

CAMBODIA AT WAR

**Human Rights Watch/Asia
Human Rights Watch Arms Project**

Human Rights Watch

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Human Rights Watch/Asia

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PREFACE

This report is based on dozens of interviews collected between February 1994 and February 1995, and three visits by our researchers to Cambodia and Thailand between March 1994 and February 1995. In Cambodia, researchers visited Phnom Penh and the provinces of Battambang, Siem Reap, Banteay Meanchey, Kompong Cham, and Svay Rieng. In Thailand, researchers visited Bangkok and the border area of Aranyaphrathet. Persons interviewed included diplomats, peasants, government officials, representatives of Cambodian and foreign development and human rights non-governmental organizations, lawyers, journalists, deminers, soldiers and Khmer Rouge defectors. The names of persons interviewed are not disclosed to preserve confidentiality. In preparing this report, Human Rights Watch also had access to memoranda and reports from international and local human rights monitors from 1992 through February 1995.

Human Rights Watch wishes to extend thanks to the many individuals and organizations who assisted its research. Cambodian non-governmental organizations are on the front lines in their work to make human rights a reality in Cambodia, and their accomplishments over the past two years in human rights education, legal defense, advocacy and monitoring and publicizing human rights problems have been inspirational. We wish in particular to express our deep appreciation to the Cambodian Human Rights and Development Association (ADHOC), the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Human Rights Vigilance of Cambodia (VIGILANCE), the Khmer Kampuchea Krom Human Rights Association (KKHRA) and the Cambodian Human Rights Trainers Organization (CHRTO) for their help. The Phnom Penh field office of the U.N. Centre for Human Rights has also performed exemplary work in advising and helping public authorities and the people of Cambodia in protecting and promoting human rights. We wish to thank the Centre for its assistance, as well as the Human Rights Task Force on Cambodia, the Office of the U.N. High Commissioner for Refugees, and other international and foreign non-governmental organizations too numerous to mention by name. Many individuals contributed their comments and suggestions to this work, and we acknowledge our indebtedness to them.

We also wish to express our sincere appreciation to the Royal Cambodian Government for its cooperation and assistance, and note that such openness and cooperation has been characteristic of the government's relations with international human rights organizations more generally. We thank the many government representatives and officials who shared their views and criticisms with us and who have graciously received our own. Human Rights Watch endeavored to interview

official representatives of the Khmer Rouge during the peacekeeping period when the Party of Democratic Kampuchea maintained an office in Phnom Penh. Following the closure of that office, the lack of access to areas occupied by the Khmer Rouge has made direct dialogue impossible.

This report was written by Dinah PoKempner, counsel to Human Rights Watch/Asia, and edited by Sidney Jones, executive director of Human Rights Watch/Asia, and Stephen D. Goose, program director of the Human Rights Watch Arms Project. Diana Tai-Feng Cheng, associate with Human Rights Watch/Asia, provided research assistance, and both she and associate Jennifer Hyman prepared the report for publication; Mark Girouard, a Luce fellow with Human Rights Watch/Asia and interns Jason Smith, Jasdeep Singh and Trung Tu also contributed to the preparation of the report.

TABLE OF POLITICAL PARTIES AND ACRONYMS

CAMBODIAN POLITICAL PARTIES

BLDP	Buddhist Liberal Democratic Party, a political party which evolved from the non-communist resistance group known as the Khmer People's National Liberation Front or KPNLF.
CPP	Cambodian People's Party, the political party of the government installed by Vietnam in 1979, known previously as the People's Revolutionary Party of Kampuchea. That government is referred to in the text variously as the "Phnom Penh government" and "the Hun Sen administration" to avoid confusion; the government's formal names were the People's Republic of Kampuchea (1979-1989) and the State of Cambodia (1989-1993).
FUNCINPEC	Front Uni National pour un Cambodge Independent, Neutre, Pacifique, et Cooperatif, the royalist political party. Formerly a resistance group.
Khmer Rouge	The colloquial name for the Party of Democratic Kampuchea is used throughout the text as it is the most widely recognized; the term refers to both the political and military organization.
MOULINAKA	Mouvement de Libération National du Kampuchea, a political party. Originally a military resistance group allied with FUNCINPEC.
<i>Note:</i>	This report does not use Cambodian forms of address or titles when referring to officials, dignitaries or members of the royal family, in order to avoid confusion for non-Cambodian readers.

OTHER ACRONYMS

CMAC	Cambodian Mine Action Center, an agency of the Cambodian government that undertakes and supervises humanitarian demining, mine marking, and mine awareness education
ICRC	International Committee of the Red Cross
ICCPR	International Covenant on Civil and Political Rights
KPNLAF	Khmer People's National Liberation Armed Forces, a former non-communist resistance force that was integrated into the Royal Cambodian Armed Forces
RCAF	Royal Cambodian Armed Forces
UNHCR	United Nations High Commissioner for Refugees
UNTAC	United Nations Transitional Authority in Cambodia

I. SUMMARY

Although the United Nations peacekeeping mission in Cambodia has been hailed as one of the most successful ever, Cambodia was back at war even before the last of the peacekeepers had left. The U.N.-sponsored May 1993 elections did manage to bring the former non-communist resistance armies into a single unified force with the Phnom Penh military against the Khmer Rouge, but the elections did not stop the fighting, nor did they fundamentally change Cambodia's political structure. New landmines are planted daily, tens of thousands are fleeing their homes, and the civilian population is suffering abuses from both sides. Due to the weakness of basic political and legal institutions, those in power often can and do act with impunity. While Cambodia is developing some social institutions that can check human rights abuses, such as an independent press, a lively domestic human rights community, and a body of independent and critical parliamentarians, these features are under threat as the political situation deteriorates.

The Khmer Rouge continues to be a major human rights violator. Having sat out the elections and failed to win a place in the coalition government through either diplomacy or battle, the Khmer Rouge intensified its efforts to sever the northwest part of the country from Phnom Penh. To its history of presiding over the deaths of one million Cambodians between 1975 and 1978, it added a fresh record of abuse, including extrajudicial executions, abductions of villagers for ransom or forced labor, and the racially motivated slaughter of ethnic Vietnamese. Diplomatically isolated and threatened by defections, the guerrillas adopted new tactics during the 1994-1995 dry season, including the murder of civilians, the systematic destruction of civilian homes and rice fields, looting, rape and the kidnapping and murder of Westerners.

The Royal Government, for its part, has also been responsible for serious violations of humanitarian and human rights law. Its soldiers have engaged in murder and rape, and military intelligence officers in particular have operated, and may still be operating, secret detention centers where torture and executions have taken place. Military officers appear to hold ultimate authority over civilian residents, and efforts by civilian authorities to assert control over military abuses have met with stiff resistance. Soldiers have also been responsible for widespread looting and extortion.

Curbing these abuses is no small undertaking. In the aftermath of the last twenty years of war and destruction, the Royal Government faces tasks of monumental proportions. They include the economic development of one of the world's poorest nations, the reconstitution of basic social and legal institutions, the transformation of authoritarian patterns of government into democratic ones, and

the securing of basic human rights. The escalation of the war in the 1993-1994 dry season made each of these tasks immeasurably more difficult. As military objectives took priority over building civil society, the government tolerated military abuses and in some cases took reprisals against individuals for criticism of the military or political leadership.

Although individual officials throughout the Cambodian government struggled to abolish military impunity, their efforts were frequently undermined by a lack of political will at the top. The Royal Government hesitated to take action against military abusers even in cases of international notoriety, instead threatening and suing journalists who reported violations. While the country's political leaders issued veiled threats against outspoken dissident politicians, journalists and human rights workers suffered violent attacks from perpetrators that the police sometimes failed to identify or apprehend. The government's enactment of a law against the Khmer Rouge raised the specter that accusations of association with the party could be used against the government's critics or lead to widespread arrests. The law's terms have been poorly publicized, and there are already reports of unjustifiable detentions in its name. Fears that the courts were ill-prepared to uphold the presumption of innocence in such cases were realized in the first prosecutions reported under the law.

To complicate matters still further, the country must struggle with the blight of landmines, both those left in the ground in years past and those being laid every day as the war continues. Cambodia is one of the world's most heavily mined countries, with an estimated eight million landmines in its soil, and the highest proportion of amputees of any country. In areas of the northwest, the 1994-1995 fighting has produced an exponential increase in landmine injuries over the peacekeeping period. Landmines kill and maim indiscriminately long after any immediate military objective is past, and their prevalence has taken a terrible toll on the villagers of Cambodia, dramatically reducing the land available for agriculture and settlement, and slowing Cambodia's reconstruction and development. The Cambodian government has equivocated on the issue of mines, with political leaders pledging an eventual ban, and military authorities deploying them freely in the meantime. The Khmer Rouge has no such equivocation, and has exhorted its supporters to ever greater use of landmines and booby traps. Although nongovernmental and governmental demining agencies have made significant progress in mine marking, mine awareness and mine eradication, their efforts are jeopardized by the failure of the international community to provide an ongoing commitment of funds over a sustained period of time.

Despite the deteriorating situation for human rights, civil liberties, and rule of law, foreign donors have been slow to link human rights accountability to their aid policies. Corruption and lack of discipline on the part of the Royal Cambodian Armed Forces have prompted some foreign allies of Cambodia to insist on military reform as a precondition to lethal aid. Among the countries that reportedly are already providing weaponry to Cambodia without conditions are North Korea, South Africa, the Czech Republic, Poland, Russia, Israel, Seychelles and Indonesia. Other countries, such as Australia and the United States, have limited their military assistance to Cambodia to training and non-lethal aid. Yet even if Cambodia's military becomes more professional, the state's failure to rein in abuses and punish those responsible will continue to undermine popular support for the government and endanger the accomplishments of the U.N. peacekeeping mission. It is critical for the international community to send the message that accountability must apply in all areas, including human rights. If that signal fails to reach the government, abuses and erosion of basic freedoms may rapidly escalate.

Foreign support for the Khmer Rouge, while reduced, is still an issue. Despite the U.N. Security Council's imposition of sanctions against the Khmer Rouge during the peacekeeping mission for failing to abide by the Paris Peace Accords, and the formal outlawing of the group by the Cambodian government, Thailand has failed to cut off all support. Throughout the peacekeeping period and the 1993-1994 dry season, the Thai Government permitted weapons, trade, and Khmer Rouge political and military figures to flow back and forth across the Thai-Cambodia border. Only insistent criticism from the West persuaded the Thai military to disassociate itself from the group, a process that only began after the 1993-1994 dry season. While there are signs that Thailand has increased its commitment to halt weapons flows to the guerrillas, trade continues to cross the Thai-Cambodian border through Khmer Rouge areas from the town of Pailin to the south. This trade includes logging and gem mining, enormous sources of revenue for the guerrilla force.

KEY RECOMMENDATIONS

- An immediate end to violence against civilians by both sides, and respect for the laws of war and international human rights norms. This would require the Khmer Rouge to put an end to its deliberate campaign of razing entire villages, destroying crops, and taking whole communities hostage, and to abandon the use of starvation, rape and terrorist attacks on civilian targets as weapons of war. On the

Royal Government's side, it would require the prosecution of those who commit extrajudicial executions, assaults, indiscriminate bombardment, abduction, illegal detention, extortion, pillage and other abuses.

- The prosecution in civilian courts of military authorities who commit abuses against civilians. The government must ensure the independence of judges and lawyers from political influence, and make legal representation available to all defendants.
- The end to official reprisals against the press and threats against others for the expression of opinions or reporting of facts that reflect negatively on government bodies, official policies or government figures. Freedom of expression must be assured through a law that fully complies with international standards.
- Scrupulous monitoring of the implementation of the government's law against the Khmer Rouge by judges, defenders and human rights advocates, who must be protected from accusation and reprisal. The full text of the law must be widely disseminated, and all arrests under its authority be made public. Persons who have been unjustifiably detained must be released without delay.
- The abolition of the use, acquisition and stockpiling of antipersonnel landmines by the Cambodian parties as well as all other nations, and the financial support of demining efforts by international donors over a sustained period of time.
- A full stop to Thailand's support of the Khmer Rouge, particularly the cessation of trade which provides the guerrillas immense financial resources. A mechanism for international monitoring of support for the Khmer Rouge, whether in the form of military equipment, logistical assistance or trade, should be established.
- The guarantee that refugees who flee hostilities will not be forcibly repatriated into a situation of danger, and that international organizations will have access to monitor such refugees and supervise any voluntary repatriation.
- No further provision of arms or military equipment to the warring Cambodian parties by any nation, in view of the disproportionate suffering of civilians at the hands of each military force.
- The inclusion of training in human rights and humanitarian law as a primary component of any effort to assist the Cambodian government with reform of its military.

Human Rights Watch also calls on international donors who are considering further budgetary support and assistance for the Cambodian government to insist that the government hold its officials, civilian and military, accountable for gross violations of human rights. Such accountability is an indicator of good governance, together with factors such as transparency of

governmental processes, commitment to the rule of law, and the practice of holding government officials responsible for their actions.

II. BACKGROUND

A NEW GOVERNMENT

Almost 90 percent of all eligible voters participated in the U.N.-administered elections of May 1993, a remarkable result considering the very real threat of armed disruption by the Khmer Rouge right up to the first day of balloting. Despite a massive campaign of political intimidation by the Phnom Penh government, the royalist party, Front Uni National pour un Cambodge Independent, Neutre, Pacifique, et Cooperatif (FUNCINPEC) won fifty-eight out of 120 seats in the Constituent Assembly, with the Phnom Penh government's Cambodian People's Party (CPP) winning fifty-one seats, the Buddhist Liberal Democratic Party (BLDP) winning ten seats, and the Mouvement de Libération National du Kampuchea (MOULINAKA) one seat. Once the CPP's loss was apparent, Prince Chakrapong, the Deputy Prime Minister of the Phnom Penh regime, and Sin Song, the Minister of Interior, attempted to mount a secession of the eastern provinces. Although the movement crumbled in days when senior leaders of the CPP withheld their support, it did provide the CPP leverage to get FUNCINPEC to accept it as an equal partner in the government.

As the elected Constituent Assembly set to drafting the constitution, then-Prince Sihanouk requested his son, Prince Norodom Ranariddh, the leader of FUNCINPEC, and Hun Sen, the premier of the former CPP-led government, to lead the country during the transitional period, which ended in September 1993 with the adoption of a new constitution and the assumption by King Sihanouk of the throne. The transitional arrangement was ultimately formalized into a unique system of twin leadership, with Ranariddh taking the title of First Prime Minister and Hun Sen the title of Second Prime Minister. Many cabinet positions and provincial leadership posts were similarly duplicated, sometimes with FUNCINPEC in the senior position, sometimes not. But even where a FUNCINPEC official held the senior title, the CPP has remained the dominant power, thanks to its grip on the bureaucracy and security forces.

THE 1994 DRY SEASON OFFENSIVES

In July 1993, the interim Cambodian leadership announced the integration of the militaries of the non-communist parties and the Phnom Penh party into one national armed force. The U.N. agreed to provide payroll support for the new

government, including the military, for three months. The United Nations Transitional Authority in Cambodia (UNTAC) returned to the government the arms and landmine stocks it had collected during the demobilization and cantonment phase of the peace plan, a phase which was abandoned when the Khmer Rouge refused to participate. The withdrawal of various components of the peacekeeping mission began shortly after the election, and the last UNTAC forces left the country on November 15, 1993.

The Khmer Rouge used the months following the elections to launch a two-pronged offensive -- one part diplomatic, one military -- to persuade the other parties that it must be allowed to share power in the new government if there were to be any peace. On July 7, 1993, Khmer Rouge forces captured the historic twelfth-century Preah Vihear temple on the Thai-Cambodian border. Then on August 1, the Khmer Rouge detained twenty-one peacekeepers for seven hours on Thai soil when they overran a Cambodian checkpoint at the Chong Aan Ma Pass.

The unified Cambodian military responded in August with a concerted offensive against Khmer Rouge strongholds in Banteay Meanchey and Kompong Thom provinces. By the end of the month, the government had taken Kraya, a small village in Kompong Thom that was a major logistical base for the Khmer Rouge. The Khmer Rouge briefly recaptured Kraya in November, and the government's newly-named Royal Cambodian Armed Forces (RCAF) reasserted control in January 1994. The offensive was a successful collaboration of Phnom Penh military divisions and FUNCINPEC units and resulted by early 1994 in the RCAF opening Highway 12, a main route into Khmer Rouge regions of Preah Vihear and Siem Reap provinces. The government's next major victory was in Phnom Chat, a Khmer Rouge logistical base in Banteay Meanchey province. Another coordinated attack between military units of the Phnom Penh party and the non-communist parties took the Khmer Rouge by surprise, and the government seized the base on August 20. Following this success, the government began to concentrate troop strength in the vicinity of Anlong Veng, the headquarters of the senior Khmer Rouge commander Ta Mok and a major supply base for the northern front.

During this time King Sihanouk struggled, ultimately without success, to encourage rapprochement between the government and the Khmer Rouge. On November 22, he stated that the Khmer Rouge might be included in the government, even at ministerial levels, if it were to acknowledge the government's legitimacy, open the territories it occupied, and merge its military into the government's forces. After First Prime Minister Prince Norodom Ranariddh noted that the offer of ministerial positions was unconstitutional, King Sihanouk withdrew the offer. Prince Ranariddh subsequently met with the Khmer Rouge's titular leader

Khieu Samphan in Thailand on December 17, and announced that he would propose a constitutional amendment to allow the Khmer Rouge to share ministerial positions if the party agreed to cease fighting, demobilize and open its territories. During these negotiations, the RCAF pressed military actions in Kompong Thom, Banteay Meanchey, Preah Vihear and Siem Reap provinces, and the government began a campaign to encourage defections from the ranks of the Khmer Rouge. Negotiations stalled when Khieu Samphan demanded that a technical group containing no CPP members be set up to work out a peace proposal. On January 17, the Khmer Rouge explicitly rejected the demand to demobilize or integrate its forces.

On February 3, the RCAF marched without opposition into Anlong Veng. The defending Khmer Rouge forces had broken down into small units and dispersed into the surrounding hills before. Nevertheless, the RCAF sustained heavy casualties, mostly from mines and booby-traps that had been planted all around the area and its victory was short-lived. On February 24, the subdivided Khmer Rouge units routed the government forces, bereft of food and basic supplies, from the area.

Following this defeat, the government prepared to attack Pailin, the gem and logging center of northwest Cambodia and the Khmer Rouge's main base and source of income. The offensive began on March 17, led by 7,000 troops supported by tanks, heavy artillery and armed helicopters. Most casualties were again from mines, as well as illness from ponds and wells in the area that the Khmer Rouge had poisoned. On March 19, the government took control of the town, as Khmer Rouge troops again dispersed and withdrew. Between 25,000 and 30,000 inhabitants of Pailin poured out into Thailand, which denied access to all international humanitarian organizations and forced the refugees back into Khmer Rouge territory at the malarial jungle area of Phnom Malai one week later.

The Khmer Rouge began diversionary attacks at Poipet and Bavel, and on April 19 recaptured Pailin. Although approximately 3,000 Khmer Rouge troops were involved in the fighting, the government's weakness was vividly displayed by the rapidity with which its troops fled. A small contingent of several hundred Khmer Rouge fighters outran their own supply lines, chasing the government army down Route 10 to within a dozen kilometers of the provincial capital of Battambang. The Khmer Rouge again inflicted heavy casualties by forcing RCAF troops to flee over minefields, but were unable to hold on to their territorial gains. By May, the government had roughly reestablished its front lines to their locations before the offensive. However, the civilians that reluctantly returned to communities all along Route 10 in Rattanak Mondol district of Battambang province were subjected to periodic shelling between the armies throughout the rest of the year.

Four days after the loss of Pailin, King Sihanouk again proposed peace talks between the government and the Khmer Rouge. Peace talks held on May 27 in Pyongyang, North Korea, and on June 16 in Phnom Penh foundered as the parties disagreed on whether an actual ceasefire should precede the creation of an international commission to monitor the ceasefire. Following the collapse of talks, the Cambodian Ministry of the Interior ordered the Khmer Rouge to vacate its compound in Phnom Penh, and the small diplomatic corps departed to Thailand.

In July 1994, Khmer Rouge guerrillas attacked a train in the southern province of Kampot, killing several passengers and guards and abducting scores of Cambodians, as well as three ethnic Vietnamese and three young Western tourists, Jean Michel Braquet of France, David Wilson of Australia and Mark Slater of Britain. The Vietnamese hostages were reportedly killed, and most of the ethnic Khmer released within days of the attack. Pol Pot, however, allegedly directed that the Westerners be held.¹ The government tried unsuccessfully to negotiate ransom with Khmer Rouge General Noun Paet and then concentrated troops in the area where the hostages were being held, alternating negotiations with bombardment. Aided by the defection of the Khmer Rouge commander who led the raid on the train, the government overran Paet's base in October. It was then discovered the Westerners had been slain as much as a month earlier.

As the dry season began, Khmer Rouge activity increased in the northwest provinces of Battambang, Banteay Meanchey, and especially Siem Reap. The government renewed its efforts to encourage defections, and the Khmer Rouge appeared to change tactics, placing heavy pressure on villagers in these areas to join the guerrillas or provide them with labor, or see their houses and rice fields burned. Battambang again experienced massive civilian displacements, with the population of Rattanak Mondol district once again fleeing their homes. Even as the Khmer Rouge began kidnapping large numbers of peasants to work on roads and fortifications in the Anlong Veng area, senior commander Ta Mok moved his base from Anlong Veng to Preah Vihear. As 1995 began, the government began concentrating thousands of troops in Preah Vihear at Phnom Kulen, a base that the Khmer Rouge had evacuated at year's end, in what appeared to be preparations for

¹ Jason Barber and Ros Sokhet, "Train raid 'not planned for hostages'," *Phnom Penh Post*, January 13-26, 1995.

another large-scale offensive. By February, reports of hundreds of casualties in the conflict zones of Preah Vihear and Anlong Veng had begun to appear.

POLITICAL DEVELOPMENTS

The survival of the coalition between FUNCINPEC and the CPP was tested throughout 1994, and instability persisted into the early months of 1995. An unfortunate corollary has been a steadily deteriorating environment for political pluralism and human rights and a general lowering of expectations as to the government's performance in these areas. The 1991 Paris Peace Accords stipulated a government for Cambodia that would be fully committed to upholding human rights and democracy. Under the banner of "national reconciliation and unity," Prime Ministers Ranariddh and Hun Sen have developed a working relationship and have united at critical times to quash threats to their leadership, including those emanating from within their own parties.

An early challenge took place on July 2, 1994, when the government acted to suppress what it described as a coup attempt on the part of by Prince Chakrapong and Sin Song.² The facts surrounding the event remain murky, but the most credible reports are that Second Prime Minister Hun Sen was alerted to the plot by the attempt of Secretary of State for Defense Chhay Sung Yung to have warrants issued for the arrest of three senior generals (Chhay Sung Yung fled to Vietnam and

² These two CPP figures had renounced their seats in the National Assembly just after the elections to lead the unsuccessful secession attempt; both were chastised and then pardoned. But their quest to then regain status as parliamentarians with the backing of the CPP leadership paralyzed the National Assembly for months. The CPP and FUNCINPEC leadership agreed in May to put off the issue, which was ultimately mooted by the attempted coup.

later returned to be a government witness). Around 5:00 P.M. that evening, twelve armored personnel carriers with fewer than 300 troops headed from Prey Veng towards the capital, Phnom Penh. Hun Sen used military units formerly allied to the noncommunist opposition to intercept this convoy, along with Prince Chakrapong and Sin Song. Significantly, Hun Sen decided not to inform CPP Interior Minister Sar Kheng of the coup attempt until 6:00 P.M., and directed the counter-response personally from his house. This led to speculation that the highest levels of the CPP were complicit in the attempt, possibly in response to King Sihanouk's continuing efforts to bring the Khmer Rouge into a national unity government and his expressed willingness to assume greater power.³

³ See Nate Thayer, "Coup Plot Thickens," *Phnom Penh Post*, July 15-28, 1994; "Sar Kheng: 'We Can Survive This,'" *Phnom Penh Post*, July 18-28, 1994; Nate Thayer, Rodney Tasker, "The Plot Thickens," *Far Eastern Economic Review*, July 21, 1994.

Prince Chakrapong was allowed to flee to Malaysia. Sin Song, however, was placed in detention, from which he managed to escape in September. Further arrests followed, including that of Sin Sen, who had been promoted to the level of Secretary of State in the Interior Ministry the day before, and Gen. Tes Choy, who was in charge of the elite Interior Ministry A-3 paramilitary forces. According to news reports, on July 7, Hun Sen met with CPP leaders, including party chairman Chea Sim, and agreed not to push for further arrests lest they lead to further armed conflict and a collapse of the government.⁴ Fourteen Thai nationals who were accused of assisting in the coup attempt were also arrested; five were released on August 19 and the remaining nine were convicted by a Cambodian military court on October 28 of taking part in the attempted coup, given suspended sentences and then freed. At the same trial, Prince Chakrapong and Sin Song were convicted *in absentia* and sentenced each to twenty years of imprisonment, while Sin Sen received an eighteen-year sentence and Tes Choy a five-year suspended sentence. Prince Chakrapong, Sin Son and Sin Sen already had been expelled from the CPP on August 30.

The affair quickly took on an international dimension. Prince Chakrapong turned up in Thailand on August 4, and after Cambodia protested, left three days later for France where he has residency rights. Sin Song was arrested in Bangkok on November 2, and was charged along with four other Cambodian military officers with, "illegal entry." The four officers were given a two-month suspended jail sentence and fined about \$112 each. Second Prime Minister Hun Sen requested Sin Song's extradition on November 5. Adul Boonset, a former member of the Thai parliament, surrendered on November 9 to the police to face charges along with five other Thais of assisting the five Cambodians to enter Thailand. On December 30, Thailand announced it would not repatriate Sin Song because it considered his conviction was for a political rather than a criminal offense, and his lawyers continued the search for a country that would grant him political asylum.

Five days after the attempted coup, while uncertainty about the government's stability was still high, the government pressed for and won the National Assembly's unanimous approval for legislation that outlawed the Khmer Rouge. The same day, King Sihanouk, who opposed the ban on the Khmer Rouge, asked the National Assembly to enact a constitutional amendment allowing an

⁴ Nate Thayer, "'Coup' Plot Thickens," *Phnom Penh Post*, July 15-28, 1994.

acting head of state to sign legislation into law when the monarch is ill. Chea Sim, as acting head of state, ultimately signed the bill into law (see Appendix II for text).

The new law marked a turning point in Cambodia's politics, polarizing those within the Royal Government who favored pursuing military action against the Khmer Rouge from those who preferred to end or de-escalate the war through negotiations. The prime ministers reacted sensitively to any challenges to their authority, particularly the suggestion from opposition parliamentarians that King Sihanouk be granted greater powers in order to negotiate an end to the war with the Khmer Rouge.⁵ As King Sihanouk returned to Cambodia in January 1995 from Beijing, where he had been receiving treatment for cancer, both prime ministers denounced such proposals as "attacks on the constitution," with Prince Ranariddh explicitly chiding the leader of the BLDP, Son Sann, and maverick members of his own FUNCINPEC party. Some of these parliamentarians had also spoken against foreign countries providing the Cambodian government forces with lethal aid and had urged conditionality and strict financial accounting for other types of aid. Both prime ministers darkly warned that persons advocating such positions should watch out for possible "demonstrations" or retaliation from angry soldiers. At the same time, the government moved to silence the increasingly critical and boisterous Cambodian press, which printed in its pages opposition views, condemnations of corruption and other abuses.

The Khmer Rouge responded to the government's legal ban by proclaiming their own government, and escalating shelling of the Poipet market. The government mounted a vigorous campaign to encourage defections in the latter half of 1994, while the amnesty provisions of the law were still in effect. Thousands responded, and although a large proportion of the "defectors" were ordinary villagers, porters or militia, a significant number of battle-trained soldiers, including some of high rank, were among them. These defectors reported increasing difficulty for the Khmer Rouge in moving men and materials through the Thai border, and chronic shortages of supplies.

⁵ Previous proposals that the Khmer Rouge be included in the government through Cabinet positions had failed, in part because the Cambodian constitution explicitly reserves cabinet-level positions for parties that are represented in the National Assembly.

The pressure produced by the government's hard-line policy on the Khmer Rouge appears to have been matched by a shift in Khmer Rouge policy as well. A variety of factors, among them the successful reconquest of Pailin and Anlong Veng, the prospect of greater diplomatic isolation, reduced opportunities to play a role in the government, and defections to the government side all appear to have refocused Khmer Rouge strategy on sharpening military struggle and purifying its ranks. As a consequence, the party has hardened its policies towards civilians. A steady goal of the Khmer Rouge has been the destruction of the government's administrative structures throughout the village, commune and district level. To that end, Khmer Rouge forces for years have kidnapped and sometimes killed both civil and military authorities in areas which they infiltrate, while at the same time working to indoctrinate and win over ordinary people. But in the 1994-1995 dry season, Khmer Rouge forces began to target the general civilian population for attack, forcing residents in conflict areas to move themselves and their rice harvest behind Khmer Rouge lines, and imposing forced labor in those zones. In contested areas, the Khmer Rouge began systematically razing villages and burning rice fields, slaughtering civilians indiscriminately in what appeared to be a deliberate policy of terror.

By early 1995, the intensified fighting and the efforts of each warring party to suppress challenges to its political authority were producing a fresh cycle of abuses. As the Khmer Rouge drove the population out of entire districts of the northwest provinces, the Cambodian government began to prosecute journalists and alleged "Khmer Rouge" in proceedings that did not meet minimal international standards of fairness. These and similar abuses were expected to continue, and possibly worsen, without the firm response and concern of the international community.

III. HUMAN RIGHTS ABUSES BY THE KHMER ROUGE

There is little sign that the ideology, leadership, or social regulations of the Khmer Rouge have changed significantly since their bloody reign from 1975 to 1979, when approximately a million Cambodians -- almost one-eighth of the population -- lost their lives to outright murder, starvation, slave labor and disease.¹ During the UNTAC period, the Khmer Rouge kept the areas under its control sealed off to peacekeepers. These zones remain virtually off-limits to international human rights and development organizations. The scant information available on life behind its front lines comes from persons who have escaped from or deserted the ranks of the party.

There is no lack of evidence, however, of abuses the Khmer Rouge has committed against civilians in government-held areas of the country. Although the guerrillas have long subjected villagers to extortion and kidnapping, their actions were often tempered by a policy of trying to win hearts and minds to their cause. That changed at the start of the 1994-1995 dry season, to a policy of giving civilians the choice of taking themselves and their harvest to Khmer Rouge zones, or losing their rice, their homes, and frequently their lives.

The international laws of war set forth as a cardinal principle that civilians shall not be made objects of attack (see Appendix I). Cambodia is a signatory to the Geneva Conventions, and all persons in Cambodia, including members of the Khmer Rouge, are bound by the Conventions' provisions. With regard to civilians and members of the armed forces who are *hors de combat*, Common Article 3 of the Geneva Conventions explicitly prohibits violence to life and person, the taking of hostages, humiliating and degrading treatment, and extrajudicial punishments, including extrajudicial execution "at any time and in any place whatsoever." These general prohibitions can be interpreted in the light of Protocol II to the Geneva Convention to specifically cover rape, the abduction of people for forced labor, ransom or shielding, and facilitating military operations. Pillage of civilian property

¹ For a comprehensive analysis of Khmer Rouge policy and practice, see Christophe Peschoux, *Les "Nouveaux" Khmers Rouges* (Paris: L'Harmattan, 1992).

is forbidden, as well as attacks on objects indispensable to survival of the civilian population such as mining agricultural land, looting rice stores, or burning rice fields. The forced displacement of civilians is not permitted simply to deny the enemy a social base.

Each one of these abuses has been deliberately perpetrated by the Khmer Rouge against the civilian population, as described in the section below. Under the laws of war, insurgents do not have a "combatant's privilege" for acts such as killing or capturing enemy soldiers or destroying military targets, as soldiers have in international wars. Thus, members of the Khmer Rouge are subject to prosecution for any act which constitutes a common crime in the law of Cambodia.

EXTRAJUDICIAL EXECUTIONS AND PRISON ABUSE IN THE ZONES

In the absence of a court system, life in the Khmer Rouge zones is regulated primarily by military leaders, and infractions of rules are punished, often harshly. According to one high-ranking defector, minor offenses, such as petty theft or disobeying orders on how to cultivate land, were handled by "instruction" or in more serious instances, "warning." Grave offenses, such as challenging or criticizing political leaders, could be punished with detention and beatings, or even execution.²

This particular defector was suspected of wavering loyalty, and in January 1993 was arrested on the orders of the senior Khmer Rouge Commander Ta Mok. The defector recounted that his hands were tied behind his back and a chain placed around his neck. Thus bound, he was beaten, kicked, hung upside down, and partially suffocated by a plastic bag placed over his head. Ta Mok ordered his execution without trial, but he escaped from custody on the way to the execution ground. This same defector reported that in the weeks preceding his arrest, between thirty and forty persons had been executed at Ta Mok's command, usually by

² Human Rights Watch interview, March 1994.

security forces who entered a suspect's house at night and shot the entire family. The leadership would then claim to the population that the household had been attacked by bandits.³ As with most reports by defectors, there is no way of independently verifying this account.

³ Human Rights Watch interview, March 1994.

The Khmer Rouge has maintained prisons in various locations in their territory. There is a prison facility at Phnom Sasada, an area abutting the Thai border in western Battambang province. According to the U.N. Special Representative for Human Rights in Cambodia, as of June 1994 some thirty persons were held at Phnom Sasada.⁴ The prisoners included three government soldiers captured in combat, several Khmer Rouge soldiers and civilians accused of breaching discipline, and a number of villagers from government-controlled areas who were arrested for illegally cutting wood in forests under Khmer Rouge control. The facility consisted of four makeshift roofs set on stilts in a barbed-wire compound. Detainees were sick with malaria and suffering from skin diseases due to poor sanitary conditions. The treatment of prisoners varied with their purported offense, with light offenders assigned labor outside the compound and serious offenders shackled by one foot for twenty-four-hour periods and allowed to bathe only once a month. One witness reported that a government soldier was severely beaten by a prison chief during his interrogation.⁵ The prison director was Ta Chan, former deputy to the chief of S-21, the Khmer Rouge's notorious intelligence branch that was responsible for tens of thousands of extrajudicial executions at the Phnom Penh interrogation center of Tuol Sleng during the party's time in power.

Captured government soldiers are not held for exchange. The usual practice appears to be either release and encouragement to join the Khmer Rouge or summary execution. In September 1993, the Khmer Rouge captured fourteen soldiers from the Khmer People's National Liberation Armed Forces (KPNLAF) stationed at Sok Sann in western Pursat province who were about to evacuate the base and join government forces. Eight were released, but Khmer Rouge soldiers told them that the other six had been executed because they were high-ranking officers, and indeed, none of the six has been heard from again.⁶ In April 1994,

⁴ Report of the Secretary General, "Situation of Human Rights in Cambodia: Recommendations of the Special Representative for Human Rights in Cambodia and the Role of the United Nations Centre for Human Rights in Assisting the Government and People of Cambodia in the Promotion and Protection of Human Rights," *Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives A/49/635* (New York: United Nations, November 3, 1994), hereinafter referred to as November 1994 Report of the Special Representative.

⁵ November 1994 Report of the Special Representative, p. 17.

⁶ The six unaccounted for included three generals, two colonels and a major. Human Rights Watch interview, Phnom Penh, August 1994.

when the Khmer Rouge retook Pailin, they captured a group of seventeen security police who had been sent there from Battambang by the government. None have been heard from since, and it is feared that they have been killed.

MURDER OF CIVILIANS AND CIVILIAN ADMINISTRATORS

In areas of infiltration outside of their zones, the goal of the Khmer Rouge is to win the allegiance of the peasantry and establish pockets of support throughout the country. The three "don'ts" that remain at the core of Khmer Rouge propaganda to peasants include not serving the government as soldiers, not serving as administrators, and not selling rice to the government. Khieu Samphan, in his capacity as "prime minister" of the Khmer Rouge administration, exhorted listeners to the party's radio station in October to "smash and remove all categories of the enemy civil administration" in order to "cut off all the arms and legs of the enemy, plug all their eyes and ears, sever all their economic links with the countryside, block up all their large and small communications roads, and prevent them from conscripting the people as soldiers and militiamen."⁷

⁷ "Khieu Samphan 'Appeal' on Rural Administration," *(Clandestine) Radio of the Provisional Government of National Union and National Salvation of Cambodia* 1200 GMT October 5, 1994 translated in Foreign Broadcast Information Service (FBIS) EAS-94-194, October 6, 1994. In November 1994, a broadcast in the name of the Khmer Rouge "ministry of rural areas, agriculture, and water conservancy" called on peasants to keep their rice harvest away from the government, and "ruthlessly smash and sweep away all kinds of enemy civilian administrators in the villages and communes and enemy

political networks in all sectors". "KR Calls on Peasants to Protect Rice Crop," *(Clandestine) Radio of the Provisional Government of National Union and National Salvation of Cambodia* 1200 GMT November 19, 1994 translated in FBIS-EAS-94-225, November 22, 1994.

The contours of this political line are clearly evident in the human rights abuses committed by the Khmer Rouge detailed below. One prevalent pattern is the kidnapping or murder of village, commune and district leaders, a practice that is rampant in areas of significant Khmer Rouge presence.⁸ For example, Chumkiri district of Kampot province has been a frequent target of Khmer Rouge attack. On August 17, 1994, approximately eighty Khmer Rouge troops attacked Chumkiri town, burning shops near the market. In the course of the raid, Khmer Rouge soldiers surrounded the house of the Chumkiri district chief, eventually catching him and stabbing him to death. Three others were killed by the Khmer Rouge at the same time: the deputy district police commissioner, the district chief's bodyguard, and a civilian passerby.⁹

Another recent example of deliberate attack on civilian administrative structure comes from the connected villages of Ta Moeun/Ta Poug in Battambang province, where returning refugees from the Thai-Cambodian border attempted to find a home. This case highlights the dangers inherent in settling refugees or the displaced in conflict areas. Ta Moeun/Ta Poug is situated on a historic fault line between Khmer Rouge and government forces, and the general area has been infiltrated by the Khmer Rouge since the late 1960s. The local government was eager to see the area demined and brought more firmly into the government orbit through settlement, and the United Nations High Commissioner for Refugees (UNHCR), hard-pressed to find agricultural land for returnees, accepted the site when there was still a real prospect of demobilization under the peace plan.

But Khmer Rouge forces viewed the resettlement scheme as a means to extend government control and reacted with hostility. New settlers would find that Khmer Rouge would shoot at their feet when they went to work the fields, or would "tax" them two or three sacks of rice per hectare they farmed. In the end, many abandoned agriculture as too dangerous and survived by foraging. In February 1994, a contingent of about thirty to forty Khmer Rouge fighters armed with B-40 rockets marched through the village, burning and looting, and killing the Ta Poug village chief. Later, the Ta Moeun village leader chosen by the returnee population fled after the Khmer Rouge burned his house to the ground in warning. In March 1994, a new village chief and the head of security for the village militia who had

⁸ Political abduction is a long-established Khmer Rouge policy. See Peschoux, *Les "Nouveaux" Khmers Rouges*.

⁹ Human Rights Watch interview with Kampot residents, Phnom Penh, August 1994.

been threatened by the Khmer Rouge were both shot dead. Shortly after this incident, the remaining settlers abandoned the site.

