

Amnesty's KR trial stand opposed

By Bill Bainbridge

The founder and director of the Cambodian Genocide Project has come out against the positions held by two international human rights organizations on the proposed Khmer Rouge tribunal.

Dr Gregory H Stanton said Amnesty International (AI) and Human Rights Watch were "superb organizations", but implied their quest for perfection in a genocide trial was misguided. Both organizations have lobbied the UN General Assembly to reject the deal arguing that the mixed tribunal format left justice at the mercy of local politics.

"[T]o 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," he wrote in an April 26 statement titled Perfection is the Enemy of Justice.

Stanton, who is also the president of Genocide Watch and coordinator of The International Campaign to End Genocide, criticized as self-defeating the "all or none" approach that human rights groups have long taken toward the crimes of the Khmer Rouge.

"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," he wrote.

Stanton's was the latest salvo over the proposed tribunal as its heads towards adoption by the General Assembly. A draft agreement was reached between Cambodia and UN negotiators on March 17, and subsequently passed on May 2 by the Assembly's Third Committee. The Assembly itself is expected to pass the deal shortly, which could allow a tribunal to begin work as soon as 2004.

A UN statement estimated it would cost more than \$19 million to finance the tribunal. That would pay for setting up and running the Extraordinary Chambers, the office of the prosecutors and the co-investigating judges, the Pre-Trial Chamber and the Office of Administration.

The agreement received a mixed review from the Assembly's Third Committee before it was passed. The US representative supported the proposal but said it should not have been considered until after July's general election.

Japan and the UK were both in favor, but the Dutch representative said his delegation would have preferred further negotiations between the UN and Phnom Penh to "ensure that international standards of justice were upheld".

But AI remains opposed to the agreement.

"Although an improvement on previous proposals, following the hard work of the UN's Office of Legal Affairs, Amnesty International continues to assert that the current draft agreement for the establishment of a tribunal does not sufficiently guarantee international standards for fairness, and requires revision," the organization said in an April 28 statement.

In his statement, Stanton accused AI of being ill-informed about the content of the Cambodian trial law.

"AI complains that the Agreement does not mention Article 9 of the ICCPR [International

Covenant on Civil and Political Rights], concerning arrest and a speedy trial," he wrote. "But Cambodia is already bound as a party to the entire ICCPR, and repeats these rights in Article 35 of its tribunal law."

He also criticized AI for "ignoring [the fact that] the Sierra Leone tribunal and courts in East Timor and Kosovo, are also mixed courts". That came after AI argued that the mixture of Cambodian and international judges was without precedent in any domestic or international court.

Stanton further questioned the human rights body's interpretation of the law in relation to "superior orders". AI had argued that there was nothing in the agreement that would prevent a suspect from claiming as a defense that he was just following orders. Stanton said the tribunal law was clear on that point.

"[That ignores] 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'," he wrote.

"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 UN General Assembly should approve the UN Cambodian Agreement to bring them to trial," Stanton concluded.

Phnom Penh Post, Issue 12/10, May 9 - 22, 2003

© Michael Hayes, 2003. All rights revert to authors and artists on publication.

For permission to publish any part of this publication, contact [Michael Hayes, Editor-in-Chief](mailto:Michael.Hayes@PhnomPenhPost.com)
<http://www.PhomPenhPost.com>