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

Situation of human rights in Cambodia

**Report of the Special Representative of the Secretary-General for
Human Rights in Cambodia, Mr. Peter Leuprecht, submitted in
accordance with resolution 2002/89**

Executive summary

Cambodia is preparing for its third parliamentary election since the signing of the Paris Peace Accords in 1991. The upcoming National Assembly Elections will be an important benchmark as Cambodia strives to deepen its roots as a multi-party democracy. To ensure that fundamental human rights are fully respected serious efforts must however also be undertaken to further develop the legal framework, strengthen the judiciary, put an end to the problem of impunity, combat corruption and in general to put in place and implement economic development policies that safeguard and secure the human rights of Cambodia's people as guaranteed in the 1993 Constitution, Cambodia's national laws, and the international human rights treaties that Cambodia is bound by.

Legal and judicial reform remains the most elusive of Cambodia's reform efforts, and as such has been a continuing preoccupation of the Special Representative. Given the centrality of an independent, competent and effective judiciary for securing human rights under the rule of law, this effort is of primary importance and goes to the heart of so many key issues. The difficulties faced cover a wide spectrum of problems in the judicial and law-making mechanisms which have been addressed in previous reports. The court system continues to be plagued by corruption and a lack of independence and impartiality. The serious shortage of lawyers for the population of 12 million, with nearly all certified lawyers based in Phnom Penh, means that the majority of people who come before the courts are not represented. The problem of impunity continues to affect the ability of Cambodians to receive justice. Individuals in positions of power and State authority, particularly in law enforcement and the armed forces, are rarely held accountable for the crimes they commit.

Recent measures are steps in the right direction, but are insufficient. The new Royal School for Training Judges and Prosecutors, for example, could have a lasting impact on the quality of the administration of justice, and its effects will hopefully be felt over the longer term. The significant increase in the salaries of judges and prosecutors in November 2002 could help to curb corruption if coupled with the adoption of the long-awaited Law on the Status of Judges and Prosecutors and active measures from the Supreme Council of Magistracy, the body which is entrusted with ensuring judicial independence and maintaining discipline among judges and prosecutors. This body, however, requires fundamental structural reform and must itself be independent if it hopes to accomplish its tasks. Similarly, article 15 of the Law on Political Parties should be amended to disassociate Council members, judges and prosecutors from political influence. The few benchmarks agreed to at the Consultative Group meeting of donors in June 2002 should be adhered to and become the subject of serious and continuing dialogue between donors and the Government.

With Cambodia's third National Assembly Elections since the signing of the 1991 Paris Peace Accords coming up in July 2003, the Special Representative is concerned about several long-standing issues. The Royal Government and the newly elected National Election Committee must strive to ensure that there is equitable access to State media for all political parties and also promote access to non-State media, particularly electronic media. In confronting

electoral fraud, vote buying, the use of and incitement to violence and other problems, the National Election Committee (NEC) must make use of its considerable authority to impose fines and other sanctions. Law enforcement officials have shown a commitment to investigate recent election-related killings, but the judicial process in bringing the culprits to justice remains flawed.

The Royal Government has pursued a policy of granting large-scale land, forestry and other types of concessions to private companies. The experience thus far has shown that this represents a serious threat to the well-being of those living on such territory and has also contributed to the problem of access to land for the general population. The Special Representative urges the Royal Government to review agricultural land concession contracts and their implementation and to consider using its legal right of revocation where the provisions of Cambodian law and the requirements of the contracts have not been respected. The recent tumult over the insufficient time given to the public to study and comment on concessionaires' plans for forest management over the next 25 years illustrates the marginalization of the affected communities.

Housing for displaced Cambodians remains an issue of concern. Relocation sites such as Anlung Krognam were put in place after fires destroyed the Bassac and Deurn Cham slum areas of Phnom Penh in 2001. Infrastructure developments have also resulted in displacement. Those vulnerable communities forced to live in these areas face security concerns and poor water, sanitation, health and education facilities. Opportunities for income are often limited, requiring many resettlers to travel long distances each day for work. In August 2001, several non-governmental organizations (NGOs) developed a set of Relocation Guidelines with the involvement of the Phnom Penh municipality which the Special Representative commends to the authorities as providing the basis for sound policies to tackle these difficult issues.

Both the former High Commissioner for Human Rights and the Special Representative have highlighted trafficking in human beings as an issue of great concern. Trafficking occurs both in-country, mainly from rural to urban centres, and from and to neighbouring countries. Mainly affected are women and children. The chances for progress in combating those who promulgate this trade will be bleak unless certain fundamental practices of corruption and acquiescence are altered, and problems of extreme poverty in rural areas are addressed. Those responsible for trafficking are rarely charged or brought to trial, and then usually only the wrongdoers at the bottom of the criminal chain.

The state of Cambodia's prisons was addressed in the Special Representative's draft paper of November 2002 entitled "Towards a humane prison policy for Cambodia" which marked the beginning of a dialogue with the prison authorities. In the last decade, the prison population has increased nearly threefold. Many of Cambodia's prisons are now overcrowded, and conditions in some prisons are deplorable with prisoners lacking adequate food and clean water. Since imprisonment is the routine punishment for most crimes, even of the most minor nature, the rapid increase in the prison population could be curbed by the introduction of non-custodial sentencing alternatives. Other issues under discussion with the authorities include improving access to prisoners, providing transport to enable detainees to attend their own trials, and addressing the problem of excessive pre-trial detention.

