

Progress and Challenges
at the Extraordinary Chambers
in the Courts of Cambodia

June 2007

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INTRODUCTION

The Extraordinary Chambers in the Courts of Cambodia (ECCC) was created to bring to trial “senior leaders” and “those most responsible” for atrocities committed in Cambodia between April 17, 1975 and January 6, 1979.¹ During this time, approximately 1.7 million people died from torture, murder, forced labor, starvation and other inhumane treatment.

Since February 2006, when the Office of Administration began operating, the ECCC has achieved many significant milestones: the facilities and premises were renovated and are largely functional; the judges, investigating judges, principal defender, and prosecutors were appointed and sworn into office; approximately 240 staff members have been hired; the courtroom and additional detention facilities are expected to be completed within months; preliminary investigations by the co-prosecutors have taken place; some trainings have occurred; and agreement has been reached among judges on the 114 complex rules governing the court’s proceedings. No other international or hybrid court can claim so many accomplishments in its first year of operation.

Nonetheless, more could have been done—and must still be done—for this court to hold fair trials that render justice to victims of the Khmer Rouge crimes. Consequently, this report focuses less on the court’s many accomplishments than on challenges the court must meet to carry out its mandate. These include threats to judicial independence, the difficulty of adhering to international standards of due process and fair trials, a need for more openness and transparency, the imperative of public engagement with the court, and broader questions of capacity and effectiveness of court operations. More resources are required to ensure that this joint experiment in Cambodian and international justice does not fail. With sufficient will and concerted efforts, the problems are surmountable.

The Open Society Justice Initiative considers the ECCC to be the best chance to secure justice for the atrocities committed under the Democratic Kampuchea regime. The Justice Initiative maintains a full-time international court monitor in Phnom Penh, and undertakes advocacy efforts worldwide on issues affecting the court. Since it started work on the ECCC in 2003, the Justice Initiative has provided a series of international experts, trainings, research, and technical assistance to the ECCC and its predecessor (the Cambodian government’s Khmer Rouge Trial Taskforce) and regularly convenes Cambodian NGOs to facilitate discussion and advocacy around the ECCC in Cambodia.

This report comes at a particularly important moment in the court’s development. On June 12, 2007, the internal rules developed by the judges to govern the ECCC’s functional operations were adopted. The adoption of internal rules will allow the handover of dossiers from the co-prosecutors to the co-investigating judges so that full investigations can begin. This marks the end of the preparatory phase of the court and the beginning of the formal legal process. Absent additional delays, we can expect pre-trial proceedings to begin immediately, and trials in late 2007 or early 2008.

¹ Article 1, *Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea* (October 27, 2004).

SUMMARY OF PROGRESS

Formal judicial proceedings at the ECCC have not begun. Yet considerable work has been carried out in a variety of areas to prepare for them:

- The Office of the Co-Prosecutors continues to conduct investigations in preparation for initial submission of cases to the Office of the Co-Investigating Judges for full and independent investigation.
- Staff recruitment and development have progressed. The ECCC now has approximately 160 Cambodian staff and 80 international staff. The administrative building at the ECCC site has been renovated for court staff.
- Administrative procedures and guidelines have been developed.
- The Office of the Co-Investigating Judges, Witness Protection Section, Public Affairs Unit, Court Management Unit, Security Unit, and Office of Administration are all staffed and operational. Some sections need additional staff, capacity, and funding, but planning for full operation is in progress.
- Staff in many of the units have received some training, including the prosecutors' and investigating judges' staff, along with the judicial police, translators and interpreters.
- Senior court staff, including the judges and prosecutors, have been willing to interact regularly with the media and community groups to spread information about the court.
- Most of the necessary structures for the court are at least operational. Designs for the layout and refurbishing of the courtroom and Pre-Trial Chamber have been completed. A temporary detention center designed to hold pre-trial detainees has been completed, and construction has begun on a permanent pre-trial detention facility to hold up to eight prisoners. Completion of the structure is anticipated before the end of June.
- The court has produced outreach information and has begun distributing it.

Perhaps most significantly, the judges of the ECCC have drafted and adopted a set of internal procedures to guide the court's work. Given the unique nature of the ECCC, and the transitional state of Cambodian criminal procedure, this was a formidable task.

CURRENT CHALLENGES FOR THE ECCC

Notwithstanding these achievements, the court faces a number of major challenges as it moves toward formal investigations and trials. Four stand out:

- Maintaining the reality and appearance of independence and impartiality of the judiciary and other organs of the court;
- Ensuring compliance with due process and fair trial standards;
- Fostering transparency and public engagement; and
- Improving overall capacity and effectiveness of operations.

I. Independence and Impartiality

The primary concern long expressed by ECCC stakeholders is whether the court will be allowed to operate as an independent judicial institution free from political interference.² Judicial and prosecutorial independence is mandated by international standards,³ as well as the *Law* and the *Agreement* governing the ECCC, both of which provide that judges and prosecutors will “be independent in the performance of their functions and shall not accept or seek any instructions from any government or other source.”⁴ In addition, decision-making independent of political influence at the level of the Administration and other units such as Witness Protection, Defense Support and Public Affairs is critical to the integrity of the court.

Violations of the principle of independence rarely occur in public; as a result, they are often hard to document. Nonetheless, the court has yet to conclusively dispel concerns about political interference. The court must act scrupulously to bolster confidence in its independence. A number of factors that emerged over the last 18 months have undermined the court’s credibility with the public. They include:

- 1) flaws in the Cambodian judicial selection process;
- 2) delays and fractures between the national and international judges in the process of adopting rules of procedure;
- 3) failure to address persistent allegations that Cambodian staff are required to kick back part of their salaries to government officials responsible for their appointment to the court; and
- 4) government threats to ban the Justice Initiative in retaliation for seeking an investigation into these allegations.

Improved leadership and visible efforts to remedy each of these problems are essential.

² See articles in *Justice Initiatives: The Extraordinary Chambers* (Open Society Justice Initiative, New York) 2006; *Bringing the Khmer Rouge to Justice: Prosecuting Mass Violence before the Cambodian Courts*, edited by Ramja, Jaya & Van Schaack, Beth, (The Edwin Mellen Press), 2006; *UN Special Report of the Secretary General on Khmer Rouge Trials*, U.N. GAOR, 59th Sess., Agenda Item 105 (b), Para 37 UN Doc. A/59/432 (Oct. 12, 2004); Report of Group of Experts for Cambodia, established pursuant to G.A. Res. 52/135, U.N. GAOR, 53d Sess., Annex, Para 110, U.N.Doc.A/53/850, S/1999/231 (March 16, 1999).

