

REPORT

to the

**Director of the Office of Administration
of the Extraordinary Chambers in the Courts of Cambodia (ECCC)**

and to the

**Resident Representative
of the United National Development Programme – Cambodia (UNDP)**

submitted by
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Phnom Penh, Cambodia
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Background

1. UNDP started to fund ECCC operations in June, 2006 through a nationally executed project. As part of UNDP's assurance mechanism in project management, an audit was conducted in two stages between January and March 2007 to examine Human Resources management practices in the ECCC. The audit revealed weaknesses in the Human Resources management practices which need to be addressed in order to ensure that appropriate levels of operational capacity of the ECCC are maintained and that standard requirements for transparency and integrity are met.

2. Since the conduct of the audit, ECCC has put in place several measures to address the identified weaknesses. To complement these efforts, a senior Human Resources specialist was engaged to review HR policies and practices to further enhance the operational capacity of the ECCC and subsequently the delivery of justice to the victims of the Khmer Rouge.

Terms of Reference

3. "Based on a review of the HR audit report and other pertinent documents as well as consultations with senior management in the ECCC, UNDP and UNAKRT, the HR Consultant is expected to review, and make recommendations regarding the existing and recently introduced HR systems, policies and procedures of the ECCC, with particular reference to:

- the Personnel Handbook that has been developed by the Personnel Section . . . outlining procedures to be followed by all national personnel;
- policies and procedures relating to recruitment (including all steps from identifying a need for new staff; development of TORs and desired qualifications; advertising; short-listing, testing and interview, and selection);
- procedures relating to performance evaluation and extension of contracts for existing staff."

Expected Output and Reporting Requirements

4. "A report shall be provided, including recommendations regarding the three above-mentioned areas of human resource management in the ECCC. Specific outputs should include a finalized Personnel Handbook; finalized procedures for all stages of recruitment; and finalized detailed procedures for performance evaluation and extension of contracts."

Activities of the Consultant

5. The Consultant worked in Cambodia from 14 July to 4 August 2007. He worked in the offices of ECCC and UNDP.

6. The Consultant enjoyed free access to ECCC staff, both International and National. He was provided by ECCC with an office and all needed equipment, and was given free access to files and documents of the National Personnel Section. The Director of the Office of Administration was generous with his time, and the Consultant benefited from several useful meetings with the Director. The Chief of the Personnel Section and the Personnel Officer gave the Consultant all of the time and information he requested from them, and showed themselves eager to improve their systems and learn of new practices and concepts. The Consultant also benefited from excellent support and assistance from UNDP officers and staff.

Personnel Handbook

7. Subsequent to the HR audits, the Personnel Section produced, in Khmer and English, a First Edition of a "Personnel Handbook (National)", issued on 22 March 2007. In the Consultant's view, this was a very positive response to the auditors' concerns, and a good first effort at defining ECCC HR policies and procedures.

8. The Handbook formed the major element of the Consultant's work, since it covered the following items from the Consultant's Terms of Reference:

- "policies and procedures relating to recruitment";
- "procedures relating to performance evaluation and extension of contracts for existing staff."

9. The revision of the Handbook was a time-consuming process, and occupied much of the Consultant's time in Phnom Penh. At the end of a consultative process which saw the Handbook go through several different revisions, a text agreed to by the ECCC and the Consultant was produced on 2 August. The result is, in the view of the Consultant, a useful tool to guide the work of the Personnel Section and ECCC National managers and staff in the future.

10. **Recommendation (and Implementation Plan):** The Handbook should be:

- translated from English into Khmer, preferably by a translator familiar with Human Resources management terminology;
- issued in English and Khmer versions, with copies sent to all Heads of Office and Heads and Chiefs of Section;
- announced to, and made available to, all National staff members, with a supply of copies available in the Personnel Section to be given to any staff member who requests a copy, or who wants to consult the Handbook;
- used as a standard reference by managers, staff and the Personnel Section, and its provisions applied consistently and fairly.

