

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

A spate of recent reporting in the *Cambodia Daily* and other papers has made public growing concern about the preparedness of Office of Administration (OA) — the administrative arm of the Extraordinary Chambers in the Courts of Cambodia (ECCC) — to handle the Court’s increasing judicial workload. The split authority between the national Director and international Deputy Director with regard to budget, hiring, and staff reporting appears to be undermining best efforts to meet the daunting challenges of running a complex new tribunal. UN experts assessing the preparedness of the Court to conduct judicial proceedings recently found that the organizational division between the two “sides” of the Office “serves only to constantly hinder, frequently confuse and certainly frustrate the efforts of a number of staff on both sides of the operations.” 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.

At most courts with mixed national and international jurisdiction (called “hybrid” courts), as well as international courts, Registries are responsible for administrative functions. 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. 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.

This was the experience at the Special Panels for Serious Crimes in East Timor — a hybrid court similar in many respects to the ECCC — which for the first three years of its existence lacked a central administrative authority to make and bear responsibility for core management decisions. Similar to the ECCC, administrative and management functions were shared between the UN mission and the national authorities, with both sides deferring to the other’s jurisdiction when problems arose. According to the Special Panels’ chief judge, the split in authority 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.”

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.

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, called the President. 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, there is no single office of President with responsibility for overseeing the OA. 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.” However, the Committee’s authority to “advise and guide” the OA on judicial support activities does not institutionalize the OA’s accountability to the judicial organs, nor does it 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.

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. However, even if these roles 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.

At the same time, the experience of the international and hybrid 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. 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 decisionmaking in the OA.

Anne Heindel

Email: anne.heindel@gmail.com