

# **IMPUNITY IN CAMBODIA: HOW HUMAN RIGHTS OFFENDERS ESCAPE JUSTICE**

**A Report by Adhoc, Licadho, and Human Rights Watch**

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## IMPUNITY IN CAMBODIA: HOW HUMAN RIGHTS OFFENDERS ESCAPE JUSTICE

*“If somebody kills a poisonous snake, are you angry with the killer?”*

—Pailin Court President Pich Sarin, explaining why the court did not take action after municipal police executed two murder suspects without trial.<sup>1</sup>

### I. SUMMARY AND RECOMMENDATIONS

- A brothel owner in Banteay Meanchey province with connections to high-ranking military beats a prostitute to death in front of more than a dozen witnesses. He is detained, then released allegedly for lack of evidence.
- The bodyguards of a provincial governor in Kompong Speu catch a sixteen-year-old boy who has scaled the wall of the governor’s compound to steal chickens. They tie him up and torture him, and then pump more than ten machine gun bullets into his body, killing him instantly. No action is taken against them.
- Soldiers in Kompong Thom arrest ten fishermen suspected of cow theft. They are marched to a secluded clearing, where they are tied up, searched, and tortured. When one of the men tries to run, the soldiers execute nine of the men with at least one bullet to the head. One man is able to escape. When he goes to the police station to identify the perpetrators, he sees one of the soldiers sitting there chatting with his police friends. The victim quickly leaves.
- A member of the commune militia in Takeo breaks up a holiday celebration of a popular opposition leader in the village — saying the people are “making too much noise”— by shooting five people one by one.<sup>2</sup> He returns later to finish off two of the wounded people with a grenade. Police come the next day to look at the bodies but leave without taking any action against militia members. Several days later, the militia leader leaves town, and the case stalls.

While all of these incidents happened more than one year ago, none of the perpetrators have been brought to justice, nor, in most cases, have local law enforcement or judicial officials launched more than token investigations. These are not isolated incidents; similar failures of the justice system happen every day in Cambodia.

Two Cambodian human rights organizations —Adhoc and Licadho<sup>3</sup> — and an international human rights organization, Human Rights Watch, conducted a two-month investigation and analysis on the problem of impunity in Cambodia. They found that the main reasons for lack of arrests and prosecution of human rights offenders include the following:

1. Lack of political will and determination by the top echelons of government to address the problem. Failure

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<sup>1</sup> Marc Levy, “Pailin No-Trial Executions Stark Reminder of K.R. ‘Jungle Law’” *Cambodia Daily* (Phnom Penh), December 22, 1998.

<sup>2</sup> A commune consists of three to four villages.

<sup>3</sup> The Cambodian Human Rights and Development Association, or Association Droits de l’Homme Cambodienne (Adhoc) and the Cambodian League for the Promotion and Defense of Human Rights, or Ligue Cambodienne pour la Protection et la Défense des Droits de l’Homme (Licadho), are Cambodia’s oldest and largest human rights organizations.

by authorities to prevent and punish serious violations of fundamental human rights encourages others to commit offenses, knowing that they too can probably get away with it.

2. Lack of neutrality and independence of the judicial and law enforcement systems. Both the courts and the police are thus vulnerable to intervention, pressure, and directives from high-ranking political or military figures. The rule of law is undermined to the extent that justice is carried out through orders and executive decrees. Due process is sabotaged because the focus in criminal justice is often to extract confessions and convictions rather than collect evidence, conduct proper investigations, or hold impartial trials.

3. Little control over the use of firearms and lethal force. Decades of war and civil strife have left Cambodia saturated with weapons, which are misused by police and military both in the line of duty and outside working hours. War has also left behind a culture of violence where the instant reaction to an apparent crime is to kill the perpetrator, rather than waiting for a case to work its way through the politicized, weak, and often corrupt court system. In Phnom Penh, for example, at least one in every thirteen arrests during 1998 resulted in either death or injury; out of 1,152 arrests, police killed seventy-six people and wounded twelve.<sup>4</sup>

4. State-sanctioned impunity in the form of Article 51 of the Common Statutes on Civil Servants provides protection to government employees who commit crimes or human rights abuses by requiring the permission of the perpetrator's ministry prior to arrest. Each year the Ministry of Justice receives more than one hundred requests for waivers of immunity granted to police or civil servants. Authorization was granted in forty-four of the total cases in 1998; the rest are listed as still waiting response from the relevant ministries. This means in effect that Article 51 protections for the offender are still in place for those not yet authorized for prosecution.<sup>5</sup>

5. The deterioration of the political situation from 1996 onwards. This resulted in the two halves of the coalition government — the Cambodian People's Party and the royalist party, Front Uni National pour un Cambodge Independent, Neutre, Pacifique, et Cooperatif, or Funcinpec — protecting their own subordinates from prosecution.

6. Minimal cooperation between police and courts and the fear of both bodies to investigate and prosecute crimes committed by the armed forces.

7. Inadequate salaries and related morale problems, leaving civil servants, police, and military susceptible to corruption.

8. Low level of professionalism in judicial and law enforcement bodies. These bodies fail to follow correct procedures because their personnel lack training, competence, and resources. The absence of legal mechanisms and professional competence means the security forces are often unable to conduct independent investigations into instances of misbehavior within their own ranks.

Adhoc, Licadho, and Human Rights Watch also found that there are numerous points in the criminal justice process when actions by state agents can undermine or destroy the possibility of bringing perpetrators of crimes to justice, particularly when they are members of the police or military or connected to powerful individuals in the government or private sector.

- Information about the commission of a crime has to reach the prosecutor before it can move through the courts. Prosecutors are obliged by law to investigate a crime that comes to their attention, even if they have not been informed of it by the police, but in practice, if the police do not report a crime, it often does not get to the court.
- If the prosecutor does receive a case and there is enough evidence to prosecute, he should either promptly

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<sup>4</sup> Human Rights Watch interview with Mao Chandara, chief of general staff, Ministry of Interior, Phnom Penh, April 13, 1999.

<sup>5</sup> "Report on Requests to File Charges from Prosecutors of Provinces and Municipalities During 1998," Ministry of Justice, April 9, 1999.

issue an arrest warrant or forward the case with preliminary charges to an investigating judge. The question then is first, whether the investigating judge will actually issue an arrest warrant and second, whether the police will actually deliver it, or whether arrangements will be made by local officials or the police for an out-of-court settlement by the perpetrator. Such financial settlements are common in criminal cases, especially rape, with the intermediary (police, local officials, or court personnel) usually taking a commission.

- Under Article 51 of the Common Statutes on Civil Servants, no civil servant or member of the police force can be arrested or charged unless the perpetrator's ministry formally grants permission. Civil servants, including police, are effectively immune from prosecution unless their superiors waive that immunity. The process of requesting such a waiver can take months, during which time the suspect can live freely in society — or escape altogether — or intimidate witnesses or victims. Ministries often refuse to grant permission to waive the immunity granted by Article 51. In reality, despite the fact that Article 51 does not apply to military personnel, it has been used by the military hierarchy to deny permission to courts to prosecute its subordinates.
- In the rare cases that police officers, soldiers, militia chiefs or local officials are actually arrested, prison authorities often hesitate to detain them because of intense pressure they face for their release. Police usually receive preferential treatment in jail and sometimes are allowed to go free during the day or are freed pending trial, unlike ordinary criminals.
- After arrest, the case goes back to the investigating judge. Because judges are often pressured to dismiss cases involving police or military, few cases involving these forces ever reach trial, or if they do, the judges will often give suspended sentences.<sup>6</sup>
- If the case does go to trial, witnesses can be paid off or threatened, so they do not show up in court or they change their stories to the benefit of the perpetrator. Pressure can also be brought to bear on victims or their families to drop their complaints in exchange for financial compensation; this is especially common if the perpetrators are allowed to go free pending trial, which gives them an opportunity to intimidate witnesses and victims.
- If actually convicted, the perpetrators may threaten or bribe the court or prison staff afterwards, sometimes securing their release from prison after being sentenced.<sup>7</sup>
- Finally, large numbers of court verdicts are not actually implemented, particularly for military offenders who can threaten armed retaliation, obtain protection at their military base, or, as in most cases, simply not respond to court summonses or warrants. In the latter cases, the offenders are sometimes tried in absentia.

Some of the analysis in this report is derived from a study conducted by Adhoc and Licadho of killings that have occurred over a twenty-two-month period in Cambodia. The research found that at least 263 people were allegedly killed by the police, the military, the gendarmerie, militia members or local officials, and that while many of these appear to have been deliberate executions, none of the perpetrators were brought to justice. A summary of the findings of the research is appended. In addition, this report includes four in-depth case studies illustrating the problem of impunity at the provincial level.

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<sup>6</sup> Human Rights Watch interview with U.N. legal expert, Phnom Penh, March 1, 1999.

<sup>7</sup> For this reason, at least one provincial judge keeps a machine gun in his office for protection.

## **RECOMMENDATIONS**

Adhoc, Licadho, and Human Rights Watch believe that policy changes in five key areas could reduce the problem of impunity in Cambodia. These five areas are the military and police, the judiciary, legal reform, criminal justice administration, and support for human rights monitoring. Accordingly, we recommend the following to the Royal Cambodian Government and Cambodia's donors, neighbors, and trading partners:

### **Military and Police**

1. Take steps to establish a genuinely neutral police and military by establishing minimum qualifications for entry into service and competitive hiring procedures and by creating an independent appointments committee.
2. Hold police and military officers accountable for any crimes they commit and enforce prohibitions against their interference in the administration of justice. Instruct the Ministry of Defense to cooperate with relevant authorities in the police force, judiciary, and gendarmerie to ensure that soldiers who commit crimes and abuses are arrested, prosecuted and punished. Those in the military chain of command who protect soldiers accused in criminal cases should be disciplined with demotion or expulsion from the armed forces. Enforce legal provisions to ensure that complaints from victims are not required to trigger action against military offenders.
3. Establish a clear demarcation of responsibilities and chain of command between the different law enforcement bodies. Clearly differentiate the responsibilities of the gendarmerie and judicial police. Coordination and cooperation between the Ministries of Justice and Interior is especially important. Provisions in a new criminal procedures law could define the role of the police and how they are to interact with other agencies and institutions in criminal investigations. All police officers should understand from their first day in uniform that they are expected to cooperate with prosecutors when the latter order arrests.
4. Clarify through legislation the functions and jurisdiction of the military prosecutor's office and military court, along the lines stipulated in Article 11 of the Criminal Code, stipulating that the military court deal exclusively with internal military matters. Article 11 defines military offenses as those involving military personnel and which concern discipline within the armed forces or harm to military property. Ordinary crimes committed by military personnel are to be tried in civilian courts.
5. Support the program of confiscating unlicensed weapons in Phnom Penh and the provinces but back it up by enforcement of prohibitions against illegal use of weapons whether they are licensed or not. Enforce prohibitions against personal use of assault rifles as stated in Subdecree 62 on Illegal Weapons and Explosives Control. Also enforce Subdecree 38, passed on April 30, 1999, covering the importation, production, sale, distribution, and use of weapons and explosives of all types.
6. Enforce Article 6 of the 1992 criminal code, calling for the police to observe the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which states that police must report to their superiors actions involving injury or death of suspects. Independent judicial inquiries should be conducted in regard to all such cases.
7. Create a national witness protection program to provide courts and police with funds and resources to guarantee the protection of witnesses willing to testify, improving the quality of evidence used in trials.
8. Conduct joint trainings for police and court officials to improve cooperation in implementation of criminal justice.

### **Judiciary**

1. Initiate serious, independent, and thorough investigations — and prosecute those responsible — for hundreds of summary executions, assassinations, massacres, incidents of torture, and other serious human rights violations that have taken place since the founding of the Royal Cambodian Government in 1993.

2. Promote a genuinely independent judiciary by launching a program of judicial reforms that includes the following:

- Promptly pass the long-overdue Law on the Statute of Magistrates, which establishes procedures for hiring and disciplining court officials, sets educational requirements for appointment of new judges, and addresses issues such as conflict of interest and membership in political parties. In addition, set clear policies with regard to the retirement of judges and prosecutors.
- Reformulate the Supreme Council of Magistracy (SCM) as a neutral body, independent from the Ministry of Justice and political parties, so that it can set about the tasks laid out for it in the Constitution. Those tasks are to oversee the functioning of the judiciary, make judicial appointments, and take disciplinary measures over court officials. In order to ensure the separation of powers, require that once appointed to the SCM, members must resign from any active role in a political party.
- Empower the SCM to act forcefully and promptly in order to address issues of political pressure, intimidation or intervention on judicial matters by armed forces, and corruption. The SCM, which has met on legislative matters only once, should become more active and begin to meet regularly to address these issues, as should the Disciplinary Council of the SCM. The SCM's deliberations, particularly those regarding discipline of court officials, should be transparent, and clear mechanisms should be established for the public to complain about individual judges or prosecutors.
- Provide guarantees and implement practical measures to ensure the safety of judges so that intimidation and concerns about their personal security do not influence court decisions.

3. With regard to procedures for arrest, treatment of detainees, and trial, implement and enforce existing provisions of the 1992 criminal code, such as Article 12 (treatment of detainees), Article 13 (arrest and detention procedures), Article 14 (pre-trial detention), and Article 24 (provisions on evidence; prohibitions against obtaining confessions under duress).

4. Enforce legal prohibitions in the 1993 Criminal Procedures Law against out-of-court financial compensation for felonies and major criminal offenses. Police and local officials should not take commissions in settlements of any cases, civil or criminal. Prohibit any negotiations or compensation to be paid until after any state action is complete, i.e. the trial is over or the charges are dropped by the prosecution.

### **Legal Reform**

1. Repeal Article 51 of the Common Statutes on Civil Servants, which effectively grants impunity to police, military, gendarmerie, and civil servants who have committed criminal offenses.<sup>8</sup> The Military Statute should also state clearly that soldiers are subject to prosecution in civil courts for criminal offenses.

2. Complete the drafting of laws, including a new law on criminal procedure, a law on civil procedure, a law on the statutes of magistrates, a civil code, a law on the organization and functioning of the Ministry of Justice, and a new criminal law to replace the 1992 criminal code drafted by the United Nations Transition Authority in Cambodia (UNTAC).<sup>9</sup> These laws should be drafted in close consultation with members of civil society and in accordance with national and international human rights standards.

### **Administration of the Criminal Justice System**

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<sup>8</sup> Hun Sen has recently pledged to call on the Council of Ministers and the National Assembly to repeal Article 51. In addition, both the current and former ministers of justice have proposed that Article 51 be amended, which is a positive indication of the ministry's concerns about the article. Finally, government officials and NGO leaders endorsed the repeal of Article 51 at a meeting in Hong Kong in March 1999 on Rule of Law, sponsored by the Asian Human Rights Commission. See Kay Johnson, "No Protection for Officials, Hun Sen Says," *Cambodia Daily*, May 21, 1999.

<sup>9</sup> The criminal code, passed by the Supreme National Council on September 10, 1992 during the mandate of UNTAC, is titled "Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period."

1. Increase salaries of court officials as one measure to reduce corruption. In a similar manner, increase the salaries of police, military and gendarmerie to address problems of corruption, lack of discipline, and low morale.
2. Provide technical and financial assistance to ensure that judicial officials and law enforcement officers are competent and properly trained. A functioning institute for the training of judges and prosecutors, providing follow-up courses for practicing jurists, would be one way to achieve this goal. A police academy could be established to train police in law and human rights.
3. Periodically rotate police and court personnel to different departments or geographical locations to reduce the possibility of corruption and nepotism.
4. Take immediate steps to discipline or dismiss court officials for failure to prosecute cases (using the SCM Disciplinary Council) and law enforcement officials for failure to investigate and report on cases.
5. Increase the number of trained and experienced lawyers and defenders through training programs. Support the Cambodian Bar Association and nongovernmental legal aid organizations that provide legal assistance to low-income people. The goal should be to have at least one qualified criminal defense lawyer in every province. No criminal trials should be held without access to competent counsel.

### **Monitoring Impunity**

1. Support the work of local human rights organizations and the Cambodia Office of the High Commissioner for Human Rights so that they can continue to assist in monitoring and investigating reports of impunity.
2. Once a functioning and independent judiciary is in place, create a neutral investigation authority, possibly in the form of a National Human Rights Commission, that is truly independent of the government and mandated by law to investigate and follow up on human rights abuses. This entity should possess subpoena powers, the ability to compel testimony, and the ability to refer cases for prosecution to the courts. Commission members should have no connection to the government or political parties. This body should be empowered to submit legally admissible evidence to the court and to require the prosecutor to open or reopen an investigation. A subcommittee of the commission could act as an Office of Civilian Complaints, serving as an ombudsman by addressing specific complaints about the police, military, militia, gendarmes, and other government officials.
3. Members of the Consultative Group on Cambodia, the donor consortium, should establish a Rule of Law and Judicial Reform Working Group to evaluate the Royal Cambodian Government's progress in meeting all of the above objectives.

