



UNITED NATIONS

Press Release

XXXXXXXXXX **The United Nations Special Representative of the Secretary General for human rights in Cambodia and the Special Rapporteur on the Independence of Judges and Lawyers express concern over judicial independence in Cambodia in the light of recent judicial appointments** XXXXXXXXXXXXX

23 August 2007

The United Nations Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, and the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, issued the following statement today:

"The Special Representative and the Special Rapporteur are concerned that recent judicial appointments appear not to have been made in accordance with the Constitution, casting doubt on whether the constitutionally guaranteed principle of judicial independence is being fully respected in Cambodia.

According to Cambodian law, all judicial appointments, transfers, promotions, suspensions or disciplinary actions are decided by the Supreme Council of Magistracy and implemented by royal decree. Yet the royal decree of 9 August 2007 replacing the President of the Court of Appeal (NS/RKT/0807/339) appears not to have been made on the basis of a decision of the Supreme Council of Magistracy: prior to the issuance of the decree, no meeting of the Council was convened.

Instead, the decree states that the action was requested by the Chairman of the Supreme Council for State Reform, following proposals from the Co-Chairmen of the Council for Legal and Judicial Reform and the Minister of Justice. In other words, the replacement of the Appeal Court President was done at the request of the executive branch of government in contravention of the separation of executive and judicial powers specified in the Constitution.

Without commenting on the merits of the allegations made against the outgoing Appeal Court President, disciplinary action against judges is, according to the law, the prerogative of the Supreme Council of Magistracy, acting through a Disciplinary Council. The United Nations Basic Principles on the Independence of the Judiciary, which form part of Cambodian law, state that judges, like all citizens, are entitled to a fair hearing and other

guarantees of due process. The Executive should not have a role in deciding whether any judge has acted inappropriately and should be dismissed.

The appointment of four new members of the Supreme Council of Magistracy by another royal decree (NS/RKT/0807/340), also issued on 9 August 2007, appears to have been made similarly at the request of the Executive rather than in accordance with the law.

The Special Representative has already expressed concern that the composition of the Supreme Council of Magistracy, which includes a government minister and a member of the ruling party's Permanent Committee, does not inspire confidence that the judicial appointment process in Cambodia is free of political control. But these recent royal decrees actually sideline the Supreme Council of Magistracy, leaving it only a role in implementing, together with the Supreme Council for State Reform, a decision that it did not formally approve.

Three of the appointments to the Supreme Council of Magistracy were for positions which, according to the Law on the Supreme Council of the Magistracy, are reserved for members elected by the judges. No elections appear to have been held for these positions; indeed, no elections have ever been held for these three elected positions.

An independent judiciary is a fundamental guarantor for the protection of human rights in any country: without independent judges, it is not possible to ensure everyone's right to a fair trial. Unless the Supreme Council of Magistracy is, and is seen to be, free of government control, the Courts of Cambodia cannot be recognized as independent. And if the courts are not independent and impartial, they cannot administer justice fairly in accordance with international human rights standards.

The Special Representative and the Special Rapporteur call upon the Cambodian Authorities to ensure that the provisions of the Constitution, the Law on the Supreme Council of Magistracy, as well as international human rights law, are respected so that the independence of the Cambodian judiciary can be ensured.

They also associate themselves with the concerns already expressed by the United Nations about the implications of the transfer of the Co-Investigating Judge at the Extraordinary Chambers in the Courts of Cambodia to the presidency of the Appeal Court. Legal and judicial reform is crucially important to the future development of Cambodia; but it should not be undertaken at the expense of the essential protections provided to judges, including guarantees of tenure, that enable judges to administer, and be seen to administer, justice efficiently, impartially and fairly, free of political interference."

Background Information

The Special Representative of the Secretary-General for human rights in Cambodia is an independent expert mandated by the United Nations Human

Rights Council to monitor and report on the human rights situation in Cambodia. The Special Representative's mandate derives originally from the Paris Peace Accords and the General Assembly of the United Nations. The current mandate-holder has been Yash Ghai since November 2005. Professor Ghai is a constitutional lawyer and academic from Kenya.

The Special Rapporteur on the independence of judges and lawyers is an independent expert mandated by the Human Rights Council to monitor attacks on the independence of the judiciary, lawyers and court officials and progress achieved in protecting and enhancing their independence. The current mandate-holder has been Leandro Despouy since August 2003. Mr. Despouy is a human rights lawyer and academic from Argentina.

For use of the information media; not an official record