Joint Cambodian NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia

Presented to the UN Committee Against Torture (CAT) prior to Cambodia's second periodic report at the 45th session of CAT, held in Geneva from 1 to 19 November 2010

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Jointly prepared by

Cambodian Human Rights and Development Association (ADHOC),

Cambodian Defenders Projects (CDP),

Cambodian League for the Promotion and Defense of Human Rights (LICADHO),

Transcultural Psychosocial Organization (TPO),

Cambodian Human Rights Action Committee (CHRAC),

and endorsed by

Asian Human Rights Commission (AHRC); Cambodian Center for Human Rights (CCHR); Coordination of Action Research on AIDS and Mobility (CARAM Cambodia); Community Legal Education Center (CLEC); Cambodian Women in Crisis Center (CWCC); Khmer Institute of Democracy (KID); Khmer Youth Association (KYA); Legal Aid of Cambodia (LAC); People's Center for Development and Peace (PDP); Protection of Juvenile Justice (PJJ); Human Rights Vigilance of Cambodia (VIGILANCE)

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Abbreviations

ADHOC	Cambodian Human Rights and Development Association
AHRC	Asian Human Rights Commission, Hong Kong
AIJI	Asian International Justice Initiative
BAKC	Bar Association of the Kingdom of Cambodia
CCP	Code of Criminal Procedure
CCHR	Cambodian Center for Human Rights
CDP	Cambodian Defenders Project
CHRAC	Cambodian Human Rights Action Committee
CJR	Center for Justice and Reconciliation
CoM	Council of Ministers
ECCC	Extraordinary Chambers in the Courts of Cambodia
GDP	General Department of Prisons
HRW	Human Rights Watch
IOM	International Organization of Migration
JRS	Jesuit Refugee Service
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
LHTSE	Law on the Suppression of Human Trafficking and Commercial Sexual Exploitation
MoI	Ministry of Interior
MoJ	Ministry of Justice
NPM	National Preventive Mechanism (according to OPCAT)
OHCHR	Office of the High Commission for Human Rights (Cambodia Office)
OPCAT	Optional Protocol to the Convention Against Torture
SCM	Supreme Council of Magistracy
TPO	Transcultural Psychosocial Organization

I. Executive Summary

A. After its initial report in 2002, the Royal Government of Cambodia ("the Government") submitted in 2009 its second periodic report to the Committee against Torture (CAT). Ahead of Cambodia's review by the Committee in November 2010, the purpose of the present report is to provide a robust, collective analysis from civil society actors to raise awareness of the situation of torture and other ill-treatment in Cambodia and other important issues in relation to the Convention against Torture ("the Convention").

B. Even 18 years after Cambodia's accession to the Convention, the country's legal and judicial system is unable to effectively prevent and punish acts of torture. The definition of the term "torture" remains unclear under Cambodian law, and the Government has not used the opportunity as provided by the new Penal Code to include a definition of torture in line with Article 1 of the Convention. Fundamental laws which could have potentially strengthened the independence of the judiciary were not enacted. Further, victims of torture and citizens generally are not afforded sufficient legal representation needed to confront a judiciary which lacks resources and professionalism, while being corrupt at most levels and not fully free from political interference.

C. In Cambodia today, there are still no measures available to effectively prevent acts of torture. The evidence collected by various NGOs indicates that the majority of cases of torture occur in police custody, often in the form of extracting confessions. The lack of appropriate detention cells at police stations results in arrested persons often being shackled for prolonged periods. It is in this setting that the most common forms of torture and ill-treatment are imposed, including beatings, crushing of limbs, electric shocks, intimidation and threats to family and friends. The fact that detainees are not allowed to contact a lawyer during the first 24 hours of custody combined with the complete absence of proper monitoring of police stations fosters an environment in which torture and other forms of ill-treatment are widespread.

D. The forcible repatriation of 20 Uighur asylum-seekers to China in December 2009 severely damaged the credibility and reliability of Cambodia's system of refugee protection. The forced deportation is in direct violation of the fundamental principle of non-refoulement as stated in Article 3 of the Convention. The lack of protection and specific safeguards for asylum-seekers represents a backward step for the status of refugees in Cambodia.

E. The Cambodian criminal justice system continues to rely on incarceration as the default punishment for both defendants awaiting trial and convicted criminals. As a consequence, individuals awaiting trial face excessive pre-trial detention periods, often to the extent that they are kept in pre-trial detention longer than the maximum prison term for the charged

offence. Other non-custodial measures like bail are not applied to counter this development. This over-reliance on incarceration is directly responsible for Cambodia's ever growing prison population and the overcrowding of detention centers, resulting in poor prison conditions, inadequate separation of men/women/juveniles and the frequent use of torture and other forms of ill-treatment to punish transgressions. In addition, prison discipline is increasingly delegated to certain inmates who make up so-called "prisoner self-management committees."

F. Those having suffered or witnessed acts of torture or ill-treatment have no effective way to make complaints against responsible police or other state officials. The lack of a comprehensive and transparent system of receiving complaints against the police and other law enforcement officials is one of the most serious obstacles for the State to fulfill its obligations as provided in the Convention. The Government has not established a national preventive mechanism in accordance with its obligations under the Optional Protocol to the Convention against Torture (OPCAT).

G. The direct result of the above is that prompt and impartial investigations of alleged acts of torture take rarely place. In fact, we are not aware of any prosecutions of law enforcement officials for torture-related crimes in the past five years. In addition, victims' fear of reprisals is a major barrier to any formal complaint, and the State does not provide victims and witnesses with any form of protection mechanism.

H. There exists no comprehensive system of compensation and rehabilitation for victims of torture in Cambodia. This report provides an unprecedented overview of available mental health services in the country, detailing the gaps in access and availability of specialized services for victims of torture.

I. Various acts of other cruel, inhuman or degrading treatment or punishment occur in the territory of Cambodia. The Government does not take effective measures to prevent and investigate such acts and prosecute those responsible for the commission of these acts. A particular area of concern is the existence of unlawful detention centers, such as the Social Affairs Centers, which operate outside the scope of the criminal justice system. These centers exist solely to lock-up members of society deemed 'undesirable' by the authorities without due process of law and legal consideration. Conditions at these centers are often inhuman, and there has been evidence of numerous human rights abuses at these centers, including torture and other forms of cruel, inhuman or degrading treatment. The Government has done little to address this grave situation.

II. Summary Recommendations

(See detailed recommendations at the end of the report)

The above mentioned NGOs recommend to the Royal Government of Cambodia:

(1) Prepare and enact **specific anti-torture legislation** which incorporates into domestic law the definition of torture set out in Article 1 of the Convention and characterizes in detail acts of torture as a specific crime, punishable by appropriate sanctions;

(2) Take effective measures to establish and ensure a **fully independent and professional judiciary** in conformity with international standards. Such measures include to immediately expediting the adoption of three fundamental laws: the Organic Law on the Organization and Functioning of the Courts; the Law on the Amendment of the Law on the Supreme Council of Magistracy; and the Law on the Statute of Judges and Prosecutors;

(3) Provide for an **adequate and effective legal aid scheme** which provides sufficient resources and independent capacities in order to guarantee access to justice for all the people of Cambodia, particularly for poor and vulnerable populations, and enables any person deprived of his or her liberty the right to be assisted by a lawyer;

(4) Establish a **separate juvenile justice system** by adopting expeditiously the draft Law on Juvenile Justice and develop corresponding guidelines and directives for judges, prosecutors and judicial police on the concept of a child-friendly justice system;

(5) Amend the Criminal Procedure Code as to **guarantee detainees the right to communicate with a lawyer**, relative, friend or other person at any time while in police custody, and to have a legal representative present during police questioning;

(6) Immediately close all **unlawful detention centers**, in particular the so-called Social Affairs Centers. These centers exist solely to lock-up, without due process, members of society deemed 'undesirable' by the authorities. The existence of these centers has no basis in national or international law;

(7) Immediately stop the practice of **shackling** persons in police custody and other detention;

(8) Increase without delay the **use of non-custodial pretrial measures**, for instance supervised release prior to trial, in order to reduce excessive pre-trial detention, and comprehensively apply and further develop existing legal provisions on bail;

(9) Take all the necessary measures to reduce and prevent the **use of torture and other ill-treatment in police custody**, including increased monitoring by prosecutors and independent organizations, and training of law enforcement officials, judges and lawyers in human rights law, and in particular the provisions of the Convention;

(10) Take measures to improve **conditions of detention** in police stations and prisons, including hygiene, food supply and separate detention of men, women and juveniles;

(11) Immediately disband the so-called "**prisoner self-management committees**," which function as a way for prison officials to outsource critical job functions and disguise state-sanctioned torture;

(12) Establish an **independent civilian oversight body** competent to directly receive and deal with **complaints against the police** and other law enforcement personnel in a satisfactory manner;

(13) Ensure that law enforcement personnel and other officials of the state accused of torture and other ill-treatment are **promptly, impartially and fully investigated** and, where appropriate, prosecuted according to the law;

(14) Establish **domestic capacities in forensic pathology** and other specialized medial facilities allowing for a professional examination of victims of torture and other ill-treatment, if necessary by calling for international cooperation;

(15) Establish an effective state program of **victims and witness protection** at the courts which assists in ensuring confidentiality and protects those who come forward to report or complain about acts of torture;

(16) Prohibit the **use of confessions** as admissible evidence in court unless the confessions were made in the presence of a judge or a lawyer, and train law enforcement, judges and lawyers in how to identify and investigate false or forced confessions;

(17) Improve **access to medical and psychological services for torture survivors**, especially during and after imprisonment, and assure that they receive effective and prompt rehabilitation services;

(18) Increase the **capacity of national health agencies** in providing specialized rehabilitation services, based on recommended international standards, to survivors of torture, including their family members, specifically in the field of mental health;

(19) Ensure that any **national preventative mechanism** established in accordance with the Optional Protocol to the Convention against Torture is independent and impartial and also capable of receiving individual complaints about torture and other prohibited ill-treatment which it can then convey to the competent authorities for follow-up action.

III. Introduction

After its initial report in 2002, the Royal Government of Cambodia submitted in 2009 its second periodic report to the Committee against Torture (CAT). Ahead of Cambodia's review by the Committee in November 2010, the purpose of the present report is to provide a robust, collective analysis from local civil society actors. In doing so, we want to raise awareness of the situation of torture and other ill-treatment in Cambodia and other important issues in relation to the Convention against Torture.

As this report will show, 18 years after Cambodia's ratification of the Convention Against Torture, the situation of torture and other cruel, inhuman or degrading treatment in Cambodia is still of concern. However, this year has also seen on 26 July 2010 the first verdict before the Extraordinary Chambers in the Courts of Cambodia (ECCC) which concerned the notorious and wide scale use of torture at Tuol Sleng, the S-21 security prison used during the Khmer Rouge regime. The conviction of the former director of this torture center for crimes against humanity and war crimes should send a strong signal for ending impunity for torture in Cambodia.

The idea for a joint Cambodian NGO parallel report, to accompany the Government's report, was conceived at a workshop held on 23 June 2010 at the OHCHR Cambodia office. This workshop was organized by the Cambodian Human Rights Action Committee (CHRAC), a coalition of 23 Cambodian human rights NGOs, in collaboration with REDRESS and the Asian Human Rights Commission (AHRC). The preparations for the report started in July 2010 when a working group with representatives from four Cambodian NGOs was formed. The participating NGOs are the Cambodian Human Rights and Development Association (ADHOC), the Cambodian Defenders Project (CDP), the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and the Transcultural Psychosocial Organization (TPO). These NGOs requested the Secretariat of CHRAC to coordinate the writing process and to compile the joint report based on information gathered by the contributing NGOs and other sources.

We hope that this report will inform the Committee against Torture in preparing its observations and assist the Royal Government of Cambodia in identifying current problems and taking swift action to fulfill its obligations under the Convention. Finally, we want to thank all NGOs and other individuals who contributed to the preparation of this report.

Phnom Penh, Cambodia, October 2010

IV. Comments on the Cambodia Report and Replies to the List of Issues

Article 1 Definition of torture

On the list of issues no 1: Definition of torture in Cambodian law

1. As the Cambodian Government's report points out, neither the Penal Procedure Code nor the draft Penal Code include a definition of the term "torture". Even if Article 31 of the Constitution obliges public officials to respect international conventions, including the Convention against Torture, the lack of a clear terminology is problematic and does not assist in increasing the understanding of torture in the judiciary and among law enforcement officials. For instance, many law enforcement officials do not consider psychological harm as a form of torture. Thus, it is regrettable that the Government has not used the opportunity as provided by the drafting of the new Penal Code to include a definition of torture as contained in Article 1 of the Convention. The Government thereby failed to meet an important recommendation made by the Committee to the Government in 2003. As a consequence, the Government should now consider preparing and enacting a specific anti-torture legislation.

On the list of issues no 2: Status of adoption of fundamental laws

2. In March 2010, the National Assembly adopted the Cambodia's first Anti-Corruption Law. Although the Government's willingness to proceed with this long overdue law is laudable, it is inadequate that the adoption followed within three days after the draft law was first made available to the public, thus providing civil society and other stakeholders with no opportunity to comment on the draft. Previous civil society comments not considered in the adopted law, such as those provided by the Coalition for Integrity and Social Accountability, referred to shortcomings in relation to witness and whistleblower protection and the independence of the Anti-Corruption Unit provided in the law.[1] Since the adoption of the law, the Anti-Corruption Unit was established, but so far it has not dealt with any high-level corruption cases. Corruption remains endemic in the country's state institutions and severely hampers the functioning of the judiciary.

3. Despite the Government's progress with the adoption of the Anti-Corruption Law, no progress was made with regard to the adoption of three other fundamental laws: the Organic Law on the Organization and Functioning of the Courts; the Law on the Amendment of the Law on the Organization and Functioning of the Supreme Council of Magistracy; and the Law on the Statute of Judges and Prosecutors. Nevertheless, the adoption of these fundamental laws figures high on the Government's agenda outlined in 'National Strategic Development Plan' for the years 2009-2013.[2] The Law on the Statute of Judges and Prosecutors is currently in the Office of the Council of Ministers (CoM). Outstanding issues relate in particular to the oversight role that the Ministry of Justice (MoJ) currently occupies

[1] *NGO Position Papers on Cambodia's Development in 2009-2010 to the 3rd Cambodia Development Cooperation Forum, 02-03 June 2010*, Monitoring the Implementation of the National Strategic Development Plan and the 2008 CDCF Joint Monitoring Indicators, Phnom Penh, May 2010, 3-4.

