

UNITED NATIONS



HIGH COMMISSIONER FOR HUMAN RIGHTS

Grenade attack in Phnom Penh

30 March 1997

and

Extrajudicial executions

2-7 July 1997

An assessment of the investigations

Geneva, 13 May 1998

Table of contents

	Paragraph	Page
A. Background.....	1-4	3
B. Terms of reference.....	5-13	4
C. Modern Cambodia and the political events leading up to 1997.....	14	6
D. Grenade attack - 30 March 1997.....	15-19	7
E. Assassination of Ho Sok.....	20-21	10
F. Other cases of extrajudicial executions...	22-24	12
G. Judicial administration.....	25-30	14
H. Impunity.....	31	16
I. Conclusion.....	32	16

Annexes

Annex A List of meetings of the United Nations experts

**REPORT OF THE TWO EXPERTS IN CRIMINAL INVESTIGATIONS
ON THE RESULTS OF THEIR MISSION TO CAMBODIA**

A. Background

1. On 30 March 1997, unidentified men carried out a grenade attack on a peaceful political demonstration in Phnom Penh. At least 16 people were killed and over 100 were injured. The Government set up a Commission of Inquiry, which is headed by the Director-General of the National Police. The Special Representative of the Secretary-General for Human Rights in Cambodia has held discussions with the Commission on the progress of its work, and has reported on the incident to the UN Commission on Human Rights and the General Assembly.

2. On 22 August 1997, the Special Representative submitted a memorandum to the Royal Government of Cambodia providing evidence of summary executions, and torture and listing persons missing since the events of 2-7 July 1997. The purpose of the memorandum was to provide useful information to assist the Government in conducting serious and thorough investigations. The Special Representative has also reported to the United Nations General Assembly and the Commission on Human Rights on the events.

3. On a number of occasions since then, the Government has pledged itself to carry out full investigations into both the grenade attack and the cases documented in the August memorandum, and to bring the perpetrators to justice. Nevertheless, the Government has also pointed out, most recently during the visit of the High Commissioner for Human Rights in January 1998, the difficulties it faces in conducting such investigations. The Government therefore welcomed the offer of the High Commissioner to assist the investigation processes through international expertise. Two experts were appointed to assess progress made in the investigations and to clarify needs for further assistance.

4. The two experts are Mr. Arun Bhagat, former Director of the Indian Intelligence Bureau and Professor Peter T. Burns, Q.C., from Canada, who is a member of the United Nations Committee Against Torture.

B. Terms of Reference

5. The Experts=terms of reference pursuant to their agreement with the United Nations High Commissioner for Human Rights are:

The experts will explore with the relevant Cambodian authorities the measures which have so far been taken and those which are planned to investigate (i) the grenade attack of 30 March 1997 in Phnom Penh, and (ii) the executions and other human rights violations reported by the Special Representative in his August 1997 memorandum. The experts will assist the Government to determine what may be needed to improve the quality of these investigations and to bring them to a conclusion. In addition, it will identify whether any additional international assistance may be required to support the Government in meetings its objective of bringing the perpetrators to justice.

6. The methodology of the Experts included analysis of the various reports and other pertinent material supplied by the Cambodia Office of the High Commissioner for Human Rights, consultation with members of that office, members of branches of the Royal Cambodian government and its various departments and non-governmental organizations. A meeting with Mr. Sam Rainsy, the leader of an opposition political party and the apparent target of the March 30, 1997 grenade attack, was also held.

7. The mission involved the Experts= presence in Cambodia from 18 to 25 April 1998.

8. During their meeting with Mr. Uch Kim An, the Secretary of State in the Ministry of Foreign Affairs, the Secretary welcomed the Mission whole-heartedly. He said that his Government was very keen to avail of this assistance in investigation and it was eagerly awaiting the report of the FBI investigations. He further said that the Police Forces of Cambodia, the Judiciary and the Prosecution Branch were handicapped due to continuous strife which the country had experienced over the last 20 years. Trained and educated personnel were not available and the Government had perforce to continue with the present staff until such time as educated candidates were available. The Government of Cambodia was keen for all the assistance they could get. He pointed out that the visit of the experts was rather short and perhaps they should visit for a longer period. The Government wanted the elections to be held in a peaceful manner and he would personally see that the meetings proposed for us materialized. It was however not possible to meet important officials like the Minister for Defence, the co-Minister of Interior, the Director of the National Police, and the Director of the Criminal Department of the Police who was out of the country.

