

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

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### **Cambodia: Suspect's rights at Khmer Rouge Tribunal must be respected, allegations of UN interference investigated**

Amnesty International is concerned that the rights of a suspect in Case 004 before the Extraordinary Chambers in the Courts of Cambodia (ECCC), to instruct lawyers of his choosing and conduct an effective defence, have been severely compromised by the continuing failure to provide a contract to the international defence lawyer chosen by the suspect in March 2012. Amnesty International calls for a full enquiry into allegations that UN administrators at the Tribunal have acted in bad faith and interfered in the case, by ignoring a judicial order to provide resources for the effective representation of the suspect.

Cases 003 and 004 before the ECCC involve five suspects under investigation for crimes against humanity, war crimes and other serious crimes during the period of Khmer Rouge rule in Cambodia. The Cambodian government opposes the investigation of these cases. Nonetheless, UN-nominated Reserve International Co-Investigating Judge Laurent Kasper-Ansermet undertook investigations into these cases before resigning and leaving the court in May 2012, citing obstruction by his Cambodian colleague Co-Investigating Judge You Bunleng and other Cambodian staff.

Cambodia's Supreme Council of Magistracy failed to confirm the appointment of Judge Kasper-Ansermet as International Co-Investigating Judge. While the UN Secretary General and the international judges on the Tribunal's Pre-Trial Chamber have stated that Judge Kasper-Ansermet has acted with full legal authority, the Tribunal's Cambodian judges refused to recognise his authority and the validity of his judicial actions.

In February 2012, Judge Kasper-Ansermet notified the Case 004 suspects that they were under investigation and entitled to certain rights, including the right to counsel of their choosing. This right is enshrined in the statute of the ECCC and its internal rules. One suspect selected Mom Luch and Richard Rogers as his national and international counsel respectively. The Defence Support Section (DSS) notified the Co-Investigating Judges of this selection and made a request to the Deputy Director of the Tribunal's Office of Administration (DDOA) to issue contracts for the lawyers. Amnesty International has been informed that Judge Kasper-Ansermet sent a memorandum to the DDOA recognising the suspect's selection of lawyers and requesting contracts for them. According to Rogers, following the DDOA's failure to issue a contract for the suspect's chosen international defence counsel, Judge Kasper-Ansermet issued an order for the DDOA and the DSS to provide resources for the suspect's effective representation.

However, the DSS, under a new chief, decided in May 2012 that the chosen international defence counsel does not qualify for payment under the Tribunal's Legal Assistance Scheme and should not be given a contract. The reasons behind this decision seem to have shifted over time, and include seemingly contradictory concerns about alleged conflict of interest, as Rogers was the former DSS Chief, and the relevance of Rogers' experience in this role.

In a recent letter to the UN Under-Secretary General for Legal Affairs, Rogers claims that the DDOA and DSS are flouting Judge Kasper-Ansermet's order by failing to issue a contract to him as the chosen international defence counsel, thereby effectively undermining the right of the suspect to counsel of his choosing. He describes this as "interference in the judicial process". Rogers also alleges that UN administrators waited for Judge Kasper-Ansermet's departure from the Tribunal before denying him a contract, to avoid judicial scrutiny; and that, in bad faith, the DDOA made a request to national Co-Investigating Judge You Bunleng to clarify Judge Kasper-Ansermet's order. Judge You Bunleng apparently responded to the request by saying that he did not recognise Judge Kasper-Ansermet's legal authority to issue the order. Rogers was not made party to the DDOA's clarification request, and alleges "a complete lack of transparency, due diligence, and due process." These serious allegations, if proven, have effectively resulted in a violation of the suspect's right to counsel of his own choosing.

The Tribunal's UN spokesperson has said that Rogers can now appeal the DSS decision to refuse him a contract to the Pre-Trial Chamber. However, since the Cambodian judges have already stated that they do not recognise Judge Kasper-Ansermet's authority, they are unlikely to recognise his order.

In a recent press statement, the Cambodian Human Rights Action Committee (CHRAC), a coalition of Cambodian human rights NGOs, referred to an "obstructionist trend" at the ECCC, arguing that, for budgetary reasons, UN officials at the Tribunal appear to be adopting Judge You Bunleng's position that Judge Kasper-Ansermet's actions are invalid, and blocking the appointment of a suspect's international counsel.

As this dispute continues, Amnesty International is concerned that a vulnerable suspect being investigated for the most serious crimes imaginable and whose name has been widely reported in the media, is left in limbo without a full defence team comprised of both national and international criminal law experts, to which he is entitled. To ensure that the rights of the suspect are respected, Amnesty International calls for the suspect to be given the necessary resources for an effective defence without any further delay, including a contract for an international lawyer of his choosing, as was apparently ordered by the former Reserve International Co-Investigating Judge.

UN officials at the ECCC have not fully addressed Amnesty International's queries about this matter. Amnesty International calls for a thorough, prompt, independent and impartial enquiry into Rogers' allegations. Should the UN fail to investigate this matter, it may leave itself open to a charge of double standards: ready to criticize Cambodian government interference at the ECCC, while not addressing allegations that its own administrators have interfered in the Tribunal's proceedings by apparently ignoring a judicial order, and thereby compromising a suspect's fair trial rights.