



**General
Assembly**

Distr.
GENERAL
A/49/635
3 November 1994

Original: ENGLISH

Forty-ninth session
Agenda item 100 (c)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND
REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Cambodia

Recommendations of the Special Representative for human rights
in Cambodia and the role of the United Nations Centre for Human
Rights in assisting the Government and people of Cambodia in
the promotion and protection of human rights

Report of the Secretary-General

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ABBREVIATIONS

CPP Cambodia People's Party

FUNCINPEC Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique et Coopératif (National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia)

ICRC International Committee of the Red Cross

ILO International Labour Organization

KPNLAF Khmer People's National Liberation Armed Forces

NADK National Army of Democratic Kampuchea

PDK Party of Democratic Kampuchea

RCAF Royal Cambodian Armed Forces

UNHCR Office of the United Nations High Commissioner for Refugees

UNDP United Nations Development Programme

UNESCO United Nations Educational, Scientific and Cultural Organization

UNTAC United Nations Transitional Authority in Cambodia

UNV United Nations Volunteers

WFP World Food Programme

WHO World Health Organization

I. INTRODUCTION

1. By its resolution 48/154 of 20 December 1993, entitled "Situation of human rights in Cambodia", the General Assembly welcomed the elections of May 1993 and the inauguration of the Government of the Kingdom of Cambodia. After taking note of Commission on Human Rights resolution 1993/6 of 19 February 1993, the Assembly welcomed the establishment in Cambodia of an operational presence of the Centre for Human Rights of the Secretariat:

- (a) To manage the implementation of educational and technical assistance and advisory services programmes, and to ensure their continuation;
- (b) To assist the Government of Cambodia established after the election, at its request, in meeting its obligations under the human rights instruments recently adhered to, including the preparation of reports to the relevant monitoring committees;
- (c) To provide support to bona fide human rights groups in Cambodia;
- (d) To contribute to the creation and/or strengthening of national institutions for the promotion and protection of human rights;
- (e) To continue to assist with the drafting and implementation of legislation to promote and protect human rights;
- (f) To continue to assist with the training of persons responsible for the administration of justice.

2. Furthermore, the General Assembly requested the Secretary-General to assure the protection of the human rights of all people in Cambodia.

3. It is worth recalling that, pursuant to the request made by the Commission on Human Rights in its resolution 1993/6 to ensure a continued human rights presence in Cambodia after the expiry of the mandate of the United Nations Transitional Authority in Cambodia (UNTAC) including, through the operational presence of the Centre for Human Rights, the Centre established its Cambodia office at Phnom Penh on 1 October 1993.

4. In the same resolution, the General Assembly welcomed the appointment by the Secretary-General (on 23 November 1993) of a Special Representative for human rights in Cambodia, Justice Michael Kirby from Australia, to undertake the tasks set out in Commission on Human Rights resolution 1993/6. These tasks include:

- (a) To maintain contact with the Government and people of Cambodia;
- (b) To guide and coordinate the United Nation human rights presence in Cambodia;
- (c) To assist the Government in the promotion and protection of human rights.

The General Assembly also requested the Secretary-General to report to it at its forty-ninth session on the role of the Centre for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights and on any recommendations made by the Special Representative on matters within his mandate.

5. The present report is submitted in accordance with that request. The report consists of two parts, one containing the report and recommendations of the Special Representative, and the other, contained in an addendum to the present document (A/49/635/Add.1) on the activities of the Centre for Human Rights in Cambodia.

II. MISSION TO CAMBODIA OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL

6. The Special Representative conducted his first mission to Cambodia from 21 to 28 January 1994. As requested by the Commission on Human Rights in its resolution 1993/6, he submitted a report to the Commission at its fiftieth session in February 1994. ^{1/} The report contains an historical overview of Cambodia and political developments during 1992 and 1993; an analysis of the situation of human rights in Cambodia; detailed information on the programme and outcome of the first mission of the Special Representative; and conclusions and recommendations of the Special Representative to the Government of Cambodia on a number of human rights issues. The report was translated into Khmer by the Centre for Human Rights and was widely distributed to governmental departments, Cambodian non-governmental organizations and interested individuals.

7. The present report is based on the findings of the Special Representative on his second and third missions to Cambodia, as well as on his ongoing observation and on information provided by the Cambodia office of the Centre for Human Rights.

8. The Special Representative visited Cambodia for the second time from 26 to 28 May 1994. On that occasion, he met with the Cambodian Ministers of Justice and of Information, the acting Chairman of the National Assembly, the Chairman of the Commission on Human Rights and Reception of Complaints of the National Assembly and the legal expert attached to the Council of Ministers of the Government of Cambodia. He also met with the representative of the Secretary-General in Cambodia, Mr. Benny Widyono, and representatives of United Nations agencies and other international organizations based in Cambodia; and with representatives of the diplomatic corps, Cambodian human rights non-governmental organizations and the Khmer Journalists Association. The Special Representative also visited Police Judiciare (PJ) prison in Phnom Penh and held consultations with staff of the office of the Centre for Human Rights in Cambodia.

9. The Special Representative then travelled to Geneva, where from 29 May to 3 June 1994 he attended a meeting of Special Rapporteurs, Representatives, Experts and Chairpersons of Working Groups of the Commission on Human Rights to discuss matters of common concern for the implementation of their respective mandates and ways to enhance coordination among the various procedures. He met with the United Nations High Commissioner on Human Rights, the Assistant Secretary-General for Human Rights and staff of the Centre for Human Rights. He also met with a number of interested delegations and held consultations with representatives of United Nations bodies and agencies involved in Cambodia, as well as international and Cambodian non-governmental organizations represented in Geneva. The practice established by the Special Representative in connection with his missions to Geneva and the session of the Commission on Human Rights, of consulting with a wide range of (both governmental and non-governmental) international actors interested and/or active in the field of human rights in Cambodia has proved to be very useful for the purpose of: (a) encouraging and facilitating the regular exchange of information on human rights activities implemented or planned in Cambodia; (b) enhancing coordination and cooperation especially within the United Nations system; and (c) bringing to the attention of the Special Representative human rights issues in Cambodia relevant to his mandate of particular concern to the international community.

10. The third mission of the Special Representative was conducted from 16 to 30 July 1994. The Special Representative travelled to Kompong Som (Sihanoukville) and Battambang provinces, where he visited the provincial courts and prisons and met with judges and prosecutors, the provincial police, governors and other local authorities. In the prisons, he discussed extensively with the prisoners their conditions of detention. He also met with representatives of Cambodian non-governmental human rights organizations having offices at the provincial level. At Battambang, the Special Representative devoted particular attention to the issue of land-mines, was briefed by specialized groups and spent one day with de-mining teams at work. A one-day visit to displaced ethnic Vietnamese persons at Chrey Thom, on the border with Viet Nam, was organized during his mission. Accompanying the Special Representative were the Representative of the Secretary-General in Cambodia and representatives of the Centre for Human Rights, the

Office of the United Nations High Commissioner for Refugees (UNHCR), the World Food Programme (WFP), the International Committee of the Red Cross (ICRC), the Ligue Cambodgienne pour la promotion et la défense des droits de l'homme, the Cambodian Institute of Human Rights, the Vietnamese Association and international and Cambodian press, as well as officials of the Government of Cambodia.

11. In Phnom Penh, the Special Representative had meetings with the Minister for Foreign Affairs, the Secretary of State for Women's Affairs, officials of the Ministry of Interior, members of the Legislative, Interior, Human Rights, Education and Health Commissions of the National Assembly. Several meetings were held, both collectively and individually, with representatives of the diplomatic corps at Phnom Penh, United Nations agencies and international and Cambodian non-governmental human rights organizations, including specialized groups on minorities, women and the elderly, as well as religious groups. The Special Representative had extensive consultations with staff of the Centre for Human Rights. During his mission, he gave a press conference on the issue of land-mines and participated in a panel discussion on human rights with representatives of the international and Cambodian non-governmental organizations community. A detailed programme of the second and third missions is contained in annexes I and II to the present report.

III. MISSION TO CAMBODIA OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

12. Mr. José Ayala-Lasso, the United Nations High Commissioner for Human Rights, visited Cambodia from 24 to 26 July 1994. The High Commissioner, accompanied by the Special Representative of the Secretary-General for human rights in Cambodia, met with the acting Head of State and the First Prime Minister. An unprecedented interministerial meeting, including the Ministers of Information and Justice, the Co-Ministers for Interior and Defence and a representative of the Minister for Foreign Affairs, was organized to discuss human rights issues of common concern to the ministries represented. The High Commissioner discussed the operation of the Cambodia office of the Centre for Human Rights, the technical cooperation programme being implemented by the Centre with the Government, and the protection of human rights in Cambodia, including ensuring effective guarantees for freedom of expression, the independence of the judiciary, the role of the military in recent cases of human rights violations, the conditions of prisons and the treatment of ethnic Vietnamese. The High Commissioner also met with Cambodian non-governmental human rights organizations, representatives of United Nations agencies in Cambodia, members of the international and Cambodian press and staff of the Centre for Human Rights (the programme of the visit of the United Nations High Commissioner for Human Rights is contained in A/49/635, annex II).

IV. COOPERATION BY THE GOVERNMENT

13. In all meetings held with ministers and senior officials of the Government of Cambodia, members of the National Assembly, police and prison authorities, including at the provincial level, the Special Representative greatly appreciated the openness of the

Cambodian authorities in recognizing the difficulties still faced by Cambodia in ensuring that human rights were promoted and protected in conformity with the Constitution, the international human rights norms binding on Cambodia and the laws of the country. The shortcomings, from the human rights perspective, of the Cambodian legal order and of the national system for the administration of justice were, without exception, recognized in all contacts of the Special Representative with Cambodian officials. The problems caused for the respect of human rights by the continuing political instability, the deterioration of the security situation, the interference of the military power with the civilian sphere and the difficulty in asserting the rule of law were also openly acknowledged. During his mission in Cambodia, the High Commissioner also expressed his appreciation for the spirit of frankness and cooperation showed by the Cambodian authorities. The Special Representative expressed his appreciation and gratitude for the above attitude of the Government of Cambodia. The recognition of identified problems is the first step on the path to their solution. The Special Representative will continue to provide his assistance to contribute to the success of the Government's efforts to ensure full protection of human rights in Cambodia.

