, while those who have broken it are allowed to go free. It can also create conditions of generalised violence whereby citizens feel they can take the law into their own hands.

The trials of Khmer Rouge leaders, which Cambodia is undertaking with the assistance of the United Nations, have the potential to effect real change. Every effort should be made to ensure that this potential is realised, and that the trials have a ‘ripple effect’, by raising standards of due process generally, and creating a greater appreciation of the rule of law and the need for official accountability among both the leaders and the citizens of Cambodia. In particular the trials offer an important opportunity for raising the level of judicial independence and integrity. Furthermore, the lessons to be learned from these trials should not be limited to those directly involved. Although individual judges and prosecutors should set an example for the legal profession as a whole, the trials should have the indirect effect of building capacity among the broader legal and police community, who can be trained to work within the parameters set by international law. The general absence of due process described in this report must be seen to be unacceptable.¹⁰⁹

It is important that these trials – which as a *matter of law* will be before ‘Extraordinary Chambers’ of the Cambodian courts¹¹⁰ - do not *in practice* take place in isolation from the wider Cambodian court system. Thus, rules of evidence and procedure adopted by the Extraordinary Chambers should become common rules for *all* Cambodian courts.¹¹¹

¹⁰⁸ Opening statement by World Bank Cambodia Country Director, Consultative Group for Cambodia meeting, December 2004.

¹⁰⁹ See Part VI

¹¹⁰ Extraordinary Chambers shall be established in the existing court structure, namely the trial court, the appeals court and the supreme court ...’, *Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea*, Article 2

¹¹¹ See generally Agreement between the UN and the Royal Government of Cambodia, Footnote #2 above. Thus, Article 12 requires that the procedure of the Extraordinary Chambers shall be in accordance with Cambodian law, but where Cambodian law is inconsistent with international standards, ‘guidance may ...

The implementation of the comprehensive set of recommendations made by successive Special Representatives, the General Assembly, the Commission on Human Rights and the treaty bodies since 1994 is crucial to combating impunity and factors that foster and facilitate it. Of particular concern is the protection of those rights that cannot be subject to any derogation at any time as stipulated in the International Covenant on Civil and Political Rights. During the period covered by this report a situation of derogation has existed which continues to this day. In its General comment 29, the Human Rights Committee also identified other “elements” in the Covenant that in its opinion cannot be subject to derogation, which include that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Key recommendations have included:

- Investigate urgently and prosecute, in accordance with due process of law and international human rights standards, all allegations of human rights violations,
- Review and investigate the outstanding cases of murder and summary killings and other serious human rights violations, and bring those responsible to justice;
- Protect victims of violations of human rights. They and their families are entitled to effective remedy; the harm done must be repaired;
- Create an independent board of inquiry to examine all acts of mob violence, why these attacks occur and how to prevent them;
- In order to end torture and cruel, inhuman and degrading treatment and punishment, judges and prosecutors should inquire into the circumstances surrounding all confessions offered as evidence in criminal trials, should not allow forced confessions to be admitted as evidence in trials, and should prosecute any persons involved in the use of physical force to obtain a confession. Requirements under the Convention against Torture should be implemented and the necessary amendments to national law made.¹¹² A system of regular visits of NGOs to police cells and detention centres should be instituted;
- Expedite the adoption of the laws and codes that are essential components of the basic legal framework. They must be consistent with the treaties by which Cambodia is bound;
- Fundamental reform of the judiciary is crucial to ending impunity. Cambodia needs a judiciary that is independent, impartial and effective. Laws on the status of judges and prosecutors and the organization and functioning of the courts are urgent. Deep and extensive restructuring of the Supreme Council of Magistracy is essential;
- Cambodia needs a strong and independent Bar. Provisions of the Law of the Bar must be given their plain meaning to provide fair and impartial access to the Bar for lawyers meeting the required standards. Government must refrain from interfering in the functioning of the Bar.

be sought in ...rules established at the international level’. Article 13 requires that the right of the accused ‘enshrined in Articles 14 and 15 of the ICCPR shall be respected throughout the trial process. Such rights shall, in particular, include the right: to a fair and public hearing; to be presumed innocent until proved guilty;and to examine or have examined the witnesses against him or her’.

¹¹² Of particular importance as regards the Criminal Code and the Code on Criminal Procedure

- Cambodia also needs legal aid programmes to provide access to justice for the poor, based on sound precedent.
- The rights of accused persons to fair trial must be upheld; this right has been seriously impaired by trials that breach due process;
- There is a need to demonstrate and ensure that the military and police are not above the law and to reconfirm the principle of 'equality before the law'. The establishment of a high-level committee to investigate judicial complaints concerning military or police conduct has been recommended;
- Improve the conditions of detention, including reviewing sentencing policy and developing non-custodial options as an alternative to imprisonment, providing proper food and health care to prisoners and detainees, meeting the special needs of women and children and ensuring access to prisons and inmates for lawyers, family members and human rights organizations in accordance with the relevant regulations in force;
- Implement the UN Declaration on Human Rights Defenders. Cambodia has an active and vibrant civil society, which plays a crucial role in consolidating respect for human rights and rule of law in the country. Their ability to carry out this important work fully and freely must be guaranteed.

