

# CAMBODIA

## DETERIORATION OF HUMAN RIGHTS IN CAMBODIA

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## I. SUMMARY

Even as international attention focuses on the split in the Khmer Rouge organization and the hopes for peace that it has engendered, the human rights situation in Cambodia remains precarious and has in many respects steadily worsened over the course of 1996. Disturbing trends include a rise in political violence, the continued repression of the press, and impunity for abuses committed by government officials and other powerful figures. Indeed, an amnesty given to former Khmer Rouge leader Ieng Sary in September marks only the latest incident in a history of impunity for human rights abusers in Cambodia since the United Nations-sponsored peace settlement.

It has been over three years since the United Nations-sponsored elections produced the current government. Cambodians now face the task of planning the next round of elections, both local elections in 1997 and national elections in 1998, amid growing concerns that the elections may be delayed. Meanwhile, the deterioration in the human rights situation during the past year, raises questions about the extent to which democracy and the rule of law have been established in Cambodia and whether free and fair elections are possible in the current political climate. In 1996, one journalist was shot and killed while two were arrested on the basis of their writings, one of them as recently as August 23, 1996. While the latter two were later released under royal pardons, the risks of engaging in free speech have been made clear. In addition, extrajudicial executions and torture during interrogations continue to take place, especially in areas where the Khmer Rouge is active. The perpetrators of these and other abuses continue to carry out their actions with impunity, as the Royal Government of Cambodia makes frequent use of a law that largely shields government employees from prosecution for crimes.

There are, to be sure, some positive developments. Human rights training for judges and police continues, and some observers have suggested that there have been signs of improvement in the independence and performance of the judiciary. In addition, the National Assembly's Commission on Human Rights and the Reception of Complaints received funding in early 1996 from the United Nations Development Programme to hire ten human rights assistants. These assistants completed several weeks of training in mid-June and, shortly thereafter, began investigating a variety of abuses, including trafficking of children, labor abuses and extrajudicial executions. Despite some initial success, the ability of the commission to remedy serious human rights abuses remains to be seen. By mid-1996, the consensus among local and international human rights workers in Cambodia was that the human rights climate was worse than it had been at any time since 1993.

While the rift among the Khmer Rouge may signal the beginning of the end of Cambodia's long-running civil war, the human rights situation in Cambodia is not likely to improve in the near future unless the Cambodian government demonstrates greater tolerance for opposition political viewpoints and takes steps to ensure accountability for abuses, and unless the international community comes to expect and demand such behavior.

This report is based on a mission to Cambodia conducted by a Human Rights Watch/Asia researcher in May and June 1996. Our researcher interviewed government officials, human rights workers, nongovernmental organization staff, and victims and their family members in order to document the abuses addressed in this report.

## II. RECOMMENDATIONS

### **Human Rights Watch/Asia urges the Royal Cambodian Government to:**

- repeal Article 51 of the Law on Co-Statute for the Civil Servants of the Kingdom of Cambodia, the law that *de facto* grants impunity to government officials accused of human rights violations.
- remove from the draft Common Military Statute any provisions that would require courts to seek permission from the Ministry of Defence before they can prosecute soldiers for common crimes.

- vigorously investigate human rights abuses and prosecute, according to Cambodian and international law, those who are found guilty of human rights abuses. The government must ensure the independence of judges and lawyers from political influence and make legal representation available to all defendants.
- cease immediately the imposition of prison terms for journalists or other forms of reprisals for reporting or commentary that reflects negatively on government agencies, policies or officials. While Human Rights Watch/Asia welcomes the ultimate release of journalists Chan Rottana and Hen Vipheak under pardons from King Sihanouk, it condemns their conviction and imprisonment on the basis of peacefully expressed opinions, actions taken in violation of the Cambodian constitution and Cambodia's obligations under international law.
- cease immediately the use of extrajudicial executions to "punish" those accused of undertaking activities on behalf of the Khmer Rouge.
- cease immediately the use of torture to elicit information or to force confessions from detainees and prisoners. Torture is especially common during interrogation of those accused of undertaking activities on behalf of the Khmer Rouge.
- ensure that any proposed anti-drug law be in full compliance with the protections of civil liberties set forth in Cambodian law and international law.
- protect ethnic Vietnamese living in Cambodia from ethnically motivated violence. The government must make it clear to the Cambodian public that such ethnically motivated violence will be punished according to law.

**Human Rights Watch/Asia urges the international community, especially 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, together with factors such as transparency of government processes, is an indicator of good governance and commitment to the rule of law.
- cease pressuring the Cambodian government to pass anti-drug laws that are likely to foster human rights abuses. The international community should encourage instead the careful drafting of any anti-drug law to ensure full compliance of all its provisions with the protections of civil liberties set forth in Cambodian law and international law.
- the government of Japan to call on the Cambodian government to ensure greater protection of human rights and accountability for rights violations. As the leading donor nation (including pledges of US\$91 million in assistance to Cambodia at this year's donors' meeting) and as a prominent proponent of peace and development in Cambodia since the 1991 peace agreements, Japan can play an important role in pressing for human rights improvements.

Human Rights Watch/Asia also urges the United Nations High Commissioner for Refugees in Hanoi and Phnom Penh to continue efforts to obtain hard information from the Cambodian government and the Vietnamese government about the whereabouts, legal status, and well-being of Ly Thara, Ly Chandara, and Nguyen Phong Seun, who were seized in Phnom Penh and delivered to Vietnamese authorities on May 9, 1996. The United Nations High Commissioner for Refugees should continue pursuing information on these cases on the grounds that the three men may have been refugees *sur place*, whose expulsion to Vietnam would constitute *refoulement*.

### III. BACKGROUND

The deterioration of human rights in Cambodia over the past year reflects to a large extent mounting political tensions between the Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique, et Coopératif (Funcinpec) and the Cambodian People's Party (CPP), the two parties in Cambodia's ruling coalition. In order to understand the roots of this tension, it is helpful to outline briefly the genesis and development of the coalition's power sharing arrangement. In October 1991, the four major political factions in Cambodia signed the Paris Peace Accords with the intent of bringing an end to more than twenty years of fighting. The United Nations-sponsored elections contemplated in the Paris Peace Accords were held in May 1993, yielding a turnout at the polls of nearly 90 percent of all eligible voters. Funcinpec and the CPP were the leading rivals in the elections, with Funcinpec achieving victory by a narrow margin. Funcinpec garnered 45 percent of the vote (winning fifty-eight of the 120 seats in the National Assembly), CPP won 38 percent of the vote (fifty-one seats), and the Buddhist Liberal Democratic Party (BLDP) won 3 percent (ten seats), with the Mouvement de Libération National du Kampuchea (Moulinaka) taking one seat. The Khmer Rouge ultimately declined to participate in the elections, choosing instead to continue waging its guerrilla war against the government of Cambodia.

Funcinpec's narrow victory in the elections failed to translate into a corresponding apportionment of power in the new government of Cambodia, and almost immediately after the elections, political tension primarily between Funcinpec and CPP led to a period of instability in the government. This tension soon boiled over into a series of events that set the tone for the newly formed government's future.

### **Tensions Between Ruling Partners**

Within weeks of the election, Prince Norodom Chakrapong, deputy prime minister in the CPP government and son of then-Prince Sihanouk, and other "dissident" members of the CPP headed a secessionist movement claiming to represent six eastern provinces.<sup>1</sup> Although short-lived, the secessionist threat provided additional leverage for the CPP to force the victorious Funcinpec party into a power-sharing agreement. Indeed, there was some speculation that Prince Chakrapong's movement was sanctioned by CPP leader Hun Sen.<sup>2</sup> Certainly, the CPP publicly indicated its reluctance to accept the results of the election. In fact, the CPP suggested that suspicion of election fraud was a significant motivation for Prince Chakrapong's secession attempt.

Under the terms of the agreement to form a coalition government, two prime ministers were appointed, First Prime Minister Norodom Ranariddh from Funcinpec and Second Prime Minister Hun Sen from the CPP. In addition, joint ministers were appointed for the Interior Ministry and the Defence Ministry. Other ministries and provincial governorships were divided between Funcinpec and the CPP. Meanwhile, Prince Sihanouk became king and declared himself politically neutral. Although both parties publicly called for reconciliation among political factions in Cambodia, each party struggled to gain more power in the coalition. Funcinpec sought to achieve a share of power that more closely reflected the election results. The CPP, on the other hand, was reluctant to relinquish its rule over the country. Apart from the obvious problems resulting from apportioning the ministry portfolios and other sectors of government under these circumstances, such as the difficulties of decision-making, several other factors rendered a true sharing of power nearly impossible. Primary among these was the fact that elections had not been held at the local or commune level in Cambodia. As a result, the pervasive and firmly entrenched CPP provincial and commune power structures throughout the countryside remained unchanged. As one reporter noted in 1993,

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<sup>1</sup> For more information about the events following the 1993 election, see Human Rights Watch/Asia and Human Rights Watch Arms Project, *Cambodia at War* (New York: Human Rights Watch, 1995), pp. 14-22.

<sup>2</sup> Nate Thayer, "State of Confusion," *Far Eastern Economic Review*, June 24, 1993.