Although this pattern of systematic attacks directed at the village, commune and district leadership has been characteristic of Khmer Rouge strategy for years, it was generally partnered with an effort to make the peasantry switch allegiance through a "hearts and minds" campaign. It was not unusual, for example, for Khmer Rouge units to pay for food they asked of villagers, and for the most part looting or assault were rare on the part of Khmer Rouge soldiers, although other abuses, such as forcing villagers to provide labor, money or rice as "taxes" were not. Even where village leaders were abducted, they were often returned unharmed once ransom was paid, with only an admonition not to participate any further with the enemy's civilian administration.

This changed in the 1994-1995 dry season. A document that purports to be a directive from Pol Pot taken from the body of a Khmer Rouge soldier was published by the Cambodian press in January 1995.¹⁰ The document critiques the lenient attitude of the Khmer Rouge in the past towards government administrators, and calls for the establishment of "concentration camps" to hold such persons behind Khmer Rouge lines. There they are to be starved, interrogated and indoctrinated before their release, but "as for the simply cruel ones," cadres are instructed to "solve their cases quickly." It has not been possible to authenticate this document. However, Human Rights Watch has received disturbing news in February 1995 from residents of Battambang province that at least two such camps have been established by the Khmer Rouge, one in the north of the country, and another not far from Pailin, where captured civilian administrators have been held for "reeducation" before they are released.¹¹

Another shift in policy during the 1994-1995 dry season has been the targeting of entire communities for attack. This return to the strategies of the 1970s seems designed to sharply demarcate the population into opposing sides and force

¹⁰ "KR 'Directive' Against Administration Viewed," *Koh Santipheap*, January 5, 1995 translated and reprinted in FBIS-EAS-95-005, January 9, 1995.

¹¹ Human Rights Watch interview, February 1995.

people to move themselves, their households and their rice harvest behind the Khmer Rouge lines. Those who do not risk losing everything, including their lives.

In a year that has seen an exceptionally poor rice harvest due to flood and drought, this strategy not only secures for the Khmer Rouge a source of food and labor, but swells the population of the internally displaced whom the government must support. According to the Cambodia office of the UNHCR, the displaced population as of February 1995 includes over 150,000 Cambodians dependent on international aid agencies and government hand-outs for survival.

Communities throughout the Northwestern provinces of Battambang, Banteay Meanchey and Siem Reap have been burned to the ground by the guerrillas. This process began before the rains stopped, in mid-1994. Ek Phnom district of Battambang has been the scene of continual skirmishes between the RCAF and the Khmer Rouge. In June 1994, the Khmer Rouge added 150 families from Prey Chas district to the internally displaced population by warning them to leave or be killed. One aid agency worker reported that the Khmer Rouge told villagers that burning houses and killing the village leadership was a "new strategy" to "end the war quickly" and that villagers should ask Hun Sen for help in rebuilding their homes, a message that villagers repeated to Human Rights Watch in February 1995.¹²

In Kralanh district of Siem Reap province, the Khmer Rouge drove the inhabitants from eight of ten communes during November 1994, burning houses, schools and clinics in the process. The number of people displaced was approximately 30,000. Villagers interviewed by *The Phnom Penh Post* reported seven persons killed, including two school teachers accused of "having a high level of education and political tendencies as puppets" and a woman who was raped and then shot. Another school teacher who was taken by the Khmer Rouge with eighty-nine other villagers to perform labor recounted, "They forced us to cut trees, harvest crops and sharpen spikes without giving us food. I thought it was the end of my life."¹³ Officials in Siem Reap province have told reporters of thousands of villagers in remote areas of the province being abducted for forced labor by the Khmer Rouge in December and January. It Sam, a former Khmer Rouge divisional commander who defected in December 1994, reported that Khmer Rouge forces

¹² Tricia Fitzgerald, "Khmer Rouge Burn Northern Cambodian Villages," United Press International, December 9, 1994.

¹³ Ker Munthit, "Burnings and Killings Before Rebels Beaten Off in Siem Reap," *Phnom Penh Post*, p. 8, December 2-15, 1994.

had killed approximately 2,000 people in the area of Anlong Veng and some 300 others in three villages in Banteay Srei district of Siem Reap, among whom were Khmer Rouge civilians and villagers abducted from Svay Leu district in Siem Reap.¹⁴

¹⁴ Som Sattana, "Defectors Say Khmer Rouge Killing Hundreds of People," Associated Press, January 21, 1995.

On October 24, 1994, Khmer Rouge guerrillas captured seven boatloads of villagers of K'dol Taken commune in Battambang who were heading south on the Mongkol Borei stream. These seventy-one persons were part of an expedition organized by an entrepreneur from nearby Bavel, who had negotiated with the Khmer Rouge to allow bamboo cutting in areas they controlled. The stream forms a border with land occupied by the Khmer Rouge, and this commune has a long history as a battleground, dating back to 1973 when in retaliation for militia resistance, the Khmer Rouge massacred hundreds of families in the area. This time, the Khmer Rouge marched the villagers over the course of two days to an encampment at O'Tasok and questioned each one as to the reason they were going through the area, apparently suspicious that the villagers were government agents. The Khmer Rouge commander ordered his troops to open fire on the group, killing fifty-one persons, five of them women.¹⁵ By January, Khmer Rouge had leveled almost all of the ten villages in K'dol Taken commune, destroying hundreds of houses, including schools and a foreign-funded sanitation project. Seven civilians were reported to have been killed in the raids, and another fifteen wounded.¹⁶

Battambang province became the focus of attacks from December 1994 to February 1995. Aid workers report that over 2,700 houses have been burned in Battambang province alone since the beginning of the dry season fighting, out of some 5,500 house burnings throughout the country. In December 1994 Khmer Rouge offensives caused virtually the entire population of Rattanak Mondol district -- over 40,000 persons -- to flee their homes. Villagers in Kilo 38, a village at the border of government-held territory along Route 10 in Rattanak Mondol district reported that in the 1993-1994 dry season fighting the Khmer Rouge took food from them, and government soldiers who supposedly were to protect them stole pots, pans, cattle, wood, and doors. In the dry season fighting this year, the Khmer Rouge shot the cattle and burned the village to the ground.¹⁷ Other villagers from Rattanak Mondol who were frightened to return to their homes told Human Rights Watch, "Last year the Khmer Rouge ate our chickens -- this year they will eat us!"¹⁸

¹⁵ Jon Ogden, Ung Rotana and Darren Whiteside, "Massacre commune prepares defense," *Phnom Penh Post*, November 18 - December 1, 1994.

¹⁶ Darren Whiteside, "Working among the cinders," *Phnom Penh Post*, January 27 - February 9, 1995.

¹⁷ Human Rights Watch interview, Battambang province, February 1995.

¹⁸ Human Rights Watch interview, Battambang province, February 1995.

Of the approximately 40,000 people affected, half had returned by the end of February 1995, but the area is still subject to shelling. Many of those who returned to Rattanak Mondol and to other areas are living in a state of flux, ready to leave at any moment; others only visit their homes and fields by day, and retreat to safer areas to spend the nights.¹⁹

¹⁹ Human Rights Watch telephone interview, February 28, 1995.

The Khmer Rouge chose January 15, the last day of the amnesty period under the new law against the Khmer Rouge, to launch systematic attacks throughout Battambang province. Dozens of villages were razed in the districts of Bavel, Banan, and Ek Phnom, and aid agencies estimated some 2,400 houses were destroyed within ten days.²⁰ The displaced villagers of Phum An Song Sok, Prek Norin commune, Ek Phnom district had never had to leave their homes since 1979, unlike the miserable residents of Rattanak Mondol district who have regularly been driven from their homes by the dry season hostilities. On January 31, 1995, Khmer Rouge forces entered the village. All the men fled to the fields, and the women and children tried to hide in the river. The guerrillas looted and burned over forty houses in the village, killed six cows, and destroyed the villagers' heavy concrete water jars. As the guerrillas left, they yelled out that they would be back and they would kill any residents they found were still there. Earlier, on November 24, 1994, the Khmer Rouge had entered the village, murdered the fifty-two-year-old commune leader, Oum Nheb, by shooting him in the back as he fled, and looted and burned down his house. Despite this attack, the other villagers had remained. This time they fled. As of early February 1995, they had not returned, because the Khmer Rouge stayed nearby.²¹

These raids sometimes have been accompanied by bloody massacres. A relief worker reported at least thirty-nine civilians had been killed and twice as many injured in hostilities in the province between December 1994 and February 1995.²² One such instance took place on January 30, 1995, when a party of sixty

²⁰ Ros Sokhet and Darren Whiteside, "'Vengeance on a scale not seen in a long time,'" *Phnom Penh Post*, January 27 - February 9, 1995.

²¹ Human Rights Watch interview, Battambang province, February 1995.

²² Human Rights Watch telephone interview, February 28, 1995.

Khmer Rouge soldiers and civilian porters entered Phum Boem Ek, some fifteen kilometers from Battambang provincial town. They killed six civilians. Two were shot while trying to flee on a tractor and another two while attempting to escape on a motorcycle. One child was shot while watching the scene from a window. A villager threw a hand grenade at the Khmer Rouge soldiers, who charged in that direction and shot the first person they encountered, who happened to be a child. Only two houses were burned in this village, but the Khmer Rouge went on to the nearby village of Phum Ts'kao, where they looted and then burned about twenty houses. The villagers of this area also had not been attacked since 1979.²³

²³ Human Rights Watch interview, Battambang, February 1995.

MURDER OF ETHNIC VIETNAMESE CIVILIANS

A central tenet of Khmer Rouge policy and propaganda is that all ethnic Vietnamese are occupation forces who must be eradicated from Cambodia, and the method for this purge is slaughter. The Khmer Rouge make no distinction between civilians and the former military occupiers of Cambodia, claiming that the civilians are merely soldiers in disguise; nor does the party exempt women and children, on the rationale that women bear children and children can grow up to be soldiers.²⁴ A typical Khmer Rouge broadcast in January 1995 ascribes to "the people and students" the following opinion:

"[A]rmed groups should be organized to liquidate the Vietnamese, burn their houses, and destroy their boats. Cambodia has to be turned into a volcano where the Vietnamese can no longer live."²⁵

During the UNTAC period, more than one hundred ethnic Vietnamese civilians were murdered, often in highly organized military-style operations by squadrons of armed men. In most cases investigated by the peacekeepers, evidence pointed to the Khmer Rouge as the perpetrators. Some 20,000 ethnic Vietnamese residents fled Cambodia because of Khmer Rouge massacres during this period. Violence against ethnic Vietnamese continued after the elections, with diplomats and human rights monitors reporting more than forty additional murders between

²⁴ See Asia Watch, "Cambodia: Human Rights Before and After the Elections," *A Human Rights Watch Short Report*, vol. 5, no. 10, May 1993, p. 20.

²⁵ "KR Claims Armed Groups to Liquidate Vietnamese," *(Clandestine) Radio of the Provisional Government of National Union and National Salvation of Cambodia*, 1200 GMT January 17, 1995, translated in FBIS-EAS-9--012, January 19, 1995.

December 1993 and December 1994.²⁶ In many of these instances the perpetrators were unclear, and the Cambodian government has largely failed to mount serious investigation. However, in some cases, there was evidence that Khmer Rouge or former Khmer Rouge may have been the perpetrators.

²⁶ Correspondence, Phnom Penh, October 26, 1994.

For example, the Vietnamese embassy in Phnom Penh reported that on May 15, 1994, a group of armed Khmer Rouge soldiers stopped a fishing boat with two ethnic Vietnamese men who were residents of Kompong Leng district, Kompong Chhnang province, an area that for many years has had an ethnic Vietnamese population. They beat the two men with their oars, shot them dead, and robbed the boat. One week later, Khmer Rouge abducted four other ethnic Vietnamese in the same location, according to the embassy.²⁷ The embassy also reported, and human rights investigators confirmed, that on August 27, 1994, four ethnic Vietnamese fishermen were captured by persons identified as Khmer Rouge soldiers in Phlau Tout commune, Kompong Leng district of Kompong Chhnang province. The Khmer Rouge tied them up and took them away, along with their boats, fishing equipment and other property. They were not heard from again. In October, Khmer Rouge radio reported that "people" attacked "hidden elements of the Communist Party of Vietnam" in Kompong Leng district killing ten and wounding two others.²⁸

In another incident, two ethnic Vietnamese fishermen were killed and two others wounded in Prek Don Hen, Prek Ampil commune, Khsach Kandal district of Kandal province. The attackers were three Cambodians armed with AK-47s and dressed in civilian clothing, who first raided the home of the commune militia and then went to a fishing area and summoned the ethnic Vietnamese working there to come ashore. They complied, some thinking the armed men wanted protection money, others thinking they wanted to buy fish. The gunmen then separated the women and children to one side, and lined up the four men on another. One of the Cambodians fired his gun into the air, saying to the others, "Do whatever you want." The others then opened fire on the men. The gunman who appeared to be the leader of the group was identified by some sources as a Khmer Rouge defector who had come to live in the area, and another attacker as his brother. Commune authorities believe other Khmer Rouge operate in the forest some thirty kilometers from the village. It is unclear whether these men were still acting under the

²⁷ "Phnom Penh Embassy Protests Against Killings of Vietnamese Residents," *Voice of Vietnam External Service (English)*, 1330 GMT May 27, 1994, transcribed by BBC Monitoring Service, May 30, 1994.

²⁸ "KR Radio Says 10 'Hidden' Vietnamese Killed," *(Clandestine) Radio of the Provisional Government of National Union and National Salvation of Cambodia*, 1200 GMT October 23, 1994, translated and transcribed by FBIS-EAS-94-205, October 24, 1994.

authority of the Khmer Rouge or whether they independently chose to perform a racial massacre. There had been no particular tensions between ethnic Khmer and ethnic Vietnamese residents in this locality in the time immediately prior to the murders.

RAPE

Rape was also used as an instrument of warfare during the April 1994 attack on Banteay Chhmar district, a border area of Banteay Meanchey province that at one time held a mixed population of Khmer Rouge and partisans of the non-communist KPNLAF. When the KPNLAF integrated into the government's forces after the elections, it spearheaded attacks on Khmer Rouge bases in the area. Khmer Rouge unit 519, led by Dong Saroeun and Soun Sou, retaliated for earlier KPNLAF attacks on Khmer Rouge settlements, attacks which allegedly involved looting and rape as well. According to witnesses, between one hundred and 150 Khmer Rouge troops sacked and burned over one hundred houses in the district, destroying structures where inhabitants could not pay off the soldiers or where the owners were KPNLAF military or their relatives. Local residents present at the time of the attack reported that a number of young women were abducted and raped, an account later confirmed by medical workers who treated four women for rape.²⁹ Four civilian men were also killed by gunfire, although they may not have been deliberate targets of Khmer Rouge soldiers, who fired into the air indiscriminately. Local KPNLAF officials also claimed one woman was abducted, raped and killed.³⁰

ABDUCTION AS A BUSINESS AND TACTIC OF WAR

²⁹ Local KPNLAF officials thought between thirty and one hundred women were raped, a figure which appears almost certainly to be an overestimate based on interviews with women who had stayed in Banteay Chhmar during the fighting.

³⁰ Human Rights Watch interviews, Banteay Chhmar and Sisophon, August 1994.

The abduction of ordinary civilians for ransom, for use as forced labor or for use as human shields is another prevalent Khmer Rouge abuse. Abduction for forced labor has become especially common as the Khmer Rouge seek villagers for field work, road construction and portering ammunition and supplies. Eighteen men were reported abducted from Phkor village and Thnor Ampil village in Veal Pong commune, Oudong district of Kompong Speu province on August 19, 1994 causing villagers in the area to sleep in their rice fields.³¹ The men were forced to walk five days to a place in the mountains known as Koh Krobov. There they were forced with about forty or fifty other men who had been taken from villages in Kompong Speu to clear forest for growing corn, dig ponds, and porter ammunition. At night the men were kept in a long building about two meters wide. Eight men who tried to escape were kept in shackles at night, and two men had to wear shackles during the day. The head of this prison camp was a man named Ta Ly, and the commander of the Khmer Rouge division that captured them was a man named Keo Pong. The prisoners received only rice and some salt to eat, and eventually most of the men contracted malaria or scarlet fever, making them unable to work. They were at that point released by their captors, more than a month after they had been abducted. The persons who survived this ordeal were deeply traumatized, and returned to their homes with trepidation. According to a human rights worker who interviewed them in October, they were afraid the Khmer Rouge would return and ran into the fields whenever they saw approaching flashlights.

The deputy provincial governor of Siem Reap also reported in September the abductions of over 300 villagers from Varin, Svay Leu, Chi Kren, Kralanh and Chongkal districts to labor on road construction in the vicinity of the Khmer Rouge stronghold at Anlong Veng.³² Ten civilians were kidnapped from Banteay Srei

³¹ Robin McDowell, "Guerrilla Abductions Plague Kompong Speu," *The Cambodia Daily*, September 6, 1994.

³² Ros Sokhet, "Hundreds of captives work on rebel road," *Phnom Penh Post*,

district in Siem Reap province in late December, and Khmer Rouge defectors from Anlong Veng in January told reporters of "thousands" of hostages held for forced labor in conditions of near-starvation.³³

November 18 - December 1, 1994.

³³ "Khmer Rouge Continue Kidnappings Despite Defections," Associated Press, December 30, 1994; Som Sattana, "Khmer Defector: Khmer Rouge Kidnapped 10,000 in Three Months," Associated Press, January 2, 1995.

In August, Human Rights Watch visited former residents of Ampil Pram Daeum commune who since February 1994 have lived in make-shift shelters on the side of Route 58B in Bavel district, Battambang province. They eke out a living by foraging, or in some cases working their fields, which now lie in a war zone. On July 31, 1994, five young girls from this community were captured by a contingent of twenty Khmer Rouge soldiers in the vicinity of Boeung K'dom. Two of the girls were released that day, and two more two days later, but as of August 7, 1994, one sixteen-year-old girl was still being held. According to family, the mother went to negotiate with the soldiers and was told her daughter would be released as soon as her husband ceased to be a soldier for the government forces. Others heard that the Khmer Rouge soldiers wanted to keep the girl because she was pretty. Since that time, the mother heard that her daughter had been transferred to a Khmer Rouge village on the Thai-Cambodian border, and had gone to plead for her.³⁴ Approximately six men from this commune had also been abducted and forced to clear paddy fields for the Khmer Rouge; at the time of our visit two or three were still being detained for this purpose.

³⁴ Human Rights Watch interview, Phoum Saing Raing, Route 58B, Bavel, August 1994.

Also in August 1994, Human Rights Watch interviewed a group of villagers who had been forced to trek across northwest Cambodia at the command of the Khmer Rouge. The villagers had originally come from the Thai-Cambodian border camps in 1992 and 1993, and were volunteers for the one settlement approved by the UNHCR under Khmer Rouge administration, Yea Ath.³⁵ Many of Yea Ath's settlers did not have resources or relatives they could rely on elsewhere in Cambodia and were attracted by the exceptionally large grants of fertile, unmined farmland which promised self-sufficiency. The settlement was designed to serve as a bridge between the Khmer Rouge and the rest of Cambodia, despite the fact that by this time the demobilization stage of the peace plan had failed. Residents could move between Yea Ath and government territory with relative ease provided they paid soldiers on both sides a "toll", and many crossed to vote in the May elections. But Yea Ath, directly on the borderline between the two armies, was the site of repeated clashes, and by mid-October 1993 its settlers had either evacuated with the Khmer Rouge, or the larger number had fled to collection sites for the displaced in government territory. Some of the dislocated eventually moved to Tamar Phrous, Rattanak Mondol district of Battambang province in early 1994.

³⁵ Under the principle of free choice in selection of a settlement site in Cambodia, the UNHCR had evaluated several possible locations in Khmer-Rouge controlled territory. Despite warnings that Yea Ath could be caught on the front lines should hostilities resume, the site was approved, with the understanding that there would be free access between Yea Ath and government-held territory for villagers, U.N. officials and aid organizations. Approximately 6,000 Cambodians moved to Yea Ath, not all of whom understood beforehand that it was a settlement under Khmer Rouge administration, as Court Robinson, an independent scholar of refugee issues, has documented through extensive interviews performed in 1993. The UNHCR organized the construction of an access road, a clinic and a school, investing far more in Yea Ath than other resettlement sites in the hope that it would strengthen cooperation on the part of the Khmer Rouge with the peace process, a cooperation that had disintegrated in almost every other area.

From the outset, however, the Phnom Penh military feared the settlement would merely serve to consolidate Khmer Rouge claims to the land, and conducted raids on the settlement in mid-1993, in breach of the ceasefire provisions of the Paris Peace Accords, assurances to U.N. peacekeepers stationed nearby. Khmer Rouge military also moved through the town, which was supposed to be demilitarized and neutral. Once a permanent government was established on September 24, 1993, Yea Ath effectively became enemy territory. Settlers began to flee as the Khmer Rouge attempted to arm residents and ultimately to evacuate them towards Pailin. By mid-October 1993, Yea Ath was deserted, with most of its inhabitants fleeing to the government side. See Court Robinson, *"Something Like Home Again": The Repatriation of Cambodian Refugees* (Washington D.C.:Immigration and Refugee Services of America, 1994).

In early April 1994, Khmer Rouge forces moved several mobile bases near the Sangke River close to the village of Thmar Phrous. The Khmer Rouge began making frequent contact with the new settlers, which made local authorities suspicious of them and isolated them further. As the Khmer Rouge consolidated their position throughout the area between late April and early May, they began taking men from the Yea Ath group as porters for weapons. Finally, the soldiers, with the aid of a community leader, rounded up over eighty families and force-marched them with Khmer Rouge military units down Route 10 in the direction of Pailin.

In the course of this forced march, at least three civilian men lost their lives to mines, one fourteen-year-old boy was killed by machine gun fire from a helicopter, another child died in a shelling episode, and a third child died of diarrhea. "When someone stepped on the mines, he just remained there with the spirits, as though he were no more than the spirit of a dog, because we could not bury him -- the Khmer Rouge would not let us stop walking," said one woman, alluding to the Khmer belief that the spirits of the unburied dead cannot rest. The forced marches continued by night as well. By late July, they reached Boeung Kandal in Prey Kaphua commune, where a small Khmer Rouge contingent put them to work cultivating paddy fields. Their only food was rice porridge and bits of bamboo or morning glory vine. At this point, a young man escaped to government territory to test what sort of reception others could expect if they escaped. More followed, and local officials and the UNHCR began providing assistance and planning relocation yet again for a steady stream of people slipping out of the fields at Boeung Kandal. At the time of Human Rights Watch's visit in early August, those who had escaped reported some twenty-seven families were still in Boeung Kandal, most of them sick with malaria.

Kidnapping for ransom has long been a staple Khmer Rouge tactic against local officials, and appears to be becoming more widespread. Civilians displaced from three small villages in Ek Phnom district in Banteay Meanchey province reported in August that the Khmer Rouge had recently kidnapped one girl during their looting and asked a ransom of five dumlung of gold. Since February or March of 1994 the Khmer Rouge had been kidnapping the heads of local fishing cooperatives, and by August they had taken twelve for ransom.³⁶ The practice had become almost institutionalized in the southwestern zones like Kampot province as supplies from northwest Khmer Rouge bases dwindled during the peacekeeping

³⁶ Human Rights Watch interview, Ek Phnom district, Banteay Meanchey province, August 1994.

period and afterwards. One resident of Kampot described hostage-taking as an everyday event, with ransom much like "taxes" calibrated to the victim's means. In April 1994, the Khmer Rouge captured four very wealthy Cambodians, three of whom were generals (and one of whom had just purchased his rank a few weeks before). In their case, they were each "priced" at over \$10,000. A more prosaic instance in April was the marriage of a working man in Kompong Trach district, who had to ensure that the wedding would not be disrupted by paying 10,000 riel (\$5.00) to government officials as "tax" and delivering to the Khmer Rouge of his neighborhood three oxcarts of dried stingray and three gallons of rice wine.³⁷

This hostage-taking finally caught the world's attention when Westerners became targets of the Khmer Rouge. At various points during the UNTAC period, Khmer Rouge units detained peacekeepers who had ventured into their zones, as a display of military vigilance and political clout. All were released unharmed within hours or days, although their vehicles were often confiscated. In 1994, however, the Khmer Rouge in the southwest began abducting Western civilians for ransom.

³⁷ Human Rights Watch interview, August 22, 1994.

The first instance involved Melissa Himes, a twenty-four-year-old relief worker for Food for the Hungry International, who was abducted on March 31, 1994. She and three Cambodian colleagues had gone to a village in Dang Tung district, Kampot province, to investigate the theft of a vehicle from her organization. She was held for forty-two days in a remote village that was surrounded by minefields while her captors and employer wangled over her ransom. The local Khmer Rouge military leader, Noun Paet, commanded a group of approximately seventy guerrillas associated with Division 405 who were based on Phnom Vior ("vine mountain") in Dang Tung district. He demanded ransom variously at \$10,000 and \$1,000,000, and finally agreed on three tons of rice, five tons of cement, 1,500 cans of fish, one hundred sheets of roofing tin, some tractor tires, and medicine. Himes spent two weeks of her captivity digging a well and was not harmed. She later reported that Cambodian men and women were "constantly" being brought to the village to work for a few days to a few weeks until relatives paid off ransoms, ranging from thousands of dollars to a bag of rice.³⁸

In the second instance, the same Khmer Rouge unit abducted three backpacking tourists, from Australia, France and Britain, along with three ethnic Vietnamese and scores of Cambodians during an attack on the train from Phnom Penh to Sihanoukville on July 26, 1994. Thirteen persons were killed in the raid, including armed guards shot at point-blank range. Many of the ethnic Khmer were freed in the days and weeks following the incident, and the ethnic Vietnamese hostages were reportedly killed. The government encircled Phnom Vior with military and attempted to negotiate a ransom for the three Western men, but this effort failed as the troops persistently shelled the mountain, and the Khmer Rouge leadership in the northwest began to issue political demands for the hostages' release. The Khmer Rouge officer who commanded the July 26 raid, Chhuk Rin, deserted on October 15, and was promptly given immunity from prosecution, the

³⁸ William Branigan, "Cambodia Links Ransom and Robbery to Officials," *Washington Post*, August 9, 1994.

rank of colonel in the RCAF, and \$200. Ten days later, government forces aided by the deserters overran the mountain, and Noun Paet fled. The corpses of the three young men were discovered shortly thereafter, showing signs that their legs had been broken and they had been bludgeoned to death as much as a month earlier.³⁹ It was later reported that the Cambodian government had intercepted cables showing that the order to kill the three came from the top of the Khmer Rouge hierarchy.⁴⁰

³⁹ Reuter, "Western hostages 'clubbed to death' by Khmer Rouge, *The Times* (London), November 8, 1994.

⁴⁰ "Desperate Khmer Rouge Most Likely Culprits in Massacre?" *The Nation* (Bangkok), November 27, 1994, p. A4.

It was the eighth time in eighteen months that the train had been attacked at Kompong Trach in Kampot province by the Khmer Rouge, and it brought to light the high degree of collusion between local government officials and the local Khmer Rouge guerrillas in Kampot. A Cambodian riding the train that day recalled that one hundred meters after the train passed a government checkpoint in Kompong Trach, approximately thirty Khmer Rouge ambushed it with B-40 bazookas. A leader of the raiding party had boarded the train earlier in Kompong Trach as a passenger. Armed with an automatic pistol, he quickly took control of the foreigners and directed the raiders by walkie-talkie. As the Khmer Rouge immobilized the train, government soldiers stood by with ox-carts to take a share of the booty, and indeed, some passengers had to ransom their belongings from government custody.⁴¹ In the ensuing weeks, local officials, acting as self-appointed interlocutors with Noun Paet, added their own percentage to his ransom demands, and government officials brokered video footage and letters of the hostages to eager members of the international press corps. In the wake of these developments, the government replaced local military commanders and demoted an official of the ministry of information.⁴²

⁴¹ Human Rights Watch interview, August 1994.

⁴² Human Rights Watch interviews, August 1994; Gary Way, "Officials accused of hostage scams," *Phnom Penh Post*, August 26-September 8, 1994; Jason Barber, "More hostages 'inevitable'," *Phnom Penh Post*, November 18 - December 1, 1994.

An ominous development during this second episode was the transformation of Noun Paet's demand for ransom into the Khmer Rouge leadership's demand that Australia, France and Britain not send military aid to the Cambodian government. This new demand came in the form of a radio broadcast that reversed Khieu Samphan's earlier denial that the party was responsible for the kidnappings.⁴³ Khieu Samphan later added the demands that the law banning the Khmer Rouge be repealed and that the party be invited to reopen its "liaison office" in Phnom Penh.⁴⁴ The Khmer Rouge radio continues to threaten to kill foreigners whose countries are part of the so-called Western "alliance" that supports aid to the Cambodian military.⁴⁵ Since the abduction of the three Westerners to Phnom Vior, travel advisories to certain areas of Cambodia have been issued by the governments of Britain, Australia and the United States, and some nongovernmental organizations have begun to pull staff out of more isolated posts in areas with Khmer Rouge activity. Concerns that the Khmer Rouge may be deliberately seeking to kidnap more Westerners have been fed by reports in Battambang province that the Khmer Rouge began asking local people and especially drivers about the movement of foreigners and accounts from defectors of orders and bounties offered for kidnapped Americans or Australians.⁴⁶

It is not yet clear whether the Khmer Rouge were responsible for other disappearances of Westerners. On April 11, 1994, a British man and woman and an

⁴³ Sou Sophornnara and Reuters, "Hopes of captives' release decline," *Phnom Penh Post*, August 26 - September 8, 1994.

⁴⁴ Ros Sokhet, "Hostages alive but losing weight," *Phnom Penh Post*, October 7 - 20, 1994.

⁴⁵ Mark Dodd, "Khmer Rouge Demand Million Dollar Fine from West," *Reuter*, August 8, 1994; "Khmer Rouge to Foreigners: Stay Out of Cambodia," *Associated Press*, November 4, 1994; "Khmer Rouge Commentary on 'Alliance' Role," (*Clandestine*) *Radio of the Provisional Government of National Union and National Salvation of Cambodia*, November 20, 1994, translated and transcribed in FBIS-EAS-94-224, November 21, 1994; Som Sattana, "Khmer Defectors: Khmer Rouge Offers \$8,000 Reward for Foreigners," *Associated Press*, January 3, 1994.

⁴⁶ Tom Fawthrop, Jon Swain, "Pol Pot linked to killing of Briton," *The Sunday Times* (London), November 13, 1994 (article claims there is documentary evidence that the order to kill July 26 hostages came directly from Pol Pot).

Australian woman travelling from Sihanoukville to Phnom Penh on Route 6 were abducted from their taxi near the Sre Ambel junction, about sixty miles north of Sihanoukville. Their captors, whose identities were never discovered, initially demanded \$150,000 ransom, but communications soon broke off. Human remains and clothing recovered several months later near the Elephant Mountains, a Khmer Rouge base area, led investigators to believe that the three were most likely killed shortly after their abduction.⁴⁷ In the last incident, a Belgian couple disappeared on May 21, 1994 on the Thai side of the border with Cambodia's Preah Vihear province. The two were reportedly going to visit the archeological ruins of the Preah Vihear temple, which is in an area controlled by the Khmer Rouge. There has been no news of their fate.⁴⁸ A German tourist who tried to illegally enter Cambodia from Thailand disappeared in a Khmer Rouge area. He was last seen on a motorbike on December 8, 1994, on his way to Ban Loem, near Pailin. There have been unconfirmed reports that he was shot dead, but the Khmer Rouge have not issued any statement on his case.⁴⁹

⁴⁷ "Officials: Evidence Suggests Three Kidnapped in Cambodia are Dead," Associated Press, July 17, 1994; Jill Perry, "Cambodian Hostages Believed Killed," United Press International, October 27, 1994.

⁴⁸ "U.N. Worker Missing," *Indochina Digest* (Washington D.C.), May 27, 1994, vol VII no. 21.

⁴⁹ "German Said to be Dead," *Phnom Penh Post*, December 30, 1994 - January 12, 1995, p.2.

The Khmer Rouge took pains to deny the massacre of twenty-four Thai loggers on November 21, 1994. The men were employees of the BLP Company, which had acquired the concession from the Cambodian government, and then was faced by demands from the Khmer Rouge forces that they be paid off as well. According to company employees, thirty-two loggers were rounded up by a force of approximately one hundred heavily armed guerrillas. The guerrillas demanded \$200,000 from the workers, who could collect among themselves only \$12,000. The guerrillas refused the money and forced the men to walk a kilometer into the forest before shooting them from the back. Thai military commander-in-chief Wimon Wongwanich concluded the Khmer Rouge was probably responsible for the killing. The matter is still under investigation by Thai and Cambodian authorities. If the Khmer Rouge indeed were responsible it is unlikely that such a large-scale attack against the Thais would have taken place without authorization at the highest levels of the party. Khmer Rouge radio denounced news reports of the massacre as fabrications by the U.S. and Australia, designed to provoke a rift in friendly relations between Thailand and the party.⁵⁰

In contrast, the Khmer Rouge were quick to claim responsibility for the murder of a Cambodian tour guide and an American woman who were ambushed when visiting the Angkor-period temple of Banteay Srei in Siem Reap province on January 15, 1995. The woman's husband suffered shrapnel and gunshot wounds in the attack. The government arrested ten people who were described as bandits caught with the victims' possessions. However, the Khmer Rouge claimed its guerrillas were responsible, and broadcast a report that it had rewarded the killers with twenty oxen, twenty water buffaloes and \$4,000.⁵¹

⁵⁰ "Khmer Rouge Denies Killing Thai Loggers," *(Clandestine) Radio of the Provisional Government of National Union and National Salvation of Cambodia*, 1200 BMT, November 25, 1994, translated in FBIS-EAS-94-228, November 28, 1994.

⁵¹ "Ten Arrested in Fatal Cambodian Tour Group Attack," Reuter, January 27, 1995; George Gedda, "Khmer Rouge Weakened by Defectors," Associated Press, February 3, 1995.

ATTACKS ON INFRASTRUCTURE AND FAMINE AS A WEAPON

Khieu Samphan's exhortation to "sever all [the enemy's] economic links with the countryside, block up all their large and small communications roads" is followed through regular attacks on transportation throughout the country and on civilian targets such as markets. The July 26 attack on the Sihanoukville-bound train was just one of many such attacks; each one often involves the loss of civilian life in addition to looting.⁵² On January 4, 1995, Khmer Rouge guerrillas attacked a train in Kompong Chhnang province, killing eight persons, including three women and a fourteen-year-old girl. Over twenty other persons were seriously wounded when the guerrillas targeted passenger carriages by opening fire on them with B-40 rocket launchers after detonating five explosives under the track.⁵³

The Khmer Rouge makes no distinction between civilian and military targets. The guerrillas seldom engage in direct combat with the RCAF, and there is little doubt that civilians and civilian structures have borne the brunt of the hostilities. The Poipet market on the Thai-Cambodian border was a frequent target for shelling in 1994, and many civilians have been injured or killed as a result. In Battambang province, as government troops began to mass in January and February 1994 for the assault on Pailin, attacks on villages and markets in outlying parts of Bavel and Battambang districts increased, in what was widely perceived as a Khmer Rouge effort to terrorize the population and divert the government's attention from the offensive. A year later, in January 1995, Khmer Rouge raided Rieng Kessey commune, fifteen kilometers south of Battambang, where the local militia chief reported the guerrillas burned forty houses, including the commune's school and its medical clinic. Guerrillas were reported to have searched for the woman who ran

⁵² An attack in Kampot in early August 1993, for example, resulted in ten persons killed and thirty injured when guerrillas laid mines on the train track and raked the cars with small arms and shoulder-launched rockets. Approximately forty civilians were impressed at gunpoint to porter stolen goods -- mainly motorbikes and a cargo of food additive -- to a point about three miles from the train. In February 1994, three women were killed and ten other persons seriously wounded when the Khmer Rouge ambushed a train in Pursat province using anti-tank mines. "Three women killed in KR train ambush," *Bangkok Post* February 19, 1994.

⁵³ "Cambodia: Khmer Rouge Train Attack Seen as New, Cruel Tactic," Reuter, January 4, 1995.

the clinic, accusing her of helping the enemy by allowing soldiers to use the facility.⁵⁴

⁵⁴ Darren Whiteside, "Working among the cinders," *Phnom Penh Post*, January 27 - February 9, 1995.

The Khmer Rouge have also begun to use food as a weapon. The 1994 rice harvest was disastrous for Cambodia. Floods, exacerbated by continued sluicemining in the Pailin area and large-scale deforestation throughout Cambodia, swept away some of the crop, and the rains ended early in the growing season. Relief agencies have estimated the harvest in Battambang province, normally one of the most productive in Cambodia, is as much as 37 percent below the average, and villagers characterize it as the worst in fifty years.⁵⁵

These natural disasters have been exacerbated by a deliberate Khmer Rouge policy to cut off the population in government-held areas from its sources of food. In the northwest, the guerrillas have cut access to floating rice paddy areas, such as Bavel district in Battambang province. It is estimated that access to as much as 35,000 hectares of prime paddy land has been severed by the guerrillas in Battambang. The guerrillas have also cut off vital fishing lanes to the Tonle Sap, Cambodia's great lake. There is every indication that this is a deliberate strategy, aimed at dislocating the population and swelling the numbers of the displaced. The guerrillas have similarly targeted rice supplies in government-held areas for looting or burning. According to some estimates, Khmer Rouge forces have burned thousands of hectares of dry rice fields since December 1994 in the northwest provinces, the country's richest rice-producing area.⁵⁶ Relief officials fear that the numbers of displaced, already high, will continue to swell as rice stocks dwindle during the dry season, with no new crop being planted in contested areas to replenish them.

⁵⁵ Human Rights Watch telephone interview, February 28, 1995.

⁵⁶ Lindsay Murdoch, "Khmer Rouge Hunts Foreigners -- Australians Under Threat," *Sydney Morning Herald*, January 5, 1994.

IV. ABUSES BY GOVERNMENT FORCES

Although the Khmer Rouge inspires fear among Cambodian peasants, abuses by the government's military are equally and deeply resented. In village after village in the northwest provinces, peasants expressed outrage to Human Rights Watch at the conduct of government military personnel, which included not only looting and extortion, but murder, rape, and the maintenance of secret detention centers. In areas throughout the country, military officers appear to hold ultimate authority over civilian residents, and what efforts civilian authorities have made to assert control over military abuses have been met with stiff resistance.

The Royal Government is obliged to respect both international human rights law and the laws of war (see Appendix I). Both absolutely prohibit extrajudicial executions, torture, and other inhumane treatment of all noncombatants. Many of the incidents described below violate both categories of international law. In this chapter, abuses that have taken place in combat zones have been discussed primarily as violations of the laws of war, and abuses by military authorities against civilians that have taken place outside the context of direct hostilities have been discussed primarily as abuses of international human rights law. These include forced conscription, illegal military detention of civilians, and the failure to protect Cambodia's ethnic Vietnamese minority from racially motivated murder and discrimination.

In many of the instances of military detention of civilians, the victims were labelled as "Khmer Rouge," although they were not apprehended in the course of battle or wearing uniforms. The laws of war explicitly forbid violence against the life or person of noncombatants, keeping them hostage, or imposing any sentence upon them outside of a regularly constituted court. The military is not authorized to detain anyone on the authority of the law against the Khmer Rouge, which like other Cambodian criminal law must be executed by civilian police acting pursuant to judicial warrants, except in cases where suspects are apprehended in a criminal act.

VIOLATIONS OF THE LAWS OF WAR

The RCAF shows little concern for insulating civilian populations from its conduct of hostilities; indeed, it is civilians who typically suffer the most in the imprecise area bombardments that have constituted the main action of the army against the guerrilla forces. Extrajudicial execution of soldiers outside of combat, physical assaults on its own civilian population, and the pillage and destruction of

civilian property in areas it is supposed to protect are all serious problems. Particularly disturbing is evidence of possible collaboration between RCAF and Khmer Rouge forces in the destruction and pillage of villages in the 1994-1995 fighting. While such collaboration cannot be definitively confirmed, the widely-held belief that it takes place reflects the degree to which the RCAF is resented by the civilian population in its own territory.

