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Comments on the Draft Internal Rules of the ECCC

Human Rights Now

On November 3rd, 2006, the Rules Committee has released the Draft Internal Rules. The meeting of international and Cambodian judges will convene in late November in Phnom Penh to finalize the draft. As a transitional justice mechanism of Cambodia, the Extraordinary Chamber for the Courts in Cambodia faces both historical opportunity and challenge of achieving justice and national reconciliation, by overcoming impunity of gross human rights violations. In this regard, Human Rights Now reiterates the importance of victims' roles and their rights in the entire process of the ECCC.

While Human Rights Now has already released our opinion paper "*Justice for Victims – Fundamental Issues for the Extraordinary Chambers in the Court of Cambodia*" on September 13th, 2006 (revised on October 13th, 2006), it again submits comments on the Draft Internal Rules to address the issues of victims' participation and reparation in the ECCC proceedings.

1 In the first place, Human Rights Now welcomes the proposal in the Draft Internal Rules which is to confirm the victims' right to participate in the ECCC proceedings and seek reparations as Civil Parties. (Rule 27, Rule 58, Rule 61, Rule 62, Rule 69, Rule 74, Rule 75, Rule 81, Rule 82, Rule 85, Rule 88, Rule 89, Rule 92, Rule 99, Rule 104, Rule 112, etc.) We support the crystallization of victims' right in the ECCC procedure.

The provisions in Draft Internal Rules provide that a victim may petition to participate in a proceeding as a Civil Party and guarantee their participation at all stages in the proceeding.

Human Rights Now calls upon all judges to confirm the victims' rights proposed in the Draft in accordance with the Cambodian criminal procedure and the international standard in case of gross violations of human rights and humanitarian law.

2 Human Rights Now also welcomes the provision which empowers a court to issue orders of reparation including collective or symbolic reparation (Rule 27, Paragraph 12 (b), Rule 99). The ECCC should hear the voice of victims on what forms of reparation would be appropriate.

3 Human Rights Now recognizes that it is extremely important for the ECCC to ensure the victims' rights to participation and reparation. If the victims' rights are not realized and end up mere nominal provisions in the Rules, the entire justice and reconciliation process will fail.

In this regard, Human Rights Now strongly supports the proposal for the establishment of the Victims Unit (Rule 13, for discussion). As stated in the footnote 3 of the Draft Internal Rules, the establishment of the Unit is essential for the realization of victims' rights. In order to ensure effective exercise of the victims' rights, the ECCC should properly assist victims by providing information (regarding lawyers, procedure, investigation), support (both physically and psychologically) and protection. Without the Unit which undertakes those tasks, victims' rights could not be effectively exercised.

In order for the Unit to be secured, the ECCC should invite additional assistance for the expenses necessary for the establishment of the Unit from voluntary funds. Human Rights Now strongly urges governments, international institutions, NGOs, and other persons to make any contributions (*see* Rule 6).

4 Human Rights Now also welcomes the proposal of certain mechanisms for collective representation including the proposition for the provision of a list of lawyers to represent victims (Rule 27, Paragraph 3 through 5), and Victims' Associations (Rule 13, Paragraph 7, Rule 27, Paragraph 9, etc.). In addition, Human Rights Now calls upon the ECCC to disseminate all the information regarding victims' participation into the proceedings to the public.

5 In order to realize the victims' rights, Human Rights Now emphasizes the needs

to address the financial deficiency. Adequate resources should be allocated for the outreach, support, protection and counsel for victims as well as training for the court personals and counsels. However, the current budget is not sufficient to do those tasks.

To this end, Human Rights Now strongly urges all States, in particular the Group of Interested States, pay special attention on this very issue and make sufficient contributions.