



**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**

Initial reports of States parties due in 1993

ADDENDUM

CAMBODIA

[29 August 2002]

I. GENERAL INFORMATION

1. From 1975 to 1978 Cambodia was faced with a ruling regime, led by the Khmer Rouge who committed cruel torture and inhumane acts against Cambodian people. The Khmer Rouge forced people to overwork without enough rest time, food and medicaments. The Khmer Rouge detained, tortured arbitrarily and killed people without judicial judgement.

2. Tuol Sleng Museum was a big detention place, and has been clearly proved as a place where the Khmer Rouge committed cruel and inhumane acts of torture. According to research, roughly 20,000 people were tortured and killed in this detention place. Apart from this, several million people were tortured and killed and their remains were found in big tombs in several places in Cambodia. This indicated clearly that torture organized by the Khmer Rouge was a crime against humanity.

3. To accomplish this policy, the Constitution of 1993 has ensured and protected all forms of freedom for Khmer citizens, as well as ensured and prevented any act of torture against any individual as outlined in article 38:

- The law guarantees that there shall be no physical abuse of any individual;
- The law shall protect the life, honour, and dignity of the citizens;
- The prosecution, arrest, or detention of any person shall not be done except in accordance with the law;
- Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate in or conspire in such acts shall be punished according to the law;
- Confessions obtained by physical or psychological force shall not be admissible as evidence of guilt;
- Any case of doubt shall be resolved in favour of the accused;
- The accused shall be considered innocent until the court has judged finally on the case;
- Every citizen shall enjoy the right to defence through judicial recourse.

4. Apart from the Constitution of 1993, the transitional criminal law has remained in force ensuring and preventing against torture of any individual:

Article 12: “No detainee shall be subjected to cruel, inhumane or degrading treatment or punishment, nor be beaten or tortured. Each detainee must have access to appropriate medical care. Prisoners must not be shackled or kept in isolation, whether they are in pre-trial detention or already sentenced. In no case shall the family of a detainee or prisoner be harassed as a result of the prisoner’s behaviour.”

“Arrest and detention must take place in accordance with the Standard Minimum Rules for the Treatment of Prisoners, as well as the Body of Principles for the Protection of Any Person under Any Form of Detention or Imprisonment, adopted by the United Nations.”

Article 24 (3): “A confession obtained under duress, of whatever form, shall be considered null and void.”

Article 25: “All suspects, indicted and accused persons benefit from the most complete presumption of innocence.”

Article 35: “Anyone who, without orders from the judicial authority, arrests, detains or illegally confines anyone, shall be liable to imprisonment:

“For ten years, if the illegal confinement lasts longer than one month;

“From three to five years, if the confinement lasts less than one month.”

5. After the Paris Peace Accords of 23 October 1991 the Supreme National Council signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 22 September 1992. Ever since this convention has become the most important judicial principle for Cambodia. To enact this principle was a real accomplishment. The Kingdom of Cambodia has deemed this convention as the basis for constructing a system of regulations so that, as described in article 31 of the Constitution of 1993, “the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the Charter of the United Nations, the Universal Declaration of Human Rights, the covenants and conventions related to human rights and women’s rights”.

6. Based on the above-mentioned principle, the legislature, the executive and the judiciary recognized and considered this convention as a basis for issuing decisions relating to torture. The Ministry of Justice issued a letter, N.09 dated 13 September 1993, instructing provincial-municipal prosecutors to review prisons and detention places on the basis of the Convention. The Ministers of the Interior instructed provincial-municipal governors and police commissioners not to commit torture at the time of interrogation.

7. The Constitution of 1993 has provided power to the courts in judging all cases. Article 128 (3) states: “The judiciary shall be responsible for all lawsuits including administrative ones. The authority of the court shall be granted to the Supreme Court [and] to the lower courts of all sectors and levels. Therefore, anyone who considered that he/she was tortured or ill-treated shall have the right to submit a complaint to the court for physical and psychological damages and compensation. The prosecutor shall be responsible for penal proceedings, prosecuting the offender for the purpose of punishment, pursuant to the law. The Criminal Procedure Law of 1993 stipulates:

Article 8: “Penal actions and promotion of penal proceedings are the function of the prosecutor.”

Article 9: “Any person who is victimized by an offensive act may submit a complaint for damages with the prosecutor’s accusation.”

8. An offender who has committed an act of torture shall be punished in conformity with the law, and shall compensate the victim. Even if the offender has already compensated the victim, he/she cannot escape the punishment of the law. Article 7 of the Criminal Procedure law of 1993 states that penal actions may not be reconciled.

9. Although the Constitution of 1993 has guaranteed and protected against torture and the law has prohibited and punished perpetrators, acts of torture are still committed. Some accused persons or suspects have been tortured by the competent authorities during interrogation. These acts happened secretly and were difficult to prosecute. There has been little evidence sufficient to punish the offender.

10. The victim of torture was under the arrest or detention by the authorities and was unable to complain, due to fear of revenge from the perpetrator, and also the victims had difficulty giving specific evidence to the court. This problem was also difficult to research because torture was rarely proved by evidence or witnesses.

11. Accordingly, the implementation of the Convention is still not perfect and is faced with many difficulties still to be resolved. The plague war lasted for more than two decades, leaving many inhumane acts in people’s memories. War created illiteracy, poverty, and unemployment and these factors have promoted torture and inhumane acts. The dissemination of human rights education and morality is still narrow. Knowledge of human rights on the part of the public, as well as the competent authorities, is still limited and vague.

II. IMPLEMENTATION OF ARTICLES 1 TO 16 OF THE CONVENTION

Article 1

Definition of “torture”

12. The term “torture” for the purpose of the Convention means acts by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her what has been committed or is suspected of having been committed, or intimidating or coercing him or her, a third person, or for any person based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

13. According to the Khmer dictionary of 1967, the term torture means “brutal, bad and inhumane acts”. Presently, in Cambodia there is still no law to determine the definition of “torture”, so the Kingdom of Cambodia adopts the term “torture” from the Convention.

14. To ensure continually lawful execution, the Ministry of Justice has prepared a draft Criminal Code that states a prohibition of acts of torture. Article 200 of this draft code states that anyone who commits an act of torture or cruelty shall be punished with 7-15 years in prison.

Article 2

Paragraph 1 - Preventive measures

15. The Kingdom of Cambodia takes legal, administrative and judicial measures to prevent any acts of torture in all areas that are under its jurisdiction.

Legal measures

16. Article 38 of the Constitution of 1993 says that:

- The law guarantees that there shall be no physical abuse against any individual (para. 1);
- Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. A person who commits, participates in or conspires in such acts shall be punished according to the law (para. 4);
- Confessions obtained by physical or psychological force shall not be admissible as evidence of guilt (para. 5).

17. Transitional criminal law which has remained in force has prohibited any acts of torture:

Article 12: “No detainee shall be subjected to cruel, inhumane or degrading treatment or punishment, nor be beaten or tortured.”

Article 57: “All public agents, including police and military agents, who abuse individual integrity and individual residence, shall be punished by one to five years’ imprisonment.”

Administrative measures

18. The Ministry of Justice, Ministry of the Interior and Ministry of Health have issued a joint declaration on 7 July 1993 instructing their agents not to shackle or handcuff prisoners in prison. On 13 September 1993 the Ministry of Justice instructed provincial-municipal prosecutors to review provincial-municipal prisons and detention places at least once a month in order to review the personal circumstances of convicted and pre-trial prisoners.

19. On the occasion of a seminar on 14 and 15 May 1995 on protesting acts of torture, H.E. Chem Sgoun, senior minister and Minister of Justice, stated that “any act of torture committed against suspected, accused, pre-trial and convicted persons is contrary to law and shall be punished pursuant to the law”.

20. The Ministry of the Interior on 23 November 1995 has imposed punishment on police officers who commit torture. Any police officer who during interrogation uses torture, all forms of duress or instigation thereof, shall be punished, demoted, removed from his position or dismissed from the force. Any police officer who conspires to commit or commits a cognizable offence and tortures seriously, or beats an accused to death attempting to obtain a confession, shall be prosecuted.

Judicial measures

21. Presently, in the Kingdom of Cambodia there are 21 provincial-municipal courts, 1 appellate court and 1 Supreme Court. Both higher courts are situated in Phnom Penh City. As the judiciary is responsible for all cases, including administrative ones, the courts shall have full capacity to judge and punish torture offences.

22. The victim of illegal acts of physical and mental abuse committed by a public authority may make complaint to all courts, such as the pre-trial court, the appellate court, the Supreme Court (articles 2 and 5 of the Transitional Criminal Law). The victim may file claims and damages against the perpetrator, co-offender and accomplice (article 39, Constitution and article 27, Transitional Criminal Law). A detainee or prisoner shall also have the right to complain or denounce any officer who commits torture or acts of cruelty against him or her.

23. Legal and administrative measures are sufficient to prevent acts of torture, but they still have not been eliminated completely. The acts are committed secretly, without evidence or witnesses; the victim may also not dare to complain.

Paragraph 2 - Torture during a state of emergency

24. In spite of a state of war or threat of war, domestic political instability or a state of emergency, Cambodia has not used these reasons as a pretext to torture citizens.

