

**COMMENTARY ON THE REPORT OF THE
ROYAL CAMBODIAN GOVERNMENT
UNDER THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS,
UNDER CONSIDERATION BY THE HUMAN RIGHTS COMMITTEE
ON MARCH 30, 1998**

Introduction

The Cambodian Human Rights and Development Association (ADHOC) and the Cambodian League for the Defense and Promotion of Human Rights (LICADHO), two national Cambodian NGOs, have prepared this commentary on the report submitted by the Royal Cambodian Government (RCG) under article 40 of the International Covenant on Civil and Political Rights (ICCPR).

This report consists of article-by-article commentary on the government report. Case examples of violations of rights guaranteed by the Covenant are provided. However, these examples are only a small fraction of the cases received and investigated by ADHOC and LICADHO. Errors of fact and omissions by the government are duly noted and up to date information and examples given.

Recognizing that the Committee will have received briefings from a number of sources, ADHOC and LICADHO's report focuses on violations of the Covenant, rather than the political conditions in Cambodia. The many reports of the UN Secretary General's Special Representative for Human Rights in Cambodia provide detailed information on the political context in which violations occur.

Information related to articles 1 – 27 of the Covenant

Article 1

Paragraph 1

While Cambodian people have been able to express their right to self-determination in the general elections of 1993 and 1998, ADHOC and LICADHO are concerned about the lack of influence of the people on the political process. The one opposition party in the National Assembly has not received any formal answers to questions it regularly poses to the government since the 1998 elections. When an NGO criticized the government's attitude, it was severely criticized by the Ministry of Information and told not to interfere in state affairs.

Furthermore, ADHOC and LICADHO are concerned about the increase in illegal logging and selling of Cambodia's natural resources by the State and powerful individuals. Apart from the environmental consequences for the country, the proceeds of these transactions are not integrated into the National Budget. The granting of semi-autonomous zones in the country to former leaders of the Khmer Rouge regime (e.g. Pailin) only increases the possibility for illegal selling of Cambodia's resources.

Article 2

Paragraph 1

The right to establish political parties: between 1995 and 1998, the Khmer Nation Party (later Sam Rainsy Party - SRP) was prevented from registering as a political party, on the grounds that no legislation existed regulating the creation of political formations. The Kannapat Kaun Khmer complained that there was no official announcement of the deadline for the registration of political parties for the 1998 elections. This has prevented the participation of at least this party.

Paragraph 2

The government report cites a number of laws which relate to civil and political rights. ADHOC and LICADHO believe that several of these laws contain provisions contrary to the provisions of the Covenant. These include the Law on the Co-Statute for Civil Servants, Press Regime, Law on Kidnapping and Traffic in and Exploitation of Persons and the Labor code. All these laws were adopted after Cambodia ratified the ICCPR.

Of the new laws which the government report cited as being at the drafting stage, two years since the submission of its report, only the Law on Combating the Production and Use of Drugs and Drug Trafficking has been adopted. This law seriously hampers the protection of civil and political rights by allowing arrests and searches at night, including without warrants and interference with private correspondence without prior approval from a judge.

Paragraph 3

ADHOC and LICADHO agree with the government that victims often encounter difficulties in exercising their right to seek legal remedies. The main reason for these difficulties is institutionalized impunity. Victims or their families are often intimidated or threatened by perpetrators or by government officials, such as the police. As a consequence, complaints are dropped or never filed. Even though - according to the Law on Criminal Procedure - the police are obliged to investigate a criminal case without a complaint from a victim, if a complaint is dropped, or none made, usually the investigation is stopped as well. Victims are often reluctant to press charges and their fear is increased by the high rate of possession of arms and explosives in the country. Police personnel are susceptible to corruption by perpetrators of crimes and human rights abuses, mainly due to their low salaries.

In Kompong Som, a girl who was raped by the son of a high ranking official in 1998, decided not to press charges after receiving serious threats.

Police often act as intermediary between the victim or the victim's family and the perpetrator, by trying to reach a financial settlement in lieu of judicial proceedings.

In January 1999, the police in Takeo province paid \$ 185 to a ten-year old rape victim on behalf of the perpetrator. The complaint was dropped and no investigation took place.

Prosecutors and judges are also susceptible to bribery and corruption, and in cases where alleged perpetrators of human rights violations also hold high ranking positions in the government or security forces, charges rarely proceed.

The weaknesses of the judicial system which cause impunity will be dealt with when discussing article 14 of the Covenant.

Article 3

Theoretically, men and women have equal rights. In practice women are more disadvantaged than men in most fields. This is particularly visible in the areas of higher education, senior government positions, and in ratio of female doctors, lawyers, professors, etc. Apart from tradition, the main factor for a low level of education is poverty, since – contrary to the Constitution - education is generally not free, since most teachers demand payment from students to supplement their income. In making a necessary financial selection to determine which children will be sent to school, parents often favor their sons over their daughters. The RCG made an error in its report when stating that 83% of the teachers in Cambodia are female. This should be around 28%.

In most prisons, female prisoners are still guarded by male prison officers, leading to reported incidents of rape and sexual abuse in Koh Kong, Kompong Speu, Svay Rieng, Siem Reap and Preah Vihear prisons. In two cases the perpetrators were demoted but no legal action was taken.

In December 1996 human rights workers investigated the rape and torture of a 17-year-old female prisoner in Koh Kong prison by prisoners, one guard, the prison administrator and the prison director. The provincial prosecutor investigated and requested permission to prosecute in accordance with article 51 of the Law on the Co-Statute for Civil Servants. Provincial authorities denied permission and discouraged the prosecutor from taking the issue any higher. However, after the intervention of human rights workers, the Ministry of Interior sent a commission to Koh Kong province for investigation; a decision was made to remove the director, the first deputy director and the administrator from the prison and to grant permission for prosecution, but no legal proceedings followed. The main offender, the prison director is known to have connections with highest authorities and has since been transferred to the provincial intervention police.

ADHOC and LICADHO agree that trafficking in women is a major problem in Cambodia but note that to date few traffickers have been prosecuted. See under article 8 for more information regarding trafficking of women.

The problems faced by Cambodia's women remain a low priority for the RGC. In 1998, the Ministry of Women's Affairs was allocated 0.06% of the national budget; the Ministry of Defence allocation was approximately 40%.

