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**TECHNICAL ASSISTANCE AND CAPACITY-BUILDING**

**Report of the Special Representative of the Secretary-General  
for human rights in Cambodia, Yash Ghai\***

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\* There was a delay in the submission of the report in order to reflect the latest information.

## Summary

The fourth mission to Cambodia of the Special Representative of the Secretary-General for human rights in Cambodia, from 1 to 10 December 2007, centred on the theme of the rule of law, including access to justice. The framework of the rule of law gives valuable insights into the legal, judicial and political system of a country. It is an appropriate focus because the rule of law is a key concept in the Constitution of Cambodia itself.

The main issues analysed below relate to the criminal process, focusing on ending impunity, the rights of assembly and movement, and property rights, particularly those of indigenous peoples. This report discusses the prospects of the jurisprudence and practice of the Extraordinary Chambers in the Courts of Cambodia (ECCC) (for trials of those most responsible for the atrocities of the Khmer Rouge regime) having a positive impact on the Cambodian legal system. There is a section on the election system, a key component of democracy, where the rule of law is crucial, and a matter of some urgency as National Assembly elections are due in July 2008.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 7	4
I. THE RULE OF LAW .....	8 - 18	4
A. The rule of law and its importance .....	9 - 12	5
B. Rule of law in the Constitution of Cambodia .....	13 - 18	5
II. RECORD OF RULE OF LAW IN CAMBODIA .....	19 - 51	6
A. Legal development .....	20 - 32	7
B. Prosecutorial independence .....	33 - 41	9
C. Judicial independence .....	42 - 44	10
D. Independence of the legal profession and the provision of legal services .....	45 - 51	11
III. CONSEQUENCES OF THE DISREGARD OF THE RULE OF LAW .....	52 - 73	12
A. Undermining of the Constitution .....	53	12
B. Impunity and victimization .....	54 - 58	12
C. Violations of the principles of the market .....	59 - 61	13
D. Land rights and conflicts .....	62 - 67	14
E. Civil society undermined .....	68 - 72	15
F. The overall picture .....	73	16
IV. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA .....	74 - 85	17
A. Structure of decision-making within the Extraordinary Chambers in the Courts of Cambodia .....	78 - 79	17
B. Issues of independence and administration .....	80 - 86	18
C. Decision on the detention of Kaing Guek Eav (Duch) .....	87 - 89	20
V. ELECTION LAWS AND PRACTICE .....	90 - 98	21
VI. CONCLUSIONS AND RECOMMENDATIONS .....	99 - 103	22

## **Introduction**

1. This is the third report by this Special Representative since his appointment by the Secretary-General on 1 November 2005, submitted in accordance with Human Rights Council resolution 5/1. The Special Representative undertook his third mission to Cambodia from 29 to 31 May and his fourth from 1 to 10 December 2007.
2. This report examines the extent to which the rule of law is observed in Cambodia. The framework of the rule of law enables one to gain valuable insights into the legal, judicial and political system of a country, exploring systematically the strengths and weaknesses of the legal and judicial system, and the impact of the analyses and recommendations of successive Special Representatives. The report examines how to maximize the impact of the Extraordinary Chambers in the Courts of Cambodia (ECCC)'s jurisprudence and practice on the Cambodian national legal system.
3. The report analyses the electoral system, considering what reforms may be appropriate for the National Assembly elections due in July 2008.
4. During his fourth mission, the Special Representative met with representatives of Cambodian civil society, the Bar Association of the Kingdom of Cambodia (BAKC), lawyers working with NGOs providing legal services, members of the diplomatic community, international agencies, development and international NGOs, journalists, prison officials and two detainees, judges, prosecutors, defenders and staff of ECCC. He regrets that requests to meet Prime Minister Hun Sen or any ministers or senior public servants were rejected, frustrating any dialogue.
5. He visited Rattanakiri province, and met with human rights associations, had a lengthy discussion with the Acting President of the provincial court, and visited the provincial prison. At the Kong Yu village he studied at first hand a land dispute between the indigenous villagers and a company, and had some unexpected experience of the sort of harassment that faces villagers and those showing an interest in their problems (see paragraph 70). The Deputy Provincial Governor was not in his office when the Special Representative went to keep an appointment with him.
6. The Special Representative encountered communities who fear police aggression and arrest when he visited the Dey Krahom and Group 78 communities in Phnom Penh, where residents face illegal evictions.
7. The Special Representative participated in ceremonies to mark International Human Rights Day, organized by civil society groups.

## **I. THE RULE OF LAW**

8. The importance of the rule of law and United Nations role in its promotion has been repeatedly emphasized. Visiting Cambodia in 2006, the High Commissioner for Human Rights, Louise Arbour, described court reform as "the single most important area" requiring progress.

The 2005 World Summit held by the General Assembly identified the rule of law as a key area, emphasizing its indispensability for sustained growth, sustainable development and the eradication of poverty and hunger.

#### **A. The rule of law and its importance**

9. The rule of law means that the affairs of the State, and its relations with the people, are conducted strictly in accordance with its constitution and the law. This limits the powers of the State and protects citizens and communities against arbitrary acts of the State or others. Laws or policies inconsistent with the constitution are invalid. The law must be fair and respect fundamental human rights, and all citizens must receive equal treatment before the law. It is up to the courts to determine whether a law is invalid or to interpret the law. Laws must be accessible to all. They must be administered by an independent judiciary in a transparent way, and citizens' access to justice, including appropriate remedies, must be assured. Prosecutors and police must follow the law, not the dictates of the executive.

10. Legal institutions play a critical role in economic development, especially in the functioning of a market economy. The concepts of property, corporations and contracts, backed by an independent adjudicatory process, provide a foundation of predictability for economic activities. The rule-of-law framework is infinitely more sustainable for economic and social development than coercion and unlawful appropriations of property, relying on State power.

11. The establishment of the rule of law plays a critical role in the rehabilitation of a State and its officials after prolonged conflict, such as that in Cambodia, during which massive violations of the rule of law by the Khmer Rouge regime destroyed the very foundations of society. The rule of law is important for the legitimacy of the State in the eyes of the people.

12. The values and norms of the rule of law, incorporated in international instruments, is the responsibility of all States and the international community. The rule of law is most threatened by the Government, by corruption among public servants and by judges or prosecutors who are not independent and take orders from the Government. Lawyers must be free to protect their clients without intimidation by the Government or influential persons, or the bar association.

#### **B. Rule of law in the Constitution of Cambodia**

13. With these considerations in mind, the international community and the various Cambodian groups in the 1991 Paris Agreements emphasized human rights, democracy, and legal and judicial institutions, culminating in the Constitution, which was adopted by the freely elected Constituent Assembly.

