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Cambodia: Amnesty International calls on states to nominate their highest qualified judges and prosecutors to the Extraordinary Chambers of Cambodia

With less than one month until the closing of the nomination process for the election of judges and prosecutors to the new Extraordinary Chambers for the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (Extraordinary Chambers), Amnesty International is calling on all states to nominate their most highly qualified candidates to the Extraordinary Chambers.

Amnesty International has campaigned for justice for the victims of the Khmer Rouge since 1978. Although the organization has welcomed the establishment of the Extraordinary Chambers as a major step towards bringing a few of those bearing the greatest responsibility to justice, it has expressed serious concerns about some elements of the Agreement establishing the Extraordinary Chambers.

In particular, given serious weaknesses in the national judicial system, Amnesty International was dismayed by a decision to appoint a majority of Cambodian judges to serve on the Extraordinary Chambers. Eleven of the 19 judges and one of the two co-prosecutors will be Cambodian.

Having observed and commented on the national judicial system for many years, Amnesty International considers that the Cambodian judicial system continues to be weak and subject to political pressures especially in high profile cases. It is currently unable to ensure that trials are conducted in a manner that would conform to international law and standards of fairness.

The role of the eight international judges and the international co-prosecutor will be extremely important to work with their Cambodian colleagues to ensure that the Extraordinary Chambers meet the highest standards of international justice, including, fully respecting the right to a fair trial and ensuring effective protection measures for victims and witnesses.

It is of the utmost importance that governments around the world consider nominating their most highly qualified candidates from their countries for the positions. Indeed, Amnesty International has made a similar appeal with respect to nominations of judges and the Prosecutor of the International Criminal Court.

The millions of victims of the crimes under international law committed by the Khmer Rouge and their families have waited too long for justice. If the Extraordinary Chambers are to succeed they will require the fullest support of the international community.

Background

On 6 June 2003, the United Nations and the Government of Cambodia agreed to establish the Extraordinary Chambers. The Extraordinary Chambers will together form an internationalized court based both on international and national law to investigate and prosecute senior Khmer Rouge leaders and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom and international conventions recognized by Cambodia that were committed during the period from 17 April 1975 to 6 January 1979.

The Agreement provides for the following judicial and prosecution posts: a Trial Chamber composed of three Cambodian and two international judges; a Supreme Court Chamber composed of four Cambodian and three international judges; a Pre-Trial Chamber composed of three Cambodian and two international judges; one Cambodian and one international investigating judge; and one Cambodian and one international prosecutor. Cambodia's Supreme Council of the Magistracy makes all final selections. For international positions, it chooses from among nominees of the UN Secretary-General.

Amnesty International has expressed serious concerns about the Extraordinary Chambers in its paper, *Kingdom of Cambodia: Amnesty International's position and concerns regarding the proposed "Khmer Rouge" tribunal*, AI Index: ASA 23/005/2003, 25 April 2003. Despite subsequent developments, almost all of these concerns about the Extraordinary Chambers remain, but it is to be hoped that the nomination and selection of distinguished candidates who meet the criteria for judges and the co-prosecutor will address some of these concerns.

During the period of Khmer Rouge rule, the national 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 on 25 December 1978, when the Vietnamese army invaded Cambodia. When the Democratic Kampuchea government fell on 7 January 1979, there were only 10 qualified lawyers left in the country. The Cambodian judicial system still suffers from poor facilities, low salaries, executive interference, lack of education and training and weak and poorly enforced legislation.

During the preparation of the Agreement establishing the Extraordinary Chambers, the UN Secretary-General observed in his report to the General Assembly: "I cannot but recall the reports of my Special Representative for human rights in Cambodia, who has consistently found there to be little respect on the part of the Cambodian courts for the most elementary features of the right to a fair trial. I consequently remain concerned that these important provisions of the draft agreement might not be fully respected by the Extraordinary Chambers and that established international standards of justice, fairness and due process might therefore not be ensured". Report of the Secretary-General on Khmer Rouge Trials, U.N. Doc.A/57/769, 31 March 2003, para. 28.