The draft of the Women's Code seems to have been abandoned and no further action has taken place with regard to this or other legislation that might benefit women.

There are many reports about domestic violence against women. According to a 1996 report by an NGO, one in six women in Cambodia is physically abused by her spouse, of whom half were injured. There is virtually no legal intervention in cases of domestic violence. The police almost never respond to assaults and domestic violence is viewed as an internal family matter, not a criminal offence. Criminal penalties are rarely applied in cases of domestic violence unless the woman is killed or near death. Only serious injuries, defined by police as "stabblings, gunshots, unconsciousness or death" fall within the application of the penal code. Women who are raped are often persuaded by the perpetrators or police to accept a small sum of money as a settlement instead of pressing charges. One NGO calculated that this was the case in at least 25% of all reported rape cases.

Article 4

Article 22 of the Constitution does not guarantee the application of democratic principles in cases where the nation is in danger. While a formal state of emergency has never yet been proclaimed, during the coup d'état of July 1997, then second Prime Minister Hun Sen implemented a so-called eight-point-plan which severely restricted the rights and freedoms of Cambodia's citizens and opened the way for warrantless searches and forced registration of visitors.

Article 6

Paragraph 1

ADHOC and LICADHO agree with the RCG that landmines are dangerous weapons posing a threat to the right to life. However, during the fighting in 1997 landmines were used by all sides in the conflict, including the government. Even in 1998 landmines were for sale, at least at one market in Phnom Penh. One positive development is that the number of casualties resulting from landmines has gone down from 300-500 per month in 1992 to 50-100 in early 1999.

With reference to the government's claim that free medical care is available to those in need, Article 72 of the Constitution does indeed guarantee this right. However, throughout the country people have to pay for medical services. Cases have been reported where people have died of denial of medical care.

In February 1997, a man suffering from intestinal perforation was admitted into Koh Kong provincial hospital. Doctors charged him over \$200 for the operation and medicines, normally provided free of charge for the poor. After the operation, unable to pay for post-operation care, he developed bedsores and died of septicemia. Medical personnel claimed they were not responsible for nursing care.

ADHOC and LICADHO are very concerned about the high number of illegal weapons in the country, as well as the illegal and uncontrolled use of weapons. A 1999 crackdown on illegal weapons yielded no concrete improvements. There are no enforced rules which effectively control the use of firearms by law enforcement personnel. Hand grenades have been used in police operations. According to an early 1998 Phnom Penh municipal police report, of the 1,118 people apprehended in 1997, 65 were killed and 15 others injured. This means that at least one in every 14 arrests

resulted in either death or injuries. Reports from Siem Reap province show that in 1998, out of 193 arrests, 11 suspects were killed.

There have been hundreds of extrajudicial killings by the security forces in Cambodia since the country acceded to the ICCPR. These extrajudicial killings fall into two main categories: (a) political killings and (b) killings of civilians - sometimes alleged criminals - through excessive use of force by military and law enforcement personnel.

Notable omissions from the government's report include the deaths of at least 16 people on 30 March 1997, in a grenade attack on a peaceful, authorized demonstration against the judicial system by supporters of Sam Rainsy outside the National Assembly. No mention is made in the government report of the dozens of extrajudicial executions of Prince Ranariddh's supporters during and after the July 1997 coup or indeed to the many civilians killed in the course of fighting.

On July 7, 1997, Ho Sok, Secretary of State in the Ministry of Interior was executed in the Ministry of Interior compound. Three police officials responsible for security in the Ministry of Interior were suspended on July 28, 1997 and reinstated shortly afterwards. No-one has been brought to justice in relation to this case.

In the months preceding the July 1998 elections, opposition parties, particularly FUNCINPEC and the Sam Rainsy Party reported attacks and killings of their supporters, most of which were dismissed by the authorities as resulting from robberies or personal disputes.

The crackdown on the September 1998 demonstrations in Phnom Penh resulted in at least two deaths at the scene. Dozens of people were reported missing; after the demonstrations, more than 20 bodies were discovered in and around Phnom Penh. Most displayed signs of torture and apparent execution. Up to ten people remain unaccounted for.

On September 9, 1998, two young men who had participated in the demonstrations were taken away by police and gendarmerie to the outskirts of Phnom Penh where they were shot and left for dead. According to villagers, one of the victims regained consciousness and tried crawling away to hide. Gendarmes returned to the area and riddled him with bullets. He was found with more than 20 bullet wounds in his body, making his remains unidentifiable.

In addition to these political killings, there are many reports of extrajudicial executions by military, gendarmerie or police forces. While the death penalty is outlawed, numerous cases have been reported in which people were killed, apparently as punishment for an attempt to escape prison or because they were suspects of robbery or other crimes.

On December 19, 1998, an ADHOC activist was killed outside of his house in Kandal province. He represented a group of villagers who were threatened with eviction from the land on which they had lived for five years, because the land would be sold to a local businessman. He was allegedly shot dead by the bodyguard of the manager of a gravel company in the presence of a member of the commune militia. He was called outside his house and was shot six times. The widow of the victim filed a complaint to the Kandal province court on December 22, 1998. The Kandal police and the

investigating judge have slowly started investigating the case, but even though the names of the perpetrators are known, no arrest warrants have been issued.

In April 1998 in Kompong Thom province, ten men suspected of cow theft were arrested by soldiers of division 51. They were marched to a secluded clearing, searched, tied up and tortured. As several men tried to escape, the soldiers chased them, tripped them and executed them. A total of nine men were killed in this fashion with at least one bullet to the head. The one surviving victim identified the perpetrators to the police. No legal action was taken.

Paragraph 2, 4, 5 and 6

Even though the death penalty has been formally abolished, as stated above, large numbers of extra-judicial killings take place by the armed forces as a punishment for suspected criminals.

