

Kingdom of Cambodia

A human rights review based on the Convention against Torture

Introduction

In April 2003, Amnesty International submitted an 11-page briefing to the UN Committee against Torture (the Committee). The Committee examined Cambodia's initial report on its implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 29 April 2003. Amnesty International was disappointed that Cambodia was unable to send a delegation to attend the Committee's examination of its state party report. As dialogue with the state party is at the centre of the examination process, this severely detracted from this opportunity for Cambodia to discuss this crucial issue with the experts that make up the Committee. A representative from the Cambodian diplomatic delegation in Geneva was present to record and transmit a list of questions from the Committee to the Cambodian government. The Committee decided to issue provisional concluding observations (attached in Appendix 1) in the absence of immediate answers from the state party.

Amnesty International's briefing to the Committee which is attached with this document has been slightly modified to include relevant paragraphs of the state party report and several minor amendments. From this it will be seen that the organization focused its attention on:

- The definition of torture in the Cambodian law
- Administrative measures preventing and deterring torture
- Refoulement of asylum-seekers and refugees
- Deficiencies in Cambodian criminal law
- Selective impunity
- Monitoring, education, information and training
- Failed investigations, impunity and lack of redress
- Complaints procedures and compensation arrangements for torture victims
- The use of torture to exact confessions
- Prison conditions and the endemic ill-treatment of prisoners

Amnesty International lists 12 recommendations for the Cambodian government in its briefing in addition to numerous suggestions as to where Cambodia should clarify its position with regards to its own state party report submitted to the Committee.

Summary of main concerns

Impunity

The organization's over-arching concern in Cambodia remains impunity for the perpetrators of human rights violations, including those accused of torture. Members of the police and military are able to impose their will on the civilian population and commit violations, safe in the knowledge that they will never be called to account for their actions. In its briefing, Amnesty International highlighted a number of individual cases where alleged perpetrators had either gone unpunished or received derisory official censure.

Weak implementation

Amnesty International believes that, by and large, legal safeguards do exist in Cambodia to prevent torture (suggested additions and amendments to legislation form part of the organization's submission). In addition, Cambodia is a signatory to a raft of international human rights instruments which, if adhered to, outlaw the use of torture and provide for mechanisms and safeguards within the judicial and penal system that would guard against torture and other forms of ill-treatment and ensure sanctions towards perpetrators. The organization believes that the problem in Cambodia is one of implementation and the political will to implement laws and respect the spirit behind international treaties. As is pointed out in the provisional Conclusions and Recommendations, the Committee regrets "*...the paucity of information on the practical enjoyment in Cambodia of the rights enshrined in the Convention*".¹

Refoulement of asylum-seekers and refugees

Despite being a signatory to the 1951 Refugee Convention, Vietnamese Montagnard refugees are being routinely refouled back to Viet Nam where reports of torture, ill-treatment and unfair trials persist. The forcible deportation of refugees and asylum-seekers to countries where they risk torture and ill-treatment also contravenes Article 3 of the Convention against Torture. Amnesty International's submission to the Committee details individual cases of refugees and asylum-seekers who have been refouled to both China and Viet Nam and presents evidence that Cambodia is responsible for the mass-refoulement of Montagnard asylum-seekers.

The provisional Conclusions and Recommendations

The provisional Conclusions and Recommendations of the Committee provide a long list of 'subjects of concern' and a series of recommendations. There is no doubt that the document is greatly weakened by the absence of a dialogue with Cambodia which might have immediately

¹ UN Committee against Torture: Cambodia, Conclusions and Recommendations CAT/C/CR/30/2, 9 May 2003 A2.

clarified several issues and allowed the Committee to be more specific in its recommendations.

In its concluding observations, the Committee made reference, *inter alia*, to Amnesty International's main concerns – impunity, implementation, and refoulement of refugees – and makes specific recommendations on all these issues. The conclusions in full are attached as Appendix 1.

Overall recommendations to the Cambodian government

Amnesty International urges the Cambodian government to make public its answers to questions raised during the examination session which are to be submitted to the Committee by 31 August 2003. The organization calls upon the Cambodian authorities to take immediate measures to address the recommendations issued in the provisional concluding observations. Many of these recommendations echo and reinforce those of Amnesty International as set out in the organization's briefing to the Committee provided below. The Cambodian government should make public all steps taken to ensure that Cambodia is in full compliance with both the letter and the spirit of the Convention against Torture.