[2] See Royal Government of Cambodia, '*National Strategic Development Plan, 2009-2013*', Phnom Penh, November 2009, para. 329, p. 101.

in terms of guidance and inspection of the Office of Prosecution, whereas judges are under the guidance and inspection of the Supreme Council of Magistracy (SCM). The Law on the Organization and Functioning of the Courts is currently with the Council of Ministers. Most importantly, no progress has been made regarding the Law on the Amendment of the Supreme Council of Magistracy, which was originally proposed to the National Assembly in 2002. It seems it is currently still under review in the Ministry of Justice. Contentious issues relate to the role and independence of the secretariat of the SCM as well as the composition of the SCM. The law is urgently needed to enable the SCM to effectively monitor the judicial system and the conduct of judges as well as to receive complaints on any irregularities in the courts. No further information on the future progress of these draft law is publicly available. Overall, all three laws are vital to ensure the independence of the judiciary and the effective functioning of the courts.[3] The current state of Cambodia's judiciary is not in line with international standards, such as provided for in the Basic Principles on the Independence of the Judiciary.

Article 2 Prevention of torture

4. In Cambodia today, there are no measures available to effectively prevent acts of torture. In this regard, the state of the judiciary is of particular concern. In his most recent visit in June 2010, Surya Subedi, UN Special Rapporteur on the situation of human rights in Cambodia, summarized the situation of the country's judiciary as follows: "… a combination of a lack of adequate resources, organizational and institutional shortcomings, a lack of full awareness of the relevant human rights standards, and external interference, financial or otherwise, in the work of the judiciary, has resulted in an institution that does not command the confidence of people from many walks of life."[4] Moreover, in his most recent report dated September 2010, the Special Rapporteur went further to note that "people seem to be generally fearful of the courts"; "corruption seems to be widespread at all levels of the judiciary"; and "the judicial proceedings have been used by the rich and powerful in many cases to dispossess, harass and intimidate the poor as well as their lawyers and those working for them in the civil society sector".[5] Under such conditions, the judiciary is failing to assist in the prevention acts of torture, and it is not able to provide an effective redress for any victims of torture in Cambodia.

On the list of issues no 3: Persons detained in police custody

5. The Criminal Procedure Code specifies a number of rights afforded to the accused as listed in the Government's report. However, the current law provides inadequate protection for criminal suspects in police custody. In particular, Article 98 of the Code of Criminal Procedure does not permit a suspect to speak to a lawyer or family member during the first 24 hours of custody. According to that provision, only "*after* a period of 24 hours from the

[3] Cambodian Human Rights Action Committee, '*Legal and Judicial Reform Issues in Cambodia*', Submission to the Universal Periodic Review (UPR) of Cambodia 2009, CHRAC-KHM-S06-2009.

[4] Professor Surya P. Subedi, *Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia*, Phnom Penh, 17 June 2010.

[5] *Report of the Special Rapporteur on the situation of human rights in Cambodia*, UN doc. [A/HRC/15/46 of 16 September 2010], para. 51-53.

beginning of the police custody has expired, the detainee may request to speak with a lawyer or any other person…" [emphasis added]. Thus, suspects are routinely held *incommunicado* for at least the initial 24 hour period, which is often enough time to extract a confession, possibly under duress. Furthermore, the provision regarding police custody of a minor does not specify a timeframe for notifying a parent or guardian.

6. The Government does not allow NGOs to monitor places of police detention. NGOs must therefore rely on interviews with detainees – pretrial, convicted and released – in order to learn of the conditions of police detention. Based on these reports, it is clear that the majority of cases of torture and ill-treatment occur in police custody and that torture is commonly used to extract confessions from criminal suspects. The most common forms of torture and ill-treatment include kicking, beating (with fists or an object), crushing of limbs, electric shocks, intimidation and threats, prolonged handcuffing in uncomfortable positions, and shackling. Most police units lack the necessary training, resources and professional incentive to conduct impartial fact-based investigations. Thus, their focus is primarily on extracting an expedient confession, often by unlawful means. For instance, the number of torture related incidents occurring in police custody reported to workers of the local NGO LICADHO have increased steadily since 2008:

   2008: 83 cases reported during 2,015 inmate interviews (4.2 percent)

   2009: 108 cases reported during 1,728 interviews (6.3 percent)

   2010 (through June): 60 cases reported during 836 interviews (7.2 percent)

   Similarly, the NGO ADHOC recorded for the year 2009 nine victims who died in police detention apparently as a result of torture.[6]

7. **CASE STUDY**: On 19 February 2008, a police officer named Pring Pov, 40 years old; residing in Kep village, Kep commune, Kep district, was arrested without a warrant by his superior officer for refusing to cede his land to a senior government official as instructed. Pring was detained at a Police Discipline Unit in Samaki village, Trapaing Krasaing, Russey Keo district, where he was shackled all day and night in a windowless, 4x4m cell, without ventilation for an extended length of time. Although he was reportedly bleeding from acts of torture and became seriously ill, he was not afforded access to medical treatment. After his condition continued to deteriorate, Pring was taken to a hospital where he was under the supervision of eight police officers around-the-clock. He was discharged on 3 April 2008 and released the same day. Pring's wife filed a complaint with the provincial prosecutor for Kampot province, and the Cambodian Human Rights Action Committee (CHRAC) filed another complaint with the Prosecutor-General on 13 March 2008.[7]

8. The current facilities pose serious obstacles to the full implementation the rights provided for in the Criminal Procedure Code. Not all police stations have separate detention cells or lockups for police custody. As a consequence, arrested persons are often detained in toilets or hand-cuffed to chairs for a prolonged period of time. This practice has evolved to prevent

[6] ADHOC, *Human Rights Situation Report 2009*, Phnom Penh, January 2010, p. 10. Available at http://www.adhoc-chra.org/gallery/files/Adhoc_Situation2009%28en%29%20.pdf (last viewed on 5 October 2010)

[7] Case documented by CHRAC, also publicized by AHRC, in statement AHRC-UAU-012-2008, 3 April 2008.

arrested people from escaping. The lack of adequate safeguards for detainees in police stations creates an environment that engenders torture and ill-treatment of people.

9. As for the right to request health examinations, the law provides no guarantee of access to medical care for suspects in police custody. Article 99 of the Code of Criminal Procedure states that the "Royal Prosecutor or the judicial police officer may ask a doctor to examine the detained person at any time." The law however does not explicitly permit the detainee or his lawyer to request medical care. Thus, the current law gives law enforcement officials full discretion to decide whether a suspect will see a doctor. As a result, medical care during interrogations is virtually non-existent. And even in cases where such requests are made, there are only very limited medical services available in or near police stations. Local hospitals do not have secured facilities to treat detained persons. For fear of escape, police refrain from sending arrested persons to the hospitals for treatment.

10. **CASE STUDY**: This lack of medical care can lead to deaths in custody. The NGO LICADHO documented one such case, which occurred in Svay Rieng province in late June 2009. A 54-year-old man was arrested in a drink-driving accident in which he crashed his motorcycle, killing his passenger and injuring himself. His wife visited him and, after noting the worsening of the man's injuries, repeatedly requested the custodial officer to send her husband to hospital for treatment. The officer refused her request and instead told her to bring in a doctor to treat him in prison. However, the wife could not get a doctor to treat her husband because there was no letter of authorization for medical treatment from the police. The detainee's conditions worsened while in custody, which ultimately caused his death. The doctor carrying out the autopsy later stated that the person may not have died if he would have been sent for treatment on time.[8]

On the list of issues no 6: The Bar Association of the Kingdom of Cambodia

11. The independence and autonomy of the legal profession is regulated under the 1995 Law on the Bar Association of the Kingdom of Cambodia (BAKC). From 2004 to 2006, the BAKC was paralyzed by a dispute over its presidency which gave much doubt over the body's integrity and its independence from political interference. Though the BAKC has gained some stability since, doubts about its independence remain. Legislative safeguards to guarantee its independence are important, but they weigh little in practice.

12. Despite the regulations set out in the Law on the BAKC as mentioned in the Government's report, admission to the Bar is in practice highly dependent on the governing bodies of the Bar. Due to the high number of applicants, the Bar imposes a limit on the number of candidates each year. The President of the Bar has the right to recommend a list of applicants to the Bar Council which then approves applications. In order to be included in this list, candidates need to pay significant additional fees outside the formal process. In some cases, affiliation to certain civil society organizations or the political opposition also makes it difficult to enter the Bar.

[8] Case documented by LICADHO; also publicized by the Asian Human Rights Commission (AHRC) in statement AHRC-STM-159-2009 of 28 July 2009.

On the list of issues no 7: Legal aid services in Cambodia

13. The fundamental right to effective legal defense is enshrined in Article 38 of the Constitution. In addition, Article 300 of the Code of Criminal Procedure provides that the accused shall appear in person during hearings at court and may be assisted by a lawyer of their choice or request to have a lawyer appointed for them. Even more, Article 301 states that the assistance of a lawyer is compulsory where a trial involves a felony charge, or where the accused is a minor. If in either of these circumstances the accused has not selected a lawyer, a lawyer must be appointed upon the initiative of the court president.

14. However, in practice, the Government does not offer a comprehensive legal aid scheme for poor and vulnerable populations. This was confirmed by a systematic survey on the situation of legal aid in Cambodia which was conducted at the initiative of the Government's Council for Legal and Judicial Reform in 2006. The survey found that there was "no comprehensive legal, institutional and policy framework at the national level to guide the provision and regulation of legal aid services".[9]

15. Though it is commendable that the BAKC established a Legal Aid Department, its available resources are limited. Article 29 of the 1995 Law on the Bar provides for the establishment of a Bar Fund to be used partly for legal aid which is supposed to be derived from dues paid by its members. In addition, the Government has begun to contribute about 200 million Riel (about 47,000 USD) annually to the Department. Overall, the available financial resources are extremely insufficient. As a consequence, and apart from what BAKC is supposed to provide, and the provision of free services by a very few number of private practitioners, legal aid services in Cambodia are all provided by NGOs. The Cambodian Defenders Project (CDP) estimates that 90 percent of persons that need legal representation but lack the financial means are referred to NGOs by the courts or other NGOs.

16. Apart from the limited Government-funded capacities at the BAKC, the 2006 legal aid survey counted 85 lawyers in NGOs offering full-time legal aid services.[10] Preliminary results of a recent, non-finalized update survey of the available capacities, conducted by the Cambodian Human Rights Action Committee (CHRAC), seem to indicate that this number has gone down to 78 lawyers in the year 2010.[11] However, at the same time, there is a new scheme in existence which is funded by the French Embassy in collaboration with the BAKC. This scheme assists 22 part-time lawyers based in the provinces who take on a limited number of legal aid cases next to their private practice. Overall, the available capacities are by far insufficient to cover the demand for legal aid service in Cambodia.

17. Little empirical information is available on the affect of the shortcomings in the legal aid system. A few NGOs monitor trials at the national courts, though none monitor the courts in remote provinces. The Center for Justice and Reconciliation (CJR) monitored 484 criminal cases, involving 799 defendants, at five courts of law (Supreme Court, Appeals Court, Phnom

[9] For more information on the situation of legal aid in Cambodia, see also Council for Legal and Judicial Reform, '*Legal Aid in Cambodia. Practices, Perceptions and Needs*', A study based on a national survey, Phnom Penh, December 2006, p. 10.
[10] Ibid, p. 14.
[11] Cambodian Human Rights Action Committee (CHRAC), Legal Aid Survey, soon to be published in 2010.

Penh Capital/Municipal Court, Battambang Provincial Court and Kandal Provincial Court) in the period from December 2009 to February 2010. Of the 467 felony defendants, 438 defendants (or 94 percent) were represented by counsel at the trials monitored.[12] Likewise, the Cambodian Center for Human Rights (CCHR) monitored 199 trials in the period from August to December 2009 at the Phnom Penh Capital Court and the Kandal Provincial Court. Of the 199 trials monitored during the Reporting Period, the defendant was without legal representation in 64, or 32 percent, of all trials monitored. The fact that almost one third of defendants in the trials monitored appeared without legal representation in itself suggests that the right to legal representation is unlikely to be communicated to all accused. In five of the 105 trials in which the accused was charged with a felony, no legal representation was present at trial. While it is encouraging that these five trials represent such a small percentage of the total trials monitored involving felonies, these specific trials were conducted in clear breach of law which makes legal representation compulsory in these cases. A majority – 62 percent – of those charged with a misdemeanor also appeared without representation, raising serious doubts about the procedural fairness of these trials.[13]

18. An effective defense does not end with the right to counsel but also requires adequate time and facilities for the lawyer and client to prepare their case. In cases of felony where the court is obligated to designate defense attorney, judges mostly contact NGOs. However, courts often do not inform lawyers until one day before the hearing which does not allow for sufficient time to prepare properly for defending the case. In some cases, courts refer the case to private lawyers to merely show up during the trial to fulfill the procedural rules. Though the situation has improved to some extent since 2007 due to better communication technology such as mobile phones, it is often not in line with the Code of Criminal Procedure which in Article 145 permits at least five days for the counsel to review and prepare a legal defense prior to the interrogation by the Investigating Judge.

On the list of issues no 8: Legacy of the ECCC

19. In July 2010, the Extraordinary Chambers in the Courts of Cambodia (ECCC) pronounced the verdict in its first case. The trial was closely monitored nationally and internationally. The Asian International Justice Initiative (AIJI) "assessed the Duch trial to have been conducted in accordance with generally accepted standards of due process at international criminal tribunals".[14] In comparison to the national court system, high standards exist at the ECCC, especially in regard to the rights of the accused, detention procedures, witness and victim protection and court management more generally. Although the central aim of the ECCC is to prosecute senior leaders and those most responsible for the atrocities committed during the Khmer Rouge era, it has additionally been promoted by both the United Nations and the Royal Government of the Kingdom of Cambodia as a model for Cambodia's domestic

[12] Center for Justice and Reconciliation (CJR), '*CJR Law Review*', Issue 01, Phnom Penh, March 2010, p. 8-9. Available at http://www.cjr-cambodia.org/pdf/CJR_LawReview_Mar2010_English.pdf (last viewed on 5 Oct 2010)
[13] Cambodian Center for Human Rights (CCHR), '*Fair Trial Rights in Cambodia. First Bi-annual Report*', Phnom Penh, July 2010, p. 29-30.' Available at http://www.cchrcambodia.org/English/add_report/reports/tmp-report-en%28071310_1279077859%29.pdf (last viewed on 5 Oct 2010).
[14] Asian International Justice Initiative (AIJI), '*Lessons Learned from the Duch Trial. A Comprehensive Review of the First Case before the Extraordinary Chambers in the Courts of Cambodia*', Phnom Penh, December 2009, p. 6.

criminal courts. Despite this promotion, to date there has been very little active engagement between the ECCC's judges and lawyers and experts working at the national level to consider ways in which this model might be used to achieve the most positive results. The ECCC has created an internal Legacy Advisory Group, but there is no work plan and no activities have been implemented to date. A laudable development is the recent engagement of the OHCHR Cambodia office which has created the position of an ECCC Legacy Officer to consider and facilitate practical approaches to ensuring the Tribunal has a positive impact on Cambodian criminal procedure and the domestic courts system more generally. However, concrete actions need now to follow by the Government, the ECCC and international donors if the aim is to maximize the Tribunal's positive legacy with regard to the judicial system in Cambodia. In addition, special care should be taken to avoid any potential negative legacy of the ECCC. A recent split decision of the ECCC Pre-Trial Chamber in relation to political interference provides an illustration of the potential for such a negative legacy (see also our response to the list of issues no 29).

