



HUMAN RIGHTS COMPONENT FINAL REPORT

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UNTAC HUMAN RIGHTS COMPONENT
FINAL REPORT

TABLE OF CONTENTS

EXECUTIVE SUMMARY	PAGE 1
INTRODUCTION	PAGE 8
CHAPTER ONE: MONITORING THE EXISTING ADMINISTRATIVE STRUCTURES	PAGE 13
CHAPTER TWO: INVESTIGATIONS INTO ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS	PAGE 25
CHAPTER THREE: EDUCATION, INFORMATION AND TRAINING	PAGE 48
CHAPTER FOUR: HUMAN RIGHTS AND THE TRANSITION TO DEMOCRACY	PAGE 63
CHAPTER FIVE CONCLUSIONS AND FUTURE CONCERNS	PAGE 68
APPENDIX ONE: DIRECTIVE NO.93/1 CONCERNING THE SPECIAL PROSECUTOR'S OFFICE	PAGE 75
APPENDIX TWO: DIRECTIVE NO.93/2 CONCERNING THE SPECIAL PROSECUTOR'S OFFICE	PAGE 77
APPENDIX THREE: INVESTIGATION STATISTICS	PAGE 78

EXECUTIVE SUMMARY

Introduction

The responsibility of UNTAC in the area of human rights was the most extensive in the history of United Nations peacekeeping operations.

Under the Paris Peace Agreements, the Cambodian authorities undertook to respect human rights and fundamental freedoms. The agreements envisaged that the United Nations would "*foster an environment* in which respect for human rights would be ensured" and would work to prevent a return to the "policies and practices of the past".

UNTAC's human rights mandate included a programme of human rights education, general human rights oversight during the transitional period of the existing administrative structures and investigations of human rights complaints and the taking, where appropriate, of corrective action.

Efforts to promote and protect human rights in Cambodia were closely linked to UNTAC's primary mandate to hold free and fair elections and to oversee a transition to democratic government. Much of the work of the Human Rights Component necessarily centered on election-related political violence and restrictions on political freedoms.

On UNTAC's arrival, Cambodian society was singularly lacking in the basic institutions and structures upon which the safeguarding of fundamental human rights depends: an independent judiciary, an effective and non-political bureaucracy, a professional police force, a free press, and human rights and other non-governmental organizations representing popular interests. Assisting Cambodia in ensuring a "non-return to the policies and practices of the past" involved helping to rebuild (or build) these institutions and restoring a capacity for good governance.

Increased respect for human rights and the rebuilding of Cambodia's institutions of government and civil society needed to proceed together as integral parts of a "peacebuilding" package designed to secure a lasting end to armed conflict and a genuine transition to democracy.

Monitoring of the existing administrative structures

While other Components of UNTAC were given responsibility to supervise and control the existing administrative structures, the police and the military, the Human Rights Component undertook a broad monitoring function, particularly of those institutions and structures linked directly to the protection of human rights, such as the police, the prisons, the courts and the legal system generally.

Cambodia's accession to all major international human rights instruments provided an overall framework for the Component's monitoring activities.

State of Cambodia prisons were closely monitored, both physical conditions of the prisons and the health of the prisoners themselves; and the protection of the right to due process. Conditions in the prisons remain poor, but have improved considerably during the transitional period. All known political prisoners have been released. Most prisoners, however, are still held without trial, largely as a result of a non-functioning judicial process.

Cambodia's extremely weak institutions of law and order and their history of involvement in repressive practices and the exercise of arbitrary authority, made it difficult to maintain a clear distinction between "monitoring" or "oversight" and actual institutional correction or reform. The requirements of the minimum level of respect needed for the holding of the elections, and the longer term needs related to Cambodia's transition to democracy, warranted UNTAC involvement in helping to begin "rebuilding" many aspects of the country's administration.

Investigations

The Component necessarily concentrated on the investigation of allegations related to those civil and political rights linked to the holding of free and fair elections. Investigations included those of specific instances of violations, such as a politically motivated killings, and patterns of violations, such as harassment and intimidation by local police against particular political parties.

Hundreds of investigations were conducted by the Component, often in collaboration with investigators from the UNTAC Civilian Police. The killing of persons of ethnic Vietnamese descent by the NADK and the killing of perceived political opponents by elements of the CPAF and the SoC police were of greatest concern.

Attempts at "corrective action" following investigations led to inquiries by the Component into existing systems of redress. Together with the Component's monitoring functions, these inquiries revealed the extent to which redress mechanisms, in particular judicial and legal infrastructure as well as more traditional and local forms of civil redress, were largely not functioning. Lack of official action, coupled with increased political violence and other human rights violations compelled the undertaking of direct redress measures. These included the arrest and detention of serious human rights violators.

Education, Information and Training

Human rights education was conceived as the "cornerstone" of UNTAC's human rights activities in the Secretary General's report to the Security Council of February 1992. Ensuring a "non-return to the policies and practices of the past" meant a need to reform official and popular attitudes, as well as to provide the technical and other expertise and training needed to restore "good governance."

The Human Rights Component has undertaken a broad range of activities in this field, working through schools and universities and organizing training courses targeted at particular groups in society such as administrative officials, police, teachers, political party officials, health professionals, members of local human rights groups and public defenders. Information campaigns on human rights have also been presented through radio and television and the close cooperation of Buddhist monks and other community leaders have been enlisted.

In October 1992, UNTAC launched an appeal for the newly established Trust Fund for a Human Rights Education Programme in Cambodia. Nine projects were signed with seven non-governmental organizations. Projects included training in teacher training colleges in eleven provinces, training in human rights election monitoring, teaching in the faculty of medicine and training of

health professionals, training in U.N. human rights procedures including attendance at the U.N. Commission on Human Rights in Geneva, and training related to women's rights.

Over fifteen other projects are in preparation. Many of them involve non-governmental organizations from the Asia-Pacific region in partnership with local Cambodian human rights groups carrying out innovative education and training projects.

Human rights and the elections

The Cambodian settlement linked the "fostering of an environment in which respect for human rights is ensured" to the holding of "free and fair elections" and, indirectly, to Cambodia's transition to democratic government. The relationship between human rights and the transition to democracy remains inextricably linked: a level of respect for basic rights and freedoms being essential for beginning popular political participation. Conversely, the establishment of representative institutions and processes remains the best long term safeguard for human rights.

Vigorous attempts were made to improve the human rights environment surrounding the elections, which remained less than satisfactory throughout the campaign. Through UNTAC Radio, all political parties were able to broadcast freely and UNTAC ensured the peaceful holding of party meetings and rallies throughout the country.

The successful holding of the elections in May 1993, however, marked only the first step of the difficult political transformation envisaged by the Paris Peace Agreement. The adoption of a new constitution and the creation and nurturing of those administrative and judicial institutions upon which a functioning democracy depends, remains to be achieved.

While the new constitution should provide a framework for future human rights protection, the success of enforcing or implementing constitutional safeguards and provisions related to individual rights, freedoms and entitlement, rests with the rebuilding or strengthening many basic institutions of government and of civil society.

In this area, the Human Rights Component has been primarily active

on three broad fronts:

1. Encouraging the development of indigenous NGOs
2. Working with the existing administrative structures to begin rebuilding Cambodia's legal and penal system.
3. Encouraging and facilitating the involvement of international and regional NGOs in all areas of human rights activities in Cambodia in the post-transitional period.

In February 1992, at UNTAC's request, the U.N. Human Rights Commission made the unprecedented decision to authorize the U.N. Centre for Human Rights to establish an operational presence in Cambodia for the next two years. The Secretary General was also authorized to appoint a Special Representative for Human Rights in Cambodia.

Conclusions

The peace process brought new freedoms to individual Cambodians and, through the electoral process, allowed for unprecedented popular political participation. Basic ideas about human rights have reached even remote areas in every province and have begun the process of changing people's attitudes about their rights and responsibilities. Cambodia is now signatory to more international human rights instruments than any other country in the region. The successful establishment of human rights associations with a combined membership of over 150,000 has been particularly encouraging.

A number of serious concerns, however, remain, including:

1. The restoration of order. The recent rise in lawlessness around the country may threaten continued progress in the human rights area.
2. Rebuilding State Institutions. There is an urgent need to rebuild (or build) those key institutions and structures vital for future human rights protection, including a professional police force, a functioning and independent judiciary and an effective bureaucracy.
3. Fragility of civil society. Civil society has only begun to

emerge during the transitional period. International attention and assistance for recently formed non-governmental organizations, especially through education and training activities will be important in strengthening new democratic processes.

4. Treatment of ethnic minorities. Recent renewed attacks against ethnic Vietnamese underlines the vulnerability of minority communities in Cambodia and the need to develop effective legal and other protective mechanisms as well as the need for continued international monitoring of the situation.

Lessons Learned

Initial plans, that all Components would share in the responsibility for human rights activities and that the Human Rights Component would perform only a central coordinating role proved not to be feasible. As a result, the very limited human and other resources given to the Component severely effected all aspects of UNTAC's human rights activities.

This problem stemmed largely from two issues, the lack of advance planning and the general level of understanding of the role of the Component. As a result of pressure for UNTAC to commence its operations early, clear policy guidelines and planning of necessary resources were lacking.

Secondly, there did not exist a wide appreciation of the pro-active and at times protagonist role needed to fulfill UNTAC's human rights mandate. This role at time directly conflicted with other political and diplomatic efforts of the mission. In particular, the failure of UNTAC to control the key areas of administration adversely effected human rights efforts on a number of occasions.

The lack of effective enforcement measures as part of UNTAC's corrective action mandate, especially the failure to use powers of removal of officials for violations, also frustrated many of the Component's efforts. The Component's proposals to establish a Special Prosecutors Office met with serious internal opposition, and delayed its effectiveness.

Nevertheless, the Component was able to make many successful inroads, particularly in relation to accessions to international

human rights instruments, unrestricted access to civil prisons, support for indigenous NGOs and comprehensive educational activities.

The establishment of the Trust Fund for a Human Rights Education Programme in Cambodia proved to be an indispensable tool in implementing through NGOs a range of programmes which could not otherwise have been covered.

From the outset, the Component was concerned about follow up of its activities. Arrangements made for the U.N. Centre for Human Rights to become operationally present in Cambodia after UNTAC's departure were important for the United Nations to assist Cambodia in its "peacebuilding" efforts, but require active follow up if they are to succeed.

INTRODUCTION

Mandate

The mandate of UNTAC in the area of human rights promotion are the most extensive in the history of United Nations peacekeeping.

Articles 15 and 16 of the Paris Peace Accords provide the overall framework within which activities to promote and protect human rights in Cambodia during the transitional period were to be undertaken. Of particular importance, under Article 15, the *Cambodian authorities* agreed to ensure respect for human rights and fundamental freedoms. UNTAC was given the responsibility of "fostering an environment" in which respect for human rights was to be ensured.

Section E of Annex 1 of the Agreement outlined the measures envisaged in carrying out this task: the ratification of relevant international human rights instruments by Cambodia in order to provide a legal framework for human rights activities and to facilitate UNTAC's efforts to enhance respect for the rule of law; the development and implementation of a human rights education programme; the exercise of general human rights oversight; and the investigation of complaints and allegations of human rights abuses and, where appropriate, corrective action.

The Secretary General's report to the Security Council on Cambodia in February 1992¹, envisaged a small human rights office attached to UNTAC headquarters in Phnom Penh, as "a central policy-making and coordinating body." Only a small number of human rights officers were thought to be required as "all UNTAC staff, operating in all areas of the mandate, would be charged with carrying out human rights functions, as an integral part of their primary duties." Initially, there were no provisions for provincial human rights staff, though this decision was later reviewed, resulting in a final staff of some twelve professionals in Phnom Penh and one provincial human rights officer, with support staff, in each province. Later on, in January 1993, further ten staff were allocated to the Component.

Conceptually, the carrying out of UNTAC's human rights mandate was entrusted to all parts of the operation. In particular, the mandate of the Civil Administration Component to "supervise and control" five key areas of administration - foreign affairs, defense, public security, finance and information - was to have provided UNTAC with an important mechanism through which to implement human rights redress.

Significantly, this approach did not foresee a need for a radical overhaul of existing state institutions nor a need to urgently

¹ *Report of the Secretary General on Cambodia.* Security Council document S/23613, 19 February, 1992.

rebuild or build new structures of government. While a "control" mandate could allow for intervention to end continuing violations of human rights, it did not envisage activities in the much broader area of "peacebuilding."

The Human Rights Component

The Human Rights Component was functionally divided into two main sections: Investigations and Monitoring, to deal with current violations and the oversight of existing administrative structures; and Education, Information and Training, responsible for human rights education in the broadest sense.

Much of the work of the Component was necessarily linked to the holding of general elections for a Constituent Assembly in May 1993. Efforts both to monitor, investigate and take corrective action related to ongoing human rights abuses - and to conduct programmes of human rights education. These were designed primarily to improve the existing human rights environment in order that "free and fair" elections might take place." The Component concentrated almost exclusively on those political and civil rights and freedoms needed for the beginnings of a democratic process.

Attention also had to be focused, however, from the very start of the mission, on the post-transitional period, on ways and means to ensure future human rights protection and continued international involvement. The Component saw its work as being only the beginning of a long term process tied in part to a successful transition to democratic government. Support for indigenous human rights associations and other non-governmental organizations was a particular concern.

The Cambodian Context

Upon UNTAC's arrival, Cambodian society was singularly lacking in the basic institutions and processes upon which respect for human rights fundamentally depends. These included an independent judiciary, a free press, viable state institutions capable of providing basic social services, a broadly educated professional class, and indigenous non-governmental organizations able and willing to promote the interests of civil society. In addition, the deep psychological scars of the recent past were readily apparent. The need for outside assistance in initiating nearly all aspects of human rights protection and promotion was obvious.

The "existing administrative structures" in Cambodia were created during a period of prolonged war and foreign occupation. State institutions and processes were geared towards rigid political control. The State of Cambodia was an authoritarian state backed by active military force and unwilling to accommodate alternative sources of authority. The Cambodian People's Party and the state were intertwined, with informal patron-client relations complimenting party control from the centre right down to the village level. In the other zones of Cambodia, arbitrary military control had taken the place of normal government, with no attempt

being made to allow for a civil society or to control the regular violations committed by military elements.

Though Cambodia may not have appeared to be in a situation comparable to say, Somalia, where basic institutions of the state had largely "collapsed"; state structures and institutions were such that they required a radical reorientation if they were to come into line with the democratic aspirations of the Paris Peace Agreement. An example was the police. In addition, many other institutions directly related to the establishment of "good governance" were completely absent or present only in name, such as the judiciary.

Post-Conflict Peacebuilding

The Secretary General, in his *An Agenda for Peace*² advocated the undertaking of "post-conflict peacebuilding" measures as an integral part of future peacekeeping operations. Described as the "counterpart to preventative diplomacy", these measures would seek the "construction of a new environment", preventing a reoccurrence of hostilities and contributing to lasting peace and development.

Peacebuilding is particularly necessary and urgent in countries where the institutions of state have largely collapsed. In these countries, the threat of anarchy would require broad efforts to reassert order and reestablish the basic functioning of civil administration. Vacuums in political authority, the immediacy of humanitarian needs, and the absence of viable local partners would compel the United Nations in these situations to undertake an even more intrusive and far-reaching role.

Cambodia was clearly a country in which such urgent peacebuilding activities were necessary. The success of human rights efforts in the future will depend in large part on the restoration of good governance; in turn, advancing respect for human rights will be vital in securing an atmosphere conducive to political stability and economic progress. Neither the Paris Peace Agreements nor the Security Council mandate of UNTAC, however, foresaw the need for such an expansive programme of institution building and governmental reform.

In addition, during the transitional period, human rights activities and other "peacebuilding" measures were undertaken not in context of a peacemaking/enforcement operation, but in context of more traditional peacekeeping operation, without clearly defined enforcement powers. The undertaking of "peacebuilding measures" within the context of a traditional peacekeeping operation, thus required innovative strategies and new approaches to promoting and protecting human rights in the field.

² *An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peacekeeping - Report of the Secretary General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992. Security Council document S/24111, 17 July 1992.*

In particular, increasing politically motivated violence and the failure of local authorities to meet their obligations to ensure respect for basic rights led the Special Representative to authorize *human rights enforcement* measures not explicitly mentioned in the Paris Agreement, such as the arrest and prosecution of serious human rights violators.

The Report

This report, a summary of the principal activities of the Human Rights Component, is divided into five main chapters. The first chapter, on monitoring, deals with the oversight of the "existing administrative structures" by the Component, particularly the police, the prisons and the court system. Monitoring of the Cambodian administration quickly revealed the need for not only immediate redress measures but also much longer term rehabilitation assistance. Work in the area of human rights monitoring necessarily led to a variety of projects related to the training or retraining of officials and efforts to reestablish the basic institutions of a functioning and independent judiciary.

The second chapter, on investigations and corrective action, describes the allegations of human rights violations received by UNTAC during the transitional period, results of the investigations undertaken by the Component, and the efforts made to redress these violations. A statistical appendix at the end of the report summarizes the Component's investigations. Much of the investigation work centered on political violence related to the elections. Attempts at redress faced numerous difficulties related to resistance on the part of existing administrative structures to cooperate in the investigation, arrest and prosecution of serious human rights violators. The complicity of elements of the Cambodian administration, particularly the security forces, in politically motivated violence, led to direct UNTAC arrests and other measures to improve the overall human rights environment for the holding of the elections.

The human rights education programme in Cambodia was the largest ever undertaken by the United Nations and required the setting up of a close working relationship with indigenous non-governmental organizations as well as international and regional human rights groups. The third chapter, on education, information and training, analyzes the Component's work in this area; a series of appendices at the end of the report provide a detailed statistical picture of the projects undertaken as well as a selective evaluation of their impact.

