

AMNESTY INTERNATIONAL

Public Statement

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Cambodia: Special Khmer Rouge tribunals in Cambodia -- Justice is not served by diluting international standards

The United Nations General Assembly will soon decide whether to adopt the resolution on Khmer Rouge trials recommended for adoption by the UN's Third Committee on 20 November. Amnesty International believes that the current text does not provide a realistic basis to establish a viable and credible judicial process to end impunity for the worst international crimes, committed during the Khmer Rouge period between 1975 - 1979. The heavily compromised text calls on the UN Secretary-General to resume negotiations with the Cambodian authorities on the basis of a law that falls far short of international standards.

Amnesty International wants to see an end to the longstanding impunity for these massive and grave violations of human rights and calls on the General Assembly, when considering the adoption of the resolution, to provide the UN Secretary-General with no less than a new and strong mandate to establish a credible judicial process that must meet all necessary international standards.

Any judicial procedure that involves the UN should not fall short of the international standards provided in the Rome Statute for the International Criminal Court, to which Cambodia is a state party.

International fair trial standards must not be for negotiation. If the Cambodian people lack confidence in the ability and will of the United Nations to assert its authority to hold trial proceedings which are independent, impartial and fair, according to international standards, they will not cooperate with the trials.

Cambodian non-governmental organizations and the Cambodian Bar Association have frequently called for a truly international process, precisely because they believe anything less will not bring truth or justice. The latest press release from the Cambodia Human Rights Action Committee, a coalition of 18 local NGOs, was issued on 9 December 2002.

The position of Amnesty International is clear. Justice is not served by diluting international standards to suit the occasion or a government in power. Such dilution by a UN sanctioned judicial mechanism could have untold adverse consequences for the ongoing fight against impunity in Cambodia and elsewhere in the world.

The Cambodian people, who have suffered so much without access to justice or redress, deserve nothing less than the highest standards of justice.

Amnesty International supports the statement of the UN Secretary-General that he plans to conduct negotiations in a manner that will ensure that prosecutions and trials before any special chambers comply with established international standards regarding the independence and impartiality of the judiciary, the effectiveness, impartiality and fairness of prosecutors and the integrity and credibility of the legal process.

In particular, Amnesty International urges the General Assembly to specify that any judicial mechanism must provide for:

an independent and impartial prosecutor to determine whether to seek an indictment solely on the basis of his or her own professional judgement. This is especially pertinent given that the Cambodian government has already publicly stated its opposition to at least one key Khmer Rouge official standing trial (Cambodian newspaper Reaksmei Kampuchea quoting Hun Sen 17 December 1999) and is clearly keen to see the number of those indicted restricted to a handful of suspects who have been opponents of the present government. It is essential that there is no perceived or actual political interference in the selection procedure or the manner in which the prosecutor exercises power;

an independent and impartial court applying all international fair trial standards - the current draft resolution limits the international standards of justice, fairness and due process of law to those 'set out in articles 14 and 15 of the International Covenant on Civil and Political Rights. The Cambodian judicial system is currently unable to ensure trials that would conform to international standards of fairness as it is weak and subject to political pressure especially in high profile cases. Cambodian citizens are well aware of the inadequacies and the political interference in the judicial system where corruption is also commonplace. Previous "super-majority" proposals for the participation of Cambodian and foreign judges, and the compromise solution - whereby the judging panel should comprise three Cambodian and two international judges but requiring agreement from four judges for a verdict in the event of possible conflicting prosecutor opinions over indictments - fail to guarantee the necessary independence and impartiality and have, moreover, no precedent in any domestic or international court. In fact, they could seriously compromise the integrity of the judicial process;

effective witness protection, either as part of the initial legislation or clearly spelled out in any accompanying rules and procedures. Witnesses will not come forward to testify without the necessary assurances for their safety from international, rather than domestic authorities;

any judicial mechanism established under UN auspices to be so conceived that it will substantially contribute to the longer-term strengthening of Cambodia's national capacity to try perpetrators of human rights abuses in its courts. This is of particular importance in Cambodia where the special judicial machinery to be created may only be used for the trials of a handful of people.

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