KINGDOM OF CAMBODIA
No solution to impunity: the case of Ta Mok

1. Impunity or justice?

On 6 March 1999, Chhit Choeun, more commonly known as Ta Mok, was arrested by the Royal Cambodian Armed Forces (RCAF) and brought to Cambodia's capital Phnom Penh, where he remains detained at the Military Prosecution Department Detention Facility. Ta Mok was the last leading member of the Khmer Rouge to remain at large in Cambodia; the others are dead or have defected to the government in the last three years. The arrest of Ta Mok, twenty years after the collapse of the Democratic Kampuchea (Khmer Rouge) government highlights the failure to date of the Cambodian authorities and the international community to bring to justice anyone connected with the grave human rights violations, including murder, torture, and forced disappearances that took place in Cambodia between 1975 and 1979. However, it also brings into focus the weaknesses of the Cambodian judicial system, and the breaches of due process that are commonplace in almost all criminal trials in the country.

The widespread and systematic nature of the human rights violations which were committed under the Democratic Kampuchea government between 17 April 1975 and 7 January 1979 constitute crimes against humanity under international law. Crimes against humanity recognised by international law include the practice of systematic or widespread murder, torture, forced disappearances, deportation and forcible transfers, arbitrary detention and persecution on political or other grounds. Genocide and torture are also crimes under international law which are subject to universal jurisdiction; this means that all countries have the obligation to prosecute those accused of this kind of crime, regardless of the territory where the crimes were committed. Cambodia is a state party to the Convention on the Prevention and Punishment of the Crime of Genocide, since 1950, which specifically establishes the principle of universal jurisdiction *inter alia* by an international penal tribunal.

The arrest and detention of Ta Mok occurred just as the United Nations Secretary General and the Royal Cambodian government were considering the report of a Group of Experts appointed by the Secretary General to consider the options for bringing to justice those believed to be responsible for the grave violations of human rights that took place in Cambodia under Khmer Rouge rule (17 April 1975 to 7 January 1979). Following a request for assistance from the Cambodian Prime Ministers in June 1997, the UN General Assembly passed a resolution in December 1997:

> "*Request[ing] the Secretary-General to examine the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law, including the possibility of the appointment, by the Secretary-General, of a group of experts to evaluate the existing evidence and propose further measures, as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability.*"

The report of the UN Group of Experts recommends that "in response to the 21 June 1997 request of the government of Cambodia, the United Nations establish an ad hoc international tribunal to try Khmer Rouge officials for crimes against humanity and genocide committed from 17 April 1975 to 7 January 1979."[1] The Group further recommends that this ad hoc tribunal is not established in Cambodia itself. The Group of Experts examined the possibility of conducting trials in Cambodia, under Cambodian law, possibly with international assistance, and does not recommend this option; "the Group is of the opinion that domestic trials organized under Cambodian law are not feasible and should not be supported financially by the United Nations."[2]

Amnesty International believes that the UN Group of Experts is right to be concerned about the conduct of domestic trials in Cambodia of those believed to be responsible for the grave violations of human rights that occurred there between 17 April 1975 and 7 January 1979. It is not in the interests of justice to hold an unfair trial that fails to establish the truth and may serve only to hold one individual to account for the crimes of many. The breaches of due process that have already occurred in the case of Ta Mok (detailed below) heighten Amnesty International's fears about domestic trials in Khmer Rouge cases. Amnesty International agrees with the UN Group of Experts that, in present circumstances, only an international court can deliver truth and justice in these cases, in a way that meets the expectation of the Cambodian people and the international community.

From its experience of investigating and documenting human rights violations around the world, Amnesty International believes that impunity - literally exemption from punishment - is one of the biggest obstacles that countries with such tragic human rights histories as Cambodia have to overcome, in order to progress to a climate of human rights promotion and protection. Impunity remains the most serious human rights problem in Cambodia today. It would be a tragedy for Cambodia and its people if the arrest of Ta Mok, instead of being the catalyst in the establishment of an international court which can deliver justice, serves simply to bury the truth and further institutionalize the impunity which lies at the heart of Cambodia's human rights problems.