## **II. OVERVIEW OF IMPUNITY IN CAMBODIA**

The problem of impunity — in which criminals escape justice — is so deeply entrenched in Cambodia that the phrase “culture of impunity” has become almost a cliché. The problem ranges from the failure to prosecute former Khmer Rouge leaders such as Ieng Sary and Ke Pauk — implicated in the killings of millions of Cambodians in the 1970s — to hundreds of more recent unpunished crimes committed by current government authorities.

Examples range from politically motivated crimes such as the execution of Ministry of Interior official Ho Sok on July 7, 1997 in the Ministry of Interior compound,<sup>10</sup> to cases that have nothing to do with politics, such as the police officer who shot a karaoke singer in the head in February 1999 in a Phnom Penh café after

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<sup>10</sup> Three police officials responsible for security in the Ministry of Interior were suspended on July 28, 1997 but reinstated shortly afterwards. No one has been brought to justice in relation with this case.

she refused his sexual advances.<sup>11</sup>

The problem of impunity builds on itself: the lack of accountability by state authorities who get away with gross human rights violations encourages others to think that they too can be above the law in committing crimes. Perpetrators learn there is nothing to fear for committing a crime because prosecutions and trials rarely take place — especially of those with connections in high places.

When suspects are arrested who have ties to high-ranking officials, relatives of the suspect or others acting on his behalf may intervene to secure the suspect's release.<sup>12</sup> They may try to pay off the police, prosecutor, or investigating judge — or put strong pressure on them — in order to halt the investigation and have the charges dropped. The Royal Cambodian Government acknowledges the problem: "Interference by other branches in the work of the courts most often takes the form of pressure, obstruction of proceedings and threats by those in power, particularly when they are members of the armed forces," the government admitted to the U.N.'s Committee on Human Rights.<sup>13</sup>

There may be even more pressure in politically motivated cases, where police and court personnel may be shielding other authorities or under threat themselves. Among the most serious incidents of political violence since 1993 are the following:

- Killings of at least two people by government security forces or their agents, and at least eleven known disappearances of other people in conjunction with demonstrations in Phnom Penh in September 1998. Another twenty-four killings were reported in August and September, as part of an increase in killings that coincided with the government's crackdown on the demonstrations, although to date no causal relationship has been established. Dozens more protesters, including monks, women, and students, were beaten or injured by gunfire from government security forces.<sup>14</sup>
- Murders of at least twenty-two people, in which political motivations played a part, in the final two months preceding the July 1998 elections.<sup>15</sup>
- Summary executions, disappearances, and torture of close to one hundred members of opposition parties in the ten months following the July 1997 coup.<sup>16</sup>
- A grenade attack against a demonstration led by opposition politician Sam Rainsy at the National Assembly on March 30, 1997, in which at least sixteen people were killed and more than one hundred wounded.<sup>17</sup>

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<sup>11</sup> While the suspect's name was known, a warrant for his arrest was not issued for two months. See Phann Ana and Kay Johnson, "Karaoke Girl Shot for Refusing Proposition," *Cambodia Daily*, February 5, 1999.

<sup>12</sup> For an example, see the case study under Section IV of this report titled "Banteay Meanchey: Murder of a Young Girl by a Brothel Owner."

<sup>13</sup> Paragraph 213, "Report on the Application of Civil and Political Rights in Conformance with Article 40 of the ICCPR," Kingdom of Cambodia, 1997. The report was submitted to the U.N. Committee on Human Rights on March 30, 1999.

<sup>14</sup> Special Representative of the United Nations Secretary General for Human Rights in Cambodia, "Monitoring of Election-Related Intimidation and Violence," August 20-October 28, 1998.

<sup>15</sup> *Ibid.*

<sup>16</sup> Memoranda to the Royal Government of Cambodia submitted by the Special Representative of the United Nations Secretary General for Human Rights in Cambodia, August 23, 1997 and May 13, 1998.

<sup>17</sup> The FBI, which investigated the attack because an American citizen was wounded, tentatively found that bodyguards working for Hun Sen were involved in the attack. The FBI report has never been made public, and the Hun Sen government has denied the charges. On March 29, 1999 — two years after the attack — Hun Sen adviser Om Yentieng, chairman of the government's Human Rights Committee, said that the government had identified two people who threw the grenades. While Om Yentieng said that he believed the prosecutor had enough evidence, he said it was up to the police and the courts to arrest them. However, to date no one has been arrested or prosecuted. See R. Jeffrey Smith, "Hun Sen's Guards Tied to 20 Killings," *Washington Post*, June 30, 1997; and Reuters, "Cambodia says has identified grenade attackers," March 29, 1999.



- Murders of at least five journalists, the attempted murders of at least three other journalists, and violent attacks on several opposition newspaper offices over the last four years.<sup>18</sup>
- Grenade attacks against gatherings of Buddhist Liberal Democratic Party members in September 1995, which killed two and injured more than thirty.<sup>19</sup>

Few of the perpetrators of the above crimes have been brought to justice. A 1998 U.N. report prepared by two experts in criminal investigation, who visited Cambodia to evaluate the government's progress in investigating post-coup executions and the deadly March 30, 1997 grenade attack, concluded that the government had not launched any serious investigations into any of the cases and that no investigations were planned.<sup>20</sup>

A governmental Human Rights Committee, headed by Hun Sen adviser Om Yentieng, was established by the government in 1997. The co-prime ministers signed a subdecree in June 1998 mandating the committee to investigate human rights abuses, to prepare a draft law on the establishment of an independent national human rights institution, and to propose reforms for improving the administration of justice.<sup>21</sup> According to Om Yentieng, the committee has proposed reforms in the fields of the judiciary, police, military, and administration.<sup>22</sup> However, in its human rights investigations, the committee has not made substantial progress: the vast majority of the cases it has received alleging summary executions, torture, rape, assault, or intimidation committed by state agents remain unsolved.<sup>23</sup> The committee did investigate some of the allegations of political violence during the 1998 election campaign, but very few arrests or prosecutions have taken place in regard to more than 130 killings and "disappearances" reported to the Special Representative for Human Rights since 1997.<sup>24</sup>

In many cases, victims or their families are intimidated or threatened by perpetrators who are assisted by the police or other armed forces. As a consequence, complaints are dropped or the victim decides not to file a complaint. Even though the Criminal Procedures Law does not require a complaint from a victim to trigger a police investigation, once a complaint is dropped the investigation usually comes to a halt as well.

In some cases, a victim's decision to drop a complaint, even in serious criminal cases such as murder, is linked to payment of compensation by the perpetrator negotiated by police, commune chiefs, or court officials themselves, who take a commission. The victim is often pressured to accept the offer and not file a complaint or press criminal charges. This is particularly common in rape cases, where victims or their families want to avoid publicity about the crime.<sup>25</sup> Such arrangements violate Article 6 of the Law on Criminal Procedure, which allows a civil suit for damages and criminal prosecution in the same case. In other cases, court officials are bribed by the accused party not to proceed with charges or to drag out cases so that plaintiffs lose hope

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<sup>18</sup> Human Rights Watch, "Growing Climate of Impunity Threatens Cambodian Elections," Human Rights Watch press release, March 30, 1998.

<sup>19</sup> Ibid.

<sup>20</sup> See Special Representative of the United Nations Secretary-General for Human Rights in Cambodia, "Memorandum to the Royal Government of Cambodia," May 13, 1998; and United Nations High Commissioner for Human Rights, "Grenade attack in Phnom Penh 30 March 1997 and Extrajudicial Executions 2-7 July 1997: An Assessment of the Investigations," Geneva, May 13, 1998.

<sup>21</sup> See Subdecree 37 on Establishment of a National Committee for Human Rights, June 8, 1998.

<sup>22</sup> Human Rights Watch interview with Om Yentieng, Phnom Penh, April 26, 1999.

<sup>23</sup> Beth Moorthy and Samreth Sopha, "Kingdom's Rights Committee Stymied by Politics," *Phnom Penh Post*, May 28-June 10, 1999.

<sup>24</sup> The Special Representative for Human Rights in Cambodia noted that the Committee "did investigate some of the reports of possible human rights violations brought to it during and after the [1998] election campaign. This helped to clarify facts in some of the cases and also secured the release of a kidnap victim." See "Situation of human rights in Cambodia: Report of the Special Representative of the Secretary-General for Human Rights in Cambodia," Commission on Human Rights, February 26, 1999.

<sup>25</sup> One human rights group, Licadho, reports that at least 25 percent of the rape cases the organization receives are resolved through financial compensation.

and drop their complaints.

- In Kompong Som in September 1998, a girl was raped by the son of a high-ranking official. The family decided not to press charges after receiving serious threats and an offer of money from the perpetrator's family to keep silent. No legal action has been taken against the perpetrator.
- Also in Kompong Som, a man living close to the prison was shot by a prison official in March 1997. The victim decided not to file a complaint after he was threatened and harassed by the perpetrator. He was offered a small amount of money to meet his medical expenses. No legal action has been taken against the perpetrator.
- A nine-year-old girl was raped by a man in Kompong Speu province October 1998. The commune chief mediated between the perpetrator and the victim's family. After withdrawing the complaint, the family received U.S. \$425.
- A man was shot to death by a drunk commune militiaman in Battambang province in August 1997. His relatives were forced to sign a contract with the perpetrator, who offered them 23,000 Thai baht (about U.S. \$610) if they would drop the charges.<sup>26</sup>

Provincial court officials confirm that payment of compensation to victims is widespread. The chief of the Battambang Court reported, "Many criminal offenses and lesser offenses do not reach the prosecutors because the judicial police make [financial] reconciliation, closing the cases."<sup>27</sup>

Victims often turn to informal arbitration of complaints by local commune officials because they fear or mistrust the police and courts and lack confidence in their technical competence. This is particularly the case in the widespread problem of kidnapping. A Ministry of Interior official said that most families of kidnapping victims never cooperate with the police because they do not trust them. "Their first priority is the safety of their family member," he said. "They forget about putting the perpetrator in jail. This doesn't mean the families support the idea of impunity for the kidnappers. They don't trust the competence of the police. Later they can worry about revenge against the criminal. But until the police show they are loyal to the people, and not loyal to their money, the people will not trust the police or cooperate with them."<sup>28</sup>

Impunity also occurs when authorities ignore widespread incidents of torture or summary executions committed by police. Police often summarily execute alleged criminals during arrest, rather than conducting proper investigations and arrests and sending suspects to court. Local human rights groups received more than a dozen cases in 1998 in which people were killed by police as punishment for an attempt to escape prison or because they were suspected of robbery or other crimes. According to police records, police killed suspects in 6 percent of arrests, or seventy-six people, in Phnom Penh during 1998.<sup>29</sup>

Less common are executions by police and gendarmerie of suspects after arrest, but then torture to extract confessions becomes the problem. According to reports by the U.N. Special Representative for Human Rights in Cambodia, one prisoner out of five or six claims to have been tortured while in police custody, representing between 600 and 900 cases each year.<sup>30</sup> Usually the torture takes the form of repeated beatings and kicking, often until the victim becomes unconscious. Some detention centers are known to systematically use methods such as electric shock, near-asphyxiation with plastic bags, and sham executions.

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<sup>26</sup> The above cases are from "Impunity in Cambodia," a report by the Cambodian Human Rights and Development Association (Adhoc), March 1999.

<sup>27</sup> "Annual Report (1998) on Actions of the Provincial Court and Prosecutor," 6 December 1997-30 November 1998, from Battambang Court Chief to H.E. Minister of Justice, November 30, 1998.

<sup>28</sup> Human Rights Watch interview with Ministry of Interior official, Phnom Penh, April, 1999.

<sup>29</sup> Human Rights Watch interview with Mao Chandara, chief of general staff, Ministry of Interior, Phnom Penh, April 13, 1999.

<sup>30</sup> These figures represent only the percentage of prisoners who are tortured, then kept in custody, not those who are taken into custody, tortured, and released before trial. United Nations General Assembly, "Situation of human rights in Cambodia: Report of the Secretary-General," September 17, 1998.

In general, police do not consider physical evidence and focus on obtaining confessions at all costs in order to prove that a crime occurred. The police commonly defend these practices by stating, “If we don't beat them and use other harsh methods, how will we get a confession?”<sup>31</sup>

- In January 1996, Liv Peng An was tortured to death by district police officers in Kompong Cham province. According to the official police report, Liv Peng An had committed suicide by hanging himself from the window bars, though his body was found shackled to the ground with his hands handcuffed behind his back. Following complaints of Liv Peng An's family and human rights workers, the Ministry of Justice ordered the exhumation of the body in August 1996. The medical examination revealed that five ribs on the left side of the body were broken. A first trial in 1997 failed to address the issue of torture as the cause of death in custody. The district police inspector was given a suspended sentence for illegal arrest and detention. In February 1998, the co-ministers of interior authorized the prosecution of the police officers for murder. A trial took place in April 1998 and the five defendants were acquitted.<sup>32</sup>

Impunity means not only lack of punishment, but lack of investigation, arrest or prosecution by local authorities, even in the face of overwhelming evidence. The call to end impunity is not a call for revenge but a legitimate demand for justice and accountability. The government's duty to prosecute and punish human rights violators is solidly grounded in international law and covenants to which Cambodia is a party.<sup>33</sup>

*De facto* and *de jure* impunity exists in Cambodia. *De facto* impunity prevails when a case is not investigated or prosecuted, or when a suspect is not brought to trial by a court, even if all the evidence points towards a certain perpetrator. *De jure* impunity is a form of institutionalized impunity stipulated by law — for example, the official policy of protecting civil servants, including police, from criminal liability through the provisions of Article 51 of the Common Statutes on Civil Servants.

The problem of impunity lies in part with chronic problems in law enforcement and the administration of justice, in part with a deeply entrenched culture of violence arising from decades of warfare. But it is fundamentally a problem of political will. The government has little interest in prosecuting known perpetrators of human rights violations and criminal offenses, even in cases that have been extensively documented by local and international human rights organizations and the United Nations.

Offering training programs for the police and judiciary and funding legal reform programs will be ineffective unless Cambodia's leaders are willing to show that no one, not even high-ranking officials, can be above the law and that those officials can and will be held accountable if they commit crimes or human rights abuses.

### III. CAUSES OF IMPUNITY IN CAMBODIA

There are several reasons for the problem of impunity in Cambodia. The country's long civil war left behind a culture of violence. The army and police have unclear lines of authority and are frequently tied to political factions in the government. There are problems in law enforcement. There are too many weapons in too many hands. The judiciary is not independent. Cooperation between the police and the courts is poor. And a law passed in 1994 effectively grants civil servants immunity from prosecution.

#### **Historical Background Historical BackgroundHistorical BackgroundHistorical Background**

Impunity in Cambodia grows out of the country's complex history of prolonged warfare and political upheaval over the last thirty years. The country's legacy of repression and violence from 1975 to 1979 under

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<sup>31</sup> Muzamil Jaleel, *Cambodian Police and the Need for Reforms*, Asian Human Rights Commission, August 1998.

<sup>32</sup> United Nations General Assembly, “Situation of human rights in Cambodia: Report of the Secretary-General,” September 17, 1998.

<sup>33</sup> Caroline Ort, “Impunity for the Perpetrators of Gross Violations of Human Rights,” Rijksuniversiteit Leiden, February 1994.

the Khmer Rouge has been well documented, and for many, the problem of impunity in Cambodia begins with the failure thus far of the Cambodian government and the international community to hold any senior Khmer Rouge leaders accountable for mass murder. Under the Khmer Rouge, there was no semblance of rule of law or justice, and only a handful of judges and lawyers survived. After their ouster in 1979, formal mechanisms of law enforcement and justice were re-established in name, but they were very weak in practice.

Under the Peoples' Republic of Kampuchea (1979-1989), there was no separation between state and party. Police chiefs, provincial governors, and provincial court officials and justice representatives did not operate in a neutral or independent way but answered to the provincial party chief, head of the provincial people's committee, or directly to ministries in Phnom Penh. The Ministry of Justice supervised and reviewed all judgments made by the courts, and police took their orders from party cadre.<sup>34</sup> Decades of civil war also fostered a practice among government security forces of using extrajudicial violence or repression against the political opposition — who were often branded as criminals because they were seen as enemies of the state.

