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### **Possible Roles for a Special Advisor or Oversight Committee for the ECCC**

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As the Extraordinary Chambers in the Courts of Cambodia (ECCC) seeks new funding sources to make up an immediate shortfall, some donors are considering whether to make additional funding conditional on international oversight over the ECCC's financial and administrative decisions. Partial audits of the ECCC in 2007 support their view that stronger oversight of the ECCC's operations is needed. Some donor governments and NGOs have suggested the creation of a special international advisory position and/or oversight committee as a condition for providing additional funds. The special advisor or committee would monitor and provide input on the Court's administrative operations in an effort to ensure its independence and transparent functioning. This memorandum presents our views on how these roles could most effectively promote efficiency, transparency, and accountability at the ECCC.

#### Other Available Models

Neither the framework agreement between Cambodia and the United Nations nor the Cambodian law establishing the Court foresees the existence of a special international advisor or oversight committee. Moreover, only at the Special Court for Sierra Leone (SCSL) does any remotely similar role exist. Most international courts have either been UN bodies or have developed out of UN missions, and therefore have been subject to formal UN oversight mechanisms.

Only the SCSL is similar to the ECCC in being formally independent of the United Nations, and its management committee provides the closest existing precedent.

The International Criminal Tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY) were created by the Security Council under its Chapter VII peace and security authority. No independent reporting or monitoring structures were created to oversee these UN subsidiary bodies' proper administration. Instead, these tasks fall to the UN Secretariat and the Security Council itself, to which the court Presidents report on an annual basis. The Special Panels for Serious Crimes in East Timor were created by the UN Transitional Administrator in that country. The Secretary-General was tasked with reporting to the Security Council every six months on the progress of the Special Panels, but no other oversight mechanism was established.

Unlike these courts, the SCSL was never a UN institution; it is an independent court created by treaty between the United Nations and Sierra Leone. It is not funded directly from the UN budget, but from voluntary state contributions. The Security Council does not have a direct oversight role, and the UN Secretariat was never tasked with administering its funding. Instead, the agreement between the UN and Sierra Leone

provides that interested states will establish a Management Committee comprising a representative of the UN Secretary-General, state donors, and the host state. Additionally, the SCSL Statute requires the SCSL President to report annually on the operation and activities of the court to both the Secretary-General and the Government of Sierra Leone.

#### A New Position or Committee for the ECCC

We believe that a special international advisor or oversight committee could promote transparent and efficient operations at the ECCC by performing functions broadly similar to those of the SCSL's management committee.

Some of the key functions could include:

- Providing advice and policy direction to senior ECCC officials on all non-judicial aspects of the Extraordinary Chambers' operations;
- Participating in the formulation of the ECCC's annual budget;
- Reviewing financial and other administrative reports of the ECCC;
- Reporting to the Cambodian government, UN Secretary-General, and key international donors on the ECCC's budget and non-judicial operations;
- Advising the Cambodian government, UN Secretary-General, and key international donors on matters related to the ECCC's non-judicial operations; and
- Helping to ensure that the ECCC has adequate funds for its operation.

Any new advisory position and/or oversight committee must comply with the framework agreement and 2004 establishment law. For this reason, the position or committee would have to operate independently of the formal ECCC structure. We believe that both an individual advisor and an oversight committee could help improve the ECCC's operations and serve as useful conduits between the Court and its key official stakeholders. An advisor could collaborate with ECCC officials on a day-to-day basis, while a management committee could be responsible for periodic assessments.

If an individual advisory position is created, we believe it should be a UN-mandated post appointed by the Secretary-General in consultation with the Cambodian government and major international donors. The advisor's effectiveness and political weight would be dependent on his or her diplomatic skills and expertise in court management. He or she should report directly to the UN Secretary-General and possess a mandate to consult with all state donors as well as ECCC officials.

An advisor fitting this description could have a number of advantages. An effective and high-level individual advisor could react quickly and decisively when concerns arise. An effective advisor may also be able to build relationships and trust with ECCC officials and other key stakeholders. We believe regular informal meetings would be an important ingredient in building effective oversight.

A management committee could comprise representatives of several key donor states, as well as the United Nations and Cambodia. This arrangement would have the benefit of making the Court more responsive to the views of all stakeholders, and possibly result in more transparent and deliberative decision-making. Its effectiveness would depend on

the extent to which committee members worked together effectively and actively. If a committee is created, it should be small in size (e.g., 3-5 members), enabling it to function efficiently and decisively. Members should be appointed by the UN Secretary-General after consultation with the major stakeholders.

Whether an individual advisory position or a committee is established, effective oversight will require engaging regularly with ECCC officials and interested governments, taking a low-key diplomatic approach, and focusing on collaborative solutions to the ECCC's challenges.