

SPECIAL AUDIT

AUDIT OF HUMAN RESOURCES MANAGEMENT AT THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)



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I. EXECUTIVE SUMMARY

I.1.5 SUMMARY OF OBSERVATIONS AND CONCLUSIONS

The following is a summary of the main observations and conclusions arising from the audit of the Extraordinary Chambers in the Courts of Cambodia (ECCC) human resources management:

Ineffective monitoring and oversight by the project board

The June 2006 project document provides for the establishment of a project board to be chaired by ECCC and comprising UNDP, UNDESA, the EC and other contributing donors. The role of the project board is mainly to oversee and monitor the activities of ECCC. In our opinion, chairing the project board potentially puts ECCC in a conflict of interest situation.

We also noted that the project board has not been effective in fulfilling its role. The board has not met since the start of the project in June 2006. Also, the review of the ECCC's 2007 workplan and budget by some board members did not give rise to comments or questions although the budget included an excess of 52 staff positions costing \$357,000 when compared to the budget estimate prepared in 2004. The project board has not formally approved the procedures and processes used to staff the ECCC to-date.

High salary scales for ECCC staff

Cambodia proposed to apply a pay scale for the ECCC national professional staff that was equivalent to 50% of the UN gross salary scale for international staff as of 2003. The UN gross salary scale is only a nominal scale that includes a tax element and does not reflect the net salaries actually paid to its professional staff. The UN technical mission, involved in establishing the ECCC project, expressed concern that the proposed salary scale is high by Cambodian standards and that donors might not be inclined to pay the tax element included in the proposed salary scales. Subsequently, Cambodia exempted the ECCC staff from its national income tax. However, the proposed salary scale was not adjusted to take into account the tax exemption status of its staff. As a result, even if in principle the ECCC salary scales at 50% of the UN scales is considered as being reasonable, failure to adjust for the tax exemption has inflated an already high level of salaries by an average of 46%, when compared to the UN net salary scale. The salary scales for the national support personnel are comparable to the UNDP-Cambodia salary scale for national support staff. The appropriateness of the salary scale being applied by ECCC has not been challenged in spite of the concerns expressed and therefore needs to be reviewed urgently.

Staff hired without meeting the minimum job requirements

At the time of setting the salary scales for the ECCC, the high level of pay was justified as a means to attract high calibre candidates with international experience. Our review of 29 personnel files indicated that in 18 cases (62% of the sample tested) the recruits did not meet the minimum requirements specified in the vacancy announcements in terms of academic qualifications or professional working experience.

Low response rate to job vacancy announcements

We noted that the means used by ECCC to advertise or publicise job vacancies was limiting as this was confined to the Cambodian government web site. In spite of our requests, ECCC did not provide us with a complete list of job vacancy announcements. Our selection of two advertisements covering 22 job vacancies indicated that in respect of 15 vacant positions (68%), the number of responses was rather low, ranging from one to eight applicants in respect of each position.

Unable to verify the number of applications received

ECCC indicated that 77 applications were received for a total of 10 job vacant positions but we were only provided with 32 of these applications (42%). Consequently, we were not able to ascertain the accuracy of the stated number of applications received per job vacancy.

Short-listing of applicants and interview of candidates not properly documented

ECCC informed us that an ad hoc selection committee was established to review, short-list applicants and interview the candidates. We were not provided with the necessary documentation to enable us to assess the basis of the short-listing and interviews performed by this committee, in all of the cases that were selected for audit. In cases where such documentation was made available, various deficiencies were noted in the work performed by this committee, which raises serious questions as to its effectiveness.

Discrepancies in the selection of candidates

Our review of 29 personnel files showed a number of discrepancies in the selection and interview processes suggesting that the recruitment was not performed in a transparent, competitive and objective manner that ensures the selection of the most suitable candidate for the job. Some examples include – a candidate who did not meet basic requirements was selected for appointment, a job application was received after appointment date; and hiring of one staff without vacancy announcement.

Weaknesses in the performance evaluation process

A staff performance evaluation system appears to have been established in 2007, subsequent to our first field audit mission in late January. We reviewed a sample of these evaluations and noted that these were not necessarily performed objectively in accordance with the process described to us.

Unjustified excess in staffing level in the 2007 budget

The 2007 budget provides for a staffing level that significantly exceeds the levels specified in the June 2006 project documents by 80 positions and the December 2004 budget estimate by 52 positions. At the time of the audit, the ECCC could not show any written justification for these additional 52 positions (compared with 2004 budget) which required an additional annual budget allocation of US\$357,000. This proposed increase did not give rise to comments or questions by the members of the project board. However, at the time of the audit the ECCC budget for the year 2007 was not yet formally approved by the board.

International staff not involved in staff management process

Three ECCC units are headed by international staff. These units are staffed with a mix of international and national personnel. We noted that in these instances the international unit heads are kept away from normal managerial functions relating to personnel in their respective units, such as:

- a) Participation in the recruitment process of national personnel;
- b) Conducting performance assessment of national personnel; and
- c) Verifying and signing attendance sheets.

Access restrictions to personnel files of 28 staff

We were informed that a total of 28 staff were appointed by the Royal Government of Cambodia in the start-up phase of the Extraordinary Chambers of the Courts of Cambodia (ECCC), prior to the signature of the June 2006 project document,

In our review of the ECCC payroll records, we noted that in 2006 four of the 28 staff received substantial salary increases ranging from 54% to 338%. The rationale for these salary increases could not be determined as we were not given access to the records of these staff. The audit also could not assess whether (i) there were appropriate job descriptions for these positions; and (ii) the staff appointed to these positions have the necessary qualifications.

I.2. R RECOMMENDATIONS

For action by UNDP-Cambodia

1. UNDP-Cambodia, in consultation with headquarters, should consider the results of this audit and determine whether the present implementation modality (NEX) should continue or instead a DEX modality should be introduced. Also, in this regard, if the Cambodian side does not agree to the essential measures that are, from UNDP perspective, necessary to ensure the integrity and success of the project, then serious considerations should be given to withdrawing from participation in the project altogether. In considering future options, the risks involved in the project should be carefully re-assessed together with UNDP-Cambodia's own capacity to manage them.
2. Notwithstanding the modality of implementation, 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 with clearly established procedures under the close supervision of UNDP to ensure that the most suitable and competent candidates are recruited for every position and therefore, increase the project's chances of success.
3. UNDP-Cambodia should carefully review the ECCC salary scale for the national personnel and submit a proposal with appropriate justifications to the project board for its consideration and approval.
4. Prior to approval of the annual work plan and budget for 2007, UNDP should ensure that staffing numbers in these documents are reasonable and duly justified. Additional posts requested by ECCC should be supported by documented justification of the need for

such posts and an assurance that there are adequate resources within the approved budget.

5. The chairmanship of the project board should be assigned to other than ECCC so as to avoid a conflict of interest situation. Also, periodic meetings of the project board should be initiated (preferably quarterly but at least once semi annually) with a view to strengthen the monitoring and oversight of ECCC activities, including the review of progress reports, spot check reports and audit reports

For action by ECCC

6. ECCC should ensure that the channels selected to advertise its job vacancies are able to attract a wide pool of applicants. In this regard, job vacancy advertisements in newspapers should be continued. In the event of a low response to an advertised vacancy, ECCC should re-advertise the positions in order to attract a larger number of applications. Applicants should be provided an option to submit job applications via e-mail so as to increase the chances of a higher response rate.
7. All job applications and other relevant documents received by ECCC must be retained on file for future reference and ensure accountability.
8. ECCC should ensure that candidates to be short-listed and interviewed for any particular post have met the minimum requirements stated in the terms of reference of the post and in the vacancy advertisement in terms of academic qualifications and relevant work experience.
9. Members of the ad hoc personnel selection committee which is formed to conduct short-listing and interview of candidates should not be confined to national staff only. In hybrid sections which comprise both international and national staff, the chief of sections should be actively involved in the recruitment process of staff in their sections.
10. The ad hoc personnel selection committee should document the basis and results of its short-listing exercise so as to ensure greater transparency and that these documents are properly filed and retained.
11. The personnel section of ECCC should conduct reference checks of short-listed or selected candidates. Prior to the interview, short-listed candidates must be requested to disclose any related party or if any relatives of theirs are currently working or have worked in ECCC.
12. All staff performance evaluations must only be conducted by the section chief regardless of whether the section chief is an international or national staff.
13. The ECCC extension of service contracts should follow a clear policy which should take into account the need to train staff, build capacity and retain good staff for the full duration of the project, based on their performance.
14. ECCC must establish clear procedures and guidelines governing the appointment of volunteers.

For joint action by ECCC and UNDP-Cambodia


15. The contract and terms of reference of the audit firm hired to do the spot check should be renegotiated and revised to also include quarterly spot-checks on human resources management and procurement procedures. This measure should alleviate the need to maintain a separate internal audit function in ECCC.

I.3. MANAGEMENT COMMENTS

The comments of the management of ECCC and UNDP-Cambodia on the audit recommendations were obtained and are included in the report. Kindly refer to attachment I and II.

I.4. ACKNOWLEDGEMENT

The audit teams extend their appreciation to the management and staff members of ECCC and UNDP-Cambodia for their cooperation during the audit.


Mr. Salleppan Kandasamy
Officer in Charge, OAPR

II. BACKGROUND, OBJECTIVES and SCOPE

II.1. B BACKGROUND

The Extraordinary Chambers of the Courts of Cambodia (ECCC) was established by the Royal Government of Cambodia and the United Nations and began its operations in 2006 with two distinct components:

- a) An international trust fund managed by UNDESA under the project UN Assistance to the Khmer Rouge Tribunal (UNAKRT) with a total budget of US\$43 million. This is generally referred to as the international side as it primarily serves to administer the international personnel and affairs of ECCC; and
- b) A three-year national programme budgeted at US\$13.3 million, consisting of government funds, direct bi-lateral assistance and international funds that are administered by UNDP. This is generally referred to as the Cambodian side and serves to administer the national personnel and affairs of ECCC.