After the signing of the Paris Peace Accords in 1991, Cambodia held democratic elections and adopted a new constitution, which established a multiparty democracy and provided for fundamental human rights, the independence of the judiciary, and the neutrality of the police and military. In 1992 Cambodia ratified several key human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR).

However, the fractious 1993-97 coalition government opened the door to further impunity because office holders at all levels could blame their counterparts from rival parties for crimes committed by their subordinates. Police, military, gendarmerie, and bodyguard units maintained loyalties split along party lines, with political rivalries often exploding into armed confrontation. A high-ranking official in the Justice Ministry said of that period: "The division of responsibility was not equitable, from the district and commune chiefs to the composition of the Supreme Council of Magistracy, which was dominated by the Cambodian People's Party. The other side demanded representation, and when that did not happen, it began preparing troops. The two parties were waiting to find the mistakes from each other."<sup>35</sup>

While the Justice Ministry official said that the situation was improving with the consolidation of power under one party after the 1998 elections, he noted that the problem of impunity was far from solved. For example, he said, prosecutors and judges continue to violate the law by remaining afraid or hesitant to resolve lingering politically motivated cases from 1997 or 1998. "It's a problem of lack of technical expertise and lack of cooperation — plus they are afraid of revenge from the perpetrators," he said. "They need encouragement from the top to guarantee their security should they go after these high-profile cases. If there's no way to guarantee their security, either through a directive or [some other] official way, they won't dare to do anything."<sup>36</sup>

There are different interpretations of Cambodia's historical legacy. One, held by some officials interviewed, is that many police, judges, and prosecutors continue to see their role primarily as a means to make a living. They operate, as they did in the 1980s, not by rule of law but largely through political influence and intervention or by orders and executive decrees. Their aim is often to extract confessions and convictions in order to formally fulfill their duties, rather than to collect evidence, conduct proper investigations, or hold independent trials.

A second interpretation is that the problem stems not from deliberate efforts to thwart the rule of law for political ends but from the low level of professional skills. "During wartime we see soldiers looting, corruption by officials, gunmen killing people and using the war as an excuse," explained Prum Sokha, secretary of state at the Ministry of Interior. "This doesn't mean the authorities tolerate crime, but there's no time to investigate because the focus is on war. Our society has changed so much over the last several

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<sup>34</sup> See Dolores A. Donovan, "The Cambodian Legal System," *Rebuilding Cambodia: Human Rights, and Law*, Johns Hopkins University, 1993. See also Koy Neam, *Introduction to the Cambodian Judicial Process*, The Asia Foundation, 1998.

<sup>35</sup> Human Rights Watch interview with Justice Ministry official, Phnom Penh, April 6, 1999.

<sup>36</sup> *Ibid.*

decades. This doesn't mean we tolerate crime or that it's government policy, or that most of the people support the idea of impunity — no. But there's a lack of competence of the police and authorities to crack down on the problem."<sup>37</sup>

### **No Clear Division of Labor in the Armed Forces**

Impunity is attributable in part to the lack of distinct lines of command between the police, gendarmerie, and military forces. One reason why perpetrators are allowed to go unpunished is that there is no clear division of responsibility among the different ministries governing criminal investigations — the Ministries of Justice, Interior, and Defense.<sup>38</sup>

Cambodia has approximately 64,000 police, who are under the Ministry of the Interior. There are 148,000 members of the armed forces, which consist of the army, navy, and air force and report to the Ministry of Defense. The 10,000 gendarmes are formally part of the armed forces, and there are tens of thousands of commune-based militia who report to local commune officials. In addition, senior officials have created bodyguard units, largely composed of soldiers or police officers seconded from the regular forces, which sometimes seem to be little more than private armies and whose only role is to safeguard the personal security of the official to whom they are assigned.

The National Police force, which is under the Ministry of Interior, consists of six departments: Security Police, Transport Police, Public Order Police, Border Police, Administrative Police, and Judicial Police. The judicial police are the main police component in the criminal justice system, although the gendarmerie are also empowered to carry out criminal investigations when necessary, according to the criminal procedures law. The penal or criminal police are under the Judicial Police Department. According to the criminal procedures law, the judicial police are supposed to operate under the Prosecutor General of the Court of Appeals. They continue to receive their assignments, orders and disciplinary action from the head of the National Police, however, meaning that the prosecutors lack full control and authority over them.<sup>39</sup>

The gendarmerie, created by a subdecree in 1994, are under the Ministry of Defense. With the French providing training in some areas, the gendarmerie are better equipped, funded, and trained than the regular police. This has created strained relations between the two units, with the gendarmerie generally having more power and status. The gendarmerie effectively replaced the old military police, but the two institutions are not the same. The gendarmes have far greater powers than the military police had, for in addition to policing the military by addressing disciplinary violations committed by soldiers, they also share some of the tasks of administrative police, in protecting public order, and of the judicial police, in conducting criminal investigations and making arrests.<sup>40</sup>

One of the reasons the gendarmerie were mandated to share the criminal investigation powers of the judicial police was to offset the reluctance, fear, or inability of the judicial police to investigate crimes or execute court orders in cases committed by military personnel. In practice, however, the gendarmerie have not been effective in policing the military nor in supporting the judicial police in regular criminal investigations. Instead, they themselves are committing human rights abuses with impunity. The U.N. Special Representative for Human Rights in Cambodia noted: "Growing evidence of [the gendarmerie's] nationwide activities shows that not only is this force failing to fulfill its judiciary police and military police mission, but it is increasingly becoming an agent of human rights abuses, enjoying the same impunity as the other security forces."<sup>41</sup> "The lines of authority are unclear between police and gendarmerie," said Secretary of State for the Interior Prum

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<sup>37</sup> Human Rights Watch interview with Prum Sokha, secretary of state, Ministry of Interior, Phnom Penh, April 9, 1999.

<sup>38</sup> United Nations High Commissioner for Human Rights, "Grenade attack in Phnom Penh 30 March 1997 and Extrajudicial executions 2-7 July 1997: An assessment of the investigations," Geneva, May 13, 1998.

<sup>39</sup> United Nations High Commissioner for Human Rights, "Grenade attack in Phnom Penh 30 March 1997 and extrajudicial executions 2-7 July 1997: An assessment of the investigations," Geneva, May 13, 1998.

<sup>40</sup> Human Rights Watch interview with Mao Chandara, chief of general staff, Ministry of Interior, Phnom Penh, April 13, 1999.

<sup>41</sup> Report of the Secretary-General, "Situation of Human Rights in Cambodia," October 17, 1997.

Sokha. "The gendarmerie do not act as police for the military; they work like police."<sup>42</sup>

### **Lack of Neutrality of the Armed Forces**

In addition to the unclear lines of authority, Cambodia's police and military forces, including bodyguard units, have been used by different administrations and political factions to serve political goals or defend the interests of individual high-ranking officials or businesspeople. Corruption and nepotism have played a key role in filling positions, which are often sold, or given out by politicians as rewards for political loyalty. For lower-ranking soldiers, their meager salaries cause many to resort to banditry or set up highway checkpoints to extort money from travelers.

In addition, personnel rosters are filled with vast numbers of "phantom" police and military officers, whose commanders receive their salaries. A commander adds extra names to a pay list and then sells the names to individuals, who subsequently turn over a portion of their monthly salary to the commander. The estimated 148,000 members of the Royal Cambodian Armed Forces (RCAF) includes sizable numbers of "noneffective troops"—disabled and elderly soldiers as well as the "nonexistent." Hun Sen adviser Om Yentieng estimates that there are at least 20,000 phantom soldiers whose pay goes to their commanding officers.<sup>43</sup> Armed forces cannot be accountable if their rolls are filled with nonexistent personnel, making it difficult to find the real names of perpetrators in the military or police force.

A proposed restructuring of the military would bring provincial units and their commanders under the direct tactical control of central RCAF headquarters. This would make the regional and district commanders less vulnerable to manipulation by local warlords by changing the provincial focus from military operations to administration.<sup>44</sup>

Many generals are extremely entrenched in politics after years of factional fighting or are preoccupied with their lucrative business in illegal logging, casinos, smuggling, human trafficking and operation of brothels. Human rights organizations have received numerous reports of the military and the gendarmerie committing acts of violence in order to pressure the courts or influence their decisions.

- On June 10, 1998 about fifty heavily armed gendarmes surrounded the Phnom Penh municipal court in an effort to reverse the court's decision to release two suspects. The two had been held for the alleged murder of a gendarme but stood to go free for lack of evidence and because the deputy prosecutor determined that they had been tortured while in detention. The court was forced to turn the two men over to the same gendarmerie unit that had tortured them instead of releasing them. The gendarmes again beat and severely tortured the two, including the use of electric shocks, and illegally detained them for a day before transferring them to T-3 prison.<sup>45</sup> Later in 1998, in an incident that court and Ministry of Justice officials believed was linked to the June 10 case, then-Justice Minister Chem Snguon received threats; also, several grenades were thrown at his house or found on the premises after he reported to the two prime ministers that the gendarmes had intimidated court employees.<sup>46</sup>

Obtaining an arrest warrant for soldiers who have committed crimes is very difficult, as the military often does not recognize court-issued arrest warrants. The judges in turn are afraid to confront the military and have little ability to force them to attend court as an accused or a witness. When military personnel accused of a crime have fled to a military base, commanders can protect them by barring police with arrest warrants from the

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<sup>42</sup> Human Rights Watch interview with Secretary of State for the Interior Prum Sokha, Phnom Penh, April 9, 1999.

<sup>43</sup> "The delicate challenge of downsizing RCAF," *Phnom Penh Post*, April 13-29, 1999.

<sup>44</sup> "The delicate challenge of downsizing RCAF," *Phnom Penh Post*, April 13-19, 1999; Michael Richardson, "With Khmer Rouge Collapse, Pressure Grows to Rein In Army," *International Herald Tribune* (Paris), January 11, 1999.

<sup>45</sup> Report of the Secretary-General to the United Nations General Assembly, "Situation of human rights in Cambodia," September 17, 1998; *Cambodia Daily*, June 12, 1998.

<sup>46</sup> Muzamil Jaleel, *Cambodian Police and the Need for Reforms*, Asian Human Rights Commission, August 6, 1998.

base.<sup>47</sup>

- A Kompong Speu land dispute is seen as a test case as to whether the judicial system can prevail in disputes involving the military. Royal Cambodian Armed Forces (RCAF) General Chum Tong Heng is trying to evict more than one hundred families of former soldiers. The military claims that the land is under the control of the military development bureau, but legal advocates say the families were on the land before the military took it over and the matter should be settled in the civilian courts. General Chum Tong Heng has ignored three courts summonses and a civil case filed against him by the one hundred families, and was quoted in the press as saying, “This is an internal [military] affair. I don’t need to discuss the matter in court.”<sup>48</sup>

“Cases involving perpetrators who are soldiers are very difficult for us to effectively settle,” said Battambang Judge Nil Nonn. “Part of the problem is we do not have a clear address or military base [for the perpetrators], and the commanders often do not cooperate with the judicial police.”<sup>49</sup> It is also difficult to arrest offenders who are members of militias; they are generally armed but often have no clear commanders. Instead, they operate under more of an extended family system in the commune setting, enabling perpetrators to be tipped off in advance by neighbors or relatives in the police that they are going to be arrested, giving them time to escape.

The military court, which is under the Ministry of Defense, presides over cases involving military offenses committed by the members of the military, or cases in which military personnel are involved in damage to military property. Common offenses committed by soldiers are under the jurisdiction of the provincial and municipal courts.<sup>50</sup> The role of the Military Court is not always clear. For example, former Khmer Rouge official Ta Mok is being tried in a military court, not a civilian one, for violating the 1994 Law Outlawing the Khmer Rouge, a law that applies equally to civilians and military personnel. The rationale in this case is that he was an active soldier at the time the crimes were committed, and that the crimes he committed were directly linked to military activity.

### **Availability of Weapons**

Decades of warfare and civil strife, plus the recent effort to demobilize thousands of soldiers, have left Cambodia saturated with cheap, easily available arms and explosives. Both private civilians and officially authorized armed units possess these weapons, and misuse them. Estimates of the numbers of guns in Phnom Penh alone range from 100,000<sup>51</sup> to the Ministry of Interior’s official figure of 10,130 weapons, of which 8,937 were licensed as of April 1999.<sup>52</sup> Guns are used to solve anything from neighborhood quarrels to settling political or business rivalries.

There are few mechanisms to effectively control the way security personnel use firearms during off-hours. However, in the course of duty, police often resort to excessive use of lethal force to apprehend suspects; police are known to have used hand grenades in police operations and to routinely shoot alleged criminals during arrest.

Murders increased in Cambodia during 1998, according to a report to the National Assembly by Minister of

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<sup>47</sup> For an example of a case where a perpetrator of a mass killing is thought to have obtained protection in a military base, see case study in Section IV below, “Takeo: Massacre of Five Family Members by Commune Militiaman.”

<sup>48</sup> Yuko Maeda and Phann Ana, “Land Dispute Triggers Soldiers’ Transfer,” *Cambodia Daily*, March 22, 1999; Yuko Maeda and Im Sophea, “Land Case Called Key for Judicial ‘Revolution,’” *Cambodia Daily*, April 9, 1999.

<sup>49</sup> “Annual Report (1998) on Actions of the Provincial Court and Prosecutor,” 6 December 1997-30 November 1998, from Battambang Court Chief to H.E. Minister of Justice, November 30, 1998.

<sup>50</sup> Article 9, Law on the Organization and the Activities of the Tribunals of the State of Cambodia (1993). See also Koy Neam, *Introduction to the Cambodian Judicial Process*, The Asia Foundation, 1998, p. 17.

<sup>51</sup> Reuters, “Cambodia’s murder rate rises, other crime down,” April 8, 1999.

<sup>52</sup> Human Rights Watch interview with Mao Chandara, chief of general staff, Ministry of Interior, Phnom Penh, April 13, 1999.

Interior Sar Kheng, who said that most criminals were police, soldiers, and students.<sup>53</sup> From January through October 1998 in Phnom Penh alone, 297 people were killed as a result of crimes involving guns — more than during all of 1997 — and another 130 were wounded.<sup>54</sup> These figures do not include the numbers of alleged criminals routinely shot dead by police.

Authorized by Subdecree 62, in April 1999 the Ministry of Interior established checkpoints in Phnom Penh to confiscate weapons from persons lacking licenses from the Ministry of Interior.<sup>55</sup> During the first three weeks of the campaign, approximately 1,150 weapons were voluntarily turned in to authorities and another 124 weapons and thirty-two grenades were confiscated in Phnom Penh.<sup>56</sup> In May, Phnom Penh authorities made a public display of destroying some 4,000 weapons at Olympic Stadium. However, critics have said that the gun control effort is largely a cosmetic measure because police, gendarmerie, and soldiers — some of the greatest perpetrators of armed crimes — will remain entitled to their weapons. More important than whether a gun is licensed or not, critics say, is whether there is strong political will to enforce the law against those who abuse weapons. In addition, measures need to be taken to ensure that confiscated weapons are not put back in circulation again, either redistributed by those who confiscated them to their local political constituencies or resold at arms markets such as one at Toek Tlaa on the outskirts of Phnom Penh.

“We need to look at who really has the guns,” said a source in the Ministry of Interior. “Is it really effective to look in car trunks? Of course it is a deterrent, but you can still give twenty dollars and keep your gun. The ones who conduct the criminal activities are the ones with the licenses — they’re the ones who use the guns. The current effort is confiscating the guns of people who lack licenses — they are the ones who generally don’t use their guns. Gun control is a good idea, but you have to implement it without discrimination. If you close one door but open dozens more, it will have no effect.”<sup>57</sup>

At present, military generals and high-ranking civil servants such as senators, parliamentarians, Supreme Court judges, ministers of state, and district and provincial governors are entitled to own and carry handguns if they are properly licensed. Police, military, and gendarmes, as well as combatants and bodyguards are entitled to carry licensed guns, but only during working hours or while on mission.<sup>58</sup> Eventually even ministers will not be entitled to carry guns, according to the Ministry of Interior, but this will have to be a “step-by-step process.”<sup>59</sup>

A high-ranking Ministry of Interior official said that many crimes are committed by police, causing even himself to mistrust them. “Some are not disciplined soldiers or police — they just get the position but never go to work, or they work as a casino guard,” he said. “When they need money they can use their gun; there’s no way to control them. The commander of their unit doesn’t even know the number of people he has. Even I myself don’t trust the police who stop me along the road. Some are fake police. I give them some money because in the dark I don’t know if they’re real police or not. In any case, I can be sure they are armed.”<sup>60</sup>

## Problems in the Law Enforcement Process

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<sup>53</sup> Reuters, “Cambodia’s murder rate rises, other crime down,” April 8, 1999.