Article 3 Prohibition of 'refoulement'

20. On 19 December 2009, the Royal Government forcibly deported 20 Uighur asylum-seekers, including two young children, to China without an examination of their refugee claims. Although the Cambodian authorities had initially given assurances that they would consider these individuals as asylum-seekers and complete the determination of their refugee status accordingly, this was abruptly overturned and all asylum-seekers were deported by plane to China. Such conduct was not just in violation of the 1951 Refugee Convention, which Cambodia has ratified, but it stands also against the fundamental principle of non-refoulement as stated in Article 3 of the Convention against Torture. No fair and objective risk assessment took place before a decision was taken about these asylum-seekers. The status of these deported Uighurs in China remains unknown. Two days after the deportation, Cambodia and China signed agreements involving development deals worth more than $1 billion USD.[15] This was not the first such incident. On 9 August 2002, the Government deported to China two practitioners of the Falun Gong who were seeking asylum in Cambodia. The case of the deportation of the Uighurs, without following the safeguards of the Convention, severely damages the credibility and reliability of the system of refugee protection in Cambodia.

21. On 30 June 2007, Cambodian authorities arrested Mr. Tim Sakhorn, a Khmer Krom activist and Buddhist monk of the Northern Phnom Den Pagoda in Takeo Province. He was subsequently defrocked and driven away in a car. His whereabouts remained unknown for weeks. On 3 August 2007, Vietnamese state media reported that Tim Sakhorn was in prison in Vietnam. In November 2007, he was put on trial in An Giang Province in Vietnam and sentenced to one year imprisonment for "undermining the solidarity between Cambodia and Vietnam".[16] Some time after his release from prison in 2008, he was temporarily

[15] Mydans, Seth. '*Twenty Uighurs, $1 Billion and a Clear Signal*', International Herald Tribune, reprinted in the Cambodia Daily on 24 December 2009, p. 26.

[16] Human Rights Watch. '*On the Margins. Rights Abuses of Ethnic Khmer in Vietnam's Mekong Delta*'. New York, USA: Human Rights Watch, p. 66-75.

allowed by Vietnamese authorities to return to Cambodia. Afraid of being returned again to Vietnam, Tim Sakhorn fled to Thailand in mid-April 2009 where he sought political asylum.[17] The case illustrates the many difficulties Khmer Krom face in Cambodia today.

On the list of issues no 9: Asylum-seekers and refoulement of foreigners

22. According to information provided by the Jesuit Refugee Service (JRS) Cambodia, there are currently 66 individuals seeking asylum in Cambodia. This is an increase from the previous years (2007: 44 individuals; 2008: 42 individuals; 2009: 56 individuals, including the 20 Uighur asylum-seekers deported to China). See detailed statistics below.

Current situation of asylum seekers in Cambodia[18]

Number of individuals: 66*
**Data does not include those individuals who have abandoned claims/left the country voluntarily*

Country of Origin	Number	Comments
Vietnam	7	
Burma	49	33 Rohingya
Sudan	1	
Nigeria	1	
Ghana	1	
Pakistan	7	

Gender	Number
Male	44
Female	22

Age	Number
Under 18	13
18-30	21
30-49	26
50 and above	6

23. Since the passing of the Refugee Sub-Decree on 17 December 2009 which hands over refugee status determination powers to the Cambodian government through its Refugee Office (previously they were decided jointly between UNHCR and Refugee Office), no cases have been decided. JRS assumes that the probable risk of torture would be assessed in the refugee status determination procedure. In terms of appealing decisions to deport or refoule an asylum seeker, there are no avenues to appeal decisions as they are usually acted upon immediately and individuals are physically deported. However, Article 22 of the Refugee Sub-Decree provides for an appeal avenue, although this has not been exercised –

[17] OHCHR Cambodia, '*Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights*', UN doc. [A/HRC/12/41 of 5 August 2009], para. 43.

[18] Statistics provided by the Jesuit Refugee Service, Cambodia. Note that statistics are only for those who sought assistance from JRS. There may be slightly different statistics from UNHCR.

particularly in the case of the Uighurs who were deported shortly after the Sub-Decree entered into force.

24. As far as JRS is aware, no Cambodian border officials have yet been trained in the asylum procedures. Under the Refugee Sub-Decree, Article 6 states that 'aliens may apply for asylum with the competent authorities of the Kingdom of Cambodia by any way as appropriate.' Thus, asylum seekers should be able to present themselves at the border and be allowed entry into the country despite not having any official documents or visas (Article 6 provides an exemption from Article 8 and Article 11 of the Law on Immigration). Practically speaking, since the implementation of the Sub-Decree, those asylum seekers who do not have documents have entered the country illegally and then managed to come to Phnom Penh and register at the Refugee Office.

On the list of issues no 10: Protection of unaccompanied asylum-seekers

25. There is no legal framework that provides for the protection of unaccompanied asylum-seekers and refugee children. Given this legislative gap, it would be assumed that UNHCR procedures for their protection would be applied.

On the list of issues no 11: Deportation of Montagnard asylum-seekers

26. Since early 2001, several thousands of Montagnard asylum-seekers have fled religious persecution in Vietnam to seek refuge in Cambodia. There is evidence collected by the NGO ADHOC that suggests that in 2006, the number of asylum-seeking refugees totaled 425, markedly less than the total number of 1,008 in 2005.[19] We do not have clear statistics on the number of arrivals and deportations since 2007.

27. There has been significant publicity surrounding the 2005 incident where many Montagnard individuals were forcibly returned to Vietnam by Cambodian authorities.[20] The Cambodian police on this occasion were reported to have used unwarranted violence during the forced return, striking asylum-seekers with batons and using electric prods to herd people into buses. On arrival in Vietnam, the majority of the repatriated were interrogated and often charged according to Article 91 of the Vietnam Penal Code with 'fleeing abroad or defecting to stay overseas with the view to opposing the people's administration'.

28. The 2005 UNHCR tripartite Memorandum of Understanding (MoU) with the governments of Cambodia and Vietnam forms the primary guideline for dealing with Montagnard asylum seekers. Under the MoU, refugees who refuse to settle in Cambodia are to be repatriated Vietnam in a 'safe and orderly' form. This agreement means that the protection afforded to refugees effectively ceases for those that refuse to resettle. The return of asylum seekers, particularly without voluntary consensus from the individuals is contrary to Cambodia's obligations as a signatory to the CAT, the 1951 Refugee Convention and its 1967 Protocol not to return individuals to a place where their lives or liberty are at risk, or face the possibility of torture. Moreover, the fact that the MoU does not specify that the Vietnam

[19] ADHOC, '*Human Rights Situation Report 2006*', Phnom Penh, March 2007, p. 7-8.
[20] See for instance Human Rights Watch (HRW), '*No Santuary. Ongoing Threats to Indigenious Montagnards in Vietnam's Central Highlands*', June 2006, p. 26-36.

government must not punish or prosecute returnees for 'illegal departure' is of grave concern, considered in light of reported persecution, abuse and torture.

29. From information gleaned from 2007, there appear to be no safeguards against non-refoulement which are in place. The practice of Cambodian authorities has been to arrest Montagnard asylum seekers and deport them to Vietnam. With regard to rejected asylum-seekers, the procedure has been that UNHCR then hands responsibility of the rejected asylum seekers to the Cambodian Government who then deports them. There have been no examples of case where the authorities did not proceed with deportation because of fear that the persons might be tortured.

Article 10 Education and Information

30. Generally, awareness and knowledge regarding the prohibition against torture as laid down in the Convention is low among law enforcement and health personnel as well as other public officials. Insufficient guidelines and regulations exist for persons who may be involved in the custody and interrogation of individuals subjected to arrest or detention.

On the list of issues no 14: Mental health and rehabilitation services in Cambodia

31. A national mental health authority exists (the 'National Program for Mental Health' under the Ministry of Health) which provides advice to the Government on mental health policies and legislation, coordinates training of health providers in mental health, and will provide guidance on research activities once sufficient capacity is built. Currently, there is a national mental health strategy plan for 2010 to 2015 that has being drafted, but has not yet been revised and adopted by the Ministry of Health. In addition, there is minimal financing allocated for the mental health department. There is no current mental health legislation.

32. In Cambodia, mental health care has been largely neglected by governmental and non-governmental organizations. Problems include a narrow range and limited quality of public mental health services, particularly in rural areas; service fragmentation; a lack of multi-sectored approaches to mental health care; a lack of unified leadership and vision; limited capacity to raise awareness at the policy and legislative level and ongoing struggles to secure funding. The absence of mental health policies and strategic plans impedes the development and availability of effective treatment, prevention and promotion programs. Furthermore, a lack of human resources, inadequate planning and sufficient funding reduces the capacity to effectively implement and monitor initiatives at the service provider levels.

33. With regard to the public sector in Cambodia, there are 63 mental health outpatient facilities (OPD) under the Ministry of Health, 45 are located in referral hospitals (out of 84 total), and 18 are located in health centers (out of 967 total). In 2008, there were 15,320 new psychiatric cases in eight provinces, which altogether provide a very low mental health service utilization rate of 0.001 per capita.[21] There are two psychiatric in-patient units at referral hospitals, both in Phnom Penh, with a total of 14 hospital based acute care

[21] Information according to the National Health Program, Ministry of Health.

psychiatric beds. None of the outpatient facilities offers specialized services for torture survivors. With regard to accessibility of services, inpatient services are only available in Phnom Penh, whereas outpatient services are located in eight provinces. Most psychiatrists and other specialist services are based in Phnom Penh, whereas mental health care in the provinces is provided by psychiatric nurses and/or general practitioners with only three months training in basic mental health care.

34. In the non-governmental sector, there are around 12 NGOs providing mental health services for different target groups (see table 1 in Annex). However, only a few organizations offer specialized medical and/or psychological assistance for torture victims: The Transcultural Psychosocial Organization Cambodia (TPO) runs an outpatient clinic in Phnom Penh that provides comprehensive psychiatric and psychological assistance to torture victims. Services range from psychiatric medical assessments, prescription of psychoactive medication, if required, cognitive-behavioral therapy, body focused trauma treatment and psych-education by trained mental health professionals. In cooperation with the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) TPO's psychiatrists provide medical assessments and treatment to prisoners, who are victims of torture. Within its “Project Against Torture” LICADHO provides individual and family counseling on an outpatient basis and refers victims to specialized medical and/or mental health services in cooperation with TPO and practitioners in Cambodia. Subject to the available capacity, TPO and LICADHO also offer home visits to torture victims, addressing needs in the context of the family and community. The "Trauma Recovery Program" of World Vision assists girls aged 7-17, who are victims of sexual assault and trafficking. With regard to accessibility of services, service provision by NGO’s is focused on the areas mentioned in table one, with the majority being in Phnom Penh and a smaller portion featured in selected provinces. Furthermore, a number of psychosocial and mental health services are only available to those in their target groups, as opposed to the general population.

35. In 1994 the International Organization for Migration (IOM)[22] and the University of Oslo in cooperation with the Ministry of Health in Cambodia initiated the first training of psychiatrists after the Khmer Rouge regime. At present, 35 psychiatrists have been trained and work in mental health facilities and/or private practice in Cambodia, although the National Program for Mental Health estimates that about 30 percent of psychiatrists trained are not involved in clinical care. In total 45 psychiatric nurses have been trained and most work in the national mental health sector and private practices. 600 nurses and primary care doctors from the provincial levels have been trained in basic mental health care, but only approximately 10 percent are estimated to be providing mental health services. The Department of Psychology of the Royal University of Phnom Penh offers a bachelor degree program for psychology since 1994. Between 1998 and 2010, 663 students graduated in psychology; however, only few psychologists work in clinical settings. A bachelor degree program in Social Work and Master’s degrees in Social Work and Clinical/Counseling Psychology have recently started, with the first students to graduate within two years.

36. Mental health care has been integrated into primary health care by Ministry of Health since 2002. The 600 physicians and nurses had three months training on basic mental health care,

[22] We want to thank Joe Stewart, Consultant of IOM, in assisting us to compile relevant data for this section.

and two weeks of training in primary mental health care. Only five psychiatrists received specialized training on the treatment of torture survivors, four of whom were working with TPO. The Centre for Victims of Torture Minneapolis (CVT) in cooperation with TPO initiated a 3 -year-training program on cognitive behavioral therapy with the focus in trauma therapy. Two psychiatrists from the national sector and 13 mental health professionals from the non-governmental sector completed successfully the training in 2010. General Doctors and personnel working in primary mental health care show an evident lack of awareness and knowledge in assessing and documenting torture survivors.

37. Despite the fact that around 8.000 Khmer Rouge survivors act as complainants or civil party applicants before the Extraordinary Chambers in the Courts of Cambodia (ECCC), neither the Tribunal nor the State party has envisaged establishing any support scheme for Khmer Rouge trauma and torture survivors. Within its "Justice and Healing after the Khmer Rouge Regime Program" TPO offers medical and psychological services to Khmer Rouge torture survivors, who participate in the Khmer Rouge Tribunal. It is the only organization providing comprehensive mental health services to Khmer Rouge torture survivors, who participate in the tribunals' proceedings. In May 2007, TPO and the ECCC signed a Memorandum of Understanding (MoU) outlining TPO's responsibilities with the Tribunal; the MoU was renewed on 22nd July 2010. Working in close cooperation with the Witness and Expert Support Unit (WESU) and the Victims Support Section (VSS) of the ECCC, TPO provides a variety of psychological services through its Cambodian mental health experts. So far, TPO has been able to deliver psychological support to approximately 90 civil parties and 31 witnesses during the trial phase of Case 001 ranging from preparatory psychological interventions and on-site support during the proceedings to intense psychological and psychiatric follow-up care. On-site psychological support services include reducing anticipatory anxiety through psychological briefing prior to the proceedings, monitoring participants' mental health condition, offering emotional support during the trial and debriefing after the proceedings. Psychological services outside the courtroom include the assessment and treatment of psychological/psychiatric disorders, if required, supportive psychotherapy by trained psychiatrists and psychologists and follow-up counseling services after the proceedings. Additional services consist of information, education and training on torture and its after-effects to staff of the ECCC Victims Support Section, civil party lawyers and NGO staff. For its ECCC project, TPO has also received co-funding from the United Nations Voluntary Fund for Victims of Torture (UNVFVT) for the year 2010.

Article 11 Interrogation, Custody and Imprisonment

On the list of issues no 16: Pre-trial detention

38. The limits on pretrial detention are set forth in Articles 208-14 of the Code of Criminal Procedure. These relatively new provisions provide much longer time limits compared to the previous law. However, excessive pretrial detention continues to be a serious problem in Cambodia. In addition to the reasons for unwarranted prolongation of pre-trial detention stated in the Government's report, lack of proper case management is a major problem. Neither prison management nor court staff follows up on the actual length of pre-trial detention. Sometimes suspects who have no legal representation are simply forgotten. In

Phnom Penh, this situation is somewhat alleviated through higher level of knowledge on the law among law enforcement officials.

