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

Situation of human rights in Cambodia

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

Summary

The Special Representative conducted his eleventh mission to Cambodia from 7 to 14 November 2004. He continues to appreciate the freedom with which he can carry out his mandate, the open dialogue he has with government representatives and the support he receives from the non-governmental sector and the international community.

A new Government, a coalition between the Cambodian People's Party and the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia, was established in July 2004 after a political deadlock that lasted almost a year. The new Government was formed following an unconstitutional process, and the Special Representative has a number of concerns regarding the future of the democratic and pluralistic political system in Cambodia.

The Special Representative remains especially concerned about the continuing problem of impunity, which has become systemic and which must be repudiated and ended. Impunity has allowed accountability to be avoided through acts that have served vested interests and that have suppressed and weakened voices questioning existing policies and practices. Individuals and groups responsible for committing serious violations of human rights, in particular members of the military, the police, the gendarmerie and other armed forces, have not been arrested or prosecuted. It has become increasingly clear that impunity is not only the result of low capacity within law enforcement institutions and a weak judiciary. Impunity has also undermined progress in the social and economic development of Cambodia for the benefit of the majority of its people.

Cambodia has yet to develop neutral State institutions, checks on executive power, and the means to enforce rights that are guaranteed in the law and the Constitution. The judiciary does not and cannot act in an independent and impartial manner when faced with the interests of those with economic and political power and influence. It has continued to be subject to executive interference and open to corruption, and human rights problems have gone unchecked. Efforts to reform the judiciary over the past decade have been ineffectual in achieving significant improvements in the administration of justice, although institutions involved in planning processes and training in the justice sector have shown some welcome advances during the past year. Progress in the justice sector will not occur without the political support that is needed from the highest levels of Government.

In October 2004, the National Assembly and the Senate passed the law approving ratification of the Agreement between the United Nations and the Government of Cambodia to set up Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the period of Democratic Kampuchea, and amended the 2001 Law on the Establishment of the Extraordinary Chambers. Problems of budget and funding have hampered progress and must be overcome as a matter of urgency. Cambodia's people need to understand what happened and to see justice done. It will also be important to maximize the potential for the trials to have positive long-term consequences for Cambodia's legal system and for the administration of justice in Cambodia today.

The Special Representative continues to be concerned about restrictions on freedom of assembly and association that have routinely been imposed since the anti-Thai riots in January 2003. Over 30 requests to hold peaceful gatherings were refused by the Municipality of

Phnom Penh alone over this period of time, often in an arbitrary manner, and sometimes without any reasons given. There are also indications that restrictions on assembly, association and movement are increasingly being applied in other parts of Cambodia in violation of the Constitution and the International Covenant on Civil and Political Rights.

During his eleventh mission, the Special Representative released a report on land concessions for economic purposes from a human rights perspective. From the research carried out for this report, it is clear that the concession system has failed and needs to be reconsidered. The system has led to violations of the human rights of local populations, while the Cambodian people as a whole has not benefited from the system which has raised no significant revenue for the State. The Special Representative was encouraged by the opening speech of the Prime Minister at the National Land Forum on 18 October 2004, and by agreements reached at the meeting between donors and the Government in December. He attaches particular importance to the full disclosure of information about all concessions. The military development zone system requires particular attention. Efforts to reduce poverty in rural Cambodia will be difficult without such information.

The Special Representative is encouraged by initiatives taken by non-governmental organizations and the Municipality of Phnom Penh to promote a human rights-based approach to urban development. However, forced evictions in Phnom Penh and elsewhere remain a matter of concern.

Endemic corruption remains a recurring obstacle in establishing the rule of law and in achieving economic and social development. In September 2004, the Prime Minister announced a “war on corruption” in response to warnings from international financial and development agencies. This should be followed by concrete steps, for example, Cambodia should become party to the United Nations Convention against Corruption and pass and implement an anti-corruption law in accordance with international best practices embodied in the Convention.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1	5
I. ELEVENTH MISSION OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA	2 - 3	5
II. MAJOR DEVELOPMENTS AND HUMAN RIGHTS ISSUES OF CONCERN	4 - 74	5
A. Political developments	4 - 9	5
B. Systemic human rights violations and impunity	10 - 19	7
C. Justice sector and the rule of law	20 - 33	9
D. Khmer Rouge trials	34 - 36	12
E. Fundamental freedoms	37 - 41	12
F. Land and management of natural resources	42 - 57	14
G. Housing rights	58 - 60	16
H. Corruption and transparency	61 - 68	17
I. International treaty obligations	69 - 74	18
III. CONCLUDING REMARKS	75 - 77	19
IV. RECOMMENDATIONS	78 - 107	20
A. Democratic institutions	79 - 81	20
B. Systemic human rights violations and impunity	82 - 86	20
C. Justice sector and the rule of law	87 - 88	21
D. Fundamental freedoms	89 - 92	21
E. Land and management of natural resources	93 - 100	22
F. Housing rights	101	22
G. Corruption and transparency	102 - 104	22
H. International treaty obligations	105 - 107	23

Introduction

1. The present report is submitted in accordance with resolution 2004/79 of the Commission on Human Rights. This is the current Special Representative's fifth report to the Commission. It builds upon the Special Representative's earlier reports to the Commission and the General Assembly. The approach and methodology remain as described in the earlier reports.

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

2. During his eleventh visit to Cambodia from 7 to 14 November 2004, the Special Representative paid particular attention to the management of land and natural resources, the continuing problem of impunity, and to corruption. He had discussions concerning the general political climate following the creation of a new Government in July 2004, and examined issues of justice sector reform, the freedoms of association and assembly, indigenous land rights and issues relating to the trials of senior Khmer Rouge leaders. He reiterated his recommendation for the establishment of an independent commission to investigate the phenomenon of mob killings. The Special Representative released a report on land concessions for economic purposes from a human rights perspective at the end of his mission and called for full disclosure of information concerning all concessions in Cambodia.

3. The Special Representative was granted an audience with His Majesty King Norodom Sihamoni. He met the Prime Minister, the Co-Ministers of the Interior, the Minister of Justice and the Minister of Land Management, the political opposition, the judiciary and the police. Meetings were also held with representatives of trade unions, indigenous peoples, the Cambodian Bar Association, non-governmental and civil society organizations, the media, diplomatic missions, the United Nations Country Team and multilateral and bilateral development and donor agencies. He also met with citizens who reported violations of their human rights. He visited, in the company of representatives of the Governor of Phnom Penh, the former Hamacheat theatre in the centre of the capital where over 100 families live in unacceptable and inhumane conditions.