<sup>54</sup> Huw Watkin, “Phnom Penh’s crime deaths soar amid unrest and recession,” *South China Morning Post* (Hong Kong), November 20, 1998.

<sup>55</sup> See Subdecree 62, “Subdecree on Illegal Weapons and Explosives Control,” July 31, 1995; Decision 27, “The Cease of Validity of Licenses Authorized to Carry Weapons,” April 2, 1999; Decision 28, “Decision on the Establishment of a Commission for Weapons and Explosive Confiscation,” April 2, 1999.

<sup>56</sup> Im Sophea, “City Seeks to Destroy Guns,” *Cambodia Daily*, April 26, 1999; Saing Soenthrith, “Phnom Penh’s Residents Cough Up 1,000 Weapons,” *Cambodia Daily*, April 14, 1999.

<sup>57</sup> Human Rights Watch interview with source in the Ministry of Interior who asked to remain anonymous, Phnom Penh, April 1999.

<sup>58</sup> Chapter Three, Subdecree 62, “Subdecree on Illegal Weapons and Explosives Control,” July 31, 1995. See also Chapter Four, Subdecree 38, “Subdecree on Administering and Inspecting the Import, Production, Selling, Distribution and Handling of all Types of Weapons,” April 30, 1999.

<sup>59</sup> Human Rights Watch interview with Mao Chandara, chief of general staff, Ministry of Interior, Phnom Penh, April 13, 1999.

<sup>60</sup> Human Rights Watch interview with Ministry of Interior official, Phnom Penh, April, 1999.



Impunity is also fostered by major shortcomings in the law enforcement process, including poor training, corruption, the lack of regulations governing recruitment and promotion, and the tendency for police to see their role as ridding the country of undesirable elements by whatever means necessary.

In 1998, police killed suspects in 6 percent of arrests in Phnom Penh. At least one in every thirteen arrests in Phnom Penh resulted in either death or injury; out of 1,152 arrests police killed seventy-six people and wounded twelve.<sup>61</sup> Reports from Siem Reap province show that in 1998, one in seventeen arrests resulted in death; out of 193 arrests, eleven suspects were killed.<sup>62</sup>

The police say they use guns because criminals do, too. “The reality in Cambodia is that in 99 percent of cases the robbers use guns,” said Ministry of Interior Chief of General Staff Mao Chandara. “The perpetrators are so cruel and savage — even teenagers are incredibly violent, shooting and killing just to steal a motorcycle. The perpetrators don’t make an exception for the police. When we shoot them [alleged robbers], the people are happy and congratulate us.”<sup>63</sup>

A source familiar with the workings of the national police force commented on the police force’s excessive use of lethal force in apprehending suspects or conducting arrests:

The violence goes down so deep — people know that anyone they confront would not hesitate to open fire. The policeman’s reflex is to protect himself, not to implement the law, because they are afraid the suspect will open fire on them. They figure because the whole system will not condemn them [for shooting], why shouldn’t they do it to protect themselves? It’s part of the culture of implementing law and order: it’s done on a very unilateral basis. The policeman’s priority is to protect himself first; the interest of the public comes second; for example the possibility that an innocent citizen might be hit by a stray bullet is not as important as their own safety.<sup>64</sup>

Police officers often do not initiate investigations into cases, and when they do they are prone to settle cases on their own, outside of the judicial system, through payment. Sok Sam Oeun, executive director of the Cambodian Defenders’ Project, said, “The police believe they don’t need to proceed on a case unless there is a complaint. If a body is found floating down the river they don’t investigate. They prod the body to let it loose but don’t investigate.” He cited a case where a man was found dead on a roadway. The police came, and reported to the hospital that the man was still alive so that they wouldn’t have to spend money to take him to the hospital morgue themselves. They did not investigate the case.<sup>65</sup>

Despite provisions in the 1992 criminal code, police continue to arrest many suspects without warrants. Furthermore, suspects are often arrested without being informed of their rights or of the charges against them. In violation of the criminal code, many suspects are kept in police custody for questioning for more than forty-eight hours before being brought before a judge, with many detainees reporting severe mistreatment during police questioning. Within these first forty-eight hours, lawyers and family members are rarely allowed access to suspects. A substantial proportion of pre-trial detainees spend more than six months in prison before the actual trial commences, again in violation of the criminal code. According to Article 22 of the criminal code, if any of the procedures set out in articles 10-21 of this law are not complied with, the accused must be immediately released. This provision is often completely ignored.<sup>66</sup>

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<sup>61</sup> The 1998 number is higher than that for 1997, when 5 percent, or sixty-five out of 1,118, of Phnom Penh arrests resulted in deaths. Human Rights Watch interview with Mao Chandara, chief of general staff, Ministry of Interior, Phnom Penh, April 13, 1999.

<sup>62</sup> Joint Commentary by Adhoc and Licadho on the Report of the Royal Cambodian Government under the ICCPR, Under Consideration by the U.N. Committee on Human Rights, March 30, 1999.

<sup>63</sup> Human Rights Watch interview with Mao Chandara, chief of general staff, Ministry of Interior, Phnom Penh, April 13, 1999.

<sup>64</sup> Human Rights Watch interview with source close to the Ministry of Interior, Phnom Penh, April 1999.

<sup>65</sup> Human Rights Watch interview with Sok Sam Oeun, executive director, Cambodian Defenders’ Project, Phnom Penh, March 2, 1999.

<sup>66</sup> Joint Commentary by Adhoc and Licadho on the Report of the Royal Cambodian Government under the

The Royal Cambodian Government is aware of these procedural errors routinely committed by police, stating in its first report on compliance with the International Covenant on Civil and Political Rights (ICCPR): “The law protects and safeguards rights in accordance with the provisions of Article 9, Paragraph 1, of the Covenant [ICCPR], but in practice law enforcement officials do commit violations, such as arresting suspects without a warrant issued by the prosecutor or the examining magistrate, and detaining suspects for longer than the six-month period established by law.”<sup>67</sup>

The failure of the law enforcement process is due in part to lack of training and competence of police, as well as the lack of funds to properly conduct investigations and execute court orders. Difficulties also arise when crime sites are located in remote or unsafe areas. But training by itself will not solve the technical errors that officers commit in the law enforcement process. The absence of rules over procedures such as recruitment, training and promotion enables political parties and powerful individuals to appoint and promote police officers and commit other such abuses of power which compromise the neutrality and effectiveness of the police.

According to one source familiar with the workings of the national police force, “If I’m chief of a police checkpoint, I got that position by paying my boss to get it. I have to pay him back. Police openly take money from people they stop along the roadway — training has nothing to do with that. Training has to come after a long list of things has happened: increasing salaries, making salaries merit-based, and basing recruitment on competence and not on the envelope of cash I give my boss and then have to pay back.”<sup>68</sup>

Part of the problem is that sanctions or disciplinary measures are not always enforced for policemen who violate the law while carrying out their duties. “Right now the national police force operates essentially as a state within a state: no one can touch it,” said the source familiar with the national police force. “From the top to the bottom, if police commit violations they are never sanctioned. At most they are reshuffled to another position for a while.”

### **Lack of an Independent Judiciary**

An independent judiciary is one of the main conditions for a state based on the rule of law. The aftermath of Khmer Rouge rule left Cambodia with only a handful of judges, and rebuilding the judiciary has been a slow and highly politicized process. Most of the judges and prosecutors in Cambodia have been beholden to political parties that are in turn under the direct control of top government officials, undermining the very principle of separation of the executive and judicial branches.<sup>69</sup>

Article 109 of the Cambodian Constitution does provide for judicial independence. All judges are subject to supervision and disciplinary action from the Supreme Council of Magistracy (SCM). The Supreme Council of Magistracy is less independent than the constitution intended, however, since its members include representatives of the executive branch, including the minister of justice. In addition, many of its members have been strongly linked to the ruling Cambodian People’s Party (CPP), politicizing the highest judicial body in the nation and violating the principle of the separation of powers.

The Supreme Council of Magistracy has met only twice, with only one meeting — its first, in December 1997 — in which the body discussed judicial issues, and no meetings in which cases or disciplinary action were addressed.<sup>70</sup> Because the Supreme Council of Magistracy rarely meets, the Ministry of Justice has taken upon itself the role of a disciplinary authority. In addition, influence on the judiciary by the Ministry of Justice is

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ICCPR, Under Consideration by the U.N. Committee on Human Rights, March 30, 1999.

<sup>67</sup> Paragraph 155, “Report on the Application of Civil and Political Rights in Conformance with Article 40 of the ICCPR,” Kingdom of Cambodia, 1997. The report was submitted to the U.N. Human Rights Committee for its March 30, 1999 meeting in New York.

<sup>68</sup> Human Rights Watch interview with source close to the Ministry of the Interior, Phnom Penh, April, 1999.

<sup>69</sup> Report of the Secretary-General, “Situation of Human Rights in Cambodia,” October 17, 1997.

<sup>70</sup> The only other meeting of the Supreme Council of Magistracy, in May 1998, was convened in order to establish the Constitutional Council as part of the 1998 electoral process.

often exercised through circulars issued by the ministry, which are often considered in effect as law. This violates the principle that only the legislative branch has the power to make laws, as well as Article 90 of the constitution, which gives sole authority to the National Assembly to make laws. Furthermore, the Ministry of Justice has used its power to influence the decisions made by the courts, especially in politically sensitive cases. This causes judges to hesitate even more in following their own conscience or legal training in making decisions. Examples of the Ministry of Justice taking power that belongs to the Supreme Council of Magistracy, interfering in court decisions, or being subject to political pressure, include the following:

- In 1998, the Ministry of Justice suspended three judges of the Appeals Court after they overturned the conviction of former Funcinpec military official Chau Sokhon. Chau Sokhon had been arrested and convicted in 1997 on drug smuggling charges, sentenced by municipal court to fifteen years in prison plus another three years on a separate drug smuggling charge. In December 1997 the Appeals Court overturned one of his convictions, saying there was insufficient evidence. He was released but then arrested eight days later when he was trying to leave the country, escorted by United Nations personnel. Minister of Justice Chem Snguon then suspended the three Appeals Court judges who overturned his conviction on the grounds that they had made an “abnormal” decision.<sup>71</sup>
- In 1998 a deputy governor of a province summoned court personnel to a meeting where he organized them as a branch of the CPP. He ordered court officials to postpone hearings or complaints filed by opposition party members until after the July 1998 elections were over.<sup>72</sup>

Because of the long delays in setting up the Supreme Council of Magistracy, the politicization of the body, and the fact that the SCM’s Disciplinary Council has never met, there effectively has been no official body to discipline judges. In part because the SCM was not established until late 1997, prolonged suspensions of judges have generally been decided upon by the Ministry of Justice. For example: Appeals Court Judge Samreth Sophal, suspended in March 1995; Pursat Prosecutor Kong Bin, suspended in April 1997; and Pursat Judge Son Neatheavy, who was transferred to a post as investigating judge after being accused of illegal arms possession in 1997.

According to the 1993 Law on Criminal Procedure, the judicial process should operate as follows: police detain suspects for a short period of time while they gather evidence and present a preliminary report to the prosecutor, who then either files charges or requests police to provide additional evidence. If the prosecutor files charges, an investigating judge is assigned to the case to evaluate whether the accused should be arrested and sent to trial. The investigating judge’s duty is to make sure that correct legal procedures are followed during the investigations, and that the rights of the accused are respected. A trial date is set; during the trial, the presiding judge decides whether the accused is guilty, by considering the evidence put before the court.<sup>73</sup>

The reality is quite different, with judges receiving instructions from the executive branch or letting themselves be influenced by bribes or intervention by offenders or their representatives. There is little concept within the judiciary of the presumption of innocence or the importance of evidence in determining guilt.

There are also many aspects of the Cambodian judiciary that remain undefined in law. There is still no law, for example, that clearly defines the roles of trial judges, investigating judges, prosecutors and clerks or sets forth qualifications or how ranks and salaries are to be determined. There are also no regulations governing membership in political parties or conflicts of interest for judges and other court officials.<sup>74</sup>

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<sup>71</sup> Kimsan Chantara, “Suspended Appeal Court Judges Return to Work,” *Cambodia Daily*, January 5, 1999; Commission on Human Rights, “Report of the Special Representative of the Secretary-General on the Situation of Human Rights in Cambodia,” February 20, 1998; Kay Johnson, “Evidence Clear: Justice System Routinely Fails,” *Cambodia Daily*, March 25, 1999.

<sup>72</sup> Commission on Human Rights, “Report of the Special Representative of the Secretary-General on the Situation of Human Rights in Cambodia,” February 20, 1998.

<sup>73</sup> Kevin Maguire, “Kingdom of Cambodia, Courts Handbook,” Cambodian Criminal Justice Assistance Project, December 1998. See also Dolores A. Donovan, “The Cambodian Legal System,” *Rebuilding Cambodia: Human Rights, and Law*, Johns Hopkins University, 1993, p. 90.

<sup>74</sup> Report of the Secretary-General, “Situation of Human Rights in Cambodia,” October 17, 1997.

The Royal Cambodian Government acknowledged the problem, stating in its report on compliance with the ICCPR that, “The independence of the judiciary is guaranteed by law. However, practice has shown that, owing to interference and pressure from other branches, the courts are not fully independent.”<sup>75</sup> “Before 1992,” the report continued, “the courts were completely subordinate to the provincial authorities from both the personal and the financial points of view. Since 1992, and more particularly since the Constitution’s entry into force in September 1993, the judiciary has been an independent branch (Art. 109). The courts are no longer under the administration of the provincial and municipal authorities. However, as the influence of the past has not yet been completely eliminated, the provincial and municipal authorities might weaken the independence of the judiciary to some extent.”<sup>76</sup>

The government report further noted:

Given that the Supreme Council of Justice has not yet been established, the trial courts, the Court of Appeal and the Supreme Court do not yet function well, because of the lack of competent staff and documents available for consultation. Some judges are obliged to seek the opinion of the Ministry of Justice on the interpretation of articles and the determination of offenses; the Minister of Justice makes recommendations and issues guidelines to enable the judges to apply laws and procedures correctly. Such actions might weaken the independence of the judiciary to some extent, but under the present circumstances, in which judges are not sufficiently experienced, they need guidance in order to perform their work.<sup>77</sup>

A court official from the Takeo Provincial Court agreed with the government’s assessment: “Frankly, habits from the communist days are still in place, with the court system continuing to operate under the supervision of the party.”<sup>78</sup>

In a 1997 interview, former Minister of Justice Chem Sngun admitted that judges make their decisions prior to conducting a trial:

The judge prepares his decision before the trial opens. Before the case opens, he already has a model. During the trial, issues may be brought up that modify the judge’s decision. If the responses to questioning or testimony are slightly different than expected, the judge will modify the decision for ten or fifteen minutes at the end of the trial. If the events during the trial are very different, he must suspend the trial until a later date. At that time, he will look at additional evidence and write a decision. Judges always make a map of their decision after looking at the [pre-trial] evidence.<sup>79</sup>

Highly politicized cases such as the trials of Prince Ranariddh in a military court in March 1998, in which pre-arranged pardons had been negotiated, show the power of the executive branch over the judiciary. “There are many political cases where the judge cannot be independent but listens to the top, for example, the case of Srun Vong Vannak,”<sup>80</sup> said Cambodian Bar Association President Ang Eng Thong. “There was no evidence;

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<sup>75</sup> Paragraph 209, “Report on the Application of Civil and Political Rights in Conformance with Article 40 of the ICCPR,” Kingdom of Cambodia, 1997.

<sup>76</sup> Paragraph 212, “Report on the Application of Civil and Political Rights in Conformance with Article 40 of the ICCPR,” Kingdom of Cambodia, 1997.

<sup>77</sup> Paragraph 211, “Report on the Application of Civil and Political Rights in Conformance with Article 40 of the ICCPR,” Kingdom of Cambodia, 1997.

<sup>78</sup> Human Rights Watch interview with court official, Takeo, April 8, 1999.

<sup>79</sup> Eric Pape, “Justice is not a Wild Horse — It must be Controlled,” *Phnom Penh Post*, November 7-20, 1997.