Amnesty International's briefing to the UN Committee against Torture

Introduction

Cambodia acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) on 22 September 1992. The Cambodian government has submitted its initial report to the UN Committee against Torture, which monitors implementation of the Convention. While this report is long-overdue, Amnesty International welcomes its submission by the Cambodian government as an indication of the government's willingness to recognise its obligations under the Convention against Torture.

Amnesty International welcomes the Cambodian government's dialogue with the Special Representative of the Secretary-General for Human Rights in Cambodia, and the Office of the High Commissioner for Human Rights in Cambodia. It also welcomes the Cambodian government's willingness to allow independent human rights monitors access to the country, which is an important indicator of any government's commitment to human rights. However, despite comprehensive legislation outlawing the use of torture and other forms of ill treatment, reports of their widespread use continue to be received by Amnesty International more than 10 years since Cambodia acceded to the Convention against Torture.

In Amnesty International's opinion, the most serious human rights problem in Cambodia remains impunity for the perpetrators of human rights violations, including those accused of torture. Members of the police and military are able to impose their will on the civilian population and commit violations, safe in the knowledge that they will never be called to account for their actions. The ongoing failure to bring to justice members of the Khmer Rouge political movement, believed to be responsible for the mass violations of human rights which occurred during their time in power (17 April 1975 to 7 January 1979) has contributed to this climate of impunity. Political instability, which has been a feature of much of the last ten years in Cambodia, has also contributed to a poor human rights record and ill-treatment of detainees. The government has appeared unwilling to address problems of fundamental human rights in the country, and has more often concentrated on criticising the work of human rights defenders, than tackling the substantive issues they raise.²

Background

The Agreement on a Comprehensive Political Settlement of the Cambodia Conflict (commonly known as the Paris Peace Agreements), designed to bring an end to the long-

² For more information on the Cambodian governments frequent and vitriolic attacks on human rights defenders please see Amnesty International press release: *Cambodia – Freedom of expression under attack* ASA23/002/2003 dated 10 February 2003.

running civil war in Cambodia was signed in Paris in October 1991 by the four warring factions. Under the terms of the agreement, the United Nations Transitional Authority in Cambodia (UNTAC) was given authority to take over the administrative functions of government, organize the cantonment of each faction's armed forces and the subsequent demobilization of 70% of these armed forces, and to hold democratic elections in the country. During the period of the UNTAC mandate, Cambodia acceded to all the major international human rights instruments, including the Convention against Torture. Although the implementation of the Paris Peace Agreements was hampered, most notably by the Khmer Rouge group's refusal to cooperate in the cantonment process and eventual withdrawal from the peace process and elections, UNTAC managed to hold democratic elections in Cambodia in May 1993, resulting in victory for the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (known by its French acronym FUNCINPEC), led by Prince Norodom Ranariddh. The Cambodian People's Party (CPP) led by Hun Sen came second, and the Buddhist Liberal Democratic Party (BLDP) was third in the poll. A coalition provisional government was formed and a new constitution drawn up, re-establishing Cambodia as a monarchy and detailing the Kingdom's system of government. With the departure of UNTAC personnel in September 1993 the Royal Government of Cambodia assumed full control over the country's affairs. Prince Norodom Ranariddh became First Prime Minister and Hun Sen, Second Prime Minister. The First Prime Minister's father, Prince Norodom Sihanouk, who had been head of the Supreme National Council, the embodiment of Cambodian sovereignty during the UNTAC period, was crowned King of Cambodia in September 1993 and a new constitution was promulgated.

Great progress was made in human rights promotion and protection during the UNTAC period. A free press flourished for the first time, and the roots of civil society were formed, with the growth of a local human rights movement, and the subsequent formation of non-governmental organizations concerned with economic development. In spite of some continuing serious human rights violations, Cambodian people enjoyed basic human rights at a level they had not experienced during decades of civil war and repressive government. Torture and ill-treatment in police custody and prisons became much less common. While only four political parties won seats in the National Assembly, many more fielded candidates in the elections, and the rights to freedom of association, assembly and expression were exercised by many for the first time.

After the UN transitional period, when the Royal Government took office, fundamental human rights quickly came under threat again in Cambodia, and more and more violations were reported as political tensions rose. Once again, after the brief interlude of the UNTAC period, torture in police custody, and prison conditions amounting to cruel, inhuman and degrading treatment became commonplace. There were increasing concerns as to the

impartiality and proper functioning of the judiciary. The court system in Cambodia is neither fair nor independent,³ and in political cases, verdicts appear to be decided upon in advance.

