



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Consideration of reports submitted by States parties under
article 19 of the Convention**

**Second periodic report of States parties due in 1997; the present report
is submitted in response to the list of issues (CAT/C/KHM/Q/2)
transmitted to the State party pursuant to the optional reporting
procedure (A/62/44, paras. 23 and 24)**

CAMBODIA* **

[29 October 2009]

* For the initial report of Cambodia, see CAT/C/21/Add.5; for its consideration, see CAT/C/SR.548 and 589 and CAT/C/67/Add.7.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Article 1

Question 1. With reference to the previous conclusions and recommendations of the Committee, has the definition of torture contained in article 1 of the Convention been incorporated into Cambodian law and in particular into the new Penal Procedure Code and the draft penal code of Cambodia? When is the draft penal code expected to be adopted?

1. Neither the Penal Procedure Code nor the draft Penal Code have defined the term “torture”, since the Kingdom of Cambodia has recognized and abides by the principles of international conventions as set out in article 31 of the Constitution. Furthermore, the criminal laws of the Kingdom of Cambodia recognize, and are implemented in compliance with the basic principles of international law, which the Kingdom of Cambodia has ratified as set in article 9 of the draft Criminal Code.

2. The Kingdom of Cambodia has included torture as a criminal offence in the draft Penal Code, in order to prosecute those who commit torture and cruel acts. The penalty is a minimum seven years and a maximum 30 years imprisonment based on the situation, circumstances, and the nature of the offences.

3. The new draft Penal Code has already been submitted to the National Assembly and will be adopted and promulgated in the near future.

Question 2. Please provide information on the status of the drafting and adoption of the following laws: Organic Law on the Organization and Functioning of Courts; Law on Amendment of the Supreme Council of Magistracy; Law on the Status of Judges and Prosecutors and Law on Anti-Corruption.

4. The Organic Law on the Organization and Functioning of the Courts; the Amendment to the Law on the Supreme Council of Magistracy; the Law on the Status of Judges and Prosecutors; and the Law on Anti-Corruption, are still under examination, consideration and consultation [within the Council of Ministers].

Article 2

Question 3. Under the new Penal Procedure Code, please provide information on the rights of persons detained in police custody, in particular their right of access to a counsel and to a doctor of choice, to be informed of their rights and to inform their family promptly about their detention. Under the new Penal Procedure Code, how long may a person be held in police custody? Please, provide information on the human and financial resources made available to ensure the adequate enforcement of the new Penal Procedure Code.

5. Under the new Penal Procedure Code, persons detained in police custody have prioritized rights as follows:

- To request consultations with the lawyer and anyone who he/she has chosen, within 24 hours after the detention
- To request health examinations by a doctor
- In cases where the person detained is a minor, judicial police shall inform the parents, legal representative or guardians of his/her detainment
- The suspect may be detained for a maximum of 48 hours in judicial police custody. In important matters, the judicial police may request an extension of the detention

period for an additional 24 hours, in accordance with the approval of the competent prosecutor

6. To ensure affective implementation of this new Penal Procedure Code, the Royal Government of Cambodia has assigned a budget to the Ministry of Justice for dissemination and training.

(a) *Dissemination*

- Disseminated in the form of explanation, clarification of the context and the essence of each provision through television and radio
- Conducted outreach training programmes in the provinces and municipalities and in the capital with the participation of civil officials, especially, judges, prosecutors and court clerks from all entities in the provinces and the capital

(b) *Training*

- The Ministry of Justice has conducted training courses for law enforcement officials, including judges, prosecutors and judicial police in the six separate regions throughout the Kingdom of Cambodia

7. The Royal Academy for Judicial Professions has also concurrently conducted training courses for the judges and prosecutors around the country.

8. The Royal Academy for National Police has also conducted training courses on the new Penal Procedure Code for police officials at all levels around the country.

Question 4. Please provide information on the use of the writ of *capias* (deika bāngkoap aoy noam khloun), which under Cambodian law should only be used if the accused fails to appear before court on a specific date after having received a properly communicated summons.

*Abolition of the order to bring (writ of *capias*)*

9. According to the former law on criminal procedure of 1993, a writ of *capias* was applicable in case the suspect fails to appear before the court at the set time after he/she receives the summons. However, the Penal Procedure Code of 2007 now allows the judge to use writ of *capias* without issuing a summons in advance (see articles 189–194).

Question 5. Does the State party's domestic law, particularly the new Penal Procedure Code, specifically provide that no exceptional circumstances whatsoever may be invoked as a justification of torture?

10. National laws, especially the Penal Procedure Code of the Kingdom of Cambodia, do not contain any provisions that can be used as a justification or means for an excuse for torture, under any circumstances.

Question 6. There have been reports on arbitrary admission practice by the Bar Association of Cambodia as well as a significant increase in its membership fees. Please provide information on the current rules of the Bar Association as well as on the measures taken by the Government to guarantee its independence.

11. Admission as a member of the Bar Association of the Kingdom of Cambodia is made in accordance with the principles set in the Law on the Bar in two ways:

Firstly, Article 31 of the Law on the Bar states that anyone who works as a lawyer shall have:

- (a) Khmer nationality;

- (b) A Bachelor of Law or law degree declared to be equivalent;
- (c) A Certificate of Lawyer's Professional Skill, awarded by the Centre for Training of the Legal Profession;
- (d) No criminal record of felony or misdemeanour;
- (e) Not having been subject to disciplinary actions or administrative punishment such as dismissal from function, termination of duty or suspension from work, due to an act contrary to honour or integrity;
- (f) Not being in a state of bankruptcy declared by the court.

12. In accordance with criteria (c) above, the Royal Government of Cambodia has established a Lawyer Professional Training Centre to conduct an examination to select the trainee-lawyers, after they have followed theoretical studies for a period of nine months and the practicum for a period of one year. Those selected will be provided with the Certificate of Lawyer Profession which, together with other qualification, must be submitted to the Bar Council in order to for them be admitted as official lawyers.