EXTRAJUDICIAL EXECUTIONS

As noted above, extrajudicial execution of any person who is taking no active part in hostilities is explicitly prohibited by Common Article 3 to the Geneva Conventions, as is torture or cruel treatment. Members of the armed forces are considered to be taking no active part in hostilities when they have laid down their arms, or are outside of combat because of sickness, wounds, detention, or any other reason.

Since the 1994 offensive, members of local and international organizations who monitor Cambodian prisons have been struck by the relative absence of Khmer Rouge soldiers from those prisons open to inspection, raising the question of whether those Khmer Rouge captured in battle mostly desert the Khmer Rouge voluntarily, or whether they are imprisoned secretly or summarily executed. There has been at least one execution documented of a Khmer Rouge soldier captured by an RCAF unit in Battambang in March 1994. This prisoner was decapitated, and his head displayed outside the military base until Western reporters began to photograph it.¹ Human Rights Watch received reports of other decapitations at the time, but is aware of no other photographic evidence. At least one international monitor reported that an RCAF commander acknowledged torturing Khmer Rouge prisoners of war who refused to cooperate.²

¹ Nate Thayer and Nayan Chanda, "Things Fall Apart..." *Far Eastern Economic Review*, May 19, 1994, photograph at p. 20.

² Human Rights Watch interview, August 1994.

Military personnel have privately confirmed reports that during the campaign against Anlong Veng in early 1994, officers summarily executed RCAF soldiers who attempted to desert. One incident reported to Human Rights Watch by residents of Siem Reap concerned a young man in Somvay commune, who attempted to escape forced military service in January 1994 and was allegedly placed into a bag and shot by soldiers.

ATTACKS ON CIVILIANS

The RCAF and other agents of the Cambodian government have also been responsible for abuse against civilians, both in the form of deliberate attacks and indiscriminate firing of weapons. Common Article 3 to the Geneva Conventions mandates that noncombatants "shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria." Protocol II to the Geneva Conventions is persuasive authority in illustrating the commitment to "humane" treatment in Article 3. It provides that civilian populations, as well as individual civilians, shall not be the object of attack. Acts that are prohibited against civilians "at any time and in any circumstances whatsoever" include murder, torture, mutilation or any form of corporal punishment; rape or any form of indecent assault; and pillage. The government military, however, has been known to commit all of these abuses against civilians whom it is charged with protecting.

A major problem is the extremely poor discipline, training and pay of RCAF soldiers, who frequently turn to banditry in surrounding villages for basics such as food. Even during periods when soldiers have been paid regularly, the temptation to supplement their meager salaries by means of their weapons is strong. Informal "checkpoints" where soldiers, in and out of uniform, extort payment from travellers are a common sight throughout Cambodia. Another dangerous pastime of troops throughout the northwest battle zones is the indiscriminate and random firing of shells, not in the course of fighting, but in order to collect metal from shell casings. A lively trade in metals flourishes: copper driving bands of shells are traded for use in jewelry, and casings of brass, aluminum or rolled iron worked into implements or sold for scrap.

As of mid-1994, the military had no means in place to prevent soldiers from carrying their weapons whenever and wherever they pleased. In areas with significant RCAF postings, it is a common sight to see men armed with AK-47s or even rocket launchers roaming villages and towns. Communities located in close proximity to government lines suffer frequent abuses from soldiers, among them killings, assaults, rapes and robbery. In one village close to the front lines in

Battambang province, residents reported that in July 1994, a government soldier kidnapped a thirteen-year-old girl, raped her, and returned her unconscious to the family, threatening them with death if they brought a complaint. A group of four or five soldiers had previously entered the village demanding food and chickens from the locals, taking what they wanted without paying back their base, and similarly raiding a nearby village two days later.³ One senior commander in the north forthrightly acknowledged that "out of rank" government soldiers were the most common source of human rights abuses, but claimed that he had no means to discipline troops without jeopardizing the war effort and encouraging defections to the Khmer Rouge.⁴

Villagers in the northwest voiced the most anxiety about national army units, because their soldiers were least likely to be drawn from the district in which they were posted and thus less likely to be deterred from abusive behavior than if they and their families had been known to the community. In terms of the victims, the internally displaced were especially vulnerable to official abuse, not only because of their poverty, but also because they were dislocated and less able to call on social ties to local authorities for protection. In August 1994, internally displaced persons from Samrong district in Banteay Meanchey province were moved from a pagoda where they had taken refuge when soldiers entered the pagoda, stole food from resident monks and raped several women. Another displaced woman at that pagoda was hospitalized because a soldier allegedly chopped off several of her fingers in a dispute.⁵

PILLAGE AND DESTRUCTION OF CIVILIAN PROPERTY

³ Human Rights Watch interview, Battambang, August 1994.

⁴ Human Rights Watch interview, Siem Reap, March 1994.

⁵ Human Rights Watch interview, Banteay Meanchey, August 1994.

Pillage is prohibited by international law as a direct recognition of the suffering it inflicts on civilians. In Cambodia, that suffering is intense; the villagers in war zones such as Rattanak Mondol district in Battambang province are extremely poor, and have been forced from their homes many times, most recently in January 1995. The litany of items that displaced villagers have lost is a testament to their destitution: houses, door frames, cows, clothing, rice stores, chickens, even their pots and pans.

It was widely reported that during the occupation of Pailin government officers mobilized their men and trucks to cart off booty from the town, to the neglect of all other military objectives such as evacuating the wounded, defending the town against recapture and supplying the troops. During the 1994 dry season offensive, villages along Route 10 in Battambang suffered widespread pillaging, mainly at the hands of government troops. In virtually every community on the road to Pailin, residents who had fled the fighting returned to homes that were stripped bare. Villagers recounted seeing army trucks piled high with booty and rice stocks, with soldiers firing guns into the air, as they returned to their empty homes.

A clinic operated by World Vision near S'dau was occupied for a few days by a handful of Khmer Rouge soldiers when the RCAF fled from Pailin in April 1994. These guerrillas were quickly replaced by the government, which occupied the clinic for weeks. Some time during these occupations, several clinic buildings were blown up.⁶ While government troops occupied the remaining structures, they systematically stripped them of furniture, window and door fittings. By the time staff returned in late June and July 1994, the clinic had to be almost entirely rebuilt.

Wat Snoeng, a large regional pagoda, was occupied by government troops who evicted all but three elderly monks. When the army occupied the pagoda, the monks asked locals who had brought their rice stores and farm implements to the pagoda for safekeeping to take these things away. Even so, most people in Snoeng lost their property during this time, and the pagoda was stripped of pots, pans, dishes, and over one hundred prayer mats. Villagers who stayed during the time the Khmer Rouge occupied the town as the government retreated noted that the Khmer

⁶ An ordnance expert said the structures had most probably been destroyed from explosions set off in their interior, rather than from falling shells. Human Rights Watch interview, S'dau, August 9, 1994.

Rouge had brought their own food with them and refrained from threatening civilians or taking their property.

Although that restraint on the part of the Khmer Rouge vanished in the 1994-1995 dry season, the RCAF's propensity for looting and extortion remained unchanged. In interviews in Battambang in February 1995, displaced villagers repeatedly voiced suspicions of collusion between the Khmer Rouge and the RCAF.

People from a Banan district settlement reported to a human rights group that the Khmer Rouge attacked their houses on January 15, 1995, and as soon as they left, government soldiers came in and seized what was left. One family lost a generator, and when they tried to recover it, the authorities demanded they pay the equivalent of \$400 first. On January 30, 1995, the Khmer Rouge raided the village of Ek Phnom. The mines that police and militia used to guard the access road to the village had been deliberately defused, raising local suspicions that the police were complicit; these suspicions were reinforced when soldiers burned a village next to Ek Phnom to the ground, oddly sparing only the police station.⁷ Although it is almost impossible to verify suspicions that have arisen from incidents such as these, there has been close cooperation between local Khmer Rouge and government authorities in other areas of Cambodia, such as Kampot. The fact that such suspicions are common is at minimum an indication of how little trust the population has in the RCAF.

VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW

The Cambodian government is a party to numerous international treaties on human rights, among them the International Covenant on Civil and Political Rights (ICCPR), to which it acceded in 1992. The duty to respect human rights outside the conduct of hostilities falls equally on civilian and military authorities of the government. Serious abuses of human rights are still commonplace throughout Cambodia. This section highlights abusive practices associated with forced conscription, military detention of civilians, and the failure to protect ethnic Vietnamese residents from racially motivated attack and discrimination.

Of serious concern is the failure of the Cambodian government to effectively address such abuses. The most notorious instance relates to the butchery and robbery of scores of civilians by military intelligence authorities in northwest

⁷ Human Rights Watch interview, February 1995.

Cambodia, continuing at least through mid-1994. Various crimes by these military officers have been known for more than two years to the leaders of the present government, in their capacity as members of Cambodia's Supreme National Council during the UNTAC operation, and as leaders of the transitional government that immediately preceded the Royal Government's formation. Yet despite wide international and local publicity of this group's continuing abuses, the government has yet to take any measures to bring those involved to justice. Ignoring reports by international human rights monitors and their own military prosecutor, the prime ministers have instead relied on a hand-picked commission that so far has produced only inconclusive investigations. Nor have attacks on ethnic Vietnamese been seriously investigated, and not a single prosecution has been brought in any instance of racially motivated murder.

FORCED CONSCRIPTION

Conscription by the government military is not in itself a human rights abuse, but the arbitrary and corrupt process by which it takes place in Cambodia is itself abusive. The ICCPR, Article 7, provides that "all are equal before the law and are entitled without any discrimination to equal protection of the law."⁸ Article 49 of Cambodia's constitution states: "The duty to defend the country shall be determined by law." These two provisions require that the practice of military conscription must be grounded in law and carried out in a nondiscriminatory fashion. Neither condition is presently respected.

There is ample evidence that local officials regard conscription primarily as a means to extort bribes rather than as a way to allocate the burden of military service in an equitable fashion. Senior military officials have condemned conscription abuses as contrary to the policy of the Royal Government, which is trying to demobilize soldiers and reduce the size of the army. They have stated that

⁸ The official English translation of the Cambodian constitution, Article 31, provides that "Every Khmer citizen shall be equal before the law". Even assuming that by "Khmer citizen" is meant all citizens of Cambodia rather than a subset of an ethnic group, this article is not in conformity with the ICCPR, which applies to "all" persons, regardless of citizenship. Military service, however, is normally a duty imposed only upon citizens or permanent residents of a nation.

there has been no policy of conscription since the 1991 Paris Peace Accords, and that conscription prior to the accords was on a voluntary basis.⁹

Nevertheless, forced conscription on the part of the government has become a regular feature of dry season fighting. Typically, village or commune leaders are given quotas to fill, although the concentration of recruitment from conflict areas has impaired the ability of these villages to plant and harvest rice. These quotas for either the regular military or local militia present opportunities for bribery and abuse. One scheme reported in Battambang province was a lottery, in which the village leader put the names of every eligible male into the draw, except for those who paid a bribe of about 50,000 riel (\$20). Those who were selected in the lottery would be conscripted, and at this point a bribe of 200,000 riel (\$80) was necessary to avoid service. In Siem Reap, the militia would "recruit" by going to the homes of men at night, and taking them for duty unless they could pay a bribe of between 10,000 and 30,000 riel for each visit.

In 1994, forced conscription increased in conjunction with the offensives at both Anlong Veng and Pailin. Accounts of conscription gathered by international agencies suggest that some officials in the Fifth Military Region believed it was necessary to recruit soldiers to stand in for "ghost" names on the army's payroll as a precondition to military assistance from other countries. One man arrested in Bakan district of Pursat province was detained when he offered a ride to a soldier to the district military office. He was held in the office with thirty-three other men and boys who had been taken into custody on the roads and in the marketplaces. Seven of these men were released after their relatives "negotiated" with the military officials, and the rest were transferred to Rattanak Mondol district in Battambang, to Tuol village, near the front line. They were joined by approximately 120 other men conscripted from Pursat province and given military uniforms and 23,000 riel (less than \$10). Soldiers said that more men would be conscripted, not only for fighting but also to stand in for "ghost" names on the roster of soldiers originally submitted to UNTAC for assistance in salary payment. That was necessary, they believed, because of rumors that the United States would soon provide similar salary support. Several men escaped by paying a soldier approximately 60,000 riel (\$24) to guide them to freedom. In another village, those conscripted were

⁹ Anugraha Palan, "Top Generals Unaware of Incidents," *Phnom Penh Post*, July 29-August, 1994.

registered not in their own names, but in the name of "ghosts" from the salary roster.

Resentment of military service has increased since the Paris Peace Accords, which were to end the war. In the 1993-1994 dry season, methods of recruitment were rough and corrupt, especially in the north and northwest conflict zones. In these areas, entire populations of adult males resorted to sleeping in their rice fields for weeks at a time to avoid late night visits from soldiers who would demand that men enlist or else pay a bribe. In June 1994, there were numerous accounts from Banan district in Battambang of men being abducted from their rice fields or homes by soldiers and detained at the district military office, either paying for their release or undergoing perfunctory military training before being sent to the Pailin front. A provincial military officer named Phuey, since promoted to the Fifth Military Region staff, was responsible for conscription policy at this time.

In another egregious instance documented by local human rights groups, soldiers from General Phuey's unit staged a conscription exercise on April 19, 1994 at Snoeng commune. That morning, two truckloads of about twenty soldiers arrived in Snoeng, a village about twenty-three kilometers from Battambang on the road to Pailin. The soldiers interrogated villagers as to whether they were civilians or military, and forced civilian men at gunpoint onto the trucks. The streets quickly cleared, and many men decided to go into hiding. Those who remained went to the local pagoda for evening prayers that night. Approximately fifteen soldiers surrounded the pagoda and began selecting young men out of the crowd. Of the approximately twenty men caught, a handful were released whose families bribed the soldiers, and one more who said he was a member of the CPP. The rest of the men were marched at gunpoint, loaded onto trucks and taken to a military operations headquarters just outside of Battambang town. There they were kept until they were transferred to the front, unless their families paid bribes of between 50,000 and 100,000 riel.¹⁰

On November 23, 1994, the Council of Ministers approved a draft law on military conscription. The law would mandate an eighteen-month period of obligatory military service for Cambodians between the ages of eighteen and thirty-five who have not finished high school, according to reports. The draft law has yet to be made public or submitted to the National Assembly for debate.¹¹

¹⁰ See Derek Francis, "Villagers' Ordeal at B'bang HQ," *Phnom Penh Post*, July 29-August 11, 1994.

¹¹ "Army Service Bill Passed by Ministers," *Cambodia Daily*, November 24, 1994 p. 7.

MILITARY DETENTION OF CIVILIANS AND SECRET PRISONS

The abduction and detention of civilians by military authorities, often for the purpose of extortion, and often entailing physical abuse, torture, or murder, are persistent abuses throughout Cambodia. These practices are gross violations of the most fundamental human rights -- the right to life, to physical security, to freedom from arbitrary detention and to freedom from forced labor or slavery -- rights that Cambodia has explicitly pledged to uphold in acceding to the ICCPR.¹²

The most egregious pattern of abuse to come to light recently is the conduct of the government's military intelligence hierarchy based in Battambang, which has been implicated in over fifty cases of suspected summary execution of civilians and scores of abductions over the last three years. Those abducted were held in secret locations, concealed from UNTAC supervision and international humanitarian organizations, and maintained in violation of direct orders from the RCAF General Staff. The most recent depredations of this group include the murder of at least thirty-five civilians at a location known as "Che K'mau" (Black Wood). These activities were widely publicized by the international media in August 1994 and became the subject of conflicting and ongoing investigations by different government authorities. But the bloody history of this group has long been known to the political leaders of the present government and the residents of Battambang.

The information in the following sections is based on internal reports made available to Human Rights Watch of investigations by UNTAC and other organizations, and numerous interviews conducted by Human Rights Watch in Cambodia between April 1993 and January 1995. To protect the identities of witnesses, their names and references containing their names are not cited.

Military Intelligence in Battambang

The Vietnamese in 1979 established a military intelligence apparatus in the northwest region of Cambodia known until 1990 as "T-6." According to sources familiar with the unit, it was responsible for arrest and interrogation, and often torture, of persons suspected of belonging to the Khmer Rouge or resistance

¹² See ICCPR Articles 6, 7, 8, and 9.

factions. These interrogations were conducted primarily at a villa in Battambang provincial town which served as its headquarters and prison, and was also known as "T-6." With the departure of the Vietnamese in 1989-1990, the unit was renamed "S-91." "S-91" appears to refer to *santisoke*, or "security" and 1991, the year the organization was turned over to Cambodian leadership and renamed. In the early 1990s, over fifty soldiers were employed with S-91, as guards, interrogators, executioners, and investigators. Following the elections, the unit changed names once again, this time to "B-2" for *deuxième bureau*, the French designation of military intelligence. The leadership appears to have remained fairly constant throughout the unit's history, and there is little doubt that these persons are highly connected within the political structures of the CPP.

The military intelligence establishment includes two collaborating organizations. The one known as S-91 or B-2 is directly connected with the Ministry of National Defense. Gen. Toan Saveth, reportedly an officer of the Ministry of National Defense's intelligence bureau in charge of Battambang, Banteay Meanchey and Siem Reap provinces is one leader; directly under him is Gen. Phal Preunh, said to be responsible for operations in Battambang.

Prior UNTAC investigations described Toan Saveth as the leader of the S-91 group. Phal Preunh, a man who had lost his forearms and one eye, was identified by prior UNTAC investigations as the person in charge of conducting investigations and executions of those detained by S-91. In addition to his activities at the T-6 compound, he also ran his own detention center in a villa located near the Ta Min pagoda in Battambang town.

The second branch of the military intelligence establishment includes staff assigned to the Fifth Military Region, comprising Battambang, Pursat and Banteay Meanchey provinces. Gen. Toat Theuan, a deputy chief of staff of the Fifth Military Region, is the overall commander of this group and has been implicated in its previous depredations, along with Col. Youn Youm, commander of the Fifth Military Region Special Intelligence Battalion, and one of his deputies named Tep Samrith. Tep Samrith, (sometimes called "Lorn") additionally functioned as the *aide de camp* of Toan Saveth, and according to UNTAC investigators, was responsible for the arrest and interrogation of S-91's prisoners.

Every one of the above-named superior officers was the subject of extensive UNTAC investigations in 1992 and 1993 that revealed literally dozens of murders, abductions and acts of extortion. Every one also appears to have received a significant promotion in rank since that time.

The Special Intelligence Battalion includes several hundred members in Battambang province. It is divided into at least three units, among them Ko-1, Ko-2 and Ko-3. Ko-1 is based in Tuol Po village, Sangke district Battambang. Its

assignment was to execute persons sent "by the higher echelons" from Battambang. Until the end of April 1994, the unit was commanded by Lt. Col. Kem Vorn and his two deputies, Sith Som and Nip Kosal, the latter of whom was reportedly killed by the Khmer Rouge in March 1994.

The second sub-unit of the Special Intelligence Battalion, Ko-2, is based in Roahe village, under the command of Lt. Col. Sou Chan Nary, and his deputies Koy Vorn and Kchang Bun Thoeun. Initially sent to protect fishing communities in the Tonle Sap area from the Khmer Rouge, they appear to have usurped any Khmer Rouge "taxation" activities and now demand exorbitant protection fees from local traders and fishermen who wish to work their concessions and sell their catch to Battambang. Sou Chan Nary and Kem Vorn answer to Youn Youm; all three come from Thmei village in Banan district of Battambang, and are thought to be related.

The third sub-unit is assigned to the Poipet area of Banteay Meanchey province, where UNTAC had discovered and closed unreported lock-ups during the peacekeeping era.

Both the Special Intelligence Battalion and the S-91 group are said to be controlling prostitution and gambling networks, "taxation" along the roads and rivers, and protection rackets. The provincial police are aware of these activities, but powerless to stop them, as the leaders of these groups appear to enjoy the protection of the governor of Battambang (who is the nephew of CPP chief Chea Sim and the commander of the Fifth Military Region) and high officials in Phnom Penh.

Abuses During the Peacekeeping Era and the Transitional Government

During the peacekeeping era, UNTAC human rights and police investigators began to document abductions and murders attributed to this group. The first documented murder was of a man named Dam, who was arrested in July 1992 on the accusation that he had stolen a car. In July or August 1992, Dam was placed in a Soviet-style ambulance and taken by Phal Preunh, and a number of lower-ranking S-91 officers including Phal, Han Thy, and Chhim Mo, to Kompong Preang commune, Sangke district. He was wearing shorts with his hands tied behind his back. There is evidence that Phal shot Dam to death with an AK-47 on Toan Saveth's order. Dam's body was not recovered.

Also in July 1992, an unidentified man was shot dead at point-blank range in Thmei village, Kompong Prieng commune, Sangke district. According to investigators, Phal Preunh and Von Cheuon, a soldier under Preunh's command, had taken the victim from the 5th Military Region headquarters. Von Cheuon executed him on orders from Phal Preunh, for supposedly being a motorcycle thief. The corpse found had been mutilated.

The next incident was precipitated by UNTAC's discovery of the T-6 prison, where over fifty prisoners were estimated to have been detained since January 1992. On August 23, 1993, UNTAC entered the prison, but found all the prisoners had been released or removed hours earlier. Although the UNTAC visit took the prison guards by surprise, Toan Saveth was apparently informed in advance by Toat Theuan, then deputy chief of staff of the Fifth Military Region and a former head of T-6 himself. Toan Saveth then reportedly ordered the killing of two T-6 prisoners, one Chhon Chantha (also referred to as Suan Chhanta), accused of being a resistance fighter and found with FUNCINPEC papers on him who had been arrested earlier that August, and Rith, accused of being a Khmer Rouge, who had been arrested in July 1992. These men allegedly were taken to the Fifth Military Region headquarters in Treng in a Soviet-style ambulance by Toat Theuan, Sanh Sarith, Rit and Chim Mo and killed; there were reports that they were then buried at Phnom Tippadei in Rattanak Mondol district, but their bodies have not been recovered. It was also reported that Chim Mo was killed by his colleagues, who apparently thought he knew too much about the abuses of T-6. As many as ten other prisoners who had been held in T-6 between June and August 1992 were released after paying substantial ransoms in gold or money.

Another clearly documented case took place during a rising wave of violent attacks against FUNCINPEC and other opposition parties throughout the country. On January 31 and February 1, 1993, four FUNCINPEC activists who had recently repatriated from the border were abducted by soldiers in Sangke district and taken to the Takok military camp commanded by one Youn Youm, then a captain and a member of S-91 since at least 1990. Youn Youm denied that he had ordered the arrest and detention of the men or knew their whereabouts, despite numerous eyewitness accounts to the contrary. As concern over whether the men had been murdered grew, the UNTAC special prosecutor attempted to serve a warrant of arrest on Youn Youm. But a high-level committee within UNTAC known as the "Action Cell" was concerned that the CPP would react negatively to an unannounced raid on the camp, and first requested Hun Sen and other top leaders of the Phnom Penh regime for Youn Youm's surrender. When the special prosecutor went to arrest him a week later, he found the Takok camp empty, its occupants allegedly transferred to the Pailin front.¹³ The four FUNCINPEC members have not reappeared, and are presumed dead. Youn Youm, however, did reappear, this time as a participant in another murder/abduction enterprise of S-91 described below.

¹³ See Asia Watch, "Cambodia: Human Rights Before and After the Elections," *A Human Rights Watch Short Report*, vol. 5, no. 10, May 1993, pp. 17, 15, 34.

Hun Suorn, a soldier, was killed on the night of April 6, 1992 by two bullets in the chest. He had been abducted that night in Battambang town by four other soldiers with whom he had been playing cards and from whom he had won a considerable amount of money. The soldiers took him to the house of an S-91 officer (believed to be Toat Theuan) located directly opposite another building in Battambang town used by S-91 for detentions. From there he was taken by truck to a local restaurant, and then to the outskirts of town near Wat Kor commune, where he was shot. His body showed signs of torture, and his arms had been bound.

UNTAC investigations in other parts of the country revealed a coordinated effort on the part of the CPP to attack opposition groups both through infiltration and recruitment of local thugs as "reaction forces" to carry out physical attacks on party members and offices. When confronted with evidence of these groups, the Hun Sen administration's ministry of national security, then headed by Sin Song, claimed they were for the purpose of suppressing armed banditry. UNTAC police suspected S-91 involvement in at least one of the dozens of attacks on FUNCINPEC party offices prior to the election, in this case an attack on the Sangke district FUNCINPEC office on March 31, 1993 which killed three people.

The strategy of recruiting thugs became a hallmark of S-91 operations as well. The UNTAC raid on T-6 in August 1992 caused a temporary pause in the group's activities, but by September Toan Saveth was reportedly reassembling the group and intimidating former members he suspected might betray it. The group began recruiting notorious robbers, who then continued their banditry under the protection of the unit. But some of these recruits also became S-91's newest victims. The rationale for S-91's activities shifted from controlling political opponents to "using thieves to catch thieves," as Toan Saveth himself explained, echoing Sin Son's explanation for the "reaction forces." This happened to fit nicely with CPP propaganda that accused UNTAC of releasing and defending thieves, a response to the peacekeepers' efforts to clear prisons of those unjustly detained and to institute respect for basic legal procedures. The shift in emphasis may also have served a practical purpose of shielding S-91's activities from scrutiny, as UNTAC investigations were focused on instances of political violence as the May elections approached.

On April 30, 1993, two men left Chamkar Samrong II village in Battambang in a "Komanka"-style jeep to go hunting with a young S-91 soldier of the Fifth Military Region. The two, Duong Nhy and Sroh, did not return, and the soldier, Kao Solyda (also known as "Phouek") avoided their families. According to UNTAC sources, both were killed, along with another man named Ra, near Kampeng Puoy, Banan district, on the orders of Toat Theuan because they were robbers. Ra, who apparently was a robber, lived with another brigand named Vorn

Vet who had recently joined S-91, and police speculated he may have betrayed Ra to them. Only two corpses, neither conclusively identified, were found where the victims were reportedly taken and murdered.

By July 1993 at the latest, S-91 had put the T-6 detention facility back to use. On the morning of July 19, 1993, two S-91 members, Chheang Sarorn, known as Rorn, and Pou Virak, known as Korp or Kaep, visited the houses of Kom Sot and another man and informed them that it had been reported that the two had stolen and pawned a motorcycle, which both men denied. That night, the two were abducted at gunpoint by several S-91 members, including Phouek, Leang Kim Hak, also known as 'Map' and Sua Seun. They were taken to the T-6 villa where they were undressed and shackled. Tep Samrith interrogated each one about the theft while Phouek beat them, including hitting them on the neck with a B-40 rocket launcher. At midnight they were blindfolded and taken on motorbicycles by Map, Phouek, and Sua Seun to Anlong Vil village near Route 5 in Sangke district where Seun killed Kom Sot by shooting him in the head. The other man escaped.

The next incident occurred two weeks later, when the bodies of Suon Heang, Touch Taylin and Sun Sareuat showed up, along with another severely injured man, close to Anlong Vil village in Sangke district, and two more corpses were found at the place in Wat Kor commune where Hun Sourn had been killed in April. All the victims had been blindfolded with strips of the same blue-checked scarf, and had been shot in the head late on the night of August 3, 1993. Three of the victims had been invited to have dinner at Phal Preunh's home in order to give biographical information and enlist in S-91. Following the meal, they were suddenly arrested by subordinates of Preunh, beaten, and put into a "Komanka"-style jeep. The fourth victim was arrested that night by several S-91 members, including Phouek and Ung Sovann at Kapko Thmei village in Battambang town. A note had been left at both places with the sign of a skull and crossbones and the words, "The Activity of the Robber Groups Must be Destroyed - T.B. Kh.M."¹⁴

In early August, two more male corpses were found close to the same spot in Anlong Vil, again shot in the head with a message with the same words and skull and crossbones nearby. Local police identified the two men as local robbers, and suspected military figures of committing the murders, but no particular suspects were identified.

¹⁴ The meaning of the Khmer initials is obscure, but one plausible explanation is that they stand for *tam banchea kheit neung maccheatnan*, "by orders of the province and the center."

These cases were brought to the attention of the transitional government's Ministry of National Security and the Supreme National Council by UNTAC personnel prior to their departure. No action was taken.

Abuses of S-91/B-2 Continuing Under the Royal Government

The most recent investigations of S-91 reveal abductions, extortion, and murders continuing into the time of the Royal Government. In March 1994, Human Rights Watch began to investigate reports of continuing S-91 murders at Che K'mau. Ultimately, at least thirty-five other murders committed between June 1993 and January 1994 in that location became known to the U.N. Centre for Human Rights.

According to the investigations of international human rights monitors, the victims of S-91 have been moderately prosperous traders, businessmen, travellers or passersby who were in the wrong place at the wrong time, as well as some suspected Khmer Rouge members or sympathizers. Many of the victims appear to have been spotted in markets en route to or from the Thai border by the military intelligence network and marked as likely prospects for extortion. Ambushes or abductions were then arranged. Arrests have often taken place at night in markets, where merchants and petty traders often rent stretchers and sleep outside on the pavement, or on the road under the guise of bandit attacks on complicit taxi drivers.

Victims were typically held overnight at one of the secret prisons in Battambang, or sometimes longer if it appeared their families could be extorted for ransom. They were systematically robbed of their possessions, and if suspected of Khmer Rouge sympathies, interrogated by Phal Preunh himself. As the use of his villa near Wat Ta Min became more widely known as S-91's detention facility, Phal Preunh transferred his operation to the house formerly known as the T-6 facility, located on the same side of the river on a street running between Route 5 and the river bank. A new corrugated metal fence went up with a small sentry box, and the refurbished headquarters swiftly became notorious as "Uncle Preunh's place."

From the Battambang detention houses, victims who were not immediately executed were transferred to locations near Che K'mau. Che K'mau is the name of an abandoned village some forty-five kilometers east of Battambang, on the left bank of the Sangke river, in Prey Chas commune, Ek Phnom district. The area is a vast flood plain, with small villages on the few embankments that subsist on fishing when the rainy season submerges the land. A small pagoda is the only inhabited site left at Che K'mau. On the opposite bank is Tuol Po village, the site of a small garrison camp for one of the sub-units of the Special Intelligence Battalion of the Fifth Military Region. There is no prison as such at Che K'mau or the Tuol Po garrison. Until early 1994, prisoners were sent from Battambang town with specific

orders that they be executed as "Khmer Rouge enemies." The members of Ko-1 usually performed executions in the early hours of the morning or immediately after the victim's arrival. Soldiers would place the victims, blindfolded with arms tied in back at the elbows, onto boats to one of several execution places a few kilometers downstream from Che K'mau and shoot them point-blank in the head. Bodies would be disposed of in the river, where terrified fishermen would sometimes find them. Local people estimated that as many as seventy people may have been killed in the second half of 1993.

The names of many of those executed were not known to witnesses. Cases where the victims were known include the following:

- Kouang of Boeung Tim village, Ta Pon commune, Sangke district was a Khmer Rouge defector who had lost one arm. He reportedly surrendered to Battambang military authorities around June 1993, and was told to report to his village chief, which for some reason he failed to do. A Special Intelligence Battalion office arrested him and another man on November 17, 1993. He was taken to the S-91 villa, interrogated, and sent to Che K'mau where he was executed within hours of arrival.
- Sous Savoeun, a twenty-three-year-old man from Svay Sar Village, Ta Poon commune in Sangke district, had left the Buddhist monkhood a few months prior to his arrest on November 17, 1993. He was driving Kouang (above) on his motorcycle to a nearby village when they both were arrested by Special Intelligence Battalion authorities. Like Kouang, he was interrogated at the S-91 headquarters and transferred to Che K'mau and killed.
- So Ngy, a husband and father living at Prek Daun Heam village, Prek Daun Heam commune, K'sach Kandal district, Kandal province, he was said to have been a FUNCINPEC political worker prior to the elections and afterwards worked as a trader making trips between his home village and the Thai border. He was reportedly arrested in Battambang in late November 1993, taken to the S-91 office in the town, and transferred to Che K'mau where he was executed sometime close to the end of the month.
- Thoeun Chen was a twenty-two-year-old resident of Battambang town, who was recruited by the Special Intelligence Battalion and assigned to the Ko-2 unit in Rohae village in 1993. Chen is said to have disagreed with the type of activities he was assigned to do and ran away. He was captured, taken back to his unit and summarily executed in February 1994 by his unit commander, Lt. Col. Sou Chan Nary.

The bodies of some of those executed at Che K'mau were mutilated as well. According to eyewitnesses, soldiers would sometimes rip open the captive's abdomen and cut the liver and gallbladder out. They would fry or grill the liver and eat it and dry the gallbladder, later using it in rice wine. One detainee was forced by a soldier to drink rice alcohol from a five-liter plastic jug in which a number of human gall bladders were macerating. These grisly practices have a pedigree in Cambodian folk beliefs that eating the liver of an enemy can improve a soldier's own ferocity in combat, and that bile has a medicinal value. Cannibalism seems to have become a joke among the soldiers at Che K'mau; one of them was heard to say in April 1994 that two detainees had been "eaten up" -- i.e. killed, in early 1994.

At least seven other detainees managed to escape in 1993, some after paying substantial bribes to their captors. News of these escapes, and the detention of a number of others including women, children and monks, appears to have spread widely in Battambang, causing the leadership of the military intelligence ring to fear that their activities would be exposed. There is at least one report of Special Intelligence Battalion soldiers being sent to find and kill one such escapee. But the widening awareness of executions at Che K'mau seems to have led to a change in policy there. Instead of executing sixteen detainees remaining at the end of 1993, the Ko-1 unit decided to hold them as quiet captives, releasing some conditional on a promise of silence, and forcibly incorporating others into the Ko-1 unit on pain of death.

Among the detainees who were known to be alive as of May 1994 were seven travellers from Kompong Chhnang province who were arrested just outside of Poipet town in Banteay Meanchey in late November 1993. They were on their way back home after visiting relatives in the Khmer Rouge-controlled area of Phnom Malai. They included three Buddhist monks, a Buddhist nun, a twenty-six-year old woman, a twelve-year-old boy and a seventeen-year-old girl. The girl, a granddaughter of one of the monks, was taken to a location in Poipet where it was alleged by other informants that she was raped repeatedly by soldiers; she was said by others to be pregnant as a result. The other six were taken to Battambang, stripped of their belongings and identity papers, and interrogated by Phal Preunh in the B-2 detention villa about their activities, connections with the Khmer Rouge, and the conditions in Phnom Malai. They were then sent to Che K'mau with orders that they be executed, but for reasons that remain unclear, the order was opposed by a Ko-1 officer and eventually suspended. All seven were released in May 1994 and returned to their homes.

Two cousins living in Samraong K'nong village, Ek Phnom district were arrested, as well as a third man. The first two, Yam Moeun, a construction worker,

and Neang Chheng, a moto-taxi driver, had been refugees repatriated from the Site Two border camp in 1992. On June 14, Yam Moeun was taken from Che K'mau to the Battambang hospital after losing both his forearms and the use of one of his eyes in a mine explosion. He and his cousin were assigned to lay mines in the evening around their base camp and to remove them in the morning; in the process he was injured by a "Claymore" mine. Less than two weeks later he was transferred to another hospital when two soldiers suddenly appeared to watch him just outside the ward, and soldiers came to warn his relatives. His cousin managed to escape the unit on a visit home. Guarantees of the security of these men were pledged by Minister of Interior Sar Kheng, Governor of Battambang Ung Samy, Deputy Commander of the Fifth Military Region Gen. Prum Moranak, and Provincial Police Commissioner Vann Nay.

When Yam Moeun and his cousin arrived at Che K'mau on November 27, 1993, they joined four former Khmer Rouge soldiers who were on their way home to their villages from Pailin. Five other men joined the detainees a few days later. All these men were apparently forced to join Ko-1 in exchange for their silence and their lives. Three of the former Khmer Rouge soldiers were taken away by Ko-1 soldiers and never seen again; one was released, and three more escaped, including one of the former Khmer Rouge who had been assigned the duty of teaching pupils in the Po village primary school. Two of the others, a man named Phal and another named Ram Vichet, were forced to join the Special Intelligence Battalion and were transferred to Rohal village. They are still believed to be detained.

According to one source, Toan Saveth issued an order to the military intelligence group in early 1994 to cease executions at Che K'mau, apparently out of fear of being exposed, and there is no evidence of executions at that location after January 1994. In early April 1994 a recent Ko-1 recruit was spared execution by Youn Youm for a minor offense on the intervention of another officer. Abductions, however, continued into the year.

The most recent documented case occurred in June 1994, when his soldiers arrested a man at the new market in Battambang town and detained him in manacles at the B-2 headquarters there. Following intervention by friends and family with Phal Pruenh and Toan Saveth, the victim was released unharmed after three days, but not before he was robbed of his possessions and forced to sign a statement promising he would not talk to foreigners or complain against those who arrested him.

The activities of B-2 and the Special Intelligence Battalion, originally directed at suppression of political opponents of the Vietnamese and the CPP, appear to have evolved towards uninhibited predation on the civilian population. Although the group's crimes were very widely known among the population of

Battambang, people, including very high-ranking provincial military and police officials, were extremely frightened and reluctant to discuss them. The intelligence ring has threatened to kill informers and has acted on its threats. According to investigators, a Po village resident named Ly was arrested and executed by Ko-1 soldiers in August 1993 after he was accused of having spoken to several fishermen from another village about Special Intelligence Battalion activities.

Government Inaction

The failure of any authority, from UNTAC to the central government, to curb these abuses has given the leaders of the intelligence ring an aura of political immunity and has no doubt encouraged continued brutality.

When the extent of the atrocities committed at Che K'mau was discovered in June 1994, the U.N. Human Rights Centre, Human Rights Watch and Amnesty International communicated confidentially to leaders of the government, urging them to secure the safe release of the remaining detainees, to investigate the matter and prosecute those responsible. Also in June 1994, the Royal Government's military prosecutor, Gen. Sao Sok, conducted an investigation that substantially corroborated the findings of these international monitors, and recommended that the alleged perpetrators be produced for interrogation.

The military prosecutor's recommendations that the secret prisons be immediately dismantled and the perpetrators be brought for interrogation was transmitted to the ministry of defense, which issued written instructions to the RCAF General Staff to implement the military prosecutor's recommendations. These instructions were ignored. Instead, the prime ministers appointed a special commission to conduct its own investigation. In a report dated July 22, 1994, the commission concluded that no such abuses had taken place. Once the July 22 report began to circulate, the findings of previous investigations, including the military prosecutor's, found their way to the international press. In the wake of public outrage, the prime ministers ordered the special commission to resume the investigations.

Both the composition of the commission and its methodology have raised serious questions as to whether it is capable of conducting a neutral, confidential and reliable investigation. The commission, composed mainly of CPP members, includes the Battambang deputy chief of police, who is a potential witness, and a deputy commander of the Fifth Military Region. Its questioning of witnesses has been carried out in the company of large and intimidating entourages of military and press. Although the government has invited local human rights monitors to observe these investigations, Cambodian human rights groups have declined the invitation, saying that they considered the prior investigations to be neutral and adequate.

The focus of the commission's inquiry has been whether or not locations such as Che K'mau are still being used for detaining persons. Establishing that they are not, however, is only the first step in a genuine inquiry, which must investigate when illegal detentions did occur, who was responsible, and whether these individuals are still at liberty to perform similar abuses. This is especially important, given that abductions have continued and the military intelligence group has historically used a wide variety of locations to hold and murder its victims.