Paragraph 3

The RCG states it complies with the provisions of the Genocide Convention. ADHOC and LICADHO understand that according to the Genocide Convention, a state has the duty to arrest and try those responsible for genocide. Apart from all the political and other extra-judicial killings which have taken place in the past seven years for which no-one has been held accountable, the estimated 1.7 million deaths during the Khmer Rouge regime between 1975 and 1979 have also been covered with impunity. ADHOC and LICADHO are very concerned about the warm reception in Phnom Penh of the former Khmer Rouge leaders Khieu Samphan and Nuon Chea by the Cambodian government in December 1998. The government continues to stall on the establishment of an international tribunal to try those responsible for genocide and mass killings between 1975 and 1979. The arrest in March 1999 of Ta Mok, a senior member of the Khmer Rouge illustrates this point. The government has announced its intention to bring him to trial in a domestic court, regardless of the lack of competency in Cambodia's judicial system to handle such a case.

Article 7

Torture is prohibited in the Constitution and the Penal Code but is widespread in police custody, usually to coerce suspects to confess. Over 90% of convicted prisoners have confessed to the crimes they are accused of having committed. At least one prisoner in six claims to have been tortured while in preliminary detention, usually in police custody, representing between 600-900 cases each year. There are usually no witnesses other than the police, but in many cases it has been possible to gather strong evidence that law enforcement agents have been involved in serious ill treatment or torture, most commonly repeated beatings and kicking, often until the victim becomes unconscious. There are also some institutions that systematically use particular methods, such as electric shocks, near asphyxiation with plastic bags, and sham executions.

Court officials routinely admit confessions as evidence and often use such confessions as the sole basis for decisions to detain and to convict suspects. In one case a defendant complained of having confessed under duress and the prosecutor responded by shouting: "Court hearings are not the place for complaints about police misconduct". Other factors that hinder prosecutors' and judges' willingness to take

into consideration accounts of ill treatment and torture are concerns for their own security and the fear of losing the already minimal cooperation of the police and gendarmerie. Fear of retaliation often prevents the victims, lawyers or even judges from addressing the issue in court.

Since 1995, there have been at least five well-documented cases of suspects dying as a result of torture in police custody. To date, none of those responsible has been held to account.

In Kompong Cham province, in January 1996, Liv Peng An was tortured to death by district police officers. According to the official police report, Liv Peng An had committed suicide by hanging himself to the window bars, though he was shackled to the ground and had his hands handcuffed behind his back. Following complaints of Liv Peng An's family and human rights workers, the Ministry of Justice ordered the exhumation of the body in August 1996. The medical examination revealed that six ribs on the left side of the body were broken. A first trial in 1997 failed to address the issue of torture as the cause of death in custody. The district police inspector was given a suspended sentence for illegal arrest and detention. In February 1998, the co-Ministers of Interior authorized the prosecution of the police officers for murder. A trial took place in April 1998 and the five defendants were acquitted.

Since 1993, torture is no longer systematic and widespread in prisons. However, there have been a number of torture cases in prisons, usually in connection with escape attempts or for disciplinary reasons.

In April 1995, in Kampot prison, a detainee suspected of robbery and murder was disciplined by prison guards. He was beaten with metal bars on the legs, back and arms and sustained a fractured arm. An investigating judge and court clerk witnessed the incident and sent the victim to the hospital. No legal action was taken against those responsible.

Article 8

In December 1997, human rights organizations investigated large organized networks of human traffickers that had been operating in two provinces bordering Thailand since 1995. Every month hundreds of young men were trafficked to Thailand where they worked under slave-like conditions. Human rights organizations forwarded to the government names of people suspected of being involved in the trafficking, many of whom were police officials. At a later date, the government responded that the traffickers had all escaped to Thailand. Human rights investigators were able to determine that this was not true and that the traffickers continued to operate freely, though on a smaller scale. Reported working conditions in Thailand included drugging workers to enhance their work capacity, verbal and physical abuse, withholding salaries and informing the police on the illegal status of the workers who would subsequently be arrested shortly before their wages were due. In some cases, medical workers were able to determine that drugs had been used and that severe physical abuse had taken place.

There have been many reports of trafficking in women and sometimes very young children for prostitution, both within and outside of Cambodia. There have been very

few arrests under the 1996 Law on the Suppression of the Kidnapping, Trafficking, Sale and Exploitation of Human Beings. It is reported that there exists a growing and increasingly powerful and well connected network of buyers, middlemen and brothels supporting this illicit trade. Debt bondage is a common practice for women who are sold to brothels. Police routinely refuse to release women and children from brothels on the grounds that they owe money to the brothel owner, the debt being the initial sum that was paid for the woman. Brothel owners frequently pay protection fees to the local authorities and police. In other instances, organizations working on child and forced prostitution see their efforts to rescue prostitutes hindered by police informing brothel owners on imminent crackdowns. Even though during occasional crackdowns on brothels several people are arrested, the real perpetrators are hardly ever convicted.

On June 25, 1998, a brothel owner in Poipet, Banteay Meanchey Province was arrested after he had beaten to death one of the prostitutes. The woman had been kidnapped and forced to work as a prostitute for over one year. Twenty-one prostitutes were freed during his arrest and were taken to a shelter in another province. Even though the other prostitutes signed affidavits saying that they had seen the brothel owner beat the woman unconscious and that she died as a result of her injuries four days later, the Banteay Meanchey Court released the perpetrator on September 15, declaring that there was a lack of evidence. The perpetrator re-opened his brothel shortly after his release, reportedly under strong protection from Thai businessmen and powerful military officials.

Article 9

ADHOC and LICADHO agree that Cambodia's legal provisions regarding liberty and security of person are in accordance with the ICCPR. In practice, however, most of the legal guarantees are not observed. People are still being arrested without a warrant. Furthermore, suspects are often arrested without being informed of their rights or of the charges against them, many are kept in police custody for questioning for more than 48 hours before being brought before a judge and 40% of detainees interviewed by human rights organizations stated they had been severely mistreated during police questioning. Within these first 48 hours, lawyers and family members are rarely allowed access to suspects. According to a 1995 report at least 34% of detainees had spent more than 6 months in pre-trial detention. According to article 22 of the 1992 Transitional Criminal Law, if any of the procedures set out in articles 10-21 of this law is not applied, the accused must be immediately released. This provision is often completely denied.