The fourth chapter, on human rights and the transition to democracy, discusses the human rights efforts related to the elections, the drafting of the new constitution and the transition to democratic government. In addition, the chapter deals with issues related to the long term protection and promotion of human rights, and possible future roles for the international community.

The final chapter provides an assessment of the general impact of

UNTAC's human rights activities in Cambodia; a summary of future concerns and a series of "lessons learned" over the past eighteen months.

CHAPTER ONE: MONITORING THE EXISTING ADMINISTRATIVE STRUCTURES

Introduction

The Paris Peace Agreement envisaged United Nations human rights "oversight" of "existing administrative structures" with the principal aim of fostering an environment in which basic rights and freedoms are respected. While the Civil Administration Component of UNTAC was given responsibility to "supervise and control" the existing administrative structures, the Human Rights Component undertook a broad "monitoring" function, particularly of those institutions and structures linked directly to the protection of human rights, such as the police, the courts and the legal system generally.

The extremely weak state of Cambodia's institutions of law and order and their history of involvement in repressive practices and the exercise of arbitrary authority meant that a clear distinction between "monitoring" or "oversight" and actual involvement in institutional correction or reform was difficult to maintain. Both the requirements of a minimum level of respect needed for the holding of the elections, and the longer term needs related to Cambodia's transition to democracy, warranted UNTAC involvement in helping to begin rebuilding many aspects of the country's administration.

Accessions to International Human Rights Instruments

Article 15 of the Paris Agreements contained an undertaking by Cambodia to adhere to international human rights instruments, providing UNTAC a useful framework for monitoring the existing administrative structure.

The SNC signed the ICCPR and on *International Covenant on Economic, Social and Cultural Rights* on 20 April 1992.

On September 20 1992, the SNC acceded to the following five international human rights instruments: the *Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment*; the *Convention on the Elimination of All Forms of Discrimination against Women*; the *Convention on the Rights of the Child* and the *Convention relating to the Status of Refugees* and its Protocol.

Following these accessions, UNTAC compiled all seven instruments, together with the two other main human rights instruments to which Cambodia was already party (the *Convention on the Prevention and Punishment of the Crime of Genocide*, and the *International Convention on the Elimination of All Forms of Racism and Racial Discrimination*) and a selection of other instruments. These have been translated by the Cambodian Documentation Centre into Khmer

and were widely disseminated to officials and, through the Cambodian human rights organizations, to the general population.

A. The Courts

Reform of Cambodia's system of courts was a major aim of the Human Rights Component. The Component sought to ensure the adoption by the local authorities of the standards laid down in Article 14 of the *International Covenant on Civil and Political Rights* ("ICCPR") and, after 10 September 1992, in Article 1 of the *Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable During the Transitional Period* ("the Transitional Criminal Law"). These provisions require that courts be competent, independent and impartial. The Supreme National Council of Cambodia adopted the ICCPR in April 1992 and the *Transitional Criminal Law* in September 1992.

The task of reform, however, proved a difficult one for several reasons. First, the existing administrative structures oppose the limitations upon their own power which necessarily follow the establishment of an independent judiciary. Thus, the courts are not allowed to operate independently or impartially. Secondly, Cambodia's legal framework (its structure, education and culture) has been destroyed. Members of the judiciary often do not possess the educational or professional background to perform their tasks competently. Thirdly, the rule of law is frequently neither respected nor upheld by the institutions of State. In summary, the law, and the courts in particular, are still regarded as tools of the governing political parties - to be paid lip service on occasion but ignored when inconvenient.

1. Structure of the Courts

The Courts of the State of Cambodia

The formal structure of the criminal courts of the State of Cambodia at the time of UNTAC's arrival was established in the *Constitution of the State of Cambodia* adopted by the National Assembly of Cambodia on 30 April 1989.

The *Constitution* provided for a system of provincial courts composed of a judge sitting with two Peoples' Assessors appointed by the local party officials. The Peoples' Assessors had equal rights and responsibilities as the judges in court proceedings, and verdicts were decided by majority.

Provincial courts were subject to direction not only by the Supreme Court but also by the Public Prosecutor, the National Assembly and the Council of Ministers. Judges were required, before deciding on each case, to request the advice of the Supreme Court and/or Ministry of Justice. There was no procedure for public hearing of appeals and the Supreme Court was not required to give any reasons for reversing a judgement of a provincial court.

These practices were justified by SOC officials on the basis that the lack of trained judges meant that they could not allow them to operate independently. The Supreme Court and Ministry of justice therefore exercised a "supervisory role" to ensure that courts behaved properly and reached "correct" decisions.

Courts in the PDK, FUNCINPEC and KPNLF zones

At the commencement of UNTAC's mission no legal system existed in Cambodia outside the territory controlled by the SOC. The other Cambodian Parties did not establish such systems during the life of UNTAC, nor did they demonstrate any great desire to do so.

In place of due legal process, the areas controlled by the PDK, the KPNLF and FUNCINPEC were effectively subject to martial law. The military determined whether a person was guilty of an offence without any formal procedure whatsoever, and dispensed summary justice, again without recourse to any procedure. Summary executions were often carried out against persons accused of serious crimes such as robbery, rape or murder. These practices existed in the zones controlled by the PDK, the KPNLF and FUNCINPEC. An example is given below, in Case No.3.

The Component attempted to redress this situation, building a prison in Thmar Pouk and attempting to negotiate the establishment of courts in Thmar Pouk and in Ampil. Unfortunately, however, these proposals have not materialized.

2. The role of the Human Rights Component

At the time of UNTAC's arrival the fundamental justice issue was the complete breakdown in the legal system. For the Human Rights Component the criminal courts were the major area of concern. This focus reflected the importance attached to the criminal justice system by the provisions of the *International Bill of Rights*, which applies to Cambodia by virtue of the Paris Agreements and the adoption of the ICCPR by the SNC. Article 14 of the ICCPR provides in part:

... In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...

Article 14 then sets out a series of minimum standards for the functioning of a criminal justice system. As due process provisions did not exist in Cambodian legislation the Article 14 principles were the foundation for the Component's early work in this area.

For example, courts did not function, and thus prisoners were held without trial at the discretion of the police. Of about 400

prisoners in Phnom Penh jails at the end of June 1992, less than 20 had been tried. None of the remainder had ever been taken before a court.

A primary focus of UNTAC and of the Human Rights Component in monitoring the courts was to endeavour to introduce the notion of the independence of the judiciary into the legal system. This was both to ensure that those charged with criminal offences were dealt with in accordance with the ICCPR and also to provide an avenue for the enforcement of basic human rights. Without an independent judiciary such enforcement is impossible.

UNTAC sought to provide for an independent judiciary during the transitional period through the *Transitional Criminal Law* adopted by the SNC on 10 September 1992. The independence of the judiciary was seen as the cornerstone of the *Transitional Criminal Law*. Article 1 states:

1. The independence of the judiciary must be guaranteed in accordance with *The Basic Principles on the Independence of the Judiciary*, adopted by the United Nations. Judges must decide in complete impartiality, on the basis of facts which are presented to them, and in accordance with law, refusing any pressure, threat or intimidation, direct or indirect, from any of the parties or any other person.
2. The judiciary must be independent of the executive and legislative authorities and of any political party. Persons selected for judicial functions must be honest and competent.
3. The principle of the independence of the judiciary entitles and requires judges to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. They must have decent and sufficient material conditions for the exercise of their functions. Judges must receive suitable training and be remunerated adequately to ensure their impartiality and independence.

Unfortunately, the mere passage of legislation does not ensure an independent judiciary. Despite the framework established by the *Transitional Criminal Law* no real attempt was made to adapt the existing courts to that framework. Thus while the courts were technically independent of the executive arms of government, in reality they remained totally subject to direction by the Minister for Justice. The Minister for Justice of the SOC regime clearly explained his view of the independence of the judiciary when he explained to Human Rights Officers that judges who did not follow his instructions and thus "disobeyed the law" must be punished.

The courts also remained amenable to pressure from the police and the Ministry for National Security. For example, police were not required to attend at court for the trial of prisoners they had

arrested, as the court continued to accept without question the information presented to it on police files. There was no opportunity for the police to be challenged on this material - they were not in court and not available for cross-examination. This remains the case despite the work of UNTAC and the Human Rights component to reform such practices.

The Investigation and Monitoring Unit in Phnom Penh and the Provincial Human Rights officers in each province established and maintained a program for the monitoring of the courts in an attempt to protect the right to due process. This program involved human rights officers meeting court officials and judges to discuss the scheduling of trials and other applications concerning prisoners' cases, and attending at the court to monitor hearings when they took place.

The success of this program varied from province to province. In Phnom Penh, for example, the court generally continued to avoid dealing with the cases of the prisoners in local prisons. In other provinces such as Sihanoukville, Pursat and Kampot the local judges were able to deal with the backlog of cases and to improve the efficiency of their courts in processing matters to trial.

Human rights officers also at times were required to assist local judges to seek protection from intimidation by local authorities. For example, during the election period in many provinces judges were obliged to campaign for Cambodian People's Party (CPP) during working hours. Some judges complained privately to UNTAC rather than confront the local authorities directly. A directive aimed at stopping this unacceptable interference with political rights and the independence of the judiciary was eventually issued by the Ministry of Justice of the SOC following UNTAC's intervention.

The attention of the Cambodian human rights associations and international human rights organizations have also been constantly brought to the problems in the legal system. Both the first and second International Symposiums on Human Rights in Cambodia focused on the need to rehabilitate the judicial system and several NGOs from the Asia-Pacific region agreed to work in partnership with Cambodian NGOs in this area.

The Component has recently organized several training courses for judges. The most significant of these was a three week seminar for Cambodian judges organized together with the International Commission of Jurists (ICJ) in July of this year. It brought together senior judges and prosecutors from all around the country to participate in an innovative programme which included moot courts, small discussion groups and other exercises. Six prominent international judges attended and gave lectures during the three weeks.

B. Prisons

There is one main prison in each province of Cambodia. These

prisons were under the jurisdiction of the SOC "Ministry of National Security" during the transitional period, until the formation of the Joint Interim Administration. There were also small detention facilities at various SOC police stations. All these places of detention were operated by the SOC police, responsible to the Ministry of National Security in Phnom Penh through the provincial or municipal police structures, which themselves fall under the umbrella of the "Ministry of National Security." There was no prison service separate to the police force.

In addition to these prisons, the "Ministry of National Security" directly controlled three prisons from Phnom Penh. Two of these, T3 and Prey Sar prisons, were located in or near Phnom Penh. The third, T5, was a maximum security prison located near the border with Vietnam in Kompong Cham province.

The SOC Ministry of Defence also maintains a military prison in Phnom Penh and various other detention facilities.

Until June 1993, UNTAC had not visited any prisons controlled by the other Cambodian parties, who denied the existence of any prisons or detention facilities in the territory under their control. A prison was completed in the territory controlled by FUNCINPEC in the north of Banteay Meanchey province in late June 1993, and was subsequently inspected by the Provincial Human Rights Officer. The design of this prison fell grossly short of international standards. It was a wooden structure some 3 feet high, with no windows.

Monitoring of prisons

Prison visits were conducted by Human Rights officers with the assistance of CIVPOL according to the following set of rules agreed between the Component and the SOC authorities:

1. the UNTAC prison inspection team had the right to move freely, without any restriction, within the premises of the prison.
2. the UNTAC prison inspection team had the right to interview all prisoners in private without prison personnel being present.
3. the UNTAC prison inspection team had the right to return to the prison for follow-up action or to reinspect or reinterview prisoners whenever it believes necessary.
4. Prisoners were not to be interrogated by prison officials concerning the nature of their discussions with UNTAC officers.

Initial inspections made clear that Cambodian prisons did not come close to meeting basic international standards. Though many problems were due to a lack of resources, many others were attributable to the policy of prison officials.

In accordance with provisions of the *Universal Declaration of Human Rights* and the *ICCPR*, the Component adopted a set out guidelines for the conduct of human rights monitoring work in the prisons. Those guidelines identified three major areas of concern in the prisons:

- (a). Improving the physical conditions ~~of Cambodian~~ jails, to accord with basic international standards.
- (b) Attempting to procure the release from prison of those categories of prisoners of special concern to Component:
 - * Prisoners under 18 or over 59 years of age.
 - * Prisoners detained for politically related offenses - including prisoners held for offenses which were inconsistent with basic rights, such as "illegally" attempting to leave Cambodia.
 - * Prisoners detained without trial for long periods.
 - * Cases of humanitarian concern, including those requiring serious medical treatment.
- (c) Ensuring that those in prison had been accorded due process in the determination of the charges against them.

Physical conditions in the prisons

Practices contrary to the prohibition on cruel, inhuman or degrading treatment or punishment were a serious human rights concern in Cambodian prisons. Such practices included:

1. Widespread shackling of prisoners, both as punishment and also as a routine security measure.
2. The use of solitary confinement cells lacking light or ventilation for extended periods of time.
3. Prisoners who were either shackled or kept in dark cells were not allowed out to exercise.

Incidents of direct physical abuse also occurred, although they were not as widespread as the problems described above. Case No.1 below illustrates the state of the prisons at the time of UNTAC's arrival, and some of the problems facing human rights monitors at that time.

Case No.1: On 1 July 1992 Human Rights Component officers visited the T3 Municipal Prison in Phnom Penh. On talking to the prisoners they were informed that five prisoners had died in custody over the previous three weeks, allegedly from various illnesses associated with malnutrition. One prisoner had died shackled to a cement block in the prison. The other four men died in the prison hospital. The deaths were confirmed by prison authorities. Prisoners asserted that the men had swollen bodies before their deaths, and that at least one had lost his speech three weeks before dying. Many of the remaining 143 prisoners were in extremely poor health. All prisoners were put in leg shackles each night from 3.30p.m. until 7.00 a.m. In one building 27 of the 34 total prisoners complained of having swollen areas of their bodies, numbness, and difficulty breathing. 19 prisoners claimed that they vomited regularly after eating. Thirteen of these prisoners claim to have malaria. Prison officials asserted to UNTAC that 31 prisoners had been sent for treatment recently, however 4 of those 31 prisoners were counted among the deceased. Further, based on the findings of an earlier UNTAC investigation in PJ prison in Phnom Penh, it was pointed out to the prison officials that 18 of the 27 remaining sick prisoners are now in PJ, allegedly awaiting treatment. Those 18 men have been inspected by UNTAC doctors and were found to be in serious condition.

Shackling of prisoners has historically been a common practice in Cambodia. Early in the mission many prisoners were found in very serious health condition due to being shackled constantly for long periods of time. Case No.2 provides a not uncommon example:

Case No.2: On 17 June 1992 on a visit to T3 Municipal Prison in Phnom Penh Human Rights officers found two men detained in separate isolation cells in the prison. The cells had no light, no windows, and no ventilation. Both men stated that they had been in these cells for four months, and had been shackled to the floor for the whole of that period. One of them had also been handcuffed for the first three months, the other for about 20 days. The two men both alleged that they had been shot at the time of their arrest, and had not been treated. Medical examination by UNTAC doctors confirmed that the physical condition of the men was consistent with their allegations, save that their wounds were not consistent with having been shot as alleged, but rather may have resulted from pistol-whipping. The men were both extremely undernourished and weak, and were unable to stand unaided as a result of muscle wastage in their legs. The doctors indicated that the prisoners would have been unlikely to survive another two weeks detention under those conditions. Intervention by Human Rights Officers ensured that the men were immediately released from isolation and given medical treatment. The isolation cells in T3 prison were closed immediately.

Following representations by UNTAC in June 1992 to the SOC Ministry of National Security, a directive was issued to all prisons throughout the country for the removal of shackles. This led to a reduction in the use of shackles, though it did not completely end the practice. UNTAC officers continued to find instances of shackling throughout the mission. After the early months of the

mission most such incidents resulted from the use of shackles as punishment rather than as instruments of restraint.

Accordingly, in February 1993, after repeated warnings to local authorities and several directives from the "Ministry of National Security" to provincial prison directors, the Human Rights Component authorised its officers to physically remove any shackling irons found in prisons or police cells so as to prevent their use under any circumstances. For the same reasons, Human Rights Officers also insisted on the immediate removal of prisoners from dark isolation cells whenever such a situation was encountered.

(b) Due process rights

The second important aspect of the Component's work in the prisons related to ensuring due process for all detainees. Many had been detained for lengthy periods without being taken before a court. The Component sought to address this problem through obtaining the agreement of the SOC officials to undertake the following:

- (a) The release of all prisoners who had been held beyond the period for which they would have been detained, if convicted of the offenses charged.
- (b) Determination of the legality of the continued detention of all remaining prisoners.
- (c) The scheduling of trials for all untried prisoners.
- (d) The release pending trial of those who could not be tried immediately, provided they did not constitute a threat to society.

In August 1992, following these demarches, the SOC Ministry of National Security established a Prisons Commission to review the cases of the prisoners detained in SOC prisons. In Phnom Penh, the review resulted in the decision to refer 73 cases to the Phnom Penh Peoples' Tribunal for trial and the release of 140 prisoners against whom there was insufficient evidence or who had already been held for excessive periods without trial. A similar review exercise was then carried out in the provinces, resulting in the release of some 230 prisoners in total.

Unfortunately, while these measures were welcome, the promised trials did not take place, and the prisons again became overcrowded within a few months.

This review process was repeated in July 1993, again at the request of the Human Rights Component and following a statement on the deplorable conditions in the prisons made by Prince Norodom Sihanouk on 4 July 1993.

Court applications for release of prisoners

These events underlined the structural nature of the problems of Cambodia's prisons. Without a functioning legal system, the prisons were inevitably overcrowded and unhealthy. In the absence of any supervision by the courts, few prisoners were released except through the payment of bribes to prison authorities.

