

AMNESTY INTERNATIONAL

Public Statement

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Cambodia: Extraordinary Chambers must not rush to adopt flawed Rules

Amnesty International today called on the judges of the Extraordinary Chambers in the Courts of Cambodia (Court), who are meeting to consider draft Internal Rules (Rules) governing the work of the Court, to extend their consideration of the Rules and to extend the time allocated for public comments and expert consultations.

Amnesty International has reviewed the Rules, which were released for public comment on 3 November 2006. Although the organization welcomes the transparent process conducted by the Court, it has identified a number of serious problems which must be resolved to ensure that the Court meets the highest standards of international justice in investigating and prosecuting crimes under Cambodian and international law committed in Cambodia between 17 April 1975 to 6 January 1979.

Amnesty International is concerned that the problems it has identified in its initial review are complex and cannot be effectively resolved by 25 November, when the judges conclude their plenary and are expected to adopt the Rules. Amnesty International is, therefore, calling on the judges not to rush to adopt the Rules in the time frame but instead to advance their work as much as possible at this plenary, taking into account the initial input it has received. The Court should then either extend the transparent consultation process and schedule a further plenary or provisionally adopt the Rules at this meeting and schedule a detailed review process in the near future.

Summary of Amnesty International's concerns on the Rules

Amnesty International has identified a number of problems in the Rules which should be addressed, including:

There are inadequate provisions for the protection and support of victims and witnesses. Amnesty International is particularly concerned that the establishment of a Victims Unit is only included for discussion and "subject to the availability of additional funding." Furthermore, the functions and responsibilities of the proposed Victims Unit differ significantly from victims and witnesses units of other international and internationalized courts, raising concern that, even if the Unit is established, it will not be effective. Victim and witness units of other international courts are solely responsible for providing protection and support, assisted by other authorities. The Court's Rules however fail to establish the Victims Unit as the central body to perform these functions and do not include details of protection or support services that will be provided.

Although the Rules provide for reparations for victims, the scope and forms of reparations are vaguely defined and, in some instances, inconsistent with international law. For example, a provision that

victims can only apply for reparations for injuries which “have come into being and continue to subsist at the time of the proceedings” is contrary to the principle that all victims of crimes under international law have a right to full and effective reparation.

The Rules do not incorporate important provisions adopted by other international and internationalized courts governing the prosecution of crimes of sexual violence. In particular, rules relating to the treatment of survivors of sexual violence and establishing principles on the consideration of evidence in cases of sexual violence are omitted.

The Rules provide that the judges will need to decide whether the Cambodian Bar Association or the Defence Unit of the Court will maintain a list of defence lawyers. The organization believes that this task must be allocated to the Defence Unit to ensure that the accreditation of defence lawyers is conducted independently. Amnesty International is particularly concerned by recent reports that the Bar Association has indicated that if it is given this task, it would bar foreign lawyers from defending accused persons.

Rules prohibiting trials in absentia have not yet been fully incorporated into the Rules. The right of an accused person to be present at their trial is an integral part of the right to defend oneself, where they can hear and challenge the prosecution case and present a defence.