These recommendations should be read, considered and implemented in conjunction with the reports and recommendations presented by the Special Representatives since 1994. They represent the absolute minimum elements of any effective strategy to end impunity in Cambodia.

Appendix A: Note on Sources:

The report is written on the basis of published UN material. It draws primarily on the reports of the Special Representatives of the Secretary-General for human rights in Cambodia to the General Assembly and to the Commission on Human Rights, and on additional thematic reports. It also draws on the Cambodian Government's reports to the Human Rights Committee and the Committee against Torture, and from the observations and recommendations made by these two Committees. All documents are available on the website of the Office of the High Commissioner for Human Rights in Cambodia.

Commission on Human Rights

Commission on Human Rights resolution E/CN.4/RES/1993/6

Advisory services and technical cooperation in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/2005/116

Advisory services and technical cooperation in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/2004/105

Advisory services and technical cooperation in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/2003/114

Advisory services and technical cooperation in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/2002/118

Advisory services and technical cooperation in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/2001/103

Advisory services and technical cooperation in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/2000/109

Advisory services and technical cooperation in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/1999/101

Advisory services in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/1998/95

Advisory Services in the field of human rights. Role of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights: E/CN.4/1998/94

Advisory services in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/1997/85

Advisory services in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/1996/93

Advisory services in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: Report E/CN.4/1995/87

Advisory services in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia Addendum: E/CN.4/1995/87/Add.1

Advisory services in the field of human rights. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia: E/CN.4/1994/73/Add.1

Report of Diane Orentlicher, independent expert to update the Set of principles to combat impunity - Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1

General Assembly

Situation of human rights in Cambodia, General Assembly Resolution: A/RES/58/191

Situation of human rights in Cambodia. Report by the Special Representative submitted by the Secretary-General to the General Assembly: A/58/317

Situation of human rights in Cambodia. Report by the Special Representative submitted by the Secretary-General to the General Assembly : A/57/230

Situation of human rights in Cambodia. Report by the Special Representative submitted by the Secretary-General to the General Assembly: A/56/209

Situation of human rights in Cambodia. Report by the Special Representative submitted by the Secretary-General to the General Assembly: A/55/291
Situation of human rights in Cambodia. Report by the Special Representative submitted by the Secretary-General to the General Assembly: A/54/353
Situation of human rights in Cambodia. Report by the Special Representative submitted by the Secretary-General to the General Assembly: A/53/400
Situation of human rights in Cambodia. Report by the Special Representative submitted by the Secretary-General to the General Assembly: A/52/489
Situation of human rights in Cambodia. Report by the Special Representative submitted by the Secretary-General to the General Assembly: A/51/453
Situation of human rights in Cambodia. Report by the Special Representative submitted by the Secretary-General to the General Assembly: A/50/681
Situation of human rights in Cambodia. Report by the Special Representative submitted by the Secretary-General to the General Assembly A/49/635

Treaty bodies

Cambodia Initial Report to Human Rights Committee, CCPR/C/81/Add.12
Conclusions and recommendations of the Committee against Torture: CAT/C/CR/31/7
Concluding Observations of the Human Rights Committee: CCPR/C/79/Add.108.
Concluding observations of the Committee on the Elimination of Racial Discrimination: CERD/C/304/Add.54.
Concluding observations of the Committee on the Rights of the Child: CRC/C/15/Add.128.

Other reports and memoranda

UNTAC Human Rights Component Final Report, September 1993
Report of Group of Experts: Grenade Attack in Phnom Penh 30 March 1997 and Extrajudicial Executions 2-7 July 1997: an assessment of the investigations, May 1998
Report of Group of Experts for Cambodia A/53/850, February 1999
Report of the High Commissioner for Human Rights Mission to Assess the Current Situation of Criminal Justice in Cambodia, 10 – 22 May 1999
Special Representative Memorandum: Evidence of Summary executions, Torture and Missing Persons since 2-7 July 1997
Special Representative Memorandum to the Royal Government of Cambodia, 13 May 1998
Special Representative Monitoring of Political Intimidation and violence, 1998
Report of the Special Representative of the Secretary-General for Human Rights in Cambodia on Access to the Media, 25 June 1998
Special Representative report: Street Retribution in Cambodia, June 2002
Special Representative Report: The State of Cambodian Prisons, 1994; Towards a Humane Prison Policy for Cambodia, November 2002
Special Representative report: The 2003 National Assembly Elections, December 2003.
Special Representative report: Land Concessions for Economic Purposes from a human rights perspective, November 2004

Appendix B: Individual Cases

1. Selected cases December 1992 to October 2003 readdressed with the Government of Cambodia

From 1992 onwards, UNTAC and the Special Representatives of the Secretary-General for human rights in Cambodia have raised specific cases of reported human rights violations with the Cambodian authorities. As noted in the report, a list of 178 representative cases was contained within a February 2004 letter to the Cambodian government. The Ministry of Interior provided a response to the Special Representative in November 2004. The cases cited within the body of the report, as well as subsequent cases, demonstrate the range of human rights violations that have occurred and continue to occur. They also display a consistent pattern of delay and unwillingness in the investigation, prosecution and trials of those responsible. The following cases are additional to cases already cited in the body of the report, and should be considered in conjunction with it.