In the aftermath of an effective coup by forces loyal to Second Prime Minister Hun Sen in early July 1997, dozens of First Prime Minister Prince Norodom Ranariddh's associates were extrajudicially executed, and hundreds more were detained, some of whom were tortured. Hundreds of people fled to neighbouring countries in fear of their lives, including National Assembly members and FUNCINPEC government officials. Prince Ranariddh and several of his associates were tried *in absentia* by a military court in grossly unfair proceedings. The government made many commitments to investigate the killings and other human rights violations associated with the coup, including to the UN High Commissioner for Human Rights, but much of its activity was directed at discrediting the work of organizations involved in human rights monitoring, most notably the Cambodia Office of the High Commissioner for Human Rights (COHCHR). Amnesty International and local human rights monitors were also criticised by the government in connection with their human rights monitoring and reporting activities.

A Japanese-brokered plan allowed for the return to Cambodia in 1998 of Prince Ranariddh and his supporters, in order to contest elections in July 1998. In the run-up to the elections, opposition parties made many complaints of harassment and intimidation, and there were acts of violence, including political killings. The poll took place on 26 July 1998; the declared result was a victory for the CPP, with FUNCINPEC and the Sam Rainsy Party (SRP) coming second and third. These parties and other smaller parties contested the results, alleging widespread fraud. Popular protests which began in August were violently crushed by the authorities in September.⁴ After months of political deadlock, a coalition government of CPP and FUNCINPEC parties, led by Prime Minister Hun Sen took office in November 1998.

In November 2000 a group of armed men from the Cambodian Freedom Fighters (CFF) movement launched an attack at the Ministry of Defence and the Council of Ministers building in Phnom Penh, and a military base on the outskirts of the capital. Eight people were killed and at least 14 more were injured. In the days following the attack, more than 200 people were arrested throughout Cambodia on suspicion of involvement in the CFF. While most of these people were never charged and were subsequently released, more than 100 were sentenced to long terms of imprisonment in trials which failed to meet international standards for fair trial.

The run-up to the first commune-level elections which were held in February 2002 was marred by violence and intimidation. A reported 17 candidates and political activists were killed. Killings, harassment and intimidation have continued in the approach to the third

³ In its recent resolution 57/225, the UN General Assembly noted "continued problems related to the rule of law and functioning of the judiciary resulting from, *inter alia*, corruption and interference by the executive with the independence of the judiciary..."

⁴ See Amnesty International report, *Kingdom of Cambodia: Demonstrations crushed with excessive use of force* (AI Index: ASA 23/26/98, 22 September 1998).

national elections to be held in July 2003. Political tensions rose and security concerns were heightened when violent anti-Thai riots broke out in Phnom Penh in January 2003.

Amnesty International's concerns:

Article 1: Definition of torture

The definition of torture as set out in Article 1 of the Convention against Torture is not properly reflected in Cambodian law. The Cambodian government's report to the Committee against Torture⁵ refers to a definition according to a Khmer dictionary of Academic Buddhism. This does not satisfy Article 1 of the Convention. Article 38 of the Cambodian Constitution⁶ does not account for forms of mental torture as outlined in Article 1.

State party report paragraph 13, CAT/C/21/Add.5, 17 January 2003

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

Article 2: Administrative measures preventing and deterring torture

Clarifications required:

In reference to paragraphs 18 – 20 of the state party report, Amnesty International would appreciate clarification from the Cambodian authorities as to how many of these disciplinary procedures have been implemented and whether any prosecutions or other sanctions have resulted. Weak implementation is crucially linked to Amnesty International's concerns regarding impunity⁷.

⁵ At the time of writing Amnesty International only had access to a draft government report on which to base its own concerns. The final edited version has since become available. Extracts quoted in this document are taken from the final version of the state party report, CAT/C/21/Add.5, 17 January 2003.

⁶ Article 38 of the Cambodian Constitution:

"The law guarantees there shall be no physical abuse against any individual.

The law shall protect the life, honour and dignity of the citizens.

The prosecution, arrest, or detention of any person shall not be done except in accordance with the law".

"Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Person [sic] who commit, participate or conspire in such acts shall be punished according to the law.

Confession obtained by physical or mental force shall not be admissible as evidence of guilt.

Any case of doubt shall be resolved in favour of the accused.

The accused shall be considered innocent until the court has judged finally on the case.

Every citizen shall enjoy the right to defence through judicial recourse".

⁷ Please also refer to comments on articles 12 -14 below.

State party report, paragraphs 18 – 20, CAT/C/21/Add.5, 17 January 2003

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

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

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

Likewise, paragraph 22 of the state party report makes reference to complaints procedures open to victims including prisoners. Amnesty International would appreciate receiving information from the Cambodian authorities on how many such complaints have been filed and how many have been successful during the last 10 years.