39. Excessive pretrial detention has been documented in the following circumstances:

(a) Detention orders are not extended when they have expired. Under Articles 208-14, provisional detention orders must be reviewed periodically by the court and formally extended. For example, an adult felony may be provisionally detained for six months; the detention order may be extended twice, each time for an additional six months. However, such extensions are often presumed by prosecutors, courts and prison officials, and detainees are not given the opportunity to contest the extension. Alternatively, extensions may be made without a proper statement of reasons and/or made for convenience purposes only. The charged persons may not be informed and asked about their observations, depriving them of the opportunity for them to ask the judge for their provisional release.

(b) Persons are detained longer than the maximum time limits for pre-trial detention (adults: four months plus a two-month extension for misdemeanors; six months, plus two six-month extensions for felonies; juveniles: 2 to 4 months, depending on age, for misdemeanors; four to six months, depending on age, for felonies). Caseloads at some courts are considerable, and some detainees remain imprisoned for two years or more before trial.

(c) Individuals are kept in pretrial detention longer than the maximum prison term for the charged offense. This problem arises from inadequate recordkeeping and communication between prisons and the courts, and can be exacerbated by corrupt officials who demand payment before processing an inmate's release.

(d) Juvenile prisoners charged with misdemeanors are held in pretrial detention for more than half of the minimum sentence set by the law for the offense. Under Article 214, this is illegal.

(e) Upon the closing order terminating the investigation period, the trial does not start within the prescribed four months upon which the charged person is supposed to be released automatically, and yet the person is maintained in prison. Under Article 249, the trial must begin within four months of the closing of the investigation period.

(f) Even if the trial starts within four months, the court can issue interlocutory orders authorizing further investigation, circumventing the four-month requirement contained in Article 249. This often extends the investigation period beyond the maximum time limit.

(g) In some provinces, prosecutors and courts erroneously interpret Article 249 of the Code of Criminal Procedure to authorize an additional four months of pretrial detention, in addition to the limits set forth in Articles 208-14. Thus, an adult charged with a felony can be kept in pretrial detention for 22 months (six + six + six + four) instead of the 18 months clearly prescribed in Article 208. Articles 208-14 provide for *absolute limits* to the total term of "provisional detention." Article 249 concerns an entirely different subject: the time limit on provisional detention after a judicial investigation is closed. Ordinarily, the completion of an investigation automatically terminates provisional

detention. Article 249 allows the judge to extend detention for four months following the completion of an investigation. It does not add an additional four months to the absolute limits in Articles 208-14. We note that the government's submission to the Committee does not argue that Article 249 provides for an additional four months of pretrial detention. Thus, we hope that the government can ensure that this view of the law is uniformly enforced throughout the country.

40. LICADHO's monitoring of 19 prisons with an average pretrial population of 3,900 has identified an average of 102 cases of excessive detention per month for the first six months of 2010. In 2009, the average was 80 excessive detention cases per month, with an average pretrial population of 3,670. In addition, trial monitoring of the Cambodian Center for Human Rights (CCHR) revealed that in 176 of the 199 trial monitored during the latest reporting period (Aug – Dec 2009) the accused was detained in pre-trial detention – a rate of 88 percent across the trial monitored. This is notwithstanding the presumption of liberty and against pre-trial detention in Article 203 of the Code of Criminal Procedure (CCP). Of particular relevance is the trial monitoring report's finding that eight out of 199 cases monitored, the duration of detention exceeded the maximum legal limits for provisional detention prescribed in Article 208 and 209 of the CCP. In two cases the accused, who had been charged with felonies, were provisionally detained for over three years.[23]

41. Excessive detention is also a problem for convicted prisoners who are imprisoned beyond their release date. This problem can be caused by official corruption, for instance prison officials demanding payment for processing release papers. Prisoners may also be excessively detained when the prosecution appeals a lower court decision. A prosecution appeal almost always triggers the continued detention of the defendant – even if the lower court found the individual not guilty. Appeal courts are woefully overburdened, and scheduling a hearing can take years. Thus, defendants can be imprisoned beyond the maximum possible sentence for the charged crime, *even if they are ultimately found not guilty*.

42. The problem of chronic excessive detention is closely linked to Cambodia's grown reliance on prison as the default punishment for any transgression. The country has made minimal use of non-custodial alternatives, including bail, community service and suspended sentences. As a result, the judicial system is severely overburdened and the country has seen an unprecedented explosion in the prison population.

On the list of issues no 17: Conditions in prisons

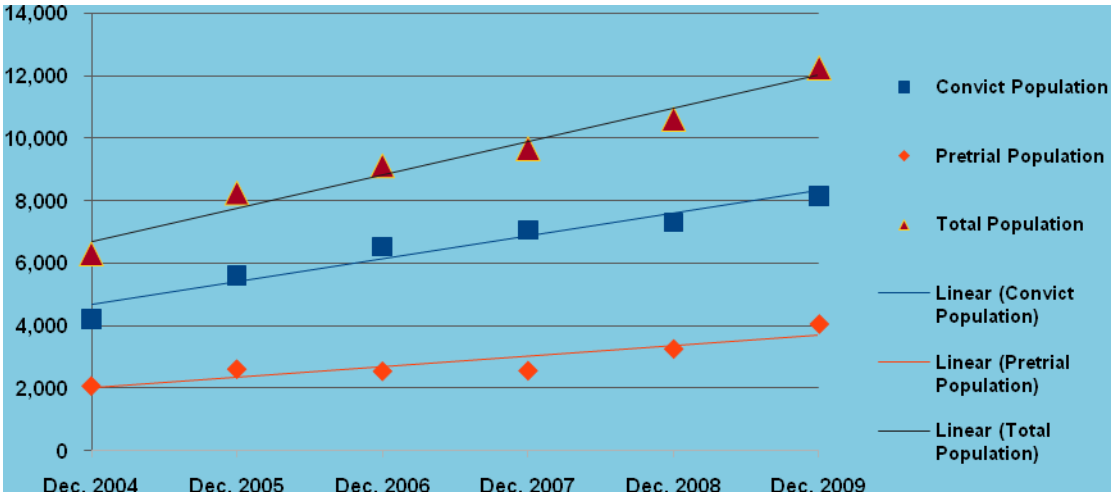
Overcrowding

43. Overcrowding is among the most serious problems facing Cambodia's prison system (see graph). Cambodia's prisons are already starved for resources, and overcrowding has strained an already broken system to the point of crisis. Cambodia's prison system was operating at approximately 100 percent of capacity in 2004. Taking into account the data of the General

[23] Cambodian Center for Human Rights (CCHR), '*Fair Trial Rights in Cambodia. First Bi-annual Report*', Phnom Penh, July 2010, p. 32-33.

Department of Prisons (GDP, see also para. 60) of June 2010, it is now at 173 percent capacity, with an average growth rate of 14 percent. Putting this data into context and comparing it with the information gathered by the International Center for Prison Studies, Cambodia's prison system would now rank among the 25 most crowded in the world. If current growth trends hold, the system could become the world's most crowded by 2018.[24]

44. Thus far, the Government's sole response to the overcrowding crisis has been to construct additional prisons and expand existing ones. The GDP's latest attempt to ease overcrowding is the construction of Correctional Center 4 (CC4). This new prison in Pursat Province, opened in January 2010, is designed to eventually house 2,500 inmates. The inmates will engage in forced labor, and there is concern that the labor will be performed for the private rubber industry.



Graph I: Prison Population Growth, 2004-2009 ; Source: LICADHO, July 2010, p. 7.

45. While Cambodia is certainly in need of upgraded detention facilities, building new prisons alone cannot eliminate the problem of overcrowding. Even if the inmate population slows to a growth rate of 10 percent per year and Cambodia builds a new CC4-sized prison every year, this will still never catch up with the total inmate population. Taking a more conservative view – the addition of 400 new beds per year for nine years, together with a population growth rate of 5 percent over that time – Cambodia's prison system would still be at 165 percent of capacity in 2019.

46. Overcrowding is largely the result Cambodia's over-reliance on prisons as the predominant response to crime. Currently, Cambodia's criminal justice system is focused almost entirely on incarceration, both of convicted criminals and defendants awaiting trial. The default punishment for nearly any crime is imprisonment – even for minor offences, and often for an extended time period. Likewise, release pending trial is rare for criminal defendants who typically end up in pretrial detention (see our response in para. 38-40).

[24] LICADHO, '*Beyond Capacity. Cambodia's Exploding Prison Population and Correctional Center 4*', LICADHO Briefing Paper, Phnom Penh, July 2010, p. 1-5. Available at (last viewed on 5 Oct 2010) http://www.licadho-cambodia.org/reports/files/142CC4%20Briefing%20Population-Final-ENG.pdf

47. **CASE STUDY**: Sentences of imprisonment routinely lack proportionality to the seriousness of the crime. In a recent case, a man was sentenced to 18 months imprisonment and a $50,000 fine for possession of drugs and possession of US$500 in counterfeit currency. The fine was imposed specifically for the counterfeiting offense. The man could not pay the fine, and as a result was forced to spend an additional two years in prison.

48. **CASE STUDY**: In another case, a 16-year-old boy in Preah Sihanouk Province was imprisoned for breaking a window. According to a source, the boy was addicted to drugs, argued with his family over money, and broke the window in anger. The family, at a loss to deal with his drug problem, reported him to police. He was convicted of property damage and sentenced to six months imprisonment.

Torture

49. Overcrowding impacts prison security and increases the chance that inmates will be tortured. Current inmates rarely report specific incidents of torture to NGOs or other monitors due to the fear of retribution by prison officials or other prisoners. NGO interviews with inmates are not always confidential.

50. Despite limited reports, it remains clear that torture and other forms of ill-treatment are still commonly used as form of punishment for certain transgressions, including escape, attempted escape and fighting. The most common techniques include shackling, beating, prolonged placement in isolation, and round-the-clock confinement to a cell for periods exceeding one month.

51. **CASE STUDY**: In early 2010, 15 prisoners at the Kampong Thom provincial prison were shackled to each other after they attempted to escape. Kampong Thom prison is Cambodia's most overcrowded prison, housing 220 prisoners in a space meant for 50. The prisoners were bound together with metal leg cuffs attached to iron bars; one bar held eight prisoners and the other held seven. The shackling lasted 24 hours a day for over one month. The inmates remained shackled while they slept, ate, and relieved themselves. The shackling persisted despite numerous local- and high-level intervention attempts from local NGOs and the United Nations Office of the High Commissioner for Human Rights. Prison officials claimed that the shackling was necessary for security reasons, as they had no space to securely house inmates who posed an escape risk. The shackling finally ceased when the inmates were transferred to different prisons.

52. **CASE STUDY**: On 26 September 2008, Heng Touch, aged 24, of Roluos village, Cheung Ek commune, Dangkor district, was arrested and charged of robbery to be sent on 1 October 2008 to custody at Prey Sar prison (M-1) on the outskirts of Phnom Penh. In mid November, Heng fell mildly ill in the prison. When his mother and older brother visited him, the guards suggested that he be moved to another room, but asked USD$200 to effect this transfer. When the mother and brother only offered USD$50, the guards refused. After being told Heng's condition had deteriorated to a serious state, Heng's mother visited him at the prison and reported that his head was swollen, face, body and legs significantly bruised and tongue cut. His mother paid the guards USD$30 to transfer Heng to Monivong Hospital where he later told her that he was severely beaten by five men. Medical scans indicated

that he had a suffered a fractured skull and had damaged lungs. His condition continued to worsen until he lost consciousness permanently. It has been alleged (and later denied by the prison director) that Heng was tortured by guards after they failed to solicit a bribe. Heng died on 21 November 2008 at Calmette Hospital.[25]

53. Prison discipline is increasingly "outsourced" to other inmates who make up so-called "prisoner self-management committees." These committees are made up of senior prisoners who receive privileges in exchange for keeping other inmates in line. They report directly to prison officials, who may give orders regarding the operation of the prison. These orders may range from distribution of sleeping space in a cell to an order to beat certain inmates. The use of prisoner self-management committees is disturbing, as the practice places an additional layer between torture victims and state actors, making it more difficult to identify mistreatment as state-sponsored torture. This appears to be a conscious effort on the part of the law enforcement officials to disguise their involvement in serious, systematic and institutionalized violations of the Convention. The practice also indicates a deterioration of professionalism in a prison system that already suffers from a dire lack of qualified personnel. Prison guards are growing increasingly reliant on inmates in the execution of their jobs.

54. **CASE STUDY**: In February 2010, two released inmates reported that the prisoner self-management committee regularly meted out "initiation beatings" for newly-arrived inmates at CC1 and Kampong Cham prisons. The inmates received such beatings themselves, and stated that the only exceptions were reserved for certain prisoners the guards designated off limits.

55. **CASE STUDY**: In December 2009, a female inmate working in a prison garment factory felt ill one morning during work. The factory area was excessively hot, and she had finished her work, so she went to the doorway to get some fresh air. A female guard responded by cursing her and telling her to get back to her place. The inmate explained that she felt sick, and the guard responded by attacking her. The inmate reported that the guard pulled her down by her hair and beat her about the head with her shoe. A male guard joined the beating, using his belt to strike the inmate three times. Following the attack, the prisoner was ordered to write a letter of apology to the female guard involved. In addition, the inmate was forced during recreation time to exit her cell on her knees, and remain kneeling in the prison compound – in the sun – for the duration of the period of her cell. This continued for 20 days. Following the 20 day period, the prisoner was further disciplined with a total denial of recreation time for an indefinite period. The inmate also lost her job.

Food supplies

56. As mentioned in the Government report, the daily food allowance was increased in 2009 from 1,500 riel per day to 2,800 riel per day. This was an important step in providing for the minimum needs of prisoners. However, prisoners report that the overall quality and

[25] Case documented by ADHOC and LICADHO, see inter alia ADHOC, *Human Rights Situation 2008*, Phnom Penh, January 2009, p. 19. Also at Asian Human Rights Commission (AHRC), Urgent Appeal, AHRC-UAC-253-2008 of 26 November 2008.

quantity of food remains poor. Inmates still require supplementary food supplies – or money to purchase such food – to assure proper nutrition. Protein, such as fish or meat, is rare, and distribution of food is not always conducted in an egalitarian manner. In addition, some prisoners have complained that prison officers eat food intended for inmates. The lack of adequate food supplies can cause malnutrition and diseases such as beriberi.

Hygiene conditions

57. Due to overcrowding and understaffing, inmates are not given adequate time out of their cells for recreation. As a result, recreation time has become commodified, with inmates paying for the privilege. Prison officers are also known to charge prisoners for access to rehabilitation programs, medicine, water, and visiting privileges.

58. Many new prisons were constructed with minimal regard to proper construction and security standards, resulting in hygiene problems. Some facilities are built as part of so-called "land swaps," where a company is given valuable land – typically a central parcel where the former prison was located – in exchange for constructing a new prisons. These companies then use unskilled, and unpaid, inmate labor for much of the work. Key elements of the job are routinely left unfinished, including electricity hookups, water facilities, auxiliary buildings (including medical clinics), and even inmate housing. Within a few years, infrastructure is crumbling and needs upgrading. At the provincial prison in Koh Kong, the sewers are so overburdened that they routinely overflow into inmate living areas. The prison was built by a private firm in 2006.

