

KINGDOM OF CAMBODIA

Urgent need for Judicial Reform

“The Committee is concerned that the justice system remains weak due to the killing or expulsion of professionally trained lawyers during the conflict, the lack of training and resources for the new judiciary and their susceptibility to bribery and political pressure. The Committee is also concerned that the Supreme Council of the Magistracy is not independent of government influence, and that it has not yet been able to deal with the many allegations of judicial incompetence and unethical behaviour. The Committee is further concerned that the judiciary seeks the opinion of the Ministry of Justice in regard to the interpretation of laws and that the Ministry issues circulars which are binding on judges. The State party should take urgent measures to strengthen the judiciary and to guarantee its independence, and to ensure that all allegations of corruption or undue pressure on the judiciary are dealt with promptly.” (UN Document CCPR/C/79/Add.108 Human Rights Committee Concluding Observations on Cambodia, 27 July 1999, emphasis added).

The promotion and protection of human rights in Cambodia is severely hampered by the lamentable state of the judicial system. Poor facilities, low salaries, executive interference, lack of education and training, and weak and poorly enforced legislation combine to produce a judicial system in which people have no confidence, and which daily fails in its duties and responsibilities. In February 2002, the United Nations (UN) told the Cambodian government it would no longer negotiate on establishing a special court to try Khmer Rouge leaders for genocide and crimes against humanity for the period 1975 to 1979. The UN gave as its main reason that the Cambodian court would not guarantee the independence, impartiality and objectivity required by the UN. The shortcomings of the judicial system have an impact not only on the ability to deliver justice today. They also prevent the delivery of justice for the crimes of the past, and in effect prevent the court from acting as a credible deterrent against the commission of crimes in the future.

Amnesty International welcomes the fact that the Royal Government of Cambodia and the donor countries are in agreement over the need for judicial reform. The organization notes that many initiatives have been taken in this area in the recent past, but that the overall result of such initiatives has not been a concrete improvement in performance. In addition to the concrete needs of funding, training and evaluation, greater coherence and coordination is required if judicial reform is to deliver a strong, independent judicial system, capable of upholding the basic rights and protecting the vulnerable.

Background

Cambodia's troubled history has contributed to the many weaknesses of the current judicial system. Under the period of French colonial rule, a civil law system was established, in line with French judicial traditions. However, the majority of Cambodians would have had no contact with the courts. Following independence from France in 1953, the court system as established by the French was maintained, although its effectiveness in upholding basic rights was limited. In 1970, then Prince Sihanouk's government was overthrown in a coup, and civil war followed for the next five years, ending with the takeover of the country in 1975 by the Government of Democratic Kampuchea (Khmer Rouge). During the period of Khmer Rouge rule, the court system was completely abandoned. The vast majority of judges and lawyers who remained in Cambodia during that time died or were killed. Of those who survived, most fled when the Vietnamese army invaded Cambodia on 25 December 1978. When the Democratic Kampuchea regime fell on 7 January 1979, there were only 10 qualified lawyers left in the country. The People's Republic of Kampuchea which was established after the fall of Democratic Kampuchea faced the enormous task of reconstructing the country, while fighting a war with the Khmer Rouge, and the non-communist resistance forces established along the border with Thailand. Steps towards creating a new judicial system took several years. The system that was eventually established was modelled on that of Viet Nam, which itself was informed by the Soviet Union's judicial system. This system promoted a very high conviction rate, and basic rights such as legal representation were not respected. Political imprisonment, torture and ill-treatment were widespread, and the use of confessions as sufficient evidence for conviction was common practice. The level of education and training of the judiciary was very low.

Following the 1991 Paris Peace Accords, and the establishment of the United Nations Transitional Authority in Cambodia (UNTAC), the UN put forward Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (commonly known as the UNTAC Penal Code), which was adopted by the Supreme National Council, the body in which sovereignty rested during the UNTAC period, on 10 September 1992. The UNTAC Penal Code was hastily drafted, and contains a number of provisions which do not meet international human rights standards. During the UNTAC period, Cambodia acceded to most of the major international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.¹

¹In 2002, Cambodia also ratified the Rome Statute of the International Criminal Court.