25. This protection shall be guaranteed by the Constitution of 1993:

- Article 22 states that when the nation faces danger, the King shall make a proclamation to the people putting the country in a state of emergency after agreement with the Prime Minister and the President of the National Assembly or Senate;
- Article 78 (5) states that in time of war or other special circumstances where an election cannot be held, the National Assembly may extend its term for one year at a time, at the request of the King;
- Article 90 (6) states that the National Assembly shall approve a law on the declaration of war. The adoption of the above-mentioned clauses shall be decided by a simple majority of the entire Assembly membership;

- Article 86 states that if the country is in a state of emergency, the National Assembly shall meet every day continuously. The National Assembly has the right to terminate the state of emergency wherever the situation permits. If the National Assembly is not able to meet because of circumstances such as occupation by foreign forces, the declaration of the state of emergency must be automatically extended. During a state of emergency, the National Assembly shall not be dissolved.

26. By determination of the Constitution of 1993, in all circumstances of state of emergency or war, the Kingdom of Cambodia still applies democratic principles. In a state of emergency, the Royal Government will not take any new measures contrary to the conventions and national laws. The King is the supreme Commander-in-Chief and President of the Council for National Protection (articles 23 and 24 of the Constitution). The Constitution has not specified any special condition other than this article.

27. The judicial branch is dependent on appointed judges in all cases and has no power to replace, even though the State is in an emergency (articles 128 and 130 of the Constitution).

28. After acceding to the Convention, Cambodia has never proclaimed a state of emergency. Although the Khmer Rouge had acted against the Royal Government, provoking civil war and clashes between armies, the Royal Government has never declared a state of emergency. And the Government has never taken up this problem of illegal acts of torture. In any case, torture is an offence that the competent institutions are continuously taking measures to prevent and to punish pursuant to the law.

29. In order to ensure preventive measures against torture, the Ministry of the Interior as well as the Ministry of National Defence have tried to commit to training courses for competent national police officers and national military police officers in techniques to obtain confession without any coercion or torture. Both Ministries have also closely cooperated with the Office of the High Commission for Human Rights in this endeavour.

Paragraph 3 - Orders to commit torture

30. An order of a superior or public authority shall not be more powerful than the law, if the order is contrary to the law and constitutes an offence. Thus, an order of a superior or public authority may not legitimate torture because the law defines torture as an illegal act and prohibited by law. Article 122 of the Constitution of 1993 stipulates that members of the Royal Government shall not use the orders, written or verbal, of anyone as grounds to exonerate themselves from their responsibility.

31. In this case, whoever gives an order to commit torture acts shall be guilty of torture and punished pursuant to the law. The direct perpetrator and the person who ordered or masterminded the act are both liable for punishment. As defined in article 69 of the Transitional Procedure Law, whoever supplies the modalities of an offence, orders the offence to be committed or facilitates commission of the offence, shall be considered an accomplice and punished with the same punishment applicable to the principal instigator.

Article 3

Expulsion, expatriation and extradition

Paragraph 1

32. The Kingdom of Cambodia recognizes and respects the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as defined in the Constitution of 1993 (art. 31). The Kingdom of Cambodia shall not expel, expatriate or extradite abroad anyone who is believed to be subject to torture.

33. In this above-mentioned case, the Constitution of the Kingdom of Cambodia (art. 33), states: “Khmer citizens shall not be deprived of their nationality, exiled or arrested and deported to any foreign country unless there is a mutual agreement on extradition.” Therefore, Khmer citizens shall be protected by the Constitution from expulsion, expatriation and extradition.

34. In the case of an alien, the Kingdom of Cambodia will apply regulations in accordance with the Convention.

35. The expulsion of aliens from Cambodia is decided by the Minister of the Interior, according to the immigration law promulgated by Royal Decree N.05/94, dated 22 September. Similarly, a Cambodian court judgement also has power to expel. An English citizen who committed an offence was sentenced to imprisonment and expelled from Cambodia, after already serving imprisonment, by the Kandal provincial court.

36. The Kingdom of Cambodia has ratified the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, but Cambodia has not set up a law on refugees for its real application.

37. In conformity with the law on immigration, in 1995 Cambodia expelled 2,938 aliens who illegally entered Cambodia (report of the Foreign Department, Ministry of the Interior).

38. So far, Cambodia does not have enough regulations or treaties on extradition to extradite offenders to other countries. Cambodia has signed an extradition treaty with Thailand on 16 May 1998, and signed one with China on 9 February 1999.

39. In reality, Cambodia does not have enough regulations or treaties on extradition with other countries, but Cambodia is a member of the International Criminal Police Organization (Interpol). Thus, for applying extradition, the Royal Government exercises the principles of mutual understanding and diplomatic and Interpol codes.

40. According to the above-mentioned principles, and upon the request of the United States authorities, the competent Cambodian authorities have sought to arrest criminals to send to the United States, as follows:

- In March 1996, a Japanese named Tanory Ayasy, who was accused of attempting to murder the United States President, and who stole an aeroplane, was arrested;
- Meng Sothy, who was accused of 12 counts of murder in the United States, was arrested in July 1997;
- In December 1997, John Minh, also called Kim Kvieng, accused of murdering a Vietnamese woman and stealing US\$ 21,500 in California, was arrested;
- In February 1998, Sun Ly, also called Vo Sunminh, accused of burning his house for the purpose of gaining insurance, causing his son's death, was arrested.

41. In case of implementation of article 3 (1), the Royal Government of Cambodia will consider all points concerning acts of torture as mentioned in the Convention, as well as violations of human rights.

42. The Royal Government of Cambodia will study violations of human rights in other countries through the assessments of the United Nations Commission on Human Rights.

43. To guarantee the best application of article 3 (1), the Royal Government of Cambodia will try its best to reform the justice system including enactment of laws, especially the law on the Criminal Code and the law on the Criminal Procedure Code, and at the same time will try to conclude extradition treaties with many countries, especially with countries in the region.

Article 4

Paragraph 1 - All acts of torture are contrary to the law

44. Acts of torture are inhumane acts, contrary to the morality of Cambodian Buddhists. The Kingdom of Cambodia has adhered to Buddhism as a guide for educating human mentality, avoiding cruel and inhumane acts, and especially for educating people not to commit acts of torture. To avoid all acts of torture, the Kingdom of Cambodia has regarded that all acts of torture and inhumane and cruel acts are offences. As the Minister of Justice stated at a seminar on 13 and 14 March 1996, acts of torture of suspected, accused, detained and convicted persons are offences. In this case, attempt, complicity, participation and commission of acts of torture are all offences and contrary to the law.

45. Acts of torture and complicity and participation in their commission are prohibited by law. The Constitution of 1993, article 38 (1+4), states that the law guarantees that there shall be no physical abuse of any individual, and any treatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate in or conspire in such acts shall be punished according to the law. According to the Transitional Criminal Law, no detainee shall be subjected to cruel, inhumane or degrading treatment or punishment, nor be beaten or tortured (art. 12-1). Any public agent, including police or military agents, who deliberately infringe upon the rights or integrity of any person will be punished by one to five

years in prison. Anyone who supplies the modalities of an offence, orders that the offence be committed or facilitates commission of the offence shall be considered an accomplice and punished with the same punishment applicable to the principal instigator (art. 69).

46. The above regulations were not sufficiently defined. Article 38-1 of the Constitution of 1993 states that “to prohibit physical abuse against any individual”, has not been clearly related to acts of torture. Article 38-4 of the Constitution and article 12-1 of the Transitional Criminal Law prohibit acts of torture on detainees. Article 57 of the Transitional Criminal Law provides for punishment of any authority that infringes the integrity of any individual.

47. The new draft Criminal Code states clearly that torture is an offence (chap 8, arts. 200-207).

Paragraph 2 - Punishment of perpetrators and accomplices in torture offences

48. Attempted acts of torture and complicity in acts of torture are illegal and punishable in accordance with their grave nature. Even if no article of law specified torture as an offence, the existing laws as described above would be adequate for punishing offenders.

49. Cambodia has no clear law to determine that acts of torture are criminal or misdemeanour offences. In deciding to punish an offender, a court decision is based on acts committed and resulting consequences. Even though there are still no regulations to punish torture, the offender may not escape punishment. On 5 November 1993, Phnom Penh municipal court sentenced a Batambang prison guard convicted of torturing a prisoner to one year in prison and ordered him to pay 200,000.00 riels in damages to the victim.

50. The competent ministries do not permit torture to escape from legal remedy. In one case, the body of Ly Peng An, who died in the Krochhmar District police commission (in Kampongcham province), was exhumed for re-examination seven months later after the Ministry of Justice received a complaint that this person had been tortured to death.

51. The Kampongcham provincial prosecutor issued a letter, N.310/97 dated 25 September 1997, to the Ministry of the Interior for the purpose of permitting the prosecutor to prosecute a group of police who murdered a suspect. In response, the Ministry of the Interior issued a letter, N.1/18 dated 9 December 1997, to the Kampongcham provincial governor ordering the provincial police commissioner to turn a group of policemen over to the court in order to resolve the case.