59. Water quantity and quality is a recurring problem at many Cambodian prisons, with several lacking adequate wells, pumps, or hookups to city water. Overcrowding in Cambodia's prisons greatly contributes to the spread of communicable diseases such as Tuberculosis, Scabies and upper respiratory infections.

60. Current statistics, as of June 2010, according to the General Department of Prisons (GDP) are as follows:

• **Total prisoners:**	**13,944 (4,443 pretrial [32%], 9,501 sentenced [68%])**	
• Convicts:	Male = 8,169	Female = 410
• Pretrial Detainees:	Male = 3,762	Female = 241
• Foreigners:	Male convicts = 296	Female convicts = 90
	Male pretrial = 151	Female pretrial = 50
• Minors:	Male convicts = 521	Female convicts = 15
	Male pretrial = 189	Female pretrial = 50

On the list of issues no 18: Rules and instructions

61. Despite the current rules in place, police and prison officials are rarely investigated, prosecuted or disciplined for torturing a detained person. Since the Paris Peace Accords in

1991, there have only been two cases of torture by prison officials filed in court, one complaint led to the prosecution of the prison director in Battambang, the other led to minor administrative discipline to prison guards from Kampong Cham.[26] The likelihood of retribution for current detainees is very real, and fear prevents most detainees from filing complaints. There is no protective system in place, for instance mechanisms like automatic transfer, protective custody or rigorous assurance of the complainant's anonymity that assures the detainee's security. The risk of retribution is heightened further since danger could extend to the detainee's family as well.

62. Even for detainees who do manage to file administrative complaints against officers, mechanisms are not in place to ensure an impartial and appropriate review. To the extent that there are such mechanisms, the system is plagued with corruption. Thus, few current detainees would take the risk of reporting torture to prison officials or the police. The potential risks far outweigh the possible benefits.

63. The same concerns apply for released detainees, even if they do not face the risk of immediate retribution in prison. Filing a complaint brings substantial risk for ex-detainees or their family members, and the promise of indifference or hostility from government officials charged with investigating the offence. Meanwhile, there is very little potential upside.

On the list of issues no 19: Supervision of prison and police stations

64. The Ministry of Interior (MoI) allows regular monitoring of prisons by a limited number of NGOs and a few other monitors, such as the OHCHR Cambodia office. Though access of monitors has generally improved over the past years, it is still periodically suspended following escapes, security threats, and the publication of unfavorable reports on prison conditions.

65. Article 509 of the Code of Criminal Procedure requires the Prosecutor-General to make regular prison inspections, however the law does not specify frequency. The extent of the Prosecutor-General's power, willingness and competence to address deficiencies in detention conditions is also unclear. In practice, the number of inspections conducted by the Prosecutor is minimal or non-existent.

66. The MoI is in charge of granting NGOs access to prisons, but in practice, the degree of access varies by prison and can change at the whim of local officials. Some institutions allow NGOs to meet with both pretrial detainees and convicts. In some prisons, officials require NGO researchers to ask permission of the local prosecutor before interviewing a pretrial detainee. In other prisons, NGO researchers are only allowed to meet with pretrial detainees. The confidentiality of NGO interviews varies by prison and by inmate. Sometimes there are multiple guards listening intently; other times the interviews are completely confidential.

67. The Government does not allow NGOs to regularly monitor police stations used for interrogating criminal suspects.

[26] Information according to LICADHO research.

68. The Government also does not allow regular monitoring of so-called drug rehabilitation and "Social Affairs Centers." The former are used to warehouse drug abusers who are overwhelmingly detained against their will after being arbitrarily taken off the street and forced to perform hard "rehabilitative" labor. The latter are used to detain non-convicted homeless, beggars, street children, prostitutes and drug addicts – also against their will. The detainees in drug rehabilitation and social affairs centers are not charged with or suspected of any crime. The very existence of the centers is of dubious legality, and released detainees report conditions that in many cases are worse than in Cambodia's prisons.

On the list of issues no 20: Separation of prisoners

69. There is currently limited separation of prisoners in Cambodia's prisons, due largely to inadequate infrastructure and significant overcrowding. Whether prisoners will be separated is determined not by law, but rather on consideration of ancillary factors, especially the layout of the particular prison and the availability of space. Although women and men are afforded separate sleeping areas, the genders mix considerably at some prisons during daytime recreational hours. The situation in relation to the lack of separation also applies to pretrial detainees and minors who are often housed with convicted prisoners. The minimum age for imprisonment in Cambodia is 14, but the lack of reliable birth records in Cambodia and also leads to the occasional imprisonment of underage juveniles. This can include the placement of children under age 14 with the juvenile population, or even with the adult population. The NGO LICADHO recently documented a case where police records asserted that a 12-year-old boy was 20. The boy placed in pretrial detention at Correctional Center 1, a prison reserved exclusively for adult males. The failure to clearly separate classes of prisoners by pre-trial, gender and minors generates potential for serious abuse to occur.

70. Sexual abuse can be a taboo topic in Cambodia, and it is difficult to address during interviews with prisoners. NGOs have received sporadic reports of sexual abuse, both by staff and other inmates. But the sample size is too small to draw significant conclusions. Generally, sexual violence in prison appears to be largely under-reported but exists throughout the prison system. While there are only sporadic reports of sexual abuse both by staff and other inmates, the practice of not separating women from men in Cambodian prisons drastically increases the chances of sexual assault occurring. This is further reinforced by the fact that there is currently an insufficient number of female staff to ensure that all female prisoners are guarded by female officers.

On the list of issues no 21: Juvenile justice system

71. The Law on Juvenile Justice in Conflict with the Law is still being drafted. Cambodia still does not have a separate juvenile justice system and children are housed in adult prisons after appearing in the same court and before the same judges as adults. Since the law has not yet been passed, there are no provisions or guidelines stating that the arrest, detention or deprivation of the rights and freedom of children should be carried out as a last resort.

Judges, prosecutors and judicial police have not been trained on the concept of a child-friendly justice system.[27]

On the list of issues no 22: Application of international human rights conventions

72. Most judges, prosecutors and law enforcement officials are not aware of the contents of the Convention. More awareness-raising and specialized training among those officials is necessary. Generally, judges do not take into account the Convention when they consider a case of torture or other ill-treatment or when they interpret national legislation.

On the list of issues no 23: Treatment of people suffering from mental illness

73. Although the law provides for a "diminished responsibility" defense, as mentioned in the Government report, this provision rarely affects the outcome of criminal proceedings.

74. **CASE STUDY**: In one case, a mentally-ill woman accused of stealing money from a market seller. She was diagnosed schizophrenic by an NGO psychiatrist prior to the trial. The psychiatrist did not testify, but her defense lawyer raised a mental illness defense. The defendant's mental illness was apparent during trial, with her testimony becoming so erratic and nonsensical at times that it provoked laughter from judges and lawyers. Despite this, she was convicted of theft sentenced to six years imprisonment.

Article 12 and 13 Investigations and Complaints

75. The lack of a public and comprehensive system for receiving complaints against the police and other law enforcement officials is one of the most serious obstacles for the State to fulfill its obligations as provided in the Convention. As a consequence, no internal control mechanisms have developed to deal with complaints made against law enforcement officials, and no viable avenues exist for victims of torture and ill-treatment to make complaints and expect that they are dealt with in a satisfactory manner.

76. In addition, no effective victims and witness protection mechanisms exist in Cambodia. Affected people are fearful of those who are supposed to protect them. Victims of torture or others who witnessed such acts, willing to come forward and complain about such crimes do not receive any protection; to the contrary, they are often intimidated and fear serious reprisals following the complaint. For any effective complaints mechanism against abuses perpetrated by officials of the state, there is a need to develop procedures and provide adequate resources to protect victims and witnesses. No measures have been taken by the Government to ensure the protection of victims of torture so that they can make complaints without fear of reprisals.

On the list of issues no 24: Measures taken to fight impunity

77. A major obstacle to any prompt and impartial investigation of alleged acts of torture derives from the many deficiencies in Cambodia's policing system. Criminal investigations use old

[27] *NGO Position Papers on Cambodia's Development in 2009-2010*, May 2010, p. 121-122.

methods, and attempts to modernize the policing system have not led to visible improvements. Investment in the police is low, and the training of officials is inadequate to allow them to deal with criminal investigations effectively. The under-development of the system is also one main reason for the constant use of force and coercion on arrested people.

78. As noted in the response to the list of issue no. 18, police and prison officials are rarely disciplined for torture and other acts of ill-treatment. Victims fear retribution if they complain, or believe that nothing will come of their complaint because the system is ineffective and plagued by corruption. The victims' fear of reprisals is a major barrier to any formal complaint.

79. In the absence of a functioning complaints mechanism against law enforcement officials, the only limited avenue available for victims involves making complaints to the courts. However, the Cambodian judicial system rarely prosecutes such crimes. When the victims find the courage to file a complaint at the court, the latter will often engage in or be forced to conclude informal arrangements with the perpetrator to drop the case. There are frequently cases of political interference by the Executive into the matters of the courts which influence the outcome of a case. Furthermore, there are many documented cases where courts have reported the complaints back to the concerned law enforcement officials against whom a complaint was lodged. Thus, and as mentioned previously, the complete absence of any kind of protection mechanism for the complainants prevents victims from coming forward.

80. **CASE STUDY**: Mr Leang Ho, a member of the Sam Rainsy party and a friend were stopped at gunpoint by drunken policemen and military officers at Thmey Kandal village, Preah Theat commune, Oraing Ov district, Kampong Cham province. The police officer assaulted Leang Ho by striking him on the head with the butt of a gun while the military officer hit Leang Ho's face repeatedly. Leang Ho was then arrested and beaten extensively sustaining injuries to his head and face until unconscious. Later that month in November 2006, Leang Ho filed a complaint detailing the assault against the responsible police officers which for reasons that remain unknown, were not investigated at all. Leang Ho made a second attempt to file the assault complaint and was consequently arrested on 27 November 2006 in front of the Kampong Cham provincial court, allegedly on the orders of Governor Hun Neng (brother of Prime Minister Hun Sen) who opined that the altercation was in fact Leang Ho's fault.[28]

81. In the few instances where courts have prosecuted law enforcement personnel, sentences have been notably short and charges have been diminished (e.g., reduced from attempted killing to physical assault). For example, in July 2009, a Phnom Penh military police officer fatally shot his wife in the throat during an argument. The officer was given a sentence of two years imprisonment, with three-quarters of the term suspended. In all, the officer spent a mere six months in prison for murder.

[28] Case documented inter alia by the Asian Human Rights Commission (AHRC), see AHRC urgent appeal UP-217-2006 of 30 November 2006.

82. Currently, Cambodia has no domestic capacities in forensic pathology. Most victims of torture are not examined by doctors or other medical experts. As a result, no medical reports are available to document cases of torture victims. The introduction of such specialized medical and forensic facilities is urgently needed. At present, only a very few NGOs, including LICADHO and Médecins Sans Frontieres (MSF), have a limited number of staff available who are able to perform some of these services.

83. **CASE STUDY:** A 45-year-old man named KL, who resided in Koh Tkov village, Kea commune, Mong Russey district, Battambang province, was arrested on April 1, 2009 at 10 pm and immediately taken to a police station by two police officers. He was arrested on suspicion of "domestic violence". The next day at 1 pm, his wife arrived at the police station and learned that her husband was dead. The police claimed the cause of death of excessive alcohol consumption. However, an observation on the body performed by the NGO ADHOC showed that there were wounds on the head, nose broken, marks on neck and chest, and other wounds on the forehead and face. These wounds clearly indicated torture. However, there no proper examination or medical forensic was conducted to the body; instead, the policemen just gave the relatives 100,000 Riels for the funeral.[29]

On the list of issues no 25: Prosecutions of law enforcement personnel

84. We are not aware of any prosecutions of law enforcement official for torture-related crimes in the past five years.

On the list of issues no 26: The Supreme Council of Magistracy

85. The Supreme Council of Magistracy (SCM) is a constitutional organ, established in 1994, belonging to the judiciary charged with protecting the independence and professional integrity of judges and prosecutors. In that capacity, it has the mandate to nominate and discipline judges and prosecutors, both of which belong to this Council. However, it is widely acknowledged that the Supreme Council of Magistracy is unable to carry out its role effectively and credibly. Many issues have been raised as to the independence of the SCM, due to the inclusion of a member of the Executive, the Minister of Justice, as an ex officio member. In addition, current members of the SCM are active judges and prosecutors resulting in potential conflict of interests and of available to time. The question of the composition of the SCM is vital to ensure the body's independence as well as the independence of the judiciary as a whole. As such it is central to any amendment of the current law.

86. In addition, there have been frequent cases of infringement by the Ministry of Justice, and even the Government itself, on the jurisdiction of the SCM. As rightly pointed out by the Committee, the Ministry of Justice now controls the Secretariat of the SCM. As a consequence, the Ministry has made its own proposals for nomination, ensured Council approval and submitted the lists to the King for signature. The SCM has not much to say at all in this process, and those executive instructions are contrary to the law and

[29] Adapted from ADHOC, *Human Rights Situation Report 2009*, Phnom Penh, January 2010, p. 10.

unconstitutional. It appears that the Government seeks to make permanent the current arrangement whereby the Ministry of Justice functions as the secretariat of the SCM.

87. The current practice shows clearly that the Council requires fundamental reform, in line with the constitutional principle of separation of powers, so that its composition represents the judicial profession free from political influence. The proposed amendment to the 1994 Law establishing the Supreme Council of Magistracy has been placed on hold, pending the finalization of laws on the organization of the courts and on the status of judges and prosecutors, whose status and conditions of service remain vague (see our response on the list of issues no 2). In his most recent report, the Special Rapporteur on the situation of human rights in Cambodia made detailed recommendations for the reform of the SCM.[30]

On the list of issues no 27: Independent complaints body

88. Since the previous conclusions and recommendations by the Committee, the Government has not established an independent body competent to deal with complaints against the police and other law enforcement personnel. A national preventive mechanism according to the Government's obligations under OPCAT is not a replacement for the need to establish such a body. In 2009, the National Police Commissioner announced the use of telephone hotlines and the installation of letter boxes at commune police stations in Phnom Penh to receive any complaints of the public. Though this isolated action was a commendable attempt, it has yielded no effect in bringing to justice those officials accused of any misconduct. Affected people have no trusted avenue to lodge complaints against police officers and prison staff. An independent civilian body, placed outside the law enforcement system, to oversee the police and to conduct investigations into any complaint against police officials is needed without delay.

89. On the national preventive mechanism under OPCAT, see also our response to the list of issues no 38.

Article 14 Compensation of Victims

On the list of issues no 28: Mechanism to provide compensation to victims

90. Since the previous report, the Government has made no attempt to institutionalize the right of victims to fair and adequate compensation. As a consequence, there were no reported cases during the observation period where compensation for torture or ill-treatment of state agents was awarded. Thus, the legal regulations raised in the Government's report are not implemented. Currently, there is no realistic possibility for victims to bring about law suits so as to receive compensation for torture or other forms of cruel or inhuman treatment.

