

Filename: 11 LAW UNTAC.doc

UNITED NATIONS - NATIONS UNIES

UNTAC - APRONUC

PROVISIONS RELATING TO THE JUDICIARY AND CRIMINAL LAW AND PROCEDURE APPLICABLE IN CAMBODIA DURING THE TRANSITIONAL PERIOD

Decision of September 10, 1992

THE SUPREME NATIONAL COUNCIL (hereinafter referred to as "the SNC"),

Acting in accordance with the powers granted to it as the unique legitimate body and source of authority under Article 3 of the *Agreement On A Comprehensive Political Settlement of The Cambodian Conflict*, of 23 October 1991, (hereinafter referred to as the Agreement"),

Recalling Article 6 of the Agreement, according to which the SNC has delegated to the United Nations all powers necessary to ensure the implementation of the Agreement,

Further recalling that the United Nations Security Council, by its resolution 745 (1992), has established the United Nations Transitional Authority in Cambodia (hereinafter referred to as "UNTAC") in accordance with Article 2 of the Agreement, to carry out the mandate set forth in Annex 1 to the Agreement,

Considering that UNTAC has been given responsibility, pursuant to Articles 6 and 16 of the Agreement and sections B and E of Annex 1, for direct control or supervision in the areas of maintenance of law and order, protection of human rights, law enforcement, and judicial processes,

Considering further that all parties to the Agreement explicitly recognized in Article 15 that all persons in Cambodia, and all Cambodian refugees and displaced persons shall enjoy the rights and freedoms embodied in the Universal Declaration on Human Rights and other relevant international human rights instruments,

Considering also that the SNC acceded to Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 20 April 1992 and that these instruments entered into force with respect to Cambodia on 26 August 1992,

Concerned that the structures, laws and judicial institutions do not fully comply with the requirements of the Paris Agreement and sometimes totally or partially lacking in certain areas, and in any case are inadequate to ensure public order and human rights throughout most of the territory,

Recognizing that UNTAC has the responsibility to assist in establishing such structures, laws and judicial institutions where they are absent and to help improve them where they already exist in order to bring them up to the requirements of the Agreement,

Convinced of the urgent need to indicate clearly to all the Cambodian parties the rules of law which must be applied throughout Cambodia and the judicial procedures which must be put in place in order to ensure their effective application during the transitional period,

Further convinced that the application of these rules and procedures is necessary to foster a politically neutral climate and to prepare for free and fair elections,

THEREFORE ADOPTS the following provisions relating to the judiciary, and criminal law and procedure applicable in Cambodia during the transitional period, and **CALLS UPON** all Cambodian parties to apply them in good faith until such time as the Legislative Assembly resulting from the elections amends them or adopts new legislation in this area.

SECTION I: JUDICIAL SYSTEM

ARTICLE 1: INDEPENDENCE OF THE JUDICIARY

1. The independence of the judiciary must be ensured in accordance with The Basic Principles on the Independence of the Judiciary, adopted by the United Nations . Judges must decide in complete impartiality, on the basis of facts which are presented to them, and in accordance with law, refusing any pressure, threat or intimidation, direct or indirect, from any of the parties to a proceeding or any other person.
2. The judiciary must be independent of the executive and legislative authorities and of any political party. Persons selected for judicial functions must be honest and competent.
3. The principle of the independence of the judiciary entitles and requires judges to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. They must have decent and sufficient material conditions for the exercise of their functions. Judges must receive suitable training and be remunerated adequately to ensure their impartiality and independence.

ARTICLE 2: JUDICIAL FUNCTIONS

Judges and prosecutors both are magistrates. Only judges may adjudicate. Prosecutors are responsible for penal actions, which only they may initiate. They file indictments in court and in all other fora provided for in this text. The Attorney General pleads before the Supreme Court in the interest of the law, reviews the legality of indictments by provincial prosecutors, and organizes and supervises their work.

ARTICLE 3: COURTS

1. The Cambodian parties to the Agreement (hereinafter referred to as "the parties") agree to set up, with the collaboration of UNTAC, at least one trial court in each zone or province where such courts do not now function. Judges shall be appointed, promoted and dismissed by the existing administrative structure, under the supervision of UNTAC.
2. Trial courts are composed of a judge and a prosecutor. These courts have general jurisdiction over the application of these rules, as well as laws and other norms in force in their respective jurisdictions.

3. Alternate judges may be appointed in the same way to replace judges who disqualify themselves due to a conflict of interest or incapacity.

