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Comments on the report of the State of Cambodia concerning the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹

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Edited by Mr Nick Cheesman, Projects Officer, Asian Legal Resource Centre.

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¹ Consideration of reports submitted by States Parties under article 19 of the Convention, initial report of the State Party, due in 1993, submitted in 2002, Addendum: Cambodia, CAT/C/21/Add.5.

Introduction

The Asian Legal Resource Centre has prepared this report to coincide with the consideration of the initial report of the State of Cambodia to the Committee against Torture (the Committee), under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The initial report was due on 13 November 1993 and was submitted on 29 August 2002, for consideration at session number 30 of the Committee.

This report is based upon the Asian Legal Resource Centre's accumulated experience regarding torture and the rule of law in Cambodia. The Asian Legal Resource Centre and its sister organization, the Asian Human Rights Commission, have published widely on these topics, including, *Report of the fact-finding mission to Cambodia* (1994); *Problems facing the Cambodian legal system*, by Mr Basil Fernando (1998); *Comments on the Constitution of the Kingdom of Cambodia*, by Justice H Suresh (2001, with the Cambodian Defenders Project and Danish Centre for Human Rights); *Three critiques on flaws in the Cambodian legal system* (2001, with the Cambodian Defenders Project and Danish Centre for Human Rights); and a number of papers in *article 2*, February 2002 (vol. 1, no. 1).² The Asian Legal Resource Centre has also made interventions on Cambodia at the UN Commission for Human Rights annual sessions, as well as numerous statements and Urgent Appeals on both specific and general cases of torture and human rights abuse (see example in Appendix A). It has also made many interventions at the local level in Cambodia (see example in Appendix B). These resources have all been used in the preparation of this report. Publications and reports by the Cambodian Human Rights and Development Association (Adhoc), the Cambodian Defenders Project, and Licadho have also been used.

This report was written by Mr Basil Fernando, Executive Director, Asian Legal Resource Centre. Mr Fernando was a senior officer of the Human Rights Division of UNTAC and the UN Commission on Human Rights stationed in Cambodia from 1992 to 1994. The report was edited by Mr Nick Cheesman, Projects Officer, Asian Legal Resource Centre.

1. Preliminary observations

Cambodia acceded to the CAT on 15 October 1992, together with four other UN human rights treaties, while being governed by UNTAC.

At the time, Cambodia did not make a declaration under either article 21, recognising the competence of the Committee to receive inter-state complaints, or article 22, which would permit the Committee to receive individual complaints.

Cambodia did not make any reservations to the CAT.

Cambodia submitted its initial report to the Committee on 29 August 2002, for consideration at session number 30. It has not yet submitted its second and third periodic reports, due on 13 November 1997 and 2001 respectively.

² Many of these publications and documents are available online through the following websites: www.alrc.net, www.ahrchk.net, www.article2.org.

Apart from the CAT, Cambodia has acceded to the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child. It has ratified the International Convention on the Elimination of All Forms of Racial Discrimination and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. It has signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

2. General background

Cambodia has had a liberal democratic constitution since September of 1993, the same year in which elections were sponsored by UNTAC. However, the creation of democratic institutions did not accompany the Constitution. The existing institutions, those established after the fall of the Khmer Rouge regime in 1979, remained intact. Most persons who held positions as police, prosecutors and judges during that period also continue to hold office. The actual conditions for civil rights did not improve, despite the generous provisions of the Constitution.

According to article 1 of the Constitution, “Cambodia is a Kingdom with a King who shall rule according to the Constitution and to the principles of liberal democracy and pluralism.” In actual fact, the King is only the symbolic head of state. Article 7 states that, “The King of Cambodia shall reign but shall not govern.”

The Prime Minister controls all the functions of state. The constitution has not provided for any checks and balances on that power. Thus, the Prime Minister can exercise absolute power, despite the Constitution recognising the separation of powers.

The executive and judicial powers constitute a single and indivisible system. In fact, all components of the justice system—police, prosecutors and judiciary—are tightly knit.

Although torture violates the Constitution it is widely practiced in the course of criminal investigations and in obtaining confessions that are used in trials.

3. Legal and institutional structure

3.1 Legal provisions relevant to the practice of torture

Torture is forbidden under article 38 of the Constitution:

The law guarantees there shall be no physical abuse against any individual. The law shall protect the life, honor and dignity of the citizens. The prosecution, arrest, or detention of any person shall not be done except in accordance with the law. Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to the law. Confessions obtained by physical or mental force shall not be admissible as evidence of guilt.

However, torture has not been made an offence in Cambodia. There is also no legal procedure to establish whether a confession has been obtained “by physical or mental force”.

The legal provisions for criminal cases are stipulated in a document adopted as the ‘Transitional Criminal Procedure’ in September 1992 by UNTAC. This document, intended to provide a temporary criminal code, is now popularly known as the UNTAC Code (see Appendix C). No criminal procedure code has since been instituted in Cambodia.

3.2 Institutions in the justice system

Cambodia’s court system is very similar to those of other former communist countries. Though Cambodia has adopted a liberal democratic constitution, the court system introduced by the Vietnamese regime (1979-1987) has remained intact. In 1993 a Court of Appeal was introduced.

The court system has three levels: municipal and provincial courts, the Court of Appeal, and the Supreme Court. The courts have jurisdiction over both criminal and civil cases. Even in the Court of Appeal and the Supreme Court, cases are heard all over again, as in the courts of first instance.

There are no legal provisions to bring action against state agencies. The Supreme Court does not offer any opportunity for a citizen to come before it to complain against them.

Prosecutors exercise considerable power. They decide on detentions and prosecution of cases.

The police have only 48 hours in which to investigate cases. Once a case has been filed, further investigations are left to investigating judges and prosecutors. However, in general further investigations do not take place.

There are no courts with jurisdiction over administrative matters.

All matters relating to appointments, dismissals, promotions and disciplinary control of the judiciary are addressed in the Supreme Council of Magistracy.

The Council for Judicial and Legal Reforms may initiate or encourage reforms and follow up on policy. This Council is under the direct control of the Prime Minister.

3.3 Legal education of judges

Understanding the nature of legal education is essential to understanding the legal system and actual practice of law in Cambodia.

The Royal School of Magistrates started admitting students for the first semester during 2003, in accordance with the sub-decree on Establishment of the Royal School of Magistrates (No. 09 ANKR B.K.) issued in 2001. The School’s objective is to select and ensure high quality judges and prosecutors through professional continuous training and refresher courses.

The Board of Directors of the School is composed of the Senior Minister in charge of the Council of Ministers (chairman) and the Minister of Justice (vice chairman). The dean is a member of the Board and is appointed by a royal decree on a proposal from the Prime Minister.

The independence of the School is questionable. The links between future magistrates and the government will remain tight and will continue to undermine independence of the judiciary, as one of the tasks of the Board is to nominate the chief and members of the Board of Examiners.

4. The practice of torture

Reports suggest widespread use of torture by Cambodian police, military and prison authorities. It is commonly understood that any interrogation by state agents may involve torture. (See examples in Appendix D).

The methods of torture that have been revealed through surveys conducted by independent organisations are as follows:

- Beating with sticks and rods made of wood, rattan or bamboo;
- Beating with guns;
- Crushing of limbs;
- Whipping;
- Electric shock treatment;
- Suffocation with plastic bags or blankets;
- Threats to kill or harm using gun shots to frighten the victim;
- Denial of medical facilities; and,
- Threats to family members.

5. The definition of torture (issues under articles 1 & 4)

As noted above, while the Constitution prohibits torture, there is no crime in Cambodia that outlaws it. In fact, there are only 34 offences on the UNTAC Code, and torture is not one of them (see Appendix C). Article 12(1) of the UNTAC Code states that

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

Article 57 of the same Code states that

Any public agents, including police or military agents, who deliberately infringe upon rights of physical integrity and the inviolability of the home, as protected by the present text, shall be liable to a punishment of one to five years in prison.

These provisions do not amount to a clear definition of torture as required by the CAT, nor sufficient punishment. There is thus no criminal sanction against torture in Cambodia. It follows that Cambodia is in breach of its obligations under the CAT.

6. Institutional problems and potential legal limitations to the prohibition of torture (issues under article 2)

Justice in Cambodia is administered by several agencies under two ministries. The police fall under the Ministry of Interior, and judges and prosecutors under the Ministry of Justice. Though coordination has often been talked about, no policy has been implemented.