II. MAJOR DEVELOPMENTS AND HUMAN RIGHTS ISSUES OF CONCERN

A. Political developments

4. A new coalition Government was established in Cambodia on 15 July 2004 comprising the Cambodian People's Party (CPP) and the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC). The Government was established following amendments to the Constitution by elected members of the National Assembly who had yet to take office that required them to vote on government positions and the new Assembly's leadership simultaneously by show of hands, instead of separately and through secret ballot as previously required.

5. The new Government has approximately twice as many members as the previous one and includes positions for 7 deputy prime ministers, 15 senior ministers, 28 ministers and 135 secretaries of State. This may well give Cambodia by far the biggest Cabinet in the

world. In addition, 146 under-secretaries of State were appointed. It has also been agreed that additional CPP and FUNCINPEC governors will be appointed in each province, municipality and district of the country.

6. On 6 October 2004 King Norodom Sihanouk abdicated. After the new parliament passed a Law on the Throne Council, Norodom Sihamoni, the son of Norodom Sihanouk, was selected King on 14 October. A coronation ceremony was held on 29 October.

7. In addition to that it took almost a year to form a new Government following the National Assembly elections of July 2003, and that this was done through an unconstitutional and controversial process. At the time of writing there are a number of other reasons to be concerned about the future of the democratic and pluralistic political system in Cambodia. The two ruling parties have reached an agreement that ignores the constitutional requirement to hold Senate elections during 2005, and have instead decided that they will directly appoint the members of the Senate. Village chiefs have not been selected by the Commune Councils, as provided for in the Law on Commune Administration of 2001. Instead, a formula is under discussion whereby 70 per cent of the chiefs will be appointed by CPP and 30 per cent by FUNCINPEC. The sole opposition party in parliament, the Sam Rainsy Party, has not been granted any seats on the National Assembly commissions and is therefore excluded from the potentially important reviews of draft legislation taking place in these commissions. Requests from the judiciary and the Ministry of Justice to lift the immunity of three opposition members of parliament are currently awaiting a vote at the National Assembly. The Prime Minister also accused the Sam Rainsy Party on 18 July, three days after the formation of the new Government, of organizing a secret armed force. Military intelligence and law enforcement officials have since been compiling names of alleged members of this force. At the time of writing, the Military Court has brought charges against one party member. Others have been summoned to the court for questioning, and some have gone into hiding. Few have given any credibility to the allegations, and senior CPP government officials have publicly declared that the authorities have found no evidence of an armed force being created.

8. One of the main results of political developments of the last months seems to be a growing concentration of power in the hands of Prime Minister Hun Sen and an increasingly autocratic form of government.

9. Reports released by international financial and development agencies during the past year have shown that international development assistance to Cambodia has not led to the improvements that were hoped for, and express concern about the outlook for the future unless significant reform is undertaken. Despite a decade of impressive economic growth, 6.7 per cent per annum between 1994 and 2002, and a considerable influx of aid, no significant progress has been made in reducing poverty. The growth rate could, according to the International Monetary Fund, fall to below 2 per cent during 2005, and only recover gradually provided that Cambodia presses ahead with reforms. Economic growth has largely been confined to urban areas, while rural growth has barely kept pace with the increase in population. Most of the population is clustered around the poverty line. It is estimated that between 40 and 45 per cent of the population subsists below this level. Average per capita consumption by all strata of the population fell between 1993/94 and 1999 from 2,260 to 1,800 riel per day. The number of public medical establishments at commune level was reported to have declined by 2000 to 68 per cent of the level in 1989. Owing to malnutrition, 45 per cent of all children are

moderately stunted and 21 per cent severely stunted. The infant mortality rate is the highest in East and South-East Asia and is today higher than it was a decade ago. Only 37 per cent of the adult population is functionally literate.

B. Systemic human rights violations and impunity

10. The Special Representative regards impunity as one of Cambodia's most serious problems. It is a major obstacle to efforts to safeguard and secure respect for human rights in Cambodia and to create conditions for their full realization. The Government over the past decade has been repeatedly urged to take effective and urgent measures to address this problem by the General Assembly and the Commission on Human Rights, Special Representatives of the Secretary-General for human rights in Cambodia, the expert bodies responsible for overseeing Cambodia's compliance with international human rights treaties, and by other institutions and organizations. However, little or no progress has been seen.

11. Under international law, Cambodia is obliged to thoroughly investigate serious violations of human rights, to prosecute those responsible and, if their guilt is established, to punish them. This means that all victims should be in a position to assert their rights and receive a fair and effective remedy, ensuring that those responsible stand trial and that victims obtain reparations.

12. During his mission, the Special Representative shared his concerns about impunity with the Prime Minister and with senior government officials and inquired into the status of 178 cases of serious violations of human rights which had been raised by Special Representatives and the Cambodia Office of the High Commissioner for Human Rights since 1994 and which were transmitted again to relevant government ministers in February 2004. He received a response which, at the time of writing, is being assessed.

13. Cases that illustrate a consistent and continuing pattern of impunity include the cases of the Secretary of State, Ho Sok, who was murdered inside the compound of the Ministry of the Interior in Phnom Penh on 7 July 1997, and the death of a young man named Prak Sitha inside the same Ministry on 16 January 2003, following beatings by a known police officer. No one has been held to account for these crimes. Nor has anyone been convicted for eight murders of journalists and the many other violent attacks against media representatives that have occurred over the past decade, or for the murders of two trade union leaders and the assaults on other labour union activists during 2004. OHCHR/Cambodia has since 2000 documented the murder of 43 persons in attacks on known political activists in which a political motive is suspected. In a majority of these cases no one has been convicted and imprisoned. In many cases where suspects have been brought to trial, there are concerns about the conduct of the investigations and prosecutions, denial of minimum fair trial standards, and questions about the actual culpability of those convicted. In others where, for example, only short or suspended sentences have been handed down, the adequacy of the punishment is in question. The past decade has also seen many instances of harassment and violence against human rights defenders who document and report on violations of human rights.