Cases where investigations are continuing:

In 64 out of the 178 cases provided to the Government, the reason given for no arrests having yet been made was because investigations are continuing. They include:

Buddhist Liberal Democratic Party

On 30 September 1995, grenade attacks were carried out against the premises of the faction of the *BLDP* led by Son Sann and against a pagoda housing its supporters.

Sok Vanthorn and Sou Sal

On 9 August 1997, soldiers from Regiment 37 stationed in Au commune, Kompong Speu province arrested a farmer, Sok Vanthorn, and three other men – two brothers named Sou Si and Sou Sal, both former Khmer Rouge soldiers, and a third villager named Haim Bek. On 14 August villagers found the bodies of Sok Vanthorn and of Sou Sal. Their hands and ankles were tied. They had broken necks. Their eyes were gauged out. Their heads, chests and stomachs were cut open. Their livers and gal bladders had been removed. The other two men reportedly escaped.

Attack on the Phnom Penh Municipal Court

On 10 June 1998, around 50 heavily armed gendarmes from Khan Daun Penh in Phnom Penh surrounded the Phnom Penh municipal court, following the court's decision to release two suspects in a murder case. The court was compelled to hand over the two men who were badly beaten and later taken to the T-3 prison.

Thong Soi

On 24 June 1998 Thong Soi, a Reastre Niyum Party representative in Santuk district of Kompong Thom, was shot dead while returning to his village from tending a rice field.

Sao Savon

On 1 February 2002 Sao Savon, a NICFEC observer, was killed in Ta Leang village, Romaing Thkaol commune, Svay Teab district, Svay Rieng.

Cases where no action was taken:

In 25 of the 178 cases the reason given for no action being taken was that the actions were related to the July 1997 fighting.

Dr. Seng Kim Ly

On 7 July 1997, Dr. Seng Kim Ly, a military medical doctor, was found dead in his looted Phnom Penh residence. He had been shot with three bullets in the head and chest.

Bodyguards of General Nhek Bun Chhay

On 7 July 1997, four bodyguards of General Nhek Bun Chhay were summarily executed after his office-cum-house in Somnang 12 was taken over by soldiers loyal to the CPP.

Generals Chao Sambath and Kroch Yoeum

On 8 July 1997, General Chao Sambath, Deputy Chief of the Intelligence and Espionage Department, and General Kroch Yoeum, Under-Secretary of State at the Ministry of National Defence were summarily executed. Witnesses had earlier seen them being arrested by soldiers belonging to paratrooper commando Regiment 911 near Damnak Smach train station in eastern Udong district, Kompong Speu province.

Chhun Ma

On 25 July 1997, twelve soldiers from Varin district military, said to be under the command of an officer named Meas Mam, surrounded the house of Chhun Ma in Prasat village, Prasat commune, Varin district, Siem Reap province. Chhun Ma managed to escape. The soldiers opened fire into the house killing his 10 year old son, Ma Sun. The soldiers then searched the house and beat his wife.

Pheap

On 27 July 1997 Pheap, a bodyguard of First Prime Minister Norodom Ranariddh, was killed by three bodyguards of Huor Sareth, the then newly-appointed commander of the Tang Krasang bodyguard unit base. Pheap's body was exhumed several days later. It showed signs of strangulation and a broken neck.

In four cases the reason given for inaction was that the area was controlled by the Khmer Rouge. They include:

Peam So Village

On 9 April 1994, thirteen people, including nine children, were killed in an attack on a Vietnamese community in Peam So village, Sa-ang district of Kandal province. Twenty-five other people, many of them children, were hurt. The attack was apparently carried out on behalf of the NADK. All seven suspects were released for lack of evidence.

Mines Advisory Group

In March 1996 thirty de-miners from the Mines Advisory Group were captured by Khmer Rouge soldiers in Angkor Chum district in Siem Reap province. The kidnappers initially demanded a ransom and released everyone except two men, Christopher Howes, a British instructor, and Houn Hourth, his Cambodian assistant. The two are believed to have been murdered by Khmer Rouge officials in Anlong Veng.

Cases where no action was taken – other reasons:

A variety of other reasons have also been given for a failure to investigate and prosecute.

Thong Sophara

On 21 May 1996 Thong Sophara was beaten to death while in detention in Siem Reap. The Ministry of Interior said that the provincial police did not investigate or proceed with the case file as there was no warrant from the prosecutor to order the police to investigate.

Danh Teav

On 20 July 1998 Danh Teav, an official with the Ministry of Interior's anti-terrorist police was arrested, detained and interrogated in the office of the Serious Crimes Department of the municipal police. He was beaten until he fell unconscious and later made to thumbprint a confession. On 21 July he was brought to the Phnom Penh court along with five other men who had been arrested in connection with the same case. They bore visible marks of beatings on their faces, backs and chest. The Ministry of Interior said that Danh Teav was arrested together with three other offenders and sent to Phnom Penh municipal court. They were detained under an arrest warrant issued by the court on 22 July 1998 at PJ prison. The response made no mention of any investigation into the suspected torture of Danh Teav while in police custody.