2. Background

In 1979, following the collapse of the Democratic Kampuchea government, with the invasion of the Vietnamese army, and the establishment of a new government, *in absentia* trials of two Khmer Rouge figures, Pol Pot and Ieng Sary were held by a specially convened court in Phnom

[1]United Nations, Report of the Group of Experts for Cambodia, Pursuant to General Assembly Resolution 52/155, 18 February 1999.

[2]Ibid.

Penh. The trials, which fell far short of minimum international standards for fairness, sentenced the two to death.

In recent years, the Royal Cambodian government has advocated judicial proceedings administered internationally to try those believed responsible for the crimes against humanity that took place in Cambodia between 17 April 1975 and 7 January 1979. However, while maintaining this position in public, the members of the government elected in 1993 were also involved, particularly in 1996 and 1997, in efforts to encourage members of the Khmer Rouge to defect to the government - or more pertinently, to one or other of the two main political parties in the governing coalition. Senior ministers from the two main parties, FUNCINPEC and the Cambodian People's Party (CPP) vied with each other to attract defectors to their own political camp. Ieng Sary, the former Foreign Minister in the Democratic Kampuchea (Khmer Rouge) government defected in 1996 and, at the request of the then two Prime Ministers, was granted a royal amnesty for the conviction passed in the blatantly unfair 1979 *in absentia* trial, and was allowed by the government to live in Pailin in northwest Cambodia, in a semi-autonomous zone, controlled by his supporters. Amnesty International commented at the time that, while it recognised the need for national reconciliation in Cambodia, it believed that conciliatory steps taken independently of an effort to identify and hold accountable those responsible for human rights violations in the past may seriously jeopardise human rights protection in the future.[3] After Ieng Sary's defection, which effectively split what was left of the Khmer Rouge, competition between the two Prime Minsters and their respective parties to attract defectors increased.

In July 1997, forces loyal to CPP Second Prime Minister Hun Sen launched violent and sustained attacks on forces loyal to FUNCINPEC First Prime Minister Prince Norodom Ranariddh. The CPP claimed that Prince Ranariddh was trying to bring the Khmer Rouge back into Phnom Penh and into government. In the weeks preceding the effective coup d'etat, there was intense speculation that the arrest of Pol Pot was imminent, and Prince Ranariddh was involved - through Royal Cambodian Armed Forces FUNCINPEC Deputy Chief of Staff Nhek Bun Chhay - in contacts with the rebel group over the planned arrest. After the effective coup d'etat, with Prince Ranariddh and most of his close supporters in exile or killed, Hun Sen and the newly-appointed FUNCINPEC First Prime Minister Ung Huot reaffirmed the June 1997 request to the UN for assistance in bringing the Khmer Rouge to justice internationally. This led to the UN General Assembly resolution and the appointment of the Group of Experts.

In December 1998, Khieu Samphan and Nuon Chea, senior members of the Khmer Rouge, with high ranks during the Democratic Kampuchea government, declared their allegiance to the Royal Government and were welcomed to Phnom Penh by Prime Minister Hun Sen. They were housed in a luxury hotel at the government's expense, and Hun Sen told the press

[3]Amnesty International *Kingdom of Cambodia: Accountability for gross human rights violations* (AI Index: ASA 23/10/96), 11 September 1996

that "we should dig a hole and bury the past." Similarly, in a press conference Khieu Samphan urged "let bygones be bygones." There was widespread condemnation both from within Cambodia and internationally, of the apparent reversal in government policy on bringing to justice those implicated in the grave violations of human rights between 1975 and 1979. Following this criticism, Prime Minister Hun Sen publicly reaffirmed his desire to see Khmer Rouge leaders brought to trial, and the Royal Government endorsed this view. A government statement to that effect was broadcast on Cambodian radio on 5 January 1999:

> "The Royal Cambodian government will consider the view of the UN law experts before deciding whether Khmer Rouge leaders Khieu Samphan and Nuon Chea, who have rejoined the national society, will be brought to trial."[4]