After the May 1993 elections, and the adoption of the new Constitution in September 1993, UNTAC's work was finished, and Cambodia assumed full responsibility for its own governance once more. The new Constitution states that "The Kingdom of Cambodia shall recognise and respect human rights as defined in the United Nations Charter, the Universal Declaration of Human Rights and all treaties and conventions concerning human rights, women's rights and children's rights." It also states that "the judiciary shall be an independent power." However, statements of intent do not guarantee implementation, and the reality has been that respect for human rights in Cambodia is not guaranteed, and the judiciary is weak, corrupt and subject to political interference. The legislative framework, regulations and machinery for the enforcement of the rights guaranteed in the 1993 Constitution are still not in place, almost ten years later. The UNTAC Penal Code remains in force, and the many initiatives of the last decade, from a variety of donors have not been able to ensure that the judicial system operates to uphold and protect the rights of the people of Cambodia. In 2002, as in previous years, an individual charged with a criminal offence in Cambodia is likely to find themselves in court, without the services of a lawyer, and unable to assert their fundamental rights to a fair trial.²

What is the problem?

There is a huge gap between the requirements of Cambodia's human rights obligations and their implementation in practice.

During a recent mission to Cambodia, a delegate of Amnesty International attended the Phnom Penh criminal court to observe trials. These were ordinary criminal trials: the cases and defendants were not previously known to Amnesty International, and the delegate arrived in court without knowing what cases would be heard. It was quickly apparent that the weaknesses Amnesty International has observed in the judicial system over many years remain. Judges and prosecutors appear unwilling or unable to uphold Cambodian law, and adhere to international standards for fairness.

EXAMPLE ONE: 22 March 2002 - Phnom Penh Municipal Court.

One case observed on the morning of 22 March 2002 concerned an allegation of a multiple rape. There were three defendants tried, although the victim stated that she had been raped by nine men.

²Amnesty International has published many documents on the human rights situation in Cambodia, which are available online at www.amnesty.org

The judge explained to the defendants that they had the right to representation, and all three were represented.

*However, all three had made allegations during questioning that one of the others had committed the rape, therefore there was a clear conflict of interest between them. Despite this, the trial went ahead with one lawyer representing all three.

Under the UNTAC Penal Code, defendants are entitled to legal representation at the police station and when being questioned by the investigating judge.

*However, their lawyer had been appointed and met them for the first time that day at court. Therefore their rights to legal representation at all stages of the proceedings and to prepare their case, as guaranteed by Article 14 of the ICCPR, as well as in other instruments had been denied.

All three implicated other men by name, men who were known to them.

*However, the accused men's lawyer said that the police could not find the named men, and therefore these men had not been arrested.

All three made admissions of various degrees of involvement in the rape to the police; some of these admissions were withdrawn when making subsequent statements to the investigating magistrate, and the accused claimed that they had been beaten up in the police station and threatened with guns. They affirmed their withdrawal of the admissions, and their allegations of ill-treatment at trial.

*However, the prosecutor and the judge ignored the risk that statements had been secured through the use of torture and ill-treatment, and very lightly dismissed the allegations. The judge said the fact that they had changed their story from what they told the police showed that they were lying. The prosecutor even remarked that as there were no signs of torture on the defendants, they must be lying - even though the initial questioning took place some six months earlier.

*Article 15 of the UN Convention against Torture (to which Cambodia is a state party) requires that statements which have been obtained through use of torture should not be used in evidence in any case, except in the prosecution of the alleged torturer. The UN Special Rapporteur on torture has stated that the burden of proof should be on the authorities to prove that they have not used torture or ill-treatment, rather than the other way around.

* The Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted to the UN High Commissioner for Human Rights, 9 August 1999, known as "the Istanbul Protocol") requires investigations into allegations of torture to be undertaken.

One defendant was 16 years old (in fact he is likely to be 15, as Cambodian custom is to say that a newborn baby is "one year old" and to count years on this basis).

*As such he was entitled to particular rights of representation to take special care to protect his interests (Article 40(2) of the Convention on the Rights of the Child, to which Cambodia is a state party) and also, not to be held in custody except as a measure of last resort and for the shortest appropriate period of time (Article 37(b) of the Convention on the Rights of the Child). However, this child defendant had remained on remand in custody for seven months, violating not only international standards, but also Cambodian law. Article 14 (4) of the UNTAC Penal Code states: “minors 13 to 18 years of age may not be placed in pre-trial detention for more than one month. The length of such detention may be doubled if the minor is charged with a crime.”

Another defendant stated that he was illiterate and had mental health problems.

