

**First Report of the Secretary General's Special Representative on Human
Rights in Cambodia**

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At the opening of the Second World Conference on Human Rights in Vienna in June 1993, the Secretary-General of the United Nations, Dr Boutros Boutros-Ghali emphasised the central role played by human rights protection in the achievement of the goals of the United Nations. Among the instruments engaged in furthering the objects of human rights are the Commission on Human Rights and the network of Special Rapporteurs, Special Representatives and other experts appointed by the Secretary-General to examine the state of human rights and the needs for advisory services and technical assistance.

Some of the Special Rapporteurs are concerned with particular themes (such as the Special Rapporteur on Extra-judicial, Summary and Arbitrary Executions, Mr Bacre Waly Ndiaye). Others are concerned with human rights in particular countries. All report on their work to the General Assembly of the United Nations in New York and to meetings of the Commission on Human Rights in Geneva. These reports are designed to bring to international attention problems in the observance of basic human rights norms; needs for technical and advisory services; and criticisms and reports of non-cooperation, where that is appropriate. It is by international scrutiny, exerting appropriate pressure on states, that advances in the respect for human rights are often secured and funds provided to help those states which are willing to conform to the recommendations of Special Representatives and Special Rapporteurs.

The purpose of this note is to record, in summary, the first substantive report of the Secretary General's Special Representative for Human Rights in Cambodia, Justice Michael Kirby (Australia). His appointment was made pursuant to a resolution of the Commission on Human Rights in February 1993. This was endorsed by the Economic and Social Council of the United Nations in July 1993. The appointment came into effect on 26 November 1993. The terms of reference of the Special Representative

include the maintenance of contact with the Government and people of Cambodia; the coordination of United Nations human rights activities in Cambodia; assistance to the Government of Cambodia in the promotion and protection of human rights; and reporting to the General Assembly and the Commission on Human Rights on his findings.

Because of the late appointment, the Special Representative was only able to present a formal report to the General Assembly at its 48th Session in December 1993. This foreshadowed his first Mission to Cambodia in January 1994. That Mission took place between 21-28 January 1994. In advance of the visit to Cambodia, the Special Representative had meetings in Geneva and Paris with individuals and organisations interested in human rights in Cambodia. These included consultations with the co-sponsors of the resolution under which he had been appointed, with United Nations bodies, specialised agencies and other organisations having a presence in Cambodia and with interested NGOs and officials. Whilst in Cambodia, the Special Representative spent time in Phnom Penh and Battambang. During the visit, he met the co-Prime Ministers of Cambodia (Prince Norodom Ranariddh and Mr Hun Sen), the Foreign Minister (Prince Norodom Sirivudh) and other Ministers, officials, members of the Human Rights Commission of the National Assembly of Cambodia, members of the Diplomatic Corps, representatives of non-governmental organisations and of the media. Following his initial visit to Cambodia, the Special Representative had discussions in Thailand with representatives of the Thai Administration.

A continued United Nations human rights presence

The report presented to the Commission on Human Rights at the beginning of March 1994 is divided into two sections. The first, titled "A Continued United Nations Human Rights Presence in Cambodia" (Doc E/CN.4/1994/73), outlines the historical background against which the appointment of the Special Representative took place. It describes the first mission to Cambodia and the high level of cooperation accorded both by governmental and non-governmental representatives.

Such cooperation is not the universal experience of Special Rapporteurs / Representatives.

The report proceeds to an analysis of the problems of Cambodia in according economic, social and cultural rights in the context of a country undergoing reconstruction after decades of war and civil strife. It then examines the state of civil and political rights in the country. It proceeds to scrutinise the position of identified vulnerable groups (women, children, ethnic and religious minorities, returnees and the handicapped). It concludes with a description of the work, funding and programme of the Cambodia Office of the United Nations Centre for Human Rights. This office provides a permanent presence of the United Nations Human Rights machinery in Cambodia. It employs nine international staff and ten local staff. Its programme and activities includes the provision of advice to the Government of Cambodia on the building of institutions and legal structures for the protection of human rights and democracy; securing a system for the administration of justice consistent with international standards; and strengthening the many non-governmental organisations which sprang up during the period that Cambodia, prior to its general elections, was under the control of the United Nations Transitional Authority for Cambodia (UNTAC). The Centre has also been engaged in raising awareness of human rights and encouraging popular support for democratic reforms and institutions. Although based in Phnom Penh, it has maintained contact with Cambodian provincial centres. It hopes shortly to place an officer in Battambang, the second city of Cambodia. The office of the Centre for Human Rights in Cambodia has been heavily engaged in providing advice to the Government as it sets about drafting and adopting laws basic to a civil society. These include laws on the press, criminal procedure, the judiciary, demonstrations, immigration and nationality.

The report describes the destabilisation of Cambodia after carpet bombing in the late 1960s, arising out of the war in neighbouring Vietnam. It outlines the terror imposed by the Khmer Rouge (PDK) regime and the invasion by Vietnamese forces in late 1978.