Real power in Cambodia resides with whoever runs the provincial political structures [...] Provincial officials effectively control the armed forces and security services, tax collection, civil service - and through them 80 percent of the Cambodian population. The country's provinces remain under the sway of the CPP, and respond to old political loyalties rather than central authority [...] A [provincial] governor also traditionally controls the armed forces, security services and bureaucracy within the provinces. Further, governors report directly to the party rather than the state.<sup>3</sup>

The CPP's firm grip on the provincial power structure became an important public issue when Prince Ranariddh lashed out at the CPP during Funcinpec's party congress on March 21-22, 1996, claiming that the CPP was dragging its feet on its earlier agreement to share power at the local level.<sup>4</sup> In addition, Ranariddh, speaking for Funcinpec, threatened to withdraw from the coalition if the CPP did not take measures to share power equally.<sup>5</sup> The threat drew a hostile response from Hun Sen who threatened to use military force if necessary to keep Funcinpec from withdrawing from the coalition government.<sup>6</sup> The hostility between the ruling parties triggered by Ranariddh's outburst brought political tensions in the capital to a level that many analysts believed to be the worst since the UNTAC elections. Among other things, both parties were reported to have moved troops into Phnom Penh in late April, with Hun Sen moving tanks near his residence in connection with one in a series of what he claimed were plots to assassinate him.<sup>7</sup> Tension between Funcinpec and the CPP also continues to affect the operations of the police and the military. Although under the Paris Peace Accords, the UNTAC peace process was to have created a single integrated army as well as civil service, there are numerous reports that among both the police and the army, units are still constituted along party lines.

### **Continued Fighting with the Khmer Rouge**

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<sup>3</sup> Nate Thayer, "Bitter Victory," *Far Eastern Economic Review*, December 9, 1993.

<sup>4</sup> "Cambodian royalists threaten coalition pull out," Reuters News Service, March 22, 1996.

<sup>5</sup> Ranariddh suggested that such a withdrawal would trigger a dissolution of the National Assembly, requiring new elections. Ibid.

<sup>6</sup> "King defuses tension among factions," *Phnom Penh Post*, May 3-16, 1996.

<sup>7</sup> "Tanks stationed near Cambodian PM's house," Reuters New Service, April 19, 1996; "Rumours cause PM's to count guns," *Phnom Penh Post*, April 19-May 2, 1996.

The ongoing civil war between the Royal Government of Cambodia and the Khmer Rouge also continues to influence political developments and the human rights environment. Despite a seemingly steady stream of defections to the Cambodian government, the Khmer Rouge continued to carry out operations throughout almost the whole of the country in the first half of 1996. Prior to the August 1996 defections, Khmer Rouge troop strength was estimated to be as high as 10,000.<sup>8</sup> The Khmer Rouge stopped an ambitious government push to take Pailin during the January to May 1996 dry-season offensive, resulting in heavy government casualties.<sup>9</sup> Some CPP military leaders publicly held the ambivalence of Funcinpec army commanders and units at fault for the failure of that offensive, indicative of the divisive impact the war at times has had on the coalition.<sup>10</sup>

While the Khmer Rouge's military and political strength may be in decline, as many observers claim, defections from the Khmer Rouge continue to have a strong impact on political stability in Cambodia. In August 1996, in what appeared to be a sign of significant dissent in senior leadership of the Khmer Rouge, two Khmer Rouge generals, Ei Chien and Sok Pheap, representing as many as 3,000 guerrillas, together with Ieng Sary, former Deputy Prime Minister for Foreign Affairs under the Khmer Rouge government from 1975-1979, entered into peace negotiations with the government of Cambodia. If these overtures indicated a mass defection, as Hun Sen declared not long after negotiations began, they would represent a significant blow to Khmer Rouge military strength. However, by late August, Hun Sen's declaration appeared premature as talks stalled on key issues, such as Ieng Sary's desire to enter the political mainstream in Phnom Penh. As of late October 1996, the dissident guerrillas remained in their field positions near Phnom Malai in northwestern Cambodia, maintaining control over Pailin and its nearby gem-mining fields, as their leaders continued negotiations with the government.

The negotiations with the breakaway faction of the Khmer Rouge initially highlighted the tension between the coalition government's partners, with Hun Sen publicly taking the lead in encouraging the defection and pardon of Ieng Sary, who in 1979 was sentenced to death in absentia by the People's Revolutionary Court of Phnom Penh for his part in the deaths of at least one million during the four years of Khmer Rouge rule, 1975-79.<sup>11</sup> At the same time, in a reflection of the confusion surrounding the origins of the detente, there were reports that Funcinpec leaders were, in fact, the ones taking the lead in negotiations with the dissident Khmer Rouge, in an effort to strengthen the royalist party's power-sharing negotiations with the CPP.<sup>12</sup> Ranariddh, however, had initially expressed caution over the peace negotiations and had expressly criticized Hun Sen for unilaterally offering concessions to the dissident Khmer Rouge without consulting his Funcinpec partners or other government institutions, such as the National Assembly. King Sihanouk had also put the reconciliatory value of the peace talks further in doubt by making virulent attacks on Ieng

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<sup>8</sup> Chhay Sophal, "Top Khmer Rouge commanders defect with forces," Reuters News Service, August 8, 1996; "Bad Deal in Cambodia," *The Economist*, October 12-18, 1996, p. 20. In fact, there is significant disagreement, even among government sources, over the troop strength of the Khmer Rouge.

<sup>9</sup> Casualties have been estimated to be as high as 2,000, while government figures set casualties for mid-February to mid-April at some 300 soldiers killed and over 500 wounded. "Government releases highest casualties yet," Agence France Presse, April 3, 1996; "Experts doubt RCAF's abilities," *Phnom Penh Post*, May 3-16, 1996.

<sup>10</sup> Jason Barber, "Coalition in troubled water," *Phnom Penh Post*, May 17-30, 1996.

<sup>11</sup> Second Prime Minister Hun Sen publicly spoke out strongly in favor of the defection of Ieng Sary and troops affiliated with Sary, amid some criticism that he was orchestrating the defections for his own political gain. However, initial negotiations with the dissident Khmer Rouge were conducted by Funcinpec General Nhek Bun Chay. The two prime ministers ultimately agreed to work jointly in negotiations with Ieng Sary and Generals Ei Chien and Sok Pheap. "Khmer Rouge gambit: peace or peril," *Phnom Penh Post*, August 23-September 5, 1996.

<sup>12</sup> Matthew Grainger and Jason Barber, "Royalists work rebel split for profit," *Phnom Penh Post*, September 6-19, 1996.

Sary in the press. For their part, some CPP officials openly expressed distrust of the loyalty of earlier Khmer Rouge defectors.<sup>13</sup>

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<sup>13</sup> Jason Barber, "Coalition in troubled waters," *Phnom Penh Post*, May 17-30, 1996.

King Sihanouk, however, ultimately granted Ieng Sary an amnesty by a royal decree issued on September 14, 1996, after being requested to do so by Hun Sen as well as Prince Ranariddh. Despite the king's request that the amnesty be made public only after approval by two-thirds of the National Assembly, copies of the decree were circulated within hours of its signing, when the king had been formally notified of the approving signatures of fewer than ten members of parliament.<sup>14</sup> The amnesty annulled Ieng Sary's 1979 conviction and death sentence and shields him from potential penalties under the 1994 Law Outlawing the Democratic Kampuchea Group. Prior to the pardon, Ieng Sary had held a press conference in western Cambodia, at which he claimed that he was not involved in any of the killings during Khmer Rouge rule, claiming that he had "no regrets because [the killings were] not my responsibility."<sup>15</sup> While Khmer Rouge soldiers under Ieng Sary's control maintained their positions near Phnom Malai, officials from both the Sary camp and the Cambodian government issued statements in late September declaring that agreement on the integration of those troops into the Royal Cambodian Armed Forces (RCAF) was imminent. Meanwhile, Khmer Rouge guerrilla forces loyal to Pol Pot continue to oppose the government, denouncing Ieng Sary and other defectors in their radio broadcasts.

It is not an easy matter to weigh the amnesty of Ieng Sary against the opportunity for peace his reintegration into Cambodian society represents. However, the amnesty should be evaluated in the context of the widespread impunity for human rights abuses that has characterized Cambodia's post-UNTAC politics. At every level in the Cambodian government, down to police and soldiers in the field, there is a deeply troubling absence of measures to hold accountable those who commit human rights abuses, matched with an aversion to carrying out full investigations of abuses. At the least, the amnesty of Ieng Sary should not be construed to legitimate his claim that he had no responsibility for the deaths of Cambodians during Khmer Rouge rule. King Sihanouk, in fact, clarified the scope of his pardon in a public letter to Amnesty International, where he stated that he would support the judgment of an international tribunal should one be convened in the future to try Ieng Sary or other Khmer Rouge leaders.<sup>16</sup>

How to hold the Khmer Rouge accountable for human rights abuses continued to be a major question in 1996, not just in terms of the 1975-79 crimes against humanity, but also in terms of killings over the last three years. Such attacks included massacres of ethnic Vietnamese and the kidnapping or murder of village, commune and district leaders.<sup>17</sup> The Khmer Rouge have also targeted Western tourists. The defection of Ieng Sary brought to light the execution by the Khmer Rouge in 1994 of a German tourist who had disappeared near the Thai-Cambodian border and whose fate had not previously been known.<sup>18</sup> The Khmer Rouge has executed at least seven Western tourists since the UNTAC elections.

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<sup>14</sup> Huw Watkin, "King: PMs jumped the gun on Sary amnesty," *Phnom Penh Post*, September 20-October 3, 1996.

<sup>15</sup> Seth Mydans, "An Amnesty in Cambodia: Forgiving Past Killing to Save Future Lives," *The New York Times*, September 18, 1996.

<sup>16</sup> Letter, dated September 13, 1996, from King Norodom Sihanouk to M. Pierre Sané, Secretary-General of Amnesty International.

<sup>17</sup> *Cambodia at War*, pp. 25-32.

<sup>18</sup> According to Ieng Sary, the German tourist had been executed on the orders of Khmer Rouge defence chief Son Sen, in accordance with the request of Pol Pot. "Remains of German killed by Khmer Rouge sent home," Reuters News Service, September 12, 1996.



