

Edited to include Cambodian responses in the text and to remove individual names

**SPECIAL AUDIT
OAPR
UNDP**

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

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I. EXECUTIVE SUMMARY

I.1. 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 work plan 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.

Response

We see no reason to change the composition and structure of the Project Board. We believe it is appropriate that the Director of Administration be the Chairperson. We note that the Project Board operates 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. [Note that UNDP-Cambodia also did not support this recommendation.]

We entirely agree with the proposal to hold at least semi-annual meetings of the Project Board

Update

Meetings of the Project Board have been held in June and September 2007 with the next meeting scheduled for January 2008.

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.

Response

The policy to remunerate national professional positions at 50% of their international counterparts was itself a broad in-principle compromise decided by the Prime Minister between two widely divergent positions, both argued strongly by their proponents: either equity in salaries for all professional staff (as is the case in the Special Court of Sierra Leone); or Cambodian professional staff to be paid at Cambodian national government salaries and international professional staff at UN rates.

The major donors agreed with this compromise. The agreement did not specify what was to be used as the basis for calculating the 50% (whether it was to be net or gross salary, to include allowances or not, to move along with any movement in the UN salary scales or not). Various documents have somewhat different formulations, with most documents simply referring to 50% of UN salaries without further specification.

A number of factors have to be taken into account:

- 1. all Cambodian personnel of the ECCC were deemed tax-exempt by the Royal Government of Cambodia in Information Note (S.Ch.N) 313 dated 27 February 2006;*
- 2. the tax-exempt status is not exceptional, as it applies also to Cambodian staff employed on the UNAKRT side and to all Cambodian consultants hired by UN agencies in Cambodia and multi-lateral donors (including the World Bank, ADB, IMF);*
- 3. there are many different possible UN salary rates that could be taken as a comparator: gross salary, net salary, take-home base pay or actual take-home pay. The latter, which could be seen as the truest comparator, would also have to take into account all benefits accruing to the individual employee. These include (but are not necessarily limited to) post adjustment; hardship allowance and also the fact that the common staff costs include provisions for pension and insurance contributions, travel costs on assignment, home leave and separation, assignment grants, education grants, hardship and mobility allowance and rental subsidies;*
- 4. Cambodian salaries were calculated at 50% of the 2003 rates, while they would need to be compared to the actual rate now paid to UN staff, allowing for any incremental creep during the intervening period;*
- 5. Cambodian personnel have been recruited at the 50% rate, have been asked to sign contracts that would have been longer term except for the fact that UNDP transferred funds only on a quarterly basis; and have performed their roles on the expectation that this rate would continue to apply;*
- 6. continuing employment on a short-term renewable contract would in all likelihood be declared by a Cambodian court to be an ongoing contract. If duties and terms of reference do not change, then neither should the salary;*
- 7. the cost saving for reducing the salary of the 48 national staff in the professional grades should be balanced against the cost of implementing the proposed changes, ECCC staff time spent on this exercise, and the disruption and loss of morale among staff;*
- 8. any adjustment proposed by UNDP would apply only to salaries of personnel paid from the UNTF funds, and this would introduce a detrimental differentiation of conditions for staff depending on the source of funds for individual salaries.*

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.

Please note response below at III.3

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.

Please note response below at III.4.1

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.

Response

The prior-established TOR determined that the audit would focus only on staff funded under the UN Trust Fund and the EC Fund; therefore, we provided only 32 job applications. (Some others outside the scope of the audit were funded through other sources).

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.

Response

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 was used as the basis of short-listing the applicants and each one was signed by the relevant Chief of Section, Chief of Personnel and one other senior national staff nominated to be on the relevant Recruitment Committee.

Update

The procedures have been further strengthened in recent months.

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.

Please note response below at III.3

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.

Update

Procedures relating to performance evaluation and extension of contracts for existing staff were included in the terms of reference for the human resources consultant, Mr Daniel A. Conway, and he recommended that "Future performance evaluations should be based on an objective-setting process, as outlined in the Handbook" and that UNDP should provide assistance to the ECCC in the area of objective setting,

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.