Of critical importance is the question why the alleged perpetrators have not been brought to account in any way. On July 16, 1994 Toan Saveth was arrested when a car with him and two subordinates stopped less than one hundred meters from a police checkpoint on Route 5, south of Battambang provincial town in Moung Russei district, and persons within got out and fired a 40 mm M-79 grenade launcher on the police post. Within twenty-four hours of his arrest, Toan Saveth had been transferred to the Tuol Sleng military prison in Phnom Penh. The news caused jubilation throughout Battambang; in the words of one resident, "It was as though one bar was removed in the prison that holds our hearts." He was released several weeks later, however, because of an alleged lack of evidence, based on testimony that he was "asleep" in the car at the time of the alleged attack.¹⁵

The Royal Government is legally and morally obligated to punish those who committed abuses before its creation as well as under its watch. It is particularly obligated to do so in light of the fact that the leaders of the present government were apprised of many of these atrocities by UNTAC in their capacity as members of the Supreme National Council during the peacekeeping era.

Other Instances of Military Detention of Civilians

¹⁵ Human Rights Watch interview, March 4, 1995.

The activities of the military group previously known as S-91 or B-2 in Battambang and Che K'mau, while horrific, are not unique. Another incident which only recently came to light is the case of Som Ek, an officer in the KPNLAF area of Boeung Trakuen, whose car was destroyed by a mine in late 1993. Angered by the loss of his car, Som Ek arrested seven local men and one boy and accused them of sabotaging his car, and according to one source, called them "Khmer Rouge" and accused them also of robbery and murder. The seven men were held for almost a month in shackles under a house, guarded by men in military uniforms. By their account, soldiers beat them every day, frequently to the point of unconsciousness, sometimes as often as six times in one day. One victim was hit on the side, back, chest and head with a wooden stick, sometimes until the stick broke. Another man was beaten in the head with a gun and across his back. Approximately a week after their detention, their wives were invited to see them and pay ransom. On this occasion they were beaten in front of their wives, to encourage the women to pay more. This happened several times. The captives were released after four to six weeks, most having paid large ransoms that required their families to sell their land, cattle and other possessions.¹⁶ Several of the victims were still seeking medical care in August 1994 for injuries they had sustained during their captivity. A complaint had been filed on behalf of the victims with the provincial court of Banteay Meanchey, and an armed soldier had come to search for one of the men on the suspicion he was the complainant. In 1994, Som Ek moved to Phnom Penh, where he reportedly is a military instructor with the RCAF.¹⁷

FAILURE TO PROSECUTE RACIALLY MOTIVATED KILLINGS AND DISCRIMINATORY TREATMENT UNDER THE LAW

¹⁶ Ransoms went as high as 90,000 baht (\$3,600).

¹⁷ Human Rights Watch interviews, Banteay Meanchey and Phnom Penh, August 1994. The names of the victims and their residences have been withheld for their protection.

Prejudice against Cambodia's ethnic Vietnamese population is widespread in Cambodia, and racist invective is not confined to the Khmer Rouge. The non-communist opposition parties have echoed the wildly exaggerated claims of the Khmer Rouge that "millions" of Vietnamese are colonizing Cambodia,¹⁸ and the CPP is reluctant to be seen actively defending ethnic Vietnamese because of its historic ties to the Vietnamese occupation that put its leadership in place.¹⁹

¹⁸ There has not been a census in Cambodia since the Khmer Rouge period, but most estimates of the ethnic Vietnamese population since the UNTAC period range between 100,000 and 500,000, out of a total population of eight to ten million Cambodians.

¹⁹ The fear and antipathy of Cambodians towards Vietnam is rooted in centuries of political subjugation and loss of territory to their vastly more populous neighbor, which the 1979 Vietnamese invasion did little to alleviate, despite ending Pol Pot's rule. Ethnic Vietnamese residents of Cambodia suffered slaughter and displacement by the thousands during both the Lon Nol government (1970-1975) and the Khmer Rouge period (1975-1978), and more recently during the UNTAC period (1992-1993), when approximately 20,000 ethnic Vietnamese fled long-established fishing villages because of the resumption of racial murders by the Khmer Rouge. See [Asia Watch "Cambodia: Human Rights Before and After the Elections," *A Human Rights Watch Short Report*, vol. 5, no. 10, May 1993, p. 20] and [Amnesty International, "Kingdom of Cambodia: Human Rights and the New Government," *Amnesty International Report Index* ASA 23/02/95, March 14, 1995.]

As a result, there is virtually no political support for protecting the ethnic Vietnamese residents of Cambodia from physical attack or official discrimination. The ICCPR, Article 2, stipulates that all parties to the treaty undertake "to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind" including distinctions such as "race" "language" or "national or social origin." Among those rights are the right to life, to liberty, to physical security, and to equality before the law.

Of the dozen or more incidents of killings and abductions of ethnic Vietnamese that have taken place since the Royal Government took power in September 1993, none have received a serious investigation that has identified the perpetrators and brought them to justice. In only one incident were suspects ever arrested. That incident was the April 9, 1994 attack on Peam So village, Ksach Kandal district in Kandal province.

Just after dark when the people of the village had retired to sleep, a number of men came through, throwing at least seven grenades and firing more than 100 shots in what appeared to be a well-planned, coordinated attack. They killed thirteen people and seriously injured twenty-five others. A twenty-three-day-old infant whose arm was blown off in the attack subsequently died. Men and women were shot as they scrambled to climb down out of their houses to hide; a number of children who were still playing together in front of some houses were injured or died when one man deliberately threw a grenade into their midst.

The government did not provide any material or medical assistance to the villagers after the attack. The nongovernmental human rights group Licadho sent two doctors to provide first aid and take the most seriously injured to hospitals. Local and international human rights and humanitarian organizations, including the National Assembly's Human Rights Commission, investigated the incident. The incident was also jointly investigated by the district military and the police, and seven local men were taken into custody and detained for several weeks in the Kandal provincial prison. They were eventually released, however, for "lack of evidence," although there was testimony from various witnesses that implicated at least some in the massacre. There had been disputes between ethnic Khmer fishermen and ethnic Vietnamese fishermen in the area; it is not clear whether the Khmer Rouge participated or had any role in instigating the attack.

This was not the only time where the government failed to aid ethnic Vietnamese victims of attack or to prosecute those responsible.²⁰ In another case,

²⁰ See also account of attack on Prek Dam Hen, Chapter II above, and Amnesty International, "Kingdom of Cambodia: Human Rights and the New Government,"

four ethnic Vietnamese and two ethnic Khmer villagers were killed on September 5, at Prek K'dam commune, Ponhea Loeu district of Kandal province. A group of men wearing uniforms of both the Khmer Rouge and the government military, and carrying AK-47 rifles and hand grenades, went from house to house demanding gold. When they were told there was none, they began shooting. Witnesses reported that the shooting was first directed at houseboats of the ethnic Vietnamese residents, and that the men stated they were searching for ethnic Vietnamese. Police did not arrive in the village until the next morning. There were also reports from villagers that members of the RCAF had visited the village the day before to demand money from the village chief.²¹ The government, however, has yet to identify the perpetrators. Human Rights Watch recognizes the difficulties inherent in investigating such cases and bringing perpetrators to justice. Nevertheless, the Cambodian government's conspicuous failure to do so in a single case is tantamount to an invitation for such attacks to recur.

Also of concern is the potential for discriminatory application of the law. Both Cambodia's constitution and its 1994 immigration law pose serious problems in this regard. The constitution, adopted after the elections in 1993, limits many of its basic human rights guarantees to "Khmer people" or "Khmer citizens," in contravention to the provisions of the ICCPR, which stipulates that rights must be guaranteed to all persons resident in a state or under its jurisdiction without discrimination.

Amnesty International Report, Index ASA 23/02/95, March 14, 1995.

²¹ Amnesty International Urgent Action, "Cambodia: Arbitrary Killings/Fear for Safety," *Amnesty International Index ASA*, 23/13/94 September 15, 1994.

Nationality has yet to be defined by the Royal Government, which nevertheless passed an immigration law on August 26, 1994. In a press release dated August 16, 1994, Human Rights Watch expressed its concern that the draft law allowed for the deportation and expulsion of aliens, without defining who was an alien, and allowed the Ministry of Interior to confiscate the papers of resident aliens, which would make them vulnerable to expulsion without any right to a hearing or review by the courts (see statement in Appendix III). These measures were widely perceived as aimed at facilitating the deportation of ethnic Vietnamese residents of Cambodia. Fears that the government was contemplating mass expulsions were heightened when the Ministry of Interior inquired whether it could use transit camps that the UNHCR had earlier constructed for returning Cambodian refugees for the purpose of incarcerating "illegal immigrants" prior to deportation.

The law, in its flawed state, was adopted almost unanimously by the National Assembly, but the government has since taken pains to assure it is not contemplating either mass expulsions nor discriminatory application of the law to ethnic Vietnamese.²² However, there is evidence that ethnic Vietnamese residents of Cambodia who received identity documents between 1979 to 1991, or documents that show residence in Cambodia even earlier, have had these documents replaced by a card which describes them as "overseas Vietnamese persons," and that holders of such cards are subjected to fines, bribes and discrimination by local authorities.²³ Moreover, the Cambodian government has yet to resolve the case of over 2,800 ethnic Vietnamese who are stranded on their houseboats at Chrey Thom, in the middle of the Bassac river, between Cambodia and Vietnam. Neither Vietnam nor Cambodia has recognized them as citizens. Many of these people claim their families have lived in Cambodia for generations, and some have documents that prove residence as far back as the 1960s. In February 1995, the Cambodian government announced it would allow those people who could prove residency in Cambodia prior to 1970 to return to their homes. According to the UNHCR, approximately twenty families so far have proof of such residency.²⁴ But to date

²² "Interior Official on Vietnamese Immigration," *Reaksmei Kampuchea*, (Phnom Penh), November 21-22, 1994 p. 12 *translated and reprinted in* FBIS-EAS-95-023, February 3, 1995.

²³ For a comprehensive discussion of this phenomenon, see Amnesty International, "Kingdom of Cambodia: Human Rights and the New Government," *Amnesty International Report*, Index ASA 23/02/95, March 14, 1995.

²⁴ Human Rights Watch telephone interview, February 1995.

there has been no screening procedure established or other official means of implementing this policy. A nationality law is being drafted, but has yet to be submitted to the legislature for consideration. In the meantime, the people at Chrey Thom cope with malnourishment and disease as they wait to learn if they may return home.

V. MEANS OF IMPOSING ACCOUNTABILITY FOR GROSS ABUSES

The Royal Government has the responsibility to remedy serious violations of human rights by identifying abusers and imposing appropriate and proportionate punishment through the process of law. It is equally responsible for abuses committed within the area it controls by officials and by persons unconnected with the government, for by tolerating grave abuses on the part of the latter and failing to prosecute or punish them, the government becomes a tacit participant. The government is also responsible for punishing atrocities committed prior to its own tenure, particularly when such acts were recognized as crimes in both Cambodian and international law at the time they were committed. Without accountability, there can be no rule of law or meaningful respect for human rights.

The means by which a government may enforce accountability generally include laws, law enforcement agencies, and courts. In addition to these governmental mechanisms, there are other forces in any society, including Cambodia, that contribute to exposing abuses and generating pressure for their redress. These include human rights organizations and journalists, as well as competing politicians, all of whom have their own motivation to publicize abuses. The government's tolerance of these voices is required by the international guarantees of free expression and association, and such tolerance of critics is a trademark of open societies.

In Cambodia, the governmental means of enforcing accountability are weak. The government has recognized this weakness and has solicited foreign assistance for a wide variety of undertakings, from legislative drafting, to military reform, to law enforcement training and legal education. Throughout Cambodia there are individual military and civilian authorities who have made an effort to hold abusers accountable, with mixed results. Even small steps, such as the jailing of a soldier, or the release of a prisoner who has been forced to give a confession, represent major advances over the practices of the past. Nevertheless, these cases are still the exception to the general impunity that government authorities enjoy. The justice and law enforcement systems historically have been under political direction, and basic skills at every level are in short supply. Even where police, prosecutors and courts are attempting to pursue justice in a professional and impartial fashion, they are frequently blocked by political obstacles at both the local and national level.

The development of public debate and activism on behalf of human rights has been more rapid. Over a dozen human rights groups and more than thirty newspapers have been established since 1991. Members of the National Assembly

play a vital role in bringing human rights issues and abuses into public debate. The Royal Government has provided broad access to international human rights and humanitarian organizations, solicited their advice and technical assistance, and in some areas, such as prison conditions and legislation, responded to criticism and suggestions with improvements.

Nevertheless, public criticism and exposure of alleged abuses has increasingly provoked a backlash. The government has closed newspapers, jailed journalists, and intimidated broadcasters. Human rights groups and other organizations are coming under increasingly strict monitoring and control by the Ministry of Interior. Politicians have been threatened, human rights workers attacked, and journalists killed, all in circumstances which raise a question of official complicity. Such abuses are themselves constitute serious violations of the fundamental human rights to life and the freedoms of expression and association. They are also deeply destructive of Cambodia's society and its ability to protect human rights through open debate.

MILITARY POLICE

Abuses by military authorities are widely recognized as problems by the Royal Government, which has introduced limited measures to assert greater civilian control over the army. In 1994, a newly trained corps of military police began to be deployed throughout the provinces. France's Military Assistance Mission to Cambodia has trained a fraction of the total force, estimated in February 1995 to number approximately 2,500, with a view to creating a French-style *gendarmerie*, or military police force directly answerable to the Prime Ministers. The Cambodian force also answers to the General Staff of the RCAF, but has separate headquarters in the provinces from the provincial and national military forces. The government plans to eventually have a force of 7,000 military police present in all provinces.

Better trained, armed, supplied and paid than ordinary troops, this force was the first noticeable effort of the RCAF to diminish and control the most common military abuses. The initial impressions of residents and authorities in towns such as Battambang and Sisophon were positive. Military police units confiscated weapons from soldiers out of uniform, searched vehicles for weapons and confiscated them, and improved security on the roads and in markets. Military police have also assisted civilian courts and police in investigating and arresting military figures accused of crimes, sometimes, but not always, with success.¹ By

¹ The arrest of Gen. Toan Saveth, for instance, was a joint action by the military and

August 1994 in Battambang, however, there was some disillusion among residents who reported that military police had begun to participate in extortion at security checkpoints.

THE OFFICE OF THE MILITARY PROSECUTOR

The Office of the Military Prosecutor was established during the Vietnamese occupation, but appears to have acquired new vigor under the direction of Gen. Sao Sok, a member of the CPP. The office has quietly intervened to facilitate the trial of military personnel in civilian courts on several occasions, in addition to conducting inquiries for the purpose of military prosecutions. It took a leading role in investigating the abuses committed by military intelligence in the northwest and in recommending further action. These efforts have been undercut by the less professional investigations conducted by the prime ministers' Special Commission, whose members include both military and civilian authorities. The release from Tuol Sleng prison of Gen. Toan Saveth, a prime suspect in the Che K'mau case who was held there on other charges, underscored the political limitations of the military prosecutor's office.

Despite the visibility of the military prosecutor's office in the Che K'mau affair, the office does not generally discuss its activities publicly, making it difficult to determine to what degree it is succeeding in imposing legal control over military abuses. Senior officials of the military prosecutor's office from parties other than the CPP were unauthorized to discuss specific cases with Human Rights Watch. They were able to confirm that the majority of cases under investigation involved criminal offenses by military personnel against civilians and gave a brief description of case procedure.

civilian police.

If military personnel are suspected of common crimes, the military prosecutor had authority to issue an arrest warrant for the military police to execute. Where possible, local civilian police may also directly arrest a military offender, although it was acknowledged this was often feasible only in unusual circumstances, such as when suspects were caught in the act. Suspects would be transferred to the military prison of Tuol Sleng in Phnom Penh, situated next to the military prosecutor's office, and their cases investigated. If the issue was an infraction of military discipline, such as destruction of military property, the military prosecutor was to perform a court-martial. If the matter involved a common crime, the military prosecutor's office was to transfer the files to a civil court for further proceedings under Cambodia's criminal law. This procedure was confirmed by judges and prosecutors in Battambang and Sisophon, who frequently petitioned the Ministry of Justice to refer cases involving military personnel to the Ministry of Defense for action by the military prosecutor and military police.²

CIVIL AUTHORITY OVER MILITARY PERSONNEL

The reliance on the military prosecutor and military police to handle cases involving military personnel who commit common crimes against civilians suggests the weakness of civilian authorities in handling such issues. Judges and prosecutors interviewed by Human Rights Watch believed the cooperation of military commanders was essential to the proper functioning of the justice system. But for the most part, military officers were unused to the idea of the supremacy of civilian authority or the rule of law and were accustomed to take it upon themselves to handle matters where their own men or financial interests were involved.

Where there is such cooperation, there has been real progress in applying criminal law to military offenders. There have been several encouraging precedents in Battambang, including the December 1993 trial and conviction of a soldier for rape of an eleven-year-old girl in Boeung Ampil. Another case, of a drunken soldier who accidentally killed a sixteen-year-old girl when he emptied his AK-47 for amusement one night in Tan Kot village, highlights the results of cooperation between military and civilian authorities.

² Human Rights Watch interview, August 1994.

The incident took place on March 3, 1994. According to police in the nearby village of S'dau, the soldier was arrested three hours after the killing and sent to a military lock-up in Treng. A week after the incident, the police were requesting that the soldier be transferred to civil authorities for trial. In the meantime, the girl's family was given, unsolicited, five sacks of rice and approximately \$40 in compensation from the soldier's local military commander. Eventually, the soldier was turned over to police and tried in the Battambang provincial court. He was convicted of manslaughter and sentenced to one year and eight months in prison, which he was serving in a civilian prison. The family, who had returned to Cambodia nineteen months earlier from the Site B refugee camp along the Thai border, had moved in with relatives farther from the military encampment, and as of August 1994 were unwilling to return to Tan Kot.³

Another example of the eventual assertion of civil authority concerns a murder case in Kratie province. Four soldiers from the 22nd Battalion of the provincial military entered Ban Teay village on the evening of April 11, 1994, and demanded a chicken from residents. When one was not produced, the soldiers accused them of being "Pol Potists," or Khmer Rouge, and fired their AK-47s into a crowd of people who were watching a video outdoors. A seven-year-old boy, Thoeun Nab, a farmer, Thi Phorn and Hen Mao, a young policeman were killed instantly; three other villagers were wounded. The victims' families reportedly received compensation from both the commander of the 22nd Battalion and the governor of Kratie. Although the provincial government gave permission for villagers to hold a demonstration to protest the killings, the villagers became afraid after local officials began asking who had proposed the demonstration, and police began asking how the incident became known outside the province. Three of the four soldiers charged with murder were arrested and convicted of involuntary manslaughter by a civilian court, and sentenced to terms of thirteen and ten years. The court also awarded 900,000 riels (\$360) in damages to each of the bereaved families. Because of fears that the soldiers could escape and take revenge on the villagers, they were transferred to the Kompong Cham provincial prison. The case of the commanding officer of the soldiers, who was not present at the time of the crime, was transferred to the jurisdiction of the Office of the Military Prosecutor.

But for every step forward in asserting civil authority, there are many setbacks. The intensifying state of war has made the recognition and development of effective civil authority more difficult. This was particularly evident in the

³ This case received a great deal of attention from the UNHCR, as both the victim and the soldier were returnees from the border area.

former headquarters of one of the non-communist resistance groups, in Thmar Pouk, near the Thai border in Banteay Meanchey province. Units from the KPNLAF were incorporated into the RCAF after the elections, and remain based in the area.

Following the departure of UNTAC and hostilities between the Khmer Rouge and its former allies in the non-communist resistance, the region has reverted to military rule. There is no civil court or judge in the area, despite UNTAC's efforts to train and locate one there. The area military commander, Gen. Kho Chhean, reports he either handles problems involving military personnel himself or refers them to the police in Sisophon. Civilian officials confirmed that they had not recently transferred a soldier to a civilian court. Suspects arrested by the police were generally held overnight in a small police lock-up constructed by UNTAC⁴ before being transferred to Sisophon town. Soldiers, however, often broke out of this jail, and were effectively detained only at military headquarters in town.

During the peacekeeping years, the district police of this area benefited from exemplary training by an unusually dedicated unit of UNTAC civilian police. Their training, however, was of little use in cases that involved military suspects, as they rarely had the power to arrest such persons except possibly if they caught them in a criminal act. The obstacles facing the civilian police were evident in a case under investigation at the time Human Rights Watch visited in August 1994. Four days earlier, a husband and wife were severely injured when an anti-tank mine was detonated near their bed, reducing their wooden house to rubble but miraculously sparing their lives. Local police had gathered evidence that pointed to military suspects but were unable to proceed further with arrests. They instead reported the incident to the local military headquarters.

Even where military suspects are arrested, it is often difficult to keep them in civilian jails. One flagrant example was a military raid on the Battambang jail. On March 29, 1994, a military contingent suspected to be from the Fourth Military Region attacked the Battambang prison to release Tes Sokhuntea, a FUNCINPEC lieutenant colonel who had been convicted of attempting to smuggle a sack of Khmer antiquities from Cambodia to Thailand. Over a dozen soldiers arrived in two vehicles with mounted machine guns. One vehicle took up a defensive position while the other moved in to collect Tes Sokhuntea. Although a few shots into the air were exchanged, the prison authorities behaved with notable restraint to avoid

⁴ The area was notorious for summary execution of suspected offenders by both the KPNLAF and Khmer Rouge military; UNTAC police had even found suspects tied to trees. The construction of a jail was considered a priority in ameliorating these abuses.

bloodshed, and no one was hurt in the incident. The humiliation of the prison authorities did take a toll, however, in harsher treatment of prisoners after the incident, including an increase in beatings by prisoners entrusted by the guards with enforcing discipline over the others when several civilian prisoners attempted an escape six weeks later.

In this case, the Ministry of Justice requested action from the Ministry of Defense, and the military prosecutor's office had begun an investigation, the results of which had not been announced by late 1994. In Banteay Meanchey, provincial court officials began enforcing a June 1994 rule of the Ministry of Interior that requires police officials, military personnel and criminal defenders to get permission from the court before entering a prison. According to court officials, this rule was designed to thwart the frequent practice of armed military and police officials simply entering the jail and taking prisoners with them.⁵

Judges and prosecutors who act against military offenders are often vulnerable to threats and attacks. An extremely serious incident took place on May 13, 1994, when armed soldiers attacked the Sihanoukville court in Kompong Som province, causing the chief judge and the prosecutor to flee for their lives. Sok Tha, a military officer whose parents had been tried and found guilty of a trademark offense, led the attack. To date neither the civil or military prosecutors have lodged a case against Sok Tha and the other soldiers for the attack on the court, and reports that Sok Tha was demoted in rank have been disputed. Nor have Sok Tha's parents been sent to serve the prison sentence imposed by the Sihanoukville court. Armed military attacks also took place on July 7, 1994 at the Phnom Penh municipal court and on July 15, 1994 at the Kandal province court.⁶ In Battambang, it was common for judges of the provincial court to take their automatic rifles with them into court, a practice that appears less unusual in light of the danger of encountering armed spectators or witnesses. Chief Judge Nil Non has instituted wide-ranging reforms, making the court a model of accessibility and good order. As of mid-1994, judges were leaving their weapons in their offices, and the weapons of any other observers or participants in court cases were to be locked in the exhibit room during court session. Still, the pressure on judges is high. In one case where the wife of a military officer was convicted of assault and battery in early 1994, her family sent a man to stalk the judge. The judge resolved the situation by explaining

⁵ Human Rights Watch interview, Sisophon, August 1994.

⁶ November 1994 Report of Special Representative, paragraphs 79-82.

at length to her relative the importance of rule of law to society.⁷ Prosecutors in other provinces also reported receiving threats as they investigated cases and frequently found themselves unable to enforce summonses against reluctant witnesses in cases against military or police figures.

THE DEVELOPMENT OF THE LEGAL PROFESSION

The establishment of the rule of law requires more than the primacy of civil authority. Most courts in Cambodia still lack even a minimum standard of independence, and interference by civil authorities at both the provincial and national level is still common. Virtually all judges, prosecutors, and state defenders are members of the CPP. In the past, the judiciary was directly answerable to the Ministry of Justice. The Ministry of Justice continues to issue directives on day-to-day court administration and the application of laws, and judges continue to refer to it for directions in difficult or sensitive cases. The Court of Appeals and a Supreme Court have been established, but have only just begun to take up cases. In a significant decision, the Court of Appeals in February reversed an investigating magistrate's decision to free for lack of evidence an RCAF colonel who is suspected of murdering a journalist who wrote about the colonel's participation in illegal lumber deals (see this chapter, "The Role of the Press," below).

The National Assembly established by law in December 1994 a Supreme Council of Magistracy, the body that will supervise the appointment, promotion and discipline of judges and prosecutors, and ensure their independence and integrity. There is concern, however, that this monitoring institution will for the moment preserve political control over the judiciary. The nine-member panel includes the King (or his representative), seven judges and prosecutors, and the minister of justice or his chosen representative. As virtually all practicing judges and prosecutors were appointed by the former State of Cambodia government and are accustomed to executive control by the Ministry of Justice, there is considerable potential for partisan influence unless the government makes serious efforts at integrating the judiciary and making it administratively and financially independent of the ministry.

⁷ Human Rights Watch interview, August 1994.

At the time the law was debated in the National Assembly in December 1994, a challenge was raised as to the constitutionality of the minister of justice's participation, as Article 101 of the Cambodian Constitution explicitly prohibits members of the Royal Government from holding any position in the public service. The constitutionality of the law may be decided by the Constitutional Council, a body yet to be operational. This council's composition may also be dominated by CPP members, given that the Supreme Council of Magistracy is to nominate one-third of the appointees, the Assembly another third, and the King another third.⁸

⁸ The King has already nominated three persons, one each from the three major parties, CPP, FUNCINPEC and BLDP; the National Assembly is also likely to divide its nomination among the parties.

A similar problem of political monopoly and control besets the nascent legal profession. Under the previous government, criminal defenders were employees of the state, subordinate to prosecutors and in practice limited to arguing mitigating circumstances for the purpose of sentencing. Under the UNTAC-era criminal law, anyone with a high school education may act as a defender, an arrangement that recognized the extreme paucity of legally-trained advocates in Cambodia in the 1990s.⁹ UNTAC, and then various foreign nongovernmental organizations, provided basic legal training in Cambodian criminal law to human rights activists and others who wished to act as criminal defenders. These grass-roots training programs ran counter to efforts by French advisers to professionalize legal education, narrow the bar, and focus training efforts on the existing defenders, prosecutors, and investigating magistrates inherited from the previous CPP government.

As a consequence, the Ministry of Justice has periodically expressed doubt as to whether the nongovernmental defenders will be able to pursue their occupation once a law regulating the composition of the bar is adopted and a French-designed bar examination is instituted. Such a law on the bar has been drafted by the Council of Ministers, and awaits submission to the National Assembly. It contains a provision that only lawyers qualified under its terms may provide legal advice or representation. This provision, if construed as superseding the UNTAC-era law, will make legal representation an impossibility for all but a handful of criminal defendants.

⁹ Fewer than a dozen professionally-trained lawyers survived the Khmer Rouge era. Between that time and the peacekeeping period, the Phnom Penh government instituted legal education courses of several months to two years' duration; much of this education consisted of political indoctrination, and the faculty of law suffered from a lack of even the most basic teaching materials and legal texts. Since the peacekeeping period, a four-year undergraduate curriculum in law has been introduced, whose first class has yet to graduate.

No graduates from the newly instituted four-year law curriculum will emerge until 1997. The draft law contains a transitional period, in which legal professionals with three years of experience working in the courts may take supplementary training and a bar examination to qualify as lawyers. As currently drafted, very few nongovernmental defenders will have such experience by the end of the transitional period. In addition, such candidates will have to take a required preparation course in order to sit for a bar examination. At present, the preparatory course under the Ministry of Justice's auspices has enrolled approximately thirty students, the majority of whom are legal professionals under the previous government.

The professionalization of the bar is an important goal for Cambodia. But given the paucity of professionally-trained lawyers, it must be accomplished very gradually, lest the general public be denied access to legal assistance for a generation. The small pool of lawyers who will be professionally certified under the proposed law and bar examination, of course, will not be restricted to careers in criminal defense. Many may be drawn to more lucrative specialties, such as commercial law, leaving the set of criminal defenders even smaller. The premature restriction of the bar will also have adverse consequences for human rights in non-criminal areas also, ranging from domestic violence to housing evictions to children's rights.

Despite this uncertainty, nongovernmental defenders have already made an impact, representing a wide variety of defendants, from publishers to ordinary civilians to government officials. In one Phnom Penh case, a nongovernmental defender represented a six-month pregnant Kompong Cham woman who was accused of being an accomplice to a theft when a man who owed her a debt stole a motorcycle, leaving her to face the accusation of its owner. The defender succeeded in getting the woman an early trial, and although the woman was convicted, she was sentenced to time served and released.¹⁰ In another Phnom Penh case, a nongovernmental defender succeeded in winning a rare acquittal for another female defendant. In this case, another pregnant woman accused of theft had been tormented by police until she gave a confession. She related that police struck her face, causing impairment to her hearing, burned her on the hands with cigarettes, and locked her in a toilet space, depriving her of adequate food and water. After

¹⁰ Jason Barber, "Pregnant prisoner freed from PJ lockup," *Phnom Penh Post*, December 30, 1994-January 12, 1995.

her transfer to a prison, she miscarried. The judge disqualified her confession (the only evidence against her) and ordered her release.¹¹

THE ROLE OF THE PRESS

One of the most profound effects of the U.N. mission was creation of genuine freedom of press. Where only state-controlled media had existed, over thirty newspapers and three television stations now compete. Professional standards are often low, and violent or lurid depictions, racial slanders, and unsourced allegations are staples of tabloid news. Nevertheless, the domestic press corps is slowly acquiring experience, and journals of all political perspectives cover issues of genuine public importance, such as official corruption, abuse of the law, political events such as the failed coup attempt, and debate on matters of political policy towards the Khmer Rouge. The domestic and foreign press played a critical role in exposing the atrocities perpetrated by the S-91 division, and in many other cases have brought to public attention instances of official abuse or conflict between the people and government authorities.

¹¹ Sou Sophornnara, "Acquittal for abused woman," *Phnom Penh Post*, January 13-26, 1995.

Government officials from both the FUNCINPEC and CPP parties are unaccustomed to being the subjects of such frank debate and criticism, and have reacted with intolerance and shock. On almost a dozen occasions over the last year, the executive branch of the Royal Government has suspended or confiscated publications, or threatened court action, all for printing allegations of official corruption or other material viewed as derogatory of government or officials.¹² The government launched a criminal case against one editor, and has instituted defamation suits against other publications, both domestic and foreign. These actions accelerated late 1994 and early 1995 as the National Assembly prepared to consider a new press law that in large part would determine the continued viability of Cambodia's free press.

¹² Most recently, the government briefly closed two papers on January 14, 1995: See "Ranariddh Issues Warning to Unruly Press," *Cambodia Daily*, September 7, 1994; "Government Bans Entry of Two French Journalists," Agence France Presse, October 30, 1994 reprinted in FBIS-EAS-94-211, November 1, 1994; Sou Sophornnara, "Cyclo Driver's Letter Leads to Ban on Paper," *Phnom Penh Post*, November 18 - December 1, 1994; and Jon Ogden and Heng Sok Chheng, "Newsmen in New Intimidation Claims," *Phnom Penh Post*, June 3 - 16, 1994.

Although there were instances of press closings earlier,¹³ the official crackdown on the Cambodian media became even more serious in the wake of the July 2 coup attempt. On July 7, the prime ministers issued a statement that some people had "spread false propaganda" to take advantage of the uncertain political situation, and warned that anyone publishing inaccuracies with the aim of provoking "turmoil" would be treated as having committed a crime. The next day, Noun Nonn, the editor of *Dom Ning Pei Prek* ("Morning News") was arrested for publishing an article that suggested Interior Minister Sar Kheng was involved in the coup attempt, a suggestion that had appeared in other local and foreign publications and one that Sar Kheng categorically denied. At a press conference held the day of the arrest, Sar Kheng stated that *Dom Ning Pei Prek* had published "inaccurate information damaging to the reputations of individuals...and likely to create instability." Human Rights Watch protested the arrest (see statement, Appendix III). Although Noun Nonn was released in August, criminal charges against him are still pending, as is an investigation against his son for an article the paper ran alleging corruption on the part of the governor of Svay Rieng, who since was appointed national chief of police.

The arrest of Noun Nonn was followed by the government's closing of other newspapers that had speculated on the events surrounding the failed coup or published criticism of or negative allegations against government figures. Shortly after the failed coup, Minister of Interior Sar Kheng asked the Ministry of Information to investigate the papers *Sakal* ("Universe") and *Kolbot Angkor* ("Children of Angkor") for inaccurate reporting that was aimed at "inciting the break-up of national solidarity and creating turmoil"; the same day the Ministry of Information requested the Phnom Penh municipal court to close the newspapers. On November 11, the government shut down *Oddom Kate Khmer* ("Khmer Ideal") for a letter it published from a reader headlined "Stop Barking, Two Samdechs Prime Ministers," in which the writer criticized the firing of Sam Rainsy and the corruption of the former governor of Phnom Penh and Svay Rieng, Hok Lundi. Another paper, *Samrek Reas Khmer* ("Khmer Cry"), which had run articles critical of Prime Minister Ranariddh was also closed at the same time. The next day Prime Minister Ranariddh promised not to prosecute critical papers such as *Oddom Kate*

¹³ Earlier in the year the government had closed the newspaper *Sakal* ("Universe"), which had tried to run scathing critiques of King Sihanouk's prior association with the Khmer Rouge and his alleged misdeeds, and *Prum Bayon* ("Bayon God"), a publication by students at Phnom Penh University known for tongue-in-cheek articles that criticized virtually all political parties and figures.

Khmer, Samleng Yu Vachon Khmer ("Voice of Khmer Youth") and *Dam Ning Pel Prek*, yet warned that "history" would condemn those who "undermine" or "sow division" in the nation, saying, "I do not protect traitors."¹⁴ *Monak Seka Khmer* ("Universal Cambodian Conscience") was shut down for a week in December 1994 by Secretary of State for Information Khieu Kanharith for publishing a "derogatory" article that "blasphemed" the government.¹⁵

¹⁴ "Ranariddh Criticizes Khmer Rouge, News Media," *Phnom Penh National Radio of Cambodia Network*, November 13, 1994, translated and transcribed in FBIS-EAS-94-220, November 15, 1994.

¹⁵ The offending article may have been one titled "Foolishness, Crazyness and Theft," a description of the behavior of members of the legislature, the executive and the judiciary respectively, or others entitled "Does Samdech Hun Sen Dare to Recognize the Truth?" and "Does Samdech Hun Sen Fear that Vietnamese Prostitutes Will Lose Their Occupations?"

On January 14, 1995, the government briefly suspended two other papers, the late Noun Chan's *Samleng Yu Vachon Khmer*, apparently for a cartoon showing Prince Ranariddh carting a bag of money on his head, suggesting corruption, as well as a scathing satirical essay titled "His Royal Highness [Prince Ranariddh] is More Stupid Than Hun Sen Three Times a Day." The essay criticized Prime Minister Ranariddh as both autocratic and subservient to Hun Sen. *Serei Pheap Thmei* ("New Liberty News") was also suspended, also for a cartoon and for an article criticizing Hun Sen. The suspension decisions were reversed, but the government announced that it would institute defamation actions against the two papers, seeking fines but not criminal penalties.¹⁶ Instead, the government has sought to prosecute both papers under the UNTAC-era criminal provisions.

On February 27, 1995, the Phnom Penh municipal court sentenced Chan Rottana, the editor of *Samleng Yu Vachon Khmer*, to one year in prison and a fine of \$2,000 for the cartoon and the satirical piece. In this case, the court relied on the UNTAC-era criminal law's prohibition of "misinformation," defined as a publication which is false or falsely attributed, done "in bad faith with malicious intent," and which "has disturbed or is likely to disturb the public peace." Chan Rottana and his defender argued that the article was entirely opinion, and thus not capable of being described as "false," and that it had not been shown to disturb the public peace in the month since it was published. The judge, however, after deliberating for five minutes, pronounced Chan Rottana guilty, explaining that because the article had been degrading to Prime Minister Ranariddh it had therefore endangered public order. Chan Rottana remains free pending an appeal. The editor of *Serei Pheap Thmei* was summoned to appear the Phnom Penh municipal court on February 28, 1995, on a charge brought by the Ministry of Information of "misinformation" under the UNTAC-period criminal law.

¹⁶ "Suspension Order Withdrawn," Agence France Presse, January 17, 1995, transcription reprinted in FBIS-EAS-95-010, January 17, 1995.

Other government actions against the press included a police raid on a printing facility where *Samleang Yu Vachon Khmer* was producing copies of a booklet titled "Only the King Can Save Cambodia: Cambodian People Want Peace." The police confiscated the materials without presenting a warrant or court order during the raid, which took place on February 15, 1995. The Information Ministry was said to have subsequently justified the confiscation on the basis that the booklet could have produced anti-government sentiment or provoked public demonstrations.¹⁷ *Samleang Yu Vachon Khmer* published the contents of the booklet in a special newspaper edition two days later, without official interference. Also on February 15, the government again shut *Oddom Kate Khmer*, which had reopened in January 1995 and had continued to print articles highly critical of the two prime ministers. The Information Ministry announced the newspaper would remain shut until a press law was passed¹⁸ (see Human Rights Watch statement, Appendix III). On February 21, 1995, *Samrek Reas Khmer* was fined three million riel (\$1,200) under the criminal defamation provisions of the UNTAC-period criminal law, as well as another 100,000 riel (\$40) for failing to register the newspaper with the ministry of information. Also in early February, the government banned a film titled "The Three Worlds," which was being shown free of charge at the Vimean Tip cinema in Phnom Penh. According to a representative of the government's video and film board, the director violated his contract with the board by not showing a censored version. The movie criticizes corruption on the part of government officials and suggests that Vietnamese and Thais are taking over the best houses.¹⁹

Government efforts to quash unfavorable reporting extended to the foreign press. In August, Prince Ranariddh declared Kampot province off-limits to reporters because the intense foreign press coverage had complicated the negotiations for the three Western hostages and created a ready market to which corrupt officials tried to peddle tips and access to the Khmer Rouge. In late August, the government gave warnings to foreign writers who published accounts of atrocities committed by the S-91 unit in Battambang province. On September 6,

¹⁷ Human Rights Watch interview, February 17, 1995.

¹⁸ Maja Wallengren, "Cambodia Shuts Newspaper Over 'Insults'," Reuter News Service, February 15, 1995.

¹⁹ Sou Sophornnara, "Govt pulls critical movie off screen," *Phnom Penh Post*, February 24 - March 9, 1995.

Prince Ranariddh stated that foreign journalists who "exaggerate" would be expelled, while his office released a statement criticizing an article that speculated on the restructuring of the government. That restructuring took place on October 20, when the controversial and popular Finance Minister Sam Rainsy was sacked, and Foreign Minister Prince Sirivuddh resigned in sympathy shortly thereafter. On October 30, the government banned from the country two correspondents for the French newspaper *Libération* who had written critically of corruption within the Cambodian military and the S-91 abuses in an article on French military aid. The government in January 1995 brought defamation actions against *Libération* and another French newspaper, *Le Figaro*, for articles they had published on military abuses that repeated the allegations of cannibalism relating to military intelligence soldiers responsible for the killings at Che K'mau (see Human Rights Watch statement, Appendix III).

