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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: JUDICIARY

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

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.

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. 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.

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

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

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.

THE VIETARIANS

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.

THE NEW CRIMINAL CODE

ARTICLE 67: DISREGARD OF INCONSISTENT RULES

Any text, any practice, any rule written or not written which goes against the letter or the

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