<sup>80</sup> Srun Vong Vannak, security chief for opposition politician Sam Rainsy, was arrested and accused of organizing the murder of Keo Samouth, a relative of Hun Sen. In September 1997, he was sentenced to thirteen years in prison in what the UN Special Representative for Human Rights in Cambodia has called a “political trial” but released in an amnesty in 1998. See Report of the Secretary-General to the U.N. General Assembly, “Situation of Human Rights in Cambodia,” October 17, 1997.

only 'advice' from the top. Trials cannot be independent when judges work for political parties.”<sup>81</sup>

Aside from interference in the judiciary by the executive branch, the Cambodian court system clearly suffers from a lack of funds and training. Only 0.37 percent of the national budget goes to the Ministry of Justice. At salaries averaging U.S.\$20 a month, clearly many court officials give precedence to cases involving parties who can pay for their cases to be adjudicated. The Royal Cambodian Government described the problem of corruption in the judiciary: “Some judges, unable to bear the difficulties of their daily living conditions, accept bribes and take biased decisions, thus weakening the principle of equality before the law.”<sup>82</sup>

It has been difficult to increase the numbers of trained and experienced judges and prosecutors; those appointed during the People's Republic of Kampuchea period of the 1980s received a minimal legal education at best, and many still lack basic knowledge related to human rights and implementation of justice in a constitutional democracy.<sup>83</sup> Until recently, when some judges and prosecutors began to receive training from the Ministry of Justice, the Cambodian Court Training Project, University of San Francisco, or the U.N.'s Judicial Mentor Program, the best education most court officials could get was a five-month law course at the Institute of Public Administration and Law that was offered between 1982 and 1989, plus a year or two of university-level education.<sup>84</sup>

While prosecutors may commit procedural errors in charging a perpetrator, this rarely leads to the release of the offender.<sup>85</sup> Procedures outlined in Articles 10 to 21 of the 1992 criminal code, which deal with arrest warrants, searches, and legal assistance are often not followed.

Like the police, court officials suffer from morale problems and often do not take initiative on cases. Prosecutors rarely go out to investigate crimes but wait for the police report. If the police do not report a crime, it often does not get to the court, even though prosecutors are obliged by law to investigate a crime that comes to their attention even if they have not been informed by the police or even if there is no formal complaint.<sup>86</sup> Prosecutors often complain that they do not have the funds or means of transportation to investigate cases.

“The prosecutor must do more, not just sit in his chair if there are criminals in the locality,” said Cambodian Bar Association President Ang Eng Thong. “They should not just listen to the police but conduct their own investigation. The prosecutors tend to use the police report as the basis of the dossier to send to investigating judge to make an arrest warrant. The investigating judges have the same problem — they don't go to the field to investigate. They say they lack resources or transportation to conduct investigations.”<sup>87</sup>

Trial judges also overly rely on written police reports; often they do not call police as witnesses even though they are legally entitled to do so. In some cases judges make their decisions solely based on confessions extracted under pressure or torture. This is in violation of Article 24 of the criminal code.

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<sup>81</sup> Human Rights Watch interview with Cambodian Bar Association President Ang Eng Thong, Phnom Penh, March 10, 1999.

<sup>82</sup> Paragraph 207, “Report on the Application of Civil and Political Rights in Conformance with Article 40 of the ICCPR,” Kingdom of Cambodia, 1997.

<sup>83</sup> See Dolores A. Donovan, “The Cambodian Legal System,” *Rebuilding Cambodia: Human Rights, and Law*, Johns Hopkins University, 1993.

<sup>84</sup> Dolores A. Donovan, “The Cambodian Legal System,” *Rebuilding Cambodia: Human Rights, and Law*, Johns Hopkins University, 1993.

<sup>85</sup> For an example of a case where numerous legal improprieties were committed by court officials but charges were not dropped, see the case of the arrest of two Licadho workers in December 1998 in Sihanoukville, described in *Toxic Justice: Human Rights, Justice, and Toxic Waste in Cambodia*, Human Rights Watch / Asia, May 1999.

<sup>86</sup> The Ministry of Justice issued a circular to prosecutors in 1998, underlining Article 56 of the Law on Criminal Procedure, stating that if they hear about a crime or receive a complaint — even if they have not been informed by the police — it is their duty to investigate.

<sup>87</sup> For an example of lack of action by an investigating judge, due in part to fear of repercussions from military perpetrators, see the case study under Section IV of this report titled “Kompong Thom: Summary Executions of Nine Fishermen by Military.”

Some court decisions are determined by armed intimidation by members of the police, military, or gendarmerie. The Royal Cambodian Government offered the following examples of intimidation of court personnel in its report on civil and political rights:

In May 1994 soldiers attacked the home of the Kompong Som prosecutor in order to kill him and then burst in on a court hearing a few hours later, causing the judge, prosecutor and court clerk to flee. In July 1994 soldiers entered the Phnom Penh Courthouse seeking to intimidate the judges. Also in July 1994 soldiers entered the Kandal courthouse in an effort to intimidate the judges. On December 28, 1995 a group of gendarmes armed with pistols, rifles and submachine guns attempted to obstruct the enforcement of a civil judgment in Phnom Penh. The court was only successful in enforcing its judgment when the Minister of Justice intervened.<sup>88</sup>

Other examples of armed attacks against the judiciary include the following:

- In June 1998 proceedings at the Koh Kong provincial court were disrupted by the chief of the provincial judicial police and ten policemen when the court was to hold a hearing on a land case involving the wife of the judicial police chief, causing the court to indefinitely postpone the hearing out of concerns for their safety.<sup>89</sup>
- In November 1996 the chief of the Banteay Meanchey judicial police stormed the provincial prison with thirty heavily armed police officers and an armored personnel carrier in order to release a police officer who had been arrested by the gendarmerie for beating and threatening to kill his wife. After some negotiation, the prison staff decided that they did not need a court order to release the suspect and freed him immediately. The judicial police chief later threatened the life of the prosecutor who had issued the arrest warrant.<sup>90</sup>
- In March 1994 several soldiers in Battambang attacked the provincial prison in an attempt to obtain the release of persons imprisoned for drug trafficking; in another instance in Kratie a general ordered his deputy and two other subordinates to make threats against the prison to obtain the release of a prisoner (no date given).<sup>91</sup>

Even when proper judicial procedures are followed in the administration of justice and perpetrators are found guilty and convicted to a prison sentence, many verdicts are not actually implemented. In a survey of courts in nine provinces, Adhoc found that several reasons were given for the low rate of implementation of verdicts. These included that the judicial police did not properly carry out their duties but negotiated unofficial financial compensation with offenders; armed groups intervened in the judicial process; offenders obtained the protection of the military or fled to remote areas; or the courts lacked resources and financial means to implement verdicts.<sup>92</sup>

The problem is compounded in provinces such as Battambang, the site of military activity for many years. Battambang Judge Nil Nonn reports that almost no court decisions or verdicts were actually implemented in Battambang in 1998, where he estimated that members of the military were responsible for committing as much as 15 percent of the criminal cases. Half of the Battambang court's criminal cases were tried in absentia,

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<sup>88</sup> Paragraphs 205 and 206, "Report on the Application of Civil and Political Rights in Conformance with Article 40 of the ICCPR," Kingdom of Cambodia, 1997.

<sup>89</sup> Report of the Secretary-General to the General Assembly, "Situation of human rights in Cambodia," September 17, 1998.

<sup>90</sup> Report of the Secretary-General to the United Nations General Assembly, "Situation of human rights in Cambodia," October 17, 1997; See also *Phnom Penh Post*, June 13-26, 1997.

<sup>91</sup> Paragraph 204, "Report on the Application of Civil and Political Rights in Conformance with Article 40 of the ICCPR," Kingdom of Cambodia, 1997.

<sup>92</sup> "Survey on Implementation of Verdicts by the Courts and the Police," Adhoc, March 1999.

and only 5 percent of the total verdicts were actually implemented.<sup>93</sup> The court issued plenty of arrest warrants, Nil Nonn said, but could not implement most criminal verdicts, particularly prison sentences.<sup>94</sup>

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<sup>93</sup> At the same time, however, Battambang's prison population increased dramatically, with more than 200 people sentenced in 1998, according to a U.N. human rights official.

<sup>94</sup> Human Rights Watch interview with Battambang Judge Nil Nonn, Battambang, March 3, 1999. See also, "Annual Report (1998) on Actions of the Provincial Court and Prosecutor, 6 December 1997-30 November 1998, from Battambang Court Chief to H.E. Minister of Justice," November 30, 1998.

## Poor Cooperation between Police and Courts

Lack of collaboration, trust, and respect between the courts and the police is often a factor in the poor implementation of criminal justice procedures and ensuing impunity for perpetrators. In many cases, the police charge that they have risked their lives to make an arrest, but then because the courts are corrupt and slow to act, criminals are allowed to escape. Even when arrest warrants are issued, the courts still sometimes release suspects, alleging that the police have not provided enough evidence or properly prepared their paperwork. The courts, meanwhile need sufficient evidence in order to prosecute, which they say they often do not receive.

Ministry of Interior official Mao Chandara said that the judicial police have difficulty preparing case files because of lack of expertise and experience, causing the courts to close cases for lack of evidence. "But then we have to wonder why, if the case file is not complete, why don't they send it back to us so we can fill in the missing parts?" he said. "The judicial police are under the prosecutor's control, according to the legal procedures. The investigating judge has the right to investigate but he also the right to order the judicial police to do more investigation to complete the file."<sup>95</sup>

In Phnom Penh, there are 500 outstanding arrest warrants for 1998, in which police have been unable to apprehend perpetrators, according to Khieu Sameth, chief of the penal department of the Ministry of Justice.<sup>96</sup>

Ministry of Interior spokesman Khieu Sopheak attributes the huge backlog not only to problems in preparing the warrants but to corruption within the judiciary, with court officials taking their time to issue warrants for cases in which they have a conflict of interest.<sup>97</sup>

The Cambodian government acknowledged the problem in its report to the United Nations on its compliance with the ICCPR: "The release of defendants or suspects often creates friction between the police and the courts. The police criticize the courts for deliberately releasing individuals whom they have made every effort to arrest."<sup>98</sup>

In practice, the police often wield far more power than the courts. Provincial prosecutors complain that the judicial police do not respect the courts and often ignore judicial procedure completely; detaining, incarcerating and releasing suspects without notifying the courts.

"The police don't respect the law, they respect their boss," said an official from the Kandal provincial court. "We at the court are not their commander; we don't pay their salaries. In general the police should contact the prosecutor when they have a case, but they only contact us when they have a really difficult case. If there's material they can confiscate they don't contact us. The police love power and don't care about the procedure. That's the reality."<sup>99</sup> A Banteay Meanchey court official wryly noted that police used arrest warrants "like a basket to collect money."<sup>100</sup>

Police officers often do not feel it is their role to prepare a report, conduct an investigation, or even to enforce warrants and summonses. Part of the reason, according to an official at the Takeo Court, is because they see the courts as lower than themselves. "The police have the appearance of having more status because they have property, vehicles, bodyguards," he said. "We have none of that so we appear weak."<sup>101</sup> He advocated legal reforms to clearly place the judicial police under the authority of the prosecutors.

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<sup>95</sup> Human Rights Watch interview with Mao Chandara, chief of general staff, Ministry of Interior, Phnom Penh, April 13, 1999.

<sup>96</sup> Human Rights Watch interview with Khieu Sameth, deputy chief of the Department of Civil and Criminal Affairs, Ministry of Justice, Phnom Penh, April 6, 1999.

<sup>97</sup> Phann Ana and Kevin Doyle, "Courts Guilty of Not Doing Their Job, Interior Officials Say," *Cambodia Daily*, April 12, 1999.

<sup>98</sup> Paragraph 166, "Report on the Application of Civil and Political Rights in Conformance with Article 40 of the ICCPR," Kingdom of Cambodia, 1997.

<sup>99</sup> Human Rights Watch interview with court official, Ta Khmau, Kandal, March 16, 1999.

<sup>100</sup> Human Rights Watch interview with Banteay Meanchey court official, Sisophon, March 5, 1999.

<sup>101</sup> Human Rights Watch interview with Takeo Court official, Takeo provincial town, April 8, 1999.



Secretary of State at the Ministry of Interior Prum Sokha summarized the tension: “We have corrupt police and corrupt courts. Sometimes the police send all the evidence to the court but the real criminals are released anyway. In some cases the police look down on the court, and in some cases the court looks down on the police.”<sup>102</sup>

### **Institutionalized Impunity: Article 51**

Legal aid organizations and human rights activists are critical that Cambodia still lacks a comprehensive criminal code five years after the creation of the Royal Government of Cambodia. Instead it is still relying on a criminal code, written and implemented by the U.N. Transitional Authority in Cambodia (UNTAC), that was supposed to be an interim law until a more complete criminal code was adopted. It has become, however, the country’s sole criminal law. It has been criticized for not punishing enough offenses (it only punishes thirty-five) as well as lacking a list of defenses. In addition, there is a drastic need for a new criminal procedures code to replace the 1993 version, which does not contain enough standards for procedure; the focus is mainly on the responsibilities of various court personnel and not on how procedures such as issuing arrest warrants are to be conducted.

Despite these shortcomings in Cambodia’s legislation, the most important form of state-sanctioned and institutionalized impunity in Cambodia is Article 51 of the 1994 Law on the Common Statutes for Civil Servants. It provides that civil servants — which in practice includes police and security forces as well as military — may not be prosecuted for any crimes that they commit without the consent of the Council of Ministers or the alleged offender’s supervising ministry. Theoretically the only exception is when civil servants are caught in the act of committing such crimes.

Requests to waive a state official’s immunity are generally channeled through the Ministry of Justice, which then forwards them to the relevant ministry. For example, if a policeman commits armed robbery in Takeo, the provincial prosecutor would send a request to the Ministry of Interior through the Ministry of Justice for Article 51 provisions to be lifted so that the policeman can be charged and an arrest warrant issued. However, it can take months, or even years, for the ministries to respond to a request, not only giving the perpetrator plenty of time to escape or to intimidate witnesses or court officials but paralyzing the criminal justice process and effectively granting the perpetrator immunity during the delay.

Article 51’s protections of civil servants from prosecution are always in place unless a prosecutor requests a waiver. In many cases the prosecutor does not ask for a waiver because the case involves the military or high-ranking officials who have the ability to pressure or intimidate the court. Often prosecutors do not bother to request the waivers because they know they will encounter significant delays or receive no answer at all. For example, 62 percent of the requests filed in 1998 have not yet received a response from the Ministry, meaning in effect that Article 51 protections for the offender are still in place.<sup>103</sup>

“When I ask permission from the Ministry of Justice to file a complaint I don’t receive an answer for more than half a year,” said an official from the Kandal court. “The victims are left with only their tears. The perpetrators have already committed their action. Later they threaten the victim so the victim cannot do anything. This is contrary to the legal principle that each person should be equal before the law.”<sup>104</sup>

The long (or permanent) delays in obtaining responses to requests by provincial courts for Article 51 waivers clearly interferes with the court’s abilities to function. “It is difficult to enforce the law with government civil servants because they have privileges in Article 51 and the concerned institutions do not reply or give us a clear response as to whether they allow us to charge the civil servant or not,” said Judge Nil Nonn in his 1998

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<sup>102</sup> Human Rights Watch interview with Prum Sokha, secretary of state for the Ministry of Interior, Phnom Penh, April 9, 1999.

<sup>103</sup> “Report on Requests to File Charges from Prosecutors of Provinces and Municipalities During 1998,” Ministry of Justice, April 9, 1999.

<sup>104</sup> Human Rights Watch interview with official from Kandal provincial court, Ta Khmau, March 16, 1999.

Annual Report to the Ministry of Justice.<sup>105</sup>

If an Article 51 decision is finally made, authorization is given to lift immunity in 60 percent of the requests at best; in 1998 only 38 percent were approved.<sup>106</sup> In this way, since its enactment in 1994, Article 51 has allowed hundreds of crimes allegedly committed by state officials, military, or police to go unprosecuted and unpunished. Meanwhile, when victims inquire about the status of their complaint, they are told that it is being held up by bureaucratic red tape.<sup>107</sup>

Many countries provide immunity from civil action to public officials who commit administrative mistakes but believe in good faith that they are acting within the law. However, that immunity does not apply to acts that are illegal, such as murder, robbery, assault, rape, or torture. Cambodia appears to be one of the only countries that places civil servants above the law, essentially providing blanket immunity to all crimes they commit. Article 51 violates several articles of the Cambodian constitution, including Article 31, which provides for equality before the law to all Khmer citizens; Article 51, which mandates separation of powers, because it transfers the decision whether to prosecute from the courts to the ministries; and articles 109, 110 and 111, which have to do with judicial independence, the rights of judges only to adjudicate, and separation of judicial power from the legislative and executive branches. In addition, it violates articles 2 and 14 of the ICCPR, which provide equal protection of the rights under the covenant and equality before the court.