ARTICLE 4: APPELLATE COURTS

1. The parties agree to set up, with the collaboration of UNTAC, at least one appellate court in any zone or territory under their control where they have not already established one.
2. Appellate Courts are composed of three judges and one prosecutor, appointed, promoted and dismissed by the existing administrative structure, under the supervision of UNTAC.
3. Alternate judges may be appointed in the same way to replace judges who disqualify themselves due to a conflict of interest or incapacity.
4. Any intervening party, prosecutor or the accused may appeal decisions of trial courts within a period of two months from the day judgment is pronounced in court if the accused is present; an additional fifteen days are added to this period if the judgment was rendered in absentia.
5. Appellate courts judge both law and fact.

ARTICLE 5: SUPREME COURT

In accordance with the wishes of the Party "State of Cambodia's, the current supreme court in Phnom Penh shall be improved so that it may comply with the requirements of Article 1 above and perform the following functions:

- a) it exercises judicial review of the law;
- b) it reviews appellate judgments on petition by the Attorney General, the convicted party, the intervening party or by their counsel within a period of two months from the day judgment is pronounced in the appellate court if the accused is present for sentencing; an additional fifteen days are added to this period if the judgment was rendered in absentia.
- c) it may send cases back to an appellate court and, if that court does not conform to its judgment, the Attorney General, the condemned party, the intervening party, or their counsel may resubmit the case to the Supreme Court within two months of the judgment under the same conditions mentioned under sub-paragraph b) above. The Supreme Court may then render a final decision on both the law and the facts.

ARTICLE 6: POLICE

1. The police shall observe the Code of Conduct for Law Enforcement Officials and, to the extent possible, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the United Nations.
2. The parties whose law enforcement officials are not able to comply with the requirements of this text agree to collaborate with UNTAC in setting up and training an appropriate police force.

ARTICLE 7: ATTORNEYS AND COUNSEL

1. Attorneys are authorized to establish a Bar Association, which will take the form of a non-profit association with disciplinary and regulatory authority over its members. The Bar shall neither receive nor accept any instructions from any political party, nor from any legislative authority or executive authority acting for any of the Cambodian parties to the Agreement. During the transitional period, any person holding a degree equivalent at

least to the university law degree or having five years of legal or judicial experience at a sufficiently high level of responsibility may be admitted to practice law.

2. Due to the small number of attorneys in Cambodia, during the transition period, any Cambodian holding a diploma of completion of secondary school education may represent an accused person in court, provided he or she is not an executive-level official or an elected official of the existing administrative structures or of a recognized political party. Furthermore, accused persons may ask a member of their family to represent them, regardless of level of education.
3. The representative of an accused party shall have the same rights in judicial proceedings as an attorney and be able to have access to any document, file motions or plead. In the present context the term counsel refers without distinction either to an attorney or to any other person representing an accused.
4. Foreign attorneys shall be allowed to appear in Cambodian courts, provided they furnish proof that they are members of a Bar in their own country or are officially authorized to practice in their country. The existing administrative structures agree to facilitate the granting of visas to attorneys coming to practice their profession in Cambodia.

ARTICLE 8: THE CORRECTIONAL SYSTEM

1. The aim of the correctional system is social rehabilitation. Treatment of all prisoners must be in conformity with the Standard Minimum Rules for the Treatment of Prisoners, and Basic Principles for the Treatment of Prisoners, adopted by the United Nations.
2. Any authority that arrests or detains suspects or detains anyone in pre-trial detention or following conviction, must maintain a prison registry signed every month by the prosecutor and one of the judges in the province or zone indicating, for purposes of verification, the name, age, address, date and reason of arrest, the date of arraignment, and, for convicted persons, the date of the sentencing and the prescribed punishment.

ARTICLE 9: VISITS TO PLACES OF DETENTION

1. Prosecutors and judges may at any time enter prisons to visit prisoners.
2. Authorized agents of UNTAC human rights, civil administration and civil police components have the same right. In this connection, each Cambodian party to the Agreement must compile a list of all its detention centers at the latest upon entry into force of the present text, and submit the list by this date to the central services of the UNTAC civil administration component.

SECTION II: CRIMINAL PROCEDURE

ARTICLE 10: LEGAL ASSISTANCE

1. The right to assistance of an attorney or counsel is assured for any person accused of a misdemeanour or crime.

2. No one may be detained on Cambodian territory more than 48 hours without access to assistance of counsel, an attorney, or another representative authorized by the present text, no matter what the alleged offence may be.