The report of the UN Group of Experts was delivered to the Royal Cambodian government and the Secretary General of the United Nations shortly before the arrest of Ta Mok. Government ministers statements in the days preceding the arrest of Ta Mok pointed to a rejection of the UN experts' conclusions. On 6 March 1999, it was publicly announced that Ta Mok was arrested, and from the day of arrest, government spokesmen insisted that a trial would take place in Cambodia. An "Aide-memoire" issued by the Cambodian government on 12 March 1999 states clearly that:

> "The national judiciary system will undertake the investigation, prosecution and trial of Ta Mok, the culprit, under the Cambodian law in force ... the culprit is a Cambodian national, the victims are Cambodians, the place of the commission of the crimes is also in Cambodia; therefore the trial by a Cambodian court is fully in conformity with the legal process."[5]

A letter from Prime Minister Hun Sen to the UN Secretary General on 24 March 1999 stated again that a national court would be responsible for the trial of Ta Mok. However, the letter also stated:

> "To ensure that the aforesaid trial by the existing national tribunal of Cambodia meets international standards, the Royal Government of Cambodia welcomes assistance in terms of legal experts from foreign countries. It is, however, up

[4]National Voice of Cambodia, Phnom Penh, in Cambodian 1300 gmt, 5 January 1999, as reported by BBC Monitoring

[5]UN document A/53/866, S/1999/295, Aide-memoire on the report of the United Nations Group of Experts for Cambodia of 18 February 1999, issued by the Government of Cambodia on 12 March 1999.

to the tribunal to determine the number of these legal experts."[6]

A trial in Cambodia, even with the assistance of international experts is exactly what the UN Group of Experts recommend against.

In a further apparent change of position, in a meeting with a US Senator on 6 April 1999, Hun Sen said that he would be prepared to allow foreign judges to sit in Cambodia's courts, in the case of the trial of Ta Mok. Speaking on Cambodian television on 7 April, Hun Sen reportedly stated that the government was not opposed to the possibility of foreign judges and prosecutors coming to Cambodia to work with the Cambodian court.[7] However, no details have been forthcoming about how this could operate. Changes to Cambodian legislation would be required to render such an arrangement legal.

3. Why a fair trial matters

From the date of the arrest of Ta Mok, the position of the Cambodian government on the appropriate venue in which to bring him to justice changed from advocating an international trial to insisting on a domestic one. Amnesty International believes that every government has a responsibility to bring to justice people responsible for human rights violations. However, the organization also believes that trials which are unfair or are perceived to be unfair serve only to undermine the principle of justice. Amnesty International's Fair Trials Manual states this very clearly:

> "Unless human rights are upheld in the police station, the interrogation room, the detention centre, the court and the prison cell, the government has failed in its duties and betrayed its responsibilities."[8]

The parlous state of Cambodia's judicial system is one of the many tragic legacies of the country's recent history, and in particular of the period of Khmer Rouge rule, when all judicial structures were completely destroyed. Rebuilding a judicial system after almost 30 years of civil war and political instability is an enormous task. Amnesty International has seen many instances of unfair trials in the country since the adoption of the new constitution in 1993. Basic safeguards to ensure fair procedures are simply non-existent in most cases, and ignored in others. At present, it is almost impossible to obtain a fair trial in Cambodia's courts, even on common criminal charges, with no political elements involved. The Cambodian government has

[6]UN document A/53/875, S/1999/324, Letter dated 24 March 1999 from the Prime Minister of Cambodia to the Secretary-General.

[7]*Reuters*, 8 April 1999.