UNDP's contribution to the project is US\$6.2 million, consisting of US\$1.2 million from the European Commission (EC) and US\$5 million from the UN trust fund (UNTF), i.e. a balance of funds from the UN Transitional Authority in Cambodia UNTAC (February 1992 to September 1993), which was established to ensure implementation of the agreements related to human rights, conduct of elections, resettlement of refugees and displaced persons etc.

A UNDP project document was signed in June 2006 with the Cambodian side of the ECCC. The project is implemented using the national execution modality (NEX) with UNDP administering the related funds. Under this arrangement, advances are made to ECCC on a quarterly basis and expenditure reports are subsequently submitted in return by ECCC. The project period was set at three years, with the Director of ECCC's Office of Administration designated as the National Project Director.

On 4 October 2006, the Open Society Justice Initiative (OSJI) addressed a memo to donors and states interested in the ECCC raising concerns regarding the transparency of the hiring practices in the Cambodian side of ECCC.

On 31 October 2006, UNDP-Cambodia requested the assistance of OAPR in conducting a special audit of human resources management in ECCC. In consultation with the office, OAPR assisted in the drafting of the request for proposal and selection of a Malaysia-based audit consultant, Candide Consulting. The audit of the human resources management in ECCC by Candide Consulting took place between 29 January and 8 February 2007.

On 14 February 2007, OSJI issued a press release alleging that "Cambodian court personnel, including judges, must kick back a significant percentage of their wages", some 30%, "to Cambodian government officials in exchange for their positions on the court".

The work conducted by Candide Consulting was reviewed by OAPR in February 2007 and it was determined that some areas of the audit scope were not covered and additional work was required. In consultation with UNDP management, OAPR decided to field another mission to Cambodia in order to conduct additional audit work. ECCC management was advised of this matter and gave its concurrence to the additional audit work on 14 March 2007.

The audit fieldwork for the second mission took place between 27 and 30 March 2007. The audit team comprised two OAPR auditors and one auditor from Candide Consulting.

II.2. OBJECTIVES

The objectives of the special audit conducted by Candide Consulting were to:

- a) Review the human resource management practices currently in place in the ECCC, in particular to assess whether a competitive, fair, objective and transparent process exist in selection and recruitment of staff for the ECCC specifically those under the responsibility of the Cambodian side;
- b) Review the recruitments made by the Cambodian side of the ECCC to ensure that quality personnel have been recruited whose skills match those required in the job description. Appointments made by the Royal Government of Cambodia (RGC) shall be exempt from this audit;
- c) Review the adequacy of budget allocated to fill the remaining vacancies in ECCC that will enable ECCC to function efficiently and effectively in meeting its objectives; and
- d) Highlight those procedures, processes and practices that contravene international best practices and recommend improvements, recognising the special nature of the project.

The additional audit work was intended to obtain reasonable assurance in the following areas:

- a) Comparison of salary scale of ECCC with UNDP scale for national staff and with scales applied in other Govt institutions; and ensuring staffing numbers and salary scale of ECCC is in line with the recommendations of the UN technical committee and donors;
- b) Adequacy and transparency of hiring procedures by ECCC;
- c) Accuracy of salary payments in accordance with employment contracts and correct reporting in the financial statements; and
- d) Feedback on monitoring actions of UNDP over ECCC;

II.3. SCOPE

The audit covered recruitment and payment of salaries from June 2006 to February 2007.

The scope of the audit did not include judges appointed by the supreme council of magistracy as set out in the law on the establishment of the ECCC.

III. DETAILED AUDIT OBSERVATIONS AND FINDINGS

III.1. HIGH SALARY SCALES FOR ECCC STAFF

Staffing numbers and salary scales for both the international and national sides of ECCC are outlined in the "budget estimate for year 1 through year 3" dated 31 December 2004 of the technical cooperation project - Extraordinary Chambers in the Courts of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea. Even though the document is not signed, it serves as a reference of the official outcome of discussions between the UN technical mission, the Royal Government of Cambodia and donors on the estimated funding requirements.

The national salary scale in the December 2004 budget estimate was based on figures provided by the Government, e-mail correspondence between the Royal Task Force and the UN technical mission dated 13 February 2004, as follows:

- ? Salaries for national professional staff : based on 50% of UN gross salary for international staff (step one of the salary scale for professional international civil servants). As of February 2007, 47 out of 132 ECCC personnel (36%) hold professional posts; and
- ? Salaries for national support staff: based on levels that relate to current salaries paid to support staff by the UNDP country office in Cambodia.

For the ECCC national professional personnel, salaries were derived from the gross salary figures in the UN salary scale for international staff, which includes an element in respect of national income tax nominally payable on the salary income. This gross salary is used by the UN as a point of reference. International staffs in the UN are in fact paid salaries in accordance with a net salary scale derived after deducting staff assessment, which is equivalent to the tax element included in the gross salary. The proposal by Cambodia to pay salary at the gross level would implicitly assume that the staff would be subject to Cambodian income tax.

The UN technical mission involved in establishing ECCC advised in an e-mail dated 15 February 2004 that "even if donors were willing to subsidise national salaries that are high by Cambodian standards, they may be reluctant to pay the tax portion of those salaries".

Subsequently, in February 2006, the Deputy Prime Minister (HE Sok An) approved a tax exemption of the monthly pay of officials and employees of ECCC. However, this exemption was not taken into account to adjust the salary scale downwards to be in accordance with the net salary scales of UN international staff.

Even if the UN technical mission's concerns that the proposed salary scales were high by Cambodian standards were disregarded and if the ECCC salaries are in principle established at the 50 per cent level of UN international staff salaries, the fact that the tax exemption was not taken into account would mean that the ECCC salaries are actually more than 50 per cent of the salaries received by an average of 46 per cent, as shown in the following table. The excess is estimated on the assumption that the tax payable in Cambodia is the same rate as assumed by the UN in its staff assessment.

Grade	ECCC salary based on 50% of gross salary based on 2003 international staff scale * - Salaries actually paid by ECCC (a)	50% of UN net salary payable to UN staff based on 2003* international staff scale (b)	Excess in US\$ (c) = (a-b)	Excess in Percentage (d) = [(c)/(b)*100]
D1 5,300		3,419	1,881 55%	
P5 4,300		2,893	1,407 49%	
P4 3,520		2,418	1,102 46%	
P3 2,850		2,010	840 42%	
P2 2,300		1,675	625 37%	
Average 46%				

* At the time of the 2004 budget estimate, the Cambodia set the salary scale using step one of each grade of the UN international professional scale effective 2003. These 2003 rates are now being used in

the employment contracts and are being paid to personnel.

For the ECCC national support personnel, the salaries are, in relative terms, comparable to the UNDP-Cambodia salary scale for national support staff. The salary scales for UNDP-Cambodia are determined on the basis of, inter alia, the salaries paid by the highest comparators in Cambodia.

We attempted to compare ECCC salary scales with established Government salary scales. We requested assistance from UNDP-Cambodia and the audit firm who did the spot checks of ECCC to obtain salary scales of government institutions. However, we were informed by national UNDP staff who were former Government personnel, that there is no established salary scale, nor were employment contracts given to them. Similarly, the local audit firm, engaged to audit the project annually, also could not obtain access to such information either.

Notwithstanding the above, we obtained the salary scales of two NEX donor funded projects. The highest paid national professional post is a net salary of US\$1,200 (project director) for one project, and US\$500 (office manager) for the second project. Using these salaries as a benchmark, it could be concluded that the ECCC salary scales are high and the concerns of the UN technical mission about the high level salaries by Cambodian standards were not taken into account by the project.

III.2.5 SIGNIFICANT INCREASE IN STAFF

The 2004 budget estimate presented staff requirements for each year of operation. In 2006, recruitment was based on the staffing numbers set out in the 2004 budget estimate for year one. Additional requirements – i.e. in excess of the numbers included in the budget, were cleared with UNDP prior to hiring.

The project document signed in June 2006 indicated a total staffing of 179 personnel. By comparison, the 2004 budget estimate provided for a staffing of 171 for the year 2006 and 207 staff for 2007.

The ECCC annual workplan and budget for 2007 provided for a total of 259 staff, i.e. a staffing capacity that exceeds the June 2006 project document by 80 positions and the 2004 budget

estimate by 52 positions. The excess of 52 positions of which 10 are for national professional posts (19%), represents additional annual costs of US\$357,000.

Other than the fact that these staffing numbers have been reflected in the 2007 annual work plan and budget submitted to UNDP, the ECCC could not provide any justifications for the significant increase in the staffing.

As part of the approval process of the ECCC budget for 2007, UNDP reviewed and commented on the total amount of the budget, in line with available funds but did not compare the number of posts in the work plan against the staffing table, and was not aware of the additional posts to be created. UNDP submitted the budget to the other members of the project board, UNDESA in NY and EC delegation in Bangkok for approval. At the time of the audit, EC has not explicitly approved the work plan and budget, but has released the second tranche for payment. UNDESA has yet to approve the 2007 budget. The project board is chaired by ECCC and comprises UNDP, UNDESA, EC and other contributing members.

Consequently, we were not provided with the necessary documentation to support the rationale for a staffing increase in 2007 by 52 positions representing a budget cost of US\$357,000 over and above the initial budget estimate established in December 2004. Also, this excess in staffing for the year 2007 has not given rise to comments or questions by the members of the project board.

III.3.5 STAFF HIRED DID NOT MEET THE MINIMUM REQUIREMENTS IN THE VACANCY ANNOUNCEMENTS

In an e-mail dated 13 February 2004 from H.E. Ngy Tayi (Secretary of State, Ministry of Economy and Finance) a member of the royal task force which set up the ECCC, to Mr. Karsten Herrel (UN Legal Affairs, Advisor of the Technical Mission) in justification of the salary of national staff to be set at 50% of gross salary of international staff it is stated that, "The Secretary General and the international community have repeatedly stressed the need for the Extraordinary Chambers to show integrity, credibility, and independence and to meet international standards. In applying this spirit we wish to set salaries at a rate that will attract candidates of highest calibre, including those with overseas qualifications".

