

**Perfection Is The Enemy of Justice:
A Response to Amnesty International's Critique of the
Draft Agreement Between the U.N. and Cambodia
By Dr. Gregory H. Stanton**

At least 1.7 million Cambodians died during Khmer Rouge rule in Cambodia from 1975 through 1978. On 13 May 2003, the United Nations General Assembly approved an Agreement between the U.N. and the Royal Government of Cambodia to establish a tribunal to try the surviving leaders of the Khmer Rouge. The Assembly appealed to the international community to provide assistance, including financial and personnel support, to the tribunal.

The Khmer Rouge were driven out of power in 1979, but for years after that the U.S. and other nations voted to seat them in the United Nations, and opposed all efforts to bring them to justice. Since 1981, the Cambodian Genocide Project, Yale University's Cambodian Genocide Program, and the Documentation Center of Cambodia have gathered evidence from eyewitnesses, collected hundreds of thousands of pages of documents, and mapped thousands of mass graves. In 1991, a Cambodian peace agreement was signed and in 1994 the Cambodian Genocide Justice Act, sponsored by Senator Charles Robb, made it U.S. policy to press for an international tribunal to try the Khmer Rouge. In 1997 the Cambodian government requested help from the U.N. to set up a tribunal. The UN appointed a Group of Experts to study the legal case, and in 1999 these jurists recommended establishing a tribunal.

Years of negotiations followed. The U.N. tried to impose a U.N.- run tribunal. Cambodia insisted that the tribunal be majority Cambodian, under Cambodian law. Agreement was reached in 2001 on a mixed tribunal with a Cambodian majority, but requiring super-majority agreement by international judges for all decisions. Administration will be shared by Cambodian and U.N. officials, prosecutors, and investigating judges. The maximum penalty will be life in prison. The Cambodian National Assembly passed a law to establish the tribunal on these terms.

The devil, who has evidently been protecting the Khmer Rouge leaders for 24 years and is well represented by lawyers, rose again in the details. In February 2002, U.N. negotiators broke off implementing talks, and were only forced back into them by a U.N. General Assembly Resolution passed in December. Amnesty International and Human Rights Watch opposed the Resolution, because it directed the U.N. to base its agreement with Cambodia on the Cambodian law, which they found deficient.

Following negotiations in New York and Phnom Penh, Hans Corell of the U.N. Office of Legal Affairs and Sok An, Senior Minister of the Royal Government of Cambodia, signed an Agreement on 17 March 2003. The Cambodian government met four key demands of the U.N. It agreed to amend the Cambodian law to simplify the tribunal's appeals process, to incorporate the rights of the accused enshrined in Articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR), and to affirm that the Vienna Convention on the Law of Treaties prohibits invocation of national law to escape international treaty obligations. With respect to amnesty, the plan states that "the Royal Government of Cambodia would undertake not to request one for any persons who might be investigated or convicted of crimes under the Agreement."

Amnesty International (AI) and Human Rights Watch are superb human rights organizations. But for Cambodia, they have insisted on another international tribunal, not a court that Cambodians will accept as their own. One of the shortcomings of the Yugoslav and Rwandan tribunals has been their lack of relationship with national legal systems. Throughout its critique, AI ignores the fact that the U.N. – Cambodian Agreement is supplementary to the 2001 Cambodian law. AI fails

to even append the text of the Cambodian law to its Report, which includes the Agreement and the Secretary-General's Report to the U.N. General Assembly.

AI complains that the Agreement does not mention Article 9 of the ICCPR, concerning arrest and speedy trial. But Cambodia is already bound as a party to the entire ICCPR, and repeats these rights in Article 35 of its tribunal law.

AI says that "the proposed mixture of Cambodian and international judges and complicated decision making process has no precedent in any domestic or international court," ignoring the Sierra Leone tribunal and courts in East Timor and Kosovo, which are also mixed courts.

AI says that "nothing in the Agreement prevents the accused from successfully claiming superior orders as a defense," ignoring Article 29 of the Cambodian law, which says, "The fact that a Suspect acted pursuant to an order of the Government of Democratic Kampuchea or of a superior shall not relieve the Suspect of individual criminal responsibility."

AI goes on to complain that there "is scant provision for victim and witness protection," ignoring Article 23 of the Agreement and Article 33 of the Cambodian law, which both say that the court "shall provide for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the identity of a victim or witness." AI recommends that these "deficiencies" should be remedied by a subsequent document, a complete answer to its own criticism.

AI criticizes the Agreement because it does not include provisions for reparations, calling this a "major retreat from the Rome Statute," even though such provisions are not part of most common law systems of justice. The Cambodia tribunal will try only a few top leaders of the Khmer Rouge. Ten old men will not have the means to give restitution or compensation to 1.7 million victims. UN Trust Funds connected to tribunals have been notably unsuccessful at raising funds for such purposes. AI wants "rehabilitation, satisfaction, and guarantees of non-repetition" as well. Surely the only satisfaction and guarantees of non-repetition of mass murder that the tribunal can offer are trial and punishment of the perpetrators.

Finally, AI expects the tribunal to help rebuild the entire Cambodian system of justice. By setting an example of fair trials in a well-managed court, it will do so. It is also a reason for making the tribunal a special part of the Cambodian court system and locating it in Phnom Penh. But to reject the Agreement because the court cannot do everything is equivalent to saying that because all law-breakers cannot be captured and tried, none should be.

This all-or-none approach to justice for Cambodia has been characteristic of some human rights groups from the beginning. In 1981, when I asked the International Commission of Jurists to undertake investigations of the atrocities of the Khmer Rouge, the Chairman of the Board refused with the reason that if they could not investigate violations by the Vietnamese-backed government that drove the Khmer Rouge from power, they would not investigate the Khmer Rouge mass murders. All-or-none standards are self-defeating. Perfection is the enemy of justice.

The Cambodian people have waited 24 years for justice. AI's Report recommends yet more negotiations. The surviving Khmer Rouge leaders are old men, living in comfortable retirement. The Cambodian National Assembly should now approve the U.N. – Cambodian Agreement to bring them to trial.

Dr. Gregory H. Stanton is Founder and Director of The Cambodian Genocide Project; President of Genocide Watch; and Coordinator of The International Campaign to End Genocide. Contact: gstanton@genocidewatch.org, phone: 1-703-448-0222, FAX: 1-703-448-6665.