[8]Amnesty International *Fair Trials Manual* (London 1998) p3.

admitted that the judicial system has many flaws. In its initial report to the UN Human Rights Committee submitted in November 1997, it states:

> "The independence of the judiciary is guaranteed by law. However, practice has shown that, owing to interference and pressure from other branches, the courts are not fully independent … Interference by other branches in the work of the courts most often takes the form of pressure, obstruction of the proceedings and threats by those in power, particularly when they are members of the armed forces … As the independence of the judiciary and the equality of all before the law are not fully guaranteed, the impartiality of the courts also cannot be fully guaranteed."[9]

Amnesty International is extremely concerned that breaches of due process which have already occurred in the case of Ta Mok, threaten the credibility of the case and constitute a violation of the detainee's basic rights under Cambodian and international law. No matter what crimes individuals are accused of, they are entitled to the rights guaranteed under international standards. Their alleged crimes against others do not render them ineligible for the rights due to them as human beings. How a person is treated when accused of a crime provides a concrete demonstration of how far a state respects individual human rights and upholds the rule of law. This document will illustrate some of the breaches of due process which have already taken place in Ta Mok's case and highlight Amnesty International's concerns about the future stages of the judicial proceedings. For many reasons the organization believes that, in the case of members of the Khmer Rouge, the interests of justice and accountability are best served by the establishment of an international court to try those against whom there is a case.

4. Fair procedures

Anyone facing criminal charges in Cambodia should enjoy a number of rights, as guaranteed by the Cambodian Constitution, the Law of Criminal Procedure and the International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a state party. Amnesty International campaigns for the fair and prompt trial of all political prisoners, regardless of the offences of which they are accused, and without condoning the views or actions of the prisoners concerned. Without fair procedures, justice cannot be done. A fair trial in each and every case is in everyone's interests.

4.1 Presumption of innocence

"*Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*" (ICCPR, Article 14:2)

[9]UN Document CCPR/c/81/Add.12 (State Party Report), 23 September 1998.

"*Any accused person shall be presumed innocent so long as the court has not yet handed down a final judgment.*" (Cambodian Constitution, Article 38)

"*All suspects, indicted or accused persons benefit from the most complete presumption of innocence*." (Article 25, Provisions relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia)

In Cambodia, when an individual stands accused of responsibility for a crime, international and Cambodian law protect the fundamental right of presumption of innocence. Without this right, any trial procedure becomes tainted. Whatever the nature of the alleged crime and the apparent strength of the evidence against an individual, it is for an independent court to judge, on the basis of evidence presented to the court, whether a person is guilty or not. Statements in the official media which may prejudice a trial, or which pre-empt the outcome of any trial are a breach of the presumption of innocence. On 6 March 1999, the National Voice of Cambodia radio broadcast a government press statement on the arrest of Ta Mok. The statement read:

> "Implementing the order of Samdech Hun Sen, Prime Minister of the Royal Cambodian Government, the Royal Cambodian Armed Forces arrested Chhit Choeun, alias Ta Mok, the leader of the hardline Khmer Rouge on 6 March 1999. At present, the culprit Chhit Choeun, called Ta Mok, is being detained in Phnom Penh and is awaiting trial by a tribunal."[10]

The UN Human Rights Committee in General Comment 13 state that "the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial." In identifying Ta Mok as "the culprit" the Cambodian authorities denied his right to be presumed innocent until proven guilty, and thus breached both domestic and international law. This was repeated in another statement on 13 March 1999, in which the government said that it would ensure a "proper" trial for Ta Mok, while at the same time declaring him a "criminal".

> "The national judicial system will manage to investigate, charge and prosecute the criminal Ta Mok in accordance with the existing law of Cambodia ... This procedure will be guaranteed to be done in a proper and effective way."[11]

4.2 Arrest and detention

[10]National Voice of Cambodia, Phnom Penh, in Cambodian 1410 gmt, 6 March 1999, as reported by BBC Monitoring, 7 March 1999.

[11]*Reuters*, 13 March 1999.

"*No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*" (ICCPR, Article 9)

"*Accusations against, arrest, detention or imprisonment of a person may be made only when they are carried out correctly by virtue of the provisions of law.*" (Cambodian Constitution, Article 38)

The exact circumstances of the arrest of Ta Mok are not clear, but it appears that he was arrested – or captured – by members of the Royal Cambodian Armed Forces, at a location near the border with Thailand during daylight hours on 6 March 1999.