Reports indicate that large numbers of Montagnards in search of refuge are hiding on both sides of the border, that asylum-seekers have been forcibly returned to Viet Nam, and that individuals who have assisted them have been threatened by both Vietnamese and Cambodian authorities. In order to address these concerns, the Government should comply with its obligations under the Convention relating to the Status of Refugees, grant the Office of the United Nations High Commissioner for Refugees free access to the border areas, and enable it to impartially examine the claims of those seeking asylum.

Cambodia still faces delays and impediments in fulfilling its reporting obligations under the international human rights treaties. The reporting process and the recommendations of the treaty bodies should be given far greater priority and viewed as an opportunity to assist Cambodia in incorporating the provisions of these treaties into its laws and practices. The Special Representative commends the recent parallel report prepared by a committee of NGOs monitoring compliance with the International Covenant on Economic, Social and Cultural Rights which presents a sobering picture of the situation and provides helpful recommendations which he hopes will be taken into full account.

The Special Representative concludes his report with a number of conclusions and recommendations.

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Introduction

1. The present report is submitted in accordance with resolution 2002/89 of the Commission on Human Rights. This is the Special Representative's third report to the Commission on Human Rights.

2. This report builds upon the Special Representative's earlier reports to the Commission on Human Rights and the General Assembly. The Special Representative will, in general, attempt to avoid repeating what he has stated in previous reports. His approach and methodology remain as described in previous reports.

I. SEVENTH MISSION OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA (12-19 NOVEMBER 2002)

3. The pressing need for judicial reform, prison conditions, land and housing issues, preparations for the 2003 general election and the problem of human trafficking were the focus of the seventh mission of the Special Representative to Cambodia. Meetings were held with His Majesty, King Norodom Sihanouk; Prime Minister Hun Sen; Phnom Penh Governor Chea Sophara; prime ministerial advisor Om Yenteng; Justice Minister Neav Sithong; and President of the National Assembly, Prince Ranariddh. The Special Representative met Sam Rainsy, the new National Election Committee (NEC), the Council for Legal and Judicial Reform and the Bar Council. He also consulted with representatives of civil society, the donor, United Nations and diplomatic communities, and visited Kompong Speu province to familiarize himself with problems relating to land concessions and their effect on inhabitants.

4. The important and difficult challenge of judicial reform featured in several meetings with Government officials and concerned groups. The Prime Minister, at the meeting with the Special Representative stated that of the major reform efforts this was the slowest area to change. He believed that increased salaries would help, but that strong disciplinary action would also be necessary against judges found guilty of misconduct.

5. The conditions of Cambodia's prisons were addressed in a draft discussion paper on prisons which marked the beginning of a dialogue with the authorities towards a more humane prison policy. The Special Representative chaired a seminar on prison reform in which representatives of the prison authorities and NGOs concerned with prison conditions participated.

6. The Special Representative began to explore in greater depth land and forestry issues because of the effect they have on the well-being and basic rights and livelihoods of large segments of the population. The Special Representative raised some of his concerns with the Prime Minister and was encouraged by his seeming awareness and concern for the problem.

7. With National Assembly elections in July 2003, the Special Representative dealt extensively with election issues during meetings with concerned government officials, the NEC and non-governmental organizations. In preparation for the elections, considerable amendments to the Law on Election of Members of the National Assembly were made in August 2002. While

the Special Representative acknowledges several positive changes, he regrets that the amendments were adopted in a rush without much public consultation. Considering the fundamental importance of freedom of expression and of access to media during electoral campaigns, one of the major tasks of the NEC and the Royal Government is to ensure that all political parties have equal access to the State media. They must also do their utmost to promote such access to non-State media, in particular the electronic media. The Special Representative urges the new NEC members not to repeat the mistake of their predecessors who insisted that such equal access could cause trouble and excite the population.

8. As of 30 November 2002, the Special Representative is aware of convictions in 10 of the 17 election-related killings and suspicious deaths recorded before the local election held on 3 February 2002. From the commune elections in February 2002 until the end of November 2002, the United Nations Cambodian Office of the High Commissioner for Human Rights (COHCHR) has documented eight election-related murders. In connection with the commune elections, the NEC largely failed to avail itself of the considerable powers granted to it through the Law on Election of Commune Councils. In connection with the upcoming elections, the Special Representative urges the new NEC, as well as the Cambodian judiciary, to exercise their lawful duties to act against those individuals responsible for violence, intimidation and other interferences with the free exercise of electoral rights or the proper functioning of the electoral process.

9. Trafficking in human beings is a major issue of concern in Cambodia as a country of origin, transit and destination for such trafficking. Mainly affected are women and children, who are forced or pushed into prostitution, rented or sold, often by parents or relatives, or abducted. Trafficking for adoption purposes is also a major concern.

10. The Special Representative followed up on the August 2002 visit of the former High Commissioner for Human Rights who highlighted these concerns during her visit. Corruption and a lack of police enforcement are a significant contributing factor to the growth of the sex trade, currently the third highest “employer” of women in Cambodia after agriculture and garment making. The Special Representative urged the Government and authorities to ensure effective enforcement of the laws related to human trafficking.

II. MAJOR DEVELOPMENTS AND HUMAN RIGHTS ISSUES OF CONCERN

A. Judicial Reform

11. Despite repeated statements from the highest levels of the Government, progress in the reform of the judiciary in Cambodia has been slow and remains a matter of serious concern. An independent, fair, competent and effective judiciary is a prerequisite for securing human rights and the rule of law, as well as the conditions for economic development and investment. The lack of a properly functioning, independent and impartial judiciary continues to have an adverse effect on the enjoyment of human rights guaranteed to the Cambodian people by the Constitution, national laws and international human rights instruments to which Cambodia is a party. Inadequate legal frameworks and a weak judiciary have blocked prospects of foreign investment. The overall impact of the judiciary has also been negative on the poverty-reduction efforts of the Government.

