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**Cambodian Center for Human Rights**

**Press Release**

**Phnom Penh – 15 October 2009**

**PRE-TRIAL CHAMBER REJECTION OF AMICUS CURIAE BRIEF –  
OPAQUE FILING PROCEDURES AND THE DISREGARD OF LEGACY AT  
THE ECCC**

The Cambodian Center for Human Rights (CCHR) today slams the rejection by the Pre Trial Chamber (PTC) at the Extraordinary Chambers in the Courts of Cambodia (ECCC) of its *amicus curiae* brief dated 7 September 2009 (the CCHR Brief) that was submitted to assist the PTC in determining whether or not to uphold the Office of the Co Investigating Judges (the OCIJ) *Order on use of statements which were or may have been obtained by torture* dated 28th July 2009 (the OCIJ Order). The rejection - which was made with no explanation - reflects the complete lack of transparency that has bedeviled the ECCC from the outset, and the continuing and abject failure of the ECCC to afford any consideration to its legacy for Cambodia.

The CCHR Brief described as irresponsible and injudicious the OCIJ Order, which amounts to a blanket acceptance of torture-tainted evidence that puts the ECCC and Cambodia in breach of the Convention Against Torture. Moreover, the OCIJ Order was described as a dangerous precedent that could be exploited by the Cambodian judiciary to permit the admission of torture-tainted evidence and serve to legitimize endemic torture practices in Cambodia. The CCHR Brief raised the concern that the OCIJ Order operates to inform members of the infamously partial and non-independent Cambodia judiciary that the law can be set aside ó in this case a blanket international ban on the use of torture tainted evidence ó in order to achieve a pre-determined or desirable result.

The CCHR Brief was sent in conjunction with a complaint letter to the United Nations (UN) Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the situation of human rights in Cambodia respectively; and was expressly supported by a letter from the Law Society of England and Wales to the PTC. The CCHR has received an email from an unnamed Case File Officer to the effect that the PTC had rejected the CCHR Brief.

The CCHR opines that the OCIJ Order is all the more concerning in light of the recent sworn testimony by Wayne Bastin, former head of the OCIJ Intelligence and Analysis Unit, which alleges bias by Co-Investigating Judge Marcel Lemonde. If true, such bias would undermine the fairness of all investigations, suggest a presumption of guilt and cause untold damage to the ECCC.

Although it is at the discretion of the Judges of the ECCC to accept or reject *Amici Curiae*, the CCHR is dismayed at the absence of guidance provided to prospective *Amici*. Internal Rule 33 and the Practice Directions that are intended to provide guidance to those filing documents at the ECCC are unclear, unhelpful and

inconclusive. Furthermore, a veil of secrecy seems to envelop previous decisions of the Chambers of the ECCC accepting or rejecting *Amicus Curiae* briefs (ACBs). The few documents that are available to the public through the ECCC website create procedural obligations on prospective *Amici* - such as the provision of separate applications and submissions in two languages - which, in light of the time constraints that are necessarily involved, are onerous and unnecessary for applicants - especially those which lack the same resources as the organs of the Court. It is clear that this Kafkaesque regime that surrounds the filing of *Amici* applications serves to usurp the function of Rule 33 of the Internal Rules and places an effective bar on organizations seeking to be heard in relation to a legal question under consideration at the ECCC. To compound the difficulties faced by the CCHR in submitting an application under Internal Rule 33, the CCHR has received no explanation as to why the CCHR Brief has been rejected. It seems that there is now a blanket ban on ACBs. In light of the enthusiasm of the Court to solicit ACBs in relation to an issue as straightforward as provisional detention, the disregard of applications on a matter of such jurisprudential significance as the current debate is disconcerting in the extreme. The CCHR has requested an explanation but has received no reply.

Further, the rejection of the CCHR Brief provides another signal that the ECCC is ignoring its promises to bestow a positive legacy of development of the judiciary and rule of law in Cambodia. CCHR President Ou Virak - who himself has recently been threatened with arrest and imprisonment for speaking out for an indigenous minority and human rights defenders in Ratanakkiri Province, and is therefore experiencing at first hand the workings of the flawed Cambodian judiciary - today stated: "We have tried to assist the PTC in bringing to its attention a number of very serious concerns arising from the OCIJ Order and we are very disappointed - but not surprised - that our efforts have been rejected. I remind the ECCC that its work does not happen in a vacuum, that it has promised a legacy of development for the judiciary and rule of law for Cambodia, and that an order that has the potential to be used as a weapon in the hands of a flawed judiciary and law enforcement agencies and which puts Cambodia in breach of the Convention Against Torture runs counter to these promises. We urge the ECCC to listen to Cambodian voices."

Accordingly, the CCHR requests that:

- The PTC reconsider its decision to reject the CCHR Brief and overturn the OCIJ Order as a matter of priority;
- Given the problems of transparency outlined above, the PTC issues publicly available guidelines on submitting ACBs and provides training on dealing with ACBs to all Court personnel; and
- The Deputy Director and Acting Director at the ECCC set out their aims for and the mechanism and activities to be implemented to bestow a legacy of development of the judiciary and rule of law in Cambodia.

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