³ Article 14(1), *International Covenant on Civil and Political Rights*, G.A Res. 2200A, U.N. GAOR, 21st Sess. Supp.No. 16, U.N. Doc.A/6316 (1966). (Cambodia signed it on 17 October 1980 and acceded to it on 26 May 1992).

⁴ Articles 10 and 19, *Law*, and Articles 3(3) and 6(3), *Agreement*.

Ultimately, the test of whether the court overcomes the concerns about independence from political influence will lie in the conduct of actual legal proceedings, the trials and the written decisions of the judges. The judges are the ultimate guardians of the process.

Judicial Selection Process

After many calls for a transparent and open judicial selection process from non-governmental civil society organizations, the Cambodian judges for the ECCC were selected in a closed manner with no input from civil society. Several of the judges selected have been involved in cases which appear to have been tainted by political control or corruption.⁵ The selection process fueled distrust at the initial stages of the court and placed a high bar for the judges and the court to surmount in order to demonstrate independence and impartiality.

Delays in Adopting Rules of Procedure

The November 2006 plenary session left many observers with the perception that Cambodian personnel were “acting on instructions from government officials” and used “obstructionist tactics” throughout the session which “delayed the adoption of the draft rules.”⁶ These concerns were heightened when the plenary session planned for April 2007 was postponed because of failure to reach agreement on appropriate fees to be levied on foreign lawyers by the Bar Association of the Kingdom of Cambodia (BAKC). One Cambodian NGO leader told the press that “this is a politicized process, and the Cambodian Bar Association is being used as an actor, as a pawn, to achieve larger political goals.”⁷ Rules of procedure were finally adopted in June 2007. Nonetheless, the highly polarized nature of the deliberations as reported in the press raised questions about whether the Cambodian judicial officials will be allowed to exercise independent judgment free of outside influence.

Need for a Thorough Investigation into Allegations of Corruption

In a February 14, 2007 press release, the Justice Initiative issued a public call for a thorough investigation into allegations of corruption by Cambodian personnel within the ECCC. This was followed with a Letter to the Editor in the Cambodian press.⁸ These allegations, brought to the Justice Initiative’s attention over several months by multiple sources both inside and outside the court, asserted that as a condition of employment, Cambodian staff were required to kick back a fixed portion of their salary to government officials, or those higher in rank within the ECCC itself. Precisely because these allegations directly implicate the integrity of the court, swift investigative action, public dissemination of the results, and effective implementation of anti-corruption measures as part of the court’s day-to-day operations are essential.

⁵ See for example cases referred to in the following articles, “Nominee List for KR Trial is Sent to King,” by Prak Chan Thul and Whitney Kvasager, *Cambodia Daily*, May 5, 2006; and “Asian Rights Group Doubts Credibility of Some Cambodia Judges on Khmer Rouge Tribunal,” by Holly Manges Jones, *Jurist Legal News & Research*, May 22, 2006, [Http://jurist.law.pitt.edu/paperchase/2006/05/asian-rights-group-doubts-credibility.php](http://jurist.law.pitt.edu/paperchase/2006/05/asian-rights-group-doubts-credibility.php).

⁶ See Human Rights Watch, *Government Interferes in Khmer Rouge Tribunal – Donors Should Recognize How Government Tactics Threaten Entire Process* (December 5, 2006) available at <http://hrw.org/english/docs/2006/12/05/cambod14752.html>.

⁷ Theary Seng, Executive Director of the Center for Social Development, quoted in Rory Byrne, “Dispute Over Lawyers’ Fees is Latest Threat to Long-Delayed Khmer Rouge Trial,” *VOA News*, available at <http://voanews.com/english/2007-04-07-voa11.cfm>.

⁸ Press Release: “Corruption Allegations at Khmer Rouge Court Must Be Investigated Thoroughly,” http://www.justiceinitiative.org/db/resource2?res_id=103627; and James. A. Goldston, “Letter to the Editor on Corruption Charges at Khmer Rouge Court,” http://www.justiceinitiative.org/db/resource2?res_id=103701.

In March 2007, auditors from the United Nations Development Programme (UNDP) conducted the second phase of an internal audit of funds UNDP holds in trust, which are used to pay Cambodian staff salaries at the ECCC. This audit was based on “various reports in the later part of 2006 [that] raised concerns about transparency of hiring procedures of the ECCC.”⁹ Although the audit report—which has not been released publicly—apparently discloses serious problems in human resource practices related to Cambodian court staff, we understand that it fails to address the substance of the corruption allegations. While the audit was a good first step, it was never designed to adequately address allegations of the nature the ECCC confronts. It was conducted in a manner which could not possibly have yielded sensitive information of the nature necessary to corroborate—or dispel—allegations of corruption.¹⁰ An investigation with adequate safeguards and trained investigators is still needed to get to the core of the allegations at issue.

As a treaty partner, the UN has a particular interest in ensuring the court works efficiently, fairly, transparently and free of corrupt practices. The UN should institute a proper investigation— independent of the UNDP process—into the allegations of kickbacks.

The Justice Initiative has offered to help locate and provide regional experts to assist the court in developing a process to ensure that improper practices do not occur in the future and that employees have recourse if they are asked to engage in improper activity. These offers have been rejected by the Office of Administration of the ECCC and apparently no other plan is in place to address the problem.

Threats to Freedom of Expression

The Justice Initiative first called for an investigation into allegations of salary kickbacks in February 2007 and again in March 2007 because it believed—and continues to believe—such an investigation is in the best interests of the ECCC. The response to this request from the government and the ECCC’s Cambodian administration has been denial, criticism, and a threat from the highest levels of Cambodia’s government to ban the Justice Initiative from the country.¹¹ The Cambodian side of the Office of Administration has refused formal cooperation with the Justice Initiative since the press release was issued.¹² On March 9, 2007, Justice Initiative staff were informed of a threat from the Cambodian government to expel the Justice Initiative from Cambodia. In response to concerns expressed by a number of international actors, the threat was reduced to a visa revocation (or non-renewal upon expiration) aimed at the Justice Initiative’s international court monitor, based in Phnom Penh. The continuing existence of this threat bodes poorly for:

- (1) the ability of civil society to engage with the ECCC without fear of retaliation for the free expression of ideas and criticism of a public institution;
- (2) the Cambodian government’s will to allow the ECCC to operate independently, and accept criticism as a public institution in an ostensibly democratic society; and
- (3) compliance with Article 12 of the *Agreement* which provides that the proceedings of the court shall be open to national and international NGOs.