Ta Mok was brought to the detention facility of the Military Prosecution Department in Phnom Penh on 6 March 1999. This detention centre is the most secure legal detention facility in Cambodia. The particular security concerns surrounding this case, including the fact that the suspect is likely to be charged with genocide and crimes against humanity, among other crimes, is likely to have influenced the choice of this detention facility, rather than the civilian alternatives. However, the legal status of this decision is not clear.

4.3 The Military Court

The legal case against Ta Mok appears to be proceeding through the Military Court, and not the civilian court. Military courts were set up in 1954 and a Special Military Court was established in Cambodia under a 1959 law, with jurisdiction over a number of crimes, mainly crimes against the state, including treason and insurrection. The penalties which could be imposed were draconian and the Special Military Court did not allow for the right of appeal. After the Khmer Rouge period, civilian and military courts were reconstituted, during the period of the People's Republic of Kampuchea. Decree laws relating to the competence and structure of the Military Court were adopted in 1981. They state that the competence of the court is limited to those in the military, working for the Ministry of Defence, or civilians accused of crimes involving persons of those two categories.

Cambodia's penal code of 1992 states very clearly that:

> "Military tribunals have jurisdiction only over military offences. Military offences are those involving military personnel, whether enlisted or conscripted, and which concern discipline within the armed forces or harm to military property. All ordinary offences committed by military personnel shall be tried

in ordinary courts."[12]

Ta Mok is not and never has been a member of the Royal Cambodian Armed Forces. Moreover, the offences he is likely to be charged with (see below for more details about these) certainly do not fall into the category of breaches of military discipline.

The potential human rights problems associated with military and special courts has been noted by the UN Human Rights Committee in its General Comment 13:

> "The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with the normal standards of justice ... In some countries, such military and special courts do not afford the strict guarantees of the proper administration of justice ... which are essential for the effective protection of human rights."[13]

More recently, the Human Rights Committee has repeatedly stated that persons alleged to have committed human rights violations should be tried only by the competent ordinary courts in each State, and not by any special tribunal, in particular, military courts.

The most recent prominent cases heard by Cambodia's Military Court took place in March 1998, and serve to underline the serious concern Amnesty International has about the conduct of trials in Cambodia. The Military Court heard cases *in absentia* against Prince Norodom Ranariddh and a number of his close associates, on a raft of charges including illegal importation of weapons and organized crime. The court cases, which took place inside the Ministry of Defence lacked even the semblance of due process, with among many breaches of fair procedures: *in absentia* trials; no defence lawyers; the judge and prosecutor asking leading questions of witnesses; verdicts bearing little relation to the "evidence" presented. The Military Court is not legally the competent court to hear the case against Ta Mok. Judges of the Military Court retain military ranks and remain accountable to the Ministry of Defence, thus exposing the lack of independence of the Military Court from the executive branch of government. In this context, it is not possible to ensure the right to an independent tribunal.

4.4 The rights of people in custody

[12]Article 11, Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 11 September 1992.

[13]UN Human Rights Committee General comment 13. Equality before the courts and the rights to a fair and public hearing by an independent court established by law (Article 14), 13 April 1984.

"*Anyone who is arrested shall be informed, at the time of arrest, of the reason for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time, or to release.*" (ICCPR, Article 9.2 & 3)

"*Accusations against, arrest, detention or imprisonment of a person may be made only when they are carried out correctly by virtue of the provisions of law ... Every person shall have the right to defend himself in court.*" (Cambodian Constitution, Article 38)

"*The right to assistance of an attorney or counsel is assured for any person accused of a misdemeanour or crime. No one may be detained on Cambodian territory more than 48 hours without access to assistance of counsel, an attorney, or another representative authorized by the present text, no matter what the alleged offence may be.*" (Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia, Article 10)

"*No one may be detained more than 48 hours without being brought before a judge, following charges filed by a prosecutor.*" (Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia, Article 13)

