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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS  
QUESTIONS, INCLUDING ALTERNATIVE  
APPROACHES FOR IMPROVING THE  
EFFECTIVE ENJOYMENT OF HUMAN RIGHTS  
AND FUNDAMENTAL FREEDOMS

SECURITY COUNCIL

Fifty-fourth year

Identical letters dated 15 March 1999 from the Secretary-General  
to the President of the General Assembly and the President of  
of the Security Council

By resolution 52/135 the General Assembly requested me to examine the request of the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law, and those committed by the Khmer Rouge, in particular, and to that end to examine the possibility of appointing a Group of Experts. I accordingly appointed a three-member Group of Experts to evaluate the existing evidence with a view to determining the nature of the crimes committed by Khmer Rouge leaders in the years 1975-1979; to assess the feasibility of their apprehension; and to explore legal options for bringing them to justice before an international or national jurisdiction.

The Group of Experts visited Cambodia and Thailand from 14 to 24 November 1998. It met with the then Second Prime Minister, Hun Sen, with representatives of Government ministries and of non-governmental organizations and private individuals. It also visited the Documentation Centre, the National Archives and the Tuol Sleng prison (the so-called "Museum of Genocide"). The Group of Experts submitted its report to me on 22 February 1999 (see annex). A copy of the report was given on the same day to the Government of Cambodia for its consideration.

On the basis of a review of the material and documents made available to it, the Group of Experts concluded that the evidence gathered to date testifies to the commission of serious crimes under international and Cambodian law, and that sufficient physical and witness evidence exists to justify legal proceedings against the Khmer Rouge leaders for those crimes. It considered

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protections afforded defendants in the 1992 law. Beyond the supremacy of the Constitution - at least as a matter of principle - the relationship between the various laws of criminal procedure remains vague.

## 2. Functioning of the Cambodian judiciary

126. In order to evaluate the option of trials in Cambodian courts, the Group has devoted considerable attention to the state of the Cambodian judiciary. It has consulted officials of the Cambodian Government responsible for the administration of justice (including the Chief Justice of the Supreme Court), international and non-governmental organizations and the reports of the Special Representative of the Secretary-General for Human Rights in Cambodia. 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.

127. First, one of the many legacies of Cambodia's decades of civil conflict is the lack of a qualified legal profession in Cambodia. Most attorneys and scholars fled during the 1960s and 1970s or were killed by the Khmer Rouge; those who entered the profession during the years of the People's Republic of Kampuchea or the State of Cambodia received their training under a system in which courts were not independent. Lack of experience with evidentiary issues has often led courts to use shoddy police reports as the sole basis for convictions. The number of qualified judges is thus very small, though perhaps large enough to form a bench for trials of the Khmer Rouge. However, the enormity of the Khmer Rouge's atrocities and the effect they appear to have had on every household means that it would be difficult to find a judge free of the appearance of bias or prejudice.

128. Second, the infrastructure of the Cambodian legal system is poor even for the developing world. Courts lack law books, typewriters and other basic necessities, especially in the provinces. The buildings are run-down. Jails are marked by deplorable conditions.

129. Third and most troubling for the option of domestic trials, Cambodia still lacks a culture of respect for an impartial criminal justice system. Criminal justice receives only a fraction of a per cent of the national budget, with judges paid as little as \$20 per month. As a result, despite the presence of persons of character in parts of the judiciary, it is widely believed that judges can easily be bought by defendants or victims. The vast majority of judges are also closely associated with the Cambodian People's Party. Powerful elements in the Government such as important political figures, the security apparatus and the Ministry of Justice are widely believed to exert overt and covert influence over the decisions of investigating judges and trial courts. These include threats and physical attacks on judges; or simply the realization among judges that their tenure, and often their prospect of future livelihood, depend upon the approval of political elements. Moreover, criminal defence attorneys, even if trained properly, are stymied in their work. Judges are said to pay little attention to their legal arguments, even in routine cases. The courts and police restrict their contact with clients, even during court

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sessions. Defenders can also face threats from victims' families or friends. Treatment of those jailed pending trial or those in prison remains far below international standards. In sum, Cambodia's system falls far short of international standards of criminal justice established in the International Covenant on Civil and Political Rights and other instruments.<sup>74</sup>

130. A related issue concerns security for trials held in Cambodia. Trials of members of the security forces have been disrupted or prevented by governmental units with impunity. Trials of the Khmer Rouge are likely to be well attended, necessitating careful and professional management of crowds. It is possible that the trials may ignite old passions among observers. Defendants, prosecutors, judges and witnesses may become targets of attack and will need ample protection, in the case of witnesses possibly including prolonged post-trial protection. Escapes from prison are common. It is not thus at all evident that the Cambodian police are properly trained to address these types of situations.

### 3. Recommendations

131. In order to conduct domestic trials that meet international standards of due process, Cambodia, alone or with foreign support, would have to undertake a number of critical steps, including (a) clarification of the law and procedure to apply to such trials, e.g., through special legislation; (b) providing trained lawyers and investigators to undertake prosecutions; (c) providing a functioning set of facilities, including a courtroom, prison and investigative and prosecutorial offices; and (d) ensuring a fair and impartial set of judges, free from political control or pressure.

132. The Group of Experts is keenly aware of the advantages of organizing a trial under Cambodian law. Most obviously, it places the responsibility on the State most directly affected and avoids the political, financial and administrative complications inherent in setting up an international tribunal. For the following reasons, however, 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.

133. First, in the light of what we heard during our mission to Cambodia, even from some high official sources, the level of corruption in the court system and the routine subjection of judicial decisions to political influence would make it nearly impossible for prosecutors, investigators and judges to be immune from such pressure in the course of what would undoubtedly be very politically charged trials. The decisions on whom to investigate and indict, and to convict or acquit, must be based on the evidence and not serve to advance the political agenda of one or another political group. This is necessary in order to respect the integrity of the proceedings and to accord fundamental fairness to defendants.

134. Second, trials of the Khmer Rouge leaders must observe the maxim that justice not only be done, but be seen to be done. To serve the purposes of criminal justice outlined in the introduction to our report, the Cambodian people must have confidence in the fairness of the process. Otherwise, they