Chea Bunthorn

On 24 September 1999 Chea Bunthorn died, apparently from torture, after being arrested and detained without a warrant by Kien Svay district police in Kandal province. The Ministry of Interior said that the police detained Chea Bunthorn for 48 hours in order to build the file to send to the court. Between 10 and 11 pm, Chea Bunthorn committed suicide by hanging himself. The science technology office and the local authorities undertook a forensic examination. According to investigations carried out by human rights

groups Chea Bunthorn's hands were reportedly handcuffed when he was found in the cell. The medical examination report did not figure in the police report about the case. Police ordered Chea Bunthorn's wife to have the body cremated immediately. Family members and people involved in the funeral said the body had red and black bruise marks around the throat, upper thighs, ankles and fingernails.

Cases of disciplinary action:

In three of the 178 cases the Ministry of Interior noted that disciplinary action had been taken instead of criminal prosecutions; they include.

Srey Tauch

In July or August 1996 Srey Tauch, a female detainee at the Koh Kong prison was raped by the prison director. The Ministry of Interior said that the director was removed from his position in 1997 after the rape was revealed. Subsequent reports have indicated that he was given a senior police post in the province.

Human Trafficking Case

In December 1997, organized networks involved in the trafficking of human beings were discovered operating from Dang Tung and Bak Klang in Koh Kong province. These networks were involved in selling young men to work in Thailand under harsh conditions. The Koh Kong police commissioner recognized that some policemen were involved in the trafficking and sent the names of four ringleaders to the Ministry of Interior. The Ministry said that they were sent to Ministry of Interior for punishment, but did not specify what kind of action was taken against them.

Cases sent to the court:

The Ministry of Interior said that 61 cases had been sent to the courts. According to information that the Cambodia Office has subsequently received from the courts, in 17 cases either the charges were dropped by the investigating judge or the suspect was acquitted. In a further nine cases the perpetrator had escaped before he could be arrested. Some 16 of the 178 cases did result in convictions. However, in some cases these were convictions *in absentia* and in others the crime they were convicted of was not necessarily the most appropriate given the facts, and was in some instances wholly disproportionate. The Cambodia office continues to follow up with the courts on other cases.

Lt. Col Sath Soeun

On 25 July 1995, Lt. Col Sath Soeun allegedly killed a 16 year old youth named Pao in the presence of several police and gendarmerie officers. Pao was suspected of burgling a house in Kompong Cham. The Ministry said that the case was sent to the Provincial court, that the court conducted a hearing, but decided not to detain Sath Soeun. Sath Soeun and the victim's family reportedly settled the case outside court and no further legal action was taken.

Chim Chhuon

On 10 February 2000, Chim Chhuon, a Sam Rainsy Party activist and prospective commune election candidate, was murdered in Tuol Bey Village, Reay Paiy commune, Kang Meas district, Kompong Cham. The Ministry said that the police arrested Suy Tean and sent him to court. Suy Tean was prosecuted and acquitted on 11 August 2000. The acquittal was upheld by the Supreme Court on 5 December 2001.

Sim Mov

On 13 October 2003, Sim Mov, an SRP activist, was killed in Andong Dey village, Prek Kabav commune, Kang Meas district, Kompong Cham. The Ministry said that the police sent the case to the court with three suspects. They were detained in prison on 25 October 2003 and charged with murder. The investigating judge dropped the charges against the three during investigation and they were released.

Ly Seng

On 22 March 1993 Sub-Lieutenant Ly Seng was murdered in Prek Moha-Tep village in Battambang. On 7 July the UNTAC special prosecutor issued a warrant for the arrest of Gen. Phorn Salin, the deputy commander of Military Region Five. Arrest warrants were also issued by the SOC Military Prosecutor and the Battambang Provincial Court. The Ministry said that the Battambang provincial court was still seeking

to arrest the perpetrator. Phorn Salin is currently based in Pursat and holds the position of Deputy Chief of General Staff at Military Region 5 responsible for the Pursat area of operation.

Trayung Village

On 1 October 1997 five people were killed and five others wounded in a grenade attack in Trayung village, Ream Andoeuk commune, Kirivong district, Takeo province. Takeo court had issued arrest warrants for Leang Teng, the Commander of the commune militia, and Khum Chean, a member of the commune military. The Ministry said that the offenders had escaped.

Somrep Phaly

On 13 August 1998 Somrep Phaly, a policeman and son of the district Funcinpec representative, was shot dead by a soldier in Por village, Kandol Chrum commune, Punhea Krek district. The soldier was a member of RCAF Division Four, based in Tbong Khmum district. The murder was witnessed by several people. The Ministry said that the investigation was finished and that the case sent to the court with suspect Chan Phal, who escaped. The police are still seeking to arrest him.

Phuong Tong

Phuong Tong was shot dead on 18 December 1998 after having recently joined the human rights organisation ADHOC as an activist. The murder was related to a local land dispute with a gravel company in which the victim had represented a group of villagers facing eviction. The investigation pointed to a soldier and a policeman as being responsible. They and a third man, a farmer, were eventually arrested in October 1999. The farmer and policeman were charged with murder and the soldier with voluntary manslaughter. During the course of the investigation, the investigating judge dropped the charges against all three due to lack of evidence. The prosecutor appealed the decision. The Appeal Court upheld the decision to drop the charges. On appeal to the Supreme Court, the court in part reversed the decision, upholding charges against the soldier and policeman. On 1 April 2005, they went on trial in Kandal provincial court. The policeman was found guilty of involuntary manslaughter and sentenced to eight years imprisonment. The soldier was acquitted due to lack of evidence.