13. Secondly, article 32 states that neither a Professional Lawyer's Certificate nor a Bachelor's degree of laws are required for (a) a judge who has been working in his/her own profession for period of more than five years and (b) a previous judge holding a diploma of law or secondary education of law and he/she has been working in his/her profession for a period of more than two years. A Professional Lawyer's Certification is not required for (a) those who have a Bachelor's degree of law and have served in the legal profession or a judicial career for more than two years; (b) a lawyer of Cambodian origin who is registered with a foreign Bar Association; or (c) a person holding a doctoral degree in law.

14. The above-mentioned individuals have the right to apply to become professional lawyers following an investigation conducted by the Inspection Team of the Bar Association, the review of the application by Prosecutor-General of Court of Appeals, and the approval of the Bar Council.

15. The payment of [annual] Bar membership fees has been approved by the Bar Council which has been set at US\$ 50 per trimester starting from the first mandate to the fourth mandate [of the Bar President]. Within the fifth mandate, it was reduced to only US\$ 30 for one trimester; therefore there has been no increase of this fee.

16. Since its establishment in 1995, the Bar Association of Cambodia established its regulations and Code of Conduct which, up to now, have regulated the legal profession.

17. In order to guarantee the independence of the Bar Association, the Royal Government of Cambodia is taking measures by incorporating those rules of international law which ensure its independence into the relevant national laws, such as Constitutional Law, Criminal Law and Law on the Bar and so on, which provide the authority to the Bar Association to work independently.

Question 7. Please provide information on the provision of legal aid in Cambodia and the availability of legal services to individuals and groups who are unable to pay for profession legal advice. Who is involved in the provision of these services and what support does the Government provide?

18. Article 29 of the Law on the Bar states that all lawyers are obliged to help poor victims within the context of the regulatory framework as well as to help defend his/her clients.

19. The Bar Association established the Legal Aid Department which makes lawyers available to help defend individuals and groups who are unable to pay for professional legal

advice. In addition to the Bar's own ability to provide such services, the Bar Association also authorizes NGOs to provide such services.

20. Moreover, in case a criminal defendant is unable to pay for a lawyer, the law entitles the court to designate a lawyer without charge.

21. The Royal Government of Cambodia has offered a building to the Bar Association to use as its own offices and also has contributed in cash 200,000,000 Riels (two hundred million Riels) per year to the Bar Association to support the provision of free legal services to poor individuals.

Question 8. Please provide information on the measures taken by the Government to ensure that the high standards set by the Extraordinary Chambers in the Courts of Cambodia, in particular with regard to detention procedures and practices, as well as the procedural guarantees afforded to defendants, are being applied with equal rigour throughout the Cambodian justice system.

22. All citizens have the same rights before the law in Cambodia. The high standards set by the Extraordinary Chambers in the Courts of Cambodia with regard to detention procedures and practices, as well as the procedural guarantees afforded to defendants, are being applied with equal rigour throughout the Cambodian judicial system based on the Penal Procedure Code of 2007 and the internal regulations of Extraordinary Chambers in the Courts of Cambodia.

Article 3

Question 9. Please provide information on the implementation of article 3 of the Convention in cases of expulsion or return (refoulement) of foreigners, indicating, in particular:

- (a) **The number of persons seeking asylum and the number of returnees;**
- (b) **Whether and how the probable risk of torture is assessed in the determinations and the process to appeal the decisions;**
- (c) **The procedure for the examination of asylum requests submitted at the border.**

What is the current situation of asylum-seekers in the country? Please provide statistics by region of the country and disaggregated by age, sex, gender and country of origin of the asylum-seeking population.

(a) *Numbers of persons seeking for asylum*

23. Currently, there are 66 refugees of nine different nationalities staying in Cambodia (as of 25 June 2009), supported by UNHCR. In 2004, 784 *Montagnard* asylum-seekers who had fled into Cambodia were living in a camp under the support of UNHCR. By 2009, 110 of them were still in Cambodia.

(b) *Assessment of probable risk of torture*

24. Cambodia has never received any information about the risks of torture occurring to the refugees because the refugees are under the supervision of UNHCR.

(c) *The procedure for the examination of asylum requests*

25. So far, the Kingdom of Cambodia has not set the standards and procedures for screening applications for rights of settlement at the border because these duties are under

the responsibility of UNHCR. However, Cambodia is now preparing a draft sub-decree on procedures for screening and determining refugee status or offering rights of settlement to foreigners to settle in Cambodia.

Question 10. What is the legal framework which provides for the protection of unaccompanied asylum-seekers and refugee children? Please provide information about the conditions under which these minors live while in the State party.

26. As mentioned above, Cambodia does not yet have a legal framework to protect individual asylum-seekers or unaccompanied refugee children; however, such a framework is presently being drafted. For minors who are living in Cambodia, Cambodia will draw upon the Convention on the Rights of the Child to ensure their well being.

Question 11. There have been reports of arbitrary arrests and deportations of Montagnard asylum-seekers back to Viet Nam by the local authorities in Cambodia's north-eastern provinces prior to their asylum requests being processed and heard. Please inform the Committee of the specific safeguards against non-refoulement which are in place and the practice of the State party in this respect. Provide examples of cases where the authorities did not proceed with extradition, return or expulsion because of fear that the persons might be tortured.

27. Cambodia has never arrested or deported Vietnamese Montagnard asylum-seekers even though it is within the jurisdiction of the local authorities of north-eastern provinces of the country. As stated above, Cambodian authorities have always dispatched Vietnamese Montagnards who have immigrated to Cambodia to UNHCR.

Articles 4, 5, 6, 7 and 8

Question 12. Please provide information about the measures taken to establish the State party's jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention.