On December 19 and 20, 1998, massive demonstrations took place in Sihanoukville in relation to the dumping of 3,000 tons of toxic waste. These demonstrations, which started peacefully, turned violent on the second day. On December 20, 1998, seven people were arrested. The next day, three people, including two human rights workers of LICADHO Sihanoukville, were also arrested by the police. The LICADHO workers were originally accused of participating in, leading and encouraging an illegal demonstration, though this accusation was dropped. All ten were charged with robbery and wrongful damage to property. According to a medical doctor who examined the detainees, at least two of them had injuries that showed that they had been subjected to severe physical mistreatment during questioning. Not all detainees were given prompt access to lawyers. Two of the detainees were human rights workers, who were only monitoring the demonstrations and receiving complaints, and

have not been involved in any illegal activities. When the human rights workers were arrested on December 21, no arrest warrants were shown. According to Article 18 of the Criminal Law, warrants have to be produced, unless the arrests are of people caught in the act of committing a crime. Since the arrests took place the day after the demonstrations, when one person was in a coffee shop and the other in his office, this was not the case. Despite all the procedural errors, most of the suspects remained in detention. Five people were released on bail, three of them only after a ruling by the Appeals Court. The lower court of Sihanoukville ordered the pre-trial detention of all suspects, even those with permanent addresses, families and jobs in Sihanoukville, and people who guaranteed their availability to appear before the court. The cases are ongoing.

Article 10

Paragraph 1

Treatment in Cambodian prisons and other places of detention falls short of international standards. While treatment of prisoners has considerably improved since 1992, there are still areas of serious concern.

In more than one out of every four prisons in Cambodia, inmates have no access whatsoever to medical care. These prisons have no medically trained staff and receive no attention from either provincial health staff or from NGOs active in the medical field. In prisons where arrangements for medical care exist, the quality of this care varies considerably. In some prisons the medical attention given is such that only a minority of those inmates in need of care are treated.

The main health problem among prisoners is caused by food shortages; 60% of prisoners complain of hunger. A majority of all medium and long term prisoners are malnourished and thus are more susceptible to diseases. The sum allocated for food allowance is insufficient, paid to provincial prisons with considerable delays and corruption of prison officials goes unchecked, causing prisoners to go for long periods without adequate nutrition. In the last two years several prisoners have died for lack of proper nutrition.

Dark cells were in use in at least three prisons in 1997 and several prisons throughout the country continue to have insufficient light and ventilation. Shackling was observed in three prisons in the last two years. In Stung Treng prison, prisoners are kept in nine metre square cage-like structures, with 1.5 meter ceilings.

In many cases, improved treatment of prisoners does not solely depend on economic conditions, but rather the goodwill of prison officials, such as allowing longer exercise periods, longer visits, and allowing gardening to supplement prisoners' diet.

Aside from the 24 legal detention centers in Cambodia, there are a number of other facilities which are used to detain or punish people. As they usually are not monitored by human rights workers and members of the judiciary, there are reasons to believe that treatment in those places of detention is far worse than in prisons.

In the semi-autonomous zones controlled by the former Khmer Rouge, there are two illegal prisons in use. Treatment of detainees is not monitored, though suspected to be

inhuman. Human rights workers have inspected the facilities in Phnom Malai, and observed cage-like structures exposed to the elements and shackles and have noted the numerous disturbing reports of summary executions of suspects.

Military bases throughout the country regularly detain civilians and military personnel.

In June 1998 in Battambang province a soldier suspected of stealing a necklace from another soldier was detained for over two months in an empty fuel tank.

In 1997, a group of teenagers accused of creating public disturbance were detained for over one week in a shipping container in Siem Reap military base. The container was exposed to direct sunlight causing the victims to suffer from severe dehydration.

The Dangkor detention center is a center for homeless under the jurisdiction of Phnom Penh municipality and the Ministry of Social Action. The center illegally detained persons arrested by municipal police in an attempt to empty the capital of the homeless. Treatment reported by those detained included deprivation of food and water, no access to toilets, beatings, extortion and deprivation of exercise. After the intervention of human rights workers, the center was closed down several times, but re-opened shortly afterwards.

Paragraph 2

In only six prisons of the 24 legal detention centers in Cambodia are unconvicted and convicted prisoners segregated. Unconvicted and convicted prisoners generally receive the same treatment. In some cases, unconvicted prisoners are subject to further limitation of rights, shorter visits, censorship of mail and even shackling, in fear that they may either attempt to escape or interfere in the investigation of their case.

In most prisons, it is still the practice to hold juveniles and adult prisoners in the same cells, with the notable exceptions of five recently refurbished prisons and the Youth Rehabilitation Center. Over 70% of juvenile offenders are kept in the same facilities as adult offenders regardless of the nature of their alleged offense.

Paragraph 3

The aim of the correctional system in Cambodia according to law is social rehabilitation. In reality it is more accurate to say that Cambodian prisons are places of punishment and do not promote rehabilitation. The current prison conditions are not only inhuman as a form of detention, they are also dysfunctional from a rehabilitating point of view. Poor post-release options for most prisoners certainly increase the probability that they will become repeat offenders. Interviews in six prisons showed that a vast majority of all prisoners had no formal education at all or only five years of primary education. No more than 10% had finished high school. Many said that they did not have a place to stay after their release, and even fewer have a job to go back to. Most prisoners interviewed said that they wanted to live in urban areas after release, yet the most common work skill claimed was farming.

With regard to education, occupation and housing, women have considerably worse future prospects. Fewer women than men claim that they have a place to stay after release and as in society in general, women have lower levels of education. Among 81

women prisoners interviewed in 1997, 90% had only primary level or no education at all.

In January 1999, a woman in Kandal prison who had been incarcerated in her late teens and had served a ten-year prison sentence refused to leave the prison after completing her sentence as she had no where to go.

Unfortunately there are few work, training or even exercise programs in the prisons that can improve prisoners' options after release. The few small programs that exist in prisons are usually managed and financed by NGOs and have not been reproduced on a national level. Instead the fact that most prisoners have nothing useful to do with their time tends to result in depression, alienation and feelings of helplessness. These states intensify the difficulties prisoners have in reintegrating in society after release.