Numerous instances of Khmer Rouge activity in early 1996 reveal the difficulties the government has had in containing the rebels. For example, in response to the kidnapping by Khmer Rouge in June 1996 of over one hundred Cambodian and Thai workers at a quarry in Kampot province, Co-Interior Minister Sar Kheng told the press that the kidnapping was not the responsibility of the Cambodian government since the mining company had failed to make appropriate payments to the Khmer Rouge for working in that area,<sup>19</sup> a statement that amounts to an abdication of government responsibility for that area. On March 26, 1996, armed men kidnapped a British de-mining expert and his interpreter northwest of Siem Reap. Despite initial confusion over whether the kidnappers were bandits or Khmer Rouge guerrillas, later government efforts to negotiate the release of the two men were directed at a Khmer Rouge base, to which the men were taken.<sup>20</sup> The whereabouts and well-being of these men were still unknown at the time this report went to print.

In some cases, the government's response to Khmer Rouge activities has itself exacerbated human rights problems, as in its use of the Law on Outlawing the Democratic Kampuchea Group (the anti-Khmer Rouge law), passed in July 1994, to unlawfully detain and torture suspected Khmer Rouge. Application of the anti-Khmer Rouge law during the first half of 1996 increased in Battambang province in particular, where the Khmer Rouge had been especially active in its efforts to cut road and railway connections to Phnom Penh.

#### IV. POLITICAL VIOLENCE

Political violence increased significantly in the first half of 1996. Much of this political violence was directed at the Khmer Nation Party (KNP), the opposition party headed by former Finance Minister Sam Rainsy. The KNP, despite having carefully sought to meet all the requirements for registration as a political party required under the 1992 United Nations Electoral Law for Cambodia,<sup>21</sup> has never been officially recognized by the government, which has instead suggested on a few occasions that the party is illegal. However, by May 1996, the government's policy regarding the KNP changed to a reluctance to declare the party either legal or illegal. In that context, the KNP opened its first provincial offices on May 18, 1996. This expansion has sparked violence and intimidation by unknown armed assailants, as well as by provincial officials and police.

The opening ceremonies at two of the first three provincial offices of the KNP, in Prey Nup commune in Kompong Som province, were marred by intimidation by local authorities and some twenty policemen, who appeared at the ceremonies and threatened to use force to remove KNP signs.<sup>22</sup> Other more serious incidents preceded and followed the opening of those offices in Kompong Som. On May 10, a KNP official in Siem Reap province was fatally beaten and robbed of the registration forms of over 2,000 KNP party members, strongly suggesting a political motive for the killing. On May 17, three KNP officials were arrested by police while traveling from village to village in Ang Snoul district in Kandal province to collect membership applications. The three were held for two days before they were released. The KNP continued to face harassment in Kandal province, as one office opened in Saang district on June 6 was targeted by local soldiers and policemen who tore down the party's sign four times between June 6 and July

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<sup>19</sup> According to Sar Kheng, "It is not a problem between the Khmer Rouge and the government but with a private company . . . . The problem was that a sawmill company in Kampot province sent its workers into deep forest to cut trees and unluckily they met the Khmer Rouge." ("Cambodian government staying out of latest hostage talks," Reuters News Service, June 24, 1996.)

<sup>20</sup> Leo Dobbs, "Conflicting reports surround Cambodian kidnapping," Reuters News Service, April 1, 1996.

<sup>21</sup> A political party law has not been adopted yet by the post-UNTAC government.

<sup>22</sup> Human Rights Watch/Asia interview with Sam Rainsy of KNP, Phnom Penh, May 29, 1996; To Serey, "KNP Adds Two Kompong Som Offices," *The Cambodia Daily*, June 3, 1996.

21.<sup>23</sup> The opening of two offices in Prey Veng province on May 27 was also marred by the late night harassment by unidentified armed men of two KNP officials in their homes causing them to flee to Phnom Penh the following morning. The government has contended that the incidents in Prey Veng were not politically motivated.<sup>24</sup> The two KNP officials have since returned to their offices in Prey Veng.

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<sup>23</sup> "More strife for Rainsy in Kandal," *Phnom Penh Post*, July 26-August 8, 1996.

<sup>24</sup> Chea Sotheacheath and Chris Decherd, "Government Says KNP Incidents are Not Political," *The Cambodia Daily*, June 5, 1996.

On May 18, 1996, in another incident that may have been related to the wave of violence against the KNP, prominent journalist and KNP steering committee member Thun Bun Ly was murdered in Phnom Penh, in what appears to have been a politically motivated assassination.<sup>25</sup> As of October 1996, there were no public results from the Ministry of Interior's investigation into the killing. Thun Bun Ly's death marked the first killing of a journalist in Cambodia since December 1994. He had been convicted in 1995 on charges of defamation and disinformation in two separate trials on the basis of articles published in his newspaper. The sentences in those trials included jail terms. He had lost his initial appeals of those convictions but had filed a subsequent appeal to the Supreme Court and was awaiting a decision. On the day that he was murdered, he had published an article in his newspaper *Oudamkati Khmer* (Khmer Ideal) about overhearing a threat on his life made by an officer in the anti-terrorist unit of the army.

Some officials of Funcinpec reportedly have also been intimidated. Funcinpec leaders declined to discuss these incidents with Human Rights Watch/Asia. However, the *Phnom Penh Post* reported in early June that in two Siem Reap districts, Funcinpec leaders were going into hiding each night for fear of attacks.<sup>26</sup> On May 18, police in those districts confiscated properly registered weapons from several houses of Funcinpec leaders. These leaders have also reportedly been subject to threats, including one made to Funcinpec's provincial deputy leader that Funcinpec members were risking death if they did not join the CPP.

Despite the hesitance of senior Funcinpec leaders in Phnom Penh to discuss this increase in violence and intimidation directed against provincial party leaders and supporters, First Prime Minister Prince Ranariddh eventually complained publicly about such incidents (without mentioning the CPP by name) and vowed to bring those responsible to justice.<sup>27</sup> Ranariddh made specific references to incidents in which Funcinpec signboards had been torn down from provincial offices and to reports that the police in Kandal province (which surrounds Phnom Penh) had tried to prevent people from watching the Funcinpec television station. Ranariddh's public statements immediately drew a response from Second Prime Minister Hun Sen, who, while not mentioning Ranariddh or Funcinpec by name, criticized those raising allegations of political violence, insisting that such persons should first "find out the real evidence," but also warning that anyone who raises such accusations would "get a bad result."<sup>28</sup> The resumption of tension between Funcinpec and CPP after a brief, publicized rapprochement between Hun Sen and Ranariddh in the days immediately preceding the Tokyo Consultative Group meeting bodes ill for the level of politically motivated violence in the period before the planned local and national elections, as well for the human rights situation in general. If bickering between the political parties continues, both the local and national elections are almost certain to be delayed; many observers, including officials from the Ministry of Interior, are already concerned that it is too late to address all the logistics involved in holding elections as planned.<sup>29</sup>

## V. ASSAULTS ON THE PRESS

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<sup>25</sup> See Human Rights Watch/Asia press release, "Killing of Cambodian Opposition Figure Condemned," May 18, 1996.

<sup>26</sup> Christine Chaumeau, "Political Violence in Provinces," *Phnom Penh Post*, May 31-June 13, 1996.

<sup>27</sup> "Cambodia PM vows action against party intimidation," Reuters News Service, August 1, 1996.

<sup>28</sup> "Cambodia's Hun Sen warns royalists over criticism," Reuters News Service, August 2, 1996.

<sup>29</sup> Jason Barber, "Paperwork 'too late for 1997,'" *Phnom Penh Post*, April 19-May 2, 1996.

The Cambodian government has waged a steady campaign against press freedom since 1993,<sup>30</sup> and suppression of the press worsened in 1996. In addition to the murder of journalist Thun Bun Ly, a spate of convictions of journalists were upheld on appeal. On August 23, the Supreme Court affirmed the conviction of Hen Vipheak, the editor of *Serei Pheap Thmei* (New Liberty News), who had been convicted of disinformation and had lost his initial appeal. Hen Vipheak was convicted on May 20, 1995 for an article he published in the February 6, 1995 issue of *Serei Pheap Thmei* entitled "Cambodia: Country of Thieves" which satirized and criticized the various branches of government and for a cartoon showing Prime Minister Hun Sen holding a gun to Prime Minister Ranariddh's head. He appealed that decision to the Appeal Court, which, while overturning a second conviction for defamation, upheld on December 22, 1995 the lower court's disinformation conviction. The August 22 Supreme Court ruling also upheld the municipal court's penalty of a one-year jail term and a fine of five million riels (\$US2,000), while reversing the Appeal Court's ruling that the newspaper be shut down. Hen Vipheak was jailed in T-3, the largest prison in Phnom Penh, after the Supreme Court ruling, but was released after one week in prison under a pardon issued by King Sihanouk, after the King had obtained the prior approval of the two prime ministers. Like Thun Bun Ly, Hen Vipheak was a steering committee member of the opposition Khmer Nation Party (KNP) headed by former National Assembly member Sam Rainsy.

Hen Vipheak's conviction came under Article 62 of the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (UNTAC Criminal Code), which sets forth penalties for disinformation including imprisonment for up to three years. The crime of disinformation is defined under that law as the publication of false information in bad faith and with malicious intent, "provided that the publication, distribution or reproduction has disturbed or is likely to disturb the public peace." The Supreme Court rejected Hen Vipheak's defense that his satirical articles represented opinion and upheld his conviction despite the lack of evidence showing that the articles had "disturbed or [were] likely to disturb the public peace." The Supreme Court also rejected, without explanation, his contention that the press law provisions of the UNTAC Criminal Code were superseded by a new press law in July 1995.