14. The Constitution of Cambodia represents a commitment of the Cambodian people to democracy, human rights and the rule of law. One aspiration of Cambodia is to be a country "abiding by the law" (Preamble). Various other provisions emphasize the supremacy of the Constitution and the law, including articles 49, 52 and 150.

15. The Universal Declaration of Human Rights and human rights treaties are binding (art. 31). This was confirmed in a recent, very welcome ruling by the Constitutional Council. Foremost is the right of all citizens to equality before the law (art. 31, para. 2). No one may be prosecuted,

arrested or detained except in accordance with the law; confessions obtained by physical or mental force are not admissible evidence; the accused are presumed innocent and have the right to defence (art. 38). The Constitution recognizes the fundamental freedoms of movement, assembly and association, and the right to participate actively in the political, economic, social and cultural life of the nation. Under article 44, all citizens have the right to own land, and property may only be confiscated in the public interest, as provided for by law, and after payment of fair and just compensation.

16. The independence of the judiciary (art. 128) and the separation of powers (art. 51) underpinning that independence are fundamental. Judges must adjudicate “with strict respect for the laws, wholeheartedly and conscientiously” (art. 129, para. 2). The King has personal responsibility for guaranteeing judicial independence, presiding over the independent Supreme Council of Magistracy (SCM) which advises him on the organization and independence of the judiciary and prosecution (art. 134).

17. The Constitution guarantees a market economy, central to which is the rule of law. And because, especially in developing countries, the greatest threat to the market economy often comes from the misuse of power of the State, the Constitution precludes members of the Government from engaging in trade or industry or holding any position in the public service (art. 101).

18. After 1993, a dynamic civil society movement emerged for the first time, in the space created by the active involvement of the international community. However, post-conflict development, with which the international community has been closely associated, has led to the formation of a strong State, with all its elements, such as the bureaucracy, the police and the military. Its monopoly of force has endowed it with enormous capacity for coercion, balanced by neither legislature nor judiciary. The space for civil society is steadily shrinking. State officials, and powerful interests around them, are able to appropriate natural and economic resources, as well as the property of others, punish their opponents and suppress their rights, while civil society has limited impact. The norms, institutions and procedures of the rule of law can help to restore a measure of the balance within the State, between its three constitutive powers, and between it and civil society.

## II. RECORD OF RULE OF LAW IN CAMBODIA

19. A respected Cambodian human rights organization begins a recent report:<sup>1</sup>

“The Cambodian justice system has failed. Despite the UNTAC intervention and 15 years of aid to legal and judicial reform, in 2007, the primary functions of the courts continue to be:

- To prosecute political opponents and other critics of the Government

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<sup>1</sup> “Human rights in Cambodia: The charade of justice”, published by the Ligue cambodgienne des droits de l’homme (LICADHO), December 2007.

- To perpetuate impunity for State actors and their associates
- To promote the economic interests of the rich and powerful.”

After considerable documentary research (including reports of his predecessors) and discussions with many individuals and groups in Cambodia, poor and powerful alike, and after studying the reports of national and international organizations, the Special Representative agrees with this assessment.

### A. Legal development

20. Of eight key laws which the Government promised to complete by the end of 2005, the Code of Civil Procedure (CCP) and the Penal Procedure Code (PPC) came into force, and the Civil Code and the Penal Code are expected to come into force, in 2008. These codes will lead to improvements in the legal process. However, initial analysis indicates some weaknesses that may aggravate violations of the rule of law.

21. The previous law<sup>2</sup> permitted pretrial detention for up to four months, and two additional months by reasoned decision of the judge. The new PPC permits the four-month pretrial detention in misdemeanour cases to be extended, two months at a time (up to half the minimum sentence) (art. 209). The 6-month limit for felonies can now be extended up to 18 months, 6 months at a time (art. 208). Given the unprincipled ways in which many prosecutors and courts use their powers, these extensions are retrograde.

22. Even acquitted persons are held in detention pending an appeal by the prosecutor (arts. 307 and 398). Prosecutors routinely appeal against acquittal, regardless of the prospects of overturning the decision. This rule applies even to persons who have been detained for as long as the possible sentence. An appeal can take months and numerous persons can be held in detention for unconscionably long periods.

23. PPC permits police detention of 24 hours before a detainee can see a lawyer or other person for 30 minutes (art. 98). (By contrast, in France this 30-minute conversation with a lawyer occurs at the beginning of the detention and again after 20 hours). Perhaps unsurprisingly a local commentator has challenged the view that these laws represent real reforms.<sup>3</sup>

24. Previously, a confession could not be a basis for conviction unless corroborated by other evidence. This safeguard is removed, giving confessions the same weight as other evidence (art. 321), although PPC reiterates the prohibition on the use of coerced confessions. There is a

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<sup>2</sup> “Provisions relating to the judiciary and criminal law and procedure applicable in Cambodia during the transitional period”, adopted by the United Nations Transitional Authority in Cambodia (UNTAC), 10 September 1992.

<sup>3</sup> See note 1 above, p. 23.

heavy reliance on confessions, many obtained through coercion or torture. The new rule could undermine the prohibition of evidence obtained by forced confessions by the Constitution and the Convention against Torture.

25. Excessive delays mark the Cambodian court system, partly because of serious shortages of courts and judges, and the travel involved for people. The requirement of a three-judge bench for felonies will aggravate this problem as it now requires a three-judge bench for felony cases (art. 289). The Special Representative understands that the intention is to discourage corruption in the judiciary. However, empirical evidence elsewhere suggests that this is not necessarily a safeguard against corruption.

26. The Civil Procedure Code (CPC) introduces various court fees which place the civil courts out of reach of most ordinary Cambodians. Substantial deposits must be lodged with the courts, which may award costs against the losing party. These substantially increase the overheads of organizations providing essential legal assistance to the poor. Without State-funded legal aid, such rules always work to the disadvantage of the poor.

27. There has been less progress on other urgent laws. The Law on the Organization and Functioning of the Courts has been delayed by disagreement between the Ministry of Justice and SCM over who should administer the courts. Ministry control would be inconsistent with the separation of powers and independence of the judiciary.

28. The constitutionally required law on the status of judges (art. 135) has made little progress. Without this, judges cannot, as stipulated in the Constitution, elect their members of SCM, who are meanwhile appointed on the instructions of the executive. Nor has progress been made on the amendment to the Law on the SCM, necessary to establish judicial independence and curb corruption. Likewise, slow progress has been made towards the adoption of the anti-corruption law.