Code of Conduct

11. The First Edition of the Handbook, issued by the Personnel Section on 22 March 2007, contained an excellent statement of the duties and obligations of staff in a Chapter called "Conduct and Employee Responsibilities." Section I of that chapter was "Ethical Conduct", and contained 7 clear statements about the responsibilities and obligations of staff in terms of ethics and honesty. To this text, the Consultant added a new Point 3 concerning ethical relations between ECCC staff members: "Employees shall not solicit or accept any gift, payment or other item of monetary value from any person employed by, or seeking employment by, the ECCC."

12. **Recommendation:** the text of Section I of Chapter 11 of the revised Handbook, "Ethical Conduct" should form the text of a Code of Staff Conduct, and every National employee, serving and yet to be recruited, should be asked to sign the Code of Conduct, now for serving staff, at the time of appointment for new staff, as a way to emphasize the ethical standards expected of ECCC staff, and the signed Code of Conduct should be placed in personnel files. **(A copy of the Code of Conduct is attached to this Report.)**

Recruitment

13. The Personnel Section has developed a revised Application Form for Employment (EC-A-002). This form contains a section requiring applicants to disclose some family relationships: siblings, and dependents. This is a good start, but the form needs further refinement. Applicants should be asked to indicate the names of all relatives, by blood or by marriage, who are currently employed by the ECCC or the Royal Government of Cambodia. Family links to civil servants or ECCC employees will not necessarily prevent a candidate from being hired, but knowing of family relationships will help the ECCC avoid some possible problems, such as appointing a relative of an Applicant to the Selection Committee, etc.

14. **Recommendation:** The Application Form for Employment should be revised so that Section 13 on page 2 of the form states: "List all relatives working for the ECCC or the Royal Government of Cambodia, and give their title and Ministry/Office/Section."

Recruitment and Selection Procedures

15. The revised text of the Personnel Handbook sets out in detail in Chapter 3 the process to be followed when recruiting ECCC staff. Principles set out in the Chapter are "Transparency, Competitiveness, Consistency." Sections in the Chapter cover Recruitment Policy, and Recruitment Process and Procedures. The Procedures require:

- Use of the ECCC Application for Employment form at the time a candidate submits his/her application, which will provide relevant information in a standard format, facilitating the comparison of candidates, and which contains information about family relationships;

- publication of Vacancy announcements on the ECCC website, and in at least one English language and one Khmer language newspaper, and distribution of Vacancy Announcements to embassies or any other likely source of candidates;
- Procedures to be followed for receiving and registering applications.
- Screening, testing and interviewing by an Ad Hoc Selection Committee of three members, plus the Chief of Personnel Section as Committee Secretary. The Committee ranks candidates and recommends the selection of one or two (backup in case the first-ranked candidate does not take the job) to the Director of the Office of Administration.
- The Head of Office or the Head or Chief of Section in which the vacant post is located must always be a member of the selection committee, whether the Head/Chief is a National or International ECCC staff member, as recommended by the Auditors.

Appointment

16. All appointments of National ECCC staff are made by the Royal Government of Cambodia.

17. In most cases, when the Director of the Office of Administration receives the preferred candidates from an Ad Hoc Selection Committee, the Director will review the recommendation and if the Director agrees, the Director will transmit the file to the Royal Government of Cambodia for the appointment action.

18. Appointment of assistants and law clerks for Cambodian judges, Co-prosecutors and Co-investigating judges is more complex. In addition to approval by the Director of the Office of Administration, the law establishing the ECCC makes specific provisions for the judges, co-prosecutors and co-investigating judges to approve the appointment of anyone who will serve as an assistant and law clerk, before appointment by the Royal Government of Cambodia. These special requirements are set out in the Handbook.

19. **Recommendation:** it is recommended that the procedures set out in the Handbook for advertising posts and screening, interviewing and testing candidates be applied to the recruitment of assistants and law clerks for the Cambodian judges, co-prosecutors and co-investigating judges. At the point in the procedure the candidates recommended for selection by the Ad Hoc Selection Committee are sent to the Director of the Office of Administration, the Director should then take the necessary steps to consult the judges, co-prosecutors and co-investigating judges in accordance with the law before the file is transmitted to the Royal Government of Cambodia for the appointment action.