Hen Vipheak was not the first journalist imprisoned by the post-UNTAC government for exercising his right to free speech. On June 28, 1996, journalist Chan Rottana, the editor of *Samleng Yuvachon Khmer* ("Voice of Khmer Youth") also lost his appeal to the Supreme Court and was immediately arrested and sent to T-3 prison in Phnom Penh. Chan Rottana too was a KNP member. Like Thun Bun Ly before and Hen Vipheak after him, Chan Rottana had already been convicted in February 1995 of disinformation under the old UNTAC press law and had lost his initial appeal on October 1995. At that hearing, the Appeal Court, in a move of questionable legality, changed the original charge from disinformation under Article 62 of the UNTAC Criminal Code to defamation under Article 63. Altering the charges violated Chan Rottana's right to be notified promptly of charges against him and deprived him and his defender of adequate time to prepare for a defense.<sup>31</sup> The conviction was based on a satirical piece he published in *Samleng Yuvachon Khmer* titled "Ranariddh is More Stupid than Hun Sen Three Times a Day." The Supreme Court also ordered that *Samleng Yuvachon Khmer* be closed down. The arrest of Chan Rottana marked the first time since the UNTAC elections in 1993 that a prison sentence was enforced against a journalist in Cambodia for the nonviolent expression of his opinion. Chan Rottana was released on July 5, 1996 under a pardon from King Sihanouk.<sup>32</sup>

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<sup>30</sup> See Human Rights Watch/Asia, "Cambodia: The War Against Free Speech," *A Human Rights Watch Short Report*, vol. 7, no. 13, September 1995.

<sup>31</sup> Article 13 of the UNTAC Criminal Code states that no one may be detained more than forty-eight hours without being brought before a judge, *following* the filing of charges by a prosecutor; Article 14(3)(a) of the International Covenant on Civil and Political Rights (ICCPR); Article 14(3)(b) of the ICCPR (the right to adequate time to prepare a defense).

<sup>32</sup> "Cambodian Editors Released from Jail," Reuters News Service, July 5, 1996.

The government's disregard for press freedoms, as well as other fundamental rights, was also demonstrated by the Cambodian government's treatment of several ethnic Vietnamese living in Phnom Penh who were affiliated with an anti-Hanoi Vietnamese language newspaper published in Phnom Penh called *Tu Do* (Freedom). In December 1995, thirty-one ethnic Vietnamese were arrested in Phnom Penh on grounds that they were part of a group opposing the current Vietnamese government.<sup>33</sup> Those arrested included six U.S. passport holders who were expelled from Cambodia to the United States, as well as Ly Chandara, editor and publisher of *Tu Do*. Chandara and the others were released after being warned that continued activity in the "movement" would lead to deportation.<sup>34</sup>

Then, on March 9, 1996, Cambodian officials from the Ministry of Interior seized three ethnic Vietnamese men, Ly Thara, Nguyen Phong Seun, and the editor Ly Chandara (also known as Ly Ngoc) from their homes, and brought them to the Vietnam border where they were handed over to Vietnamese authorities.<sup>35</sup> Ly Thara (also known as Nguyen Minh Man) was the president of a construction company located in Phnom Penh. Nguyen Phong Seun (also known as Nguyen Phong Son) was a reporter who may have been affiliated with *Tu Do*. The Cambodian Ministry of Interior alleged that these men were engaged in an attempt to "destabilize" and overthrow the government of Vietnam, but has provided no information to support its claim that these men were engaged in activities that could be considered crimes under international law. Freedom of expression and the right to non-violent, peaceful association are guaranteed under Articles 20 and 21 of the International Covenant on Civil and Political Rights (ICCPR). While Articles 20 and 21 permit the imposition of restrictions in the interests of national security or public order, the government of Cambodia has failed to set forth facts showing that such restrictions were appropriate in this case.

Despite initial allegations by the Cambodian government that the three were Vietnamese nationals, there is some evidence to suggest that at least one may have been a Cambodian citizen. The *Tu Do* group in the United States (with which some supporters of the *Tu Do* newspaper in Cambodia are affiliated) has alleged that Ly Thara is the Cambodian-born son of an ethnic Vietnamese woman also born in Cambodia and that he has served in the RCAF as a colonel. If this is the case, the Cambodian government has further violated its own laws that forbid the expulsion of a Cambodian citizen. In the absence of a nationality law at that time, it would be difficult to determine definitively whether Ly Thara was Cambodian. Even if the three men were all deemed to be citizens of Vietnam, the expulsion of these men may also have constituted *refoulement* by the Cambodian government in violation of its obligations under the Convention Relating to the Status of Refugees,<sup>36</sup> since their peaceful expressions of political opinion in Cambodia would almost certainly have given rise to a well-founded fear of persecution, rendering them refugees *sur place*.

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<sup>33</sup> Sou Sophornara, "Anti-Vietnamese plotters arrested and warned," *Phnom Penh Post*, December 15-28, 1995.

<sup>34</sup> The government claimed that the arrestees were members of a group called *Doan Quan Phuc Quoc* (Country Restoration Forces), whose membership card was held by several of the arrestees, including Ly Chandara. Sou Sophornara, "Anti-Vietnamese plotters arrested and warned," *Phnom Penh Post*, December 15-28, 1996. However, there are also other loosely collected organizations in Cambodia that oppose the Vietnamese government. All who oppose the Vietnamese government are collectively referred to by the Cambodian government as the "Vietnam *Tu Do* movement." Several of these Vietnamese also bear cards of the U.S. veterans organization Brotherhood Rally of All Veterans Organization (BRAVO). The headquarters of BRAVO denied any knowledge of such members in Vietnam. Human Rights Watch/Asia telephone interview with BRAVO, California, March 26, 1996.

<sup>35</sup> Human Rights Watch/Asia was not able to confirm or contradict allegations by members of the *Tu Do* group in the United States that Vietnamese government officials were also involved in the seizure of the three men. Members of the *Tu Do* organization in the United States also claim that Cambodian authorities have apprehended and expelled to Vietnam two other men, So Lam and Hong Long, both of whom have performed production work, reporting and photography for *Tu Do*. Human Rights Watch/Asia telephone interviews, March 26, 1996. Human Rights Watch/Asia has not been able to confirm these other expulsions.

<sup>36</sup> Article 33, Convention Relating to the Status of Refugees, entered into force on April 22, 1954, as amended by the Protocol Relating to the Status of Refugees, entered into force on October 4, 1967.

In early August, there were unconfirmed reports that Nguyen Phong Seun had been released due to serious illness. The whereabouts of the other two men were unknown as of October 1996.<sup>37</sup> Officials in the office of the United Nations High Commissioner for Refugees (UNHCR) in Hanoi told Human Rights Watch/Asia that they did not believe that these deportees were of concern to the UNHCR as they were merely Vietnamese being forcibly returned to their own country.<sup>38</sup> As Human Rights Watch/Asia believes the deportees may be refugees *sur place*, we disagree with this UNHCR assessment.

As a result of these deportations, some fifteen ethnic Vietnamese loosely affiliated with groups in Phnom Penh critical of the Vietnamese government (including Tu Do) gathered at the U.S. embassy in Phnom Penh on March 15, 1996, seeking asylum. They left only when embassy staff assured them that the Ministry of Interior had stated that no more ethnic Vietnamese would be deported to Vietnam if they obeyed the law and refrained from conduct that would warrant their deportation.<sup>39</sup> There has been no public explanation of what constitutes deportable behavior, and in late April, a Canadian-Vietnamese and an American-Vietnamese were deported to Canada and the U.S., respectively, on grounds that they too were affiliated with the movement opposing the government of Vietnam.<sup>40</sup>

## VI. TORTURE AND EXTRAJUDICIAL EXECUTIONS OF CIVILIANS SUSPECTED OF AFFILIATION WITH THE KHMER ROUGE

In the March 1995 book *Cambodia at War*, Human Rights Watch/Asia reported frequent incidents of extrajudicial executions and torture against Khmer Rouge suspects throughout Cambodia. In 1996 such abuses continued to be committed against civilians in connection with the Cambodian government's ongoing struggle with the Khmer Rouge. In many instances, the victims are farmers who live in contested zones that frequently change hands between the Khmer Rouge and the government and who are often forced to sell food and other products to the Khmer Rouge when their villages are in Khmer Rouge hands. Such activities are frequently sufficient to trigger suspicion on the part of government soldiers that the farmers are Khmer Rouge agents. In other instances, even the provincial police acknowledge that extrajudicial executions were carried out without any evidence that the victim engaged in Khmer Rouge activities. Even in cases where the suspect has in fact carried out actions for the Khmer Rouge, however, international human rights and Cambodian law prohibit the use of torture and extrajudicial executions. In May and June 1996, Human Rights Watch/Asia investigated several incidents of such abuses against civilians in Battambang, speaking with Cambodian human rights workers, victims and their relatives, policemen and the chief judge of Battambang Provincial Court.

### Torture

Torture continues to be used frequently to force confessions and elicit information from those who are arrested under the anti-Khmer Rouge law. In Battambang province, for example, at least thirteen persons were arrested in 1996, including eight persons arrested at the end of April and during May. According to interviews Human Rights Watch/Asia and other human rights workers in Cambodia conducted of prisoners in Battambang provincial prison charged under the anti-Khmer Rouge law, these detainees are frequently tortured during interrogation.

Four of the eight men arrested under the anti-Khmer Rouge law in April and May were arrested on April 30 and May 1, 1996 in Moug Rossei district. The four were Cheng Ponlok, age forty-four, and Sim Cheun, thirty-one,

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<sup>37</sup> Both the Vietnamese and the Cambodian governments have declined to reply to letters from Human Rights Watch/Asia inquiring after the fate of these men. There has been no information to confirm or deny rumors that Ly Thara was executed in Vietnam after his deportation. The limited statements from the Vietnamese government on the fate of these men suggests that they are still alive.

<sup>38</sup> Human Rights Watch/Asia interview, Hanoi, June 14, 1996.

<sup>39</sup> Leo Dobbs, "Cambodia says won't act in wake of U.S. asylum bid," Reuters News Service, March 16, 1996.

<sup>40</sup> Ek Madra and Robin McDowell, "Police Book Two for Vietnam Group Link," *The Cambodia Daily*, April 26, 1996.

both from Chok Toch village, Kor Kos commune; Tung Sorch, forty-six, from Som ROUNG village, Tipadei commune; and In Sear, forty-nine, from Dop Krosang village, Prey Toch commune. The four men were accused of working together to carry out Khmer Rouge activities, including laying mines. Although police arrested the four separately in and around Battambang city, all were brought to the Svay Por police station in the city and then tortured during intense interrogation, the apparent goal of which was the extraction of confessions that they had served as agents of the Khmer Rouge. Human Rights Watch/Asia has no way of assessing the validity of the charges against the men, but the use of torture under any circumstances is unacceptable and in violation of both Cambodian and international law.