29. The Special Representative regrets particularly the continued lack of real progress on the development of a framework for the registration of land belonging to indigenous peoples. The Special Representative, and the Special Rapporteur on adequate housing, Miloon Kothari, in his report to the Council of 21 March 2006,<sup>4</sup> have previously urged the speedy enactment of a sub-decree on the registration of indigenous land. The Special Representative fears that due to this delay most indigenous communities may lose their lands, frequently in an arbitrary and abusive manner, before its enactment. Many persons told the Special Representative that the delay was deliberate, in order to promote Rattanakiri and Mondulakiri, two provinces where indigenous peoples form the majority of the population, as the “fourth development pole” by 2015. The Government has ignored his previous recommendation to suspend dealings in indigenous peoples’ land until enactment of the sub-decree.

30. The need for reform and clarity in land legislation goes beyond the indigenous peoples’ issue. Mr. Kothari, surveying all land laws as they affect the right to housing, concluded that

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<sup>4</sup> See E/CN.4/2006/41/Add.3.

because of “the legislative vacuum and ineffective enforcement of existing laws, an increase in forced evictions, relocations and displacements of a large number of families can be expected in the near future”.<sup>5</sup>

31. There has been little progress on the proposed Law on Peaceful Demonstrations. The urgency of the need for a new law is emphasized by the Constitutional Council’s decision that all laws must respect human rights treaties.

32. A major problem is the failure to apply the law fairly and consistently. The law is applied or not applied, depending on the objectives of the Government or local authorities. This unprincipled approach to the law is the cause of numerous human rights violations.

### **B. Prosecutorial independence**

33. The Special Representative has previously observed that many prosecutors fail to meet national and international standards requiring impartiality and integrity, in the public interest rather than for partisan interests. Complaints filed by senior government officials, even when based on weak or unsubstantiated evidence, are prosecuted with vigour, while the vast majority of the populace have little hope or expectation of having their grievances taken up by public prosecutors.<sup>6</sup> Although some prosecutors try to perform their functions impartially, and at some personal risk, the overall situation has not improved.

34. Offences under the law for infringement of rights to land have not been used to protect communities whose rights have been violated by influential individuals, companies or government entities. Action has not been taken against those who have illegally sold or bought land occupied by others, or infringed their rights to land and forest resources.

35. Conversely, when legal proceedings are instituted against a well-placed person or company (or when communities resist evictions or the appropriation of their land), it is not unusual for the plaintiff (or community representatives) to be accused of some offence, for example “destruction of property” or “infringement of property”. The result of such accusation may be that the person is taken into custody and is unable to pursue his or her rights under the law. In Kong Yu (see paragraph 65), villagers were accused of criminal defamation after filing legal action against Keat Kolney and others, including local officials, to annul an allegedly fraudulent land deal.

36. Following the violent eviction of more than 100 families in Spean Ches, Sihanoukville, by armed police officers in April 2007, 13 villagers were arrested and charged with battery with injury and wrongful damage to property, or complicity. No action has been taken against police officers who used excessive force, destroying homes and assaulting residents.

37. At the Dey Krahom community in central Phnom Penh, 13 community representatives face criminal charges following attempts to prevent evictions. The legality of the evictions has not been examined by the courts.

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<sup>5</sup> E/CN.4/2006/41/Add.3, para. 29.

<sup>6</sup> See E/CN.4/2006/110.

38. Criminal charges relating to ownership of land should be suspended until the preliminary question of ownership is determined in civil proceedings (art. 343). Yet charges of infringement of private property continue to be pursued against community members involved in land disputes over the ownership of unregistered land.

39. The actual use of the PPC provisions, and previous rules, in connection with detention of unconvicted persons gives rise to great concern. Though article 203 suggests that detention should be exceptional, in practice almost all accused persons, including most juveniles, are detained pending trial, even for minor offences, and often for periods greatly exceeding the statutory time limits. Many do not see a lawyer during their incarceration.

40. In May and June 2007, three community members from O'Vor Preng, Battambang province, were charged with infringement of private property in relation to a dispute over unregistered land with a well-connected businessman. Two were granted bail, and the trial judge suspended the charge against the third, awaiting resolution of the land ownership dispute; yet all remained in detention because the prosecutor appealed. The men were finally released in late September 2007, after community members called upon the Ministry of Justice to intervene with the prosecutor.

41. Chhea Nee was convicted of two charges in relation to a dispute over land involving the military and wealthy businessmen in Bavel district, Battambang province. Despite having served the sentences imposed, he remained in prison, as the prosecutor appealed. Chhea Nee was finally released on 6 December 2007, after the prosecutor exercised his discretion under article 398 of the PPC to release him pending the appeal. It is hoped that other prosecutors will exercise their discretion similarly.

### **C. Judicial independence**

42. Human rights observers generally agree that “despite repeated public pledges by the Royal Cambodian Government of its commitment to judicial and legal reforms, and millions of dollars invested by foreign donors in reform programmes since 1992, there has been no progress whatsoever in the single most important issue affecting the courts: their lack of independence from political and financial influence” (see LICADHO report, 2007). There is a very deliberate manipulation of the judiciary to serve interests of particular ministers or their business friends.

43. The President of the Court of Appeal was removed on 9 August 2007 on the instructions of the executive, denying the judge due process guaranteed under the Constitution and international law. Her replacement was to be an ECCC judge (see paragraph 84). The appointment of four new members of SCM by another royal decree (NS/RKT/0807/340) appeared to have been made similarly on executive instructions, contrary to the law.

44. In his first report, the Special Representative expressed concern at the composition of SCM, which includes a government minister and a member of the ruling party's Permanent Committee. But these recent royal decrees actually sideline the SCM, leaving it only a role in implementing, together with the Supreme Council for State Reform, a decision that it did not formally make.

#### **D. Independence of the legal profession and the provision of legal services**

45. The legal profession is regulated under the Law on the Bar, which proclaims the independence and autonomy of the profession and gives its members the monopoly of providing legal services (art. 1). The Law regulates qualifications for entry into the profession and the provision of legal services (some rules concern preserving the monopoly of the profession and some conflict of interests).

46. From 2004 to 2006, BAKC was paralysed by a dispute, with heavy political overtones, over its presidency. Since October 2006 it has regained some stability. However, it is perceived as being closely tied to the Government, and several lawyers and NGOs have told the Special Representative that BAKC is not independent of political pressures.

47. The Cambodian legal profession is very small but growing, and availability of services to the poor is thus limited. Research suggests that fewer than half of the accused in criminal cases in which having a lawyer is not mandatory, are represented; even in serious cases, where it is mandatory, about 30 per cent of the accused are unrepresented.

48. The Government has no legal aid scheme. BAKC, with little funding from government and foreign donors, can provide limited legal aid. However the principal source of legal advice and representation, especially in the rural areas, is NGOs. These have lawyers on their staff who represent the poor, and since the mid-1990s legal aid NGOs have done very valuable work.