[30] *Report of the Special Rapporteur on the situation of human rights in Cambodia*, UN doc. [A/HRC/15/46 of 16 September 2010], para. 72-75.

91. Notwithstanding the fact that torture victims like any other victims of a crime can join the criminal proceedings as civil party and claim damages, no cases have been brought forward. This is primarily a result of the low numbers of torture complaints and the failure to investigate and establish such complaints, as mentioned in our response to Article 12 above. Even if such claims were to be successful, no national mechanism exists to implement compensation for victims of torture.

92. Although the ECCC is supposed to operate on the basis of Cambodian national law as stipulated by the ECCC Law, the current provisions on civil party participation in the Internal Rules have increasingly deviated from its original provisions. The ECCC cited the need to adapt to the requirements of mass civil party participation in the Court's second and most important case. As a result, the role of the ECCC as a precedent setting entity for the domestic judiciary in relation to civil party participation is limited. The Cambodian Criminal Procedure Code grants more procedural rights to civil parties, than the current Internal Rules of the ECCC. In terms of reparations, the ECCC's mandate is limited to moral and collective reparations, which makes any comparison to a state-based monetary compensation mechanism difficult. Largely because of limitations in the Court's Internal Rules, the Trial Chamber – in its first verdict pronounced in July 2010 – granted no tangible collective reparations to the civil parties in Case 001. In addition, the ECCC has not conducted any investigations to date into the assets of convicted or accused persons rendering the implementation of the traditional civil party claim against a convicted person impossible. This conduct was upheld in a decision issued by the ECCC Pre-Trial Chamber, dated 4 August 2010.

Article 15 Use of Coerced Statements and Confessions

On the list of issues no 29: Role of confessions

93. In practice, law enforcement officials and the judiciary often regard confessions as the primary basis for convictions. Once the accused confesses, police officials will no longer look for additional supporting evidence but use whatever the confession at hand. If other evidence contradicts the facts set out in confessions, they are mostly ignored and the judgment will rely on the confession. The burden of proof for torture lies with the accused.

94. Accused will be interrogated by the police and subsequently by the investigating judge before going to trial. In the case of torture, confessions can be revoked at any stage of the proceedings. For clients who have legal counsel, revocations must be announced at interrogation before the investigating judge. For instance, nearly all clients who have been able to get access to legal aid services provided by the Cambodian Defenders Project (CDP) and who experienced abuse in police custody withdraw their confessions. However, trial judges tend to pressure the accused in confirming confessions for doubt of their statements. Often times, they blame the accused and their lawyers for making false confessions in police custody or before the investigating judge. All of the CDP clients who revoked their confessions were convicted without further investigations into their claims of torture.

95. A trial monitoring report issued by the Cambodian Center for Human Rights (CCHR) recorded out of 199 cases monitored in the Phnom Penh Capital Court and the Kandal Provincial Court, 10 cases suggesting a confession was extracted from the accused through torture and 108 cases suggesting no coercion was used – in 81 cases the situation was not clear.[31] The CCHR monitoring report provides also an illustrative example.

96. **CASE STUDY**: An accused was charged by the Phnom Penh Capital Court with robbery under Article 6 of the Law on Aggravating Circumstances of Felonies. The police arrested the accused for the theft of a wallet. The offense was allegedly committed with an accomplice - a friend of the accused. The accused claimed that it was not him but rather his friend who had stolen the wallet. All parties were present at the hearing and documentary evidence was relied upon. The accused alleged that the police had beaten him to get him to answer their questions. The accused confessed his guilt while he was being beaten but at trial claimed that the confession was not genuine and was the result of coercion. Despite this claim, the judge accepted the police statement as evidence and the accused was sentenced to six years imprisonment and ordered to pay 1,300,000 Riels in compensation.[32]

97. In July 2009, the ECCC Office of Co-Investigating Judges (OCIJ) dismissed a defense motion requesting a declaration of inadmissibility in relation to all evidence obtained through torture, in particular the torture 'confessions' of the S-21 Security Center, except for the specific purpose stated under Article 15 of the UNCAT. The subsequent appeal to the Pre-Trial Chamber of the ECCC (PTC) was deemed inadmissible, noting a lack of jurisdiction to review the admissibility of evidence.[33] In their reasoning, the PTC concluded that there is a substantial absence of rules in relation to the admissibility of evidence, particularly in the Cambodian Code of Criminal Procedure. The lack of legal guidelines together with the fact that the issue of admissibility arises during the trial process effectively confers broad powers of discretion to trial judges in terms of evidence. There is widespread concern that the ad hoc interpretation of an important international convention by the OCIJ will have lasting ramifications on the Cambodian legal landscape post-ECCC, particularly the way that the domestic courts might interpret the scope of the Convention in the future.[34] This concern is heightened by the fact that Article 15 is drafted explicitly so as to reflect the intended narrow exclusionary rule which prohibits *all* use of statements obtained through torture *except* against suspected torturers and, *only* for the purpose of proving that the statement was so obtained. The clear exclusionary rules highlight the importance of ensuring statements obtained through torture only be used for the specific and legitimate purpose as defined in the Convention. There is significant international judicial discourse that supports this position, citing that consideration of statements obtained by torture (outside the scope of Article 15) is inconsistent with the object and purpose of the Convention, and

[31] Cambodian Center for Human Rights (CCHR), '*Fair Trial Rights in Cambodia. First Bi-annual Report*', Phnom Penh, July 2010, p. 20.
[32] Ibid, p. 20-21.
[33] ECCC PTC, Public Decision on Admissibility of the Appeal Against Co-Investigating Judges Order on Use of Statements which were or may have been Obtained through Torture, 27 January 2010, 002/19-09-2007-ECCC/OCIJ (PTC 27).
[34] Cambodian Center for Human Rights (CCHR), '*Application of the Cambodian Center for Human Rights to present an Amicus Curiae Submission Pursuant to Internal Rule 33 at the Extraordinary Chambers in the Courts of Cambodia (ECCC)*', September 2009.

furthermore, violates the right to a fair trial.[35] As a consequence, the Cambodian Center for Human Rights (CCHR) also made a complaint to the Special Rapporteur on torture calling for his urgent attention and action to bring these concerns to the OCIJ to the United Nations Assistance to the Khmer Rouge Trials and to the Government of Cambodia.

Article 16 Other Cruel, Inhuman or Degrading Treatment or Punishment

98. Various acts of other cruel, inhuman or degrading treatment or punishment occur in the territory of Cambodia. The Government does not take effective measures to prevent and investigate such acts and prosecute those responsible for the commission of these acts. This report focuses on the following areas: social affairs centers, drug detention/rehabilitation centers, the situation of sex workers in police and other custody, trafficking in children and child sex exploitation, and the situation of rape in Cambodia.

Social Affairs Detention Centers

99. Since at least 2003, Cambodia has operated so-called "Social Affairs (Detention) Centers" which are operated by the Ministry of Social Affairs outside the scope of the criminal justice system. The Government has used these centers as depositories for society's 'undesirables' – drug users, sex workers, the homeless, beggars and the mentally ill, and there has been evidence of serious human rights abuses at these centers. Due to the fact that the Government does not allow regular monitoring of these centers, there is no comprehensive evidence that details the extent of human rights abuses. However, NGOs have managed to make a handful of visits to some centers and have also secured a significant amount of information from released detainee's testimonies. The testimonies reveal a consistent picture of the extent to which torture and other forms of cruel, inhuman and degrading treatment are employed, including beatings, rapes and, in some instances, killings.

100. The most publicized of these centers is known as "Prey Speu" in Chom Chao commune, Dankor district – a Social Affairs Detention Center on the outskirts of Phnom Penh investigated by the NGO LICADHO. While the Government portrays the center as a voluntary shelter where troubled members of society can seek assistance and rehabilitation, the reality is much grimmer. In 2008, detainees released from Prey Speu all describe, with alarming consistency, the prevalence of sadistic physical violence, gang-rape, gross overcrowding and a lack of food and water. The victims were of all ages, but always came from society's most vulnerable groups: beggars, homeless, street children, sex workers and drug users. The detention center offers nothing in the way of rehabilitative programming, social services, training or assistance. By most accounts, conditions may be worse than in most of Cambodia's prisons. After NGOs publicly exposed in mid-2008 the existence of the crimes taking place within the walls of Prey Speu, the authorities suspended the practice of unlawful detention. Although this was a positive development, more revealing was that the authorities refused to acknowledge the abuses which took place in the center, and to this day, they have failed to prosecute any staff. Alarmingly, some staff members that were

[35] Application of Amnesty International, the International Commission of Jurists and the Redress Trust to present an Amicus Curiae submission pursuant to Internal Rule 33, 002/19-09-2007-ECCC-OCIJ-PTC, 25 September 2009.

responsible for the extensive abuse, including rape and even murder, remain employed by the center. In late 2009, Prey Speu resumed unlawfully detaining individuals through regular street sweeps and 'social crackdowns'.[36] NGOs have already documented new instances of verbal and physical abuses committed by the staff.

101. The very existence of the social affairs centers is of dubious legality. The problematic situation is compounded by the reality that detainees are essentially deflected from the criminal justice system. The detainees are not formally charged by police, summoned by the court or convicted of a crime in any sense. The complete absence of legal representation at any stage allows public authorities to illegally arrest and imprison people with impunity, and effectively serve the role of judge, jury and jailer. Detainees are held on the pretence of rehabilitation, but in practice, the centers function as sites for locking-up society's "undesirables". The few so-called "voluntary" inmates at these centers are often voluntary only in the most cynical interpretation. Some of them are employed by the center or the relatives of these quasi-staff members. Many others are mentally ill or otherwise lacking capacity for meaningful consent. The dire situation is heightened by the fact that there is no judicial or even quasi-judicial body that has the power to review the commencement of the detention, the legality of the detention or the necessity to continue the detention. The absence of any means of recourse results in a situation where there are no checks on the power of public authorities. The net effect of such wide ranging discretion is that vulnerable people in Cambodian society can be arbitrarily targeted with no opportunity for legal recourse

102. **CASE STUDY**: In one case, the parents of three children aging from 5 to 9 years old approached a local NGO seeking help in retrieving their children from Prey Speu. The three children were arbitrarily picked up on the street by Phnom Penh Municipal Social Affairs staff a week prior. The parents attempted to protest during the arrest, but the staff pushed them away and placed the children in a truck. The father followed the truck on his bicycle, and arrived at the Department of Phnom Penh Municipal Social Affairs. There, he was told by his oldest child that staff had beaten his youngest child. They told him to stop crying for his mother. The father asked the staff why he would beat a child; the staff member responded by striking the father on his head. A few hours later, the children were sent to Prey Speu. At the center, they were locked in a small room with other children and adults of all ages and genders. They were only allowed out twice per day for short meal periods, when they were given watery porridge. The oldest boy was beaten by a staff member after they decided he was asking to go to the toilet too often. When the boys were finally released following an NGO intervention, they were in a pitiful state. The children had had little to eat and wore the same dirty clothes for the duration of the detention.

Drug Detention/Rehabilitation Centers

103. The desperate situation facing individuals held in social affairs centers apply equally to those that are held in a number of Government run 'drug rehabilitation centers'. Recent research by Human Rights Watch (HRW) indicates that there are approximately 11 specific

[36] See LICADHO Media Statement, '*Punishing the Poor. More Arrests of Street People*', 26 July 2009. Available at http://www.licadho-cambodia.org/press/files/212LICADHOPRPunishingPoorArrests09.pdf

centers designed for people that use drugs in Cambodia, operated by a haphazard coalition of Government entities with no central authority.[37] There is evidence to suggest that these drug detention/rehabiliation centers are increasingly being used by the Government as a means of social control, with the National Authority for Combating Drugs (NACD) study reporting that there were 2,382 people held in drug detention centers in 2008 - 40 percent more than the number of detainees in 2007 (1,179).[38] Almost a quarter of these individuals were children, and were held alongside adults in the same facilities and under the same dire conditions.

104. While these centers exist under the pretence of a place for voluntary rehabilitation, in reality, only very small percentages of persons actually join the centers on their own accord. It has been observed by HRW that the vast majority of people are arrested by police or unlawfully and arbitrarily rounded up by public authorities that range from the military police to local municipal authorities. Individuals formerly held at those centers have reported the widespread practice cruel and inhumane treatment in a number of these centers, particularly in the form of electric shocks by electric batons, whipping with twisted electrical wire, beatings with weapons, painful physical exercises such as rolling along the ground with sharp rocks, and being chained while standing in the sun. The food provided in these centers was often rotten or insect-contaminated and evidence suggests that this was grossly deficient both in terms of nutrition and caloric content. The continued arbitrary lock-up of individuals in drug rehabilitation centers, without any proper procedures, represents a clear violation of international legal standards.

105. **CASE STUDY** (adapted from HRW 2010): Atith described being punished by having to "roll like a barrel" and perform other physical exercises, and then being beaten and whipped, in the Orgkas Khnom center ("My chance" center) at the outskirts of Phnom Penh, currently run by the Municipality of Phnom Penh. Staff demanded Atith take off his shirt and trousers and roll on the ground "like an oil barrel". Atith was made to roll about 100 meters, then back 100 meters. After rolling he stood up and fell on his face because of intense dizziness. There were cuts over his body, especially his forearms because he used them to protect his head. The staff at the detention center then made him do "frog leaps" for 100 meters [forward] then back 100 meters on the same road. Thereafter, he had to "roll like a monkey", 100 meters [forward] then back again. Atith was finally beaten in the buttocks with a wooden pole, the type used to carry baskets. After this beating, the staff then they used a whip of electrical wire – 3 or 4 wires twisted together. The severely painful whipping caused a large about of bleeding. This happened to Atith twice: once for quarrelling, once for smoking a cigarette.[39]

[37] See more at Human Rights Watch, '*Skin On the Cable. The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia*', January 2010. Available at (last viewed on 5 October 2010) http://www.hrw.org/sites/default/files/reports/cambodia0110webwcover.pdf

[38] Information according to the National Authority for Combating Drugs.

[39] Adapted from Human Rights Watch, *Skin On The Cable*, 2010, p. 44.

The Situation of Sex Workers in Police and Other Custody

106. The widespread abuse of sex workers in police custody in Cambodia is prevalent and has been for many years. The situation was highlighted again through a recent report published by Human Rights Watch in July 2010. While there are no exact figures on the number of sex workers in Cambodia, a study by the Ministry of Health in 2006 suggests that there are approximately 6,000 direct and 26,000 indirect female sex workers.[40] The available reports on the abuse of sex workers identify that abuse occurs frequently by public authority figures (police, park security guards and government officers) and often while in custody. The range of cited abuses include beatings, rape, sexual assault, arbitrary arrest, forced labor, extortion and other forms of cruel and degrading treatment. A 2006 US-AID funded academic study among 1,000 sex workers in Phnom Penh confirms this dire situation, with approximately half of them reporting being beaten by the police and one third being gang raped by the police.[41] The often brutal behavior is compounded by the fact that the Government operates periodic crackdowns to 'cleanse the streets', allowing the largely opportunistic incidents of human rights abuse of sex workers to pervade.