The Component also made efforts to attempt to persuade the courts to address problems in the prisons. Applications for release were made by the Component to courts of the State of Cambodia, based upon violation of due process rights, including lack of trial within a reasonable time and detention without charge. Applications were made on behalf of detainees identified as priority cases. The success of this program varied from province to province.

As a result of the program, some 14 prisoners were released across the country through court orders. Generally, however, this program suffered from the problems with the courts identified in the previous section of this Chapter. In Phnom Penh in particular, the years of neglect of the legal system resulted in a system so inefficient that it was unable to cope with these release applications, and large numbers of cases initiated by Human Rights Officers simply lay unattended in the courts.

General treatment of prisoners

In addition to the problems caused by the legal system, many problems of the prisons resulted from general neglect and poor management. There was no system, for example, for the transfer of prisoners from the grossly overcrowded PJ prison to the underpopulated T3 prison, which is located some 500 metres away in Phnom Penh.

Other serious problems were:

1. Prisons were in very poor physical condition - in need of repair, overcrowded, and lacking in basic sanitary facilities.
2. Prisoners were held for lengthy periods, often many years, without being charged.
3. Prisoners who were clearly ill are not given medical treatment.
4. Prisoners were often overcrowded and not given adequate food and water to ensure their survival.
5. Deprivation of food and water was used as a punishment.
6. Prisoners who have not been charged were not segregated from convicted prisoners.
7. Juvenile prisoners were not segregated from adult prisoners.
8. In some cases, female prisoners were not segregated from male prisoners.
9. Sick prisoners, including those with contagious diseases, were not segregated from the general prison population.

Visits to the prisons were often conducted with the assistance of an UNTAC doctor to diagnose and suggest treatment for prisoners who were ill. Consistent with the approach outlined above, however, the aim of such medical visits was to assist the local authorities to develop their own systems for proper healthcare in the prisons. UNTAC medical staff therefore provided treatment only in extreme cases of emergency.

Many of the medical problems in the prisons derived from lack of food and clean water. Attempts were made to have the SOC authorities increase the monetary allowance to prisons for food for the prisoners. At the commencement of the mission, this allowance was set at 17 riel per prisoner per day. It was subsequently increased to 100 riel, but given the rise in food prices this meant a small increase in real terms.

Together with the ICRC, the Component developed a proposal for improvements to the sanitation and water supply systems in the prisons. As a result of this program, which was entirely instituted by ICRC, improvements were made in many prisons. Water and sewage systems were improved, and buildings cleaned and whitewashed. Ventilation and lighting were also improved.

Regrettably, momentum in this area was not maintained. Although some improvements made by ICRC were permanent, others - such as the repair of sewerage systems in the prisons - depended for their efficacy upon a commitment from the Cambodian authorities to preventing a repetition of the overcrowding which led to the problems in the first place. Lack of administrative will made it difficult to maintain such improvements, and clean and healthy conditions continued to be rare in Cambodian prisons.

Structural rehabilitation of the prisons including new, and cleaner cells, exercise areas and other facilities, which would meet minimum international standards, were required. Many problems in the prisons, such as overcrowding, inadequate exercise, insufficient light and ventilation, are contributed to by inadequate and poorly maintained structures.

The health situation has clearly improved since prison monitoring began. Deaths of prisoners from treatable illnesses or malnutrition, common before UNTAC's arrival, were stopped for a long period by a combination of the preventative measures taken by the ICRC and the work of the Human Rights Component in improving management systems both in the prisons themselves and in the courts.

Despite these improvements, however, the health situation in prisons at the end of UNTAC's mission remains tenuous. Problems related to providing adequate food had not been resolved, despite numerous efforts by UNTAC. Food remains generally inadequate in amount and quality. There are still numerous cases of TB, berri berri and other illnesses, and seriously sick prisoners often are not segregated from other prisoners.

Again, these problems can be traced to a lack of will on the part of the Cambodian authorities to improve the situation, in addition to a lack of resources. Little money is provided for food for the prisoners, and what is provided is in many cases not applied to the best advantage of the prisoners. Similarly, medical supplies, which are in short supply, are often not received by the prisoners for whom they are intended.

In some provinces UNTAC Human Rights Officers were able to arrange regular visits by competent medical staff, but this was not consistent. Even if medical examinations occurred, often the prisoner received no medicine or treatment without intervention by the Human Rights Component.

CHAPTER TWO: INVESTIGATIONS INTO ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS

Introduction

UNTAC's human rights responsibilities included "the investigation of human rights complaints" and the taking "where appropriate" of "corrective action."³ This responsibility was closely tied to UNTAC's broad mandate to supervise and control existing administrative structures and to monitor their compliance with Cambodia's undertaking under the Paris Agreement to respect all basic human rights. The difficulties faced by UNTAC in fulfilling its supervision and control function, due in part to resistance for the existing administrations, led to the increased importance of human rights oversight, investigations and the taking of corrective action.

The Human Rights Component necessarily concentrated on the investigation of allegations related to those civil and political rights linked to the holding of free and fair elections. Investigations included the investigation of specific instances of violations, such as politically motivated killings, and of patterns of violations such as harassment and intimidation of political party members.

"Corrective action" following investigations led to inquiries by the Component into existing systems of redress; together with the Component's monitoring functions, these inquiries revealed the extent to which redress mechanisms, in particular judicial and legal infrastructure as well as more traditional and local forms of civil redress, were largely not functioning. Though attempts to achieve redress through existing structures were made, increased political violence and other human rights violations compelled the undertaking of direct redress measures. These included the arrest and detention of serious human rights violators.

Sources of allegations of human rights violations

599 allegations of human rights violations were received directly by the Human Rights Component headquarters in Phnom Penh with 701 more being received in the provincial offices. Some 217 of these complaints were investigated in Phnom Penh, and a further 1083 in the provinces. Complaints were also received through the local Cambodian human rights associations. A further source of allegations were the various political parties. Ongoing monitoring of the courts and the prisons also led to investigations of specific abuses.

The principal source of information, however, concerning human

³ See Annex 5 of the *Paris Agreements*

rights violations were the UNTAC Civil Police (CIVPOL) and Military Components, given their much greater resources and coverage of the country. Information received by UNTAC Military and Civil Police personnel in the provinces was reported to Phnom Penh on a daily basis; human rights investigations were often conducted in parallel and in cooperation with Police and Military investigations.

In the conduct of these investigations, the UNTAC Civil Police and Military Observers were of invaluable assistance to the Human Rights Officers. In particular, human rights investigators worked closely with the Taskforce established by the Civil Police Component. The expertise of the officers attached to this unit greatly facilitated the work of the Human Rights Component. Provincial Human Rights Officers also worked closely with local UNTAC Civil Police in the conduct of their investigations. In many instances this cooperation was productive. On other occasions, however, the lack of trained investigating officers amongst the Civil Police led to difficulties and impeded the investigations. In future UN missions, it would be advantageous for investigative work if the police seconded to UNTAC were chosen with a view to their function in the mission.

Land Disputes

Common during the first several months of the transitional period were complaints of deprivation of property by the authorities or officials of the State of Cambodia. These complaints were much complicated by the recent history of land ownership laws in Cambodia, including the abolition of all private title and the destruction of all property ownership records during the Khmer Rouge regime. Such complaints, which were numerous, were referred to the Civil Administration component of UNTAC which established a special unit to deal with such matters.

Investigation of human rights violations

For the purposes of this report, the issues of summary executions and other violations against the person may be usefully divided into four subheadings⁴:

⁴In the Appendix, statistics for these categories of gross human rights violations are separated into further categories of killings and other violations of the integrity of the person. In the text of this report, however, such incidents of violence will be considered together.

The statistical report also includes a breakdown of other incidents of harassment and intimidation, and of abductions and disappearances. These incidents are also discussed in the text of the report under the general headings described above, rather than as separate categories.

1. violence against political opponents;
2. politically motivated ethnic violence;
3. violence intended to intimidate the civilian population;
and
4. other incidents of random or arbitrary violence,
including summary executions and torture.

Investigation of these complaints was often made difficult by the pervasive fear and mistrust in the local communities, often caused by continued harassment and intimidation by administrative authorities and the security forces.

Attribution of responsibility for such incidents was often extremely difficult given the propensity of military personnel from the various Cambodian factions to wear each other's uniforms, and the ready availability of such uniforms in the markets of most villages and towns. In many such incidents, however, eyewitness accounts and related evidence made clear the identity of the group responsible for such attacks, even where the identity of the individuals concerned was unclear.

The investigation of such matters was hampered in many cases by the reluctance of witnesses to give statements to UNTAC investigators for fear of reprisals and the inability of UNTAC to offer protection to witnesses. The inability or unwillingness of local authorities to take any action to investigate or prosecute served to heighten fears on the part of potential witnesses.

Violence against perceived political opponents

The pattern of complaints of politically motivated violence by the SOC altered several times during the duration of the mission, largely as a reflection of the political situation. The period from March to November 1992 was characterized by relatively low levels of political violence. The most common complaints were of harassment and intimidation of opposition political parties. Complaints ranged from arrest, imprisonment, dismissal from employment for membership in an opposition party, to threats of violence against opposition parties for engaging in political activity in the provinces.

During this early period several allegations of serious human rights violations were also made, particularly by members of the Khmer Peoples' National Liberation Front (KPNLF)/ Buddhist Liberal Democratic Party (BLDP) in the lead up to their party Congress in Phnom Penh in June 1992. The party alleged political assassinations of several of its members during the period leading to the congress. Many of these allegations were, however, unable to be confirmed by UNTAC investigators principally due to delays in deployment of UNTAC personnel throughout the countryside.

By November 1992 the incidence of serious human rights violations had increased markedly and reports of attacks on political party offices and members became a regular occurrence. The period from

November 1992 to January 1993 was characterized by a high level of politically motivated violence, particularly in the more heavily populated provinces of Battambang and Kompong Cham. Investigations established the responsibility of the CPAF and SOC police for many of these attacks, particularly on members of FUNCINPEC and, to a lesser extent, the BLDP.

Both the frequency and the seriousness of these attacks escalated during this period. In the period from November 1992 to January 1993 alone, UNTAC investigators confirmed the death or injury of 96 FUNCINPEC and BLDP members in apparently politically motivated attacks, many of which were attributed to SOC.

Case No.3: On 2 November 1992 Mr. Att Sidorn, BLDP member, and his mother were shot dead in Veal village, Ba Phnom district of Prey Veng province in a military style operation by five armed men. Two of the men entered Mr Sidorn's house, beat his wife with rifle butts, tied his hands behind his back, and shot him four times as his wife pleaded with them to spare her husband's life. Before leaving the house one of the men instructed another to check that Mr Sidorn was dead. The men then left the house without stealing anything. While the shooting was going on in the house, Mr Sidorn's mother ran crying towards the house. She was shot down by the men who had remained outside the house, and also died. Mr Sidorn's wife was able to identify two of the assailants, who were local SOC officials. Despite this, no action was taken against these men. Human rights investigators concluded that the killing was politically motivated in that Mr Sidorn's activities on behalf of the BLDP led to his assassination.

This pattern of violence continued until January 1993, when a number of factors apparently combined to cause a diminishing in the level of violence. Prince Sihanouk issued a statement from Beijing to all Cambodian parties to the Paris Agreements to end the violence, stating that he would not return to Cambodia until that occurred. In the same week, in response to a proposal made by the Human Rights Component in December 1992, the Special Representative announced the establishment of the UNTAC Special Prosecutor's Office to prosecute the perpetrators of serious human rights violations. He also announced the immediate deployment of UNTAC military and CIVPOL patrols to guard opposition political party offices.

Incidents of political violence attributable to SOC decreased considerably over the following two months. While attacks on political party offices and political party members continued to occur, their frequency decreased.

By March the opposition political parties, driven underground to some extent in the provinces by the wave of violence from November to January, again began to step up their campaign activities in preparation for the elections which had by then been announced for May 1993. In a statement to the Supreme National Council concerning the requirement for a neutral political environment for

the holding of the elections, the Special Representative stated:

*... Political culture and tradition vary greatly from country to country, and elections in some countries are routinely attended by violence which in some countries would be considered unacceptable. It would be unrealistic, therefore, to apply a simple, universal yardstick to the elections that will take place in May in Cambodia. But there is no excuse for playing down violence in the forthcoming campaign by comparing it with the much greater levels of violence in Cambodia's tragic and bloody history, as if killings were somehow more acceptable here than elsewhere. Any politically-motivated act of violence, especially if it results in death, is unacceptable. ...*⁵

Unfortunately, despite such calls, and frequent demarches with the responsible authorities, incidents of politically-motivated violence again increased markedly from the middle of March, as the opposition parties sought to campaign in the provinces. In the period from the beginning of March to the election, UNTAC investigators confirmed that politically motivated attacks left 114 FUNCINPEC and BLDP members dead or injured. Many of these attacks were attributed to either police or military officials of the SOC.

Case No.4: On 1 April 1993 in Romeas Hek district, Svay Rieng province, FUNCINPEC member Suern Sour was in his home with his wife, Hong Shur, and their children. At about 11.30 at night a local policeman Ngim Chanarith and two local militia members, Kau Chhong and Sor Vor entered the house. Seven other local militia members remained outside the house. Ngim Chanarith, who was armed with an AK-47 assault rifle, and the other men who entered the house demanded gold from the family, and then started to beat Suern Sour in front of his wife. One of the militiamen hit him with an axe. They then chained his arms behind his back, and Ngim Chanarith shot him in the leg. The house was dark, but the two militiamen were carrying torches, and the witnesses could identify them as they knew them personally from the village. After shooting Suern Sour, the militiaman Sor Vor struck Hong Shur on the head with a rifle butt. The men then stripped her to search her for gold. Finding none, they searched the house and stole one earring, a chicken, and some clothes. As they were then leaving the house, Ngim Chanarith turned to Suern Sour, who was lying on the floor crying for help, and shot him in the head, killing him. UNTAC investigators concluded killing politically motivated, and recommended issue of warrants for the arrest of Ngim Chanarith, Sor Vor, and Kau Chhong. The warrants were not issued.

⁵ Statement by SRSG on Neutral Political Environment to Supreme National Council, Phnom Penh, 9 March 1993

Violence against political opponents by the NADK

From the commencement of the UNTAC mission problems of denial of access to the areas controlled by the PDK caused problems for the monitoring and investigation of human rights matters in those areas. This situation worsened from June 1992 when the NADK refused to take part in the disarmament and cantonment process set out in the *Paris Agreements*. As described below, from non-compliance with the peace agreement, the NADK moved to attacks on SOC and ethnic Vietnamese Cambodians and then to direct attacks on UNTAC personnel.

The refusal of access to PDK controlled areas of Cambodia meant that the Human Rights Component was unable to perform its functions in those areas. From reports which were received from those areas, it appears that a system of military rule prevailed in the absence of any form of legal system, similar to the situation in the areas controlled by the KPNLF and FUNCINPEC.

The frequency of incidents of violence against their political opponents attributed to the forces of the NADK increased steadily during the mission, following the refusal of the NADK to participate in the disarmament and cantonment process. Officials of the CPP were one target of the NADK as their anti-election campaign gathered momentum. These attacks were accompanied by an increase in the anti-SOC rhetoric broadcast over PDK radio, which constantly referred to SOC as the *Vietnamese puppet regime*.

NADK attacks were targeted primarily at CPP officials at the commune and village level, as well as at Vietnamese to intimidate the local populations. According to UNTAC investigations, these incidents resulted in 216 confirmed cases of killings by the NADK, 342 confirmed injuries and 181 confirmed abductions by the NADK. Typically, such incidents took the form of raids by NADK units upon villages in SOC controlled territory, targeting commune police posts. A major incident of this kind which occurred in Bakan District Town in Pursat province in March, described below, illustrates the nature of such attacks.

The attack on Bakan District Town also marked the commencement of another phase of the NADK's opposition to the electoral process - the targeting of UNTAC personnel in politically motivated attacks.

Case No.5: At about 11.15 p.m. on the night of 8 February Bakan District Town, Pursat province, was attacked by about 40-50 armed men. The attackers split into four groups, each of which attacked different targets in the town, including UNTAC offices and residences. 6 people (4 children and 2 women) were killed, and another 16 injured, some seriously. No UNTAC personnel were injured, although the Indian CIVPOL were present in their house when it was raked with machine gun fire. UNTAC and other premises were extensively looted in the course of the attack. The attackers also targeted the SOC police station and the home of the police chief were attacked, and the police chief was seriously injured. Investigation by UNTAC established that the NADK were responsible for the attack. This was later confirmed by a surrendered NADK soldier who admitted to taking part in the attack.

Politically motivated violence against UNTAC

Attacks upon UNTAC personnel increased in frequency and intensity from this time, and have resulted in the deaths of 18 and injuries to another 67 personnel during the reporting period. A further 43 UNTAC staff were either abducted or detained for various periods of time whilst engaged in their duties. In many instances investigation of these attacks was rendered very difficult by the tense security situation which followed such attacks. While in many cases it was not possible to identify the perpetrators of such attacks with certainty, there was no doubt that a significant proportion of these attacks could be attributed to the NADK. An example follows:

Case No.8: On the evening of 2 April 1993 three NADK soldiers including the local commander, Major Don, were invited to dine with the Bulgarian Battalion of UNTAC at Srea Kob village in Thpong district, Kompong Chhnang Province. The Bulgarian Battalion had engaged in a deliberate program of attempting to build friendly relations with the NADK in order to avoid conflict. After they had been with the Bulgarian officers for about 4 hours, 10 fully armed NADK soldiers arrived and entered the camp. They refused offers of hospitality. Without warning, the NADK commander suddenly stood up and opened fire at the Bulgarian soldiers at the table, killing 2 of them instantly. After an exchange of fire, the NADK soldiers withdrew, leaving 3 Bulgarians dead and another 3 seriously injured. Shortly after, the NADK commenced shelling the camp. The shelling continued for about 4 hours.