Juvenile offenders receive the same treatment as adult offenders in prisons where they are incarcerated together. In 1995, the Royal Government created The Youth Rehabilitation Center (YRC) and placed it under the direct jurisdiction of the Ministry of Youth Rehabilitation and the Council of Ministers. The YRC holds between 40 and 60 children aged between 9 and 17. The children incarcerated in the YRC are usually street children, beggars and some suspected of prostitution and petty theft who are arrested during police sweeps as part of the capital's beautification campaign. At any given moment, less than 10% of those incarcerated have been either charged or convicted of a crime. A disciplinary council meets regularly and reviews individual cases. Since the opening of the YRC, human rights workers have documented at least two serious cases of torture and several cases of denial of medical care. The seclusion of the center as well as the controlled access and lack of transparency fuel suspicions that the educational and vocational training activities observed by visitors are staged mainly for fund-raising purposes.

Article 11

A considerable number of prisoners in Cambodia, and to a much higher extent women, have been given additional prison sentences under the Law on Forced Physical Imprisonment because of unpaid fines, damages or compensation. In many cases these debts have remained unpaid simply because the prisoner's economic situation is such that he/she has no ability to pay.

Article 7 of the Law on Forced Physical Imprisonment stipulates that regardless of the amount of debt, the prison term cannot exceed two years. In case there is more than one complainant the law has been interpreted to allow a maximum of two years of imprisonment for each complaint.

A woman arrested in Siem Reap and sentenced in 1996 to eight months imprisonment for fraud was given an additional twelve years in prison under the Law on Forced Physical Imprisonment because there were six creditors.

Article 12

Paragraph 1

In the evenings and nights there are still checkpoints in many provinces, which are manned by armed people in police or military uniform, who extort money from travelers. The civilian control over the armed forces is still very limited. During the demonstrations in September 1998, roadblocks were installed at the access roads to Phnom Penh and people entering and leaving the city were questioned.

ADHOC and LICADHO were pleased to see that the recently repatriated refugees from the camps at the Thai-Cambodian border were able to settle in the regions where they originated from, with the assistance of aid agencies. However, especially in the northeastern provinces of Mondulhiri and Ratanakiri, problems are expected to arise in the field of land distribution.

Paragraph 2

After a grenade attack on the house of Prime Minister Hun Sen on September 7, 1998, which marked the beginning of the violent crackdown of the post-election demonstrations, an international travel ban was imposed on all opposition parliamentarians. None of the 58 elected National Assembly members of FUNCINPEC and the SRP were allowed to leave Cambodia. This travel ban was only lifted after the swearing-in of the National Assembly on September 24, 1998.

Paragraph 4

ADHOC and LICADHO agree with the RCG that Cambodians are not exiled from their country, but wishes to note that since the violence of July 1997 a large number of Cambodians have sought refuge abroad and have gone into self-exile.

In 1995, Prince Norodom Sirivudh was convicted in absentia to a ten year prison sentence for intent to kill the second Prime Minister on charges of illegal possession of weapons. However, Prince Sirivudh was allowed to leave the country prior to his conviction. In 1997, he attempted to return to Cambodia, but airline carriers would not allow him on their flights after the second Prime Minister had threatened to shoot the plane transporting Prince Sirivudh out of the sky.

After the swearing-in of the National Assembly on September 24, 1998, the majority of opposition parliamentarians fled abroad, reporting fears for their safety. They have subsequently returned to Cambodia.

Article 13

In October 1998, the Ministry of Information threatened to revoke the visa of an American reporter for his coverage of the events related to the inauguration of the National Assembly. After protests from foreign diplomats, the Ministry backed down.

On December 5, 1996, 19 persons of Vietnamese origin accused of involvement in the People's Action Party (PAP), a United States based Vietnamese political grouping which advocates democratic reforms in Vietnam, were deported by the Cambodian authorities and handed over to the Vietnamese police. They were immediately arrested and placed in detention in Ho Chi Minh City. The 19 deportees were among a group of 28 Vietnamese who were arrested when they tried to cross the border with Thailand to hold a political meeting of the PAP. Eight of the 28 were able to prove their Cambodian citizenship or their legal residency in Cambodia, one was a United

States citizen. Ten among the 19 had registered applications for asylum with the UNHCR. According to human rights organizations, this was not the first time that Vietnamese citizens who had applied for asylum were deported to Vietnam, where they were handed over to the authorities. Seventeen remain in detention without charge or trial in Vietnam.

Article 14

Paragraph 1

ADHOC and LICADHO agree with the RCG that there are still many problems regarding the equality of all individuals before the law. One of the main problems contributing to this inequality is the existence of article 51 the 1994 Law on the Co-Statute for Civil Servants, which implies that a civil servant, which includes security forces, cannot be prosecuted unless there is a previous authorization from the Minister involved, or from the Council of Ministers. This article is also often applied to military personnel. It is the experience of human rights workers in Cambodia that authorization to prosecute is rarely given and that in effect military, police and other government personnel are placed above the principle of equality before the law. Furthermore, this provision also gives a suspect the time and the opportunity to avoid arrest by disappearing to another province and thereby escaping justice.

Corruption, influence of high-ranking officials and political bias often result in judicial decisions in which the rich and powerful are favored over poor individuals.

A recent example is the ruling in February 1999 by the lower court of Kampot province in a land dispute, whereby the judge ruled in favor of a military commander and ignored all the evidence supporting the claim of the villagers who lived in the disputed area. No thorough investigation was ordered by the judge into the substantiated evidence presented by the villagers, that the military commander based his claim on forged documents.

Under Article 109 of the Constitution, the judiciary is recognized as an independent power. All judges are under the supervision of the Supreme Council of Magistracy (SCM). Only the SCM is allowed to take disciplinary action against delinquent judges. However, the SCM is not fully independent of the Ministry of Justice, since the Minister of Justice and the Prosecutors-General of the Appeals Court and the Supreme Court are members. Furthermore, the SCM is heavily CPP dominated.

Influence of the Ministry of Justice on the judiciary is often exercised through circulars issued by the ministry, which have the effect of law. This violates the principle that only the legislative branch has the power to make laws. Furthermore, the Ministry of Justice has used its power to influence the decisions made by the courts, especially in politically sensitive cases. In 1998, the Ministry of Justice suspended three judges of the Appeal Court after they overturned a sentence in a politically sensitive case.

Many judges are still openly aligned with political parties and are appointed through the involvement of political parties. The method of appointing judges enhances the link between branches and makes them susceptible to political pressure. The independence of the judiciary therefore is still very limited and a reason for concern.