The legal authority for newspaper closings and Noun Nonn's arrest was a 1992 bill passed by the Phnom Penh party's legislature during the peacekeeping period. Despite the government's reliance on this enactment, it is without legal force. It was never adopted as law by Cambodia's sovereign authority of the time, the Supreme National Council, and it was since overruled both by UNTAC's media policy and by Cambodia's adherence to the ICCPR. The Royal Government is the first administration to attempt to enforce the enactment as law. The enactment forbade publishing "inaccurate" information with "intent to alarm the citizenry" or information that was "detrimental" to national security, and gave the government broad powers to close newspapers and confiscate their publications. In this aspect it is similar to a draft press law that became a focus of domestic and international criticism.

The draft law, which is still pending before the National Assembly, would also allow the Ministry of Information to request the courts to indefinitely suspend newspapers for reasons of public security, and would impose criminal penalties on those that print material that "humiliates" or "degrades" national organs or public authorities or that "may cause turmoil to public security" (see Human Rights Watch statements, Appendix III). Minister of Information Ieng Mouly has defended the draft law as preferable to leaving aggrieved individuals take the law into their own hands.²⁰ It was a measure of just how low expectations had fallen when officials suggested that the only alternative to unchecked violence against reporters was to limit the freedom of press. The government has not probed, however, whether its campaign against critical newspapers has encouraged such violence.

²⁰ Michael Hayes, "Stop Press," *Far Eastern Economic Review*, December 1, 1994.

In 1994, two journalists were murdered and another killed, each under circumstances that raised unanswered questions of official complicity. The first was Tou Chhom Mongkol, the editor of *Antarakhum* ("Intervention"), a paper that had vigorously condemned corruption among government authorities. He was found dead on a main Phnom Penh thoroughfare on June 11 of a blow to the head, which could have been caused by either an accident or a deliberate attack. On March 24, his newspaper's office was the subject of a grenade attack, but police never identified the perpetrator.

Nuon Chan, the editor of *Samleng Yu Vachon Khmer*, was the next victim, gunned down in broad daylight on September 7, 1994 by two men on a motorcycle as he was driving his own around one of Phnom Penh's main traffic circles. As the two killers drove off, a white car followed closely behind, swerving in what witnesses believed was an attempt to block off pursuit. Military police came on the scene almost immediately, but Nuon Chan was not sent to a hospital for nearly thirty minutes and did not survive. *Samleng Yu Vachon Khmer* had been founded in April 1994 and specialized in revelations of official corruption and criticism of FUNCINPEC, CPP and business figures. Prior to Nuon Chan's murder the editors had received repeated warnings from the Ministries of Information and Interior and Prime Minister Ranariddh, for articles that variously attacked Hun Sen, suggested Chea Sim was behind the coup attempt, accused Gen. Nhim Vanda (a close associate of Hun Sen) of profiteering from public property, and criticized the governor of Phnom Penh for his dealing with squatters. Secretary of State for Information Khieu Kanharith condemned Nuon Chan's murder, but was also reported to have said that if "he had not been killed, the ministry would have sued him."²¹

Two men were arrested and charged with Nuon Chan's killing: Mon Seun on September 18 and Sum Say on September 19, 1994. In an unusual and courageous ruling, however, a judge of the Phnom Penh municipal court disqualified one defendant's confession as forced; the other had always denied the crime. The case continues under investigation, although there is no indication that

²¹ Barton Biggs, "Slain Editor Pressured by Gov't, Letters Show," *Cambodia Daily*, September 9-11, 1994.

the government has produced evidence other than the disqualified confession. An article in the *Bangkok Post* alleged the Interior Ministry had found the real criminals were members of FUNCINPEC, at which point First Prime Minister Ranariddh asked the investigation to be halted.²² Nuon Chan's successor as editor of *Samleng Yu Vachon Khmer*, Chan Rotana, reported that in early February he received an anonymous telephone call accusing him of being Khmer Rouge; the caller said, "You should be killed!" and then hung up.

²² Sou Sophornara, "Judge Rejects Confessions of 2 Editor Murder Suspects," *Phnom Penh Post*, November 18 - December 1, 1994.

Most recently, twenty-eight-year-old Chan Dara, a journalist with the generally pro-government newspaper *Koh Santepheap* ("Island of Peace"), was shot to death on the evening of December 8, 1994. The murder occurred just as Chan Dara was leaving a restaurant in the provincial town of Kompong Cham where he had a drink with RCAF Col. Sat Soeun. Chan Dara had published several articles in *Koh Santepheap* and another paper, *Preap Noam Sar* ("The Carrier Pigeon") on the involvement of government and military figures, including Sat Soeun, in illegal timber and rubber deals in the province. Days before his murder, he had told editors at both papers that he had received warnings from officials to stop his investigations, and that the military had threatened to destroy his wife's newsstand. On December 11, police arrested Sat Soeun for the murder. Following his arrest, editors of both *Koh Santepheap* and *Preap Noam Sar* reported they had received threats from friends of the colonel, and a military associate of Sat Soeun was found lurking about the offices of both papers on December 15 and 16. Minister of Interior You Hockry reportedly intervened and had the soldier returned to his base in Kompong Cham.²³ Sat Soeun is being held in Phnom Penh as a security precaution while investigations on the murder charge proceed in Kompong Cham. The Court of Appeals on February 24, 1995 reversed the investigative magistrate's decision to dismiss the case for lack of evidence, and ordered the investigation continue.

THE HUMAN RIGHTS COMMISSION OF THE NATIONAL ASSEMBLY

The Human Rights Commission of the National Assembly has played a vital role in addressing hundreds of human rights complaints from citizens, investigating abuses, and raising human rights concerns regarding proposed legislation. Its chairman, BLDP member Kem Sokha, has been consistently outspoken on controversial issues such as the law against the Khmer Rouge, the need to compensate victims of government evictions, press freedom, and independence of the judiciary.

Since its creation, the committee has functioned with barely any staff. The greatest obstacle to its work, however, has come from the National Assembly itself, which refuses to formally refer draft laws to the committee for review. What comments committee members have raised have been in open floor debates, or the

²³ Pip Wood, "Newspaper Editors Still Experience 'Threats'," *Cambodia Daily*, December 20, 1994 reprinted in FBIS-EAS-94-250, December 29, 1994.

hearings of other committees that were open to members of the National Assembly at large. This situation is not because of any lack of legislation raising serious human rights issues. In 1994, the National Assembly considered laws on immigration and the judiciary; in 1995 it is scheduled to consider laws regulating the press, the bar and nationality.

POLITICAL DEBATE WITHIN THE GOVERNMENT

Open debate on government policies also aids accountability. The legislator Ahmad Yahya, an ethnic Cham representative for the FUNCINPEC party, was recently quoted on the subject of dissent within the government. "We are not opposed to the government, but when we see something wrong we have to speak up and this will be good for our country."²⁴ Yahya is one of the only legislators who opposed the 1994 immigration law, on the basis that it could be used to discriminate against ethnic minorities. There are other legislators who have defended independent positions at odds with the government's policies. But increasingly, such politicians have been the subject of warnings from the prime ministers and threats from both official and unidentified sources.

On the occasion of King Sihanouk's temporary return to Cambodia on January 4, 1995, a number of politicians renewed the call for him to be given greater power in order to facilitate a political settlement with the Khmer Rouge. The prime ministers were swift to respond. Prince Ranariddh accused Buddhist Liberal Democratic Party leader Son Sann of proposing a "coup d'etat" by suggesting that the government established by the new constitution be modified.²⁵ Prime Minister Hun Sen lashed out at those who opposed foreign lethal military aid on account of military corruption, a position held by Kem Sokha and Sam Rainsy. The CPP prime minister reportedly warned such opponents to be "careful" because they may anger the army and police with the prospect of deteriorating living standards, and suggested further that military and police "will certainly march toward the houses" of those critics "and the government will find it very difficult to

²⁴ Brian Hansford, "Trend Towards Intolerance," *Bangkok Post Inside Indochina Supplement*, January 31, 1995, p. 1 reprinted in FBIS-EAS-95-020, January 31, 1995.

²⁵ "Cambodia: Ranariddh Calls Son Sann's Appeal a Coup D'etat," *National Voice of Cambodia, Phnom Penh*, January 11, 1995 translated by BBC Monitoring Service: Asia-Pacific January 16, 1995.

stop this because the troops will have guns in their hands."²⁶ Prince Ranariddh's spokesman, Ly Touch, supported Hun Sen's statements, saying, "If anyone opposes this aid, it should be considered that they support the Khmer Rouge."²⁷

²⁶ "Hun Sen, Ranariddh Warn Opposition in Speeches," *Reaksmei Kampuchea*, January 5, 1994 reprinted in FBIS-EAS-95-003, January 5, 1995.

²⁷ "The Co-PMs Put Pressure on Opposition Mps," *Cambodia Daily*, January 6, 1995.

These remarks, which in some circumstances could be interpreted as political repartee, were perceived as threats in view of other events. One was a report that Prince Ranariddh said at a dinner party on December 21, 1994 that Sam Rainsy's wife would be the next widow in Phnom Penh, because Hun Sen had determined to kill Sam Rainsy. The Prince later explained that he spoke in jest because Rainsy's wife is "beautiful," but he added that "many army and police officers are unhappy with Sam Rainsy's comments about corruption in the army."²⁸ Prime Minister Hun Sen pointedly charged the military to be ready to confront any attempt to destroy the constitution or the Royal Government on the occasion of the creation of a special anti-insurgency force,²⁹ raising a question as to whether the opponents he envisaged were military forces, such as the Khmer Rouge, or domestic political critics. Kem Sokha and Son Chhay, both BLDP legislators, both authors of proposed bills to punish official corruption, and both opponents of lethal aid, have also received explicit death threats from both anonymous and identified sources. Prince Ranariddh and Hun Sen denied that there was any basis to the threats perceived by these legislators, and reaffirmed the Royal Government's responsibility to protect freedom of speech and the safety of journalists and other government critics.³⁰

²⁸ "Cambodia: Ranariddh Denies Plotting Against Rangsi," *Reaksmei Kampuchea*, January 12, 1995 translated by BBC Monitoring Service: Asia-Pacific, January 16, 1995.

²⁹ "Hun Sen Reaffirms Army Must Defend Constitution," *Agence Khmer Presse*, January 25, 1995 translated from French by FBIS-EAS-95-016, January 25, 1995.

³⁰ Brian Hansford, "Trend Towards Intolerance," *Bangkok Post Inside Indochina Supplement*, January 31, 1995, p. 1 reprinted in FBIS-EAS-95-020, January 31, 1995.

THE ROLE OF NONGOVERNMENTAL AND INTERNATIONAL HUMAN RIGHTS ORGANIZATIONS

The proliferation of human rights groups in Cambodia is one of the more remarkable legacies of the peacekeeping mission. UNTAC provided support and a measure of protection to human rights groups, which attracted thousands of members and conducted ambitious educational and monitoring programs in every province of Cambodia. Although human rights activists were targets for threats and physical attack along with opposition politicians during the campaign period, this type of dramatic intimidation subsided after the election. Human rights groups have reached out to both ordinary citizens and the government, offering both general education in basic rights and specialized education for police and civil servants. The government has generally cooperated in allowing local groups to monitor prisons and provide medical and material assistance to prisoners. Many groups have trained staff in criminal defense and investigation of human rights complaints, and these groups have increasingly been able to bring abuses to official attention and mediate disputes.³¹

These sorts of activities, however, have made them vulnerable to retaliation by local authorities in some cases. An example is the case of Pem Mon, a member of the human rights group Adhoc who was unlawfully detained from November 15, 1993 to February 16, 1994. Pem Mon had been asked in mid-1993 to mediate a land dispute in Pea Reang, Prey Veng province. In preparation, he had gone to the provincial agriculture department office and learned that local officials were in possession of eight hectares of the disputed land. In November, the newspaper *Reksmei Kampuchea* ("Pride of Kampuchea") published an article that alleged authorities in Pea Reang had sold part of the disputed land for personal profit. Local officials, who suspected Pem Mon to be the source of the article, had him arrested and charged with "inciting chaos" by instigating former landowners to reclaim their land. Pem Mon was released after intervention by local and international human rights monitors.

Since UNTAC's departure, the Royal Government has sought to place human rights and other organizations under more formal control. As reports of

³¹ In Svay Rieng, for example, a human rights group filed a complaint with local police concerning an incident in October 1994 in which three police officers detained a man illegally. This man, who was on his way to sell a car, had resisted the officers' demand for a pay-off. The local police did arrest the officers; but the provincial court ordered their release.

military atrocities in Battambang province began to circulate in August 1994, the Ministry of Interior issued a set of vaguely-worded regulations for the "control" of associations. One required all groups to submit membership lists and reports on their activities; another stipulated that groups notify local authorities of any meetings, seminars or other gatherings five days in advance. Provincial authorities interpreted these directives broadly, and in at least two provinces temporarily disallowed educational activities on the part of two human rights organizations. Protests by international NGOs led the government to promise clarification of its directives, but provincial officials continue to pressure foreign and local NGOs to submit photographs, addresses and biographies of their staff. In Phnom Penh, officials from the Interior Ministry requested in February 1995 organization charts and staff lists from the Khmer Institute for Democracy, Vigilance, and Ponleu Khmer, all of whom declined to provide the information. The human rights group Licadho received a similar request in January 1995 from the Phnom Penh municipal police.

In addition to this effort to exert more systematic control, there have been specific incidents of government backlash against human rights groups. The murder of the editor Noun Chan caused an outpouring of protest from both local and international human rights groups, who urged the government to do a thorough investigation and punish political violence. But many of the local groups who protested then found themselves the subjects of official warnings. One group of Cambodian human rights associations received a letter from the office of Prime Minister Ranariddh accusing them of criticizing the government. Another group, the Khmer Institute for Democracy, was chastised for going "far beyond the realm of democracy and freedom of expression" and "reminded" that its status was "not officially recognized and authorized."³² This NGO had previously come under

³² Ministry of Foreign Affairs, *Press Release*, September 14, 1994. In fact, the Khmer

scrutiny when the government pressured a broadcasting company not to air videotaped debates the group had prepared on various topics of public controversy as part of a public information series it had contracted to provide. The debates that were the subject of official ire were one on the law against the Khmer Rouge and an address on the economy by then Finance Minister Sam Rainsy.³³

Leaders of human rights groups have reported receiving implicit threats and "warnings" about their safety from members of the government over the last year. One of the most chilling attacks was directed against the family of a staff member of the U.N. Centre for Human Rights in Phnom Penh. In September 1994, Luis Oliveros drove home with his children late one night in an ordinary car belonging to the U.N. Centre. As he reached the gate, another car blocked his rear, and gunmen jumped out, motioning for him to get out of his vehicle. The gunmen deliberately abducted Oliveros's five-year-old daughter, driving off in his car. The abductors then shot the girl point-blank in the leg, and threw her out of the Toyota. She was discovered shortly after bleeding in the road by a woman who took her to the hospital in time to save her life. Police have not succeeded in apprehending the kidnappers, and there is speculation that the incident may have been intended as retaliation for the Centre's role in protesting military atrocities in the northwest.

Institute for Democracy, which is a local, not a foreign, nongovernmental organization, was authorized personally by King Sihanouk in his capacity as head of the Supreme National Council, the normal procedure during the peacekeeping period.

³³ All three broadcasting stations, Television of Kampuchea (TVK, the government station), International Broadcasting Corporation (IBC, a Thai-owned station) and Cambodia Television (CTV, formerly FUNCINPEC TV) observed a three-day blackout on news of the July 2 coup. All practice a degree of self-censorship; IBC began submitting videotapes of all material it airs twice a week. See Heng Sok Chheng, "TV Viewers Kept in Coup Darkness," *Phnom Penh Post*, August 12 - 25, 1994.

About one month later, a second vehicle was stolen from the U.N. Centre and retrieved within two hours from the house of a colonel assigned to the military intelligence bureau.

VI. THE LAW AGAINST THE KHMER ROUGE

In the week after the attempted coup, the government pressed the National Assembly to outlaw the Khmer Rouge, which it did in a statute passed July 7, 1994. As originally drafted, the law criminalized mere membership in the political organization or military of the Khmer Rouge and stipulated the confiscation of all property under Khmer Rouge control. In an open letter dated July 6, 1994 that was addressed to the prime ministers, Human Rights Watch expressed concern that the vaguely-drafted statute left open the possibility that persons could be punished under the law not for any act of violence but for mere association with the Khmer Rouge, in violation of international human rights guarantees. After vigorous political debate, significant amendments were added to the law, defining "members" as those who "give orders, accomplish or engage directly in armed conflict for the purpose of serving the policy" of the Khmer Rouge. Those who are only the family members of such persons or persons "living under duress" with the Khmer Rouge were explicitly excluded in the definition. An important provision was added that specifies punishment of two to five years of prison for those "who use this law to violate the rights of the people by threatening, charging, arresting, detaining, torturing or violating the dwelling" of others. Except for the leadership of the Khmer Rouge, the law provided a six-month amnesty period which expired on January 15, 1995 (see text of law, Appendix II).

Human Rights Watch is concerned that judges, prosecutors and law enforcement authorities remain uninformed as to the strict limitations in the application of this law. As of August 1994, judges in the provinces of Battambang and Banteay Meanchey had not seen copies of the law; as of December 1994 neither had judges in Siem Reap. U.N. Special Representative Justice Michael Kirby in his November 1994 report on human rights described the law's coming into force as presenting "a major test to the courts and Constitution of Cambodia."¹ Justice

¹ November 1994 Report of Special Representative Kirby, paragraph 128 p. 39.

Kirby recommended that the law be disseminated to both officials and to the general population through radio and television, that it be enforced by civilian authorities only, and that arrests under the law be made public immediately.²

² Ibid., paragraph 131, pp. 40-41.

None of these recommendations has been acted upon as yet. However, there is evidence that arrests of persons for being "Khmer Rouge" had begun even before the end of the amnesty period. In December 1994, over a dozen persons were being held in the Siem Reap provincial prison on the charge that they were Khmer Rouge. The majority of these persons appeared to be noncombatants living in conflict zones, or persons who had been impressed as porters and laborers by the guerrillas.³ There have also been reports that RCAF military in Kompong Speu in December 1994 recorded large numbers of surrenders and defections from the Khmer Rouge -- and also dozens of arrests of Khmer Rouge "informants" and "food suppliers."⁴

The accusation that a victim is "Khmer Rouge" has long been used to justify abuses on the part of Cambodian officials. One example was the execution of victims of extortion at Che K'mau, justified by labelling prisoners "Khmer Rouge," but there are other instances as well.

Neth Thong and Mov Ving, for example, were executed on February 5, 1995. The two were playing volleyball at O'Krobou village, Moung commune, Moung Russei district in Battambang province when a group of approximately thirty armed and uniformed soldiers, militia and police led by a local militia leader named Chhoun Ka'th surrounded them and took them into custody. The authorities did not have a warrant nor did they give a reason for the arrest. Less than an hour later, local people heard volleys of gunfire. The bodies of the two men were found the next morning, bullet-ridden, handcuffed, and showing signs of severe beating. The police report on the incident stated the victims were "Khmer Rouge," and local authorities challenged the bereaved families saying, "Why are you having funeral rites for Khmer Rouge?" Chhoun Ka'th, the leader of the armed group, is reported to have held a grudge against the two men because they were seen in the company of a Khmer Rouge member who abducted and murdered Chhoun Ka'th's brother; however, Neth Thong was also known to be an active FUNCINPEC member during the elections. Since the murders, relatives of the victims have been threatened by Chhoun Ka'th's relatives because they had complained to other authorities. In

³ Human Rights Watch interview, January 1995.

⁴ Letter, January 24 1995.

another incident reported by local human rights monitors, a combined military and police force arrested and detained overnight a dozen villagers from Koh Dos Thmei village in Kandal province on December 7, 1994. The authorities claimed, without evidence, that the villagers were Khmer Rouge and were harboring weapons; an unlawful search of their homes came up with two weapons that belonged to local government militia soldiers. An unresolved land dispute involving a district official seems to have been the motivation for the arrests.

Human rights groups, judges and defenders face a quandary in trying to combat abuses in connection with the implementation of the Khmer Rouge law. All have expressed deep concern that should they try to intervene on behalf of persons improperly accused, they themselves could be branded "Khmer Rouge" sympathizers. Although Cambodian law recognizes the power of the courts to order the release of improperly detained prisoners, the practice of habeas corpus is almost unknown. There is little judges can do to force recalcitrant police to release a suspect, assuming that detentions in the remote provincial districts even come to their attention, and civilian judges have still less leverage over local military authorities. Special Representative Kirby criticized the Interior Ministry's efforts to register NGO staff as potentially inhibiting persons from defending cases brought under the law and exposing abuses in its administration "for fear of being accused of collaboration."⁵

Fears of abusive application of the law have been realized in the first known prosecution under its terms. On February 22, 1995, two men were convicted by the Battambang provincial court under the law and sentenced to twenty-five years of imprisonment each. Koeng Sara, thirty-eight years old, and Seth Peth, thirty-four, were accused of being involved in Khmer Rouge activity from July 12 to 14, 1994, including laying mines at Neak Banh Teuk in Battambang provincial town that killed one person and injured many others on July 13. The two men were arrested on July 17 without a warrant by provincial police, and held in the provincial prison for seven months. Both were returnees from the Site 8 border camp, which had been controlled by the Khmer Rouge.

At their trial, which began on February 21, 1995, both men were charged with unlawful possession of weapons, murder, and violation of Article 4 of the law against the Khmer Rouge, which provides penalties of between twenty and thirty years of imprisonment for acts such as "destruction against the Royal Government."

⁵ November 1994 Report of Special Representative Kirby, paragraph 128 p.39.

According to observers, the prosecution's case consisted of a police report of the arrest and confessions signed by the accused. No prosecution witnesses saw the men lay the mines at Neak Banh Teuk, and the defender for the two men was not permitted to cross-examine the prosecution's witnesses.

The accused men testified they were tortured from the day of their arrest. According to Seth Peth, when he denied that he had engaged in any illegal activity, his police interrogators took off his clothes, tied down his arms, and ordered him to sit on a table. They then kicked him repeatedly, and asked him whether he would still continue to lie or tell the truth. Then they hit and kicked him in the face and body several times until he fell off the table. A gun was pointed at his head and he was ordered back onto the table. Then he was beaten on the head with a gun. The police took him into another room, where they kicked him twice in the groin and he passed out. He was locked in a room at the jail until July 19. Then he was taken into an interrogation room and beaten in the head with a gun. The police told him he should say the correct things in court or he would be killed. Fearing for his life, he wrote and signed a confession as his interrogators demanded. Koeng Sara provided similar testimony of his own mistreatment, and also said he signed a false confession out of fear. Under Cambodia's criminal law, as well as the U.N. Convention Against Torture, a confession obtained under torture must be excluded as evidence in any legal proceedings against the victim.⁶

⁶ The UNTAC-period criminal law, entitled "Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period," is still in force. Article 24(3) provides, "A confession obtained under duress, of whatever form, shall be considered null and void." Cambodia acceded to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1992. Article 15 provides, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

Five witnesses for the defense corroborated the whereabouts of the men during the period in question. One witness, a nurse, testified that Koeng Sara was suffering from malaria during this time and could not move from his bed. The judge dismissed this testimony. In sentencing the men to twenty-five years each, the judge also awarded two victims of the mine explosion 750,000 riel (\$300) each, and suggested that another two years would be added to the prison sentences if the defendants could not pay the fine, a violation of both the UNTAC-period criminal law still in force, and Article 11 of the ICCPR, which states that no one shall be imprisoned merely because of inability to fulfill a contractual obligation.

This case, which was being appealed as of February 1995, highlights the political pressure to bring prosecutions under the law, and the weakness of the legal system in resisting such pressures and providing procedurally sound consideration of such cases. Allegations of torture in police custody in Cambodia are common and according to prison monitors, often justified. Police in many areas lack even the most basic skills to question suspects, and so often resort to physical abuse. The fact that the men were both refugees in a Khmer Rouge-controlled border camp appears to be one of the elements behind their arrest (as no other evidence of complicity with the Khmer Rouge or terrorism was produced aside from the forced confessions). This raises the issue of guilt by association that is likely to be a recurring problem in the application of this law. It is up to Cambodia's Court of Appeals to review these cases carefully, establishing clear guidelines for minimum standards of procedural fairness for courts to follow in future cases.

VII. MINING AND DEMINING

Cambodia has come to stand as the unparalleled example of how landmines can devastate a country. Over the last twenty years of war, an estimated eight million landmines have been laid throughout the country, and more are being planted daily. Casualties in the northwest in December 1994 and January 1995 almost equaled the combined total for the same period during the previous three years, and exceeded any recorded levels from the Mongkok Borei surgical unit since the Paris Peace Accords.¹

¹ International Committee of the Red Cross (ICRC), Table of Mine Casualties, Mongkol Borei, provided in February 1995. The statistics for December 1994 show thirty-two casualties, as compared to eleven in 1993, eleven in 1992 and twenty-four in 1991; the statistics for January 1995 show sixty-seven casualties as compared to thirty-seven in 1994, three in 1993, sixteen in 1992 and fifty-five in 1991.

Roughly half the country has sizeable concentrations of landmines, which claim hundreds of victims each month. Although Cambodia has some of the most fertile land in Asia, much of it is unusable because of landmines, and major roads throughout the country are periodically booby-trapped or cut, taking a serious toll on the population and economic development of the country. Cambodia, with a population of approximately eight and one half million, already has the highest percentage of physically disabled inhabitants of any country in the world. Current estimates of casualties from landmines each month have run between one hundred and 300 persons, taking into account the high likelihood of many victims never being able to reach a medical facility. Of the almost 40,000 amputees² in the country, most are civilians who were injured in the course of making their living tending their rice fields, cattle and children, or fishing, or gathering firewood or thatch. These grim statistics mean that the Cambodian conflict may be the first war in history in which landmines have claimed more victims -- combatants and noncombatants alike -- than any other weapon.³

² See "Cambodia Prime Minister Calls for Help with Mines," Reuter, February 25, 1995 (Ieng Mouly estimates amputees at 40,000); Office of International Security and Peacekeeping Operations, *The Global Landmine Crisis* (Washington D.C.: United States Department of State 1994) p. 46 (noting the ICRC estimated "at the end of the war" that Cambodia had more than 30,000 amputees and estimating that more than 300 people are killed or maimed each month).

³ For extended discussion of the extent of the impact of landmines in Cambodia, see reports by Asia Watch and Physicians for Human Rights, *Landmines in Cambodia: The Coward's War* (New York: Human Rights Watch 1991) and by The Arms Project and Physicians for Human Rights, *Landmines: A Deadly Legacy* (New York: Human Rights

All parties to the conflict have saturated areas with landmines, both as a defensive tactic to limit enemy movements, and as an offensive tactic to cause casualties by driving enemies into mines. Neither the Khmer Rouge nor the government usually maps its minefields, and both sides lay landmines indiscriminately around civilian areas such as villages, schools, wells and rice fields, as well as around military installations and encampments.

The customary laws of war, as codified in the 1977 Protocols to the Geneva Conventions, prohibit direct attacks on noncombatants and indiscriminate attacks. Situations in which landmines have been used in direct attacks on civilians in Cambodia include the use of landmines to depopulate areas and disrupt civilian food supplies, control civilian populations through controlling their access to essential survival materials such as water, food and fuel, and direct terrorist attacks on markets, towns, and other civilian targets.

Human Rights Watch believes that even where landmines are not used for the express purpose of direct attacks on civilians, their use is by definition an indiscriminate attack within the meaning of customary law. This conclusion rests on the delayed action of the weapon, because its impact cannot be limited nor directed at a specific military objective.⁴ Landmines remain lethal for years and blind to whether the foot that detonates them belongs to a soldier or a child. They can never satisfy the rule of customary law that the military utility of a weapon outweigh its humanitarian costs, either in terms of each particular use or in terms of the aggregate military advantage compared to the aggregate humanitarian cost over time. For these reasons, Human Rights Watch advocates a total ban, not only on the use of antipersonnel landmines, but also on the manufacture, export and stockpiling of antipersonnel landmines as well. A coalition of Cambodian NGOs have created the Cambodian Campaign to Ban Landmines, and thus far have collected 280,000 signatures on a petition calling for a ban.

KHMER ROUGE USE OF MINES

Mines remain a basic weapon of war for the Khmer Rouge, along with other devices that pose serious long-term risk of civilian injuries, such as sharpened and poisoned sticks. A recent radio broadcast exhorted peasants to "continue to establish networks of stakes or mines everywhere" and to "excavate stake pits, and plant poisonous stakes at passes of geographical importance where the enemies travel back and forth and around enemy positions."⁵

The importance the Khmer Rouge attaches to mines as a weapon is evident in its recent broadcasts lambasting U.S. efforts to train the RCAF in demining.

⁴ Article 51 of Protocol I to the Geneva Conventions defines indiscriminate attacks as those which "strike military objects and civilians or civilian objects without distinction," those which use a "method or means of combat, the effects of which cannot be limited," and those which use "a method or means of combat which cannot be directed at a specific military objective". Although Protocol I applies to conflicts of an international nature, it is a codification of preexisting customary law binding in non-international conflicts as well. See Arms Project and Physicians for Human Rights, *A Deadly Legacy* pp. 289-291.

⁵ "KR Calls on Peasants to Protect Rice Crop," (*Clandestine*) *Radio of the Provisional Government of National Union and National Salvation of Cambodia*, 1200 GMT November 19, 1994 *translated and transcribed by* FBIS-EAS-94-225, November 22, 1994.

Declaring that the gravity of Cambodia's mine problem is simply "U.S. propaganda," the party confidently announced, "Once there is peace, the mines can be defused within three months."⁶

⁶ "KR Say Only Three Months Needed to Clear Mines," *(Clandestine) Radio of the Provisional Government of National Union and National Salvation of Cambodia*, October 13, 1994 in FBIS-EAS-94-200, October 17, 1994.

Defectors report that guerrillas are usually equipped with about ten mines per man, usually Chinese-made Type-72 varieties that can be set off by close vibrations as well as direct contact. Soldiers are taught how to incorporate these mines into booby traps, most often set above the ground, but mapping is not a normal practice. A military manual used by Chinese advisers to train Khmer Rouge and other resistance fighters emphasizes the use of improvised booby-traps, often employing "over-kill" quantities of explosives for maximum physical and anti-morale effect.⁷ Although guerrillas sent to live in an area as long-term infiltrators usually know where they have laid mines, and indeed, use this knowledge to control access by peasants to forests or other natural resources, fighters on the move often forget where they laid their mines and injuries result.⁸

Mines are used tactically by the Khmer Rouge to cover retreat and to booby-trap installations that they believe enemy soldiers will occupy. The guerrilla forces generally carry fewer mines with them than do government soldiers as their military strategy calls for them to be on the move, but they have heavily mined areas on the periphery of their entrenched positions. The majority of injuries sustained by government forces in the assaults on Anlong Veng and Pailin were from tactical mines, and observers who entered Pailin with the government's troops noted the complete absence of mines within the town as evidence of a Khmer Rouge intention to return.

There have been reports on the government side of hundreds of new mine casualties since January 1995 from the fighting in Preah Vihear province. As in the previous dry season battles, mines appear to be the the main cause of deaths and injuries, both in the vicinity of Preah Vihear temple and the other main Northwestern battlefield near Anlong Veng. One Khmer Rouge defector who joined the government army and lost his leg on a scouting mission near Anlong Veng estimated five or six soldiers were being killed every day, mainly by mines.⁹

Quite apart from leaving mines at the scene of combat, the Khmer Rouge has also used mines and other explosive devices to terrorize the civilian population. The first week of March 1994, shortly after the government's military decamped from the provincial capital of Battambang, a mine exploded in the railway station,

⁷ The Arms Project and Physicians for Human Rights, *A Deadly Legacy*, p. 170.

⁸ Human Rights Watch interview, March 1994.

⁹ Seng Kimseang, "Heavy Casualties Reported in Cambodian Fighting," Reuter News Service, February 15, 1995.

injuring four civilians travelling from other provinces. Two days later, a mine was discovered in a gasoline station in the center of town; it was disarmed by a demining organization before it exploded. Had it not been disarmed, the destruction would have been substantial, as the station had large storage tanks of fuel and was located close to a school. In July 1994, two grenades linked to a single fuse and a timing device exploded under a shop in the center of Battambang, killing two persons and injuring approximately thirty others. Several days earlier, a demining organization disarmed another explosive device made of Chinese grenades and a fuse. In each of these cases, available evidence pointed to the guerrillas as the most likely perpetrators.

GOVERNMENT USE OF MINES

Government forces make extensive use of mines to guard their installations and isolate guerrilla forces from civilian supporters by mining rice paddies and the margins of forests. Like the departed Vietnamese forces, the government lays mines in heavy concentrations, and seldom maps or marks its minefields. Troops are usually heavily supplied with mines, generally of Soviet types such as the PMN/PMN-2 and POMZ-2/POMZ-2M, in addition to a wide variety of other types. Western observers estimate that the government stockpiles of mines may number over one million.¹⁰

King Sihanouk called in February 1994 for the destruction of mine stockpiles and a ban on further use of mines on the part of the government and the Khmer Rouge, but to date the RCAF has opposed relinquishing mines, and every RCAF officer interviewed by Human Rights Watch believed mines were an essential weapon. The government's own position is confused; First Prime Minister Norodom Ranariddh announced at an international donors meeting on March 11, 1994 an immediate ban on the import and laying of landmines. But there was ample evidence that the RCAF still relied heavily on landmines in the subsequent battle for Pailin. In August 1994, Ieng Mouly, the chairman of the Cambodia Mine Action Center, a governmental demining agency, announced the government's intention to legislate a ban on the use of landmines. Mouly, who gave no timetable for this legislation, said that in the meantime the government proposed to take interim steps, including criminalizing the re-mining of demining sites, ensuring that new minefields are marked, and banning sales of mines to civilians.¹¹ In January 1995,

¹⁰ Human Rights Watch interview, Phnom Penh, August 1994.

¹¹ "Mouly Reveals Plan to Outlaw Mines," *Phnom Penh Post*, August 26 - September

the Cambodian delegation to the governmental experts meeting in preparation for the Review Conference of the Conventional Weapons Convention and its Landmines Protocol called for a comprehensive ban on landmines.

In the course of their battles along Route 10 from Pailin, government soldiers deployed new mines extensively, in some cases re-mining areas that had been painstakingly cleared by humanitarian demining organizations. Mine belts were laid in the vicinity of Boeung Ampil, where thousands of internally displaced Cambodians had made encampments by the side of the road, and in gardens and paths of other villages lining Route 10 to Pailin, including Snoeung and S'dau communes. Deminers who subsequently cleared these areas again noted that the mines laid were fresh, and most likely came from government stockpiles. It is not possible, however, to verify with certainty whether all new mines were laid by the government, as both warring parties frequently employ the same mine types.

RISING MINE CASUALTIES AND FRESH DISPLACEMENT

According to the UNHCR, the number of people who were homeless because of the war stood at more than 150,00 at the end of 1994; this figure did not reflect the many more people who had been displaced and returned home, and possibly were displaced again, amounting to literally hundreds of thousands of incidents.¹² Each time villagers are displaced because of war, there is always a danger when they return of casualties from landmines and unexploded ordnance.

The beginning of the 1994-1995 dry season has shown a sharp increase in mine casualties over any year since 1991. The ICRC surgical hospital in Mongkol Borei recorded thirty-two mine casualties in December 1994, compared to a previous high of twenty-four in December 1991, and sixty-seven casualties in January 1995, as compared to fifty-five three years earlier. During the peacekeeping years, casualties for these months ranged between three and sixteen persons.¹³ This continues the trend from the end of the 1993-1994 dry season, when casualties in the vicinity of Route 10 in Battambang and contested areas of Banteay Meanchey province also climbed sharply higher.

The 1994 campaign for Pailin had displaced almost 30,000 villagers from Rattanak Mondol district and 6,500 residents of Banan district by April and May 1994. As the planting season for rice and garden crops wore on, the government encouraged displaced persons to return to their homes through television announcements. Although demining groups urged the government to delay the return of villagers for a short while so that re-marking of minefields and removal of new mines could be accomplished, the pressure to return the dislocated before planting and ploughing season had gone was high, both to ensure they would be able to cultivate the land they abandoned, and to move them off of land on which they were squatting. Villagers interviewed by Human Rights Watch reported that they began returning, despite fears that their homes might be mined, because the message from local officials was that emergency rice assistance would only be supplied in their home villages. Heads of households also wished to return to try to prevent looting of their houses.

¹² Human Rights Watch telephone interview, February 1995.

¹³ ICRC, Table of Mine Casualties, Mongkol Borei, provided in February 1995.

The displaced started flowing back in late May, before clearance was complete. Various demining organizations worked intensively to replace minefield markings and clear unexploded ordnance from the area. Mine injuries recorded in June and July were nevertheless markedly higher than in the previous two years. World Vision, a nongovernmental agency providing health services in Rattanak Mondol, counted nineteen mine injuries, including five deaths, during the months of June and July. Villagers interviewed in February 1995 reported that there had been forty-one mine casualties from S'dau and Boeng Ampil in Rattanak Mondol between June and September 1994. Of those forty-one, twenty-one had died because they either could not get to a hospital or could not afford to pay for medical care.¹⁴ One demining supervisor reported that at least twenty new mined areas had been discovered since the offensive, although many of these were small, in some cases amounting to only a mine or two randomly planted between homes, on paths or in gardens.¹⁵

This cycle of premature return may be repeated. Villagers who had fled S'dau and Boeung Ampil in December 1994 and January 1995 had suffered repeated prior displacement. They were afraid to return because of landmines, yet reported that commune leaders had warned that if they did not return to their homes by February 15, 1995, their names would be cut from the list of those who received humanitarian aid.¹⁶ That food assistance is all they will have to survive on, because the poor harvest and their repeated displacements have left them with no food stores. All along Route 10, displaced villagers complained of government corruption in its distribution, ranging from "fees" of 100 riel (\$.04) to get one's

¹⁴ Human Rights Watch interviews, Rattanak Mondol, Battambang, February 1995.

¹⁵ Human Rights Watch interview, Battambang provincial town, August 1994.

¹⁶ Human Rights Watch interviews, Rattanak Mondol, Battambang, February 1995.

name on the list for assistance, to a cut of five kilograms of rice to government officials for every fifteen kilogram distribution.¹⁷

In Banteay Meanchey province, an estimated 15,000 villagers were displaced by mid-year, most from Serey Sophorn and Thmar Pouk districts. Mine casualties recorded by the ICRC hospital surgical unit in that province rose significantly in the first six months of 1994 over the same period in 1993; the figures more than doubled for the months of April through July. Deminers interviewed by Human Rights Watch in August reported that there was little evidence of new mine-laying by the Khmer Rouge during the 1994 dry season in the areas under its control in the southern part of Samrong, but that new mine casualties were appearing from belts laid on access paths on the north bank of the local river, which is under government control. About a dozen mines were discovered in a two-kilometer stretch near Samrong commune, and deminers knew of one man who had lost his life and another woman who lost her legs in this area since the fighting. Displaced residents of Samrong reported that many new mines had been laid in their rice fields and gardens, only a few hundred meters from their homes in Kandal and Thming Trei village. A fifteen-year-old Kandal village boy lost his leg on May 20 to a mine as he was feeding his animals in a rice field that was apparently safe prior to the fighting. People displaced from Samrong were also reluctant to return in July and August 1994, despite government encouragement, as the area was still sandwiched between Khmer Rouge positions and the RCAF, and subject to frequent shelling.

DEMINING: EFFORTS AND OBSTACLES

¹⁷ Human Rights Watch interview, February 1995.