⁹ UNDP Release “Backgrounder - UNDP and Extraordinarily Chambers of the Courts of Cambodia,” released February 19, 2007.

¹⁰ Among other deficiencies, the majority of the auditors’ interviews with ECCC staff were conducted in an office visible to ECCC senior management, with court security guards monitoring individuals who entered the audit room. This followed a staff meeting at which ECCC personnel were warned not to talk to anyone about the allegations of corruption.

¹¹ See press articles at <http://www.justiceinitiative.org/advocacy/press>.

¹² February 16, 2007 letter from Sean Visoth, Director of Administration of ECCC to James Goldston, Executive Director of the Open Society Justice Initiative.

Leadership and Independence

Effective leadership is essential to insuring the integrity and credibility of a successful judicial institution. Leadership is a particular challenge for the ECCC because of the structural impediments of joint national and international staffing in all leadership positions at the court. Yet, some of the problems identified in this report could be ameliorated by stronger leadership.

The ECCC is unique among the international tribunals and hybrid courts in that it does not have a registrar with authority and responsibility over both the administrative and the judicial sides of the court. The ECCC has a Director and Deputy Director of Administration qualified in administrative decision-making, but without experience or authority in judicial management. Each has control over a different part of the budget and different staff. Coordinated decision making does not always occur. This structure has led to the development of parallel systems rather than a unified court. In several areas of the court, Cambodian staff sit on one side of the hall with international staff on the other, even though both are performing the same functions. This divided administrative structure does not promote efficiency or contribute to the development of local capacity. It undermines progress in addressing many of the issues raised in this report. The court would be better served by a unified structure headed by an experienced registrar with the authority and responsibility to overcome these divisions. If this is not feasible under the *Agreement*, similar results may be accomplished by retaining a high level management consultant who can work with the staff to develop the capacity and put mechanisms in place to facilitate better and more unified administrative leadership.

Under appropriate circumstances, judicial leadership can provide powerful support for a court's institutional independence. A leadership structure is needed to represent the interests of the judges, foster a cohesive judicial identity and coordinate the activities of the court's organs. To date, however, ECCC judges have been hampered by weak mechanisms for developing a collective identity.

Almost one year into the life of the ECCC, its judges remain (with the exception of the two co-investigating judges on the ground fulltime at the court) spread around Cambodia and the world, engaged in other full time employment. This situation has created particular challenges for judicial leadership. The Judicial Administration Committee—five judges separated by thousands of miles yet intended to liaise with the Office of Administration—cannot manage the intensive interaction required for efficient decision-making on major issues. Distance, language and cultural barriers can be overcome, but they require more face-to-face interaction than the present plan permits. Judicial participation and leadership are also needed to ensure that ECCC management takes account of judicial perspectives on the budgetary, resource allocation and other management decisions that influence the court's judicial work.

The court is in the process of hiring two senior legal officers for the Pre-Trial Chamber (one Cambodian and one international). This is a welcome development, with potential to foster the ECCC's judicial leadership. Yet the court needs full time judicial leadership, chosen by the judges themselves, on the ground in Cambodia with the responsibility and authority to ensure judicial leadership of the court. Given the likely need in coming months for the regular presence of judges from the Pre-Trial Chamber, planning for consistent judicial presence and leadership should be facilitated. However, judges charged with this leadership role will require additional assistance. Adequate legal and administrative support from qualified, trained, full time law clerks and administrative staff is a must. Planning for this support must begin immediately and adequate funds must be reallocated within the current budget or additional funding secured to achieve this goal.

II. Compliance with Due Process and Fair Trial Standards

Article 12(2) of the *Agreement* requires the ECCC to exercise its jurisdiction “in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 *International Covenant on Civil and Political Rights*, to which Cambodia is a party.” This includes securing a “fair and public hearing” through ensuring public access to the court’s proceedings. The ICCPR’s Article 14 states that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”¹³ This includes the right to be presumed innocent until proven guilty, to be tried without undue delay, and to communicate with counsel of one’s choice. Article 15 stipulates that no person should be tried for an offence or omission that did not constitute a criminal offense at the time at which it was committed.

Clear and consistently applied procedural rules are a critical benchmark for proceedings that meet international standards of due process and fair trials. Such rules help to prevent delay, ensure adequate notice to all parties, preserve impartiality, and provide a foundation for appellate review. They safeguard in practice the rights of the accused which are expressly set forth in the *Agreement*, the *Law*, international treaty law, and the Cambodian Constitution.¹⁴ They are particularly important given the uncertain criminal procedural law and inconsistent practice in Cambodia.

Until rules of procedure were adopted, there was little to be observed about the ECCC’s actual compliance with fair trial standards.¹⁵ Once formal investigations by the Co-Investigating Judges begin, this situation will change and there will be opportunity to test the court’s compliance with international standards.

Protection of Defense Rights

The newly named Defense Support Section has been the subject of much controversy over the last eight months. During the November 2006 plenary meeting of the judges, objections were raised regarding the role of the Defense Support Section, the relationship with and role of the Bar Association of the Kingdom of Cambodia and how international defense counsel would be able to participate in the proceedings. These issues were at the center of the disputes that delayed the adoption of the internal rules of procedure.

The internal rules of procedure provide a complex system for involvement by both the BAKC and the Defense Support Section in establishing standards for and providing lists of qualified international and Cambodian defense counsel for suspects, accused, or civil parties. The BAKC has the ability to delay or block registration of foreign defense counsel permitted to represent defendants and suspects. It will be important to monitor the process and, where appropriate, make changes to protect in practice the right of suspects and accused to freely choose, in a timely way, competent and independent defense counsel.

Protection of the rights of accused to freely choose competent counsel who can act with undivided loyalty on their behalf is essential if the ECCC is to meet international standards. The

¹³ This reflects a similar requirement of the *Universal Declaration of Human Rights*’ Article 10, that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

¹⁴ Article 13, *Agreement*; Articles 14 and 15, *ICCPR*; Articles 31 and 109, Constitution of Cambodia. 1993.

¹⁵ See Scheffer, David, *Memorandum on the Application of International Standards of Due Process by the Extraordinary Chambers in the Courts of Cambodia*, Open Society Justice Initiative, April 2006, http://www.justiceinitiative.org/db/resource2?res_id=103267.

Defense Support Section must ensure that these basic rights are protected and it must have sufficient authority to perform this function adequately.