52. In the case of acts of torture which have occurred, the court determines punishment in accordance with the acts committed, as follows:

- In cases of the victim's death, the court shall sentence the offender for a criminal offence, in accordance with articles 31 and 32 of the Transitional Criminal Law;
- In cases of rape, the court shall punish the offender for a criminal offence in accordance with article 33;

- In cases of illegal detention, the court shall punish the offender in accordance with article 35;
- In cases of injury, the court shall punish the offender pursuant to the Transitional Criminal Law;
- In cases of complicity in acts of torture, offenders shall be punished like the perpetrator, in accordance with article 69.

53. The Royal Government will determine the acts of torture that are contrary to the new draft Criminal Code being prepared and examined by the Ministry of Justice. In this draft, there are eight articles dealing with punishing the offence of torture.

Article 5

Competence for prevention of offences

Paragraph 1

54. In the Kingdom of Cambodia there are competent authorities to prevent offences under their jurisdiction committed on board a ship or aircraft registered in Cambodia. Article 2 of the Constitution states that the territorial integrity of the Kingdom of Cambodia shall absolutely not be violated within its borders as defined in the 1/100,000-scale map made between 1933 and 1953 and internationally recognized between the years 1963 and 1969. Article 145 of the Constitution states that the territory of the Kingdom of Cambodia shall be divided into provinces and municipalities. Provinces shall be divided into districts (Srok) and districts into communes (Khum). Municipalities shall be divided into Khan and Khan into Sangkat.

55. To ensure prosperity and protect the freedom of Khmer citizens, in Cambodia there exist provincial-municipal judges and prosecutors (article 128 of the Constitution).

56. Cambodia is facing border problems with Thailand and Viet Nam. These problems make it difficult for Cambodia to resolve cases of offences that occur in disputed areas.

57. Whenever the above-mentioned offence defined in article 4 of the Convention occurs on board a ship or aircraft registered in Cambodia, the competent provincial-municipal authorities have the right to arrest the alleged offender and send him or her to the provincial-municipal courts for the appropriate legal procedure. The law on Criminal Procedure of 1993, (art. 96) states that each province or municipality has one court, with jurisdiction over the territory of that province or municipality.

58. All persons who are in the territory, air space and waters of the Kingdom of Cambodia shall be under the jurisdiction of Cambodia. Article 11 of the Law on Criminal Procedure of 1993 states that penal action may be taken against all persons who are in Cambodia, without discrimination as to race, nationality, religion, sex and social position.

59. The Diplomatic Corps shall be protected by the Vienna Convention on Diplomatic Relations. Parliamentarians and senators are protected by the Constitution. The accusation, arrest, or detention of an Assembly member or senator shall take place only with the permission of the National Assembly or the Senate or by the Standing Committee of the National Assembly or Senate, except in case of flagrante delicto. In such case, the competent ministry shall immediately report to the National Assembly or Senate or to the Standing Committee for a decision. The decision made by the Standing Committee of the National Assembly shall be submitted to the National Assembly at its next session for approval by a two-thirds majority vote of the Assembly members. In any case, the detention or prosecution of a parliamentarian shall be suspended by a three-quarters majority vote of the Assembly members (arts. 80 and 104).

60. The court shall have sole competence to adjudicate all cases. Article 128 of the Constitution sets out that the judiciary shall have jurisdiction over all lawsuits, including administrative ones. Article 130 of the Constitution states that judicial power shall not be granted to the legislative or executive bodies.

Paragraph 2

61. In the Kingdom of Cambodia there exist laws for punishing anyone who commits acts of torture. The courts of the Kingdom of Cambodia shall have the competence to judge these cases, whatever the nationality of the offender or the victim, or if the offender cannot be extradited.

62. In the past, the courts of the Kingdom of Cambodia have not been presented with the case of a foreigner having committed acts of torture inside or outside the territory of Cambodia. If a Khmer national who committed acts of torture abroad should enter Cambodia, the court has the competence to handle the case. On the other hand, Cambodian authorities can cooperate with the country where the offence was committed. This issue is governed by article 33-1 of the Constitution which says that Khmer citizens shall not be deprived of their nationality, exiled or arrested and deported to any foreign country unless there is a mutual agreement on extradition.

Article 6

Paragraph 1 - Detention or taking an offender into custody

63. When anyone is suspected of committing acts of torture and evidence is found in the territory of Cambodia, the competent authority of Cambodia will detain, or temporarily detain, the offender for the purpose of ensuring that the offender does not escape, in order to investigate the criminal offence or to arrange the legal procedure to extradite the offender, if he or she is a foreigner. But the prosecution, arrest, or detention of any person shall not be done except in accordance with the law (article 38 of Constitution). Anyone who, without order from the judicial authority, arrests, detains or illegally confines anyone shall be liable to imprisonment.

64. The judicial police shall have the duty to seek the offender, collect evidence and then send it to the court that has the duty to adjudicate. The police may arrest and send an offender to court if the offender has committed a cognizable criminal or misdemeanour offence, or with a writ of *habeas corpus* or an arrest warrant (article 35 Law on Criminal Procedure of 1993).

65. The competent authorities have the role of judicial police as stated in article 36 of the Law on Criminal Procedure as follows:

- (a) Prosecutor and investigating judge;
- (b) Provincial-municipal governor, vice provincial-municipal governor, district-khan governor, vice district-khan governor, chief of commune or sangkat;
- (c) Director or deputy director of department, chief or deputy of bureau, chief or deputy chief of section of the following:
 - Department of criminal police;
 - Department of economic police;
 - Department of science and technology police;
 - Department of anti-terrorism;
 - Department of border police;
 - Department of foreigners;
 - Department of anti-narcotics;
- (d) Provincial-municipal deputy police commissioner;
- (e) Chief or deputy chief of bureau and chief or deputy chief of section who is in charge of a criminal job and is under the control of a provincial-municipal police commissioner such as:
 - Serious criminal police bureau;
 - Light criminal police bureau;
 - Economic police bureau;
 - Criminal science and technology bureau;
 - Anti-narcotics bureau;
 - Anti-terrorism bureau;
 - Foreigners bureau;

- (f) Police inspector, vice police inspector and chief or deputy chief of criminal section of district-khan police inspectorate;
- (g) Chief or deputy chief of traffic police bureau and chief or deputy chief of traffic police section “traffic offence only”;
- (h) Chief or deputy chief of commune - sankat administrative police post;
- (i) Commander or deputy commander of military police, who is in charge of criminal offences concerning the military;
- (j) Official of any ministry or institution who is given power to examine offences by the law.

Any operation of a judicial police officer is led and coordinated by a prosecutor in order to ensuring an effective accusation, which is under the control of the appellate prosecutor. The Minister of Justice has the right to delegate to the judicial police any competence in the whole territory, and also issues any instruction on methods and procedures for judicial police officers. A provincial-municipal governor/deputy governor, district-khan governor/deputy governor, or chief of commune-sankat has the competence to instruct the judicial police in their respective territory to act on offences in cooperation with the prosecutor.

66. The officers of the judicial police have the right to arrest offenders only in cases of crimes or misdemeanours caught in the act. They shall bring the alleged offenders to the competent jurisdiction within 48 hours. In case of non-compliance with this strict rule, the officer shall be punished in accordance with the law (article 47 of the Law on Criminal Procedure 1993).

67. After receiving the charge files from the prosecutor, the judge has the right to decide whether to detain the offender (article 13 of the Transitional Criminal Law).

68. The accused has the right to petition the judge for release, either directly or through counsel. The judge must respond within five days by a reasoned decision (article 14-2 of the Transitional Criminal Law). Article 65 of the Law on Criminal Procedure states that if the presiding judge thinks that the accused may be temporarily released, with or without bail, he/she shall decide on this issue before examining the merits. He/she will act the same way if the accused so requests in writing.

69. Permitting temporary release of the offender before opening the hearing of a criminal offence is difficult because there is no guarantee that the accused will appear before the court for the opening hearing, and the competent authority has difficulty in finding him/her because the administrative management system is not perfect.

70. Some judges permit criminal suspects to temporarily remain at large. In this case the suspects taking this opportunity to escape without appearing before the court.

71. Any person, whether in detention or not, must be judged no later than six months after arrest (article 21 of the Transitional Criminal Law). In case of a cognizable misdemeanour offence, the accused shall be temporarily detained and will be brought to trial in the near future. If the judge finds that the file is incomplete, he or she may postpone the hearing to a later date that is not longer than four months counting from the date of detention (article 64 of the Law on Criminal Procedure). In cases of cognizable and non-cognizable offences, the accused shall be brought to trial no later than six months after the date of arrest. This time is kept for the investigation (article 60 of the Law on Criminal Procedure).

72. Concerning extradition, the Cambodian competent authority will take the appropriate measures to investigate and temporarily arrest, after receiving a warrant from the requesting country. During the temporary detention, if the competent ministry has not received the request for extradition from the requesting country, the offender shall be released. This temporarily is the procedure because Cambodia is a member of Interpol.

73. This above-mentioned principle shall be exercised in the Kingdom of Cambodia to ensure that all persons are treated equally before the law, whether Khmer citizens or foreigners. But its real execution is still not effective, owing to the following difficulties:

- (a) Some competent authorities have violated the procedure by detaining or arresting the accused without warrant;
- (b) Some police fail to bring the accused before a prosecutor within 48 hours after the time of detention. This is the result of a lack of means and capacity of competent agents;
- (c) In principle, a hearing for the accused must be held no later than six months after arrest. But this principle is still not completely followed because there still exists pre-trial detention longer than six months because of a lot of lawsuits, insufficient judges, weak capacity and lack of means and facilities, as well as a lack of research facilities.