The Human Rights Component views such attacks by the NADK as politically motivated in that their objective was to disrupt the electoral process and to further their campaign of linking UNTAC to the alleged "Vietnamese aggressors" and the SOC. The public pronouncements of the PDK through its radio also made it clear that the PDK sought stir opposition to UNTAC during this period. At no time was any regret expressed for such attacks, although at times the PDK did deny responsibility.⁶

Politically motivated ethnic violence

Throughout the transitional period a campaign of violence was maintained by the NADK against Cambodians of ethnic Vietnamese origin. In a series of attacks from July 1992 to August 1993, 116 Cambodians of ethnic Vietnamese origin were killed and another 87 injured, according to UNTAC investigations. Another 11 Cambodians of ethnic Vietnamese origin were abducted by the NADK and their whereabouts remain unknown.

⁶ See, for example, Voice of the Great National Union Front of Cambodia broadcast concerning attacks on the Bulgarian Battalion in Kompong Speu, XX April, 1993

Case No. 7: On 28 December 1992 a fishing village called Taches on the shore of the Tonle Sap Lake was attacked during the night by about 20-24 NADK soldiers. The attackers landed in the village, and were directed by their commander to locate ethnic Vietnamese in the village. They went to a number of houses along the street adjacent to the river questioning people as to whether they were Vietnamese or Khmer. The group then reported to their commander that the Vietnamese lived in the house along the riverbank, and he ordered them to "destroy" the people in those houses. The attackers then opened fire on the houses along the riverbank. When the occupants of those houses attempted to flee to the river to hide, they were followed and shot in the river. Several shells were fired at the houses from B40 rockets, but did not explode. Sixteen people died as a result of the attack and many others injured. In January 1992 an NADK soldier who had surrendered to CPAP forces in Kompong Chhnang allegedly confessed to involvement in this attack. He was placed under arrest by UNTAC under the authority of the Special Prosecutor's Office and is currently detained on murder charges in a prison maintained by UNTAC in Phnom Penh.

These attacks are categorized as politically-motivated ethnic violence by the Human Rights Component, as the PDK have repeatedly made it clear that the targeting of ethnic Vietnamese was a key part of their political strategy.

Such attacks apparently formed part of the wider campaign by the PDK to characterize the SOC administration and UNTAC as "puppets" and to demonstrate to the ethnic Khmer population that the country was overrun with ethnic Vietnamese, with the support and agreement of the SOC and UNTAC. Racist public pronouncements by the PDK along these lines were a feature of their anti-election campaign. In many instances, such as the two cases described below, the PDK did not attempt to deny responsibility for attacks. In a series of press releases and radio broadcasts following the attack on Chong Kneas in Siem Reap in which 35 people died, the PDK set out its attitude to these attacks:

... the people further say that their joint destruction of the Yuon⁷ in the Tonle Sap Lake area is correct, because for more than 13 years, they have been extremely furious with the Yuon aggressors' plundering of their land and fish⁸

⁷ Yuon is a derogatory Khmer term for Vietnamese.

⁸ Voice of the Great National Union Front of Cambodia, 2330 GMT, 14 March 1993

Case No.8: On 10 March 1993 20 armed men, some wearing NADK uniforms, armed with new AK47 assault rifles, arrived at Chong Kneas shortly before dark in 6 fishing boats. At about 8.30p.m. the boats split into two groups. Four of the boats proceeded to the video parlour in the village, where three men jumped from the boats onto the video boat, stepped into the video room, and opened fire on the group of about 50 people in the room. 18 people were killed in this attack, and another 15 injured. Some of the victims were on other smaller boats tied to the side of the video boat, and were struck by stray flying bullets. The NADK on one of the other boats entered a boat owned by a fishing family and killed 9 of the eleven family members thereon. The only survivors were two girls aged 11 and 13 who jumped over the side when the shooting started and swam to a nearby boat. Two small children - both aged 2 years - were thrown over the side of the boat and drowned. The sixth NADK boat opened fire on a boat owned by the family of NGUYEN THI ENG without entering it, and killed the four occupants of the boat. Altogether 35 people were killed and 27 wounded. A SoC police station some 300 metres from the video boat is equipped with boats armed with 50mm machine guns with a range of some 700-800 metres and a top speed of 15 knots/hour, as opposed to the 8 knots/hour capacity of the fishing vessels used by the NADK. There was no attempt by the SoC police to engage the attackers. UNTAC investigators established that the attack was by the NADK, and a warrant was issued by the UNTAC Special Prosecutor's Office for the arrest of Leung Dara, the commander of the NADK unit responsible. He has not been apprehended.

PDK propaganda against the Vietnamese was echoed by other factions.⁹ In a paper dated August 26, 1992, the KPNLF sought to justify the detention and mass expulsion of ethnic Vietnamese, raising additional concerns that inflammatory rhetoric from political parties would incite general ethnic violence.¹⁰

It was repeatedly pointed out to the Cambodian parties that incitement to racial hatred and violence was expressly prohibited under international provisions to which Cambodia is a party, such as the ICCPR. The Human Rights Component responded publicly to these racist comments and in a response to one KPNLF statements during 1992, the Component stated:

... suggestions ... that all Vietnamese in Cambodia are illegal immigrants who should be placed in controlled settlements and treated as displaced persons, impliedly until their return to Vietnam, is in our view in express violation of Article 20 of the Covenant on Civil and

⁹ See, for example, the *KPNLF Weekly Bulletin*, 7 November 1992, which carried an article referring to the Vietnamese by the derogatory term *Yuon* as an infectious invading germ ... poisonous to all living things, both plant and animal.

¹⁰ KPNLF Statement August 26, 1992, *The Khmer People Facing Racism, Genocide, Ethnocide*, p.3

*Political Rights*¹¹

The continued campaign of the PDK and the support lent to that campaign by other Cambodian Parties to the *Paris Agreements* meant that the associated campaign of ethnic violence continued without any appropriate action by the Cambodian authorities.

Violence against Cambodians of ethnic Vietnamese origin, which peaked in March 1993 with a series of violent attacks, led to the exodus to Vietnam of some 25,000 ethnic Vietnamese from Cambodia in the following weeks. The exodus during the months of April and May was mainly composed of fishing families from the Tonle Sap Lake, the majority of whom had lived in Cambodia for generations.

Racial attacks resumed after the election with the abduction and killing of a group of Vietnamese fishermen in Sihanoukville in June, and a series of attacks on fishing families seeking to return to their former homes on the Tonle Sap Lake in July and August. The attacks on the villages on the Tonle Sap during this period resulted in the deaths of 18 Cambodians of ethnic Vietnamese descent, injuries to one, and the abduction of another 14. UNTAC investigations indicate that the NADK was responsible for each of these attacks.

These politically motivated attacks on ethnic Vietnamese have been a major human rights concern throughout the transitional period. In a statement to the Supreme National Council following the attack in Chong Kneas, the SRSG stated:

*... The Cambodian parties cannot abdicate their responsibilities under the Paris Agreements and International Covenants with regard to respect for the life and dignity of all people regardless of racial or ethnic origin. I call upon them to renew that commitment to honouring their obligations in full. In this delicate period before the holding of general elections, the eyes of the international community will increasingly turn to Cambodia. What they expect to see is the return of Cambodia to the civilized world through the ballot box and not a return to the evil policies and practices of the past.*¹²

UNTAC continued to press the Cambodian parties as to their responsibilities in this area. Unfortunately, however, the failure of the NADK to heed these calls was matched by an apparent unwillingness of the SOC prior to the election and the Joint Interim Administration post-election to take necessary action to

¹¹ Response of the Director, Human Rights Component, to Mr Son Soubert, Vice-President of the KPNLF, 9 October 1992.

¹² Statement of the Special Representative of the Secretary General to the Supreme National Council working session, Phnom Penh, 19 March 1993.

protect the ethnic Vietnamese. Following the election, the new Joint Interim Administration explained to the UNTAC SRSG that this was a difficult matter for them to deal with as it was not possible politically for them to be seen to be protecting the Vietnamese.

~~Violence~~ intended to intimidate the civilian population

Another major human rights concern during the transitional period was the incidence of attacks on civilian targets, particularly by the NADK. UNTAC confirmed that some 159 civilians were killed and 325 injured in attacks of this nature. Of these, 84 were confirmed to have been killed and 226 injured by the NADK and another 40 killed and 27 injured by SOC. A further 202 civilians were abducted, 181 of whom were abducted by suspected NADK soldiers, either for ransom or for forced labour as porters.

Such attacks by the NADK appeared to be aimed at destabilising the territory controlled by the SOC and thus the electoral process, and intimidating the local populations. These attacks included such incidents as the attack on a house where a video was being shown in a village just outside Kompong Them provincial town, which resulted in the deaths of 20 people and injuries to another 35. They also included attacks on markets in villages and towns, the ransacking of houses, and abductions of civilians and their vehicles at roadblocks established on the highways.

Although robbery also appeared to be a motive in such incidents, the *modus operandi* of the attacks left little doubt that their prime objective was terror rather than robbery. This factor, together with eyewitness accounts, often provided an indication of responsibility for the attacks.

Case No.9: On 5 May 1993 the train from Battambang to Phnom Penh conveying about 500 passengers including tourists was derailed when it struck two landmines placed on the track. After the train stopped, 100 armed men attacked the train, firing rocket propelled grenades into the carriages and raking the train with automatic weapons fire. 20 of the passengers were reported killed and approximately 100 others were injured. Many of the victims were unidentified, as railway workers cremated bodies unclaimed at the scene. Other passengers escaped by fleeing across adjacent fields. CPAF soldiers travelling as train guards were observed by passengers discarding their uniforms and running away, providing no resistance to the attackers. The engine of the train was reported partially damaged, one of the wagons was totally burned and two other wagons were derailed due to the explosion. The attackers engaged in some looting of the train but not on a large scale. After they had left the train, however, it was looted by villagers from three nearby villages, and then by the CPAF soldiers dispatched to assist after the attack. UNTAC investigators established that the attackers were NADK soldiers from the 36th Division, 8 of whom were identified by witnesses.

Attacks of this kind increased as the political opposition of the

PDK to the holding of the election grew. Generally the PDK would deny responsibility for attacks of this kind, although UNTAC investigations often indicated that they were responsible.

The abduction of civilians by the NADK either for ransom or to act as porters, carrying weapons and food for NADK soldiers, continued throughout the transitional period.

Violence and intimidation by SOC forces in the same period was directed primarily at their political opponents, although many instances of threats and violence against civilians designed to intimidate them into supporting the CPP in the election were investigated and confirmed by the Human Rights component staff.

Random or Arbitrary Violence

In addition to the human rights violations described above, there were numerous incidents of apparently random or arbitrary violence by the police or armed forces of the four Cambodian parties to the Paris Agreements. Such incidents included the summary execution of prisoners such as NADK soldiers who voluntarily surrendered to the custody of CPAF after arrest; or of prisoners who were recaptured after attempting to escape from SOC prisons (see Case No.11 and Case No.12 below).

Case No.10: On 21 August 1992 in Banteay Meanrith in the area controlled by the KPMLAF, a KPMLAF soldier Chat Thieu was shot by his commanding officer, Colonel Mean Pichait, from behind as he knelt on the ground. The bullet which struck Chat entered through the back of his leg and exited from his groin area causing his upper left femur to shatter. Investigators concluded that Colonel Mean purposefully discharged his pistol at the victim with the intention of wounding or possibly killing him, and that there was no legal justification for this act. The lack of any legal system in the KPMLAF area meant that it was impossible for the case to be dealt with as a criminal matter. After negotiations with the political wing of the KPMLAF, it was agreed that the Colonel would be placed under house arrest pending the establishment of a court. He was later discharged under an arrangement similar to bail. No court has yet been established in the area.

In addition, general banditry and other crimes resulting from the collapse of law and order remained a major problem through out the transitional period. Again, the failure of the disarmament process envisaged under the Paris Agreements meant the presence of a large number of heavily armed soldiers and former soldiers of all factions, often unpaid for long periods of time, in the countryside. Many innocent civilians were killed or injured in banditry attacks by such groups. Although such incidents involve violations of the rights to life and personal security, they were not a focus of the work of the Human Rights Component as they were considered to belong in the realm of the criminal law. Accordingly, statistics of these incidents have not been

incorporated into the Appendix.

Incidents of torture and other cruel, inhuman and degrading treatment or punishment

In addition to the torture and execution of prisoners by both NADK and SOC forces, other cases of torture in the prisons of the SOC were investigated. The two most serious cases occurred in Battambang and Prey Veng, which are described below.

Case No.11: On 16 May 1993 at 4:00 pm 98 prisoners from the Prey Veng provincial prison escaped after some of them overpowered the prison official who was guarding them at the time. UNTAC police who were outside the prison observed 2 prisoners run from the prison, and then saw armed police entering the prison. Shortly after, they heard shooting from inside the prison. About 48 prisoners were recaptured by the guards. When UNTAC investigators were allowed to enter the prison the following day they found the bodies of 7 prisoners allegedly shot dead by the prison guards in the course of the escape. The investigators found that each of the victims had been shot a number of times at close range, and that several of their wounds were to the face and head. On the basis of this and other evidence it was concluded that the 7 persons were killed after being rearrested. Witnesses stated that 6 of the victims were shot and killed by the Deputy Director of the prison, Panny, before the Director of the prison forcibly disarmed him. Other prisoners were severely beaten and tortured following their recapture. One prisoner suspected of having organised the escape was tied to a chair and beaten for over an hour. A rock was forced into his mouth by 2 police to muffle his screams. He was beaten with a bamboo cane and his skin scraped with a bamboo rake. A warrant was issued by the UNTAC Special Prosecutor for the arrest of the Deputy Director of the prison on multiple murder charges. He was arrested with the assistance of the local police and placed in detention in the UNTAC jail in Phnom Penh awaiting trial.

Case No.12: In the course of visits to the Battambang Provincial Prison, UNTAC officers became aware of allegations of torture of prisoners by prison guards. It was alleged that in February 1992 Ten Seng, chief of prison guards in Battambang provincial prison, had ordered the tying of prisoner Ngaw Haun to a tree in the prison compound. It was alleged that Seng then ordered that a fire be ignited around Haun as punishment for a failed escape attempt. The fire caused severe burning to the prisoner's legs and arms. Haun has been interviewed by UNTAC and was observed to continue to suffer greatly from the effects of the burning. Medical evidence conformed that the injuries suffered by the prisoner were consistent with the allegations. UNTAC investigation also implicated Seng in similar burnings as well as beatings of at least three other prisoners. As a result of the investigation, a warrant was issued by the UNTAC Special Prosecutor's Office for the arrest of the Prison Officer Ten Seng on charges of having engaged in torture of prisoners. After several unsuccessful attempts, UNTAC Civil Police arrested Ten Seng in July 1993 and he was detained in the UNTAC prison in Phnom Penh on charges of having tortured prisoners.

In addition to these more extreme cases, complaints of other cruel, inhuman and degrading treatment or punishment were common in the prisons controlled by the SOC. Often they included the use of shackles, dark isolation cells, and deprivation of food and water, and are described in the section of this report dealing with prisons.

Complaints of physical mistreatment of prisoners in the custody of CPAF and the SOC police were also common. Case No.13 provides an example of such abuses.

Case No.13: On 21 February 1993 2 NADK members were captured by CPAF during a raid on a village in Thuc Phos district, Kompong Chhnang province. The body of one of the men, Heng Prong, who had been captured by about 5 CPAF soldiers, was found in the forest about 3 hours after his arrest. His hands were tied behind his back and there were 2 bullet wounds in his chest. His family alleged that he had been kicked and beaten before he was shot to death. The person who found his body discovered 2 bullets in the soil approximately 2 cm below the body. UNTAC investigators confirmed that these 2 bullets which appeared to have killed Heng Prong indicated that he was shot while he was laying flat on the ground. The other captured NADK member, Sao, was taken by CPAF soldiers to the forest, where he was shot in the arm. He was then allowed to be treated by a man from the village, however the man who treated him then found Sao's body later the same day in a hole beside the place where he had treated him. A medical examination indicated that his eyes had been slashed with an axe and his arm broken. The investigators concluded that the 2 cuts with an axe on his face were responsible for his death. The matter was referred to the Action Cell and a warrant was issued by the UNTAC Special Prosecutor for the arrest of the CPAF officer in charge of the arrest of the two men.

Corrective Action

The Paris Peace Agreement provided that UNTAC should have the responsibility for corrective action, where appropriate, in cases of human rights violations.¹³ Within UNTAC, the responsibility for proposing and recommending corrective action measures rested with the Human Rights Component. The lack of detail in the Paris Agreements as to what constitutes corrective action posed a major problem for UNTAC and the Human Rights Component throughout the transitional period. The failure to specify appropriate measures meant that it was always open to the Cambodian Parties to contest the authority of UNTAC in its attempts to remedy human rights violations.

The Component adopted several measures as responses to different

¹³ See Section E, paragraph (c), of Annex 1 to the Final Act of the Agreement on a Comprehensive Political Settlement of the Cambodian Conflict.

human rights problems, with varying degrees of success. In general, however, the lack of effective methods of corrective action posed a major obstacle to the Component in attempting to perform its functions under its mandate.

Wherever possible the component attempted to persuade relevant Cambodian authorities to meet their responsibilities to maintain law and order in their ~~respective~~ territories; to investigate allegations of human rights violations, and to arrest and prosecute those responsible.

Particularly in cases of less serious human rights violations, UNTAC attempted to work with the Cambodian authorities in seeking redress. This method was employed with considerable success in the prisons (see the section on Prisons in Chapter Two of this report) and, with varying degrees of success, at the provincial level.

