

AN EXCHANGE ON HUMAN RIGHTS AND PEACE-KEEPING IN CAMBODIA

Introduction:

The United Nations mission in Cambodia is to end by November 15, with the promulgation of a new constitution, the formation of a new government, and the withdrawal of peace-keepers. The peace-keeping period was marked by major human rights violations, among them the slaughter of ethnic Vietnamese residents of Cambodia, abuse of prisoners, and incidents of politically-motivated murder, assault and intimidation that accelerated in the months leading up to the May 1993 elections. Those elections became a formidable act of faith on the part of Cambodia's people, as almost 90 percent of eligible voters cast ballots in the face of the Khmer Rouge's threats to disrupt the polls. But the elections did not halt abuses such as political attacks or murders of ethnic Vietnamese. Cambodia is at war with the Khmer Rouge once more, governed by a shaky interim coalition government, and facing an uncertain transition to constitutional democracy.

In this context, it is imperative that the United Nations, the international community and the present Cambodian authorities take immediate steps to ensure that those responsible for egregious violations are held accountable. Accountability is no luxury, to be deferred to a more stable, peaceful moment. It is the very cornerstone of a society ruled by laws, including international laws that require that those who violate human rights be held answerable for their actions. The deterrence of future tragedies rests on this principle, and in its absence, prospects for long-term stability and peace in Cambodia are remote.

The performance of the United Nations in upholding accountability for gross abuses in Cambodia was the focus of a May 1993 report by Asia Watch entitled "Cambodia: Human Rights Before and After the Elections." The report detailed grave human rights violations committed by the Cambodian parties to the conflict and the actions of the United Nations Transition Authority in Cambodia (UNTAC) in response to those violations. It concluded that human rights protection had too often taken a back seat to peace-making, and that UNTAC's failure to effectively penalize abuses offered a poor model to the post-UNTAC government and encouraged continuing grave abuses in the future. UNTAC, in a letter published here together with our response, countered that the report was unbalanced, in that it did not take into account the many achievements of UNTAC, especially with regard to education, training and the formation of non-governmental organizations.

This exchange takes place in the context of a wider debate about what part human rights should play in UN peace-keeping in any particular country.¹ Where serious human rights violations are taking

¹ Asia Watch's parent organization, Human Rights Watch, has published an assessment of human rights

place, should the UN's priority be penalizing abusers or gradual institutional reform? Should the UN emphasize teaching international human rights standards or documenting and exposing abuses? Asia Watch believes that each of these functions is important, but that the long-term effectiveness of efforts aimed at education and reform will be seriously undermined if the will to hold abusers accountable is lacking. Without demonstrating that there is redress for gross violations, instruction in human rights may have little impact, or even breed cynicism. Meaningful institutional reform may be difficult so long as serious abuses continue with impunity.

UNTAC promoted human rights on all these various fronts. It provided education and training in human rights to the general public and to special groups such as human rights activists, judges, criminal defenders, and civil police. It drafted and promulgated new criminal law and media guidelines, and persuaded Cambodia's sovereign authority to accede to seven international human rights instruments. UNTAC facilitated the formation of new political parties and newspapers. It provided the protection necessary for the fragile beginnings of a civil society, with professional associations and non-governmental organizations. In the realm of human rights protection, UNTAC, and especially its Human Rights Component, performed creditably in monitoring prison conditions and supervising the release of hundreds of prisoners, even while abuse of prisoners remained an intractable problem. The Human Rights and Civil Police components investigated literally hundreds of serious human rights abuses which were committed as the date of the elections approached.

These efforts, however, were too often compromised by reluctance at the highest levels to follow through with "corrective action" as mandated by the peace plan.² "Corrective action" encompassed a wide array of measures, from arresting and prosecuting perpetrators, to dismissing abusive or obstructive officials, to publicly exposing and stigmatizing wrongdoers. The public condemnation of individuals responsible for abuse was often seen as inimical to the ongoing diplomacy required in both peace-making and peace-keeping. But failure to hold abusers accountable can undermine whatever peace diplomats construct, and lasting reconciliation is difficult to achieve where impunity prevails.

In Cambodia, the UN assumed unprecedented administrative responsibility in a country with virtually no institutions capable of addressing serious human rights abuses. Under the Paris Accords, the UN Secretary-General's Special Representative was given complete authority, after consultation with the Cambodian parties, to direct wide areas of administration in order to attain "a neutral political environment."³ The country had no free press, the Buddhist church was state-controlled, and the civil police and judiciary were both rudimentary and totally politicized.