Romdel Village

On 26 April 1998 a grenade was thrown at a family gathered on the terrace of their house in Romdel village, Som commune, Kirivong district, Takeo province killing two people and injuring four others, one of them a Buddhist Liberal Democratic Party (or in short Son Sann party) activist. Nam Kay and Nam Nuon were killed outright. Khieu Touch, Ep Soeung, Soeun Im and Sauth Pring were injured. Khieu Touch was the Son Sann Party's district representative. The Ministry said that Khun Porn, 38, was arrested and sent to court. He was sentenced to 17 years imprisonment. He admitted to throwing the grenade and said his reason was that one of the victims had previously threatened to kill him. Victims and human rights groups, however, suspected a political motive. As of April 2005, Khun Porn was still serving his sentence.

Chhay Than

On 14 January 2001 Chhay Than, a prospective Funcinpec commune election candidate, was killed in Toul Vihear village, Chiro 2 commune, Tbong Khmum district, Kompong Cham. The Ministry said that the police identified Mom Lonh as the suspect, but that he escaped before he could be arrested. The court charged him with illegal weapons possession, but no charge of murder has been filed. Mom Lonh was tried in absentia for illegal weapons possession on 15 February 2002 and sentenced to a one-year suspended sentence.

Ti Sovann

On 11 February 2002 Ti Sovann, an SRP activist, was killed in Borei Keila squatter area, Veal Vong commune, 7 Makara district, Phnom Penh. The Ministry said that the perpetrator, Saom Sophy, 39, male, was arrested and detained in CC1 on 13 August 2002. The case was sent to court. Saom Sophy was sentenced to three years imprisonment for involuntary manslaughter. Investigations by the police, the investigating judge, Ham Mengse, and human rights groups showed that he had accidentally shot Ti Sovann during a drinking party.

Cases involving attacks on the media:

In the majority of these cases the Ministry of Interior has stated that investigations are continuing.

Thou Chan Mongkol

Thou Chan Mongkol, editor of *Antrakum* (Intervention) newspaper, was found dead on a Phnom Penh street on 10 June 1994, possibly the victim of a traffic accident, three months after a grenade had been thrown at the newspaper's office, which injured five people.

Nuon Chan

Nuon Chan, editor of *Samleng Yuvachoun Khmer* (Voice of Khmer Youth), was shot and killed by two men on a motorbike in Phnom Penh on 7 September 1994.

Koh Santepheap

Sao Chan Dara, a reporter for *Koh Santepheap* (Island of Peace), was shot and killed in Kompong Cham on 8 December 1994. A grenade was thrown at the newspaper's office on 15 October 1997 and the editor of the paper was subsequently shot. Sath Soeun was tried for the murder of Sao Chan Dara, but acquitted. The Appeal Court upheld the acquittal and no appeal to the Supreme Court was made.

Ek Mongkul

Ek Mongkul the radio journalist for FM 90 was shot on 21 October 1995.

Thun Bun Ly

Thun Bun Ly, editor of *Udomkete Khmer* (Khmer Ideal) newspaper, was shot and killed by two men on a motorcycle in Phnom Penh on 18 May 1996. Half an hour before his death, he had informed a friend that he feared for his safety. In 1995, he had been prosecuted and convicted twice for publishing articles critical of the Government.

Leng Sam Ang

On 2 January 1997 Leng Sam Ang, the editor of Komnet Kaun Khmer, was beaten and shot by police.

Michael Senior

Michael Senior, a freelance photographer of Cambodian descent, was shot and killed by soldier as he attempted to photograph troops looting a public market in Phnom Penh on 8 July 1997.

Chour Chetharith

The murder of Chour Chetharith, a journalist at Ta Prohm radio, on 18 October 2003 detailed in the report. The Ministry said the case was under further investigation.

2. 'Contract' killings February 2003 to May 2004

As mentioned in the body of the report, several high profile murders took place in Phnom Penh during the run up to the elections for the National Assembly of July 2003 and the political deadlock that followed. These cases did not figure in the list of 178 cases transmitted to the Ministry of the Interior. None has been satisfactorily resolved. The following are additional to the cases of Judge Sok Sethamony, radio journalist Chour Chetharith, and trade unionist Chea Vichea which are detailed in the report.

Sam Buntheon

Sam Buntheon was Director of Vipasona Meditation Center, a monk and teacher. He was shot on February 6, 2003 by two men in front of his building at Wat Lanka. The killers then left on a motorcycle. Sam Buntheon died in hospital on February 8. The municipal police turned over the investigation to the Ministry of Interior Central Judicial Police. No one has been arrested for the crime.

Om Radsady

Om Radsady, advisor to Prince Ranarridh, was a well known and high ranking official of Funcinpec who was shot once in the back in the middle of the day in central Phnom Penh on 18 February 2003. The two men involved escaped from the scene on a motorcycle. Om Radsady died in hospital later that day.