12. At the Consultative Group of donors meeting in June 2002, donors and the international community reiterated their concern about continuing widespread corruption and the prevailing state of the judiciary. In order to ensure a minimum of progress in these areas, donors and the Government agreed to a few benchmarks, which have not yet been met.

13. Priority legislation set out in the benchmarks includes the Law on the Status of Judges and Prosecutors which will establish the service conditions and a fixed tenure system for judges, and the Law on the Organization and Functioning of Adjudicate Courts aimed at restructuring the court system. Difficulties in the court system can be traced in part to a lack of clarity in the jurisdiction of the various levels of courts and the lone national appellate court. Although some donor Governments pressed for the immediate adoption of the long-awaited anti-corruption law, the meeting finally agreed that existing laws should be immediately enforced and set June 2003 as the deadline for the adoption of the anti-corruption law.

14. The Special Representative noted a few positive steps taken by the Government. An initiative to increase allowances and salaries for judges and prosecutors is welcome. A sub-decree adopted in November 2002 increased salaries from around \$25 to a minimum of \$300 per month. However, the national budget for the judiciary will need to be increased if this is to be implemented on a sustainable basis. The Special Representative hopes that the substantial increase in allowances and salaries will help to curb the corruption prevalent within the judiciary, but emphasizes that this will need to be accompanied by active measures from the Disciplinary Committees of the Supreme Council of Magistracy.

15. In order to secure the independence of the Cambodian judiciary, which remains vulnerable to executive interference and political influence, the Special Representative has urged the Government to commit to structural reform of the Supreme Council of Magistracy, the body entrusted with the task of ensuring judicial independence and maintaining discipline among judges and prosecutors. This requires a thorough review of the existing law and the introduction of effective measures to bring about change, first and foremost to secure the independence of the Council itself. The present draft amendment bill submitted to the National Assembly does not envisage any structural reform of the Council.

16. Of equal importance is an amendment to article 15 of the Law on Political Parties aimed at dissociating the Council members, judges and prosecutors from the political parties. This matter has been repeatedly raised by the Special Representative with the concerned authorities and, during his most recent mission, with the new Council for Legal and Judicial Reform.

17. This Council was created on the eve of the Consultative Group of donors meeting in June 2002 as a vehicle to accelerate and monitor the implementation of the legal and judicial reform process. A permanent coordination body was constituted by sub-decree in August 2002 to assist this new Council. The long-awaited strategy document and action plan for legal and judicial reform, as a basic blueprint for change, has yet to be finalized, and should be accorded high priority.

18. Some positive developments have been noted in efforts towards building the capacity of judges and prosecutors. The efficient operation of the newly established Royal School for Training Judges and Prosecutors could have a lasting impact on the quality of the administration of justice in the longer term.

19. The need for competent lawyers to secure access to justice for the people of Cambodia and the multiple roles that a bar association can play in strengthening the judicial system have yet to be properly appreciated in Cambodia. With the recent establishment of the Centre for Training Lawyers, which began a training programme for 60 young law graduates in October 2002, it is hoped that a new generation of professionally trained lawyers will be admitted to the bar. However, the Special Representative continues to be concerned about the chronic shortage of lawyers in Cambodia.

20. There are many courts in Cambodia where no lawyers are available to represent litigants. In a country of over 12 million people, fewer than 200 lawyers are in legal practice, and only 20 practise in the provinces. For example, on 27 November 2002, for the first time in the history of the Prey Vihear Provincial Court, legal representation was provided by a defence lawyer engaged by the Cambodian Defenders Project, an NGO, to represent a client in a criminal case. Despite the shortage of lawyers, the bar association continues to interpret narrowly article 32 of the Law on the Bar to restrict the admission of young law graduates to the association. During his seventh mission, the Special Representative again raised these concerns in meetings with the newly elected Bar Council and the Council for Legal and Judicial Reform. He again urged them to expand the scope of the law and improve access to justice for the poor. He also encouraged the Government to create a legal aid fund to provide legal services to indigents and the rural population.

21. Despite the slow progress in the promulgation of priority legislation, the Special Representative has noted progress in the drafting of a Civil Code and a Code of Civil Procedure with the assistance of the Government of Japan. The working teams of Japanese legal experts anticipate that the final drafts of the Codes will be ready by the end of March 2003. It will be essential to review these drafts to bring them into harmony with other important laws, such as the land law, the forestry law and emerging commercial laws, and to allow time for full public consultation. The drafts of the Penal Code and Code of Criminal Procedure are similarly now entering their final stages and should also be made available for full public consultation before they are presented to the National Assembly.

22. The Special Representative welcomes recent initiatives taken by some commissions of the National Assembly and by government ministries to organize public consultation meetings to discuss draft laws, for example the Domestic Violence Law and the Trafficking Law, and believes these initiatives should now be regularized in law.

23. The Special Representative has been closely observing developments in response to action taken by the Inter-Parliamentary Union (IPU) on the cases of the removal of three Cambodian senators from the Senate in December 2001. On the issue of the rights of members of parliament to exercise freedom of speech and expression, the Special Representative was

assured by the President of the National Assembly that no such action would be taken against any member of the National Assembly. He hopes the Senate will make this same commitment and urges the Senate to comply with the most recent resolutions adopted by the IPU on 27 September 2002 in this regard.

B. Impunity

1. Kompong Cham Trial

24. The Special Representative remains extremely concerned about the problem of impunity in Cambodia. Individuals who exercise State authority, most notably law enforcement officials and members of the armed forces, are rarely held accountable for crimes they commit.