One of the greatest obstacles UNTAC faced was non-cooperation of the Cambodian parties. The Khmer Rouge refused to enter the disarmament and cantonment phase of the peace plan, barred UNTAC from its zones of control, continued open warfare with the Phnom Penh military, massacred ethnic Vietnamese civilians, and ultimately turned its guns on the peace-keepers themselves. The Phnom Penh regime also obstructed the peace process, pressing military offensives, conducting a terrorism campaign against its political rivals, and resisting almost every UNTAC effort to investigate and sanction abusers.

Human rights protection thus required confrontation, but the peace plan, the Security Council and donor nations set limits to confrontation. UNTAC was neither empowered to enforce peace through use of arms nor authorized to withdraw its forces or delay elections. Yet even within these limits, a more aggressive approach to non-cooperation was possible.

A case in point is a series of unpublicized raids that UNTAC conducted subsequent to Asia Watch's visit in 1993. These raids, an initiative of the Civil Administration component, produced evidence that the Phnom Penh regime had organized undercover squads to infiltrate and terrorize the political opposition. They finally put the Phnom Penh government on notice that UNTAC was serious about asserting control under its mandate. Even so, the action came late, on the verge of elections, and went unpublicized until the leader of the Phnom Penh faction, Hun Sen, protested it. The findings from these raids, that the Phnom Penh regime had organized undercover units to sabotage and terrorize political opponents prior to the elections, was finally exposed by the *Washington Post* well after the polls. We have included the

² *Agreements on a Comprehensive Political Settlement of the Cambodian Conflict*, United Nations, DPI/1180-92077-January 1992-10M, Annex 1, Section E (New York: 1992), hereinafter "Comprehensive Settlement."

³ The Comprehensive Settlement signed in Paris on October 23, 1991 provides that the Supreme National Council, a representative body of the warring Cambodian parties that constitutes the sovereign authority of the country, "delegates to the United Nations all powers necessary to ensure the implementation of this Agreement," including the power to issue directives, conduct its own investigations and take "corrective" action, assign UNTAC personnel to administrative bodies and remove personnel from such bodies, supervise or control all civil police, and supervise other law enforcement and judicial processes to the extent necessary to ensure that "human rights and fundamental freedoms are fully protected." Article 6 and Annex I Section B.

introduction to this report in the appendix, to highlight the sort of information that ought to have been made public to the Cambodian people and to the world at large.

Another obstacle was the absence of any credible justice system. This presented UNTAC with two options. The first was to address human rights abuses through measures such as dismissing or exposing perpetrators, rather than formally prosecuting cases through the judicial system, in the meantime working towards the system's eventual reform. The second was to radically overhaul existing tribunals, or to create new ones for the transitional period, using UNTAC's power to control government administration in the field of public security.

UNTAC pursued both options, with less than optimal results. While it drafted a code on criminal law and procedure, UNTAC could not adequately retrain the largely uneducated judiciary within the peace-keeping mission's short time-frame. Nor would it provide the salaries and security that were necessary to make judges independent of political authorities. UNTAC did assume the power of arrest and prosecution, but when the Phnom Penh authorities closed their courts to UNTAC's cases, the peace-keepers balked at appointing an independent tribunal. Few arrests were carried out, and those arrested faced indeterminate administrative detention, itself a human rights violation.

The May 1993 elections, which took place against a backdrop of massive political intimidation by the Phnom Penh government and threats of armed retribution by the Khmer Rouge, exceeded all expectations. Almost 90 percent of eligible voters cast ballots, awarding the Phnom Penh party 51 seats in the constituent assembly, the royalist FUNCINPEC party 58 seats, and other parties the remaining 11 seats.

The elections, however, did not dispel the underlying tensions between the Cambodian parties, or put a halt to human rights abuses. Once it was clear the Phnom Penh party would have to share power, Deputy Prime Minister Prince Chakrapong and Minister of the Interior Sin Song attempted to wrest the eastern part of the country away. The secession crumbled within a few days, but not before hundreds of FUNCINPEC members fled the eastern provinces in fear of retribution. The situation stabilized slightly with the formation of an interim government, with FUNCINPEC leader Prince Ranariddh and former Prime Minister Hun Sen as co-chairmen, although relations between officials of the Phnom Penh regime and FUNCINPEC are still tense in the provinces.

Events since the election vividly demonstrate the fragility of the political situation and the continuing prevalence of serious human rights abuses.