74. In ensuring the detention of accused persons for the period of 48 hours, the Royal Government has adopted a legal amendment permitting the police to delay the period and detain the suspect longer, with appropriate reason and with the approval of the prosecutor. This amendment, adopted by the National Assembly, was promulgated officially on 10 January 2002.

75. The Ministry of Justice is preparing a draft Criminal Code and Criminal Procedure Code including punishment of competent authorities who do not act in accordance with the laws and regulations. The Ministry of Justice will be also scheduled to continue training of new judges in all courts. The Ministry of Justice has instructed all provincial-municipal courts to adjudicate cases punctually, avoiding longer periods of pre-trial detention than the law allows, as follows:

- Circular N.13/6106.94 dated 31 May 1994;
- Instruction N.198 dated 14 February 1996;
- Circular N.4/97 dated 2 April 1997.

The Ministry of Justice issued an order on 16 December 1996 to Takeo provincial court, which excessively detained four persons. On 10 September 1997, the Ministry of Justice issued an instruction to Koh kong provincial court, which excessively detained six persons.

76. The Council of Ministers decided to submit to the Royal Government, on 5 February 2002, and the Royal Government has issued a subdecree relating to the creation of the Royal Court School for the purpose of training judges and prosecutors. The selection of new judges will take place at the end of 2002.

77. Upon receiving the information that someone has committed an act of torture, as defined in article 4 of the Convention, the prosecutor is competent to carry out a preliminary inquiry in order to bring charges and to send the accused to the investigating judge to conduct proceedings consistent with court procedure. If there is enough evidence and documentation, the prosecutor may prosecute and send the accused directly to the court for a hearing when the file is complete and there are sufficient elements to constitute an offence. Inquiring into criminal offences is the competence of the prosecutor and investigating judge, pursuant to law. Article 38-3 of the Constitution states that the prosecution, arrest, or detention of any person shall not be done except in accordance with law. Article 2 of the Transitional Criminal Law states that the prosecutor files the indictment in court. Article 55 of the Law on Criminal Procedure of 1993 states that once the perpetration of any crime or offence is known, the prosecutor shall proceed immediately to investigation measures which are provided to him/her by the law. Article 68 of the Law on Criminal Procedure of 1993 states that in each municipal court, there is one or several judges responsible for investigating criminal cases, depending on the workload and the court's need.

78. In cases where the offender is caught in flagrante delicto and the investigating judge did not receive the case, the prosecutor may order the suspect arrested. The prosecutor shall inspect and confiscate any object as evidence necessary for finding the truth and shall propose a technical evaluation of objects as may be deemed necessary. The prosecutor shall, after completing the statement of confession immediately send the files to the investigating judge for conducting additional investigations and rearranging the documents prior to delivering the files to the court hearing the case (article 62 of the Law on Criminal Procedure).

Paragraph 2

79. In additional investigations, the investigating judge proceeds according to the following procedure:

(a) When the accused person appears for the first time, the investigating judge shall record his/her identity, inform him/her of the imputed act, receive his/her statement after informing him/her of the right to answer or not to answer without the assistance of a lawyer or defender chosen by him/her or appointed automatically. At this first appearance the accused may request the judge to appoint counsel. If he/she does so, the investigating judge shall suspend the interrogation and call in counsel in order to interrogate the accused in the presence of the counsel (articles 75 and 76 of the Law on Criminal Procedure);

(b) To collect additional information, the investigating judge has the right to order all those on the list of complainants and witnesses before the judge, as well as all persons who consider that their testimony is useful. In all cases, the investigating judge has the right to cross-examine parties and witnesses;

(c) After listening and interrogating, the investigating judge may take other measures, if necessary, such as:

- To examine the spot where the criminal offence occurred, accompanied by one clerk;
- To search the residence of the accused, accompanied by a lawyer or defender;
- To choose an expert for special scrutiny of evidence, if the judge considers it necessary.

80. When the investigating judge considers that the collection of information is complete, then the files are kept by the lawyer for the period of 24 hours. After that, the investigating judge sends the files to the prosecutor who brings a charge in writing which the prosecutor sends back to the investigating judge within three days. After the investigating judge receives the indictment the judge shall send the accused to court for a hearing. In contrast, if the investigation does not find any fact or sufficient evidence, the judge may issue a non-suit order, and if the prosecutor does not complain, the accused shall be freed by the investigating judge (investigation procedure and file processing as defined in chapter iv of the Law on Criminal Procedure).

81. Any person, whether or not in detention, must be judged no later than six months after arrest (article 21 of the Transitional Criminal Law). So the investigation must last no longer than six months after the date of arrest.

Paragraph 3 - Right to communicate of the accused person

82. Article 38-8 of the Constitution states that all persons have the right to be protected by the law. So all accused persons in pre-trial detention in the territory of Cambodia, either national or non-national, are entitled to be protected by the law and have the right to communicate with close representatives. It follows from this that, every accused person has the right to choose a lawyer or defender.

83. Article 10 of the Transitional Criminal Law states that the right to the assistance of an attorney or counsel is assured for any person accused of an offence or crime. Article 75-76 of the Law on Criminal Procedure permits the accused person to have the right to protect him/herself, choose a lawyer or propose that the Government appoint a lawyer. Articles 13-4 and 21-2 of the Transitional Criminal Law state that 48 hours after the arrest of the accused person, the lawyer shall receive the files and receive notice 15 days before of the hearing of his/her client. Article 76-78 and 80 of the Law on Criminal Procedure authorizes the accused to

be represented by a lawyer from the first appearance before a judge and the lawyer has the right to examine files, as well as communicate directly and freely with his/her client. Nowadays, the Royal Government has permitted a bar association for legal defenders, and defenders are accredited to courts to act in criminal lawsuits without any payment for the poor.

84. Every detained person has the right to write a letter once a month and to be visited by his/her family every two months; this visiting time shall be reduced if the person is convicted (articles 23, 24 and 25 of the internal regulations on places of correction of the Ministry of the Interior).

85. The Human Rights Commission, the prosecutor, the judge, doctors, lawyers, defenders, representatives of the Office of the United Nations High Commissioner for Human Rights, NGOs and the family of detained persons shall be permitted to visit the correctional institution to know the real situation and meet the accused. Through legal and natural persons, foreigners who are detained have the right to communicate with the appropriate representative of their countries.

86. This above-mentioned principle shall apply in Cambodia, but in the past it was not well applied. Issues such as free communication between the lawyer and client in detention places and visits by human rights organizations and the families of detained persons in detention places face some difficulties on the part of competent authorities. But all shortcomings are gradually improving.

87. Lawyers are few in number, especially in the remote provinces. To resolve this issue, the Council of Ministers decided to submit this issue to the Royal Government. As a result, the Royal Government, on 14 September 2001, issued a subdecree creating a training centre for lawyers.

Paragraph 4

88. When an accused person has been temporarily detained, all courts as well as the competent authority shall inform the family. If the accused is a foreigner, the competent ministry will notify urgently the State of the accused person's nationality.

Article 7

Charging the accused person

Paragraph 1

89. The Cambodian competent authority will prosecute and punish persons who commit acts of torture who are found in its territory and who cannot be extradited. In the case of an alien who commits an act of torture in his/her State, then lived in Cambodia and was arrested by the Cambodian authorities with an arrest warrant from the requesting country, and the Cambodian authority determines that the accused may not be surrendered to the requesting country for the reason of unclear grounds, the authority will exercise punishment consistent with Cambodian law. So far, in Cambodia there has not been such as case.

Paragraphs 2 and 3

90. If a case happens as defined in paragraph 89 above, the Cambodian authority will apply the Law on Criminal Procedure as described above in article 6.

Article 8

Extradition of offenders

Paragraph 1

91. Cambodia will consider all acts of torture and other cruel, inhuman or degrading treatment or punishment as offences and subject to extradition. Acts of torture will be included in general extradition and in treaties between Cambodia and other States in the future.

92. As mentioned above in article 3, the Kingdom of Cambodia does not yet have enough laws or extradition treaties and mutual assistance in the legal field with other countries. The laws and regulations relating to extradition are stated in the Constitution only in article 33: Khmer citizens shall not be deprived of their nationality, exiled or arrested and deported to any foreign country unless there is a mutual agreement on extradition. The Royal Government will try its best to deal with all the above-mentioned problems as soon as possible in order to determine an extradition procedure correctly. Cambodia signed a treaty on extradition with Thailand on 6 May 1998, and with China on 9 February 1999.

93. Even though Cambodia still does not have enough regulations and laws, for the purpose of stopping the offender in a criminal case and also as a member of Interpol, the Cambodian authority has agreed to extradite offenders (see article 3). Apart from this, Cambodia has not yet asked to extradite an accused or convicted person who has committed acts of torture or criminal offences in the territory of Cambodia.