However from our review of 29 staff personnel files we noted that 18 staff did not meet the minimum requirements specified in the vacancy announcements in terms of either academic qualifications or professional working experience. Below are some of the most recurring shortcomings:

- (i) In 16 cases, candidates had only one or two years of working experience whilst the job announcement required a minimum of three to four years of experience. In one instance, the job requirements stated a degree in English language and a minimum of 3 years of professional experience in interpretation. However, the selected candidate had only some part time experience in performing translation and was pursuing a degree in Education. This position pays a monthly salary of US\$3,500.
- (ii) In nine cases, the experience of the selected candidate was not directly relevant to the position applied for as required by the job announcement. In one of the cases, the vacancy announcement required a minimum of 3 years of accounting experience but the selected staff had only experience in teaching English and had an internship of 6 months in an administrative role.

- (iii) In 10 instances, the selected candidates did not have the minimum academic qualifications specified in the job announcements. In one particular case, a candidate who had not completed her first degree studies and without any working experience has been hired to a position which requires a minimum of three years relevant working experience and a first degree. This position pays a monthly salary of US\$2,300.

III.4. D EFFICIENCIES IN THE RECRUITMENT AND SELECTION PROCESS

ECCC has in place a mechanism for recruitment and selection. A four page draft summary recruitment manual approved by the Director of Administration (DoA) on 25 June 2006 outlines the policies and procedures for recruitment and selection. Subsequently this manual was superseded by a personnel handbook which was issued on 22 March 2007. During the course of the audit, we noted the following observations in the recruitment and employment process:

III.4.1 Ineffective publicity of job vacancy announcements

Until January 2007, all vacancy announcements were only made via the Royal Government of Cambodia's website (<http://www.cambodia.gov.kh/krt/>). Since 2007 vacancy announcements are published in 2 major newspapers in Cambodia as well as on ECCC's own website. The decision to advertise in newspapers was only taken after a request by UNDP following a meeting held by friends of ECCC (a group comprising representatives from various donors) with UNDP and ECCC in September 2006.

Despite our request, ECCC did not provide us with a complete list of all job vacancy announcements made to date by ECCC. Subsequently, we selected two samples, comprised of 22 job vacancies, for our review of the list of applications received that was prepared by the personnel section for job announcements no. PS-AN-06-0501 and PS-AN-06-0805. For 15 out of 22 positions advertised, the response was low and they are as follows:

Position Advertised	Number of responses received
Records / Archives	8
Support staff of Co-Investigating judge	7
Protocol & Liaison	6
Financial Assistant	6
Private Assistant of DOA	6
IT Helpdesk	5
Procurement Assistants	5
Interpreter	5
Greiffer	4
Legal Officer	4
Web developer	3
Internal Auditor Assistant	3
Evidence custodian	2
Personnel Officer	2
Internal Auditor	1

By comparison, we were advised by UNDP-Cambodia that it is common to receive about 50 job applications for any one position advertised for its recruitment purposes. The UNDP office advertises its vacancies through newspapers and its website.

III.4.2 Incomplete maintenance of job applications received by ECCC

From our review of the list of applications received, as prepared by the personnel section, for job announcement no. PS-AN-06-0501, we noted that a total of 77 applications were received for all the 10 positions advertised. We were informed by the Chief of Personnel that they retain all job applications received to date. However, upon our request to review all these job applications, we were only provided with 32 complete job applications or 42% (comprising application letter from applicants, CVs and copies of certificates). Therefore, we were unable to satisfactorily verify that the stated number of applications was actually received as stated by the Personnel Section. This may also suggest that the responses to the job advertisements could be lower than what has been reported.

III.4.3 Unable to verify e-mail transmission of job applications

We were informed by the Chief of Personnel that job applications are received via e-mail, post or hand delivered to ECCC's premises. From our review of the lists of applications received, as prepared by the personnel section, it was mentioned that some applications were received via e-mail. However upon our request, the personnel section was unable to provide us with such e-mails so as to ascertain that these applications have actually been submitted by e-mail.

Effective from 2007, all job vacancy advertisements state that applications must only be submitted via post or to be hand delivered to ECCC's premises. In our opinion, elimination of submission of job applications via e-mail would further reduce the number of responses that ECCC may receive in the future. Moreover, given that the premises of ECCC are located about 45 minutes away from Phnom Penh, applicants would be further inconvenienced if they have to submit job applications by hand to ECCC's premises.

By comparison, we were advised by UNDP-Cambodia that it is a common practice to receive a fairly large number of job applications via e-mail.

III.4.4 Lack of documentation to support short-listing of job applications

We were informed by the Chief of Personnel that an ad hoc personnel selection committee is formed to screen and short-list job applications based on certain established evaluation criteria. The selection committee also conducts interviews of short-listed candidates. This committee is usually made up of the chief of personnel and several other section chiefs depending on the position to be filled. Short-lists consist of at least three candidates for each vacant position to be filled.

However, ECCC could not provide us the necessary documentation to enable us to assess the basis of short-listing performed by this ad hoc committee and how the decisions for short-listing job applications were made.

III.4.5 Absence of reference check and disclosure of related party

We noted that currently it is not a practice by the personnel section of ECCC to conduct reference checks on short listed or selected staff.

Candidates are also not required to disclose any related party or if any relatives of theirs are currently or have worked in ECCC during any stage of the recruitment process.

III.5. W EAKNESSES IN THE PERFORMANCE EVALUATION PROCESS

During the first audit fieldwork by Candide Consulting in late January 2007, the audit team was advised by ECCC that a performance evaluation system for its personnel has not been put in place and thus no performance evaluation has ever been done.

However, during our second audit fieldwork we were informed by the Chief of Personnel that a performance evaluation system has been in place since January 2007 and performance evaluations are conducted for all personnel at least once a year. We were also informed that recommendations for extension of service agreements (less than one year) are to be accompanied by a performance evaluation report.

As described by the Chief of Personnel, the section chief conducts a performance assessment of the section's personnel and subsequently completes an employee evaluation report. This report states the duties, objectives and goals of the personnel together with the performance rating and recommendation of the section chief. The concerned personnel signs this evaluation report followed by the section chief and the Chief of Personnel. Finally this report is signed off by the DoA.

During our audit, we were given completed employee evaluation reports purportedly completed in early January 2007 for personnel whose contracts were renewed in February 2007. We noted the following discrepancies in these evaluation reports:

- a) Three out of 17 personnel evaluation reports had the signature of the Director of Administration (DoA) dated earlier than the date of the concerned personnel's signature;
- b) One personnel evaluation report did not have the date of the DoA's signature; and
- c) In the General Services and ICT sections, which are headed by international staff, the personnel evaluation reports of national staff were signed off by another national ECCC staff.

Given the above discrepancies we were not satisfied that the personnel performance evaluation system, which was established in January 2007, is being properly implemented.

III.6. C CONTRACTS EXTENDED FOR ONLY THREE -MONTH DURATION

Based on the 29 personnel files that we reviewed we noted that all personnel with an expired contract have been renewed for a period of three months. The personnel section could not provide satisfactory explanation for the rationale behind the extension of contracts by only a three-month period despite the fact that the project has another two more years to end. This practice of extending contracts by three months at a time does not seem consistent with the terms and conditions of the contracts used by ECCC which state that a contract can be terminated by either party. Prior to the issuance of the contract extensions, the concerned staff were holding service contracts lasting more than three months.

III.7. A ABSENCE OF CLEAR PROCEDURES AND GUIDELINES GOVERNING APPOINTMENTS OF VOLUNTEER PERSONNEL

The DoA had mentioned in his meeting with Candide Consulting during the first audit fieldwork in late January 2007 that there were no volunteers in ECCC and the practice of appointing volunteers had stopped. However, based on the volunteers list provided to us by the personnel section during our second audit fieldwork in March 2007, we noted that there were six volunteers in ECCC.

We were advised by the Chief of Personnel that volunteers generally write to the DoA through him to seek appointment as a volunteer in ECCC. Upon the DoA's approval, the person is allowed to work as a volunteer in ECCC and we were informed that no salary or any other form of payment is made to the volunteer.

We noted that volunteers do not sign any service contracts with ECCC and also there are no terms of reference to govern the functions to be performed by them. Furthermore, the services of volunteers are not limited to any specific duration of time.

III.8. D DISCREPANCIES NOTED IN PERSONNEL FILES

Our review of a sample of 29 files showed the following discrepancies:

- (i) Date of interview minutes and start date of contract is the same - Mr.

Interview minutes report (Minute of Recruitment) was dated 14 August 2006 which is also the start date stated in the service contract.

- (ii) Discrepancies in the interview minutes - Mr. X

We noted that Mr. X had applied for the position of Assistant to DoA (grade FS-5) on 6 June 2006. The minutes of recruitment in his file however, indicates that he was the only candidate who attended the interview on 21 June 2006 for the position of Defence Support which was not the position that he originally applied for. In the same minutes of recruitment, it was stated that another person, Mr. Y (who was not interviewed) was selected instead of Mr. X. These minutes of recruitment were signed by Mr. Keo Thyvuth (Chief of Personnel), Mr. Khanh Tony (chief of courts management section), Ms. Marany Sammoun (Translator).

Mr. X was, however, engaged as Defence Support (grade FS – 3) from 1 July 2006 to 31 January 2007 and subsequently his contract was renewed to 30 April 2007.

We were informed that Mr. X had gone on leave without pay beginning 1 March 2007 for 2 months. No reasons have been given for his leave and in the absence of proper leave guidelines established, we are unable to ascertain if the leave was properly approved.

- (iii) Date of job application letter is later than closing date of job announcement - Mr. (interpreter)

The letter of job application sent by the candidate was dated 13 July 2006 which is more than a month after the closing date as stated in the job announcement i.e. 9 June 2006 (at 4 pm). The list of applications received, that was prepared by the personnel section, shows that the date of receipt of the application has been left empty.

The interview was held on 8 August 2006 and the minutes of recruitment was dated 15 August 2006, but the service contract had a starting date from 14 August 2006.

- (iv) Request to fill up job vacancy memo is dated later than job advertisement - Mr. and Mr.

Requests to fill two vacancies were dated 18 October 2006 which is much later than the job advertisement date of 1 September 2006 and the interview date of 29 September 2006. A request to fill a vacancy is a memo from the chief of section to the DoA for approval and needs to be prepared and approved prior to a job announcement.

- (v) Job application letter is dated later than start date of service contract - Ms.