25. In a trial in Kompong Cham on 30 August 2002, five prison guards faced charges of infringement of individual rights dating back to 1999, when five inmates were severely beaten following an escape attempt. According to testimony from other prisoners and the victims themselves, the five were severely beaten by a group of guards. The beatings allegedly took place in front of prison officials, including the director and medical officer, and in clear view of other inmates. One guard claimed in his statement to the investigating judge that he carried out the beating on the orders of the prison director. All five victims were struck repeatedly with the handle of a hoe or other wooden objects, and some were punched, kicked, slapped or hit on the head with rocks.

26. At least two of the victims were afterwards deprived of medical treatment by the prison clinic. For some two weeks after the beatings, the five were kept stripped to their underwear and deprived of mattresses, blankets and mosquito nets. They were fed reduced rations and held in their cells 24 hours a day, in violation of prison regulations, for at least a month after the beating. Deprived of bathing water, some developed skin diseases. When interviewed by a human rights NGO, LICADHO, a month after the beatings, four of the five still had multiple wounds or scars, and one appeared to walk with difficulty.

27. Despite compelling evidence presented before the court, including testimonies from victims and other prisoners who witnessed the events, all five defendants were acquitted. However, the court directed that administrative action be taken against them. As of the end of November 2002, the Prisons Department of the Ministry of the Interior had taken no such action. Meanwhile, three of the defendants continue to work at Kompong Cham prison, as they have done ever since the incident.

2. Mob killings

28. Prompted by an increase in incidents of mob violence, the Special Representative released in June 2002 a report entitled "Street retribution in Cambodia". This report was based on the documentation of some 65 assaults and murders by mobs since mid-1999. The report stated that law enforcement officials frequently failed to intervene to stop such violence and that on several occasions they had been directly complicit. In his report, the Special Representative asked for the establishment of an independent board of inquiry to assess why mob attacks occur and how to prevent them.

29. The Special Representative hopes that such a board will be established by the Government. He welcomes the fact that the number of mob killings has declined since the report was released. Between the beginning of June 2002 and the end of November 2002, COHCHR had recorded two such killings.

C. Prisons

30. During his visit, the Special Representative began a dialogue with prison authorities, government officials and NGOs on a more humane prison policy for Cambodia on the basis of a draft discussion paper which summarizes changes in conditions that have taken place in prisons since 1994 when COHCHR published a report entitled "The state of Cambodian prisons".

31. Since that report was published, the prison population has increased nearly threefold. Several prisons are now dangerously overcrowded. The living space in Kompong Thom prison is, for instance, less than 1 m² per prisoner.

32. Imprisonment is the routine punishment for most crimes. The rapid increase in the prison population could be addressed by introducing non-custodial sentencing alternatives. Little use, for example, is made of fines and suspended sentences and there are no community service alternatives for minor and first-time offenders. Accused persons are routinely placed in pre-trial detention for long periods of time, even if the crime for which they are charged is very minor.

33. Overcrowding is a threat to prisoner health as it increases the spread of diseases such as scabies and tuberculosis. Health is also severely damaged by lack of adequate food and clean water. These problems have changed little in the past eight years. The daily allowance for food for each inmate has remained the same since 1994: 1,000 riels, or about 25 cents.

34. While international standards require that sick prisoners in need of specialist treatment shall be transferred to specialized institutions or hospitals, this is almost invariably done too late in Cambodia. Prisoners are often transferred to hospital when it is clear that they are about to die, although prior transfer and proper medical attention could have saved their lives. Lack of funds for transport and shortage of guards are often given as the reasons. Many inmates must rely on NGOs for basic health care.

35. The lack of provision for inmate transport also has serious negative implications for the functioning of the judiciary. Court hearings are often postponed because prisoners are unable to attend their own trials. In other cases, hearings are carried out in absentia. In practice the problems relating to transportation also effectively deny many prisoners the right to appeal. Currently, Cambodia's only Appeal Court and the Supreme Court are based in Phnom Penh. The establishment of regional or peripatetic appeal courts could help ensure prisoners' rights to file appeals against the decisions of first instance courts.

36. Most prison buildings are old and seriously dilapidated. Many do not have sufficiently strong fencing to secure the prison compound. According to prison regulations, all prisoners are entitled to at least one hour per day in the open air, but this rule is widely ignored. The United Nations Standard Minimum Rules for the Treatment of Prisoners provide that women shall be held entirely separate from men, young prisoners separate from adults, and untried

prisoners separate from convicts. These rules are rarely followed in prisons outside of Phnom Penh. Although male and female prisoners are placed in different cells, when they are outside the cell they mix freely with one another. In most prisons, juveniles are placed together with adults. Little or no attempt is made to separate minor offenders from felons, or pre-trial detainees from convicts, turning Cambodia's prisons into potential crime schools for the young and vulnerable. While largely a consequence of the lack of adequate facilities, the mixing of all prisoners also creates serious potential for physical, sexual and psychological abuse.

37. Reports indicate that torture and other cruel, inhumane or degrading treatment or punishment within prisons have declined since 1994. However, incidents continue to be recorded and, most worryingly, there have been no convictions of any such offences since COHCHR began monitoring prisons in 1994.

38. The Special Representative is also concerned that COHCHR and NGOs are facing serious and increasing difficulties in gaining access to prisoners. Private interviews with prisoners are not authorized, causing problems in collecting reliable information on the treatment of prisoners. Defence lawyers also complain that prison officials obstruct their visits, imposing time constraints or requiring special authorizations that are difficult to obtain. Visits by family and friends are critical for prisoners, not only for psychological support, but also for food and other essential materials, as well as help to return to society on completion of sentence. The regulations in force provide that all prisoners have the right to receive visits from families or friends for at least one hour each week. This provision is systematically ignored. In practice, most families are able to visit for little more than 15 minutes each week.