ARTICLE 11: MILITARY TRIBUNALS

Military tribunals have jurisdiction only over military offenses. Military offenses are those involving military personnel, whether enlisted or conscripted, and which concern discipline within the armed forces or harm to military property. All ordinary offenses committed by military personnel shall be tried in ordinary courts.

ARTICLE 12: TREATMENT OF DETAINEES

1. No detainee shall be subjected to cruel, inhuman or degrading treatment or punishment, nor be beaten or tortured. Each detainee must have access to appropriate medical care. Prisoners must not be shackled or kept in isolation, whether they are in pre-trial detention or already sentenced. In no case shall the family of a detainee or prisoner be harassed as a result of the prisoner's behaviour.
2. Arrest and detention must take place in accordance with the Standard Minimum Rules for the Treatment of Detainees, as well as the Body of Principles for the Protection of any Person Under Any Form of Detention or Imprisonment, adopted by the United Nations.

ARTICLE 13: ARREST AND DETENTION

1. No one may be detained more than 48 hours without being brought before a judge, following charges filed by a prosecutor. In the event that it is impossible to abide by this time limit due to prevailing transportation conditions in the region, the time may be extended to the extent strictly necessary to bring the detainee before a judge by the most rapid means available.
2. The public prosecutor petitions the judge to indict and possibly to detain a suspect, based on the police file, by preparing an introductory indictment making reference to specific facts and legally characterizing the infraction according to the present text.
3. The judge may thus decide, by a reasoned decision:
 - to charge the suspect, with or without incarceration;
 - to release the suspect because the evidence is insufficient;
 - to continue the investigation without disclosing the name of the suspect.
4. Within the same time limit of 48 hours after arrest, extended if appropriate for the additional period mentioned in the sub-paragraph (1) above to allow for transportation, counsel must receive a copy of the file of accusation against the suspect.

ARTICLE 14: PRE-TRIAL DETENTION

1. Only the judge, if so petitioned by the prosecutor, may decide to keep an accused in prison, and only if the accused is likely to escape and has not demonstrated an interest in remaining available to appear, such as a job, a family, a home, or if there is reason to believe that the accused will influence witnesses or the conduct of the investigation.

2. The accused has the right to petition the judge for release, either directly or through counsel. The judge must respond within five days by a reasoned decision.
3. The accused, the intervening party or their counsel or the prosecutor may appeal the decision of the judge within five days. The Appellate Court must judge within fifteen days petitions appealing decisions on detention.
4. The duration of a pre-trial detention must in no case exceed four months. However, upon the reasoned decision of a judge, this period may be extended to six months if justified by the requirements of the investigation. Minors less than 13 years of age may not be placed in pre-trial detention; minors 13 to 18 years of age may not be placed in pre-trial detention for more than one month. The length of such detention may be doubled if the minor is charged with a crime.

ARTICLE 15: ADMINISTRATIVE DETENTION

No one in Cambodia may be detained by any administrative police nor for offenses not set out in this text or other applicable penal law or text.

ARTICLE 16: RELEASE OF DETAINEES

All persons detained or held in a center of detention not appearing on the list mentioned in article 9 of the present text shall be considered as illegally detained and shall be immediately released, upon petition by a prosecutor, by any court, by counsel of the detained, or by any authorized representative of UNTAC civil administration, human rights or civil police components. Any person detained or held within a declared center of detention but not listed on the prison registry shall similarly be released.

ARTICLE 17: ACCESS TO THE FILE

1. If a judge decides that additional investigation is necessary, counsel of the accused shall, throughout the investigation, be immediately advised of new evidence presented against his or her client.
2. Counsel shall have access to the file of the person charged upon simple written request at any time during the proceeding, and shall obtain from the judge any results of investigation, expert testimony or hearings which he or she considers useful in the defense of his or her client.

ARTICLE 18: ARREST WITHOUT A WARRANT

Police may arrest anyone found in the act of committing a cognizable offense, in particular:

- if the suspect is observed committing a crime or misdemeanour, or if pursued by a public outcry;
- if the suspect is identified at the scene of a crime or misdemeanour by witnesses or the victim;
- if the suspect attempts to flee the scene of a crime or misdemeanour.

ARTICLE 19: ARREST BASED ON EXISTENCE OF SUBSTANTIALLY INCRIMINATING EVIDENCE

1. In all other cases, the investigating police may not arrest a suspect without substantially incriminating evidence which is exact and consistent and indicates that the suspect participated in the commission of a crime or misdemeanour.