The Ministry of Interior works more directly with the executive and conducts criminal investigations on the basis of contemporaneous policies. For example, at a given time it may follow an order to close down all entertainment houses allowing Karaoke bars, or crack down on kidnappers. On such occasions, arrests, detention and interrogations depend on these directives.

Meanwhile, the Ministry of Justice manages courts in a more regular and less changing manner. Thus, there are difficulties of coordination between the different agencies.

The policing system itself has a military style and its capacity for criminal investigations is low due to lack of training, lack of clarity with regards to its powers and responsibilities, and lack of a clear chain of command. Though the police force has a hierarchy based on organisational charts, it does not operate accordingly.

Prosecutors receive files from the police, but there is no real coordination of activities. Once a file is given, the police stop work on that case. The prosecutors are thereafter expected to conduct their own investigations. Then the case goes to an investigating judge, who is also expected to investigate. Thus, there is much confusion about the functions of each party.

Complaints of torture mostly relate to police investigations. However, once a case is passed to the prosecutors there is no way to pursue a complaint against the police.

7. Prevention of torture

7.1 Existing norms and rules concerning detention (issues under article 11)

At no stage has Cambodia issued clear instructions to the police, military or prison authorities with a view to preventing torture or to provide redress to the victims of torture. The rudimentary instructions found in the UNTAC Code also do not provide any such guidelines.

A tacit policy exists that torture during criminal investigation is necessary. A report by Licadho indicates the following reasons:

- The practice of arresting someone and then seeking evidence against them, rather than vice-versa; and the corresponding police emphasis on securing confessions from criminal suspects, with a lack of willingness or ability to use other criminal investigation techniques.
- The police's failure to abide by lawful arrest and detention procedures; and the lack of legal representation (or other assistance) for detainees in police custody, to observe and challenge any unlawful treatment of them.
- The judiciary's general willingness to accept forced confessions as evidence of an accused's guilt; and its related failure to hold the police accountable to the law, particularly with regard to unlawful arrest, detention, torture and forced confession.

- The failure of government officials, police chiefs and other national or provincial authorities to actively deter the use of torture, and to protect and promote the judiciary's independence, jurisdiction and responsibility to address torture cases.³

7.1.1 Control over the legality of detention, and right to appeal

There is no way to challenge the legality of detention in Cambodia. A victim of torture must continue through the courts until proved innocent the same as any other accused.

Criminal procedure in Cambodia has not developed to allow courts to make interim orders in cases pending trial. It is presumed that if a person has been arrested there is enough evidence to find them guilty. The right to appeal against detention is linked with the power of the courts. Both of these matters need to be addressed simultaneously, in clear legislation. However, at present the prospect of developing such laws is very slight.

There are no avenues to challenge the legality of detention either in the Court of Appeal or the Supreme Court. Appeals are understood conceptually as retrials. There are no interim remedies through appeals on orders of detention pending trial. The powers of appellate courts are unclear, and they lack distinct procedures.

7.1.2 Access to a lawyer, and restrictions on the right to representation by a lawyer

The right to representation is now a part of Cambodian law. In this regard Cambodia has progressed within the last 10 years, partly due to the legal aid provided by some NGOs and by foreign contributions. The state has not itself developed any legal aid scheme. It has not yet acknowledged this obligation.

However, there is much to be desired when it comes to what a lawyer can actually do to represent a client. As procedures of detention and trial are inadequately developed, it is not possible for lawyers to claim the right to represent their clients at all stages. Actual trial practices also do not provide for proper cross-examination of witnesses. Lawyers also have limited opportunities for intervention during the pretrial stages.

7.2 Education

In Cambodia, education on human rights in general and torture in particular is hampered by the limitations of laws and practical obstacles to persons seeking redress. Much education on human rights has been abstract, dealing with general notions of human rights. This is of little use when the actual possibilities for the realisation of rights are extremely limited.

The same applies to legal and judicial education. When legal provisions and procedures do not exist for lawyers and judges to act upon, their abstract knowledge of UN conventions and other international laws is not of much use. Cambodia is an example of how an enormous gulf can exist between awareness and implementation of human rights standards.

³ Jason Barber, *Less than human: Torture in Cambodia*, Licadho, June 2000, pp. 30–1.

8. The right to complain, and the obligation to investigate, initiate legal proceedings and punish torture (issues under articles 12 & 13)

8.1 The right to complain (issues under article 13)

There is no legal authority to which complaints about torture may be made. Nor is there any authority to receive, investigate and redress any wrong done by state agents. Though several human rights commissions exist, none of them have a clearly laid down legal procedure within which they can receive and deal with complaints.

The situation is so defective that even when a senior human rights activist was severely beaten by an “unknown” person on suspicion that she may have contributed to an adverse report produced by a reputed international group, she did not make any complaint. It was thought futile to do so.

Clearly, Cambodia has failed to meet its obligations under article 13. However, it must also be noted that having of a proper authority for dealing with complaints is very much linked to the development of basic criminal law and criminal procedure. A commission or authority will not in itself be able to undo the deep scepticism people have towards state officers and the possibility that they may be held to account for their actions.

8.2 The obligation to investigate, prosecute and punish torture (issues under article 12)

As indicated above, no authority exists to investigate cases of torture. Clearly article 12 has not been complied with.

9. Redress (issues under article 14)

No legal redress exists except as provided for under the UNTAC provisions mentioned above. In practice, the possibility of legal redress is severely hampered by the lack of effective investigation. Clearly article 14 has not been complied with.

Conclusions

1. The law and legal practices in Cambodia have not been developed to address acts of torture since Cambodia acceded to the CAT in 1992.
2. The lack of development is due to the poor state of criminal law and procedure in Cambodia. Without significant progress in this respect, it will not be possible to implement any human right effectively, including the right to be protected against torture. Ad hoc measures to address torture in Cambodia will fail unless accompanied by extensive reforms to the entire legal system.

Recommendations

1. A law prohibiting torture in Cambodia must be enacted immediately, in keeping with the CAT. It must provide a clear definition of torture, prescribe punishment for offenders, and establish a clear procedure whereby complaints can be made, investigated and prosecuted.
2. A law must be enacted to allow victims of torture, illegal arrest and detention to approach the Court of Appeal and/or the Supreme Court, which must be empowered to investigate such complaints and make orders for compensation and recommend action to be taken against perpetrators. The court could investigate via the affidavits presented both by the complainants and respondents. This procedure has proved quite useful elsewhere (such as in Sri Lanka) and can lead to the development of further jurisprudence to counteract torture in Cambodia.
3. The UNTAC Code should be abrogated and a comprehensive penal code and criminal procedure code be promulgated as soon as possible. Criminal procedure regarding arrest and detention must be clearly laid out with specific reference to the rights of suspects.
4. A law relating to the powers and organization of the police needs to be enacted. This must be regarded as a priority to eliminate torture and establish the rule of law.
5. An independent body must be set up to investigate complaints of torture. It must have real powers to question all relevant persons and gather evidence without fear of hindrance. It should have power of prosecution.
6. The right of a suspect to challenge the legality of detention must be respected and provision made for the making of such applications in lower courts as well as higher courts
7. Courts at both lower and higher levels must be empowered to deal with pre-trial matters. Specific legal provisions must be enacted in this regard. These must clearly lay down how to undertake applications on pre-trial matters and the manner in which the courts should deal with them. These applications must be addressed quickly.
8. Judges must be given adequate training.
9. Greater amounts of funds and other resources must be allocated to deal with Cambodia's defective justice system. This is a joint responsibility of the government and its funding agencies.
10. Civil society contributions must be encouraged if the justice system is to improve.
11. Cambodia must develop a closer working relationship with the Committee against Torture, so that the Committee can help it develop proper procedures. The Committee must give specific advice and offer clear direction. Mere general recommendations are not likely to yield results as without laws and institutions to pursue them they will achieve nothing, even where there is genuine good will and a desire to comply with the provisions of the CAT.

Appendices

Appendix A: Statement by the Asian Human Rights Commission

4 February 2003

Ten years after UNTAC, not an inch of progress in Cambodia's rule of law

The total destruction of the Thai embassy and businesses in Phnom Penh on January 29, widely reported by the international media, does not come as a surprise to anyone who has worked on the Cambodian justice system since the elections of 1993 under the UN Transitional Authority for Cambodia (UNTAC). These events reveal that there has not been even an inch of progress in reforms to the law enforcement system there.