39. Excessive pre-trial detention remains a serious and pressing issue in certain parts of the country. Cambodian law stipulates that the duration of pre-trial detention shall not exceed four months, but that this period can be extended to six months if justified by the requirements of the investigation. As of 31 July 2002, there were 205 prisoners in Phnom Penh and Banteay Meanchey who had been in pre-trial detention for more than six months. Causes of excessive detention include a claimed overload for the judiciary and lack of transportation resources at the prisons.

40. The Special Representative was encouraged by the response of government officials at the November seminar, and hopes that a more humane prison policy will result from the dialogue that has been initiated.

D. Elections

41. Cambodia's third National Assembly Elections since the signing of the Paris Peace Accords in 1991 have been scheduled for 27 July 2003. In preparation for these elections considerable amendments to the Law on Election of Members of the National Assembly were made in August 2002. These amendments reduce the number of members of the National Election Committee, the body responsible for administering the elections, from 11 to 5 members. They also introduce a new voter registration system that is expected to result in considerable financial savings. While the Special Representative recognizes that the amendments include several positive changes and address a number of shortcomings in the law, he regrets that these amendments were adopted in a rush without much public consultation.

42. The amended election law stipulates that the members of the NEC shall withdraw from membership of any political party to which they may belong. However, it fails to put in place a procedure for the selection of a truly independent NEC. While law requires that the National Assembly approve the members of the NEC by an absolute majority vote, it also gives the Ministry of the Interior full discretion in the selection of candidates; this has been used to select members affiliated with the Cambodian People's Party, or Funcinpec.
43. During his visit to Cambodia in November 2002, the Special Representative met with the then recently appointed members of the new NEC and received their assurances that they will carry out their duties in a neutral and transparent manner. In contrast to the limited public discourse that took place before the adoption of the amendments to the election law, the NEC has taken the important initiative to publicly distribute draft election regulations for comments. Election monitoring organizations and political parties have made good use of this opportunity.
44. The Law on Election of Members of the National Assembly gives the NEC the responsibility for ensuring equal access for the political parties to the State media. In connection with National Assembly elections in 1998 and the commune elections in 2002, the Special Representative expressed concern at the failure of the Royal Government to ensure freedom of expression and equitable media access, and at the hindering by the NEC of voter education initiatives and the spread of party political information.
45. Considering that freedom of expression is a fundamental human right and that equitable media access is recognized internationally as a prerequisite for free and fair elections, the Special Representative stresses the need for the Royal Government and the NEC to ensure equitable access to State media and to do its utmost to promote such access to non-State media, in particular the electronic media.
46. Through the Law on Election of Members of the National Assembly, the NEC has considerable authority to impose fines and other sanctions for such acts as electoral fraud, vote buying, causing disruption to the polling and counting process, and use of and incitement to violence and threats against voters and candidates. Even though similar powers were granted to the NEC for the Commune Council elections in February 2002 and numerous violations were brought to its attention, no sanctions were enforced. In connection with the upcoming elections, the Special Representative urges the new NEC as well as the Cambodian judiciary to exercise their lawful duties to act firmly against those individuals responsible for violence, intimidation and other interferences with the free exercise of electoral rights or the proper functioning of the electoral process.
47. As of 30 November 2002, the Special Representative is aware of convictions in 10 of the 17 election-related killings and suspicious deaths recorded before the local elections held on 3 February 2002. While law enforcement officials have continued to show commitment to investigate these murders and suspicious deaths and to bring the culprits to justice, the Special Representative is concerned that the judicial processes have often been seriously flawed. In some cases prime suspects have been absent from trials and in other cases convictions were handed down on the basis of very limited evidence.

48. Since the Commune Council elections in February 2002 and up to the end of November 2002, COHCHR has documented eight election-related murders. In four of these cases the victims were affiliated with the Sam Rainsy Party, in three cases with Funcinpec, and in one case the victim was the 19-year-old pregnant daughter of one of the victims affiliated with Funcinpec.

E. Land and forestry issues

49. Land-grabbing and increasing landlessness among poor people remain serious threats to the population's right to an adequate standard of living. The implementation of the Royal Government's policy to grant large-scale forestry, fishery, agricultural and other types of concessions to private companies has contributed to the problem of access to land for the general population.

50. Since the mid-1990s, agreements have been reached between the Royal Government of Cambodia and private companies on the establishment of at least 40 land concessions for agricultural purposes, covering more than 800,000 hectares. These concessions give natural persons or legal entities the right to clear private State property for industrial agricultural exploitation. During the period of such a concession, which, according to the new Land Law adopted in 2001 can last for a maximum of 99 years, concessionaires have the same rights as owners, with the exception that the occupied land cannot be sold. For most areas currently under agricultural concession, the concessionaires are occupying the land without having paid any fees to the State.

51. Currently, Cambodia's largest agricultural land concession covers over 300,000 hectares of land in Kompong Chhnang and Pursat provinces. This area is occupied by the Pheapimex Co. Ltd., which in addition controls approximately 700,000 hectares as forest and other types of concession. The Special Representative is deeply concerned that this and other agricultural land concessions constitute a direct threat to tens of thousands of people who are dependant on the land in question to secure their basic livelihood. During his seventh visit to Cambodia, the Special Representative visited Aural and Phnom Srouch districts in Kompong Speu province where the Cambodia Haining Group Co., Ltd. has been granted a 70-year lease over 21,250 hectares of land for the stated purpose of planting crops and breeding and raising animals. While there, the Special Representative was made aware of the significant use of pesticides by the company, which threatens the people and animals of the area.