9. A full list of persons with whom meetings occurred is contained in Annex AA≅ of this report.

10. For the purposes of our enquiry we have adopted as a starting point the description of the 30 March 1997 Grenade Attack in Front of the National Assembly, prepared for the Office of the United Nations for Human Rights in Cambodia as an internal document, dated 31 August 1997. We were also referred to the so-called F.B.I. Report on those events, but given its lack of authenticity we felt unable to use it as a primary source.

11. We also adopted the findings of fact contained in the Memorandum to the Royal Government of Cambodia Relating to Evidence of Summary Executions, Torture and Missing Persons Since

2-7 July 1997, dated 21 August 1997 by the Cambodia Office of the United Nations Centre for Human Rights, forwarded to the Royal Cambodian Government by the Special Representative of the United Nations Secretary General for Human Rights in Cambodia, Thomas Hammarberg, by letter dated 22 August 1997. We were not unmindful of the fact that one of the persons listed as killed had been wrongly identified in the memorandum (his name had been confused with that of his brother).

12. In his report to the Commission on Human Rights concerning the situation in Cambodia, see E/CN.4/1998/95, dated February 1998, Thomas Hammarberg, the Special Representative of the United Nations Secretary General for Human Rights in Cambodia, stated at paragraph 26 that he welcomed the Government of Cambodia's acceptance of an international expert to provide advisory assistance to its investigation and prosecution process.

13. The experts are pleased to advise that they were given access to most of the political, military, police and judicial personnel that they requested. This revealed willingness by the Royal Cambodian Government to cooperate with the experts' mission that was underscored by the fact that in many cases little notice of their requests for meetings was able to be given.

C. Modern Cambodia and the political events leading up to 1997

14. Although the Constitution of the Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights Art. 31, this appears to be very often honoured in the breach rather than otherwise.

D. Grenade attack - 30 March 1997

15. The grenade attack on 30 March 1997 was discussed in some

detail with Maj. Gen. Teng Savong, Deputy General Director of the National Police, who is assisting Gen. Hok Lundi, Chairman of the Commission of Investigation appointed by the Government to investigate the incident of the grenade attack.

16 The police account was that their investigations had found that fourteen¹ persons had died in the grenade attack and 142 persons had received injuries. The demonstration was authorised and legal. During the investigations, which had been conducted along with F.B.I. agents, only one witness had stated that one of the suspects had been chased up to the area in front of Watt Botum where the bodyguards of the second Prime Minister had been deployed. There were many civilian houses there, and, after the incident, many people were running about. During their investigations, the authorities had not been able to identify any of the culprits. It had also not been possible to establish that one culprit had been allowed to enter Watt Botum by the Second Prime Ministers bodyguards. This witness had been taken to the spot, but nothing was clear. The bodyguards had also been examined in groups. Individual interviews had also been undertaken. The bodyguards of the second Prime Minister had denied that they had allowed anyone to go through their lines. From the investigations it had been determined that 4 grenades had been thrown and, therefore, there had to be 3 or 4 culprits. They suspected that the grenades which had been used were the M-07 delay fragmentation grenade which was being used by the United States Armed Forces. The Cambodian Military to whom a reference had been made had not given any reply as yet about the identity of the grenades. Similarly, the F.B.I. who had been asked to examine the fragments had not given them any report. Investigations had revealed that it was a usual practice for the bodyguards to be deployed in the manner as they had been deployed on the 30 March 1997. Although Mr. Sam Rainsy could not recall such heavily armed military personnel at any of the 4 previous