28. In case a suspect is present in territory under the jurisdiction of the Kingdom of Cambodia, various measures will be taken as below.

(a) Extradition

29. As a matter of principle, the extradition of suspects shall be implemented in accordance with the extradition treaty in force between the Kingdom of Cambodia and the applicant country. However, even if there is no extradition agreement, the Kingdom of Cambodia is able to apply the extradition procedures. Under the principles stipulated in the Penal Procedure Code of 2007 the Investigatory Chamber of Appeal Court is authorized to review and decide on extradition of suspects at its discretion.

(b) Prosecution in court

30. In cases in which a suspect committed a crime in the territory of the Kingdom of Cambodia or abused Cambodian citizens and no extradition is requested or allowed, Cambodia has jurisdiction to investigate, accuse and to try the case under its court system.

Article 10

Question 13. Please provide detailed and updated information on the instructions and training provided for law enforcement officials and other public officials with respect

to human rights and specifically the treatment of detainees and measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Is there training in areas such as non-coercive investigatory techniques and/or methods to detect signs of torture? What monitoring and evaluation techniques have been used to assess the impact of these programmes?

31. Training on human rights for law enforcement officials and other civil servants in the Kingdom of Cambodia has been carried out on a continuous basis through the inclusion of laws on human rights into the curriculum of secondary education, tertiary education and other vocational training schools.

32. The Constitution of the Kingdom of Cambodia states that a confession which is obtained by physical or mental force shall not be regarded as an evidence of guilt. According to the said statement, all investigators in Cambodia, both in the police force as well as in judicial institutions have been trained on the techniques of investigation which do not use any form of violence or force.

Question 14. Please provide detailed information on training provided for health personnel in the country, particularly with respect to the documentation, treatment and rehabilitation of victims of torture. In the context of the trials before the Extraordinary Chambers in the Courts of Cambodia, please indicate if the State party has envisaged establishing any scheme or programme to provide appropriate medical and psychological assistance to those victims of torture who will testify or provide testimonies before the courts. If so, provide detailed information about the scheme/programme, its governing rules and the services provided, as well as disaggregated data on the type and number of victims to be assisted in the context of the trials.

33. There has not yet been any special training programme for medical practitioners in Cambodia on the documentation, treatment and rehabilitation of victims. However, some medical schools provide training on techniques and administrative practices for documentation, treatment and rehabilitation of victims who have suffered from various forms of violence in general. Moreover, treatment provided to the victims is also carried out in accordance with the Code of Conduct of medical practitioners.

34. In the context of judgment in the presence of the Extraordinary Chambers in the Courts of Cambodia, the Kingdom of Cambodia has not set up any project or programme for providing medical or mental support to victims of torture who are to testify in the presence of the court. However, the ECCC has established a Victims Unit, a legal office which facilitates the victims' participation in the judicial proceedings as witnesses or as civil parties, to enable them to get involved in the judicial process. There is also a Witness Protection Office which looks after the interests and the protection of witnesses.

Question 15. Please provide information on the status of the United Nations code of conduct for police officers under the UNTAC law now that this law is being superseded by new provisions in the draft Penal Code and in the new Penal Procedure Code.

35. Currently, some of the key provisions of the United Nations Code of Conduct for Police Officers have been extracted and included into fundamental Laws such as the Penal Procedure Code, articles 61 to 66, and the draft Penal Code which set out the offences and conditions of guilt.

Article 11

Question 16. According to national law and the new Penal Procedure Code, how long can pretrial detention last? How does the State Party ensure that there are no

instances of unwarranted protraction of pretrial detention? Please provide information on how national legislation regulates the use of incommunicado detention.

36. According to the new law, the new Penal Procedure Code, the duration of the period of pretrial detention varies according to the type of offence such as:

(a) The pretrial detention period of a case of felony can be no longer than six months; however, the investigating judge can extend this detention period twice, for a period of six months each time. As a result, the maximum period of pretrial detention is a maximum 18 months;

(b) The pretrial detention period for misdemeanours cannot exceed four months. However, the investigating judge can extend this period once, for an additional period of detention of no longer than two months. As a result, the maximum period of pretrial detention in such cases is six months;

(c) The pretrial detention periods for crimes against humanity, the crime of genocide or war crimes are not longer than one year. However, the investigating judge can extend this period twice, for periods of one year each time. As a result, the maximum period of pretrial detention for such offences is three years.

37. Excessive pretrial detention occurs for the following reasons:

- Appeal cases: In Cambodia, there is only one Court of Appeal which collects all cases of appeal across the country, so there are many cases getting stuck at the Court of Appeal where there is only one courtroom available, which has to be used to settle both criminal and civil cases. To solve this problem, the Royal Government of Cambodia will take into account the establishment of the regional court of appeal to avoid the possibility of backlogs of such cases.
- The increase in number of judges has not kept up with the growing number of cases, which thus have not been able to be settled on time. To solve this problem, the Royal Government of Cambodia has been continually training more judges.

38. Although the Cambodian authorities wish to avoid any case of excessive pretrial detention, this has proven unavoidable; however they are taking action to gradually solve this problem.

39. In 2008, only 114 available judges were competent to settle the 50,106 cases that were brought before the courts throughout the country. As a result, each judge had to settle an average of around 347 cases each year, creating a heavy burden that delays the settlement of the cases and results in delays.

40. In addition to this problem of the insufficient numbers of judges, the limited professionalism of some of judges and the shortage of resources have caused a backlog in the settlement of cases. To solve such problems, the Cambodian authorities have continually conducted judicial training for the judges.

Question 17. What measures has the State Party taken to improve conditions in prisons, including overcrowding, as well as food provision and hygienic conditions? Please provide data on prisons in the country, including names, location and population disaggregated by crime, age, sex, ethnicity and geographical region of the country.