Paragraphs 2 and 3

94. Cambodia shall not categorically stipulate that extradition or mutual assistance in legal matters is a necessary basis for a treaty between States parties. This issue is already stressed through the application by the Cambodian competent authorities of an agreement to extradite offenders in the absence of an extradition law or treaty. Should a request for extradition for torture happen in the future, Cambodia will follow the Convention. Cambodia will always be prepared to sign an extradition treaty with all friendly countries.

Paragraph 4

95. As mentioned above, Cambodia is a member of Interpol, so the Government will abide by the statute and regulations of this organization. This means that Cambodia recognizes acts of torture and inhuman, cruel or degrading treatment, although these acts may occur in Cambodia and it considers these acts contrary to Cambodian criminal law.

Article 9

Mutual judicial assistance

96. Cambodia follows the principle of mutual assistance in prosecuting criminal offences concerning acts of torture with all States parties to the Convention. Cambodia has still not concluded mutual judicial assistance agreements with other countries. But Cambodia has signed a lot of conventions, including the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racism and the Convention against Torture, and Cambodia will agree to mutual judicial assistance to the extent necessary to stop and arrest offenders. Cambodia has still no transnational torture offence, and has never assisted on torture offences with States parties to any convention. Cambodia has provided mutual assistance in police matters because Cambodia is a member of Interpol, described in article 3 and article 6.

97. Cambodia does not have enough agreements and treaties with neighbouring countries, and also mutual judicial cooperation is not completely positive. To effectively promote this area, the Royal Government will prepare mutual judicial assistance cooperation agreements with other countries, including especially regional cooperation, because Cambodia is a member of the Association of South-East Asian Nations (ASEAN).

Article 10

Training on torture

Paragraph 1 - Training of competent authority

98. Cambodia prohibits and prevents acts of torture or cruel, inhuman and degrading treatment or punishment, and is gradually eliminating it. Cambodia continues its works in cooperation with the Office of the High Commissioner for Human Rights and human rights NGOs to educate the national police, the military police and the military on human rights, especially on acts of torture.

99. After the Paris Peace Accords, human rights education has been conducted gradually, mostly short-term training. Each training course includes the Convention against Torture. The object of training courses is to explain to the competent authorities the following:

- General human rights, especially the main provisions of the Convention against Torture;
- Main provisions of the Constitution of Cambodia and the Law on Criminal Procedure;
- Role and function of competent authorities in democratic countries.

100. Human rights training was undertaken actively with the participation of the United Nations Transitional Administration in Cambodia (UNTAC) and afterwards, with the Cambodia office of OHCHR and human rights NGOs.

101. Training the National Police. Since May 1995, NGOs (Adhoc, Licado and Vigilece) have cooperated with the Ministry of the Interior to train the national police in human rights. A syllabus has been prepared in cooperation with Cambodia office of OHCHR. Among roughly 70,000 police, 14,000 of them were trained from May 1995 to May 1996; 17,000 were trained from May 1996 to May 1997. From 1997 to 2001, the above-three organizations have given training courses for 10,360 national police. The Cambodia office of OHCHR gave training courses for 6,476 national police. Every training course lasted four days. Through cooperation, French teachers trained national police on general principles of criminal law and criminal procedure, from March 1995 to March 1995.

102. Training the military. The Cambodia office of OHCHR has cooperated with military police headquarters to train military police, from July 1996 to the present. Until now, there have been 204 courses and 7,724 military police participated. From May 1995 the Cambodia office of OHCHR has cooperated with the National Defence Ministry and the International Committee of the Red Cross (ICRC) on training courses in human rights and the law of military conflict for Royal Armed Forces Officers. A total of 101 trainers on human rights were trained, and 68 trainers on military conflict. The Ministry of Defence, in cooperation with the Cambodia office of OHCHR and ICRC, has given human rights courses for 35,511 soldiers, and trained 23,634 in military conflict. Every training course lasted 15 days.

103. Training of prison officers. Human rights training has been conducted by the Cambodia office of OHCHR and human rights NGOs. In 1994, the Cambodia office trained 12 provincial-municipal prison officers. Each training course lasted three days. Presently, human rights NGOs train other officers in the provisions of the Convention against Torture.

104. Training human rights NGOs. The Cambodia office of OHCHR has trained NGO human rights officers in order that they can train law enforcement officers in Cambodia.

105. Training of judges, lawyers and defenders. Defenders were trained by UNTAC and NGOs (project lasting nine months). The defenders training programme is continuing. The problem of forced confession is also included in the training course. Thirty lawyers were trained in 1995. Other lawyers are being trained by the Cambodian Bar Association. These lawyers have also studied human rights problems. In the above-mentioned training courses, torture was also discussed. A total of 134 judges were additionally trained by French judges in four trimesters until 1993. Forty-two new judges were also trained completely in 1995. Provincial judges were also trained under an OHCHR technical cooperation programme and a United States NGO, Human Rights Law Group. All judges were additionally knowledgeable on human rights.

106. Training of doctors. A code of conduct of medical staff is a subject in which all medical students are trained prior to becoming part of the framework of the health staff. Apart from this, medical staff who are responsible for treating convicted and detained persons shall be trained

more. The NGO human right alliance and the Cambodian health section trained medical staff who are responsible for prisons in two provinces (Kampong Speu and Kampong Chhnang). The programme focused on the principle of a code of conduct for medical staff, including the prohibition of and protection against torture and inhuman, cruel, or degrading treatment or punishment.

107. Other relevant subjects were also studied, such as mental diseases. Since 1994, 60 psychology students have been or are being trained at Phnom Penh University. Some NGOs are focusing on mental health problems. Ten doctors are being trained in the specialty of mental disease for a period of four years and will become specialized doctors.

108. The Royal Government has focused on creating the consultation and mental treatment sections that are supported by the Japanese Government Mental Health Training Programme, Oslo University and the Asian Medical Doctors Association. For this purpose, the Government will continue increasing the consultation and mental treatment sections in all provincial-municipal hospitals.

109. To publicize, disseminate information about and take preventive measures against acts of torture in Cambodia, in March 1996, an inter-ministerial commission prepared a human rights report for the United Nations, supported by assistance from the United Nations, to prepare a seminar on the Convention against Torture. This seminar was held by the Ministry of Justice over 1½ days, presided by the Minister of Justice and the Secretary of State for the Interior and attended by 100 participants (including prosecutors, lawyers, defenders, directors of the criminal department, prison department representatives, the training department of MoI, and officials of institutions and the United Nations. The seminar allowed all participants, especially law enforcement officials, to understand more about the acts that international and national laws forbid. After the seminar, the permanent secretariat of the inter-ministerial commission collected the seminar documents to compile as a book. The books were distributed to provincial-municipal courts and prosecutors, commissioners and prisons and the seminar participants as well.

110. The Government has paid additional attention to the following:

(a) The Ministry of Education, Youth and Sport has included human rights in the primary and secondary school programmes, and included a demographic subject test. Human rights is to be examined prior to entry to associate schools, State-owned vocational training schools and higher education public institutions;

(b) The Office of the Council of Ministers has compiled a Royal journal, issued every month, on laws and regulations, and distributed it widely without any restriction. At the same time, new laws and regulations also are publicized through the press, radio, TV and newspapers. International pacts or conventions to which Cambodia is a party also have been publicized, strongly supported by the Cambodian office of OHCHR and human rights NGOs.

(c) To express a strong will for protecting human rights, the Royal Government issued a subdecree concerning permission for governmental officials, employees and workers in Cambodia to take a rest day to celebrate International Women's Day (8 March), International

Labour Day (1 May), Human Rights Day (10 December) and Children's Day (1 June). The Government always takes a measure to solemnly commemorate each celebration day. With assistance from the Cambodia office of OHCHR, on 8 December 2000 the Cambodian Human Rights Committee celebrated Human Rights Day on 10 December.

111. In sum, after training, law enforcement officials, both civilian and military, and commune and district officials understood about human rights. But the training is limited and law enforcement officials do not have a lot of practice.

112. The Royal Government will therefore continue educating and publicizing human rights tasks, especially combating acts of torture, to reach local places in Cambodia in order that all persons understand and participate in eliminating all acts of torture. This will make Cambodia a real democratic State and a State ruled by law in the future. But to achieve this, not only government efforts but assistance from the Cambodia office of OHCHR and NGOs is also needed.

Paragraph 2 - Prohibition of acts of torture

113. Protection against torture and cruel, inhuman, or degrading treatment or punishment is in the Cambodian Constitution and the Law on Criminal Procedure, and has been described in previous articles, especially in article 4.

114. This prohibition is also being included in regulations or instructions to law enforcement officials as follows:

(a) The national police: the Ministry of the Interior has adopted regulation No. 006 dated 23 November 1991 stating that police who obtained confession by torture will be demoted or dismissed. This punishment excludes the punishment from the court;

(b) The military: the Law on General Statutes for Military Officials was adopted by the National Assembly on 15 September 1997. Article 17 of this law states that military officials must follow orders with responsibility. Any order that is against the law or against the convention is an offence. In this case the one who issues the order as well as the one who implements the order must be responsible before the law;

(c) Civil servants: the Law on the Statutes of Civil Servants of the Kingdom of Cambodia states clearly the responsibilities of the civil servants of the Kingdom of Cambodia, including the medical staff. Article 35, paragraph 2, of this law states that civil servants must not use their positions for their own benefit or to threaten the citizens. In the case of violation of this prohibition, these civil servants will be disciplined. Meanwhile, the Ministry of Health is drafting a separate statute for medical staff;

(d) Judges: the Statute of Judges will include the responsibilities of judges and will be prepared in the future. It will include the prohibition of acts contrary to international conventions, and punishments irrespective of penal proceedings for any act that is contradictory to the law.