2. A suspect who has fled may be arrested pursuant to an arrest warrant issued by a public prosecutor or judge and executed by police conducting the investigation.
3. The arrest warrant must stipulate facts and grounds for the arrest of the suspect.
4. The treatment of an arrested person shall be in accordance with the provisions of article 13 of the present text.
5. Furthermore, the police may, if so instructed by a prosecutor or judge, subpoena any person useful to the investigation to appear before the police, judge or prosecutor if that person has refused to heed other requests to appear voluntarily. After appearance, a person so summoned shall be immediately released unless there are specific, consistent and serious charges against him or her, in which case the procedures outlined in article 13 of the present text shall apply.

ARTICLE 20: SEARCHES

1. Searches must be conducted in the presence of the suspect and two witnesses, preferably neighbours or owners of the building.
2. Except in cases of cognizable offenses, searches must be authorized by one of the judges of the competent court or by the prosecutor. They may take place only between the hours of 6:00 a.m. and 6:00 p.m. They should take place in the presence of the suspect if possible, and two witnesses from among the suspect's family members. Proof obtained in violation of the present article is not admissible in court.

ARTICLE 21: TIME LIMITS

1. Any person, whether or not in detention, must be judged no later than six months after arrest.
2. Counsel for the accused must be informed at least fifteen days prior to the date of the trial of his or her client.

ARTICLE 22: RELEASE FOR PROCEDURAL ERROR

1. If any of the procedures set out in articles 10-21 is not complied with, the accused must be immediately released. This immediate release may be obtained by counsel for the accused or any authorized representative of UNTAC civil administration, human rights or civil police components. As of the date that the present text takes effect, all detained or imprisoned persons must have a file prepared in conformity with the present text and immediately available for review by judges, prosecutor or authorized agents of UNTAC. If no such file exists, these persons must be released on petition by their counsel, by any authorized representative of UNTAC civil administration, human rights or civil police components, by the judge or by the prosecutor.
2. Violations by public officials of the individual rights enumerated in articles 10-21 of the present text will incur sanctions provided in article 57.

TITLE III: TRIAL

ARTICLE 23: IN CAMERA HEARINGS

All proceedings must be public, unless the victim or his or her representatives request a closed hearing and the judges concur.

ARTICLE 24: EVIDENCE

1. Witnesses mentioned in the police file, including police officers, must be heard in court. Witnesses may be examined by the intervening party, the accused or their respective counsel, or by the prosecutor.
2. All evidence, including police reports, is rebuttable and may be challenged during the trial.
3. Confessions by accused persons are never grounds for conviction unless corroborated by other evidence. A confession obtained under duress, of whatever form, shall be considered null and void. Nullification of a confession must be requested from the judge by counsel for the accused prior to the sentencing hearing.
4. The defense may call its own witnesses, and present its own evidence to the court.
5. All witnesses, whether for the prosecution or for the defense, may be summoned to appear before the court by subpoena and are subject to a fine of 100,000 to 1,000,000 Riels for failure to appear.

ARTICLE 25: PRESUMPTION OF INNOCENCE

All suspects, indicted and accused persons benefit from the most complete presumption of innocence.

ARTICLE 26: JUDGMENT

1. All criminal judgments are rendered "In the name of the Cambodian Nation." They must indicate the acts held against the accused and the witnesses or evidence on which the judge relies, as well as the explicit grounds of the conviction.
2. The judgment, containing the explicit grounds for the conviction and the order, must be read aloud at the trial. A copy of the judgment shall be given to the parties in the trial at their request.

ARTICLE 27: INTERVENTION

1. Victims or their beneficiaries may directly or through counsel bring a civil action in a criminal case during the preliminary investigation, or during the sentencing hearing in order to claim damages and costs against the offender, co-offender or the accomplices to the offense. Counsel for the intervening party shall have access to the file on the same terms as those of counsel for the accused.
2. Parties guilty of the offense and their accomplices are jointly liable for reparations or compensation, under conditions outlined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations.

ARTICLE 28: OFFENSES BASED ON OPINION OR BELIEF

1. No one may be prosecuted for political opinion, religious convictions, or membership in a race or ethnic group.

2. Penal texts currently in force anywhere in Cambodia may no longer refer to offenses based on opinion or ideology, and are accordingly abrogated.

ARTICLE 29: REVIEW OF CERTAIN TRIALS

Any convicted person may directly or through the counsel or an attorney, request a review of their trial to determine whether they have been convicted for their ideas, opinions, statements, or their membership or non-membership in a racial, ethnic, religious, political or social group.

