CCHR Media Comment – Phnom Penh, 23 January 2012

RGC must respect ECCC Agreement or risk undermining the entire tribunal

Today, 23 January 2012, it was reported in The Cambodia Daily (“Gov’t Mute on Rejection of UN-Appointed Judge”) that the office of United Nations(“UN”) Secretary General Ban Ki-moon has alleged that the Royal Government of Cambodia has breached the agreement adopted in 2003 between Cambodia and the UN on the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) by refusing to confirm the appointment reserve Judge Laurent Kasper-Ansermet as International Co-Investigating Judge.

In a statement released on Friday, Martin Nesirky, spokesman for UN-Secretary General Ban Ki-Moon, voiced concerns surrounding the reported rejection of Kasper-Ansermet’s appointment by the Supreme Council of Magistracy (“SCM”) and stated that this is a clear breach of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea (the “Agreement”) which requires the SCM to appoint the UN nominated judge. In response, Keo Remy, Vice-President of the government’s Press and Quick Reaction Unit, said that, “The person appointed must be from the reserve, we agree [with] that...But it is up to the Magistracy to appoint or not appoint.”

Judge Kasper-Ansermet was sworn in as Reserve International Co-Investigating Judge for the ECCC on 21 February 2011in accordance with Article 5 of the Agreement. According to Article 5(6) of the Agreement, upon the resignation of International Co-Investigating Judge Siegfried Blunk on 31 October 2011, “the person appointed to fill [the] post [of International Co-Investigating Judge] must be the reserve international co-investigating judge” (emphasis added). Similarly, under Article 27 of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia, “In the event of the absence of the foreign Co-Investigating Judge, he or she shall be replaced by the reserve foreign Co-Investigating Judge” (emphasis added). These instruments clearly provide that no further degree of procedure is required for Mr. Kasper-Ansermet to take up his position as International Co-Investigating Judge and that any further procedure involving the SCM is unfounded in the ECCC’s founding and governing documents.

This is the most recent in a series of developments at the ECCC that raise the question of political interference with the judicial process at the tribunal. There has been widespread concern for some time that the Office of the Co-Investigating Judges (OCIJ) is bowing to political pressure in relation to the investigations into Cases 003 and 004. Since the resignation of International Co-Investigating Judge Siegfried Blunk three months ago – tendered following numerous statements that he argued suggested political interference into Cases 003 and 004 by government officials – the investigations into Cases 003 and 004 have been at an impasse. Since Judge Blunk’s resignation National Co-
Investigating Judge You Bunleng, who sits on the SCM, has refused to work with Judge Kasper-Ansermet until the latter has been appointed by the SCM. The rumored rejection by the SCM - whose members include the tribunal’s Cambodian co-prosecutor Chea Leang who has also voiced her opposition to Cases 003 and 004 and Minister of Justice Ang Vong Vattana – of Judge Kasper-Ansermet further fuels fears of a political agenda to ensure that Cases 003 and 004 never come to trial.

Commenting on the rumored rejection of Judge Kasper-Ansermet, Ou Virak, President of CCHR, stated:

“The Supreme Council of Magistracy’s reported rejection of Judge Kasper-Ansermet as the International Co-Investigating Judge not only breaches the letter of the 2003 agreement between the UN and the Royal Government of Cambodia establishing the ECCC as a hybrid Cambodia-UN Court, but also the spirit underlying the Agreement – i.e. a desire to provide justice to the victims of the Khmer Rouge. The latest developments seriously undermine the legacy and operation of the Court, and add fuel to suspicions regarding political interference. It is well known that Judge Kasper-Ansermet wants to conduct full and frank investigations into Cases 003 and 004, something the government opposes. The Royal Government of Cambodia must respect its obligations under the ECCC Agreement and ensure that the environment exists for Cases 003 and 004 to be genuinely and properly investigated. By failing to do so, the government will severely undermine the legitimacy of the entire court and taint – perhaps irreparably – any justice it seeks to dispense.”

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