State party report, paragraph 22, CAT/C/21/Add.5, 17 January 2003

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

Amnesty International calls on the Cambodian authorities to report in detail and give examples of the implementation in practice of laws and state practice to prevent torture as required by Article 2(1) of the Convention.

Article 3: Refoulement of asylum-seekers and refugees

Despite being a signatory to the 1951 Refugee Convention, Vietnamese Montagnard refugees are being routinely refouled back to Viet Nam where reports of ill-treatment, torture and unfair trials persist. Deported refugees and asylum-seekers are handed over directly to Vietnamese law enforcement officials, often allegedly for financial remuneration. Information on those returned is not readily available. However, Vietnamese official press

reports have publicised the trials of several such cases, and it is believed that all those returned are held, at least for a brief period, in detention in Viet Nam.

Reports of torture and ill-treatment of those arrested in the Central Highlands since the events of 2001 continue to emerge.⁸ Again, information is not readily available to Amnesty International, to verify individual claims of ill-treatment and torture in detention, but a pattern of credible reports suggest that the treatment of those arrested, particularly by the police, is in violation of both Vietnamese law and obligations under international human rights treaties signed by Viet Nam. These concerns are clearly shared by the UN's Human Rights Committee which reported, in its concluding observations that it '*remains concerned at the abundance of information regarding the treatment of the Degar (Montagnard) indicating serious violations of article 7...of the Covenant.*'⁹

There have also been three cases where 'urban refugees' have disappeared, assumed refouled by the Cambodian authorities or with their acquiescence. A Vietnamese monk and a Chinese married couple who claimed to be practitioners of the Falun Gong spiritual movement went missing and were widely believed to have been forcibly returned to their respective countries.

The Vietnamese monk, Thich Tri Luc, secular name Pham Van Tuong, born in 1954, was an active member of the Unified Buddhist Church of Viet Nam (UBCV), banned by the Vietnamese authorities post-1975. Thich Tri Luc was first arrested in 1992 and detained for 10 months without trial. It is then alleged that Vietnamese security police tried to force him to become an informer for the Communist Party, but he refused. Police pressure is reported to have become so intense that in April 1993 he wrote to UBCV Patriarch Thich Huyen Quang asking permission to immolate himself. The Patriarch reportedly refused. In 1994, Thich Tri Luc was again arrested for participating in a UBCV mission to deliver assistance to flood victims and sentenced to two and a half years in prison charged with "abusing democratic freedoms to harm the interests of the State". Since his release and prior to his escape to Cambodia, Thich Tri Luc has reportedly been under continuous surveillance and routinely harassed by Security Police on account of his membership of the banned UBCV. On the day of his disappearance he was seen, by a fellow asylum-seeker, getting into a car with a Vietnamese man. The general assumption from all parties, including UNHCR is that he was returned to Viet Nam under duress. There are fears that Thich Tri Luc has been tortured and subjected to other forms of ill-treatment on his return to Viet Nam. Whilst many senior UBCV figures are under house arrest or heavy surveillance, news of their whereabouts is generally known. Worryingly, in the case of Thich Tri Luc, Amnesty International has no information whatsoever of his fate since his 'disappearance'.

⁸ *Repression of Montagnards – Conflicts over Land and Religion in Vietnam's Central Highlands*, Human Rights Watch, April 2002, pages 166-169.

⁹ Concluding observations of the UN Human Rights Committee; Viet Nam 26/07/2002 CCPR/CO/75/VNM para 9.

The Chinese couple, Li Guojun and his wife Zhang Xinyi were arrested on 2 August 2002 according to reports and immediately deported to China by plane. Unconfirmed reports received by Amnesty International indicated that the pair were arrested and imprisoned on their return to China. The torture and ill-treatment of imprisoned followers of the Falun Gong spiritual movement is well documented.¹⁰

These two incidents led to unusual public criticism of Cambodia by the UNHCR¹¹ and were raised by the then High Commissioner for Human Rights during a visit to the region.¹²

Clarifications required:

Amnesty International calls on the Cambodian authorities to clarify the fate of the individuals mentioned and explain how its policy of arrest and refoulement of Montagnard asylum-seekers can be justified given its obligations under the Convention against Torture and other international human rights instruments.

Recommendation

Cambodia should adhere to the most fundamental tenets of the 1951 Refugee Convention and in this way uphold Article 3 of the Convention against Torture. Amnesty International urges the Cambodian authorities to end the refoulement of Montagnard asylum-seekers as a matter of the utmost urgency and seriousness.