ARTICLE 30: STATUTE OF LIMITATIONS

The Statute of Limitations is three years for misdemeanours and ten years for crimes. The Statute of Limitations ceases to run as soon as any legal process has been initiated.

TITLE IV: CRIMES

ARTICLE 31: MURDER

1. Anyone who kills or attempts to kill another person after premeditating the crime, or by preparing an ambush, or who kills or attempts to kill another person in the course of theft or rape, is guilty of the murder, and shall be liable to a punishment of imprisonment for a term of ten to twenty years.
2. Premeditation is the process of conceiving and preparing an attack on another person before the actual execution of the attack. An ambush consists of lying in wait with the intention of committing an act of violence against another person.

ARTICLE 32: VOLUNTARY MANSLAUGHTER

Anyone who voluntarily kills or attempts to kill another person without any of the aggravating circumstances mentioned in Article 31, whether or not a weapon is used, is guilty of the crime of voluntary manslaughter, and shall be liable to imprisonment for a term of eight to fifteen years.

ARTICLE 33: RAPE

1. Anyone who rapes or attempts to rape another person of either sex is guilty of rape and shall be liable to imprisonment for a term of five to ten years.
2. Rape is any sexual act involving penetration against a nonconsenting person. If rape is accompanied by fraud, violence or threats, or if it is committed by anyone in a position of authority over the victim, the punishment shall be a term of imprisonment of ten to fifteen years.

ARTICLE 34: ROBBERY

1. Anyone who steals or attempts to steal from another person under the following aggravating circumstances is guilty of the crime of robbery and shall be liable to a term of imprisonment of three to ten years:
 - if the theft is accompanied by force, whether or not a weapon is used or the victim sustains injury;
 - or if the theft is committed by several persons or by breaking and entering.

2. Theft is the fraudulent taking of another person's property with the intent of appropriating it.

ARTICLE 35: ILLEGAL CONFINEMENT

Anyone who, without orders from the judicial authority, arrests, detains or illegally confines anyone shall be liable to imprisonment:

- for ten years, if the illegal confinement lasts longer than one month;
- from three to five years, if the confinement lasts less than one month.

ARTICLE 36: ORGANIZED CRIME

Any individual who has taken part in a formal or informal association set up for the purpose of planning one or more crimes or misdemeanours against persons or property, if specific acts of preparation of these offenses have taken place, shall be liable to a term of imprisonment of from three to fifteen years.

ARTICLE 37: EMBEZZLEMENT BY PUBLIC OFFICIALS

1. Any elected official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, or any political official who, acting in an official capacity or while performing official duties, with a view to owning or using, misappropriates, sells, rents, embezzles for personal profit or for that of a third party, property, services, money, personnel, any advantage, document, authorization or any function belonging to any public authority, is guilty of the crime of embezzlement of public property and shall be liable to imprisonment for a term of three to ten years.
2. After serving the sentence, the person convicted of this crime may be removed from elective office and may also be prohibited for a period of two years from standing for election or from holding any position in the public administration.
3. The penalty for this crime shall also include a fine of double the sum of money or value of the property embezzled.

ARTICLE 38: EXTORTION

1. Without prejudice to possible disciplinary action, any civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, or any political official who, acting in an official capacity or while performing official duties, solicits or attempts to solicit or who receives or attempts to receive property, a service, money, staff, a professional position, a document, an authorization or any benefit in exchange for any one of these same elements is guilty of the crime of extortion and shall be subject to a punishment of three to seven years in prison.
2. After serving the sentence, the person convicted of this crime may be removed from elective office and may also be prohibited for a period of two years from standing for election or from holding any position in the public administration.
3. The penalty for this crime shall also include a fine of double the sum of money or value of the property extorted.

ARTICLE 39: ILLICIT TRAFFIC IN NARCOTIC DRUGS

1. Except for derogations for reasons of public health granted by public health authorities of each of the existing administrative structures, the production, transport, importation, exportation, possession, offering, transfer, acquisition and use of plants, narcotics and psychotropic substances, the list of which is appears in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988, the Protocol to the Single Convention of 27 March 1972, Convention on Psychotropic Substances of 21 February 1971 and the Single Convention on Narcotic Drugs of 30 March 1961, are prohibited throughout Cambodian territory.
2. Any one who knowingly violates the present article shall be liable to a punishment of five to fifteen years in prison. Furthermore, all illicit substances will be seized and the courts shall order their destruction after they have been analyzed.