14. It has become increasingly clear that impunity is not only the result of low capacity within law enforcement institutions and of a weak judiciary. By upholding a system under which selected institutions and individuals have been allowed to breach the law and violate human rights without being held to account, those with economic and political power have been

able to obtain personal enrichment and maintain vested interests. Impunity has allowed accountability to be avoided through acts that suppress and weaken voices that question existing policies and practices, whether they be those of political activists, members of trade unions, journalists, or citizens advocating for human rights.

15. The Special Representative's analysis of patterns and cases of violations of human rights over the last decade shows that human rights violations have often not been carried out at the direct behest of key power holders, but that they have been condoned to maintain vested interests. Thus, members of the armed forces, police, and others have routinely not been arrested or prosecuted even when suspicions and evidence have been well known to the authorities and the general public.

16. In cases in which State institutions have acted contrary to vested interests, representatives of these institutions have been subjected to violence and intimidation. During the past decade, Special Representatives have for instance publicly raised their concerns about 18 attacks on members of the judiciary. The involvement of military or police has been recorded in a majority of these cases. The most recent incident occurred on 8 November 2004, when a grenade was thrown into the home of the prosecutor of the Kratie provincial court. It is imperative that a thorough investigation be conducted into this case, even if no one was injured in the attack.

17. The regular occurrence of torture and other cruel, inhuman or degrading treatment or punishment over the last decade has been well documented in places of detention, but as far as the Special Representative is aware, only one person has been convicted and imprisoned as a consequence of such acts since 1993. It is unlikely that technical assistance and capacity-building efforts directed at law enforcement institutions and the judiciary will produce the results expected by donors unless this pattern of impunity is broken, and political decisions are made to address the problem. The current situation in which government officials and other influential individuals have been free to break the law without being held to account has also caused grave lack of faith among the general public in law enforcement institutions and the judiciary.

18. One indication of this is the continuing problem of mob violence. OHCHR/Cambodia documented the killing of 26 persons by mobs in 2004. During his mission, the Special Representative was informed by the Director-General of the National Police that the police had documented 30 mob killings during the year. As far as the Special Representative is aware, no one has been prosecuted in connection with these killings. Over the past five years, well over 100 persons have lost their lives due to such violence, and many others have been seriously injured. In a number of cases, law enforcement officials have instigated crowds to attack individuals suspected of theft or robbery. Since 2002, the Special Representative has on several occasions recommended that an independent board of inquiry comprised of responsible representatives from political parties, NGOs and religious organizations be established to examine this problem and to inquire into police and prosecutorial conduct. The Special Representative hopes that this recommendation will be taken up by the new Government.

19. The Special Representative is also of the view that systemic impunity has resulted in the distorted allocation of economic resources, further perpetuating poverty. It has undermined the legal predictability and trust in the rule of law that are needed for investors, has deprived the State of revenue that is needed to deliver public services, and has damaged Cambodia's

credibility and competitiveness in a global market. If there is to be significant and sustainable economic and social progress, and if efforts to end and reduce poverty are to be successful, impunity and collusion with it must be repudiated and ended.

C. Justice sector and the rule of law

20. The past year has seen a growing realization among donor and development agencies that mechanisms for accountability have yet to be put in place and that the rule of law remains elusive. Cambodia has still to develop neutral State institutions, checks on executive power, and the means to enforce rights that are guaranteed in the law and the Constitution. Many of the failures are neither accidental nor the result of neglect or incompetence. The judiciary has provided “legal” legitimacy to abuses of power, arbitrary decision-making, and exonerating those responsible for serious human rights violations.

21. As is the case with many post-conflict peace-building efforts undertaken in recent years, establishing the rule of law has been a priority for donors and development agencies in Cambodia. Yet efforts have been piecemeal and ineffectual in achieving real improvement in the administration of justice in the form of improved access to justice or the development of a judiciary that is independent, impartial and free from corruption. The past decade has seen the continuation of executive control over the judiciary and other key legal institutions, and interventions have been undertaken without a sound diagnosis and understanding of the underlying problems and obstacles to reform. A principal obstacle to establishing judicial independence is that the courts have continued to function as an arm of the executive, a practice that characterized the administration of justice in Cambodia in the 1980s, and has become deeply entrenched. The 1990s also brought many opportunities for corruption with market liberalization. Again, capacity-building and technical solutions alone will not resolve these problems.

22. A number of cases in 2004 have illustrated these continuing problems. A case that exemplifies the problem of impunity and the role of the judiciary is that of trade union leader Chea Vichea who was shot dead in a contract-style killing in central Phnom Penh on the morning of 22 January 2004. On 19 March 2004, investigating judge Heng Thirth of the Phnom Penh Municipal Court ordered the release for lack of evidence of two men who had been arrested for the murder.

23. According to reliable reports, his order went against explicit instructions from a senior government official to forward the case to trial. The prosecutor appealed the order. On 22 March, the Supreme Council of the Magistracy instituted disciplinary action against the judge, on grounds unrelated to the case. The judge was transferred to the distant province of Stung Treng in July. On 8 July the Special Representative released a statement in which he expressed concern about the many irregularities that have characterized the investigation and prosecution of this case. He also raised his concerns with senior government officials during his mission. The suspects remain in pre-trial detention in excess of the six-month maximum allowed under Cambodian law pending further investigation.

24. The widely held perception in Cambodia that the courts are corrupt and that there is no equality before the law was borne out by two cases in the Phnom Penh court in March 2004.

The trial and sentencing of Nhim Sophea, a nephew of the Prime Minister, is an example of how the courts operate in favour of the privileged and well connected. Whilst not wishing to pronounce any judgement on the guilt or innocence of this individual, justice was not seen to be done in this case, and court proceedings were undertaken in contravention of Cambodian and international human rights law. The accused was identified by witnesses as the person who opened fire on a crowd following a traffic accident in October 2003. Two people were killed and four were wounded. The accused was charged with voluntary manslaughter. The court at first instance provided no advance notice that the case would be heard on 11 March, and the trial was held in camera. Relatives of the victims were paid sums on the order of \$8,000 and did not testify before the court. Another person, who has not been apprehended by the police, was held responsible and sentenced in absentia. Nhim Sophea received a sentence of 18 months in prison after charges against him were reduced to involuntary manslaughter. On 26 August, during another in camera hearing in the Court of Appeal, all charges against the accused were dismissed. The prosecutor did not appeal the case, despite the clear breaches of international and Cambodian law that had occurred. By way of contrast, the case following that of Nhim Sophea in the Phnom Penh court that same day was the trial of Kul Vinlay, a man charged with stealing 2,700 riel (\$0.65). He was sentenced to four years in prison after his mother was unable to pay the \$1,000 that had been sought in exchange for his release.

