

**When the Human Rights Community Is Its Own Worst Enemy**

**By Kip Hale, Senior Counsel, American Bar Association (ABA) Center for Human Rights  
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The global fight to uphold respect for international human rights is a daunting job. Governments flagrantly violate human rights on a daily basis -- as do multi-national conglomerates and extremists organizations, who have become the new human rights abusers on the block. International human rights non-governmental organizations (NGOs) are often the vanguard in this global fight. So, it is perplexing when some of these NGOs undercut their own legitimacy by making public outcries that do little to help their overall causes, and in fact, undermine them. These typically resourceful and responsible groups sometimes fail to provide constructive solutions in times of need, and instead exemplify the aphorism, "the perfect is the enemy of the good."

An example of the human rights community's predilection to sabotage itself was recently displayed by NGOs that monitor the work of the United Nations (UN)-supported Khmer Rouge tribunal, officially the Extraordinary Chambers in the Courts of Cambodia (ECCC). The ECCC is an international hybrid tribunal created to prosecute surviving senior members of the 1970s Khmer Rouge regime, which allegedly perpetrated mass atrocities that caused the death of nearly two million people in Cambodia. The ECCC's structure includes both Cambodian and international personnel that share equal power in the prosecutors' and judicial investigators' offices. However, the Cambodians have a majority in the pretrial, trial and appeals chambers. The first case at the ECCC (Case 001) recently came to a close with the appeal verdict of Duch, who was sentenced to life imprisonment for the torture and murder of over 12,000 detainees -- including women and children -- at the notorious Tuol Sleng prison in Phnom Penh. Case 002, the trial of the Khmer Rouge's four most senior-living leaders and referred to as "the largest and most complicated prosecution since Nuremberg," began in earnest in late 2011 and will likely last for the next few years.

With Case 001 complete and Case 002 ongoing, a court-jeopardizing dispute has erupted over Cases 003 and 004, which are currently in their judicial investigation stage. At this stage, Cambodian and international investigating judges explore allegations made by the International Prosecutor in order to determine whether or not to file an indictment. The close connections between the suspects in Case 003 and 004 to members of the existing Cambodian government have led to pressure to close these investigations. Citing an inability to do their work due to political interference, the German international investigating judge resigned last October and his Swiss successor, Laurent Kasper-Ansermet, resigned on March 19, 2012. Kasper's resignation was particularly troubling. After Kasper used Twitter to voice his frustration about the ECCC's

work environment, his Cambodian counterpart started a war of press releases. Additionally, the Cambodian government used baseless legal arguments to block Kasper's official appointment. The situation culminated in a series of petty maneuvers by Cambodian staff to frustrate Kasper's investigations.

At this moment of internal disarray at the ECCC, monitoring NGOs should put forth coherent and robust solutions. Moreover, their recommendations should be presented with a mixture of ingenuity, perspective, and gravity. Unfortunately, some notable NGOs and commentators only made the ECCC calamity worse with melodrama and cynicism. A Fellow at the Council on Foreign Relations published an article after Kasper's resignation that questioned whether this and other ECCC problems were "worth the trouble." The Executive Director of the International Bar Association published a scathing report stating that he had witnessed, "a growing number of problems that made [him] question the very legitimacy of the Court". Finally, Open Society Justice Initiative, one of the world's leading voices on international justice, released a press release after Kasper's resignation that opened with the following sentence: "The Open Society Justice Initiative is calling upon the United Nations to reconsider its commitment to the Khmer Rouge tribunal..."

It is statements like these that call into question the tactics of the human rights community. We cannot and should not overlook the irresponsibility of these statements just because we believe in the mission of the messengers. To be clear, there could be a point of illegitimacy at the ECCC where the UN would have to walk away to uphold the rule of law. Yet, the ECCC is not at that point. More importantly, to suggest that the UN leave its commitment to the ECCC at this stage in its development is an insult to the countless victims of the Khmer Rouge. Additionally, the ECCC is the product of decades of toil by thousands of people who strived for accountability. To walk away now would eliminate the opportunity to investigate the alleged crimes in Case 003 and 004, and would appallingly halt the ongoing trial in Case 002 -- by far the most important case. Starting in 2006 with a preliminary prosecutorial investigation, Case 002 has accumulated hundreds of thousands of documents, witness statements, testimonies, man-hours, and most importantly, the involvement of over 100,000 victims who participated either as recognized victim representatives, civil parties (victims who have legal standing at trial), or spectators in court. Case 002 will help bring a measure of justice to these and others victims, and this opportunity should not be lost. To advocate that the UN strongly consider deserting the entire ECCC process prior to the finish of Case 002 is reprehensible.

What NGOs should have done is to advocate for what the UN did when faced with Kasper's resignation. After the resignation, the UN Secretary-General Ban Ki-Moon issued a measured and relatively strong press release. While disappointing that it only labeled the political interference as "worrying", the UN stayed true to the rule of law by stating in its response that the UN would resort to the ECCC treaty for answers to this impasse. Specifically, the UN would nominate a new investigating judge as stipulated therein. Furthermore, the UN stated its expectations to the Cambodian government to provide "full cooperation" with, and "promptly"

appoint, the nominee. Once appointed, the UN expects "every assistance" to be given to the investigating judge to undertake his duties. The UN plans to "remain vigilant," that such assistance in provided through former US Ambassador for War Crimes and current UN Special Expert to the ECCC, David Scheffer. The firm and sensible tone of this statement accomplished what the international NGO's response failed to do -- place the ECCC in a position that makes success possible.

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