The victim of the rape did not identify the three defendants in any way: her statement did not contain any identifying details of the rapists. She simply noted in her statement that police arrested three men at the scene of the rape. The prosecutor claimed that this constituted sufficient corroborative evidence to identify the three defendants as among the perpetrators of the rape. The victim did not appear in court to give evidence, therefore she was not able to say whether the three accused were indeed among the men who raped her: nor could their legal representative cross-examine her on any such statement, in violation of the right to call and examine witnesses under Article 14(3) of the ICCPR. In addition, Article 24 (1) of the UNTAC Penal Code states: “Witnesses mentioned in the police file, including police officers, must be heard in court. Witnesses may be examined by the intervening party, the accused or their respective counsel, or by the prosecutor.” Further, Article 24 (4) states: “The defence may call its own witnesses and present its own evidence to the court.”

All three defendants were convicted of rape, attempted rape, and being an accomplice to rape, and were sentenced to eight, six and two years in prison respectively. They were informed of their right to appeal.

This trial, for a serious crime and with multiple defendants, had lasted only two hours.

Amnesty International's experience of trials in Cambodia in the last ten years has been that trials do not meet international standards for fairness, and that in a number of cases, the breaches of due process represented a very serious threat to justice, and compromised the legitimacy of the court. Interference by the Executive branch of government has further undermined the system. Amnesty International's primary concern is that long-term investment of training and resources in Cambodia regarding fair trial standards and proper enforcement of criminal law to address impunity has yet to yield concrete improvements.

EXAMPLE TWO - Executive interference in the judicial process

On 3 December 1999, Cambodia's Prime Minister Hun Sen issued an order to rearrest "all suspect armed robbers, kidnapper and drug-trafficking criminals". Within hours of the Prime Minister's order, Phnom Penh police began rearresting people who had previously been released on the direction of the Phnom Penh Municipal Court - either on bail, or following trial. The Prime Minister's directive followed a 29 November 1999 letter from Phnom Penh Governor Chea Sophara, complaining of corruption at the court. Attached to his letter (which was available to the media), was a list of 66 names of people he called "criminals" who had been released on the order of Municipal Court judges during the first two and a half weeks of November 1999. Within hours of publication of the list of names, Phnom Penh police began rearresting the individuals and detaining them at various police stations around the capital. An Amnesty International delegation visiting Cambodia at the time investigated a number of cases and found that nine were minors, and ten had been held in pre-trial detention for more than six months, in violation of the Penal Code.

More than 70 people were rearrested between December 1999 to February 2000, the majority of them in Phnom Penh, with smaller numbers in Kampot, Svay Rieng and Banteay Meanchey provinces.

Based on Amnesty International's research at the time, and further information made available to the organization, most of those rearrested were kept in police detention for over a week, in violation of the UNTAC Penal Code, which states that anyone arrested should be brought before a court within 48 hours. Police who spoke to Amnesty International in December 1999 admitted that they did not know what to do with the people they had been ordered to rearrest, and in some cases, court officials initially refused to accept the cases, on the grounds that the arrests were illegal. Eventually, all of those rearrested did appear in court, where detention warrants were issued, which did not state any charges, but rather that the detention followed "order 167 of the Prime Minister".

On 7 December 1999, then Minister of Justice Uk Vithun suspended from duty the President of the Phnom Penh Municipal Court and its Chief Prosecutor, because of the allegations made against them of corruption. Under the Constitution, only the Supreme Council of Magistracy has the power to act in disciplinary proceedings against judges and prosecutors, although the Minister of Justice is a member of the Supreme Council of Magistracy, which in itself raises serious questions about the independence of this body from the government. Article 12 of the 1994 Law on the Organization and Functioning of the Supreme Council of Magistracy excludes the Minister of Justice from meetings of the Disciplinary Council, which should be convened to consider cases of disciplinary actions against judges and prosecutors. The suspension of court officials by the Minister of Justice contravened Cambodian law, because the Minister is not authorised to act in such matters.

By the end of November 2000, 37 people who had been rearrested following the Prime Minister's order remained in custody, in Phnom Penh without new charges or trials, in clear violation of the UNTAC Penal Code and Article 9 of the ICCPR. The UN Special Representative of the Secretary General for Human Rights in Cambodia played an active role in attempting to secure the release of these people held in illegal detention. By mid-January 2001, 24 of the 37 had been released, while the Ministry of Justice recommended the continuing detention of the remaining 13. Lawyers acting for several of these people filed a complaint at the Phnom Penh Municipal Court against the Prime Minister's Order, on the grounds it was unconstitutional. The complaint was forwarded to the Supreme Court, in accordance with proper procedure as detailed in the Law on the Organization of the Constitutional Council. By mid-June 2001, the complaint remained at the Supreme Court, which appeared reluctant to hear it, although according to law, it should forward the complaint to the Constitutional Council within 15 days, unless it considers it to be without merit.

