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KINGDOM OF CAMBODIA

Open letter to the Royal Government on the jurisdiction of the Military Court

Dear Ministers,

I am writing to you as Secretary General of Amnesty International to express my concern about the current detention in the Military Prosecution Detention Facility of two men, Mong Davuth and Kong Bun Hean. They were both arrested recently for alleged involvement in a rocket attack in Siem Reap province in September 1998. The case is proceeding through Cambodia's Military Court, which, irrespective of the serious nature of the charges, does not have jurisdiction to judge such cases.

Article 11 of Cambodia's criminal code¹ states clearly that:

“Military tribunals have jurisdiction only over military offences. Military offences are those involving military personnel, whether enlisted or conscripted, and which concern discipline within the armed forces or harm to military property. All ordinary offences committed by military personnel shall be tried in civilian courts.”

Amnesty International is concerned that, following the arrests earlier this year of senior Khmer Rouge member Chhit Choeun (more commonly known as Ta Mok), and former Khmer Rouge prison chief Kang Kek Ieu (also known as Duch), a precedent has been set whereby political priorities rather than Cambodian law are influencing the choice of court to which particular cases are assigned. The cases against Ta Mok and Duch are being pursued by the Military Court, even though this is not the competent tribunal to hear these cases.

Mong Davuth and Kong Bun Hean are reportedly charged with plotting to kill Prime Minister Hun Sen in September 1998. This is a very serious charge, and one that will be of concern to many people, both within and outside political circles in Cambodia, but it is not a case that falls within the competence of the Military Court. Amnesty International is further concerned that access for human rights monitors, medical personnel and family members to individuals detained in the Military Prosecution Detention Facility has been denied in recent months, in contravention of international human rights standards.

¹ Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, dating from 11 September 1992.

In April 1999, an Amnesty International document² drew attention to the potential human rights problems associated with military and special courts, as noted by the United Nations Human Rights Committee:

“The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with the normal standards of justice ... In some countries, such military and special courts do not afford the strict guarantees of the proper administration of justice ... which are essential for the effective protection of human rights.”³

In several of its reports, the Human Rights Committee has noted that the trial of civilians by military courts is incompatible with States’ obligations under international law.⁴ Paragraph Five of the UN Basic Principles on the Independence of the Judiciary also states clearly:

“Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures.”

Cambodia is a state party to the International Covenant on Civil and Political Rights (ICCPR). It is obliged to ensure that the rights guaranteed by the Covenant are protected and upheld. Article 14 of the ICCPR guarantees equality before the courts and the right to a fair trial in a competent, independent and impartial tribunal established by law. Cambodia’s Military Court does not meet those standards. Judges of the Military Court retain military ranks and remain accountable only to the Ministry of Defence -- the court is therefore not independent from the executive branch of government. Recent cases heard by the Military Court only serve to underline this lack of independence.

Violent crime is a serious problem in many parts of the world, and governments have an obligation to their citizens to ensure that those who engage in such activities are brought to justice. However, justice requires independent, competent and impartial courts. The decision to detain individuals at the Phnom Penh Military Prosecution Department who, under Cambodian and international law, should not be held there, and the pursuance of their cases by the Military Court is a breach of Cambodian law and international standards for fair trial. Amnesty International also draws the Royal Cambodian Government’s attention to the fact that detention of individuals by a court or tribunal which is not competent to pursue the case amounts to arbitrary detention under international law.

² Amnesty International Kingdom of Cambodia: No solution to impunity - the case of Ta Mok (AI Index: ASA 23/05/99), 22 April 1999.

³UN Human Rights Committee General comment 13. Equality before the courts and the rights to a fair and public hearing by an independent court established by law (Article 14), 13 April 1984.

⁴See UN documents *Human Rights Committee: Concluding Observations* - Egypt CCPR/C/79/Add.23 para 9, *Concluding Observations* - Lebanon, CCPR/C/79/Add.78, para 14 and *Concluding Observations* - Peru, CCPR/C/79/Add.67 para 12.

Amnesty International urges the Royal Cambodian Government to take immediate steps to halt the misuse of the Military Court and the Military Prosecution Detention Facility, and to ensure that cases are heard in the competent civilian courts, upholding international standards for fair trial. In any interim period, Amnesty International recommends access to detainees in the Military Prosecution Detention Facility is provided to lawyers, medical personnel, family members and independent human rights monitors.

Yours sincerely,

Pierre Sané
Secretary General