The Police Commissioner of Phnom Penh created a special Commission to investigate. Mom Sophan, a paratrooper was arrested on 10 March and his brother Ear Chhukrath on 12 March 2003. The police confiscated one handgun and a motorbike. The lawyer assigned to represent the accused said that Mom Sophan confessed to the robbery of Om Radsady's mobile phone, that the shooting was not intentional, and claimed that another person, Rous Siphath, a newly recruited paratrooper had assisted him by driving the motorbike. On 15 March, Rous Siphath, was arrested and similarly charged. Ear Chhukrath was released on 14 March.

On 27 October 2003, the accused were found guilty by the Phnom Penh Municipal Court and were sentenced to 20 years imprisonment for illegal possession of a weapon (Article 54 of UNTAC law), robbery (Article 6 of Law on Aggravating Circumstances of Felonies), and voluntary manslaughter (Article 4 of the same Act). The court clerk read out witness statements. No witnesses testified in the court.

Questions were raised concerning the quality of the investigation and the trial, whether the suspects acted by themselves as put forward by the authorities, and whether the motive of the murder i.e. the robbery of a mobile telephone was credible as it contradicted eye-witness accounts.

Touch Srey Nich and Kim Sinoun

On the morning of 21 October 2003, Touch Srey Nich, a popular singer, 24 years old, was shot three times at close range - twice in the head and once in the neck at about 11.45 a.m. Her mother Kim Sinoun, 59, was shot once in the back when she tried to shield her daughter, and died later in hospital.

According to witnesses, four men on two motorcycles stopped in front of a flower shop, which Touch Srey Nich and her mother were leaving, and shot at them six or seven times. Two were reportedly in military clothing. Touch Srey Nich was transferred to hospital in Bangkok. She survived the attack but remains paralyzed from the neck down. Although she was not a member of FUNCINPEC, she was publicly perceived as one, and had performed several of the party's campaign songs for the July 2003 National Assembly elections. A government spokesperson immediately after the event said that the attack pointed to a systematic campaign of terror ultimately designed to discredit the Prime Minister. The Prime Minister also said that forces were at work to undermine the CPP, and he ordered the police and military to tighten security and also formed a special team to find the perpetrators.

No arrests have been made and the police have failed to identify any suspects. They have said that investigations are ongoing, but have complained that the victim and family members refused to co-operate. In January 2005, Touch Srey Nich and her surviving family members were resettled in the US.

Ros Sovannareth

On 7 May 2004, Ros Sovannareth, Steering Committee member of the Free Trade Union of Workers of the Kingdom of Cambodia, and the Union's representative at Trinunggal Komara Garment Factory in Russey Keo district in Phnom Penh was shot and killed by two men on a motorcycle while travelling home from the factory on a motorcycle. The men pulled up beside him as he fell to the ground, and shot him two more times before riding off. The police soon after the incident said the motive was possible rivalry with the other union in the factory.

On 15 February 2005, the Phnom Penh Municipal Court convicted and sentenced Thach Saveth, a 22-year-old paratrooper, to 15 years in prison for premeditated murder under Article 3 of the Law on Aggravating Circumstances of Felonies. The accused denied the charge and insisted that he was in Siem Reap province at the time of the killing. The trial was characterized by breaches of procedural rules and the absence of the most basic standards of fair trial. The trial judge placed the burden on the accused to prove that he was not in Phnom Penh at the time of the incident and dismissed the testimony of the three witnesses that supported his alibi. The accused was convicted solely on the testimony of a police officer in charge of the investigation and written statements of two witnesses who never appeared in court. The judge declined to provide an explanation as to why the witnesses, who apparently resided in Phnom Penh, were unable to testify in public, and openly reprimanded the defence counsel during the latter's final submission for

delaying the proceedings. The trial lasted approximately one hour. The defendant was also ordered to pay \$2,000 in compensation to the widow of the victim. The case has been appealed.

3. Torture and cruel, inhuman or degrading treatment or punishment

Tem Seng

On 9 April 1993, the Office of the Special Prosecutor of UNTAC issued an arrest warrant for Tem Seng, deputy director of Battambang prison, for the attempted murder, battery with injury, illegal confinement and the infringement of individual rights of Nhao Huam in February 1992, and Ieng Samong and Tuon Chry in March 1993.¹¹³ UNTAC police tried to serve the arrest warrant but Tem Seng escaped. He continued to work in the prison until he was arrested by UNTAC on 26 July 1993. On 24 September 1993, the Phnom Penh Municipal Court charged him with infringement of individual rights relating to the February 1992 incident.¹¹⁴ He was arrested and sentenced to a year in prison and ordered to pay compensation to the victims' families. After serving his sentence, he was allowed back to his former position as deputy director of Battambang prison. In its 1999 report to the UN Human Rights Committee, the Government cited the case of Tem Seng as evidence of its actions against officials involved in the mistreatment of prisoners. He was retired in 2003 after the Committee against Torture, as well as the Special Representative, questioned his continued service as a prison official.¹¹⁵

Eath Oeurn

Eath Oeurn, a farmer from Prey Veng province, was arrested on 26 July 2001 on suspicion of theft of several buffaloes and died three days later after his detention in three separate police stations. Before his death, the victim told his wife that he had been beaten by three policemen, whom he identified. His wife and daughter saw that he had bruises over his body and face, had lost two teeth, and was vomiting blood. No autopsy was conducted before he was cremated. However, the family had photographs taken of the body which show bruises on his face, chest, stomach, back, buttocks, thighs and legs.