V. THE CONTINUING CHALLENGE TO THE SECURITY SITUATION

14. Since the beginning of 1994, the resumption of fighting with the Party of Democratic Kampuchea (PDK)/National Army of Democratic Kampuchea (NADK) 2/ in several provinces and conflicts within the two main parties of the coalition Government and between them and the King have led to increased political instability and a related deterioration of the security situation in the country. These tensions culminated in early July with what was officially described as an "aborted coup attempt". These events have inevitably affected the confidence and hope which prevailed in both the Government and society after the May 1993 elections. They have reintroduced scepticism, uncertainty and, in some cases, fear.

15. Following the formation of the newly elected Royal National Government of Cambodia in October 1993, NADK increased its military pressure on government targets in western Cambodia in an effort to enhance its bargaining power and to force a negotiated solution whereby it would be integrated with the Government without having to make vital concessions. Such demands were rejected by the Government. Contacts between the Government, King Norodom Sihanouk and the PDK 3/ took place at Bangkok and Beijing but to no avail, because of the unreconcilable positions of the parties involved. Meanwhile, the guerrilla's violent actions included the blowing-up of dozens of bridges, mostly in western Cambodia, and attacks against village and commune administration, police or military offices. Several murderous attacks on civilian trains were also carried out and Vietnamese civilians have continued to be the victims of racial violence.

A. Government offensives against strongholds of the National Army of Democratic Kampuchea

16. In response to growing NADK military pressure, the newly formed Royal Cambodian

Armed Forces (RCAF) launched two major offensives in January and March 1994. These were aimed at capturing two main strongholds of NADK: its northern command in Anlong Veng district (Siem Reap-Otdar Meanchey province), and Pailin, the guerrilla's tactical headquarters since 1992. The latter is a district town in an area rich in precious stones adjacent to the border with Thailand. It is located 70 kilometres south-west of Battambang, the second largest town of the country. It was captured by NADK in late 1990.

17. Anlong Veng was never captured by government forces. Pailin was taken, but for a short period only. Within weeks, NADK regrouped its forces, counter-attacked and retook its positions, forcing RCAF to withdraw. NADK forward units, for the first time since they captured Pailin in late 1990, advanced to within 13 kilometres of Battambang on Highway 10. Their thrust was eventually blocked by RCAF, which gradually repelled the guerrillas to Pailin. In the counter-attack, Pailin was reportedly bombed by government helicopters. In purely military terms the net result of these government offensives was the re-establishment of the status quo ante.

18. The Government benefited very little, if at all, from these military initiatives. On the contrary, in human, political, military and economic terms, they seriously damaged the internal and external perception of the Government and its armed forces. Domestically, these offensives resulted in the killing of an estimated 500 government soldiers and the injuring to more than 1,000 others, for no ultimate military, territorial, political or economic gain. Financially, they cost the Government an estimated several million dollars. They also contributed to exacerbating internal tensions within the parties in the government coalition and between them. Abroad, they projected the image of a country again engulfed by war, with its negative repercussions on tourism, foreign development assistance and investments.

B. Resumption of full-fledged warfare

19. The most direct effect of the foregoing operations on the security situation was an intensification of warfare. Fighting had been kept at a relatively low level after the elections owing to a relative military restraint observed by both sides as contacts and manoeuvres were taking place between the guerrillas and the Government. In direct response to the RCAF offensives, PDK remobilized its forces and resumed its military and political activities throughout the country. These were aimed at destabilizing the government administration in the villages and communes and replacing it with a political authority under the control of the guerrillas. The break-up of the peace talks in May 1994, the adoption of the law on the outlawing of the "Democratic Kampuchea" group in July (see paras. 72-74), and the government instruction to the PDK delegation at Phnom Penh to leave the country confirmed the rupture and the return to Cambodia to a level of military fighting close to that which prevailed before the cease-fire in early 1991.

20. Evidence from both sides of the conflict shows that combatants and civilians are tired of the war and see no reason to continue the fight. Evidence from NADK-controlled zones continues to show that the population there, which to a large extent continues to be

captive, ardently desires to return to its villages. However, because the villages are in government-controlled areas, many villagers are reported to be afraid of reprisals upon return and are uncertain about their ability to find a plot of land to build a house and make a living. Meanwhile, civilians in these zones continue to constitute a reservoir of manpower for the guerrillas. They are used at the convenience of the guerrillas to serve in military operations.

C. New mines laid by both sides

21. Renewed fighting in western Cambodia has also provided the context for the laying of new anti-personnel mines by both sides to the conflict. This is particularly the case in the district of Rattanak Mundeul, which is the most heavily mined area of the province. An estimated 40,000 inhabitants of the district had to evacuate their villages to escape fighting, which ravaged almost the entire district. They sought, with 20,000 others, temporary shelter in the suburbs of Battambang and along the roads of the province. The gradual return of the population to what was left of the villages after the fighting was marked by the death and injuries of several villagers as a result of newly laid mines. The Special Representative spoke to many of these people during his third mission.

D. Serious shortcomings of the Royal Cambodian Armed Forces

22. The RCAF offensives in Anlong Veng and Pailin (see paras. 16-18 above) have revealed the serious structural shortcomings of RCAF which have direct implications for the human rights situation in Cambodia. These shortcomings include comparatively poor organization, planning, training and leadership. On the battlefield, this has resulted in numerous lives being lost or endangered unnecessarily.

23. Serious weaknesses also include widespread corruption reported within the military forces. One aspect of the corruption is the large numbers of "ghost soldiers" whose salaries are pocketed by others. Soldiers, generally poorly paid, are often not paid for months by their officers. Their salaries are reportedly paid to their unit commanders.

24. The shortcomings include the reported involvement of senior regional and provincial military officers and their units in criminal activities. This was illustrated in Battambang province by the administration of secret detention centres used for detaining abducted civilians, extorting money, asserting illegal power and for executing those detained. These officers are also allegedly controlling gambling and prostitution networks, as well as informal taxation checkpoints along main highways and waterways.

25. These structural problems are also illustrated by an inflated number of officers in RCAF. An estimated 60 per cent of the 120,000 troops are middle- and high-ranking officers. The latter include over 2,000 generals.

E. Human rights implications

26. These features have serious implications for the human rights situation in Cambodia.

Military personnel have been implicated in a large number of human rights abuses throughout the country. Recent instances have included death threats to judges and pressure on courts in Phnom Penh, Sihanoukville and Battambang; the attack on Battambang provincial prison to secure the release of a convicted soldier; the abduction and execution of civilians for extortion in secret detention facilities; the frequent summary execution of villagers who oppose or attempt to resist army abuses; and the recent wave of forced military conscriptions in several districts of Battambang and Banteay Meanchey provinces.

27. These activities exemplify a situation in which, in many cases, members of the armed forces in Cambodia continue 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, deprived of any recourse to civil protection, experience, on a daily basis, the "law of the gun". Evidence gathered by the Centre for Human Rights in several provinces shows that 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 to bring them within the discipline of law.

28. The intensification of fighting with NADK in several front-line provinces is strengthening the influence of the army which often applies a de facto regime of military rule in these regions. This may be further complicated by the adoption by the National Assembly on 7 July 1994 of the law on the outlawing of the "Democratic Kampuchea" group. This law does not contain a definition of who is a member of the proscribed Democratic Kampuchea group. It may, in practice, further strengthen the power and authority of the military. Despite several amendments providing for safeguards against excessive or unjust implementation of the law, with any resumption of military operations, this law, if implemented, could result in the widespread arrests and detention of persons suspected of being "Khmer rouge" supporters or sympathizers. It will be necessary for this situation to be carefully monitored and vigilantly reported by the Special Representative and by the Centre for Human Rights (see paras. 127 and 128 below).

29. An order signed on 17 June 1994 by the two co-Prime Ministers raised fears of a further strengthening of the economic, and thus political, influence of the military forces within the Government. The order revoked all pre-existing procedures established to ensure control by the central Government of timber exports. It entrusts to the Ministry of Defence the responsibility for the control of timber exports and revenue and for adopting new procedures (see para. 87 below). The order was reportedly revoked by the Government in early August 1994.

F. Political instability and the challenge to security

30. From May 1994 onward, the political atmosphere in Phnom Penh began to deteriorate. The failure of the peace talks at Pyongyang in late May, the failure of the

King's attempt to influence government politics and the related growing tensions within the parties forming the Government and between these parties added political uncertainty to the instability caused in several provinces by the resumption of fighting. Fractures arising from factional disputes within the two main parties to the coalition ⁴/ reappeared. They were illustrated by the events of 6 July 1994, which were officially described as an "aborted coup attempt". Three high-ranking police officers, including the former Minister of Interior and National Security, the Under-Secretary of State of the Ministry of Interior, and a top police officer, along with 14 Thai nationals suspected of involvement, were arrested in the wake of the incident. Another suspect, Prince Norodom Chakrapong, King Sihanouk's son, was allowed to leave the country. At the time of writing of the present report, 5 of the 14 Thai suspects had been released. The 12 other suspects, including 9 Thai nationals, were still being held virtually incommunicado and without any formal charge.

31. These factors of instability are not conducive to the establishment of institutions designed to restore the rule of law and to ensure the protection of basic human rights in Cambodia. They continue to pose a major challenge to the security situation in Cambodia. They provide the context for the possible curtailment of recently acquired rights and freedoms. This was evidenced by the restrictions imposed by the Government on the press in July following reporting about the "aborted coup" and the alleged internal tensions within the Government. These measures, which included the jailing of the editor of a popular newspaper and direct pressures against several newspapers, substantially silenced the Cambodian press on these issues. Until these tensions are peacefully resolved, they will continue seriously to undermine the positive legacy of the transitional period and the efforts undertaken by the Government, since its formation, to strengthen respect for human rights.