There are many cases of interference by the executive and local authorities in judicial matters.

In January 1998, the First Deputy Governor of Kandal Province summoned the court staff and organized them as a branch of the CPP. The court was also instructed to delay the hearing and resolution of any cases filed by persons in opposition with the government or which involved complaints against the government until the elections were over.

Many of the judges and lawyers in Cambodia were trained shortly after the Democratic Kampuchea period, which provided them with a very poor legal education. Most of them were originally recruited from schools where they were teachers. Many of them still lack basic knowledge related to justice in a constitutional democracy and human rights. The competence of the judiciary needs to be enhanced and ensured.

The lack of material resources contributes to probability that individuals in the judicial process will ignore the rule of law. Many court cases are influenced by bribes and corruption, which is partly due to the low salaries of judges and other court staff. All courts lack adequate operating funds. In 1998, salaries for judges were only increased for the judges in the Supreme Court. The problem of corruption is said to be worse in the provincial courts, however.

Another, related problem is the lack of staff in the courts. There is a severe shortage of judges, prosecutors and court clerks. This leads to long waiting periods for cases to be heard and the acceptance of poorly qualified candidates.

Paragraph 2

In practice, the presumption of innocence is not observed in the Cambodian legal system. The high number of torture and physical ill-treatment cases during police questioning, aimed at obtaining a confession, is a clear example of this. So far, the proposed measures in the government report have not had the desired result or have not been implemented at all.

Paragraph 3

There are still many shortcomings regarding the minimal guarantees for those charged with criminal offenses, though practices vary considerably from one court to another. Pre-trial detainees and their lawyers regularly complain of lack of clear charges, not being informed when charges are modified, non-disclosure of evidence, and denial of access to witnesses. Judges are also accused of routinely ignoring motions filed by lawyers. Improvements have been noted in the access of pre-trial detainees to lawyers. Among prisoners in six provinces sentenced during 1997, as many as 97% claim that they had legal representation during their trial. The progress noted in the last years is attributable to the establishment of two NGOs that provide legal aid to the poor. However, access to lawyers remains difficult in the remote provinces, as the NGOs have not extended their programs to those areas. Violations of the rights stipulated in the ICCPR also frequently occur in politically sensitive or motivated cases.

The UNTAC Criminal Code says that the duration of pre-trial detention should not exceed four months, but this period may be extended to six months if justified by the requirements of the investigation. In reality little respect is paid to the four months time limit. In six prisons in 1997, more than half of those sentenced during that year waited more than four months in detention before being brought to trial. As noted previously, practices vary from one court to another. In 1998 in Phnom Penh, over 40% of prisoners remained over six months in pre-trial detention.

In 1998 in Phnom Penh, Sam Chit was arrested and charged with complicity in a murder. He was kept in pre-trial detention for 21 months before his case was heard in court. He was acquitted, as there was no evidence.

Paragraph 4

With reference to the procedures regarding juveniles we refer to the information given under article 10 of the report on the Youth Rehabilitation Center. In the UNTAC Criminal Code it is stated that minors 13 to 18 years old may not be placed in pre-trial detention for more than one month. The length of detention might, however, be doubled if the minor is charged with a crime. These stipulations are not well respected; 70% of minors sentenced in 1998 spent more than the maximum time prescribed by law in pre-trial detention.

Paragraph 5

There is one appeals court located in Phnom Penh. Because of an overload of cases, many plaintiffs have to wait an unreasonably long time before seeing their case in court, if ever. Complaints have been made by plaintiffs or accused persons who want to appeal to the courts of higher instances, and have to pay bribes to speed up the process. Furthermore those convicted in provincial courts must bear the cost of transportation to the capital for themselves and the prison guards.

A convicted prisoner in Battambang province appealed his sentence in July 1995. Despite repeated requests from a human rights NGO, in January 1999, his case still has not been heard in the Appeal Court. The Law on Criminal Procedure lacks provisions dealing with the time limits within which the Appeal Court should deal with a case.

Paragraph 6

In practice, to avoid admitting that miscarriage of justice has happened, the courts usually sentence defendants to the time they have served in pre-trial detention.

Article 15

Paragraph 2

Contrary to the statements made by the government in its report, the government does not cooperate with the international community to bring former Khmer Rouge leaders to justice. In December 1996, at the request of the government, King Norodom Sihanouk granted amnesty to Ieng Sary. The government allowed him to continue to live in the western border town of Pailin and to turn this area into a semi-autonomous zone. After their defection to the government in December 1998, Prime Minister Hun Sen warmly welcomed former Khmer Rouge leaders Nuon Chea and Khieu Samphan and allowed them to live in Pailin as well, as ordinary citizens. Furthermore, after the

three independent experts appointed by United Nations Secretary General Kofi Annan presented their report on the possibility of establishing an international tribunal for the former leaders of the Democratic Kampuchea regime, Prime Minister Hun Sen stated in a letter dated March 3, 1999, that he did not approve of an international tribunal and preferred the establishment of a truth and reconciliation commission, because a trial could cause panic among former Khmer Rouge leaders and revive civil armed conflict.

Article 17

The government does not acknowledge its capability to place telephone taps on the telephones of suspects. There have been recent cases where people have been convicted because of the interception of phone calls.

In 1998, a Cambodian-American who was wanted in the United States for murder was located because of tapping the telephones of his family and friends in Cambodia. He was arrested and extradited to the United States.

There has been a large increase lately in the number of land disputes throughout the country. Military are mainly responsible for the unlawful eviction of numerous villagers from their houses and sometimes also for the destruction of houses and crops. They violate the right of privacy and home of these people, without court orders and without any legal land titles. Military sometimes claim they need the land themselves, and in other cases they work for companies which want to occupy the land. The sensitive issue of rights to land is often solved with the use of force against people who have lived and worked on a certain plot of land for several years. Court rulings seem to be more in favor of the military and companies than of the individual villagers (see the case in Kampot under article 14).