III. Transparency and Public Engagement

Access to Information

Transparency is an essential condition of all public institutions, including courts, as a bulwark against corruption and improper political influence, and as a foundation for public confidence. For the ECCC, maintaining an adequate level of transparency about its operations is particularly critical to its mission. The public must be able to follow and understand ECCC proceedings if the court is to meet its goals of modeling fair trials, providing a better understanding of the Khmer Rouge regime, and assisting Khmer Rouge victims in trying to deal with the past. In addition, without public scrutiny, the risk of corruption and political manipulation increases. Arbitrary decisions to close the ECCC off from public inquiry increase skepticism about its work and undermine its credibility and effectiveness.

The court has generally been willing to provide routine information to the public. The public release of the draft internal rules for civil society comment in November 2006 was laudable. Public Affairs Unit staff and several key legal and judicial staff speak frequently and often openly with the press. Key judicial, administrative and prosecution staff have been willing to meet with representatives of civil society and to participate in community events.

However, given the press reports of polarized difficulties in the internal rules process, delays in beginning formal proceedings, the controversy over the UNDP audit and similar difficult issues, additional efforts to explain what is happening at the court are necessary to reassure the public that the court is committed to becoming a transparent institution which serves the interests of the people of Cambodia.

Greater clarity about the ECCC's intention and ability to be transparent in its operations is still needed in four major areas:

- (1) the extent to which the public will be able to access documents produced by or for the ECCC;
- (2) the level of information about the investigative process which can be shared with the public;
- (3) whether public access to key court proceedings will be allowed (particularly in the Pre-Trial Chamber, which may hear significant issues *in camera*, such as the legality of an indictment); and
- (4) the capacity of the Public Affairs Unit to meet public information needs.

Access to Written Documents

Public access to written documents produced in connection with ECCC proceedings—redacted where necessary to protect the confidentiality of individual witnesses or others at risk—is fundamental to enhancing understanding of the processes and giving meaning to the final judgments. Motions, legal briefs, and pre-trial judicial decisions will likely play an important role in the proceedings on crucial jurisdictional matters such as the interpretation of the terms, “senior leaders” and “those most responsible.” Pre-trial motions, briefs and decisions are not common in Cambodian criminal law practice. Special rules are necessary to ensure public access to these documents, including making them available in Khmer.¹⁶

¹⁶ This could be accomplished in a practice directive adopted by the court or in an amendment to the internal rules of procedure next time the judges consider suggested amendments.

Word-for-word transcription of trial and pre-trial hearings is also important to preserve the historical record of the ECCC; provide a sound basis for appellate review; and ensure that final judgments can be contextualized and understood by the public. The best practice for creating accurate transcripts is to hire trained court reporters who can create nearly instant transcripts. The ECCC's original budget did not include funds for transcription of trial or pre-trial hearings. Full transcripts of proceedings should be mandated by the ECCC's internal rules or practice directions. Corresponding rules of the International Criminal Court (ICC), the International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) explicitly require "full and accurate" records of all proceedings.¹⁷

Release of Public Information during the Investigation Stage

Both the *Law* and the *Agreement* are silent on the extent to which the public may have access to information about the progress of ECCC investigations. Under domestic practice in Cambodia, these processes are conducted in secret. Yet regular updates on the progress of investigations, with precautions to guarantee confidentiality and the security of witnesses, will ensure continued public engagement with the ECCC process. In addition, many issues related to compliance with international standards, particularly involving the rights of the accused and suspects, will arise during the investigation stage. Monitors should be given access to ensure these rights are respected. This can be done under appropriate conditions to guarantee protection of witness identities and other sensitive information. For example, an independent monitoring group in East Timor, the Judicial System Monitoring Program (JSMP), received permission from individual judges for access, under conditions to protect confidentiality, to proceedings that were not otherwise open to the public in the East Timor's Special Panels for Serious Crimes (a mechanism created to prosecute perpetrators for the violence in East Timor which erupted after the tiny Pacific nation voted for independence in a 1999 referendum).¹⁸ This process, implemented in a civil law system like Cambodia's, enhanced the credibility of the Timorese court because it allowed monitors to view and report on proceedings impacting the rights of accused, while also preserving legitimate confidentiality needs.

Public Access to Proceedings, Particularly in the Pre-Trial Chamber

In the *ECCC Agreement*, the notion of a "fair and public trial" is recognized as a right of the accused¹⁹ and is assured, in part, through public access to trial proceedings.²⁰ Absent extraordinary circumstances requiring confidentiality for an ongoing investigation, or to protect witnesses, appeals to the Pre-Trial Chamber should be conducted publicly.²¹ This is particularly important because the internal rules of the court greatly expand the jurisdiction of the Pre-Trial Chamber to decide, subject to no further appeal, significant legal issues that go to the core jurisdiction of the court. The internal rules start with the presumption that all Pre-Trial Chamber proceedings will be closed, but that decisions, including dissents, must be written and published.

¹⁷ ICTR Rule 81, ICTY Rule 81, SCSL Rule 81. Each rule requires that the "Registrar shall cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings."

¹⁸ See, for instance, *Judicial Update*, October/November 2005, "Recent Developments in the Courts," at footnote 7, [www.jsmp.minihub.org/Justice%20update/2005/Justice%20Update%2022%20\(e\).pdf](http://www.jsmp.minihub.org/Justice%20update/2005/Justice%20Update%2022%20(e).pdf)

¹⁹ Article 13, *Agreement*.

²⁰ Article 12(2), *Agreement*. Article 34 new of the *ECCC Law* also refers to the trials as being "public and open".

²¹ The Pre-Trial Chamber will also resolve disputes between the Co-Investigating Judges, and the Co-Prosecutors. There is a stronger argument that these disputes go to internal, strategic decisions and do not demand public access. However, where such disputes do raise substantive legal issues such as jurisdiction of the court, they should be held in public.

The rules further provide that any judge or party can move for the proceedings to be open to the public. However, unless four out of five of the judges vote to open the proceedings, they will remain closed. If this super-majority approval for opening the proceedings is not achieved, critical court rulings impacting whether cases go forward may be conducted in secret. A better rule, more consistent with the spirit and intention of Article 12(2) of the *Agreement*, would provide that proceedings involving all parties should be presumptively public. Good reasons for closing a portion of the proceedings, or instituting protective proceedings, should be considered on a case-by-case basis. Certainly all issues related to the jurisdiction of the court and the basic rights of accused and suspects should be presumptively public in compliance with international fair trial standards. These parameters for public access to Pre-Trial Chamber proceedings should apply to petitions and briefs filed in such proceedings as well. If the court does not routinely decide to hold significant pre-trial hearings in public, the rule should be amended to remedy the problem.

