



This document is scheduled to be published in the Federal Register on 12/26/2013 and available online at <http://federalregister.gov/a/2013-30819>, and on FDsys.gov

[Billing Code: 4710-30]
DEPARTMENT OF STATE
[Public Notice 8574]

Summary of the Certification Related to the Khmer Rouge Tribunal

On June 26, 2013, Deputy Secretary William Burns signed a required certification for the Khmer Rouge Tribunal, per section 7044 (c) of the Department of State, Foreign Operations, and Related Programs Act, 2012 (Division I, P.L.112-74) as carried forward by the Full-Year Continuing Appropriation Act, 2013 (Div. F, P.L. 113-6), that the United Nations and the Royal Government of Cambodia are taking credible steps to address allegations of corruption and mismanagement within the Extraordinary Chambers in the Courts of Cambodia (also known as the “Khmer Rouge Tribunal”).

The Certification and related Memorandum of Justification are to be provided to the appropriate committees of the Congress and published in the Federal Register.

I am signing the below to verify and affirm Deputy Secretary Burns signature and meet the requirements for publication of these documents in the federal register.

December 10, 2013
Date

Ed Shin
Special Assistant for
Deputy Secretary Burns

Section 7044(c) of the Department of State, Foreign Operations Appropriations Act, 2012 (Div. I, P.L. 112-74), as carried forward by the Full-Year Continuing Appropriations Act, 2013 (Div. F, P.L. 113-6)

Funding for the Extraordinary Chambers in the Courts of Cambodia

Sec. 7044(c) Cambodia. – Funds made available in this Act for a United States contribution to a Khmer Rouge tribunal may only be made available if the Secretary of State certifies to the Committees on Appropriations that the United Nations and the Government of Cambodia are taking credible steps to address allegations of corruption and mismanagement within the tribunal.

MEMORANDUM OF JUSTIFICATION
FOR CERTIFICATION RELATED TO THE KHMER ROUGE TRIBUNAL
UNDER SECTION 7044(c) OF THE DEPARTMENT OF STATE, FOREIGN
OPERATIONS AND RELATED PROGRAMS APPROPRIATIONS ACT, 2012,
AS CARRIED FORWARD BY THE FULL-YEAR CONTINUING
APPROPRIATIONS ACT, 2013

Section 7044(c) of the Department of State, Foreign Operations, and Related Program Appropriations Act, 2012 (Div. I P.L. 112-74), as carried forward by the Full-Year Continuing Appropriations Act, 2013 (Div. F, P.L. 113-6), provides that funds appropriated by that act for a United States contribution to the Extraordinary Chambers in the Courts of Cambodia (ECCC, also known as the Khmer Rouge Tribunal) may only be made available if the Secretary of State certifies to the Committees on Appropriations that the United Nations and Royal Government of Cambodia are taking credible steps to address allegations of corruption and mismanagement within the ECCC. Deputy Secretary Burns has signed the certification pursuant to State Department Delegation of Authority 245-1.

Background

The ECCC, which began operations in 2006, was established as a national court with UN assistance to bring to justice senior leaders and those most responsible for the deaths of as many as two million Cambodians under the Khmer Rouge regime, which was in power from April 17, 1975, until January 6, 1979. In 2010, the ECCC completed its first case (Case 001), convicting Kaing Guek Eav (aka “Duch”), former chief of the Tuol Sleng torture center, of crimes against humanity and war crimes, and sentenced him to 35 years in prison. Duch’s trial was the first attempt in three decades to hold a Khmer Rouge official accountable for that era’s atrocities and was a milestone in the history of Cambodian justice. In February 2012, the ECCC’s Supreme Chamber upheld that conviction, and extended Duch’s sentence to life in prison. The United States, other foreign governments, and non-governmental organizations (NGOs) monitoring the ECCC agreed that proceedings throughout Case 001 met international standards of justice.

In September 2010, the four surviving senior leaders of the Khmer Rouge, including Nuon Chea (“Brother Number 2”), were indicted on a variety of charges

(“Case 002”), including crimes against humanity, grave breaches of the Geneva Convention, and genocide. The trial commenced in November 2011, with court officials seeking to reach a verdict in 2014. In response to pre-trial motions, the Court found Ms. Ieng Thirith, the Khmer Rouge’s Minister of Social Affairs, mentally incompetent to stand trial. She was released from custody in September 2012 after several appeals. Co-accused Ieng Sary, Foreign Minister during the Khmer Rouge regime, died on March 14, 2013, before a judgment could be rendered against him. Investigations by the ECCC’s Office of the Co-Investigating Judges commenced in September 2009 against three suspects (“Case 003”) and no final decision has been made regarding the legal question of whether the suspects and their alleged crimes fall within the jurisdiction of the ECCC. Two additional suspects (“Case 004”) are also being investigated.

Factors Justifying Determination and Certification

From the time the ECCC commenced operations in 2006, there have been allegations of corruption on the administrative side of the court, primarily in the form of salary kickback schemes affecting Cambodian staff members. These allegations received widespread attention from U.S. and international media, and concerns about corruption led many to question the ECCC’s ability to deliver justice. In late 2008, at the request of the United States and other donors, the RGC removed the Cambodian head of administration, the person most associated with the corruption scheme. His replacement, Tony Kranh, who remains the Acting Director today, has been competent and has cooperated well with the donor community, ECCC officials, and the UN Office of Legal Affairs.

The ECCC, in cooperation with the UN, has taken additional steps to protect the integrity of its proceedings against corruption. In August 2009, the UN and RGC reached an agreement to establish an Independent Counselor (IC), who is semi-autonomous from the Tribunal’s administration, the UN, the RGC, and donor states, to hear and address allegations of corruption at the ECCC. The guidelines established for the Independent Counselor confirm his obligations to protect the confidentiality of complainants, ensure that there are no reprisals for whistleblowing, and provide a report of his activities to both the UN and RGC. Addressing the ECCC in October 2010, the Secretary General commended the work of the Independent Counselor and the effect that office has on the public perception of the ECCC – that the Tribunal’s administration will not tolerate any form of corruption.