25. In such circumstances, it is hardly surprising that recent studies confirm earlier surveys that the courts constitute the State institution in which the Cambodian population has least confidence. The Special Representative has shared his concerns on several occasions with the Prime Minister and other senior government officials, urging an end to discriminatory practices by the courts, and hopes that the reform process will address these problems.

26. A strong and independent legal profession is key to safeguarding and upholding human rights and to reform of the legal system. Unfortunately, there have been moves to interfere with the independence of the Bar Association. Senior government officials have in recent years made substantial private donations to the Association. The Prime Minister, two Deputy Prime Ministers and a Secretary of State in the Ministry of the Interior were admitted as members of the Association in September 2004, and obtained licences to practise law, although none has the requisite professional qualifications and legal practice. Their admission has fuelled claims that the Association is partisan, not independent, and arbitrary in its admission practices.

27. In a move that some have interpreted as a reaction to this erosion of independence, Bar Association members elected a lawyer and advocate from civil society to the presidency of the Bar on 16 October 2004. The outcome of the election was challenged by supporters of the former President. The Court of Appeal held a hearing in camera on 19 November, and ordered that the former President was to hold office for three months during which he is to prepare a new election, although the decision does not stipulate that he must actually hold an election. The Bar Council, in a statement supported by a majority of its members, announced on 24 November that it is not responsible for any decision or activity undertaken by the former President on behalf of the Bar Association, and does not recognize the decision of the Court of Appeal.

28. In June 2002, donors and the Government agreed that key components for reforming the justice sector would be in place by October 2002, and that visible actions would be immediately taken to fight corruption. Reported cases of corruption would be immediately investigated and prosecuted within the existing legal framework, and an anti-corruption law would be submitted

to the National Assembly by 30 June 2003. To date, only one of the five benchmarks agreed upon at the June 2002 Consultative Group meeting has been met. A strategy document for legal and judicial reform was adopted by the Council of Ministers on 30 June 2003, along with a draft action plan, both of which the Special Representative has addressed in previous reports.

29. Those institutions involved in planning processes and training in the justice sector have shown some welcome advances during the reporting period. The work of the Project Management Unit of the Permanent Coordination Body, the secretariat for the Council for Legal and Judicial Reform, has seen a marked improvement in efficiency and has adopted a consultative process.

30. During the meeting of the Consultative Group for Cambodia held in Phnom Penh in December 2004, the Government and donors agreed that the Council of Ministers as a matter of urgency should adopt and submit to the National Assembly a Criminal Code, a Criminal Procedure Code, a Civil Code, a Civil Procedure Code, a Law on the Organization and Functioning of the Courts, a Law on the Amendment of the Law on the Supreme Council of the Magistracy and a Law on the Status of Judges and Prosecutors. They also agreed that all these laws should be prepared through a satisfactory participatory process, and be consistent with the Constitution and international best practice, as reflected in international human rights treaties and in instruments such as the Basic Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors. The Special Representative hopes that priority will be given to these essential laws in 2005 and that they will accord with the provisions of the international human rights treaties by which Cambodia is bound.

31. The schools for lawyers and for judges and prosecutors have progressed in their work. The first intake of students in the latter will complete their training in 2005, and will be ready to be appointed. The school holds promise for producing technically competent judges who are independent, committed to being guardians of the rule of law and resisting executive interference and corruption. However, this promise has been clouded by allegations of corruption and executive interference in the admission process.

32. There can be little progress in the justice sector unless political decisions for delivering reform are made at the highest levels of Government. The situation in many ways remains as elusive as when the Special Representative first took up his appointment in August 2000. Progress will be evident when Cambodia's courts can rule in accordance with the law without fear of reprisals and politically motivated disciplinary action, and when they begin to treat all citizens as equal before the law. Corruption in the judicial system must be challenged and the separation of powers must be respected.

33. The Special Representative is supportive of the approach of some donor agencies and Governments focusing on the demand side of legal and judicial reform, particularly on legal aid and legal literacy programmes for the poor and disadvantaged populations. Relevant initiatives include legal education, helping local communities to understand their legal rights, and assisting them and their representatives to have the means and knowledge to advocate for their rights and to document and publicize violations when they occur. The Special Representative is also supportive of research to inform policy development in this sector, for example research into the impact of alternative dispute resolution mechanisms at local level on access to justice, the impact

of Cambodia's decentralization policy on conflict resolution and access to justice at commune level, and the interface between the formal and informal justice sectors.

D. Khmer Rouge trials

34. Progress was limited in 2004 in preparations for the trials to try those most responsible for crimes committed during the period of Democratic Kampuchea. This was due in part to the political deadlock. On 4 October 2004, the National Assembly unanimously passed the law approving ratification of the Agreement between the United Nations and the Government of Cambodia to set up the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the period of Democratic Kampuchea, and adopted amendments to bring the 2001 law which established the Chambers into compliance with the Agreement. The laws were promulgated on 27 October following approval by the Senate.

35. Much of the discussion over the past year focused on budget issues following the visit to Phnom Penh in March 2004 of the Coordinator of the United Nations Assistance to the Khmer Rouge Trials, during which a projected budget of around \$60 million was prepared. Since then, some Member States have sought significant cuts in the proposed budget. The Secretary-General's report to the General Assembly (A/59/432 and Add.1) provides details about resource requirements and mobilization and outlines the next steps to be taken. At the time of writing, the United Nations Task Force has just concluded another visit to Phnom Penh, but a report is not yet available.

36. The Special Representative urges donor Governments to quickly provide the necessary funds once agreement on the budget has been reached so that the Extraordinary Chambers can be established and the trials proceed. The trials are not a foreign imposition on Cambodia. As the Special Representative has stated before, many, if not most Cambodians, want these trials as a means of establishing and acknowledging the crimes against humanity that were committed during the Khmer Rouge period, and of understanding why they occurred. Efforts must also be made to maximize the potential for the trials to have positive long-term consequences for the legal system and the administration of justice in Cambodia today.

