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Khmer Rouge Court Session Highlights Need for More Active International Engagement

New York — A meeting of judges and staff at the Extraordinary Chambers in the Courts of Cambodia (ECCC) last week highlighted the challenges facing the tribunal, the Open Society Justice Initiative said today.

The ECCC—which will try those "most responsible" for the crimes of the Khmer Rouge—held a five-day meeting in Phnom Penh but failed to reach agreement on a lengthy draft of the procedural rules that will govern the trials. During the week, the Cambodian Bar Association resisted the creation of an independent tribunal defense office and effectively blocked a planned training for Cambodian defense attorneys.

"These setbacks, while disappointing, are not surprising," said James A. Goldston, executive director of the Open Society Justice Initiative. "The issues are complex, the Cambodian legal system is not strong, and the judges have had only a short time to work together. At the same time, the early difficulties underscore the need for much greater international attention to make this tribunal a success."

Trying war crimes and crimes against humanity is a complicated process, and especially challenging in a legal system with little relevant experience, a tight timeline, and a slim budget, the Justice Initiative said. Last week's developments further underscore the magnitude of the ECCC's task.

The adoption of clear procedural rules for the court—which features both Cambodian and international judges and staff—is crucial for moving ahead with investigations and trials. But it might be expected that 25 judges representing more than a dozen national jurisdictions could not resolve all disagreements about the tribunal's rules in just five days. The judges plan to reconvene early next year to work further towards creating procedural rules to guide the Chambers' operations. In the meantime, a committee of several judges has been tasked to produce a consensus document to be considered at that meeting. It is imperative that their efforts succeed.

To ensure that a final set of rules is adopted as soon as possible, and to enable the ECCC to carry out effective prosecutions and fair trials that comport with international due process standards, the international community must step up its active engagement with the tribunal. Specifically, the United Nations and the Group of Interested States—the loose assemblage of donors and other governments supporting the ECCC—must take the following steps:

- Supply funds to support a commitment by the ECCC to convene the judges regularly, allowing adequate time to work on substantive issues (including the development of internal rules of procedure), and establish a common commitment to legal principles based on relationships of trust and respect.

- Facilitate strong judicial leadership at the ECCC, either by hiring a highly qualified legal advisor devoted solely to representing the judges' interests full-time, or alternatively placing one full-time international and one full-time Cambodian judge charged with judicial leadership on the ground in Phnom Penh. Currently, judges are not scheduled to convene full-time in Phnom Penh until at least mid 2007. It is crucial to establish a mechanism to facilitate judicial leadership between now and then. Again, donors need to fund this effort.
- Provide immediate professional development assistance to the judges, to familiarize them with international and Cambodian law, practices and procedures.

International actors also need to take a proactive role in creating the proposed ECCC Defense Support Office, giving it power to create and maintain a list of approved lawyers to appear before the ECCC, and ensuring that international counsel can fully represent potential defendants. Protecting the rights of defendants is a cornerstone of international fair trial standards. The Court has an obligation to ensure the right of defendants to choose effective, independent and qualified defense counsel. The procedure for listing, approving and training lawyers to appear before the ECCC must be maintained by the Defense Support Office to ensure this right. Coordination with the Cambodian Bar Association would be beneficial, but ultimate authority over the process cannot be delegated to an outside group. Ensuring an "equality of arms" means that international defense counsel should be able to fully participate in the ECCC trials and appear before the Chambers.

The Open Society Justice Initiative works around the world to protect human rights and develop legal capacity for open societies. It has examined the ECCC's needs in a series of memos to the Group of Interested States.

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