Spot Checks

20. The practice of spot checks on HR actions and files is accepted by the Director of the Office of Administration and the Chief of the Personnel Section.

21. **Recommendation:** Spot checks that include reviews of personnel files of all recently appointed National ECCC staff should continue, to help identify any problems with the application of the recruitment, selection and appointment procedures.

Performance Evaluation: Objective Setting

22. The Handbook contains, in Chapter 10, a detailed procedure for evaluating the performance of National ECCC staff. Since objectives were not set at the beginning of the ECCC's first year of operation, evaluation of the performance of staff can only be on the basis of an existing evaluation format. For performance evaluations in the second and subsequent years of ECCC activities, the Handbook contains provisions for a Performance Evaluation system based on objective setting at the beginning of a review period, and evaluation of the staff member's performance in meeting those objectives mid-way through, and at the end of, a year, with more frequent reviews during the year if necessary.

23. **Recommendation:** Future performance evaluations should be based on an objective-setting process, as outlined in the Handbook.

24. **Recommendation:** UNDP should provide assistance to the ECCC in the area of objective setting, providing training to Heads of Offices and Heads and Chiefs of Section and the staff of the Personnel Section in objective-setting techniques. The training could be by formal sessions, or coaching by a UNDP staff member on loan to ECCC Personnel Section for a significant period of time, or both.

Renewal of Contracts

25. Chapter 10 of the revised Handbook on Performance Evaluation states that no personnel action to extend an employee's contract will be issued unless a completed Performance Evaluation report showing satisfactory service has been provided to the Personnel Section.

Contract Renewals in 2007

26. Contract renewals in 2007 are a special case. The Auditors recommended: "taking into account the serious lapses in the recruitment process to-date, all the recruitments of staff made by ECCC to-date should be nullified and a new recruitment exercise launched. . . ."

27. This draconian recommendation would obviously be extremely harmful to the interests of the ECCC as an institution, depriving it of its staff just as it begins its judicial activities. While the frustrations of the Auditors with the practices, lapses and incomplete documentation they found during their audit are understandable, the solution proposed seems unrealistic.

28. There are two elements to the problems detected by the Auditors: procedural, and substantive.

29. On the procedural side, the Personnel Section has already taken note of the Auditor's comments and efforts are being made to improve documentation and record keeping in the Section. The clear procedures for recruitment and record keeping set out in the Personnel Handbook ought to lead to further improvements in this area.

30. On the substantive side, the gaps between requirements in the vacancy notices and education and experience levels of appointed candidates may not be the result only of procedural errors or tainted recruitment actions. The shortfalls in experience and educational qualifications may be in large part a reflection of the labor market in Cambodia. The Director of the Office of Administration points out that an entire generation of intellectuals, professors and teachers were wiped out by the Khmer Rouge, which limited educational opportunities even after the Khmer Rouge era. Things are rapidly improving in Cambodia, but access to education may not have been so readily available 5 to 8 years ago, when candidates who are expected to have a complete university education including a graduate degree and several years of work experience would have normally been entering universities. And 5 years ago, the number of jobs available in which future ECCC applicants could gain relevant experience was certainly more limited than is the case today.

31. The Chief of Personnel Section said to the Consultant:

"It is true we didn't recruit the best translators in Cambodia. We recruited the best translators we could find among those who applied for ECCC jobs."

The Director of the Office of Administration told the Consultant that the ECCC had recently advertised for 6 translators/revisers, but have appointed only two, because only two came anywhere close to meeting the requirements for the job, and passed the tests. It appears that ECCC is not attracting candidates who meet fully the requirements set out in vacancy announcements.

32. The fact that the ECCC officially has a life expectancy of 2 more years might discourage some people from leaving other jobs with longer-term prospects to apply for a job at the ECCC.

33. This is the context, in the Consultant's view, in which the gaps between the requirements stated in vacancy notices and the qualifications of some appointed candidates must be seen.

34. That being said, some action should be taken in light of the Consultant's comments on this matter.

35. **Recommendation:** All contracts expiring in the August – September time frame should be extended by 3 months, to allow time for the following actions to take place.