The main demining organization is the Cambodia Mine Action Center or CMAC, a state agency of the Cambodian government that relies on foreign contributions for the bulk of its budget. It employs approximately 1,500 trained Cambodian deminers, most of whom are demobilized soldiers, and coordinates demining, mine marking and mine education activities with other nongovernmental organizations. It presently fields forty-one platoons of approximately thirty deminers each, sixteen mine-marking teams, ten explosive ordnance disposal teams, and two mobile mine awareness teams. The majority of demining teams are currently deployed in the heavily-mined northwest, with nineteen teams in the area of Sisophon, five in Battambang, five in Pursat, and another dozen teams covering the central Kampot/Kompong Speu area.¹⁸ From November 1993 to November 1994, CMAC cleared 7.5 million square meters of land, and is expecting to exceed that rate in the next year of operation.

CMAC's priority is humanitarian demining, that is, clearing land for the resettlement of refugees and displaced persons and for cultivation. As a government entity it frequently comes under pressure to clear land for military or commercial objectives, pressures that it has so far resisted. A greater problem is the refusal of the RCAF to allow the clearance of minefields thought to have strategic value, even when they are located near civilians. During the UNTAC period, deminers learned through unhappy experience that areas cleared in contested zones could swiftly be remined; as a consequence, CMAC has tried to choose sites away from battlefields. The experience of the settlements along Route 10 in Battambang shows that avoidance of conflict areas is not always possible. Although Route 10 is the main road to Pailin from the provincial capital, and thus the scene of continual shelling and skirmishes, it is also the main artery through some of the most fertile and populated land in Battambang province. It is an area where thousands of Cambodia's internally displaced live. Deminers told of villagers cultivating land as soon as it was cleared; indeed, prospective cultivators follow almost on the heels of the demining crews. Although CMAC's large operations along Route 10 were displaced in April 1994 due to the fighting in Pailin, the agency returned rapidly to the area despite continuing insecurity once civilians began to return to their homes.

¹⁸ Correspondence, CMAC to Human Rights Watch, February 2, 1995.

Although Cambodian deminers are paid very little in comparison with commercial deminers in the rest of the world, their pay at \$100 per month is astronomically higher than active-duty soldiers, who earn \$15 or \$20 in those months when they actually receive their pay. Deminers also receive free food, health care, and disability and life insurance protection. This difference in income and lifestyle has sometimes caused tensions between platoons of deminers and soldiers in the vicinity, and there have been a few instances of government soldiers killing or assaulting deminers, shooting into or planting explosives in clearance zones and otherwise harassing deminers. There have also been several cases of Khmer Rouge attacks on or kidnapping of CMAC deminers. In Pursat province, three CMAC deminers were abducted by Khmer Rouge guerrillas in mid-1993, but released within two days, minus their vehicles and equipment. In December 1993, Khmer Rouge opened fire on another mine clearance team, wounding at least eleven persons.¹⁹ In the April build-up to the battle for Pailin, Khmer Rouge guerrillas questioned displaced persons for information on the locations of deminers. Kidnapping threats and mortar fire also limited the activities of a French quasi-governmental enterprise contracted to demine the area of the historic Angkor monuments in Siem Reap in March 1994. The leader of *Companie Francaise d'Assistance Spécialisée* (known as COFRAS) was told by district police in Svay Chek and a local government military commander of plans by Khmer Rouge guerrillas to kidnap deminers and steal their vehicles. The group had to suspend plans to demine in Svay Chek and Banteay Srei.

Such problems, however, appear not to be the result of either of the warring parties trying to sabotage demining efforts, but rather of banditry or tensions in particular localities where either side is conducting military operations. The chief technical adviser for CMAC, Lieutenant Colonel Léveillé, describes the impact of ongoing hostilities on demining operations as limited, with the exception of the April 1994 Pailin offensive, which caused CMAC to withdraw from Sisophon and Battambang until late June 1994. The Mines Advisory Group, a nongovernmental demining organization, remained in the area during the offensive without incident, and was thus positioned to save lives through explosive ordnance disposal as displaced villagers began returning down Route 10.

But the most serious threat to demining efforts in Cambodia remains the difficulty of securing substantial financial commitments from the international

¹⁹ Eric Stover, Allen S. Keller, James Cobey, Sam Sopheap, "The Medical and Social Consequences of Land Mines in Cambodia," *The Journal of the American Medical Association*, vol. 272, August 3, 1994.

community to sustain an intensive effort over a period of years. CMAC requires approximately \$10 million each year to field forty platoons of deminers, and projects a five-to eight-year minimum operations period to begin to bring the situation under control. In October 1993, CMAC nearly stopped operating as it made the transition from UNTAC to independent status because of a lack of funds and arrangements to transfer equipment and foreign advisers. Publicity and new pledges saved the program, but as of February 1995, CMAC still lacked the \$8 million necessary to operate through its proposed cycle ending April 1996. No financial or logistical arrangements have been made to sustain operations beyond that time.

VIII. FOREIGN SUPPORT FOR THE KHMER ROUGE

The Khmer Rouge, who during their time in power were one of the most xenophobic and isolated governments, enjoyed foreign support once they were ousted from power by the invading Vietnamese military. The party retained Cambodia's seat at the U.N. until 1982, when the seat was held in the name of a coalition of resistance forces, in which the Khmer Rouge was the senior partner. Sustained by humanitarian aid it siphoned from refugee encampments, and direct military aid from countries who wished to check Vietnam's strength, the Khmer Rouge regained small but strategic areas within Cambodia that provided an independent economic base in timber and gem trading.

Although the foreign governments who sustained the Khmer Rouge now publicly disavow support for the guerrilla movement, the Khmer Rouge continues to depend on foreign support to sustain its military activities, in the form of logistical assistance and cross-border trade. The principal Khmer Rouge strongholds in Cambodia are located near Thai border regions in the north and west of Cambodia; these base areas supply other regions of Khmer Rouge control and infiltration.

China was the Khmer Rouge's chief patron and provider of weaponry until it formally relinquished that role by signing the 1991 Paris Peace Accords. Beijing hosted military training camps for the Khmer Rouge from 1979 to at least 1986 and perhaps later, and stationed military advisers with Khmer Rouge troops as late as 1990.¹ There have been no more recent sightings of Chinese advisers reported,² although some analysts believe that China continues to hold money in trust for the

¹ Human Rights Watch interviews, Phnom Penh and Bangkok, February - August 1994.

² Among the booty that government troops found when they entered Anlong Veng was a Chinese-English dictionary.

Khmer Rouge and may at some time again become a source of arms.³ China's official policy towards Cambodia is to continue to encourage through diplomatic means "national reconciliation" between the government and the Khmer Rouge.

³ Human Rights Watch interviews, Bangkok, Phnom Penh and Washington, August 1994 - January 1995. Interviews with Khmer Rouge defectors have revealed no continuing contact with Chinese advisers.

Thailand, always the main conduit of materials to the Khmer Rouge, has since 1991 superseded China as the most important source of foreign support for the guerrillas. The warmth of the relationship was underscored when Buddhist peace marchers were taken captive briefly by Khmer Rouge soldiers in Battambang province on April 30, 1994. One of their number, an ethnic Chinese, was given very harsh treatment by the soldiers (who apparently mistook him for an ethnic Vietnamese) until they discovered the man was a Thai citizen. At that point, the guerrillas' attitude completely altered. Apologizing for their hostility, they explained that the Thais were their only remaining foreign friends.⁴

It is the state of friendship that has come under international scrutiny now that an elected, internationally recognized government is in place, and the Khmer Rouge have been reduced to outlaw status. Thailand's role as the funnel for Chinese aid to the Khmer Rouge was in harmony with Thailand's security concerns regarding the Vietnamese invasion of Cambodia. The close logistical relations of the Thai military with the Khmer Rouge over more than a decade of war spawned economic relations as well. Although the peace accords transformed the Thai government's official posture towards the Khmer Rouge, leading ultimately to the recognition of the Royal Government of Cambodia as the sole sovereign authority of Cambodia, the Thai military has been slow to divorce itself from its historic partner, and the extent of such a divorce is still very debatable.

Although the Khmer Rouge are reputed to have substantial financial reserves, there is little doubt that the guerrillas rely on the ability to trade and move across the Thai border to sustain their activities. The party's policies regarding respect for fundamental human rights appear not to have changed since the time it presided over the deaths of a million Cambodians; indeed, although the party reverted to tactics aimed at winning "hearts and minds" among the peasantry during the 1980s, those tactics appear to have been abandoned for an all-out campaign of terror against civilians as much as hostilities directed at enemy soldiers. The dedication of the Khmer Rouge to warfare, particularly to the destruction of agricultural land and infrastructure necessary to civilian life, poses an immense challenge to Cambodia's rehabilitation and economic development. To the extent that Thailand and other foreign governments sustain the ability of the Khmer Rouge to carry out its war against civilians in Cambodia, they are complicit in these abuses.

⁴ Human Rights Watch interview, Phnom Penh, August 1994.

Concerns regarding Thailand and the Khmer Rouge center on four issues: the transfer of weapons to the Khmer Rouge, the provision of logistical support, the tolerance of business relations with the Khmer Rouge, and the treatment of Cambodian refugees. In each of these areas, the Thai military has cooperated with the Khmer Rouge since the peace accords, although international criticism, particularly from the U.S. and Australia, has caused it to disavow passing any direct military support. There is no evidence, however, that Thai policies have changed with respect to tolerating business relations with the Khmer Rouge, nor with respect to the summary repatriation of Cambodian refugees.

WEAPONS SUPPLY

Following the Vietnamese invasion of Cambodia in 1979, almost 100,000 Cambodians, many of them swept up before the retreating Khmer Rouge army, poured across the Thai border seeking refuge. Thailand initially forced refugees back into the Cambodian jungles through minefields, but following an international outcry, ceased this *refoulement* and allowed the delivery of international humanitarian assistance. The border population quickly swelled to almost 300,000, the vast majority gathered in encampments controlled by the Khmer Rouge and the nascent non-communist resistance factions. The Thai military directed the distribution of humanitarian aid usually through authorities with the military factions. The resistance armies literally fed off of the refugee populations under their control, and gradually gained strength. This development was not unforeseen by donor nations who opposed Vietnam's occupation of Cambodia, and wished to nurture a military buffer between the Vietnamese army and Thailand.

Thailand took on a similar role with regard to internationally supplied arms for the resistance factions, hosting major supply depots and acting as distributor. Large-volume shipments of weapons from China used to come in at the Sattahip Port in Bangkok, and later weapons shipments from other countries, including Singapore.

The shipments arriving at Sattahip would be distributed by the Thai military to major weapons storehouses, with weapons for the Khmer Rouge going to different storage centers than those for the non-communist factions. According to military sources, warehouses were situated for easy access to strategic resistance bases just inside Cambodia. One such logistics base was located near Aranyaprathet, to supply the non-communist KPNLAF; another was located in Surin, to supply FUNCINPEC. The Khmer Rouge benefited from various storage bases as well. The guerrillas were given a storage facility near Aranyaprathet, to

supply the Phnom Malai region and from there the Khmer Rouge central front (covering Battambang, Kompong Chhnang, Pursat and Phnom Penh), commanded by Son Sen. Another was located near the sea at Trat. This base supplied the southern front (provinces such as Kompong Speu, Takeo, and Kompong Som) under the command of Nuon Chea. Another base at Ubon supplied arms to Ta Mok's headquarters at Anlong Veng, and from there to the northern front (provinces including Preah Vihear, Kompong Thom, Siem Reap, and Kompong Cham). Some analysts estimated that there were as many as fifteen to twenty such weapons depots established in Thailand, and based on satellite surveillance of the border, many assumed that a substantial amount of the weapons delivered by foreign suppliers have not been transferred to the Khmer Rouge.⁵

The Thais profited handsomely from their role as a conduit. The non-communist groups reportedly had to pay as much as \$15,000 per truckload of arms for delivery and armed escort from Sattahip to Surin, but these bills were usually covered by the Chinese Embassy in Bangkok. The Thai military also took a hefty cut of the arms delivered -- according to one source, as high as 30 percent of what China sent for the use of the Khmer Rouge.⁶ But even with this rake-off, the quantities of arms supplied to the Khmer Rouge were in the words of one military analyst, "astronomical."⁷

The Khmer Rouge arsenal is overwhelmingly of Chinese manufacture, with a smattering of weapons from other sources, either bought on the arms market or provided earlier by their former non-communist allies. A sample of weapons captured by the RCAF at Anlong Veng included 200 Chinese semi-automatic rifles,

⁵ Human Rights Watch interviews, Bangkok and Phnom Penh, March 1994.

⁶ Human Rights Watch interview, Phnom Penh, February 1994. Other sources reported figures between 15 and 25 percent.

⁷ Human Rights Watch interview, Bangkok, March 1994.

over one hundred AK-47s, fifty to sixty B-40 rocket launchers, 85mm Chinese-made field guns, three recoilless rifles, about forty Chinese anti-tank mines, and a half-dozen mortars, ranging in size from 60mm to 120mm.⁸

The non-communist factions received a more limited supply of Chinese-made weapons and faced perennial delivery problems and shortages. Generally, Thailand would deliver Chinese arms in lump amounts to these groups, sometimes holding back deliveries for political reasons. In the early to middle 1980s, a group of Asian and Western patrons of the non-communist groups created a "working group" and used it to plan strategy and smooth deliveries of military supplies to the non-communists. In the later 1980s, the non-communist resistance began to receive weapons provided by Singaporean licensees, such as U.S. model M-16 rifles that according to one source were most likely manufactured by the quasi-governmental enterprise Chartered Industries, as well as Carl-Gustav anti-tank rockets. There are also reports of sporadic weapons shipments from France and North Korea. Nevertheless, there were frequent instances of non-communist forces trading or selling their weapons to their Khmer Rouge allies, either to return supplies they had borrowed in the meantime, or simply out of corruption.

⁸ Human Rights Watch interview, Phnom Penh, March 1994.

In March 1994, there was concern that German 69mm Armbrust short-range anti-tank missiles, once provided to the resistance forces, had wound up in the hands of the Khmer Rouge, who were firing them against the RCAF during fighting around Anlong Veng. No tangible evidence was recovered to confirm this, though officers formerly with the resistance claimed to have recognized the distinctive rockets when they were used in battle. According to a senior RCAF commander formerly allied with the non-communist resistance, the suppliers had asked the resistance to return these weapons before the elections.⁹ Armbrusts have since been purchased by both sides to the conflict and are available from arms brokers in Cambodia.¹⁰

In 1985, the Khmer Rouge began to take large amounts of arms from the warehouses in Thailand into Cambodia. Over the next seven years, they constructed caches, both large and small, throughout territory they occupied in Cambodia. One high-ranking Khmer Rouge commander who defected said that once UNTAC began monitoring the Thai-Cambodian border in 1992, it became more problematic for the Khmer Rouge to bring new supplies over, but this posed no great difficulty as "tremendous" amounts of arms had been stockpiled by the party in Cambodia. Another defector who belonged to Ta Mok's security "police," however, reported that transfers from Thailand to Ta Mok's base at Anlong Veng continued all through the 1991-1992 dry season.¹¹ Diplomatic sources reported that heavy weapons were

⁹ Human Rights Watch interview, Cambodia, March 1994.

¹⁰ Human Rights Watch interview, Cambodia, August 1994.

¹¹ Stephen R. Heder, "The *Partie* of Democratic Kampuchea During the Transitional Period: Evidence from 'Self-Demobilisers'" , Paper Delivered at the 46th Annual Meeting of the Association of Asian Studies, Boston, Massachusetts, March 24-27, 1994, p.20.

trucked over the Thai border to the Khmer Rouge until shortly before the May 1993 elections.¹²

¹² Human Rights Watch interview, Bangkok, March 1994.

Major caches based in the jungles near Pailin and Anlong Veng were designed to supply field headquarters; Khmer Rouge divisions in the field and political infiltration cells would design smaller caches for their personal resupply. These caches consisted mainly of small arms and ammunition buried in shallow pits under the soil. One officer familiar with these caches explained that arms would be delivered sealed in heavy plastic. The most common type of rocket launcher, an RPG-2, for example, would come with the rocket and the launcher each sealed in plastic wrapping, airtight against humidity and capable of being stored for approximately five years, even through the rainy seasons, without heavy grease. Soldiers could use a common field knife to rip open the wrapping, and the weapon would be ready for use. Recoilless rifles would also be stored this way, with the middle section sealed in plastic and protected for approximately five years.¹³ Other sources reported that weapons would sometimes also be sealed in heavy grease.¹⁴ On the other hand, heavy artillery would usually be kept moving in the jungle, although the Khmer Rouge sometimes housed it in temporary installations.¹⁵

¹³ Human Rights Watch interview, Phnom Penh, March 1994.

¹⁴ Human Rights Watch interview, Phnom Penh, March 1994.

¹⁵ Human Rights Watch interviews, March 1994 and August 1994.

The existence of the Thai warehouses came to light when in the early morning hours of December 7, 1993, Thai police in Chantaburi province intercepted a ten-wheel truck escorted by two pick-up trucks headed towards the Cambodian border. Hidden under sacks of rice, they found a mixture of Chinese and U.S.-type weapons, including three machine guns, forty-eight anti-tank rockets, ten RPG-2 launchers, 990 hand grenades, 103 120mm mortar rounds, 490 rocket-propelled grenades, and ninety rolls of bomb fuse. The convoy was manned by five Thais, a Cambodian named "Comrade Rit,"¹⁶ and a Thai Special Forces master sergeant. The truck driver indicated he was delivering the arms to a point on the Cambodian border to the northwest of Pailin that was under Khmer Rouge control, where Khmer Rouge soldiers took charge of the arms. He said he had already made several deliveries that night. According to one newspaper, the members of the convoy showed police a permit allegedly issued by a local military commander to allow the weapons delivery to proceed to the border.¹⁷

That afternoon the driver of the truck led Thai police, accompanied by reporters, to the source of the weapons delivery. It was a farm at Ban Tanot, Tambon Thaluang, Pongnamron district, Chantaburi province that included twelve warehouses measuring ten by forty meters, and an operations office, equipped with radios and a schedule posting the December deliveries. The warehouse complex was guarded by Cambodians identified as members of the Khmer Rouge, who lived there with their families. The storerooms were crammed with enough arms to fill 300 similar truckloads -- approximately 1,500 tons, or in the words of one police officer, "enough to defend a small country."¹⁸ According to one intelligence report,

¹⁶ Also identified in some news reports as "Comrade Kit".

¹⁷ Korkhet Chantaloetlak, "Border Police Dig Up an Explosive Secret," *The Nation* (Bangkok), December 12, 1993, p. A7.

¹⁸ Pranee Srithongnoy, "Thai Army Denies Involvement in Arms Supplies to Khmer Rouge" United Press International, December 8, 1993.

the arsenal included 1.5 million rounds of 7.62 ammunition, approximately 200 rounds of 12.7 mm ammunition, 10,000 mortar rounds, 5,000 rocket-propelled grenade rounds, ten 105mm howitzers, two 130mm howitzers, and eighty-two rocket launchers with 500 rounds of ammunition. The mainly Chinese-made weapons were in mint condition, although they had serial numbers that showed they had been stored for some time.

In the middle of the police raid, a military officer appeared and held a private conference with the police lieutenant directing the raid. The police and "Comrade Rit" had already told reporters that the weapons belonged to the Khmer Rouge; however, the following day the police announced that the arsenal actually was the property of the Royal Thai Army. Thailand's Commander-in-Chief Gen. Wimon Wongwanich immediately denied that the army was involved in storing or transporting arms for the Khmer Rouge, though he clarified that the weapons cache had been there for eight years and was from a "third country" that previously supplied the Cambodian resistance. Foreign Minister Prasong Soonsiri on a visit to Phnom Penh shortly after the discovery announced that the weapons would be returned if the "suppliers" asked for them, but General Wimon insisted the weapons would remain in Thai hands.¹⁹ The "third country" is widely understood to be China, which according to diplomatic sources has no interest in demanding the return of the weapons. The Cambodian government claimed the weapons as its property, but the Thai military did not recognize this claim. It has not made public the ultimate disposition of the cache.

Military analysts interviewed by Human Rights Watch in March and August of 1994 reported that arms transfers from Thai soil since the December police raid on the Chantaburi warehouse have not been large. Khmer Rouge defectors have been quoted as saying that in the latter half of 1994 the weapons supply from Thailand had substantially diminished, if not entirely disappeared, and that the commander Ta Mok was heard to complain of having to spend "huge amounts" to gain access to Khmer Rouge stocks of Chinese weapons in Thailand.²⁰ At least one diplomatic source said there was evidence of an effort in early 1994 by

¹⁹ "Wimon assails media 'lies'" *The Nation* (Bangkok), December 13, 1993, p.1.

²⁰ Tom Fawthrop, "Thai Military Support for KR 'Far From Over,'" *Phnom Penh Post*, December 30, 1994-January 12, 1995, p. 5 reprinted in FBIS-EAS-95-002, January 4, 1995. See also a report of Thai police intercepting a truckload of weapons along the Ta Phraya-Buriram highway that follows the Cambodian border, "Rockets, Weapons Seized on Cambodian Border," *Daily News*, October 25, 1994 translated and reprinted in FBIS-EAS-94-245, December 21, 1994.

Thai military figures to complete transfers of weapons stockpiles to the Cambodian side of the border, and that the December 1993 deliveries had likely been part of that effort as well. Opinions vary as to whether the transfers were authorized or tacitly condoned at high levels of the military or whether they were an unauthorized local initiative of the special forces given oversight of the arsenal. Few, however, believe the Thai military's contention that the shipment was arranged by "smugglers" who duped the military personnel directly responsible for the warehouse.

The dwindling of cross-border shipments is likely to have minimal effect on the Khmer Rouge, at least in the short run. Taking into account the deliveries over the last eight years and the Khmer Rouge's low rates of expenditure, most sources agreed they were well supplied for the foreseeable future. The most conservative estimates allow for two or three years of all-out continuous battles, and an almost indefinite period at their present level of low-intensity guerrilla warfare.

Ironically, an alternative source of arms appears to be the Cambodian government forces themselves. A Khmer Rouge communiqué dated May 5, 1994, put it starkly:

What our successes in Anlong Veng and Pailin have clearly demonstrated is that we can continue the struggle under the current circumstances, that is without external support. It is similar to the situation in 1973, after the peace agreement signed by the Vietnamese. At that time we were isolated from external support. We had to rely on the people and we had to get our ammunition from the enemy.²¹

According to the *Far Eastern Economic Review*, Western diplomats concluded that more than half the ammunition sent by the government to the Pailin battlefield was not expended in fighting yet is missing from the stockpiles.²² Human Rights Watch independently received unconfirmed reports that senior government officials had allegedly sold a portion of the supplies earmarked for the Pailin front.²³ A senior Cambodian commander told Human Rights Watch that the RCAF had no reliable system for controlling weapons issued to its soldiers, and that

²¹ Nate Thayer, "One Way Out," *Far Eastern Economic Review*, June 2, 1994, p. 15.

²² Ibid.

²³ Human Rights Watch interview, February 1994.

his troops could not be trusted either to accurately report the weapons they had captured from the Khmer Rouge or to refrain from selling their weapons to the enemy.²⁴ In his opinion, training and professionalization of the army was key to halting these practices. Human Rights Watch took note of the lively arms trade operating in 1994 in both the northwest and Phnom Penh, where a late 1994 government survey has logged almost 900,000 unregistered weapons in the hands of the general population.²⁵ Senior officials of the Cambodian Ministry of Defense strongly deny allegations of corruption.²⁶ Nevertheless, the government did see fit to issue a circular on "Cutting Wastage and Saving Expenditure" that specifically prohibited the military from selling its weapons.²⁷

LOGISTICAL SUPPORT

In addition to the stockpiling and delivery of weapons to the Khmer Rouge and other resistance groups, Thailand provided a variety of forms of logistical support. These included allowing the guerrillas to launch attacks on their opponents from positions in Thailand, allowing resistance fighters to take sanctuary in Thai territory, providing transportation for troops and weapons through Thailand to

²⁴ Human Rights Watch interview, March 1994.

²⁵ "Official on Number of Weapons in Phnom Penh," *Reaksmei Kampuchea*, October 26, 1994, pp. 1, 5, translated and reprinted by FBIS-EAS-94-207, October 26, 1994.

²⁶ Human Rights Watch interview, December 1994.

²⁷ "Cambodia Targets Military in Wastage Campaign," Reuter News Agency, December 1, 1994.

various points on the Cambodian border, and facilitating travel and residence for Khmer Rouge leaders in Thailand.

The Thai military set up special units in the 1980s to handle intelligence and logistical relations between the various resistance factions and the regional military "taskforce" units at the border. Unit 838 was assigned to coordinate relations with the Khmer Rouge, and its parent, Special Warfare Unit 315, channelled arms supplies, logistical support and intelligence to the Khmer Rouge. A few months after the elections, the Thai Supreme Command began quietly to relocate to other positions regular officers with Unit 838 known to have business interests with Cambodians. Some were transferred to other parts of Thailand, but others, especially locally-recruited members, appear only to have been reabsorbed by the regional taskforces or Special Warfare Unit 315, from which they were drawn. Although Thai military spokespersons claim that 838 has disappeared, in March and April 1994 some of its functions appeared to have been taken up again by special forces. These special forces have assumed responsibility for liaison with the Khmer Rouge, arranging their passage over the Thai border with Royal Thai Army border units, and reportedly coordinating the return of refugees who fled Pailin to Khmer Rouge-held territory.²⁸

²⁸ Sutin Wannabovorn, "Thai Unit With Guerrilla Links Said to Still Exist," Reuter News Agency, March 30, 1994; Sutin Wannabovorn, "Covert Thai Unit 838 Resurfaces," *Phnom Penh Post*, April 8-21, 1994.

The Thai government has repeatedly asserted that it recognizes the Royal Cambodian government and does not support the Khmer Rouge, yet Cambodian officials on numerous occasions have accused Thailand of allowing the Khmer Rouge to launch attacks on Cambodia from Thai soil. In some cases, these accusations appear to be justified. Military analysts concur that it is more likely that the Khmer Rouge attacked the Preah Vihear temple in June 1993 from the accessible Thai side of the border, rather than scaling the cliffs on the Cambodian side, and it was reported that Thai troops provided food, medical supplies and fuel to the guerrillas after their conquest.²⁹ There is also evidence that Khmer Rouge troops launched attacks on the border district of Ampil in 1993 and 1994 from the Thai side, and possibly some of the numerous artillery strikes on Poipet.

Some analysts suggest that the Thai border forces are limited in their ability to prevent these incursions without involving themselves in battle with the Khmer Rouge. But similar concerns do not seem to pertain to confrontations with the Cambodian government's forces. Thai border patrol police turned back a small unit of government soldiers in May 1994.³⁰ To the anger of the Cambodian government, the Thai military instituted a "warning shot" policy in September 1993, and has since fired live ammunition at government positions in Cambodia as a

²⁹ Philip Shenon, "Thai Army Hand in Glove with Pol Pot," *The Guardian* (London), December 23, 1993 (reprinted from *The New York Times*). The Preah Vihear temple was once claimed by Thailand, but a 1954 World Court decision ruled in favor of Cambodia's title.

³⁰ "P.Penh Troops Cross Border During Battle," *The Nation*, May 8, 1994.

response to stray rockets crossing the border during fights between the warring Cambodian armies.³¹

³¹ Agence France-Presse, "P.Penh Police Say Thais Shelled Wrong Base," p. A5, *The Nation*, April 16, 1994 (five Cambodian police were injured when Burapa Task Force fired eight mortar rounds into Poipet district, in response to a stray rocket that destroyed a house and injured a twelve-year-old girl in Thailand).

Thai forces have evacuated Khmer Rouge fighters and civilians through Thailand, relocating them to areas of Khmer Rouge control elsewhere in Cambodia. The government attack on Phnom Chat consisted of a three-day artillery barrage, as Thai aircraft flew overhead in apparent surveillance.³² A ceasefire was negotiated by the opposing sides to allow for evacuation. Thai trucks and Thai drivers arrived at the Khmer Rouge base, which is situated at the summit of the hill just at the Thai-Cambodian borderline, and took aboard between 400 and 500 guerrillas and about 1,000 of their relatives. The soldiers were ordered to surrender their arms, which were loaded onto a separate truck. The Thais then transported the civilians first to the former Site 2 camp in Thailand, and then south towards the Khmer Rouge base at Phnom Malai. The soldiers were also taken through Thailand towards Phnom Malai. The Thais returned the arms to the fighters as they crossed the border back into Cambodia. When the government troops entered Phnom Chat, the Khmer Rouge had removed all weapons other than a few small arms.³³

At Anlong Veng, evidence suggests that approximately 1,000 Khmer Rouge fighters dispersed along the Dong Rek mountain escarpment, on the Cambodian side of the border. There were a number of reports that as many as 3,000 armed militia members fled ahead of the troops to O'Trao in Thailand, but later visitors to O'Trao did not report seeing a Khmer Rouge population there.³⁴

The policy of logistical cooperation, however, appears finally to have begun to change. Although the commander-in-chief of the Royal Thai Army, Gen. Wimon Wongwanich is reported to have directed the Thai military to have no contact with the Khmer Rouge as early as 1993, there is little doubt that military on

³² Human Rights Watch interview, Phnom Penh, March 1994.

³³ Human Rights Watch interview, Phnom Penh, March 1994.

³⁴ Human Rights Watch interview, Phnom Penh, March 1994.

the border maintained close and friendly relations. As First Army Commander Lt. Gen. Chettha Thanacharo explained, "Actually, we are trying not to interfere with the Khmer Rouge. We get along fine, but people want us to become enemies."³⁵ But towards the end of 1994, possibly in response to the alleged Khmer Rouge massacre of Thai logging company employees, and possibly in response to international and Cambodian pressure, the Thai government began to move more seriously towards enforcing the restriction on official contacts.

³⁵ Pinyanat Worasiri and Uaiphon Taechutrakun, "First Army Commander on Cambodia Policy," *Athit*, July 15-21, 1994 pp. 17-21 *translated and reprinted by* FBIS-EAS-94-164, August 24, 1994.

In July 1994, the Royal Thai Army's Supreme Command sent an order to all border units emphasizing the policy of no direct links with the Khmer Rouge. In October 1994, it was reported that a meeting of the Thai National Security Council chaired by Prime Minister Chuan Leekpai, had decided to cut off entry and exit through the border for the Khmer Rouge, although contracts between the Thai commercial sector and the Khmer Rouge would be respected.³⁶ Anecdotal reports of denial of access to Khmer Rouge military and dignitaries began to surface in the latter half of 1994.³⁷ According to diplomatic sources, one unit specifically asked for clarification as to whether Pol Pot would be able to travel to Bangkok for medical checks as usual, and was told no.³⁸ It is highly unlikely that all contacts have been cut, however, given Thailand's military and commercial interest in maintaining communications with the guerrilla force at its borders.

³⁶ "NSC Decides to End Contacts With Khmer Rouge," *Siam Rat* (Thailand), October 21, 1994 p. 15, *translated and reprinted in* FBIS-EAS-94-204, October 21, 1994.

³⁷ Human Rights Watch interview, Phnom Penh, August 1994; Nate Thayer, "Money Man," *The Far Eastern Economic Review*, February 9, 1995 p. 16; Gordon Fairclough, "New Frontiers," *The Far Eastern Economic Review*, January 12, 1995 pp. 14-15.

³⁸ Human Rights Watch interview, January 1995.

The Thai military closed the Chong An Ma border crossing to Preah Vihear province after the November 22, 1994 massacre of logging workers, and has decided to delay opening two other planned border crossings for loggers into areas under Khmer Rouge control.³⁹ Prime Minister Chuan Leekpai in December 1994 reiterated the policy of severing all contacts with the guerrillas to governors of the provinces bordering Cambodia.⁴⁰ Military authorities from the Thai and Cambodian governments have begun to cooperate on border issues. As of late January 1995, a Cambodian military source had reported that "some Thai people" were continuing to supply the Khmer Rouge at Preah Vihear; Gen. Nhek Bunchhay, deputy chief of the RCAF General Staff told reporters on February 13, 1995, that the government had received a guarantee from Thailand that the Thai military would not allow food supplies or war material to be channelled across the border to the guerrillas occupying the temple.⁴¹ In early February, Cambodia announced the formation of an eleven-member military commission to coordinate border issues with the Thai military, including security, illegal border crossings, smuggling and banditry.⁴² These developments point to the prospect of Thai disengagement from at least overt military support for the Khmer Rouge.

³⁹ "Wimon denies Khmer request for immediate re-opening of Chong An Ma border pass," *The Nation*, December 18, 1994; "Military on Opening Cambodian Border Crossings," *The Bangkok Post* December 24, 1994 p. 8, reprinted in FBIS-EAS-94-249, December 28, 1994.

⁴⁰ Gordon Fairclough, "New Frontiers," *The Far Eastern Economic Review*, January 12, 1995 pp. 14-15.

⁴¹ "Official: Some Thais Still Trading With KR," Agence France Presse, January 28, 1995 reprinted in FBIS-EAS-95-019, January 30, 1995; "Government to Refrain from Attacks Near Preah Vihear Temple," *National Voice of Cambodia*, GMT 0500 February 15, 1995 translated and reported by BBC Monitoring Service, February 16, 1995.

⁴² "Group Formed to Coordinate Work With Thailand," *National Radio of Cambodia*, 0500 GMT February 2, 1995 translated and reprinted in FBIS-EAS-95-023, February 3, 1995; "Thai, Cambodian Officials Confirm Creation of Coordinating Border Commission," *National Voice of Cambodia*, 1300 GMT February 14, 1995 translated and reported by BBC Monitoring Service, February 16, 1995.

FORCED REPATRIATION OF REFUGEES TO KHMER ROUGE-HELD TERRITORY

The Cambodian war has been fought just as much for control over populations as over territory. A crucial question, therefore, is Thailand's treatment of Cambodians who flee across its borders. Thailand, which has not signed the 1954 Refugee Convention or its 1967 Protocol, nevertheless sheltered some 300,000 Cambodian refugees on its soil from 1979 to 1992. Thai policy, however, was to leave most of these refugee encampments under the *de facto* control of various Cambodian resistance groups, who used these captive populations to obtain humanitarian aid and soldiers. Since the emptying of the border camps by the UNHCR during the peacekeeping mission, civilians have continued to spill into Thailand during periods of fighting. The Thai policy has been not to shelter them, but to return them to the party under whose control they lived, without evaluating them for refugee status or their preferred destination of return.

The most flagrant instance of Thailand's forcible return of civilians to Khmer Rouge-held territory occurred in March 1994, when the military forced between 25,000 and 30,000 persons who fled the Pailin area back into the malarial jungles of Phnom Malai.

Beginning March 19, 1994, tens of thousands of Cambodians, along with Thai traders and ethnic Mon gem miners, poured out of Pailin and into Ban Pakkard, Chantaburi province in what appeared to be an orderly, well-prepared exodus in advance of the government offensive. The Royal Thai Army's Chantaburi-Trat Task Force closed off access to this population to Thai civil authorities (including the governor of Chantaburi province), the Thai Red Cross, international organizations including the ICRC and the UNHCR, local and foreign nongovernmental agencies, foreign reporters and foreign diplomats. There are reports that young men who may have been soldiers, or eligible conscripts, were taken by truck by the Thai military and sent across the border at Phnom Malai.

Following a meeting in Bangkok of the National Security Council, the Ministry of Interior, the Ministry of Defense and the Foreign Ministry, Thai officials announced on March 22 that the government would coordinate repatriation of the refugees with the Cambodian government. On March 25, however, Thai soldiers began to load refugees at Ban Pakkard onto trucks, transported them about forty kilometers north to Ban Sabtari, and forced them across the border into Khmer Rouge-controlled territory. The entire population had been transferred by the next day. According to some reports, Ban Sabtari was the point chosen by "leaders," who falsely assured the community that international aid organizations were going

to help them return to their homes in Cambodia.⁴³ The Cambodian Foreign Minister swiftly condemned the action.

The area to which the refugees returned is known to be mine-infested and malarial, but no relief agencies have been able to get access. The ICRC won Thailand's agreement for a cross-border assistance program, but the Khmer Rouge did not respond to its offer of help. Smaller repatriations, also without international monitoring, have since taken place at various spots along the Thai-Cambodian border, including the return on March 31 of some 600 refugees who fled from Poipet. The UNHCR was present in April, however, when the Thai military returned 998 refugees to Boeung Trakuen in Cambodia from Ta Phraya district where they had fled a successful Khmer Rouge attack.⁴⁴

COMMERCIAL RELATIONS

The Thai government's position on the acceptability of trade with the Khmer Rouge has been equivocal. Although the National Security Council has declared that transit across the border by the Khmer Rouge is forbidden, it has decided that contracts between the Thai private sector and the Khmer Rouge will be maintained, "pending consultation with the Cambodian government."⁴⁵

The Cambodian government has licensed logging concessions to various foreign companies, including Thai companies. In some cases, the actual concessions include territory that is currently under the control of the Khmer Rouge

⁴³ November 1994 Report of the Special Representative, paragraph 44, p. 17.

⁴⁴ "Refugees Pushed Back Into Cambodia," United Press International, April 26, 1994.

⁴⁵ "NSC Decides to End Contacts With Khmer Rouge," *Siam Rat*, October 21, 1994, p. 15, translated and reprinted in FBIS-EAS-94-204, October 21, 1994.

or infiltrated by the guerrillas. Whether the actual logging concession is in government hands or not, the guerrillas often manage to extort "taxes" or "fees" as the logs pass through areas with a Khmer Rouge presence, thus ensuring that much of the logging approved by the government also subsidizes their own activities.

Cambodian government policy on logging has changed many times. The Royal Government lifted a previously imposed moratorium on timber exports to allow the export of already felled logs from October 1993 to March 1994. In April 1994, the general ban theoretically went back into effect, but the prime ministers authorized exceptions, making this practice formal policy in June 1994. At that point, proceeds from timber export licensing, which had gone into the general budget, began to flow instead directly to the Ministry of Defense, which produced concern on the part of international financial institutions. The government announced a new logging ban beginning January 1, 1995, with the export of already felled logs permitted through April 1995, but it is very probable that new cutting continues, based on the continued heavy flow of logs in the early months of 1995. The Cambodian government has so far been unable to effectively police new logging in the concessions; even the Secretary of State for environment, in praising the government's latest logging ban, admitted that "enforcement of that policy is a different story."⁴⁶

It is frequently said that the Thai army is incapable of completely sealing its 800-mile border with Cambodia. This statement is incontrovertible, but it completely ignores that much of the cross-border trade is large-scale logging and gem mining, supported by networks of roads into Khmer Rouge zones of Cambodia that the Thai military helped to construct throughout the 1980s. The Thai side of the border is a military zone, with access to roads and official crossing points tightly monitored by Thai military units. The commander-in-chief of the Royal Thai Army, Gen. Wimon Wongwanich, has declared closing the border "impossible," but it is clear that the economic welfare of Thais dependent on the border trade is also a consideration. In General Wimon's words, "The fact that people go there to mine gemstones or sell food and other supplies is a matter of survival for these people.

⁴⁶ Barton Biggs, "Despite Ban, Logging Persists," *Cambodia Daily* January 13, 1995.

We can't arrest them as if they were criminals. This is something that leaves soldiers with a very bitter taste."⁴⁷

But it is not the small trading of Thai villagers that is of concern, but rather the lucrative commercial trade in gems and timber that provide the Khmer Rouge with the revenue to wage war. Estimates of Khmer Rouge revenue from gem mining and logging are inherently impressionistic, but range from tens of millions of dollars annually to, more plausibly, tens of millions of dollars monthly.