In October 1991 the Paris Peace Agreements, which followed a decade of protracted negotiations, secured the agreement of the four Cambodian factions to participate in a comprehensive political settlement. The United Nations was to supervise the conduct of free and fair elections. It was following these agreements that the UNTAC was established. Its forces established control in most parts of the country. A Human Rights Component of UNTAC was created to assist in the re-establishment of courts and a legal system necessary for the protection of human rights. As UNTAC moved towards the conduct of elections, it became necessary to anticipate its withdrawal, at the end of its mandate. To this end, in February 1993, the Centre for Human Rights in Geneva was encouraged to establish an operational presence in Cambodia. It was in this context too that the Office of the Special Representative for Cambodia was proposed. The importance of the establishment of an office in Cambodia derived both from the terrible derogations from human rights which had occurred in Cambodia in the preceding twenty years and from the fact that this was the first time such a permanent operational base had been established within a country to provide technical assistance and advice on human rights issues. The co-Prime Ministers, on behalf of the Government of Cambodia, signified their support for these initiatives. They gave full consent and promised "full cooperation in helping the Special Representative and the Centre for Human Rights to carry out their respective mandates".

The Special Representative's first report contains a detailed review of the economic dislocation, the disruption of health and education services and the danger to cultural and religious rights, especially from the Khmer Rouge forces which in 1993 withdrew from the election and receded to the north-east portion of Cambodia. Specific mention is made of the need to provide protection and security for the Angkor Wat complex near Sianriep, a town not far from areas of Cambodia under Khmer Rouge control. Particular attention was called to the problem of anti-personnel landmines.

In the field of civil and political rights, the report contains a number of criticisms. These extend to the constitution, recently adopted, which guarantees certain rights to "every Khmer citizen" rather than to "all persons" as required by international law. The need for a major revision of the code of criminal procedure, the respect of the rights of persons in detention and the assurance of due process and of a right of review is called to notice.

Much of the section of the report on vulnerable groups deals with the particular vulnerability of women in Cambodia. Only 19% of Cambodian high school students are female. Because of the attrition of war, 60% of agricultural labour and 67% of all industrial workers are women. Female illiteracy is estimated at between 60 and 70% - considerably higher than that of males.

Children are also described as a vulnerable group. More than 20% of the Cambodian population is estimated to be under four years of age. Infant and childhood mortality is high, in part because of malnutrition and diarrhoeal diseases. Growing problems of child prostitution are called to notice.

In the case of ethnic minorities, special attention is paid to the plight of the Vietnamese. Between February and April 1993 there were serious atrocities directed at the Vietnamese minority in Cambodia. Armed UNTAC naval personnel assisted at least 30,000 such people to enter Vietnam. About 5,000 ethnic Vietnamese are presently massed at Trey Thom near the border with Vietnam. Since the first mission, in April 1994, there have been serious massacres of ethnic Vietnamese in Cambodia. The Special Representative has indicated his intention to visit the ethnic Vietnamese refugees during his next mission to Cambodia in July/August 1994.

Recommendations for action

The conclusions and recommendations of the Special Representative are contained in a separate *addendum* to this report. This records the important progress which has been made towards recreating a civil society since the Paris Peace Agreements: the adoption of the new Constitution and re-establishment of the

Kingdom of Cambodia and the conduct of elections accepted as free and fair. There are listed many persisting problems which derive from the continuing threats to the security of Cambodia posed by the Khmer Rouge (PDK). The first of these is the laying of land mines in large numbers throughout the country. The destruction of the infrastructure for the enforcement and realisation of human rights is described as a major impediment to rebuilding effective safeguards for human rights in Cambodia. The Special Representative identifies his approach as being one of cooperation, advice and assistance. Amongst the priority areas requiring urgent attention he lists the devotion of proper resources for hospitals, schools, courts and the defence of cultural treasures; support for the Human Rights Commission of the National Assembly; the enactment of urgently needed laws (including on land ownership, press freedom, the judiciary, nationality and peaceful assembly); the implementation of training programmes concerning human rights and the assurance of true independence of the judiciary, particularly by the payment of proper salaries. Currently, judges in Cambodia receive only \$US20 a month. This is grossly inadequate and exposes the judiciary to the risks and temptations of corruption which undermine the safeguards for effective protection of human rights.

Detailed recommendations are made on the urgent need to upgrade the delivery of health services; to protect cultural sites and to reinforce the moves to reopen schools and other places of education. The need to teach human rights in schools and through the media to the general community have the strong support of the government.

Detailed recommendations are also made on securing judicial independence, fair and open trial of accused persons, the proper conduct of the police and military and of prisons, the provision of an effective press law which would guarantee freedom of expression and protection for vulnerable groups, including women, children and ethnic minorities. Particular emphasis is placed upon the need to support the Human Rights Commission of the National Assembly as the authentic, locally established body to receive and investigate human rights complaints. Many of those complaints

have concerned disputes about land rights which have broken out following the return to their former land of previous owners, displaced by war.