VI. CRIMES, ABUSES AND ATTACKS BY MEMBERS OF THE PARTY OF DEMOCRATIC KAMPUCHEA ("KHMER ROUGE")

32. In response to the RCAF offensives against its bases in Anlong Veng and Pailin, the NADK high command reportedly instructed its field units throughout the country to prepare for a new phase of warfare against the Government. NADK reportedly remobilized its forces, recruited fresh combatants, increased old units, formed new units and resumed its traditional military and political activities. These consist primarily of destabilizing the Government's political and security administration at the village and commune levels by military attacks and replacing that administration with a political authority under its own control. Following its strategy aimed at isolating western provinces, NADK has sought to cut off and disrupt communication lines. This has resulted in the blowing up of numerous bridges along highways 5 and 6, the mining of roads and attacks against road convoys and civilian trains. The NADK has also stepped up its racist campaign (aiming effectively at "ethnic cleansing") against Vietnamese civilians.

A. Forced disappearances

33. On 23 September 1993, at least 17 soldiers from a former Khmer People's National Liberation Armed Forces (KPNLAF) division 1 stationed at Sok Sann in Western Pursat province, were abducted by NADK elements as they were evacuating their former base to rejoin government forces. In April 1994, when it recaptured the base, NADK captured a group of 18 policemen dispatched to Pailin from Battambang. Since their disappearance, none of these two groups of persons have reappeared. It is feared that they have been executed.

B. Abduction of foreigners

34. A new feature of NADK activities appears to be the abduction of foreign nationals, particularly Westerners. It is still unclear whether these abductions reflect a centrally directed policy or results from local initiatives. Similarly, it is unclear whether this policy, if it exists, includes the extortion of ransom and/or the execution of the victims. So far, none of the victims has been a political target as such.

35. During the transitional period, NADK units abducted several United Nations officials who had ventured, without permission, into zones beyond United Nations control. All were subsequently released unharmed. Evidence at the time showed that there was no policy to execute captured UNTAC personnel. Since the beginning of 1994, four groups of foreigners are known to have been abducted in Cambodia. In two instances only can the abductions be conclusively attributed to NADK. These include the kidnapping in April 1994 of a relief worker of the aid organization Food for the Hungry and that of three tourists, nationals of Australia, the United Kingdom of Great Britain and Northern Ireland and France, following a train attack on 26 July 1994. The relief worker, a female national of the United States of America, was eventually released after 40 days detention in exchange for a substantial aid package. In the second case, the three tourists were kidnapped during the ambush of a civilian train which resulted in the killing of 16 passengers. Both kidnappings were carried out in Kampot province, apparently by elements from NADK 405 Division. In both cases their captors asked for a ransom in exchange for the release of the hostages. In the third case, two nationals of Australia and one national of the United Kingdom were kidnapped north of Sihanoukville on 11 April 1994. Serious doubts remain as to the identity of those responsible, although Ministry of Interior officials responsible for the investigation have blamed the NADK 27 Regiment, which operates in the area. No convincing evidence has, however, been produced to corroborate that claim. It has not been established that NADK was responsible for their abduction and disappearance. Since their kidnapping, the three victims have not been seen again. In the fourth case, a Belgian couple reportedly disappeared on 21 May 1994 near the Thai border opposite Cambodia's northern Preah Vihear province. Nothing is known about their whereabouts since their disappearance.

36. This new type of activity, if confirmed and if it is established that it reflects centrally directed instructions, would constitute a further serious step in the NADK campaign against foreign support for Cambodia. It is likely to have the effect of discouraging foreign assistance to the Government, tourism and investors. It also hampers crucial development work in the countryside. It would also illustrate and confirm what appears to

be a gradual evolution of the activities of many NADK field units towards banditry. There is growing evidence that NADK attacks against villages and communes, or against trains, are accompanied by frequent, if not systematic, looting of villagers' or passengers' property.

C. Continuing crimes, abuses and attacks

37. Since the departure of UNTAC and the formation of the new coalition Government, NADK field units have been positively implicated in many confirmed instances of serious crimes and abuses of human rights. These include the alleged execution of soldiers captured in combat and the massacre of Vietnamese civilians. NADK units have also been implicated in the rape of female villagers, in the laying of anti-personnel mines, and in using village communities as human shields to protect themselves from enemy shelling. Forced conscription of rice and ammunition porters has resumed since the beginning of the year. At least on one occasion, several NADK combatants were allegedly executed by their commanders for reasons which remain unclear.

D. "Ethnic cleansing"

38. The racist campaign of NADK directed against Vietnamese civilians in Cambodia is continuing unabated. It appears to have been stepped up since the beginning of 1994. It deserves the attention and condemnation of the international community. PDK radio continues to carry daily broadcasts describing the alleged ongoing "colonization" of Cambodia by Vietnamese settlers. The radio accuse the "communist Vietnamese" and their "Vietnamese puppets" in Phnom Penh of sending hundreds of thousands of new settlers in Cambodia to annex Cambodia and to "destroy the Khmer nation and race". It alleges that "4 million" Vietnamese have settled in Cambodia so far and that the "colonization" continues. It broadcasts inflammatory appeals to listeners to rise against the Vietnamese.

39. More than half a dozen instances of attacks against Vietnamese communities, resulting in the killing of at least 24 villagers and the wounding of many others, have been reported in recent months. In most cases, NADK units are directly responsible for these attacks. In the largest attack, which took place on 9 April in Peam So village, Sang district of Kandal province, 13 villagers, including 9 children, were cold-bloodedly massacred at night and another 25, many of whom were children, were injured. Although NADK cannot be directly implicated in this massacre, available evidence suggests that the perpetrators may have carried out the attack on its behalf. Seven suspects arrested following investigations were eventually released for "lack of evidence".

40. Other instances of racial killings implicating NADK include the reported killing of two villagers on 15 May 1994; the alleged kidnapping of four villagers on 21 May; and the reported killing of a family of five, including three children, on 3 July. These murders were all carried out in Kompong Chhnang province. This province, which has a sizeable Vietnamese fishing community, has been the scene of repeated anti-Vietnamese violence for the past two years. Other abductions, disappearances and killings of Vietnamese

civilians were reported in Krachie and Kompong Cham province. None of these killings - except in the Peam So cases - have been seriously investigated by the Cambodian authorities. Nor have their perpetrators been brought to justice. It is recognized that the difficulties of doing so are not insubstantial.

E. Detention centres in zones controlled by the National Army of Democratic Kampuchea

41. NADK continues to administer detention centres in the zones under its control. One of these centres is located at Phnom Sasada, in NADK Sector 32, a region controlled by the guerrillas adjacent to the Thai border in western Battambang province. As of early July 1994, an estimated 30 persons were alleged to be held there. By June 1994, those detained there reportedly included three RCAF soldiers captured in combat, several NADK soldiers and civilians accused of having breached discipline, as well as villagers from government-controlled zones captured in the forest while cutting wood. The latter were apparently accused of illegally cutting wood in forested zones under NADK control, or of being disguised government soldiers or agents. According to the gravity of the alleged offence, detainees are either left free in the detention facility and assigned to productive tasks outside it - such as cultivating vegetables, cutting wood or clearing new forested land for cultivation - or are shackled by one foot in rows for prolonged periods. The facility is reported to be in a barbed wire enclosure in which four makeshift roofs are set up on stilts. Detainees are living and sleeping on the bare ground without mats, blankets or mosquito nets. All were said to be sick with malaria and to suffer from skin diseases resulting from lack of hygiene and very poor sanitary conditions. Serious offenders are said to be shackled by one foot 24 hours a day and are allowed to bathe only once a month. According to a witness, a government soldier captured in combat was severely beaten by a prison chief who interrogated him. If true, these actions constitute some of the worst abuses of human rights which are occurring in Cambodia at this time. Previous attempts of the Special Representative to make contact with the representatives of PDK in Phnom Penh were rebuffed.

42. NADK units have also been implicated in several documented cases of rape. In one instance in early 1994, several female villagers were allegedly the victims of multiple rape by NADK soldiers in eastern Banteay Meanchey province. A local NADK official reportedly admitted the accusation and explained that the women had been raped in retribution for the rape of NADK female villagers in the same region by RCAF troops during military operations against NADK villages in August 1993. In another documented instance in Aek Phnom district of Battambang province in May 1994, a young village girl was abducted by a group of NADK soldiers and raped by one of them. She was held for several days in their camp before being allowed to return home.

43. In Rattanak Mundol district of Battambang province, where most of the fighting has taken place since the beginning of the year, retreating NADK forces have also been accused of laying anti-personnel and anti-tank mines, apparently to cover their retreat and hinder government forces in pursuit of them. On at least two reported occasions in Battambang and southern Banteay Meanchey provinces, whole village communities have

been used as human shields by NADK units which have brought artillery pieces in the vicinity of the villages to shell government positions.

44. There is also evidence that the 25,000 civilians under NADK control in Pailin who crossed into Thailand following the Government offensive were lured back into NADK zones by their leadership. NADK cadres reportedly told them that international aid organizations would help them return to their homes in Cambodia. Instead, they were trucked back across the border to a NADK stronghold located north of Pailin. Witnesses who were part of the relocation said that a large number of children and elderly people died of dysentery and dehydration in the ill-planned move owing to the lack of water, rice and medicines. Within days, NADK cadres forcibly recruited one male porter per family in preparation of the recapture of Pailin. They were sent to the front-line as conscripts.

45. The foregoing human rights abuses and reported acts of brutality and lawlessness will cause no surprise to those familiar with the record of NADK and PDK. In 1975 and 1976 they were responsible for one of the most intensive genocides in the history of humanity. Those responsible have not been brought to justice for their crimes against humanity. During his visits to Cambodia, the Special Representative heard numerous calls by Cambodians for the establishment of an international penal court in which the leaders of NADK and PDK could be put on trial for their crimes.