The Asian Human Rights Commission (AHRC) has consistently pointed out that this failure is the number one problem obstructing not only Cambodian democracy but also Cambodia's return to the rule of law. AHRC has observed that anarchy and chaos prevail in Cambodia as it lacks a foundation upon which to cement an orderly society. AHRC's urgent call to prioritize police, prosecution and judicial reforms has fallen on deaf ears. The sheer ugliness of this situation is marked by the fact that to date neither a proper Penal Code nor Criminal Procedure Code exists. Even the international community, which has spent time and resources trying to set up an international court to try former Khmer Rouge leaders, has done nothing to help improve the local "justice system", which deprives every living Cambodian the possibility of enjoying a society that respects the law.

The response of Prime Minister Hun Sen to the Thai embassy incident is typical of the way justice has been dispensed in Cambodia for decades. He was quoted as saying that, "The Government was incompetent for failing to crack down on the riots for the following reasons: we could not control the inflammatory information and did not use armed force to shoot rioters." The Prime Minister's admission of government responsibility for the failure to prevent this incident was accompanied by remarks that show he simply is unable to comprehend the causes of this chaos.

The first question he should have asked himself is what were the police doing prior to, during and after the incident? This question simply does not arise in Cambodia, due to the very nature of the "police". Ill paid, ill trained police, which do not function under any orderly command, are not a group that anyone would think of as capable of preventing a riot. Naturally, it did not even occur to the Prime Minister to ask what role the police might have played or failed to play in this incident. His mind instead went to the armed forces. Despite a constitution declaring Cambodia a liberal democracy, for all practical purposes, the old rules of governance continue: "armed force" is the solution.

In recent years, Cambodia's earlier rule of the gun had been diminished, and some opposition groups held public demonstrations without being attacked. This, however, was mostly due to the intervention and even physical presence of the international community. Today, due to the lack of a rationally functioning police force overseen by an effective judiciary, a return to the armed forces shooting rioters is all that the Prime Minister can think about.

Meanwhile, large numbers of persons are being rounded up and taken to courts. Are they the real culprits? The lack of a credible system of investigations will leave this question unanswered. Given the financial consequences of this event, in which a vital business partner has suffered badly, and given the international publicity, some people will need to be punished. Whether or not they are actually guilty of anything will remain a mystery.

Last year, the champion of economic privatization, Milton Friedman, remarked that, "It turns out that the rule of law is probably more basic than privatization. Privatization is meaningless if you do not have the rule of law." The fate of those Thai businessmen who made their investments in a country with no basic rule of law will naturally be taken seriously by others. The economic consequences on Cambodia, which is already impoverished, are sad to reflect upon.

The lesson from this incident is that judicial institutions--the police, prosecution and judiciary--must be firmly secured to ensure stability in Cambodia, including security for outside investors. This will require serious involvement by the international community, as there are powerful local interests militating against development of the rule of law in Cambodia.

The international community owes it to Cambodia to reflect upon the failures of the UNTAC mission, which aimed to build a liberal democracy there, but fell far short of its goal. This failure should be acknowledged but regarded not as a matter of shame so much as a question of integrity for the United Nations and other international agencies. The United Nations must begin negotiations with the government and back it with material resources to bring about reforms. Thailand can play a great role, motivated by opportunities for trade and investment in a stable neighbour. For example, international judges, prosecutors and trained police can be recruited to fill institutional gaps until Cambodia's judicial institutions are upgraded and capable of undertaking their mandate effectively. Without such external recruitment and intervention there is no way that Cambodia can move forward. In fact, given the sheer devastation of recent decades, Cambodia's situation is much worse than that of any other country in the region. Hopefully this most recent incident will lead to more sobering reflections on Cambodia's problems, and more effective solutions.

Appendix B: Advertisement by the Asian Human Rights Commission and Cambodian Defenders Project, published widely in Cambodian media, March 2003

Elimination of Torture

យើងត្រូវការលប់បំបាត់ការធ្វើទារុណកម្ម

Requires

**A well worked-out and a
comprehensive Penal Code and a
Criminal Procedure Code**

Expedite

THE PENAL CODE AND CRIMINAL PROCEDURE CODE

ដើម្បីសម្រេចបាននូវបំណងនេះ ចាំបាច់ត្រូវការ ក្រមព្រហ្មទណ្ឌ ថ្មីមួយ

ដែលស្របទៅនឹងសភាពការសង្គមបច្ចុប្បន្ន និង

ច្បាប់ស្តីពីនីតិវិធីព្រហ្មទណ្ឌ ថ្មីមួយ ដែលការពារសិទ្ធិសេរីភាព

ប្រជាពលរដ្ឋ ។



Asian Human Rights Commission – AHRC
Cambodian Defenders' Project

គណៈកម្មាធិការសិទ្ធិមនុស្សអាស៊ី

ក្រុមអ្នកច្បាប់ការពារសិទ្ធិកម្ពុជា



Appendix C: The UNTAC Code

PROVISIONS RELATING TO THE JUDICIARY AND CRIMINAL LAW AND PROCEDURE APPLICABLE IN CAMBODIA DURING THE TRANSITIONAL PERIOD

Decision of September 10, 1992

THE SUPREME NATIONAL COUNCIL (hereinafter referred to as “the SNC”),

Acting in accordance with the powers granted to it as the unique legitimate body and source of authority under Article 3 of the Agreement On A Comprehensive Political Settlement of The Cambodian Conflict, of 23 October 1991, (hereinafter referred to as “the Agreement”),

Recalling Article 6 of the Agreement, according to which the SNC has delegated to the United Nations all powers necessary to ensure the implementation of the Agreement,

Further recalling that the United Nations Security Council, by its resolution 745 (1992), has established the United Nations Transitional Authority in Cambodia (hereinafter referred to as “UNTAC”) in accordance with Article 2 of the Agreement, to carry out the mandate set forth in Annex 1 to the Agreement,

Considering that UNTAC has been given responsibility, pursuant to Articles 6 and 16 of the Agreement and sections B and E of Annex 1, for direct control or supervision in the areas of maintenance of law and order, protection of human rights, law enforcement, and judicial processes,

Considering further that all parties to the Agreement explicitly recognized in Article 15 that all persons in Cambodia, and all Cambodian refugees and displaced persons shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments,

Considering also that the SNC acceded to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 20 April 1992 and that these instruments entered into force with respect to Cambodia on 26 August 1992,

Concerned that the structures, laws and judicial institutions of Cambodia do not fully comply with the requirements of the Paris Agreement and are sometimes totally or partially lacking in certain areas, and in any case are inadequate to ensure public order and human rights throughout most of the territory,

Recognizing that UNTAC has the responsibility to assist in establishing such structures, laws and judicial institutions where they are absent and to help improve them where they already exist in order to bring them up to the requirements of the Agreement,

Convinced of the urgent need to indicate clearly to all the Cambodian parties the rules of law which must be applied throughout Cambodia and the judicial procedures which must be put in place in order to ensure their effective application during the transitional period,

Further convinced that the application of these rules and procedures is necessary to foster a politically neutral climate and to prepare for free and fair elections,

THEREFORE ADOPTS the following provisions relating to the judiciary, and criminal law and procedure applicable in Cambodia during the transitional period, and solemnly CALLS UPON all Cambodian parties to apply them in good faith until such time as the Legislative Assembly resulting from the elections amends them or adopts new legislation in this area.

Title I: JUDICIAL SYSTEM

Article 1: Independence of the Judiciary

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 to a proceeding 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.

Article 2: Judicial Functions

Judges and prosecutors both are magistrates. Only judges may adjudicate. Prosecutors are responsible for penal actions, which only they may initiate. They file indictments in court and in all other forums provided for in this text. The Attorney General pleads before the Supreme Court in the interest of the law, reviews the legality of indictments by provincial prosecutors, and organizes and supervises their work.

Article 3: Courts

1. The Cambodian parties to the Agreement (hereinafter referred to as “the parties”) agree to set up, with the collaboration of UNTAC, at least one trial court in each zone or province where such courts do not now function. Judges shall be appointed, promoted and dismissed by the existing administrative structure, under the supervision of UNTAC.
2. Trial courts are composed of a judge and a prosecutor. These courts have general jurisdiction over the application of these rules, as well as laws and other norms in force in their respective jurisdictions.
3. Alternate judges may be appointed in the same way to replace judges who disqualify themselves due to a conflict of interest or incapacity.