In the meantime, the 13 people who remained in detention in June 2001 following the December 1999 rearrest order have been charged with new criminal offences, or - in the case of those who had been released on bail - had their bail amended to pre-trial detention. Their continued detention is illegal. One judge and one prosecutor from Phnom Penh Court who were initially suspended by the Minister of Justice were transferred to other posts.

The Prime Minister's rearrest order effectively labelled everyone arrested by the police as a criminal, and the only role for the courts was to decide for how long they should go to prison, not whether there was any evidence against them. By labelling everyone arrested a criminal, the right to be presumed innocent, recognised in Article 14(2) of the ICCPR is denied to suspects, and the court is unable to exercise independence if its decisions can be overturned at any time by the executive branch of government.

What needs to be done?

Amnesty International welcomes the recent assessment from the World Bank, identifying the manifold problems in the judicial system of the Kingdom of Cambodia, and promoting various remedial measures to address the situation.³ The World Bank appointed consultants to assess possible activities that could be considered for a proposed legal and judicial reform project. The consultants met representatives of the Royal Cambodian Government, the Cambodian Bar Association, the local donor community and the non-government sector. Amnesty International has noted attempts by various donors over the years to address the many failing aspects of the

³ World Bank *Legal and Judicial Reform Mission - November 2001, Aide-memoire*, February 2002, a copy of which was made available to Amnesty International in March 2002.

Cambodian legal system, particularly regarding the promotion of and adherence to human rights standards. The organization's primary assessment of attempts to address legal and judicial reform is that much time, effort and resources have been poured in, particularly from various donors, and the Office of the UN High Commissioner for Human Rights. However, progress in terms of practical improvement for ordinary Cambodians has been very slow, particularly for those seeking redress for violations of human rights, or those who come into contact with the criminal justice system. These problems have been noted by various donor agencies in reports dating back several years. Despite trenchant analysis of these issues time and again, the same problems persist.

Amnesty International's key recommendations on issues pertaining to its expertise are listed below.

1. Gaps in legislation: primarily criminal code, and criminal procedure code.

In 1992, Cambodia acceded to the key international human rights treaties: the ICCPR; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The task of drafting the criminal code and the criminal procedure code must be undertaken with the aim of incorporating Cambodia's human rights obligations, as detailed in these and other international human rights instruments, into these two important domestic legal instruments.

Amnesty International therefore recommends that appropriate experts, including Cambodian representatives of local non-governmental organizations and lawyers' groups, participate fully in the drafting processes and maintain an overview of the entire project.⁴

2. Removal of the crime of defamation from Cambodian domestic law (Article 63 of the UNTAC Penal Code)

Human rights instruments acknowledge the importance of individuals protecting themselves from unfair or untrue comment or criticism, but normally specify that civil remedies such as apology, retraction and reasonable compensation should be used to secure redress, rather than criminal penalties. Criminal defamation laws are frequently used against those who peacefully oppose governments, including journalists and human rights defenders. This also occurs in Cambodia. Recently a staff member from the non-governmental organization Global Witness received a

⁴ Basic useful guidance on key human rights law and standards governing the administration of justice can be found in Amnesty International's *Fair Trials Manual* (AI Index: POL 30/02/98).

court summons to answer defamation charges with regard to an unpublished report submitted confidentially to the government by the organization in its capacity as independent forestry watchdog.

With defamation remaining on the statute books, the work of human rights defenders in holding the government to account for shortcomings in its implementation of human rights will be inhibited, through fear of criminal sanction.

3. A new criminal procedure code

a) implement a clear and effective system of assessing complaints that confessions or other statements have been obtained by use of torture or cruel, inhuman or degrading treatment which is in accordance with international standards such as the Istanbul Protocol and the recommendations of the Special Rapporteur on torture.