115. Even though there exist some deficiencies in the above, in general no one can utilize his/her power in the course of duty for the purpose of torture or inhuman or degrading treatment or punishment on detainees and convicted persons. This prohibition shall be assured and protected by the Constitution of the Kingdom of Cambodia, stated in articles 38 and 39, and the Transitional Criminal Law (art.12).

116. On the prohibition of torture and inhuman or degrading treatment or punishment, the Government of Cambodia has issued the following guidelines:

(a) The Ministry of Justice, Ministry of the Interior and Ministry of Health issued guidelines on 7 July 1993 stating that a convicted person or pre-trial detainee shall not be shackled;

(b) The Ministry of Justice issued an instruction on 13 September 1993 to provincial-municipal prosecutors to examine prisons and detention places at least twice a month in order to examine convicted and detained persons' circumstances;

(c) The Ministry of Health issued an instruction on 7 May 1994 guiding all provincial-municipal health departments cooperating with provincial-municipal authorities in order to care well for pre-trial detainees and convicted persons.

In the draft Criminal Code, there are eight articles punishing torture.

Article 11

Review system for detention and investigation

117. In the Kingdom of Cambodia, persons who are responsible for investigation, interrogation, detention and imprisonment have been reviewed. Such persons are prohibited from acting against regulations protecting accused, suspected or convicted persons from torture.

118. This review applied to legal, administrative and judicial measures which were contained in laws for protecting detained, or convicted persons:

(a) Article 38 of the Constitution in 1993: protects the physical integrity of individuals;

(b) The law protects the life, honour and dignity of people;

(c) Prosecution, arrest and detention shall be carried out in accordance with the law;

(d) Coercion, physical ill-treatment or any harsh treatment of a detained or convicted person is prohibited. The perpetrator, co-offender and accomplice shall be punished pursuant to the law. Confessions arising from physical or mental coercion shall not be accepted as evidence of guilt. Any doubt shall be resolved in favour of the accused. The accused shall be innocent as long as the judge has not finally adjudicated. Anyone has the right to be protected by judicial means.

119. In the Kingdom of Cambodia, the person who has the right to arrest and detain is called a judicial police officer. Other responsibilities include:

- to record crimes and offences;
- to make statements of infractions;
- to collect evidence;
- to seek perpetrators in order to send him or her to the court, pursuant to a warrant.

120. A judicial police officer may arrest or detain an accused or suspected person or search a residence. The accused or suspected may be detained for a period of 48 hours before being brought before a competent court. The Law on Criminal Procedure of 1993 sets out:

- Article 35: the judicial police deal with criminal, misdemeanour and petty offences, collect all evidence and then send it to the court in charge of adjudicating. Perpetrators may be sent to the court accompanied by a judicial police officer only when he/she has committed a criminal offence or when arrested with a warrant;
- Article 36: a judicial police officer also has the right to record witness testimony and to search residences, the latter only in case of a criminal or cognizable offence;
- Article 47: only in the case of a criminal offence or flagrante delicto has the officer the right to arrest the alleged offender. The officer shall send offenders within 48 hours to a competent judge irrespective of the period needed to transport the offender. In case of disrespecting the above-mentioned, the officer shall be subjected to punishment under Transitional Criminal Law (arts. 22 and 57).

121. Detention of the accused or suspect can be longer than 48 hours if ordered by a judge, but for no longer than six months. Article 79 of the Criminal Procedure Law of 1993 states that after the accused first appears, the investigating judge has the right to decide whether to detain the accused in custody. This judgement comes into effect immediately unless the prosecutor appeals. All parties have the right to complain to the appellate court concerning the above judgement within a period of 15 days counting from the day of receiving notice of judgement. The appellate court has to resolve this matter within 15 days after receiving the appeal.

122. Within 48 hours of the detention or arrest of the accused or suspect, the judicial police have the right to interrogate the suspect or accused in order to open a file on the offence and then he/she is sent to the prosecutor. The judicial police conduct the interrogation of the suspect or accused pursuant to his/her experience, without clear guidelines or orders.

123. Interrogations do not use tape recorders or video tapes. Statements are made and corrected as outlined in article 40 of the Criminal Procedure Law of 1993. The statement includes the surname, name and function of the person making the statement. The person who makes the statement has to sign and date it and make the statement urgently without any delay. Erasures or amendments shall be clearly indicated.

124. Within the 48 hours from detention the judicial police do not allow anyone, except competent agents, to contact the detainee. But every activity of the judicial police, including search prior to detention, arrest and interrogation of the suspect or accused, is the right by law of the prosecutor to allow before they take place. Article 36 of the Criminal Procedure Law of 1993 states that any operation of the judicial police is directly ordered by the prosecutor and is examined by the prosecutor general of the appellate court.

125. So the prosecutor general has the right to hear or lead an interrogation of the accused at any time. But the prosecutor general has no right to examine at the police station. Controlling the police station is in the competence of the Ministry of the Interior.

126. Review of every judicial police operation is the competence of the prosecutor. The Prosecutor examines the activities of the judicial police in three main cases:

(a) First case: the prosecutor examines the detention or arrest of the accused or suspect to determine whether the judicial police have applied the law, especially concerning non-cognizable offences for which a warrant is required (article 19-2 of the Transitional Criminal Law);

(b) Second case: the prosecutor reviews the duration of detention or arrest of the accused or suspect to ensure that the 48-hour limit is respected;

(c) Third case: the prosecutor reviews police activities in the interrogation of the suspect or accused. Police shall be prohibited from exercising coercive means to obtain a confession from the accused or suspect.

127. In reality, prosecutors do not work in the provinces and municipalities are not sufficiently numerous owing to a lack of funds. Therefore, the procedures described above are not always followed. Prosecutors cannot review the activities of the judicial police directly and can only examine complaints, reports and the suspect or accused when police send him/her in.

128. Because of the situation described above the operation of the judicial police can be improved.

129. An accused or suspect who is illegally detained without a warrant shall be released (articles 16 and 22 of Transitional Criminal Law). Furthermore, if the competent authority acts contrary to the law he/she shall be subjected to a punishment pursuant to law (article 22-2 of the Transitional Criminal Law). Examples are as follows:

- In Pur Sat province, one pre-trial detainee was released after more than six months;
- In Kampong Cham province, one district police inspector was sentenced for detaining the accused for a period longer than 48 hours.

Review of the military

130. The military are not competent to detain accused or suspected persons. In the case of flagrant offences, the military have the right to detain but no right to interrogate or take a statement, so they must send the perpetrator immediately to the judicial police. Therefore, there is no review system for military detention.

131. In sum, the prosecutor is competent to detain or arrest the accused or suspect. Although the military may detain or arrest, only the prosecutor has the function of reviewing detention.

Review of prison officers

132. In the Kingdom of Cambodia, in December 2001, there were 24 prisons and detention places housing 3,158 convicted persons, 60 of them female, and 2,106 persons in pre-trial detention, 224 of them female.

133. Prisons and detention places are controlled by the Ministry of the Interior as regards assignments, administration and financial affairs. Provincial-municipal police superintendents have a very important duty in controlling prison officers' work. Provincial-municipal superintendents, who are responsible to the Ministry of the Interior, directly control the performance of prison officers.

134. The Ministry of Justice contributes to the review of prisons and detention places. In this review, the Ministry acts through the provincial-municipal prosecutor who is responsible for reviewing on site twice a month according to Ministry guidelines. The prosecutor plays an important role in reviewing the correct performance of prison officers in relation to convicted persons and pre-trial detainees.

135. With the permission of the competent prison officer, the family of a convicted person and pre-trial detainee has the right to visit the prison compound. NGOs who are working with human rights work shall also be permitted to review prison conditions.

136. The family of the sentenced or detained person and NGOs, through the prosecutor, can complain, in writing or verbally against a prison or detention officer who is responsible for ill-treatment. The competent authority, in particular a judge, would normally deal with this action but this procedure needs to be improved.

137. In fact, management and review exist, but performances are not yet efficient and improved. The accused or suspect is handcuffed at some interrogation places. The judicial police sometimes illegally obtain information from accused and arrest and detain without a warrant. Some persons are detained longer than the period allowed by law. Some prisons lack adequate hygiene. In some places detained and convicted persons sleep on the floor in close confinement.

138. This lack is an objective circumstance on account of the country's economic and social difficulties. On the other hand, the technical capacity of responsible officers is limited, as are facilities and means of transportation which are supplied by the State. These deficiencies cannot be solved immediately.

139. In sum, the review system of the Royal Government of detention, interrogation and prison, which is the responsibility of specialized institutions of the Ministry of the Interior and the Ministry of Justice, has not been able to be carried out because of the lack of means of transportation, facilities, budget, capacity and technical means.

140. Government, in the face of these deficiencies, is trying to resolve them gradually by itself and also by appealing for international aid. Recently, Government has transferred prison management from the power of the police to the provincial-municipal authority.