TITLE V: MISDEMEANORS

ARTICLE 40: INVOLUNTARY MANSLAUGHTER

Any person who through carelessness, negligence or other culpable behaviour involuntarily kills another person is guilty of the misdemeanor of involuntary mans-laughter and shall be liable to a term of imprisonment of one to three years.

ARTICLE 41: ASSAULT AND BATTERY

1. Anyone who voluntarily strikes another resulting in injury leading to permanent disability or temporary disability lasting more than six months, is guilty of battery and shall be liable to a punishment of one to five years in prison.
2. If the disability lasts less than six months, the offence shall be punished by a term of imprisonment of six months to two years.
3. If there is no disability, the punishment shall be a term of imprisonment of two months to one year.
4. If any weapon is used to strike the blows, the period of imprisonment shall be doubled.

ARTICLE 42: INDECENT ASSAULT

1. Any person who sexually offends another, unconsenting, person of either sex by touching, caressing or any other sexual act not involving penetration, is guilty of the misdemeanour of indecent assault and shall be liable to a term of imprisonment of one to three years.
2. If the indecent assault is accompanied by fraud, violence or threat, or if it is committed by any person with authority over the victim, or if the victim is under 16 years of age, the duration of these sentences shall be doubled.
3. Any person who procures, entices or leads away, for purposes of prostitution, or exploits the prostitution of a minor, even with the consent of that minor, shall be liable to a term of imprisonment of two to six years.

ARTICLE 43: THEFT

Any person who steals or attempts to steal the property of any natural or artificial person, in the absence of any of the aggravating circumstances set forth in Article 34, is guilty of the misdemeanour of theft, and shall be liable to a term of prison of six months to five years.

ARTICLE 44: MISDEMEANOURS CONCERNING CULTURAL PROPERTY

1. Any person who steals or attempts to steal cultural property belonging to the State or to natural or artificial persons, which is part of the Cambodian national heritage, shall be liable to a term of imprisonment of six months to ten years. Any person who illicitly exports or attempts to export or transfers or attempts to transfer ownership of cultural property shall be liable to the same punishment.
2. For the purposes of the present text, cultural property shall be as defined in the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, ratified by Cambodia on 26 September 1972. Any element of cultural property that has not been the subject of an authorization to transfer ownership or to export, issued by the Supreme National Counsel or by the body designated for this purpose by the SNC, shall be deemed part of the Cambodian national heritage.
3. The voluntary damaging of cultural property belonging to the Cambodian national heritage, through unauthorized or clandestine excavations, vandalism or any other means, shall incur the same punishment.

ARTICLE 45: FRAUD

Any person who through deceit, use of a false name or impersonation persuades another person of an illusory authority, or by making another person fear or anticipate an event of any sort thereby receives or attempts to receive all or part of a tangible or intangible estate of that or any other person, is guilty of the misdemeanor of fraud and shall be liable to a term of imprisonment of one to five years.

ARTICLE 46: EMBEZZLEMENT

Any person who takes or wastes, against the interest of the owner, possessor or holder, any goods, money, merchandise, or document which contains or itself represents an obligation or release, which was entrusted to the person for rental, deposit, commission, loan or modification (paid or unpaid), with the responsibility to return it or to offer it back or to put it to an agreed upon use, is guilty of embezzlement and shall be liable to a punishment of a term of imprisonment of one to five years.

ARTICLE 47: COUNTERFEIT OF SEALS, BANK NOTES, PUBLIC DOCUMENTS, STAMPS AND TRADEMARKS

1. Any person who counterfeits seals of existing administrative structures or makes improper use of such seals
2. Any person who counterfeits or falsifies a bank note, postage stamp, validation sticker, fiduciary value, share, bond, currency that is legally exchangeable in Cambodia, passport or identity card of existing administrative structures, or who makes use of or brings the same into Cambodian territory;

3. Any person who counterfeits or falsifies a bank note, postage stamp, validation sticker, fiduciary value, share, bond, currency that is legally exchangeable in a foreign country, passport or identity card of a foreign country, or who makes use of or brings the same into Cambodian territory is guilty of the misdemeanor of counterfeit and is liable to a term of imprisonment of five to fifteen years.

