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EXECUTIVE OFFICE OF THE SECRETARY-GENERAL

REFERENCE:

23 September 2009

Dear Ms Clark,

I am writing to raise the issue of UNDP's intention to bring to an end its involvement in the funding of the national side of the Extraordinary Chambers in the Courts of Cambodia (ECCC). I fully understand that you were unable to discuss this in the margins of the General Assembly, and would like now to set out our concerns in a little detail.

First, I would like to thank UNDP for its role in managing and disbursing funds to the national (Cambodian) side of the ECCC, which has enabled a range of States, and the European Commission, to make contributions. These contributions to the national side of the ECCC are an essential component of its funding. Without them, the ECCC would not have made the landmark achievements of taking into custody the five accused former Khmer Rouge leaders, and commencing the first trial earlier this year.

UNDP's intention now, as described by your Assistant Secretary-General, Mr. Chhibber, to Mr. Peter Taksøe-Jensen, the Assistant Secretary-General for Legal Affairs, is to close the ECCC project after disbursement of the remaining funds from Australia and France. This position arises out of concerns about past allegations of corruption on the national side of the ECCC Administration. However, as I think UNDP agrees, the recent establishment of the Independent Counsellor position at the ECCC with the agreement of the Government of Cambodia has satisfactorily addressed the need for an anti-corruption mechanism, and, combined with the change of senior management, the issue of corruption has been addressed.

Our concern is first and foremost that there needs to be a viable mechanism with the necessary financial oversight to channel funds from donor States and international organisations to the national side of the ECCC. Having considered possible alternative arrangements, both the Controller and my Office remain convinced that UNDP is the United Nations office most suited to act as the United Nations Secretariat's partner in this endeavour. In considering UNDP's possible withdrawal, the principal donors have raised with us the concern that the "one-UN" approach that has been a pre-requisite for the success of the United Nations' engagement in the ECCC will be jeopardized. Withdrawal by UNDP would leave my Office, the Controller and the UN Department of Economic and Social Affairs (DESA) in an untenable position, and place the national component of the ECCC at risk as its funding situation deteriorates.

Ms. Helen Clark
Administrator
UNDP
New York

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These issues are of such concern to the members of the ECCC Steering Committee (France, Australia, Japan, US and UK) that they have asked my Office to pass on to you the attached letter expressing their concern, and to ask that UNDP does not withdraw from its involvement until an adequate alternative management mechanism for channeling funding to the national side of the ECCC is put in place. They ask that UNDP works with the other interested offices to find this alternative mechanism, so that a broad group of States or other donors can contribute to the national side of the ECCC.

Furthermore, there would be a considerable negative presentational aspect to a decision to close the ECCC project. There is a real danger that it would be perceived by the Cambodian public, and the Cambodian and international media, as the United Nations "pulling out" of the ECCC. I would also invite you to take into account the United Nations' relations with Cambodia, both in relation to the ECCC and more broadly, at a time when we have managed to re-establish a good working relationship based on mutual trust.

For these reasons, I would be very grateful if you could avoid taking any action toward closing the ECCC project until there has been an opportunity for UNDP to reconsider the matter. My Office and DESA would be willing to work closely with your staff to address concerns and to minimise any risks to UNDP of continuing engagement in the ECCC.

Finally, if you remain convinced that closing the ECCC project is the right course of action, I would recommend that you and I discuss the issue with the Secretary-General given the high profile and potentially damaging consequences of any such announcement by UNDP.

I thank you in anticipation of your consideration of this matter. I am copying this letter to Mr. Nambiar (Chef de Cabinet) and Mr. Haysom (Executive Office of the Secretary-General).

Yours sincerely,

Patricia O'Brien
Under-Secretary-General for Legal Affairs
Legal Counsel