Article 4: Appellate Courts

1. The parties agree to set up, with the collaboration of UNTAC, at least one appellate court in any zone or territory under their control where they have not already established one.
2. Appellate Courts are composed of three judges and one prosecutor, appointed, promoted and dismissed by the existing administrative structure, under the supervision of UNTAC.
3. Alternate judges may be appointed in the same way to replace judges who disqualify themselves due to a conflict of interest or incapacity.
4. Any intervening party, prosecutor or the accused may appeal decisions of trial courts within a period of two months from the day judgment is pronounced in court if the accused is present; an additional fifteen days are added to this period if the judgment was rendered in absentia.
5. Appellate courts judge both law and fact.

Article 5: Supreme Court

In accordance with the wishes of the Party "State of Cambodia", the current Supreme Court in Phnom Penh shall be improved so that it may comply with the requirements of Article 1 above and perform the following functions:

- a. it exercises judicial review of the law;
- b. it reviews appellate judgments on petition by the Attorney General, the convicted party, the intervening party or by their counsel within a period of two months from the day judgment is pronounced in the appellate court if the accused is present for sentencing; an additional fifteen days are added to this period if the judgment was rendered in absentia.
- c. it may send cases back to an appellate court and, if that court does not conform to its judgment, the Attorney General, the condemned party, the intervening party, or their counsel may resubmit the case to the Supreme Court within two months of the judgment under the same conditions mentioned under sub-paragraph b) above. The Supreme Court may then render a final decision on both the law and the facts.

Article 6: Police

1. The police shall observe the Code of Conduct for Law Enforcement Officials and, to the extent possible, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the United Nations.
2. The parties whose law enforcement officials are not able to comply with the requirements of this text agree to collaborate with UNTAC in setting up and training an appropriate police force.

Article 7: Attorneys and Counsel

1. Attorneys are authorized to establish a Bar Association, which will take the form of a non-profit association with disciplinary and regulatory authority over its members. The Bar Association shall neither receive nor accept any directives from any political party, nor from any legislative authority or executive authority acting for any of the Cambodian parties to the

Agreement. During the transitional period, any person holding a degree equivalent at least to the university law degree or having five years of legal or judicial experience at a sufficiently high level of responsibility may be admitted to practice law.

2. Due to the small number of attorneys in Cambodia, during the transitional period, any Cambodian holding a diploma of completion of secondary school education may represent an accused person in court, provided he or she is not an executive-level official or an elected official of the existing administrative structures or of a recognized political party. Furthermore, accused persons may ask a member of their family to represent them, regardless of level of education.

3. The representative of an accused party shall have the same rights in judicial proceedings as an attorney and be able to have access to any document, to file motions or to plead. In the present text the term “counsel” refers without distinction either to an attorney or to any other person representing an accused.

4. Foreign attorneys shall be allowed to appear in Cambodian courts, provided they furnish proof that they are members of a Bar in their own country or are officially authorized to practice in their country. The existing administrative structures agree to facilitate the granting of visas to attorneys coming to practice their profession in Cambodia.

Article 8: The Correctional System

1. The aim of the correctional system is social rehabilitation. Treatment of all prisoners must be in conformity with the Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations.

2. Any authority that arrests or detains suspects or detains anyone in pre-trial detention or following conviction, must maintain a prison registry signed every month by the prosecutor and one of the judges in the province or zone indicating, for purposes of verification, the name, age, address, date and reason of arrest, the date of arraignment, and, for convicted persons, the date of the sentencing and the prescribed punishment.

Article 9: Visits to places of detention

1. Prosecutors and judges may at any time enter prisons to visit prisoners.

2. Authorized agents of UNTAC human rights, civil administration and civil police components have the same right. In this connection, each Cambodian party to the Agreement must compile a list of all its detention centers at the latest upon entry into force of the present text, and submit the list by this date to the central services of the UNTAC civil administration component.

Title II: CRIMINAL PROCEDURE

Article 10: Legal Assistance

1. The right to assistance of an attorney or counsel is assured for any person accused of a misdemeanor or felony.

2. No one may be detained on Cambodian territory more than 48 hours without access to assistance of counsel, an attorney, or another representative authorized by the present text, no matter what the alleged offense may be.

Article 11: Military Tribunals

Military tribunals have jurisdiction only over military offenses. Military offenses are those involving military personnel, whether enlisted or conscripted, and which concern discipline within the armed forces or harm to military property. All ordinary offenses committed by military personnel shall be tried in ordinary courts.

Article 12: Treatment of Detainees

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

2. Arrest and detention must take place in accordance with the Standard Minimum Rules for the Treatment of Detainees, as well as the Basic Principles for the Treatment of Prisoners, adopted by the United Nations.

Article 13: Arrest and Detention

1. No one may be detained more than 48 hours without being brought before a judge, following charges filed by a prosecutor. In the event that it is impossible to abide by this time limit due to prevailing transportation conditions in the region, the time may be extended to the extent strictly necessary to bring the detainee before a judge by the most rapid means available.

2. The public prosecutor petitions the judge to indict and possibly to detain a suspect, based on the police file, by preparing an introductory indictment making reference to specific facts and legally characterizing the infraction according to the present text.

3. The judge may thus decide, by a decision setting out the reasons:

- to charge the suspect, with or without incarceration;
- to release the suspect because the evidence is insufficient;
- to continue the investigation without disclosing the name of the suspect

4. Within the same time limit of 48 hours after arrest, extended if appropriate for the additional period mentioned in the sub-paragraph (1) above to allow for transportation, counsel must receive a copy of the file of accusation against the suspect.

Article 14: Pre-Trial Detention

1. Only the judge, if so petitioned by the prosecutor, may decide to keep an accused in prison, and only if there is a risk of escape or non-appearance manifested by the absence of such factors as a

job, a family, a home, or if there is reason to believe that the accused will influence witnesses or the conduct of the investigation.

2. The accused has the right to petition the judge for release, either directly or through counsel. The judge must respond within five days with a decision setting out the reasons.

3. The accused, the intervening party or their counsel or the prosecutor may appeal the decision of the judge within five days. The Appellate Court must judge within fifteen days petitions appealing decisions on detention.

4. The duration of a pre-trial detention must in no case exceed four months. However, upon the decision of a judge setting out the reasons, this period may be extended to six months if justified by the requirements of the investigation. Minors less than 13 years of age may not be placed in pre-trial detention; minors 13 to 18 years of age may not be placed in pre-trial detention for more than one month. The length of such detention may be doubled if the minor is charged with a felony.

Article 15: Administrative Detention

No one in Cambodia may be detained by any administrative police nor for offenses not set out in this text or other applicable penal law or text.

Article 16: Release of Detainees

All persons detained or held in a center of detention not appearing on the list mentioned in article 9 of the present text shall be considered as illegally detained and shall be immediately released, upon petition by a prosecutor, by any court, by counsel of the detained, or by any authorized representative of UNTAC civil administration, human rights or civil police components. Any person detained or held within a listed center of detention but not listed on the prison registry shall similarly be released.

Article 17: Access to the File

1. If a judge decides that additional investigation is necessary, counsel of the accused shall, throughout the investigation, be immediately advised of new evidence presented against his or her client.

2. Counsel shall have access to the file of the person charged upon simple written request at any time during the proceeding, and shall obtain from the judge any results of investigation, expert testimony or hearings which he or she considers useful in the defense of his or her client.

Article 18: Arrest Without a Warrant

Police may arrest anyone found in the act of committing a cognizable offense, in particular:

- if the suspect is observed committing a felony or misdemeanor, or if pursued by a public hew and cry;

- if the suspect is identified at the scene of a felony or misdemeanor by witnesses or the victim;

- if the suspect attempts to flee the scene of a felony or misdemeanor.

Article 19: Arrest based on Existence of Substantially Incriminating Evidence

1. In all other cases, the investigating police may not arrest a suspect without substantially incriminating evidence which is specific and consistent and indicates that the suspect participated in the commission of a felony or misdemeanor.
2. A suspect who has fled may be arrested pursuant to an arrest warrant issued by a public prosecutor or judge and executed by police conducting the investigation.
3. The arrest warrant must stipulate facts and grounds for the arrest of the suspect.
4. The treatment of an arrested person shall be in accordance with the provisions of article 13 of the present text.
5. Furthermore, the police may, if so instructed by a prosecutor or judge, subpoena any person useful to the investigation to appear before the police, judge or prosecutor if that person has refused to heed other requests to appear voluntarily. After appearance, a person so summoned shall be immediately released unless there are specific, consistent and serious charges against him or her, in which case the procedures outlined in article 13 of the present text shall apply.