52. While the concession agreement between the company and the Royal Government was signed in 1998, the company did not begin to operate in the concession area until June 2002. The company then illegally felled several thousand trees, planted five to six hectares of shrubs for the production of castor oil, put up some buildings, installed a sawmill and improved a road going through parts of the concession area.

53. The concession area has a population of more than 8,500 people spread over 26 villages. In the 1980s, when the Khmer Rouge exercised some level of control over the area, most families moved to live along Road number 4 which connects Phnom Penh and Sihanoukville in

the south-western part of the country. After widespread Khmer Rouge defections in 1996, the Government encouraged these internally displaced people to move back to their villages. During 1997 and 1998, people moved back in large numbers.

54. After three years of drought, the population is now struggling to make a living in the area. Their situation has been further worsened by instructions from law enforcement officials and company representatives to stop using agricultural land and forest located within the concession area. This land is normally used by the people to grow rice and vegetables, graze cattle, and to make firewood and charcoal. Some families have further been instructed that they have to leave their homes. The population in the area, as well as the village and commune authorities, have raised their concerns at the provincial and national levels of government. It is clear that if the company is permitted to forcibly implement its instructions, the effects on the population will be very severe.

55. In order to safeguard the livelihood of people living on agricultural concession land, the Special Representative urges the Royal Government to undertake a review of all agricultural land concession contracts and their implementation and to consider using its legal right to revoke contracts where the provisions of Cambodian law and the requirements of the contracts themselves have not been respected. The Cambodia Haining Group Co., Ltd. has in various ways violated both the law in force and its contract with the Ministry of Agriculture, Forestry and Fisheries. The company did not start its production activities within the time period required, has not paid land rental on time, has not been undertaking the compulsory environmental impact assessment, has engaged in illegal logging activities and has operated a sawmill without authorization.

56. The land law stipulates as a general rule that a land concession area shall not cover more than 10,000 hectares and that existing concessions that exceed this limit shall be reduced. The procedure for such reduction and the specific exemptions shall be determined by sub-decree. The procedures for granting land concessions shall also be determined by sub-decree. These two executive regulations have yet to be adopted.

57. Forestry concessions cover an area of close to 4 million of Cambodia's land surface of approximately 18 million hectares. During the Special Representative's meeting with the Prime Minister in November 2002, the Prime Minister stated that he would be prepared to cancel all forestry concessions if necessary in order to save Cambodia's remaining forests. According to a World Food Programme study of 2001, more than 2.3 million people may depend directly on the forest for their livelihoods. It is therefore obvious that any decisions regarding the use of Cambodia's forests must take special and careful account of those people living in and around concession areas.

58. Under the ongoing forestry reform programme, the concessionaires have been obliged to prepare plans for how they are to manage the forest in a sustainable and socially and environmentally acceptable manner during the next 25 years. The Forestry Law, adopted in September 2002, requires that these plans be disclosed to the public for comment. International consultants have estimated that six months would be needed for proper community consultations. However, the management plans were made public on 11 November 2002 and the deadline for

comments set at 30 November 2002. It is clear that this 19-day consultation period, including the Water Festival holidays, was insufficient to ensure that affected communities and NGOs have time to scrutinize and prepare detailed comments on these extensive documents. Equally disturbing, after the plans were officially supposed to have been made public, representatives of forest-dependant communities were denied copies of the plans by the Department of Forestry and Wildlife in Phnom Penh. The World Bank had agreed to assist the Government in distributing the plans, but failed to do so in an acceptable manner. In the end, the task of disseminating the management plans ended up with some NGOs doing so to a limited extent. The Special Representative is of the opinion that the responsibility for ensuring that the Cambodian population is given a proper say in the determination of their own future lies both with the Royal Government and with the international donor community.

59. On 5 December 2002, police and gendarmerie officers used excessive force while dispersing a group of approximately 150 representatives of forest-dependant communities waiting outside the Department of Forestry and Wildlife in central Phnom Penh for a response regarding the Department's participation in a workshop concerning the forest management plans. In dispersing the non-violent crowd, law enforcement officials hit, kicked and used electro-shock batons on several of the women and men. One of the representatives, Hem Sao, a 29-year-old village chief from Preah Vihear province, died a few hours later. While the cause of death has not been established, it is well known that electro-shock batons have the potential to cause death from loss of coordination of the heart muscle's contractions. The Special Representative condemns the use of excessive force by law enforcement officials and calls upon the Royal Government to ban the use of electro-shock batons for the purpose of crowd control.

F. Housing

60. The Special Representative followed up on housing issues, having particular regard to relocation. Relocation sites, such as Anlung Krognam, were put in place as a consequence of fires which occurred in November 2001 in the Bassac and Deurn Cham slum areas of Phnom Penh. Private investment and infrastructure development are also resulting in displacement.

61. Resettlement must be based on appropriate policies to provide adequate shelter and a satisfactory standard of living. Policies must address issues of security, access to water, sanitation, and health and education facilities, as well as employment and other income-generating opportunities. Non-governmental organizations, with the involvement of the Municipality of Phnom Penh, developed in August 2001 a set of Relocation Guidelines for Phnom Penh. Unfortunately, the authorities have tended to ignore the guidelines, although they provide sound guidance on what ought to be done prior to, during and after a community relocation and aim to limit negative impacts on those communities that agree to resettle.