VII. HUMAN RIGHTS RECOMMENDATIONS

46. During the period since his first report, the Special Representative has regularly submitted recommendations on human rights issues to the Government of Cambodia. They have involved, in some cases, messages of appreciation for action (requiring no further action) and in others recommendations for specific follow-up. Unfortunately, difficulties arose within the Administration of the Government of Cambodia in the consideration of these recommendations. Following further discussions with ministers and officials, it is believed that these difficulties have been overcome. Annex III to the present report sets out the recommendations made between April and July 1994 with a summary of action taken. The Special Representative will, where appropriate, keep these recommendations under review.

VIII. ACTION TAKEN ON THE FIRST REPORT

47. The following is a review of the recommendations made by the Special Representative in his previous report to the Commission on Human Rights, 5/ and the action taken on them.

Paragraphs 13-16: right to health

48. There has been no significant change. A national committee on acquired immunodeficiency syndrome (AIDS) has been established and it is about to launch a national survey to determine the extent of the disease. The infrastructure and delivery of

health services remain poor.

Paragraphs 17 and 18: cultural rights

49. There has been no significant change. Illicit trafficking in Khmer artifacts continues, often under the protection of legal and illegal armed groups.

Paragraphs 19-25: education, including legal education

50. There has been no significant change. Recommendations pertaining to the Cambodia office of the Centre for Human Rights have not been implemented so far owing to the non-availability of the Trust Fund. There have been commendable attempts by the Government to tackle corruption in the conduct of examinations in schools.

Paragraphs 26-32: judicial independence and the rule of law

51. There has been no significant change, although many judicial officers continue to assert independence and to resist interference. A code of judicial practice to assure independence of judiciary has not been adopted and contacts between judges and the Ministry of Justice continue to occur. The salaries of judges have not been increased. Copies of laws are not supplied to the judges immediately upon adoption. The law on the Supreme Council of the Judiciary has not been adopted to ensure independence of judiciary and staffing of the courts. The recommendations pertaining to the Cambodia office of the Centre for Human Rights have not been fully implemented owing to the non-availability of the Trust Fund. In general, judicial independence has faced increasing challenges, particularly from the military and political authorities, since the last report and the challenges to the establishment of the rule of law have increased manifold. This has resulted in elements of lawlessness, arbitrary violence and the denial of basic human rights described below (see paras. 77-82 below).

Paragraphs 33 and 34: fair and open trial

52. There has been no significant change. Derogations from Cambodian laws relating to arrest, detention and trial continue to occur. Detentions without trial in excess of four months continue, contrary to the law. Several non-governmental organizations have become seriously involved in providing representations on behalf of accused persons, but have been thwarted in their duties by continued lack of access to the accused persons, lack of adequate time to prepare for trials and reluctance on the part of courts to allow representation in all cases, particularly civil cases, purportedly upon instructions from the Ministry of Justice. In general, the implementation of the legal provisions remains patchy.

Paragraphs 35-39: new laws: necessary practices

53. There have been some changes. A constitutional council and a supreme council of the judiciary have not been established and judicial remedies remain to be created. A law on

land has not been adopted and arbitrary and forced evictions continue to occur. Rules of court have not been clarified with the result that the courts continue to act on the instructions of the Ministry of Justice. The legal status of non-governmental organizations, including their privileges and duties, has not been clarified. On the other hand, an immigration law has been drafted and is currently being considered by the National Assembly and the draft press law is expected to be submitted for adoption soon. The drafting of laws continues to follow a secret procedure, even though the Government has permitted non-governmental organizations to give opinions on drafts of laws.

Paragraphs 40-42: the police and the military

54. The Centre for Human Rights has implemented some training programmes for police. Training activities will be intensified when programme funds become available. There has been no law governing the use of firearms and dangerous weapons continue to be readily available and used.

Paragraphs 43-51: prisons and other custodial detention

55. There have been several positive changes, although the overall situation remains far from adequate (see paras. 88-92 below). Prosecutors have begun visiting prisons, although not on a regular basis, and not to look into individual complaints. Dark cells and shackles do not appear to be used in official prisons. In some places, the dark cells have been demolished. Defenders, non-governmental organizations and in some cases the Centre for Human Rights have faced difficulties in gaining access to prisons. Recently, the Special Representative himself faced some initial difficulties in gaining access to a prisoner in PJ prison in Phnom Penh. Unauthorized or secret prisons are maintained, although there have been some recent attempts by the Government to tackle this issue. Owing to the initiative of the Commission on Human Rights and Reception of Complaints of the National Assembly, the Government has agreed to provide for separate detention of juveniles and adults, men and women, and accused persons and convicts. The daily supplements for prisoners have been increased to 1,000 riels a day per prisoner, which is still considered inadequate. Access of prisoners to medical services and facilities remains poor. Most prisoners are ignorant of their rights and the disposition of their cases. The Centre has conducted a countrywide training and assessment programme of the prisons, with the full cooperation of the Ministry of Interior.

Paragraphs 52-55: press law and freedom of expression

56. Positive developments have taken place with respect to the draft press law. The draft was prepared by the Ministry of Information and was reviewed by the Centre for Human Rights at various stages. Finally, as it stands now, the draft appears to be fully in conformity with international human rights standards. The draft has not yet been adopted by the National Assembly. The Centre for Human Rights organized a seminar on the draft law and freedom of expression according to the recommendations. The media in Cambodia have, however, faced many threats and intimidations. As a result, while the draft law itself may be in conformity with international human rights standards, the actual

freedom enjoyed by the media has, in recent times, fallen below minimum standards. The media have also revealed varying degrees of lack of professionalism in matters of accuracy and taste (see paras. 93-98 below).

Paragraphs 56-66: vulnerable groups

57. With respect to women, the Secretariat for Women's Affairs is currently reviewing the draft women's code. The Centre for Human Rights is assisting the Secretariat in drafting and reviewing the code with the view to ensuring its conformity with international human rights standards (see para. 168 below). The Government has issued a decree on the establishment of a National Committee on Children and a Juvenile Delinquent Centre. The National Assembly is currently considering an immigration law and a nationality law is said to be in the course of preparation. The immigration draft, however, does not provide for the minimum guarantees recommended in the first report of the Special Representative ^{1/} and also by the Centre. The draft, as it stands, falls short of international human rights standards (see para. 99 below). The Commission on Human Rights and Reception of Complaints of the National Assembly has not drafted any legislation forbidding discrimination against persons specifically on the grounds of race or ethnic origin. The provisions in chapter 3 of the Constitution itself that discriminate against persons who are not Khmer nationals have also not been amended.

Paragraphs 67-74: Commission on Human Rights and Reception of Complaints of the National Assembly

58. The Commission has performed remarkably well, despite facing many obstacles. It has taken the initiative in suggesting reforms to the Government in the areas of prisons, children's rights and non-governmental organizations. The members of the Commission, particularly the chairperson, have taken the lead in promoting democratic debates in the National Assembly during discussions on drafts of laws. The Commission has also intervened in many cases of human rights complaints, but the Government has not effectively and speedily implemented the Commission's recommendations in many cases. The Commission continues to face many problems, including a lack of adequate staff, equipment and resources and of political support. The Commission has also been prevented from reviewing crucial drafts of laws owing to the procedures of the National Assembly and it is hoped that since the procedures are now being reviewed, the Commission will be able to play a more active role in the review of drafts of laws. The Commission is planning to publish a newsletter, subject to funding. At the suggestion of the office of the Centre for Human Rights in Cambodia, the Commission has made contacts with parliamentary human rights bodies throughout the world. The possibility of establishing an independent agency for the promotion and protection of human rights appears remote at present and the Commission is expected to play a more active and independent role. The Centre is planning a workshop on the operation of parliamentary human rights bodies in cooperation with the Raoul Wallenberg Institute and the Inter-Parliamentary Union during the latter part of 1994.

Paragraphs 75-79: security

59. The security situation has worsened significantly (see paras. 14-29 above). The failure of the peace initiative between the Government and PDK culminated in the passage by the National Assembly of the law outlawing the "Democratic Kampuchea" group. There is no indication as yet that the Government and armed forces of certain countries have desisted from support, explicit or tacit, including commercial and business activities, of those who have failed or refused to agree to the peace initiatives. As a result, low-intensity warfare continues to ravage the countryside and to cause suffering. The renewed conflagration has resulted in a vicious cycle of mine-laying, especially in areas that had recently been de-mined. The indiscriminate use of land-mines, particularly anti-personnel mines, by both sides to the conflict continues to have devastating consequences for the human rights of individuals and the survival of the society. There has been no ban on the import and use of mines by the Government. The worsening of the security situation has been exacerbated by the aborted coup d'etat on 2 July&nb

Paragraphs 80-82: conduct of peace-keeping and other United Nations officials

60. Following the submission of his report to the Commission on Human Rights, 1/ the Special Representative wrote to the Secretary-General and called to his attention the need to develop a code of conduct for United Nations peace-keepers and machinery for its enforcement. The Secretary-General subsequently informed the Special Representative that the United Nations was developing guidelines for the conduct of United Nations peace-keepers, and a code of conduct for soldiers and military observers.

Paragraphs 83-89: international obligations

61. An Inter-Ministerial Committee on Reporting Obligations has been established according to the recommendations. The Centre for Human Rights continues to assist this Committee in the performance of its duties (see A/49/635/Add.1, para. 32).

IX. UPDATE ON SELECTED HUMAN RIGHTS ISSUES

A. Education, including legal education

62. During his last mission to Cambodia, the Special Representative noted a number of positive developments in the field of education. He welcomes the initiative of the Government to introduce procedures for the objective external marking of secondary examinations designed to reduce corruption and to raise pre-university standards and university entrance.

63. The Special Representative particularly welcomes the strong support expressed by many representatives of the Government of Cambodia for the teaching of human rights to schoolchildren and to the general population. Once again, the first Prime Minister, Prince Norodom Ranariddh, in his meeting with the United Nations High Commissioner for Human Rights and the Special Representative, endorsed the need for general human rights information and education. In this regard, he welcomes the initiative of United

Nations agencies, particularly the United Nations Educational, Scientific and Cultural Organization (UNESCO), which has organized training courses and assisted in the provision of curriculum materials for teaching human rights in schools in Cambodia.