49. These lawyers and NGOs face many obstacles, placed in their way by powerful members of the community, with assistance from the authorities, and, unfortunately, it seems, BAKC. There have been cases of rich or well-connected litigants trying to get the lawyers of their less powerful opponents investigated for criminal offences - such as "incitement" - simply for performing their professional responsibilities of acting for the poor. In the Kong Yu case (see paragraph 65) the villagers' lawyers have been accused of criminal incitement. Cases should be allowed to proceed, rather than being diverted and even derailed by harassment of the lawyers.

50. NGOs complain that in various ways their work has become more difficult. They experience greater difficulty in holding meetings with clients, including in getting access to prisoners. New court fees will make bringing cases harder (and commune officials demand bribes for a certificate of financial status by which the poor could obtain exemption from fees). Some NGOs report that their staff have experienced what feels like intimidation from the Bar and has led some lawyers to resign and move into private practice.

51. Preserving professional independence is undoubtedly important. But recent efforts of BAKC to cast doubt on the legitimacy of the activities of these legal aid NGOs can reasonably be viewed as having other motives. When concerns are raised by a body that shows some hostility to the NGO movement, it cannot appear even-handed, especially when the Bar itself is seen as being closely linked to the Government. BAKC has suggested that the Law on the Bar prohibits legal practice by NGO-employed lawyers. On the other hand it has asked NGOs to sign memorandums of understanding with it in order to carry out their legal aid work. It halted a legal internship programme (the USAID-funded Law Fellows Program) despite it having been

previously approved by the Bar. Any concerns about lawyers being employed should be raised with all employers, including Government and the private sector, and not just with NGOs. As NGOs have a central role in providing legal aid services for the poor, and thus essentially fulfilling a mandate of the Bar, any differences should be ironed out in a spirit of cooperation.

### **III. CONSEQUENCES OF THE DISREGARD OF THE RULE OF LAW**

52. The above analysis shows that laws, institutions, procedures critical to the rule of law are very little respected in Cambodia - especially by the State. Numerous reports by the Special Representatives and national and international organizations have highlighted serious consequences of this. For the most part, the Government has made no serious attempt to deny, much less refute, these findings or to take serious action to address these issues.

#### **A. Undermining of the Constitution**

53. The most serious consequence is that many important provisions of the Constitution of Cambodia designed to protect the rights of the people and to promote good and fair governance are negated, and the status of the Constitution as the supreme law is undermined.

#### **B. Impunity and victimization**

54. Prosecutorial and judicial functions are subordinated to the executive in political cases or cases involving powerful interests, and judges' rulings are too often influenced by money. Governmental instructions to prosecutors or judges are duly carried out, regardless of the evidence or the law. Control of prosecutors means that members of the executive and their friends enjoy wide impunity from the penalties of the law, while others are prosecuted for and convicted of offences they have not committed. Courts become the central arena of violations of the law and the denial of justice. The very threat of legal action by the executive is often sufficient to force the targeted person to bow to pressure, go into hiding, or flee the country.

55. It is not uncommon for senior opposition politicians to be charged and convicted without evidence, and to be subsequently pardoned, as part of a political deal (or to soften up international donors before crucial pledging conferences) - disregarding the law that the power of pardon lies with the King, and not the Government.<sup>7</sup> Victims have included Prince Norodom Ranariddh, Sam Rainsy, Prince Norodom Sirivuddh and Cheam Channy.

56. Politically motivated charges are also used to give impunity to government protégés. Born Samnang and Sok Sam Ouen were convicted for the killing of independent trade union leader Chea Vichea in 2004,<sup>8</sup> largely on the basis of a retracted confession, despite overwhelming evidence demonstrating that neither could have taken part. On 12 April 2007, the Appeal Court upheld the convictions, ignoring crucial new evidence and Born Samnang's complaint that his confession was coerced, and although the prosecutor said that there were "huge gaps in the police investigation" and called for a reinvestigation to find the "real killers".

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<sup>7</sup> See pp. 2-6 of the LICADHO report, "The charade of justice" for examples.

<sup>8</sup> See A/HRC/4/36, paras. 43 and 55.

57. On 28 February 2007, another trade union leader, Hy Vuthy, was shot and killed by unidentified gunmen. The police investigation has stalled. The case of trade unionist Ros Sovannareth killed on 7 May 2004 has been related in previous reports.

58. In 1999, the then Special Representative, Thomas Hammarberg, wrote: “The phenomenon of impunity and its institutional expression constitutes the single most important obstacle to the effort to establish the rule of the law in Cambodia”.<sup>9</sup> This enables the persecution of human rights activists, vulnerable land- and house-owners, trade unionists and others. The 2007 LICADHO report, cited above, discusses numerous cases of impunity, including more recent ones.<sup>10</sup>

### **C. Violations of the principles of the market**

59. Although a market economy is guaranteed by the Constitution, some of the ways in which the Government manages the economy distort key principles of the market mechanism, resulting in the misallocation of resources. They prevent the growth of the entrepreneurial spirit, make a mockery of property rights and the binding nature of contracts, lead to weak trade unions often having to confront “strong” and brutal companies, often protected by local authorities, the police and the military, resulting in poor conditions for workers. This does not promote development of negotiating skills or familiarity with pricing policies. Dependence on foreign skills and management retards development of local capacity; and business relies for its profits on superior access to decision-makers, rather than fair competition. Consensual transactions, fundamental to the market, are largely missing, replaced by coercion or favours.

60. The negative impact on the market mechanism and the misuse of resources that follow from the absence of the rule of law are clearly demonstrated in the report of the international NGO, Global Witness, “Cambodia’s family trees: Illegal logging and the stripping of public assets by Cambodia’s elite”,<sup>11</sup> published in June 2007. It recounts the story of a syndicate involved in logging in Prey Long, whose owners or associates are connected to some of the most senior ministers and officials.

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<sup>9</sup> E/CN.4/1999/101, para. 45.

<sup>10</sup> Pp. 11 to 15.

<sup>11</sup> See [www.globalwitness.org/media\\_library\\_detail.php/546/en/cambodias\\_family\\_trees](http://www.globalwitness.org/media_library_detail.php/546/en/cambodias_family_trees). Global Witness was at one stage appointed as official monitor of logging activity, but when it uncovered information unfavourable to the Government, this mandate was revoked. When this report came out in June 2007, instead of dealing with these allegations, the Government banned it and confiscated all copies. The Special Representative met the representatives of Global Witness in 2007 to probe them in depth about the reliability of their information and was persuaded of the accuracy of the report. Since this report was prepared, the Government of the United States, at the urging of the Congress, has banned the top officials of the company (including ministers) from entering the country.