For more extreme human rights violations, and for cases where the Cambodian authorities were not prepared to assist in resolving the problem, other forms of corrective action had to be recommended. These measures included recommendations for:

- * administrative sanctions such as transfer, demotion, or dismissal from office for officials of the existing administrative structures;
- * criminal sanctions through the Cambodian legal system against the perpetrators of serious human rights violations;
- * public condemnations of the Cambodian factions deemed responsible for serious human rights violations; and
- * criminal prosecution by UNTAC through the Prosecutor's Office.

Administrative sanctions

In cases where UNTAC investigations indicated that officials of a Cambodian party to the Paris Agreements was responsible for a violation of human rights, one of the options open to the Human Rights Component was to recommend the transfer, demotion or removal of those officials by the relevant existing administrative structure. The power for UNTAC to take such action was founded on Section B of the UNTAC Mandate, which provided that:

... all administrative agencies, bodies and offices acting in the field of foreign affairs, national defence, finance, public security and information will be placed under the direct control of UNTAC, which will exercise it as necessary to ensure strict neutrality. In this respect, the Secretary-General's Representative will determine what is necessary and may issue directives to the above-mentioned administrative agencies, bodies and offices. Such directives may be issued to and will bind all Cambodian Parties.

From the early phases of the transitional period, it was clear that the Cambodian Parties, particularly the SOC, were reluctant to allow direct control in the manner envisaged in the Paris Agreements. The refusal of SOC authorities to cooperate in Case No.14 is an early example of resistance to UNTAC attempts to utilize its control function to improve human rights observance.

Case No.13: On Sunday 26 July 1992 at 8:00 a.m. a prisoner was arrested in a public street in Phnom Penh on suspicion of being involved in stealing several motorcycles. When interviewed by Human Rights Officers in prison the following day, the prisoner had cuts and bruising on his head, and face, his right shoulder, his left arm, his ribs and back, and a broken rib. He alleged that during his arrest he was beaten with the butt of a pistol by the police, and stated further that he was beaten with an iron bar following his arrest. He also identified a police officer from the Phnom Penh Municipal Police as responsible for the beatings. He claimed that many people had witnessed the arrest and beating. Medical examinations confirmed that his injuries were consistent with his story. Interviews with the prisoner's wife and 6 other witnesses who did not know the prisoner confirmed that there were 4-5 police involved in the arrest, none of whom were in uniform; that the prisoner was armed with a pistol, but had made no attempt to use it, as he had been surprised by the police; that two police had held the prisoner with his arms behind his back whilst another policeman had taken the prisoner's pistol from his belt and struck him on the head with the butt of the pistol; and that the prisoner has not made any attempt to resist the police or to escape as he was securely held with his arm behind his back by the two policemen for the duration of the beating. Two of the police officers involved in the arrest were interviewed. They disagreed with the evidence of the other witnesses, but agreed that the prisoner was punched in the face and kicked whilst on the ground with his hands handcuffed behind his back. The officer in charge of the arrest said that at one point he punched the prisoner in the face because he was angry with him.

In Case No.14, at the request of the Human Rights Component, the SRSG asked the SOC authorities to remove the officer in charge of this arrest from his position in the police force. The power to remove officials is specifically derogated to the SRSG by the Paris Agreements¹⁴.

This course of action was recommended by the Human Rights Component rather than a criminal prosecution because of fears for the safety of the witnesses to the beating should they be forced to publicly give evidence against this middle-ranking policeman. When the matter was brought to the attention of the SOC authorities, they responded that their investigation revealed that the allegations against the policeman were false. They refused to address the issue of his own admissions regarding the matter, which had been

¹⁴ See Section B, Annex 1, Agreement on a Comprehensive Political Settlement of the Cambodian Conflict, paragraph 4(b).

made in the presence of one of their own senior officers. They refused to take action against the policeman.

A joint review of the matters was then agreed by the SRSB with Hun Sen, the acknowledged leader of the State of Cambodia in attempt to break the impasse. This joint review was carried out by a team consisted of 3 SOC representatives and 3 UNTAC representatives chaired by one of the UNTAC representatives. After several sessions the chairman concluded that SOC representatives had failed to state any valid reason for challenging the decision of the SRSB that the officer be removed. However, in the end result, no action was taken against the policeman, who is still a member of the Cambodian police force.

In other cases involving less senior officials or less politically sensitive issues, the SOC was more cooperative. Some recommendations for transfer of officials were acted upon. Case No.15 provides an example of such a case. It appeared, however, that while SOC was prepared to transfer or even demote officials in some cases, the removal of officials for human rights violations was resisted firmly by the SOC.

Case No.15 In September and October 1992 the Provincial Human Rights Officer in Banteay Meanchey province conducted an investigation into alleged beatings of prisoners by police in Mongkol Borei district of the province. The investigation found a pattern of severe beatings and death threats by police. In several instances the police concerned admitted to their involvement in these activities. The investigators concluded that the beatings commonly took place in the course of extracting confessions from the prisoners. As a result the PHRO recommended the demotion and transfer of the three police officers responsible for the most serious beatings, and of their commanding officer, and the dismissal of a policeman responsible for kicking several prisoners in the face during the course of interrogations. Following negotiations between the PHRO and the local police commander, the commander agreed to these measures, which were then implemented.

In a bid to better coordinate UNTAC's efforts in supervising and controlling the actions of the existing administrative structures, an internal committee called the *Action Cell* was established by the SRSB in February 1993. This committee, initially comprised of senior representatives of the Civil Administration, Military, Civil Police and Electoral components and the Information Division, was presided over by the DSRSB. Its function was to consider proposals for corrective action from all components, including the Human Rights Component, and to decide on the appropriate form of corrective action in the circumstances, and the most effective way of implementing such action. The Human Rights Component was invited to join the committee when it became apparent that the majority of its work related to recommendations for corrective action to remedy human rights violations.

The approach of the *Action Cell* in matters of administrative

sanctions was to attempt to negotiate with the existing administrative structure to gain their cooperation in the implementation of the recommended action. This approach was a response to the failure of the SRSB's attempts to remove officials such as the police officer discussed in Case No.14 above. Unfortunately, in the view of the Human Rights Component, this approach was founded upon the same misconception of the control function of UNTAC as that which gave rise to the problems encountered in Case No.14. Rather than exercising the power of removal ceded to the SRSB under the Paris Agreements, the Civil Administration component had attempted to seek the cooperation of the SOC Ministry of National Security in removing the police officer. In deciding to adopt this approach, the Action Cell merely succeeded in compounding the problems encountered previously by the Human Rights and Civil Administration components.

The attempts of the Action Cell to gain the cooperation of the SOC authorities in taking corrective action for human rights violations almost uniformly ended in failure.

In some cases of corruption in the legal system, such as that of the provincial prosecutor in Battambang, recommendations for removal by the SRSB were made. Unfortunately, these recommendations were not accepted by the Action Cell.

The Special Prosecutor's Office

Throughout November and December 1992 an emerging pattern of increasingly serious violations of human rights by officials of the SOC and the NADK raised grave concerns about the human rights environment in which the elections campaign would be held.

During those months investigations were conducted into reports of some 51 politically or ethnically motivated killings, 35 attacks upon offices of opposition political parties and human rights groups, and 76 other incidents of politically motivated violence. This pattern of violence continued into January, with a further 13 deaths, 10 attacks on political offices, and another 16 incidents of political violence.

In many instances, the existing administrative authorities refused to conduct investigations. Senior officers of the SOC expressed the view that they did not have the capacity to either investigate or prosecute such matters.

Further, it became apparent that despite UNTAC investigations into these matters which implicated and identified officials of the SOC and the NADK, UNTAC had not succeeded in taking corrective action against any official for any human rights violation.

The Transitional Criminal Law adopted by the Supreme National Council of Cambodia provided a framework to address this problem through the criminal law. Despite the laudable aims of these provisions, however, it was obvious that such offenses would not be

prosecuted by state-appointed prosecutors. These prosecutors faced not only the threat of interference, but also physical danger should they seek to institute penal action against the will of the relevant existing administrative structure.

In these circumstances the Human Rights Component proposed that UNTAC should authorize UNTAC personnel to direct and control prosecutions of officials of the various parties¹⁵. A proposal for the establishment of a Special Prosecutor's Office within UNTAC was formulated by the component and forwarded to the SRSG in December 1992. In early January the SRSG announced the establishment of the Special Prosecutor's Office within UNTAC, attached to the Office of the DSRSG.

The brief of the Prosecutors' Office was to:

- * consider recommendations for prosecution for criminal offenses arising from investigations by UNTAC components where those recommendations involve officials, police or military officers of existing administrative structures;
- * where appropriate, institute and prosecute penal actions in the appropriate courts of Cambodia as constituted under the *Transitional Criminal Law* adopted by the SNC; and
- * where appropriate, to prosecute appeals to higher courts in Cambodia where initial prosecution is unsuccessful.

A copy of the Directive issued by the SRSG on 8 January 1993 to establish the office is attached to this report as Appendix 2.

Arrests of suspected human rights violators

Following authorization of UNTAC arrests and prosecutions by the SRSG in January 1993, several arrests have been made by UNTAC Civil Police. The first arrest was made in Kampot in January 1992, as a result of investigations into a killing of a BLDP member, described above. Shortly thereafter, a self-demobilized NADK soldier was arrested on charges related to the massacre of Cambodians of ethnic Vietnamese descent in Kampong Chhnang.

Subsequent to these arrests, which were made without warrant by UNTAC CIVPOL, a series of warrants have been issued by the Prosecutor. Warrants have been issued only where investigators are confident of the identity of the individuals responsible for serious human rights violations. Case No.16 is a case where identification evidence was not a problem due to admissions made by the accused. In many other cases while it has been possible for investigators to attribute responsibility to either SOC or the

¹⁵ Authority for this action derives from paragraph B4 of the UNTAC mandate, Annex 1 to the *Agreement on a Comprehensive Political Settlement of the Cambodian Conflict*.

NADK, individual identification evidence was not considered sufficient to meet the requisite criminal standard of proof beyond reasonable doubt.

Case No.14: On 8 April 1993 three NADK soldiers abducted Mr Lay, a forest worker who was a Cambodian of ethnic Vietnamese descent from the forest in Kravanh district, Pursat province. They tied his hands behind his back and took him deep into the forest. They then executed him by shooting him in the back of the head, and left his body lying in the forest. On the same day, another 4 Cambodians of ethnic Vietnamese descent disappeared in the same area. One of these men was found dead, and one other was later released. The other two were not found. Two NADK soldiers who surrendered to CPAF forces in the area confessed to the abduction of Mr Lay and stated that he was killed by a third NADK soldier who was with them. They said that they had abducted him with the intention of killing him, as the NADK command had instructed them to kill Vietnamese. Warrants were issued for the arrest of the three NADK soldiers on charges of kidnapping and murder.

From the outset problems were experienced in executing the warrants issued by the Special Prosecutor's Office. The initial proposal for the Special Prosecutor's Office had recognised that arrests may have to be made by a joint taskforce of UNTAC Civil Police with Military support, largely due to the fact that the Civil Police were unarmed. While the UNTAC components agreed to such an approach prior to the establishment of the office, practical problems soon arose when the execution of the warrants fell due. Some countries indicated that their police and/or military were not to be involved in such exercises, viewing them as *peace-making* rather than *peacekeeping*, and thus outside the mandate of UNTAC.

The debate over the use of force in making arrests was a major factor in delaying the execution of many of the warrants issued by the Special Prosecutor. These debates became more protracted following the decision in February 1993 that the issue of warrants by the Special Prosecutor had first to be approved by the Action Cell. Discussion of the merits of cases at this committee became embroiled in debates about the practicalities of executing warrants for the arrest of armed military officers or police.

In some cases the Action Cell sought the assistance of the SOC in making arrests. In Case No.11 above, a warrant for the arrest of the Deputy Director of the Prey Veng Prison was executed with the assistance of local authorities. Unfortunately, SOC authorities have not always been so helpful. Due to a lack of cooperation on their part, many warrants have not been executed. In some instances, authorities have not merely been uncooperative, but have obstructed attempts by UNTAC to effect arrests. Case No.17 below illustrates the problems experienced in one case in attempting to execute the warrants.

Case No.15: Between 31 January and 1 February 1993 four members of the Funcinpec party were abducted from their homes in Balad/Noreah II village, Noreah Commune, Sangke District, Battambang province by CPAF military officers. Statements from some 70 witnesses to the abductions identified 7 CPAF officers of the 5th Regional Military stationed in Battambang province as having abducted the four men, who were believed to have been taken to a CPAF military base located in Tacoc village of Sangke district, Battambang province. Investigation by UNTAC confirmed the allegations, identifying the persons abducted and the CPAF members responsible. SOC police and CPAF military denied the involvement of government forces in the abductions, and also denied the fact of the abductions, stating that their police concluded that no persons were reported missing from the area. Warrants for the arrest of the 7 CPAF officers were then issued by the UNTAC Special Prosecutor, however attempts to locate the soldiers for service of the warrants were frustrated by the total lack of cooperation by SOC officials, who denied, at the highest levels, even the existence of both the CPAF officers and the people abducted. The four FUNCINPEC members have never been located, and are presumed dead.

In an attempt to address these problems with the execution of arrest warrants by the Special Prosecutor's Office, the Security Council called upon all parties to cooperate with the UNTAC Special Prosecutor's Office in investigations of acts of violence and threats and intimidation committed on political or ethnic grounds.¹⁶

The UNTAC Detention Facility

Despite these problems, UNTAC continued with attempts to bring the perpetrators of serious human rights violations to justice. As mentioned above, warrants have been issued for sixteen suspects in such cases, and a total of four arrests have been made by UNTAC.

Following these arrests, UNTAC had to address the issue of the detention of the prisoners in its custody. Conditions in the existing prisons were so far short of international standards (see section on Prisons in Chapter One of this report) that it was considered unacceptable for UNTAC to utilize those facilities for the detention of prisoners. Moreover, the prisoners themselves might have been at risk in SOC prisons.

As a result, the decision was made to construct an UNTAC prison facility for holding prisoners arrested pursuant to the authority of the Prosecutor. Construction of the prison was completed in April 1993, and two prisoners previously held at the GHANBATT HQ in Phnom Penh were transferred to the new facility, which is guarded by a joint force of UNTAC police and military.

¹⁶ United Nations Security Council Resolution 810 (1993), S/25376, 8 March 1993

Two other prisoners, both SOC officials, who were held in Prey Veng Provincial Prison on charges of assassinating a member of the BLDP in his home, escaped before they could be transferred to the UNTAC prison.

Prosecution through the Cambodian Courts¹⁷

The general problems with the courts of the SOC have been discussed in Chapter One of this report. Initially it was hoped that requiring the Special Prosecutors' Office to operate in the existing Court structure, may, by the public nature of such prosecutions, play a role in altering the legal and official "culture" of the courts of the existing administrative structures.

Accordingly, in the first two cases the Special Prosecutor sought to bring charges against the accused in the Phnom Penh Municipal Court, as envisaged under the original proposal. Following the hearing of the first of these cases by the Court, however, the Minister for Justice of the SOC issued an instruction to the Chief Judge of the Court that he was in error in hearing the case, and that should he continue to "violate the law" in such a way he would be "punished". As a result the Judge declined to hear the Special Prosecutor's application in respect of the second prisoner.

It was apparent that the SOC judiciary was not independent of the executive and legislative authorities of the SOC, and that trials of cases brought by the Special Prosecutor's Office could not be brought before these courts. As the SRSB noted, in relation to the Prosecutor's attempts to bring such cases before the courts:

... The proper course in such cases ... is that they should be determined by a competent and independent court ... I regret very much that despite our continuous effort over many months, the SOC authorities have been unable or unwilling to make such a court available.¹⁸

UNTAC was therefore forced to the view that it was not possible to conduct trials with political overtones in the SOC courts. The cases brought by the Special Prosecutor are by their nature such cases, involving as they do allegations of serious human rights violations against operatives of the Cambodian Parties. Accordingly the Special Prosecutor refused to bring any further matters before the courts of the SOC.

As a result, the SRSB issued Directive No.2, on 3 February 1993. A copy of that Directive, which effectively removed UNTAC prisoners

¹⁷For more general discussion on the Cambodian courts and legal system see Chapter Three: Police, Courts and Prisons

¹⁸Letter SRSB to H.E. Mr. Hor Namhong, Member of the Supreme National Council, Minister for Foreign Affairs, Phnom Penh, 3 June 1993.

from the jurisdiction of the SOC courts, is attached to this report as Appendix 2. Amendments were subsequently made to the *Transitional Criminal Law* to incorporate the two UNTAC Directives into Cambodian law. Unfortunately, attempts to locate a competent court have continued without success to date. No real cooperation was received either from the SOC prior to the election or the Joint Interim Administration post-election in establishing a court competent to hear these matters.

CHAPTER THREE: EDUCATION, INFORMATION AND TRAINING

Mandate and strategy

The mandate of UNTAC to develop a programme of human rights education is set out in the Paris Agreements and supplemented by the February 1992 Report of the Secretary-General¹⁹. On the basis of those two documents, the Component elaborated a strategy to achieve the maximum educational impact during the transitional period. Over the course of the mission, it is estimated that approximately 90,000 students attended human rights courses as a result of the Component's Education programme. In addition, countless thousands of Cambodians were exposed to human rights 'teachings' through the media.

The Paris Agreement and Secretary-General's report

The Secretary-General's Report to the Security Council on Cambodia says that "The development and dissemination of a human rights education programme is foreseen as the cornerstone of UNTAC's activities in fostering respect for human rights..."