Information from the Public Affairs Unit

A division has developed between a national side and an international side of the ECCC's Public Affairs Unit. This is reflected in the existence of two web sites and two spokespersons—one national, the other international—for the court. The court's web site is www.eccc.gov.kh and contains basic information about the court. It also lists job vacancies for the “Cambodian side” of the court. But www.unakrt-online.org is the website for the UN Assistance to the Khmer Rouge Tribunal—the “international side” of the court—and contains similar, but not identical information, and job postings for the international side of the court. The international spokesperson speaks on behalf of the international side of the court when there are differing perspectives. The national press officer and the head of the Public Affairs Unit speak on behalf of the court, but are regarded as delivering the message of the Cambodian side of the court when there is conflict between Cambodian and international staff.

The divisions in the Public Affairs Unit reflect the reality that the court is not a unified institution. The current situation mirrors the tension within the court as an institution comprised of components that do not yet operate in harmony. Until the court can operate as a unified institution, two spokespersons may be necessary to ensure that accurate information reaches the public. However, this solution does not come without a high price in terms of confusion and cynicism from the public. It should be regarded as a temporary solution until the underlying division can be overcome. Immediate efforts must be made to end this division in the Public Affairs Unit and elsewhere in the court.

Outreach

Comprehensive outreach to the people of Cambodia is probably the most important factor in determining if the ECCC contributes to a sense of justice for victims and whether it offers Cambodians a new prism through which to view the rule of law. Even a perfectly fair trial will do little to heal the wounds left by the Khmer Rouge, promote an understanding of the period, or defeat a culture of impunity if a broad range of Cambodians do not know of, or understand, the significance of the proceedings.

According to the Court's Public Affairs Unit, inadequate funding is the main limitation on the court's outreach work. The court's current outreach work includes distribution of a booklet, posters and stickers, development of the ECCC website referred to above, cooperation with NGOs conducting outreach activities such as public forums, and distribution of radio spots. Yet unlike the Special Court for Sierra Leone, whose outreach section has actively designed and implemented a comprehensive program of outreach activities throughout the country—including regular town hall meetings with court officials, talk radio shows, and training workshops—the Extraordinary Chambers has yet to develop and execute a similarly comprehensive outreach

effort. Some modest progress is being made, however. Funding is being sought from the court budget and from individual States to establish some presence in each of the provinces to facilitate wider dissemination of information. Plans for making and distributing video summaries of trial proceedings are moving forward. Additional international and Cambodian staff is planned for the outreach office at some point in 2007. The Swiss government has agreed to provide an outreach professional to the court.

Thus, while the ECCC's outreach effort is commendable in light of its limited resources, much broader and more pro-active efforts are required to meet daunting needs. Once the court begins to handle cases, the demand for information will likely grow. Many Cambodians live in remote areas, with little access to information; they will require outreach efforts tailored to their situation. Beyond the provision of information, additional initiatives are needed to foster discussion about the court. Some of this work can be done by collaborating with NGOs, but the court has the primary obligation to ensure broad and effective outreach. Additional resources must be made available to this priority undertaking.

IV. Capacity and Effectiveness of Court Operations

The court is in the process of building capacity and infrastructure to allow it to conduct formal legal proceedings. This section looks at progress to date, and the challenges that must be met for the court to preside effectively and efficiently over the difficult and sensitive cases that will come before it. We note that the United Nations commissioned an expert evaluation of the UN portion of the Office of Administration to recommend steps needed to prepare the court for the new phase of work that follows adoption of the court's rules. Although that report has not been released publicly, the evaluation is an important step in addressing the administrative problems the court has encountered due to its unusual joint leadership structure. The report's key recommendations should receive serious consideration for adequate funding and implementation to ensure that the court's operations can be streamlined and rationalized. Some important issues that need to be addressed quickly by the court are outlined below.

Witness Protection and Support

The Witness Protection and Support Section falls under the authority of the Court Management Unit and the Cambodian "side" of the court. It has been headed by an international staff person, who is assisted by one intern and three Cambodian staff. The section has responsibility for witness operations, protection, support, and administration. There has been much organizational progress in the last several months. However, with its current staff and budget, the section can only provide minimal witness protection and support services during trial. The section has requested—and needs—additional staff and resources if it is to provide adequate witness protection and support. The recent resignation of the head of the section, the only staff member with international experience in witness protection and support, is a setback.

The section currently relies on assistance from a qualified NGO to provide witness counseling. This support is a valuable asset to the court, but it is not clear that the NGO will have the funding or capacity to meet the victim and witness support needs as the court proceedings move forward. In-house professional support capacity will be necessary to meet the special needs of witnesses, and to adequately protect confidentiality in sensitive cases.

The particularly complex potential threats to witnesses of the ECCC are different from those in most domestic courts. Cases may well involve both insider witnesses and witnesses with information about people in positions of power in Cambodia. Although witness protection is a Cambodian responsibility, international expertise and capacity are required, in addition to well-

trained Cambodian personnel to build capacity and ensure compliance with emerging international standards for witness protection. The June 2007 NGO-led training for protection officers assigned from the Cambodian judicial police is a step forward, but it will not fully remedy the problem. The court urgently requires an independent, expert threat assessment to guide the development of the Witness Protection and Support Section. The expectation, reflected in the court's current approach, that the court can rely on Cambodian judicial police to provide witness protection to the range of witnesses anticipated—from crime-based witnesses, to insiders, to defense witnesses—is unrealistic.

Court Management

The Court Management Unit is responsible for witness protection and support (addressed separately above), translation services, information management, transcription and audio visual needs for the Trial and Pre-Trial Chambers, and management of the detention facility (a responsibility shared with the Prison Department of the Ministry of Interior). Delays in planning and hiring qualified staff, along with capacity and funding problems, hinder progress in each of these areas.

Translation and Interpretation

The quality and quantity of translation and interpretation services are inconsistent and need improvement. Adequate oral and written translation is a daunting challenge in all the international and hybrid tribunals; yet as in other tribunals it is critical to the core functioning of the ECCC. Delays, misunderstandings and, more significantly, errors will plague the work of the court if inadequacies in translation and interpretation services are not addressed.

The court currently has nine UN-hired translators and ten Cambodian translators and interpreters, and is recruiting more. According to staff in the Court Management Unit, the number of dedicated translators must be doubled for the court to run effectively. Creative recruiting procedures, including reaching out to Cambodian diaspora communities, will likely be necessary to prevent translation shortcomings from delaying or harming the proceedings.