E. Fundamental freedoms

37. The Special Representative remains concerned about restrictions on freedom of assembly and association that have been routinely imposed since the anti-Thai riots in January 2003, except during the formal one-month campaign period for the National Assembly elections in 2003. He is aware of over 30 cases of requests to hold peaceful gatherings being refused by the Municipality of Phnom Penh alone over this period of time, often in an arbitrary manner, and sometimes without any reasons given, in breach of the Law on Demonstrations. The police allowed two of these unauthorized gatherings to proceed. The others were either prevented from forming or forcibly dispersed. Freedom of assembly was also interfered with in other ways, such as through the intimidation of demonstrators or those providing venues for gatherings. There are worrying indications that the freedoms of assembly, association and movement are increasingly being restricted throughout Cambodia.

38. While some provisions of the Law on Demonstrations are arguably unconstitutional since they contravene the rights to freedom of assembly and demonstration, of equal concern is that

the authorities have often breached provisions of the Law or applied it in a way that breaches constitutionally protected rights. At times, the reasons that have been invoked are not those permitted under the Law, and at others there has been no objective evidence to justify the cited reason. More understanding is needed of the fact that in most other countries which require the authorities to be notified in advance, the purpose is not to request permission to demonstrate per se, but rather to provide for a process of negotiation over, for example, the time and route of gatherings in public places. Restrictions have also been imposed arbitrarily. A procession for peace conducted by 10 monks was not authorized to proceed as a threat to public order and security, nor was a demonstration against domestic violence by victims of such violence. However, a demonstration by a pro-Government group, the Pagoda Children, Intelligentsia and Student Association, which has been linked to previous acts of violence, was authorized to proceed.

39. Until the 1991 Law on Demonstrations is redrafted to comply with Cambodia's Constitution and its obligations under the International Covenant on Civil and Political Rights, the Special Representative urges the authorities to read the current law in conformity with protected constitutional rights and permitted exceptions; to clearly and explicitly provide the relevant reasons, as required by the law, and to base those reasons on fact. Restrictions on freedom of assembly are prohibited except where they are imposed in conformity with the law; for limited purposes such as national security or public order; are proportionate in achieving the relevant purpose; and are "necessary in a democratic society".

40. As the Special Representative has urged in previous reports and during his missions to Cambodia, law enforcement authorities must act in a responsible and professional manner at all times in the case of gatherings that proceed without authorization. If absolutely necessary, such gatherings may be dispersed, but without excessive force. The amount of force must be reasonable, in proportion to the threat posed, be used in a way that minimizes damage or injury to persons and property, and must only be used as a last resort. The authorities continued to use excessive force in 2004 to disperse demonstrations. In several cases, police beat demonstrators with rubber or electric batons, resulting in injuries to participants and sometimes to police. It is striking that in a majority of the cases, violence only occurred after the police interfered in the demonstration, and that the demonstrators were not engaging in any acts of violence or criminality.

41. The Special Representative notes with concern several cases where villagers travelling to attend gatherings in other provinces to discuss and exchange ideas on issues such as the environment and land have been stopped by the police and returned to their province of origin. He also notes that the Governor of Ratanakiri province in July announced that all non-governmental associations must receive approval from provincial authorities before they can leave the province. The right to move freely relates to the whole territory of a State. None of the restrictions of which the Special Representative is aware accorded with law, nor were they necessary in a democratic society. They appeared instead to be aimed at restricting the freedoms of movement, expression and association. These are not freedoms that are simply to be "tolerated" by the authorities; they are rights that must be upheld and be capable of enforcement.

F. Land and management of natural resources

42. In November 2004, the Special Representative released, on the basis of research carried out by OHCHR/Cambodia, a report on land concessions for economic purposes from a human rights perspective. The report examined the impact of these concessions, their contribution to overall State revenue, and the impact they have on the human rights and livelihoods of the people living in or near land under concession. The Special Representative hopes that the report and its recommendations will contribute to a better understanding of the issues and will help to bring about the changes in policy and practice that are necessary for the sake of Cambodia, its rural poor, and for future generations.

43. According to information obtained from the Ministry of Agriculture in February 2003, the Council of Ministers had approved 40 economic land concessions covering 809,296 hectares, or over 4 per cent of Cambodia's territory. These concessions are granted for commercial agricultural exploitation and give concessionaires rights similar to those of an owner, except the right to alienate the land. The maximum duration of a concession is 99 years, although most concessions granted thus far have been limited to 70 years. The maximum permitted size under the Land Law of 2001 is 10,000 hectares. Concessions granted before the Law came into force and that exceed this size are to be reduced to 10,000 hectares, although exemptions are possible.

44. A sub-decree of the Land Law on land concessions for social purposes was adopted in March 2003, defining the criteria, procedures and mechanisms for granting land concessions for residential use and subsistence cultivation. The aim is to convert areas excised from economic land concessions to concessions for social purposes. However, much of the State private land suitable for social concessions is currently conceded for agricultural and other purposes.

45. The required sub-decree on procedures for granting economic land concessions, and for the reduction and specific exemptions of concessions over 10,000 hectares is therefore urgent and long overdue. As concessions should be granted only on the private property of the State and not on "State public property", which is inalienable, the sub-decree relating to the classification of "State public property" and State private property is also urgently needed.

46. During his mission, the Special Representative met with representatives of Cambodia's indigenous peoples. He is increasingly concerned that they are ever more vulnerable to land confiscation and the legal alienation of their land, including through the granting of economic land concessions. The process of identifying indigenous peoples and demarcating their lands has been far too slow. Although the Ministry of Land Management is undertaking pilot studies to support the drafting of the sub-decree for collective titling, there is mounting concern that there will be little land left to title by the time the sub-decree is drafted and titling begins. The sub-decree must be adopted promptly and the titling process for indigenous community property must be completed before any new concessions are granted.