Then-Minister of Justice Chem Snguon proposed in January 1997 that Article 51 be amended and sent a draft law to the co-prime ministers to that effect. However, to date it has not been amended or repealed. Snguon proposed that prosecutors need only to *inform* the relevant ministry of a civil servant accused of a crime, rather than *seeking permission* to prosecute from the Council of Ministers or the relevant institution, except in cases of *flagrante delicto* — where someone is caught in the act of committing a crime.<sup>108</sup>

While Chem Snguon also stated that military personnel were excluded from the scope of Article 51 in a letter to the minister of defense in a letter dated April 22, 1997, it continues to be applied to the military.<sup>109</sup> Minister of Defense Tea Banh has continued to state that soldiers are covered by provisions of immunity similar to that provided by Article 51. For example, in an August 1998 letter to U.N. Special Representative Thomas Hammarberg, Tea Banh referred to a November 1995 letter from the co-ministers of the Council of Ministers that had proposed the inclusion in the common military statute of provisions that would provide immunity to the military in a similar manner as Article 51.

Article 51 waivers of immunity are usually not used to protect lower-ranking level civil servants who commit crimes. “It’s only used for the big fish,” said Sok Sam Oeun, executive director of the Cambodian Defenders Project. “In many instances where the police or courts are intimidated by a high-level perpetrator they need

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<sup>105</sup> Annual Report (1998) on Actions of the Provincial Court and Prosecutor,” 6 December 1997-30 November 1998, from Battambang Court Chief to H.E. Minister of Justice, November 30, 1998.

<sup>106</sup> “Report on Requests to File Charges from Prosecutors of Provinces and Municipalities During 1998,” Ministry of Justice, April 9, 1999.

<sup>107</sup> For an example of a case held up by Article 51, see the case study titled “Kompong Speu: Torture and Execution of Teenage Boy by Official’s Bodyguards” in Section IV below.

<sup>108</sup> Commission on Human Rights, “Report of the Special Representative of the Secretary-General on the situation of human rights in Cambodia,” February 20, 1998.

<sup>109</sup> Report of the Secretary-General to the United Nations General Assembly, “Situation of human rights in Cambodia,” September 17, 1998. See also Chem Snguon’s letter to the co-ministers of national defense, dated April 22, 1997, which states: “I would like to inform your excellency that the military are not under Article 51 of the Common Statutes for Civil Servants. According to the law, therefore, the charging or arrest of any military who committed a misdemeanor, the law does not require obtaining permission from the concerned ministry beforehand.” In a September 3, 1997 letter to the co-ministers of national defense, Chem Snguon states again that “Military officers are not under the power of the Common Statutes for Civil Servants. Therefore there is nothing to prohibit the prosecution of military personnel. The request for authorization the Co-Ministers of National Defense by civil prosecutors against military officers who commit criminal offenses may be made only to inform and to avoid the use of weapons by military offenders against the proceeding of the prosecutors and civil courts.”

Article 51 in order to be able to essentially say, 'I don't want to arrest you but your boss told me to.'<sup>110</sup>

According to Ith Rady, deputy director of the Department of Personnel and Training of the Ministry of Justice, in 1996 there were approximately one hundred requests for Article 51 waivers, of which sixty were approved. In 1997 there were about 200 requests, of which 120 were approved.<sup>111</sup>

During calendar year 1998, the Ministry of Justice recorded 117 cases in fourteen provinces where courts asked for authorization to prosecute civil servants under Article 51. Authorization was granted in forty-four of these cases, and the rest are listed as still waiting response from the relevant ministries. The Ministry of Interior received seventy-eight letters of request for authorization in cases involving police, the largest single category of offenders, and in more than half of these cases the alleged crime committed was intentional manslaughter. The ministry authorized thirty-seven of the total number of cases for prosecution; the rest are awaiting approval.

#### IV. PROVINCIAL CASE STUDIES OF IMPUNITY

##### **Banteay Meanchey: Murder of a Young Girl by a Brothel Owner**

Meach Bunrith is known as the most powerful brothel owner and one of the most abusive pimps in the border town of Poipet in Banteay Meanchey province, a major point for smuggling goods to and from Thailand.<sup>112</sup> He is also thought to be one of the biggest traffickers of women to Thailand, with a network of traffickers operating throughout Cambodia. He is said to have powerful military backing, and off-duty but uniformed gendarmes and soldiers work as armed guards at his brothel.<sup>113</sup>

On June 17, 1998 Meach Bunrith severely beat Nguyen Thi Poeung, a twenty-four-year-old woman who worked in his brothel. Four days later, she died in a local clinic. On June 25, three prostitutes, one of whom had been previously in touch with the human rights organization Adhoc, escaped from Meach Bunrith's brothel and reported the death of Nguyen Thi Poeung to Poipet police. On June 26, a mixed force of gendarmes, police, military, and militia raided the brothel. Meach Bunrith was arrested on charges of involuntary manslaughter and transferred to the provincial town of Sisophon for detention in the Banteay Meanchey provincial prison. Twenty-one prostitutes and a woman who worked in the brothel as a cook were found in the raid and allowed to go free; the brothel was then closed.

The raid, brothel closure, and arrest were hailed as a major victory by human rights workers.<sup>114</sup> But less than three months later, the provincial court dismissed the case for lack of evidence and freed Meach Bunrith. Soon after his release, Meach Bunrith reopened his brothel.<sup>115</sup>

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<sup>110</sup> Human Rights Watch interview with Sok Sam Oeun, executive director of the Cambodian Defenders' Project, Phnom Penh, March 2, 1999.

<sup>111</sup> Human Rights Watch interview with Ith Rady, deputy director, Department of Personnel and Training, Ministry of Justice, Phnom Penh, March 15, 1999.

<sup>112</sup> Adhoc interviewed one young woman who tried to escape from Meach Bunrith's brothel several times. She said Meach Bunrith had photographs of all the girls and a network in Banteay Meanchey, Battambang and Phnom Penh to try to track down the ones who escape. "When they caught this woman the second time they beat her, hit her head, and cut and shaved her hair," an Adhoc investigator said. "They also kicked, slapped and hit her and used offensive language to curse her everyday. After the torture they did not give her enough food and charged her \$100 to buy a wig so that she could return to work. When we met her, she cried and begged for help from us. She said there were fifty others who wanted to get out also, who had been tortured. Some had been sold by their parents or neighbors, some came voluntarily. But when they threatened and beat the girls, even the ones who volunteered wanted to leave." "Complaint of [victim's name] to Chief of Adhoc Banteay Meanchey," June 17, 1998; and Human Rights Watch interview with Adhoc worker, Phnom Penh, March 12, 1999.

<sup>113</sup> Human Rights Watch interviews with local officials, international and local NGOs in Poipet and Sisophon, Banteay Meanchey, April 4-5, 1999.

<sup>114</sup> See the Report of the Special Representative on Human Rights in Cambodia to the U.N. General Assembly, September 17, 1998; Kay Johnson and Touch Rotha, "Alleged Brothel Killer's Release Draws Outrage," *Cambodia Daily*, October 20, 1998; *Raemey Kampuchea*, "Liberation of 20 'Fresh Meat' Girls from Hell," June 1998.

<sup>115</sup> Since his release from prison, at least one woman has filed a complaint with the provincial military against

In fact, the evidence against Meach Bunrith was overwhelming. Immediately after Meach Bunrith's June 26 arrest, personnel from Military Region Five and the gendarmerie obtained detailed witness statements from more than a dozen women attesting to the fact that they had witnessed the fatal beating.<sup>116</sup>

They said Meach Bunrith beat Nguyen Thi Poeung after she refused to have sex with customers because she had recently had an abortion. He hit her on her stomach with the flat side of a cleaver, kicked her thigh, and stepped on her abdomen several times, causing her to bleed heavily. He then dragged her to the bathroom, where he dumped her next to the filthy latrine area for the night, where rats and cockroaches ran over her body. Afterwards, she was deprived of medical attention for three days. Meach Bunrith finally took her to a private clinic on June 20, and she died the next day.

One of the women stated in her affidavit to the gendarmes: "I saw Meach Bunrith take a knife to beat the victim's stomach strongly, and he kicked her left thigh. Meach Bunrith warned her not to cry out or shout. None of us dared to help because we were afraid of the pimp. The pimp's brother, Rath, was about to hit her with a water pipe, but Rith said he wanted to do it himself. We sat outside the house. Afterwards she bled a lot."<sup>117</sup>

Another girl, nineteen, stated: "About ten days ago, Meach Bunrith, the pimp, tortured Poeung, a prostitute. She bled for three or four days until Rith brought her to Serei Mongkul Clinic. She passed away in the clinic on June 21. Meach Bunrith beat her at 11:00 on her stomach and back with [the flat side of] a knife. He pulled her towards the wall and then placed her near the water jar. He turned out the light so that the rats could run across her. The girl became severely ill and lost a lot of blood. Then Rith hired people to bury her. Rith always tortured every girl in the house."<sup>118</sup>

A seventeen-year-old girl stated: "The incident took place at 11:00 at night when the girl named Poeung in the brothel did not accept guests because she just came back from dancing in the bar. Then Meach Bun Rath rushed to seize and beat her and passed her to the owner Meach Bunrith. After getting her, Meach Bunrith pulled her head and hit her in front of the other twenty-one girls. He used a cleaver and stepped on her abdomen several times which caused injury inside her body and the loss of a lot of blood. At 6 p.m. on June 21 she was sent to Serei Mongkul Clinic in Poipet. She took her last breath at 11:00 that night and was brought to be buried in Bali Lay pagoda."<sup>119</sup>

Meach Bunrith's version of the story is that Nguyen Thi Poeung was very drunk the evening of June 17, breaking glasses and making too much noise in the dancing bar where she was working, so he had some of the other girls bring her back to the brothel. Once at the brothel she refused to go inside, Meach Bunrith said: "She shouted and lay down in the mud and refused to enter the house. I threatened and hit Poeung but did not cause her to be injured or unconscious. On that day she was so completely drunk that she could not know what was right and what was wrong, and she cried and shouted in the middle of the night, waking up the neighbors. In the morning she was sober and normal." Several days later, he said, Poeung began bleeding after taking traditional medicine for an abortion so Meach Bunrith brought her to the clinic, where she died.<sup>120</sup>

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Meach Bunrith, charging in February 1999 that he had forced her to work as a prostitute, detained her against her will, and tortured her. Dated February 14, 1999, the complaint was filed with the commander of Military Region Five and commander of Military Unit at Poipet.

<sup>116</sup> Interview notes, Investigation Unit, Military Region Five, June 1998; Individual witness statements and thumbprinted petition from twenty-two witnesses to Banteay Meanchey military police, June 1998. Five witnesses interviewed by Military Region Five said in a group statement that Nguyen Thi Poeung's death was not caused by illness: "We five saw with our eyes that Meach Bunrith the brothel owner hit Poeung with a knife and water pipe and kicked her abdomen. After Poeung fell down, Meach Bunrith stepped on her abdomen, which caused her to lose a lot of blood from the vagina and mouth... Meach Bunrith was preparing a plan to collect all the girls from his brothel to cross the border to Thailand on June 25, 1998. We didn't know what the reason was. Please help us find justice."

<sup>117</sup> Witness statement to Banteay Meanchey gendarmerie, June 1998.

<sup>118</sup> Witness statement to Banteay Meanchey gendarmerie, June 1998.

<sup>119</sup> Witness statement to Banteay Meanchey gendarmerie, June 1998.

<sup>120</sup> "Request for Examination," No. 352, Banteay Meanchey investigating judge, September 14, 1998.

Despite these testimonies, on September 15, 1998, the investigating judge of the Banteay Meanchey court ordered the charges against Meach Bunrith dismissed, saying the court lacked sufficient evidence and witnesses.<sup>121</sup> The prosecutor did not appeal the judge's order. Instead, he explained why he did not charge Meach Bunrith with either intentionally or negligently causing Nguyen's death:

When she arrived home Poeung shouted and was very stubborn and abusive ... Meach Bunrith physically assaulted Poeung in order to restrain her from cursing and being abusive. According to the examination of Meach Bunrith's actions, there was no serious damage to the body of Poeung. The next morning Poeung was sober and the same as usual. On the evening of June 21 Poeung died. But her death was not caused by Meach Bunrith or by his negligence because the evidence shows that when he knew that Poeung was seriously ill he called doctors to treat her at the house and then they sent her to a private clinic...In the clinic Meach Bunrith took responsibility for her care...Other evidence showed that Poeung had had three abortions. The multiple abortions, including the use of traditional medicine, wrongly prescribed, caused her uterus to break down, causing her death. Therefore Poeung died of her illness.<sup>122</sup>

After Adhoc and the special representative for human rights in Cambodia expressed their concerns about Meach Bunrith's release, Henrot Raken, prosecutor general of the Appeals Court in Phnom Penh investigated the case.<sup>123</sup> On November 16, he instructed the Banteay Meanchey court to reopen the file and prosecute the brothel owner for voluntary manslaughter, battery with injury (under Articles 32 and 41 of the criminal code), and human trafficking, in violation of the Law on the Suppression of Kidnapping, Trafficking and Exploitation of Human Beings.<sup>124</sup>

On November 24, a delegation from the Ministry of Justice traveled to Poipet to gather information. The Ministry of Justice delegation concluded that both the judge who ordered the charges dropped, as well as the prosecutor who did not appeal the judge's order had made mistakes in their judgments. Specifically they found that the judge did not make a detailed enough investigation of the case and that the court should have charged Meach Bunrith with assault to cause injury because he had admitted assaulting the victim. In addition Meach Bunrith should have been charged with illegal brothel operation because he admitted during his questioning that he worked as a pimp and brothel owner.<sup>125</sup>

In an interview with Human Rights Watch in April 1999, Henrot Raken said that he had written letters to the Supreme Court and the minister of justice, informing them that the Banteay Meanchey prosecutor and judge had "evaluated the case wrongly."<sup>126</sup> At that time the Banteay Meanchey court had not yet responded to Raken's letter of November 1998. Raken recommended that the case be sent to the chief of the Supreme Court, the general prosecutor of the Supreme Court, and the Supreme Council of Magistracy's Disciplinary Council. In April 1999, another delegation from the Ministry of Justice, led by an undersecretary of state, traveled to Banteay Meanchey on a second fact-finding mission.

Despite these interventions from the U.N. special representative for human rights, the Ministry of Justice, Adhoc, and Human Rights Watch,<sup>127</sup> as of March 1999 the president of the Banteay Meanchey Provincial

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<sup>121</sup> Court documents by the investigating judge ("Request for Examination," dated September 14, 1998) and the prosecutor ("Order of Final Conclusion," dated September 15, 1998) concluded that there was not enough evidence. On September 15, the investigating judge signed an order dismissing the charges (Nonsuit Order No. 24) and a Release Warrant (No. 30) for Meach Bunrith.

<sup>122</sup> Prosecutor's "Order of Final Conclusion," dated September 15, 1998.

<sup>123</sup> Letter No 0172/98 from Adhoc to the prosecutor general, October 2, 1998.

<sup>124</sup> "Situation of human rights in Cambodia; Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Thomas Hammarberg," Commission on Human Rights, February 26, 1999.

<sup>125</sup> Letter to H.E. Minister of Justice from Ith Rady in regard to report on Ministry of Justice mission to Banteay Meanchey, January 6, 1999.

<sup>126</sup> Human Rights Watch interview with Henrot Raken, prosecutor general of the Appeals Court, Phnom Penh, April 6, 1999.

<sup>127</sup> Letter from Human Rights Watch to Minister of Justice Uk Vithun in regard to the murder of Nguyen Thi

Court, who is acting as investigating judge in this case, admitted that the investigation was at a standstill because no witnesses could be found. He reiterated Bunrith's claim that Nguyen Thi Poeung died as a result of taking traditional medicine for an abortion, rather than the beating by Meach Bunrith.<sup>128</sup>

He also said that Bunrith would not be charged with operating a brothel even though it was against the law. "If we change the charge to 'operating a brothel,' it's an injustice to Bunrith, because there are many brothel owners in Poipet, and many prostitutes as well," the judge said. In order to change the charge from involuntary manslaughter to voluntary, the judge said that there would have to be more evidence forthcoming from local authorities such as the commune chief and production of witnesses by Adhoc.

