



AGREEMENT TO ESTABLISH INDEPENDENT COUNSELLOR AT THE ECCC

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By Michael Saliba, J.D. (Northwestern Law '09), Consultant to the Center for International Human Rights, Northwestern University School of Law

On Tuesday August 11, the United Nations and the Royal Government of Cambodia signed an Agreement to Establish an Independent Counsellor at the Extraordinary Chambers in the Courts of Cambodia (“Agreement”). The new position will help strengthen the human resources management at the ECCC and provide a mechanism to ensure that all allegations of misconduct are properly investigated and remedied. Pursuant to this agreement the parties have selected Mr. Uth Chhorn, the current Auditor General of Cambodia, to serve as the first Independent Counsellor. This agreement was long anticipated and has been viewed as a positive development from the parties, the principal donor countries, and the Tribunal itself.

Background and Necessity for the Agreement

The agreement follows several rounds of negotiations between the parties. The parties met three times prior to the signing of the agreement – on December 9, 2008, February 23 2009, and April 6-8 2009. During the negotiations both parties consulted and received the input of the Friends of the ECCC, an organization comprised of the Ambassadors of the largest donor countries.

This is an important development for the Tribunal because it strengthens the human resources management at the ECCC. The Tribunal has been making a concerted effort recently to hold the proceedings in an expeditious manner to comport with due process of law requirements. However one of the main problems the Tribunal and the parties to the proceedings have faced is a lack of resources. As the international co-prosecutor Robert Petit remarked in a press conference on June 24 2009, the court is “under-funded and under-resourced.”

Perhaps more importantly, the new position bolsters the legitimacy of the Tribunal amid perceptions of corruption and allegations of inappropriate political tampering by the government of Cambodia. For example, according to Transparency International’s Corruption Perceptions Index, Cambodia is perceived to be one of the most corrupt countries in the world, ranking 166 of 180 (the index defines corruption as the abuse of public office for private gain and measures the degree to which corruption is perceived to exist among a country's public officials and politicians.)

More specifically, there have been allegations of inappropriate political tampering by the government of Cambodia with regard to the decision about whether additional senior leaders of the Khmer Rouge regime should be prosecuted at the ECCC. The international and national co-prosecutors are divided on this issue, but it has been reported that Prime Minister Hun Sen told French President Nicolas Sarkozy that the court should only prosecute the five Khmer Rouge leaders who have already been indicted. This prompted Human Rights Watch

to accuse the Prime Minister of trying to use his hold over the Tribunal's Cambodian personnel to interfere with the court, which calls into question the Tribunal's independence. The international co-prosecutor Robert Petit commented that it is "disturbing" that elected officials and other parties think they can tell the court what it should do.

Overview of the Agreement

The Agreement will strengthen the human resources management at the ECCC and help ensure that international due process of law standards are met. The Agreement specifies that the Counsellor be a person of high integrity and good reputation. To further ensure independence, the Counsellor will not be an employee of the ECCC, the United Nations, or a political appointee of the Royal Government of Cambodia. Consequently, the costs of establishing and maintaining this position will be shared equally by the United Nations and the Royal Government of Cambodia.

When an employee or a person affiliated with the Tribunal suspects misconduct, he or she will report the alleged misconduct to the Independent Counsellor. Once the Independent Counsellor receives a complaint, he will investigate the alleged misconduct. If his findings rise to an appropriate level he will report such findings to the Deputy Prime Minister of Cambodia as well as the Assistant Secretary-General for Legal Affairs of the UN, who together will seek to resolve the matter through appropriate consultations. Throughout the process, the Independent Counsellor will maintain the strictest level of confidentiality toward the staff of the ECCC and all persons will be protected from any retaliation for reporting misconduct in good faith.

Positive Reaction to the Agreement

The agreement was long anticipated and has been received with the full support of both the ECCC and the Friends of the ECCC.

The Ambassador of Japan and the Charge d'affaires of France, serving as Co-Chairs of the Friends of the ECCC, released an official statement on August 12 to lend their full support. They stated that the Agreement can provide the credible and effective mechanism needed to further strengthen the administration of the Courts. It also welcomed the appointment of the Auditor General of Cambodia as the Independent Counsellor. Although this organization is not party to the Agreement, it was instrumental to the entire negotiating process as the final Agreement followed detailed consultations with the Friends of the ECCC.

The ECCC also views this Agreement as a very positive development. The Public Affairs Office at the Tribunal held a press conference on August 12 to lend its full support for the Agreement. It noted that even though the ECCC was not party to the agreement, it stands to benefit greatly because the new position will improve the administration of the Tribunal and help address allegations of corruption. The Public Affairs Office emphasized that the Tribunal is looking forward to welcoming the new Independent Counsellor and will cooperate fully with him as he discharges his duties.

This long awaited Agreement has been received positively by all concerned parties. It will strengthen the human resources management at the ECCC and bolster the legitimacy of the Tribunal amid perceptions of corruption and allegations of inappropriate political tampering by the government of Cambodia. It is a very beneficial development for the Tribunal and signifies another important step toward ensuring that justice is achieved at the ECCC.