Article 20: Searches

1. In the case of flagrante delicto offenses police have the power to search.
2. Searches must be conducted in the presence of the suspect and two witnesses, preferably neighbors or owners of the building.
3. Except in cases of flagrante delicto offenses, searches must be authorized by one of the judges of the competent court or by the prosecutor. They may take place only between the hours of 6:00 a.m. and 6:00 p.m. They should take place in the presence of the suspect if possible, and two witnesses from among the suspect's family members. Proof obtained in violation of the present article is not admissible in court.

Article 21: Time Limits

1. Any accused person, whether or not in detention, must be judged no later than six months after arrest.
2. Counsel for the accused must be informed at least fifteen days prior to the date of the trial of his or her client.

Article 22: Release for Procedural Error

1. In case of non-compliance with the procedures set out in articles 10-21 that seriously interferes with the rights of defense, the accused must be immediately released. This immediate release may be obtained by counsel for the accused or any authorized representative of UNTAC civil administration, human rights or civil police components. As of the date that the present text takes effect, all detained or imprisoned persons must have a file prepared in conformity with the present text and immediately available for review by judges, prosecutor or authorized agents of UNTAC. If no such file exists, these persons must be released on petition by their counsel, by any

authorized representative of UNTAC civil administration, human rights or civil police components, by the judge or by the prosecutor.

2. Violations by public officials of the individual rights enumerated in articles 10-21 of the present text will incur sanctions provided in article 57.

Title III: TRIAL

Article 23: In Camera Hearings

All proceedings must be public, unless the victim or his or her representatives request a closed hearing and the judges concur.

Article 24: Evidence

1. Witnesses mentioned in the police file, including police officers, must be heard in court. Witnesses may be examined by the intervening party, the accused or their respective counsel, or by the prosecutor.

2. All evidence, including police reports, is rebuttable and may be challenged during the trial.

3. Confessions by accused persons are never grounds for conviction unless corroborated by other evidence. A confession obtained under duress, of whatever form, shall be considered null and void. Nullification of a confession must be requested from the judge by counsel for the accused prior to the sentencing hearing.

4. The defense may call its own witnesses, and present its own evidence to the court.

5. All witnesses, whether for the prosecution or for the defense, may be summoned to appear before the court by subpoena and are subject to a fine of 100,000 to 1,000,000 Riels for failure to appear.

Article 25: Presumption of Innocence

All suspects, indicted and accused persons benefit from the most complete presumption of innocence.

Article 26: Judgment

1. All criminal judgments are rendered "In the name of the Cambodian Nation". They must indicate the acts held against the accused and the witnesses or evidence on which the judge relies, as well as the explicit grounds of the conviction.

2. The judgment, containing the explicit grounds for the conviction and the order, must be read aloud at the trial. A copy of the judgment shall be given to the parties in the trial at their request.

Article 27: Intervention

1. Victims or their beneficiaries may directly or through counsel bring a civil action in a criminal case during the preliminary investigation, or during the sentencing hearing in order to claim

damages and costs against the offender, co-offender or the accomplices to the offense. Counsel for the intervening party shall have access to the file on the same terms as those of counsel for the accused.

2. Parties guilty of the offense and their accomplices are jointly liable for reparations or compensation, under conditions outlined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations.

Article 28: Offenses based on Opinion or Belief

1. No one may be prosecuted for political opinion, religious convictions, or membership in a race or ethnic group.

2. Penal texts currently in force anywhere in Cambodia may no longer refer to offenses based on opinion or ideology, and are accordingly abrogated.

Article 29: Review of Certain Trials

Any convicted person may directly or through counsel or an attorney, request a review of their trial to determine whether they have been convicted for their ideas, opinions, statements, or their membership or non-membership in a racial, ethnic, religious, political or social group.

Article 30: Statute of Limitations

The Statute of Limitations is three years for misdemeanors and ten years for felonies. The Statute of Limitations ceases to run as soon as any legal process has been initiated.

Title IV: FELONIES

Article 31: Murder

1. Anyone who kills or attempts to kill another person after premeditating the crime, or by preparing an ambush, or who kills or attempts to kill another person in the course of theft or rape, is guilty of murder, and shall be liable to a punishment of imprisonment for a term of ten to twenty years.

2. Premeditation is the process of conceiving and preparing an attack on another person before the actual execution of the attack. An ambush consists of lying in wait with the intention of committing an act of violence against another person.

Article 32: Voluntary Manslaughter

Anyone who voluntarily kills or attempts to kill another person without any of the aggravating circumstances mentioned in Article 31, whether or not a weapon is used, is guilty of the felony of voluntary manslaughter, and shall be liable to imprisonment for a term of eight to fifteen years.

Article 33: Rape

1. Anyone who rapes or attempts to rape another person of either sex is guilty of rape and shall be liable to imprisonment for a term of five to ten years.

2. Rape is any sexual act involving penetration carried out through violence, coercion or surprise. If rape is accompanied by threats with a weapon, or if it is committed on a pregnant woman or a person suffering from illness or mental or physical infirmity, or by two or more offenders or accomplices, or if it is committed by anyone in a position of authority over the victim, the punishment shall be a term of imprisonment of ten to fifteen years

Article 34: Robbery

1. Anyone who steals or attempts to steal from another person under the following aggravating circumstances is guilty of the felony of robbery and shall be liable to a term of imprisonment of three to ten years:

- if the theft is accompanied by force, whether or not a weapon is used or the victim sustains injury;

- or if the theft is committed by several persons or by breaking and entering.

2. Theft is the fraudulent taking of another person's property with the intent of appropriating it.

Article 35: Illegal Confinement

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

- for ten years, if the confinement or detention lasts longer than one month;

- from three to five years, if the confinement or detention lasts less than one month.

Article 36: Organized Crime

Any individual who has taken part in a formal or informal association set up for the purpose of planning one or more felonies or misdemeanors against persons or property, if specific acts of preparation of these offenses have taken place, shall be liable to a term of imprisonment of from three to fifteen years.

Article 37: Embezzlement by Public Officials

1. Any elected official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, or any political official who, while performing official duties or tasks related to such duties, with a view to owning or using, misappropriates, sells, rents, embezzles for personal profit or for that of a third party, property, services, money, personnel, any advantage, document, authorization or any function belonging to any public authority, is guilty of the felony of embezzlement of public property and shall be liable to imprisonment for a term of three to ten years.

2. The court may remove the convicted person from elective office and may also prohibit him or her, after serving the sentence, from standing for election or from holding any position in the public administration for a period of two years.

3. The penalty for this felony shall also include a fine of double the sum of money or value of the property embezzled.

Article 38: Corruption

1. Without prejudice to possible disciplinary action, any civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, or any political official who, while performing official duties or tasks related to such duties, solicits or attempts to solicit or who receives or attempts to receive property, a service, money, staff, a professional position, a document, an authorization or any benefit in exchange for any one of these same elements is guilty of the felony of extortion and shall be subject to a punishment of three to seven years in prison.

2. The court may remove the convicted person from elective office and may also prohibit him or her, after serving the sentence, from standing for election or from holding any position in the public administration for a period of two years.

3. The penalty for this felony shall also include a fine of double the sum of money or value of the property extorted.

Article 39: Illicit Traffic in Narcotic Drugs

1. Except for derogations for reasons of public health granted by public health authorities of each of the existing administrative structures, the production, transport, importation, exportation, possession, offering, transfer, acquisition and use of plants, narcotics and psychotropic substances, the list of which appears in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988, the Protocol to the Single Convention of 27 March 1972, Convention on Psychotropic Substances of 21 February 1971 and the Single Convention on Narcotic Drugs of 30 March 1961, are prohibited throughout Cambodian territory.

2. Any one who knowingly violates the present article shall be liable to a punishment of five to fifteen years in prison. Furthermore, all illicit substances will be seized and the courts shall order their destruction after they have been analyzed.

[NOTE: This article has probably been repealed in whole or in part by the Law on the Control of Drugs (09/12/1996)]

Title V: MISDEMEANOURS

Article 40: Involuntary Manslaughter

Any person who through carelessness, negligence, inattention or failure to heed regulations involuntarily kills another person is guilty of the misdemeanor of involuntary manslaughter and shall be liable to a term of imprisonment of one to three years.