36. **Recommendation:** The Chief of Personnel Section and his staff should review all files for serving ECCC staff members. A comparison should be made of the education and experience requirements set out in the relevant vacancy notice, and the education and experience qualifications of the appointed candidate. If the requirements and qualifications match, this should be indicated in a Note for File to be placed in the personnel file. If the requirements and qualifications do not match, this should also be indicated in a Note for File to be placed in the personnel file. If the mismatch is significant, for example, if a degree in one field is required but the successful applicant (now ECCC staff member) has a degree in an unrelated field, this should trigger the following action.

37. **Recommendation:** when there is a significant mismatch between requirements and qualifications, Personnel Section should consider issuing a new vacancy notice for the post. The incumbent staff member may apply, and should be assessed along with any other applicants. If a better candidate for the job applies, an appointment can be made to take effect when the contract of the present staff member expires, and the staff member should be notified of non-renewal of contract with 30 days notice. If no better candidate applies, then the contract of the serving staff member can be extended for 9 months, giving a further year of service in total.

38. **Recommendation:** In all cases, a completed Performance Evaluation for every staff member must be obtained during the next 3 months, and decisions about extending contracts beyond the 3 months must be taken in light of the assessment of the staff member's performance. In no case should a contract be extended beyond the initial 3-month extension if there is a negative performance assessment. Performance assessments should be placed on the personnel files before any contract extension beyond 3 months is issued, as required by the procedures set out in the Handbook.

39. **Recommendation:** Future Spot Checks should review personnel files to see whether the process outlined above has been followed. Spot Checks should also look at new appointments to evaluate the how qualifications of selected candidates meet requirements for the post occupied.

Position (Job) Classification

40. The Handbook contains an explanation of the principles and processes of position classification in Chapter 7.

Promotions

41. In Chapter 8, the Handbook contains the procedures for promotions through a competitive process, and by direct selection when the post occupied by a staff member is regarded to a higher grade.

Guidelines for Interns and Volunteers

42. The Auditors recommend that the ECCC "establish clear procedures and guidelines governing the appointment of volunteers." Chapter 2, Section C of the Handbook states: "Separate guidelines for the selection and work to be assigned to interns and volunteers shall be established by the Personnel Section."

43. **Recommendation** : The ECCC Personnel Section should start work promptly on the guidelines for interns and volunteers.

Conclusion

44. Implementation of the procedures and practices set out in the revised Personnel Handbook and implementation of the recommendations set out in this report should result in a more transparent and efficient personnel management system for National ECCC staff of the ECCC.

Daniel E. Conway
HR Consultant

**EXTRORDINARY CHAMBERS IN THE COURTS OF CAMBODIA
CODE OF STAFF CONDUCT
DECLARATION OF THE EMPLOYEE**

I, _____ (print name)
hereby declare that I will act in the performance of my official duties in the Extraordinary Chambers in the Courts of Cambodia with the interests of the ECCC only as the guide for my conduct. I declare I will abide by the following principles of ethical conduct which are set out in Chapter 11 of the Personnel Handbook, and which apply to all ECCC National staff :

1. Employees shall not hold financial interests that conflict with the conscientious performance of their official duties.
2. Employees shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or whose interest may be substantially affected by the performance or non-performance of the employees' duties.
3. Employees shall not solicit or accept any gift, payment or other item of monetary value from any person employed by, or seeking employment by, the ECCC.
4. Employees shall not make unauthorized communications or promises of any kind purporting to bind the ECCC.
5. Employees shall not use public office for private gain.
6. Employees shall disclose waste, fraud, abuse and corruption to the appropriate authorities.
7. Employees shall adhere to all laws and regulations that provide equal opportunity for all regardless of race, colour, political or religious affiliation, sex, national origin, age or handicap.
8. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or these standards of ethical conduct.
9. I understand that the violation of any part of this Code of Conduct can result in disciplinary action against me, including loss of employment, and can harm the interests of the Extraordinary Chambers in the Courts of Cambodia, the Royal Government of Cambodia, the Cambodian people and the world community by undermining confidence in, and possibly international financial support of, the ECCC.

Accepted and Signed on (date) _____ by:

(signature) _____