41. The measures taken by the Royal Government of Cambodia to improve the conditions in prisons include the following.

Overcrowded prisons

42. Regarding this problem, measures have been taken as follows:

- New prisons were built and others renovated by enlarging the size of the buildings to ensure a balance of prison space and the number of prisoners, at eight sites in the capital, Phnom Penh, as well as in Kandal, Preah Vihear, Siem Reap, Banteay Meanchey, Battambang, Koh Kong and Kampong Cham provinces
- Preparations are underway to build four new prisons in Kampong Thom, Ratanakkiri, Takeo and Prey Veng provinces
- A project is being designed to build an additional correctional centre for Pursat Province to be used for work in the agricultural sector (Prison Farm)

Food supplies

- The Royal Government has increased the food allowance for each prisoner from 1500 Riels to 2800 Riels per day. This allowance is doubled for each prisoner during the days of public holidays, Khmer New Year, the King's birthdays and Independence Day.
- Milk has been provided for infants and pupils whose mothers are in prison.
- NGOs have been permitted to support the families of prisoners by providing them with additional food.

Hygiene conditions

- Prisoners have been given the opportunity to leave their cells to relax, do physical exercise and play sports
- Prisoners have been provided the opportunity to participate in rehabilitation programmes such as training, and other activities such as growing vegetables, weaving, knitting and so on
- Medical rooms and medical staff have been made available to provide medical treatment in prisons
- In cooperation with the Ministry of Health and NGOs, action has been taken to support the improvement of health services and hygiene, the prevention of communicable diseases, the carrying out of medical checks, and the provision of treatment to patients suffering from tuberculosis and AIDS
- Clean water systems are being installed
- Every room has been equipped with water filters

43. The prison system in Cambodia is classified into two categories: there are three national correctional centres, one prison for the capital and 21 municipal/provincial prisons.

- Correctional Centre 1: for male detainees and convicts
- Correctional Centre 2: for female and minor detainees and convicts
- Correctional Centre 3: for all male convicts
- Municipal/Provincial Prisons: for all male and female detainees and convicts and minors

44. Up to 10 August 2009, throughout the country there were 12,456 prisoners of which 721 were female divided as follows:

- | | | |
|--------------|--------------|--------------|
| • Convicts: | Male = 8,011 | Female = 479 |
| • Detainees: | Male = 3,724 | Female = 241 |

- Foreigners: Male convicts = 256 Female = 82
 Male detainees = 106 Female = 30
- Minors: Male convicts = 426 Female = 17
 Male detainees = 267 Female = 8

Question 18. Do the rules and instructions issued regarding the duties and functions of police officers and prison staff contain any information on the prohibition of torture and inhuman, cruel or degrading treatment? Please provide information on Circular No. 006, Discipline of the National Police Forces, 1995, according to which a police officer who commits torture of a detained person can only be sent to court if the person dies. What happens in cases of torture by the police which do not lead to death?

45. The Internal Rule No. 2006 dated 23 November 1995 on the discipline of the national police specifies the prevention of torture in its articles 8–15 that “National police officers are prohibited from interrogation using any kind of torture or force to obtain answers.”

46. Article 7 of the Code of Conduct and Disciplinary Regulation for Prison Officers No. 001 dated 29 September, 2005 specifies that “... prison officials shall not refer to the order from the senior officials or using any pretexts to perform torture and other cruel, inhuman or degrading treatment as the form of punishment.”

47. If the torture applied by police officers does not cause death, the accused policeman will be subject to administrative action in accordance with the Code of Conduct and Disciplinary Regulation for Prison Officers. At the same time, that policeman will be prosecuted by the competent authorities based on his actions. Attempts to murder and battery with injury shall be punished in accordance with the Penal Code.

Question 19. What steps has the State party taken to ensure that the supervision of prisons and police stations is conducted effectively and independently? Are places of detention periodically visited? By whom? How is the situation monitored and how has the Government addressed shortcomings?

48. To ensure the effectiveness and independence of the prison management and the functioning of the police stations, the Royal Government has taken actions to monitor these two units through the process of identification of the roles of the authorities as follows:

Article 509 of Penal Procedure Code specifies that “the Prosecutor-General attached to the Court of Appeal, the Prosecutor, the President of the Investigation Chamber, and investigating judges shall perform regular inspections of prisons.”

49. In addition to the competent authorities mentioned above, the Human Rights Committee of the Royal Government of Cambodia and the National Assembly Human Rights Commission shall have the rights and power to inspect human rights issues in prison management. Along with this, the Royal Government also allows relevant NGOs to inspect and provide support to the prisons to this end.

50. At the same time, the number of lawyers available for defending the cases of the parties of prosecution and defence is insufficient, particularly in cases of felony, where the defendants require defence lawyers. Furthermore, there are no law offices located in the remote provinces.

51. Although pretrial detention should not be the norm, the Cambodian court uses pretrial detention to ensure the presence of the defendant at the court, in the absence of no other means. Furthermore, it is necessary for the security of the defendant and of society.

Question 20. Are convicted prisoners separated from those held in pretrial detention? Are minors in detention/ prisons held in separate facilities/ premises from adults? Are women prisoners held in separate facilities/premises from men and are they guarded by female personnel? Please provide information on sexual violence in prisons, on measures taken to prevent it, complaints procedure, investigations, witness protection and disciplinary measures taken.

52. In general, at the correctional centres and prisons, the detainees have been separately detained as follows:

- Convicts are separately detained from the accused
- Minors are separately detained from adults
- Women are separately detained from men

53. The arrangements for separation of the prisoners are dependent on the conditions of the sites:

- Some places, such as Correctional Centre 2, are separate institutions where there are no male adult prisoners; the prisoners are women and minors only. Also in Correctional Centre 2, male minors are separately detained from female minors.
- In some prisons in certain provinces such as Kandal, Siem Reap and Battambang provinces, the prisoners are separated from each other into different buildings according to the types and sexes of the prisoners.
- In some other prisons, which are small, the prisoners are detained in different cells in the same buildings.