62. During his audience with His Majesty King Norodom Sihanouk in June 2002, the Special Representative raised the issue of distribution of aid to the landless families in Anlung Krognam. In July 2002 the palace provided assistance, but only families holding receipts to receive plots of land were allowed to benefit, and the assistance did not reach the most needy for which it was intended. During his audience with His Majesty in November 2002, the Special Representative

was encouraged by His Majesty's continuing concern for and commitment to families who have not been granted land. The Special Representative also raised his concerns in his meeting with the Governor of Phnom Penh, Chea Sophara, and drew to his attention the fact that over 800 families had not yet received land, as previously promised.

G. Trafficking in human beings

63. The Special Representative gave special attention to the problem of trafficking in human beings, a major concern to Cambodia as country of origin, transit and destination for such trafficking. Endemic poverty, lack of education, unstable family backgrounds, corruption and failure to enforce the law are all contributing factors.

64. Significant trafficking occurs in-country, mainly from rural areas towards urban centres, tourist sites and border areas. Mainly affected are women and children, the majority of whom are forced or pressured into prostitution, rented out or sold, mostly by their parents or relatives, or abducted. Trafficking also occurs for purposes other than sexual exploitation, such as begging or labour. Cross-border trafficking is common and encompasses both trafficking to other nations and trafficking from other countries to Cambodia with recruitment taking place especially in the border provinces. Trafficking for adoption purposes is also an issue of increasing concern.

65. A new draft Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Persons, to replace the law of 1996, is in progress. It is essential that the law provide for special treatment and protection of victims as specified and prescribed in the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1). Victims should not be treated as violators of immigration law as often occurs in Cambodia. The former High Commissioner for Human Rights made a special appeal in this regard before the National Assembly in August 2002. The new law should also provide for strong measures to punish those responsible.

66. The Special Representative is concerned about the judiciary's failure to enforce the law. Victims' claims are often dismissed, or they are treated as criminals rather than receiving protection. An NGO reported that in 2001 in about 94 per cent of the cases of trafficking it dealt with, the courts failed to punish those responsible. Convictions, when they occur, generally concern persons at the lowest levels of the trafficking chain, or family members who have received payments for their children. In June 2002, police raids "rescued" a group of 14 Vietnamese girls from the brothel district of Svay Pak. No one has yet been prosecuted for trafficking or procuring these girls, yet most of the victims were subsequently sentenced, as adults, to prison terms on immigration charges.

67. In a hearing against these girls on illegal immigration charges at the Phnom Penh Municipal Court in August 2002, charges were dropped against three minors who had supporting documents from the Svay Pak commune showing they were born in Cambodia, and against one other who told the court that she had come to Cambodia when she was 1 year old. Six girls officially recognized as 18 years of age were sentenced to two months' imprisonment, along with one other officially recognized as aged 16. Three girls officially aged between 19 and 22 were sentenced to three months' imprisonment. These 10 were ordered to be deported back to

Viet Nam after serving their prison terms. Following completion of their sentences, they were transferred to the Immigration Department's holding centre near Pochentong Airport. However, when a concerned NGO contacted the centre to arrange for the girls' reception at a shelter in Ho Chi Minh City, they were told that the girls' whereabouts were unknown. There is concern that they may have been released in exchange for payments to Immigration Department officials. The case reflects a systemic failure of the judicial system to uphold the rights of victims and to hold those responsible to account.

68. The Special Representative is concerned at the low level of resources allocated to the Ministry of Social Affairs, which bears responsibility for providing and coordinating social services to victims of trafficking. At present, almost the totality of services is provided by the non-governmental sector.

69. The Special Representative welcomes the ratification by Cambodia in May 2002 of the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography.

H. Asylum-seekers

70. Few people belonging to the ethnic minority groups in Vietnam's central highlands have sought asylum in Cambodia since the closure and destruction of a UNHCR camp in the border province of Mondulhiri on 15 April 2002. However, the Special Representative has received numerous unconfirmed reports from reliable sources that large numbers of Montagnard asylum-seekers are hiding on both sides of the Cambodian-Vietnamese border. He has also been informed that Montagnard asylum-seekers from Viet Nam have been forcibly returned to Viet Nam and that intimidation and threats by both Cambodian and Vietnamese authorities have been directed at individuals who have previously assisted the asylum-seekers. The Government denies UNHCR free access to the border areas, which means that Montagnard asylum-seekers are effectively prevented from having their asylum claims examined by the UNHCR.

71. Other asylum-seekers and refugees have also been subjected to deportation. In early August 2002, two Chinese nationals and Falun Gong practitioners, Ms. Zhang Xinyi and Mr. Li Guojun, were arrested in their home in Phnom Penh and sent back to China. Both were holders of "person of concern" letters from UNHCR. After their deportation, the couple were said to be held under incommunicado detention in the Changsha City Detention Centre in Hunan Province.

72. Cambodia is a party to the Convention relating to the Status of Refugees and obliged under international law not to return any person to a country where his or her life or freedom may be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

I. Reporting obligations

73. As a State party to the core international human rights treaties, Cambodia must fulfil important reporting obligations. The Special Representative welcomes the recent submission of the initial report to the Committee against Torture. However, Cambodia is facing considerable

delays in its reporting duties. The Special Representative hopes that the Government will soon finalize the initial reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights, as well as its periodic report under the International Convention on the Elimination of All Forms of Racial Discrimination. The Government should also begin work on the overdue periodic reports on the implementation of the International Covenant on Civil and Political Rights and on the Convention on the Rights of the Child.