61. Confirming a special report on economic concessions by the previous Special Representative, the Global Witness report adds: “In the mid-1990s, senior government ministers secretly awarded between 30 and 40 logging concessions to Cambodian and foreign-owned companies, giving away 39 per cent of Cambodia’s land area, on terms that greatly favoured the interests of the concessionaires over those of Cambodia. All these concessionaires proceeded to break the law or the terms of their contracts or both. By the end of the decade, they were responsible for most of the illegal logging in Cambodia” (p. 12). According to the report, the company and its associates have committed numerous breaches of the laws: illegal appropriations of public property; intimidation, detention and illegal confinement; attempts to kill; harvesting of forest products without a permit; destruction of property; illegal transport of timber; processing of timber in the forest; corruption of forestry officials; organized crime; extortion from employees of the Forest Administration; evading import duties and export taxes. The principal finding is that this industry is run by a network of alliances and companies that rely on the support of government institutions aided by some senior ministers. The company has committed massive violations of the law, including those concerning State and private property, taxation, and the penal code - with total impunity. Victims of this illicit economy, whether through the appropriation of their property, intimidation or illegal detentions, have no redress. The beneficiaries are a relatively small group of tycoons with political, business or familial ties to senior officials. There is widespread use of police and army. Brigade 70, often described as the personal army of Prime Minister Hun Sen, acts as a specialist provider of transport and protection to the most powerful timber barons (*ibid.*, p. 72). The army itself is involved in illegal logging.

#### **D. Land rights and conflicts**

62. A study of land transactions shows the consequences of the failure to implement the law and market principles. The subordination of the prosecutors and courts to the will of the Government has resulted in much injustice in land transactions and appropriations (for details, see the 2006 report of the Special Rapporteur on adequate housing, Miloon Kothari<sup>12</sup>). Forcible and illegal evictions continue unabated. The Special Rapporteur noted that, prior to or during forced evictions, threats, intimidations, and physical violence are used by local authorities and private developers, sometimes in the presence of military and police forces.

63. Land rights are regularly violated with impunity by influential individuals, companies and government entities. Owners are often compelled to accept paltry sums, despite evidence of legitimate tenure or land titles, or to move to alternative sites. These sites are usually devoid of alternative housing, sanitation facilities and medical services, and are usually far from where residents worked, adding much to their survival costs. In a few instances (such as in Koh Pich), and often after a long battle, those evicted were eventually afforded acceptable compensation. Other evictees have simply been dumped onto a wasteland and now live in makeshift camps (for example, in Andong).

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<sup>12</sup> E/CN.4/2006/41/Add.3.

64. Victims are rarely able to invoke remedies, including compensation, provided in the law. Mr. Kothari noted the courts' reluctance to assist in enforcing the law. According to testimonies he received, the investigative procedures adopted by courts to ensure the legitimacy and legality of ownership titles are insufficient. Court decisions allegedly favour those who have acquired titles illicitly, to the detriment of families who should benefit from the 2001 Land Law provisions concerning ownership rights resulting from extended land possession and occupation. Indigenous peoples have suffered greatly, as shown above, even as Cambodia voted for the recent United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly on 13 September 2007.

65. Kong Yu village is in O'Yadao District of Rattanakiri Province, and is inhabited by indigenous Jarai people. The villagers told the Special Representative, as they have others, that they had reluctantly agreed to part with 50 hectares of their traditional land for "disabled soldiers". They were later asked for their thumbprints: firstly, when they were inebriated, on blank papers, and subsequently, in the presence of local chiefs, on documents in Khmer, which they do not understand. They received sums of money that they believed to be compensation for the 50 hectares conceded. Then land started to be cleared for a rubber plantation and the villagers were told they had sold 500 hectares to a company, in which a majority shareholder is Keat Kolney, sister of the Minister for Finance and the wife of a senior public servant. They complained to the commune chief, and the next day the district police and gendarmerie threatened villagers with prosecution and imprisonment. Villagers reported that they have lost access to vegetation they used to collect from the forest, have insufficient land for future use, and are unable to leave their cattle free to roam, in case they wander onto the rubber plantation and are confiscated. Children are kept home from school in order to take care of the cattle.

66. When contacted for her side of the story, Keat Kolney arranged for the Special Representative to meet her lawyer and a company manager with whom he had a lengthy discussion on the facts and legal issues. The company's representatives insisted that the villagers had willingly and knowingly sold all the land and showed copies of the thumb-printed documents and photographs of persons allegedly thumb-printing the documents.

67. The matter is now before the courts, and the Special Representative takes no position on the facts. The significance of the case is that this is precisely the sort of community the Land Law was designed to protect, yet they are losing their land without having the benefit of procedures to protect them, and feel strongly that they have been cheated.

### **E. Civil society undermined**

68. The failure to respect existing constitutional guarantees and legal human rights also restricts the exercise by civil society organizations of the fundamental freedoms that are essential to the realization by people of their economic, social and political rights.

69. Organizations assisting local communities to defend their rights to land have been subjected to arbitrary restrictions. In Rattanakiri and Mondulakiri, provincial authorities have been requesting such organizations to apply for permission to visit affected communities and villages, to hold meetings with villagers, to organize workshops on land rights and to protest peacefully against land grabbing. On 16 October 2007, 12 community members affected by a

dam upstream in Viet Nam were denied “permission” to travel to Phnom Penh to attend a community workshop, and the deputy provincial governor requested that provincial police stop them from leaving the province. NGOs have informed the Special Representative that local police prevented the Cambodian Centre for Human Rights and the affiliated Voice of Democracy from holding public forums in Kong Yu village in September and November 2007. NGOs operating in Rattanakiri are requested to seek permission to organize any event, a restriction that appears to have no legal basis.

70. The Special Representative had a taste of this approach to those who show an interest in the villagers when he visited Kong Yu on 3 December 2007, with officials of OHCHR. As the meeting ended, a number of armed police and military arrived, led by the district governor who asked, somewhat aggressively, why the visitors had not asked for written permission. He explained that anyone, including United Nations officials, who came to the district, required permission from provincial authorities, although he could not specify the relevant legislation.

71. In the course of 2007, numerous instances of such restrictions brought the peaceful exercise of the rights to peaceful assembly, demonstration and expression to a virtual halt. Recent examples include 48 Khmer Krom monks, demonstrating peacefully in front of the Embassy of Viet Nam in December 2007, who were dispersed with excessive force by the police; two monks were seriously injured by electric shock batons, one falling unconscious. On 29 November 2007, a strike by female workers at the Fortune Garment Woollen Knitting Company in Kandal province, was brutally broken up by a large contingent of police and anti-riot police, using tear gas, batons and electric truncheons, resulting in several workers being injured.

72. The Phnom Penh Municipality initially banned a peaceful march in the centre of the capital to celebrate International Human Rights Day on 10 December 2007, citing unspecified security concerns. It was eventually authorized, after the intercession of the Ministry of Interior, but on a much smaller scale and along a shorter route.