These steps have led to increased confidence in the ECCC within Cambodia. The Human Rights Center of the University of California, Berkeley, conducted a survey across 125 Communes nationwide. The Center's final report, released in 2011, revealed that an increasing number of Cambodians have confidence in the court.

Donor States, NGOs, and other monitors of the ECCC have expressed increased confidence in the proceedings as well. The Secretary General stated in the fall of 2010, "Beyond all doubt, the court has shown that it is capable of prosecuting complex international crimes in accordance with international standards." In a resolution adopted at its 18th session (September 2011), the Human Rights Council reaffirmed the importance of the ECCC as an independent and impartial body and welcomed the assistance of member states and the efforts of the Cambodian government to work with the UN to ensure the highest standards of administration are met.

In July 2010, the UN established the office of the Special Expert on the ECCC to provide advice and assistance to successfully conduct a high-profile war crimes tribunal. In furtherance of this mandate, the UN tasked the Special Expert with monitoring, reporting, and addressing any and all administrative issues related to the ECCC's functioning. The position was held from July 2010 to October 2011 by J. Clint Williamson, former U.S. Ambassador-at-Large for War Crimes Issues (2006-2009). Williamson was succeeded in January 2012 by David Scheffer, also a former U.S. Ambassador-at-Large for War Crimes Issues (1997-2001).

The ECCC provides a monthly report to the UN Controller and the UN Department of Economic and Social Affairs, which closely monitor the Tribunal's activities, including its expenditures. In addition, all hiring on the international side of the ECCC is vetted by the UN Department of Economic and Social Affairs. The UN Office of Legal Affairs actively engages on judicial management issues. For example, that office recommended that the Pre-Trial Chamber sit on a full-time basis in order to improve the ECCC's efficiency and to expedite its decision-making, and the ECCC accepted the recommendation.

Embassy Phnom Penh was notified of allegations of financial misconduct at the ECCC in September 2012, but a full UN investigation, including an independent audit, later proved the allegations false. In September, an outside observer approached an Embassy officer alleging that ECCC staff paid kickbacks on salaries and that large-scale financial misconduct occurred with donor money. The source did not offer any evidence and quoted only anonymous sources, but the

Embassy assessed that the allegations were serious enough to warrant notification of ECCC officials. Within days of receiving the Embassy's information, UN Special Expert on the ECCC David Scheffer traveled to Phnom Penh to investigate the allegations. The result of his initial investigation, which he shared with the UN in September 2012, showed small-scale misuse of resources, such as the use of a common television in a private office and the use of a vehicle for a single employee when it should have been designated to the motorpool. These misuses of resources were immediately corrected.

The ECCC subsequently retained the independent accounting firm Ernst & Young to conduct a spot audit of the Victim Support Section, where the anonymous sources had alleged that major misconduct had taken place. The spot audit examined financial assets and expenditures during the April – June 2012 time period and the inventory of physical assets. The results of the audit, made available to the U.S. government in December 2012, revealed that no major irregularities occurred. The spot audit found that “no exceptions were noted” when comparing receipts of funds and disbursements of funds. Some computer equipment did not display correct serial numbers, but there was no evidence that any equipment was misused. While the spot audit was limited, it was sufficient to examine the allegations presented.

The ECCC took additional precautionary steps to help prevent (or reveal) corruption. As of October 2012, the tribunal reinstated weekly office hours for the Independent Counselor at the ECCC itself (rather than at the Independent Counselor's office) to receive allegations of corruption. The Independent Counselor could also receive allegations outside scheduled office hours. Embassy Phnom Penh is not aware of any reported allegations since that time. In addition, ECCC administrative leadership conducted an all-staff meeting in October to announce the availability of the Independent Counselor and highlight procedures to report corruption confidentially. ECCC section heads were also brought together to examine allegations of staff kickbacks. These efforts have not produced any evidence of corruption. Based on the efforts of the ECCC officials and the independent auditors, no credible evidence of corruption or major mismanagement was discovered.

With the appointment of Mark Harmon as the new international Co-Investigating Judge in 2012, there has been renewed progress in Case 003 and 004 investigations. Since his arrival in October 2012, Judge Harmon has nearly fully staffed an office that had been affected by departures and established a constructive working relationship with his counterpart You Bunleng. While Judge

Bunleng has not publicly agreed that the Case 003 and 004 investigations should go forward, he is also not obstructing Judge Harmon's investigative efforts. The Case 003 and 004 investigations under Judge Harmon are proceeding expeditiously, and ECCC officials expect that they will be completed in the first half of 2014 absent unexpected delays.

The ECCC's jurisdiction over suspects in the Cases 003/004 has yet to be resolved; therefore the co-investigating judges have not made a final determination on whether these individuals should be indicted. Should the national and international co-investigating judges disagree on an indictment at the conclusion of the investigation, there is a formal process under the governing documents of the ECCC for resolving this disagreement in the Pre-Trial Chamber.

Certification and United States Policy Objectives

This certification recognizes the efforts of the UN and the RGC to address allegations of corruption and mismanagement within the ECCC. It is not an indication, however, that their responsibilities have concluded. Both parties must continue to exercise oversight of the ECCC's operations, and the donor community and NGOs must continue their vigilant engagement with the UN and the RGC to ensure that the ECCC remains judicially independent, corruption-free and well-managed.

[FR Doc. 2013-30819 Filed 12/24/2013 at 8:45 am; Publication Date: 12/26/2013]