Response

4- *The annual work plan and budget for 2007, sent to UNDP for endorsement on 10 January 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 of operations of the ECCC as follows:*

- *The ECCC will become fully operational after the adoption of the IRs (expected in June 2007);*
- *After discussion in the Rules Revision Committee, the role of the Pre-Trial Chamber has been much increased and consequently its staff also;*
- *The Court Management Section needs additional staff for some new units not envisaged in the original staffing table, such as Victims Unit, transcription of hearings and a larger pool of translators/interpreters;*
- *The General Services Section requires more drivers, cleaners and gardeners to cope with the full operations of the ECCC.*

Update

This expanded role of the Pre-Trial Chamber and other functions in Court Management Section (including an understanding that increased staff would be required) were confirmed in the June Plenary Session.

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.

Response

Under the agreement, personnel recruitment and management are the responsibility 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 Hybrid Sections in actions regarding any national staff in their Section.

Update

This policy is being implemented.

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.

Response

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.

General Response

Although we readily admit that there were weaknesses, especially in the start-up phase of the ECCC’s operations, we believe that the audit report presents an unbalanced account by failing to take into account the situation we faced and the achievements we made. The following comments on the draft of this audit report were made by the Personnel Section on 19 May 2007:

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.

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.

Further, 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 in our responses to the draft report) 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.

I.2. 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.

Response

1-3 The 1st three recommendations (made 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.

Update

Response

4- The annual work plan and budget for 2007, sent to UNDP for endorsement on 10 January 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 of operations of the ECCC as follows:

- *The ECCC will become fully operational after the adoption of the IRs (expected in June 2007);*
- *After discussion in the Rules Revision Committee, the role of the Pre-Trial Chamber has been much increased and consequently its staff also;*
- *The Court Management Section needs additional staff for some new units not envisaged in the original staffing table, such as Victims Unit, transcription of hearings and a larger pool of translators/interpreters;*
- *The General Services Section requires more drivers, cleaners and gardeners to cope with the full operations of the ECCC.*

Update

This expanded role of the Pre-Trial Chamber and other functions in Court Management Section (including an understanding that increased staff would be required) were confirmed in the June Plenary Session.

5. The chair of the project board should be assigned to other than ECCC 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.

Response

5- We see no reason to change the composition and structure of the Project Board. We believe it is appropriate that the Director of Administration be the Chairperson. We note that the Project Board operates 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

Update

Meetings of the Project Board have been held in June and September 2007 with the next meeting scheduled for January 2008.

For action by ECCC

6. *Response*
6- 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. It seems likely that reducing salaries for advertised positions would tend to reduce the number of applicants.

Update

Since May 2007 we have put in place the procedures to receive applications via e-mail.

7. All job applications and other relevant documents received by ECCC must be retained on file for future reference and ensure accountability.

Response

- 7- All applications have been retained on file except for one, which the unsuccessful applicant requested to be returned to him. We have subsequently changed our policy and in future will return only a copy if requested, while the original will be retained.

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.

Response

- 8- i) ECCC vacancy announcements mention "qualifications" and not "minimum requirements";
ii) We are confident that our selection process led to appointment of the most qualified candidate who applied. We were faced with urgent time constraints to have staff in place to support the court's activities and in the initial period some of our appointed candidates may have had less experience than we desired. Also, we note that applicants for position of interpreter or translator often have long experience as freelance interpreters, which is not adequately reflected in their years in a fixed post. In any event, the September Project Board meeting agreed that we will carry out a job-matching process to be completed before the end of 2007;
iii) the auditors claim that an inexperienced applicant was appointed in the Accounting Section but, actually, he had experience as an Assistant in the Finance and Administration Section of UNDP for more than one year and was highly recommended to the ECCC by the Head of Good Governance of UNDP. Further, he also has sound knowledge of computer applications and databases.

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.

Response

- 9- Under the agreement, personnel recruitment and management are the responsibility 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 Hybrid Section in actions regarding any national staff in their Section.

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.

Response

- 10- All documentation relevant to short-listing is filed and retained along with that related to other steps in the recruitment process.

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.

Response

11- These two recommendations are accepted and are now being implemented.

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.