In October and November 2001, the Cambodia office transmitted detailed information on the case to the Director General of National Police, requesting him to undertake an investigation. The Cambodia office received two communications from the Ministry of the Interior: a report by the Police Commissioner in Prey Veng which was not substantial and a report from the Director General of Police in December 2002 which said that the National Police had assigned its Central Department of Judicial Police to investigate the case. The investigation had concluded that Eath Oeurn had died from illness, serious abdominal pain, vomiting and excessive coining. The family of the victim was not interviewed during the investigation. A forensic examination, based on the photographs, was undertaken by an expert in the Philippines at the request of the non-governmental organisation Licadho. While the expert could not reach a final conclusion on the cause of death in the absence of an autopsy, she found that it was "highly probable that he sustained blunt force injuries on the head, trunk and lower extremities. Based on the available information regarding the circumstances of his death, craniocerebral injuries are strongly considered as direct cause and the manner of death is thus classified as homicide."

In a welcome development, in February 2002, two policemen were charged by the Prey Veng court for voluntary manslaughter. In July 2002, another policeman was also charged. The case has yet to come to trial. The President of the Prey Veng Court, also the trial judge, said that the trial would be held in June 2005, but it was postponed and no new date has been scheduled at the time of writing.

Ny Sok Rorn

Ny Sok Rorn, a 35-year-old soldier from RCAF Battalion 204 in Kratie province, died on 18 August 2004, after being taken from his home by three fellow soldiers from the Battalion on 28 July 2004, and held in the military base in Snoul district.

¹¹³ UNTAC Warrant of Arrest and Detention No. 9 of 1993

¹¹⁴ Municipal Court of Phnom Penh, Warrant of Detention No. 3275/Crim.Justice, 24 September 1993

¹¹⁵ United Nations, Press Release, Committee against Torture Reviews Initial Report of Cambodia, CAT 30th session, 29 April 2003.

At 4 p.m on 10 August 2004, two soldiers brought Ny Sok Rorn on a motorbike to a rice field and left him there. They told villagers that he was suffering from a serious fever. The villagers took him home. His wife and others said they saw many bruises on his body - swollen jaw and thigh, a burn scar on his stomach and wounds around the right ankle. The wife said that at times he fell unconscious, could not walk or eat and could only drink water. He told her that he had been chained by the leg and that many soldiers had surrounded and assaulted him. She was not able to take him to hospital because they were too poor.

At 4 a.m on 18 August 2004, Ny Sok Rorn died. The family complained to the commune council and police, and to the human rights NGO ADHOC. The police investigation and medical report confirmed that Ny Sok Rorn had suffered from bodily injuries. The medical report stated that there were bruises on the back of the head, the temple, the neck, the right side of chest, the back, and on the right and left side of the legs. There were wounds on the abdomen and shin. However, the report failed to establish the cause of the injuries.

The prosecutor received an explanation from Commander Sun Heng that the deceased had fallen from a bridge into a canal, while drunk, and hit his head, that military personnel then helped and treated him by providing massage, "cupping" and "coining". He said that the deceased went into convulsions, that he had previously suffered from spirit possession and would behave wildly and run into the jungle; and that bruises and marks would appear on his body when he was possessed by spirits. The police did not conduct a thorough investigation and appeared to agree with the version provided by the military.

In a welcome development, on 30 December, two suspects Sun Heng and Kong Kuoy were arrested for pre-meditated murder under Article 3 of the Law on Aggravating Circumstances of Felonies and later charged by the Kratie provincial court. However, on 18 January 2005, the court dropped the charge, citing lack of evidence. The police and the court concluded that the injuries were caused when falling off a bridge into a canal while intoxicated, and the marks and bruises on the deceased body were caused by "coining." According to reports received, the family was pressed to accept compensation, and did not appeal.

The Cambodia office wrote to the General Prosecutor of the Court of Appeals on 21 February 2005 concerning the possibility of appeal. No appeal was filed.

Appendix C: General comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant¹¹⁶

1. This general comment replaces general comment No. 3, reflecting and developing its principles. The general non-discrimination provisions of article 2, paragraph 1, have been addressed in general comment No. 18 and general comment No. 28, and this general comment should be read together with them.

2. While article 2 is couched in terms of the obligations of State parties towards individuals as the right-holders under the Covenant, every State party has a legal interest in the performance by every other State party of its obligations. This follows from the fact that the “rules concerning the basic rights of the human person” are erga omnes obligations and that, as indicated in the fourth preambular paragraph of the Covenant, there is a United Nations Charter obligation to promote universal respect for, and observance of, human rights and fundamental freedoms. Furthermore, the contractual dimension of the treaty involves any State party to a treaty being obligated to every other State party to comply with its undertakings under the treaty. In this connection, the Committee reminds States parties of the desirability of making the declaration contemplated in article 41. It further reminds those States parties already having made the declaration of the potential value of availing themselves of the procedure under that article. However, the mere fact that a formal interstate mechanism for complaints to the Human Rights Committee exists in respect of States parties that have made the declaration under article 41 does not mean that this procedure is the only method by which States parties can assert their interest in the performance of other States parties. On the contrary, the article 41 procedure should be seen as supplementary to, not diminishing of, States parties’ interest in each others’ discharge of their obligations. Accordingly, the Committee commends to States parties the view that violations of Covenant rights by any State party deserve their attention. To draw attention to possible breaches of Covenant obligations by other States parties and to call on them to comply with their Covenant obligations should, far from being regarded as an unfriendly act, be considered as a reflection of legitimate community interest.