64. The Special Representative notes with particular appreciation the valuable work of Cambodian non-governmental organizations towards integrating human rights into the educational curriculum. Of special note in this respect is the plan of the Cambodian Institute of Human Rights to publish a book about human rights teaching methodology for distribution to Cambodia's 70,000 schoolteachers.

65. The Special Representative welcomes the contributions of France to legal education and specifically to the education of the judiciary in Cambodia. He fully supports the efforts of the highly expert judicial officers from France who have assisted in the selection and training of Cambodia's judges. Particularly to be applauded is their contribution to the control on numbers and the assurance of quality in selection, by tests conducted using procedures designed to prevent favouritism and corruption.

66. The Special Representative also welcomes the contribution of the United States of America, the Asia Foundation and others to legal education in Cambodia. He notes with satisfaction the establishment of a certified course in contract law. He participated with pleasure in the group of international advisers providing legal expertise to various governmental agencies. He encourages the enlargement of this group to include appropriate Cambodian lawyers and paralegal officers. He welcomes the consideration of plans for a second law school in Cambodia conforming to international standards.

67. The Special Representative welcomes the ongoing discussions between the Centre for Human Rights and the Faculty of Law and Economics at Phnom Penh for the conduct of a series of human rights seminars and the provision of a number of internships to students of the Faculty and training to teaching assistants. He also welcomes the initiative of the Centre to provide lectures on human rights at the Royal School of Administration at Phnom Penh.

B. Right to work

68. The Special Representative welcomes the joint initiative of the United Nations Development Programme (UNDP) and the International Labour Organization (ILO) designed to promote the generation of employment in Cambodia. At Battambang and later at Phnom Penh he received information from both of these organizations concerning their programmes. This has involved the selection of target employment projects and population groups. It has included concentration on road building, irrigation and similar activities, including the expansion of small businesses. Groups specially targeted have included returning refugees, internally displaced persons, female heads of families and demobilized and disabled military personnel and other persons affected by war. The provision of work to such groups is essential to the rebuilding of the civil society in Cambodia.

69. Two special problems were drawn to the notice of the Special Representative in connection with the above activities. The first is alleged instances of enforced conscription into the army of recruits participating in the training courses at the ILO Provincial Training Centre at Battambang. The United Nations High Commissioner for Human Rights and the Special Representative were assured by the responsible minister that this practice was contrary to government policy.

C. Rights to the environment and to sustainable development

70. The Special Representative considers that the right to sustainable development, which is based on the full realization of the potentialities of the human person, is necessary to improve the overall promotion and protection of human rights in Cambodia. In order to achieve such a right to development, it is necessary that the right to the environment be secured. The promotion and protection of human rights cannot be dismissed from the overall social and environmental context within which it occurs. The Special Representative is therefore concerned about the following with a view to enhancing the full realization of the right to development:

- (a) The lack of a working national plan for the safeguarding of Cambodia's natural resources;
- (b) The continual and illegal plundering of natural resources, including by logging and mining by various armed groups associated with or tolerated by legal and illegal armed forces;
- (c) The recent decision to grant exclusive rights to the armed forces to handle timber exports, creating a self-financing army outside the framework of the national budget (see para. 87 below for details);
- (d) The challenge to the environment and to the lifestyles of the people by growing the ooya plant in abundance in the lakes and waterways of Cambodia, resulting in the destruction of fish stocks.

D. New laws and practices

71. Most of the new laws for which the Special Representative called in his first report have not been enacted, including those relating to the following:

- (a) The establishment of the Constitutional Council as envisaged by the Constitution;
- (b) The establishment of the Supreme Council of the Judiciary as envisaged by the Constitution;
- (c) The press;
- (d) The peaceful settlement of land claims;

(e) Associations;

(f) Immigration, nationality and refugees.

72. The absence of those and other laws continues to contribute to many of the challenges to the rule of law in Cambodia. The Special Representative acknowledges the full opportunity which he and the Centre for Human Rights have enjoyed to make comments to the Government of Cambodia and the National Assembly on particular laws, notably the draft press law and the draft immigration law. The Special Representative welcomes the assurance that representations have been taken into account in the redrafting of such laws.

73. One measure that was enacted by the National Assembly on 7 July 1994 was the law on the outlawing of the "Democratic Kampuchea" group. The purpose is to outlaw members of the Khmer Rouge and their armed forces. They are deemed "offenders against the Constitution and laws of the Kingdom of Cambodia". Provision is made, following conviction, for sentences of between 20 and 30 years' imprisonment or for life imprisonment. An amnesty is provided for six months to permit those affected to "return to live under the authority of the Royal Government in the Kingdom (...) without facing punishment for crimes they have committed" (art. 5). Only leaders of the "Democratic Kampuchea" group are excluded from this amnesty (art. 6). All property of the party of the "Democratic Kampuchea" group and of offenders is forfeited to the Government of Cambodia.

74. During the passage of the proposed law through the National Assembly, important amendments were introduced to the bill which became law:

(a) Defining more closely the persons liable to prosecution;

(b) Defining more precisely the crimes attracting the application of the law;

(c) Acknowledging the right of the King to give partial or complete amnesty as provided by article 27 of the Constitution;

(d) Punishing persons who use the law to violate the rights of people or threatening, charging, arresting, detaining, torturing or violating the dwelling house unreasonably or who misinform, witness falsely or give false evidence by using the law to violate the rights of people, such persons are liable on conviction to punishment of between five and six years' imprisonment. The victim of such injustices has the right to apply for damages for any of the foregoing violations. The amendments introduced by the National Assembly are welcomed by the Special Representative. They introduce important protections.

E. Courts and their independence

75. The Special Representative commends the improvements seen in the system of the administration of justice since his first report. In particular, he welcomes the establishment, in May 1994, of the Court of Appeals, which was the object of one of the recommendations contained in that report, and the commencement of its jurisdiction. However, the Special Representative is concerned that the Court of Appeals has not started functioning effectively and there are a large number of cases waiting to be heard. The procedures for the hearing of cases have not been drawn up and the delay in passing the law on the Supreme Council of magistracy has thwarted the role that the Court of Appeals should play as an important part of the judicial branch of Government.

76. During extensive meetings held at Battambang and Sihanoukville, the judges impressed the Special Representative with their dedication to their offices, the extremely heavy workload assumed and the diligent performance of their duties, including prison inspection and attention to the prompt hearing of matters before them. The Special Representative was impressed in particular with the action taken at the Battambang court house to improve the provision of information to the public and the facilities of the court building, including the layout of the public waiting areas and the court room by the introduction of appropriate court facilities for the defender and suitable distinctions between arrangements for the hearing of civil and criminal cases. All of these are encouraging developments. They provide a model for courts in other parts of Cambodia.

77. However, the major problems for judicial independence identified in the first report of the Special Representative remain substantially as stated. In particular, the Special Representative received further reports of contact between judges and the Ministry of Justice in relation to particular cases and their disposition. He has also been informed by some judges about the purported practice of the Ministry of Justice of issuing instruction circulars on the day-to-day administration of the courts and the application of laws, sometimes in contradiction to the laws themselves. As already stated in his first report, the Special Representative stresses that this practice, besides being incompatible with the independence of the judiciary, deprives the accused person of due process and therefore contravenes article 14 (1) of the International Covenant on Civil and Political Rights which states, *inter alia*, that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

78. The salaries of judges continue to be inadequate to provide sufficient sustenance and support for the judge and his/her family (reportedly US\$ 20 a month).

79. To these problems must be added examples of serious challenges to judicial independence observed since the first report. They derive, in the main but not exclusively, from military sources. These challenges undermine the authority and weaken the independence of the judges. A non-exhaustive list of examples include the following:

(a) Serious attacks upon the Chief Judge and the Prosecutor and disruption of court proceedings by heavily armed military elements at Sihanoukville on 13 May 1994; an attack on Battambang prison by armed military elements, reportedly from the Fourth Military Region, on 29 March 1994, to release a prisoner who had been incarcerated for

smuggling antiques;

(b) The disruption of a scheduled trial at Phnom Penh Municipal Court by armed military elements on 7 July 1994;

(c) The disruption of a scheduled trial at Kandal court on 15 July 1994 by armed military elements;

(d) The arbitrary killing of a civilian by military elements at Stung Treng and the non-prosecution of the case.

80. The most serious of these incidents related to the threat to the life of the Chief Judge of the Sihanoukville Court (Kompong Som) on 13 May 1994. A military officer, Sok Tha, whose parents had been found guilty of a trademark offence and who had been sentenced but not yet committed to prison, invaded the court building in the company of other military personnel who were armed. The Judge and the Prosecutor were forced to flee in fear of their lives. Although certain steps were later taken to respond to this attack on the court, they were not, in the opinion of the Special Representative, adequate to its gravity:

(a) The report that Sok Tha was permanently demoted in rank and transferred has been disputed;

(b) The military personnel were not prosecuted in a civil court as they should have been, given the offence to the integrity of the court and to the administration of civil justice;

(c) The military prosecutor did not appear to have brought any prosecutions of the offenders before any military tribunal;

(d) The parents of the military officer concerned remain unpunished in respect of their sentence despite the lawful order of the Sihanoukville Court which was not subject to appeal and is still in force.

81. The Special Representative brought to the notice of the Government of Cambodia, in a regular communication, the unsatisfactory features of the case. While in Sihanoukville, the Special Representative sought to discuss the case with military personnel. Despite an appointment for that purpose, senior military officers were unavailable to the Special Representative for consultation - the only time this has occurred in Cambodia. Also while in Sihanoukville, the Special Representative drew the seriousness of the case to the notice of the Provincial Governor and the Deputy Governor. He offered support and advice to the Chief Judge and the Prosecutor.

82. The Special Representative received a separate report of apparent military interference in the judicial process at Battambang. On 29 March 1994, a group of armed men, apparently military personnel, seemingly from the Fourth Military Region, stormed Battambang prison threatening the lives of guards and other prisoners and forcing the

release from the prison of a prisoner, Mr. Tes Sokhuntea. He had been convicted of offences of smuggling Khmer antiquities from Cambodia into Thailand. This incident was confirmed by officers at Battambang prison who acted with considerable restraint when under attack. It was also confirmed by the Chief Judge of Battambang, who indicated that the prisoner was still at large. It was the belief of Battambang prison officials that the persons involved in the enforced release of the prisoner were military personnel. The interference in the carrying out of a lawful sentence imposed by a court is an affront to the authority of the court.