The court must also develop clear policies and guidelines to manage its translation and interpretation needs. At a minimum, this will entail guidelines for uniform translations of important and common terms relating to the work of the court, and will require input from the Offices of the Co-Investigating Judges and the Co-Prosecutors.

Increased, and more effective, management of translation and interpretation services is crucial in order to remedy the concern among staff members that translated information may not remain confidential. A strict code of conduct for translators and interpreters, with enforceable sanctions, should be instituted and enforced.

Audio/Visual Services

The ECCC proceedings will be filmed and audio taped. However, no funding was allocated in the original budget for audio/visual equipment for the Trial or the Pre-Trial Chambers to allow proceedings to be filmed or recorded. Both services are essential and funds must be located or raised to ensure they are ready as soon as proceedings begin.

The court has commissioned experts to help design an appropriate recording system, but the necessary equipment is not at the court yet. It will also be essential to build in sufficient budget and capacity for recording practices and infrastructure that will ensure an accurate record and protect confidential information. Plans for this staffing have not yet been made.

Information Management

The court has purchased the Zylab information management system with a Khmer language interface. This is the system used at several of the other international and hybrid tribunals. With appropriate training and data entry support, it should serve the basic information management needs of the court. However, there is a lack of experienced personnel within the Court Management Unit to ensure that difficult issues of confidentiality and information-sharing are handled appropriately. The single experienced international staff member working on these issues recently resigned and a replacement has not yet been hired. Finding an experienced replacement to ensure adequate operation, staffing, and development of the information management system is critical.

Construction and Management of the Detention Facility

The ECCC has established a temporary detention facility on its premises and has begun constructing a permanent facility. The permanent facility—designed to house up to eight prisoners—will include meeting, eating, and exercise facilities. It is scheduled to be completed in late June 2007. A governor from the Cambodian prison system will be assigned to run the facility once it becomes operational.

Domestic prisons in Cambodia often fail to meet minimum international detention standards.²² While administration of the ECCC detention facility is a responsibility of the “Cambodian side” of the court, the ECCC as a whole must ensure that the detention facility and its operations comply with basic international standards for treatment of detainees as set forth in the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.²³ This must be assured by adequate professional oversight from the international side of the court as there is likely insufficient existing Cambodian expertise. Because most of the likely detainees are at advanced ages, access to adequate medical care will be fundamental and must be properly planned.

Personnel

The progress of the ECCC to date owes much to the energy and commitment of talented individuals who, in spite of structural, budgetary, and time constraints, have accomplished a great deal. Nonetheless, troubling problems remain in Cambodian staff hiring processes and in efforts by both sides to effectively integrate international and Cambodian staff.

In October 2006, the Justice Initiative issued a memorandum to the Group of Interested States listing recommended priority issues for the ECCC.²⁴ That report noted a lack of transparency in the hiring process for Cambodian nationals and urged reform to ensure that the process was fair, transparent, and designed to find the most qualified personnel for the job. Some reforms have been instituted, including job vacancies posted on the ECCC website, and the establishment of a committee process for interviews for Cambodian hires, but these must be accompanied by a commitment to make hiring decisions based solely on merit. Further attention to adequate hiring processes, including guidelines to prevent nepotism, favoritism, and procedures to govern evaluation and discipline, would help stem complaints that the system is unfair. A UNDP audit into some of these human resource issues has been done, but limited information about the results, or the court’s response to the results, has been released to the public

²² “Towards a Human Prison Policy for Cambodia,” Office of the High Commissioner for Human Rights in Cambodia, November 1, 2002, http://cambodia.ohchr.org/report_subject.aspx.

²³ *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

²⁴ http://www.justiceinitiative.org/db/resource2/fs/file_id=17498

Investigation Capacity and Relationship with Judicial Police

The original ECCC budget contemplated that the court would rely on Cambodian judicial police to perform investigative, logistical (transport), and general police support. However, Cambodian judicial police are not sufficiently trained or experienced to make a significant contribution to complex investigations. Three days of classroom training in international investigation techniques and law was provided to four groups of 30 Judicial Police (for a total of 120) in February 2007. This is a start, but much more needs to be done. The judicial police are widely mistrusted by many Cambodians because of a history of police abuses.²⁵ Little communication, planning or coordination exists between the ECCC and the KRT Security Commission (the body responsible for providing Cambodian judicial police for the ECCC). Trust and cooperation will have to be developed if the ECCC is to effectively work with judicial police. There is little evidence that progress is being made in developing this level of mutual confidence.

It is likely that Co-Investigating Judges and Co-Prosecutors will request assistance from Cambodian judicial police only for executing arrest and search warrants, and providing transport for witnesses or accused. If this is the case, additional professional investigative capacity within the ECCC will be necessary if the Co-Prosecutors and the Co-Investigating Judges are to do their jobs properly.

Victims Unit and Victim Reparations

There is no provision for a Victims Unit in the existing ECCC structure or budget. The rules of procedure provide that victims who meet certain requirements can participate as *parties civiles* in the proceedings and that a Victims Unit be established. The court administration must plan for, and adequately fund, the victim participation opportunities provided for by the internal rules. Certainly, NGOs can, and are, willing to assist in working with victims who wish to participate in proceedings, but the core responsibility rests with the court to adequately fund operations and outreach for the section.

The internal rules of procedure provide for non-compensatory or moral reparations for victims. The exact scope of such reparations is still unclear, but individual victims will not be entitled to seek monetary compensation from the court or the accused. This is a reasonable limitation to the problem of reparations in a situation of mass atrocities where so many people suffered, only a limited number of people will be tried, and sources of funds for compensation are limited. However, it is critical that the court make clear the limitations of reparations to the people of Cambodia in order to avoid false expectations. The possibility for confusion on this issue is great and the court must be at the forefront of ensuring that the expectations of victims are reasonable and accurate.

As the first hybrid court to provide for active victim participation, the ECCC has the opportunity to be a model for making courts adjudicating mass atrocities more relevant to the people they are intended to serve. It must ensure adequate outreach, planning and funding for victim participation to meet this goal

²⁵ See, for example, a Report by Adhoc, Licadho, and Human Rights Watch, *Impunity in Cambodia: How Human Rights Offenders Escape Justice* (June 1999) available at <http://www.hrw.org/reports/1999/cambo2/>.

Facilities

Courtroom facilities are still under construction. The main courtroom is still a theater without the furnishings or renovations necessary to convert it into a courtroom. Air-conditioning and additional lighting have been added, but significant additional work is needed to hold formal court proceedings.