Article 19

The media in Cambodia is heavily politicized and - like many other professional groups in Cambodia – it lacks independence, professional skills and ethics. There are over 40 Khmer language newspapers, a small number of foreign language newspapers, a dozen radio stations and five television channels. Broadcast media is generally dominated by the government and since the 1997 coup has been mainly controlled by the CPP. The 1995 Press Law fails to protect journalists from arbitrary pressure from the government and lacks clear definitions for terms such as, “political stability” and “humiliation of a national institution”. Moreover, the law allows the authorities to suspend publications arbitrarily and lacks provisions for appeals. Since 1993, there have been continuous attempts to hinder the ability of journalists to operate freely, through the imposition of restrictions on the issuing of permissions and licenses for broadcast and print media alike.

In March 1999, the Minister of Interior announced that the Ministry of Information was suspending the issuing of press licenses until further notice and that in the future licenses should be renewed annually.

Other government actions against media in recent years include the arrest and detention of journalists, suspension of newspapers, pressure on printers, confiscation of issues from newsstands and numerous threats of closure. Over the last four years, over a dozen acts of violence against journalists or their offices have taken place. These include five murders of journalists, three attempted murders, three grenade attacks and two incidences of ransacking of newspaper offices by mobs. None of those responsible for the violence have been brought to justice. Journalists continue to report receiving death threats and being placed under surveillance. To date several journalists remain in hiding and a number of others are still seeking refuge abroad.

Article 20

As the RCG correctly states in its report, discrimination against Vietnamese in Cambodia continues. On April 18, 1998, members of a Khmer Rouge division allegedly carried out a massacre in a mostly ethnic Vietnamese fishing village in Kompong Chhnang province. Twenty-two people were killed and sixteen were injured. Even though four people were arrested and convicted to prison sentences, the commander of this division was integrated into the government army on February 12, 1999, without further investigation into the massacre of the previous year. There have been numerous attacks on ethnic Vietnamese people in the past years, most of which have not been investigated properly.

The Cambodian nationality law and Constitution is in itself discriminatory as it states that rights accrue to all 'Khmer citizens' rather than all citizens of Cambodia. 'Khmer' is an ethnic term which by definition does not include people of Vietnamese or Cham origin. The wording appears to be deliberate in order to exclude people of Vietnamese origin in particular.

Article 21

Prior permission from local authorities is needed to hold demonstrations. This aspect of the law is seen as overly restrictive, especially since permission is often denied on grounds contrary to the ICCPR. Articles 1 and 2 of the Demonstration Law ban gatherings deemed to "public tranquility, order and security", which is contrary to the democratic principle that demonstrations should not be prohibited simply because they may provoke negative reactions from bystanders. Furthermore, "public tranquility, order and security" are not specifically defined in the law. Under article 3, authorities are not required to provide specific reasons for banning a demonstration, although demonstrators are allowed to appeal decisions. Article 4, which outlines measures to stop unauthorized demonstrations, could be used to prohibit spontaneous demonstrations.

In February 1999, a student organization asked permission to hold a demonstration in favor of an international tribunal for the trial of the former Khmer Rouge leaders. This permission was denied, reportedly because the students had omitted to include a contact address.

Police cracked down on several demonstrations with unnecessary or excessive use of force, such as the demonstrations in Phnom Penh in September 1998, protesting the

outcome of the elections. A grenade attack on March 30, 1997 ended an authorized demonstration by the KNP in front of the National Assembly, calling for the independence of the judiciary, which resulted in at least 16 deaths and more than 100 wounded. The arrest of two human rights workers in Sihanoukville in December 1998, who were peacefully monitoring demonstrations, can also be viewed as a violation of the freedom of assembly. A nation-wide teachers' strike and demonstrations for higher salaries in February 1999 was met with several instances of intimidation and threats by authorities in a number of provinces.

Article 22

Since Cambodia acceded to the ICCPR, over 250 national NGOs were established. The activities of these NGOs range from grassroots development to human rights. The government has allowed NGO participation in a wide range of fields, and acknowledges that NGOs play an important role in the development of Cambodia. However, there have been several efforts by the government to control NGOs involved in human rights and the rule of law.

In late 1993 an ADHOC staff member in Prey Veng province was unlawfully detained for several months under a broadly worded anti-terrorism law, accused of inciting villagers to reclaim former properties in a land dispute. After intervention by the United Nations and other organizations, he was released.

In 1994 the Ministry of Interior issued a series of directives regulating NGOs, allegedly in response to reports that some associations were violating their mandates or performing commercial or political activities. In June 1994, the Ministry of Interior directed governors of provinces and municipalities to carefully monitor the activities of associations. A subsequent directive in July 1994 called for NGOs to obtain authorization from the Ministry to put up signboards in front of their offices and give five days advance notice before conducting trainings or seminars. In 1996, the government drafted the first version of an NGO law. This law received substantial criticism from the NGO community, although they approved the draft. The main points of concern were the requirement that NGOs and associations submit annual narrative and financial reports for approval by the Ministries of Interior and Finance or face fines or de-registration. Another provision was that NGOs would be de-registered if they were found to be involved in politics. This draft law was not implemented, and in mid-1998 a new law was drafted. The new draft attempted to control the sources of funding of associations and local NGOs, excluding foreign assistance. Furthermore, the new draft made it mandatory that all associations and NGOs function on the basis of membership and organize in assemblies. However, this draft seems to have been abandoned as well and reportedly a new draft law was written at the end of 1998. To date, the government has not discussed this draft with the NGO community and has not even made it public.

There have been several other attacks against civil society lately, which might hamper the freedom of association.

In December 1998, two human rights workers were arrested after monitoring of demonstrations against the dumping of toxic waste in Sihanoukville. Even though the Appeal Court released them on bail after they had spent one month in prison, none of the charges against them were dropped.

Also in December, a human rights defender was killed, reportedly for representing fifteen families who were threatened with eviction from the land they had lived on for five years. One of the suspects in this case is a local militia member. To date, no warrant for his arrest has been issued.

Between January 6 and 19, 1999, NGO representatives were intimidated by government authorities as they gathered 84,195 signatures from Cambodians requesting the United Nations to establish an international tribunal to try Khmer Rouge leaders for the mass killings and crimes against humanity committed during their rule from 1975 to 1979. Throughout the petition process, NGO workers were intimidated by several commune and district authorities in six provinces and on January 13 authorities in Kandal province threatened to arrest an NGO worker for his participation in gathering signatures for the petition.