At the time of the Meach Bunrith's release, Banteay Meanchey Governor Duong Khem alleged that Meach Bunrith had paid about U.S. \$4,000 to court officials for his release.<sup>129</sup> The investigating judge denied that the court took bribes: "Meach Bunrith was released because we did not have the ability to get more information," he said.<sup>130</sup> The judge claimed the whole case was a set-up by the gendarmerie to extort money from the brothel owner. He said the gendarmes detained Meach Bunrith for five days, demanded 18,000 Thai baht (about U.S.\$486) and, when he refused, they handed the "suspect" to the court and destroyed the evidence. He claimed that the gendarmes came to the court and told the court to drop the case by saying they produced false information to obtain money from the brothel owner.<sup>131</sup>

The gendarmes' version of the story, according to sources in Poipet, is that the wife of a high-ranking military official in Poipet offered them 18,000 baht to release Meach Bunrith, but because of the involvement of human rights organizations in the case, they turned it down. Also, a member of the gendarmerie told a source in Poipet that they turned down the bribe because "there wouldn't be enough money to pay off everybody" because of the joint cooperation of militia, military division, gendarmerie, and police in the raid.

In March 1999, an Adhoc staff person said: "I think the case is paralyzed right now because the judge demands that Adhoc find witnesses and the relative of the victim, and we can't find them." Another Adhoc staff member familiar with the case said:

The victim's aunt was afraid. We tried to get her to appeal to the prosecutor general, but she was afraid that Meach Bunrith would kill her. After he was released from jail he had people watching her house — she was afraid and fled to Thailand. This is the difficulty — that the aunt is gone and the other girls all dispersed after temporarily going to a safehouse in Battambang. Meanwhile Bunrith and his backers are still in business.<sup>132</sup>

The provincial governor said he was also powerless to do anything. "It is the court's affair," he said. "If he was released, he can open his business if he wants."<sup>133</sup>

### **Kompong Thom: Summary Executions of Nine Fishermen by Military**

On April 2, 1998 in Kompong Thom province, soldiers from Battalion 15, armed with machine guns and rocket launchers, arrested ten men suspected of cow theft. They were marched to a secluded clearing, where they were tied up, searched, and tortured. When several men tried to escape, the soldiers chased them,

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Poeung, March 23, 1999.

<sup>128</sup> Human Rights Watch interview with Investigating Judge Mam Moeun, Sisophon, Banteay Meanchey, March 5, 1999.

<sup>129</sup> Lor Chandara, "Accused Slayer Reopens His Poipet Brothel," *Cambodia Daily*, December 17, 1998.

<sup>130</sup> However, the judge told Human Rights Watch that after Meach Bunrith's release, Bunrith's brother filed a complaint with the court, charging that someone had fraudulently taken 20,000 baht (about U.S. \$540) from his family in order to bribe the court but kept the money instead. Human Rights Watch interview with Investigating Judge Mam Moeun, Sisophon, Banteay Meanchey, March 5, 1999.

<sup>131</sup> Human Rights Watch interview with Investigating Judge Mam Moeun, Sisophon, Banteay Meanchey, March 5, 1999.

<sup>132</sup> Human Rights Watch interview with Adhoc staff persons, Phnom Penh, March, 1999.

<sup>133</sup> Lor Chandara, "Accused Slayer Reopens His Poipet Brothel," *Cambodia Daily*, December 17, 1998.

shooting one in the back and tripping the others before executing each in turn with at least one bullet to the head at close range. In the chaos, one man was able to escape. He identified the perpetrators to the police and court officials; subsequent police reports and interviews with district military and local officials confirmed that the perpetrators were members of the provincial military. More than a year later, however, none of the perpetrators have been arrested.

The sole survivor, who has been selected as the representative of the widows of the nine other men in a court complaint, said that the group of fishermen had traveled to Stung District, Kompong Thom in order to fish at Sdau lake. Eight soldiers stopped them and asked them where they were going, ordering to see their identification. After searching their bags, the soldiers tied up the men and beat them, demanding to know how many cows they had stolen and where the animals were. "They beat one man more severely, hitting him with their rifle butt, because they thought he was the leader," said the survivor. "They kicked me two times as I was lying on the ground. I felt dizzy but could hear them beating the others." The soldiers began to discuss what to do with the men: "One wanted to take us to Chor Mous Mountain. Another said there was no need to take us so far: they could kill us there and let the fish feed on our bodies."<sup>134</sup>

When one member of the group attempted to run off, a soldier shot him in the back. Soldiers kicked another man, making him stumble and fall over, and then shot him in the head. "Then they shot my cousin and after that they killed Pho Man," the survivor said. "Everyone was crying and screaming in fear." After another member of the group attempted to run off, some of the soldiers ran after him, shooting him also. In the chaos, the survivor took the opportunity to make a run for it himself before stumbling and falling into a swampy area. Two of the soldiers chased after him but could not find him. "They thought I'd run to the south, but I'd run to the north, so they ran back to the group." As he hid he could hear the sounds of the soldiers finishing off the other fishermen. He remained hidden for a while before eventually making his way back home past midnight.

The Kompong Thom Provincial Police investigated the massacre. In a report dated August 20, 1998, the police concluded that members of Navy Battalion 15 responsible for the Chor Mous area had killed the nine people after going on a mission in that area to search for a band of robbers. The report stated: "The above incident was carried out by the military unit Battalion 15 of the Navy. That geographical area is under the control of Battalion 15. Also that area previously had a group of thieves. This is the reason that Battalion 15 committed revenge in violation of the law."<sup>135</sup>

Local officials told the police that the evening of the massacre they heard radio traffic from military units in the Chor Mous area about the incident: "They said that they had destroyed nine thieves and needed reinforcements from another unit to catch one who ran away."<sup>136</sup> District military officials confirmed that they also received radio messages from military in Chor Mous, saying that they had apprehended a group of thieves, killing eight and wounding one.<sup>137</sup> That night, local people said, commune officials deployed additional militia to stand watch at a nearby bridge in an effort to apprehend the man who escaped. The next morning, according to commune officials, they asked the local navy commander to radio his forces to leave the Chor Mous area and stop military operations there in order to prevent further armed clashes when the families of the victims went in to retrieve the bodies.<sup>138</sup>

About two weeks after the incident, a local police chief based near the incident site called the one survivor to the police post in order to interview him about the massacre. "By chance, when I got there, one of the perpetrators was sitting in the police post," said the survivor. "They hadn't arrested him — he just happened to be there, chatting. I'd shaved my head [as part of funeral ceremonies] and quickly covered my face with my scarf. I was so afraid that I was shaking and couldn't control my feelings." He quickly departed, learning later that the man he saw was a friend of the local police chief.<sup>139</sup>

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<sup>134</sup> Human Rights Watch interview with survivor, Kompong Thom province, March 26, 1999.

<sup>135</sup> Report of Kompong Thom Provincial Police Station, Serious Penal Office, August 20, 1998.

<sup>136</sup> Report of Kompong Thom Provincial Police Station, Serious Penal Office, August 20, 1998.

<sup>137</sup> Interview with rights workers, Kompong Thom province, April 6, 1998.

<sup>138</sup> Report of Kompong Thom Provincial Police Station, Serious Penal Office, August 20, 1998.

<sup>139</sup> Human Rights Watch interview with survivor, Kompong Thom, March 26, 1999.

On April 27, 1998 the police sent their report to the Kompong Thom prosecutor, who prepared a complaint charging “unknown persons” with intentional murder.<sup>140</sup> On June 29, 1998 the prosecutor sent the investigating judge the dossier, which included police reports identifying the perpetrators as well as their military unit (Battalion 15). “It’s now up to the investigating judge,” the prosecutor said. “They know the information about the perpetrators. It’s not the prosecutor who issues the arrest warrant, but the investigating judge.”<sup>141</sup>

However, since June 1998 when the dossier reached the investigating judge, there has been virtually no activity on the case, despite complaints filed by the victims’ families as well as the Human Rights Action Committee, a coalition of human rights groups that conducted an investigation of the incident. While the investigating judge admitted that the massacre was one of the worst crimes committed in Kompong Thom in her memory, she has not actively investigated it. Part of the problem may be concerns about her personal security. “I worry about my safety because the case is connected to the police, local authorities, and military,” she said. “The police and commune chief are okay, but the military might be difficult.”<sup>142</sup>

The investigating judge has not interviewed any witnesses other than the one survivor. She has never been to the incident site to interview other witnesses and admitted, “If we go there so long after the incident happened, there are not so many people around who know about it.” She said she has repeatedly invited local authorities, military and police from Stung District to travel to the provincial court to be interviewed but that they had ignored her summons.<sup>143</sup>

While the court could have the local police deliver more strongly worded summonses, court officials have not yet done so. The president of the court gave the following explanation:

The reason is that the witnesses have never returned any of the summonses we have sent to them signed and with their fingerprints, so we don't know if they have ever received them. For this reason, we have not issued the second [more forceful] type of summons. The legal procedure is to ask people to come to give information who are just witnesses, not the perpetrators. If everything goes right, then the investigating judge or prosecutor can press charges and arrest warrants can be issued.<sup>144</sup>

While there has been virtually no movement on the case since it occurred more than a year ago, the judge said that she will continue issuing summonses to witnesses each month. “We have not closed the case,” she said. “We will continue. I’m trying my best. The case would be resolved if the people came here to give information. Maybe someday I’ll go to the police post to ask them, but it’s twenty-five kilometers from here.”

The court president also affirmed that the case was still open. “But it’s a complicated case,” he said. “The prosecutor has filed a complaint against ‘unidentified persons.’ So it’s like searching for a pebble in the middle of the sea.”

Meanwhile, the survivor and the wives of the victims do not understand what is holding up the case. “I went many times to the court,” said one of the widows. “All they do is show me the log book to show that the case is not yet resolved.” Cradling a small child in her lap, another widow added: “No financial compensation would be enough for me — not even ten million riel. My husband was a good man. I miss him every day. He

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<sup>140</sup> Human Rights Watch interview with Kompong Thom court staff, March 25, 1999, Kompong Thom provincial town; Prosecutor’s Order of Final Conclusion, No. 22, June 23, 1998.

<sup>141</sup> Human Rights Watch interview with Kompong Thom prosecutor, March 25, 1999.

<sup>142</sup> Human Rights Watch interview with Kompong Thom court staff, March 25, 1999, Kompong Thom provincial town.

<sup>143</sup> Human Rights Watch interview with Kompong Thom court staff, March 25, 1999, Kompong Thom provincial town.

<sup>144</sup> Human Rights Watch interview with Kompong Thom court staff, March 25, 1999, Kompong Thom provincial town.



never stole anything. The perpetrators should be punished for the crime they committed.”<sup>145</sup>

### **Kompong Speu: Execution of Teenage Boy by Official’s Bodyguards**

Before daybreak on the morning of February 23, 1998, three bodyguards for the Kompong Speu provincial governor fatally shot sixteen-year-old Soy Sophea, pumping more than a dozen AK-47 bullets into his body after he scaled the walls of the governor’s compound.

A person living near the governor’s house said that he was woken up about 3:00 a.m. to hear the sound of running in the governor’s compound, following by cries of “Thief, thief!” “I heard fighting in the governor’s compound, then [the sound of] beating and someone crying out ‘Oy! Oy! Don’t beat me, I steal only chickens.’ About half an hour later I heard many shots.”<sup>146</sup>

Several hours later the boy’s sister was told to go identify his body. “He had a bullet wound behind the ear, and there were marks of beating on his neck, like they used an iron bar,” she said. “There were black bruises on each arm from being tied up, and also on his face. His middle left finger was broken. There were many bullet wounds and lots of blood in the lower part of his body. From his waist to his knees there were many bullet wounds. Maybe they used a whole box of bullets from an AK-47 [machine gun].”<sup>147</sup>

An NGO worker familiar with the case said, “It’s Khmer tradition to kill a thief upon arrest. However, when they caught the boy they did not shoot him immediately. First he was tortured, and then shot.”<sup>148</sup>

Police reports did not mention any torture but stated that a group of thieves jumped into the governor’s compound “in order to steal the governor’s property” and that police on duty at the time “shot to death one thief.” The police report quoted one of the bodyguards as saying that at 4:35 a.m. he heard a goose honk and a dog bark, and saw a stranger climbing over the governor’s wall.

I asked, “Who are you?” but did not get an answer, and the thief ran away. So I fired a shot to intimidate him in order to arrest him. I shouted at the other bodyguards in order to surround the person to find out whether he had a gun or not. I saw his two other associates. We couldn’t know if they had guns or not so we decided to shoot at that person because we wanted to insure the safety of the governor.

The police report’s conclusion was that Soy Sophea, sixteen, “is a bad person, who along with a number of his associates, has done illegal things which affect public order such as stealing chickens, ducks, wood, pigs, and people’s belongings.”<sup>149</sup>

More than a year after the killing of Soy Sophea, no charges have been filed, nor has a lawyer been authorized to represent the boy’s family. The family filed a complaint with the court and contacted a legal aid organization for assistance. Meanwhile the three bodyguards are reportedly still at work in the provincial town. The prosecutor at the Kompong Speu Court explained the delay: “If the Ministry of Interior doesn’t allow us to file charges, then this case is stopped. We wrote a letter in August 1998 to the Ministry of Justice. If they don’t respond, we cannot proceed because of Article 51.”<sup>150</sup>

Under Article 51 of the Law on Common Statutes on Civil Servants, until the prosecutor receives authorization from the bodyguards’ supervising ministry, which in this case is the Ministry of Interior, charges cannot be filed nor can lawyers be assigned to the case. To date neither the Ministry of Justice nor the

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<sup>145</sup> Human Rights Watch interview with widows of the massacre, Kompong Thom province, March 26, 1999.

<sup>146</sup> Witness statement to NGO Workers, Kompong Speu, June 17, 1998.

<sup>147</sup> Human Rights Watch interview with Soy Sophea’s sister, Kompong Speu, March 12, 1999.

<sup>148</sup> Human Rights Watch interview with NGO worker, Phnom Penh, March 1999.

<sup>149</sup> Report from Chbar Mon District Inspection Police Station to Chief of Penal Office, Kompong Speu, February 23, 1999; Report from Kompong Speu Police Station No. 035/98, March 6, 1998; Report by Group of Bodyguards of Governor’s House to Kompong Speu Police Commissioner, undated.

<sup>150</sup> Human Rights Watch interview with prosecutor Ven Yoeun, Kompong Speu, March 12, 1999.

Ministry of Interior have responded to a letter sent by the Kompong Speu prosecutor on August 18, 1998 in regard to lifting the immunity provisions of Article 51.<sup>151</sup>

NGO workers familiar with the case say that local officials in Kompong Speu are reluctant to aggressively push the case. "The prosecutor doesn't dare," said one NGO worker. "The reason for the delay is because this case involves the governor. The court is afraid of the power of the governor."<sup>152</sup>

The Kompong Speu Court received the case on April 2, 1998 and as of March 1999 said they considered the file still open. The family of Soy Sophea contacted Legal Aid of Cambodia (LAC) in April 1998 to request legal assistance. In May 1998, LAC submitted a letter to the court asking for authorization to represent the victim's family. However, until the prosecutor files charges, no lawyer can be officially appointed to the case. "This is common, not to have a lawyer after one year," said Lean Chenda, LAC first vice director.<sup>153</sup> In October LAC met with the Kompong Speu prosecutor, who said the case was being held up by Article 51. In February 1999, LAC met with the newly-appointed minister of justice, to see whether progress had been made in the Article 51 request. According to LAC, at that time the minister of justice suggested that the Kompong Speu prosecutor submit a new letter because the initial complaint had been made under the former minister of justice.

A year after the murder of Soy Sophea, his sister told Human Rights Watch: "I have no hope. The case has gone completely quiet. No one has been helpful in pushing this case, because it involves powerful men. The small people don't dare do anything against them. When I go to the provincial office, local government workers encourage me to drop the case. An egg cannot break a stone, they say."