## **F. The overall picture**

73. In summary, when there is no rule of law, what a powerful individual or group cannot obtain by legal means, they try to obtain by force. Numerous titles to property in Cambodia are tainted by illegality. The police and the military are often used to promote these illegal purposes and thus forced into the betrayal of their public duties. To secure titles to property which belong to others, to get licences and permits to achieve advantages over competitors, to avoid taxes, one has to bribe a large number of officials so that corruption becomes deeply embedded in State and society. In a State marked by the absence of the rule of law, it is all too easy to violate the rights of others, with total impunity, if one is powerful. Whether to obey the law ceases to be a moral question, but one driven by opportunism. Laws may be made under pressures from donors, but there is no intention to enforce laws inconvenient to the ruling group. As exploitation of resources and of people increases, there is greater resort to oppression by the State. Movement of those who struggle against oppression is controlled. The desire of people to assemble freely is seen as dangerous, and the freedom of expression has to be curtailed, while threats, harassment, intimidation, attacks, and even extrajudicial killings may be necessary to curb more determined opponents who cannot be bribed or cajoled. Above all, people have to be taught to fear the

rulers, by their caprice and unpredictability, and especially brute force. In the long run, the increasing inability of courts to settle disputes in a fair manner will produce problems of law and order, aggravate tensions and conflicts and the risk of violence and responses of public defiance that will be hard to manage.

#### **IV. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

74. In 2007, the Extraordinary Chambers in the Courts of Cambodia (ECCC), set up to deal with the proceedings against senior Khmer Rouge leaders and those most responsible for crimes and serious violations of Cambodian and international law, really began their work. Five senior leaders of the Khmer Rouge are in the custody of the ECCC, being investigated for prosecution. It is expected that trials will commence in mid-2008.

75. The principal justifications for the trials include that they would: (a) provide accountability to the millions of Cambodians for the crimes of the Khmer Rouge; (b) have a deterrent effect by demonstrating that there can be no impunity for violations of human rights; (c) enhance people's understanding of justice and the rule of law; and (d) the jurisprudence and practices of the ECCC would be absorbed by the rest of the Cambodian system of justice.

76. There are various positive developments. The internal rules were agreed upon, albeit through very protracted negotiations which nearly brought the process to a premature end. It is well known that the international and Cambodian judges and prosecutors of the ECCC have been at loggerheads, although the Special Representative was assured by them that the two sides have developed good working relations. The public has taken a keen interest in the trials. And the participation of the community and victims has been secured through the procedure of Civil Party Action, which allows victims to seek collective and moral reparations.

77. There is much that Cambodian lawyers and judges - and indeed, others - can learn from the ECCC. The Special Representative welcomes the care with which the co-investigating judges in the case of the application of Kaing Guek Eav (see paragraphs 87-89 below) examined the law and legal precedents as well as the facts of the case (something that Cambodian courts do not often do). He noted with great satisfaction the mode and presentation of legal arguments, through careful drafting of charges, the submission of written briefs by the lawyers, and careful and detailed decisions of the prosecutors and judges. All made full reference to international and regional jurisprudence on human rights, with well researched notes on the due process provisions of international treaties. This is particularly welcome in the wake of the ruling of the Constitutional Council that international human rights treaties entrenched in the constitution are binding on Cambodian courts.

##### **A. Structure of decision-making within the Extraordinary Chambers in the Courts of Cambodia**

78. Being part of the Cambodian court system with a special status, the staff of the Extraordinary Chambers in the Courts of Cambodia (ECCC) (including prosecutors and judges) are drawn from both Cambodia and the international community. All judges and prosecutors are appointed by SCM, the internationals from among nominees of the United Nations

Secretary-General. Thus Cambodia can to a limited extent decide on the appointment of international judges, investigating judges and prosecutors, but the United Nations has no say in the appointment of Cambodian counterparts.

79. In the Pre-Trial and Trial Chambers there are three Cambodian judges and two international judges. In the Supreme Court Chamber, there are four Cambodians and three internationals. The Pre-Trial and Trial Chambers must decide by the affirmative votes of at least four judges and in the Supreme Court Chambers by the affirmative votes of at least five judges. It would therefore be possible for Cambodian judges to block a conviction even if all the international judges supported it. This is curious, since the international judges have, and were always expected to have, greater expertise in the law about war crimes and crimes against humanity, and longer judicial experience than their Cambodian counterparts.

### **B. Issues of independence and administration**

80. When, in 1997, the Government requested the United Nations to assist with trials, the Secretary-General appointed an eminent Group of Experts to advise him.<sup>13</sup>

81. After a careful assessment of the Cambodian judiciary (including admissions from some “high officials”), the Group concluded that endemic corruption and political influence would make it impossible for Cambodian prosecutors, investigators and judges to be free from political pressure and that decisions on “whom to investigate and indict, and to convict and acquit would be based on political considerations rather than the evidence” (para. 134). It rejected a mixed court (with equal numbers of foreign and local judges and prosecutors) and particularly opposed the appointment of a Cambodian as prosecutor or deputy prosecutor (para. 163).

82. Whether this considered advice, which was overruled by political expediency, was justified or not remains to be seen. The United Nations-Cambodia Agreement stipulates that judges and prosecutors shall be of “high moral character, impartiality and integrity ... be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source” (art. 9 (3)). However, the Cambodian judges include two who have presided over much criticized trials of prominent opposition figures, one who twice ruled against Born Samnang and Sok Sam Oeun (see paragraph 56 above) and who acquitted the Prime Minister’s nephew of manslaughter in 2004 in dubious circumstances, one who admitted having taken money from parties to litigation and one who had never been a judge before.<sup>14</sup> When these appointments were criticized, Reach Sambath, ECCC spokesperson, suggested that

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<sup>13</sup> The Group of Experts includes Sir Ninian Stephen, a distinguished Australian lawyer and a former Governor-General of his country; Justice Rajsommer Lallah, former Chief Justice of Mauritius and a member of the Human Rights Committee; and Prof. Steven Ratner, a leading international lawyer from the United States of America.

<sup>14</sup> See LICADHO report, p. 25.

service in the tribunal would enable the judges to “rebuild their reputations”<sup>15</sup> The Prime Minister described those who made the criticisms as “animals” who “want to seduce their own parents”.<sup>16</sup>

83. It is likely that these appointments were decided by the Government rather than the SCM, like the removal of the President of the Appeal Court and replacement by Judge You Bunleng of ECCC (as is clear from the relevant Royal Decree).<sup>17</sup> Under criticism from the Special Representative and the Special Rapporteur for the Independence of Judges and Lawyers and other quarters, the Government “clarified” that You Bunleng would for the time being remain with ECCC while simultaneously discharging his duties as President of the Court of Appeal.