F. Military and human rights

83. The Special Representative has been informed that the Centre for Human Rights is holding discussions with the authorities of the military court to explore the possibility of organizing human rights training for members of the military, and welcomes this positive development.

84. The alleged involvement of members of the military in human rights abuses, often unredressed, continues to be a matter of concern to the Special Representative which he has called to the attention of the Government of Cambodia. A list of examples, far from exhaustive, includes:

- (a) The raid at Battambang prison on 29 March 1994;
- (b) The murder of Mr. Ang Kouy, a senior civil servant, apparently by military personnel in Kampot province on 19 April 1994;
- (c) The attack on the judge and the prosecutor at the Sihanoukville Court House on 13 May 1994;
- (d) The attempted killing of Mr. Pheng Kim, the Deputy Governor of Stung Treng, on 5 June 1994;
- (e) The operation of a "secret prison" at Chheu Kmau, detailed in paragraph 92 below.

85. To the above list of cases must be added complaints received by the Special Representative concerning:

- (a) The extraction of unlawful taxes at illegal checkpoints on roads and highways supervised by military personnel;
- (b) The conduct of enforced conscription;
- (c) The exemption of persons from enforced conscription upon payment of unlawful "fines" to military personnel.

86. While the Government has assured the Special Representative that none of the

foregoing are sanctioned by law or government policy, it is clear that they exist. To a large extent it is also clear that the police and the judiciary lack the power or the effective means of support to enforce the law against such abuses. Such conduct undermines the confidence of the people of Cambodia in the Government and its agencies and personnel. It plays into the hands of the enemies of the Government and of its attempts to build a civil society.

87. Of possible relevance to the reduction of abuse of power within the military branches of the Government was the report given to the Special Representative during his third mission to Cambodia that a facility had been granted to the armed forces in respect of the grant of permits to conduct logging in the forests of Cambodia. Similar arrangements in other countries have led to an abuse of power as well as to the despoliation of the natural environment. The enjoyment of the environment is essential to a full realization of human rights. To that extent, it is relevant to the mandate of the Special Representative. However, it is also relevant, if a general licence for logging is confirmed, to the attempts of the Special Representative to encourage the Government of Cambodia to ensure that abuses of power by military personnel are redressed. The assurance to the military of sources of funds outside the regular budget and from activities not strictly relevant to military functions has obvious implications for human rights. It presents a risk of creating a state within a State, beyond effective civil power and influence.

G. Prisons and detention

88. The Special Representative welcomes the following improvements in the administration of prisons in Cambodia since his last report:

(a) As a result of recommendations made by the Special Representative following an inspection during his second mission, PJ prison in central Phnom Penh, has been improved with the help of financial assistance from Australia. The sewerage system has been renovated to remove human excrement; the water system for the supply of water to the cells of male prisoners has been improved; a plan to repair the roof in the female prison in order to stop leaks is in the process of being implemented; and the numbers of prisoners housed in PJ prison has been reduced by the transfer of prisoners elsewhere;

(b) Conditions at Battambang prison continue to improve. The administration of the prison has a generally enlightened approach. Sports and recreation facilities are adequate. The cells are clean and the prison food is reported to be satisfactory. It was pointed out that prisoners receive a daily subvention for food of 1,000 riels, which is more than that provided to soldiers (600 riels);

(c) Proposals are under consideration to close the T3 prison at Phnom Penh and to build a new prison outside the city. This would reportedly require an initial outlay of US\$ 3 million-US\$ 4 million to accommodate 1,000 prisoners. Such funds are not immediately available;

(d) A Juvenile Delinquent Centre has been established by subdecree of the Co-Prime

Ministers dated 19 April 1994. This Centre will attempt to establish rehabilitation programmes for juvenile delinquents.

89. The Special Representative welcomes the complete cooperation he received during his second and third missions in visiting prisons as requested. It is noted that, as shown in a survey conducted by the Centre for Human Rights, the national rate of imprisonment in Cambodia is very low by the standards of comparable countries.

90. The conduct of the survey was a valuable exercise for the Centre. It revealed the following features about Cambodian prisons: there are 22 civilian prisons in Cambodia; there are about 1,800 prisoners, only 4 to 5 per cent of whom are female; and all prisons are dilapidated.

91. Several major problems were identified in the prisons inspected by the Special Representative. They have been called to the attention of the Government of Cambodia and discussed with senior prison officials:

(a) At PJ prison in Phnom Penh, until recent repairs were made the conditions were generally appalling, involving gross overcrowding, dark and inadequately ventilated cells, unremoved human excrement, poor water supply, the presence of one prisoner in iron manacles and one serious case of beriberi (caused by malnutrition);

(b) At Battambang prison, an escapee was punished on his return to the prison by "supervisors" appointed from among the prisoners and assigned to each cell. The punishment involved cruel beatings which are contrary to the international human rights norms and should have been prevented by the prison authorities, not condoned by them. The officials have been counselled. The Chief Judge of Battambang court has been informed of the situation by the Special Representative. Some prisoners also complained of a lack of cooperation in the provisions of advice about appeals. Others complained about arbitrary cancellation or curtailment of exercise time out of cells or group punishment by reduction of out-of-cell time;

(c) At Sihanoukville prison, mosquito nets and new sewerage facilities must be urgently provided and the serious overcrowding must be reduced. Food is poor in quantity and quality as a result of the inflated costs of food in the local market following the collapse of a bridge linking the city with Phnom Penh. The prison had a bad smell and was flooded in parts. The capacity for more prisoners in each cell had been increased by the insertion of an additional wooden landing in each cell to permit twice as many prisoners to be accommodated, except in one cell occupied by the sole female prisoner. Medical facilities were inadequate. A prisoner admitted to the prison two days before the visit of the Special Representative had an open wound with an exposed bone on his right lower arm from an apparently untreated gun shot injury. The prison guards complained of a lack of transport and funds to arrange for hospital treatment of the wound, which was clearly of urgent necessity. The Special Representative informed the Chief Judge of Sihanoukville Court about the case. He also contacted the local office of Médecins du monde to secure urgent care. The Chief Judge assured the Special Representative that

immediate care would be provided, if necessary by the use of his own vehicle.

92. A serious case of abuse of power involving a so-called "secret prison" at Chheu Kmau outside Battambang came to the notice of the Special Representative after his first report. It resulted in urgent representations to the Government of Cambodia and to urgent inquiries and investigations by the Centre for Human Rights. The Special Representative welcomes the steps taken by the Government to respond to his representations. The Government dispatched to Battambang province a high-level commission of inquiry. It conducted its inquiry and prepared its report. Senior officials of the Government in the province reported to the Special Representative that at least one of the senior military officers involved in the maintenance of the secret prison at Chheu Kmau had been arrested and transported to Phnom Penh. While in Battambang, the Special Representative visited at the hospital an alleged inmate of the prison who had lost two arms, the sight of his right eye and the use of one leg as a result of being forced at gunpoint by "prison" guards to engage in the removal of land-mines planted at the perimeter of the prison to ensure its security. This profoundly injured man painted a vivid picture of his "arrest" by military personnel, allegedly for relatively minor civil offences, his removal to the secret prison, his witness to gross crimes and terrible suffering and finally his own shocking injuries when performing enforced de-mining for which he was totally unprepared and uninstructed.

H. Media and freedom of expression

93. The Special Representative welcomes the high level of media and press freedom in Cambodia. In many ways Cambodia enjoys 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. Large numbers of both international and local (Khmer) newspapers flourish in Cambodia. There are, for example, more than 20 Khmer-language newspapers. There is a large contingent of international journalists resident in Cambodia vigilantly observing local politics and developments and reporting on them. The local media flourishes. It is of variable quality. This doubtless reflects the fact that few local publishers or journalists have had professional training in the skills and ethics of journalism until the establishment of UNTAC and the adoption of the present Cambodian Constitution.

94. The Special Representative also notes that the revised draft press law is currently pending approval by the Council of Ministers. The Government withdrew the original draft submitted by the Council of Ministers to the National Assembly, after many national and international observers, including the Centre for Human Rights, made suggestions for its review in conformity with international human rights standards. The draft law was revised by the Ministry of Information in two stages, in conformity with the comments offered by the Centre and the Special Representative. The draft now appears to be in conformity with international human rights standards. The Special Representative commends the Government and particularly the Ministry of Information for their careful attention to the impact of the draft law on human rights.

95. The United Nations High Commissioner for Human Rights also welcomed the high level of freedom of expression in Cambodia. During his mission, the High Commissioner received the assurance of the Government of Cambodia that freedom of the press would be respected. No "black list" or retaliation would be contemplated against foreign journalists accused of "negative reporting". These assurances are welcomed. The Special Representative pointed out to the Government that a measure of error and even of excess is inherent in freedom. Experience has shown that attempts to eliminate error and excess generally result in excessive control and loss of freedom. By the same token, the Special Representative is understanding of the complaints of the Government, international and local journalists and sensible citizens that some media elements, particularly in the local print media, have sometimes abused their freedom by:

- (a) Publishing unattributed, unsourced materials;
- (b) Publishing rumour and grossly biased reports;
- (c) Publishing grossly insulting and offensive cartoons and articles of a particularly crude character.