3. Article 2 defines the scope of the legal obligations undertaken by States parties to the Covenant. A general obligation is imposed on States parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction (see paragraph 9 and 10 below). Pursuant to the principle articulated in article 26 of the Vienna Convention on the Law of Treaties, States parties are required to give effect to the obligations under the Covenant in good faith.

4. The obligations of the Covenant in general and article 2 in particular are binding on every State party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local) are in a position to engage the responsibility of the State party. The executive branch that usually represents the State party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State party from responsibility for the action and consequent incompatibility. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State party “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. Although article 2, paragraph 2, allows States parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty. In this respect, the Committee reminds States parties with a federal structure of the terms of article 50, according to which the Covenant’s provisions “shall extend to all parts of federal states without any limitations or exceptions”.

5. The article 2, paragraph 1, obligation to respect and ensure the rights recognized by the Covenant has immediate effect for all States parties. Article 2, paragraph 2, provides the overarching framework within which the rights specified in the Covenant are to be promoted and protected. The Committee has as a consequence previously indicated in its general comment No. 24 that reservations to article 2, would be

¹¹⁶ Adopted on 29 March 2004 at its 2187th meeting.

incompatible with the Covenant when considered in the light of its objects and purposes.

6. The legal obligation under article 2, paragraph 1, is both negative and positive in nature. States parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.

7. Article 2 requires that States parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations. The Committee believes that it is important to raise levels of awareness about the Covenant not only among public officials and State agents but also among the population at large.

8. The article 2, paragraph 1, obligations are binding on States parties and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights insofar as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States parties of those rights, as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3. The Covenant itself envisages in some articles certain areas where there are positive obligations on States parties to address the activities of private persons or entities. For example, the privacy-related guarantees of article 17 must be protected by law. It is also implicit in article 7 that States parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of article 26.

9. The beneficiaries of the rights recognized by the Covenant are individuals. Although, with the exception of article 1, the Covenant does not mention the rights of legal persons or similar entities or collectivities, many of the rights recognized by the Covenant, such as the freedom to manifest one's religion or belief (art. 18), the freedom of association (art. 22) or the rights of members of minorities (art. 27), may be enjoyed in community with others. The fact that the competence of the Committee to receive and consider communications is restricted to those submitted by or on behalf of individuals (article 1 of the (first) Optional Protocol) does not prevent such individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights.

10. States parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party. As indicated in general comment No. 15 adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum-seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State party. This principle also applies to those within the power or effective control of the forces of a State party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State party assigned to an international peacekeeping or peace-enforcement operation.

11. As implied in general comment No. 291, the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be especially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.

12. Moreover, the article 2 obligation requiring that States parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters.

13. Article 2, paragraph 2, requires that States parties take the necessary steps to give effect to the Covenant rights in the domestic order. It follows that, unless the Covenant's rights are already protected by their domestic laws or practices, States parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant. Where there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees. Article 2 allows a State party to pursue this in accordance with its own domestic constitutional structure and accordingly does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law. The Committee takes the view, however, that Covenant guarantees may receive enhanced protection in those States where the Covenant is automatically or through specific incorporation part of the domestic legal order. The Committee invites those States parties in which the Covenant does not form part of the domestic legal order to consider incorporation of the Covenant to render it part of domestic law to facilitate full realization of Covenant rights as required by article 2.

14. The requirement under article 2, paragraph 2, to take steps to give effect to the Covenant rights is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State.

15. Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children. The Committee attaches importance to States parties' establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. The Committee notes that the enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law. Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.

16. Article 2, paragraph 3, requires that States parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.

17. In general, the purposes of the Covenant would be defeated without an obligation integral to

article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State party's laws or practices.

18. Where the investigations referred to in paragraph 15 reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (art. 7), summary and arbitrary killing (art. 6) and enforced disappearance (articles 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations. When committed as part of a widespread or systematic attack on a civilian population, these violations of the Covenant are crimes against humanity (see Rome Statute of the International Criminal Court, article 7).

Accordingly, where public officials or State agents have committed violations of the Covenant rights referred to in this paragraph, the States parties concerned may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties (see general comment No. 20 (44)) and prior legal immunities and indemnities. Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable. States parties should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international law.

19. The Committee further takes the view that the right to an effective remedy may in certain circumstances require States parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations.

20. Even when the legal systems of States parties are formally endowed with the appropriate remedy, violations of Covenant rights still take place. This is presumably attributable to the failure of the remedies to function effectively in practice. Accordingly, States parties are requested to provide information on the obstacles to the effectiveness of existing remedies in their periodic reports.