Job application letter sent by the candidate was dated 2 July 2006 whereas she was offered a service contract effective 1 July 2006 and up to 31 January 2007.

- (vi) Staff hired without a competitive selection process - Mr.

Mr..... was hired without going through a competitive selection process. No vacancy announcement was made for this position by ECCC. The personnel file contains an ECCC interoffice memorandum dated 13 July 2006 from the chief of public affairs (initial sighted) addressed to the DoA through the Chief of Personnel saying that this is to confirm their conversation that she is recommending the appointment of Mr. to the position of Administrative Assistant in the public affairs section.

The above discrepancies suggest that the recruitment process in ECCC was not transparent, competitive and objective to ensure that the most suitable candidate was selected for the job.

III.9 U **NABLE TO ASCERTAIN EFFECTVIENESS OF INTERNAL AUDIT FUNCTION**

As per its staffing table, ECCC has established an internal audit function that reports directly to the Director of the Office of Administration (DoA). In the micro-assessment of ECCC done in May 2006 (see section V below), it was reported that one of the most significant risks identified was the delay in the recruitment of an Internal Auditor in ECCC. Subsequently, a vacancy announcement was advertised on 1 September 2006 in the Royal Government of Cambodia's website (<http://www.cambodia.gov.kh/krt/>). However, only one application was received by

ECCC and subsequently this person was appointed. It was noted that three job applications were received for the position of Internal Auditor Assistant and one was selected.

In our review of the internal auditor's personnel file, we noted that the person recruited did not meet the required minimum 4 years of professional experience in the auditing field.

We made numerous attempts to meet with the Internal Auditor during our second audit fieldwork mission but such meeting did not take place citing various reasons. We were made to understand by Morrison Kak & Associates (auditors who performed the financial spot checks) that two audit reports have been issued by the Internal Auditor. However, the ECCC failed to submit these reports for our review in spite of our repeated requests.

The above raises questions regarding the qualifications of the ECCC Internal Auditor. Also, as we were not given the necessary access to documentation, we are not in a position to assess the effectiveness of this function and to the extent to which it has served to mitigate risks identified in the micro-assessment report (see section III.12 below).

III.10 I NTERNATIONAL STAFF HEADING HYBRID SECTIONS NOT PERMITTED TO PARTICIPATE IN FUNCTIONS RELATED TO HUMAN RESOURCE MANAGEMENT

Three ECCC sections, i.e. General Services, ICT and Defence Support are headed by international staff whilst the staff in these sections include both international and national personnel. Based on the interviews conducted with these section chiefs and review of job interview minutes and staff performance evaluation reports, we have noted that these three section heads do not participate in the following functions:

- (i) Recruitment of national staff, including screening and short listing applications and participating as members of the interview panel;
- (ii) Conducting performance evaluation of national staff working under their respective sections; and
- (iii) Verifying and signing attendance sheets of national staff working under their sections.

A personnel handbook which was issued by the Personnel section on 22 March 2007 clearly states that only national section chiefs can perform the functions described above. This suggests an effort by ECCC to keep international section chiefs away from normal managerial functions that pertain to activities for which they are responsible.

III.11 N O ACCESS TO 28 STAFF PERSONNEL FILES AND INFORMATION RELATED TO THEM

We were informed by the Chief of Personnel that 28 staff were appointed by the Royal Government of Cambodia during the "start-up phase" when ECCC was initially being established around early 2006. We were further informed that the recruitment of these staff has not been subjected to competitive selection process. The auditors were not allowed access to the related personnel files together with any other relevant information, even though these staff are paid from project funds.

In addition to the above, we also noted the following:

- (i) During the review of payroll records, we noted that four of the above 28 staff had a significant salary raise in 2006. The reasons behind these salary increases could not be determined given that we were denied access to their personnel file:

Staff Month		Monthly rate paid (USD)	Position
	Feb –Nov	650	Support staff
	December	1,000	Assistant to Director
	Feb – May	1,000	IT Development Officer
	June - Dec	2,300	IT Development Officer
	Feb-June	650	Support staff
	July-Dec	2,850	Pool Translator
	April-Aug	330	Driver
	Sept-Dec	600	Vehicle Dispatch

- (ii) Based on the staffing table attached to the 2004 budget estimate report, it was noted that a Press Officer post was only budgeted in year two and three of ECCC's operations. However, the payroll records show that a total of US\$31,900 has been paid to a Press Officer in the first year of operations. We were unable to further ascertain the justification for hiring a Press Officer since his personnel file and other relevant information have not been made available to us.

III.12 W EAK MONITORING OF ECCC ACTIVITIES

Generally, UNDP's role in monitoring ECCC is limited to being a fund administrator where advances are made to ECCC on a quarterly basis and financial expenditure reports are submitted in return by ECCC.

In May 2006, prior to signing the project document, UNDP engaged a consultant to advise on the appropriate cash transfer and assurance measures to support effective operation of the ECCC. The micro-assessment was made following the guidelines of UNDP policy on Harmonised Approach to Cash Transfers (HACT).

Based on the micro-assessment, the level of risk associated with the financial management of ECCC was rated as low to moderate. However, the assessment also included observations in the recruitment and procurement systems:

- ? Recruitment – need to ensure most qualified staff hired, increase transparency, deal with potential conflict of interests, and develop capacity of section; and
- ? Procurement – need for clearer specifications, more qualified bids, more complete written procedures and increased transparency

The micro-assessment recommended annual audits and periodic spot checks of financial transactions and supporting documents, with a focus on high risk transactions such as exceptions, cash payments and other relevant areas.

In October 2006, ECCC contracted an external audit firm, Morisson Kak & Associates, to do both the spot checks and annual NEX audit exercise. The UNDP procurement officer participated in the selection and evaluation of the audit firm. To date, two spot checks have been done by the audit firm, covering the period June to October 2006, and November to December 2006, respectively.

III.13 N O SPOT CHECKS ON HUMAN RESOURCES AND PROCUREMENT FUNCTIONS

As per the 2007 annual work plan, UNDP will be funding expenditures of US\$4,718,000 of which staff costs and procurement will amount to US\$3,959,000 and US\$759,000 respectively.

The terms of reference for the spot checks to be performed by the external audit firm detailed in the HACT assessment relate to receipts and expenditures only. In terms of staff costs and procurement, the terms of reference of the spot check is limited to the following:

- ? Staff salary – to confirm all staff on the payroll are supported by contracts (random test of 5% of payments)
- ? Contractors – 100% sample of payments and documentation

The scope of the spot check does not include checks on recruitment and procurement procedures. The current spot check on expenditures and supporting documentation, will not be able to identify lapses in the recruitment and procurement procedures, as only payment to the final employee and contractor who has been selected is checked.

Given the significant deficiencies highlighted in this report and that UNDP funds are essentially being spent on staff costs and procurement, an annual NEX audit exercise that would cover recruitment and procurement areas, may not be sufficient to ensure timely (i) identification of lapses; and (ii) implementation of audit recommendations.

Hence, there is a need to increase the frequency and scope of verification and monitoring to include human resources management and procurement in addition to the financial transactions.

III.14 L IMITED ROLE OF PROJECT BOARD IN ECCC OPERATIONS

The project board comprises ECCC, UNDP, DESA, EC and other contributing donors. As per the project document, the project board should meet at least once a year and:

- ? Approve the annual work plan and budget
- ? Review implementation of the annual work plan, achievement of results, timely disbursements and adherence to rules and regulations; and
- ? Provide guidance and solution to any major issue/problem emerging during the implementation of the project.

The project document states that the ECCC is the chair of the project board, and hence is responsible for initiating project board discussions. To date, no official project board discussions have been initiated.

Key issues arising from progress reports, spot check reports, audit reports etc. could form the basis of discussions by the project board with the objective of monitoring and following-up on the implementation of adequate measures to address issues raised in these reports. To date, UNDP has submitted to the board members, ECCC's 2007 annual work plan and budget but, at the time of the audit, we understand that this has not been formally approved by each of the parties concerned. This process does not provide sufficient assurance that the implementation of the project will be properly directed and controlled.

Furthermore, since the ECCC holds the chairmanship function of the board, there is potentially in a conflict of interest given that the essence of the board's role is to oversee and monitor ECCC activities.

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SUMMARY OF RECOMMENDATIONS AND MANAGEMENT COMMENTS

Recommendation Management	Comments
<p>For Action by UNDP-Cambodia</p> <p>1. UNDP-Cambodia, in consultation with headquarters, should consider the results of this audit and determine whether the present implementation modality (NEX) should continue or instead a DEX modality should be introduced. Also, in this regard, if the Cambodian side does not agree to the essential measures that are, from UNDP perspective, necessary to ensure the integrity and success of the project, then serious considerations should be given to withdrawing from participation in the project altogether. In considering future options, the risks involved in the project should be carefully re-assessed together with UNDP-Cambodia's own capacity to manage them.</p>	<p style="text-align: right;">UNDP-Cambodia</p> <p>Comments</p> <p>from</p> <p>The OAPR findings on HR practices are noted with deep concern and indeed call for fundamental safeguards to be added. We will provide separately our recommendations to senior UNDP management for their consideration. Precise remedial actions will need to be carefully considered and negotiated with the national partners at the ECCC. International partners will also need to be consulted.</p> <p>a.) Context: it is essential for any reader of the OAPR report to understand that the entire structure of the ECCC was the subject of extensive negotiations between the UN and the Cambodian Government over a period of six years. Laws related to the functions within the tribunal have been promulgated and important agreements with the UN have been reached. The international community has been constructively engaged with the UN and the Government at every key step in this process and has provided generous funding to both UNAKRT and the national side of the ECCC.</p> <p>Flowing from these extensive negotiations dating back to 2001, UNDP entered this effort in 2006 inheriting key predetermined modalities (UNAKRT missions and agreements with Government) on such critical issues as the role of the national side, salaries to be paid, agreed budgets/activities of the ECCC and more. UNDP's role was envisaged to provide de facto budget support by channeling donor funds to the ECCC in line with these prior agreements.</p> <p>There was not a traditional project design exercise by UNDP since the role envisaged for UNDP was to provide financial support to the previously agreed budget and activities of the ECCC. In line with this the ECCC was designated to execute this UNDP project under the National Execution modality (NEX). Even the title of the UNDP initiative manifested the unique nature of this undertaking, "Special Support to the Cambodian Side of the Budget" for the Extraordinary Chambers in the Courts of Cambodia" (underline added for emphasis).</p> <p>The project document and the related financing agreement with UNDESA were reviewed in NY by UNDP and UNDESA. Subsequently, agreements were signed with UNDESA for the funds flow to ECCC through UNDP as well as with the EC for their support to the national judges. The project document with Government covering this support from UNDP was also signed.</p> <p>Knowing the special nature of the support to the ECCC and to ensure the integrity of UNDP and the donor funds being channelled to this effort, UNDP Cambodia undertook three special actions that</p>