107. The detention of sex workers occurs in two primary forms: police custody and social affairs centers. Article 38 of the Constitution of the Kingdom of Cambodia states: "The prosecution, arrest, or detention of any person shall not be done except in accordance with the law", however, police frequently arrest sex workers on no legal grounds and often do not even formally charge the detainees. Many sex workers interviewed by Human Rights Watch experienced extensive abuse whilst illegally detained, including force by way of slapping, hitting with radios, sticks and even guns.[42] It has been reported that police also enforce cruel and degrading punishments like forcing sex workers to stay in cells with no light or water, clean toilets at the police station and conduct sexual activities like dancing naked or performance of other sexual acts. The situation regarding detainment at social affairs centers has been discussed above (see paa. 99-101). Specifically, in relation to sex workers, there is evidence as recent as June 2010 of at least 20 persons at the Social Affairs Center 'Prey Speu' locked in their rooms, with no toilet, a lack of food and water, and only able to leave their rooms to bathe twice a day in dirty pond water. The fact that individuals are involuntarily detained at these Social Affairs Centers without due process renders these detentions illegal under Cambodian and international law. Despite this, until this day, not one police officer, security guard or government officer has been held accountable for crimes committed against sex workers.[43]

108. The introduction of *Law on the Suppression of Human Trafficking and Commercial Sexual Exploitation 2008* (LHTSE) has many positive aspects in seeking to criminalize trafficking,

[40] Ministry of Health, Cambodian National Center for HIV/AIDS, Dermatology and Sexually Transmitted Diseases, Report of a Consensus Workshop, '*HIV Estimates and Projections for Cambodia 2006 -2012*, June 25-29, 2007, http://data.unaids.org/pub/Report/2008/Cambodia_hiv_estimation_report_2006_en.pdf (accessed April 11, 2010)
[41] Jenkins, Carol, CPU, WNU, and Sainsbury, Candice, '*Violence and Exposure to HIV Among Sex Workers in Phnom Penh, Cambodia*', prepared for USAID, March 2006. Available at http://www.hivpolicy.org/Library/HPP001702.pdf, (last viewed on 5 October 2010), p.5.
[42] Human Rights Watch, '*Off the Streets. Arbitrary Detention and other Abuses against Sex Workers in Cambodia*', July 2010, p. 34-41. Available at http://www.hrw.org/sites/default/files/reports/cambodia0710webwcover_2.pdf
[43] See HRW, Off the Streets, p. 45-50.

forced sex work and other forms of forced labor. There are however, certain aspects of this law that has a significantly detrimental effect on sex workers. The new provisions in the LHTSE create new offences of obscenity, public soliciting, pornography, purchasing child sex, providing premises for prostitution and procuring prostitution (article 23-41). While the intention of the legislation is commended, the operation of the criminal provisions actually serves to endanger sex workers to a whole new range of provisions. The overly broad Article 25(2) defines the crime of "procurement" to include any act that might be "assisting or protecting the prostitution of others". This can be construed so broadly that almost anyone assisting the sex worker can come within the ambit of the provision. For instance, a taxi driver driving a sex worker, an NGO that provides condoms for HIV awareness and even family or friends can be potentially liable for 'procurement' under the LHTSE. The overly broad and vague provision operates to unnecessarily empower police and operates to facilitate even more arbitrary detention, compounding the critical situation that sex workers face.

109. **CASE STUDY** (adapted from HRW 2010): One sex worker told Human Rights Watch how she was gang raped by police in detention in September 2007. She was working one night near Independence Monument Park in Phnom Penh when she and other sex workers were arbitrarily arrested in one of the 'crackdowns'. The police took her and two other friends to the police station near Doeum Kor Market (Phnom Penh Municipal Police Commissariat's Central Office Against Crime), laid no formal charged but questioned them on their actions. The police officer then pushed the sex worker into a detaining cell where there was a single folding bed. She was then brutally gang raped by five police officers on the first night and then by six other police officers on the second night. She protested to the rape to which the police proceeded to beat her continuously while abusing her.[44]

On the list of issues no 31.

Trafficking in Children and Child Sex Exploitation

110. Cambodia remains to be a source, transit and destination country for child prostitution and trafficking of children. Research by NGO ECPAT-Cambodia indicates that sex trafficking is on the increase, with all victims reportedly female and roughly half of those victims children.[45] The victims were largely uneducated and from poor socio-economic backgrounds. The demographic of victims' correlates with the fact 67 percent of people cited money as the primary motivator for agreeing to leave with their resulting traffickers. From the same study, almost 85 percent of victims were forced into sex-related work, with the remaining proportion indicating that they were forced into other types of labor. In terms of enforcement, while 60 percent of victims reported their experience to the police, only 28.3 percent of those complaints were investigated, with no explanation behind why the others were not. As at June 2010, only three trials were actually held, with one offender being sentenced to a 2 year term (significantly less than the prescribed minimum of 7 years).

[44] See HRW, Off the Streets, p. 37-38.
[45] See NGO Joint Statistics, cited above.

111. In relation to legislation, the *Law on the Suppression of Human Trafficking and Commercial Sexual Exploitation 2008* ("LHTSE") represents a comprehensive effort from the Government to combat all forms of trafficking (sex, labor, and organ). Specifically, a total of 12 out of 30 articles explicitly address the issue of trafficking offences. While the introduction of sweeping legislation is commended, its implementation and enforcement has been problematic. In March 2010, the Cambodian police conducted a series of raids on establishments believed to be engaging in child prostitution. The police however, did not make concerted efforts to arrest the perpetrators for specific trafficking offences. Rather, it was reported that the police in Sihanoukville kept the girls who had been collected from multiple sites and then offered them back to the establishment owners for $50 per person.[46] The lack of application of the law reflects the need for more disciplinary action and for a significant proportion of public officials (especially in provincial areas) to receive extra training. Without training, judges and prosecutors will continue to mitigate the effectiveness of the substantive law by applying non-trafficking laws to clear instances of trafficking and equally, prosecute non-trafficking crimes on grounds of the law against trafficking.

112. The crime of trafficking has proven to be inordinately difficult to prosecute. Under Cambodian law, establishing the elements of the offence is almost unachievable in the absence of the victim's testimony. Therefore, the victim occupies an integral part of the justice process in cases of trafficking. In response to this, the Government has instituted some efforts to protect victims demonstrated by the 'Policy and National Minimum Standards for the Protection of the Rights of Victims of Human Trafficking' which includes guidelines to improve victim treatment and protection; and the 'National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation in Women and Children' taskforce charged with the duty to protect, rehabilitate and reintegrate victims. Despite these efforts, the victims remain for the most part unprotected, especially in terms of re-victimization and confidentiality. The practical application of the LHTSE in the courts has revealed that the judiciary often fails to handle gender or age sensitive situations, generating re-victimization.[47] For instance, during a case monitored by the Cambodian Center for Human Rights (CCHR), a judge questioned a six year old child prostitution and trafficking victim as to the number of times she had sex with customers and whether she had gained a 'thrill' from the insertion of the accused's hand into her vagina.[48] The reluctance of victims to report crimes is noted to extend from the lack of sensitivity to the fear of criminal prosecution. When the victim testifies against the accused trafficker, the victim may inadvertently implicate themselves in illegal activity as outlined in Chapter V and VI of the LHTSE. Since Cambodian law does not directly address the issue of victim immunity, the threat of prosecution may override a victim seeking justice. The precarious situation of self-incrimination significantly affects the victim's access to justice and thereby decreases the likelihood of reporting trafficking crimes.

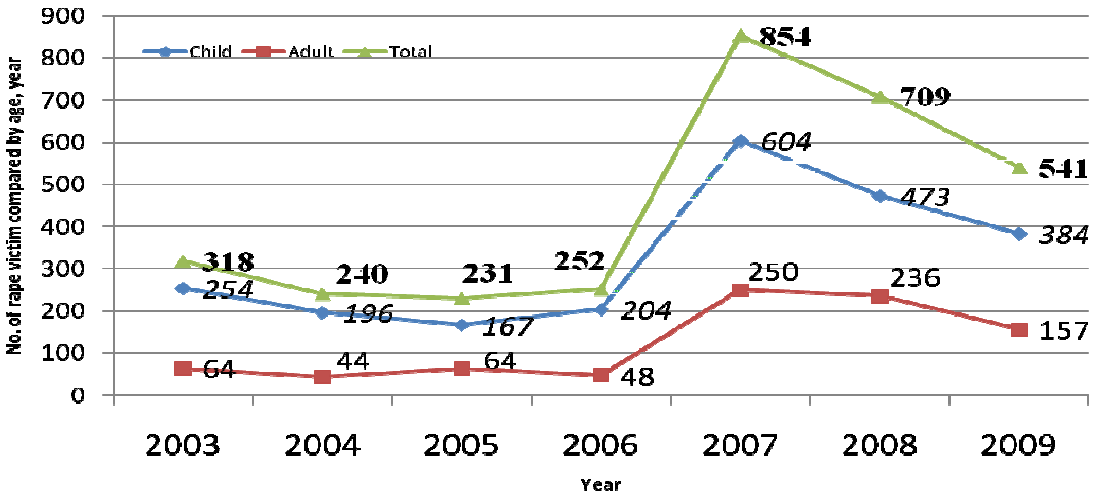
113. The issue of victim confidentiality is also a prominent factor that contributes to the lack of protection given to victims. The victims who testify against their traffickers are not afforded any form of witness protection, which operates as a significant impediment to

[46] US Department of State, '*Trafficking in Persons Report 2010*', June 2010, p. 101. Available at http://www.state.gov/g/tip/rls/tiprpt/2010/ (last viewed on 5 October 2010)
[47] See Cambodian Center for Human Rights (CCHR), '*Human Trafficking Trials in Cambodia*', Phnom Penh, July 2010.
[48] Ibid, p. 27.

successful law enforcement. Moreover, far simpler methods like courtroom visual screens and audio facilities that can be used to protect the identity of the victim are not employed. The absence of measures to protect victim's confidentiality has the potential not only to place the victim in danger but also decrease the likelihood of victims appearing at trial. The gravity of this situation is even more significant when applied to child victims. The responsibility of the rehabilitation process for child victims of trafficking is placed on the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MOSAVY). However, as the annual US Department of State report indicates, the Government defers their responsibility to a range of NGO's, frequently sending victims to NGO shelters but otherwise not providing further assistance. This is so common to the point that there were not enough places in NGO shelters to accommodate all the trafficking victims. The range of NGO services including education, financial support, vocational training, reintegration, medical treatment and accommodation provide the vast majority of victim rehabilitation in Cambodia.[49]

On the list of issues no 32: Rape

114. There is limited data on the number of rape crimes and other sexually violent crimes in Cambodia, with no single comprehensive source of information. The evidence that does exist indicates a disparity between the number of reported rape crimes and the number of offenders brought to trial. For the year 2009, a joint NGO report identified 535 suspected rape incidents, involving 541 victims, with an overwhelming proportion of child victims (72 percent).[50] The victims were all female, of Cambodian origin and largely uneducated (83.4 percent were illiterate or were only educated at primary level). Rape occurred in 22 of the 24 provinces in Cambodia with Pursat and Siem Reap cited as the locations with the highest frequency. In the same reporting period, there were 627 offenders who were cited as familiar to the victims, with only one percent of rape incidence attributed to strangers.[51]



Graph II: Rape victims compared by year, 2003-2009; Source: NGO Joint Statistics 2009, p. 16.

[49] US Department of State, Trafficking in Persons Report 2010, p. 102.
[50] NGO Joint Statistics, '*Database Report on Trafficking and Rape in Cambodia 2009*', implemented by ECPAT, NGO CRC and Cosecam, Phnom Penh, July 2010, p. vii-viii.
[51] NGO Joint Statistics, p. viii.

The NGO ADHOC investigated and intervened in 460 cases of rape in 2009, 366 out of those cases involved rape on minors and 26 cases involved gang rape. These data compare to 419 investigated cases of rape in 2008 (with 280 cases involving minors) and 523 investigated cases in 2007 (with 375 cases involving minors).[52] These data generally confirm the trends as reported in the NGO Joint Statistics.

115. According to the NGO joint statistic report, 269 victims (49 percent) that reported their rape to the police in 2009. The police conducted 213 investigations from which 191 offenders were officially charged. Of the accused, only 37 cases proceeded to trial, with 35 offenders eventually convicted and sentenced. There is no available evidence that indicates why such a large proportion of complaints were not investigated further. The empirical data highlights that there is a significantly small proportion of rape cases that are brought to trial. The available evidence from 2008 and 2009 indicates that less than 6 percent of rape offenders are held accountable for their crime in Cambodia.[53]

116. Medical services associated with rape cases do not provide sufficient assistance to the victim and are largely inaccessible. There is only one public hospital in each province and a select few in Phnom Penh that are permitted to issue medical certificates that qualify as admissible evidence in court. The costs of medical certificates range from 40,000-50,000 riel, but vary in different provinces. This figure is not inclusive of service costs, the costs of treatment and other medical fees. Importantly, the costs of medical certificates are generally regarded as prohibitively expensive for many victims. While the Government has made a positive attempt to remedy this problem by recommending free medical forensic certificates for victims of rape, there has been little to no application of the proposal.[54]

117. **CASE STUDY**: Chan was a 15-year-old girl who was repeatedly raped by her stepfather since she was 13. Chan attempted to escape to stay with her grandmother, but the stepfather always managed to ensure her return. When Chan became pregnant, she asked her mother to accompany her to hospital for an abortion. The nurses, however, said the pregnancy was too far advanced. The stepfather continued the sexual abuse throughout her pregnancy. Eventually, ADHOC heard about the sexual violence and assisted her in contacting the police. Information about the impending arrest of the stepfather leaked out and the day before the planned arrest, the stepfather and Chan's mother fled the village. After being rescued, Chan was assisted by ADHOC to hospital, where she was offered no treatment or even referral to NGOs that could provide psychological support or counselling to deal with her trauma. Chan told Amnesty International: *"The doctor just said that there was no need for me to take any medicine. He said I would heal by myself".*

118. The Government has made commendable changes to the legislation regarding rape. The new Penal Code provides in Article 239 that *"All acts of sexual penetration, of any kind whatsoever, or an act of penetrating any object into sexual organs of a person of either the same sex or different sexes by violence, coercion, threat or surprise constitutes a rape"*. The new provision clarifies previously vague terms which largely hindered legal recourse for rape. Notwithstanding, the new provision fails to associate rape with the victim's lack of

[52] See annual ADHOC human rights situation reports, 2007 to 2009.
[53] See NGO Joint Statistics 2010.
[54] See Amnesty International, '*Breaking the Silence: Sexual Violence in Cambodia*', March 2010.

consent and rather focuses on tangible attacks on the person in physical form. This narrow view in practice is likely to constitute a barrier for rape victims and even more so for rape victims in a marital setting. Without consideration of consent, it is unlikely that the courts will interpret forced sexual intercourse in marriage as rape.