Response

12- As mentioned above, personnel evaluation is done by the Cambodian and international supervisors respectively for staff under their direction. We have followed the practice of seeking input and recommendation from relevant staff on the international side on re-appointment of national staff. In one case (international Public Affairs Officer) the national Chief of Section was asked to provide 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.

Update

13. Procedures relating to performance evaluation and extension of contracts for existing staff were included in the terms of reference for the human resources consultant, Mr Daniel A. Conway, and he recommended that “Future performance evaluations should be based on an objective-setting process, as outlined in the Handbook” and that

Response

13- Given that UNDP has adopted the practice of transferring funds only on a quarterly basis, it had seemed prudent to restrict contracts for most personnel to the period for which funds were assured.

Update

At the June Project Board it was decided that after the job-matching process is completed, personnel will be appointed on a yearly basis, subject to the availability of funds.

14. ECCC must establish clear procedures and guidelines governing the appointment of volunteers.

Response

14- The procedures for internship are stipulated in the ECCC Personnel Handbook, which was put into effect on 22 March 2007.

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 spot-checks on human resources management and procurement procedures. This measure should alleviate the need to maintain a separate internal audit function in ECCC.

Response

15- 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.

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.

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 the ECCC and UNDP-Cambodia for their cooperation during the audit.

II. BACKGROUND, OBJECTIVES and SCOPE

II.1. 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, recognizing 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 FINDING

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 subsidize 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.

* 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. [table deleted]

Response

The policy to remunerate national professional positions at 50% of their international counterparts was itself a broad in-principle compromise decided by the Prime Minister between two widely divergent positions, both argued strongly by their proponents: either equity in salaries for all professional staff (as is the case in the Special Court of Sierra Leone); or Cambodian professional staff to be paid at Cambodian national government salaries and international professional staff at UN rates.

The major donors agreed with this compromise. The agreement did not specify what was to be used as the basis for calculating the 50% (whether it was to be net or gross salary, to include allowances or not, to move along with any movement in the UN salary scales or not). Various documents have somewhat different formulations, with most documents simply referring to 50% of UN salaries without further specification.

A number of factors have to take into account:

- 1. all Cambodian personnel of the ECCC were deemed tax-exempt by the Royal Government of Cambodia in Information Note (S.Ch.N) 313 dated 27 February 2006;*
- 2. the tax-exempt status is not exceptional, as it applies also to Cambodian staff employed on the UNAKRT side and to all Cambodian consultants hired by UN agencies in Cambodia and multi-lateral donors (including the World Bank, ADB, IMF);*
- 3. there are many different possible UN salary rates that could be taken as a comparator: gross salary, net salary, take-home base pay or actual take-home pay. The latter, which could be seen as the truest comparator, would also have to take into account all benefits accruing to the individual employee. These include (but are not necessarily limited to) post adjustment; hardship allowance and also the fact that the common staff costs include provisions for pension and insurance contributions, travel costs on assignment, home leave and separation, assignment grants, education grants, hardship and mobility allowance and rental subsidies;*
- 4. Cambodian salaries were calculated at 50% of the 2003 rates, while they would need to be compared to the actual rate now paid to UN staff, allowing for any incremental creep during the intervening period;*
- 5. Cambodian personnel have been recruited at the 50% rate, have been asked to sign contracts that would have been longer term except for the fact that UNDP transferred funds only on a quarterly basis; and have performed their roles on the expectation that this rate would continue to apply;*
- 6. continuing employment on a short-term renewable contract would in all likelihood be declared by a Cambodian court to be an ongoing contract. If duties and terms of reference do not change, then neither should the salary;*
- 7. the cost saving for reducing the salary of the 48 national staff in the professional grades should be balanced against the cost of the consultants proposed, ECCC staff time spent on this exercise, and the disruption and loss of morale among staff;*
- 8. any adjustment proposed by UNDP would only apply to salaries of personnel paid from the UNTF funds, and this would introduce a detrimental differentiation of conditions for staff depending on the source of funds for their individual salary.*

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. 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 work plan 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, UNDSA, 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.