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	<p>should be noted:</p> <ul style="list-style-type: none"> • Before any funds were advanced, a systems review was contracted by UNDP Cambodia and undertaken by Mr. Charles Downs (former staff of UNOPS) in April 2006. His review found the financial systems at the ECCC to be satisfactory. • A special system of "spot checks" was established by UNDP Cambodia in the project document to ensure the integrity of the financial flows from UNDP. These spot checks are working and have not found any financial faults to date. These are in addition to the standard NEX audits of UNDP. These spot checks are considered to be one of the first additional assurance measures taken by any CO and are in line with HACT. • When allegations of potential impropriety on human resource practices were brought to the attention of UNDP Cambodia in the latter part of 2006, UNDP Cambodia did not hesitate to call for an audit. This unilateral "whistle blowing" action taken by UNDP Cambodia is allowed within basic accords that UNDP has with the Government. It is this UNDP Cambodia action that triggered the OAPR audit now being reviewed. <p>b.) Further input on the Direct Execution (DEX) recommendation from OAPR : The Cambodian Law that established the ECCC provides, among other things, that "All Cambodian staff of the Office of Administration shall be appointed by the Royal Government of Cambodia at the request of the Director" (Relevant provision is found in Annex 1). This is at the heart of the basic understanding of this tribunal – i.e. that there are distinct and agreed roles for both the national and international sides of this "Extraordinary Chamber". This means that UNDP cannot recruit and appoint staff on behalf of the ECCC. For this and other reasons, UNDP Cambodia does not recommend a shift to DEX.</p> <p>Comments from ECCC</p> <p>The 1st three recommendations (to UNDP Cambodia) are completely out of proportion to the issues raised in the report. These three recommendations are unacceptable and non-negotiable to the Cambodian side as to implement them would essentially mean a re-negotiation of the entire basis and character of the ECCC as a national court with international participation and assistance, already agreed in an international treaty between the Royal Government of Cambodia and the United Nations, and approved by the Cambodian National Assembly and the UNGA respectively - or is tantamount to internationalizing the ECCC.</p>
<p>2. Notwithstanding the modality of implementation, 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 with clearly</p>	<p>Comments from UNDP-Cambodia</p> <p>UNDP Cambodia concurs with the audit finding that serious lapses in the recruitment process have taken place. This was the essence of the allegation that was brought to our attention in the second half of 2006 and now the OAPR audit findings have confirmed that.</p>

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<p>established procedures under the close supervision of UNDP to ensure that the most suitable and competent candidates are recruited for every position and therefore, increase the project's chances of success.</p>	<p>Our forthcoming and separate recommendations to senior management of UNDP at HQ will call for detailed performance reviews for contract extensions and careful oversight of any new recruitments.</p> <p>While understanding the thrust of this recommendation, UNDP Cambodia is not in a position to agree with the contract nullification recommendation for the reasons mentioned with regard to DEX but also due to the following:</p> <ul style="list-style-type: none"> • As the hiring party, only the ECCC may nullify the contracts. • Appointments made by Royal Decree of HM the King include the judicial officers (judges and alternate judges) as well as the director and reserve director of the ECCC Office of Administration. These are special appointments that have a different selection procedure. • The work of the ECCC is advancing and any actions taken would have to be pragmatically phased in so that the overarching effort continues while the integrity of donor funds is ensured. <p>Comments from ECCC</p> <p>The 1st three recommendations (to UNDP Cambodia) are completely out of proportion to the issues raised in the report. These three recommendations are unacceptable and non-negotiable to the Cambodian side as to implement them would essentially mean a re-negotiation of the entire basis and character of the ECCC as a national court with international participation and assistance, already agreed in an international treaty between the Royal Government of Cambodia and the United Nations, and approved by the Cambodian National Assembly and the UNGA respectively - or is tantamount to internationalizing the ECCC.</p>
<p>3. UNDP-Cambodia should carefully review the ECCC salary scale for the national personnel and submit a proposal with appropriate justifications to the project board for its consideration and approval.</p>	<p>Comments from UNDP-Cambodia</p> <p>The salary amounts that were included in the UNDP project document were previously negotiated by the UN and the RGC. They were the basis for the personnel costs within the \$13.3 million Cambodian share of the total \$56.3 million ECCC budget.</p> <p>The audit notes that the ECCC national support staff salaries are, in relative terms, comparable to the UNDP Cambodia salary scale. This is a positive finding and in line with the basic budget agreement between the UN and the ECCC. This is also an important finding since the lion's share of ECCC staff fall into this category.</p> <p>On the professional staff side (or 36% of total ECCC personnel), we find merit in the point raised by the audit regarding a potential error in the computation of the agreed scale (i.e. the agreed 50% base should have used the rate that is net of tax since the RGC granted tax exemption for ECCC staff). We concur that the salaries of this segment of the personnel in the ECCC should be reviewed as a part of the wider negotiations with the ECCC on contract extensions and new hires. UNDP Cambodia will be</p>

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	<p>ready to present the analysis prepared by the auditors on this topic to the project board.</p> <p>Comments from ECCC</p> <p>The 1st three recommendations (to UNDP Cambodia) are completely out of proportion to the issues raised in the report. These three recommendations are unacceptable and non-negotiable to the Cambodian side as to implement them would essentially mean a re-negotiation of the entire basis and character of the ECCC as a national court with international participation and assistance, already agreed in an international treaty between the Royal Government of Cambodia and the United Nations, and approved by the Cambodian National Assembly and the UNGA respectively - or is tantamount to internationalizing the ECCC.</p>
<p>4. Prior to approval of the annual work plan and budget for 2007, UNDP should ensure that staffing numbers in these documents are reasonable and duly justified. Additional posts requested by ECCC should be supported by documented justification of the need for such posts and an assurance that there are adequate resources within the approved budget.</p>	<p>Comments</p> <p>from</p> <p>UNDP-Cambodia</p> <p>We concur with this recommendation. This has been in motion for some time. Most recently in January of 2007 the ECCC's work plan and budget were submitted to UNDESA in NY. We understand that UNDESA is in the process of preparing comments regarding the proposed 2007 annual work plan highlighting the need for further justification to be presented by ECCC on staffing. UNDESA has an extensive team at the physical complex of ECCC who work on a day to day basis with the ECCC Administration and are knowledgeable about staffing needs.</p> <p>UNDP Cambodia has also noted the 58 additional posts proposed under UNDP funding in 2007 and have drawn UNDESA's attention to this rather large number. Again, with UNDESA's presence inside the ECCC and with justification supplied by national side of the ECCC, UNDESA will be in a position to judge whether there are valid changes in the needs envisaged several years ago and if the proposed additional posts should be funded under the UNDP project.</p> <p>To illustrate attention paid to this in the past, UNDP also funded within the 2006 allocation four additional support staff and eight drivers only after receiving adequate justification for the said posts and assurance that the additional budget will come from existing 2006 allocation. A subsequent request to hire three additional investigators was discussed with UNAKRT and is now with UNDESA for consideration.</p> <p>UNDESA plays a central role in this effort since they are the recipients and administrators of the UN Trust Funds for this effort. The UNDP role as described by Marie Oveissi of UNDESA to Stephane Vigie of UNDP RBAP is "limited to administration of the (se) funds". (see email dated 19 April 2006 – Annex2)</p> <p>Finally, we have recommended to the national side of the ECCC that the staffing numbers be an agenda item in the meeting of the Project Board proposed to take place within the next three weeks.</p> <p>Comments from ECCC</p>

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<p>5. The chairmanship of the project board should be assigned to other than ECCC so as to avoid a conflict of interest situation. Also, periodic meetings of the project board should be initiated (preferably quarterly but at least once semi annually) with a view to strengthen the monitoring and oversight of ECCC activities, including the review of progress reports, spot check reports and audit reports.</p>	<p>The annual work plan and budget for 2007 was sent to UNDP for endorsement since January 10, 2007 was based on prior discussions and consultations between ECCC and UNDP with full justification regarding the need for additional staff for the 2nd year operation of the ECCC as follows:</p> <ol style="list-style-type: none"> 1. The ECCC will become fully operational after the adoption of the IRs (expected in June 2007); 2. After discussion in the Rules Review Committee, the PTC role has been much increased and consequently its staff also; 3. The CMS also needs additional staff for some new units: Victim Support, Transcription, larger pool of translators/interpreters; 4. The General Services Section requires more drivers, cleaners and gardeners to cope with the full operations of the ECCC; 5. This increase of staff has no impact on funding as the ECCC can manage within the existing budget by redeployment and cost-savings elsewhere.
	<p>Comments</p> <p style="text-align: center;">from</p> <p style="text-align: right;">UNDP-Cambodia</p> <p>We question the auditors' finding that the project board was ineffective. The project document calls for the board to meet every 12 months and the project was/is still in the first start up year. Even if the Board had met it would have been unlikely that they would have looked at predetermined issues related to staffing. The reason cited (the lack of comments or questions on the 2007 work plan and budget from the members of the board) is not sufficient to lead to this conclusion of ineffectiveness. It should be noted that at the time of the audit, UNDESA was still in the process of examining the proposed work plan and budget for 2007. Likewise, the European Commission (EC) who is an active member of the "Friends of ECCC" donor group that monitors a multitude of ECCC matters received both the 2006 Accomplishment Report and the draft 2007 work plan and budget for EC funds – no objections were raised by the EC on the draft 2007 work plan and budget.</p> <p>Thus we recommend revision or deletion of this conclusion re the past performance of the Project Board.</p> <p>Looking forward on the recommendations regarding the future of the Project Board, our views follow:</p> <ul style="list-style-type: none"> ? The first Project Board will be held shortly (19 June) and an agreement will be sought to meet, as suggested by OAPR, more frequently than once per year as prescribed in the Project Document. ? Transferring the chairmanship to another member of the board may be problematic at this stage when there are more fundamental issues on the table. Chairing this Board allows the RGC to take ownership of the results and the accountability for achieving them – fully in line with UNDP's capacity development objective. ? The project document addresses any conflict of interest within the project board by specifying that