### ***Cheng Ponlok***

Cheng Ponlok was arrested in the afternoon of May 1, 1996 in Banon district while riding his motorcycle along the road from Battambang.<sup>41</sup> He was arrested by some thirty policemen, largely from the Svay Por police station. Ponlok was beaten during interrogation at the site of arrest until he lost consciousness. When he recovered, he found himself at the Svay Por police station, where the interrogation continued, with four policemen asking him how many times and what types of Khmer Rouge “activities” he had engaged in around Battambang.<sup>42</sup> The interrogation was accompanied by further beatings, which ceased only when Ponlok agreed to make a confession. When interviewed by Human Rights Watch/Asia in Battambang provincial prison some five weeks after his interrogation, Ponlok said that he was still coughing blood and having trouble breathing as a result of his beating.

### ***Tung Sorch***

Tung Sorch was arrested in the afternoon of April 30 while planting a banana tree in the fields near Tippadei mountain.<sup>43</sup> Sorch too claims that his arrest was made by policemen from the Svay Por police station. Although initially brought to the provincial prison in Battambang city, Sorch was then blindfolded and taken by police out of the prison and driven to an undisclosed location in Battambang city. He believed he was still in the city because the drive took less than five minutes, and he could still see the lights of the city through corners of windows from inside the building after his blindfold was removed. Sorch remembers that the building was set up like an office, with desks and chairs. There was one room where he was taken which had a sign that read “Questioning Room.” Once his blindfold was removed, Sorch was handcuffed and placed in a chair. Sorch was not sure where it was he was taken, but he suspects that it may have been the Svay Por police station.

During the ensuing interrogation, Sorch was repeatedly kicked in the back by three or four policemen. The interrogation stopped in the evening and began again the next morning, with questioning which was soon accompanied by beating. Sorch was kicked and beaten for nearly an hour, resulting in bruised ribs. When interviewed by Human Rights Watch/Asia some five weeks after his interrogation, Sorch said that he was still unable to lie on his side because of the pain. During the interrogation, Sorch was asked how many times he had undertaken “missions” for the Khmer Rouge, such as laying mines. Sorch denied taking part in Khmer Rouge activities. He did admit, however, that he used to sell cigarettes, tobacco and food to the Khmer Rouge but only, he said, after the Khmer Rouge threatened to kill him.

Sorch was then returned to the provincial prison, to be interrogated once again about four days later by three policemen (at least some of whom had been present during the earlier interrogations). The interrogation took place within the compound of the provincial prison but out of view of the other prisoners. The interrogation again focused on allegations of mine-laying. Sorch persisted in his denials, and the police beat him, although not as severely as during the earlier interrogation sessions.

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<sup>41</sup> Human Rights Watch/Asia interview, Battambang, June 5, 1996.

<sup>42</sup> More specifically, he was charged with having laid a mine near a bridge in the city, as well as two other instances of laying explosives on the roads leading to Battambang. He was asked questioned for details about other Khmer Rouge “operatives.”

<sup>43</sup> Human Rights Watch/Asia interview, Battambang, June 5, 1996.

### ***Sim Cheun***

Sim Cheun was arrested at about 8:00 a.m. on the morning of April 30 while riding his motorcycle from Battambang city.<sup>44</sup> Cheun was questioned briefly at the scene of the arrest and then taken to the Svay Por police station where he was beaten and questioned from about 8:15 a.m. until 3:00 p.m. Only forty-five minutes into the interrogation, he passed out for several minutes as a result of the beatings. At the end of the afternoon, he was taken to the Battambang provincial prison. During the interrogation, he was beaten with fists, kicked (especially in the back about the kidneys), and hit on the thighs and on the mouth with a stick. When Human Rights Watch/Asia interviewed him some five weeks after his interrogation, his front teeth were still hanging loosely from his gums as a result of the beatings he received. Cheun had also been repeatedly beaten about the head with a broom handle and clapped on the ears. He claims he still has problems with his hearing as a result of the beatings.

### ***In Sear***

In Sear was arrested at about noon on May 1 while riding a motorcycle near Che Teal commune in Moung Rossei district.<sup>45</sup> He too claims he was arrested by policemen from the Svay Por police station. His interrogation commenced at about 1:00 p.m. and lasted two hours. Sear was handcuffed during the interrogation and beaten, including repeated blows with a stick to his head, torso and feet. Sear claimed that his ribs had been severely bruised and possibly broken. Sear was held overnight at the Svay Por police station. At about 7:00 a.m. the following day, the police renewed the interrogation. The questioning continued for about an hour, during which he was repeatedly beaten and clapped on the ears. Sear was then sent to the Battambang provincial prison. When interviewed by Human Rights Watch/Asia, one of his ribs was still noticeably swollen. Sear claimed that he still experienced pain in his chest and still coughed blood when interviewed some five weeks after his beatings.

### **Additional Arrests in Battambang**

Another four men were arrested in mid-May in Battambang province under suspicion of Khmer Rouge activities, reportedly on the basis of information provided by the four men arrested above.<sup>46</sup> Those arrested all lived in Chok Toch village, Kokors commune, Moung Rossei district. One of the four, Om Han, age thirty-one, died during his interrogation following his arrest. The other three, Charm Kay, twenty-five, Paong Reuy, thirty-nine, and Chhorm Cheuy, thirty-eight, were sent to Battambang prison, where they were still held as of early October. Arrested when they responded on May 8 to letters they had received the previous day requesting their presence at the commune office, the four men were first taken to the Moung Rossei district police station where they were interrogated for about thirty minutes. They were then taken to the Svay Pao district police station in Battambang city where they were interrogated further. Charges against Charm Kay were dropped in October for insufficient evidence. As of late October, however, he was still being held at Battambang prison.

At the Svay Por police station, the four were put into separate but adjoining cells and then interrogated one at a time. Each man was interrogated by four to five policemen who beat and kicked them and hit them with rifle butts and a chair, among other things. One man, Charm Kay, was burned with cigarettes during the interrogation and choked with a scarf. The interrogations were aimed at extracting confessions that the men had laid mines around Battambang. Each interrogation lasted about two hours. Because the cells were adjacent, each suspect could hear the interrogations and could catch glimpses of the beatings of the others.

When questioned about the death of Om Han, the police commissioner of Battambang province told local human rights workers that Han had killed himself in his cell following his interrogation by hanging himself with his own shirt and tying one end around a metal bar that was so low that he would have had to lift his legs off the ground in order to strangle himself.

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<sup>44</sup> Human Rights Watch/Asia interview, Battambang, June 5, 1996.

<sup>45</sup> Human Rights Watch/Asia interview, Battambang, June 5, 1996.

<sup>46</sup> Information based on Human Rights Watch/Asia interviews with human rights workers in Cambodia, May 22-23 and June 5-6, 1996.



## **Extrajudicial Executions**

Extrajudicial executions of suspected Khmer Rouge agents by the military in the Battambang countryside continue to occur. In the first half of 1996, at least three people were killed by soldiers in Moug Rossei district. Interviews of witnesses to two of these incidents, along with comments on similar incidents from a senior police officer in the district, suggest that these incidents fit into a pattern cited by human rights workers and the police in Battambang in which soldiers seize people living in contested zones suspected of being agents or spies for the Khmer Rouge, interrogate and torture them in the field in order to obtain confessions, and then execute them. Furthermore, a senior police officer in Moug Rossei told Human Rights Watch/Asia that his colleagues have seen numerous incidents in which soldiers, without any evidence whatsoever, seize and turn over to the police farmers suspected of Khmer Rouge activity.<sup>47</sup> In such cases, the police frequently hesitate to release the suspects quickly because of the danger that releasing these suspects too soon may anger the soldiers who brought them in.

### ***Chhourn Theang (also known as Chhourn Chheang)***

On February 8, 1996, three farmers, two men and a woman from Paen village who were searching for their cattle that had scattered into flight the previous day during intense fighting between Khmer Rouge and RCAF troops, encountered a patrol of thirty RCAF soldiers from the 12th Regiment of Battalion 123. The three were detained during the afternoon by the soldiers, separated, and subject to intense interrogation during which they were beaten as the soldiers sought to force them to confess that they were agents of the Khmer Rouge. During the interrogations, one of the three, a thirty-seven-year-old man named Chhourn Theang, was shot and killed. The other two detainees were sent to the district police station where they were held for two weeks before being released.

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<sup>47</sup> Human Rights Watch/Asia interview with police, Moug Rossei district, June 6, 1996. The interviewee specifically requested that Human Rights Watch/Asia not use his name when citing the contents of the interview out of fear of retribution from the military.

One of the two survivors, Nhut Veung, is a forty-one-year-old man with one functional eye. Veung told Human Rights Watch/Asia that the three were arrested by the soldiers in the middle of the afternoon.<sup>48</sup> They were handcuffed and led away to a pagoda near Rolours, some five kilometers from the site of the arrest. The three were separated, and the soldiers taking Veung proceeded to interrogate him, pressuring him to confess that he was a spy for the Khmer Rouge. They also accused him of laying mines and owning a firearm without a proper permit. At about 4:00 p.m., he was taken into the forest, where the interrogation continued. He could not see the other two detainees at that time. Not long afterwards, he heard three shots. The soldiers beat Veung throughout the interrogation, hitting him in the face and head with a stick, kicking him, and threatening him with their guns. He passed out briefly during this portion of the interrogation.