Article 4: Cambodian criminal law

Cambodia has insufficient legal safeguards and has been slow in developing laws and legislation. It is still using the UNTAC Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (commonly known as the UNTAC Penal Code). This was hastily drafted and contains some provisions which do not meet with international standards. In the Criminal Procedure section, Article 12 on the treatment of detainees states:

“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

¹⁰ Please refer to *inter alia*: Torture: A growing scourge in China – Time for Action, AI Index: ASA 17/004/2002 dated 12 February 2001; *People’s Republic of China – The crackdown on Falun Gong and other so-called “heretical organizations”*, AI Index: ASA 17/11/00 dated 23 March 2000; *People’s Republic of China – Falun Gong practitioners: list of sentences, administrative sentences and those detained*, AI Index: ASA 17/12/00 dated 29 March 2000.

¹¹ Press briefing by UNHCR spokesperson Kris Janowski on 20 August 2002 at the Palais des Nations in Geneva.

¹² AFP, 22 August 2002 *UN Rights chief rebukes Cambodian men for child sex trade*

isolation, whether they are in pre-trial detention or already sentenced. In no case shall the family of a detainee or prisoner be harassed as a result of the prisoner's behaviour.

“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.”

Provisions within the UNTAC Penal Code for the prosecution of those alleged to have committed acts of torture and ill-treatment are weak. Article 57 states:

“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.”

A draft Criminal Code and Criminal Procedure Code have yet to be finalized. Lack of detailed legislation containing adequate safeguards is a hindrance to the protection of possible victims of torture and ill-treatment, and for the prosecution of alleged perpetrators. Additionally, despite long-term investment of training and resources by the international donor community in the administration of justice, there is a huge gap between the requirements of Cambodia's human rights obligations under Convention against Torture and other international instruments and their implementation in practice.

Recommendations:

Amnesty International calls on the Cambodian government to enact a new criminal procedure law to ensure that the country's domestic laws conform with Cambodia's international obligations under the Convention against Torture.

The new criminal procedure code should include provisions for practical safeguards to prevent torture and ill-treatment. This should start with safeguards within the police station, such as on-call rotas for human rights defenders, independent lawyers and doctors to attend detainees as soon as they are detained, monitor and record their detention and any complaints. Special protections, such as the presence of a responsible adult such as a parent or social worker as well as a legal adviser, should be available for children and those with mental health problems or disabilities. Ensuring medical examination by independent doctors, particularly proper recording of injuries sustained during custody, is of particular importance. Failure to comply with these proposed provisions should be treated as disciplinary and criminal offences.

Amnesty International recommends that administrative sanctions and criminal sanctions for police officers who fail to implement these safeguards should also

be included in the criminal procedure code. Evidence obtained without the safeguards being in place should not be accepted as valid evidence at trial.

Article 5: Selective Impunity

Recommendation:

Paragraph 59 of the state party report states that certain senators and parliamentarians may be protected from prosecution. This example of impunity is entirely unacceptable and runs counter to the theme of ‘universality of jurisdiction’ which is key to the Convention against Torture. Amnesty International urges the Cambodian authorities to amend legislation accordingly.

State party report, paragraph 59, CAT/C/21/Add.5, 17 January 2003

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

Article 10: Monitoring, education, information and training

Amnesty International is concerned that the general human rights situation and standards in the penal system have not improved despite considerable technical assistance from bilateral and United Nations judicial reform programs in the last ten years. There would appear to be little monitoring or evaluation as to the extent to which training is being incorporated into the daily working practices of, *inter alia*, police, army, lawyers and judges. This absence of progress highlights a general lack of political will to accomplish real and durable reform.

Clarification required:

There is no independent police monitoring authority to assess complaints about police practice and behaviour and given the often short term nature of much of the training provided a longer-term overview of its efficacy is essential. Amnesty International would appreciate clarification from the Cambodian authorities as to whether there is any monitoring or evaluation of police conduct and training, and if so by whom and how it is being done.

Recommendation:

All staff involved in the administration of the penal system should be provided training and made aware of minimum standards as enshrined in international law, and best practices. An emphasis should be placed on practical measures to ensure full and effective implementation of these standards and practices.

According to paragraph 116 of the state party report, provincial and municipal prosecutors examine prisons and detention places at least twice a month. Amnesty International urges that any resulting reports be made public and at the very least, resulting remedial actions are publicized. Any such reports should included details of the monitoring and evaluation of staff working in the penal system.