Ta Mok was arrested on Saturday 6 March 1999. He was held in incommunicado detention until a meeting on 8 or 9 April 1999 with a lawyer who agreed to take up his case. This is a clear breach of all the domestic law and international standards relating to the detention of suspects and the treatment of those in detention. Principle Seven of the UN Basic Principles on the Role of Lawyers states unequivocally that "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than 48 hours from the time of arrest or detention." Such a critical failure to uphold due process underlines Amnesty International's concerns about the credibility of the domestic legal proceedings against the suspect. The investigative judge assigned by the Military Court to collect evidence in the case made several attempts to interrogate Ta Mok in detention prior to the appointment of a defence lawyer. International standards require the authorities not to take undue advantage of the situation of a detained person during interrogation.[14]

In most cases in Cambodia, a suspect is brought to the court to appear before a judge, which should take place within 48 hours of arrest. In Ta Mok's case, a judge from the Military Court apparently conducted this procedure within the detention facility itself.

[14]Principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Since Ta Mok's arrest, individuals who usually are able to visit the Military Prosecution Department Detention Facility, including non-governmental organizations providing health care to prisoners, were denied access. All persons in detention should be treated in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners, which require that basic humanitarian standards are upheld. After his initial meeting with his client in April 1999, Ta Mok's lawyer told journalists that Ta Mok appeared to be in reasonable health, but that he was still wearing the same clothes in which he had been arrested. Access to prisoners is vital, in order to ensure that they are detained in sanitary conditions and are not subject to cruel, inhuman or degrading treatment. Since the initial visit of his lawyer, it has been reported that Ta Mok is ill, suffering from a fever. No independent medical personnel currently have access to the Military Prosecution Department Detention Facility.

Amnesty International is disturbed by the lack of any formal charges against Ta Mok. A radio report on the first meeting between Ta Mok and his lawyer stated:

> "Ta Mok's lawyer introduced himself for the first time on 9 April. Benson Samay, whom Ta Mok has accepted as his lawyer, said he has organized a seven-strong team of lawyers to defend Ta Mok, but it has not started work because he has not yet officially received an indictment against Ta Mok from the Military Tribunal."[15]

The right to be informed of the charges against you is one of the minimum standards laid down in the ICCPR, in order to uphold fair trial proceedings. Any accused person also has the right to adequate time and facilities to prepare a defence, which includes access to appropriate information, including documents and other evidence that might help the accused prepare their case. Notification of charges must be given promptly - according to the UN Human Rights Committee, information should be given "as soon as the charge is first made by the competent authority."[16] If there are no charges, then there is no legal basis for the continued detention of the suspect, whatever the alleged nature of his involvement in crimes.

In its February 1999 report, the UN Group of Experts identify domestic and international laws which would be applicable in any case against a suspect accused of responsibility for the grave violations of human rights committed in Cambodia between 17 April 1975 and 7 January 1979. The domestic legislation would be the 1956 Code Penal. The UN Experts comment that "the lack of familiarity of Cambodian judges with that old code could render its use in trials quite difficult."[17]

[15]National Voice of Cambodia, Phnom Penh, in Cambodian 0500 gmt, 13 April 1999, as reported by BBC Monitoring.

[16]UN Human Rights Committee General comment 13.

[17]UN Report of the Group of Experts, p36.

If the authorities intend to prosecute Ta Mok for crimes allegedly committed since 1979, then a number of other laws would apply, the most recent being the 1994 Law on Outlawing the "Democratic Kampuchea" Group. The legal complexities involved in hearing a case in a Cambodian court brought under the 1956 Code Penal or applicable international laws are enormous and are likely to prove beyond the capacity of a legal system which has yet to recover from the effects of 30 years of civil war and political instability. Those working in Cambodia's legal system today have no experience of bringing cases under the 1956 Code Penal, and most would not even have a copy of the law.

4.5 The right to trial within a reasonable time

"[*Everyone shall be entitled*] *to be tried without undue delay*" (ICCPR Article 14(3)c)

"*The duration of a pre-trial detention must in no case exceed four months. However, upon the decision of a judge setting out the reasons, this period may be extended to six months if justified by the requirements of the investigation.*" (Cambodian Criminal Code, Article 14(4))

Cambodian law requires that trials take place within four months of arrest, or exceptionally within six months. International law requires that the accused has the right to adequate time and facilities to prepare a defence. Ta Mok's lawyer was not appointed until he had already been in detention for one month, and as of 9 April, had yet to receive notification of charges against his client.