During the interrogation, the soldiers also led him to a freshly dug pit in the ground, about the size of a human body. They forced him to kneel at the edge of the pit and held a gun to his head, telling him that he could either admit that he was a spy for the Khmer Rouge, or he would be shot and buried in the pit. When he chose to confess, the soldiers forced him to affix his thumbprint to a pre-written confession, which they read out to him. (Veung is illiterate.) Veung remembers only that the statement noted among other things that he was “observing events” for the Khmer Rouge. After his confession, at about 7:00 p.m., he was taken to the Moung Rossei police station, where the soldiers handed him over to the police.

Veung recalled that although there were about thirty soldiers present when the three were detained, only four or five soldiers took part in interrogating him. He told Human Rights Watch/Asia that he deliberately avoided looking the soldiers in the face. As a result, he was unable to identify any of his torturers. Veung was held at the police station for about ten days before being released. During that period, the police interrogated him twice a day, for about two hours each session. However, the police did not physically abuse him during these interrogations. After the ten days, he was taken to a pagoda in Pho village, Kir commune, where district police and district and provincial officials were lecturing villagers on the illegality of interacting with the Khmer Rouge. Veung did not recall which village these people were from but gathered from the lecture that they were being accused of selling rice to the Khmer Rouge. Veung believes that he was released ultimately because of the intervention of local human rights workers. A policeman in Moung Rossei specifically referred to this case when explaining to Human Rights Watch/Asia the difficulty in resolving the type of case where innocent farmers are brought by soldier to the police under suspicion of being Khmer Rouge agents.

### ***Oeung Cheourb***

On December 8, 1995, Oeung Cheourb and his wife left their village to work on their land, some distance from the village. At about 5:00 p.m., as they were returning from the fields with their ox-cart, thirty-five to forty soldiers and commune militia members stopped their cart some twenty meters from their field hut.<sup>49</sup> The soldiers accosted Cheourb and took him to the forests, heading towards a big tree about a hundred meters from the hut. The soldiers sent his wife to the hut with the ox-cart. When she reached the hut, she dropped off the ox-cart and ran back to the soldiers. Some of the soldiers blocked her path and warned her not to follow them, asking her whether she wished to die as her husband would. She then went to her sister in law's hut and, with her sister-in-law Oeung Bay and Bay's husband, she returned to follow the soldiers surreptitiously. The three could hear some voices but could not make out what was

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<sup>48</sup> Human Rights Watch/Asia interview, Moung Reuy village, Moung Rossei district, May 23, 1996. Nhut Veung was living in Moung Reuy village at the time of the interview because the intense fighting had forced him to flee his home village of Paen. According to Veung, all of the 140 families living in Paen village had moved to other villages by that time. Theang's wife and eight children had, in fact, left Paen village as the fighting was beginning, even before the incident in which Theang was killed. Veung is distantly related to Way Ruot. Theang was their neighbor in Paen village.

<sup>49</sup> A field hut is a simple structure where farmers stay overnight if they are working long hours and their land is far from their village. Information for this case came from Human Rights Watch/Asia's interview with Oeung Bay, the sister of Oeung Cheourb, and from local human rights workers.

being said. Oeung Bay told Human Rights Watch/Asia she could hear her brother being beaten—a thudding sound as of a rifle butt hitting flesh.<sup>50</sup> The three turned back to the village when the soldiers took Cheourb deeper into the forest.

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<sup>50</sup> Human Rights Watch/Asia interview, Mounq Rossei district, June 6, 1996.

The following morning, Cheourb's wife went to the district police to see if Cheourb was being held there. When she returned to her village, some people passing by from Mir Lok village told her they had seen Cheourb's body in the forest. When she went to the Robous Mongkol commune office, the officials there told her that she could not bring back the body because her husband had been a Khmer Rouge member. A commune official told her the body should be buried where it was found. Furthermore, he said that only elders from the village could go there, as young men who venture there could themselves be labeled Khmer Rouge. So, four older men went to the spot where the body was found and buried it there. These men told Oeung Bay that the body showed signs that Cheourb had been beaten. There were cuts on the back of his head, and a cut on his back about two centimeters deep that appeared to have been caused by a knife. There were also two bullet wounds in his back.<sup>51</sup>

The victim's wife recognized some of the commune militia who carried out the arrest. Other militia members had covered their faces, making it impossible for her to recognize them, but she named four men from the Bung Bei militia whom she recognized: Poi Pok, Lieng, Soy and Ong Mab. The victim's sister Oeung Bay also knew several of the militia members, including the men recognized by Cheourb's wife as well as a man named K'dat. According to Bay, not long after the incident, Mab and Lieng fled the village for Takeo province. Soy left the militia to join the regular army, though he continues his farming in the area of the village. The militia members identified by the victim's wife and Bay all live in the same village as the victim.<sup>52</sup> In fact, the victim himself had been a member of the local militia, and Bay's husband continues to serve as a militia member.

According to Bay, Cheourb's village has been very insecure over the past year. In January and February, the fighting in the area of the village was particularly intense. The Khmer Rouge were moving freely in and out of the village, often buying or taking things from the villagers and threatening to kill those who protested. The RCAF soldiers also came into the village then and accused the residents of serving the Khmer Rouge. According to Oeung Bay, the Khmer Rouge were no longer able to enter the village by mid-1996 as the RCAF had increased its presence in the area.

## VII. THE POTENTIAL IMPACT OF THE DRAFT DRUG CONTROL LAW

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<sup>51</sup> Oeung Bay claimed the body had as many as ten bullet wounds in the back.

<sup>52</sup> Oeung Bay knew the four men quite well. Other neighbors had told Bay that Mab and Leang had fled the village because they were scared of retaliation for killing her brother. Bay also suggested that her brother may have been singled out for personal reasons. K'dat's father had been killed in September or October 1995 by Khmer Rouge. K'dat had alleged that Cheourb and Bay's husband had been involved in the killing of his father. Human Rights Watch/Asia interview, Moug Rossei district, June 6, 1996.

Some of the problems noted above of unlawful detention and torture may be exacerbated if a new draft drug control law is passed. The law was drafted, in part, as a response to growing international concern over increased drug trafficking in Cambodia.<sup>53</sup> According to an official in the UNDCP's Bangkok office, it is "clear that Cambodia is a new and rapidly increasing trafficking route."<sup>54</sup> On February 22, 1996, President Clinton of the United States added Cambodia to the U.S. government's list of major narcotics producing or transit countries. Inclusion on that list could result in a loss of bilateral U.S. assistance and U.S. opposition to multilateral loans, unless the president annually certifies that Cambodia has cooperated fully with the United States, or taken adequate steps on its own, to achieve full compliance with the 1988 United Nations Convention Against Illicit Traffic in Narcotics, Drugs and Psychotropic Substances.<sup>55</sup> President Clinton certified Cambodia on March 1, 1996, both for actions it has taken on its own and for its cooperation with the U.S. to stop drug trafficking. The UNDCP, the United States and other countries pressured Cambodia to take measures to control the trafficking of drugs. However, under the current political conditions in Cambodia, the measures proposed may risk increasing the level of human rights abuses.

The National Assembly is currently considering a draft Law on Control of Drugs which was "prepared following the proposal of" the UNDCP.<sup>56</sup> The law was, in fact, drafted in Cambodia, pursuant to a draft law prepared by Judge Jean Pasqual Thony for the UNDCP.<sup>57</sup> In many places, the draft drug control law directly contravenes other Cambodian law as well as human rights standards under international law by which Cambodia is bound, leaving room for a wide range of human rights abuses. The draft drug control law, submitted to the National Assembly on May 5, 1996, has not yet been adopted, but is expected to pass easily.<sup>58</sup> Human Rights Watch/Asia reviewed an unofficial English translation of the May 5 draft submitted to the National Assembly.<sup>59</sup>

Some of the most egregious provisions of the law include an extension of the period of detention for which people can be held without charge from forty-eight hours, under current law,<sup>60</sup> to ninety-six hours.<sup>61</sup> Human rights

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<sup>53</sup> Nate Thayer, "Medellin on the Mekong," *Far Eastern Economic Review*, November 23, 1995, p. 24-27.

<sup>54</sup> Thayer, "Medellin on the Mekong," *Far Eastern Economic Review*, p. 25.

<sup>55</sup> The certification process was created by a 1986 amendment to the Foreign Assistance Act of 1961. Section 490(b) of the Foreign Assistance Act states: the President of the United States by law must certify to Congress whether each producing and/or drug transit country during the previous year has cooperated fully with the United States or has taken adequate steps on its own, to achieve full compliance with the goals and objectives established by the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic substances, to accomplish goals described in applicable bilateral narcotics agreements with the United States, and to take legal and law enforcement measures to prevent and punish public corruption related to narcotics." Alternatively, a country may be certified on the grounds that "vital interests of the United States require" that assistance be provided. Countries which are neither certified nor granted a vital interests waiver are cut off from most bilateral U.S. assistance. In addition, the U.S. must vote against multilateral bank loans to these governments.

<sup>56</sup> Statement of Reasons, signed by the Prime Ministers Norodom Ranariddh and Hun Sen, for the draft Law on Control of Drugs, submitted by the government to the National Assembly on May 5, 1996.

<sup>57</sup> Human Rights Watch/Asia telephone interview with the UNDCP, Vienna, August 22, 1996.

<sup>58</sup> Matthew Grainger, "Critics slam tough drug law pushed by US," *Phnom Penh Post*, June 14-27, 1996.

<sup>59</sup> Human Rights Watch/Asia was told by a UNDCP official that the draft drug control law has been revised by the UNDCP since May 5, 1996. We were not able to obtain a copy of the revised law. To the extent that any such changes in the law remedy the shortcomings of the law as discussed above and have been incorporated into the draft law under consideration by the National Assembly, Human Rights Watch/Asia welcomes the revisions. All references are to the draft law submitted to the National Assembly on May 5, 1996.

<sup>60</sup> See Article 39 of the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable to Cambodia

workers in Cambodia widely report that torture, beatings, and other forms of abuse occur most frequently during this forty-eight-hour initial detention period, frequently to coerce confessions. To expand the period of detention to ninety-six hours would greatly increase the frequency and seriousness of abuses committed against suspects.