Human rights education may be usefully divided into three categories:

1. Formal education, i.e., classroom teaching usually divided into primary, secondary, tertiary, vocational and adult education;
2. Informal education, i.e., organized educational efforts outside of schools and universities, such as that provided by trade unions, religious groups, community organizations and others;
3. Non-formal education, i.e., means of cognitive and affective learning that take place outside of any organized effort, in particular through the family and the mass media.

In general, "information" relates to the non-formal type of education. It is included in the Secretary-General's report, in the following terms:

... for Cambodians must fully understand both the content and the significance of those rights and freedoms in order to be in a position to know when and how to protect them properly. This is especially important in an environment in which the framing of a new Cambodian

¹⁹Report of the Secretary General on Cambodia, UN Doc. No. S/23613, para. 12. This document is the principal source, after the text of the Paris Agreements, of UNTAC's mandate.

Constitution containing human rights guarantees will be on the national agenda. ... Such a civic education program would be developed in a manner that is culturally sensitive and generally "accessible" to Cambodians. Its dissemination would rely upon all channels of communication available in the country, included printed materials (words and pictures), cultural events and presentations, radio and television media, videocassette distribution, mobile teaching unites, etc.²⁰

"Training" is also used in the human rights section of the Secretary-General's report in four places: "complementary training" to civic education²¹; "some training" in the application of guidelines and materials targeted to civil servants²²; "supplementary training" for law enforcement officials and the judiciary, "especially in the areas of fundamental criminal procedure"²³; and "training" of UNTAC personnel in the areas of law enforcement and judicial functions.²⁴ The term "training" is intended in these passages in the proper sense of imparting skills necessary for the performance of certain specialized tasks.

Thus, while the Secretary-General's report does not make the distinction between formal, informal and non-formal education, it does provide guidance on training and information, and target groups for these educational activities. The implementation of these broad guidelines required a more specific strategy and plan of action.

The strategy of the Component and main achievements

In order to formulate a strategy that would allow the Component to meet the expectations of the Paris Agreements and the Secretary-General's report, target groups were identified under each of the three types of education. Specific expectations were then defined in light of the Secretary-General's report. The third step consisted in identifying the human and financial resources needed to meet those expectation. Specifically, this meant deploying existing staff, expanding staff, and finding additional resources to finance project agreements concluded with outside implementing agencies. A timetable for each of the projects was then established. This was followed by project implementation, while the final step of the strategy consisted in building in some form of evaluation of the activity.

²⁰Id., paras. 12-13.

²¹Id., para. 14.

²²Id., para. 16.

²³Id., para. 17.

²⁴Id., para. 17.

The strategy required considerable human and financial resources. From an initial staff of four in the Education, Training and Information Unit in Phnom Penh during the first months of UNTAC's deployment (a training officer, an information officer, an NGO relations officer, and a unit chief) the Component was able to expand through the appointment, in early 1993, of five additional Phnom Penh staff assigned to the Education, Training and Information Unit (two police trainers, one education officer in charge of women's projects, a training officer to head the mobile teams, and a senior advisor for information), eventually aided by four training assistants and two United Nations Volunteers. A major staffing addition, not foreseen in the Secretary-General's report, was the appointment, in late 1992, of 21 Provincial Human Rights Officers, whose responsibilities included education, training and information, and 21 Training Assistants -- Khmer-speaking educators, trained by the Component and assigned to each Provincial Human Rights Officer, working full-time on training at the provincial level.

The Component established two mobile teams, each with four or five trainers, who conducted an extensive human rights education programme in all of the provinces. After a lengthy preparatory period in which a syllabus and teaching aides were prepared, the two teams of mostly Khmer trainers reached tens of thousands of people during their operational period -- November 1992 to August 1993. The purpose of the training was to increase participants' understanding, acceptance and observance of human rights; and to promote a fairer society by encouraging authorities and those in positions of influence to respect those rights, and ordinary people to be more active in exercising them. The teams implemented training activities for Buddhist monks and nuns, human rights associations, political parties, teachers, judges, prosecutors, court and prison personnel, civil servants, police and military, women's and youth associations, students, and the staff of UN agencies and NGOs. Courses varied in length, with the majority involving 25 hours of training over a five day period. Participants were encouraged to take part in discussions, problem solving activities, role plays and question/answer exchanges.

Even with additional staff, the Component was not able to implement a human rights education strategy with any expectation of having a measurable impact on the prevailing environment without additional financial resources. For this purpose, the SRSG launched an appeal to some eighteen governments in October 1992. In that appeal he noted that it would "not be possible to implement a programme of such magnitude ... without additional resources." In response to that appeal some \$1.85 million was pledged or received in the Trust Fund for a Human Rights Education Programme in Cambodia established at United Nations Headquarters. The contributions are shown in the table on the following page.

The Trust Fund made it possible for the Component to find partners with specialized staff and experience to organize education, training and information activities, especially with respect to target groups that Component staff were unable to train directly.

The following paragraphs summarize the strategy and the main achievements with respect to each of the types of education.

1. Formal education

The formal education system UNTAC found in Cambodia was extremely weak. Facilities were poor, materials and equipment were in short supply, and salaries were low or not paid at all. Working conditions obviously provided little incentive for teachers. UNICEF had been improving teacher training and providing basic school supplies in the areas controlled by the State of Cambodia. Its primary focus was on literacy and vocational training, as well as upgrading basic subjects of maths and science.²⁵ The general situation with respect to educational needs was clearly described by UNESCO's basic needs assessment in the following terms:

Educational development in Cambodia is characterized by a unique experience in recent history where after following an evolution comparable to its neighbours in the sixties, the totality of the formal education and training systems were dismantled and brought to a stand still in the mid-seventies. ... Official figures indicate that 75% of teachers, about 67% of primary and secondary level students and almost 80% of higher education students had been eliminated or fled the country. All formal education facilities had been closed down or put to other use.²⁶

It was in this context that UNTAC sought to develop teaching and training on human rights in the schools. The key element of the strategy for the primary and secondary level was to prepare and disseminate curricular materials and encourage teachers to use them. The Human Rights Component met with the education authorities in September 1992 and expressed UNTAC's interest in seeing human rights as part of the official curriculum of civic education in the primary and lower secondary schools and in obtaining official cooperation to alert the provincial education directors to cooperate with provincial human rights officers in setting up programmes in the schools.

In response to this move, the SoC "Ministry of Education" issued, on 21 October 1992, an instruction (No. 1671) to all chiefs of provincial and municipal education services, and to all principals of schools under the supervision of the Ministry of Education, mandating the teaching of human rights in the primary and secondary schools. The "Ministry" also sent instructions to the provincial

²⁵UNICEF, Cambodia The situation of children and Women, chapter 4. Education, pp. 79-98.

²⁶UNESCO, Inter-Sectoral Basic Needs Assessment Mission to Cambodia, 15 January - 8 February 1991, Report, Bangkok, February 1991, p. 10.

education directors to cooperate with UNTAC. Finally, it agreed to UNTAC establishing courses in the university, specifically the School of Law.

Table I Syllabus for the Course offered at the Faculty of Medicine and Schools of Nursing

- Meaning of human rights and relation to health professionals
- The Universal Declaration and its significance to health professionals
- The right to health care
- Professional responsibilities and the Declaration of Geneva
- Communication skills and human rights
- The medical history and physical examination of the victim of human rights abuse
- Human rights and health care for women and children
- Land mines, torture and the responsibilities of health professionals
- Mental health and human rights
- The role of the health professional in protecting human rights

The human resources identified to implement the strategy for formal education included four categories. The first were the Component's Provincial Human Rights Officers, who conducted briefings and courses for teachers in the schools and in the Teacher Training Colleges. The second category were the Component's Training Assistants, described above. The third were the Component's Phnom Penh-based staff and trainers. Much of the training was carried out by two mobile teams ("Team A" and "Team B") who travelled to the various provinces giving courses of one-to-two weeks to various groups.

The Component prepared and taught a specialized syllabus for the law school course and also taught several classes for journalism students. The fourth category of trainers were provided by NGOs who that received funds for specific projects from the Trust Fund administered by the Component. This group is referred to as "implementing agencies." With respect to formal education, one implementing agency established a team of eight Khmer trainers, who travelled to every province with a Teacher Training College for

week-long courses. Another implementing agency prepared a specialized syllabus for the Faculty of Medicine and College of Nursing and gave courses in Phnom Penh and the provinces, assisted by a team of four trainers. A third prepared a training programme for 4,000 teachers in Kampong Cham, the most populous province.

Table II Syllabus of the ~~International~~ Human Rights Course at the School of Law

- Introduction to basic concepts of law and human rights
- Relations between domestic and international law as applied in Cambodia
- Human rights in international law and the principle of non-interference
- Civil and political rights
- Economic, social and cultural rights
- The enforcement of human rights law
- Fair trials
- National and international means of promoting human rights
- The role of the United Nations, including UNTAC
- Application of human rights law to fact situations

For primary and secondary teachers, a course for children used by UNBRO on the Thai border was reprinted in approximately 50,000 copies and used by most teachers for the 1992-1993 school year. In light of the need to apply the October decree, the Component decided a new curriculum would be needed for the 1993-1994 school year, which was commissioned from an implementing agency.

At the university level special syllabi were created. The medical curriculum was developed for the Faculty of Medicine and was used for the courses in the schools of nursing and provincial hospitals and health committees. At the Faculty of Medicine and the School of Nursing, a total of 490 students in their last years attended a comprehensive human rights course (see Table I).

The law school course covered the courses listed in Table II. It was a four-hour-a-week course for some 242 students on International Human Rights and took place at the law school in Phnom Penh from 27 October to 18 December 1992.

2. Informal education

The strategy for informal education had to be tailored to meet the needs and circumstances of each of the identified target groups. Several groups had been identified in the Secretary-General's report; others were determined to be critical to an effective effort to reach the broadest range of Cambodian society. The 15 target groups thus identified are listed in Table III:

Table III Target Groups of Human Rights Education

A. UNTAC

UNTAC Civil Police
UNTAC Electoral Staff

B. Existing Administrative Structures (EAS)

Police of EAS
Teachers employed by EAS
Students in universities
Ministerial officials of EAS
Other civil servants of EAS
Political party representatives
Judges and prosecutors of EAS

C. Civil Society

Defenders (including from EAS)
Human Rights associations
Women's associations
Journalists
Monks
Health professionals

Part of the training, especially in the first months of the mission, was directed at UNTAC itself. The Secretary-General's report referred to "parallel training for UNTAC personnel operating in these areas [law enforcement and judiciary]"²⁷ and to "coordination of the human rights programme content with other civil education programmes being disseminated, especially in relation to the elections."²⁸ Accordingly, the Component decided to provide briefings on human rights for all arriving Civilian Police (CIVPOL) and briefings for all District Electoral Supervisors (DES). The briefings were conducted both by Phnom Penh staff and by Provincial Human Rights Officers and reached approximately 2,000 CIVPOL officers. The objective of the CIVPOL briefings was to make the officers aware of the Component's mandate and to encourage their cooperation in investigations of human

²⁷S/23613, para. 14.

²⁸Id., para. 15.

rights violations.

The aim of the DES training was the develop a mutually beneficial relationship to ensure that the Human Rights Component's training activities would give sufficient attention to electoral issues in the context of human rights education, and that the Electoral Component's training would broaden its electoral content to include ~~human rights~~, in the context of civic education. However, the Component's main educational efforts were directed to the Cambodian population. In particular, efforts were made to reach the key categories of the emerging civil society. The mandate stated that "UNTAC would also work closely with ... special groups, [including] those individuals best placed to be further disseminators of information, such as teachers and community leaders."²⁹ The Component identified a number of special categories for specific training activities listed in Table IV.

Teachers were listed as belonging to the EAS because they are employed by the state. However, in reality they constituted an important element of the civil society in view of their status in society as leaders and sources of knowledge, independently of their status as public officials. Training of the teachers was conducted with a view to implementing the instruction mentioned in para.17 above mainly by one of the mobile teams, by provincial human rights staff, or by an implementing agency focusing on teacher training colleges. The result was that the largest number of persons receiving human rights training were in this category.

Health professionals were reached through the Faculty of Medicine and the School of Nursing and through a mobile team assigned exclusively to train in nursing schools and hospitals in the provinces.

During UNTAC's mandate, indigenous human rights associations were established for the first time. The Component took particular pains to provide both basic education and in-depth "train-the-trainers" courses for these associations. They were also provided with Trust Fund grants to conduct their own human rights education activities.

The general courses conducted by the Component's staff, as well as those targeted at teachers, health professionals and human rights associations, reached large numbers of women. In addition, specific courses for women were designed and conducted by both Component staff and other implementing agencies financed through the Trust Fund.

Journalists had already been receiving training through UNESCO and a programme of the Danish government, as well as through the University of Phnom Penh under an arrangement with the French Government. The Component integrated human rights teaching significantly into these programmes.

²⁹Id., para. 13.

Buddhist monks constituted a particularly effective vehicle for reaching the public at large, especially in remote areas. During the first year of UNTAC, the existing administrative structures resisted the Component's attempts to set up systematic training for this category. The active participation of monks in the human rights associations, including regularly providing meeting and office space in the Wats (monastery/temples), nonetheless allowed the Component to work with them in human rights education. In early 1993 it became possible to implement a more systematic strategy through an implementing agency training "master trainers" who would in turn prepare hundreds of monks to teach human rights at their monasteries.

As already mentioned, specific reference was also made in the Secretary-General's report to officials of existing administrative structures, and in particular police, judges, prosecutors, and civil servants.³⁰ The Component's strategy was to make officials aware of the obligations the EAS accepted in the peace process and their specific responsibilities as public servants. The second objective was to prepare them for a more responsible and accountable public service under the government to be created following the adoption of the Constitution. The strategy was implemented by provincial and Phnom Penh staff of the Component, rather than by implementing agencies. Two police trainers were added to the Component's staff, as was one person experienced in working with civil servants, for this purpose.

With respect to judges and prosecutors, the Component worked with Civil Administration Component on joint training activities following the adoption, in September 1992, of the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period. Component staff took part as instructors in courses held for the judges and prosecutors and developed a special series of judicial training activities. In July 1993, a three-week programme on the judicial functions and independence of the judiciary was funded by the Component and organized by an implementing agency for judges who had been or are more likely to be appointed to the Court of Appeals and the Supreme Court. Another project was developed that would provide judges and other legal experts to work directly with provincial and municipal judges on a daily basis over a two-month period.

Complementing the training of judges was the training of defenders. The near total elimination of all lawyers during the 1975-1979 period and the following years of one-party rule left Cambodia without any independent legal bar. No private attorneys or public defenders have practiced in the country since 1975. The Transitional Provisions guarantee the right to legal assistance for any persons accused of a crime or a misdemeanour. Because of the dearth of attorneys, the Provisions stipulated that anyone with a secondary school diploma, or family members of the accused, regardless of level of education, could represent the accused. In

³⁰See above, para. 6.

order to provide a minimal level of competency for these potential defenders, a Defenders Training Programme was created by the Component.²¹

The first course for defenders was a two week part time course organized in November 1992 for 60 persons designated by the human rights associations (45) and the EAS (15). The second course was organized for the top 20% of the second year students who took the human rights course at the law school. The students had a rudimentary understanding of basic legal principles but no practical legal experience or knowledge. Based on this experience, a new defenders' curriculum was developed consisting of ten lessons of three hours, which, with translation took six hours per day. The topics covered included:

- . What is law?
- . The separation of powers
- . The role of defenders
- . Basic principles of criminal law
- . Evidence
- . Criminal offenses and their elements
- . Arrest and detention
- . Searches
- . Confessions
- . Trial proceedings
- . Appeals
- . Forming a Bar Association

The course also developed special training programmes for police which it carried out in six provinces and which have more recently been supplemented by several "train-the-trainer" programmes of two weeks duration. This latter initiative will see local police being trained by their colleagues for the first time under the Component's indirect supervision.

Of particular importance in identifying target groups were the human rights NGOs. The Component's strategy was to work with existing human rights and women's groups to enhance their capacity to act effectively as NGOs and to provide training for their trainers, who could conduct human rights education activities throughout the provinces.

This strategy was implemented in part through a Trust Fund project called the "Human Rights Task Force for the Cambodian Elections." The Task Force prepared human rights activists from each of the main indigenous human rights associations to monitor human rights during the election. As a rule, these associations provided by far the largest numbers of election observers registered by the Electoral Component. The Task Force facilitated planning and coordination of activities of these groups and was continued after

²¹For a more detailed discussion of the Defenders Training Course, please see *Report of the Defenders Training Course* by Ruth van Rhys and Jeroen de Vries, UNTAC Human Rights Component 1993.

the elections as the "Cambodian Human Rights Task Force," with additional funding from the Trust Fund.

Training for police was provided initially by two specially contracted trainers. They provided eight training courses during the period of December 1992 to February 1993 in Phnom Penh and seven provincial areas. Over two hundred senior police were provided with an innovative four-day programme of 30 hours. This programme has been followed up in July-August 1993 with a series of three "train-the-trainer" programmes aimed at senior police and police trainers. This 60-hour course provided students with an introduction to Human Rights and teaching strategies with which to teach them. Students were required to plan and deliver a four hour class to colleagues subsequent to the course. This was supervised by a local committee of police specifically established for the purpose.

3. Non-formal education

In developing a strategy for human rights information, the Component's task was to develop a culturally relevant human rights information campaign using all possible media. This meant that the message to be disseminated would be consonant with concepts and principles of Cambodian society today.

The Component developed its human rights information campaign on two pillars, one being printed materials and the other audiovisual media. Information materials, both printed and audiovisual, were developed in close collaboration with UNTAC's Information and Education Division, and, to a limited extent, use was made of existing DPI human rights information materials.