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	<p>decisions are to be arrived at by consensus. (Management arrangements section of project document attached Annex 3). If the current arrangement proved to indeed hamper the effective functioning of the board, then the board will have to discuss possible rotation of the chairmanship among the members.</p> <p>Comments from ECCC</p> <p>We see no reason to change the composition and structure of the Project Board. We believe it is appropriate that the DOA be the Chairperson. We note that the Project Board is intended to operate on a consensus basis so the Chairperson does not have any particular powers to act unilaterally or to overrule the Board. Furthermore, all members of the Project Board have an interest in the project and so no other party could be considered neutral. We entirely agree with the proposal to hold at least semi-annual meetings of the Project Board</p> <p><u>OAPR Response to Comments from UND-Cambodia:</u></p> <p><i>OAPR takes note of the above comments of UNDP-Cambodia as well as additional clarifications provided by UNDP-Cambodia on 28 May 2007, but maintains its observation and recommendation with respect to the effectiveness of the Board. In OAPR's view, the sign of ineffective project board include:</i></p> <p><i>a) Since the project document was signed in June 2006, no meeting was held by the project board. The first meeting is planned to take place in June 2007, one year after activities have been initiated;</i></p> <p><i>b) The project board was not convened to review and approve the ECCC workplan and budget for 2007;</i></p> <p><i>c) While concerns were mounting regarding ECCC operations culminating with allegations of wrongdoing in the media, the project board was not convened to look into this matter and review any action that would have been taken and decide whether further actions are necessary. The above also supports OAPR's recommendation that the project board needs to be chaired by other than ECCC.</i></p>
<p>For Action By ECCC – see also Attachment II for Additional Comments Provided by ECCC</p>	
<p>6. ECCC should ensure that the channels selected to advertise its job vacancies are able to attract a wide pool of applicants. In this regard, job vacancy advertisements in newspapers should be continued. In the event of a low response to an advertised vacancy, ECCC should re-advertise the</p>	<p>Comments from ECCC</p> <p>All ECCC vacancy advertisements have been posted on our web site (initially through the STF web site until ECCC web site became operational in October 2006), and also distributed through several NGO email networks (including those run by OSJI and DC-Cam). We are now also advertising in the two most popular Khmer and English language local newspapers. The application deadline is normally set at least 3-4 weeks later except in case of an urgent recruitment.</p>

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<p>positions in order to attract a larger number of applications. Applicants should be provided an option to submit job applications via e-mail so as to increase the chances of a higher response rate.</p>	<p>Applications are now being accepted via email.</p>
<p>7. All job applications and other relevant documents received by ECCC must be retained on file for future reference and ensure accountability.</p>	<p>Comments from ECCC Retention of all applications has been our policy since the beginning and will be more strictly observed – previously one application was withdrawn at the request of an unsuccessful applicant. This is no longer permitted.</p>
<p>8. ECCC should ensure that candidates to be short-listed and interviewed for any particular post have met the minimum requirements stated in the terms of reference of the post and in the vacancy advertisement in terms of academic qualifications and relevant work experience.</p>	<p>Comments from ECCC All ECCC vacancy announcements have mentioned "qualifications" and not "minimum requirements". It is preferable that all short-listed candidates should meet all these qualifications, but this is not always the case – for instance occasionally an applicant's requirements may not meet one qualification but has exceeded another, or may possess an exceptional relevant skill or expertise, and it is therefore considered sensible to include that person among those to be interviewed.</p>
<p>9. Members of the ad hoc personnel selection committee which is formed to conduct short-listing and interview of candidates should not be confined to national staff only. In hybrid sections which comprise both international and national staff, the chief of sections should be actively involved in the recruitment process of staff in their sections.</p>	<p>Comments from ECCC Under the agreement, personnel recruitment and management are the responsible of each side, Cambodian and international respectively. There is no de jure obligation for mutual consultation. However, the DOA has decided as a matter of policy to offer de facto consultation to the relevant international Chief of Section in actions regarding any national staff in their Section, provided that the international side also offers such an arrangement to national Chiefs of Section on a reciprocal basis.</p>
<p>10. The ad hoc personnel selection committee should document the basis and results of its short-listing exercise so as to ensure greater transparency and that these documents are properly filed and retained.</p>	<p>Comments from ECCC A form entitled "Application Screening Criteria" has been in operation since January 2007 It lays out the number of points to be allocated to various criteria (including educational background, professional experience, computer literacy, language and knowledge), as well as the completeness of the application (cover letter, CV and certification). This form is used as the basis of short-listing the applicants and each one is signed by the relevant Chief of Section, Chief of Personnel and one other senior national staff nominated to be on the relevant Recruitment Committee. It is now being revised to include signature by the relevant international staff person.</p>
<p>11. The personnel section of ECCC should conduct reference checks of short-listed or selected candidates. Prior to the interview</p>	<p>Comments from ECCC These two recommendations are accepted and are now being implemented.</p>

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<p>short-listed candidates must be requested to disclose any related party or if any relatives of theirs are currently working or have worked in ECCC.</p>	
<p>12. All staff performance evaluations must only be conducted by the section chief regardless of whether the section chief is an international or national staff.</p>	<p>Comments from ECCC</p> <p>Under the agreement, personnel recruitment and management (including performance evaluation and extension of contracts) are the responsible of each side, Cambodian and international respectively. There is no de jure obligation for mutual consultation. However, the DOA has decided as a matter of policy to offer de facto consultation to the relevant international Chief of Section in actions regarding any national staff in their Section, provided that the international side also offers such an arrangement to national Chiefs of Section on a reciprocal basis.</p> <p>Comments from ECCC</p>
<p>13. The ECCC extension of service contracts should follow a clear policy which should take into account the need to train staff, build capacity and retain good staff for the full duration of the project, based on their performance.</p>	<p>We share this objective, but note that there is no training element within our budget. We wish to embark upon on-the-job training and are hoping for transfer of knowledge and technology from our UN counterparts.</p>
<p>14. ECCC must establish clear procedures and guidelines governing the appointment of volunteers.</p>	<p>Comments from ECCC</p> <p>The ECCC Personnel Handbook establishes a category of personnel for "ECCC Intern and Volunteer Staff" under the hiring authority of DOA, for specific purposes, with limited time of service and without remuneration payments from ECCC budget.</p>
<p>For Joint Action by ECCC and UNDP-Cambodia</p>	
<p>15. The contract and terms of reference of the audit firm hired to do the spot check should be renegotiated and revised to also include quarterly spot-checks on human resources management and procurement procedures. This measure should alleviate the need to maintain a separate internal audit function in ECCC.</p>	<p>Comments from UNDP-Cambodia</p> <p>We agree with this recommendation. The need for any other assurance activity e.g. special follow up HR audit, will be discussed by the project board.</p> <p>Comments from ECCC</p> <p>The ECCC has no objection in principle to the extension of the audit contract, provided that the firm can be confirmed as being competent in these additional fields of auditing. However, it must be recognised that this will surely have a budget impact – who will finance these additional activities? And it may also further delay the existing spot check of financial transactions carried out. We recognise that this may indeed alleviate the work of the internal auditor, but we believe it is imperative to maintain such a function within the ECCC, as would normally be expected for an operation of this size in terms of personnel and expenditure.</p>

ATTACHMENT II

ADDITIONAL COMMENTS RECEIVED FROM ECCC ON THE AUDIT REPORT

A- Comments received From ECCC by E-mail dated 17 May 2007

"[...] From the ECCC management, I would like to present our comments as follows:

1. The 1st three recommendations (to UNDP Cambodia) are completely out of proportion to the issues raised in the report. These three recommendations are unacceptable and non-negotiable to the Cambodian side as to implement them would essentially mean a re-negotiation of the entire basis and character of the ECCC as a national court with international participation and assistance, already agreed in an international treaty between the Royal Government of Cambodia and the United Nations, and approved by the Cambodian National Assembly and the UNGA respectively - or is tantamount to internationalize the ECCC.
2. The recommendations to the Cambodian side of the ECCC are, generally speaking, quite acceptable, and indeed some of these have already been implemented.
3. We recall that the decision to carry out this human resources management audit was a completely unilateral UNDP operation, with commissioning and selection of the audit firm involving no consultation or discussion with the Cambodian side of the ECCC. Despite protesting the process followed and its open-ended and sweeping terms of reference, in January and again in March we offered full cooperation to Candide Consulting and UNDP's Office of Audit and Performance Review (OAPR). During the exit interview from the first audit (on 9 February) we were informed that some "weaknesses" had been identified, and that these could be rectified- indeed, as the OAPR reveals, a number of changed procedures were immediately put into place. We were also promised that the draft report would be shared with us in the next 10 days. But we don't see it until now.
4. At that time, the auditors raised a single "irregularity" that they had heard that some staff had been hired on condition that they paid a percentage of their pay to some unspecified recipient. This issue coincidentally surfaced in the following week in a press release from OSJI issue on 14 February containing what we said at the time "unspecific, unsubstantiated and unsourced" allegations. The "Background" of the report confirms that the human resources audit was initiated as a consequence of a memo from OSJI on 4 October 2006, although it was not refer to in any of the two letters from UNDP requesting the audit inspections. Its mention in the report seems merely to discredit the Cambodian side in the eyes of the reader about something not relevant to matters audited.
5. This entire human resources audit process has focused on the Cambodian side with no comparable inspection or evaluation of the UN side of the operation. Criticism of the Cambodian side for exceeding the earlier staffing estimates make no sense without reference to what has been done on the UN side.[...]"