The drug control law also contains a set of "Provisions to Facilitate the Investigation" which, among other things, permits searches of homes and other premises with a warrant but fails to specify the standards for issuing such a warrant.<sup>62</sup> That set of provisions appears further to permit the search of persons, vehicles, mail and packages without requiring a warrant or probable cause that a crime is being committed.<sup>63</sup>

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During the Transitional Period.

<sup>61</sup> Article 65 of the draft Law on Control of Drugs.

<sup>62</sup> Article 66 of the draft Law on Control of Drugs.

<sup>63</sup> Article 68 of the draft Law on Control of Drugs.

Several other provisions also raise human rights concerns. The draft law is vague in its definition of an addiction to narcotics which raises due process concerns since, under the law, addicts may be imprisoned for refusing court-ordered treatment.<sup>64</sup> The draft law also makes punishable both the “direct” and “indirect” incitement to commit a drug offense whether the underlying crime actually took place or not.<sup>65</sup> The failure to define “indirect” incitement may result in arbitrary arrests.

A senior UNDCP lawyer acknowledged that the draft drug control law is not a “perfect law, as no law can be,” noting that in general a law that is “roughly right” is the “best standard you can achieve.”<sup>66</sup> The UNDCP official noted, “One must work with a [legal] system as you find it.” He also emphasized that the UNDCP will assist the Cambodian government to ensure the effective and proper implementation of the draft drug control law, taking into account the protection of human rights.

Such good intentions notwithstanding, Human Rights Watch/Asia believes that the approach represented by the draft drug control law does not sufficiently take into account the current deterioration of the human rights situation in Cambodia. Given the limited respect for human rights in the criminal justice system of Cambodia, a drug law that seeks to strengthen the ability of police to investigate crimes at the cost of civil liberties will not achieve the “best standard” for the investigation of drug offenses. As a senior UNDCP official in Bangkok has observed, Cambodia is vulnerable to drug trafficking because of three systemic problems: the absence of an effective legal system, lack of resources to combat drug smuggling, and official corruption.<sup>67</sup> Under current circumstances, where corruption is rampant and civil liberties frequently ignored, it is doubtful that creating a law that grants more powers to police without vigorously addressing the factors contributing to increased trafficking will be an effective approach to resolving the narcotics problem in Cambodia.

## VIII. VIOLENCE AGAINST ETHNIC VIETNAMESE

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<sup>64</sup> Articles 90 and 93 of the draft Law on Control of Drugs.

<sup>65</sup> Article 40 of the draft Law on Control of Drugs.

<sup>66</sup> Human Rights Watch/Asia telephone interview with the UNDCP, Vienna, October 10, 1996.

<sup>67</sup> Nate Thayer, “Medellin on the Mekong,” *Far Eastern Economic Review*, p. 25.

Ethnic hostility against Vietnamese runs high throughout Cambodia and constitutes a significant hurdle to protecting the basic human rights of this ethnic group.<sup>68</sup> The plight of ethnic Vietnamese living in Cambodia has improved somewhat since the early 1990s when massacres by the Khmer Rouge sent nearly 5,000 Vietnamese fleeing to Chrey Thom, near the Vietnam border. Nearly all the Chrey Thom Vietnamese have now relocated, with about half resettling in areas near Tonle Sap.<sup>69</sup> However, a similar massacre in 1996 again brought attention to the threat of violence they face. On the night of May 17, armed men, whom witnesses claim were wearing uniforms of both the Khmer Rouge and government forces, attacked a predominantly ethnic Vietnamese village in Pursat province, killing twelve people, of whom eleven were ethnic Vietnamese.<sup>70</sup> In addition, eight people were wounded, of whom five were ethnic Vietnamese. The survivors attributed the attack to the Khmer Rouge. Due to security concerns, Human Rights Watch/Asia was not able to carry out an independent investigation of this incident.

According to workers in nongovernmental organizations, Vietnamese living in Cambodia cite the continuing danger from Khmer Rouge attacks as the main motivation for staying close to their villages, especially after dark. In addition to this ongoing threat in the countryside, ethnic Vietnamese in Phnom Penh face almost daily a gamut of harassment and threats of violence. According to some twenty interviews of ethnic Vietnamese living in two predominantly Vietnamese neighborhoods conducted by Human Rights Watch/Asia, one in and one just outside Phnom Penh, ethnic Vietnamese living in the capital experience frequent, ethnically based harassment at the hands of groups of young Khmer men, who usually pick their victims at random.

In the neighborhood of Tchak Nhey Luh, located near the Japanese bridge leading to Route One,<sup>71</sup> one woman told Human Rights Watch/Asia of an incident in March 1996 in which several Khmers came into that neighborhood and began beating an ethnic Vietnamese teenager, using their fists and hitting him with a pistol. According to this woman, the teenager had sought refuge in her house (which doubles as a seamstress shop) which was directly across the street from the site of the beating. The Khmer men had followed the teenager into her house and dragged him back out into the street where they resumed their attack. The woman did not know the reason for the attack. Although a crowd of people from the neighborhood gathered around the men and yelled for them to stop the assault, none of the Vietnamese dared take any further steps. Several people living in that neighborhood explained that they rarely fight back during these attacks by Khmer men out of fear of more serious retaliation. For the same reason, the ethnic Vietnamese do not report these incidents to authorities. Officials have issued no public statements to suggest that such assaults are unacceptable and illegal or that ethnic Vietnamese are entitled to as much protection as ethnic Khmers.

## IX. IMPUNITY

One of the central human rights concerns in Cambodia is impunity for those who commit human rights abuses. This situation has worsened over the course of 1995 and 1996 as courts increasingly used a law passed on October 26, 1994 that grants near-immunity to all government employees who commit crimes.<sup>72</sup> Under Article 51 of the Law on

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<sup>68</sup> Ethnic Vietnamese have been estimated to comprise about 5 percent of the Cambodian population. (Stephen Marks, "The New Cambodian Constitution: From Civil War to a Fragile Democracy," *Columbia Human Rights Law Review* (New York: Columbia University Press, 1994), p. 72.) However, as Cambodia has had no recent population census or demographic survey, any estimate of the number of ethnic Vietnamese living in Cambodia would be somewhat speculative.

<sup>69</sup> As of late May 1996, all but four or five families had been relocated from Chrey Thom. Human Rights Watch/Asia interview with United Nations High Commissioner for Refugees, Phnom Penh, May 31, 1996.

<sup>70</sup> Christine Chaumeau, "Horror Stories from Khmer Rouge Carnage," *Phnom Penh Post*, May 31-June 13, 1996.

<sup>71</sup> According to residents, some 800 people, nearly all Vietnamese, live in Tchak Nhey Luh.

<sup>72</sup> Although it was difficult for Human Rights Watch/Asia to assess how widespread the application of this law was, human rights workers told Human Rights Watch/Asia of an increase in its application over 1995 and 1996. According to statistics



Co-Statute for the Civil Servants of the Kingdom of Cambodia, also referred to as the Law on Civil Servants, a judge wishing to prosecute senior civil servants must file a request through the Ministry of Justice to seek authorization from the Council of Ministers before the prosecution can proceed. Authorization from the head of the ministry involved is necessary for the prosecution of lower ranking civil servants.<sup>73</sup>

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compiled by the Cambodia office of the United Nations Centre for Human Rights, between May 1995 and June 1996, there were 143 cases in which the prosecutor sought permission to initiate prosecution of civil servants from eleven different ministries and one case in which permission was sought from the Council of Ministers. Permission was granted in only thirty-two of the 143 cases. These statistics are cited in the official translation, dated October 21, 1996, of the Intervention of the Commission on Human Rights and Reception of Complaints prepared for delivery at the Seventh Session of the First Legislature of the National Assembly of Cambodia.

<sup>73</sup> Law on Co-Statute for the Civil Servants of the Kingdom of Cambodia, passed on October 26, 1994.

Against a history of *de facto* impunity for civil servants who commit human rights abuses, this cumbersome authorization process all but ensures that government officials who abuse human rights will go unpunished. An exception to the authorization process is made for civil servants who are arrested while in the act of committing a crime. Summarizing the law's impact on human rights in Cambodia, one member of the National Assembly told Human Rights Watch/Asia that Article 51 of the Law on Civil Servants operates as a "barrier to protect the police and military perpetrators of human rights abuses . . . . Because of this provision of law, the courts have lost their independence."<sup>74</sup>

Article 51 has drawn criticism from the Ministry of Justice as well as from some provincial judges. However, an internal government document, prepared in response to a Kompong Speu judge's request that Article 51 be repealed, indicates that the government is not only committed to retaining this law, but that it is also planning to incorporate a similar provision into a proposed law on military personnel. The proposed Common Military Statute would permit a provincial or municipal court to try a soldier suspected of a common crime only if that court had previously obtained permission from the Ministry of National Defence by filing a request through the Ministry of Justice.<sup>75</sup>

The incorporation of such a provision into the proposed Common Military Statute would signal disaster for many regions of Cambodia such as Battambang province. Indeed, even without a law on the books providing for near impunity for military personnel, there are many instances in which the law has been mistakenly invoked to justify impunity for soldiers.<sup>76</sup> In fact, although the Law on Civil Servants on its face applies only to civil servants and not to military personnel, human rights workers in Cambodia told Human Rights Watch/Asia that there had been several instances in which courts have stalled or ceased investigations into abuses perpetrated by soldiers on the grounds that they require permission of the Ministry of Defence in order to proceed.<sup>77</sup>

### **Abuses by the Military (Battambang)**

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<sup>74</sup> Human Rights Watch/Asia interview, Phnom Penh, May 17, 1996.

<sup>75</sup> Letter from the Office of the Council of Ministers to the Secretary of State for the Civil Service, dated November 17, 1995, signed by co-ministers of the Office of the Council of Ministers, Secretaries of State Sum Manit and Nouv Kanun.