Practical safeguards to prevent torture and ill-treatment should start with safeguards within the police station, such as on-call rotas for human rights defenders, independent lawyers and doctors to attend detainees as soon as they are detained, monitor and record their detention and any complaints. Special protections, such as the presence of a responsible adult such as a parent or social worker as well as a legal adviser, should be available for children and those with mental health problems or disabilities. Ensuring medical examination by independent doctors, particularly proper recording of injuries sustained during custody is of particular importance.

Detainees should also be brought before a judge promptly;⁵ interpretation of international standards suggests that 48 hours would be the maximum acceptable time before bringing a detainee before a judge.⁶ Recent changes to Cambodian law extend the period of time the police can hold detainees before bringing them before a judge from 48 to 72 hours. Judges should take steps to ensure that detainees have not been tortured or ill-treated, and should institute criminal investigations where torture or ill-treatment appears to have taken place. Judges particularly should be open minded about allegations made by accused persons that they have been tortured or ill-treated, rather than automatically believing the prosecution's bare assertions that torture has not taken place.

Administrative sanctions and criminal sanctions for police officers who fail to implement these safeguards should also be included in the criminal procedure code. Evidence obtained without the safeguards being in place should not be accepted as valid evidence at trial.

⁵Principle 11(1) Body of Principles for the protection of all persons under any form of detention.

⁶United Nations Document A/45/40 1990, para 333.

A pre-trial procedure for assessing claims that evidence has been secured through the use of torture or ill-treatment should be implemented, so that evidence which has been obtained illegally does not come before the court which makes a final determination of guilt or innocence. The burden of proof should be on the prosecution to prove that the evidence was not obtained through torture.

b) pre-trial detention should not be the norm

International law⁷ requires that accused persons should be released on bail unless there is a risk that they might fail to reappear at court when required, may intimidate witnesses or otherwise interfere with the evidence. This is reflected in the UNTAC Penal Code, Article 14 (1), which states: “Only the judge, if so petitioned by the prosecutor, may decide to keep an accused in prison, and only if there is a risk of escape or non-appearance manifested by the absence of such factors as a job, a family, a home, or if there is reason to believe that the accused will influence witnesses or the conduct of the investigation.” This is unlikely to be pertinent in the majority of cases, and yet bail is rarely granted. Pre-trial detention has become normal practice.

If detention is required, then it should only last a short period of time - international law⁸ requires that accused persons be brought to trial as soon as possible. Currently there is a limit on pre-trial detention under the UNTAC Penal Code (Article 14[4]) of four months, which may be extended by a judge to six months. According to reports received by Amnesty International, this limit is normally respected in the provincial areas, although there are individual cases where the time limit is exceeded, sometimes by many months. However, excessive pre-trial detention is a serious problem in Phnom Penh.

Prison conditions are extremely poor: overcrowding, lack of medical treatment, and occasional shackling of prisoners continues to be reported. The budget for maintaining prisoners has not increased since the early 1990s and is inadequate.

c) appeals against conviction or sentence

Appeals against conviction or sentence should be heard promptly, and where the appeal is delayed past the expiry of the initial sentence, then the convicted person should be allowed to leave custody. Amnesty International has been very concerned at reports that convicted persons are kept in custody pending appeal even if their sentence has already expired.

⁷Article 9 (3) ICCPR.

⁸Articles 9 and 14 ICCPR.

d) appropriate criminal justice system for children

Cambodia currently does not have a separate system of justice for children under 18, as required by the Convention on the Rights of the Child. There is no minimum age of criminal responsibility set in Cambodian law, nor a separate system to assess criminal charges against children which would put their best interests as the primary consideration, as required by Article 3(1) of the Convention on the Rights of the Child. Amnesty International recommends that the assistance of appropriate expertise in human rights of children and criminal law is secured to assist in preparing this much needed legislation.

4. Tri-lingual lexicon, publication of laws, official gazette

Amnesty International supports the provision of these basic legal tools, and would encourage that they should include relevant international human rights law. Each judgment interpreting human rights provisions of treaties, the penal code, the criminal procedure code and the law relating to asylum should be included in the official gazette, ideally with a commentary to draw links with and comparisons to Cambodia's international human rights obligations. Although Cambodia has ratified a number of human rights instruments, and the Cambodian Constitution also contains important safeguards, these obligations are rarely honoured. Publication of judgments illustrating the implementation of human rights standards in judicial practice is necessary to assist judges to apply the law appropriately.