In January 1999, representatives of NGOs who had voiced their opposition against the establishment of a Senate, were attacked by a pro-government newspaper as being enemies of the government and tools of the opposition. The views of independent NGOs are often interpreted as political and several NGO representatives feel threatened.

Article 23

The law gives women the right to freely choose a spouse and enter into marriage. While the woman may say she has freely entered into such a marriage, many forces intrude to give her little choice but to agree. There also are many instances of older men marrying young women. These women often are under the minimum marrying age for women of 18. Men are mainly the decision-makers in Cambodia family life. That imbalance of power, alone, inhibits women's rights and responsibilities. That situation is aggravated because the man will often use his authority to make the woman take on a far greater share of the family's responsibilities.

The Constitution and the country's Marriage and Family Law give women equal rights in most aspects of marriage and dissolution. But there are huge disparities in marital relationships and divorce proceedings. The most discriminatory part of the Cambodian legal system may well be the legally required reconciliation process when a divorce request is made. This reconciliation process undercuts equal rights of women and men in marriage and dissolution, and promotes domestic violence. The Family and Marriage Law stipulates that anyone who wants a divorce can go either to the commune leader or directly to the Provincial or Municipal Court. That local authority is to reconcile the divorce "within 15 days of receiving the complaint," according to article 42 of the Cambodian Law of the Marriage and Family. Most Cambodian women, including many who suffer domestic violence, do not know they have the right to divorce their husbands or are unable to do so for lack of assistance.

Most women bring their divorce request to the chief of the village, not the commune leader or the provincial or municipal court. If the chief cannot reconcile the couple, he sends the case on to the commune leader who, if unsuccessful, will forward the case to the district leader. This process takes at least two or three months at each level. This amount of time may be life-threatening, for women in abusive situations. The woman usually is expected to pay officials for their work on her case.

Article 24

Although Cambodia acceded to the Convention on the Rights of the Child in 1992, the government has been slow to implement the Convention, with few laws being passed to protect children.

It should be noted that while the government makes provision for orphans, the conditions in orphanages are very poor. There have been many illegal adoptions to other countries without thorough checks on the adoptive parents' background, making the children vulnerable to exploitation or abuse.

The education system in Cambodia is in a parlous state, due to the effects of prolonged war and the inadequate amounts funds allocated for education. While attendance rates have been improving, they remain poor in more remote areas and the achievement levels are low, with many children failing their annual exams and having to repeat classes or dropping out of school. The main reason for poor attendance and low achievement is the cost of education

Despite the passing of the law against trafficking in 1996, sale and trafficking of children for sexual exploitation is a major problem in Cambodia. Many surveys have shown a high percentage of children working in brothels, possibly up to 30% of the total number of prostitutes are under 18. The majority of brothel clients are Khmer men, but there is also a significant problem of foreigners coming into Cambodia for purposes of sexual exploitation of children. There is a need for the authorities to allocate more police resources to investigating and prosecuting such cases.

There are many examples of contravention of articles in the Labour Code concerning child labour. Children under 18 are not authorised to work at night, and their rest period must be 11 hours. However nothing is done to enforce this law, and young girls are regularly working long hours at night in brothels, karaoke bars and other places of entertainment. Children under 16 may not be employed in factories. However NGOs have found widespread evidence of children working in brick factories, including at least five cases where a child under 15 has lost an arm in accidents with brick-making machines. Every brick factory employs several underage children, but they get around the law by officially employing and paying the child's parent so that the children's names do not appear on the register of employees. Little or no action has been taken by the Ministry of Labour factory inspectors to inspect these factories or act on cases. There are also reports that many young girls under 16 are working long hours in garment factories, by falsifying their age, and some local hospitals have reported cases of severe hand injuries suffered by girls from industrial sewing machines. There is particular concern that government armed forces have conscripted child soldiers in the conflict areas, and allowed children as young as 12 to

join the army voluntarily. While numbers of child soldiers may be reducing as the war with the Khmer Rouge comes to an end, at least in terms of forced conscription, priority should be given in any future demobilisation to ensuring that children under 18 are the first to be demobilised.

As stated in the government report, there is no legislation for keeping registers, and many births in rural areas are not recorded, especially in the more remote provinces. The lack of birth registration affects the acquisition of nationality. Children of Vietnamese origin have particular difficulty in gaining access to their rights, as their nationality depends on the nationality of their parents and there is much debate in Cambodia about whether or not people of Vietnamese origin should be given Cambodian nationality.

Article 25

National Assembly elections have taken place on May 23 and 28, 1993 and recently on July 26, 1998. While the 1993 elections were organized by the United Nations, the Cambodian government managed to organize the 1998 elections itself. Even though on election day there were no major irregularities reported and most international observers qualified the elections as free and fair, numerous instances of politically motivated threats and harassment as well as large numbers of politically related killings (see under article 6) were reported. Several international and national organizations warned that widespread voter intimidation could have affected the outcome of the elections. All complaints related to the elections have been dismissed by the largely CPP-dominated National Election Commission (NEC) and the also CPP-dominated Constitutional Council.

The first commune elections are scheduled to take place late 1999. ADHOC and LICADHO have several concerns with regard to these elections. First of all, the body responsible for the elections, the NEC is not independent, but heavily dominated by the ruling party. Furthermore, the government so far has not set a date, nor given the regulations for the elections (commune chief or commune council; all communes in one election or divided over three years). This makes the preparations for the NGOs as observers and possibilities for voter education more difficult. Another reason for concern is the recent proposal to appoint permanent secretaries in the communes who will control commune finances. These secretaries, who will not be elected, could form a serious threat to the independence of the elected commune chiefs.

Article 27

The indigenous highland peoples in the northeastern provinces of Ratanakiri, Mondulakiri, Preah Vihear and Stung Treng face several problems with regard to their right to land. They are less capable of acquiring legal land title than other Cambodians. There are several reasons for this. The first problem is related to their limited education. Few highland indigenous people receive a formal education, especially the ones who live further from the provincial capitals. This affects their understanding of the sometimes difficult provisions of the land law and allows other people to take advantage of them.

The Land Law should be strengthened to accommodate the traditional lifestyle of indigenous people; specifically provisions that allow the villagers to obtain communal land titles and to safeguard rights to fallowed land used in their traditional shifting agriculture.

END.