54. In relation to prison management, there is an insufficient number of women officials for controlling the women prisoners. In some prisons, there are a few women prison officers who are not able to ensure complete management; while in some prisons, women prison officers are not yet employed.

55. As in all prisons through the country, sexual abuses are strictly prohibited in the correctional centres and those who commit sexual abuse will be punished in accordance with the law.

Question 21. What is the minimum legal age of criminal responsibility? Please provide information on the juvenile justice system, including special legislation, policies and programmes. Also, please provide information on how the provisions in the new Penal Procedure Code comply with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

56. In the Kingdom of Cambodia, there are not yet any laws that clearly and officially determine the minimum age for criminal responsibility In the Penal Procedure Code of 2007:

- Article 96 specifies that a minor who is less than 14 years old may not be placed in police custody
- Article 212 specifies that a minor under 14 years old cannot be temporarily detained

57. The draft Penal Code specifies the principal punishment applicable to minors over fourteen years of age (art. 160).

58. Based on the principle of the law stated above, it is determined that the minimum age for criminal offence is 14 years.

59. A separate judicial system for minors has not yet been created. The Ministry of Justice has been drafting a Juvenile Justice Law. Although there is no separate judicial

system for minors, Cambodia has legal provisions relevant to juveniles, principles for dealing with juveniles and special programmes for juveniles. These programmes for minors detained in prisons include training courses on reading, technical and other skills such as music, engine repairs and haircutting. The provisions in the Penal Procedure Code are compliant with the United Nations Standards on Juvenile Justice such as:

- The period for detention of minors aged between 14 and 18 is between 24 hours and 48 hours without any possibility of extension (unlike adults). The detention period is set in function of age (14–16 and 16–18) and the type of offences committed (felony or misdemeanour).
- When minors are detained, the authorities shall always inform their parents, legal representatives or guardians. In case the minors are not able to afford the lawyers, the court shall assign lawyers to defend them.

Question 22. What measures has the State party taken to ensure that provisions in the Constitution and in the international human rights conventions, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which Cambodia is party, are taken into account by judges when considering cases before them and interpreting legislation?

60. The Constitution is a supreme law to which the other laws must comply absolutely. The judge shall be responsible for conducting trials in conformity with the applicable laws. So therefore compliance with the applicable law assures compliance with the Constitution because all laws consist of provisions drafted in compliance with the Constitution.

61. Article 31 of the Constitution guarantees the international human rights treaties, including the Convention against Torture. In July 2007, the Constitutional Council reaffirmed that judges should apply the international human rights treaties when deciding cases and interpreting laws.

62. International Human Rights Law is included in tertiary education curriculums (Bachelor's Degree of Law) and judges recruited possess qualifications ranging from Bachelor's Degree of Law and above. Consequently all judges selected have acquired some knowledge of international laws on human rights have been applying international laws on human rights in their profession.

63. These mechanisms ensure the enforcement of international laws on human rights in the consideration of cases; the Cambodian Human Rights Committee will conduct extra training on international laws on human rights to all law enforcement officials who hold positions in the Judicial Penal System.

Question 23. Please provide information on the treatment of people suffering from mental illness leading to diminished responsibility. Is the mental state of someone accused of a crime a mitigating factor during sentencing?

64. In cases where offences are committed by persons with a mental illness causing reduction of their capacity to control their actions, such persons are subject to extenuation during the trial as specified in article 68 of UNTAC Criminal Provisions which is still in force.

65. Article 31 of the draft Penal Code specifies that "If anyone commits an offence while he/she is having abnormal feeling which make him/her lose conscience, that individual shall not be charged under the felony case."

"If anyone commits an offence at the time he/she has abnormal feeling leading to the reduction of conscience, that individual shall be charged under the felony case. However, the court shall consider the case during the trial."

Article 12

Question 24. Please provide detailed information about the specific measures taken to fight impunity for violations of human rights, including disappearances and torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel. What steps are being taken to ensure that law enforcement personnel and others accused of torture or ill-treatment are brought to justice, as well as to ensure prompt, impartial and full investigations and punishment of the perpetrators?

66. To ensure that law enforcement officials and others who have been accused of torture and inhuman treatment are brought to trial, as well as to ensure the expeditious and impartial investigation and the conviction of the offenders, the Kingdom of Cambodia take actions as follows.

(a) *Legal action*

67. The Constitution of the Kingdom of Cambodia determines as follows:

- Article 38-1 the Law prevents authorities from using any form of physical abuse against anyone.
- Article 38-4 states that all kinds of force, physical torture or any treatment which imposes additional punishment on the detainees or prisoners are prohibited. Although the criminal code specifying the crime of torture has not yet been promulgated, the criminal law in force contains provisions which specify the crimes that physically affect the individual. Pursuant to these provisions, convictions have been made on the basis of the actual offences which have caused injury, disability, or death.
- An individual who has suffered any kind of torture has the right to lodge a complaint with the competent court as set in article 39 of the Constitution.

68. To ensure that investigations are carried out, the Cambodian courts system applies the following procedures:

- The Judicial police are competent to investigate offences and to arrest suspects, and to submit a complaint to the prosecution.
- The prosecution is required to coordinate the conduct of the investigation, in cooperation with the judicial police, and to collect all evidence so as to file a complaint to the investigating judge.
- The investigating judge is required to check the investigation, to assess whether the evidence would justify action and if so, to forward the results to the judge for examination and decision. At the hearing, the judge may pose additional questions to verify the evidence so as to ensure consideration for judgment.

(b) *Administrative action*

69. To ensure the smooth conduct of the investigation process, the prosecution or court officials have the right to request the Director of the institution where the individual being investigated is employed, to suspend any public official who is accused of a civil or a criminal offence.

Question 25. Please provide information and statistics on how many prosecutions there have been of police officers or other law enforcement personnel for torture-related crimes in the past five years, how many convictions and for what crimes and the sentences given.