<sup>76</sup> According to Chief Judge of Battambang Nil Non, however, some of the confusion surrounding the applicability of the Khmer Rouge law ought to have been dispelled by a circular from the Ministry of Justice which expressly specified that members of the armed service and the militia would not be covered by Article 51.

<sup>77</sup> Chief Judge Nil Non of Battambang Provincial Court told Human Rights Watch/Asia that the minister of justice had issued a directive in the last quarter of 1995 specifically aimed at clarifying the point that the Law on Civil Servants does not apply to military personnel, including, significantly, militia members. Judge Non conceded that there are still judges across the country who misapply Article 51 in this fashion.

According to Nil Non, Chief Judge of Battambang provincial court, some 50 percent of the murders committed in Battambang are committed by soldiers. Although this figure marks an improvement from the mid-1995 figure of 90 percent he gave to one reporter,<sup>78</sup> it indicates that abuses by the military continue to be a massive problem. While such figures may represent no more than rough estimates and any slight reduction in the percentage of murders committed by soldiers may be indicative of improved discipline in army units, as Nil Non claimed, several of our sources asserted that abuses by the military in Battambang province continue to go largely unpunished.<sup>79</sup> Nil Non himself spoke at length to Human Rights Watch/Asia about the difficulties in bringing to justice soldiers who commit crimes, including human rights abuses: "The most significant problem in administering justice in Battambang is armed men, especially soldiers; many incidents occur here, because soldiers do not observe the law very well."<sup>80</sup> Judge Non further complained that after committing a crime, soldiers frequently flee back to their bases. When the court seeks to gather information about such soldiers, the military commanders are uncooperative, making further investigation of the crime nearly impossible. According to Judge Non, while there are active military police units in Battambang city who seek to maintain some control over soldiers present in the city, the military police have almost no power out in the countryside.<sup>81</sup> As a result, Judge Non added, districts where many soldiers are deployed such as Moug Rossei, Banon and Bovel are the scenes of numerous incidents of unlawful violence by the military.

Judge Non's complaints about *de facto* impunity for soldiers were echoed by policemen in Moug Rossei district and Battambang city. The police commissioner of Battambang province, Col. Worn Choun Ly, told Human Rights Watch/Asia that arrest warrants are meaningless when the suspects that police are seeking to arrest are soldiers.<sup>82</sup> In many instances, even before the police begin negotiations with a military commander in connection with suspects in his unit, the suspects will have fled the area, making execution of the arrest warrant impossible. Almost as an afterthought, the police commissioner added that police jurisdiction is, in any event, limited to civilians.<sup>83</sup>

A senior police official in Moug Rossei district, who asked not to be named for fear of retaliation from the military, also complained to Human Rights Watch/Asia about difficulties the local police have in addressing abuses committed by soldiers.<sup>84</sup> For example, while police need to have arrest warrants to make an arrest (except in *flagrante* cases), soldiers feel free to arrest without warrants those they suspect of being Khmer Rouge agents. Soldiers do not

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<sup>78</sup> Jason Barber and Ros Sokhet, "Judge fingers soldiers for 90% of murders," *Phnom Penh Post*, July 28-August 10, 1996.

<sup>79</sup> Human Rights Watch/Asia interviews, Battambang, May 22-23, 1996.

<sup>80</sup> Human Rights Watch/Asia interview, Battambang, May 23, 1996.

<sup>81</sup> Judge Nil Non emphasized that the situation in Battambang city has improved, citing increasing intolerance among military commanders in the city for soldiers who commit crimes. Judge Non did not offer any statistics to support his claim.

<sup>82</sup> Human Rights Watch/Asia interview, Moug Rossei district, June 6, 1996.

<sup>83</sup> Despite such claims regarding the limits of their jurisdiction, it is clear that policemen often do make efforts to arrest and investigate soldiers, if they believe they can do so without risk to their safety. Throughout Cambodia, there is confusion over the jurisdictional limits of the police and the military police. For example, even though military police are charged under SOC criminal procedure of 1993 with jurisdiction over "military offenses," that term is never defined in the law, and in practice, the military police will arrest military personnel as well as civilians. According to a human rights worker in Cambodia, the jurisdictional powers of the military police and the civil police vary from province to province.

<sup>84</sup> Human Rights Watch/Asia interview, Moug Rossei district, June 6, 1996. This police official specifically requested that Human Rights Watch/Asia not use his name when citing his interview, especially in connection with his comments about relations between the police and the military in Moug Rossei district. He worried that "someone might kill [him] otherwise," suggesting that he was especially vulnerable because he "frequently rides [his] moto on the road to Phnom Penh."

understand or do not accept the principle that they must have evidence in carrying out arrests, and this attitude generates a dilemma for the police.

Soldiers come to the police to tell them to arrest someone because they believe that person is a Khmer Rouge. If the police ask what the evidence is, the soldiers will take care of the matter themselves. We know they are not Khmer Rouge, but we have to accept them [into police custody]. If we do not, the soldiers will kill them in the fields . . . . [Our procedure] is not legal, but I want to keep these people alive.<sup>85</sup>

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<sup>85</sup> In contrast to such an "illegal" procedure, this official cited the arrest by the police in May of eight Khmer Rouge suspects. In these cases, the official claimed that the police: gathered sufficient evidence for the arrest from documents and other evidence; sent the evidence to the provincial police commander, who in turn passed the evidence on to the provincial police commissioner; and, then, made the arrests. He also stated pointedly that the interrogation of these suspects was not conducted in Moung Rossei because sufficient evidence [for their conviction] had already been obtained and because there are no cells at the district police station: "We don't even have holding cells -- where would be interrogate anyone?"

While such explanations from the police in Moung Rossei seem ultimately to be proffered as an excuse for extended detention of people whom the police freely admit are innocent of any crime,<sup>86</sup> they do underscore the point that extralegal actions of the military trump the law enforcement function of the police.<sup>87</sup> While denying that there have been any direct conflicts between the police and the army in Moung Rossei, the police official noted that it would be pointless for the police to test their powers over the army. "What for?" he asked. "They [the soldiers] will kill us."<sup>88</sup>

This police official noted further that the police are not always aware of abuses committed by the military, especially when abuses are committed in remote areas of the district. Often, the family of victims of human rights abuses will go directly to local human rights organizations rather than the police, because of what he described as a prevalent belief that the police and the military are more or less the same entity. But this official added that the military also fails to tell the police about such incidents.

The events following the killing of Chhourn Theang (see above), as recounted by this police official, illustrate the bureaucratic maneuvering that is often necessary to initiate an investigation into abuses committed by the military. On February 9, the day after Theang was killed, soldiers brought the two surviving suspects, Nhut Veung and Way Ruot, to the Moung Rossei police station. The two had clearly been beaten, according to the police official, who then added, "It was not serious; they could still walk."<sup>89</sup> The arresting soldiers had claimed that the two were Khmer Rouge, but a police investigation showed otherwise. Although the policemen were not able to identify any of the individual soldiers involved in the incident, they did know at least that they were from a unit led by a Captain Luoth from the 12th Battalion, 8th Division commanded by Maj. May Hoeun. While the police cannot take any action directly against the soldiers, the police official explained, the police do "have the right to file a report with [the soldiers'] commanding officer."<sup>90</sup> Alternatively, the district police inspector may report the incident to the provincial police commissioner, who will in turn report to the provincial military police commander, who will then bring the matter to the attention of the Ministry of Defence. The military police will then discuss this matter with the military commanders in the area of the incident.

## X. CONCLUSIONS

Ieng Sary's defection has raised hopes that the government's struggle with the Khmer Rouge may soon come to an end. His subsequent pardon reflects the government's desire to accelerate the peace process. At the same time, however, the pardon represents a failure to establish accountability for human rights abuses and marks an approach that continually subordinates human rights and government accountability to other interests, severely weakening the rule of law. It is in this political context that Article 51 of the Law on Civil Servants is increasingly being used to forestall the prosecution of abusers and that the government has proposed further measures granting impunity for abuses. The legislation of impunity only adds to the *de facto* impunity with which government soldiers and police have carried out abuses throughout the country. Such legislation furthers saps what independence Cambodia's fledgling judiciary has developed since 1993. And as political intimidation through acts of violence escalates in 1996, the suppression of the

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<sup>86</sup> Among other things, this police official claimed that family members of victims are usually happy to hear that a relative taken by soldiers has been brought to the police, rather than held by the soldiers, because they have some confidence that their relative, if innocent, will ultimately be released.

<sup>87</sup> According to this police official, the police in Moung Rossei district have never arrested a soldier. Instead, the police policy in Moung Rossei is that only the military police have the jurisdiction to arrest soldiers. Nevertheless, this official made several references to instances in which the police did make some attempt to arrest a soldier.

<sup>88</sup> Human Rights Watch/Asia interview, Moung Rossei district, June 6, 1996.

<sup>89</sup> Human Rights Watch/Asia interview, Moung Rossei district, June 6, 1996.

<sup>90</sup> Human Rights Watch/Asia interview, Moung Rossei district, June 6, 1996.

developing press in Cambodia disables one of the few entities that had the potential to challenge government wrongdoing and spur the development of a true democracy.

In theory, Cambodia possesses several institutions whose operations would strengthen the rule of law and increase protections for human rights. Unfortunately, political tensions and a lack of will have curtailed the development of these critical institutions. For example, a constitutional court to determine issues of the constitutionality of legislation is contemplated in the Cambodian constitution. However, more than three years after the UNTAC elections, the constitutional court has still not been appointed, nor has there been movement in any political quarter to press this issue. Similarly paralyzed is the Supreme Council of Magistracy which, according to the Cambodian Constitution and the Law on the organization and functions of the Supreme Council of Magistracy, is charged with nominating and disciplining judges and prosecutors. Nor are these issues likely to be resolved in the near future given the tensions between the two leading political parties as Cambodia prepares for the coming elections.

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*Human Rights Watch/Asia*

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