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Cambodia: Government Interferes in Khmer Rouge Tribunal

New York — The Cambodian government must end its interference in the mixed national and international tribunal set up to prosecute crimes by senior Khmer Rouge leaders and others most responsible for Khmer Rouge crimes, Human Rights Watch said today. A recent week-long meeting of Cambodian judges and their United Nations-appointed international counterparts failed to agree on internal rules for the tribunal, which is officially known as the Extraordinary Chambers in the Courts of Cambodia (ECCC).

Acting on instructions from government officials, Cambodian personnel participating in the meeting delayed adoption of the draft rules, reversing earlier progress in the drafting process. The result is that the tribunal remains unable to launch investigations or prosecutions in accordance with international standards or even Cambodian law.

"Adopting the internal rules is crucial to ensure that the tribunal adheres to international fair trial standards and an impartial interpretation of Cambodian law," said Brad Adams, Asia director of Human Rights Watch. "Many of the Khmer Rouge leaders are old and increasingly frail, but until the rules are adopted, prosecutions and trials cannot move forward. Political interference has brought the whole process to a screeching halt."

In comments submitted to the tribunal on November 17, Human Rights Watch called for changes to the rules to meet international fair trial standards, specifically that there would be no in absentia trials, that defense counsel would be independent and effective, and that all trials would be public. Cambodian lawyers and nongovernmental organizations have called for provisions to guarantee meaningful participation and protection of victims and witnesses, outreach to rural Cambodians to inform them about the trials and ensure that they can participate as civil parties, and authorization for victims' associations and human rights NGOs to act as civil parties without having to register their organizations with the government.

Obstructionist tactics at the meeting on the internal rules were reportedly led by ECCC prosecutor Kong Srim, a protege of Deputy Prime Minister Sok An, who is Prime Minister Hun Sen's most senior and trusted political lieutenant. As a prosecutor at the Appeals Court, Kong Srim developed a reputation for handling cases in a political manner rather than according to the law and the facts: he prosecuted suspects in absentia, played a key role in the release of Hun Sen's nephew, Nhim Sophea, against whom there was compelling evidence of murder, and was crucial in engineering the imposition of the deputy prime minister's candidate, Ky Tech, as president of the Cambodian Bar Association.

As documented in numerous reports by the United Nations, international legal organizations and Cambodian NGOs, the Cambodian judiciary and legal system remain under the tight control of the government. The government has ensured the appointment to the ECCC of Cambodian judges, prosecutors and security personnel who are

politically loyal to the prime minister, the deputy prime minister and the national police chief, Hok Lundy. Such political control mechanisms are aimed at preventing judges and prosecutors from acting independently and conducting fair trials free from political interference.

Throughout the negotiations with the United Nations to establish the ECCC, Hun Sen and the Cambodian government engaged in a pattern of delay and obstruction, which was set out in detail by UN Secretary-General Kofi Annan in a report to the UN General Assembly. (See UN document A/57/769, "Report of the Secretary-General on Khmer Rouge trials," at www.un.org.) The government has long tried to bog down efforts at creating the tribunal and, now, at making it functional, through seemingly endless and often fruitless negotiations, which absorb huge amounts of time, funding and expertise, but result in little or no substantive improvements.

"Government control over the Cambodian judiciary in the Khmer Rouge tribunal has always been a grave concern," said Adams. "The fact that the government is already obstructing the process on 'technical' grounds should serve as a wake-up call for donors who have chosen to ignore Cambodian realities."

Based on past government practices, Human Rights Watch is concerned that the latest wrangling over the internal rules may be a prelude to public attacks on the tribunal's international staff, both to drive out particular individuals and to discourage others enough to bring about their resignations.

For the past 15 years, the Cambodian government has consistently attempted to silence, dismiss or undermine UN and other international personnel in Cambodia who operate independently and professionally and are seen as a threat to the government's continued control of the judicial system. Hun Sen has vituperatively attacked all four UN human rights special representatives to Cambodia and the UN human rights office in Phnom Penh for their consistent and well-documented reports on human rights abuses, including extrajudicial killings and unfair trials, as well as the judiciary's incompetence, corruption and lack of independence. While international donors have often called for reform of the judiciary as one of the highest priorities for Cambodia, the government has failed to adopt meaningful reforms.

"The government has long feigned accommodation with the UN system and international community in order to maintain its control over the judiciary," said Adams. "The UN and donors must not allow this to happen this time."

Human Rights Watch also expressed serious concern about the politically controlled Cambodian Bar Association's attacks on the proposed ECCC Defense Office and plans for the training of Cambodian lawyers by the International Bar Association. The Cambodian Bar Association threatened legal action against Cambodian lawyers planning to attend a training on international standards by the International Bar Association in Singapore, causing it to cancel the training and to issue a strong statement condemning the move. Last year, when an independent candidate was elected president of the

Cambodian Bar Association, the government-backed candidate, Ky Tech, used the politically controlled court system to have the election overturned. Ky Tech subsequently was elected as president, and it was he who ordered Cambodian lawyers not to attend the IBA training.

Though some progress has been made over the past decade, Cambodian courts generally give little respect to the right to an effective defense. The Cambodian government has repeatedly given assurances to the United Nations that arrangements would be made to allow full-fledged participation in defense by foreign lawyers, thereby ensuring that defendants would have counsel of their choosing. But the government is now obstructing this.

"The trials will not be credible unless defendants are provided a credible defense," said Adams. "Given the well-documented problems with trials in Cambodia, the government and Bar Association should be going out of their way to ensure the reality of fair trials, rather than attacking the defense office."

Future discussions of the internal rules will show whether it is possible for the ECCC to conduct trials that implement Cambodian and international law in an independent and impartial manner. Human Rights Watch urged both Cambodian and international personnel of the ECCC to pursue the objective of fair trials in accordance with international standards, keeping in mind that it is the Cambodian people who are the intended beneficiaries of this process.

"The international community needs to follow the Cambodian tribunal closely," said Adams.

"We want this tribunal to succeed. But if it becomes clear that the process is hopelessly politicized and obstructed, then the UN should withdraw its support to avoid becoming involved in a substandard trial that would be a disservice to itself and to millions of Cambodians."

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