74. The Special Representative received during his visit a parallel report prepared by the NGO Monitoring Committee on Economic, Social and Cultural Rights which presents a well-documented description of the situation, addresses the significant obstacles facing Cambodia in implementing the Covenant and provides helpful recommendations. The Special Representative commends this report to the Government and suggests that it consider integrating the report's recommendations into relevant reform and development plans. He also encourages the Government to engage in continuing dialogue with non-governmental and civil society groups in an effort to bring Cambodia's laws and practices into compliance with the provisions of the international human rights treaties.

III. CONCLUSION AND RECOMMENDATIONS

75. **The Special Representative urges donors and the Royal Government to adopt policies for economic development and poverty reduction that safeguard and take into full account the human rights of Cambodia's peoples, adopt a participatory approach and give a voice to the poor. A human rights-based approach to development implies policies based explicitly on human rights norms and values. The Special Representative stresses the need to focus on economic growth aimed at benefiting the entire population and, in particular, the poor. Thus far priority has been given to private sector economic growth without sufficient attention to respect for human rights and to equity. Cambodia needs human and sustainable development - human development, which means that the human person must be "the central subject of development",¹ and sustainable development, which "meets the needs of the present without compromising the ability of future generations to meet their own needs".² In the case of Cambodia these are by no means theoretical considerations, but very real concerns.**

76. **Cambodia has a vibrant community of NGOs. There is a need to narrow the communication gap between the Government and NGOs and civil society. The Royal Government of Cambodia should encourage the participation of NGOs and civil society in all reform efforts and lawmaking initiatives. Despite some positive indications in this direction, a liberal approach and a formalization of the process are required. The Special Representative also urges the donor community to support such increased communication to ensure meaningful consultations.**

A. Judicial reform

77. **Overall structural reform is essential for the judiciary. This requires the promulgation of the Law on the Status of Judges and Prosecutors, the Law on the Organization and Functioning of Adjudicate Courts and a thorough review of the Law on**

the Supreme Council of Magistracy. Amendment to the Law on Political Parties is required as a first step to distance judges and prosecutors from any political influence.

78. The Royal Government should create a separate fund for legal aid services to the poor. Efforts to establish a legal aid system through legislation must be made to provide access to justice for indigents.

79. The Royal Government should increase resources in the national budget to revamp the ailing judiciary and give it autonomy in both the allocation and use of resources.

80. The Royal Government should finalize a strategy document and action plan for legal and judicial reform as a matter of immediate priority. In order to give effect to a participatory lawmaking process the National Assembly and Senate should change their internal rules to entrench public hearing provisions and make public consultations a mandatory prerequisite. Considering the importance of the forthcoming draft Civil and Penal Codes, the Royal Government should initiate an extensive public consultation process in order to offer an adequate opportunity for public review and comment.

81. The Royal Government should consider establishing regional or peripatetic appeal courts.

82. A juvenile justice system should be established.

B. Mob killings

83. The Royal Government should establish an independent board of inquiry to assess why mob attacks occur and how to prevent them.

C. Prisons

84. The Royal Government should consider introducing non-custodial sentencing for minor and first time offenders as an alternative to imprisonment.

85. The Royal Government should make increased efforts to ensure separation of different categories of prisoners.

86. The Royal Government should ensure liberal access to prisons and inmates by lawyers, family members and human rights organizations, as has been the case in the past.

87. The Royal Government should pay increased attention to the problem of excessive pre-trial detention.

D. Elections

88. The Royal Government and the National Election Committee should ensure equitable access to State media and do their utmost to promote such access to non-State media, in particular the electronic media.

89. **The National Election Committee and the Cambodian judiciary should exercise their lawful duties to act firmly against those individuals responsible for violence, intimidation and other interferences with the free exercise of electoral rights or the proper functioning of the electoral process.**

E. Land and forestry issues

90. **The Royal Government should undertake a review of all land concession contracts and their implementation, and consider using its legal right to revoke contracts where the provisions of Cambodian law and the requirements of the contracts themselves have been violated.**

91. **The Royal Government should in a consultative manner develop and adopt the required sub-decree determining the procedures to reduce those land concessions exceeding 10,000 hectares and the specific exemptions to such reductions. No new land concessions should be granted until the sub-decree setting out the procedure for granting land concessions has been adopted.**

92. **The international community should ensure that development projects supported by them include provisions for meaningful and proper consultations with non-governmental organizations and the affected population.**

F. Housing in relocation areas

93. **The Royal Government and local authorities should take adequate measures to alleviate the problems of security, poor water, sanitation, and health and education facilities associated with landlessness. Its policies and practices should be guided by the Relocation Guidelines of August 2001.**

G. Trafficking in human beings

94. **The Royal Government should continue to combat trafficking in human beings by properly educating law enforcement officers and by strengthening the implementation of the law.**

95. **The judiciary should provide appropriate remedies for trafficked persons, who must be recognized as victims. The Royal Government should prosecute all offenders up to the highest level of the trafficking chain.**

H. Asylum-seekers

96. **The Royal Government is urged to fully uphold its obligations under the 1951 Convention relating to the Status of Refugees, paying particular attention to the core principle of non-refoulement.**

97. **The Royal Government should ensure that there are no further acts of intimidation against people who have legally assisted asylum-seekers.**

I. Reporting obligations

98. **The Royal Government should honour its treaty reporting obligations in a timely and substantial manner. Recommendations issued by treaty-monitoring bodies should be carefully considered to strengthen implementation of the human rights treaties Cambodia has ratified.**

Notes

¹ Declaration on the Right to Development, General Assembly resolution 41/128, annex, article 2, paragraph 1.

² Our Common Future. Report of the World Commission on Environment and Development (The Brundtland Commission), Oxford University Press, 1987.