5. Training of judges and lawyers, pilot courts as exemplars of good practice

While extensive training to those working in the criminal justice system has taken place over the last ten years, the lack of progress in improving the implementation of human rights and fair trial law and standards is extremely worrying. One possible explanation for this lack of improvement may be the style of training. Training which is too abstract, relying on for example, rote learning of legal principles, may be ineffective. Training must be practical, and incorporate new learning into examples of situations which the learners will find themselves addressing. It is also noteworthy that training has been offered by lawyers from different legal traditions, which has further added to the confusion for some judges and legal officials, particularly those who have not enjoyed a high level of education. Basic practical training in investigation and preparation of cases, case management and fact-finding through the court process is all vital, for police, prosecutors, defence lawyers, court support staff and judges. In the cases observed by the Amnesty International delegate in March 2002, the lack of forensic investigation skills and basic organization of questioning during trial was very striking.

Training should focus on issues around impunity; fair trials; and appropriate treatment for vulnerable accused persons and victims of crimes. The need for qualified judges and

prosecutors to assume responsibilities currently carried out by those without qualifications who were appointed in early eras, is critical.⁹

6. Terms and conditions of lawyers and the judiciary

The average salary for judges being US\$ 20 per month - far lower than a living wage or the salaries of public officials of similar seniority, such as parliamentarians - is an open invitation to corruption. Amnesty International's experience is that the absence of professional and truly independent judges has a catastrophic effect on cases with a human rights dimension; as well as encouraging corruption, it also encourages human rights violators with money or other forms of influence to consider that they can act with impunity. As well as the bald financial incentive of bribery, paying judges so poorly gives them a lower standing in their society, where it is easier to intimidate or influence them, and it is harder for judges to fulfil their duties fearlessly.

Amnesty International has recorded many instances where judges have not been able to make their decisions without fear or favour, including alleged attempts at bribery, and open intimidation in the court by members of the armed forces.¹⁰

Similarly, the lack of a well-funded public legal aid system makes it very difficult to ensure that accused persons - particularly those in isolated areas of the country - have access to lawyers at all stages of the criminal justice process, as required by international law and standards. The temptation is for lawyers to take on too many cases, in order to maximise income, to the detriment of their clients' interest. Coupled with the lack of trained practising lawyers, the failure to pay lawyers appropriately for their work as advocates for accused persons or victims of human rights violations means that the interests of justice are not served.

Ensuring proper payment of judges and lawyers and taking steps to recruit more lawyers - including allowing law graduates who already have appropriate and relevant work experience to be accepted at the Cambodian Bar.

Amnesty International's over-arching recommendation: Accountability for results should be built into this process from the start.

Amnesty International is extremely concerned that previous initiatives to improve the judicial and legal system of Cambodia have consistently failed to yield practical results. Donors, including the World Bank, have an important role to play in ensuring that the government of Cambodia

⁹ See "A 12-point Guide for Good Practice in the Training and Education for Human Rights of Government Officials" (AI Index ACT 30/1/98).

¹⁰ See for example Amnesty International *Kingdom of Cambodia: Human rights and the new government* (AI Index: ASA 23/02/95, 14 March 1995), pp19-20.

implements change. Improvements have been noted in individual high profile cases, perhaps most notably in the trial of two human rights defenders and a number of others in Sihanoukville in July 1999, where a particular process has been scrutinised and the case publicised. It appears that transparency and making individual judges accountable publicly for their conduct of a case has an improving effect.

Amnesty International would suggest that similar results could be achieved by instituting a court observer program in one or more courts. This would involve consistent monitoring of all cases and reporting of judgments, with an analysis of how the judgments implement human rights principles, over a long-term period. This task could be undertaken by local non-governmental organizations.

Specific recommendations to donors

Amnesty International's main recommendation to donors is that they address the issue of judicial reform as a matter of urgency and that they ensure all their assistance is planned to ensure the delivery of international human rights and legal standards to the Cambodian people.

In addition, donors should:

1. take into account the shortcomings focussed on in this report in prioritising assistance to strengthen the Cambodian judicial system;
2. develop and implement all assistance programs in close cooperation with local NGOs and other members of civil society;
3. when providing financial and technical resources in the area of judicial reform, benchmarks should be built in to ensure accountability and monitoring of progress in implementation of change by the Cambodian authorities;
4. ensure that training and technical support programs are coordinated, to avoid any duplication of efforts or application of different standards and procedures;
5. provide resources and support for local non-governmental organizations, to allow for the establishment of a court observer program with an initial period of at least nine months, followed by a thorough evaluation.