70. As stated above, the existing criminal laws being implemented have not yet specifically identified an act of torture as an offence, so there are no statistics on prosecution or conviction of specific torture cases. Competent authorities such as the judicial police, the prosecutor and the judge have not clearly defined the act of torture as a form of felony or misdemeanour. The draft Penal Code does contain a specific offence of torture and ill-treatment.

Question 26. Please provide updated information on the work and functioning of the Supreme Council of the Magistracy, as well as on the Prime Minister's Sub-decree of 5 May 2005 by which the secretariat of the Council was dissolved and its functions transferred to the Ministry of Justice.

71. The Supreme Council of Magistracy continues its regular functions, as scheduled under the Presidency of His Majesty the King of Cambodia.

72. The dissolution of the Secretariat of the Supreme Council of Magistracy has not impeded the work of the Supreme Council of Magistracy, since the secretariat only played the role of a permanent administrative unit and this responsibility has been transferred to the Ministry of Justice to ensure the sustainability of the work performance. The role of the Supreme Council of Magistracy has not been changed and the Ministry of Justice has set up a working group to function as a substitute to the former Secretariat.

Article 13

Question 27. Please provide up-to-date information with reference to the previous conclusions and recommendations of the Committee regarding the establishment of an independent body competent to deal with complaints against the police and other law enforcement personnel. Please indicate what procedures are followed when complaints are lodged against police officers and/or prison staff, and what authorities are responsible for dealing with such complaints. Also, please indicate whether any such complaints relating to torture or cruel, inhuman or degrading treatment have been lodged in recent years, and if so provide information disaggregated by type of complaint as well as sex and age of the complainant.

73. On the 19 of January 2007, Cambodia passed a national law to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Under the Optional Protocol, the Government of Cambodia established a national preventive mechanism to ensure the respect for the basic rights of those people whose freedom has been deprived, which is to deal with all acts of torture, cruelty, inhumanity, and degrading treatment.

74. This mechanism functions independently, performing its duties without receiving any pressure or recommendations from any authorities. Its duties include that of inspecting all detention centres across the country.

75. The procedures implemented when there is a complaint filed against police officers or prison officials are as follows:

- In cases where the complaint concerns performance while on duty, the resolution of the complaint will be under the responsibility of the Ministry of Interior
- In cases where the complaint concerns a crime, either felony or a misdemeanour committed during performance of a duty, the resolution of the complaint will be under the judge's competence

76. So far, within the existing criminal laws implemented in Cambodia, there are no provisions creating the offence of torture, therefore there are no complaints against torture cases. Torture cases have been covered under the provisions dealing with assault.

Article 14

Question 28. Does the State party have a national mechanism to provide fair and adequate compensation to victims of torture or ill-treatment by State agents? If so, provide details on the number of cases of compensation, type of compensation, including rehabilitation, and any other relevant information. Do the provision of the new Penal Procedure Code allow for civil parties to join criminal prosecutions? Are the provisions of the Internal Rules of the Extraordinary Chambers in the Courts of Cambodia in this respect incorporated in domestic legislation?

77. In article 39, the Constitution of the Kingdom Cambodia entitles citizens to claim compensation for damages caused by public institutions, civil institutions, or the staff of the concerned institutions. The resolution of a claim for compensation for such damage is under the judge's responsibility. Therefore, if anybody considers that he/she suffered from torture or other cruelties inflicted by public agents, such victim has the right to file a complaint to the competent court.

78. The national mechanism for the compensation for victims basically depends on the decision made by the court. As mentioned above, the criminal law as implemented so far does not contain any specific provision clearly stating the offence of torture; as a result, up to now there has not been any complaint of alleged torture.

79. Article 22 of the 2007 Penal Procedure Code states that "a civil action can be brought in conjunction with a criminal action before the criminal court." This means that the civil party can get involved in the criminal case by demanding compensation in conjunction with the criminal action of the prosecution, so the prosecution may command the criminal court to take action at the same time.

Article 15

Question 29. Please explain the role of confessions under the new Criminal Procedure Code, including information that they have not been extracted by torture, that they are free and voluntary and on who has the burden of proof. Under the new Code, are confessions regarded as the primary/only source of evidence and to what extent must there be corroboration of the material particular to confessions with other evidence? Can confessions be revoked at any point during the proceedings?

80. The new Penal Procedure Code does not determine the function of the confession. Article 38-5 of the Constitution of the Kingdom of Cambodia states that confessions obtained by using the form of physical or mental force shall not be admissible as evidence of guilt.

Question 30. Please provide information on the approximate percentage of cases during the last three years where the case for the prosecution and/or conviction rested solely on confessions. Please indicate whether derivative evidence following an inadmissible confession is admissible.

81. Unfortunately the Ministry of Justice does not have data on this question.

82. The question of derivative evidence has arisen in the context of the work of the ECCC. On 28 July 2009, the Co-Investigating Judges issued an *Order on use of statements*

which were or may have been obtained by torture which dismissed a motion by Ieng Thirith, a co-defendant in Case No. 2, requesting a declaration of inadmissibility of all evidence obtained through torture. The matter is now before the Pre-Trial Chamber. The Order and related documents are available on the ECCC website in English and French: www.eccc.gov.kh.

Article 16

Question 31. There have been reports of widespread phenomena of child prostitution and sale and trafficking of children in Cambodia, as well as of inadequate enforcement of legislation on these issues. In this connection, what is the status of the revision of the 2006 Law on Suppression of Kidnapping, Trafficking/Sale and Exploitation of Human Beings? Provide information on sanctions to offenders and protection measures for victims established, including on the implementation and evaluation of impact of the five-year Plan of Action against Sexual Exploitation of Children, 2000–2004, as well as on any other measures taken to address this problem. Please include information on rehabilitation programmes for children who have been exposed to trafficking.