47. The Special Representative is of the view that the concession policy has failed and needs to be reconsidered. It has shown no regard for the welfare and human rights of the people concerned, has not contributed to poverty reduction and has led to a plundering of natural resources. Recurring problems include a lack of consultation with local populations; failure to undertake required environmental impact assessments; denial of traditional land use rights and access to non-timber forest products; displacement of people from their homes and farmland; the

loss of traditional livelihoods in favour of the generation of a few low-paid jobs; conflicts between companies and local people; and intimidation by armed security guards, sometimes members of the Royal Cambodian Armed Forces. The Cambodian people as a whole have not benefited as no significant revenue by way of rental fees, deposits or taxes has been raised. In practice, concessions have been granted rent-free in breach of article 51 of the Land Law. Apart from land speculation, it appears that the main profits for the concessionaires have come from clearing trees. Considerable parts of the concessions have been allocated on good forested land, and the Special Representative has concluded that they provide a means of avoiding the more stringent regulations that exist for forest management.

48. The Government has also acted in breach of the Law in other areas. Three months after the adoption of the Land Law in November 2003, for example, it signed a contract with Green Sea Industrial Co. Ltd. for a teak plantation in the province of Stung Treng covering an area more than 10 times the maximum 10,000 hectares permitted. Another concession granted to the Green Rich Company in Koh Kong and located within the boundaries of the Botum Sakor National Park is in contravention of several legal provisions.

49. Companies have also acted in breach of the Land Law and their contracts. In many cases, they have not, as required by the Land Law, started any planting activities within 12 months of the granting of the concession. In some cases they have cultivated crops other than those stipulated in their contracts. In one case, timber theft and royalty evasion have been documented. Although the Land Law provides that an economic concession is revocable through government decision when its legal requirements are not complied with, no signed contracts have been cancelled, according to the available information.

50. The Law on Environmental Protection and Natural Resource Management requires the conduct of environmental impact assessments. In none of the concessions studied by OHCHR/Cambodia have such assessments been undertaken. Social impact assessments are not yet required for economic concessions. This is regrettable and ought to be changed.

51. As in other areas of government activity, the granting of economic land concessions and the concession system in general are surrounded by secrecy. Even the most basic information such as contracts, maps, and the identity of the individual shareholders is not readily available to the public. Nor does the Government regularly disclose revenue gains from concessions.

52. The Special Representative welcomes the Prime Minister's speech of 18 October 2004, in which he announced that the granting of further contracts for economic land concessions would be suspended until the necessary legislation is in place and effective. The Prime Minister also asked the authorities to review existing contracts, and stressed that land should be distributed to the poor who need it for their subsistence. The Special Representative hopes that these reforms will be implemented without delay.

53. The Special Representative publicly deplored a grenade attack that occurred at the end of his eleventh mission on the night of 13 November 2004 against villagers from Pursat and Kompong Chhnang provinces protesting against renewed activities on a concession of 138,963 hectares granted for planting eucalyptus trees in January 2000 to Pheapimex Co. Ltd. in Pursat province. He asked for a thorough investigation and appealed to the authorities to listen to the people and to be responsive to their concerns. At the time of writing, no one has

been arrested for the attack, in which eight villagers were injured. Instead, local authorities and law enforcement officials have repeatedly harassed representatives of villagers living in the concession area, and NGOs working with the communities have also received threats.

54. The Special Representative is increasingly troubled by the plight of Cambodia's rural populations in general, and the growing difficulties of access to the land and natural resources they depend on for their subsistence and livelihoods. He is especially concerned at disputes over land and natural resources which have resulted in violence and harassment against villagers, such as in Snuol district of Kratie province where villagers were threatened and physically assaulted by soldiers in November and December 2004; and in Battambang province where villagers were arrested and prosecuted in late 2004 after starting to harvest the rice they had planted on land they had occupied since the 1980s which became the subject of dispute after soldiers took it over in the late 1990s and sold it to new landowners.

55. As the Special Representative stated in his report on economic land concessions, after the mistakes of the past decade, there is no panacea. However, the Government, donors and international financial institutions are beginning to question the concession development model, and the Ministry of Land Management is attempting to address some of the problems, with donor assistance, through the Land Management and Administration Project. A complementary project, "Land allocation for social and economic development", is to be initiated once basic elements are in place. Commitments have been made to ensure local government involvement, social and environmental impact assessments, open bidding, performance reporting, external monitoring and State revenue generation. These commitments must be met.

56. At the meeting of the Consultative Group for Cambodia in December, agreements were reached on measures to improve rural livelihoods. The immediate public disclosure of existing contracts and the compliance status of contracts governing economic land concessions, mining concessions and fishing lots, and continued disclosure of the status of review of forest concessions are particularly important, as is disclosure of the location and legal status of and process for termination of mining concessions, Military Development Zones, economic land concessions and other development arrangements situated on forest land or in protected areas and inconsistent with law governing management of these areas.

57. If urgent measures are not taken to address the poor management and administration of land and other natural resources in Cambodia, the Special Representative is of the view that further conflicts over these resources can be expected and might ultimately become a threat to political stability.

G. Housing rights

58. Although some progress has been made in urban areas, especially in Phnom Penh, the Special Representative is concerned about a number of trends, including disputes involving private developers, orders of forced evictions based on interim injunctions before the final decision of the court, and the negative side effects of the rapid development of cities and infrastructures such as bridges and roads. They represent a threat for many poor families who may be at risk of being forcibly evicted or resettled without fair and just compensation. In rural areas, tourism, development of roads, building of dams and migration of lowlanders to remote areas impact negatively on the housing rights of the rural poor and vulnerable groups, such as

indigenous peoples. Violations of the law are frequent, and no adequate accountability mechanisms are in place.

59. The Special Representative strongly disapproves of the violent forced evictions of 46 families on 9 January 2004 and of 237 families on 31 August 2004 conducted in Phnom Penh. He is also concerned about violent forced evictions in other urban areas, such as in Poipet in late August and September 2004. He welcomes the establishment in January 2004 of a Housing Rights Task Force by housing and human rights groups to prevent housing rights violations and forced evictions, especially in Phnom Penh. He also welcomes the “Declaration of principles for best practices in housing and pro-poor development in Cambodia: promoting a rights-based approach to urban development” prepared by the Housing Rights Task Force together with the Municipality of Phnom Penh. He hopes that the Government will fully support this constructive initiative.

60. During his eleventh mission, the Special Representative, with the United Nations Resident Coordinator and a representative of the Municipality of Phnom Penh, visited the former Hamacheat theatre where more than 100 families live, known as the “Hamacheat Community”. The majority has been living in the building for more than 20 years under conditions that are inhumane and unacceptable. The Special Representative hopes that government officials will find an adequate and sustainable solution for these families in the near future, with the help of donor and development agencies.

