The working party on Aboriginal issues considered a number of proposals specific to the over-representation of Aboriginal young people in the juvenile justice system including the need for community justice councils and a greater utilisation of diversionary mechanisms. In relation to the use of police cautions the working party recommended the introduction of a statutory right to consideration of a caution; that cautioning be mandatory for minor offences; and that cautioning be utilised for repeat offenders. The Green Paper contained a much watered-down recommendation which ignored the need for a legislative basis to cautioning and instead relied on 'a greater acceptance, use and application of cautioning among police through appropriate education and training, performance monitoring and organisational incentives' (*Rec.* 273, p.211).

The working party on Aboriginal issues also considered the issue of racist behaviour by police. The working party recommended that violence, intimidation and harassment by police officers be considered a serious breach of duty and that the penalty for such a breach be dismissal. The penalty of dismissal was deleted from the recommendation in the Green Paper which relied instead on the more general statement of 'a serious breach of duty' (*Rec.* 281). Again a specific recommendation by a working party was watered down for the final version.

Much of the Green Paper's section on police complies with the current wishes of the police to establish a citation notice system. Such a system would enable police to issue a caution for a minor offence, a fixed penalty notice (on-the-spot fine) for a prescribed number of offences and a court attendance notice for other prescribed offences. The offences for which a fixed penalty notice would be used has not been specified. Nor has there been any consideration of the appropriateness of these measures specifically for juveniles. The system itself appears to be one which broadens police discretionary powers at the point of apprehension while at the same time being administratively less resource intensive than current methods.

It is perhaps not surprising that the Green Paper is a compromise document which reflects varied political interests. There are specific recommendations for legislative change which are positive including the proposed amendments to the *Victims Compensation Act*, the *Sentencing Act* and the *Bail Act*. There are other recommendations, or areas where no recommendations were made, which do not reflect the desires of respective working parties but do comply with the wishes of some of the more powerful players in the arena.

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CAMBODIA

The wretched witch of Sisophon

PETER CONDLIFFE writes about the effects of long-term civil war on the Cambodian criminal justice system.

Sisophon is a small town in the north-west of Cambodia. It is a wild dusty place on the edge of disputed territory between government forces and the Khmer Rouge. When I was there in the dry season my clothes and body were constantly coated with a layer of dust. I had visions of cowboys and cattle thundering down the main street in my dreams. But on waking I would discover myself again in late 20th century Cambodia where the cowboys tote AK47s and RPGs (Rocket Propelled Grenades). Every night just after dusk the shooting would begin. I was told it was drunks letting off steam. Every household has a gun in Cambodia. One night the firing was in the next house and my host warned me to be careful as I crept down to the bathroom at the back of the house. Sisophon is the sort of place where you pray for internal conveniences.

It was in Sisophon where I heard the story of the witch. She practised her craft in a nearby village. Unfortunately, the village had experienced some unexpected bad luck which resulted in several deaths and illnesses. The witch was blamed by the relatives of the victims for the misfortune. They decided that the best course of action was to kill her. They approached the Headman of the village with their plan and he approved. The unfortunate witch was killed.

The police were then called in. Rather than arresting the suspects, the police called a meeting of the aggrieved relatives of the witch and the perpetrators. The meeting was held to discuss adequate compensation to the relatives of the witch. This done, the matter was closed. Presumably the police and the Headman both received a share of the proceeds.

No attempt was made to bring the perpetrators of the crime to court. No formal charges were laid. It was as if the State of Cambodia with its panoply of western style laws did not exist. The idea that the State may have an interest in these events was not contemplated or if it were it was of very low priority. The very idea of 'crime' was different here. This was only one of a large number of instances which have come to my attention where Cambodian citizenry and officials have reached their own solutions to problems and conflicts. The desire to engage in 'self-help' or more formalised third-party interventions outside the formal legal system is widespread. The murder of witches in Cambodia appears not to be uncommon as I have come across a number of prisoners in Phnom Penh gaols who are described in the official records as 'witch killers'. The response to the violence visited on the unfortunate witch of Sisophon is typical.

Unlike our concept of public wrongs which entitle the State to interfere in the lives of its citizens the fate of the witch was determined by pre-state concepts of private and communal interests. The definition of crime was not the prerogative of the State but that of the people directly involved according to their particular local customs. In Cambodia there is often little understanding or need for far away dictates from often authoritarian or fearsome regimes. The rhythm of life beats to a different drum.

