

## **Joint Statement**

Further to the meetings of 9 December 2008, 23 February 2009, and 6 to 8 April 2009, Deputy Prime Minister and Chairman of the Royal Government Task Force on the Khmer Rouge Trials, H.E. Sok An, and United Nations Assistant Secretary-General for Legal Affairs, Mr. Peter Taksøe-Jensen, are pleased to announce that they have concluded the text of an "Agreement to Establish an Independent Counsellor at the Extraordinary Chambers in the Courts of Cambodia." The Agreement is based on the significant achievements made by the Extraordinary Chambers in the Courts of Cambodia (ECCC) as witnessed by the over 12,000 Cambodian citizens who have so far attended court proceedings in the first case. Both parties recognised the continuing importance of this progress toward addressing impunity for the crimes of the former Khmer Rouge regime. The Agreement was reached following detailed consultations with, and with the full support of, the Friends of the ECCC (the Ambassadors of the principal donor countries). The text of the Agreement is attached to this Joint Statement.

The designation of an Independent Counsellor builds on the existing structure of national and international Ethics Monitors and the Joint Sessions established by the Joint Statements of 10 December 2008 and 23 February 2009. It represents a further step to help strengthen the human resources management in the entire ECCC administration, including anti-corruption measures, to ensure the requirements of due process of law, including full protection of staff on both sides of the ECCC against any possible retaliation for good faith reporting of wrongdoing. In this context, the Independent Counsellor will be available to all staff to bring forward any concerns confidentially, and will be empowered to address such concerns.

Pursuant to the terms of the Agreement, the Royal Government of Cambodia and the United Nations have respectively proposed a number of individuals as candidates for the role of Independent Counsellor. After due consideration and extensive discussion between the parties, and after consultation with, and with the full support of the Friends of the ECCC, the parties have mutually agreed that H.E. Mr. Uth Chhorn, the Auditor General of Cambodia, should be selected to serve as the Independent Counsellor.

H.E. Sok An and Mr. Peter Taksøe-Jensen firmly believe that this new mechanism will enable staff in the entire administration of the ECCC to raise concerns confidentially, without fear of retaliation, and that it should be capable of effectively addressing any allegations of misconduct. The parties will carefully monitor the implementation of the existing structure and the function of the Independent Counsellor established by the attached Agreement, and will keep open the possibility of reviewing the arrangements in order to take any opportunities to improve them further, as appropriate.

Phnom Penh and New York, 11 August 2009

**Agreement to Establish an Independent Counsellor  
At the Extraordinary Chambers in the Courts of Cambodia**

Noting the Agreement between the United Nations and the Royal Government of Cambodia signed in Phnom Penh on 6 June 2003 (hereinafter referred to as "the Agreement") concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea in the Extraordinary Chambers in the Courts of Cambodia (hereinafter referred to as "the ECCC"), and the Joint Statements issued by the parties on 10 December 2008 and 23 February 2009 concerning the Joint Sessions between the national and international sides of the ECCC; and,

Recalling the Joint Statement of 23 February 2009, in which the parties noted that the Joint Sessions had promoted greater mutual understanding of the need to strengthen the human resources management in the entire administration, including anti-corruption measures, and agreed that a structure should be established, based on existing mechanisms, to ensure the requirements of due process of law, including full protection of staff on both sides of the ECCC against any possible retaliation for good faith reporting of wrongdoing;

Therefore, the Royal Government of Cambodia and the United Nations agree to the following:

1. In addition to the existing structure of national and international Ethics Monitors and the Joint Sessions, the Royal Government of Cambodia ("RGC") and the United Nations shall agree the designation of an Independent Counsellor to be available to all staff to bring their concerns confidentially.
2. The Independent Counsellor shall be an individual who is acceptable to both the RGC and the United Nations chosen in consultation with the group of friends of the ECCC. He or she shall be appointed neither on a Cambodian contract nor United Nations' contract, but in accordance with the mandate and the terms of reference set out in paragraph 3 below with details on funds to be used to be worked out by mutual agreement between the UN and the RGC.
3. Mandate and terms of reference of the Independent Counsellor:
  - (a) The Independent Counsellor shall:
    - (i) be a person of high integrity and good reputation;
    - (ii) be neither an employee of the ECCC, nor the United Nations, nor a political appointee in the RGC;
    - (iii) take into account the context in which the ECCC operates, and its specificities, while respecting international standards;
    - (iv) have relevant professional qualifications and experience;
    - (v) ideally be fluent in two of the official languages of the ECCC;
    - (vi) be a good communicator, including having the ability to communicate effectively with high level government and diplomatic officials;
    - (vii) have cross-cultural awareness;


- (viii) be able to relate to all personnel, from the lowest to the highest ranking, including administrative, technical and judicial personnel.
- (b) The Independent Counsellor, in exercising his or her function, shall:
- (i) carry out his or her responsibilities impartially and independently;
  - (ii) provide counseling to staff confidentially raised with him or her;
  - (iii) carry out his or her responsibilities strictly confidentially, except:
    - (I) to keep the Joint Sessions informed about his or her activities, whilst respecting the confidentiality of staff who have approached him or her;
    - (II) to inform the Deputy Prime Minister of RGC and the Assistant Secretary-General for Legal Affairs of the United Nations at Headquarters in the event of any concerns which he or she deems appropriate to raise at that level.
  - (iv) If the Independent Counsellor raises an issue referred to in subparagraph (iii)(II) above, the Deputy Prime Minister and the Assistant Secretary-General for Legal Affairs shall seek to resolve the matter promptly through consultations.
4. The RGC and the United Nations will share on an equal basis the costs of the function of the Independent Counsellor.
5. The initial appointee for the position of Independent Counsellor is referenced in Annex. If at any time the initially appointed Independent Counsellor is unable to continue to carry out the functions of the office, he or she shall be replaced by another person who fulfills the criteria elaborated in paragraph 3 above and who shall be mutually agreed by both parties and chosen in consultation with the group of Friends of the ECCC.
6. This Agreement and Annex are made in two original copies, and will come into effect on the date on which both signatures are affixed.

For the Royal Government of Cambodia

For the United Nations



Sok An  
Deputy Prime Minister and  
Chairman of the Royal Government  
Task Force on the Khmer Rouge Trials  
Phnom Penh, 07 August 2009

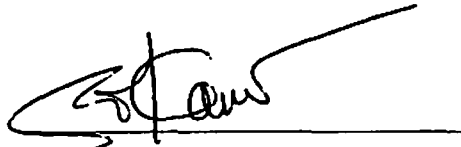


Peter Taksøe-Jensen  
Assistant Secretary-General for Legal Affairs  
New York, 11, August 2009

## Annex -- Independent Counsellor Designation

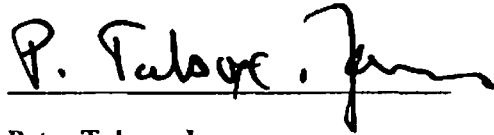
We, the undersigned, on behalf of the Royal Government of Cambodia (RGC) and the United Nations (UN), have concluded an "Agreement to Establish an Independent Counsellor at the Extraordinary Chambers in the Courts of Cambodia." Pursuant to the terms of that Agreement the parties proposed a number of individuals as candidates for the function of Independent Counsellor. After due consideration and extensive discussion between the RGC and UN, and in consultation with the Friends of the ECCC, we hereby select H.E. Mr. Uth Chhorn, Auditor General of Cambodia, to serve in this capacity.

For the Royal Government of Cambodia



**Sok An**  
Deputy Prime Minister and  
Chairman of the Royal Government  
Task Force on the Khmer Rouge Trials  
Phnom Penh, 07 August 2009

For the United Nations



**Peter Taksøe-Jensen**  
Assistant Secretary-General for Legal Affairs  
New York, 14 August 2009