1 . There is a difference of facts on this point. The Special Representative reports that at least 16 died either

demonstrations that he had led . The bodyguards of the second Prime Minister had prior information about the demonstrations and, therefore, their deployment had been ordered. Only 15 bodyguards had been deployed and they could not be blamed or held responsible as the area they were covering was not narrow. It was possible that some people had entered the Pagoda. The Commission of Investigation had invited the attendance of the Commander and the Deputy Commander and other personnel of the bodyguard units in order to examine them. They had said that they were informed about the demonstration and the deployment had been ordered for the protection of Watt Botum. The investigations had taken into consideration the possible/likely motives for the attacks - (i) whether it was political, (ii) whether it was due to individual animosity, (iii) whether the Khmer Rouge was responsible. The Khmer Nation Party split into two parts prior to the incident of the grenade attack and there was considerable dissension within the party. The sketch of the culprits made by the F.B.I. experts resembled one Brasil who had been involved in criminal activities. The police claimed that it had not been possible for the investigators to interrogate Brasil Kong Samreth because he had been given shelter by Nhiek Bun Chhay and despite efforts could not be traced or arrested. No arrests had been made in the case. Brasil had been hired before to kill Sam Rainsy. It was not known who had hired Brasil to do so. No other suspect had come up. They would welcome the assistance of the F.B.I. again and were also awaiting the report of the investigations which had been conducted by the F.B.I.

17. Sam Rainsy, the President of the Khmer Nation Party now the Sam Rainsy Party , believed that the grenade attack was targeted at him. Earlier attempts to assassinate him had also been made, he said and conspiracies had been hatched to discredit him in the past. In this instance he believed that a conspiracy had been hatched 6 days before the incident and 8 persons had been

immediately or later as a consequence of injuries.

involved. They had operated in 4 groups of 2 each. Four of them had thrown the grenades. Thoeun, Chhay Vy, Chum Bunthooun, Hing Bun Hoang and Hing Pirth were among those believed to be involved in the grenade attack. Five of the eight according to information with the K.N.P. had since been killed. All the injured and witnesses had not been examined. No compensation had been paid to the injured or the families of those killed.

18. For successful investigation of a crime, it is necessary to pursue all angles and multiple lines of enquiry. As the incident took place in broad day-light in an open area in a public place between 3 roads on which traffic was constantly moving, a vigorous and detailed examination of those who were present in the area or had passed through the area would provide useful clues. Another positive factor which would be of help in working out this case is the large number of photographs and video recordings. More than half-a-dozen photographers were present. The size of the demonstration from all accounts appears to have been between 150-175. As the venue is a frequently visited public place, there were many vendors and spectators present. The total number of people present in and around the place of the demonstration would have been about 200. Out of this number, as many as 14 16 were killed and 142 injured. A close scrutiny of the photographs and the video tapes would enable the investigators to eliminate those who were not involved. The identities of the others should be able to be established.

19. The culprits, as the investigations have shown, would be at least 4-5 in number. They, at the time of the attack, would have positioned themselves on the fringes of the crowd. They would have moved about earlier in the crowd to determine the position of their targets. The normal distance which a grenade can be lobbed is 30-35 yards. The investigating team had succeeded in recovering pins and had marked the places on the map of the scene of the crime. The lever of the grenade which sets off the detonator detaches itself after the grenade has been lobbed. It

is not clear whether the 4 levers were also reconvened from the scene of the crime or not. The position/place in which they had been found would indicate the place from where the grenades were lobbed. For successful lobbing of the grenades, the culprits would have required adequate space. They would therefore, have positioned themselves behind the crowd. Because of the constant movement on the roads as well as in the park, it is unlikely that no one saw the actual act of lobbing of the grenades. The information available with the K.N.P. requires to be pursued and followed up thoroughly. The assistance and help of the injured and the families of the deceased needs to be taken. A determined and purposeful investigation on these lines would certainly yield results. The examination of the Police officers posted at the venue as well as the members of the bodyguard of the second Prime Minister if conducted properly and thoroughly would, no doubt furnish vital clues. Despite the handicaps of lack of forensic training and experience in investigation as professed, a more determined and comprehensive approach would have yielded results by now.