This aspect of Cambodian life is one which is often only dimly appreciated by would-be reformers from other countries and cultures who may wish to understand and change it. Instituting reform at the centre may not touch the peripheries that are in reality the mainstream of Cambodian society. Any significant reform of Cambodia's legal institutions will require an understanding of how this 'informal legal system' operates and the history of those past attempts to impose more formalised processes.

The formal westernised part of the Cambodian legal system evolved during 70 years of French colonial rule, patterned on the courts of France. After independence in 1953 few changes were instituted by the then ruler, Prince Norodom Sihanouk. Although the 1947 Constitution defined fundamental rights protected by law, opponents of the government were often intimidated, illegally detained and killed by the state security forces. With the rise of the Khmer Rouge in the 1960s, government repression increased. When General Lon Nol overthrew the Sihanouk Government and changed the Prince's non-alignment policy, the country was engulfed in civil war, and most constitutionally protected rights were simply abrogated. Massive US bombing raids in 1969-73 devastated the countryside and refugees flooded into Phnom Penh, the capital. With the economy crippled and rampant food shortages, civil society in the country was destroyed.

The entry of the Khmer Rouge into Phnom Penh on 17 April 1975 and their return to 'Year Zero' spelt the end of any semblance of a formal legal system. Only with the toppling of the Khmer Rouge Government in 1979 by the Vietnamese and the installation of the Vietnamese-backed People's Republic of Kampuchea (PRK) did the rudiments of a formal legal system begin to evolve again. This time Vietnamese and Russian models were used. However, the rule of this beleaguered and isolated government was largely by decree. Now with the arrival of the United Nations and the imminent installation of a new Constitution after the UN-sponsored elections (held in May this year) the process must begin again.

Under the UN-sponsored Peace Agreement, the State of Cambodia and the three other Cambodian parties expressly recognise that the Cambodian people are entitled to the rights set forth in the Universal Declaration of Human Rights and other human rights instruments. The above case recognises the difficulties in achieving this goal. As well, there are several other characteristics of Cambodian law which will challenge future reformers. First is the lack of independence of the judiciary. There are no controls on party-controlled government bodies empowered to appoint and discipline judges. Political interference in cases is commonplace. Second, there is no independent legal profession ready to act in the interests of citizens. Nearly all of the trained lawyers have been killed or left the country during the Khmer Rouge years. Before the arrival of the United Nations in Cambodia in 1992, criminal suspects could only choose defenders from a party-approved list. Third, many of the prisoners held in Cambodian gaols have never been tried or even charged. The authorities have routinely held suspects for long periods of time without recourse to legal process. Fourth, the criminal justice system is grossly under-resourced at every level. There are no proper training and educational facilities, not enough money to repair prisons and feed prisoners, to pay police adequately, to maintain courthouses. The list of problems seems endless and is grim testimony to the effect that long-term civil war can have on a country's infrastructure.

To resolve these problems will require a massive effort by the people of Cambodia with some generous and wise help from outside. Most importantly the state of internal war must abate and then cease. One of my colleagues here summed up the situation well by writing 'The first victims of civil war are the courts'. Meanwhile informal processes based on conciliation processes will continue to be the mainstay of civil and criminal justice in Cambodia. The next witch of Sisophon may hopefully get a better deal, but this may take some time.

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The views expressed in this article are the author's alone and do not reflect the views or positions of UNTAC.

GENDER BIAS

A timely visit

CHRISTINE PARKER reports on the visit of Professor Kathleen Mahoney to Australia.

Professor Kathleen Mahoney's visit to Australia could not have been more timely. Her whistle-stop tour of Brisbane, Perth, Sydney, Melbourne, Adelaide and Canberra was quickly filled with appointments to lecture and conduct workshops on gender, race and class bias in the administration of justice. Professor Mahoney is a Professor of Law at the University of Calgary, Canada. She has published extensively on the topics of human rights and gender and other forms of bias in the courts and legal profession. She regularly lectures nationally and internationally on human rights, gender, race and class bias in the courts, and equality theory. She is also the Director of an International Project to Promote Fairness in Judicial Processes sponsored by the United Nations, and has been very involved in setting up judicial education programs on gender, race and class bias in Canada. Her trip was organised by the National Institute for Law, Ethics and Public Affairs (located at the Law School, Griffith University). It raised a number of challenges for Australian lawyers, legal academics and judges, and serves as a focus for an examination of what the Australian Government and legal community is doing about bias in the courts.