The design for the Pre-Trial Chamber does not contain an adequate public gallery, and is incomplete in other respects, including the absence of desks for the defense and victim participants. As noted above, to the greatest extent possible, consistent with the rights of the parties, the proceedings before the Pre-Trial Chamber should be public. The Pre-Trial Chamber design should be modified to include an adequate public gallery, or public Pre-Trial Chamber proceedings should be held in the trial courtroom. Considerable additional work needs to be done immediately if the courtrooms are to be ready for proceedings in the coming months.

Additional renovation is still needed in the ECCC's main office building to ensure adequate work space is ready and available for new staff. This is particularly urgent now that the court, with the internal rules passed, will be moving into a more active investigation phase and formal court proceedings draw closer.

Training

The court has held several formal training programs since its inception: a three-week training program for translators, several trainings for prosecution and investigation staff and a three-day training for judicial police. Two training sessions for Cambodian defense counsel have been conducted. Additional training is planned for prosecutors and investigators in the coming months. Informal training and information exchange goes on daily between the international and Cambodian staff. The court has been successful in obtaining outside funding assistance for much of the training done to date.

Complex issues of law and procedure will likely be presented to the court in adjudicating issues of mass atrocities. Ongoing training for judges, prosecutors and their staff will be needed to deal with this challenge.

Legacy

One commonly cited expectation for the ECCC is the legacy it will leave behind for Cambodians and the Cambodian court system. The term "legacy" most commonly refers to the positive impact of the court on domestic judicial institutions and law reform efforts. It can also connote a more general impact on cultural expectations about impunity and increased understanding of the Khmer Rouge period. Public demand for justice in Cambodia seems to be strong, both in terms of addressing past crimes and reforming the current judicial system.²⁶ ECCC outreach, public education, and training efforts must all be strengthened if a lasting legacy is to be achieved. The experience of other tribunals has shown that a positive legacy does not occur without extensive planning, effort and commitment. This situation is complicated in Cambodia by a history of ineffective legal reform efforts and perceived resistance to reform among a powerful elite.²⁷

²⁶See William Burke-White, "Preferences Matter: Conversations with Cambodians on the Prosecution of the Khmer Rouge Leadership," in *Bringing the Khmer Rouge to Justice: Prosecuting Mass Violence before the Cambodian Courts*, edited by Jaya Ramja and Beth Van Schaack, (Edwin Mellen Press), 2005; Laura McGrew, *Truth, Justice, Reconciliation and Peace in Cambodia: 20 Years after the Khmer Rouge (February 2000)*, full report available from the author, lmcgrew@igc.org.

²⁷ Report of the Special Representative of the UN Secretary-General for human rights in Cambodia, Yash Ghai, *Situation of Human Rights in Cambodia*, January 30, 2007, http://cambodia.ohchr.org/report_subject.aspx; Report of the UN Office of the High

To date no one at the ECCC has primary responsibility for ensuring that the legacy goals of the court are adequately articulated and pursued. Legacy goals are not accomplished by the mere presence of the court; they require time, creativity, effort, and resources. The Special Court for Sierra Leone recognized the effort needed to achieve a lasting legacy and hired a dedicated legacy officer in 2005 who has developed and implemented specific legacy projects. The ECCC should draw on this example.

Most important to leaving a positive legacy in Cambodia is the active insistence by all involved with the court that its operations be conducted with the utmost integrity, transparency and competence in accordance with international standards. As addressed above, considerable additional work is needed to accomplish this goal.

Budgetary Needs

The ECCC is currently operating on a projected budget of \$56.3 million over three years. It remains approximately \$5 million short of that figure. As documented throughout this and prior reports, the current budget will not meet all of the court's needs. Significant additional funds are required for outreach, training, translation, investigation, witness protection, and prosecution. The current budget does not provide for a number of essentials, including: regularly convening judges (this is currently paid from the court's training budget, which in turn has meant that other court-funded training has been limited or non-existent); transcripts of the formal proceedings; audio/visual equipment to record court proceedings; and witness protection and support, including hiring experienced protection and support officers. Now that internal rules are adopted and formal proceedings will begin, these needs have added urgency.

The court can reallocate budgetary line items and shift second and third year expenses to the first and second year. But ultimately, the court needs to plan for the inevitable budgetary shortfall and start working with donors to raise additional funds before budgetary issues become critical. The Cambodian side of the administration is now stating that it will run out of funds to pay its portion of salaries and other obligations under the *Agreement* in early 2008. If, as was the case in the past, the Cambodian government is not willing or able to come up with additional funds itself, immediate fundraising efforts must begin if the court is to continue to function.

INVOLVEMENT OF DONORS

Donor states to the ECCC, and States interested in becoming donors, have an important role to play in both supporting the day-to-day needs of the court and ensuring the court's legitimacy through their constructive attention and comment. States providing funding for the ECCC through voluntary contributions to the UN are entitled to insist that the court operate transparently, fairly, effectively, and efficiently, and to receive adequate information to evaluate its operations and budget. Donors should condition future funding of the court on the institution of management practices that deliver these results.

Donors to the ECCC and other States interested in its operations participate in Friends of the ECCC, a group which meets every other month in Phnom Penh to receive a briefing from the Office of Administration and discuss concerns. Regular and open meetings between court officials and interested States are constructive. Donors should capitalize on this opportunity to engage actively with the court about questions and concerns regarding the ECCC's operations. They should insist that they receive relevant information, including information such as the UNDP audit report, and regular written reports from both the Director and Deputy Director of

Administration. They should further insist that problems identified in the operation of the court, particularly those which go to its credibility and integrity, be remedied immediately. Donors must support the court, but their investment will be at risk if they do not insist that it meet basic standards of effectiveness, transparency and integrity.

Many of the challenges detailed in this report can, and should, be addressed by donor States and other supporters of international justice. Friends of the ECCC, and their counterparts in the Group of Interested States in New York, should set benchmarks to ensure international and operational standards are met by the court, institute an independent financial monitoring mechanism to ensure the court's resources are used efficiently and transparently, provide early identification of problems and assist with solutions, and provide a forum for members to articulate their expectations and concerns.

CONCLUSIONS AND RECOMMENDATIONS

The first year and a half of administrative operation of the ECCC has been difficult but the court can rightly claim significant progress. Delays in adopting rules of internal procedure and addressing allegations of corruption and political interference have cost it credibility in the eyes of many observers, both inside and outside of Cambodia. Nonetheless, the ECCC has accomplished much in the first year to lay the groundwork for prosecutions and trials.

