

# មជ្ឈមណ្ឌលឯកសារកម្ពុជា

## **Why the ECCC Office of Administration Would Benefit from Being Structured More Like a “Registry”**

A spate of recent news stories has made public growing concern among ECCC officials and outside observers about the preparedness of the administrative arm of the Extraordinary Chambers in the Courts of Cambodia (ECCC) to handle the Court’s increasing judicial workload.<sup>1</sup> In June, two reports critical of ECCC management were issued by two different groups of international experts. One of those groups — comprising two independent experts in administration — visited the ECCC in late May to assess the preparedness of the Court to conduct judicial proceedings. This Assessment Team’s report remains confidential except for a short summary of its recommendations. Nevertheless, this summary, together with press accounts of the Team’s findings, make it clear that they believe there are “serious flaws” in the Court’s administrative leadership and reporting structures.

At the ECCC, general administrative functions are the responsibility of the Office of Administration (OA).<sup>2</sup> In addition to hiring and supervising Court personnel, the OA supports the Court’s legal organs by serving as the official channel for both internal and external ECCC communications, maintaining a database containing copies of all case files, preserving and storing evidence, ensuring security, monitoring the conditions of detention, training Court staff, and providing a variety of other physical and administrative requirements (including supplies, equipment, facilities management, information technology, and transportation).<sup>3</sup>

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<sup>1</sup> See, e.g., Erika Kinetz, *Report Finds Flaws in ECCC Administration*, CAMBODIA DAILY, 25 Sept. 2007 at 1; John A. Hall, *Yet Another U.N. Scandal*, WALL STREET J., 21 Sept. 2007 at A15.

<sup>2</sup> See Framework Agreement, art. 8(1); Internal Rules R.9(1).

<sup>3</sup> See Establishment Law, art. 30; ECCC Internal Rules, R.9(2)-(7) and R.10(3).

### Current Administrative Organization

The OA is headed by a Cambodian Director and an international Deputy Director. The Director of the Office is responsible for the OA’s “overall management,” except with respect to “matters that are subject to United Nations rules and procedures.” The Director’s responsibilities include hiring Cambodian staff and requesting their appointment by the Cambodian Government. The Deputy Director is responsible for the administration of all international components of the Court, including the recruitment and administration of international staff. In fulfilling these responsibilities, the Director and the Deputy Director are required to “cooperate in order to ensure an effective and efficient functioning of the administration.”<sup>4</sup>

Despite the OA leadership’s reportedly cordial and constructive working relationship, the split authority between the national and international “sides” of the office with regard to budget, hiring, and staff reporting appears to be undermining their best efforts to meet the daunting challenges of running a complex new tribunal. According to news accounts, the Assessment Team has determined that the organizational division “serves only to constantly hinder, frequently confuse and certainly frustrate the efforts of a number of staff on both sides of the operations.”<sup>5</sup> Areas of concern include, among other things, OA capacity for witness protection, document management, victim support, and detention-facility oversight. Additionally, courtrooms remain unfinished, audio/video equipment has not yet been installed, and translation services are considered woefully inadequate.

### Alternative Administrative Organization

At most courts with mixed national and international jurisdiction (called “hybrid” courts)

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<sup>4</sup> See Establishment Law, arts. 13, 22, 28, 30, and 31; and Framework Agreement, art. 8.

<sup>5</sup> Kinetz at 1.

as well as international courts, Registries are responsible for administrative functions.<sup>6</sup> Two aspects of the way these Registries are structured offer insights into how the OA could be better organized to function more efficiently.

#### *Unified and Accountable Leadership*

The feature that most clearly distinguishes a Registry from the OA is the fact that a Registry's leadership, and consequently its reporting structure, is unified under one court official. For example, the Rome Statute provides that the International Criminal Court's Registry "shall be headed by the Registrar, who shall be the principal administrative officer of the Court."<sup>7</sup> Unified leadership is arguably not only an important but also an essential ingredient of a well-run administrative office. Conversely, a lack of clear authority results in no one taking "ownership" of essential tasks.

For example, for the first three years of operation of the Special Panels for Serious Crimes in East Timor — a hybrid court similar in many respects to the ECCC — there was no central administrative authority to make and bear responsibility for core management decisions. Expert observers have attributed many of the Panels' severe organizational problems to this gap. Administrative and management functions were instead shared between the UN mission and the national authorities, with both sides deferring to the other's jurisdiction when problems arose. These difficulties were partially overcome only after the role of Judicial Coordinator was created and staffed by a well-qualified official.<sup>8</sup> In the words of that official, the split in authority

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<sup>6</sup> For legal authority establishing Registries at other hybrid or international criminal courts, *see* International Criminal Tribunal for Rwanda (ICTR) Statute, art. 16; International Criminal Tribunal for the Former Yugoslavia (ICTY) Statute, art. 17; Rome Statute, art. 43; International Criminal Court (ICC) Rules, R.13-15; Special Court for Sierra Leone (SCSL) Statute, art. 16.

<sup>7</sup> Rome Statute, art. 43(2). *See also* ICTR Statute, art. 16(2) (providing that "[t]he Registry shall consist of a Registrar and such other staff as may be required"); ICTY Statute, art. 17(2) (same); SCSL Statute, art. 16(2) (same).