Article 41: Battery with Injury

1. Anyone who voluntarily strikes another resulting in injury leading to permanent disability or temporary disability lasting more than six months, is guilty of battery and shall be liable to a punishment of one to five years in prison.

2. If the disability lasts less than six months, the offense shall be punished by a term of imprisonment of six months to two years.

3. If there is no disability, the punishment shall be a term of imprisonment of two months to one year.

4. If any weapon is used to strike the blows, the period of imprisonment shall be doubled.

Article 42: Indecent Assault

1. Any person who sexually assaults another person of either sex by touching, caressing or any other sexual act not involving penetration, is guilty of the misdemeanor of indecent assault and shall be liable to a term of imprisonment of one to three years.

2. If the indecent assault is accompanied by fraud, violence or threat, or if it is committed by any person with authority over the victim, or if the victim is under 16 years of age, the duration of these sentences shall be doubled.

3. Any person who procures, entices or leads away, for purposes of prostitution, or sexually exploits a minor, even with the consent of that minor, shall be liable to a term of imprisonment of two to six years.

Article 43: Theft

Any person who steals or attempts to steal the property of any natural or artificial person, in the absence of any of the aggravating circumstances set forth in Article 34, is guilty of the misdemeanor of theft, and shall be liable to a term of imprisonment of six months to five years.

Article 44: Offenses Concerning Cultural Property

1. Any person who steals or attempts to steal cultural property belonging to the State or to natural or artificial persons, which is part of the Cambodian national heritage, shall be liable to a term of imprisonment of six months to ten years. Any person who illicitly exports or attempts to export or transfers or attempts to transfer ownership of cultural property shall be liable to the same punishment.

2. For the purposes of the present text, cultural property shall be as defined in the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, ratified by Cambodia on 26 September 1972. Any element of cultural property that has not been the subject of an authorization to transfer ownership or to export, issued by the Supreme National Council or by the body designated for this purpose by the SNC, shall be deemed part of the Cambodian national heritage.

3. The voluntary damaging of cultural property belonging to the Cambodian national heritage, through unauthorized or clandestine excavations, vandalism or any other means, shall incur the same punishment.

[NOTE: This article has been impliedly repealed by the Law on the Protection of Cultural Heritage 1996.]

Article 45: Fraud

Any person who, through deceit, use of a false name or title persuades another person of an illusory authority, or by making another person fear or anticipate an event of any sort, receives or attempts to receive all or part of the estate of any natural or artificial person, is guilty of the misdemeanor of fraud and shall be liable to a term of imprisonment of one to five years.

Article 46: Breach of Trust

Any person who misappropriates or disposes of, against the interest of the owner, possessor or holder, any property, money, merchandise, or document containing or establishing an obligation or release, which was entrusted to that person as rent, deposit, commission, loan or remuneration for paid or unpaid work, having promised to return it or to offer it back or to put it to an agreed upon use, is guilty of breach of trust and shall be liable to a punishment of a term of imprisonment of one to five years.

Article 47: Counterfeit of Seals, Bank Notes, Public Documents, Stamps and Trademarks

Any person who either:

1. counterfeits seals of existing administrative structures or makes improper use of such seals;
2. counterfeits or falsifies a bank note, postage stamp, validation sticker, fiduciary note, stock, bond, or currency that is legally negotiable in Cambodia, or passport or identity card of existing administrative structures, or who makes use of or brings such instruments into Cambodian territory;
3. counterfeits or falsifies a bank note, postage stamp, validation sticker, fiduciary note, stock, bond, or currency that is legally negotiable in a foreign country, or passport or identity card of a foreign country, or who makes use of or brings such instruments into Cambodian territory;

is guilty of the misdemeanor of counterfeiting and shall be liable to a term of imprisonment of five to fifteen years.

Article 48: Violation of Copyright

1. Any production of a writing, musical composition, drawing, painting, film, photograph, or any other printed or engraved representation which does not respect the intellectual property rights of its author(s) constitutes violation of copyright.
2. Any importation, exportation, reproduction, performance or distribution of a reproduction of an intellectual creation with intent to disregard the intellectual property rights of the author(s) also constitutes violation of copyright.
3. For the purpose of the present text, copyright is understood in the sense of the Bern Convention of 9 September 1886, revised in Paris on 24 July 1971, and by the Universal Copyright Convention signed in Geneva on 6 September 1952, revised in Paris on 24 July 1971.

Article 49: Forgery of Public Document

Any elected official, civil servant, military personnel, or official agent of any of the four Cambodian parties to the Paris Agreement or of any registered political party who, while performing official duties or tasks related to such duties, commits a forgery, either by false signature, or by alteration of a deed, writing or signature, or by impersonation, or by false entry into a registry or other public deed after its execution or closing, and any person who knowingly makes use of the same, is guilty of forgery of a public document and shall be liable to a term of imprisonment of five to fifteen years.

Article 50: Forgery of Private, Commercial or Bank Document

1. Any person who, by one of the means outlined in Article 49, forges or attempts to forge a private, commercial or bank document shall be liable to a term of imprisonment of five years or a fine of one million to ten million Riels.

2. Any person who knowingly makes use of a forged private, commercial or bank document shall be liable to the same punishment.

Article 51: Receiving and Concealing Stolen Goods

Any person who receives or purchases goods which he or she knows to have been obtained through theft or fraud or any felony or misdemeanor is guilty of the misdemeanor of receiving and concealing stolen goods, and shall be liable to a punishment of one to five years in prison. This is an ongoing offense, for which the Statute of Limitations does not run until the receiving and concealing has terminated.

Article 52: Wrongful Damage to Property

Any person who intentionally damages or attempts to damage the property of another is guilty of the misdemeanor of wrongful damage to property and shall be liable to a term of imprisonment of one to three years. If the damage is minor or the property of little value the imprisonment shall be reduced to two months to one year. Wrongful damage to cultural property belonging to the Cambodian national heritage is covered by Article 44.

Article 53: Arson

1. Any person who damages or attempts to damage the property of another through use of fire or explosives is guilty of the misdemeanor of arson and shall be liable to a punishment of one to three years in prison.

2. If the damaged property is inhabited by one or more persons, the duration of the prison term is doubled.

Article 54: Bearing or Transporting Illicit Weapons

1. Any person who bears or transports a firearm, explosives, or artillery, without authorization in accordance with regulations issued by UNTAC on the bearing and transporting of weapons, is guilty of unlawful bearing or transporting of illicit weapons and is liable to a punishment of six months to three years in prison.

2. Any person not wearing a uniform who carries a weapon must be able to produce at the request of the authorities, especially UNTAC representatives, an authorization to carry the weapon. Failure to do so shall result in the immediate confiscation and destruction of the weapon and a report serving as a record of the infraction shall be addressed to the competent judicial authority.

Article 55: Coercion of Witnesses

Any person who threatens, intimidates, or brings pressure to bear upon a witness in a judicial proceeding is guilty of the misdemeanor of coercion and shall be liable to a punishment of one to two years in prison.

Article 56: Perjury

Any person who, in a judicial proceeding, perjures him- or herself by telling the Court facts which he or she knows to be erroneous or false, and which are recognized as such by the Court, is guilty of perjury and shall be liable to a punishment of one to two years in prison.

Article 57: Infringement of Individual Rights

Any public agents, including police or military agents, who deliberately infringe upon rights of physical integrity and the inviolability of the home, as protected by the present text, shall be liable to a punishment of one to five years in prison.

Article 58: Bribery

Any person who corrupts or attempts to corrupt any elected official, civil servant, military personnel, or official agent of any of the four Cambodian parties to the Paris Agreement or of any registered political party who, while performing official duties or tasks related to such duties, by promising property, service, money, staff, professional position, document, authorization or any benefit whatsoever in exchange for any one of these same benefits is guilty of bribery and shall be liable to a punishment of one to three years in prison.

Article 59: Incitement Leading to the Commission of a Felony

Any person who, by speech, shouts or threats made in a public place or meeting, or by writings, publications, drawings, engravings, paintings, emblems, films or any other mode of writing, speech, or film that is sold, distributed, offered for sale or displayed in a public place or meeting, or by signs or posters displayed in public, or by any other means of audiovisual communication, directly incites one or more persons to commit a felony shall be punished as an accomplice to the felony. This provision also applies if the incitement leads merely to an attempt to commit a felony.