Going forward, if the court is to reach its goals and serve the people of Cambodia, attention to the following areas is necessary:

The Extraordinary Chambers:

- The Office of Administration must play a stronger leadership role in insuring credibility and accountability of the ECCC by:
 - Undertaking, and/or seeking external support for, appropriate investigation into allegations of corruption or any other allegations of improper conduct;
 - Publicly releasing the results of investigations;
 - Ensuring that all recommendations resulting from investigations into improper conduct are fully implemented; and
 - Developing enforceable codes of ethics for staff to promote a common commitment to the integrity of the court.

- The Office of Administration should consider reallocating funding within the current ECCC budget to address critical and urgent needs, including:
 - Outreach:
 - Additional outreach staff;
 - Regular travel in the provinces by ECCC staff for community discussions, events, and distribution of material; and
 - High quality teaching materials which effectively engage illiterate and low-literacy communities.
 - Witness protection and support:
 - In-house, well trained, and experienced protection officers;
 - In-house and experienced support officers, who are regularly trained in best practices for witness support by experts in psycho-social support techniques and Cambodian culture; and
 - An independent and expert threat assessment for witnesses and victims.
 - Offices of the Co-Prosecutors and Co-Investigating Judges:
 - Additional trained and experienced translators and interpreters;

- Additional investigation and legal staff; and
 - Forensic expertise.
 - General translation, interpretation and transcription capacity:
 - Additional qualified translators and transcribers; and
 - Repeated and regular training for translators, interpreters and transcription officers.
 - Judicial Chambers;
 - Law clerks, researchers, and legal officers to facilitate judicial decision-making; and
 - Systematic training of judges and their staff. Training should address international and Cambodian law and procedure, international criminal jurisprudence, best judicial practices in international and hybrid courts, and civil law (specifically Cambodian) principles and practice.
- The Office of Administration must develop a realistic budget for coming years and a concrete plan for raising sufficient funds for both the international and the Cambodian portion of the ECCC budget.
- The Office of Administration must improve capacity in the Court Management Unit by:
 - Developing policies and guidelines on court management practices, in particular the work of the translators and interpreters, and document management;
 - Hiring sufficient, experienced staff to ensure that each of the functions of the Court Management Unit are professionally analyzed and addressed.
 - Hiring short term consultants to address urgent needs.
- The Office of Administration must support the development of judicial leadership and cooperation within the ECCC by one or more of the following means:
 - Hire a trained senior legal officer, experienced in facilitating judicial training, leadership, communication and cooperation, to ensure appropriate judicial leadership and input into administrative decisions.
 - Provide for resident judges with adequate administrative and research staff to ensure they can fulfill their role of facilitating judicial leadership.
- The judges and the Office of Administration must develop appropriate practice directions and internal rules for transparency and public access to the proceedings of the court, including access to legal filings and decisions, portions of the investigation proceedings, and appropriate proceedings of the Pre-Trial Chamber.
- The Office of Administration must ensure transparency and effectiveness in hiring procedures, through:
 - Competitive hiring processes, for which appointments can be justified on the basis of merit, and which provide a performance-based probationary period and a method for removal of employees not able to perform job functions; and
 - Establishing hiring guidelines to avoid nepotism and all forms of unfair favoritism.
- All sections of the court must work to overcome the divisions between a “Cambodian side” and an “international side” through:
 - Integrating staff within the ECCC in the same offices, as opposed to separate ones; and
 - Seeking to understand and deal directly with situations where lack of trust contributes to the divisions.

The Cambodian Government and Cambodian Bar Association:

- The Government of Cambodia must allow civil society to engage freely with the ECCC process—including criticism of its work as a public institution—without fear of retribution.
- The Government of Cambodia must allow judges and other staff to exercise professional judgment free from interference.
- The Bar Association of the Kingdom of Cambodia must carry out its duties with respect to counsel appearing before the ECCC in a manner which does not cause delay or interfere with the right of accused, victims or suspects to freely choose competent and independent counsel.

The United Nations must:

- Insist that the ECCC comply with international standards for fair trials and that it comply with basic principles of integrity, transparency and effectiveness.
- Ensure that recommendations of the 2007 UNDP-requested audit of the ECCC's human resource management are adequately acted upon and that information about the audit results are made public;
- Institute (or insist that the ECCC institute) a full investigation into corruption allegations. Release information about the results of this investigation publicly;
- If corruption allegations are found to have merit, ensure adequate measures to combat these practices are put in place.
- Adequately evaluate and address the recommendations of the expert assessment team which evaluated the UNAKRT portion of the Office of Administration in May 2007.
- Advocate for the assignment by the Secretary General of the UN of a senior, highly experienced individual to monitor compliance by the Government of Cambodia with the Agreement between the Government and the UN.

Donors, Group of Interested States and Friends of the ECCC:

- Urge the ECCC and the United Nations to institute an independent investigation into corruption allegations to ensure the court has some chance—in both perception and reality—of delivering fair and independent trials.
- Provide the court with gratis personnel to address witness protection, translation and other court management needs (such as effective transcription services and audiovisual systems).
- Use the GIS meetings in New York and “Friends” meetings in Phnom Penh to discuss practical and effective ways to support and monitor the ECCC's work, including by:
 - Developing a policy which conditions any extra donor funding for the ECCC on the institution of best practice mechanisms designed to enhance the transparency and effectiveness of the court's financial and administrative operations;
 - Providing gratis personnel who are specialists in court management best practices to work intensively with the court to develop and implement these best practice mechanisms, which will in turn allow the ECCC to operate with independence, transparency and integrity generally, and specifically when problems arise;
 - Establishing a budget committee which is assigned to work with the Office of Administration develop a realistic budget for the next 3-4 years to monitor the use of funds, and ensure the financial records and operations of the court are efficient, effective and free of corruption;
 - Setting benchmarks against which to measure the effectiveness of the court and compliance with international standards.

- Monitoring the ECCC to ensure compliance with recommendations made by the audit report; and other recommendations for improvement in the operation of the ECCC;
- Working with the ECCC to develop an effective fundraising strategy.

International and Cambodian NGOs:

- Pursue outreach activities designed to engage all Cambodian communities in the work of the ECCC in a way which listens and responds to people's concerns and questions, and relays those questions and concerns to the ECCC;
- Remain vigilant in monitoring the work the ECCC for independence, impartiality, compliance with international standards, and general effectiveness in meeting its goals;
- Invest resources in monitoring, and releasing public reports, on the operations of the ECCC; and
- Continue to hold the ECCC to high standards of transparency and accountability.

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The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. Its offices are in Abuja, Budapest, and New York.

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