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CAMBODIAN HUMAN RIGHTS ACTION COMMITTEE

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PRESS RELEASE

"New Directions for Victim Participation at the ECCC"

Phnom Penh, 26 February 2010

During its Seventh Plenary Session from 2 to 9 February 2010, the Judges of the Extraordinary Chambers in the Courts of Cambodia (ECCC) revised the Court's Internal Rules, in particular amending provisions on victim and civil party participation in order to allow for effective proceedings in the Court's second and most important case. Following the publication of the new Internal Rules on 19 February 2010, the Cambodian Human Rights Action Committee (CHRAC), a coalition of 23 NGOs working in the fields of human rights, democracy and the rule of law, wishes to comment on the amendments which provide new directions for victim participation at the ECCC.

CHRAC member organizations have assisted the ECCC since the beginning with activities focusing in particular on outreach to the Cambodian society, support to victim participation and monitoring of the Court process. As a result our member organizations have assisted nearly 4,500 victims in filing complaints and civil party applications. The ECCC, which first provided for a participation mechanism under its original Internal Rules, lawyers, civil society and donors all bear now a responsibility to those victims who came forward to provide evidence of their suffering with the aim to participate in the legal proceedings.

The new Internal Rules were amended with the intention to “balance the rights of all parties, to safeguard the ability of the ECCC to achieve its mandate” (ECCC Press Release, 9 Feb 2010). However, many details remain still to be clarified by the next Plenary Session. Thus, and in order for this new balance to be fair and to respect the rights of victims, CHRAC provides the following forward-looking comments:

First, and probably most importantly, CHRAC applauds the expansion of the mandate of the Victims Support Section under Rule 12*bis* (2) to include the development and implementation of programs and measures other than of a legal nature addressing the broader interests of victims. In doing so, the Court recognizes the need to complement the criminal justice process with restorative elements of justice. The relevant provision is broad and allows therefore the Victim Support Section to design – by applying a consultative and inclusive approach – measures that are most appropriate for victims of the Khmer Rouge. Many civil society organizations have implemented in the past victims-related initiatives and projects on which the Section could build and from which it could draw inspirations. However, such an undertaking will require additional administrative and funding arrangements, likely outside the ECCC core-budget, to guarantee an effective implementation. For this to happen, the Victims Support Section should enjoy the full support from other relevant Court units, and preparations need to begin instantly.

Second, the new Internal Rules introduce Civil Party Lead Co-Lawyers who work from an independent section to represent a single, consolidated group of civil parties at trial stage and beyond. According to Rule 12*ter* (3), these Lead Co-Lawyers “shall first and foremost seek the views of the

Civil Party Lawyers and endeavor to reach consensus in order to coordinate representation”. However, the new Rules do not provide any details about the practical implementation and leave these instead to internal procedures to be developed in the near future. We therefore urge the ECCC and existing civil party lawyers to begin with the drafting of these internal procedures to make sure that adequate provisions are in place before the trial stage to ensure a collaborative approach between the future Lead Co-Lawyers and Civil Party Lawyers and to guarantee the best interests of the civil parties and their multiple views are represented in Court.

Third, CHRAC welcomes the Plenary’s decision to endorse budgetary and administrative measures to create a long-demanded increase in the level of Court-funded legal representation for civil parties. In light of the many unrepresented civil parties in Case 002 who need to find a lawyer in the coming months and the little number of pro bono lawyers currently available, we urge the Court to provide in good time sufficient resources to allow for a comprehensive and appropriate representation of civil parties’ interests at all stages of the legal proceedings.

Finally, we note that proposed amendments to the Court’s reparations scheme were deferred to a later Plenary Session. This will provide Judges with adequate time to consider their policy on reparations and its implementation in a comprehensive manner and to undertake further consultations with stakeholders. CHRAC expressed serious concerns with some of the proposed changes, and it is ready to engage in a productive dialogue with the Court to find meaningful and feasible solutions to the ECCC’s mandate on collective and moral reparations.

Apart from changing rules, however, an effective and meaningful victim participation scheme at the ECCC requires genuine commitment from decision-makers and the allocation of adequate resources to the Victim Support Section, civil society organizations, victim associations and civil party lawyers. Only this will allow for an inclusive two-way communication, particularly with civil parties, to make their participation in the upcoming trial process a beneficial experience. Else, victim *participation* would be an empty promise.

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