Amnesty International is concerned that the basic rights of the accused are not upheld in Cambodia, particularly when the accused has links to the Khmer Rouge. An illustrative case is that of Nuon Paet, who is accused of the murder of three foreign nationals held hostage following a Khmer Rouge attack on a passenger train in 1994. On 1 August 1998 it was announced that Nuon Paet had been arrested. By 15 April 1999 he remained in pre-trial detention in Phnom Penh, in violation of Cambodian law, and the principles of justice. The precedent set by this case is not a positive one.

Another important political case in Cambodia's recent past also gives serious cause for concern about the likely conduct of proceedings in Ta Mok's case. Following the arrest and detention in November 1995 of Prince Norodom Sirivudh, Amnesty International found that the confidentiality of contact between lawyer and client was breached by the detaining authorities, who made copies of all documentation brought to Prince Sirivudh while he was detained at the Ministry of Interior. His trial *in absentia* the following February also fell far short of minimum

international standards for fairness.[18]

5. Conclusion

Amnesty International is concerned that the likely trial of the suspect Ta Mok in the Military Court of Cambodia will fall far short of international standards for fair trial, and will prove no solution to the problem of impunity in Cambodia. The organization believes that the many breaches of due process to date, and the apparent choice of the Military Court as the venue for the hearing are in themselves indications of the lack of capacity and weaknesses within Cambodia's judicial system and the need for an international trial. The charges Ta Mok is likely to face relate to crimes against humanity, genocide and torture, which are crimes of universal jurisdiction; the shortcomings of Cambodia's courts need not prevent the course of justice, because an ad hoc international court, or a third country willing and able to prosecute the case are both options which could ensure fair trial, allowing the truth to be told, and helping to break the cycle of impunity in Cambodia.

Cambodians deserve better than a show trial in an ill-equipped and under-resourced court, subject to political pressure and constant security concerns. In its February 1999 report, the UN Group of Experts stated:

> "It is the opinion of the Group that the Cambodian judiciary presently lacks three key criteria for a fair and effective judiciary: a trained cadre of judges, lawyers and investigators; adequate infrastructure; and a culture of respect for due process ... trials of Khmer Rouge leaders must observe the maxim that justice not only be done but be seen to be done. ... the Cambodian people must have confidence in the fairness of the process. Otherwise they will regard this as a partisan political exercise. Moreover, the possibility of any lessons to be gained from fair and impartial trials being absorbed by the Cambodian public is diminished if the population does not believe in the process. In the course of its work, the Group has reached the opinion that the Cambodian public does not, at the present time, have such confidence in the judiciary."[19]

In present circumstances, Amnesty International believes that the interests of justice are not best served by a prosecution of Ta Mok in Cambodia, under Cambodian law, through a Cambodian court. A fair trial is always a minimum requirement for justice, in each and every case. This is true whether an individual stands accused of petty theft or involvement in one of the most notorious violations of human rights this century, including crimes against humanity.

[18]For more details on this case see Amnesty International *Kingdom of Cambodia: Diminishing Respect for Human Rights* (AI Index: ASA 23/02/96, May 1996), pp11-16.

[19]UN Report of the Group of Experts, pp38-39.

Amnesty International believes only an international option can ensure truth and justice in this and other possible Khmer Rouge cases, in a way that upholds international standards for fairness, and meets the expectations of the Cambodian people and the international community.

It is not too late for the Cambodian authorities to reconsider their position on the recommendations of the UN Group of Experts, and cooperate with the UN on the formation of an international court to ensure fair trials for Ta Mok, and for any other suspects indicted by such a court. By taking this step forward, the Royal Government, working with the international community - which also has a responsibility to deliver justice to Cambodia's people - could ensure both that the truth is known about past human rights violations, and that the cycle of impunity in Cambodia begins to be broken, thus contributing to human rights protection in the future. The opportunity to take this step in the interests of truth, justice and the Cambodian people may not present itself again. It should not be wasted now.