Wider recommendations

In two respects, the report and recommendations go beyond the particular case of Cambodia. In dealing with the problem of security which destabilises the building of institutions for the protection of human rights in Cambodia, the Special Representative lays emphasis upon the particular problems caused by the laying of landmines. The instances of death and serious bodily injury caused by landmines in Cambodia are rivalled only by Angola and Afghanistan. The report requests the Commission on Human Rights to call on all member States to assist in the removal of mines in Cambodia and to adopt laws and strict practices to police the manufacture, supply and export of landmines. It proposes that the Commission should urge the Secretary-General to convene an international conference for an urgent review of the *Convention on Prohibitions and Restrictions on the use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to Have Indiscriminate Effects*, 1980.

Secondly, the report responds to an Amnesty International report on human rights abuses alleged to have been caused by United Nations' Peace Keeping Forces, as well as complaints made concerning the lack of effective redress for such complaints. See Amnesty International, *Peacekeeping and Human Rights*, Jan 1994, London. The Special Representative suggests that the Commission on Human Rights may wish to recommend to the Secretary-General of the United Nations the issue of guidelines, based on the experience of UNTAC in Cambodia, to govern the recruitment, briefing and training of peacekeeping and other United Nations personnel. It is proposed that such guidelines should include instruction in social relations with the host population; safe sexual practices to prevent the global spread of HIV/AIDS; and free testing for HIV/AIDS and other sexually transmitted diseases. Consideration of the issue of Code of Conduct, applicable to all United Nations peace

keeping personnel, and the establishment of effective monitoring bodies is also recommended.

Commission on Human Rights resolution

The foregoing report was presented to the Commission on Human Rights in Geneva on 2 March 1994. The Special Representative outlined orally the priorities contained in the report. He asserted "The world community must not let Cambodia down. It has purchased our attention by atrocious suffering. It is still paying the price by a genuine effort which we must support and sustain".

The representative of the Cambodian Government, Mr Ieng Mouly, Minister of Information, declared that the "root cause of the conflict" and of the Cambodian tragedy had been "violations of human rights". The Minister was accompanied in Geneva by Mr Kem Sokha, Chairman of the Commission on Human Rights of the National Assembly of Cambodia. Cooperation with the protection of human rights was therefore an essential ingredient in the new political settlement. Mr Mouly described the steps being taken for the enactment of essential laws. He mentioned the moves being taken to improve the condition of prisoners and the abolition of capital punishment. He finished with an appeal to the international community "to help step all direct or indirect assistance and facilities extended to the Khmer Rouge". He drew to attention the estimated 8 to 10 million landmines indiscriminately laid in Cambodia and called for support to the Cambodian Mine Action Centre (CMAC) in removing this special threat to domestic stability. He indicated that the Cambodian Government welcomed the opening of the Centre for Human Rights in Phnom Penh and the appointment of Justice Kirby as Special Representative of the Secretary-General.

The final resolution adopted by the Commission on Human Rights welcomed the appointment by the Secretary-General of a Special Representative and the establishment of the operational presence of the Centre for Human Rights in Cambodia. It noted with interest the report of the Special Representative and particularly the identification of urgent priority areas. It requested the Centre for

Human Rights to assist in the creation of an independent national institution, such as an Ombudsman or Human Rights Commission. It expressed grave concern at the indiscriminate use of anti-personnel landmines and the devastating consequences and destabilising effect they have. It requested the Secretary-General to renew the mandate of the Special Representative and requested him to report further to the General Assembly and the Commission on Human Rights.

The Commission on Human Rights did not take up the reference to a Code of Conduct for, and means of redress against United Nations Peacekeeping Forces. This will now be addressed directly to the Secretary-General. Although expressing concern about the position of landmines, the Commission did not take up the practical steps necessary to translate that concern into action. These too will be addressed by the Special Representative directly to the Secretary-General and to the newly appointed High Commissioner for Human Rights (Mr Jose Ayola Lasso) who made his first address to the Human Rights Commission at the same time as the report on Cambodia was tabled.

In the course of his address, the High Commissioner drew upon the *Vienna Declaration on Human Rights*, adopted in Vienna in June 1993. He emphasised the need for improved coordination of United Nations machinery for the protection of human rights. In furtherance of that identified need, a meeting of Special Rapporteurs / Special Representatives / Experts and Chairman of Committees of the Human Rights Commission has been convened by the Assistant Secretary-General for Human Rights (Mr Ibrahim Fall) to take place in Geneva 30 May - 1 June 1994. It may be expected that out of these deliberations will come improved coordination of the work of these United Nations office-holders. They are, in a sense, the vanguard of the movement to translate the high aspirations of United Nations human rights instruments into practical reality for safeguarding human rights and to support the provision of technical assistance and advisory services where these are necessary to reinforce the global movement to human rights as the foundation of the new world order established by the United Nations, nearly 50 years ago.