B- Comments received from ECCC by E-mail dated 29 May 2007

"FEEDBACK FROM PERSONNEL SECTION OF ECCC ON THE DRAFT OF UNDP SPECIAL AUDIT REPORT ON HUMAN RESOURCE MANAGEMENT

A. INITIAL OPERATIONS OF THE ECCC

The ECCC began operations on 1 February 2006 in accordance with the Law on Establishment of the ECCC and the Agreement between UN and RGC. There were then only 28 employees who had been appointed by the RGC in order to organize and set up a full national structure of nine sections in the Office of Administration (Office of the Director, Public Affairs, Court Management, Defence, Budget & Finance, Personnel, ICT, General Services and Security Section of the ECCC).

ATTACHMENT II

The operational mission started from scratch regarding human resources, documentation, procedures, policies, regulations etc. We had to work hard to administer, set-up and establish all policies, regulations, procedures, work stations, equipment and office documentation and we always thought that these would need continued improvement and updating.

B. PERSONNEL WORK PLAN AND SCHEDULES

Specifically, the Personnel Section started this process with only two staff (Chief of Personnel Section and Personnel Assistant) in early April 2006. We had to start with high speed and work hard to create everything for human resource activities and personnel support services in order to respond to the requirement of the mission to be a full operation by June 2006.

As you are aware, Cambodia is a poor and developing country and we, thus need assistance to develop in all domains, particularly in human resources. In this respect, UN Assistance for Khmer Rouge Trial (UNAKRT) was established to assist the national side to ensure good operation of the ECCC overall mission. **However, we would like to ask "what assistance was actually offered to the Cambodia side during the start-up period? What prior assistance might have been needed before Cambodia side began full operations?"**

Although the UN staff offered no prior consultation or recommendation or documentation whatsoever to us, we tried to do our best to bring ECCC into full operation.

C. PAST ACTIONS OF PERSONNEL SECTION

1- Start-up period:

We set up an acceptable system and procedure for recruitment of ECCC staff with a policy to ensure transparency and competitiveness through public announcement, screening and short-listing, testing and interviewing; and appointment.

We would like to note that we did follow such procedures, but we did not have enough time to draft or document it in writing. However, we kept improving gradually. As a result, 27 applicants were hired in early July 2007. Subsequently, The Personnel Section produced a summary recruitment manual towards achieving standard procedures in recruitment for the ECCC.

Public announcements were made through the STF website and other means with an appropriate time gap and deadline of the job advertisement. The channels for receiving job applications were through P.O box No. 71 and ECCC Office (front guard post of the ECCC) (and from May 2007 also by email).

We encountered several difficulties taking into account the short time frame and rather heavy workload. We would have met numerous problems in providing and hiring staff for supporting the mission as planned if we had followed standard time and operations in recruitment. However, we thought it is essential to set up a first-things-first approach to meet the deadlines.

Under the agreement, personnel recruitment and management (including evaluation and extension of contracts) is the responsible of each side, Cambodian and International respectively. There is no de jure obligation for consultation. However, the DOA has decided as a matter of policy to offer de facto consultation with the relevant international Chiefs of Section regarding national staff in their Sections, if the international side also offers such an arrangement to national Chiefs of Section on a reciprocal basis.

We have therefore invited the international chiefs of section and other officers of UNAKRT to attend and interview candidates for vacant positions e.g. Mr. Soe Myint, Chief of ICT Section and other international Officers in ICT section were invited to attend during the interview process for IT Help Desk and Web Developer positions in June 2006, and Mr. Peter Foster international Public Affairs Officer was fully involved in the decision to transfer Mr. Chin Hemvichet from a temporary staff sent to us by UNDP to a regular member staff on 23 Oct 2006.

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2- Full operation period:

The first phase of the recruitment process was completed and then the second phase was started. Please note that we need many staff to fill the vacant positions in several sections and offices within the ECCC structure. Although the number of staff gradually increased, it was still very limited as compared to our projected staffing plan for year 1 (2006). Therefore, over thirty vacant positions had been planned for recruitment.

During this period, the recruitment procedure followed four important steps. There were five separate recruitments from early July 2006 to 31 December 2006. Generally, within this period we achieved many objectives of the ECCC. 133 staff were appointed to fill the vacant positions. 105 employees were appointed through recruitment during the period from April to December 2006 (nine months). The Personnel Section achieved full staffing profile in July 2006, meaning that we had a full staff for operation for only six months (Jul- Dec).

In concluding these introductory comments, we wish to emphasise that we have acted in accordance with existing procedures stated in our Recruitment Manual and ECCC Personnel Handbook, and that almost all appointed staff were the most qualified among applicants. However, we do not deny that a number of technical mistakes occurred during our first year of operations. We have already implemented a number of recommendations given to us by the auditors and stand ready to improve our procedures further.

Finally, it is most unusual for an audit to report only weaknesses, and not to give a balanced overview of the situation including both strengths and weaknesses. Therefore we wish to balance this by providing an overview of our achievements:

- ? 105 staff have been recruited
- ? Consultations with UNAKRT supervisors on the recruitment process, personnel operations and other associated issues have been initiated regarding:
 - ⌚ TOR: Consultations are made through direct discussion or exchange of e-mails between International Chiefs of Sections and Chief of Personnel Section.
 - ⌚ JBA: The issues relating to the job announcements are discussed with the International Chief of Personnel Section.
 - ⌚ TES: We invite international Chief of Section(s) to attend relevant pre-testing process and their recommendations were taken into consideration.
 - ⌚ ITV: We discuss with international Chief of Section on the content of a standardized test and questions for each interview.

The process of recruitment involves the following steps:

- ? Vacancy announcements were released on the ECCC web site from 27 Oct 2006, and lately also in popular newspapers (Cambodia Daily and Raksmei Kampuchea).
- ? Job applications were accepted via P.O box and ECCC Office and since May 2007 also by e-mail.
- ? Screening and short-listing
- ? Tests and interviews are made by the recruitment committee approved by DOA. Committee members may include the international Chief of Section or representative depending on the requirement of the hiring Section.
- ? Recruitment committee makes a final decision.
- ? For vacant positions under supervision of the international Section Chief, their recommendations were seriously considered. e.g. in General Services and ICT sections, the selection decision followed the recommendation from the representative of Mr. Robert Sully for Procurement Assistant and Messenger positions; and from Mr. Soe Myint for IT Assistant position. (For instance, Mr. Chhet Baring was appointed after being given priority by international Chief of Section even though he got lower scores than the other applicants)
- ? ECCC Personnel Handbook (National) was prepared by the Personnel Section with assistance from native English speaker (Chief of Public Affairs Section) and from the Legal Office (Office of Administration), and was approved by DOA for official implementation.

ATTACHMENT II

D. SPECIAL EVENT

Apparently based on an allegation from an outside organization accusing the ECCC of some irregularities in its management, a special audit was initiated by UNDP Cambodia. In order to maintain smooth cooperation between the ECCC and UNDP, the ECCC's DOA allowed an audit team from Candide Consulting to come into the premises and examine all aspects of our internal HRM.

First special audit:

In a letter from UNDP dated 17 January 2007, and a phone call on 18 January 2007, UNDP informed us they would send a team of two auditors to conduct an audit in ECCC without prior consultation regarding the whole operation including scope, term of reference, selection and appointment of auditor and modus operandi. We were simply informed that auditing would start the following Monday from 22-26 January 2007. Despite this short notice, the response from ECCC dated 23 January 2007 clearly stated our high spirit to cooperate, and requested a copy of the TOR. Subsequently, the audit was conducted from 30 January to 2 February 2007.

The response letter from UNDP dated 25 January 2007, in the attachment III (Term of References of Audit Services) at paragraph 2.1 stated "the audit will exclude all operations under the direct responsibilities of the international side of the ECCC as well as appointments made by RGC". [this refers to 28 initial positions including those made by Royal Decree and Prakas].

The ECCC provided full cooperation in providing requested documents such as recruitment files, official personal files, ECCC national staff lists, recruitment manual and other relevant documents. Based on the conditions of audit, the report was to be submitted to the ECCC in both electronic and hard copy formats for comment within 10 working days before clearance and/or circulation by UNDP.

Since the completion report has yet to be sent to the ECCC, we stood by for over a month until we unexpectedly received a letter issued from UNDP dated 23 February 2007. The letter stated that an additional special audit was required due to lack of performance in collecting information of the audit team and they will need more time for conducting this second special audit together with the UNDP OAPR.

Second Special Audit:

In response to the letter and e-mail from UNDP dated 16 March 2007, the audit team was allowed to conduct the second special audit on HRM from 27-30 March 2007.

As this second audit was a follow-up to the first special audit on HRM of the ECCC therefore the 28 staff under the responsibility and appointment made by RGC were still subject to the exemption for auditing, as previously agreed.

E. RESPONSE TO OBSERVATIONS AND FINDINGS

III- Detailed audit observations and findings

III.1 and III.2 – responses given in Annex 1 previously transmitted to UNDP.

III. 3 Staff hired did not meet minimum requirements in the vacancy announcement

i) It is mistaken to assume that more experienced candidates are necessarily more competent or any better than less experienced ones taking into account recent advances in technology. Also, we note that applicants for position of interpreter or translator often have long experience as freelance interpreters.

ii) claims that an inexperienced applicant was appointed in the Accounting Section who; actually, he had experience as the Assistant of Finance and Administration Section for UNDP for more than one year, was highly recommended to the ECCC by UNDP, and he also has sound knowledge about computer applications and databases.

ATTACHMENT II

iii) ECCC vacancy announcements mention "qualifications" and not "minimum requirements"

III 4 Deficiencies in the recruitment and selection processes

III.4.1 Since the beginning, and especially upon receiving the recommendation from UNDP in July 2006 our recruitment procedures have been constantly improving to ensure a transparent and fair recruitment of competent staff; the recruitment process has been conducted in accordance with the procedures outlined above.

Our records show that all the vacancy announcements that were requested were indeed provided to the auditors and signed as received.

III.4.2 The first vacancy announcement included 10 positions for which 77 applications were received. However, the audit team requested documentation relating only to five of these positions (Finance Assistant, Procurement Assistant, Records/Archives Assistant, Translator and Interpreter). However, the scope and conditions of the audit related only to the UN Trust Fund and the EC Fund, and some of these positions were funded through other sources such as the Indian Government Fund; therefore, they were not provided.