ARTICLE 48: MISAPPROPRIATION OF INTELLECTUAL PROPERTY

1. Any production of a writing, musical composition, drawing, painting, film, photograph, or any other printed or engraved representation which does not respect the intellectual property rights of its author(s) constitutes misappropriation of intellectual property.
2. Any importation, exportation, reproduction, public showing or distribution of a reproduction of a work with intent to disrespect the intellectual property rights of the author also constitutes misappropriation of intellectual property.
3. The copyright to which the present text refers is that which is protected by the Bern Convention of 9 September 1886, revised in Paris on 24 July 1971, and by the "International Copyright Convention" signed in Geneva on 6 September 1952, revised in Paris on 24 July 1971 (NB: exact English title of Convention required).

ARTICLE 49: FORGERY OF PUBLIC DOCUMENT

Any elected official, civil servant, military personnel, or official agent of any of the four Cambodian parties to the Paris Agreement or of any registered political party who, acting in an official capacity or while performing official duties, commits a forgery, either by false signature, or by alteration of a deed, writing or signature, or by impersonation, or by false entry into a registry or other public deed after its execution or closing, and any person who knowingly makes use of the same, is guilty of forgery of a public document and shall be liable to a term of imprisonment of five to fifteen years.

ARTICLE 50: FORGERY OF PRIVATE COMMERCIAL OR BANK DOCUMENT

1. Any person who, by one of the means outlined in Article 49, forges or attempts to forge a private, commercial or bank document shall be liable to a term of imprisonment of five years or a fine of one million to ten million Riels.
2. Any person who knowingly makes use of a forged private, commercial or bank document shall be liable to the same punishment.

ARTICLE 47: RECEIVING AND CONCEALING STOLEN GOODS

Any person who receives or purchases goods which he or she knows to have been obtained through theft or falsehood or a misdemeanor of any kind is guilty of the misdemeanor of receiving and concealing stolen goods, and faces a punishment of one to five years in prison. This is an ongoing offence, for which the Statute of Limitations does not toll until the receiving and concealing has terminated.

ARTICLE 48: INTENTIONAL DEFAACEMENT

Any person who intentionally defaces or attempts to deface the property of others is guilty of the misdemeanor of intentional defacement and faces a punishment of one to three years in prison. If the defacement is minor or the property of little value the punishment shall be reduced to two months to one year. Defacement of elements of cultural heritage which form part of the Cambodian national patrimony is treated in Article 45.

ARTICLE 49: INTENTIONAL ARSON

He or she who defaces or attempts to voluntarily deface through fire or explosive substance the property of another is guilty of the misdemeanor of voluntary arson and faces a punishment of one to three years in prison.

If the property burned is the dwelling of one or more persons, the duration of these prison terms is doubled.

ARTICLE 50: CARRYING OR TRANSPORTING ILLEGAL ARMS

Any person who carries or transports a firearm, explosives, or any artillery, without having been authorized to do so according to guidelines established by UNTAC which pertain to holding and carrying arms, is guilty of illegally carrying or transporting arms and faces a punishment of six months to three years in prison.

Any person without uniform who carries a weapon other than a hunting weapon must be able to prove to inquiring authorities, especially UNTAC representatives, his or her authorization to carry the weapon. In the event he or she is not able to do so, the weapon is to be immediately confiscated and a report forwarded to the competent judicial authority.

ARTICLE 51: COERCION OF WITNESSES

Any person who threatens, intimidates, or places pressure upon a witness in a judicial proceeding is guilty of the misdemeanor of coercion and thereby incurs a punishment of one to two years in prison.

ARTICLE 52: FALSE WITNESS

Any person who, in a judicial proceeding, bears false witness, in recounting to the Court facts which he or she knows to be erroneous or false, and which are recognized as such by the Court, is guilty of false testimony and faces a punishment of one to two years in prison.

ARTICLE 53: INFRINGEMENT OF INDIVIDUAL RIGHTS

Any public agents, including police or military agents, who deliberately infringe upon rights to be free from physical abuse and the sanctity of the home, protected by the present text, will be punished by one to two years in prison.

ARTICLE 54: INTENTIONAL CORRUPTION

Any person who corrupts or attempts to corrupt any elected official, civil servant, military officer or representative of one of the four Cambodian parties in attendance at the Paris Peace Accords, in the execution of his or her duties, by promising property, service, money, staff, professional position, document, authorization or any benefit whatsoever in exchange for any one of these same benefits has committed the misdemeanor of intentional corruption and faces a punishment of one to three years in prison.

ARTICLE 55: INSTIGATING CRIMES AND MISDEMEANORS WITH CONSEQUENCES

Punishment as accomplices to an action classified as a crime by the present text will apply to those who, by oration, shouts or threats made in public places, or by writings, printings, drawings, engravings, paintings, emblems, films or any other mode of writing, speech, or

film which is sold, distributed, offered for sale or displayed in public places, either by signs or posters shown to the public, or by any other means of audiovisual communication, directly provokes perpetration of an aforesaid action, if the action has consequences. This shall also be the case when the provocation is followed merely by an attempted crime.