For training and legal reference the Component produced large quantities of Basic United Nations Human Rights Instruments in Khmer and English. Once the Supreme National Council had acceded to the seven human rights treaties the Component prepared a Compilation of Human Rights Instruments relevant to Cambodia, including passages from the Paris Agreements, all human rights treaties to which Cambodia was a party and other standard-setting instruments. This 400-page book was printed in 10,000 copies in Khmer and widely disseminated.

With respect to printed materials, an effort was made to provide consistency in content and presentation. The most important basic information item was the human rights leaflet. This contained information on human rights in seven clusters, including one on economic, social and cultural rights. These clusters were further simplified in a set of slogans under the heading of each. Each of the slogans was then depicted on a separate poster and on T-shirts. This series of seven posters was used to produce a fold-out leaflet containing the seven posters in miniature with the relevant slogan of each cluster, thus providing a visual and simplified presentation of human rights.

For the visual presentation of printed materials, an effort was made to create an easily recognizable image that would be used throughout the campaign. This basic symbol was used as the cover for the Khmer edition of the Universal Declaration of Human Rights. It was also used in combination with the slogan "human rights in Cambodia" on thousands of human rights stickers, the T-shirts and on balloons and banners. A graphic adaptation of this image was also used as the introductory part of some of the TV productions.

Another visual presentation was chosen for a series of four leaflets, explaining the curriculum of the human rights training programme.

The Component also prepared a brief series of articles on human rights for the Khmer press. Although all Khmer press organs were provided copies of these articles in Khmer and English, only a limited number were reproduced. The same articles were used as news items by UNTAC radio.

Distribution of printed and other human rights materials was carried out through several networks. Most of the materials were distributed through the District Electoral Supervisors (DESSs). Especially during the period between registration and the elections they were provided with significant quantities of leaflets, booklet, posters, stickers and balloons. Feedback from DESSs indicated that the leaflet was used extensively during civic education sessions in the districts. Another important network was that of Provincial Human Rights Officers (PHROs), who regularly received information materials for distribution in their respective provinces. A third network was formed by the indigenous human rights associations, who both centrally and in the provinces were provided with information materials produced by the Component. The remainder of the materials was distributed directly to the UNTAC information centre, interested individuals and organizations, both local and international, to monks (who showed a particularly keen interest in these materials) and through general education and training activities.

The strategy for broadcast media was also worked out in collaboration with the Information and Education Division. Television and radio as means of communication are particularly important in light of the low level of education and literacy in Cambodia. The human rights "message" was simplified as much as possible and made attractive by using symbols and stories.

The first element of TV programming was a series of short dialogues set in rural Cambodia, featuring a limited number of actors discussing aspects of UNTAC's work. In spite of time constraints and the priority placed on the electoral campaign on TV and radio, seven of these dialogues were devoted to human rights themes, listed in the table below.

In addition, the Component produced two news magazines for television: one dealt extensively with UNTAC's mandate in the field of human rights, in addition to basic information on the

meaning of human rights, expressed through the singing of a popular Cambodian artist. The singing was accompanied by images illustrating concepts of human rights. This particular programme was refused by the State of Cambodia broadcast authorities but was broadcast on the French international channel and otherwise widely distributed on video-cassette. The song was reproduced on audio-cassette and widely broadcast on UNTAC radio. A second, shorter newsmagazine, dealt with UNTAC's human rights education and information programme.

Table IV Human Rights Topics included in Television Dialogues

- o Introduction to Human Rights
- o Freedom of Association and Freedom of Assembly
- o Political Rights and Human Rights Complaint Mechanisms
- o Rights of Women
- o Right to a Fair Trial
- o Human Rights Associations
- o Right to Life

The dissemination of audiovisual materials was done through all existing channels. Video and audio-cassettes were offered to all Cambodian broadcast authorities as well as those outside Cambodia with Khmer programmes directed at Cambodia. In addition, 500 human rights cassettes were distributed through DESSs, PHROs, and indigenous human rights groups. Feedback from these circles indicated that frequent showings were organized, even in the remotest areas.

With respect to radio broadcasting, the Component implemented a three-pronged strategy. Firstly, UNTAC radio regularly played the soundtracks of all the human rights television productions. Secondly, radio messages were broadcast explaining briefly a series of specific human rights issues and informing the radio audience that it could address complaints of alleged violations to the Component. Finally, UNTAC radio broadcast news items on human rights issues and reported on relevant human rights activities, such as education sessions, prisons action, constitutional issues, and so on. These items often contained interviews with Component staff. More than a hundred such items were broadcast in the course of UNTAC's mandate.

After the election, the Component developed a strategy aiming more to educate through the broadcast media. A series of ten radio lessons on human rights were prepared. A fictional account of the arrest, detention and trial of an alleged thief was filmed by well-known actors. The film in Khmer, called "The Arrest and Trial of Sopatra," was presented in two versions: the first showed the systematic violation of international standards, with interruptions on freeze frames to allow viewers to see and hear to relevant international norms, followed by the same story with proper

procedures being followed for comparison.

In addition, a new strategy for television production was developed. This strategy included (1) tales by a story teller with human rights messages, (2) round tables on topical issues, (3) documentaries on salient human rights events, and (4) the archiving of human rights work of UNTAC.

In May and June 1993 two series of ten stories were conceived by the Component and read on video tape by a well-known Cambodian actor and comedian. Test screenings of the tape, which will appear on television, were received favorably and the audio version has been broadcast by UNTAC radio. A second series was prepared in July 1993.

On 19 June 1993 the first round table discussion was filmed for television and video tape distribution. It was based on a "constitutional dialogue" held at the Component's headquarters among representatives of local human rights NGOs, women's organizations and monks, who spoke with three constitutional experts from Hong Kong, India and Bangladesh. The 28 minute version in Khmer was broadcast by IBC television.

The third element of the strategy consisted in selective events that were documented for wider distribution. The first such activity was the Khmer Women's Human Rights Workshop, which was filmed on 12-18 July.

The archiving project will draw on previous films about human rights work of UNTAC and add to it new footage of such events as the Second International Symposium on Human Rights in Cambodia (20-22 July 1993), the course given for health professionals (30 June 1993), the symposium on the judicial function and independence of the judiciary (5-23 July 1993), and interviews of Component staff.

On 10 December 1992, International Human Rights Day, the Component organized celebrations throughout Cambodia. Every Provincial Human Rights Officer received special funds to organize a popular event in the provincial capital, including songs, drama productions, speeches by human rights organizations, and distribution of Khmer-language banners, stickers, posters, leaflets and the brochure containing the Universal Declaration. A similar event was held at the Component headquarters in Phnom Penh.

On the occasion of these celebrations, a drawing contest was organized for children under 15 on "What human rights means to me." Ten thousand drawings were submitted and a jury selected the best artists who received prizes and awards during a ceremony at the Component's headquarters. The best posters, along with selected texts in English and Khmer on children's rights, were reproduced in a book *A Dream of Peace* of which 3,000 copies were distributed by the Component.

The Component considered that traditional means of cultural expression should be a part of the human rights education strategy.

For this purpose it concluded an agreement with UNESCO to carry out a joint project focusing on these means of expression. A Cambodian consultant was hired for a three-month period from September through December 1992 to implement three projects: a series of traditional musical performances, a comic book and a series of posters.

The main project was the planning and supervising of a series of performances by a company of ayai singers. ~~Ayai is a~~ popular and traditional form of Cambodian entertainment, first performed toward the end of the 19th century. The UNESCO consultant arranged with the director of the Performing Arts Department of the Cambodian Fine Arts University to engage the best ayai company in the country, to develop performances around human rights themes. In late 1992, the company worked out ideas for songs based on human rights issues, including freedom of expression, freedom of assembly and association, freedom of belief, rights to life and personal security, the rule of law, rights of women and children, and freedom to vote, with particular reference to the upcoming elections.

The second project was a comic book, which was based on a story of a worker who is the victim of exploitation and a reporter who is a victim of discrimination and who get help through an international NGO and solidarity from friends. Illustrated by a local artist, the comic book communicates some complex human rights concepts through an action-filled story that appeals to Cambodian readers.

The final project was a series of four posters dealing with freedom of assembly, the right to a fair trial, freedom from torture and other forms of ill-treatment, and equality and harmony among different races, religions and colours.

CHAPTER FOUR: HUMAN RIGHTS AND THE TRANSITION TO DEMOCRACY

Introduction

Under the Paris Peace Agreement, the "fostering of an environment in which respect for human rights is ensured" was linked to holding of free and fair elections and, indirectly, to Cambodia's transition to democratic government. The relationship between human rights and the transition to democracy is very close: a level of respect for basic rights and freedoms was essential for the beginnings of popular political participation; conversely, the establishment of representative institutions and processes will act as the best long term safeguard for human rights.

Human Rights and the Cambodian Elections

The successful holding of multi-party elections for a constituent assembly from 23-27 May 1993 was a watershed in Cambodia's transition to democracy. The large turnout of voters during five days of largely peaceful polling surprised many observers and represented a popular vote of confidence for representative government. The election resulted in opposition FUNCINPEC party emerging as the overall winner, with the Cambodian People's Party coming in second. Following a brief rebellion by elements of the CPP in early June, FUNCINPEC and the CPP formed an Interim Joint Administration for the remainder of the transitional period. Under the Paris Peace Accords, the Constituent Assembly is given three months to complete the drafting of a new constitution.

The human rights environment surrounding the election campaign, however, was far from satisfactory. During the campaign politically motivated violence had continued throughout the country, including attacks on civilians, primarily but not only those of ethnic Vietnamese descent, by the NADK; assassinations of perceived political opponents and attacks on opposition party offices by State of Cambodia security forces; and constant harassment and intimidation by local authorities aimed at manipulating the election outcome. An atmosphere of fear pervaded the countryside and popular confidence in the electoral process appeared to be fading amidst increasing violence.

UNTAC took a series of measures aimed at curbing the violence and creating the minimum conditions necessary for holding the elections. Measures aimed at curbing the violence are described in greater detail in Chapter Two, and included stepped up military patrols and high level demarches to responsible Cambodian authorities.

Emphasis was given to the exercise of fundamental political freedoms as a *sine qua non* of an acceptable election campaign. Vigorous attempts were made to ensure the peaceful holding of party meeting and rallies; over 800,000 people attended hundreds of such meetings and rallies in every province, under the supervision

of UNTAC CIVPOL and Military personnel. Opposition political parties were provided regular air time on UNTAC radio in an attempt to offset the monopoly held by the Cambodian People's Party; FUNCINPEC was also assisted in establishing its own broadcast facilities. The free movement of party workers and candidates was also closely monitored with UNTAC intervention whenever there appeared to be politically motivated restrictions on internal travel.

Continuing human rights abuses linked to the campaign necessitated close cooperation between the Human Rights Component and the Electoral Component. The UNTAC Electoral Law provided the Human Rights Component with an additional, albeit relatively modest, redress mechanism for perpetrators of politically motivated violence or intimidation: it allowed for removal of candidacy, deregistration of voters, and fines for breaches of electoral law.

Following investigations, the Component recommended a series of electoral sanctions to be enforced. By the beginning of the polling, several persons had been deregistered for electoral violations, including the head of one of the political parties.³² Furthermore, Prince Norodom Chakrapong, SoC "Deputy Prime Minister" and Mr. Kim Bo, "Governor" of Sihanoukville, both CPP candidates, were each fined 15 million riels.

Though the human rights situation remained very serious throughout the campaign, continuing violations were not viewed to warrant the cancellation of the elections. The Director of the Human Rights Component said on the first day of the elections:

*"In our view, the human rights situation in Cambodia remains a case for serious concern but is not unsurmountable in terms of the conduct of the elections. It is only one factor, albeit an important one, to be taken into account in the final assessment of the overall freeness and fairness of the elections."*³³

For the interests of long term progress in the protection of human rights, the elections were seen as essential. The start of a democratic process, however imperfect, was thought to be preferable to any realistic alternative. The election of a constituent assembly, leading to a liberal democratic constitution with important human rights safeguards as envisaged in the Paris Peace Accords, would clearly provide the best possible framework for continued activities to advance respect for basic rights and freedoms.

The successful holding of the elections, however, marked only the

³²Mr. Prum Neakreach, President of the Moulinaka and Nakaorsu Khmer for Freedom Party.

³³Statement by the Director of UNTAC Human Rights Component on Political Violence (23 May 1993).

first step of the difficult political transformation envisaged by the Paris Peace Agreement. The adoption of a new constitution and the creation and nurturing of those administrative and judicial institutions upon which a functioning democracy depends, remains to be achieved.

Drafting the Constitution

The inclusion of provisions in the new constitution protecting basic rights and freedoms will be critical in determining the overall framework within which future human rights activities will take place. This would include provisions establishing an independent judiciary as well as other mechanisms to enforce and advance respect for human rights.

The Component, with the assistance of constitutional lawyers and other experts from the Asia-Pacific region, drafted a "bill of rights" for the consideration of the Constituent Assembly's drafting committee.

Strengthening Democracy

While the new constitution will provide a framework for future human rights protection, the success of enforcing or implementing constitutional safeguards and provisions related to individual rights, freedoms and entitlement, rests with the rebuilding or strengthening of many basic institutions of government and of civil society.

In this area, the Human Rights Component has been primarily active on three broad fronts:

1. Encouraging the development of indigenous NGOs
2. Working with the existing administrative structures to begin rebuilding Cambodia's legal and penal system.
3. Encouraging and facilitating the involvement of international and regional NGOs in all areas of human rights activities in Cambodia in the post-transitional period.

In addition, the U.N. Commission on Human Rights in Geneva in February 1993 authorized the U.N. Centre for Human Rights to become operationally present in Cambodia following the end of UNTAC's mandate. The Centre for Human Rights would continue many of the activities of the Human Rights Component, particularly in the area of education. The U.N. Commission on Human Rights also decided to appoint a Special Representative for Human Rights in Cambodia, to maintain contact with the future government and people of Cambodia and report to the Commission and, through the Commission, to the U.N. General Assembly.

The Cambodian Human Rights Organizations

The transitional period has witnessed the emergence of five Cambodian human rights organizations as well as over a dozen other non-governmental organizations representing various groups in Cambodian society, such as women, university students, writers, and ethnic minority peoples.

The Secretary General, in his report to the Security Council of February 1992, envisaged assistance by UNTAC in the creation of local human rights associations. The Human Rights Component has worked closely with each of the five associations³⁴, provided technical assistance and advice as well as financial support. The majority of the associations are membership based, with a combined membership of over 150,000 people. They have been active in providing basic information about human rights, particularly at the grassroots level, complementing the work of the Component. During the elections, observers from each of the associations monitored polling stations in each province. Increasingly, the associations have also been involved in the monitoring and reporting of human rights violations and have held discussions with Cambodian authorities on possible redress measures.

Involvement of International NGOs

In December 1992 and early in July 1993, the Component hosted International Symposiums on Human Rights in Cambodia with the principle of aim of facilitating contact and support on the part of international and regional human rights organizations, for the newly established Cambodian human rights groups. The Symposiums were also designed to encourage international human rights NGOs to become active in Cambodia, in partnership with the United Nations and the Cambodian NGO community.

Through the Trust Fund³⁵, the Component has funded several projects bringing to Cambodia NGOs from other Southeast Asian countries, India, Sri Lanka and Japan. These projects will not only provide much needed training and expertise in a number of areas but will also provide the emerging indigenous NGO community with important international linkages which could afford a degree of protection through increased visibility.

The continuation of close cooperation between indigenous NGOs, regional NGOs and the United Nations, in helping to rebuild key

³⁴The Cambodian Human Rights Association (CHRA); Human Rights Vigilance of Cambodia; the Outreach and Community Development Projects; the League for the Defense and Promotion of Human Rights in Cambodia (LICADHO); and the League for the Defense of the Rights of Man and of Citizens (LDHC)

³⁵See Chapter Four for a general discussion of the Trust Fund's activities.

institutions related to human rights protection, as part of general rehabilitation efforts, could be an important element in further strengthening democratic processes in Cambodia.

CHAPTER FIVE: CONCLUSIONS AND FUTURE CONCERNS

Assessment of Impact of UNTAC's Human Rights Activities

Any assessment related to human rights must necessarily recall Cambodia's recent past and the profound impoverishment of the country through decades of armed conflict, violent revolution, economic collapse and foreign intervention.

In assessing changes in the human rights situation since UNTAC's arrival one year ago, it was difficult often to distinguish between the impact of UNTAC's human rights activities per se, on the one hand, and the impact of the peace process itself, including the mere presence of a large international peacekeeping operation. The cessation of major armed hostilities, with few exceptions, following the signing of the Paris Peace Agreements, alone constituted the single most important overall improvement in human rights. The absence of war permitted greater economic activity and allowed a much larger portion of the population to live free of forced conscription, generalized violence and displacement.

In addition, there was clearly progress in ensuring respect for human rights and fundamental freedoms on several fronts, albeit haphazard, bearing in mind again the realities of Cambodia's recent past.

There now exists very visibly much broader economic, political and social freedom throughout the country. The lifting of many restraints on private enterprise allowed an improvement in the economic well being of at least some segments of society, mainly in urban areas. The unprecedented growth of contacts with foreigners and the huge increase in the availability of new information and ideas, in the form of foreign publications and teaching, worked to undermine the social and political controls which previously existed. Active popular patronage and participation in religious activities reemerged after long suppression. Alternative political parties and human rights organizations opened offices across Soc administered areas and collectively gained hundreds of thousands of members.

Cambodian political and civil society tenuously began a process of reestablishment, many aspects of which are even now perhaps irreversible, while others appear to be contingent upon the degree of continued international attention and assistance past the transitional period.

Juxtaposed to this liberalization, however, a number of very serious human rights concerns remained which could have jeopardised the viability of a full democratic process. One of the single most important challenges facing the long term safeguarding of basic rights was the highly militarized state of Cambodian society and the related absence of any rule of law or civil accountability.