III 4.3 We now have put in place the procedures to receive application via e-mail. It is true that during our first year we had some inconsistency regarding use of this channel of application. We initially did allow email application for the first vacancy announcement. However, at that stage the UNAKRT had not yet installed an operating ECCC email system, and we felt it was not really professional to use the personal email addresses of our staff. Further, we encountered problems of opening attachments and reading different Khmer fonts, and so we suspended such a channel. Following the recommendation of UNDP, and following the installation of an ECCC email system the email submission channel has been re-established.

III 4.4 Our records show that all requested documentation was provided to the auditors. They were shown concrete examples of how in the initial stage, the preliminary screening is done by a joint verification by the selection committee against individual application. The applications which are duly completed are then examined against the application screening criteria.

III.4.5 At this stage, we have modified the application form requiring that the applicants declare their family members who are already employed at ECCC. This is now in operation.

III.5 Weaknesses in the performance evaluation process

As mentioned above, personnel evaluation is done by the Cambodian and international supervisors for staff under their direction respectively. We have followed the practice of seeking input and recommendation from relevant staff on the international side on re-appointment of national staff. In at least one case (international Public Affairs Officer) the national Chief of Section was asked to provide similar input to the Deputy Director of Administration but on no occasion have the national Chiefs been asked to "sign off" or even been shown a copy of the international personnel evaluation report for staff in their section. The instances noted regarding dates of signatures seem minor issues that can easily be improved.

III.6 Contracts extended for only three-month duration

Given that UNDP has adopted the practice transferring funds only on a quarterly basis, it seems prudent to restrict contracts for most personnel to the period for which funds are assured. An exception is made for some key personnel whose contracts have been renewed for 6 months or one year.

III.7 Absence of clear procedures and guidelines governing appointments of volunteer personnel

The procedures for internship are stipulated in ECCC Personnel Handbook which was put into effect on 22 March 2007

III.8 Discrepancies noted in personnel files

III.8.i Indeed the Minute of Recruitment and the starting date were both 14 August 2006, as the Co-Prosecutor urgently required the appointed person to commence work. The interview was held on 7 August 2006.

III.8.ii The recruitment followed the existing procedures; however, the archive staff failed to take out the correct document to provide to the auditors.

ATTACHMENT II

The reasons of his request for leave without pay were laid out in his letter and they conformed to the existing procedures. It should be noted that this applicant has recently been appointed to a position of considerable seniority in the Cabinet of the President of the Funcinpec Party, with the rank of Secretary of State. This would indicate that he had some capacity.

- III.8.iii It was a technical mistake by the applicant.
- III.8.iv It was a technical confusion between the dates 18 October and 18 August 2006.
- III.8.v It was the applicant who confused the date.
- III.8.vi This person was loaned to the ECCC by UNDP with recommendation and performed well for 3 months already as a staff member. It was an urgent and necessary requirement of the Chief of Public Affairs Section.

The final sentence in this section raises a serious allegation and should be deleted from the report.

III.9 Unable to ascertain if the Internal Auditor function is effective

The position of Internal Auditor was included by the UN Technical Assistance Mission, and we have agreed that it is an essential position to retain in order to ensure smooth, efficient and effective functioning and operations of the ECCC.

Moreover, the internal auditor is also tasked to discover fraud and other illegal acts, and seek to identify serious defects in the internal control system in all operational sections. In the event of discovering any events, evidence or suspects of an illegal practice, he is obliged to report without delay to the Director of the Office of Administration who has the authority to determine what further actions to take.

In fact, the person appointed to be our internal auditor has over twenty years' professional experience, including many years in the senior position of state controller.

III.10 International staff heading hybrid sections are not permitted to participate in functions relating to HRM

To date, individual staff performance appraisal (national & international) has been conducted by their respective Chief of Section as mentioned above. Please refer to Annex 1 responses to Recommendations 9 and 12. The final sentence in this section raises a serious allegation and should be deleted from the report.

III.11 No access to 28 staff personnel files and information related to them

The letter from UNDP dated 25 January 2007, in the attachment III (Term of References of Audit Services) at paragraph 2.1 **stated "the audit will exclude all operations under the direct responsibilities of the international side of the ECCC as well as appointments made by RGC". [this refers to 28 initial positions including those made by Royal Decree and Prakas].** Based on the scope of the first audit already agreed by UNDP, the members of the second audit process would likewise not be provided access to the file of 28 staff who were appointed by RGC.

III.11.i The increased remuneration of 4 of the initial employees was based on function transfer through competition or a revised work scope certified by their chief of section and approved by UNDP.

III.11.ii The Press Officer was among the 28 staff initially appointed by RGC. Although it is true that this position was originally budgeted to commence only in year two, it was firmly believed that an operation like ECCC should not get under way without this post being filled from day one and this decision has provide to be a sound one.

ATTACHMENT II

In conclusion, we believe that most of the observations and findings criticising the operations of the ECCC HRM reveal misunderstandings or minor irregularities. These could have easily been clarified or explained (as we have done now) had the members of the second audit team not precipitately cut short their visit and cancelled exit interviews with both the Personnel Section and the Director of Administration.

Phnom Penh
29 May 2007"

OAPR Response: We gave the above additional comments received from ECCC due consideration and they do not warrant amendment to the contents of the audit report.

ANNEXES

Annex 1 Excerpt from the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

CHAPTER IX OFFICE OF ADMINISTRATION

Article 30

The staff of the judges, the investigating judges and prosecutors of the Extraordinary Chambers shall be supervised by an Office of Administration. This Office shall have a Cambodian Director, a foreign Deputy Director and such other staff as necessary.

Article 31

The Director of the Office of Administration shall be appointed by the Royal Government of Cambodia for a two-year term and shall be eligible for reappointment.

The Director of the Office of Administration shall be responsible for the overall management of the Office of Administration.

The Director of the Office of Administration shall be appointed from those with significant experience in court administration and fluency in one of the foreign languages used in the Extraordinary Chambers, and shall be a person of high moral character and integrity.

The foreign Deputy Director shall be appointed by the Secretary-General of the United Nations and assigned by the Royal Government of Cambodia, and shall be responsible for the recruitment and administration of all foreign staff, as required by the foreign components of the Extraordinary Chambers, the Co-Investigating Judges, the Co-Prosecutors' Office, and the Office of Administration. The Deputy Director shall administer the resources provided through the United Nations Trust Fund.

The Office of Administration shall be assisted by Cambodian and international staff as necessary. **All Cambodian staff of the Office of Administration shall be appointed by the Royal Government of Cambodia at the request of the Director.** Foreign staff shall be appointed by the Deputy Director.

Cambodian staff shall be selected from Cambodian civil servants and, if necessary, other qualified nationals of Cambodia.

[Translation by the Council of Jurists, 6 Sept 2001] 12

Annex 2 Email exchanged between Marie Oveissi of UNDESA and Stephane Vigie of UNDP RBAP

----- Forwarded by Marie Oveissi/NY/UNO on 19/04/2006 08:31 AM -----

Marie Oveissi/NY/UNO
To
19/04/2006 08:04 AM <stephane.vigie@undp.org>
Marie Oveissi/NY/UNO@UNHQ, dale.Leach@undp.org
Subject Re: Cambodia project (Document link: Marie Oveissi)

Dear Stephane,

Thank you for advising me of tomorrow's meeting. I expect to finish the review of the project proposal forwarded by UNDP, Phnom Penh, as well as the draft agreement with UNDP, which should be useful for that meeting.

ANNEXES

As I mentioned already, it is rather unclear why UNDP finds it necessary to recruit a consultant, as the UN is simply asking UNDP to administer this project on behalf of the Government. Given that the project is already formulated, hopefully in full consultation with the government, the role of the consultant is rather unclear. **The utilization of the funds is to be determined by the Government,; UNDP's role is largely limited to the administration of these funds** (acting as an implementing agency) . I believe that this has been clearly explained at the field level by UNAKRT staff.

I am also copying Dale so that we can review any issues related to the transfer of funds and how to reflect these in UNDP's system.

Marie

<stephane.vigie@undp.org>

To

18/04/2006 07:39

Oveissi@un.org

PM

cc

Subject Cambodia project

Dear Marie,

It is good we touched base this afternoon as I was not clear about the nature of the arrangement you foresee with UNDP. As I mentioned on the phone, our Country Office has decided to contract the services of a consultant, Charles Downs, to finalise all the arrangements required for UNDP to start working on the project. It would be extremely useful if you could join us when we sit down with him on Thursday morning to help put him on the right tracks. The meeting will be at 11:00 in the 19th floor conference room.

Grateful if you could confirm your participation.

Best regards,

Stéphane Vigie
Senior Advisor for resources and partnerships
Regional Bureau for Asia and the Pacific
UNDP
Tel. 212 906 5175

Annex 3 Excerpt from the Management Arrangements section of the UNDP project document "Special Support to the Cambodian Side of the Budget of the Extraordinary Chambers in the Courts of Cambodia" signed in May 2006.

I. Management Arrangements

Programme Management

ANNEXES

The project will be implemented by the Extraordinary Chambers in the Courts of Cambodia (ECCC), and classified as a nationally executed project. The Director of the Office of Administration, Director of the ECCC will be the National Project Director who will be responsible for:

- preparing of annual work plan (AWP) and budget;
- organizing the annual Project Board Meeting and presenting AWP and budget for review;
- submitting quarterly progress narrative and financial reports to UNDP; and
- facilitating audit and evaluation exercises.

The Project Board (PB) will provide overall oversight, review progress on the implementation of activities, and propose necessary recommendations to adjust project activities as required. The Project Board shall be comprised of: ECCC (Chair), UNDP, DESA, European Commission and other contributing donors. The Project Board will meet at least once a year and will perform the following tasks:

- to approve the AWP and budget;
- to review implementation of the AWP, achievement of results, timely disbursements and adherence to rules and regulations; and
- to provide guidance and solution to any major issue/problem emerging during the implementation of the project.

On behalf of the project board, the National Project Director is responsible for timely, cost-effective and results oriented implementation of the project. Decisions will be taken by consensus.