State party report, paragraph 116, CAT/C/21/Add.5, 17 January 2003

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

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

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

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

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

Articles 12, 13 and 14: Failed investigations, impunity and lack of redress

Impunity

Cambodia is plagued by the problem of impunity stemming largely from the failure, thus far, to bring to justice those accused of the most serious violations of human rights during the Khmer Rouge period of control. The experience of the last 12 years demonstrates the weakness of the judiciary, the corrosive effects of political pressure on the judicial system and a lack of political will to see and ensure that justice is both done and seen to be done.¹³

¹³ Amnesty International report, *Kingdom of Cambodia– Urgent Need for Judicial Reform*, 19 June 2002 AI Index: ASA 23/004/2002

Despite legislation outlawing torture and over 10 years of technical assistance and human rights education from various UN agencies, including the field office of the High Commissioner of Human Rights, bilateral programs from donor governments, and the valiant work of NGOs and INGOs, there have been almost no successful prosecutions for torture. Torture and ill-treatment continue to be widely reported.

Torture in prisons - Last “successful prosecution” in 1993¹⁴

The only “successful prosecution” mentioned in the report of the state party (paragraph 162) dates back to 1993 when Cambodia was under the administration of the United Nations Transitional Authority for Cambodia (UNTAC). The so-called ‘Barbecuer of Battambang’, Mr. Tem Seng (also known as Ten Seng), chief of the prison guards in Battambang provincial prison was found to have tortured prisoners, on many occasions. Methods of torture included the burning of parts of the body as well as beatings. He was arrested in July 1993 by UNTAC, tried and sentenced to one year’s imprisonment in the UNTAC detention facility. He was ordered to pay compensation to the victims’ families. It is the understanding of Amnesty International that Tem Seng is currently working as Deputy Prison Director, at the same prison where he tortured prisoners – the provincial prison in Battambang.

State party report, paragraph 162, CAT/C/21/Add.5, 17 January 2003

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

Failed prosecutions

In August 2002, five prison guards accused of torture were acquitted in a landmark case, the first trial of agents of the state accused of torture since 1993. The court recommended that the five guards face ‘administrative action’. The acquittal was sharply criticized by the Special Envoy of the UN Secretary General for Human Rights in Cambodia. The trial stemmed from an attempted prison escape from Kompong Cham provincial prison in 1999. Five prisoners were caught and allegedly severely beaten in front of other prisoners. The five are still in prison serving out their original sentences under the care of the guards accused of their torture. Fears were expressed for their safety by the Special Envoy and other human rights advocates in and outside Cambodia.

In June 1997 the then Special Representative for Human Rights in Cambodia, Thomas Hammarberg, presented to the Cambodian government a confidential report

¹⁴ Report of the Special Representative of the Secretary-General to Cambodia, on the situation of human rights in Cambodia, submitted in accordance with Commission resolution 1993/6 (E/CN.4/1994/72, 24 February 1994).

documenting 32 cases of torture of persons in police custody in Battambang. Despite assurances that an investigation would be carried out and any police officer found responsible would face sanctions, the National Police investigation 'did not find evidence of torture having occurred in any one of 31 cases investigated'.¹⁵ A further 20 cases of alleged torture were subsequently forwarded for investigation to the Director-General of the National Police and despite further assurance from the Director-General that he would investigate and bring to justice police interrogators found responsible for abuses and would act on reports of torture provided to him by the Special Representative, it is Amnesty International's understanding that no judicial cases resulted.

Clearly, without successful prosecutions, further remedies, including compensation, as required by the Convention against Torture and Cambodia's other international obligations, such as the ICCPR, have not been fulfilled.

Recommendation:

It is both horrifying and telling that the individual found guilty in the only successful prosecution against a torturer is now working at the same prison where he carried out torture in the past. Amnesty International urges the authorities to address urgently the issue of impunity for serious human rights violations which prevails in Cambodia.

Judges should take steps to ensure that detainees have not been tortured or ill-treated, and should institute effective criminal investigations where torture or ill-treatment appears to have taken place. Judges particularly should be open minded about allegations made by accused persons that they have been tortured or ill-treated, rather than automatically believing the prosecution's bare assertions that torture has not taken place, and should instigate investigations with a view to prosecute perpetrators.

Article 13: Right to submit a complaint

Clarification required:

Paragraph 144 of the state party report states that victims who allege ill-treatment and torture have the right to submit a complaint. It is not clear from the state party report how complaints can be filed, how many complaints were filed and how many cases resolved.

State party report, paragraph 144, CAT/C/21/Add.5, 17 January 2003

¹⁵ Report of the Special Representative of the Secretary-General for human rights in Cambodia, Mr. Thomas Hammarberg, dated 13 January 2000 C/CN.4/2000/109 paras. 56-61.