96. However, a number of developments and events since the last report give cause for concern. These are drawn to notice by the Special Representative:

- (a) The arrest and detention on 23 March 1994 for 48 hours of Mr. Nguon Noun, editor of the newspaper Morning News;
- (b) The grenade attack on 24 March 1994 on the office of the newspaper Antarakum by unknown attackers;
- (c) The closure of the newspaper Sokal on 16 May 1994 by order of the Minister of the Interior and confiscation of 10,000 copies of an issue said to be critical of senior military officials;
- (d) The ministerial order of 7 June 1994 to the editor of the newspaper Prum Bayon ordering suspension of publication;
- (e) The death (and apparent murder) of Mr. Thou Chham Mongkol, editor of Antarakum on 11 June 1994, ostensibly in a traffic accident, which is still under investigation at the time of this report;
- (f) The reported suggestion to foreign correspondents in June and July 1994, unimplemented, that their visas might be terminated and they might be expelled as a result of displeasure at certain articles written by them;
- (g) Reported threats to the director of the Khmer Institute for Democracy concerning a public forum called by the Institute to discuss the draft press law;

(h) The second arrest of Mr. Nguon Noun on 7 July 1994 following the publication in the Morning News of articles concerning the aborted coup d'état on 2 July 1994;

(i) The issuance of a circular by the Ministry of Information to the newspapers and magazines in Cambodia on 16 July 1994, containing a list of directives, which appear to be in violation of international human rights standards.

97. The Special Representative made written recommendations about Mr. Nguon Noun's arrest. He called at PJ prison twice on 17 July 1994 to see Mr. Nguon. Eventually, on 18 July 1994, he was granted access. Subsequently, representations were made by the Special Representative concerning the physical condition of Mr. Nguon and access to his family. This was later allowed. Eventually, on 25 July 1994, the United Nations High Commissioner for Human Rights appealed to the First Prime Minister that Mr. Nguon might be released. He repeated that request on 26 July 1994 to the Council of Ministers.

98. Given the gravity and the frequency of these incidents, the Special Representative is concerned that the actual freedom enjoyed by the media in Cambodia is falling below international human rights standards. This is a worrying development, which cannot be mitigated or offset by the draft press law, which may, in its terms, be in conformity with international human rights standards while practice does not always conform.

I. Immigration, law and minorities

99. The Special Representative was informed that a law on immigration was being discussed by the National Assembly and a law on citizenship and nationality was being drafted and he welcomes these developments. As stated in the Special Representative's previous report, the adoption of such laws, in conformity with the human rights requirements of the Cambodian Constitution and the relevant international human rights standards, is a matter of urgency, particularly in order to establish a clear legal framework for the definition of the legal status of the Vietnamese and other minorities currently living in Cambodia. However, the draft immigration law remains seriously flawed from a human rights perspective and there have been no significant changes so far, despite the repeated advice offered by the Centre for Human Rights, UNHCR and Cambodian non-governmental organizations. Some recommendations on the draft immigration law are contained in paragraph 171 below.

100. During his third mission to Cambodia, the Special Representative visited the ethnic Vietnamese Cambodians at Chrey Thom on the border between Cambodia and Viet Nam. These boat people, numbering about 5,000 persons, have been stranded in small boats for nearly 18 months. They live on an inadequate diet of sea snails and other meagre food, supplemented by assistance provided by WFP, UNHCR and local Cambodia human rights non-governmental organizations, notably the Ligue Cambodgienne pour la promotion et la défense des droits de l'homme, CAFAAD, the Association des droits de l'homme et du développement au Cambodge, the Ligue Cambodgienne pour la défense des droits de l'homme et du Citoyen, Human Rights and Community Outreach Project,

the Khmer Institute for Democracy, the Khmer Kampuchea Krom Human Rights Association and the Khmer Students and Intellectuals Association. Appeals by international agencies and Cambodian non-governmental organizations, including those addressed to the King of Cambodia, have not evoked action. The King has insisted upon respect of the rights of his subjects who are of non-Khmer ethnicity. UNHCR has undertaken to provide funding to resettle the persons concerned in their former villages. They fled, mostly under UNTAC protection, to escape massacres of ethnic Vietnamese in Cambodia which have blighted the recent history of Cambodia. Many have documentary proof of permanent residence status granted to them or their families in earlier times. Many can prove that their parents and even grandparents were born in Cambodia. Most could establish long-term association with districts of Cambodia by "family book" records kept in Cambodian offices. Most asserted acquaintance with many Khmer friends who, they claimed, would vouch for them as good citizens and workers. All have established their commitment to Cambodia by living an arduous, precarious and even dangerous life in their boats since their removal to the border to escape violence. Most have gradually lost accumulated savings. They suffer a miserable existence. Their children are receiving no education. Their health conditions, as witnessed by the Special Representative, are poor. Their general standard of life is appalling. Most speak the Khmer language and amongst themselves speak a mixed dialect of Khmer and Vietnamese. All wish to return to their homes in Cambodia.

101. The Ministry of Interior has also instructed the border guards to deny entry to those Cambodian identity card and passport holders who cannot speak Khmer. This order may result in the denial of entry to many minority groups, including ethnic Vietnamese and Khmer Leu (tribal people from the provinces of Ratanakiri and Mondolkiri), who are not very fluent in Khmer. In addition, there has also been an order from the Ministry of Interior to conduct a census of ethnic groups in the country. These measures would have to be implemented carefully, without allowing arbitrariness or abuse at the local level. This concern arises out of the fact that, recently, there have been confirmed reports of the confiscation of the identity cards of ethnic Vietnamese in Neak Loeung, Peam Ro district, Prey Veng province, who were being surveyed. This incident happened on about 5 June 1994. After the intervention of the Cambodia Office, the identity cards have been returned. The confiscation of identity cards resulted in restricting the freedom of movement of these ethnic Vietnamese and led to demands for money by the local officials before the cards were returned. In the absence of any other documentation or database, the cards are the only proof of legal residence for many of these people.

J. International human rights

102. International human rights instruments to which Cambodia is a party include: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees. The Special Representative notes that Cambodia has one of the highest rates of ratification of and/or accession to human rights conventions in the Asian region.

103. A number of the above-mentioned instruments provide for the submission of periodic reports to the international committees established to monitor their implementation by States parties. In this connection, the Special Representative commends the Government of Cambodia for the establishment, on 28 March 1994, of an Inter-Ministerial Committee on Reporting Obligations responsible for the preparation of the relevant reports. The establishment of such a body was recommended by the Special Representative in his report to the Commission on Human Rights of February 1994. ^{1/} However, the Special Representative notes that Cambodia has not complied with any of its international reporting obligations so far. Deadlines for the presentation of reports by Cambodia are imminent and some are overdue.

K. Non-governmental organizations

104. The Special Representative welcomes the large number and variety of Cambodian non-governmental human rights organizations. He was also impressed by the vitality of those organizations, which are presently active in several areas, including human rights education, monitoring, legal counselling and defence, prisons, promotion of human rights of vulnerable groups such as women, children, elderly persons, minorities and disabled persons. Many have established offices in the Cambodian provinces as well. The Special Representative also commends the work of specialized groups and particularly the religious, women, Khmer Kampuchea Krom Human Rights Association and Vietnamese non-governmental organizations.

105. During his recent missions in Cambodia, the Special Representative held several meetings with members of non-governmental organizations at Phnom Penh, Sihanoukville and Battambang. Among the concerns brought to his attention were the possible implications of the law on the outlawing of the "Democratic Kampuchea" group for non-governmental human rights organizations and others called upon to defend the rights of the persons accused under the law. Some non-governmental organizations expressed concern that, by defending those rights, they might be accused of collaboration.

106. Another matter of concern for non-governmental human rights organizations, which is shared by the Special Representative, is the recent request made by officials of the Ministry of Interior to provide lists of members and a report on their activities. The non-governmental organizations have expressed their apprehension at this practice and are concerned about it in view of the recently adopted law on the outlawing of the "Democratic Kampuchea" group.

107. Non-governmental human rights organizations also explained to the Special Representative their difficulties in having access to prisons and in getting information, especially draft laws, from the Government. In this context the Special Representative notes, with approval, the recent decision of the Government to invite the non-governmental organizations to give opinions on the drafts of laws relating to human rights. However, it remains to be tested in practice, partly due to the fact that the non-governmental organizations themselves have not worked out the procedures of their intervention regarding drafts of laws. The access to prisons remains very localized, with non-governmental organizations gaining access in some provinces and being denied entry in others. The Special Representative has made some recommendations concerning this issue (see para. 158 below).

X. RECOMMENDATIONS

A. Right to health

108. The need to upgrade the infrastructure and delivery of health services remains urgent and substantially the same as stated in the first report.

109. Particularly urgent priority should be given to campaigns to prevent the transmission of human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS). New initiatives should be taken, in consultation with UNDP and the World Health Organization (WHO) to promote awareness about AIDS in the media, in secondary schools, in other educational institutions and in other appropriate public ways. There must be a heightened sense of the urgency of promoting HIV/AIDS awareness and education in Cambodia. The Centre for Human Rights should, in cooperation with UNDP, WHO and other relevant international and national bodies promote seminars, workshops and other initiatives designed to mobilize non-governmental human rights organizations in campaigns of HIV/AIDS awareness. Particular attention should be addressed to assisting the Secretariat for Women's Affairs and non-governmental women's organizations and to promoting the relevance of women's empowerment. The organization of prostitutes into associations for self-protection should be promoted. Investigations should be made concerning the availability from international donors of free condoms for distribution to sex workers and other target groups with appropriate advice about HIV/AIDS and its modes of transmission. Mobile vans to provide such education and assistance should be established without delay in main cities.

110. The Special Representative welcomes the investigation by the National Assembly of the current availability of pharmaceutical drugs having dangers to life and health if used without strict medical supervision. The better control of such drugs and scrutiny of the effectiveness of imported drugs should have the attention of the Government of Cambodia in a way consistent with the continued provision by pharmacies of cheap drugs and advice to members of the public unable to secure, or to afford, medical attention.

111. There is a need to monitor the channelling of pharmaceutical drugs and medicines donated to hospitals in Cambodia. It is alleged that such donated pharmaceuticals are

often found on sale in pharmacies or in the local market. Arrangements should be made to prevent the sale of donated medicines and to avoid their misuse.

B. Cultural rights

112. The Special Representative welcomes the important work of UNESCO in Cambodia for the preservation and protection of the cultural heritage of the country, especially the Angkor Wat complex. The assistance of the Government of Switzerland is acknowledged in providing a legal expert to advise the Government of Cambodia on the needs of legal regulation to protect the environment of the Angkor Wat and other similar sites of archaeological and cultural importance.