OTHER ISSUES

On the list of issues no 38: National human rights commission and preventive mechanism

119. One of the most laudable developments during the observation period was the fact that Cambodia ratified in April 2007 the Optional Protocol to the Convention against Torture (OPCAT). Under the terms of the Optional Protocol, the Government should have created an independent national preventive mechanism (NPM) by April 2008. However, the Government failed to fulfill its obligations on this point. Furthermore, under the lead of the Ministry of Interior, the Government approved a sub-decree which created an inter-ministerial committee, consisting of representatives of government ministries, with no autonomous budget and no participation from civil society. The new institution is not independent and fails to meet the basic requirements of independence as stipulated under Article 17 and 18 of OPCAT. In particular, it is not in line with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights.

120. As mentioned in the Government's report, Prime Minister Hun Sen, in an address to a conference in September 2006 held to consider the matter, announced that his Government was going to create a National Human Rights Commission for the promotion and protection of human rights in Cambodia. In his announcement, the Prime Minister said that the new body would be based on the Paris Principles. The Government's positive public message provided new momentum to the process, and Cambodia declared that it aimed at becoming the fifth country in the ASEAN to establish such a body after Indonesia, Malaysia, the Philippines and Thailand. A work program for stakeholders in the Government and in civil society was drafted which provided a timeframe for passing the necessary law for the establishment of a national human rights commission in 2009. A joint working group was soon able to come up with a draft and circulate it to the relevant Government institutions, including the Cambodian Human Rights Committee. While no agreement was made on finalizing the draft, it is said that it would be made available for public consultation before the end of 2010.

On the list of issues no 41: Dissemination of Committee's recommendations

121. The 2003 conclusions and recommendations of the CAT have not been widely disseminated among the Cambodian populations. In particular state officials are not aware of the contents of the Convention and the Committee's recommendations. Moreover, state policies and regulations are rarely transparent and difficult to access for the public. NGO access to prison facilities has improved during the observation period.

Recommendations

The above mentioned NGOs recommend to the Royal Government of Cambodia:

Legal framework and judiciary:

(1) Immediately issue a public disclaimer to all the courts stating that the definition of torture set out in Article 1 applies to all proceedings, in accordance with Article 31 of the Constitution;

(2) Prepare and enact a specific anti-torture legislation which incorporates into domestic law the definition of torture set out in Article 1 of the Convention and characterizes in detail acts of torture as a specific crime, punishable by appropriate sanctions. Such legislation could also be linked to the question of establishing the legal basis for an effective national preventive mechanism in accordance with the Government's obligation under OPCAT;

(3) Take effective measures to establish and ensure a fully independent and professional judiciary in conformity with international standards. Such measures include to immediately expediting the adoption of three fundamental laws: the Organic Law on the Organization and Functioning of the Courts; the Law on the Amendment of the Supreme Council of Magistracy; and the Law on the Status of Judges and Prosecutors;

(4) Provide for an adequate and effective legal aid scheme which provides sufficient resources and independent capacities in order to guarantee access to justice for all the people of Cambodia, particularly for poor and vulnerable populations, and enables any person deprived of his or her liberty the right to be assisted by a lawyer;

(5) Establish a separate juvenile justice system by adopting expeditiously the draft Law on Juvenile Justice in line with the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice and develop corresponding guidelines and directives for judges, prosecutors and judicial police on the concept of a child-friendly justice system;

(6) Amend the Criminal Procedure Code as to guarantee detainees the right to communicate with a lawyer, relative, friend or other person at any time while in police custody, and to have a legal representative present during police questioning;

(7) Ensure the consistent interpretation of criminal procedure norms across all provinces, particularly in terms of harmonizing courts' and prosecutors' understanding of the limits of pretrial detention;

Custody and imprisonment

(8) Immediately close all unlawful detention centers, in particular the so-called Social Affairs Detention Centers. These centers exist solely to lock-up – without due process of law – members of society deemed 'undesirable' by the authorities. The existence of these centers has no basis in national or international law;

(9) Immediately stop the practice of shackling persons in police custody and other detention;

(10) Evaluate the criminal justice policy from a more systemic perspective, so as to formulate a holistic solution to Cambodia's prison overcrowding problem. As part of this systemic approach, the Government should (a) compile a reliable and accurate profile of the prison population – including details such as sentence length, commitment offense and the age of offenders – to help inform criminal justice policy decisions; and (b) reduce the use of imprisonment as the primary punishment for all transgressions and make greater use of non-custodial sentences;

(11) In particular, increase the use of non-custodial pretrial measures, i.e. supervised release prior to trial, in order to reduce excessive pre-trial detention, and comprehensively apply and further develop existing legal provisions on bail;

(12) Take all the necessary measures to reduce and prevent the use of torture and other ill-treatment in police custody, including (a) monitoring and/or recording of police interrogation sessions; (b) visits by prosecutors who should discharge their duty and conduct investigation and take action whenever they find any indication of torture; (c) allowance of increased monitoring of police detention centers by independent monitors, such as from civil society; and (d) training law enforcement, judges and lawyers in human rights law, and in particular the provisions of the Convention;

(13) Take measures to improve conditions of detention in police stations and prisons, including hygiene, food supply and separate detention of men, women and juveniles;

(14) Immediately disband the so-called "prisoner self-management committees," which function as a way for prison officials to outsource critical job functions and disguise state-sanctioned torture;

Investigation and complaints

(15) Establish an independent civilian oversight body competent to directly receive and deal with complaints against the police and other law enforcement personnel in a satisfactory manner;

(16) Ensure that law enforcement personnel and other officials of the state accused of torture and other ill-treatment are promptly, impartially and fully investigated and, where appropriate, prosecuted according to the law;

(17) Establish domestic capacities in forensic pathology and other specialized medial facilities allowing for a professional examination of victims of torture and other ill-treatment, if necessary by calling for international cooperation;

(18) Establish an effective state program of victims and witness protection at the courts which assists in ensuring confidentiality and protects those who come forward to report or complain about acts of torture;

(19) Prohibit the use of confessions as admissible evidence in court unless the confessions were made in the presence of a judge or a lawyer, and train law enforcement, judges and lawyers in how to identify and investigate false or forced confessions;

Rehabilitation and compensation

(20) Improve access to medical and psychological services for torture survivors, especially during and after imprisonment, and assure that they receive effective and prompt rehabilitation services;

(21) Raise awareness on the consequences of torture and the need for rehabilitation for torture survivors among health and social welfare professionals in order to increase referrals of torture survivors from the primary health care system to specialized services;

(22) Increase the capacity of national health agencies in providing specialized rehabilitation services, based on recommended international standards, to survivors of torture, including their family members, specifically in the field of mental health;

(23) Implement mental health services, staffed by adequately trained practitioners, in underserved communities (especially provincial areas) in order to provide services to those who normally cannot access or afford them;

(24) Carry out training of key community resource persons (teachers, village chiefs, monks, etc.) to improve identification and referral of torture survivors;

(25) Take action to regulate and institutionalize the right of victims of torture to fair and adequate compensation by the state;

OPCAT

(26) Ensure that the national preventative mechanism established in accordance with the Optional Protocol to the Convention against Torture is independent and impartial and also capable of receiving individual complaints about torture and other prohibited ill-treatment which it can then convey to the competent authorities for follow-up action;

(27) Ensure the wide distribution of the 2003 *and* the new conclusions and recommendations throughout Cambodia.

ANNEX

Table 1: Available Mental Health Services in Cambodia (as of August 2010)

Name of agency	Location	Kind and number of professionals	Type of services offered	Quality of services	Target group(s)
Governmental Sector					
Preah Kossamak national hospital	Phnom Penh	1 psychiatrist, 2 psychiatric nurses	Psychiatric evaluation and clinical services, some basic counseling	Limited availability of psychotropic drugs, possible over-reliance on prescription over psychosocial interventions, services mostly centered around Phnom Penh	General population ***No known torture component in services***
Khmer Soviet Friendship national hospital	Phnom Penh	10 psychiatrists, 3 psychiatric nurses	Psychiatric evaluation and clinical services, some basic counseling, 8 bed short-term inpatient	Limited availability of psychotropic drugs, possible over-reliance on prescription over psychosocial interventions, low quality of services, mostly centered around Phnom Penh	General population ***No known torture component in services***
Kg Thom referral hospital	Kg Thom	1 psychiatrist, 1 psychiatric nurse	Psychiatric evaluation and clinical services, some basic counseling	Limited availability of psychotropic drugs, possible over-reliance on prescription over psychosocial interventions, low quality of services	General population ***No known torture component in services***
Kg Cham referral hospital	Kg Cham	1 psychiatrist, 2 GPs trained in MH, ? psychiatric nurses	Psychiatric evaluation and clinical services, some basic counseling	Limited availability of psychotropic drugs, possible over-reliance on prescription over psychosocial interventions, low quality of services	General population ***No known torture component in services***
Pursat referral hospital	Pursat	1 psychiatrist, 1 psychiatric	Psychiatric evaluation and	Limited availability of psychotropic	General population

		nurse	clinical services, some basic counseling	drugs, possible over-reliance on prescription over psychosocial interventions, low quality of services	**No known torture component in services**
Battambang referral hospital	BTB	2 psychiatrists, ? psychiatric nurses	Psychiatric evaluation and clinical services, some basic counseling	Limited availability of psychotropic drugs, possible over-reliance on prescription over psychosocial interventions, low quality of services	General population **No known torture component in services**
Siem Reap referral hospital	Siem Reap	2 psychiatrists ? psychiatric nurses	Psychiatric evaluation and clinical services, some basic counseling	Limited availability of psychotropic drugs, possible over-reliance on prescription over psychosocial interventions, low quality of services	General population **No known torture component in services**
Kampot referral hospital	Kampot	1 GP trained in MH, 1 psychiatric nurse	Psychiatric evaluation and clinical services, some basic counseling	Limited availability of psychotropic drugs, possible over-reliance on prescription over psychosocial interventions, low quality of services	General population **No known torture component in services**
Municipal Hospital	Phnom Penh	1 psychiatrist	Psychiatric evaluation and clinical services, some basic counseling	Limited availability of psychotropic drugs, possible over-reliance on prescription over psychosocial interventions, low quality of services	General population **No known torture component in services**
UoHS/ Nursing School	Phnom Penh	1 psychiatrist, 1 psychiatric nurse	Human resources development	Under- and post-graduates in mental health	Medical students and psychiatric residents
MoH/ National Program for Mental Health	Phnom Penh	3 psychiatrists, 2 psychiatric nurses	Policy and program development		General population

Nongovernmental Sector					
Transcultural Psychosocial Organization (TPO)	Clinic Phnom Penh, 4 provincial offices in Battambang, Pursat, Kg Thom, Siem Reap	Clinic in Phnom Penh: 4 psychiatrists, 2 psychiatric nurses, 5 psychologists, 6 counselors, 1 expat psychologist. Provincial offices: approx. 4 counselors per office	Psychiatric evaluation and treatment, CBT based and client focused counseling, trauma treatment. Culturally sensitive trauma treatment for for survivors of the Khmer Rouge regime and current torture. Community mental health with focus on gender	Excellent training practices, 3 clinicians went through a 3-year training in cognitive-behavioral therapy. Ongoing training on trauma treatment and case supervisions. Culturally sensitive counseling services.	General population ***Torture component in services***
Licadho	Phnom Penh, Siem Reap, Kg. Thom, Kg. Cham, Kandal, Pursat, Buntey Meanchey, Battambang, Kg. Som, Kampot and Koh Kong	2 social workers, 1 medical doctor, 1 midwife and 1 pharmacist	Legal assistance, basic counseling and referral service	Internal staff capacity building on psychosocial issues; no specific training on treatment of torture survivors. Medical team provides one follow up in each province on a monthly base	***Torture component in services***
Social Services Cambodia (SSC)	Phnom Penh, Kampong Speu (Psychosocial Support Center), Takhmao (Sexual	12 social workers 4 caretakers	Assessment, counseling, case management, legal assistance for sexual assault, shelter for victims, referrals, follow	Excellent training practices, culturally sensitive client-centered counseling services	Victims of sexual assault or other gender based violence, residents of Kampong Speu province ***No known***

	Assault Center)		up care, social worker and counselor training		*torture component***
Caritas Child and Adolescent Mental Health Services	Takeo	15 staff providing direct clinical services: physicians, physiotherapists, nurses, psychiatric nurses, psychologist, and special educator	Evaluation of neurological and developmental disorders in children and adolescents. Family therapy, capacity building, awareness raising, educational counseling	Psychiatric nurses and psychologists have some training before being employed, but all others learn on the job. Weekly audits, case and therapy conferences, and journal club are ongoing. Expat experts frequently come in for professional trainings	Children and adolescents ***No torture component***
World Vision Trauma Recovery Program	Phnom Penh	5 counselors	Clinical, medical, legal case management, reintegration, residential center, advocacy, and training	Trauma focused CBT training from John Hopkins University. Clinical staff received training during supervision from TRP technical advisor, who worked for Association for Services to Torture and Trauma Survivors.	**Sexual assault and trafficked girls aged 7-17**
Cambodian Women's Crisis Center	2 centers in Phnom Penh, Siem Reap, Banteay Meanchey	Counselors, lawyers, and nurses as direct service	Counseling, medical treatment, vocational and literacy training, life skills, child care, advocacy, legal case management, reintegration/repatriation, mobile outreach. Offer anger management classes for men.	Follows minimum standards for shelter operation. Training for counselors and lawyers.	Domestic violence, trafficking, and rape victims. Women and children target group. ***No torture component***

Phnom Penh Counseling Center	Phnom Penh	1 psychiatrist, four expatriate counsellors, two Khmer counsellors	Individual, marital and family counseling, trauma counseling (specifically EMDR), educational assessment, marital therapy, debriefing, psycho-education, various trainings	Internationally accredited counseling staff, various certificates in trauma counseling, ethical and professional supervision	Expatriate and Khmer clientele ***No torture clients or specific trainings on torture***
Sunrise Mental Health Clinic 012-545-565	Phnom Penh	2 MD's, 1 psychiatrist, 2 psychologists, 2 nurses	Counseling, inpatient unit	Internal capacity building for their own staff	General population ***No torture component***
AFESIP	Phnom Penh, Kampong Cham and Siem Reap	1 psychologist, 1 counselor, 2 care givers	Individual counseling, referral to medical treatment and surgery. Vocational trainings. Play and art therapy for children.	Internal capacity building, specially for care giver; cases discussions and follow up support.	**Women and children, victims of trafficking** ***No torture component***
DDSP	Pursat	5 counsellors, 2 physical therapists, 2 social workers	Referral services, basic counseling, vocational training, seed grants, education and training for disabled people, self help groups		Target Group: Disabled persons: children, land mine victims, disabilities caused by accidents ***No torture component***
Prison Fellowship	Phnom Penh, and 21 provinces (monitoring staff)	1 Singaporean medical doctor and 8 counselors/ social workers	Basic counseling, individual counseling in prison, vocational training	Staff capacity building for social workers with basic counseling skills	***No torture component***