83. The 1996 Law on the Suppression of Kidnapping and Trafficking/Sale of Human Persons and Exploitation of Human Persons was nullified after the Law on Kidnapping of Human Persons for Trafficking or for Prostitution had been promulgated under the Royal Kram No. 0208/009 dated 15 February 2008.

84. The 2008 law determines the punishment for the convicted person in accordance with the offence that he/she has committed.

85. In order to protect the victims of human trafficking and sexual exploitation, measures shall be taken consistent with the actual situation of the victims including:

- In case the victim is an adult, the action must be taken in compliance with the consent of the victim [i.e. sex workers]. If the victim consents, the competent authorities shall send him or her to the educational and training centre.
- In case the victim is a minor, the Ministry of Social Affairs, Veterans and Youth Rehabilitation is responsible for sending the victim to a centre for education and rehabilitation or to hand him/her over to his/her parents or guardians as appropriate.

86. The rehabilitation programme for young victims of human trafficking includes the provision of general education, vocational training courses such as hairdressing, classical music, dress making, etc.

Question 32. Please provide information on the number of reported rape crimes, those that have been investigated and the number of those brought to trial. What is the cost of a medical certificate required in cases of rape? Is rape in marriage an offence under the Cambodian criminal system and is there a complaints mechanism for victims?

87. Under article 33 of the UNTAC Criminal Provisions does not distinguish between rape inside and outside marriage. Rape is defined as “any sexual act involving penetration carried out through violence, coercion or surprise.” The draft Penal Code contains similar provisions.

88. The National Assembly adopted a Law on Domestic Violence in 2005. Its Article 6 prohibits torture or cruelty including (a) ill-treatment caused mental, conscious, or intellectual suffering of individual in the family or (b) harm or effect both mental and physical. Article 7 states that sexual abuse including violent intercourse, indecent sexual

assault, and production of scandalous pornography is prohibited. The Ministry of Women's Affairs has judicial police powers to intervene in domestic violence cases.

Question 33. What safeguards are there in place to prevent cruel, inhuman or degrading treatment, particularly corporal punishment in schools?

89. The Code of Conduct for teachers does not allow the teacher to beat the student, but under the old culture some teachers still do. The Ministry of Education has adopted a policy to abolish such outdated practices.

90. For further information, please refer to the second periodic report submitted by the Royal Government to the Committee on the Rights of the Child in February 2009.

Other issues

Question 34. The Committee notes that, to date, it has not received a response from the State party to the letter dated 28 April 2006 (CAT/C/KHM/CO/1/LFP) from the Committee's Rapporteur for Follow-Up on Conclusions and Recommendations to Cambodia (CAT/C/CR/30/2). Please provide the requested information.

91. The Human Rights Committee has no record of having received this communication and has checked with the OHCHR Cambodia Country Office which also did not receive a copy. The Royal Government requests that the letter be resent. It will be pleased to provide the requested information before the review of this report by the Committee against Torture.

Question 35. Please provide detailed information on relevant new developments in the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the initial report, including any relevant jurisprudential decisions and statistical data.

Question 36. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the initial report, including on any national human rights plans or programmes, and the resources allocated to them, their means, objectives and results.

92. The Royal Government of Cambodia submitted a report to the Human Rights Council this year in the context of its upcoming Universal Periodic Review which contains an update on the political, administrative and other measures taken to promote and protect human rights at the national level. This report provides information relevant to questions 35 and 36 above.

Question 37. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the initial report in 2003, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention. Please include information on any difficulty which would prevent the State party from fully implementing the Convention and the Committee's recommendations.

93. The most important developments, including drafting and adoption of the Penal Code and ratification of the OPCAT have been described in response to the previous questions.

94. In 2007, the Extraordinary Chambers in the Courts of Cambodia began its work to prosecute senior members of the Khmer Rouge and those most responsible for crimes committed during the period of Democratic Kampuchea from April 1975 to January 1979.

95. The first trial began formal public hearings in March 2009 and concerns Kang Guek Eav, alias Duch, the former commandant of the S21 prison at Tuol Sleng in Phnom Penh. It is estimated that as many as 20,000 people may have been tortured and executed at S21 under the supervision of Duch who is facing charges of war crimes and crimes against humanity as well as charges of torture under the 1956 Cambodian Penal Code. The final submissions will be presented to the Trial Chamber in December 2009 and a verdict is expected during the first half of 2010.

96. Case No. 2 is expected to begin towards the end of 2010.

Question 38. Please provide information regarding the progress made towards meeting the Government's stated intention to create an independent national human rights institution in conformity with the Paris Principles on national human rights institutions, and the proposed relationship between this institution and the national preventive mechanism required under the terms of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Cambodia on 30 March 2007.

97. On 26–27 September 2006 the Royal Government of Cambodia, as represented by the Cambodian Human Rights Committee, and in cooperation with the Working Group for Human Rights Mechanism of ASEAN, organized a Conference on the establishment of the National Human Rights Institution in Siem Reap province in the presence of the Prime Minister Samdech Akka Moha Sena Padei Techo Hun Sen. It agreed in principle that this institution is to be created based on the Paris Principles. The Joint Working Group between the Government and CSOs is currently drafting the law on this matter.

98. The Prime Minister approved a sub-decree on the establishment of a national preventive mechanism under OPCAT on 7 August 2009 which created a committee of thirteen representatives of government ministries involved in running prisons and other places of detention in Cambodia under the chairmanship of Excellency Sar Kheng, Deputy Prime Minister and Minister of the Interior. A copy of the sub-decree is available in English.

Question 39. Please provide updated information on the work of the mandate, human and financial resources of the Cambodian Human Rights Parliamentary Committee, including the number of cases of alleged human rights abuses investigated by this Committee, the number of cases where the intervention of the Committee led to prosecutions being undertaken and the specific methodology of the Committee for undertaking visits to prisons.