The Khmer Rouge launched a two-pronged offensive -- one diplomatic, one military -- to persuade the other parties that it must be allowed to share power in the new government if there is to be any peace. Khmer Rouge forces took over the 12th-century temple of Preah Vihear, and mounted attacks in the northwestern provinces of Siem Reap and Battambang. On both July 25 and August 2, 1993, gunmen believed to be Khmer Rouge soldiers attacked the Phnom Penh-bound train in the vicinity of Kampot in the south. The second attack claimed the lives of at least ten people and injured at least 30 others. In early August, an UNTAC spokeswoman estimated that Khmer Rouge forces were destroying road and rail bridges around the country at the rate of one every two days. On August 1, a Khmer Rouge unit attacked an UNTAC military checkpoint in Preah Vihear on the Thai-Cambodian border, holding hostage on Thai territory 21 peace-keepers who had fled the mortar barrage before releasing them unharmed. UN naval boats on the Mekong also came under heavy fire from Khmer Rouge positions. The transitional government responded to the steady stream of Khmer Rouge attacks with a coordinated offensive on August 18, 1993. Government troops pounded Khmer Rouge positions at times with up to 40 artillery rounds a minute, while hundreds of

villagers fled the fighting. Meanwhile, the withdrawal of UNTAC troops continued, with all battalions scheduled to be home by November 15, 1993.

Killings of ethnic Vietnamese also continued. Since the elections, over two dozen ethnic Vietnamese were murdered in attacks ascribed to the Khmer Rouge, bringing the total number of such killings to over one hundred since the beginning of the UN mission.

The site of the latest attacks was the fishing village of Chhnok Tru in the central province of Kompong Chhnang, where ethnic Vietnamese had begun to return to their homes. On March 24, eight ethnic Vietnamese were slaughtered when 20 Khmer Rouge raided the village; another eight died in an attack on July 8; six were murdered in an attack on Phum Chhrok village in Chul Kiri district of Kampong Chhnang on August 10; and on August 13, approximately 30 men arrived at Chhnok Tru in boats mounted with machine guns, robbed the villagers, killed at least one woman with a shot to the back of her head, and kidnapped 11 others. Eight children taken hostage in this latest raid were released on August 16 after villagers paid a ransom of over US \$700. Before the August attacks, Khmer Rouge radio broadcast what it termed an "open letter from the people living in the Tonle Sap area" alleging that massive boat convoys of "well-organized troops in a state of combat readiness" were invading Chhnok Tru and the surrounding area. The head of the UNTAC mission, Yasushi Akashi, sent a letter to the Khmer Rouge on August 4, deploring racist incitement and warning "against any return to violence." In a Khmer Rouge radio broadcast on August 13, representative Khieu Samphan repudiated this admonition, saying that "the Cambodian people must struggle against the Vietnamese." The Khmer Rouge kidnapped another four ethnic Vietnamese in Kompong Chhnang on August 18, and killed two by bashing in their heads with rifle butts, throwing them in the water and shooting them.

According to an internal UNTAC report, government soldiers, indifferent to defending potential victims against these attacks, at one point charged hefty "protection" fees to relatives of the victims who wished to try to collect the bodies from areas infiltrated by the Khmer Rouge.

A portion of the tens of thousands of ethnic Vietnamese residents who had fled earlier massacres in the Tonle Sap region remain stranded in miserable conditions at the Vietnam-Cambodia border. UNTAC, the United Nations High Commissioner for Refugees and relief organizations are coordinating aid to over 4,000 of the approximately 30,000 ethnic Vietnamese who fled their homes in the wake of pre-election massacres perpetrated by the Khmer Rouge. The present transitional government has barred their return, claiming it cannot protect them.

In another disturbing incident, a 20-year-old prisoner named Chhay Narith, who had voted in the May elections, died from starvation and neglect on August 26. According to a United Press International report, one human rights officer said "no one in the prison system or the interim government will take responsibility for prisoners," including Hun Sen and Prince Ranariddh, co-chairmen of the interim government. The report said that a representative of Prince Ranariddh referred questions about prison conditions to Hun Sen or the National Security Minister, neither of whom were available for comment.⁴

These events raise the question of whether UNTAC's various human rights initiatives will have lasting effect. They also point to the obligation of the Cambodian government (both the provisional

⁴ Sue Downie, "United Nations Criticizes Cambodian Prisons," *United Press International*, August 27, 1993.

government and the government that will result from a new constitution) to protect basic human rights, and the need for international assistance in performing that duty.