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

- Article 9 - anyone who considered himself to be the victim of any offence can file a complaint with the prosecutor for damages;

- Article 10 - in case the complainant is victimized by an action which he or she considers a criminal offence and the prosecutor has not responded to the complaint, the complainant can complain to the appellate court;

- Article 11 - in Cambodia, penal proceedings are carried out in relation to all persons without discrimination, as to race, religion, gender, and social position.

Article 14: Compensation

Clarification required:

The state party report makes no reference to any examples of compensations awarded. As per previous articles, Amnesty International regards the effective implementation and use of laws as equally as important as having legal safeguards on the statute books. Amnesty International requests the Cambodian authorities to provide information on implementation.

Article 15: The use of torture to extract confessions

Torture is frequently employed as a method to produce a confession and courts do not stringently ensure that evidence forthcoming as a result of torture is not invoked. The criminal procedure code was amended in November 2001 and the maximum period permitted in police detention was extended from forty-eight to seventy-two hours. This initial period in police custody is the time when torture is commonly used to extract confessions.

In July 1999, Danh Teav, an employee at the Ministry of the Interior, and his wife, Ly Rosamy, a SRP election candidate, were arrested. She was released, but Danh Teav was held in incommunicado detention for 36 hours before Amnesty International delegates located him at the Phnom Penh Municipal Court. He had been so badly beaten by the Phnom Penh Criminal Police that he could not stand without help (see below). The police had tried to make him confess to crimes including involvement in the attempted murder of a pro-government newspaper editor earlier in the year. After a brief court appearance, Danh Teav was returned to incommunicado detention for a further seven days and repeatedly denied access to a doctor despite his injuries. He was released without charge in October 1999.

There is a huge gap between the requirements of Cambodia's human rights obligations and their implementation in practice.

During a mission to Cambodia in 2002, a delegate of Amnesty International attended the Phnom Penh criminal court to observe trials. These were ordinary criminal trials: the cases and defendants were not previously known to Amnesty International, and the delegate arrived in court without knowing what cases would be heard. It was quickly apparent that the weaknesses Amnesty International has observed in the judicial system over many years remain. Judges and prosecutors appear unwilling or unable to uphold Cambodian law, and adhere to international standards of fairness.

Case observed by Amnesty International delegation on 22 March 2002 at the Phnom Penh Municipal Court

One case observed on the morning of 22 March 2002 concerned an allegation of a multiple rape. There were three defendants tried, although the victim stated that she had been raped by nine men.

All three had made admissions of various degrees of involvement in the rape to the police; some of these admissions were withdrawn when making subsequent statements to the investigating magistrate, and the accused claimed that they had been beaten up in the police station and threatened with guns. During the trial they affirmed their withdrawal of the admissions, and their allegations of ill-treatment.

However, the prosecutor and the judge ignored the risk that statements had been secured through the use of torture and ill-treatment, and very lightly dismissed the allegations. The judge said the fact that they had changed their story from what they told the police showed that they were lying. The prosecutor even remarked that as there were no signs of torture on the defendants, they must be lying - even though the initial questioning had taken place some six months earlier. The Judge failed to recommend an investigation. All three were convicted.

Recommendation:

Amnesty International recommends the implementation of a pre-trial procedure for assessing claims that evidence has been secured through the use of torture or ill-treatment so that evidence which has been obtained illegally does not come before the court which makes the final determination of guilt or innocence. The burden of proof should be on the prosecution to prove that the evidence was not obtained through torture.¹⁶ This is clearly not the case in Cambodia as outlined in paragraph 176 of the state party report which explicitly states that a police statement is to be believed until evidence is produced to show that this is not the case.

State party report, paragraph 176, CAT/C/21/Add.5, 17 January 2003

¹⁶ This was also recommended by the UN Special Rapporteur, UN Doc A/156/56, dated 3 July 2001, para 39 (j)

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

Article 16: Prison conditions and endemic ill treatment of prisoners

Ill-treatment of prisoners

In April 2000, in Kompong Thom province a local NGO reported that nine prisoners who attempted to escape were shackled 24 hours a day for an extended period with the express permission of the prison director and the provincial prosecutor as well as the director of the prison department who was reported to have declared that the “restraining” of the prisoners had been carried out in compliance with the prison procedures. There were previous instances of shackling in the same prison.

Overcrowding in prisons

Prison conditions are extremely poor: overcrowding, lack of medical treatment, and occasional shackling of prisoners continues to be reported. The budget for maintaining prisoners has not increased since the early 1990s and is inadequate. There have been concerns raised over many years regarding the poor nutrition of prisoners, particularly those without relatives who can assist them with supplementary food. In Amnesty International’s view such treatment often amounts to torture according to the definition as outlined in Article 1 of the Convention, and certainly amounts to ill-treatment pursuant to Article 16.