⁴⁷ "Wimon: Can't Close Border," *Siam Rat*, November 20, 1994 *translated and reprinted in* FBIS-EAS-95-014, January 23, 1995.

Pailin, which the Khmer Rouge captured in 1989, is renowned for its rubies and sapphires. At one point these gems made up as much as 70 percent of the gem business centered in the Thai city of Chantaburi, and as of 1994 they still commanded a market share of approximately 20 percent.⁴⁸ Despite the U.N. Security Council ban on gem mining that went into effect in February 1993, Thai companies continued operations, right up to the beginning of the RCAF's move against Pailin in February 1994. Although the ban had discouraged some of the larger operators, business picked up again in July 1993, when the Khmer Rouge reformed its profit-sharing regulations. Previously, mine operators had to pay 50 percent of their profits to the guerrillas, and usually 10 percent to the Thai military. Mining operators would be allowed by the Thai military to smuggle in gasoline to operate machinery, a portion of which would be siphoned by the Khmer Rouge for its use.⁴⁹ The Khmer Rouge changed this to a land-license fee and a monthly charge.⁵⁰ In November 1994, the pro-government *Cambodia Times* quoted the CPP deputy governor of Battambang province as reporting that the number of mining companies in the Pailin area had increased from six as of February to sixteen, each company extracting approximately 200 to 300 kilograms of stones daily.⁵¹

⁴⁸ Robert Bingham, "Thai Military Keeps Watch as Gem Trade Thrives," *Cambodia Daily*, June 26-29, 1994.

⁴⁹ Sutin Wannabovorn, "Thai Miners Ignore Ban on Cambodia Gem Trade," Reuter News Agency, March 1, 1993.

⁵⁰ "Khmer Rouge Gem Trade Booming After Rules Relaxed," *Reuter News Agency*, September 8, 1993.

⁵¹ Uk Kimseng, "Gem Mining Intensifies," *Cambodia Times*, November 6-12, 1994

Klong Tadam, a major gem market, operates at the Thai border town of Ban Laem, a few hundred meters from a Khmer Rouge-controlled village. An estimated \$40,000 in business is conducted by the Khmer Rouge each day in this market, netting approximately \$280,000 per week in revenue from gems. The market also serves as a major supply center for consumer goods for the guerrilla faction.⁵² Access to the market from both the Thai and Cambodian side is controlled by the Thai Marine Taskforce, who in this area wear black uniforms with no task force or unit numbers.

The timber trade is another enormous source of revenue, for the Cambodian government and the Khmer Rouge alike. The Khmer Rouge levy fees both on timber that originates from territory under their control and timber felled elsewhere that transits through their checkpoints. Reports of Khmer Rouge fees vary from 35 to 50 percent of the government's fees,⁵³ a range that spans from \$10 to \$56 per cubic meter,⁵⁴ with reports of \$100 to \$110 per cubic meter for logs

⁵² Robert Bingham, "Thai Military Keeps Watch as Gem Trade Thrives," *Cambodia Daily*, June 24-26, 1994.

⁵³ Pricha Kunpricha, "Columnist on Working With the Khmer Rouge," *Naeo Na* (Thailand), November 27, 1994 *translated and reprinted by* FBIS-EAS-95-014, January 23, 1995.

⁵⁴ "Logging Firm Pays Taxes to KR, Government," *Than Setthakit* (Thailand), December 21-23, 1994 *translated and reprinted in* FBIS-EAS-95-015, January 24, 1995.

taken directly from the Khmer Rouge zones, inclusive of "security fees" at Khmer Rouge checkpoints.⁵⁵

⁵⁵ Robert Bingham, "Lumber Exports Move Through an Intricate Maze," *Cambodia Daily*, June 27, 1994.

On a road leading north from the Thai village of Nuan Sung towards the border town of Bo Rai, at least Thai six logging companies maintain rest areas for trucks bringing timber from Cambodian concessions. The road is in a military zone, and the Thai Marines also maintain a base in the vicinity of the log dumps and the police and military checkpoint in Nuan Sung. Visitors observed thousands of felled trees, and loaded log trucks arriving from Cambodia at two of these log dumps as recently as February 1995. Truck owners and drivers at the Suan Pha Company log dump estimated that as many as one hundred trucks, each one carrying approximately twenty-five cubic meters of wood made the trip there each day from logging concessions in Koh Kong province, through both government and Khmer Rouge checkpoints. At least a dozen companies operate log dumps across from Cambodia's southwestern border, and substantial timber shipments from Koh Kong province also come by sea through the small Thai port of Kalapandha.⁵⁶

As of late 1994 and early 1995, major Thai logging operations concentrated in the areas bordering Thailand's southern provinces of Chantaburi and Trat. Thai companies have traditionally preferred to deal with the Khmer Rouge rather than the government because the guerrillas are considered more reliable business partners who stick to the terms of their agreements.⁵⁷ But since the massacre of twenty-two Thai workers, the Thai press has reported that the Khmer Rouge in the northern zones have demanded a larger pay-off than before, possibly reflecting the financial pressure generated by military maneuvers at Preah Vihear and Anlong Veng. In the case of the BLP Import-Export Company, Ltd, which employed the slain Thai loggers, the company had just begun operations in a logging concession it had obtained from the Phnom Penh government, at an

⁵⁶ Correspondence from Global Witness, London, March 2, 1995.

⁵⁷ See, e.g. Pricha Kunpricha, "Columnist on Working With Khmer Rouge," *Naeo Na*, November 27, 1994, translated and reprinted in FBIS-EAS-95-014, January 23, 1995.

estimated value of \$40 million. Khmer Rouge forces in the area demanded fees, which the company remitted, but the guerrillas wished to have a sum equal to what the government had been paid.⁵⁸

⁵⁸ See "Firms Work in Khmer Rouge Zones," *Than Setthakit*, December 1-3, 1994 translated and reprinted in FBIS-EAS-95-014, January 23, 1995; "Logging Firm Pays Taxes to KR, Government," *Than Setthakit*, December 1-3, 1994 translated and reprinted in FBIS-EAS-95-015, January 24, 1995.

The response of the Thai government to the massacre has been to demand compensation from the Cambodian government,⁵⁹ and to increase security selectively. The commander of the Trat Marine Special Operations Unit said that he had been ordered to investigate Thai logging companies operating in Khmer Rouge areas and to examine their contracts. If the companies adhere strictly to those contracts, he told a reporter that "things will probably be fine."⁶⁰ The Thai military announced it vetoed the Ministry of Interior's plans to open thirteen border crossings to facilitate the import of logs directly from Khmer Rouge areas, and also closed several other open border crossings, including the one near the site of the massacre.⁶¹ Trade nevertheless continues through other border crossings, and the Khmer Rouge profit, regardless of whether the logs originate in zones under their control. As one Thai commentator observed, "Even though [the Cambodian government] knows that whenever timber is exported to Thailand the Khmer Rouge will always 'take a percentage,' it has had to allow timber operations, because the government army needs the money."⁶²

⁵⁹ "Cambodia To Seek Cooperation on Logging," *Siam Post*, December 29, 1994 translated and reprinted in FBIS-EAS-94-250, December 29, 1994.

⁶⁰ "Firms Work in Khmer Rouge Zones," *Than Setthakit*, December 1-3, 1994, translated and reprinted in FBIS-EAS-95-014, January 23, 1995.

⁶¹ Sutin Wannabovorn, "Thai Army Scraps Order to Open Khmer Rouge Border," Reuter News Service, December 22, 1994. More than a dozen Thai companies had applied to use border-crossings through 1995 for trade ranging from timber to cows.

⁶² Pricha Kunpricha, "Columnist on Working With Khmer Rouge," *Naeo Na*,

THAI POLICY AND INTERNATIONAL REACTIONS

International assessment of Thailand's role *vis á vis* the Khmer Rouge is mixed. Large-scale movements across the Thai-Cambodia border are monitored by satellite by the United States, but the border is otherwise a military zone with restricted access. Thai authorities periodically invite diplomatic and foreign military representatives for arranged tours of the border area, but resist more comprehensive and effective monitoring, such as the U.N.'s request in 1993 to monitor banned trade to the Khmer Rouge zones by establishing checkpoints on the Thai side of the border as it had on those parts of the Cambodian border controlled by other parties.

Thailand's civil government and military have strenuously proclaimed the country's neutrality since 1991, denying point-blank every allegation of cooperation with the Khmer Rouge, even where there has been substantial evidence to the contrary.⁶³ In doing so, the government and the military have steadily compromised their credibility with the international community. Yet there is agreement among major Western embassies that signs of an appreciable shift in Thai policy towards the Khmer Rouge only appeared in the latter part of 1994, and that opinion within the Thai military establishment is still divided on the wisdom of breaking relations entirely.

On August 23, 1994, President Clinton approved a foreign aid appropriations bill that required a cut-off of military training assistance to any country or organization "cooperating tactically or strategically with the Khmer Rouge in their military operations." The law further required the Secretary of State to submit to Congress a report "on the Thai military's support for the Khmer Rouge." Although the amount of aid in Thailand's case was small -- \$1 million dollars for training seventy-seven Thai soldiers in the U.S. under the International Military Education Training (IMET) program -- the Thai government responded sharply. General Wimon questioned whether the U.S. was really an ally, protesting it was improper to link IMET funds with "irrelevant issues such as Thailand not agreeing with the United States on all issues."⁶⁴ Thai legislators froze Thailand's contribution to the Joint U.S. Military Advisory Group until September 2, 1994.

The Clinton Administration quickly signalled it had no intention of sanctioning Thailand under the law. U.S. Amb. David Lambertson informed the Thai government on September 12, 1994 that the State Department would report to Congress that Thailand no longer supported the Khmer Rouge. While visiting Bangkok on November 17, 1994, the U.S. Secretary of State suggested that verbal assurances of Thai non-cooperation would be enough. President Clinton later assured the Thai prime minister of his support for continued IMET funding based on the prime ministers "assurances" of no support for the Khmer Rouge.

⁶³ A catalogue of literally hundreds of such reported denials can be found in Oxfam America, *Still Waiting for Peace: A Report on Thai-Khmer Rouge Collaboration Since the Signing of the Cambodia Peace Accords*, (Boston, MA: Oxfam America, February 1995).

⁶⁴ Adam Schwarz, "Strings Attached," *Far Eastern Economic Review*, September 15, 1994.

True to these assurances, the State Department proclaimed in the summary of its February 1995 report to Congress that "the Thai government does not currently support, as a matter of policy or practice, the outlawed guerrilla organization." It issued the report required under the foreign aid appropriations law as a classified document, with only the brief summary for public dissemination. That summary did note both that "unauthorized and occasional shipments of rice, fuel, medicine and consumer goods to KR-controlled areas" continue and that the logging and gem mining industries "have been the most important sources of revenue for the Khmer Rouge." In a conclusion that damned with faint praise, it observed the Cambodian government confirmed Thailand "is making genuine efforts" to enforce its own policy of no support. As the public has no access to the evidence supporting the conclusion that "genuine efforts" have been made, there is little way to evaluate such a claim.

U.S. strategic interests have always heavily influenced its willingness to pressure Thailand, particularly where the Thai military is involved. At the same time as Congress was instituting the conditions on aid and new reporting requirements, the U.S. military was discussing the possibility of pre-positioning six U.S. warships in Thai waters as a floating military depot. This measure, as well as Thai relations with the Khmer Rouge, was on President Clinton's agenda during his meeting with Prime Minister Chuan on October 6, 1994. In November, the Thai government told U.S. Secretary of State Warren Christopher that it rejected the proposal, citing its relations with neighboring states. Christopher repeated that the U.S. would not disrupt military assistance to Thailand, which had "given promising indications" it would punish soldiers found aiding the Khmer Rouge, and declared himself to be "very impressed by their determined stance on the matter." He also said he hoped "the time would come, that circumstances would change so as to enable them to approve the requested naval depot."⁶⁵

⁶⁵ "Talks With Christopher on KR, Aid Reported, *The Nation*, November 18, 1994 pp. A1, A2 reprinted in FBIS-EAS-94-223, November 18, 1994.

Diplomats from countries whose nationals had been held hostage by the Khmer Rouge expressed skepticism to Human Rights Watch at the extent to which Thailand was actually enforcing its stated policy, noting continuing movements between Cambodia and Thailand in the southern border area. These countries too, however, have been subjected to pressure tactics from Thailand to withdraw criticism. When the death of the Western hostages held by the Khmer Rouge at Phnom Vior was confirmed in October 1994, Australian Foreign Minister Gareth Evans suggested that some elements of the Thai military maintained links with the Khmer Rouge, based on confidential satellite evidence showing Khmer Rouge crossings into Thailand. The Thai government responded by announcing a boycott of Australian weapons. At the time the Australian Defense Industries had proposed the sale of \$75 million worth of small arms to the Thai military, and some Australian parliamentarians had raised concern that such weapons could find their way to the Khmer Rouge. General Wimon and Prime Minister Chuan suggested that the Australian hostage was killed by the Khmer Rouge because of "espionage." The stand-off was eventually resolved when Evans withdrew his comments as based on "obsolete" satellite evidence. However, Defense Minister Robert Ray felt obliged to address Parliament on the "horror that all Australians would feel if that general who was responsible for that brutal execution of an Australian citizen was able to find refuge across the border."⁶⁶

⁶⁶ "Supreme Command Official Denies Aid for KR" *Radio Thailand Network*, 0500 GMT November 10, 1994 *translated and transcribed in* FBIS-EAS-94-218, November 10, 1994; see also Nusara Thaithawat, "Ministers Reportedly Defuse Dispute," *Bangkok Post*, November 13, 1994 *reprinted in* FBIS-EAS-94-219, November 14, 1994; Adam Schwarz, "Heated Exchange," *Far Eastern Economic Review*, November 24 1994.

IX. FOREIGN SUPPORT FOR THE ROYAL CAMBODIAN ARMED FORCES

The Cambodian government installed by Vietnam in its 1979 invasion was an international pariah to all but the Soviet bloc, but this position became less tenable as Western governments came under fire for their recognition and tacit support of the Khmer Rouge, the Soviet Union collapsed, and the Phnom Penh government itself turned to market reforms. The Paris Peace Accords of 1991 were largely designed to resolve the dilemma by providing for the election of a government that could receive world recognition, and most critically, international aid. That aid has been forthcoming, in pledges amounting to over \$2 billion through donors meetings held under the aegis of the International Committee on the Reconstruction of Cambodia (ICORC).

The continuing war, however, has produced new dilemmas for foreign donors, who are now being asked to supply military aid in addition to development funds. Major donors are committed to supporting the government that resulted from the internationally-supervised elections. But real questions exist as to whether the government would effectively use military aid against the Khmer Rouge or whether military discipline and ability is so lacking that such aid would be misused or end up in the hands of the guerrillas. The RCAF's record of human rights abuse and attacks on the civilian population it is supposed to defend militates against supplying it with yet more guns. At the same time, the government's increased spending on the military has already complicated its efforts to produce a balanced budget and direct resources to urgent humanitarian and development needs.

For these reasons, many donors have urged military reform as a precondition to lethal aid and offered military training assistance instead. Military training, however, cannot solve problems of corruption and human rights abuse without the political will to confront these problems directly.

MILITARY REFORM

The Royal Cambodian Armed Forces comprise national, provincial and militia forces of the previous government's Cambodian People's Armed Forces, plus units of the KPNLAF and resistance forces allied to the royalists. Although these resistance forces have been integrated into the RCAF's command structure, the actual troop units remain discrete. Prior to reform, the government stated its forces, exclusive of militia, to number 126,263, of whom 101,472 or 80 percent hold

officer rank.¹ Most military analysts put actual number of troops between 70,000 to 90,000, taking "ghosts" into account, and observe that a significant number of "officers" have purchased their rank and have little or no military experience.

The defeats at Anlong Veng and Pailin in 1994 were a testament not so much to the prowess of Khmer Rouge forces, which are thought to number between 8,000 and 15,000 regular troops, but to the weakness and corruption of the RCAF. In both cases poorly paid and fed RCAF soldiers scattered in the face of the first retaliatory attacks of the guerrillas. In the case of Pailin, a small Khmer Rouge force, estimated at between one hundred and 300 soldiers, outran its own supply lines and chased thousands of RCAF forces down Route 10 to within twenty kilometers of Battambang, Cambodia's second-largest town. The government eventually pushed the guerrillas back to the approximate location of the battlelines before the offensive, but it had to use its better-equipped and better-disciplined A-3 unit, a paramilitary police force under the authority of the Ministry of Interior.²

¹ Bertil Lintner, "Cambodia -- A Political and Military Overview," *Jane's Intelligence Review* (London), October 1994.

² Ibid.

These humiliations and the insistence of foreign donors convinced Cambodian political leaders that military reform was a necessity. In July the government began to formulate a plan, which proposed reducing the RCAF's twelve infantry divisions to six, trimming the number of soldiers to 80,206 troops, disbanding notoriously corrupt border battalions and transferring the provincial military to central command.³ Another facet of the plan was redesigning rank structure to limit the number of officers overall, and drastically reducing the number of generals from 1,800 to approximately one hundred. The RCAF took its first step in this direction by demoting every officer by one rank, including the chief of staff. By February 1995, it had reduced the number of generals to approximately 200, but had accomplished this by transferring roughly 1,000 officers to a newly-created "headquarters" staff. Substantial demobilization is awaiting foreign assistance for proposed "development centers" in each military region where the Ministry of Defense would organize vocational training and agricultural enterprises to employ former soldiers. The government's military reform plan also calls for district militias to be incorporated into the national military structure, and special forces trained for counterinsurgency to be created and deployed throughout the country. This ambitious three-year plan, however, is contingent on massive international assistance.

So far only modest amounts have been forthcoming, while foreign governments remain doubtful of the RCAF's ability to carry through the reform program and wary of the government's corruption and political instability. "Accountability is a problem," said one defense attaché, pointing to the lack of structures for basic military functions, such as coordination, salary payment, and supply.⁴

There are some basic problems that contribute directly to military abuse that have yet to be addressed. One is the inadequate and sporadic pay for active military service. For example, there have been reports that RCAF troops in the northwest have not been paid since December 1994.⁵ Further reform is necessary to clarify the chain of command over forces, institute internal codes of conduct and punish soldiers for unauthorized use of their weapons and other abuses. These

³ Remi Rorschach, "Report" *Bangkok Post*, "Inside Indochina" supplement, November 8, 1994, reprinted in FBIS-EAS-94-217, November 9, 1994, p. 2.

⁴ Human Rights Watch interview, Phnom Penh, August 1994.

⁵ Human Rights Watch interviews, February 1995.

measures need to be clearly and publicly formulated, and applied throughout the country, a task which cannot be accomplished without the unequivocal support of the political leadership. Mustering the political will to punish military abusers will not be easy. But the alternative will have a high price: continuing impunity, encouragement of gross abuses, and the deepening alienation of Cambodians from their own government and army.

ARMS FROM EUROPE AND ASIA

The government's arsenal has been described by Western military analysts as a "gun museum" of outmoded and miscellaneous arms, the majority from Soviet-bloc producers. The Soviet Union supplied both the occupying Vietnamese forces and the Cambodian forces who took their place. According to foreign observers, weapons stockpiles of small arms and ammunition were also established in Vietnam, and the new Cambodian government made unsuccessful demands to claim them, just as it asked Thailand to hand over weapons caches on its soil.⁶ Major problems with existing stockpiles include poor storage and handling of weapons, obsolescence and a shortage of spare parts. However, it is not weaponry but discipline and organization that military analysts consider the RCAF's greatest weakness.

Despite the lack of foreign assistance, the government did manage to purchase ammunition in preparation for the 1994 offensives, and has continued to shop for hardware. King Sihanouk's close friendship with Kim Il-Sung of North Korea early manifested itself in North Korea's gift to the king upon his return to Cambodia after the Paris Peace Accords of forty specially trained security guards who have continued to be supplied with weapons and ammunition. North Korea has also provided military support to the RCAF directly. In April 1994, it was reported that Pyongyang two months earlier had given the RCAF six armored personnel carriers and "tons" of small weapons, shells, mortars and ammunition. More ammunition was said to be slated for April delivery.⁷ Military observers in Phnom Penh confirmed that the government had received a substantial quantity of

⁶ Human Rights Watch interview, August 1994.

⁷ "DPRK Arms Reportedly Used Against Khmer Rouge," Kyodo, April 10, 1994 reprinted in FBIS-EAS-94-071, April 13, 1994 (reporting original article in *Sanke Shimbun* of April 10, 1994).

ammunition, but noted that much of it never reached troops in the field.⁸ Other North Korean assistance was promised in a \$15 million military cooperation agreement in March 1994. Under the agreement, North Korea will construct and help operate Cambodia's first defense factory, to manufacture small arms and ammunition, and repair tanks, artillery and small arms. The terms of the exchange were not publicized, but the North Koreans are expected to take some payment in commodities barter.⁹

⁸ Human Rights Watch interview, Phnom Penh, March and August 1994.

⁹ Nate Thayer, "Cambodia signs \$15m Accord with N Korea," *Jane's Defence Weekly*, July 30, 1994.

More purchases followed the dry season campaigns. In November 1994, First Prime Minister Ranariddh said Cambodia had acquired AK-47 assault rifles and ammunition from South Africa.¹⁰ Cambodia also moved to renew relations with countries in the former Soviet bloc. In December 1994, the sale of forty T-55 main battle tanks from the Czech Republic was confirmed, along with two squadrons of OT-64 (SKOT) armored personnel carriers and up to thirty other vehicles. Poland is set to supply fifty T-55 tanks as well.¹¹ Military analysts have questioned the utility of tanks in jungle warfare against the Khmer Rouge, which successfully captured at least twenty armored vehicles from the government in the 1993-1994 dry season fighting. Cambodia has also reestablished a defense relationship with Russia, finalizing a Memorandum of Understanding in January 1995 that will include military training and an initial arms deal valued at \$30 million, most likely to cover spare parts, and possible acquisition of artillery, armored personnel carriers, and air defense systems.¹² The government purchased from a Singaporean supplier 20,000 40mm rifle grenades and fifty German 69mm Armbrust anti-tank weapons made in Singapore under license. An Indonesian company was also

¹⁰ Ian MacKenzie, "Mandela Opens Africa's Biggest Defense Show," Reuters News Agency, November 22, 1994.

¹¹ Robert Karniol, "'Cheap' arms for Cambodia Army," *Jane's Defence Weekly*, December 17, 1994.

¹² Robert Karniol, "Russians re-establish Cambodian contacts," *Jane's Defence Weekly*, February 4, 1995.

reported to sell three million rounds of 5.56mm ammunition worth \$378,00.¹³ Malaysia was also said to have concluded an arms deal for small arms and ammunition.¹⁴

¹³ Nate Thayer, "Cambodia seeks arms from Singapore, Israel," *Jane's Defence Weekly*, July 30, 1994.

¹⁴ Human Rights Watch interviews, Phnom Penh and Bangkok, August 1994.

The Cambodian government has made a concerted effort to upgrade its Air Force from an aging fleet of MIG-21s obtained from the Soviet Union during the 1980s. The *Phnom Penh Post* reported that in January, four of Cambodia's old MIG-21 fighter planes were sent to Israel for refurbishing, with the remaining seventeen to be refurbished by the end of the year. Cambodia is also to receive six Czech-made L-39ZA Albatros jet fighter trainers under the deal with Israel.¹⁵ The government has also bought six Italian P92 reconnaissance planes which are already in use.¹⁶ Six Mi-17 helicopters were reported to arrive in Bangkok in February 1994 for delivery to Cambodia.¹⁷ Thailand made a gift of two observation planes to the government, and the Ukraine in 1993 refurbished two Mi-17 helicopters that were used as gunships. In February 1995, the government took delivery of 310 tons of ammunition from cargo that the Seychelles navy seized in 1993, when it was on its way to Somalia, in violation of a U.N. embargo. The Seychelles purchase reportedly included 120mm, 60mm, 23mm, 14.5mm, 12.7mm and 7.62mm ammunition, infantry weapons, machine guns, anti-riot weapons, as well as some heavy weapons from a separate Seychelles stockpile.¹⁸

MILITARY ASSISTANCE FROM THE "FIVE FRIENDS"

Cambodia's main supporters, who have come to refer to each other as "the five friends," are the U.S., France, Australia, Indonesia and Malaysia. None has ruled out direct weapons assistance. So far most have concentrated their efforts on training and development, although Indonesia and Malaysia have reportedly agreed to provide ammunition. While some of these assistance programs have included training on human rights and humanitarian law, most are aimed at improving basic military skills. There is concern, however, that sharpening the skills of an already

¹⁵ Nate Thayer, "Cambodia seeks arms from Singapore, Israel," *Jane's Defence Weekly*, July 30, 1994.

¹⁶ Ker Munthit, "MIGs and tanks beef up the military," *Phnom Penh Post*, January 27-February 9, 1995.

¹⁷ Maja Wallengren, "More Tanks Due in Cambodia, Shipping Official Says," Reuter News Service, February 11, 1995.

¹⁸ Nate Thayer, "Bounty of the Sea," *Far Eastern Economic Review*, March 2, 1995.

abusive military will not stop human rights violations; human rights training must be a centerpiece of military assistance.

Both Indonesia and Malaysia have promised to assist Cambodia in military training. In October, the RCAF sent 200 special forces troops on a ten-month Indonesian Army course; the \$3-million cost will be borne by Jakarta.¹⁹ North Korea has also agreed to train and equip two special warfare battalions of the RCAF.²⁰

¹⁹ *Jane's Defence Weekly*, October 8, 1994.

²⁰ Nate Thayer, "Cambodia signs \$15m Accord with N Korea," *Jane's Defence Weekly*, July 2, 1994.

France presently has forty military advisers in Cambodia. Its military assistance program includes advice, along with the other "five friends," on the restructuring of the army, and preparing Cambodian military trainers to give classes in basic military skills. Another major project is the training of a military police force, or *gendarmerie*, to enhance security in the provinces. Training for this contingent had begun in mid-1994, and it had graduated several hundred police by February 1995.²¹ In addition to these programs, French military assistance generally included support programs such as health care, and French language training, the latter not greatly appreciated by other ASEAN donors who use English as a regional common language. France has also donated a fleet of heavy transport trucks and three observation helicopters.²²

The U.S. has moved cautiously with military assistance, providing a forty-four member team of Special Forces and engineers to train RCAF officers in mine clearance and road building. The mine clearance training, which teaches blow-in-place techniques, includes a component on mine awareness training. The program also includes a donation of \$965,000 worth of road-building equipment, in what is clearly a test of the RCAF's ability to account for the equipment and put it to good use.²³ Another facet of U.S. aid has been humanitarian assistance to Khmer Rouge

²¹ Human Rights Watch interview, Phnom Penh, August 1994.

²² Philip Shenon, "Pentagon Sends Trainers and Equipment to Cambodian Army," *The New York Times*, July 28, 1994.

²³ See William Branigan, "U.S. Troops, in Old Haunts, Train Cambodians Anew," *Washington Post*, August 16, 1994.

deserters. Programs being developed for 1995 include advisory services to develop a military justice system and resource management training, as well as IMET funding for training of Cambodian officers in the U.S. In February 1995, the U.S. provided a week-long training course to forty-three senior military, police and navy officers in legal issues, including human rights and humanitarian law, war crimes, and the role of a free press in society.²⁴ In a visit to Cambodia in late January 1995, U.S. Deputy Secretary of State Strobe Talbott announced, "We do not rule out lethal assistance to the Cambodian military in the future," while at the same time cautioning that any such assistance would be contingent on further military reform.²⁵

²⁴ "Cambodian Officers Graduate U.S. Legal Course," Reuter, February 24, 1995.

²⁵ Philip Shenon, "US Considers Providing Arms to Cambodia to Fight Guerrillas," *New York Times*, January 30, 1995.

Australia raised its level of military assistance in 1994 from \$2.5 million to approximately \$6 million, none of it in weaponry. The aid package includes a one-time allocation of \$2.28 million to train sixty-two junior Cambodian officers as warfare instructors, helping to design a training program, and assistance in design and funding of a new training facility in Phnom Penh.²⁶ Australia's initial program included a marine workshop for the RCAF that would refit river and patrol craft engines and train Cambodians in this skill, the development of military communications systems, and aid for demining. Support skills, such as English language training and malaria prevention were also included. The additional funds, announced in November, will be split between further military training and reintegration programs for demobilized soldiers. At the same time, Australia also announced it was doubling its non-military development aid to Cambodia to over \$65 million over the next four years.²⁷

²⁶ Gregor Ferguson, "Australia to Triple Cambodian Military Aid," *Defense News*, December 5-11, 1994.

²⁷ "Australia Boosts Military Training Aid to Cambodia," Reuters News Agency, November 29, 1994.

X. CONCLUSIONS AND RECOMMENDATIONS

Cambodia today is far from realizing the Paris Peace Accords' promise of a country at peace where human rights are ensured and respected. The 1993 elections produced a new government. That alone did not guarantee there would be "no return to the policies and practices of the past," the diplomatic euphemism for the panoply of abuses the Cambodian people have endured since the 1970s -- holocaust, torture, starvation, the saturation of the countryside with landmines, contempt for the rule of law and deprivation of civil rights. Responsibility for the present situation rests with the warring Cambodian parties; it is also shared with the international community, particularly those nations who have provided assistance either directly or indirectly to either side in the conflict.

THE KHMER ROUGE

The Khmer Rouge, as a party to an armed conflict, is bound by international humanitarian law. Furthermore, although it is not an internationally-recognized government, the party has affirmed its intention to respect international norms of human rights with regard to its conduct towards individuals. Human Rights Watch urges the Khmer Rouge to take the following immediate actions:

- Respect the international laws of war, particularly the prohibition of attacks on civilians and civilian targets. Civilians must not be the target of violence, abduction for any purpose, rape, or any other form of humiliating and degrading treatment. Members of the civil authority, such as village or commune leaders, police or civil servants, are protected as civilians under international law.
- End looting and destruction of civilian property, whether it is personal property or public property that serves only a civilian function, such as schools or clinics.
- Prohibit attacks on objects or resources that are indispensable to the survival of the civilian population generally. Starvation may not be used as a method of warfare, whether through cutting off access to land and fishing areas, burning rice stores and fields, mining agricultural land, or poisoning water.
- Prevent the displacement of civilians except where necessary for their protection or where they are directly in the path of hostilities between military forces. Displacement of civilians may never be performed for purely political reasons, such as denying the enemy a social base or capturing a source of labor or food.
- Abolish extrajudicial executions and torture.

- Abolish racially motivated attacks and incitement to racial violence.
- Cease the use of landmines immediately, cease trade in landmines, and destroy existing stockpiles. Existing minefields must be marked and monitored pending their eventual dismantling. Cooperate fully with demining efforts, including providing information on mine locations and types, and refrain from attacks or other interference with mine clearance operations.
- Permit humanitarian organizations to visit persons detained in connection with the conflict and to provide emergency medical assistance to civilians in territory under Khmer Rouge control.

THE ROYAL GOVERNMENT

The Cambodian government is bound not only by humanitarian law but by its obligations under international human rights law as well. To effectively halt rampant abuses by its military and civilian authorities, the government must take immediate action to hold abusers accountable. Human Rights Watch calls on the government to:

- Forbid absolutely the extrajudicial execution of prisoners and punish those responsible.
- Prohibit and punish indiscriminate bombardment and attacks on civilians generally including the looting of civilian property.
- Abolish abusive and discriminatory conscription practices.
- Punish abduction, extortion, unlawful detention, torture and murder. To demonstrate the Royal Government's commitment to ending these practices by its agents, it is imperative that those responsible for the well-documented atrocities against civilians by military intelligence forces in the northwest be investigated and brought to trial.
- Subject military personnel who are suspected of committing crimes against civilians to the authority of civilian tribunals.
- Investigate and punish racially motivated violence and attacks, and ensure that immigration laws and policies strictly comport with international law.

If it is to abolish such gross abuses, the Cambodian government must also undertake to strengthen over the long term the institutions of an open society that is governed by the rule of law. Without the commitment of political leaders to these goals, international aid directed at these purposes will be wasted. To this end, Human Rights Watch urges the government to:

- Respect and protect freedom of expression through the enactment of legislation that is fully consistent with the guarantees of the International Covenant on Civil and Political Rights, and through refraining from administrative and legal actions to punish individuals or publications who express opinions or report facts that constitute criticism of the government or government authorities.
- Respect and protect human rights advocates by prohibiting restrictions on their activities that violate the fundamental freedoms of expression, association, movement and assembly. Attacks on human rights monitors, journalists, and others who report on abuses must be thoroughly investigated and promptly prosecuted.
- Respect the right of political dissent and scrupulously abjure any threat of violence or the appearance of such threat to those who voice opposition views. The integrity and independence of the National Assembly must be respected. The Human Rights Commission of the National Assembly should be allowed to contribute to the formulation of every law with human rights implications.
- Effectively ensure the independence and integrity of legal professionals, a prerequisite if the rule of law is to have meaning in Cambodia. Laws and practices relating to the composition of the judiciary and the bar must protect such professionals from direction by the political branches of government, and make legal representation widely available to Cambodians, and to all who are criminal defendants.
- Closely monitor the implementation of the law on the Khmer Rouge to avoid abuses, which are already beginning to occur. The complete text of the law, including its provisions on abusive accusations, must be widely disseminated to the justice system, law enforcement bodies, and the general public. The law should be enforced by civilian authorities, and all arrests under the law should be made public. Courts, defenders, and human rights advocates play a critical role in preventing abuses under the law. The government must ensure that law enforcement authorities throughout the country understand this role, and ensure that persons performing this role are protected from accusation and retaliation.

The Cambodian government's call for an international ban on landmine use, production, stockpiling and trade is a positive effort, but one likely to be ignored as long as government forces continue to use landmines. Human Rights Watch urges the Cambodian government to:

- Cease using landmines immediately, cease to buy or sell them, and destroy existing stockpiles. Existing minefields must be marked and monitored pending their eventual dismantling. Military and civilian authorities must cooperate fully with demining efforts, by allowing minefields to be demined, by providing information on mine locations and types, and by punishing attacks on or other

interference with mine clearance operations. Demining operations should be focused on civilian, not military benefit, and military authorities should strictly respect the mandate of the Cambodian Mine Action Centre to take civilian demining as its priority.

THE INTERNATIONAL COMMUNITY

The eighteen nations that signed the Paris Peace Accords pledged to "promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia" in order, in particular, "to prevent the recurrence of human rights abuses." That responsibility still applies, as well as the general responsibility of all members of the United Nations to uphold the respect of international human rights and humanitarian law.

Civilians have borne the brunt of the war in Cambodia. In the case of the Khmer Rouge, gross abuses against civilians are a matter of policy; on the government's part, its failure to discipline and control its military personnel has encouraged military forces to prey on the very population it is charged with protecting. The rule of law is unknown to the Khmer Rouge. The government pledges commitment to the rule of law, but undermines its pledge when it retaliates against its critics and subverts the administration of justice.

Those nations that are currently providing support to the Cambodian parties bear a particular duty to ensure that such abuses cease and that the abusers are held accountable. Thailand, by continuing to permit trade with the Khmer Rouge across its borders, has supported the lucrative trade in gems and timber that is the guerrilla movement's economic lifeline and sustains its ability to pay soldiers and procure arms. Other nations, through bilateral pledges and contributions to international financial institutions, have supplied almost half of the Royal Government's annual budget, and others have provided the RCAF with arms and equipment. Human Rights Watch calls on these nations, and the international community at large, to take the following measures:

- No arms or military equipment should be provided to either side in the conflict, whether through trade or grant, to help prevent the further commission of gross abuses against the civilian population of Cambodia.
- All countries, including Thailand, must take immediate and effective measures to eliminate trade with the Khmer Rouge to the greatest extent possible. This includes closing all border crossings from Thailand leading to Khmer Rouge

territory, and creating and enforcing legal penalties for those companies who continue to do business with the guerrilla faction.

- No country should allow the Khmer Rouge to use its territory for military purposes, including the retreat and regrouping of forces.
- In view of Thailand's continuing military and logistical support for the Khmer Rouge during the peacekeeping period and following the constitution of a legitimate government in Cambodia, and in view of its record of denial of these actions, the government of Thailand should take special measures to restore its credibility with the international community and demonstrate its good faith compliance with the Paris Peace Accords. At a minimum, Thailand should provide liberal and unrestricted access to the Thai-Cambodian border to international monitors to ascertain the effectiveness of measures taken to eliminate military support, logistical cooperation and trade with the Khmer Rouge.
- All countries in which Cambodian civilians seek to take refuge from hostilities must respect international refugee protections, particularly the principle of *non-refoulement* which forbids the return of refugees to a situation of danger. To that end, the host nation should protect such individuals until such time as they are able to return to a destination of their own choosing. The welfare of such refugees and their voluntary repatriation should be monitored by the UNHCR, and host governments should provide access as well to the ICRC and relief organizations.
- Nations which choose to assist the Royal Cambodian Armed Forces with its military reform efforts should insist that the Cambodian military respect human rights and humanitarian law in all respects. Military and military police training programs should have training in human rights and the laws of war as a core component. Military reform should be measured not only in terms of reducing corruption and inefficiency, but also in terms of rectifying abusive practices and bringing abusers to account.
- International donors and international financial institutions should insist on accountability and good governance on the part of the Cambodian government. These standards include transparency in government administration and law-making, demonstrated support and respect for the rule of law, and the determination to hold government officials responsible for their actions. Donors who are considering further budgetary support and assistance for the Cambodian government should insist that the government hold its officials, civilian and military, accountable for violations of human rights.
- Cambodia, where it is estimated that one out of every 236 persons is an amputee, demonstrates that antipersonnel landmines present an inordinate and lasting threat to civilians. Landmines undermine economic and social development,

crippling a nation with long-term costs far in excess of any short-term military benefits. Human Rights Watch believes that there should be an international ban on the production, stockpiling, transfer and use of antipersonnel landmines.

- The international community should devote far greater resources to the United Nations Voluntary Trust Fund for Mine Clearance. The United Nations should also establish a voluntary fund to assist mine victims. Countries that have produced and exported landmines bear a special responsibility for contributing to such funds.

With regard to Cambodia, Human Rights Watch urges the international community to:

- Monitor and discourage the transfer of any antipersonnel mines to any party in Cambodia.
- Provide substantial, long-term financial support for mine clearance and victim assistance programs in Cambodia. Eight million dollars is urgently required to ensure the continued operation of the Cambodian Mine Action Center through April 1996; another three to five years of intensive demining, estimated to cost approximately \$10 million per year is necessary to bring Cambodia's mine problems down to manageable proportions. Nongovernmental nonprofit demining organizations have also played a critical role in reducing civilian injuries in areas where there are still hostilities. It is crucial that their operations receive support as well, and that their technical staff are free to go to areas of greatest need.

APPENDIX I: INTERNATIONAL HUMAN RIGHTS LAW AND THE LAWS OF WAR APPLICABLE TO THE WARRING PARTIES

Cambodia became a party to the International Covenant on Civil and Political Rights during the peacekeeping period, and was already a party to the Genocide Convention and the Convention on Racial Discrimination. The Royal Government is legally bound to honor fundamental provisions of human rights, such as the right to life, the prohibition on torture, and the freedoms of expression, assembly and association, and this obligation is not removed because of war¹

¹ The International Covenant on Civil and Political Rights does not permit derogation of the first two rights under any circumstances, and only permits derogation of the latter three rights in times of an officially proclaimed state of emergency that threatens the very existence of the state, and even then, only to the extent strictly necessary. ICCPR Article 4. No such public emergency has been declared, and it would be very difficult to portray the current state of hostilities, damaging as it is to Cambodia's peasantry and rural development, as a situation that threatens the very existence of the state.

