25 May 2011

Open letter to United Nations Special Expert on the Khmer Rouge Tribunal Clint Williamson from the
Cambodian Center for Human Rights

Dear Mr. Williamson

I write to you as a Cambodian civil society leader and as a victim of the Khmer Rouge, my father having been murdered at the hands of that brutal regime. Recent developments at the Extraordinary Chambers in the Court of Cambodia (the “ECCC”) with regards to Cases 003 and 004 are a cause for serious concern and raise the question of whether the United Nations is conceding to the demands of the Royal Government of Cambodia (the “RGC”) to close the doors of the ECCC with the conclusion of Case 002.

Since the Friday afternoon one-line announcement by the Co-Investigating Judges on 29 April 2011 that the investigation in Case 003 had been concluded, events at the ECCC have taken a startling turn. In response to this announcement by the Co-Investigating Judges, on 3 May 2011 International Co-Prosecutor Andrew Cayley took the commendable step of releasing a statement outlining his intention to invoke Internal Rule 66(1) and request additional investigation into Case 003 on the grounds that the crimes alleged in the International Co-Prosecutor’s Introductory Submission have not been fully investigated. On 18 May 2011, the Co-Investigating Judges responded to Mr. Cayley’s statement with an order to retract certain portions of that statement.

The one-line announcement of the conclusion of the investigation in Case 003 and the 18 May Order to retract portions of the statement of Mr. Cayley offer as clear an indication as possible that the Co-Investigating Judges see it as their prerogative to ensure the closure of the ECCC with the conclusion of Case 002. While the RGC’s opposition to additional cases at the ECCC is well-known, the role of the International Co-Investigating Judge – Siegfried Blunk – in these developments is a matter of utmost concern. His actions raise the question of whether the United Nations has conceded to the demands of the RGC and is now acting to prevent any further cases from going to trial and to ensure the closure of ECCC with the conclusion of Case 002.

According to the ECCC’s own interpretation, which can be deduced from its conviction of prison chief Kaing Guek Eav in Case 001, its jurisdiction is not limited to a handful of leaders that are alleged to have occupied senior political positions within the Khmer Rouge and the government of the Democratic Republic of Kampuchea. A decision to close the ECCC with the conclusion of Case 002 is not therefore based in law – rather it is a political one. If such a decision is indeed effected it will fatally undermine the integrity of the ECCC and the justice which it seeks to dispense in all cases, including Cases 001 and 002.
The ECCC – as with other international and hybrid tribunals – was set up partially as a result of international guilt arising from the international community’s failure to intervene and prevent crimes against humanity. Should the ECCC’s doors shut with the conclusion of Case 002, the institution will have failed the victims of the Khmer Rouge. Unless the United Nations takes immediate steps to ensure that investigations take place in Cases 003 and 004 in earnest, the international community will have to take its measure of the blame – along with the RGC – for that failure.

Yours sincerely,

Ou Virak,
President of the Cambodian Center for Human Rights