Article 12

Urgent and impartial investigation

141. The competent authority of The Kingdom of Cambodia will order an investigation immediately when it is believed that torture has been committed in territory under the jurisdiction of any province or municipality. This matter is defined in article 55 of the Criminal Procedure Law of 1993 which states that the prosecutor, after having been informed that an offence has been committed, shall take immediate action to investigate the facts, pursuant to the law. In the territory of Cambodia, fact-finding investigations are carried out in all cases and all suspects are treated without discrimination as to race, gender, religion and position. The criminal investigation is in the competence of the prosecutor, the investigating judge and the judicial police. The judicial police investigate upon the prosecutor's instruction, and are monitored by the appellate prosecutor general. The investigation procedure is described in article 6 (2) above.

142. Although the procedure exists, investigations are difficult, because at present, there are 163 judges and prosecutors (108 judges and 55 prosecutors) legally appointed. All judges are sent to 21 provinces-municipalities, the appellate court and the Supreme Court. In comparison with the number of judges, the 11 million population and the number of cases are not proportionate and are difficult. This causes the investigations to be difficult and long. Some of the many factors, resulting in difficult investigation are the following:

- Some competent officers, in principle, proceed slowly strictly according to law, because of their small salary;
- The small salary for remote area missions (8,000 riel for a person per diem) cause a lack of competent officers to deal with cases;
- Transportation for on site investigation, and to transport witnesses to the court is lacking;

- Examination facilities are insufficient nor of sufficient technical quality;
 - The capacity and techniques of competent officers are not modern and insufficient.
143. The Royal Government is trying to reduce and eliminate these difficulties as follows:
- It is considering measures to increase the capital for spending on public investment, including an increase of civil servants' salary as a priority, and spending on court investigations and so on;
 - It has adopted a policy on reforming the justice system and the courts;
 - The Supreme Council for Magistrates has reviewed court activity step by step;
 - The new draft Criminal Code is paid more attention to by the Ministry of Justice;
 - Gradually training the police officers and judges to understand the measures and investigating techniques for finding evidences. In fact, the Royal Government issued subdecrees to create a school for judges to improve their capacity;
 - The Royal Government has increased the budget for meals for officials (15,000 per diem);
 - The Supreme Council for Magistrates approved the appointment of 30 new judges, who hold Master's degrees in law who are now being trained.

Article 13

Right to complaint of victim

144. The Kingdom of Cambodia ensures that a person who was illegally treated or tortured has the right to submit a complaint to the competent authority. Article 39 of the Constitution of 1993 states that Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by State and social organs or by members of such organs committed during the course of duty. The settlement of complaints and claims shall be the competence of the courts. According to the Criminal Procedure Law of 1993:

- Article 9 - anyone who considered himself to be the victim of any offence can file a complaint with the prosecutor for damages;
- Article 10 - in case the complainant is victimized by an action which he or she considers a criminal offence and the prosecutor has not responded to the complaint, the complainant can complain to the appellate court;
- Article 11 - in Cambodia, penal proceedings are carried out in relation to all persons without discrimination, as to race, religion, gender, and social position.

145. A person who is victimized by torture can submit a complaint at any time and with all means to, for example, human rights NGOs or the parliamentary commission on human rights or the Government (Ministry of Justice) or the courts.

146. Complaints may be laid in any place, but only the court is competent to resolve the case because court power covers all cases, as well as administrative cases. Accordingly, State institutions and human rights NGOs and the parliamentary commission on human rights, after receiving a complaint, has the duty to send it to the competent court. A detained or convicted person can submit a complaint through his/her family, lawyer or human rights organization.

147. In the past, it has been confirmed that torture happened for the purpose of obtaining a confession from a convicted person, suspect or offender. Sometimes such a complaint is made by a convicted person through the lawyer or the victim at the hearing. In these cases, it has been said by human rights organizations or lawyers that the victim was afraid to complain for fear that he/she will be ill-treated.

148. In Cambodia there are no clear provisions to protect the complainant. But, the complainant may also sue the court for protection against any threat or intimidation act or ill-treatment as well.

149. Torture is a penal offence that the prosecutor has the duty to deal with. This means that all complaints concerning torture filed by an organ, institution or individual must be sent to the prosecutor for examination, and then the prosecutor sends them to the investigating judge for investigating the facts. Article 131 of the Constitution specifies that only a prosecutor has the right to take penal action. Article 60 of the Criminal Procedure Law of 1993 states that the prosecutor makes the decision to investigate, whether for a criminal offence or a misdemeanour. The prosecutor sends to the judge the results of his assessment of the case.

150. The investigating judge has the role to investigate the case upon the request of the prosecutor. The investigating judge cannot investigate without such a request, even when the investigating judge receives the case directly by hand. The Criminal Procedure law of 1993 states in article 69 that the investigating judge cannot investigate without a request from the prosecutor. If the investigating judge receives a complaint from someone, he/she, shall send the complaint immediately to the prosecutor who is in charge of the case, as described above.

151. Therefore, the judge, after receiving the request to investigate, is in charge of the investigation with all means provided by law. The investigation is executed with impartiality and independence. Article 128 of the Constitution states that the judicial power is independent. Judicial power ensures the prosperity and freedom of the people.

152. The investigating judge, when receiving an accusation of torture, investigates according to procedure. But such investigations are difficult, because in general, the act of torture is committed secretly, without witnesses or evidence. So some prosecutors, without sufficient evidence, do not handle the complaint.

153. In the above case, the law ensures that the victim shall have the right to file claims with all courts. Article 10 of the Criminal Procedure Law of 1993 states that where a complainant deems he/she was the victim of a criminal offence and the prosecutor has not responded and handled the complaint, the complainant may complain to the appellate court.

154. In order to investigate correctly, witnesses are necessary. The law guarantees and protects witnesses. Article 55 of the Transitional Procedure Law states that “anyone who threatens, intimidates or coerces any witness in a court procedure shall be punished with one to two years’ imprisonment for a misdemeanour offence”.

155. In the past, a defender or lawyer often made a motion of protest before the court that his/her client had been tortured to confess. But this protest did not have enough information, evidence or witnesses, causing the court to reject it. In some cases, the judge may rely on physical evidence, such as in the Kim Phal case where the Phnom Penh municipality court recognized Kim Phal’s confession to have been obtained by torture, and the confession was dismissed.

156. The following table shows motions to dismiss confessions submitted in the years 1995-1997:

Motions submitted by accused persons to dismiss forced confessions 1995-1997

Province	No. motions of lawyers	Court		Verdict	
		Considered	Not considered	Guilty	Not guilty
Battambang	32	20	12	19	13
Bonteymeanchey	3	2	1	2	1
Pour sat	5	3	2	3	2
Phnom Penh	34	12	22	28	6
Kam pongcham	14	7	7	9	5
Prey Veng	2	0	2	2	0
Kandal	32	26	6	24	8
Kam pongthom	2	0	2	2	0
Siem Riep	1	0	1	1	0
Kam pongspeu	1	0	1	1	0
Sihanouk Vill	1	1	0	1	0
Takeo	1	0	1	1	0
Svay Rieng	1	1	0	1	0
Kratie	1	1	0	1	0
Total	130	74	56	95	35

Article 14

Right to damages and compensation

157. The law in the Kingdom of Cambodia protects victims. This means that victims receive damages proportionate to the suffering from criminal acts. The court has the right to determine the damages. The victim has the full right to complain to the court to request damages from the offender.

158. The request for damages of a victim who is tortured shall be protected by law as follows.

159. Article 39 of the Constitution states that Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of law by State and social organs or by members of such organs committed during the course of duties. The settlement of complaints and claims shall be the competence of the courts.

160. Article 2 of the Criminal Procedure Law states that any penal offence can result in two categories of action: penal proceedings and civil actions. Article 5 states that civil action aims at compensating any damage suffered as a result of any act of offence against the victim. The victim shall receive damages proportionate to the suffering.

161. Article 27 of the Transitional Criminal Law states that the victim or eligible person representing the victim, directly or by a counsellor who may be appointed as the civil party in the course of investigation or court hearing, may claim damages from the perpetrator, co-offender or accomplice. The counsellor shall have the right to review the file of the accused.

162. In practice, accountability for damages and claims is dependent on the court that has the right to judge. A case of torture occurred in Battambang province when prison officers were angry with a prisoner who tried to escape. The prisoner was tied to a pole and surrounded by garbage, which was set on fire. The prisoner was seriously burned. After the investigation, the municipal court sentenced a prison officer to one year's imprisonment, ordering damages of 200,000 riel to be paid to the victim as compensation (warrant N.81 of 5 November 1993).

163. Some cases concerning damages are settled out of court. Therefore, at the time of the hearing, the court has to decide only the criminal offence, not claims and damages. In the Prey Veng case, a military policeman tortured a suspect and the family sued for damages. The offender agreed to pay. At the hearing, the court decided only the criminal offence, and not any damages because the victim's party had already received damages.

164. In torture cases, the victim's family as recognized by law has the right to complain for damages and compensation. This is ensured and protected by law. Article 14 of the Criminal Procedure Law of 1993 provides that in principle, only the person who is directly victimized by any offence or act has the right to bring a civil complaint. A guardian or representative of the victim may make a complaint on behalf of the victim.