Energetic attempts to promote individual rights and freedoms in the absence of legitimate state authority and judicial redress ran the serious risk of promoting, or being seen to promote, anarchy and needed to be simultaneously supported by efforts to strengthen the structures of civil society and public administration.

The absence of institutions and structures capable of governing in accordance with international human rights standards, at times placed UNTAC's human rights efforts in the difficult position of either challenging existing arbitrary authority without an effective substitute; or seeming to acquiesce. Such human rights efforts in Cambodia clearly needed to come within the framework of a comprehensive and longer term "peacebuilding" package to have genuine effect and to contribute to lasting social stability.

Ethnic hatred, principally against persons of ethnic Vietnamese descent, whether immigrants or those born in Cambodia, resulted in mounting civilian casualties. The potential for violent unrest from this explosive issue was constantly present, with serious repercussions for both the electoral process and for regional stability. Although the PDK were directly responsible for violent attacks against ethnic Vietnamese communities, other Cambodian parties have also encouraged ethnic hatred, in part for political gain.

As Cambodian political society began to reemerge, mainly in the form of various contending political parties, over the past year, severe restraints on political discourse remained. Surveillance, intimidation, arbitrary arrest and detention, as well as some instances of torture and summary and arbitrary execution, continued through the transitional period in areas controlled by all Cambodian parties. These practices by Cambodian security forces and party officials reflected an absence of any rule of law and brought into question the longer term viability of democratic institutions in Cambodia, in the absence of continued and sustained human rights and peacebuilding efforts.

Together with social and economic liberalization came a variety of social and economic ills which affected the fundamental rights of Cambodian citizens. Rising income disparities, particularly between urban and rural populations were readily apparent. The breakdown of already minimal social services in the wake of declining state revenues meant that many vulnerable groups in society, in particular, did not have their basic needs met. There was as well as a rise in related social problems such as child labour and urban crime. The lack of support for basic economic and social rights was a major destabilizing force, which also undermined political efforts towards democratic government.

Buddhism has historically been an important source of social authority in Cambodia and the basis for many ethical beliefs supportive of respect for human rights. While the Buddhist Order of Monks or *Sangha* made some significant steps in reasserting their traditional role in Cambodian society, restrictions on religious freedom remained. The SoC continued to intervene in the religious

activities of the individual and to exercise undue influence over the *Sangha* through attempts at political indoctrination and the appointment of the ecclesiastical hierarchy.

Finally, as a result of UNTAC's inability to have access to areas controlled by the PDK, no human rights activities for populations in those areas were possible. Given the history of PDK policies including its non-cooperation with the peace process, it was assumed that little political freedom was tolerated and that fundamental violations of basic rights continued unchecked for the approximately ten percent of the population living in that zone. At the same time, the increased killing of Cambodians of Vietnamese descent by NADK units raised again the question of a possible return to the "policies and practices of the past" in Cambodia, and remains a major destabilizing factor, as well as a grave human rights violation.

Future Concerns

Restoration of order. The inability of legitimate state authorities to prevent continuing and increasing violence, including summary executions and the related and spreading culture of lawlessness, remains a principal human rights concern. The protection and promotion of all other rights rests upon the reestablishment of civil administration and law and order throughout the country. Many acts of violence are believed to be perpetrated by elements of the Cambodian police and military; their current lack of accountability and growing autonomy, if unchecked, could seriously undermine progress on all other fronts.

Rebuilding State Institutions. Related to the restoration of order is the longer term process of rebuilding (or building) the state institutions necessary for human rights protection as well as for Cambodia's social and economic development generally. From a human rights perspective, one of the most important concerns is the near complete absence of a functioning legal system. Another major concern is the need to overhaul the existing security/police apparatus. The new Cambodian constitution may include substantial provisions for protecting basic freedoms, but the legal mechanisms and structures of government required for enforcing these provisions is still lacking. International assistance in this area of institution building must be seen as a vital part of any rehabilitation package.

Fragility of civil society. Coupled with the need to rebuild state institutions is the need to rebuild or build the basic institutions and structures of civil society. The strengthening of civil society is the most essential guarantee against the recurrence of the state repression of the past. International non-governmental organizations, particularly from the region, can play a major role in this area, working with their Cambodian counterparts in the development of an indigenous NGO community and a free media. Education also has a heavy role to play in strengthening all or parts of civil society: support for educational initiatives, from

combatting illiteracy to the dissemination of basic information on individual rights to the general population, are important elements of supporting democratic government.

Treatment of ethnic minorities. Continued politically motivated violence by the NADK against persons of ethnic Vietnamese descent remains a major human rights concern in Cambodia. While all major attacks against ethnic Vietnamese have been attributed by UNTAC to the NADK, racist and inflammatory rhetoric by other political parties and the unwillingness of the SOC administrative structures to provide adequate protection, have made clear the extremely tenuous position of the Vietnamese minority community. The difficulties recently faced by several thousand ethnic Vietnamese who had fled Cambodia during the transitional period following the NADK attacks, in repatriating to Cambodia, underline this concern.

Other minority communities in Cambodia are also of concern, given the lack of formal legal or other mechanisms which might normally offer protection or redress. Indigenous upland peoples in particular may face considerable future difficulties related to control of land and local resources, given the their low level of political organization and limited access to national institutions.

Lessons Learned

It was clear from a very early stage in UNTAC's operations that the idea that all Components would share in the responsibility for human rights monitoring was not in fact feasible. On this premise, the Human Rights Component in its first months conducted basic human rights training courses for CIVPOL staff in particular. It soon became apparent that this undertaking was too time-consuming for the limited resources of the Component. While the Component worked closely with CIVPOL, in particular in its monitoring and investigation activities, in general, it could not directly rely on other components to carry out effective human rights monitoring.

This issue directly related to the resources given to the Component. The allocation of ten professional staff for the human rights mandate, outlined in the Paris Agreements and subsequently elaborated in the Secretary-General's report, was quite inadequate. Through its own efforts the Component was able to get additional professional staff in Phnom Penh as well as human rights monitors in each of the other 20 provinces. Even with this staffing, it was not possible to undertake many of the mandated activities in great depth. The Component also spent an excessive amount of time in administrative hassles attempting to get the necessary material support such as vehicles, office equipment etc. This was a particular problem for many of the provincial posts.

The question of resources for the Human Rights Component directly affected its effectiveness and its role. It arose from two principal issues; namely, the lack of advance planning for the Component's activities and the general view within UNTAC of the role of the Component. Regrettably, contrary to subsequent

missions such as Haiti, the senior staff of the Component had no opportunity to participate in any advance mission or planning for the role and resources of the Component. Owing to the pressure for UNTAC to commence its operations early, many components arrived in Cambodia without any clear policy lines, or precise indications as to which necessary resources would be available. The Component's activities were seriously affected by this and by the delay in deployment of its personnel.

At the same time, the Component was fortunate in obtaining a number of staff members who had relevant experience in the region for its core staffing. This was achieved through a process of personal selection of staff available in the region which enabled the Component to become more quickly operational than some others, albeit in a limited way. Involvement in pre-planning as well as careful selection by the Head of the Component of such staff is essential if such operations are to function quickly and effectively.

The second aspect related to the Component's functioning was that of the concept of the human rights role within UNTAC. There was not a wide appreciation of the pro-active and at times protagonist role which the Component had to play, if it was to attempt to meet the very broad mandate entrusted to it in the limited time available. At times, this inevitably conflicted with the political and diplomatic efforts of the mission at various levels in its peace-keeping function, and directly contradicted the more positive liaison function which a number of Components interpreted as being part of their mandate.

The consequences were particularly noticeable, for example, in relations with the Civil Administration Component, which was charged with supervising and controlling five key areas of the Existing Administrative Structures. The failure of UNTAC to exercise this control in a number of respects led to direct human rights problems and lack of redress. There was a clear need for a more consistent policy approach to such issues and the lack of clarification in this area undermined the Component's activities on a number of occasions.

A closely related concern was the lack of effective enforcement by UNTAC, as part of the corrective measures mandated to the Component. The reluctance of UNTAC to use its exceptional powers, for example, to remove officials for human rights violations, was one of the most glaring illustrations of this. This lack of enforcement philosophy stemmed in part from the peacekeeping nature of the mandate, which did not give full recognition for the mandatory steps required if UNTAC was to attempt to meet its electoral and human rights objectives. It also stemmed from the inevitable compromises imposed by the mission's diplomatic efforts to ensure that all parties co-operated with UNTAC in the transitional period.

The general lack of effective enforcement measures for human rights violations was clearly one of the main frustrations faced by the

Component throughout its mandate. It also led directly to the Component's proposal for the establishment of the Special Prosecutor's office, which after serious internal resistance was finally able to function in the last months before the elections. Here, too, different perspectives of the nature of the human rights mandate severely limited the effectiveness of this unprecedented measure, which had considerable potential for deterring the political violence which at one point almost jeopardized the electoral process.

In less contentious areas, the Component was able to make considerable inroads. These included accession to all the major human rights instruments; inclusion of human rights provisions in the penal and judicial codes; almost unrestricted access to the civil prisons and the release of all political prisoners; and comprehensive human rights education, training and information programmes throughout the country. All of these steps, in addition to the Component's direct support for the establishment of four major indigenous human rights organizations and the training of their members by UNTAC, were unique to the region.

The demand for human rights education and information was widespread at all levels of society and clearly is an area which requires much more long-term investment. The broad support and relatively high profile of the indigenous human rights groups supported by UNTAC were also indicative of a level of interest in this subject throughout the country. Innovative methods of mobile training teams, audio visual presentation and various public activities proved to be an extremely effective way of spreading the message throughout the countryside. With more resources and time, clearly a great deal more could have been accomplished in this area.

It was also apparent from an early stage that without separate financial resources, the Component could not effectively attempt to undertake the various education and training activities, in particular, which were required of it. The establishment of a special U.N. trust fund for this purpose, and the very positive donor support which it received, proved to be an indispensable tool for the Component's activities. As a result of this resource, the Component was able to contract out to NGOs the implementation of many of the educational activities which it could otherwise not have covered. These activities will continue in the post UNTAC period and should provide valuable support for national efforts in the same area.

From the outset, the Component was particularly concerned about raising expectations in regard to protection of human rights, which it would not later be in a position to guarantee. It therefore arranged for the UN Centre for Human Rights to be mandated to continue many of its activities, in collaboration with a Special Representative of the Secretary-General for Human Rights in Cambodia. While this process is under way, it is also clear that the Centre needs a clearer focus and more experience in this area, if it is to be an effective successor to such programmes.

Inevitably, human rights activities such as those begun by UNTAC, must be followed up by a comprehensive and long-term institution building process. This is particularly necessary in countries such as Cambodia, where the essential legal and other structures and processes needed to maintain the rule of law, are almost completely absent. One of the main lessons to be drawn from the Cambodian example is the essential need for the United Nations - with the support of the international community - to be able to continue this rebuilding process and to devote proper attention and resources to it in the post-conflict period. Without that, longer-term stability and order are unlikely to follow.

DIRECTIVE NO.93/1

Directive from the
Special Representative of the Secretary-General
establishing procedures for the
Prosecution of persons responsible for
Human Rights Violations

In accordance with the powers delegated to UNTAC pursuant to Articles 6 and 16 of the Agreement On a Comprehensive Political Settlement of the Cambodia Conflict, and Sections B and E of Annex I, regarding direct control or supervision by UNTAC in the maintenance of law and order, law enforcement, judicial processes, and protection of human rights, the following directive is issued by the Special Representative of the Secretary-General.

UNTAC will take the initiative:

1. To prosecute cases involving serious human rights violations;
2. For the purpose of such prosecutions, UNTAC will review investigations carried out by all UNTAC components recommending criminal law prosecutions of serious violations of human rights, particularly of officials, police, or military officers of existing administrative structures. UNTAC shall have discretion as to whether cases are taken up for prosecution or not;
3. UNTAC officers, authorised by the Special Representative of the Secretary-General, will have the powers to issue warrants for the arrest and detention of suspects; take appropriate action for protection of witnesses and other persons deemed by UNTAC to require protection; and prosecute cases before the Cambodian trial courts and, where appropriate, before the appellate courts;
4. UNTAC Civil Police and Military will exercise the powers to make arrests and detain suspects for the purposes of such prosecutions;
5. Duly authorised UNTAC officers will be recognized by the judicial apparatus of all existing administrative structures of Cambodia as having jurisdiction to perform all functions necessary in the fulfillment of their duties, and shall have standing to appear before all courts in Cambodia on behalf of UNTAC. All existing administrative structures within Cambodia shall allow access to and use of courts, court resources and prisons wherein persons arrested under this process shall be held.

-2-

6. All relevant provisions of the Provisions Relating to the Judiciary and Criminal Law and Procedure ~~Applicable in Cambodia During the Transitional Period~~, adopted on 10 September 1992, shall be read so as to extend to UNTAC officers all powers necessary for the execution of the tasks and functions referred to in paragraphs 3, 4 and 5 above. In particular, the term "prosecutor" shall include duly authorised UNTAC officers and the term "police" shall include UNTAC Civil Police and Military wherever such terms appear in the said Transitional Provisions.
7. Any person prosecuted by UNTAC shall be accorded all rights of defense and due process as are provided in the applicable criminal law referred to in paragraph 6 above.

Phnom Penh 6 January 1993

Special Representative of the Secretary-General


Yasushi Akashi



UNITED NATIONS
UNITED NATIONS TRANSITIONAL
AUTHORITY IN CAMBODIA
(UNTAC)



NATIONS UNIES
AUTORITE PROVISoire DES NATIONS
UNIES AU CAMBODGE
(APRONUC)

DIRECTIVE NO. 93/2

Directive from the Special Representative of the
Secretary-General Establishing Procedures for the Prosecution
of Persons Responsible for Human Rights Violations

In accordance with the powers delegated to UNTAC pursuant to Articles 6 and 16 of the *Agreement On a Comprehensive Political Settlement of the Cambodia Conflict*, and Sections B and E of Annex 1, regarding direct control or supervision by UNTAC in the maintenance of law and order, law enforcement, judicial processes, and protection of human rights, the following directive is issued by the Special Representative of the Secretary-General:

Notwithstanding the provisions of Directive 93/1, considering that the requirement of Article 13(1), (3) and (4) of the *Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period* cannot be met, pending the identification of a competent court by UNTAC, which shall be done promptly, UNTAC is authorized to detain suspects until such court becomes available.

A handwritten signature in dark ink, appearing to read 'Yasushi Akashi'.

Yasushi Akashi
Special Representative of
the Secretary-General

On this, the 3rd day of February 1993.

APPENDIX THREE
INVESTIGATIONS STATISTICS

Category ¹	Incidents	Number of Casualties
A. Summary executions		
1. Killings of political opponents		
Killings attributed to SOC	39	46
Killings attributed to NADK	15	37
Unattributable killings	62	76
2. Politically motivated ethnic killings ²		
Killings attributable to NADK	15	104
Unattributable killings	3	7
3. Killings the primary purpose of which is to intimidate the civilian population and other summary executions ³		
Killings attributed to SOC	25	40
Killings attributed to NADK	32	103
Unattributable killings	13	39
B. Other violations of the integrity of the person		
1. Attacks on political opponents		
Attributed to SOC	29	39
Attributed to NADK	8	42
Attributed to KPNALF	1	1
Unattributable	42	112
2. Politically motivated ethnic attacks ⁴		
Attributable to NADK	7	53
Unattributable	2	35
3. Attacks the primary purpose of which is to intimidate the civilian population		
Attributed to SOC	14	27
Attributed to NADK	32	252
Unattributable	7	72

C.	Harassment and intimidation		
1.	Incidents of politically motivated harassment and intimidation		
	Attributed to SOC	121	
	Attributed to NADK	12	
	Other	64	
2.	Other incidents of harassment and intimidation		
	Attributed to SOC	26	
	Unattributable	9	
3.	Threats of violence against civilian or political targets ⁵		
	Attributed to SOC	49	
	Attributed to NADK	1	
	Attributed to FUNCINPEC	1	
	Unattributable	10	
D.	Abductions and disappearances		
	Attributed to SOC	8	17
	Attributed to NADK	28	188
	Unattributable	5	10
E.	Illegal Arrest and Detention		
1.	For political reasons		
	Attributed to SOC	30	
	Attributed to NADK	11	
2.	For other reasons		
	Attributed to SOC	48	
	Attributed to UNTAC	1	
	Unattributable	2	
F.	Incidents of torture and other cruel inhuman or degrading treatment or punishment ⁶		
	Attributed to SOC	6	12
	Attributed to NADK	1	1
	Attributed to FUNCINPEC	1	

G. Acts of violence or intimidation against UNTAC personnel

Killings attributed to SOC	1	1
Killings attributed to NADK	8	11
Unattributable killings	2	3
Other acts of violence attributed to SOC	3	4
Other acts of violence attributed to NADK	15	42
Other unattributable acts of violence	12	21
	23	
Harassment attributed to SOC	23	
Harassment attributed to the NADK	38	
Unattributable harassment	2	
Threats attributed to SOC	5	
Threats attributed to the NADK	2	
Unattributable threats		

¹. A single incident may be classified as within more than one of the categories A, B & D if violations of different types occurred during the same incident; i.e. killing and/or injury and/or abduction.

². All of these incidents related to attacks upon Cambodians of ethnic Vietnamese origin.

³. These incidents include attacks upon civilian targets by both the armed forces of the Parties, and the execution of prisoners by the police or military.

⁴. See note 2 above.

⁵. An incident is classified as involving a threat where there was no physical coercion involved. Cases involving such coercion are classified either as killings, other violations of the integrity of the person, or harassment.

⁶. These statistics do not include the numerous incidents of shackling or mistreatment of prisoners which are described in the text of this report.