Article 60: Incitement not Leading to the Commission of a Felony or Misdemeanor

Any person who, by one of the means listed in Article 59, incites the commission of one of the felonies or misdemeanors covered by the present text, without the offense actually being committed, shall be liable to a punishment of one to five years in prison.

Article 61: Incitement to Discrimination

1. Any person who, by one of the means listed in Article 59, provokes national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be punished by imprisonment of one month to one year, a fine of one million to ten million Riels, or both.

2. Whenever the court convicts an accused for one of the acts mentioned in the preceding paragraph, it may order that its decision be posted at specified locations, at the expense of the convicted party, and published in one or more newspapers, also at the expense of the convicted party, not to exceed ten million Riels. Any association established pursuant to rules approved by the Supreme National Council, may intervene and bring a civil action against the party accused of the acts covered by this Article by registering a complaint with the competent prosecutor and by petitioning the court to intervene.

3. In all cases, the employer, printer, publisher, or the publishing or distribution company are jointly liable for payment of damages which may be awarded to the victim(s).

Article 62: Disinformation

The director or other party responsible for a publication or other means of communication who took the decision to publish, distribute or reproduce by any means information which is false, fabricated, falsified or untruthfully attributed to a third person and did so in bad faith and with malicious intent, provided that the publication, distribution or reproduction has disturbed or is likely to disturb the public peace, shall be liable to a punishment of six months to three years in prison, a fine of one million to ten million Riels, or both.

Article 63: Defamation and Libel

1. Any bad faith allegation or imputation of a given fact which harms the honor or reputation of an individual is a defamation. The original publication or reproduction of the allegation or imputation is punishable, even if it refers to a person who is not explicitly named but whose identity is made evident from the defamatory speech, shout, threat, writing, printing, sign, poster, or audiovisual dissemination. Any allegation or imputation against a public figure which the author, the journalist, publisher, editor, or producer knows to be false and nevertheless distributes, publishes, writes or circulates with malicious intent is also a defamation.

2. Any insult, contemptuous remark or abusive language which does not claim to impute fact constitutes libel.

3. Defamation or libel made by one of the means listed in Article 59 shall be punished by imprisonment of eight days to one year, a fine of one million to ten million Riels, or both.

4. In the event of conviction under paragraph 3 above, the court may order that its decision be posted at specified locations, at the expense of the convicted party or parties, and published in one or more newspapers, also at the expense of the convicted party or parties, not to exceed ten million Riels. Any association established pursuant to approved by the Supreme National Council, may intervene and bring a civil action against the party accused of the acts covered by this Article by registering a complaint with the competent prosecutor and by petitioning the court to intervene.

5. In all cases, the employer, printer, publisher, or publishing or distribution company are jointly liable for payment of damages which may be awarded to the victim(s).

Article 64: Electoral Fraud

Whoever, through intimidation, illicit behavior, or any form of coercion, interferes with the free exercise of electoral rights of a voter or candidate or with the proper functioning of the electoral process is guilty of electoral fraud and shall be liable to a term of imprisonment of one to three years.

Article 65: Use of Narcotics

Any person who uses for personal consumption poisonous plants, narcotics or psychotropic substances as described in the United Nations conventions mentioned in Article 39 shall be liable to punishment of imprisonment of one month to a year.

[NOTE: This article has probably been repealed in whole or in part by the Law on the Control of Drugs (09/12/1996)]

Title VI: PUNISHMENTS

Article 66: Equality of Punishments

The principle of equality of all persons under penal law requires that punishments applicable in Cambodia be the same in all provinces or zones. The punishments provided herein are therefore applicable throughout Cambodia.

Article 67: Death Penalty

The death penalty is abolished in Cambodia.

Article 68: Attenuating Circumstances and Exculpation of Minors

1. Judges must weigh attenuating circumstances to reduce even below the minimum punishments prescribed in the present text, and in particular:

- the youth of the convicted person;
- the personal background of the convicted person which might reduce responsibility;
- the psychological or psychiatric state of an accused which is certified by a psychologist or psychiatrist;
- circumstances of the felony or misdemeanor which rendered absolutely necessary the actions of the convicted person.

2. For any accused person under 18 years of age, the punishments set out in the preceding articles shall be reduced by half for any accused under the age of 18, without prejudice for more favorable provisions contained in the standards defined by the existing administrative structures.

Article 69: Complicity

Whoever has provided the means by which an offense is committed, ordered that the offense be committed, or facilitates commission of the offense shall be considered an accomplice and punished with the same punishment applicable to the principal offender.

Article 70: Suspended Sentences

Prison sentences, with the exception of those for felonies, may be suspended totally or in part. In this case, the condemned person shall not serve out the sentence provided that he or she does not commit one of the offenses covered by the preceding articles for a period of five years after judgment.

Article 71: Conditional Release

1. Convicted persons who have served half of their prison term for a misdemeanor or two-thirds of their term for a felony may be granted conditional release by the court which convicted them, if the court, having received the advice of correctional officials, feels that this release will serve to facilitate reinsertion.

2. Anyone released conditionally shall be required to serve out the remainder of the sentence if he or she commits an infraction of any of the preceding articles during the period of conditional release.

Article 72: Allocation of Fines

All fines paid during the transitional period shall be deposited in an escrow account under the responsibility of UNTAC to be paid over to the future government that will result from the elections.

Title VII: APPLICATION

Article 73: Abrogation of Inconsistent Rules

1. Any text, provision, or written or unwritten rule which is contrary to the letter or the spirit of the present text is purely and simply nullified.

2. Each existing administrative structure agrees to apply all necessary material and human resources to bring its own texts and practices into conformity with the present text and with the United Nations instruments mentioned herein.

Article 74: International Instruments

1. The instruments of the United Nations mentioned in the present text are applicable as law in Cambodia once they have been officially published by UNTAC.

2. Other relevant international instruments may be referred to for the interpretation of the present text.

Article 75: Entry into Force

This text enters into force forty-five clear days after the date of its approval by the Supreme National Council, except with respect to Titles IV, V, VI and VII, which take effect the day after their approval by the Supreme National Council.

CAT/C/CR/30/2

9 May 2003

Original: English

UNEDITED VERSION

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION**

Conclusions and Recommendations

CAMBODIA

1. The Committee considered the initial report of Cambodia (CAT/C/21/Add.5) at its 548th meeting on 29 April 2003 (CAT/C/SR.548) and adopted the following provisional conclusions and recommendations.

COMMITTEE AGAINST TORTURE

Thirtieth session

28 April-16 May 2003

A. Introduction

2. The Committee welcomes the initial report of Cambodia and notes that it generally conforms to the Committee's reporting guidelines. It regrets however, the 9 years delay in its submission and the paucity of information on the practical enjoyment in Cambodia of the rights enshrined by the Convention.

3. The Committee regrets the absence of a delegation from the State Party able to enter into a dialogue with it, and notes that the examination of the report took place in accordance with rule 66, paragraph 2(b) of its rules of procedure. The Committee looks forward to receiving written responses to the questions and comments made by its members and urges that, in the future, the State party will fully comply with its obligations under article 19 of the Convention.

B. Positive aspects

4. The Committee welcomes the following:

(a) The State party's expression of willingness to continue undertaking legal reforms in order to fulfil its international obligations in the field of human rights.

(b) The State party's cooperation with United Nations agencies and mechanisms in the field of human rights. In this regard, the Committee welcomes the cooperation with the UN human rights field presence in the country and the number of training and educational activities on human rights provided by international organizations to law enforcement personnel, as well as the positive role played by NGOs in this regard.

C. Factors and difficulties impeding the application of the Convention

5. The Committee acknowledges the difficulties encountered by Cambodia during its political and economic transition, including lack of judiciary infrastructure and budgetary constraints.