Asia Watch continues to maintain that exposure and sanction of serious human rights offenders are critical elements of UNTAC's responsibility in Cambodia, even as the peace-keepers prepare to depart. UNTAC has continued investigations of serious human rights abuses in the provinces. Asia Watch urges that such investigations continue full force, and remain an important element of the activities under the Geneva-based UN Human Rights Centre, which will maintain a presence in the country after the conclusion of the UNTAC mission.

Since the election, UNTAC has arrested two more Cambodians, who have joined the original pair of UNTAC detainees in a special jail in Phnom Penh. They are the deputy director of the Prey Veng provincial prison, who is charged with humiliating and firing upon eight prisoners, killing seven of them, and the deputy director of the Battambang provincial prison, Tem Seng, who is charged with torturing several prisoners by burning them. The Ministry of Justice says it has no authority to deal with these cases, and UNTAC intends to refer them to the new transitional government for adjudication. It is still unknown how long it will be before a competent tribunal can be constituted to hear their cases; in the meantime, they are detained under the Special Representative's administrative directive. Asia Watch urges UNTAC to set a firm date by which time these cases must be brought before a tribunal or the prisoners freed.

The importance of an independent judiciary to Cambodia's long-term ability to address human rights abuses cannot be overstated. According to the UNTAC Human Rights Component, the draft constitution, which has yet to be made public, provides that the head of state may preside over meetings of the High Judicial Council, an arrangement that would further compromise the independence of the judiciary. The component has also warned that the draft constitution contains no machinery for the enforcement of basic human rights, and in many instances limits guarantees of human rights to "citizens," which may operate to exclude resident minorities such as ethnic Vietnamese.

The Paris Accords contain specific requirements for human rights protections in Cambodia's new constitution, none of them limited by their terms to only "citizens." One stipulation is that an independent judiciary will be "established" and "empowered" to protect rights, and that "aggrieved individuals" will be entitled to have the courts adjudicate and enforce rights. The peace plan also lays out specific human rights that the constitution must protect, in view of "Cambodia's tragic recent history," among them the rights to life, personal liberty, security, freedom of movement, freedom of assembly and association, and freedom from racial, ethnic, religious or sexual discrimination. It is a matter of urgent priority that the constitutional drafters and Cambodia's constituent assembly establish an independent judiciary and guarantee to all persons in Cambodia the full complement of rights specified in the Paris Accords and the seven international treaties that Cambodia signed during the peace-keeping period.

In the post-election period, UNTAC continued to encourage education and programs to reconstruct the rule of law in Cambodia. The International Commission of Jurists (ICJ) recently conducted a human rights training seminar for 50 Cambodian judges, and the Ministry of Justice has recently approved an ICJ program to place ten foreign judges in courts throughout Cambodia as advisors to local judges in court management and administration of justice. These activities are financed by a \$200,000 grant from the government of Japan to the UNTAC Human Rights Trust Fund. Other non-governmental organizations, with the support of the UNTAC Human Rights Component, are planning to establish a bar association and a training program for criminal defenders.

The practical realization of an independent judiciary will not occur overnight, given the weak state of Cambodia's courts and law enforcement bodies. For this reason, it is especially important that the Cambodian authorities and the international community firmly support interim measures to secure human rights. Such interim measures could include the establishment of an Ombudsman or an independent and politically neutral Human Rights Commission. Any such office must be empowered to investigate human rights abuses, make public reports, recommend corrective actions, and address institutional reform.⁵

In September 1993, the Human Rights Component is scheduled to release a final report of its activities and investigations. Asia Watch urges each component of the UNTAC mission to publish the most comprehensive report possible of all reported abuses and investigations, whether resolved or unresolved. An example of the type of report that ought to be made public is the UNTAC document on undercover sabotage units attached as the appendix to this report. The release of such information for the public record will be vital, not only for the new Cambodian government as it assumes responsibility for redress of human rights violations, but also as a means of establishing the principle of public accountability in a country where impunity for the most bloody abuses has been the norm.

⁵ Similar proposals have been put forward by UNTAC and outside observers. See, e.g. Yash Ghai, "Some Thoughts on the Cambodian Constitution," Law Working Paper Series, Paper No. 10 (Hong Kong: The University of Hong Kong Faculty of Law, July 1993).

**PART I. LETTER OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CAMBODIA TO ASIA
WATCH**

**PART II. ASIA WATCH'S RESPONSE TO THE LETTER OF SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL
FOR CAMBODIA**

**PART III. TEXT OF UNDISCLOSED UN REPORT ON UNDERCOVER UNITS FORMED BY THE PHNOM PENH REGIME TO
OPPOSE POLITICAL RIVALS
SECRETARY-GENERAL FOR CAMBODIA**