113. The customary laws of Cambodia need to be studied carefully. Adoption of some of these laws may prove to be useful. However, owing to the peculiar conditions of Cambodia's destruction of traditional institutions, the extermination of monks and the intelligentsia and the destruction of documents, the identification of actual laws, customs and procedures may prove to be difficult. Customary laws may need to be modified again if such laws are in conflict with human rights norms and standards.

C. Education, including legal education

114. The urgent needs to reinforce the infrastructure of the Cambodian educational system, noted in the first report, must remain one of the highest priorities of the Government of Cambodia.

115. The Special Representative again requests the Centre for Human Rights to explore ways to assist the Government in providing human rights education to school children and the general population. In this regard, the plan of the Cambodian Institute of Human Rights to publish a book on human rights for school teachers (see para. 64 above) should be supported with appropriate funds provided by the Centre.

116. The Special Representative also requests that education in basic human rights principles be facilitated to the 29,000 monks presently living in 3,000 temples.

117. The Centre for Human Rights should revise the Human Rights Training Manual prepared by UNTAC. Revisions should aim at emphasizing institutional building of human rights in areas such as the judiciary (civilian and military courts) and civil administration.

118. The Special Representative requests the Centre for Human Rights to give particular consideration, in consultation with Cambodian government officials, non-governmental organizations and informed citizens, to the ways in which racial and ethnic prejudice may be tackled by appropriate educational means. There is a need to study successful examples by which other countries have encouraged the development of policies and attitudes of multicultural acceptance and tolerance. Initiatives beyond education should be explored. These include the use of the entertainment media, appeals by community leaders, inclusion of representatives of ethnic minorities in the activities of governmental

and non-governmental bodies and the encouragement of personal contacts which tend to break down the stereotypes upon which prejudice feeds. It is important that countries that are neighbours to Cambodia, with ethnic minorities of their own people in Cambodia, should appreciate that the way they treat, in their countries, people who are ethnic Khmers may be relevant in Cambodia to the achievement of ethnic and racial tolerance and the acceptance for non-Khmers. The provision of good examples and reciprocal promotion of multicultural tolerance by neighbouring States may assist in the promotion of these values within Cambodia.

119. The Centre for Human Rights should give consideration to the conduct of a workshop or seminar of Cambodian non-governmental human rights organizations, including those connected with ethnic minorities in Cambodia, to explore the development of an action plan containing practical ways to promote ethnic and racial tolerance and harmony. The report of such a workshop or seminar should be made available to the Centre and the Special Representative to help in the organization of future initiatives, in consultation with the Government of Cambodia, to promote multicultural tolerance and acceptance of ethnic diversity within Cambodia. Several ministers stressed to the United Nations High Commissioner for Human Rights and to the Special Representative the particular sensitivity of ethnic issues in the context of Cambodia. Their sensitivity is not doubted. Nor is the Special Representative unaware of the feeling of anxiety in many quarters in Cambodia concerning the vulnerability of the Cambodian culture and language to external pressure from more numerous neighbours. The building of a strong Khmer culture, confident in the presence of loyal citizens of different ethnicities, should be the goal.

120. The problems in legal education which were identified in the first report remain to be tackled. The recommendations in that report are again commended to the attention of the Government of Cambodia. The Special Representative urges that the selection of Cambodian judges should continue to follow strict procedures designed to prevent favouritism and corruption. The appointment of other persons who have not been chosen in accordance with those procedures should be terminated. Such appointments highlight the urgency of the establishment of the judiciary by a law of the Supreme Council.

D. Right to work

121. With regard to the reported cases of enforced conscription of participants in the UNDP/ILO training programme at Battambang (see paras. 68 and 69 above), the Special Representative stresses that conscription should be conducted only pursuant to a clear law containing appropriate safeguards. To the extent that enforced conscription occurs outside the framework of the law it should be terminated. Redress should be provided to those who have been illegally conscripted into the army. It would be specially regretted if this practice interfered in the UNDP/ILO work regeneration programme. The Centre for Human Rights should continue to monitor this issue.

122. The UNDP/ILO programme has also revealed a need for better planning and coordination in the services of aid agencies to non-governmental organizations to avoid

or reduce duplication of services and wastage of human and material resources. The Centre for Human Rights, in consultation with UNDP and ILO and non-governmental human rights organizations, should cooperate in the realization of initiatives to promote and encourage work regeneration programmes in the most efficient ways possible.

123. The Centre for Human Rights should, in cooperation with ILO and other relevant organizations, ensure the development of a draft labour law in conformity with applicable international human rights standards. Such a draft law should be based on the existing law and pay careful attention to the peculiarities of Cambodian society.

E. Rights to the environment and to sustainable development

124. The Special Representative recommends that:

(a) A national environmental plan be drawn up with the assistance of the Cambodia Environmental Advisory Team and international agencies and implemented to safeguard the natural resources of Cambodia. This plan should bear in mind the mistakes committed by other countries in the region, and elsewhere, in drawing up and implementing plans which resulted in environmental degradation and the denial of the peoples' right to participation in the planning and implementation stages;

(b) Action should be taken to stop the illegal plundering of forests and other natural resources by logging and mining, and that those responsible be punished;

(c) The decision to grant exclusive rights to the armed forces to handle timber exports should be reviewed in order to ensure a process that is in accordance with the budget law and one that will ensure accountability of and civilian control over the armed forces;

(d) Steps be taken to combat the menace posed to the environment, particularly to fish stocks, by the ooya plant.

F. New laws and practices

125. The Special Representative reiterates the call contained in his first report for a number of new laws and bodies, including:

(a) The establishment of a constitutional council as envisaged by the Constitution;

(b) The establishment of a supreme council of the judiciary as envisaged by the Constitution;

(c) The enactment of a press law;

(d) The enactment of a law on the peaceful settlement of land claims;

(e) The enactment of a law on freedom of association;

(f) The enactment of a law on immigration, nationality and refugees.

126. The Centre for Human Rights should continue to monitor draft legislation having implications for human rights and to provide advice to the Government of Cambodia. It should also continue to assist the Commission on Human Rights and Reception of Complaints of the National Assembly on the performance of its vital role.

127. Notwithstanding the amendments introduced by the National Assembly to ensure a certain degree of protection of human rights, the Special Representative notes that the law on the outlawing of the "Democratic Kampuchea" group has a large potential to offend basic human rights. The law should be analysed by the Centre for Human Rights with reference to the Constitution and the international instruments that Cambodia has ratified relevant to human rights. It should be carefully monitored to ensure that it does not become an instrument for oppression and the misuse of power.

128. Of particular concern are the possible implication of the law for non-governmental human rights organizations and others who defend the rights of persons accused under the law, and the request from the Ministry of Interior to have names of members and staff of non-governmental organizations. Accusation does not establish the offence. Every person who is accused under the law is entitled to a fair trial and to have a defender. Abuses of the law and its administration should be exposed by non-governmental human rights organizations without fear of being accused of collaboration. The coming into force of the law will present a major test to the courts and Constitution of Cambodia. The Special Representative will keep in close contact with the Centre for Human Rights and non-governmental human rights organizations and will offer his advice and assistance to the Government of Cambodia on this measure, as is appropriate.

129. The provision contained in article 9 of the law, permitting the right to an award of damages in criminal proceedings, draws attention to some provisions in Cambodia's criminal law and procedure which require reform. The Special Representative refers, in this regard, to the laws from the period prior to the 1993 elections allowing the imprisonment of people for non-payment of civil debts and the corresponding practice of some courts. During his visits to prisons in Cambodia the Special Representative met several prisoners imprisoned for failure to pay court-ordered damages. While the facility of damages compensation is entirely acceptable, it is contrary to the Provisions Relating to Criminal Law and Procedure Applicable in Cambodia During the Transitional Period, which are still in force, and to article 11 of the International Covenant on Civil and Political Rights, which states that no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. The Centre for Human Rights should conduct a review of all Cambodian laws and practices in this regard with a view to advising the Government on the removal of such provisions from the criminal law and practice of Cambodia.

130. The Special Representative notes that, according to the Convention on the Prevention and Punishment of the Crime of Genocide, to which Cambodia acceded on 14

October 1950, the necessary legislation should, in accordance with the Constitution, be enacted to give effect to the Convention, in particular to provide effective penalties for persons guilty of genocide, who should be tried by a competent tribunal. The Special Representative notes that the law on the outlawing of the "Democratic Kampuchea" group mentions that responsibility for "genocidal acts" cannot be annulled by the passage of time. The Special Representative notes that the question of defining the victims of acts of genocide was dealt with by the Special Rapporteurs on the question of impunity of perpetrators of human rights violations of the Subcommittee on Prevention of Discrimination and Protection of Minorities. ^{6/} As noted by the Special Rapporteurs, the Convention contains a limitative enumeration of victim groups, which should be, in whole or in part, a national, ethnical, racial or religious group as such. Therefore, because the Convention does not include reference to "political groups", although this term appeared in the preliminary draft, the massacres committed by the Khmer rouge, which have all the characteristics of a genocide, cannot be classified as such. The Special Representative appreciates the decision of the Special Rapporteurs to re-examine this question in their final report. The Special Representative also notes that non-governmental human rights organizations have studied the additional negative effect on the rehabilitation of victims of grave violations of human rights that impunity of the authors of such violations may have. The Special Representative suggests that interested non-governmental organizations, experts and United Nations organs study further the issue of impunity of those accused of massive massacres in Cambodia, duly taking into consideration the relevant provisions of the conventions and the law, with a view to forwarding suggestions to him for consideration in his next report.

131. The law on the outlawing of the "Democratic Kampuchea" group should be widely disseminated to local officials, courts and the population, including through the use of television and radio. Free and open democratic debate on the law and its implementation should be allowed on a continuous basis. The implementation of the law should follow a transparent process. Arrests under the law should be made public. Information about arrests must be immediately submitted to the public and the highest political authorities. The implementation of the law should be by civilian police. Those arrested under the law should be charged and tried by civilian courts. The courts must remain vigilant against abuse of the law and supervise its implementation, in order to detect abuses and to correct them.