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A Joint Statement by the Cambodian Center for Human Rights and the Asian Human Rights Commission

CAMBODIA: Tolerance of corruption at the Khmer Rouge Tribunal is unacceptable

The Asian Human Rights Commission (AHRC) and the Cambodian Center for Human Rights (CCHR) are very concerned that, on 3 April, the Office of the Co-Investigating Judges (OCIJ) at the Extraordinary Chambers in the Courts of Cambodia (ECCC), otherwise known as the Khmer Rouge Tribunal (KRT), rejected a request by the defence seeking disclosure of the UN review of allegations of corruption. The OCIJ cited lack of jurisdiction to justify their decision. Given that other potential avenues of redress have recently been blocked, this decision has essentially put an end to the recourse available for addressing corruption.

In mid-2008, the UN, which is assisting the KRT, conducted a review of new complaints regarding corruption made by Cambodian staff that followed those made not long after the formation of the KRT in 2006. This UN review has been kept confidential, although it reportedly called on the Cambodian government to address the issue of corruption head on. However, the Cambodian government failed to heed this call, and the issue has lingered while new allegations of corruption have been made over recent months.

In early January 2009, Nuon Cheas defence team filed a complaint with the Court of Phnom Penh, requesting that it investigate the alleged corruption. After taking a statement from the KRT's Cambodian administrator, Sean Visoth, who was named as one of the witnesses, and looking at the audits and other documents this witness had submitted, this court dismissed the complaint. It said that the results of these investigations (as shown in these audits and documents) did not say there was corruption and it ended its investigation altogether.

Furthermore, earlier this month, the UN made a further attempt to get the Cambodian government to put in place a credible mechanism to address allegations of corruption. But the Cambodian government refused to cooperate, which led to the breakdown of the negotiations regarding potential anti-corruption measures for the tribunal. The Constitution of Cambodia, the Agreement between the UN and Government of Cambodia for prosecuting crimes committed under the Khmer Rouge regime, the Law on the Establishment of the KRT, and the tribunals Internal Rules reflect the fair trial provisions stipulated in the International Covenant on Civil and Political Rights to which Cambodia is a party. Article 14 of this Covenant states that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal. Furthermore, the

Public Affairs section at the KRT has long heralded the trials legacy, stating that the tribunal will provide a new role model for court operations in Cambodia.

Should institutional corruption be found to exist at the KRT- and this now seems highly probable - serious questions about the fairness of the trials would be raised. Corruption introduces an element of external control that affects both the tribunals independence and the fairness of the trials - a person paying kickbacks is not truly independent and impartial. Furthermore, the failure of the Cambodian government, the UN, and the national and international judges to properly address allegations of corruption has sent out a signal to Cambodians that corruption is tolerated and, when required, accountability disregarded. Impunity overrides accountability.

Justice must not only be done but also be seen to be done. This issue of corruption, together with the widely reported sustained political interference, has very much undermined the dignity and reputation of the KRT, which it must have in order to assert its authority, maintain its credibility and win the publics trust. It casts doubt on the fairness of its trials, and this is unacceptable for a very costly tribunal which is expected to be a new role model for court operations in Cambodia.

The AHRC and the CCHR therefore urge the UN, the Cambodian government, the Cambodian courts and the KRT itself to address the issue of corruption once and for all. They should properly investigate and disclose their findings. The AHRC and the CCHR also encourage the defence to appeal the OCIJs rejection of the request for disclosure of the UN review of the corruption allegations and the decision of the Court of Phnom Penh to end its investigation into the alleged corruption. If it accepted that corruption affects the fairness of the trials, then the OCIJs jurisdictional arguments are unacceptable. Cambodians have been waiting thirty years for the Khmer Rouge trials, but trials alone are not enough - they must be fair and transparent.

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About AHRC: The Asian Human Rights Commission is a regional non-governmental organisation monitoring and lobbying human rights issues in Asia. The Hong Kong-based group was founded in 1984.

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