A leading Cambodian human rights advocacy organization released a report in August 2002, documenting a rise in human rights violations, including torture, in prisons, due to a sharp increase in the prison population. Of over two thousand inmates questioned by the NGO, over ten per cent alleged that they had been tortured whilst in police custody with a much smaller number claiming torture in prison¹⁷.

Recommendations:

All detention facilities should be subject to regular inspections and public reports.

If needed, Cambodia should increase its budget to ensure that conditions of detention conform with international standards and do not constitute ill-treatment.

¹⁷ Human Rights Situation Report 2002, The Cambodia Human Rights and Development Association, February 2003

Conclusion

This brief report outlines some of Amnesty International's concerns about torture and ill-treatment in Cambodia. We hope that the Committee find this document useful and look forward to reading the concluding observations issued by the Committee following the consideration of the state party under the Convention against Torture.

APPENDIX 1: Text of CAT Conclusions and Recommendations

COMMITTEE AGAINST TORTURE

Thirtieth session

28 April-16 May 2003

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.

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 2

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

**Adopted and opened for signature, ratification and accession by General Assembly
resolution 39/46 of 10 December 1984**

entry into force 26 June 1987, in accordance with article 27 (1)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3 [see General comment on its implementation at the end of this appendix]

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties. (amendment (see General Assembly resolution 47/111 of 16 December 1992); status of ratification)

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article. (amendment (see General Assembly resolution 47/111 of 16 December 1992); status of ratification)

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party

concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs I to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

- (f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of

them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 25 and 26;

(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

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Geneva, Switzerland

**Implementation of article 3 of the Convention in the context of article 22 : . 21/11/97.
CAT General comment 1. (General Comments)**

Convention Abbreviation: CAT

GENERAL COMMENT No. 1

Implementation of article 3 of the Convention in the context of article 22 *

In view of the requirements of article 22, paragraph 4, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that the Committee against Torture "shall consider communications received under article 22 in the light of all information made available to it by or on behalf of the individual and by the State party concerned",

In view of the need arising as a consequence of the application of rule 111, paragraph 3, of the rules of procedure of the Committee (CAT/C/3/Rev.2), and

In view of the need for guidelines for the implementation of article 3 under the procedure foreseen in article 22 of the Convention,

The Committee against Torture, at its nineteenth session, 317th meeting, held on 21 November 1997, adopted the following general comment for the guidance of States parties and authors of communications:

1. Article 3 is confined in its application to cases where there are substantial grounds for believing that the author would be in danger of being subjected to torture as defined in article 1 of the Convention.
2. The Committee is of the view that the phrase "another State" in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the author may subsequently be expelled, returned or extradited.
3. Pursuant to article 1, the criterion, mentioned in article 3, paragraph 2, of "a consistent pattern or gross, flagrant or mass violations of human rights" refers only to violations by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Admissibility

4. The Committee is of the opinion that it is the responsibility of the author to establish a prima facie case for the purpose of admissibility of his or her communication under article 22 of the Convention by fulfilling each of the requirements of rule 107 of the rules of procedure of the Committee.

Merits

5. With respect to the application of article 3 of the Convention to the merits of a case, the burden is upon the author to present an arguable case. This means that there must be a factual basis for the author's position sufficient to require a response from the State party.

6. Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable.

7. The author must establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. All pertinent information may be introduced by either party to bear on this matter.

8. The following information, while not exhaustive, would be pertinent:

(a) Is the State concerned one in which there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights (see art. 3, para. 2)?

(b) Has the author been tortured or maltreated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity in the past? If so, was this the recent past?

(c) Is there medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past? Has the torture had after-effects?

(d) Has the situation referred to in (a) above changed? Has the internal situation in respect of human rights altered?

(e) Has the author engaged in political or other activity within or outside the State concerned which would appear to make him/her particularly vulnerable to the risk of being placed in danger of torture were he/she to be expelled, returned or extradited to the State in question?

(f) Is there any evidence as to the credibility of the author?

(g) Are there factual inconsistencies in the claim of the author? If so, are they relevant?

9. Bearing in mind that the Committee against Torture is not an appellate, a quasi-judicial or an administrative body, but rather a monitoring body created by the States parties themselves with declaratory powers only, it follows that:

(a) Considerable weight will be given, in exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of fact that are made by organs of the State party concerned; but

(b) The Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.