E. Assassination of Ho Sok

20. The second case which was discussed in some detail with the concerned officers was the assassination of Mr. Ho Sok, Secretary of State in the Ministry of Interior, on 7 July 1997. This case was discussed with Gen. Luy Savun, who was assisted by Gen. Van Rotha, Lt. Col. Mao Dara and Col. Ten Borany. It was revealed by the police that Mr. Ho Sok was taken into custody on 7 July 1997 from the Crown Road, Phnom Penh by 4 personnel of the Serious Criminal Department of the National Police at about 4 p.m.. Lt. Col. Mao Dara headed this squad and all the officers were in plain clothes at the time of the arrest. The colonel revealed that he had been instructed to take Ho Sok into custody and had brought him to the Ministry of Interior in Phnom Penh. He then contacted his seniors who had given him instructions to arrest Ho Sok, to determine further action which needed to be taken, as

there was no case against Ho Sok and he had not been charged with any offence. Ho Sok was made to sit in a room on the ground floor of the Ministry of Interior which houses among other departments, the Central Department of the Judicial Police. The room opens onto the lobby of the main entrance to the building. Two plain-clothes unarmed policemen were in the room with Mr. Ho Sok when one person in military OG camouflage uniform with a red stripe on his shoulder/collar entered the room at about 5 p.m. and shot him with an AK-47 rifle. At that point Col. Mao Dara was outside the building along with his superior Brig. Tong Lim and another General. The assailant had shouted at Ho Sok that he was responsible for killing his relatives. The door of the room was closed, but had not been bolted. About 50-60 military soldiers were outside the building at that time. The assailants after shooting Ho Sok ran away by jumping over the perimeter wall. Thereafter, the scientific unit (Forensic Team) was called and they had inspected the scene of crime and recovered empty cartridges and a spent bullet. The team had come at about 8 p.m. and made an inspection according to procedure. There were five bullet wounds on the body. The Medical Officer had also carried out an examination of the body. No post-mortem was, however, conducted and the medical examination had been carried out in the room itself. Thereafter, Col. Mao Dara of the Serious Criminal Department left the scene and he could not say what happened to the body. Gen. Tong. Lee had given instructions about the disposal of the body. When asked about notification to the family members, we were informed that none of the family members were available or traceable. There had been a lot of fighting going on that day and only 3 policemen were present in the Ministry of Interior at that time and the rest were military personnel. No arrests had been made. The investigation of the case was, however, continuing. Ho Sok was in a car which belonged to an NGO when he was taken into custody. From the investigations, they had not been able to identify either the culprit or the military unit to which he belonged. The two policemen who were in the room at the time of the murder of Ho Sok were very frightened and shocked

and were not in a position to give a cogent description of the accused. On that day, both Military and Police personnel were wearing OG uniforms, as there was a lot of fighting going on.

21. Investigation in this case apparently has not been conducted with the vigour it deserves. It should have been possible for the investigators to determine the unit of the military which was deployed on that day in the Ministry of Interior. In all likelihood, the assailant belonged to the unit itself. Once the unit is identified, forensic evidence would render it possible to identify the weapon which was used to kill Ho Sok as 3 empty cases were recovered from the scene and one spent bullet was also recovered from the scene. The investigation has not gone into the suspicious circumstances of the cremation of the body of Ho Sok which by one account was undertaken by soldiers in uniform at about 3 a.m. in a Phnom Penh Pagoda. Death and cremation certificates are reported to have been issued but this line of investigation has not been pursued. The death certificate was irregularly issued after the cremation. The failure of the policemen and the soldiers present to chase the killer has not been explained as the nearest perimeter wall is about 200 to 250 meters away.