99. There are three institutions mandated to receive complaints about human rights abuses and to investigate cases.

(a) *Human Rights and Receipt of Complaints Commission of the Senate*

100. This Commission is established as one of the nine Commissions of the Senate with the duty to protect the legal rights of the citizens. On behalf of the Senate, it is the role and responsibility of the Commission to address the requests and complaints of the people whose rights have been violated. This Commission has the right to examine and investigate complaints lodged by the people and reports to the Government with a view to resolving these problems. In 2009, the Senate received 24 complaints (out of those complaints, six cases were against the verdicts of Courts, 11 cases against the Provincial Authorities, seven cases are being settled between citizens themselves).

(b) Human Rights and Receipt of Complaints Commission of the National Assembly

101. This Commission is established as one of the nine Commissions of the National Assembly. As a representative of the people, the Commission is entrusted with protecting Human Rights and addressing requests/complaints of the citizens whose rights were violated by various entities, as does the Commission on Human Rights and Receipt of Complaints of the Senate. The Complaints received 126 cases in the first semester of 2009, 87 of which involved land disputes and 39 related to the Court's decisions and other issues.

(c) Cambodia Human Rights Committee (CHRC)

102. The Cambodian Human Rights Committee is the body of the Government assigned with duties to promote Human Rights and rule of law in Cambodia. The Committee was formed by Royal Decree No. NS/RKT/0100/008 dated 18 January 2000 and Royal Decree No. NS/RKT/0209/163 dated 13 February 2009 on the amendment of articles 2 and 5 of the Royal Decree No. NS/RKT/008 dated 18 January 2000 on the establishment of the Cambodian Human Rights Committee. The role and functions of the Committee is to investigate and remedy all sorts of complaints, gather information related to the implementation of Human Rights, organize training, and dissemination of information on human rights, and to prepare human rights reports for the United Nations. In 2007, the Cambodian Human Rights Committee received 810 complaints, 625 of which are being examined; The Committee is continuing to work on 185 complaints, whereas it had investigated 171 cases, issued letters of interventions for 89 cases and had assisted in the settlement of seven cases.

103. All three institutions have mandates to visit prisons which they do on a regular basis.

Question 40. Please provide information on the legislative, administrative and other measures the Government has taken to respond to the threats of terrorism, and please indicate if, and how, these have affected human rights safeguards in law and practice. In this respect, the Committee would like to recall United Nations Security Council resolutions 1456 (2003), 1535 (2004), 1566 (2004), and 1624 (2005) which stress that States must "ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law."

104. The National Assembly adopted a Law on Anti-Terrorism in 2007, drafted in accordance with Cambodia's international obligations, with assistance from Australian experts. This replaced an earlier law on the punishment of acts of terrorism dating from 1992. The text of both of these laws is available in English.

105. Cambodia has also concluded an agreement with the Government of the United States of America concerning the non-surrender of United States citizens to the International Criminal Court, which was approved by the National Assembly in 2005.

Question 41. Please indicate the concrete measures that have been taken to widely disseminate the Convention and the Committee's conclusions and recommendations in all appropriate languages in the State party. What actions or programmes have been taken in cooperation with non-governmental organizations? Under what conditions do human rights defenders have access to places of detentions, and to information and statistics on Government policies?

106. The Office of the High Commissioner for Human Rights maintains an office in Phnom Penh in accordance with a Memorandum of Understanding with the Royal Government. Its mandate includes dissemination of human rights information and publications. Over 2000 international and national non-governmental organizations are

active in Cambodia, some of which are involved in working with prison issues. If an organization wishes to visit a prison, it must comply with the laws of Cambodia and it needs to get authorization from the General Department of Prisons subject to approval from the concerned judge or prosecutor. Prisons in Cambodia are visited by the International Committee of the Red Cross and the Office of the High Commissioner for Human Rights has a prison support reform programme which includes prison visits and confidential reporting. The Cambodian League for Human Rights (LICADHO) has a team which includes a doctor and visits several provincial prisons on a regular basis.

107. The General Department of Prisons publishes an annual report which includes updated data on prisons.

Data on the prisons in Cambodia

No.	Prison	Total number of prisoners		Culprit		Convict	
		Total	Female	Total	Female	Total	Female
1.	Police custody	5	1	5	1	0	0
2.	Correctional Centre 1	2 678	0	768	0	1 910	0
3.	Correctional Centre 2	692	303	163	59	529	244
4.	Correctional Centre 3	1 340	0	0	0	1 340	0
5.	Phnom Penh Capital	162	11	36	3	126	8
6.	Kandal Province	878	40	425	21	453	19
7.	Takeo Province	364	15	79	3	285	12
8.	Kampot Province	320	22	180	15	140	7
9.	Kampong Spue	322	12	129	3	193	9
10.	Sihanuk Ville	265	34	147	21	118	13
11.	Preyveng Province	241	12	45	2	196	10
12.	Svay Rieng Province	219	11	65	6	154	5
13.	Kampong Cham Province	634	25	205	11	429	14
14.	Kampong Thom Province	224	13	162	3	62	10
15.	Kampong Chhnang Province	318	17	167	9	151	8
16.	Pur Sat Province	224	8	150	5	79	3
17.	Battambang Province	1 010	46	270	15	740	31
18.	Banteay Meanchey Province	555	41	247	18	308	23
19.	Siem Reap Province	1 193	82	329	29	864	53
20.	Koh Kong Province	147	9	70	4	77	5
21.	Preah Vihea Province	59	0	22	0	37	0
22.	Ratanak Kiri Province	245	9	135	8	110	1
23.	Mondul Kiri Province	65	4	58	4	7	0
24.	Kratie Province	148	3	85	2	64	1
25.	Stung Treng Province	143	3	25		118	3
Total		12 456	721	3 966	242	849	479

These figures were updated on 10 August 2009.