H. Corruption and transparency

61. Endemic corruption remains a recurring obstacle to progress in both establishing the rule of law and economic development, and has been highlighted in a number of recent reports and surveys. Together, they draw a disturbing picture of corrupt practices at every level of society and a corruption-ridden State apparatus, one in which there is a significant discrepancy between the private agendas of public officials and their formal public functions, and where advantage has been taken of the economic opportunities and benefits distributed by the State. Corruption results in the unequal allocation of public resources, exacerbating existing inequalities, and undermines the realization of a range of human rights.

62. In September, the Prime Minister announced a “war on corruption”. Attacking the roots of corruption will require addressing the failures of accountability described earlier, and commitment to implementing a comprehensive, multifaceted strategy.

63. One way in which the Government can demonstrate its commitment is to implement the benchmarks agreed to at the Consultative Group meeting in June 2002 which were reiterated as priority monitoring indicators at the meeting in December 2004. First is the prosecution of reported cases of corruption, which is possible under the existing law. However, in the two and a half years that have elapsed since the 2002 benchmarks were set, no successful prosecution of corruption or bribery has been brought under the existing criminal law, with a sentence enforced. This includes two cases of fraud involving funds and resources from the World Bank and the World Food Programme.

64. The second is the passage of robust anti-corruption legislation that has now been on the agenda for a decade. The draft anti-corruption law currently with the Council of Ministers falls

well short of international best practice embodied in the United Nations Convention against Corruption. It is also poorly drafted, and there are several questions about its internal coherence as a legal text, compounding the familiar problems of implementation and enforcement of law in Cambodia. The Special Representative urges the Government to work with donor assistance to bring the draft into line with international standards, in full consultation with the people of Cambodia, and to enact the law and commit resources to its implementation.

65. The present draft proposes the establishment of an anti-corruption commission. The track record for similar bodies in other countries is poor, and the conditions under which they succeed are demanding for a country with weak institutions. If the commission is to work, it will need members of outstanding integrity and independence, and an adequate budget. Consideration should be given to methods of strengthening independence as well as to the establishment of an advisory committee, composed of civil society and members of the public, that will scrutinize the commission's work and lead to increased public confidence in its operations.

66. Cambodia would be well advised to become party to the United Nations Convention against Corruption, now signed by over 100 countries, including the bulk of members of the Association of South-East Asian Nations (ASEAN) States. States parties are bound by the Convention to provide specific forms of mutual legal assistance in gathering and transferring evidence for use in court and to extradite offenders, as well as to undertake measures that will support the tracing, freezing, seizure and confiscation of the proceeds of corruption. Other Convention provisions are particularly useful to combat instances of corruption involving very large amounts of money.

67. Legal interventions are only part of the picture. The Convention calls on countries to actively promote the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it. A comprehensive approach will also require enacting and implementing freedom of information legislation to facilitate more transparent and accountable government, financial institution regulation, accounting standards, procedures for public tendering, especially public procurement contracts and procedures, and other such interventions.

68. As the Special Representative has stated in previous reports, information held by public authorities cannot be accessed through clear institutional mechanisms, and is instead customarily accessed through personal contacts. Public officials are meant to serve, and are accountable to, the public. Information held by public authorities is not acquired for the benefit of officials or politicians but for the public as a whole. Access to information must be seen as the basis for citizens to participate effectively in formulating and implementing government policy and for informed public debate about the actions of Government. The agreements reached at the Consultative Group meeting in December include a list of actions by which Government's commitment to transparency of information held by public authorities can be gauged.

I. International treaty obligations

69. It is of utmost importance that Cambodia meet its obligations under the international treaties to which it is party. The reporting process and the recommendations of the treaty bodies should be viewed as providing valuable assistance in incorporating treaty provisions into

Cambodia's laws and practices, and in overcoming obstacles that impede compliance. The Special Representative again urges the Government to engage more fully in these processes, to promote a national dialogue, and to disseminate, implement and monitor the recommendations of treaty bodies and their concluding observations. In 2003, the Committee against Torture issued a set of clear recommendations designed to end practices of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel in police stations and prisons. These should be taken up as a priority by the new Government.

70. Cambodia eventually submitted its initial report under Convention on the Elimination of All Forms of Discrimination against Women on 30 January 2004. The Special Representative hopes that the Committee on the Elimination of Discrimination against Women will give consideration of this report priority and that the dialogue that is established will help to improve the status and situation of Cambodia's women, who continue to meet discrimination and extreme difficulties in every walk of life.

71. This past year saw little progress in finalizing the initial report under the International Covenant on Economic, Social and Cultural Rights due 10 years ago on 30 June 1994. The Special Representative urges the Government to give this report the greatest priority, all the more so in light of the disappointing progress that has been made by the Government and donor agencies in reducing poverty over the past decade. Periodic reports under other treaties are also long overdue.

72. The Special Representative welcomes Cambodia's signature of the Optional Protocol to the International Covenant on Civil and Political Rights on 27 September 2004, and urges its speedy ratification.

73. The Special Representative issued a public statement in May 2004 urging the Government to comply with its obligations under the 1951 Convention on the Status of Refugees and its 1967 Protocol. He was especially concerned about reports according to which law enforcement and security forces were involved in serious breaches of Cambodia's international obligations under the Convention, including the forcible deportation of asylum-seekers from the central highlands of Viet Nam, collectively known as Montagnards.

74. The situation in Cambodia today offers dim prospect of establishing a national human commission which would be genuinely independent and conform to the Paris Principles. First priority must be given to making the treaty reporting process work, and to strengthening existing national institutions, particularly the judiciary.

III. CONCLUDING REMARKS

75. The Cambodian people have gone through a long - too long - period of terrible suffering. The principal aim of the Government and the international community must be to heal their wounds and to reduce their suffering. Since the beginning of his mandate, it has been the Special Representative's ambition to contribute to the realization of this aim.