F. Other cases of extrajudicial executions

22. Apart from the execution of Mr. Ho Sok, Secretary of State, Ministry of Interior, 40 other instances of extrajudicial executions had been brought to the notice of the Government of Cambodia by the Special Representative of the United Nations Secretary General for Human Rights on 22 August 1997. In most of the cases, the Security forces, particularly the Army, were alleged to have been involved. In this connection, discussions were held with senior Police officers as well as officials of the Gendarmerie, the Public Prosecution Branch and the Military Prosecutor. From the discussions, it became clear that none of these cases had been seriously investigated or were being

seriously investigated. The military prosecutor clearly stated that while his branch had the jurisdiction, it could not act without the orders of the General Staff. No orders had been received. Efforts had been made by the military Prosecution Branch to obtain a list of all the military personnel who had been killed in the incidents of July 1997. They had, however, not succeeded in obtaining the particulars. The Military Prosecutor=s office had also not received any complaint from any family member of those killed. In case a complaint was received, the Military Prosecutor=s Branch would certainly have investigated the same. There was, however, one incident of a pilot of helicopter being forced to fly the helicopter by some soldiers to a particular place, whereafter, the pilot had been killed. This incident had been investigated by the Military Prosecutor=s Branch and the offenders had been subjected to trial.

23. The Public Prosecution Branch officials were clear that their Branch had jurisdiction over all cases involving Military personnel who had committed penal offenses. However, they had, themselves not investigated any of the cases cited by the Special Representative of the United Nations Secretary General in his August 1997 Memorandum. The Honourable Minister of the Interior, however, was of the view that all offenses involving Military personnel came under the jurisdiction of the Military Prosecutor and he alone was responsible for such investigation and prosecution. This, however, was not the preponderant view.

24. From the enquiries made, it became clear that none of the 42 cases have been seriously investigated or even at all. The Government of Cambodia had given assurances from time to time about conducting investigations of these cases.

G. Judicial administration

25. Under the Constitution of the Kingdom of Cambodia (Chapter III) there are elaborate provisions for the Fundamental Rights of Khmer citizens. Under Chapter IX, Article 109, it is stipulated that the Judicial power shall be an independent power and the Judiciary shall guarantee and uphold impartially and protect the rights and freedoms of the citizens and shall cover all lawsuits, including administrative ones. Under Article 110, trials are to be conducted in accordance with the legal procedures and laws in force. Article 112 provides that only the Department of Public Prosecution shall have the rights to file criminal suits. Articles 114 and 115 bestows disciplinary powers over the Justice Department on the Supreme Council of the Magistracy, which is to assist the Head of the State i.e. the King. While the foundations and the framework have been laid down in the Constitution, detailed laws and regulations to assist and guide the functioning of the courts and the investigating agencies have still to be put in place. A new Criminal Procedure Code and the Penal Code have been drafted, but the Bills have yet to be submitted to and passed by the Assembly. The Evidence Act has yet to be framed. Similarly, there are no rules and regulations or Acts for the functioning of the Police and the Judiciary. These Regulations/Acts are necessary so that the authority and powers, responsibility for supervision, inspection, command & control are clearly laid down. In the absence of these vital instruments, there are large grey areas, which are adversely affecting the dispensation of justice.

26. Most of the officials whom we met as well as members of the public deplored the fact that the personnel manning the Judiciary, the Public Prosecution, the Police and other agencies lacked in education, training, skills and expertise. While the handicap of having properly qualified persons in these important departments of Justice can only be solved by new entrants who would be properly educated, training can even now be usefully imparted to the officials presently employed in these branches. Refresher and short-term courses devised to increase their

knowledge of the working procedures, improve their understanding and skills, levels of motivation and commitment are strongly recommended.

27. The Judicial Police, which was introduced a few years ago, is required to function under the Chief Prosecutor of the Court of Appeals. However, as the postings to the Judicial Police as well as the Disciplinary Authority is made by the Head of the National Police, the Prosecutors under whom they are functioning, cannot fully assert their authority. In order that the purpose of setting up of the Judicial Police under the Prosecutors is fully met changes in command and control needs to be seriously considered.

28. As in the case of the Judiciary and the Police, there is need for a separate Act for the three branches of the Armed Forces. Through the new legislation, the powers and authority of the officials could be clearly set out. Offenses would need to be defined and punishments prescribed. The functions and the jurisdiction of the Military Prosecutor=s Branch and Military Courts and Tribunals could also be covered in this Act.