165. The victim may submit a complaint at the same time as the prosecutor's accusation, as mentioned in article 9 of the Criminal Procedure Law of 1993. A person who is considered to be

victimized by any offence act, may submit a complaint with the prosecutor's accusation for any damage. In this case, when deciding on penal offence, the court may decide the offender to compensate any damages to the victim.

166. Article 19 of the Criminal Procedure Law of 1993 states that a penal court which receives a complaint from the victim for damages shall decide on the penal action and postpone the civil case to a later time. If there is insufficient evidence to resolve the criminal case, the court cannot evaluate any damages, but the court must lawfully receive the complaint and shall delay a decision on damages until the case is resolved. Article 151 states that the court shall decide on any claims and damages to the victim.

167. The victim can also separately submit a complaint for damages and can submit a complaint to a civil court and a criminal court. This is stipulated in the Criminal Procedure Law of 1993. Article 6 states that both actions can be separated as penal and civil actions. Article 17 states that if a person who is victimized by a criminal act has complained to a civil judge for damages and has already received damages, the prosecutor cannot claim damages for the same offence.

168. Article 12 of the Criminal Procedure Law states that civil cases result in civil compensation. On the other hand, penal offences result in real damages as well as mental damage. Article 18 states that in principle the civil court and the criminal court can receive the same complaint (the same objective, matter of fact and parties).

169. Article 15 of the Criminal Procedure Law states that a civil case may be lodged by all persons, who shall be compensated for damages from the perpetrator, co-offender and accomplice, as well as the person who is responsible for the offence. Persons who are responsible for the offence, are pursued under the civil law.

170. A victim of the act of torture may have been damaged mentally as well as physically. In the Kingdom of Cambodia, this problem is not defined pursuant to law. It is not possible to create a separate hospital for treating nervous diseases. There are not many doctors. Some are working at Phrah Sihanouk hospital, which is sponsored by specialized doctors of international organizations (already explained in article 10).

171. So the victim of an act of torture who was affected mentally can go to the hospital to be treated by a doctor. The court has no procedure to address this problem. But if the victim has been provided with a certified letter from a competent doctor, the court will issue a judgement for treatment. Generally, the victim claims for damages including the cost of treatment.

172. Concerning disability resulting from torture, the Kingdom of Cambodia has no procedure for a court to define where the victim shall be sent. But the Royal Government has a centre for disabled, supported by international organizations. This centre is managed by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation. It provides education and training. Therefore, the victim who is disabled by torture can link with the Ministry of Social Affairs to request to stay and study at this centre.

Article 15

Confessions obtained by torture

173. Torture is an offence prohibited by law. So anything received by an act of torture can be void, which means that any confession of a person who is tortured is not deemed to be evidence. Particularly, a judge may not accept a confession obtained through torture. The Kingdom of Cambodia law is prohibited from recognizing a confession obtained from torture or coercion. Article 38 (5) of the Constitution specifies that a confession obtained by physical or mental force shall not be admissible. Article 24 (3) of the Transitional Criminal Law states that a confession obtained by any coercion is considered void.

174. The judge has, in principle, the duty to review the confession of the accused that police send to him/her. In case the judge has any doubt, he/she shall take measures to determine whether confession is obtained freely or by coercive means. If the latter, the judge shall refuse this confession, and reinvestigate to avoid making an error of judgement.

175. The refusal of the accused's confession shall be in the competence of the judge, pursuant to law. The judge has the right to believe or not the statement of the policeman who interrogated the accused person or witness. Article 41 of the Criminal Procedure Law of 1993 states that in principle of law, a statement is only information. It is only a report and the judge cannot be forced to believe it.

176. This does not mean that the judge shall not recognize the statements of police. Statements are refused only when the judge has enough evidence that it is unlawful or obtained by coercive means. Article 42 of the Criminal Procedure Law of 1993 states that the statement of the judicial police is a document to be believed until the evidence proves the contrary.

177. In practice, however, some competent authorities have used human rights violations to detain or accuse a person in order to make them confess. In one case, Kim Phal was beaten to confess, but the municipal court refused the confession because the judge found scars on her body and decided to drop the charge. (warrant N.1 of 10 January 1995). Two men, Men Soeun and Sum Say, were charged with murdering Non Chan who was chairman of Khmer Youth Voice. The suspects' confessions obtained by the police were dismissed by the court on account of no evidence, and in the end, the court dropped the case (drop verdict of municipal court N.1471 dated 4 April 1995).

178. The judge may not believe that every complaint of forced confession is true. The judge is responsible for fact-finding in order to decide properly. But in past experience, the judge cannot always find accurate facts. If there is no evidence that the confession was obtained by coercion, the judge has no choice other than to keep the police statement as evidence.

179. The way an investigating judge finds out is through investigation and cross-examination of the accused at the hearing. If the answers of the accused, witness, defender or lawyer are contrary to the confession, the judge has a reason to reconsider.

180. In the Kingdom of Cambodia, coercive confession has caused many problems that have not been resolved. The judicial police consider the confession of the accused as the main form of evidence and can force the accused to confess. Officers do not know enough interrogation and investigation techniques. Judges do not have enough ability and capacity to find out the facts.

181. With a lack of financial resources, the Royal Government has permitted the Office of the High Commissioner for Human Rights to help train competent authorities. This office has provided legal assistants to provincial-municipal courts to assist judges and prosecutors. As well, this office has cooperated with ADHOC to provide training courses for provincial-municipal judges, prosecutors, police and military police, in order to help the competent authorities to understand this problem and generally ensure that human rights are respected.

182. The new Draft Law of Criminal Procedure prepared by the Ministry of Justice will ensure effective exercise in the future and eliminate forced confessions.

Article 16

Elimination of torture

183. The Royal Government confirms that it will try its best to take all means in order to restrain public officials or civil servants who are working for the State not to commit inhuman or degrading acts even if incited or ordered to do so. This obligation is stated in the Convention against Torture

184. The Kingdom of Cambodia has laws and rules that prohibit coercion and physical ill-treatment or aggravated punishment of detained persons or prisoners. (Constitution, article 38 (4) and Transitional Criminal Law, article 12 and article 75).

185. The Transitional Criminal Law has imposed punishment on perpetrators who have committed cruel, inhuman or degrading treatment or punishment (article 32, of voluntary manslaughter; article 33, rape, illegal detention; article 40 involuntary manslaughter; article 41, assault and battery).

186. The Royal Government had issued instructions that prohibit shackles or handcuffs to be used on convicted or detained persons permit the provincial-municipal prosecutor to examine prisons and detention places at least twice a month, and let the Ministry of Health check pre-trial and convicted persons, who are in prison or detention and review their living conditions.

187. The competent ministries such as the Ministry of Justice, the Ministry of the Interior and the Ministry of Defence, in cooperation with OHCHR and NGOs have provided training courses for officials concerned and conducted seminars on human rights, especially on prohibited cruel, inhuman and degrading treatment or punishment.

188. Through the work mentioned above, cruel or inhuman treatment of detained or convicted persons will be eliminated. As to the living condition of pre-trial and convicted persons for the past two years, they have gradually improved and some detention places and prisons have been repaired. NGOs have provided medications and have sent doctors to treat ill detained and convicted persons. Meanwhile, the Kingdom of Cambodia is faced with difficulties, especially in the budgetary and human resource areas.

189. The Royal Government requests the international community to help in developing human resource and human rights, and requests it also to provide equipment and facilities for enhancing detention places or prisons and improving the standard of living of detained and convicted persons in accordance with United Nations standards.

190. In the past, the Government of Australia, through Ausaid, assisted to build prisons in four provinces, Kampong Chhnang, Kamopng Speu, Kampot and Kampong Cham. Today, the Australian Government, through Ausaid, continues to assist provincial Kandal prison.

List of annexes

Constitution 1993

Transitional criminal law

Immigration law

Statute of common civil servant

Statute of common military

Degree N.38 concerning on contract and other responsibilities

Sub-degree N.77 referring to general military police structure

Circulation N.13 dated 31 May 1994 of Ministry of Justice

Instruction N.198 dated 14 February 1996 of Ministry of Justice

Circulation N.04 dated 2 April 1997 of Ministry of Justice

Instruction N.04 dated 11 March 1998 of Ministry of Justice

Letter N.509 dated 13 September 1993 of Ministry of Justice

Joint declaration of Ministry of Justice, Ministry of Interior and Ministry of Health instructed not to shackle or handcuff convicted person

Letter of Ministry of Justice N.819 criminal case. 31.101/98 sent to Kamponchhnang to instruct the police not to treat tortured act

Letter N.81/98 of Appellate prosecutor general sent to Kandal prosecutor to review on the accused that was dead in hospital, had been suspected of serious torture act case.

Letter of Ministry of Interior N.006 dated 23 November 1991 referring to discipline of police force, concerning torture act

Discipline of national police force dated 23 November 1995 of Ministry of Interior

Internal regulation concerning the correctional place of Ministry of Interior

Letter of Ministry of Interior instructed not to treat torture act during interrogation

Letter of Ministry of Health dated 7 May 1994 instructed provincial-municipal health department to cooperate with provincial-municipal competent authority to care the pre-trial and convicted person.