ARTICLE 56: INSTIGATING CRIMES AND MISDEMEANORS WITHOUT CONSEQUENCES

Those who, through one of the means enunciated in the preceding article, directly provoke a crime or misdemeanor outlined in the present text, will be punished, in the event that this provocation is without consequences, by one to five years in prison.

ARTICLE 57: INSTIGATING DISCRIMINATION

Those who, by one of the means enunciated in article 55, have provoked discrimination, hostility or violence against a person or a group of persons due to their national or social origin or their membership or non-membership in an ethnic, national, racial, economic, linguistic or recognized religious group, will be punished by imprisonment of one month to one year and a fine of one million to ten million Riels.

Any outrageous communication, scornful term or abusive language which does not verify or disprove an alleged fact is a libel.

Defamation or libel made through one of the means enunciated in article 55 shall be punished by imprisonment of eight days to one year and/or a fine of one million to ten million Riel.

In the event of conviction for one of the deeds outlined in the preceding paragraphs, the court may direct that its decision be posted at locations which it specifies, at the expense of the convicted, or published in one or more periodicals, at the expense of the convicted, up to a maximum of ten million Riels. A public action concerning misdemeanors outlined in the present article may also be commenced by any group comprised according to rules established by the Supreme National Counsel, upon depositing with the competent prosecutor a complaint representing the civil party.

In all cases, the employer, printer, editing house, printing agent and distribution agent are jointly liable for payment of damages accorded to the victim(s).

ARTICLE 60: USE OF NARCOTICS

Those who use for their personal consumption narcotics or psychotropic substances addressed in United Nations conventions mentioned in article 40 will be punished by imprisonment of one month to a year.

TITLE VI: PUNISHMENTS

ARTICLE 61: EQUALITY OF PUNISHMENTS

The principle of equality of all persons under penal law necessitates that punishments applicable in Cambodia be the same in all provinces or zones. The present punishments are henceforth applicable throughout Cambodia.

ARTICLE 62: DEATH PENALTY

The death penalty is abolished in Cambodia.

ARTICLE 63: ATTENUATING CIRCUMSTANCES AND EXCULPATION OF MINORS

Judges must weigh attenuating circumstances to reduce below perhaps even the minimum prescription punishments outlined in the present text, notably:

- the age of the convicted;
- the personal background of the convicted which might lead him or her to abrogate his or her responsibilities
- the psychological or psychiatric state of an accused which is certified by a psychologist or psychiatrist;
- circumstances of the crime or misdemeanor which rendered absolutely necessary the actions of the convicted.

For any accused person of less than 18 years of age, punishments outlined in preceding articles are to be reduced by half.

ARTICLE 64: COMPLICITY

He or she who supplies the modalities of an offence, orders that the offence be committed or facilitates commission of the offence shall be considered an accomplice and punished with the same punishment applicable to the principal instigator.

ARTICLE 65: REPRIEVE

Prison sentences, but not those for criminal confinement, may in their entirety or in part always accommodate a reprieve. In such an instance the accused will not serve his or her sentence so long as he or she does not commit another offence outlined in preceding articles for a period of five years after judgment.

ARTICLE 66: CONDITIONAL RELEASE

Convicted persons who are serving a prison term or criminal confinement may benefit from a conditional release regime dictated by the court which convicted them, after having served half of their prison term or two thirds of their criminal confinement, upon the advice of penitentiary officials, if the court feels that this release will serve to facilitate rehabilitation. Any offence defined within preceding articles which is committed during the period of conditional release immediately invokes completion of the sentence.

TITLE VII: METHOD OF APPLICATION

ARTICLE 67: DISREGARD OF INCONSISTENT RULES

Any text, any practice, any rule written or not written which goes against the letter or the spirit of the present text is purely and simply annulled.

ARTICLE 68: INTERNATIONAL INSTRUMENTS

Instruments of the United Nations which are mentioned in the present text will be applicable in Cambodia as soon as they are proclaimed by UNTAC.

Other pertinent international instruments may serve to interpret the present text.

ARTICLE 69: ENTRY INTO FORCE

This text takes effect exactly two months after the date of its approval by the Supreme National Council, except with respect to titles IV, V, VI and VII, which take effect immediately.