

**Recommendations Regarding Additional Transparency at the Extraordinary  
Chambers of the Courts of Cambodia (ECCC)  
Submitted by members of Civil Society and  
Members of the Cambodian Press  
March 24, 2008**

Representatives of civil society and press corps in Cambodia have met several times over the last two weeks among themselves and with representatives of the Extraordinary Chambers in the Courts of Cambodia (the ECCC) to discuss recent tensions around access to information about the ECCC.<sup>1</sup> Members of each group affirmed that providing information to the people of Cambodia about the work of the ECCC is critical if the court is to meet its goals of fighting against impunity, serving as an example of independent justice, and helping to heal the wounds of the Khmer Rouge period in Cambodia. We all recognize the importance of a free press generally in advancing human rights and democracy in Cambodia. In addition, all three groups acknowledge that the ECCC has legitimate needs for keeping some information confidential in order to protect the right of accused to be presumed innocent, the rights of victims and witnesses to protection, and the need for secrecy of judicial investigations.

Decisions by the court to keep information confidential must be balanced against the public interest in wide dissemination of information. The press has an important role to play to ensure that people are engaged and interested in the judicial process and able to monitor its progress. Justice must not just be done but must be seen to be done. The ECCC is designed to be a model for the Cambodian legal and judicial reform; therefore, the ECCC should not be a model for unnecessary limitation on free expression and access to information.

The ECCC, the press and civil society must work together to balance the needs and rights to information about the court with the legitimate needs for confidentiality. In order to advance the goal of finding the right balance, we make the following suggestions, which were formed at a meeting held on March 10, 2007, for changes in the way that information about the court is provided to the public:

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- **General steps to increase access to information.** More clarity and better communication between the press, the principals of the court and members of civil society would help ease tension aroused by secrecy in court proceedings and enhance understanding of the needs and interests that must be balanced by the ECCC. In this regard we suggest the following steps:
  - To the extent that the court relies on the right of the accused to be presumed innocent as a basis for holding information confidential, it should obtain clear direction from defense counsel as to the extent to which accused are willing to have the process open to press to the public. Public trials are an important right of accused persons, and transparency even at the early stages can be an added guarantee of legitimacy and the credibility of the process. Defense counsel has often stated their willingness to discuss issues with the press, but they are constrained by not knowing if the court will object. The court should have a clear policy that defense counsel will not be under threat of sanction for disclosure of information pertaining to their client or their client's position on the case. The presumption of innocence is a right afforded to all accused persons to safeguard their interests in criminal proceedings, and one must assume that the accused and his counsel are cognizant of those interests so that nothing will be divulged which is prejudicial to their case. Guidelines should be agreed to by defense, prosecution and judiciary to set general rules governing disclosure, with provisions for consideration of such information on a case by case basis
  - Schedule times for regular dialogue between the press and principals of the court to clarify the respective needs for confidentiality and information. Dialogue will help to enhance the commitment of the court and the press to support public understanding of the ECCC process.
  - Both the press and the Court would be well served by a firm commitment to respect their respective roles. To this end, the scope and meaning of Rule 35 of the Internal Rules might be worth clarifying. In the absence of powers of contempt, does the ECCC have the power to sanction members of the media for reporting information or publishing or broadcasting photographs or other materials? In answering this question, guidance might be sought from the provisions of the Cambodian Press Law, Code of Criminal Procedure and the Rules of Civil Procedure.
  
- **Information regarding judicial investigations.** For the purposes of preserving the rights and interests of the parties, Rule 56(1), provides for the principle of secrecy/confidentiality of the judicial investigation. The Rule goes on to provide in sub-paragraph (2) for exceptions to the principle of blanket secrecy, and specifically provides for limited access to the press and other non-parties. It is questionable whether the legitimate purposes of, and need for confidentiality, actually require the high degree of secrecy currently imposed by the court on the investigation proceedings. Much information about the process that would be useful and interesting to the public does not infringe upon those needs. We request the court consider providing the following types of information about judicial investigations and other developments at the court:
  - Regular, scheduled news conferences with good quality of provision of interpretation, and timely ones when appropriate, by judges,

prosecutors, defenders, administrators and other principals of the court to provide basic information, explanation and comment when appropriate on developments, routine and extraordinary, and on the status of ongoing work of the court including investigations, numbers and types of witnesses interviews, adversary hearings held, and legal issues being addressed by the court.

- Establishment of a public court calendar, with information about upcoming events of possible interest to the public, for example, the arrival and departure of court officials, the swearing-in of foreign lawyers, hearing dates, etc.
  - Routine, informed, and timely press releases announcing events, developments and progress of possible interest to the public, including biographical details of new lawyers and other relevant participants.
  - Provision of photos and film about the work of the court are important tools for engaging the public. Where the parties agree, photo opportunities of proceedings, or tapes of selected proceedings should be provided.
- **Information regarding Pre-Trial Chamber proceedings.** The Internal Rules of the ECCC provide that appeals and proceedings before the Pre-Trial Chamber are confidential unless the court makes an affirmative decision to open a proceeding to the public (Internal Rules, Rule 77 (6)). We request that the court consider the following steps to increase information available to the public about the work of this chamber:
    - Amend the Internal Rules to provide that hearings of the Pre-Trial Chamber and pleadings filed in connection with such proceedings are public absent a finding that confidentiality is necessary to meet a legitimate right of a party and then provide confidentiality only to the extent necessary to protect that right.
    - If the Internal Rules are not amended as suggested, provide the public with access to proceedings whenever and to the extent it does not interfere with a specific interest in confidentiality. To the extent proceedings are held in secrete, provide a brief explanation of the reason.
    - Provide clear guidelines in amended practice directives for publication of pleadings filed in connection with proceeding of the Pre-Trial Chamber which ensure that pleadings are kept confidential or redacted only to the extent necessary to protect a legitimate confidentiality need.
  - **Information regarding administration matters.** The press and the public are also interested in issues related to the general administration of the court. The considerations for confidentially that apply to the investigative process do not apply to the administrative functions of the court. We recommend that the leadership of the Office of Administration take the following steps to increase transparency in that office:
    - Make timely release of key administrative documents such as budgets, budget proposals, audits, evaluations, financial summaries and summaries of progress in the administrative units of the court.
    - Hold periodic, perhaps monthly, press conferences with good interpretation to allow update the press and allow questions about progress in the office.