D. Subjects of concern

6. The Committee is concerned about the following:

(a) The numerous, ongoing and consistent allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel in police stations and prisons;

(b) Allegations regarding the expulsion of foreigners that seems to have occurred without taking into consideration the safeguards contained in article 3 of the Convention, in particular the situation of large numbers of Montagnard asylum-seekers in the Cambodian-Vietnamese border area;

(c) While noting the State party's indication that it prohibits torture and adopts the definition of torture from the Convention, its domestic penal law does not clearly reflect this;

(d) The extended impunity for past and present violations of human rights committed by law enforcement officials and members of the armed forces, and in particular, the failure of the State party to investigate acts of torture and other cruel, inhuman or degrading treatment or punishment and to punish the perpetrators;

(e) The allegations of widespread corruption amongst public officials in the criminal justice system;

(f) The absence of an independent body competent to deal with complaints against the police;

(g) The ineffective functioning of the criminal justice system, particularly the lack of independence of the Judiciary as well as its inefficiency;

(h) The importance given to the confession in criminal proceedings and the reliance of the police and the judiciary on confessions to secure convictions;

(i) The unwarranted protraction of the pre-trial period during which detainees are more likely to be subjected to torture and other ill-treatment;

(j) The use of incommunicado detention for, at least, 48 hours before the person is brought before the judge, during which period the detainee has no access to legal counsel or to contact his/her relatives. Furthermore, recent legal amendments allow the police to extend this period;

(k) The lack of access by detainees in general to legal counsel and a medical doctor of their choice;

(l) The overcrowding and poor conditions in prisons, as well as alleged cases of ill-treatment of prisoners and the difficulties faced by international organizations, NGOs and family members to gain access to prisoners.

E. Recommendations

7. The Committee recommends that the State party:

(a) Incorporate in its domestic law the definition of torture set out in article 1 of the Convention, and characterize acts of torture as a specific crime, punishable by appropriate sanctions;

(b) Take effective measures to establish and ensure a fully independent and professional Judiciary in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary, if necessary by calling for international cooperation;

(c) Ensure prompt, impartial and full investigation into the many allegations of torture reported to the authorities and the prosecution and punishment, as appropriate, of the perpetrators;

(d) Establish an independent body competent to deal with complaints against the police and other law enforcement personnel;

(e) Take all the necessary measures to ensure that the requirement of article 3 of the Convention is taken into consideration when deciding on the expulsion, return or extradition of foreigners;

(f) Take measures to ensure that evidence obtained under torture is not invoked in Court;

(g) Take all the necessary measures to guarantee access to justice for all the people of Cambodia, particularly the poor and the inhabitants of rural and distant areas of the country.

(h) Undertake all necessary measures in order to guarantee to any person deprived of his or her liberty the right of defence and, consequently, the right to be assisted by a lawyer, if necessary at the State's expense;

(i) Take urgent measures to improve conditions of detention in police stations and prisons. It should, moreover, increase its efforts to remedy prison overcrowding and establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned. In this connection, the State Party should consider signing and ratifying the Optional Protocol to the Convention;

(j) Reinforce human rights education and promotion activities in general and regarding the prohibition of torture in particular, for law-enforcement officials and medical personnel, and introduce training in these subjects in official education programmes;

(k) Take measures to regulate and institutionalize the right of victims of torture to fair and adequate compensation, and to establish programmes for their physical and mental rehabilitation;

(l) Ensure that the reported practice of unlawful trafficking of persons be suppressed;

(m) Provide data on: (a) the number of persons held in prisons and places of detention disaggregated by age, gender, ethnicity, geography and type of crime; (b) the number, types and results of cases, both disciplinary and criminal, of police and other law enforcement personnel accused of torture and related offences;

(n) Ensure the wide distribution of these conclusions and recommendations throughout Cambodia, in all the major languages;

8. The Committee requests the State party to provide responses to the questions asked by its members orally, and to the issues raised in the present provisional conclusions and recommendations, by 31 August 2003.

Appendix D: Case studies of torture in Cambodia

Source: Adhoc

Case 1: Torture committed by Kampong Cham District Police Chief on 11 August 2002

Facts:

On 11 August 2002, at 21:30, Morn Men, his son Morn Sok Ra, his son-in-law Chheng Dieb and Chek Soeun living nearby his house went out to hunt birds in front of the Water Office at the west of Beung Kok Market, Kampong Cham. After they had just three birds, six police officers pointed their guns at them and ordered them to sit down with their hands up. Mr Be Bunnach, Kampong Cham District Police Chief, shot in the air to threaten them and beat Morn Men on his head till he fell down and lost consciousness. Bunnach ordered one of his men to take stagnant water and pour it on the victim's face. After he regained consciousness, Bunnach beat him again. One of the others was also beaten but not so seriously as Morn Men. Bunnach accused them of committing theft at night. He accused Morn Men of being the ringleader, and tried to force them to confess. Morn Men and his colleagues did not confess. The police tied them up and took them to the police station. They did not care about the men's injuries.

Ms Leng Vy, spouse of Morn Men, came to the police station and asked the police to allow her to take Morn Men to hospital. All three police deputies did not dare to help. Morn Men was lying down bleeding from his ears and nose. Leng Vy went to a human rights NGO. A human rights worker tried to meet Bunnach but was avoided by him. One of his deputies said he did not know the facts of the case and what happened during interrogation. He said the men would be released after interrogation. At last, the police chief allowed Morn Men to be taken to hospital. However, his condition has not improved although his family spent a lot of money for his treatment.

Action taken by the victim's family:

One day after the incident, Ms Leng Vy filed a complaint with the prosecutor of Kampong Cham Court. The prosecutor sent a letter (No. 404, 14 August 2002) ordering the Provincial Police Justice Office to conduct an investigation into this matter, but there was no action at all. Leng Vy tried to meet Col. Kang Sokhorn several times, but he was always busy. She decided to meet Mr Seng Sokim, Deputy Provincial Police Commissioner, while he was going out of his office. He told her, "We have not taken any action over your case because your case is very serious, in particular because you have complained to a human rights organisation. So it is better for you to talk with the district police."

Action taken by the authorities:

After finding that the perpetrator was a police officer, the prosecutor issued an order to the Central Justice Officer of Kampong Cham Provincial Police for investigation. Mr Sen Hong Se, a prosecutor's clerk, sent an order to the District Police to conduct an investigation. The District Police sent the case to the Provincial Police Commissioner. The Police Commissioner sent the case to the Central Justice Police Office where Mr Chrin Sam An is responsible. He transferred the case to Mr Seng Sok Kim, Deputy Provincial Police Commissioner. He transferred this case to the Light Criminal Offense Office for investigation. Until now, this case has not been addressed.

Case 2: Torture committed by Kampong Cham police on 26 December 2002

Facts:

Ms Chheng Savy, 43, and Mr Chheng Thorn complained to police that their money was stolen by Mr Chhem Chhen, 19, of Beung Ses Commune, Tbaung Khmum District, Kampong Cham Province. Lt. Ou Theary, Chief of Kor Commune Administrative Police Station, sent two police officers, Thort and Tiet, to look for Chhem Chhen.

On 26 December 2002, at 17:00, Thort and Tiet stopped Chhem Chheng, brother of Chhem Chhen. After they knew that it was not the right person, they let him go and then arrested Chhem Chhen while he was watching football at Beung Ses Primary School. They brought him to the police station. When the police chief saw him he kicked him and hit him on the chest, head, waist and back. He was seriously injured. After that they chained him until 20:00.

Action taken by the victim's family:

When his mother, Phai Sa Ee, knew about his arrest she came to police station and asked the police chief to release her son. The police chief asked for 200,000 Riels bail. She told him that she was poor and had no such amount of money. When he knew that she really had no money, he agreed to release the boy. Chhem Chhen was sent to Tbaung Khmum District Hospital.

Action taken by the authorities:

After Adhoc received this information, it sent its staff to investigate the case. Adhoc sent this information to the Chief Prosecutor of Kampong Cham Provincial Court on 30 December 2002, and is awaiting action by the prosecutor.

Case 3: Torture committed by Kep police officer on 4 December 2002

Facts:

On 4 December 2002, Mr X (name withheld upon request) and his two workers went to his farm. Because his fields are located among other fields, he and his workers cut a fence in order to pass to his farm. While his workers and he were planting a banana tree, a woman shouted "thief!" and called three soldiers guarding General Y (of the Royal Army of Cambodia). When X and his workers saw the soldiers, they ran away. The soldiers chased and caught him. They tied him, and beat and kicked him seriously. They confiscated his mobile phone and broke the mirror of his car. They accused him of damaging durian trees belonging to General Y.

Afterwards X was sent to the General's farm, where the guards' chief, interrogated him. He continued to torture him to obtain a confession. The victim was kept in a locked room and was hit on his head and face and had his teeth broken. He was kicked in many places on his body. Fifteen minutes later, the police arrived and took him to their police station. Next morning, he was sent to court. On 5 December 2002, at 17:00, the prosecutor released him. The victim did not want to let human rights NGOs know about this incident because he is afraid of reprisals.