<sup>8</sup> *See, e.g.,* David Cohen, "Hybrid" Justice in East Timor, Sierra Leone, and Cambodia: "Lessons Learned" and Prospects for the Future, 43 STAN. J INT'L L. 1, 13 (Winter 2007); David Cohen, "Indifference and Accountability:

created an environment where “the chain of command was not clear, lines of responsibility were not always apparent, and the duty to sustain and support the process was often undefined.”<sup>9</sup>

As noted by the Assessment Team, similar weaknesses in the OA are attributable to its divided structure and split leadership, creating a confusion of roles and responsibilities between the two top officials. As a consequence, no OA official has a sufficient mandate to take action essential to the Court’s early operations or to be held accountable for his or her failure to do so.

#### *Judicial Coordination and Oversight*

A second major difference between the OA and a Registry is the fact that a Registrar works in close coordination with — and *under the authority of* — the court’s head judicial officer, usually called the President.<sup>10</sup> The President’s supervisory authority makes the Registrar directly accountable to the judicial arm of the court, ensuring that judicial concerns are heard and addressed. Moreover, because the Registrar acts on behalf of the President, he or she has a powerful mandate to make and implement decisions necessary to ensure the effective operation of the court.

At the ECCC, neither the Framework Agreement between the UN and the Cambodian Government nor the law establishing the Court create a single office of President. They create instead a Cambodian President of each of the Pre-Trial, Trial, and Supreme Court Chambers, but

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The United Nations and the Politics of International Justice in East Timor,” East-West Center Special Reports, No. 9, at 9 (June 2006); Phillip Rapoza, *Hybrid Criminal Tribunals and the Concept of Ownership: Who Owns the Process?*, 21 AM. U. INT’L L. Rev. 525, 531-32 (2006).

<sup>9</sup> Rapoza at 531.

<sup>10</sup> See Rome Statute, art. 43(2); ICTR Rules, R.33(A); SCSL Rules, R.33(A). See also ICTY Rules, R.19(A) (providing in part that “[t]he president shall coordinate the work of the Chambers and supervise the activities of the Registry”). Notably, at the ICC, the Registrar is elected directly by the judges, while at the ICTR, ICTY and SCSL, the Registrar is appointed “after consultation with the [ICTR] President[.]” Rome Statute, art. 43(4); ICTR Statute, art. 16(3) (providing that the Secretary-General must consult with the president before appointing the Registrar). See also ICTY Statute, art. 17(3) (same); SCSL Statute, art. 16(3) (same).

none of these officers has responsibility for overseeing the OA.<sup>11</sup> The Internal Rules partly remedied that problem by establishing a “Judicial Administration Committee” made up of three national judges and two international judges, in which the OA Director and Deputy Director participate “in a consultative capacity.” This Committee is mandated to “advise and guide the Office of Administration concerning activities relating to the administrative and judicial support provided to the Office of the Co-Prosecutors, the Office of the Co-Investigating Judges and the Chambers, including the preparation and implementation of the budget.”<sup>12</sup>

However, the Judicial Administration Committee’s authority to “advise and guide” does not institutionalize the OA’s accountability to the judicial organs, and it does not guarantee their regular coordination. Consequently, the Committee’s powers may not be sufficiently robust to solve the ECCC’s current management problems. It is worth noting that the International Criminal Tribunal for the Former Yugoslavia has a Management Committee that assists coordination with the Registry, but the court’s President also has express “supervisory” authority over the Registry’s activities.<sup>13</sup>

#### *Recommendation for an ECCC Registrar*

The OA would clearly benefit from having a more well-defined chain of command. In theory, this could be accomplished by carefully delineating the responsibilities of its leadership in all areas. The United Nations Assessment Team has made this recommendation, emphasizing the need to “clarify the responsibilities of the Director and the Deputy Director to ensure more effective decision-making, preferably by their agreeing to divide responsibilities for certain key

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<sup>11</sup> See Establishment Law art. 9 new. See also *id.* art. 11 new (giving the Supreme Council of the Magistracy the responsibility of appointing Presidents of each of the Chambers from the Cambodian judges).

<sup>12</sup> ECCC Internal Rules, R.19(1)-(2).

<sup>13</sup> See ICTY Rules, R.19(A), R.23 *ter*(B).

areas between them and that the staff working in each of those areas should report directly to the one of them responsible for that area.”

However, even if the roles of the Director and Deputy Director were clarified, the split of day-to-day authority between the national and international sides would likely still impede the ability of the OA to act decisively. For this reason, it would be preferable to create a new Registrar position with primary oversight authority over the whole of the OA, and staffed by someone with demonstrated experience in court administration. This would also go a long way toward implementing another of the Assessment Team’s recommendations: combining the functions of the parallel national and international administrations.

At the same time, the experience of the international(ized) courts suggests that the OA would be more effective if its leadership was provided both the mandate and the responsibility to make decisions under judicial authority. The Assessment Team has therefore recommended that a liaison or resident judge be given the power to provide the OA “decisions and directions on matters concerning judicial administration.” Due to the importance of including both international and Cambodian views, it may be advisable to give this responsibility to a Presidency made up of one international and one Cambodian judge. A dual Presidency with supervisory authority over a unified administration would also help address concerns about maintaining the current balance of national and international decision-making in the OA.

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