84. The Expert Group observed that the objectives of the trials would not be achieved if the Cambodian people did not have confidence in the fairness of the process, but regarded it as a partisan political exercise. Furthermore, although the jurisdiction of ECCC was restricted to “senior leaders of the Democratic Kampuchea and those who were most responsible for the crimes committed”, if only the persons currently in the custody of ECCC are accused, the people may not feel that this is adequate. The real test will be if a suspect in or close to the Government is investigated and brought before the ECCC.<sup>18</sup>

85. The Cambodia/international division is replicated at the level of administration, at Government insistence. On the Cambodian side there have been numerous, serious, administrative irregularities. There have been widely publicized allegations that the Cambodian appointees of the ECCC had to share their entire first salary and 20 to 30 per cent of their subsequent salary with senior political figures.<sup>19</sup> A special UNDP audit found that many staff whose posts were not authorized or budgeted for were appointed; there were salary increases for some staff appointed by the Government of Cambodia, as much as “from 54 to 338 per cent”.

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<sup>15</sup> Ibid., p. 25, quoted from Prak Chan Thul, “KR trial will redeem judges: spokesman”, *Cambodian Daily*, 6-7 May 2007.

<sup>16</sup> Ibid., p. 25, quoted from speech at the Phnom Penh Royal Administration School’s graduation ceremony, 11 May 2006.

<sup>17</sup> Joint public statement by the Special Representative and the Special Rapporteur on the independence of judges and lawyers, 23 August 2007.

<sup>18</sup> The Expert Group, which had envisaged about 20 accused, said that “to the extent that fair trials may reveal a different historical picture from that asserted by the Cambodian People’s Party, with the involvement of additional people, the Government may have concerns about a tribunal over which it does not exercise control” (para. 98, A/53/850; see also S/1999/231).

<sup>19</sup> Open Society press statement 14 February 2007, and interviews with ECCC staff members.

The irregularities noted by the audit team were so numerous and of such magnitude that it recommended that, if its recommendations were not accepted, the United Nations should seriously consider withdrawing from the project.<sup>20</sup>

86. The Cambodian Bar Association demanded, without any legal basis, that all foreign lawyers, whose participation is essential to ensure fair trials, and even if appearing pro bono, pay a fee of US\$ 4,900. The international judges protested that this “would severely limit the right of accused and victims to select counsel of their choice”.<sup>21</sup> An embassy offered to compensate the bar for the fees, and, after discussions with the diplomatic community, the fee was reduced to \$500. No foreign lawyer can appear without a Cambodian lawyer, who must speak first.

### **C. Decision on the detention of Kaing Guek Eav (Duch)**

87. Of great interest is the decision by the Pre-Trial Chamber on the legality of the detention order issued by co-investigating judges against Kaing Guek Eav, alias Duch. He was taken into ECCC custody on 30 July 2007, having already been in detention for over eight years, under the order of the Military Court, to face charges of genocide, amended to crimes against humanity, and again to detention under the 2004 legislation on the establishment of ECCC (before the physical existence of the Court). The defence’s arguments on the issue of bail were therefore tied to such issues as arbitrary detention and the right to be tried within a reasonable time frame. On 3 December 2007 the Pre-Trial Chamber upheld the validity of the detention order on the ground that the conditions for detention, as stipulated in the Internal Rules, are met, and declined, unfortunately, to enter into a discussion into whether or not there was a violation of the right of the accused to be tried within a reasonable time.

88. ECCC should pay due regard to the provisions on human rights and freedoms of the Constitution of Cambodia, and the mechanisms to fulfil them. In this way progressive interpretations of the Constitution will become part of the fundamental law.

89. The impact of ECCC will remain marginal unless the Government takes steps to end impunity for gross serious human rights violations of the recent past (since, for instance, 1991). Cambodian judicial authorities seem unable, whether through lack of resources or for political reasons, to act to combat comprehensively such recent violations of human rights. It is particularly ironic that the international community should spend so much effort and money to end the impunity of old and broken persons for crimes committed 30 years ago while turning a blind eye to the present violations of rights.

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<sup>20</sup> The UNDP team concluded that “the recruitment was not performed in a transparent, competitive and objective manner that ensures the selection of the most suitable candidate for the job” (UNDP, report of the special audit, 4 June 2007, p. 4).

<sup>21</sup> Statement from the Review Committee of the ECCC, 16 March 2007.

## V. ELECTION LAWS AND PRACTICE

90. Cambodia has a record of regular National Assembly and commune elections. Most observers reported positively on the 2007 commune elections and noted a decline in violence. There is a good legislative framework for elections and considerable development of other legal and administrative institutions.
91. Serious obstacles remain to achieving the constitutional goal of political pluralism through elections. Some of these are general - deficiencies in democratic governance, human rights, media access and fairness, and in the role of civil society. Opposition political parties have complained of irregularities in the administration of the elections that favoured the ruling party.
92. The National Election Commission (NEC) is generally well thought of. It is relatively transparent and holds consultations with political parties and civil society. Two major constraints seem to affect its ability to ensure free and fair elections. First, it is not in reality fully independent and does not enjoy a constitutional status. Its members are appointed by the National Assembly on the nomination of the Ministry of Interior which is not obliged to consult political parties (it did do so in recent nominations). Nor is the Ministry of the Interior required to produce more nominations than vacancies, to give the National Assembly a real choice. Members have no fixed term of office and there are no safeguards against their arbitrary removal.
93. The second constraint is that many administrative functions essential for free and fair elections are not performed by NEC. Issuing of identity cards (crucial for registration as a voter) and preparation of the voter registry are done by State officials, mostly connected to the ruling party. In 2007 even the registration of candidates was not done by NEC. Due to the scale of these operations and the different levels at which they are carried out, NEC cannot ensure that they are properly, fairly and effectively carried out (especially as these other bodies are under considerable political pressure). The Special Representative heard several complaints that these functions were performed to favour the ruling party.
94. An adviser has identified various other problems: complainants being coerced into signing reconciliation agreements; complex regulations that are arbitrarily applied; insistence of electoral authorities on formal complaints; involvement by village chiefs; failure to sanction those who commit electoral violations, particularly “vote buying”; and lack of impartiality and professionalism in decision-making on complaints and appeals, particularly at the sub-NEC levels. He advises the creation of a separate body to assume the NEC function of considering appeals from lower levels, and phasing out the role of village chiefs.
95. NEC is required to ensure that all political parties have equal access to the media. International and other election observers have stated that the media, State-owned and most of the private, are “overwhelmingly favourable to the main governing party”.
96. The period for election campaign for the National Assembly is 30 days. Outside this period there can be no campaigning - defined very broadly to exclude legitimate political activity. One observer said that Cambodian authorities “have very limited tolerance for organized political parties or NGOs outside a campaign period”.