Asked whether she thought the perpetrators should be punished, she said: "It's up to the court to decide; it's up to the law. But in my heart, people who kill others should go to jail — so they can't commit crimes again."<sup>154</sup>

#### **Takeo: Massacre of Five Family Members by Commune Militiaman**

On the evening of October 1, 1997, a group of people gathered for a family party celebrating Pchum Ben, the Festival of the Ancestors, in the front yard of popular Funcinpec activist Sao Sim in Kirivong District, Takeo. At around 8:00 p.m., Leang Teng, a member of the commune militia, passed by the party and complained about the noise. Earlier he and some of his friends had been seen hiding in the bushes around the house, observing the gathering.<sup>155</sup> Sao Sim and his wife invited Leang Teng to join the party but he declined, cursing the group and saying, "You drinkers are dogs." Afraid that something would happen, Sao Sim's wife ran after him, apologizing for the noise and urging him to join the party. Leang Teng refused again and left.<sup>156</sup>

A few minutes later Leang Teng returned with an AK-47 and opened fire on the guests, systematically aiming and shooting five of them, one after the other. Sao Sim and two of his nephews were killed instantly. Another nephew named Ben Thy and Sao Sim's son were seriously injured.<sup>157</sup> Leang Teng continued to shoot into the house destroying plates, glasses, crockery and bottles, before leaving. Neighbors and relatives carried the two surviving victims into a nearby house. While they were caring for the victims, an accomplice of Leang Teng threw a grenade into that house, but it did not explode. The two injured people were then carried out of the

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<sup>151</sup> Letter from Kompong Speu prosecutor to the Co-Ministers of the Interior through the Ministry of Justice, August 18, 1998. The letter states: "By finding that this action is a criminal offense, which should be sentenced under Article 32 of the criminal code, and referring to Article 51 of the Law on Common Statutes on Civil Servants, we request authorization for the prosecutor to charged based on legal criminal procedures against those three men."

<sup>152</sup> Human Rights Watch interview with NGO worker, Phnom Penh, March 1999.

<sup>153</sup> Human Rights Watch interview with Lean Chenda, first vice director of Legal Aid of Cambodia, Phnom Penh, March 9, 1999.

<sup>154</sup> Human Rights Watch interview with Soy Sophea's sister, Kompong Speu, March 12, 1999.

<sup>155</sup> Human Rights Watch interview with witnesses to the killings, Kirivong District, Takeo; Takeo Province Police Report, Office of Criminal Justice, Penal Office No. 050/1, October 3, 1997.

<sup>156</sup> Police Report No. 029/03, Kirivong Police Station, Takeo, October 2, 1998.

<sup>157</sup> Human Rights Watch interview with witnesses to the shooting, Kirivong District, Takeo, April 8, 1999.

house in order to transport them by car to the hospital. Leang Teng threw a second grenade into the group, killing Sao Sim's injured son and injuring an additional five people.<sup>158</sup>

After the grenade explosion, one of the wounded, Ben Thy was still alive. He lay on the ground screaming for help. The family was too frightened to assist him, terrified that another grenade would be thrown. Ben Thy was left bleeding on the road, alone and unattended until he died about two hours later.

The commune authorities were immediately notified but did nothing to intervene.<sup>159</sup> One of Sao Sim's sons who survived the attack said that about half an hour after Ben Thy died the police arrived on the scene. "They looked at the dead bodies and left," he said. "The pigs rooted around the dead bodies and ate the intestines. We could only watch — we hid because we were afraid the shooting would continue. Their lives were not important; they died like animals."<sup>160</sup>

Although witnesses provided the names of the perpetrators to the commune authorities and the police, Leang Teng spent the two days after the massacre in his house in the village, where he reportedly displayed confidence that nothing would happen to him. No effort was made to arrest him during that time, despite the fact that his responsibility for the killings as well as his whereabouts were widely known.<sup>161</sup> Sao Sim's wife said, "The day after the killings, the police came to pay a visit. They just looked at the bodies. They were rude and didn't say anything. They asked questions of some people but not the victims. Then they took some photographs and left. We never saw the police again."<sup>162</sup>

After several days, Leang Teng left the village and went to stay with relatives in another district before reportedly moving to the base of Battalion 44 in Kompong Speu province for protection.<sup>163</sup> Takeo Deputy Police Commissioner Kim Sokhon said that by the time the provincial police arrived in the village, Leang Teng was gone. "The place is far from here [the provincial town], so he had the opportunity to escape," he said. "We heard that he went to hide at the military base of Battalion 44 in Kompong Speu, but when we got there he'd left already."<sup>164</sup> In April 1999, the provincial police alleged that Leang Teng was then stationed as a soldier in Anlong Veng in the northwest — too far away for them to investigate. However, other sources in Takeo reported that as of April 1999 Leang Teng was living under the protection of the military at a base in Takeo. These reports could not be confirmed.

The provincial prosecutor received the case on November 21, 1997 and forwarded it to the investigating judge on December 2. The next day the court issued a warrant for the arrest of Leang Teng and one of his accomplices on charges of intentional killing. Court officials said that the gendarmerie were unable — or unwilling — to carry out the arrest warrant so the court re-issued it the same day to the provincial police. "We don't believe or trust the gendarmerie and the commander of the provincial military," a Takeo court official said. "So we passed the arrest warrant to the provincial police commander."<sup>165</sup>

The motives for the killing — described by the U.N. as a premeditated massacre — are thought to have been political because all five victims were affiliated with the Funcinpec party, and Sao Sim was a popular

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<sup>158</sup> Memorandum to the Royal Government of Cambodia submitted by the Special Representative of the United Nations Secretary-General for Human Rights in Cambodia, May 13, 1998; Human Rights Watch interview with witnesses to the killings, Kirivong District, Takeo, April 1999.

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<sup>162</sup> Human Rights Watch interview with Sao Sim's wife, Kirivong District, Takeo, April 8, 1999.

<sup>163</sup> Human Rights Watch interviews with provincial police in Takeo Provincial town and villagers in Trayung village, April 1999; See Memorandum to the Royal Government of Cambodia submitted by the Special Representative of the United Nations Secretary-General for Human Rights in Cambodia, May 13, 1998.

<sup>164</sup> Human Rights Watch interview with provincial police, Takeo Provincial town, Takeo province, April 8, 1999.

<sup>165</sup> Human Rights Watch interview with provincial court staff, Takeo, April 8, 1999; Arrest Warrant No. 38.39/97, December 3, 1997.

Funcinpec activist in the commune who had worked for the party for years.<sup>166</sup> A year and a half later, Sao Sim's family expressed fears for their safety. "Since my father's death I don't dare to speak out. I have to be quiet; I have to wear a Cambodian Peoples' Party t-shirt," said his son.<sup>167</sup>

Takeo court officials say it would help the case if Sao Sim's family cooperated more with local officials. "The court and the police all agree that the family of the victim should come to the court," said the acting president of the Takeo court. "The investigating judge has invited them many times, but they don't come. I think it's because they don't trust the court, or maybe they are afraid. Mostly it seems they are afraid for their security. Even me, I'm afraid — for all cases if they are like this one. This case is very difficult."<sup>168</sup>

A year and a half after the massacre, no arrest has been carried out, despite the fact that the identity of at least two of the perpetrators is known. For Sao Sim's family, however, memories of the massacre are still fresh. "To say I feel sorry about what happened to us is meaningless," said Sao Sim's son in April 1999. "There's no word to describe how sad I feel. I think about this every day, all the time. I want justice, but we must keep quiet. We've lost five family members already. We must keep quiet so that the rest of my family stays alive."<sup>169</sup>

## V. CONCLUSION

Cambodia's culture of impunity starts with the fact that no Khmer Rouge leader has been called to account for crimes against humanity committed from 1975 to 1979, atrocities which are beyond the scope of this report.

Impunity in Cambodia is prevalent in all phases of the law enforcement and judicial processes. It has been called the single most important obstacle to efforts to establish the rule of law in Cambodia.<sup>170</sup> Governmental institutions such as the judiciary, military, and the police force face huge challenges caused by the devastation of the Khmer Rouge years and ensuing civil war, as well as the lack of resources and funds allocated to criminal justice. However, the lack of accountability of state agents for human rights violations and crimes cannot be solved solely by an infusion of material resources and funds for technical training.

A key problem is the lack of political will and determination by the government to prosecute known perpetrators of human rights violations and criminal offenses, cases that have been extensively documented by local and international human rights organizations and the United Nations. Investigations by the government's Human Rights Committee have resulted in few arrests or prosecutions in regard to more than 130 killings and "disappearances" reported to the committee by the Cambodia Office of the U.N. High Commissioner for Human Rights (COHCHR) since March 1997.<sup>171</sup>

In fact, the U.N. special representative for human rights in Cambodia stated in his February 1999 report to the United Nations Human Rights Commission that "powerful elements within the police and military" have blocked investigations into political killings and other abuses. The problem of impunity will not be resolved, he said, "until the political leadership clearly demonstrates that no one is protected."<sup>172</sup>

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<sup>166</sup> Human Rights Watch interview with deputy chief of the Judicial Police, Takeo provincial town, April 8, 1999; Memorandum to the Royal Government of Cambodia submitted by the Special Representative of the United Nations Secretary-General for Human Rights in Cambodia, May 13, 1998.

<sup>167</sup> Human Rights Watch interview with Sao Sim's son, Kirivong district, Takeo, April 8, 1999.

<sup>168</sup> Human Rights Watch interview with the acting president of the Takeo court, Takeo provincial town, April 8, 1999.

<sup>169</sup> Human Rights Watch interview with Sao Sim's son, Kirivong district, Takeo, April 8, 1999.

<sup>170</sup> "Situation of human rights in Cambodia: Report of the Special Representative of the Secretary-General for Human Rights in Cambodia," Commission on Human Rights, February 26, 1999.

<sup>171</sup> See "Situation of human rights in Cambodia: Report of the Special Representative of the Secretary-General for Human Rights in Cambodia," Commission on Human Rights, February 26, 1999.

<sup>172</sup> "Situation of human rights in Cambodia: Report of the Special Representative of the Secretary-General for Human Rights in Cambodia," Commission on Human Rights, February 26, 1999. See also Joe Cochrane, "Probes into killings 'blocked'" *South China Morning Post*, April 23, 1999.

Others point to the lack of long-range vision by political leaders, who they say are largely acting in the interest of short-term profit to themselves. “The leadership of this country does not have a long vision,” said one NGO leader. “People here are only trained to address the present and never put the past together with the future. The political culture is based on the fact that we have had five different regimes in twenty years. Each time we go back to the starting point, everything completely changes, and we have a new group of people in charge who don't continue the work of the previous team. Instead they operate based on their own sense of materialism and greed.”<sup>173</sup>

Citizens and members of civil society also bear part of the responsibility to demand an end to impunity, thereby holding public officials accountable. The Cambodian NGO leader commented: “It seems that Cambodia has a very short memory — it's rare that we talk about the [1997] grenade attack anymore, or the street demonstrations of 1998. Even a recent case in Phnom Penh where two girls were raped, beaten and killed by a perpetrator who had high-level connections — today, that case doesn't exist anymore; it's like it disappeared into thin air. It's only the international community who brings these incidents up. We should be the ones to remember these incidents every month, to recall that the government hasn't come up with any solutions, any investigations. The major donors should be aware that they are funding a country with such a long list [of violations]; a place where the government says they are ‘working on it.’”<sup>174</sup>

In order to ensure that all citizens are equal before the law and that everyone must be equally accountable should they commit crimes, it is crucial that governmental bodies maintain their neutrality. “The judiciary, army, civil administration, and police must all be independent from politics,” said Prum Sokha, secretary of state for the Ministry of Interior. “The politicians should not be able to direct or dictate the process. Everything must follow the regulations, the law. In Cambodia they often confuse policy with politics. A politician gives a speech stating his own opinion and the next day it's perceived as policy, a new law. The administration must be neutral and independent to insure that impunity is stopped.”<sup>175</sup>

Cambodia's criminal justice system clearly bears the scars of decades of warfare, the devastation of the Khmer Rouge regime, and economic isolation by the international community. However, impunity cannot be attributed to these factors alone. With the end of the civil war, now more than ever it is incumbent upon the government to provide more leadership, vision, and action in order to bring violators to justice. This will help end the cycle of impunity by clearly demonstrating to the public that offenders cannot expect to continue evading justice.

## **VI: APPENDIX A: Killings Allegedly Committed by State Agents Between January 1997-October 1998, Compiled by Adhoc and Licadho**

In an investigation of killings that occurred throughout Cambodia over a twenty-two-month period, Adhoc and Licadho found that 263 people were allegedly killed by members of the police, gendarmerie, military, militia, bodyguard units, or the civil service between January 1997 and October 1998. This is a conservative estimate, as the rights organizations only included cases that they had investigated and where details could be confirmed about the alleged perpetrators and the type of action taken by local authorities. The majority of these killings were not politically motivated but nonetheless constitute grave human rights abuses.<sup>176</sup>

To the knowledge of the human rights organizations, not one of the 209 suspected perpetrators has been

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<sup>173</sup> Human Rights Watch interview with NGO leader who requested anonymity, Phnom Penh, April 1999.

<sup>174</sup> Human Rights Watch interview with NGO leader who requested anonymity, Phnom Penh, April 1999.

<sup>175</sup> Human Rights Watch interview with Prum Sokha, secretary of state, Ministry of Interior, Phnom Penh, April 1999.

<sup>176</sup> While many types of human rights abuses are committed in Cambodia, executions were chosen as a research topic in order to limit the scope of the study in order to more carefully analyze trends and results of impunity. It should be noted that for Licadho, for example, executions represented only 23 percent of all complaints received and investigated in 1998, when other key violations included torture, assault, intimidation, illegal arrest and detention, rape, and human trafficking.

brought to justice. By far the greatest numbers of suspected offenders were soldiers, who constituted roughly half of the perpetrators. Another 22 percent were police officers, 14 percent were members of the militia, 3 percent were gendarmes, 3 percent were civil servants, and 6 percent were mixed groups (bodyguard units and militia, for example).

Of these cases, the greatest cause of impunity was that local authorities (court, police, or gendarmerie) did not take any evident action at all, which occurred in close to half of the killings (48 percent). In 24 percent of the cases, the authorities took some action — such as launching an investigation — but perpetrators nonetheless escaped arrest or were released from detention for lack of evidence or other reasons. Another 19 percent of the cases are still under investigation by the courts and police, despite half of those cases being more than one year old. In 6 percent of the cases, the alleged perpetrator paid financial compensation to the victim's family but never served any time in jail.

The provincial offices of Adhoc and Licadho received many more reports of killings during the twenty-two month period than detailed in this report. The final tally included only cases that had been investigated by the human rights organizations and where sufficient information was available about the suspected perpetrators and the type of action taken by local authorities. A small proportion of cases received by the rights organizations were solved and the alleged perpetrators sentenced; these cases were therefore not included. Cases that remain unsolved but where the suspected perpetrator's identity could not be confirmed were also excluded, such as the March 1997 grenade attack on a demonstration in Phnom Penh, which killed at least sixteen people. Nonetheless, the circumstances under which the killings took place were not completely clear for all of the cases. In some provinces the local staff of the human rights organizations encountered difficulties in obtaining information about cases from the authorities, who were not always forthcoming in providing information about what sort of action had been taken.

Despite the limitations of the research, the investigation gives an idea of the possible scope of unpunished killings allegedly committed by state agents, which averages at least twelve killings per month for the period under review. The human rights organizations would welcome the Royal Cambodian Government's collaboration with them in obtaining further details on all of the cases, in order to effectively push for action on these murders and justice for the victims.

(List of killings follows)

<b>Action by Authorities</b>	<b>Military 106, or 51%</b>	<b>Police 47, or 22%</b>	<b>Militia 30, or 14%</b>	<b>Gendarmes 7, or 3%</b>	<b>Civil Servants 7, or 3%</b>	<b>Mixed Groups 11, or 5%</b>	<b>Total Perpetrators</b>	<b>Percentage</b>
<b>I. Alleged perpetrator escaped or was released or never arrested, despite some action by authorities 24%</b>								
A. Arrest warrant issued but perpetrator escaped or not yet arrested.	11	4	10		2	1	28	
B. Trial in absentia, or trial and sentencing with perpetrator present, but perpetrator escaped	1	2	3		1		7	
X. Perpetrator escaped or was released or never arrested while police or court investigation was ongoing	6	2	2			1	11	
<b>II Cases still under investigation by court and police 19%</b>								
C. Case still under investigation by court.	11	5	4		1	4	25	
D. Case still under investigation by police.	7	2	2				11	
E. Case stalled by Article 51		3		1			4	
Y. Case still under investigation by gendarmerie.	1						1	
<b>III. No evident action by local authorities 48%</b>								
F. No evident action by court.	23		1	1	1	1	27	
G. No evident action by police.	10	2	1		1		14	
H. No evident action by court or police	28	22	3	5	1	4	63	
J. Sentence did not meet crime	2		1				3	
<b>IV. Miscellaneous</b>								
I. Settled by Financial Compensation	5	5	2			1	13	6%
Other	1		1				2	
<b>TOTAL</b>	<b>106</b>	<b>47</b>	<b>30</b>	<b>7</b>	<b>7</b>		<b>209</b>	