The Khmer Rouge is not considered a party to these international human rights treaties as it is not at present an internationally-recognized government. It did, however, sign seven international human rights treaties as a participant in the Supreme National Council during 1992. To the extent that it considers itself to be the legitimate authority in the areas under its control, it is morally obligated to abide by international standards of human rights. The Khmer Rouge claims to recognize and respect human rights, although a diplomatic representative admitted to Human Rights Watch/Asia in 1992 that it had not implemented some liberties, such as the right to free expression, and would not until its political objectives were accomplished.²

² Human Rights Watch interview, Phnom Penh, April 1992.

In addition to normal international human rights standards, the Royal Government is bound to honor the international laws of war with respect to the conduct of hostilities. The law applicable to the war in Cambodia is that pertaining to internal armed conflicts.³ Sources of this law include Common Article 3 of the 1949 Geneva Conventions, to which Cambodia is a party, and customary international law. The 1977 Protocol II to the Geneva Conventions contains rules providing authoritative guidance on the conduct of hostilities by the warring parties. Cambodia is not a party to Protocol II. Nevertheless, Protocol II provides persuasive authority when interpreting the requirement of Common Article 3 that persons who are outside of combat must "in all circumstances be treated humanely."

All parties to an internal conflict are bound by these laws, including insurgents, although they do not have the legal capacity to sign the Geneva Conventions.⁴ The obligation to respect these laws is absolute for all parties to the conflict, and independent of the obligation of the other party. This means that the Royal Cambodian Government cannot excuse itself from complying with Article 3 of the Geneva Conventions on the grounds that the Khmer Rouge is violating Article 3, and vice versa.

³ In order for a conflict to be classified as an international armed conflict under the Geneva Conventions, it must involve a declared war or armed conflict between two states or "High Contracting Parties" under Common Article 2. Only states, and not indigenous rebels, may be "High Contracting Parties." Since Vietnam's withdrawal of troops in 1989, no other country has intervened with its armed forces in the conflict. The provision of military assistance in the form of weaponry or technical advisers by various countries to both sides does not raise the nature of the conflict to an international one.

⁴ As private individuals within the national territory of a State Party they are bound by its obligations. ICRC, *Commentary on the Additional Protocols of 1977* (Geneva: Martinus Nijhoff, 1987) p. 1345.

WHO IS PROTECTED

Common Article 3, Section 1, to the Geneva Conventions provides:

Persons taking no active part in the hostilities, including members of armed forces who had laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

This protected group includes civilians (who by definition are non-combatants), employees of the military who are not members of the armed forces, such as porters working in the rear of an army, civilian administrators, and other government employees such as police who do not have combat duties, even if they are authorized to bear arms.⁵ Part-time militia members with civilian occupations lose their immunity as civilians for as long as directly participate in hostilities, but regain it once they return to their civilian occupations.⁶ Also protected are any soldiers or persons participating in hostilities who are literally "outside of combat" because they have surrendered, been captured, or are wounded.

The customary law of internal armed conflicts also recognizes the principle of civilian immunity and its complementary principle requiring the warring parties to distinguish civilians from combatants at all times. United Nations General Assembly Resolution 2444⁷ sets forth in its preamble fundamental principles of humanitarian law that must be observed by all government and other authorities in "all" armed conflicts:

⁵ Report of Working Group B, Committee I, 18 March 1975 (CDDH/I/238/Rev.1; X, 93) in Howard S. Levie, ed., *The Law of NonInternational Armed Conflict*, (Dordrecht, Netherlands: Martinus Nijhoff, 1987) p. 67.

⁶ *Ibid.* p. 303.

⁷ U.N. General Assembly, *Respect for Human Rights in Armed Conflicts*, United Nations Resolution 2444, G.A. Res. 2444, 23 U.N. GAOR Supp. (No. 18), p. 164, U.N. Doc. A/7433 (New York: U.N., 1968).

- (a) That the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;
- (b) That it is prohibited to launch attacks against the civilian populations as such;
- (c) That distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible.

PROHIBITED ACTS

Common Article 3 to the Geneva Conventions states that the following acts against protected persons are prohibited "at any time and in any place whatsoever":

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

These prohibited acts encompass many of the abuses currently taking place in the Cambodian war, including:

- Extrajudicial executions, which are also a violation of Cambodia's Constitution, Article 32, which prohibits capital punishment;
- Mutilation of persons, desecration of corpses and failure to care for the wounded;⁸

⁸ Protocol II, Article 8, states, "Whenever circumstances permit, and particularly after an engagement, all possible measure shall be taken, without delay, to search for and collect the wounded...to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them."

- Imposing detention, fine or forced labor on persons for alleged crimes except pursuant to a conviction by a court offering "the essential guarantees of independence and impartiality," including procedures that give the accused prompt notice of the charges, respect the right to a defense, require individual penal responsibility for conviction, and prohibit compelling testimony or confession of guilt on the part of the accused.⁹
- Rape, any form of indecent assault, torture, any form of corporal punishment, or any cruel treatment of persons under any circumstances;
- Abduction of persons as hostages¹⁰ for any purpose, including forced labor, ransom, or shielding or facilitating military operations;

⁹ Protocol II, Article 6(2).

¹⁰ The ICRC, *Commentary on the Additional Protocols of 1977*, p. 874, defines hostages as "persons who find themselves, willingly or unwillingly, in the power of the enemy and who answer with their freedom or their life for compliance with the orders of the latter and for upholding the security of its armed forces."

- Pillage and destruction of civilian property, either by organized action or individual action with or without the consent of military authorities;¹¹

Protocol II to the Geneva Conventions gives further detail to these protections. It underscores the commitment to "humane" treatment in Common Article 3 of the Geneva Conventions in its own article 13:

The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.¹²

Starvation of civilians as a method of attack is prohibited, including attacks on "objects indispensable to the survival of the civilian population"¹³ such as

¹¹ See Protocol II, Article 4(2)(g). This prohibition is to spare civilians the suffering resulting from the destruction of their real and personal property: houses, furniture, clothing, provisions, tools, etc. International Committee of the Red Cross (ICRC), *Commentary, IV Geneva Convention* (Geneva: ICRC, 1958), p. 226.

¹² Protocol II, Article 13(2).

¹³ Protocol II, Article 14.

mining agricultural land, poisoning or restricting general water supplies, burning rice fields, or looting village and commune rice stores.

The forced displacement of civilians is also prohibited except under two circumstances: to protect the security of civilians themselves, or where "imperative" military reasons require it.¹⁴ "Imperative" military reasons usually refers to evacuation because of imminent military operations. Prompt return of those evacuated is required by the evacuating authority as soon as hostilities in the area have ceased. Displacement or capture of civilians solely to deny a social base to the enemy is not an imperative military reason, nor is it a measure to protect the security of civilians. One authority writes, "imperative military reasons" require "the most meticulous assessment of the circumstances" and "cannot be justified by political motives."¹⁵ Khmer Rouge actions to force villagers in conflict areas throughout the northwest to abandon their homes and either move into Khmer Rouge zones or join the tens of thousands of internally displaced persons camped in fields and pagodas in government-held areas do not meet this test.

THE LEGAL STATUS OF THE KHMER ROUGE

Many of the abuses perpetrated by government figures have been justified or rationalized as measures necessary to control the Khmer Rouge. In virtually all cases, this reasoning has no basis either in international or domestic law.

The Paris Accords of 1991 gave the Khmer Rouge equal status to the other three parties to the agreement, which vested Cambodia's sovereignty in a council in which each were represented. The Khmer Rouge repeatedly breached the agreement through non-cooperation with virtually every phase of the peace-keeping operation other than repatriation of refugees. The U.N. Security Council penalized the Khmer Rouge through bans on oil imports and logging and gem exports, and eventually barred the party from participating in the elections. Upon the dissolution of the Supreme National Council and the formation of the new Cambodian government, the Khmer Rouge lost any role in the government of Cambodia and resumed its role as an insurgency.

¹⁴ Protocol II, Article 17.

¹⁵ ICRC, *Commentary on the Additional Protocols of 1977*, p. 1472.

Under the Geneva Conventions, non-governmental parties to an internal conflict lack the "combatant's privilege." This privilege immunizes members of armed forces in an international conflict from criminal prosecution by their captors for violent acts that do not violate the laws of war, such as killing or capturing enemy troops, or destroying military targets. Thus, insurgents in internal conflict are subject to prosecution and punishment for acts of warfare that would otherwise be crimes under the country's domestic law, such as murder, abduction or destruction of property. In the case of Cambodia, the relevant law is the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period, a code drafted by the UNTAC mission and enacted by the Supreme National Council in September 1992.

As discussed above, Common Article 3 of the Geneva Conventions specifically prohibits "the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples" against civilians or prisoners.

Cambodia's domestic law against the Khmer Rouge does not alter this rule of international law. Like other criminal laws, it is to be carried out by civilian authorities through the regular civilian court system of Cambodia. Persons cannot be legally detained or punished for alleged acts committed on behalf of the Khmer Rouge without a court order of arrest and a fair trial. Nor may individuals be detained on the mere accusation that they are "Khmer Rouge." "Membership" in a political or military organization of the Khmer Rouge is limited to those individuals who "give orders, accomplish or engage directly in armed conflict" with the purpose of serving Khmer Rouge policy. The family of Khmer Rouge are not automatically members, nor are "those living under duress with" the Khmer Rouge. Moreover, the law itself provides restraints against abuse, including prison terms of two to five years for persons who use the law to violate the rights of others by "threatening, charging, arresting, detaining, torturing or violating places of residence without reason" as well as "misinforming, giving false witness or giving false evidence." To be effective, however, such restraints must be enforced.

APPENDIX II: THE LAW AGAINST THE KHMER ROUGE

Note: Translation based on that published by Phnom Penh Post in the July 15-28, 1994 issue. The formal name of the Khmer Rouge is the Party of Democratic Kampuchea. Text in bold indicates amendments inserted during the debate on the bill in the National Assembly.

The National Assembly of the Kingdom of Cambodia:

- Understanding that the **Agreements on a Comprehensive Political Settlement of the Cambodian Conflict** of 23 October 1991, which the "Democratic Kampuchea" group signed together with the three other Khmer signatories, required the "Democratic Kampuchea" group like the other signatories to implement all the provisions of the agreement to bring peace and national reconciliation;
- Seeing that the "Democratic Kampuchea" group clearly did not agree to implement the most important provision of the agreement, in particular violating the articles which called for respecting a cease fire, for permitting officials and staff of the UN to enter the zones it controlled, for assembling for the cantonment, the disarmament and the demobilization of armed forces, and for respecting the human rights of the Cambodian population;
- Seeing that, in addition to not respecting the most important provision of the agreement which it had signed, the "Democratic Kampuchea" group made armed attacks against officials of the UN Transitional Authority, on officials of the Royal Cambodian Government, and indiscriminately against the lives of the Cambodian people;
- Seeing that the "Democratic Kampuchea" group did not register as a political party to participate in the elections in line with the Electoral Law of the UN for Cambodia dated August 12, 1992 and did not agree to take part in what was prescribed by this Law in order to transform this group into a proper and legal party;
- Seeing that throughout the period since the election in 1993 to the present the "Democratic Kampuchea" group has continually committed criminal, terrorist and genocidal acts characteristic of the group since it captured power in April 1975 -- forced dislocation, abduction, killing and subsequently also robbery and banditry, indiscriminate laying of mines throughout the plains and forests, destroying public

and private property, leading to the killing of civilians, forcibly taking and illegally occupying national territory, and selling natural resources in violation of the sovereignty of the Kingdom of Cambodia;

-- Seeing that the "Democratic Kampuchea" group has violated the Constitution of the Kingdom of Cambodia, in particular the following:

Article 3, which states "the Khmer people of both sexes shall respect the principle of the national sovereignty and liberal multi-party democracy";

Article 52, which states that the Royal Government of Cambodia shall stubbornly protect the sovereignty and national integrity of the Kingdom of Cambodia, shall carry out a policy of national reconciliation in order to protect national unity, shall protect the law and ensure public order and security;

-- Seeing that the "Democratic Kampuchea" group has refused to heed the successive appeals to participate in the process of national reconciliation made by UNTAC, by the leadership of the other Khmer factions, and subsequently by His Royal Majesty the King and Royal Government which emerged from the elections held to solve the Cambodian problem;

-- Realizing that the leadership of the "Democratic Kampuchea" group cannot take the Paris Peace Agreement as a legal shield to conceal and escape from their responsibility of committing criminal, terrorist and genocidal acts since the time that the Pol Pot regime took power in 1975-78 and that responsibility for all these criminal acts cannot be annulled by the passage of time;

The National Assembly of the Kingdom of Cambodia hereby approves the following law:

Article 1: Outlawing the "Democratic Kampuchea" group and its armed forces.

Article 2: Following the day this Law comes into effect, all people who are members of the political organization and military forces of the "Democratic Kampuchea" group shall be considered as offenders against the Constitution and offenders against the laws of the Kingdom of Cambodia. **Members of a political organization or military force of the Party of Democratic Kampuchea are those who give orders, accomplish or engage directly in the armed conflict for the purpose of serving the policy of the Party of Democratic Kampuchea. The above-mentioned persons do not include family members or those living under duress with the Party of Democratic Kampuchea.**

Article 3: Members of a political organization or military force of the Party of Democratic Kampuchea or people who commit crimes of murder, rape, robbery of people's property, the destruction of public and private property, etc. shall be sentenced according to the existing criminal law.

Article 4: Members of a political organization or military force of the Party of Democratic Kampuchea or people who perform

-secession

-destruction against the Royal Government

-destruction against organs of the state authority

-incitement to take up arms against the state authority

shall be regarded as criminals who commit crimes against the security of the country and shall be sentenced and jailed for 20 to 30 years or for life.

Article 5: This Law shall allow for an amnesty period of six months after coming into effect to permit people who are members of a political organization or military force of the "Democratic Kampuchea" group to return to live under the authority of the Royal Government in the Kingdom of Cambodia without facing punishment for crimes which they have committed.

Article 6: For leaders of the "Democratic Kampuchea" group the amnesty described above does not apply.

Article 7: The King shall have the right to give partial or complete amnesty as stated in Article 27 in the Constitution.

Article 8: Following the day that this law comes into effect, all property which is under the control of the Party of Democratic Kampuchea or other offenders and which comes from the illegal division of the territory of the Kingdom of Cambodia and from exploitation of the natural resources of the Khmer people shall be confiscated by the Royal Government whether it is in the Kingdom of Cambodia or any other country.

Article 9: People who use this law to violate the rights of the people by threatening, charging, arresting, detaining, torturing or violating places of residence without reason shall be punished and be jailed from two to five years. Those who misinform, bear false witness, or give false evidence in order to serve their interest by using this law to violate the rights of people shall be punished and jailed from two to five years. The victim of the injustice has the right to appeal for damages due to the above mentioned violations.

Article 10: This law is considered urgent. This law was approved by the National Assembly of the Kingdom of Cambodia in Phnom Penh on 7 July 1994. Loy Sim Chheang, Acting Chairman of the Assembly.

APPENDIX III: STATEMENTS BY HUMAN RIGHTS WATCH/ASIA ON DRAFT LAWS

July 6, 1994

First Prime Minister Prince Norodom Ranariddh
Second Prime Minister Hun Sen

Your Excellencies:

We are writing to express our concern over draft legislation to outlaw the Khmer Rouge as a political and military organization (the Party of Democratic Kampuchea and the National Army of Democratic Kampuchea).

We condemn the bloody atrocities that the Khmer Rouge perpetrated during their rule of terror, and recognize that they continue to commit severe abuses against civilians and prisoners of war in Cambodia. Acts such as murder, torture, kidnapping and bombing must be punished as crimes.

Our concern, however, is that the law as presently drafted could open the way for persons to be severely punished on the pretext that they are Khmer Rouge members or sympathizers, without any particular proof that they have attempted or committed acts of violence. We note that the law assigns punishment to a variety of vague and undefined acts, termed "secessionist activities," "acts of destruction" against the government, and "incitement of the population to take arms against the state authority." Each of these undefined terms could embrace activities that are protected by international law (such as speech that falls short of immediate incitement to violence) as well as activities that can legitimately be prohibited. The law specifies "arrest" and "sentencing" for offenders, but does not explicitly set out how trials shall be conducted, or whether review by a higher court is allowed.

Cambodia's legal system is still weak, and in the past abuses of the power to arrest and imprison individuals have been numerous. The United Nations and human rights groups have documented cases where persons accused of joining or supporting the Khmer Rouge have been abducted, imprisoned without trial, robbed, and in some cases even executed. The accusation that someone belongs to or supports the Khmer Rouge should not be used as a shield behind which abusive officials can commit crimes with impunity.

These problems must be taken into account when the government decides how best to address abuses committed by the Khmer Rouge. Human Rights

Watch/Asia expresses no opinion as to the political implications of enacting a new law specifically directed against the Khmer Rouge. We note, however, that the draft law gives little guidance to those who must implement it on how to ensure that persons are not imprisoned unjustly, or that free political expression is not stifled.

The Royal Government has a duty not only to protect the people from abuses that the Khmer Rouge may commit, but also from possible abuses that others may commit in the name of the law. We believe that the better way to develop the rule of law in Cambodia is to promote accountability for specific abuses, regardless of the perpetrator's identity, rather than to criminalize membership in a particular group.

August 16, 1994

CAMBODIA: MAJOR FLAWS IN PROPOSED IMMIGRATION LAW

Human Rights Watch/Asia today voiced concern that the proposed law in immigration under consideration by the Cambodian National Assembly could open the way to serious human rights abuses, including the deportation of genuine refugees, arbitrary or mass expulsion of long-term foreign residents, and serious restrictions on free movement within Cambodia. The human rights group urged the National Assembly to consider modifying the draft law and suspending its application until mechanisms for the protection of rights are in place.

"This law makes no provision for the identification and protection of refugees," said executive director Sidney Jones, "a terrible irony considering the experiences of hundreds of thousands of Cambodians who sought refuge around the world in the aftermath of the Pol Pot era."

The human rights monitoring group, formerly known as Asia Watch, noted that Cambodia is a signatory to the 1951 Refugee Convention and 1967 Protocol. The draft law applies "except where compliance with norms of international law is required," but nowhere refers to the Refugee Convention or even mentions the word refugee. "There are no procedures in the law for identifying and protecting refugees, and without them, it is unrealistic to expect that border control officials will be aware of international refugee law, much less apply it," said Jones.

Human Rights Watch/Asia said that to ensure that principles contained in the Refugee Convention were upheld, the new immigration law should explicitly

incorporate reference to all the provisions of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol. Those international treaties define a refugee as one who has a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group or political opinion, and state that no one should be returned to a country where he or she would face persecution. Anyone with such a fear should have a fair opportunity to state a claim for asylum, and claims of refugee status should be administered without discrimination based on gender, race, religion or national origin.

Human Rights Watch/Asia noted that long-term ethnic Vietnamese residents of Cambodia appear to be particular targets of the law, which does not include a definition of nationality, although it provides for deportation and expulsion of aliens. The draft law permits the Ministry of Interior to confiscate the papers of resident aliens, and thus make them vulnerable to expulsion, without any right to a hearing or review by the courts.

"There is no doubt that Cambodia has a serious problem with border control, but this law does not begin to solve that problem," said Jones. "The draft's failure to provide safeguards against mass expulsions, however, raises the possibility that Cambodia might repeat some serious abuses of the recent past." Ethnic Vietnamese were massacred during both the Lon Nol and Pol Pot governments, and over 20,000 ethnic Vietnamese civilians fled after bloody attacks on fishing communities in 1993 when the United Nations Transitional Authority in Cambodia (UNTAC) was in place.

According to the human rights group, the Ministry of Interior has already taken several steps that show its interest in expelling ethnic Vietnamese. These include suggesting that a large center the United Nations High Commissioner for Refugees built to receive repatriating Cambodians could be used to incarcerate "illegal immigrants" prior to their expulsion, ordering provincial authorities to report on non-Khmer inhabitants, and directing border guards to confiscate Cambodian identity documents from persons trying to enter Cambodia who do not speak proper Khmer.

Human Rights Watch/Asia observed that members of the National Assembly were working closely with the United Nations High Commissioner for Refugees to improve the draft and expressed hope that legislators would work to ensure the law respects human rights and is effective.

"Basic mechanisms must be established to ensure an immigration law can work," said Jones. "These include a definition of nationality, bilateral agreements with Cambodia's neighbors to enable deportation and resolve disputes, training for immigration officials, procedures for legally challenging immigration decisions and presenting refugee claims, and resolution of humanitarian issues such as family

reunification and protection of long-term residents, including those that happen to be ethnic Vietnamese. With regard to the definition of nationality, the new law should ensure that the definition does not exclude people simply because of their ethnic origin," Jones said.

Human Rights Watch/Asia cited other problems with the law that seem to violate the rights to freedom of movement and privacy, both guaranteed to all persons regardless of nationality by the International Covenant on Civil and Political Rights to which Cambodia is a party. Foreigners residing in Cambodia are subject to "controls and checks" by local police according to the draft. The draft allows the Ministry of Interior to place areas of the country off-limits to foreigners (a move which may obstruct the activities of international nongovernmental organizations). Hotels must notify the police within twenty-four hours of any foreign guests. Foreign residents must have permission to move their residence within the country as well.

May 13, 1994

An Open Letter To Their Excellencies:

First Prime Minister Prince Norodom Ranariddh
Second Prime Minister Hun Sen
Foreign Minister Prince Norodom Sirivudh
Information Minister Ieng Mouly
Chair of the National Assembly Human Rights Commission Kem Sokha
Chair of the National Assembly Foreign Affairs and Information Commission
Om Radsady

Human Rights Watch/Asia, an international human rights monitoring organization, is writing to express concern on proposed legislation regulating the press in Cambodia.

Our concerns are based on the guarantees of freedom of expression, opinion and information, as set forth in the Universal Declaration of Human Rights¹ and the International Covenant on Civil and Political Rights.²

¹ The Universal Declaration of Human Rights, Article 19, provides:
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Two proposed laws have been put forward, one by the Ministry of Information, and the other by the Council of Ministers, which rejected the Ministry of Information's draft. Both drafts have many positive features, among them a prohibition of pre-publication censorship, recognition of the right of journalists to maintain the confidentiality of their sources, and provisions that guarantee the right to report on official statements, reports and proceedings.

Nevertheless, we believe that the latest draft by the Council of Ministers has a number of flaws which tend to undermine these positive features and jeopardize the development of a free and energetic press in Cambodia.

² The International Covenant on Civil and Political Rights, Article 19 provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a) For respect of the rights or reputations of others;
 - b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

An area of potential confusion in the Council draft concerns the limitations on freedom to publish in the name of "national security" or "public order." The International Covenant on Civil and Political Rights permits legal restrictions that are "necessary" to protect both these interests. To be "necessary," a restriction must be more than desirable, or convenient -- it must address a pressing social need, and be no more restrictive than required to prevent the harm threatened. If restrictions are drawn too broadly, abusive officials will be free to silence critics in the name of national security and public order.

In defining "national security," the Council draft omits an important qualification found in the Ministry of Information's draft:

It shall not be a violation of this Article to criticize the government or public officials. Such statements are the essence of free expression in a democratic society.³

We believe that in view of Cambodia's recent history, this principle should be explicitly stated in the law.

Under the Council draft, to show that published material "causes or is likely to cause serious harm to national security," the government must identify the national security interest at stake, and provide specific and detailed evidence that the material affects national security and public order. The Council draft, however, fails to explain what is meant by "affecting" either national security or public order.

Almost any story on an issue of public debate will "affect" national security or public order, sometimes negatively, sometimes positively. For example, reporting on demonstrators may encourage further demonstrations, or it may prompt government action on their grievances and increase public confidence in the government. International law is directed narrowly at protecting these interests from serious peril, not from the ups and downs of public opinion.

The draft also fails to explain what is meant by "public order." In most countries, public order is a broader concept than "national security," and thus threats to public order must pose some imminent likelihood of violent social disruption. Critical statements or even insults directed against the government are not threats to public order; restrictions are justified only under extraordinary circumstances. As the Council draft already prohibits incitement to violence elsewhere, this undefined reference to "public order" is likely to produce confusion and a possible opening to government abuse.

³ Ministry of Information Draft Press Law, Article 10.

Unlike the Ministry of Information draft, which relies on fines for enforcement, the Council draft gives the Ministry of Information power to suspend the publication of offending material for an indefinite time, and to confiscate it. No mention is made in this draft of whether publishers can challenge a suspension or confiscation, or how they would do it. This combination of poorly defined restrictions and strong government power to completely suppress publications poses a real danger to press freedom in Cambodia.

Another serious defect in the Council draft is its treatment of defamation. The draft makes defamation a criminal offense, and it fails to recognize truth as an absolute defense against charges of defamation. While protecting the reputation and privacy of citizens is an appropriate goal for the law, defamation is a two-edged sword that can easily be used to suppress valid criticism and intimidate the press.

Article 19 of the Council draft provides that the criminal law shall apply to acts committed by the press, which would include actions for defamation and libel under the UNTAC Provisions Relating to the Judiciary and Criminal Law and Procedure.⁴ But under the UNTAC law, the truth of a statement is not a defense to these charges, except in the case of statements concerning public figures. The UNTAC law, which treats defamation as a criminal matter that can draw imprisonment, does not reflect legal practices in many democracies.

Treating defamation as a crime raises three dangers. First, reporters, editors and publishers can be jailed, even for honest mistakes, or for reporting matters of great public interest and importance that can be difficult to verify with absolute certainty. Second, defamation allegations can be used as a way of indirectly censoring the press, as when countries make criticism of government officials or the head of state illegal. Third, making defamation a crime gives public prosecutors license to redress harm to private reputations, which can easily lead to abuse by persons with close connections to the government. For example, if a reporter writes about the corrupt business dealings of a relative of a powerful Minister, that relative may try to use his or her connections to threaten the journalist with prosecution. The better practice is to avoid possible abuse by giving all people the power to protect their reputation through instituting civil actions in the courts.

The principle that truth is a defense to defamation reflects a balance between the public's right to know and personal interests in privacy and reputation. The public's right to information includes the right to negative information; when truthful but negative reporting is unprotected the government merely licenses an

⁴ This is still the criminal law in force in Cambodia pending the drafting of a new criminal code.

indirect form of censorship. The prospect of being charged with defamation every time a newspaper publishes reports of corruption, government abuse, military defeat, or the like could silence the press and drive these very important issues out of public debate.

The definition of defamation in the UNTAC criminal provisions does not recognize truth as a defense, except in cases that relate to public officials.⁵ In contrast, the Ministry of Information's draft law made clear that an individual who charges defamation must show that the material allegations that harmed his or her reputation were false, and that the statement was a statement of fact, not opinion.

Article 11 of the Council draft provides that persons who believe that an article or picture "affects or defames" their reputation may demand a retraction or the right of reply. A retraction is a statement by the press that corrects the statements challenged or the impression the statements conveyed. A reply is the publication of the offended party's statement of the facts that rebuts the statements challenged. The practice of publishing retractions and replies contributes to public debate in a democratic society and the accountability of the press.

But the draft further provides that "a retraction or reply that the press is obliged to publish shall be published on the same page with the same size of type as the text believed to be defamatory." This raises the question of who decides which retractions and replies the press is "obliged" to publish, rather than specifying that the decision is to be left to the press. It also leaves the impression that papers must print retractions or replies to any article that "affects" someone's reputation, whether it affects it positively or negatively, whether the statements are accurate and fair or not. A newspaper that publishes what it believes to be a fair and accurate report should not be compelled to retract its statements unless a court of law finds them to be otherwise. Nor should a paper be required to print replies of any length and content on demand. Such an obligation could easily be abused, causing newspapers to avoid controversial topics at the risk of losing control over their publications. Even those nations which require editors to publish replies limit the content of replies to issues of fact and prohibit defamatory material.

⁵ It is commonly accepted that public figures should be susceptible to a higher level of criticism than ordinary people because of their position in society and the public's justifiable interest in their actions.

We note that the Ministry of Information's draft avoided these problems entirely. Defamation is clearly defined. Persons who complain of defamation must first show that the publication failed to print a retraction or reply. This gives the person complaining a way to obtain an immediate remedy, and a chance for the newspaper to try to correct its mistake before finding itself in court. Persons complaining must also prove that the challenged statement was materially false, that it damaged their reputation, that it was a statement of fact and not of opinion, and that those who published the statement did so with knowledge the statement was false, or in reckless disregard of the truth. Defamation is a strictly civil action, for which no publisher may be imprisoned. A maximum fine was stipulated for defamation suits, which would compensate those whose reputations were injured without allowing the threat of defamation suits to inhibit reporting because of the risk of bankrupting newspapers.

We are also concerned by a number of vaguely worded administrative regulations that relate to permission for press-related businesses to operate. Mandatory procedures which allow administrative officials the discretion to withhold permission to operate can amount to prior censorship of the press. Such regulations are easily susceptible to governmental abuse.

Article 16 of the Council draft requires approval from the Ministry of Information before the opening of a printing center or bookstore, without any word as to why such approval would be necessary, what the standards for granting or denying approval would be, or how people could challenge a negative decision. The scope of application is also unclear -- would a newsstand be a "bookstore" or a photocopier be a "printing center"? Article 17 requires government permission for "the publication and selling of information from abroad for the purpose of commerce" before such information is imported to Cambodia. Again, no reasons for this requirement is given, much less standards for granting or withholding permission, or measures for challenging denials. Article 10 requires publishers to file "a stamped statement" with the Ministry of Information for identification. This provision would pose no problem if the draft defined what a "stamped statement" consisted of, and stated that the Ministry had no authority to refuse to register such a statement.

The right to request access to government-held information also suffers under the Council draft. It gives the final word on such requests to administrators, with no provision for appeal outside the executive branch. Article 5 of the Council draft allows people to request access to information in government-held records, and requires government agencies to respond within ten days and give reasons if they deny access. People who are denied access may appeal to the Minister of the agency concerned, but there is no appeal from the Minister's decision to the courts.

Both draft press laws recommend the establishment of a non-governmental press organization which shall adopt a code of professional ethics and enforce compliance. We are concerned that the drafts, by requiring the creation of one such organization, do not leave journalists free to form others. The Council draft at Article 9 seems to give the press organization a quasi-governmental role, as the Ministry of Information "shall provide official press cards to journalists who are members of the press body upon the proposal of the press body."

Finally, we note that the fines imposed for violations of the Council draft are quite high, particularly for many of Cambodia's fledgling newspapers. We recommend that the government consider adjusting these amounts to ensure that they do not stifle vigorous reporting with the threat of putting newspapers out of business.

In summary, our recommendations discussed above are as follows:

* Article 13 of the Council draft, entitled "National Security and Public Order," should include the previous draft's stipulation: "It shall not be a violation of this article to criticize the government or public officials." To show a violation of the article, the government should prove that published material harmed national security, not just "affected" it. Reference to "affecting public order" should be deleted, as Article 12 already covers the penalties for publishing materials that incite violence. If a reference to "harming public order" is retained, it should be defined to require proof that the published material was likely to incite imminent violence.

* The power to suspend publication of forbidden material or confiscate it in the name of protecting national security should be deleted, as it amounts to a form of pre-publication censorship. Damages or penalties assessed after publication should provide a sufficient deterrent, as provided in the case of incitement to violence. At a minimum, any such power must be narrowly drawn to prevent the government from closing newspapers, and subject to immediate judicial review, with the government liable for costs in cases where it acted wrongly.

* The law should define defamation as a civil offense, supplanting the criminal provision in the UNTAC law which carries imprisonment as a penalty. Only the individual who claims his or her reputation was harmed should be able to bring defamation charges in court. Truth must be a defense to any charge of defamation. The Ministry of Information's original draft law contained some of the elements of a up-to-date definition of defamation suitable for a modern legal code. Newspapers should be encouraged, but not required, to publish retractions or replies on their own initiative; a court may require a retraction or reply published only after a full and fair trial that determines defamation occurred.

* No government approval should be necessary for opening or operating bookstores, printing centers or newspapers. Registration requirements, if imposed, should not allow government officials any discretion to refuse to register the business concerned.

* The refusal of a request for government-held information by a Ministry should be reviewable by the courts.

* Participation by journalists in a non-governmental press organization should be voluntary, and journalists should be free to establish and join as many such organizations as they choose. The government should not use a non-governmental press organization for official purposes, such as registering journalists.

* Fines for infractions of the law should be high enough to deter violations, but not so high that they stifle vigorous reporting with the threat of closing the newspaper.

November 10, 1994

An Open Letter To

His Majesty Preah Bat Samdech Preah Norodom Sihanouk Varman
First Prime Minister Samdech Krompreah Norodom Ranariddh
Second Prime Minister Hun Sen
Chair of the National Assembly, Chea Sim
Acting President of the National Assembly, Loy Sim Chheang
Chair of the Foreign Affairs and Information Commission, Om Rasady
Chair of the Human Rights Commission, Kem Sokha
Members of the National Assembly
Minister of Information, Ieng Mouly

Human Rights Watch/Asia is deeply concerned that the draft press law approved by the Council of Ministers on November 4, 1994 will pose a grave danger to freedom of the press in Cambodia. We urge the government and the National Assembly to thoroughly amend the draft to remove the risk that criminal penalties will be applied to those who criticize the government or public officials, and to ensure that the law does not conflict with Cambodia's constitution and the International Covenant on Civil and Political Rights.

Of especially serious concern is the number and type of offenses to which the criminal penalties of arrest and imprisonment are applied. As currently drafted, Cambodian journalists would not be able to comment on virtually any controversial topic of public concern -- including military misbehavior, corruption, political competition or the conduct of public officials -- without risking criminal liability.

Article 14 of the draft law criminalizes any publication "which humiliates or degrades national organs or public authorities." "Humiliation" is elsewhere defined as "any insult, contemptuous remark or abusive language which does not claim to impute fact" and is also punished by criminal sanction when applied to ordinary persons. These measures directly violate Article 19 of the International Covenant on Civil and Political Rights which explicitly guarantees to all people "the right to hold opinions without interference" and the right "to freedom of expression" including the freedom to "impart information and ideas of all kinds". Article 12 of the law also imposes criminal penalties such as imprisonment for up to three years, on publication, distribution or reproduction of information that is false or falsely attributed to a third person, or information which "causes or may cause turmoil to public security" or which "affects territorial integrity, national unity, independence, sovereignty, stability of governance, peace and good relations with

other countries." This restriction is far beyond the permissible restriction of speech for the protection of "national security or of public order" permitted by the International Covenant.

As we have mentioned in prior correspondence, it is not enough for speech to "affect" national security or public order -- it must threaten real, provable harm before it may be restricted in any way. "National security" and "public order" are terms that are defined at length in the jurisprudence of many countries, and they are meant to be narrowly construed. They point to an imminent threat of destruction of the state, or imminent social upheaval, not to robust debate about politics, government policies or government figures. As presently written, anything published that would "affect national unity," including virtually all political debate, would be subject to criminal sanction. The draft also gives to the Ministry of Information the right to ask that a court suspend a publication, without giving any limit on the duration of such a suspension.

We have also written previously as to why we believe that defamation cannot be punished by criminal sanction, and that truth must be recognized as a defense in all cases. The present draft only recognizes truth as a defense in the case of public officials, and subjects defamation to imprisonment as well as fine. Treating defamation as a criminal offense allows the state to use arrest and prosecution for defamation as a method of indirect censorship. Individuals should have the means to redress harm to their reputations through civil remedies such as lawsuits for damages or retraction; this power should not be left to the discretion of public prosecutors and administrators. Truth must be a defense to defamation because it protects the public's right to information, even negative information.

The imposition of liability for damages for defamation on printers as well as publications will make it difficult for any newspaper that reports negatively on anyone to find a printer. This is a form of indirect censorship, and a restriction on the internationally recognized right of the public to information. Similarly, it is not reasonable to expect that commercial distributors of publications can be aware of the entire contents of each issue; the imposition of damages for victims of material that incites "successful crimes or misdemeanors" under the draft's Article 11 will also constrict the ability of publications to be disseminated.

"Violation" of the King has also been made punishable by criminal penalty. Although the dignity of the King is protected by the Constitution, there is no specification of the legal remedy. King Sihanouk has on many occasions expressed his wish that the government not undertake criminal prosecutions of those who have criticized him. As in the case of defamation, criminal actions leave enormous discretion in the hands of public prosecutors, and leave the way open to politically-motivated abuse.

We note that Article 16 of the draft imposes criminal penalties against journalists who accept bribes, but does not penalize those who seek to bribe journalists. Journalists are already subject to sanction by journalists associations for such misconduct; it seems that the real danger of abuse lies not with journalists, but with government officials who enjoy public trust, and who, under the present draft, would enjoy impunity for such misconduct.

On the subject of fines and civil penalties, we note that the amounts imposed by the draft are very high in relation to the Cambodian economy. Civil fines that in effect can bankrupt a newspaper can also serve as an indirect form of censorship. The draft also requires that whenever someone complains that the press has harmed his or her honor or dignity, the press must print a retraction "in the next issue." Retractions are a useful form of remedy, but publishers must have initial discretion whether a remedy is due, otherwise complaints that have no merit could undermine the freedom of writers and publishers to determine their newspaper's contents. Requiring retractions to be printed immediately does not give publishers adequate time to consider the merits of complaints or review their own past reporting.

Finally, we note that the right to government-held information, provided in the draft in Article 5, is not enforceable through the courts. Without a means of enforcement, this right cannot be protected.

Human Rights Watch/Asia believes that an independent press is one of Cambodia's finest assets, and a vital safeguard of human rights. The international community is gravely concerned by recent attacks against journalists and government warnings to publishers and broadcasters to avoid controversial topics. We urge you to amend this law to ensure that press freedom will not be stifled, but will thrive.

February 16, 1995

Samdech Chea Sim
Chairman of the National Assembly
Kingdom of Cambodia

Your Excellency:

We understand that in the last several weeks, the National Assembly's Commission on Foreign Affairs and Information has worked to prepare a revised draft of the press law for consideration by the whole legislature. It has been reported that the revised draft omits criminal penalties that were included in prior

versions, a very significant step that will improve security for journalists. Human Rights Watch/Asia appreciates the Commission's recognition of the importance of this issue and commends the revision.

However, we remain concerned that the vaguely-worded offenses for which criminal penalties were provided may still be in the draft, and that civil fines may now be substituted for criminal penalties. In particular, the offense of "humiliating" or "degrading" "national organs or public authorities" (Article 14 of the unrevised draft) would still allow the punishment of journalists for expressing unfavorable opinions about the government, a direct violation of Article 19 of the International Covenant on Civil and Political Rights, to which Cambodia is a party.

The Covenant allows the legal restriction of speech where necessary to protect national security and public order, but the draft law goes much further. It allows punishment of speech which "may cause" danger to public order or which "affects" national security, or even "national unity," a concept that refers to Cambodia's unique political situation and not to international law (Article 12 of the unrevised draft).

To show that a restriction is necessary there must be more than some chance that speech will affect public order or national security. Rather, there must be an imminent likelihood of serious danger. Open debate on public affairs will almost always "affect" the political situation in a country, but that is an essential characteristic of a free and democratic society. It is only at the point where speech imperils the continued existence of the state that international law allows restriction.

Even if no criminal penalties apply to these and other offenses, civil fines may still be enough to serve as an indirect means of government censorship, in violation of international law. The previous draft provided for large fines and expansive liability (applying in some cases to printers and distributors) that could effectively put newspapers out of business. Likewise, the power to temporarily suspend publications to protect national security or public order must be strictly limited, so that it cannot be abused to close newspapers.

The press law will be one of the most important pieces of legislation that the National Assembly considers. We encourage the Commission to address the problems outlined above so that Cambodia will fulfil its responsibility to protect the international rights of freedom of expression and opinion, and maintain its vibrant and free press.