Response

The annual work plan and budget for 2007, sent to UNDP for endorsement on 10 January 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 of operations of the ECCC as follows:

- *The ECCC has become fully operational after the adoption of the Internal Rules in June 2007;*
- *After decision of the Plenary Session, the role of the Pre-Trial Chamber has been greatly increased and consequently its staff also;*
- *The Court Management Section needs additional staff for some new units not envisaged in the original staffing table, such as Victims Unit, transcription of hearings and a larger pool of translators/interpreters;*
- *The General Services Section requires more drivers, cleaners and gardeners to cope with the full operations of the ECCC.*

This increase of staff has no impact on funding as the ECCC can manage within the existing budget by redeployment and cost-savings in other budget lines.

III.3. 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.

Response

- i) ECCC vacancy announcements mention "qualifications" and not "minimum requirements";*
- ii) We are confident that with few exceptions our selection process led to appointment of the most qualified candidate who applied, despite the fact that in the initial period some may have fallen short of our desired level of either experience or education, as we were faced with urgent time constraints to have staff in place to support the court's activities. Also, we note that applicants for position of interpreter or translator often have long experience as freelance interpreters, which is not adequately reflected in their years in a fixed post.;*
- iii) the auditors claim that an inexperienced applicant was appointed in the Accounting Section but, actually, he had experience as an Assistant in the Finance and Administration Section of UNDP for more than one year and was highly recommended to the ECCC by the Head of Good Governance of UNDP. Further, he also has sound knowledge of computer applications and databases.*

Update

The September Project Board meeting agreed that we will carry out a job-matching process to be completed before the end of 2007

III.4. DEFICIENCIES 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.

Response

All 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.

It is not reasonable to compare the ECCC to UNDP in terms of visibility in the job market. UNDP is an agency that has been long-established in Cambodia and everybody knows about the background and benefits that can be gained from long-term employment there. The ECCC is a newly established institution, and it can offer only short-term appointments and no ancillary benefits.

**NUMBER OF VACANT POSITIONS AND APPLICATIONS
ADVERTISED BEFORE AUDIT**

Recruitment No1 Vacant post	Grade	Position title	Received application
1	P-3	Personnel Officer	2
1	FS4	Protocol/Liaison Assistant	6
3	P-2	Records/Achives Officers	8
1	FS5	Web Developer	3
2	FS3	Assistant to Director	11
8			30
3	P-4	Interpreters	17
5	P-3	Translators	14
2	FS5	Procurement Assistants	5
1	FS5	IT Help Desk	5
3	FS4	Financial Assistants	6
14			47
Recruitment No 2			
1	FS3	Dispatcher	7
12	GS2	Drivers	45
1	GS3	Mail Clerk	14
1	GS3	Messenger	19
2	FS4	Travel Clerks	14
2	GS2	Cleaner/Gardener	12
2	GS2	Helpers	8
1	GS2	Warehouse Clerk	16
1	FS4	Property Supervisor	7
1	FS3	Store Keeper	15
3	FS4	Maint.of Primeses & Ground Technician	5
7	GS3	Maint. Crews	10
1	GS3	Maintenance Clerks	9
35			181
2	P-4	Senior Assistants of Co-Prosecutor	7
1	P-3	Assistant of Co-Prosecutor	18
2	FS3	Clerk of Co-Prosecutor	4
1	P-3	Legal Assistant of Co-Investigating Judge	16
6			45
Recruitment No 3			
5	P-3	Investigators/Researchers/Analysts	13
1	P-3	Legal Assistant	24
2	FS3	Support staff of Co-Investigating Judge	7
1	P-2	Greffier	4
1	P-3	Interpreter	5
2	FS5	Personal Assistants of DOA	6
1	P-4	Legal Officer	4
1	P-3	Internal Auditor	1
1	FS5	Internal Auditor Assistant	3
1	P-2	Evidence Custodian	2
4	GS2	Document reproduction/Printing/ Distribution Clerks	16
3	GS4	Language Assistants	14
2	FS3	Detention Facility Liaison Assistants	7
25			106

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.

Response

The prior-established TOR determined that the audit would focus only on staff funded under the UN Trust Fund and the EC Fund; therefore, we provided only 32 job applications. (Some others outside the scope of the audit were funded through other sources).