29. In the Kingdom, apart from the National Police, investigations are also carried out by the Judicial Police, the Military Judicial Police and the Gendarmerie. Clear cut demarcation of jurisdiction and responsibility has, however, not been made. The responsibilities of the controlling Ministries of Justice, Interior and Defence needs to be clearly laid down for the proper and efficient working of the criminal justice system.

30. These Handicaps notwithstanding, the existing system itself is capable of dispensing objective justice, provided it functions independently and realises its inherent authority and responsibility. The rule of law cannot prevail unless the judiciary and its two arms - the Prosecution and the

investigating agencies - can work without hindrance and influence. From the various interactions we had with officials and others, it is clear that the Judiciary, the Public Prosecutor=s Branch and the Police have not been displaying the functional independence which is required of them by the Constitution of the country.

H. Impunity

31. The United Nations experts were struck by the fact that political homicide engendered no serious attempts at investigation and resolution of the two incidents with which they were concerned. Instead, a culture of impunity for such crimes seems deeply imbedded in the institutions of governance in Cambodia. Only if the will to remedy this condition is manifested at the highest levels of government is it likely to change.

I. Conclusion

32. Serious human rights violations had been duly brought to the notice of the Government of Cambodia by the United Nations Secretary General=s special Representative in August 1997. A number of meetings were held by the Special Representative with members of the Council of Ministers and senior officials of the Government, wherein the need to conduct expeditious and thorough investigations was stressed. Positive assurances were conveyed of the decision and intent of the Government of Cambodia to do so. Yet of the serious incidents which had been reported to the Government we found that investigations have been attempted only in two. No arrests have been made in either of the 2 cases. A suspect has been identified in the grave grenade attack on a peaceful demonstration organised by a recognised political party in which several persons lost their lives and 142 received injuries. The investigations in both the cases show a lack of vigour and determination. Many areas of enquiry have been overlooked. None of the several Prosecuting and investigating

agencies in the country has taken cognizance of incidents which were reported to the Government by the Special Representative. Whereas the Public Prosecutor's Branch admittedly has jurisdiction over the cases in the Memorandum they have not taken any steps to register and investigate them. No cogent reason for this failure was forthcoming. Rule of law and dispensation of justice is possible if there is sincerity of purpose and a determination to implement the laws. The processes of law have to move on their own volition and not depend on orders or instructions from Ministries. The Ministries of Justice and the Interior should only exercise administrative control. Working and operational freedom has to be given to the Public Prosecutor and the National Police to establish the Rule of Law in the country. Very specific and sincere efforts are required to fulfill the assurances enshrined in the Cambodia Constitution. These efforts must of necessity emanate from the highest sources of Cambodian governmental authority.

Annex A List of meetings of the United Nations Experts
(20-24 April 1998)

20/4/98

- Briefings at the Office of the High Commissioner for Human Rights
- Director, LICADHO
- H.E. Uch Kim An, Secretary of State for Foreign Affairs
- H.E. Kenneth Quinn, US Ambassador to Cambodia
- Mr. Sam Rainsy, President of Sam Rainsy Party

21/4/98

- Gen. Yeng Marady, Deputy General Director of the National Police
- Director, ADHOC

22/4/98

- Mr. Luy Savon, Director of the Central Department of the Judiciary Police
- H.E. Gordon Longmuir, Ambassador of Canada
- General Teng Savong, Deputy General Director of the National Police

23/4/98

- H.E. Sar Kheng, Deputy Prime Minister and co-Minister of Interior
- Gen. Sao Sokha, Deputy Commander of the Royal Gendarmerie
- Mr. Chheng Phat, Prosecutor of Kandal Province
- Mr. Ith Rady, Deputy Director of the Department of Personnel and Training of the Ministry of Justice and Permanent

Secretary of the Committee for the preparation of Human
Rights Reports to the UN

24/4/98

- Gen. Sao Sok, Military Prosecutor
- Mr. Thomas Hammarberg, Special Representative
- Mr. Henrot Raken, Prosecutor General to the Appeals Court