76. Unfortunately, Cambodian society is still suffering from the four basic evils the Special Representative identified at the beginning of his mandate, namely, poverty, violence, corruption and lawlessness. At the time, Prime Minister Hun Sen agreed with this analysis. The Special

Representative notes with regret that not only in the more than 4 years of his tenure, but in the more than 10 years of strong involvement by the international community, Cambodia has not made more significant progress to overcome these four evils and, in particular, that poverty has not been reduced for the majority of the Cambodian people. He deplores the fact that Cambodia has not progressed further on the road to pluralistic democracy, rule of law and respect for human rights. What we are witnessing at present does not seem to demonstrate progress towards these goals, but an increasingly autocratic form of government and growing concentration of power in the hands of the Prime Minister behind a shaky façade of democracy.

77. The Cambodian authorities and civil society as well as the international community and donors should seriously analyse developments since the Paris Peace Agreement and the reasons for success and failure. This analysis would be an essential basis for drawing lessons from the past for the future. There are reasons to believe that it will show that the corrupt and opaque power structures, inequality before the law, impunity, collusion and lack of transparency and accountability are among the main obstacles in the way of genuine democracy, rule of law and respect for human rights - all human rights for all Cambodians. These obstacles must be tackled and overcome. Otherwise, liberation from fear and liberation from want, proclaimed in the preamble to the Universal Declaration of Human Rights, will remain a perpetually unfulfilled promise for the people of Cambodia.

IV. RECOMMENDATIONS

78. **The Special Representative has made wide-ranging and detailed recommendations in his previous reports to the Commission on Human Rights and the General Assembly, many of which he finds it necessary to reiterate since the problems that they were meant to address remain. Some of the recommendations below respond to concerns that arose during his eleventh mission.**

A. Democratic institutions

79. **The Commune Councils should be allowed to select village chiefs as provided for in article 30 of the Law on Commune Administration. The required Instruction on Formalities and Procedures for Selection of Village Chiefs should be urgently issued by the Ministry of the Interior.**

80. **The constitutional provision regarding Senate elections should be respected.**

81. **The National Assembly should ensure that parliamentarians from the opposition party are given seats in the Assembly's nine commissions.**

B. Systemic human rights violations and impunity

82. **The Government must take urgent measures to ensure that past and present violations of human rights are investigated thoroughly and without undue interference, and that those responsible for such violations are brought to justice.**

83. The international community should insist on the conduct of thorough, impartial and credible investigations into the most serious violations of human rights, and the prosecution of those responsible. The murder of trade union leader Chea Vichea in January 2004 is a case in point.

84. International organizations, Governments and donor agencies should encourage and support activities that raise awareness of the nature and specifics of the problem of impunity and help promote a dialogue with the Government to end it.

85. International organizations and donor agencies should more fully support local organizations working to defend human rights to enable them to fulfil their duties in accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

86. An independent board of inquiry, comprised of responsible representatives from political parties, NGOs and religious organizations, should be established to examine all acts of mob violence, why these attacks occur and how to prevent them, and to scrutinize police and prosecutorial conduct in these attacks. This body should have the power to recommend criminal or disciplinary measures.

C. Justice sector and the rule of law

87. The Government should take immediate steps to end executive interference in the affairs of the judiciary and the Supreme Council of the Magistracy.

88. In order to provide effective support to reform of the justice sector, donor agencies need more fully to take into account the political complexities that have so far rendered most interventions in this field ineffectual.

D. Fundamental freedoms

89. The Government should take immediate steps to ensure respect throughout Cambodia for the rights under the Constitution and international law to the freedoms of expression, association, assembly and to non-violent demonstration.

90. Until the Law on Demonstrations is redrafted to comply with Cambodia's treaty obligations, the authorities should read the current law in conformity with protected constitutional rights and article 21 of the International Covenant on Civil and Political Rights.

91. The Government should instruct provincial and local authorities to respect freedom of movement and to end the practice of requiring citizens and groups to obtain approval before travelling.

92. The Government should ensure that law enforcement officials disperse demonstrations and other gatherings only if absolutely necessary. In such cases, force should be used as a last resort, must always be reasonable, in proportion to the threat posed, and minimize damage or injury to persons and property.

E. Land and management of natural resources

93. **The Government must fully disclose information on all concessions, including contracts and maps, and information about concession companies and their shareholders.**

94. **The Government should cancel contracts where concessionaires have committed serious contractual breaches or breaches of the law, and ensure that all contracts comply with the law.**

95. **Alternative forms of agricultural development for the benefit of Cambodia's rural populations should be pursued. The system of land concessions for economic purposes needs to be reconsidered.**

96. **The sub-decree of the 2001 Land Law relating to the classification of "State public property" and "State private property" must be adopted promptly and such classification undertaken.**

97. **The Government should expedite the adoption of the sub-decree on procedures for granting and reducing land concessions for economic purposes. Any exemptions to the 10,000-hectare limit established in the Land Law should be narrowly defined.**

98. **The titling process for indigenous community property must be completed before any new concessions are granted. The sub-decree which will facilitate the titling process must be adopted promptly. The Government should regularly disclose revenues gained from concessions, including disaggregated data.**

99. **Concessionaires should provide sustainable management plans and comply with the mandatory environmental impact assessment process. The Government should make social impact assessments mandatory.**

100. **Company security guards and militias on concessions and rubber plantations should be disarmed, in compliance with the regulations in force.**

F. Housing rights

101. **The Government should end forced evictions and approve and implement the "Declaration of principles for best practices in housing and pro-poor development in Cambodia" developed by the Housing Rights Task Force in collaboration with the Municipality of Phnom Penh.**

G. Corruption and transparency

102. **The Government should ensure that reported cases of corruption are thoroughly investigated and prosecuted within existing law. Data should be collected to enable monitoring of progress.**

103. **The draft Law against Corruption should be the subject of full public consultation and comply with the provisions of the United Nations Convention against Corruption. Cambodia should take immediate steps to become party to the Convention.**

104. **The Government should prepare, through a consultative process, a law on freedom of information and ensure its adoption and implementation.**

H. International treaty obligations

105. **The Government should ensure that Cambodia meets its obligations under the international human rights treaties to which it is a party and implement the recommendations made by the international treaty bodies.**

106. **Cambodia should ratify the Optional Protocol to the International Covenant on Civil and Political Rights, which it signed on 27 September 2004.**

107. **Cambodia should become party to Indigenous and Tribal Peoples Convention, 1989 (No. 169) the most comprehensive instrument of international law that protects the rights of indigenous and tribal peoples.**