97. There is no mandatory reporting on campaign financing; no explicit limitations on non-monetary and in-kind assistance to electoral candidates; no ceiling on total expenditures; no limitation on individual or total contributions; and no obligations on party officials to certify accounts or sanctions for false accounting.

98. A number of recommendations on reforms to the electoral system prepared by the European Union and other groups of observers at previous elections and UNDP experts should be considered, and implemented for the 2008 elections.

## VI. CONCLUSIONS AND RECOMMENDATIONS

99. **Year after year, the Special Representative's predecessors and others have addressed the problems of the legal and judicial system in Cambodia and made numerous recommendations, to no avail. The Government has no incentives for reform, as the international community continues to make large financial contributions regardless of widespread violations of human rights.**

100. **A distinguished Cambodian legal scholar recently commented that "the Government is the least serious about the legal and judicial programme".<sup>22</sup> The World Bank shelved a project because of "a lack of senior-level commitment to the implementation of a concerted legal and judicial reform agenda within the Executive and Judicial branches of the Government".<sup>23</sup> Another donor has said that numerous plans and councils on good governance are "little more than a studied attempt to tell donors what they want to hear".<sup>24</sup>**

### Recommendations to the Government

101. **The Government has primary responsibility for the rule of law. The Special Representative would stress the following recommendations, many of which were made previously:**

- **The Government must respect the independence of all prosecutors and judges, including those (and defenders and administrative staff) within ECCC.**
- **The Government must devote more resources to the justice sector. Efforts to train lawyers and to recruit prosecutors and judges should continue and the aim should be for everyone to be within easy reach of a court and for delays in proceedings to be minimized.**

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<sup>22</sup> LICADHO report, *The charade of justice*, 2007, p. 27.

<sup>23</sup> Kingdom of Cambodia, 2005 CAS Completion Report, World Bank, 30 March 2005.

<sup>24</sup> Cambodian Corruption Assessment, USAID, August 2004.

- **The Government should appoint a committee drawn from Government, the BAKC, human rights NGOs and local and foreign experts, to advise on the organization of legal aid. Its recommendations should be implemented speedily.**
- **The Government must promote respect for the rule of law within the State and society. It must set the example, as guardian of the Constitution and the law. Laws must be implemented fairly and fully and effective remedies for the violation of rights ensured, if people are to trust the notion of rule of law.**
- **The Government must urgently enact laws on demonstrations and anti-corruption, ensuring that they comply with the Constitution and human rights standards.**
- **The Government must protect the rights of indigenous persons and others who, due to illiteracy, customary practices and expectations, communal forms of organizations etc., are not familiar with the law or its procedures, the rules for making of economic transactions or with the market economy. Steps must be taken to ensure that State authorities, including communes, are no longer involved in transactions of dubious morality or law that undermine the rights of these communities and individuals.**
- **The Government must do all it can to stop forced evictions. It must never be complicit in unlawful evictions. Internationally accepted guidelines must be observed, including the principles that nobody should be made homeless as a result of development-based evictions, the full and informed consent of those targeted for eviction. Evictions should be carried out only in exceptional circumstances, and solely for the purpose of promoting the general welfare in a democratic society. The use of force should be prohibited. No one should be imprisoned in relation to protecting their rights to land and housing and anyone detained in this context should be released. A moratorium on forced evictions should be declared, to allow the determination of the legality of land claims to be made in an objective and fair manner.**
- **The Government must establish an independent authority to receive complaints about maladministration by the State (including institutions of justice). A Human Rights Commission fully established on the Paris Principles could be given this task.**
- **The Government must respect the duty and right of civil society to promote and protect human rights and observe United Nations resolutions on the rights of human rights defenders. No restrictions should be placed on reasonable activities of local communities and non-governmental associations.**

- **The Government must deal fairly with specific cases brought to its attention in recent reports of the Special Representatives and human rights organizations, including the circumstances in which the Venerable Tim Sakhorn disappeared.<sup>25</sup> These steps should include justice for the alleged killers of union leader Chea Vichea and bringing to justice his real killers.**

#### **Recommendations to civil society actors**

102. **The Special Representative stresses the important contribution of civil society (including non-governmental organizations, lawyers, universities, think tanks and other educational and research institutions) to the common effort to establish the rule of the law. He encourages them to pursue their efforts, with determination, patience and courage, in a spirit of openness, dialogue and cooperation with the government authorities. They should continue to provide people with information about human rights, institutions and remedies, and with a voice when the administration, lawmakers and the judiciary do not listen. Discussion with the people about the Special Representative's reports and feedback should be encouraged.**

103. **Educational institutions and NGOs should engage the public, through seminars, media and publications, on the procedures and practices as well as the rulings and judgements of ECCC, to create awareness of the meaning and importance of the rule of law.**

#### **Recommendations to the international community, including United Nations institutions**

104. **To be seriously considered and implemented by the Government, the recommendations of the successive Special Representatives need to be endorsed and supported by foreign Governments and international agencies.**

- **The international community should set up or facilitate the setting up of an independent expert commission to review the working of the legal and judicial system, to make recommendations, and to report annually to the international community and the Royal Government of Cambodia, one month ahead of the consultations between the Government and the donors and lenders. The commission should develop effective and realistic criteria to assess progress, paying particular attention to the enforcement of the law and the independence of the prosecution and judges. The report should form the basis of consultations.**

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<sup>25</sup> The chief monk of Phnom Denh pagoda in Takeo Province and an ethnic Khmer from Southern Viet Nam was defrocked on the order of the Chief Patriarch on grounds that his activities in providing shelter to monks from the Khmer Krom minority in Viet Nam fleeing alleged religious persecution had undermined good relations between Cambodia and Viet Nam. He was then driven away by unidentified persons and his whereabouts were unknown until August when he appeared in custody in Viet Nam.

- **Foreign Governments or agencies providing assistance in drafting laws must ensure that the law they are proposing is consistent with human rights. This raises no difficulties in respect of Cambodia's sovereignty. This is also an international obligation of each and every Member State of the United Nations, under the Charter and under the treaties they have ratified.**
- **Foreign embassies, collectively or bilaterally, should engage the Government in dialogues on human rights and urge the Government to stop the most egregious violations. They should emphasize that respect for human rights is an essential basis of the partnership between them and the Cambodian State and people, and for the pursuance of a development process that places human beings and environment at its heart, rather than unlimited profit and greed, at its heart.**
- **Since the Constitutional Council has stated that human rights treaties are binding, it is necessary that the decisions of the treaty bodies and of international and foreign courts and tribunals should be taken into account when applying the law. This approach would reinforce the impact that ECCC is expected to have on improvements in the Cambodian legal and judicial system. OHCHR should translate and disseminate major interpretations and conclusions of the treaty bodies.**

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