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.

Response

We now have put in place the procedures to receive application via e-mail. So far, even though we did not use e-mail system, still we have got many applications for the jobs. For example, we got 125 applications for 10 positions.

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.

Response

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 was used as the basis of short-listing the applicants and each one was signed by the relevant Chief of Section, Chief of Personnel and one other senior national staff nominated to be on the relevant Recruitment Committee.

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.

These two recommendations are accepted and are now being implemented.

III.5. WEAKNESSES 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.

Response

As mentioned above, personnel evaluation is done by the Cambodian and international supervisors respectively for staff under their direction. We have followed the practice of seeking input and recommendation from relevant staff on the international side on re-appointment of national staff. In one case (international Public Affairs Officer) the national Chief of Section was asked to provide 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 regarding dates of signatures seem minor issues that can easily be improved.

III.6. 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.

Response

Given that UNDP has adopted the practice transferring funds only in 3-monthly tranches, it seemed to be prudent to restrict contracts to the period for which funds are assured. The June meeting of the Project Board authorised a change to longer periods of appointment, with a caveat "subject to availability of funds", to be applied after the job-matching process is completed.

III.7. 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.

Response

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

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

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

Response

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 despite the fact that the requisite signatories were not available to sign the Minute. The interview was held on 7 August 2006 and the committee members agreed on the candidate to be selected.

(ii) Discrepancies in the interview minutes

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

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.

Response

Mr X had a legal background and was considered more appropriate for the second position. Personnel staff accidentally provided the auditors with the wrong paper regarding his leave. The reasons for his request for job suspension were laid out in his letter, which is on file, and they conformed to the existing procedures.

(iii) Date of job application letter is later than closing date of job announcement

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.

Response

The application was received on 6 June. The applicant must have written the wrong the date.

(iv) Request to fill up job vacancy memo is dated later than job advertisement

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.

Response

A single letter regarding two vacancies was written on 18 August 2006. The writer wrote "October" by mistake.

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

Response

The application was received on 7 June. The applicant must have written the wrong month.

(vi) **Staff hired without a competitive selection process**

..... 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 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.

Response

It was an urgent requirement of the Chief of Public Affairs Section to fill the post and the appointee had performed well for 3 months already in this position as a staff member loaned to the ECCC by UNDP. His qualifications well suited the job as he had more than 15 years' experience in communications roles with UNDP, UNTAC, CMAC etc, has good English and computer skills.

III.9 UNABLE TO ASCERTAIN EFFECTIVENESS 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).

Response

The person appointed as internal auditor has over twenty years' professional experience, including many years in the senior position of state controller. It is unfortunate that he was not available to meet on the few days in which the auditors were on site.

III.10 INTERNATIONAL 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.

Response

Initially, individual staff performance appraisal (national & international) was conducted by respective Chiefs of Section as mentioned above.

Under the agreement, personnel recruitment and management are the responsibility 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 Hybrid Sections in actions regarding any national staff in their Section.

Update

This policy is being implemented.

III.11 NO 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.

Response

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 would likewise not be provided access to the file of 28 staff who were appointed by RGC.

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:

[table with personal details deleted]

Response

The increased remuneration of 4 employees was based on function transfer through competition or a revised work scope certified by the chief of ICT section and with approval of UNDP.

- (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.

Response

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

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 NO 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.

Response

UNDP is not funding any ECCC expenditures. It is disbursing donor funds.

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 checks of financial transactions.

III.14 LIMITED 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.

Response

The first Project Board meeting was postponed to await the adoption of the Internal Rules, which would have a significant impact on the proposed budget submitted for approval, but nevertheless missed its annual deadline by only a week.

We see no reason to change the composition and structure of the Project Board. We believe it is appropriate that the Director of Administration be the Chairperson. We note that the Project Board operates 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. [Note that UNDP-Cambodia also did not support this recommendation.]

We entirely agree with the proposal to hold at least semi-annual meetings of the Project Board.

Update

Meetings of the Project Board have been held in June and September 2007 with the next meeting scheduled