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 Extraordinary Chambers in the Courts of Cambodia
 Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
 Nation Religion King
 Royaume du Cambodge
 Nation Religion Roi

**EVOLUTION OF DEFENCE SYSTEMS IN INTERNATIONAL TRIBUNALS:
 THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)**

By Isaac N. Endeley

Chief of Defence Support Section, ECCC

Introduction

This paper examines the state of defence administration in one of the world’s major criminal jurisdictions, the Extraordinary Chambers in the Courts of Cambodia (“ECCC”). Through a comparative analysis of the ECCC’s Legal Assistance Scheme (“LAS”) and the corresponding system in place at the International Criminal Tribunal for Rwanda (“ICTR”), the paper attempts to highlight the peculiarity of the ECCC as a judicial institution. In effect, while the ECCC differs from its counterparts such as ICTR or the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in many respects, perhaps the most important distinguishing element is the fact that the ECCC is not an international tribunal but a domestic court with strong international participation. Unlike the ICTR or the ICTY, whose full operational costs are covered by the UN, the ECCC was set up pursuant to an agreement between the United Nations (“UN”) and the Royal Government of Cambodia (“RGC”) under which the financial, material and human resource costs of operating the ECCC are shared by both parties.

One significant exception to this practice of dualism at the ECCC, however, is that all defence costs are borne solely by the UN and channeled through a Trust Fund managed directly by the Defence Support Section (“DSS”). This places the DSS in a unique position

vis-à-vis the other organs of the court but also in relation to the defence offices at other major tribunals. The paper also discusses the legal bases for the establishment of the DSS as well as the specific functions it performs in the context of safeguarding defendants' fair-trial rights and its administration of the LAS. An effort is made throughout the paper to highlight the similarities and differences between the comparable systems in place at the ECCC and the ICTR.

Background

Following the January 1979 ouster of the Democratic Kampuchea or “Khmer Rouge” regime, which had ruled Cambodia since 17 April 1975, the country was embroiled in a bitter civil war until the early 1990s. With the signing of the Paris Peace Agreement in October 1991 and the establishment of the United Nations Transitional Authority in Cambodia (“UNTAC”), however, a measure of peace and stability returned to the country. Amid allegations of widespread atrocities committed by the Khmer Rouge, intense negotiations between the UN and the RGC over the next decade culminated in the signing of an agreement between the two sides to set up the ECCC. Under the terms of the agreement, the UN undertook to cooperate with the RGC “in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.”¹

By comparison, the ICTR was established by the UN Security Council in November 1994, less than six months after the end of the Rwandan genocide in which more than 800,000 persons are believed to have been killed in the space of about 100 days. The ICTR was

¹ Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodia Law of Crimes Committed during the Period of Democratic Kampuchea, 6 June 2003 (the “Agreement”).

created “for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.”² Thus both judicial institutions were set up under very different circumstances.

In terms of personal jurisdiction as well, the pool of defendants who could benefit from the ECCC's legal aid system is potentially smaller, since it appears to be limited to the “senior leaders” of the Khmer Rouge regime, compared to the ICTR where jurisdiction extends to acts committed in the territory of Rwanda’s neighbours. As of 1 May 2015, only eight individuals have been formally charged by the ECCC and of these, only five have been indicted and had their cases sent to trial. This is a rather low figure compared to the ICTR which indicted a total of 93 individuals.³

"Internationalized" Court

As a judicial institution the ECCC differs from the world’s other major criminal tribunals in several important respects but perhaps the most significant difference is the fact that the ECCC is not an international tribunal but a Cambodian domestic court.⁴ It is unique in the sense that while it is undoubtedly part of Cambodia’s national court system, it also has a very strong international component. Among the judges, prosecutors, defence lawyers, court administrators, translators and other personnel, there is a delicate balance between Cambodian nationals, on the one hand, and UN or international staff, on the other. This contrasts sharply with the situation at the ICTR which, first of all, is not a part of the

² S/RES/955 (1994), 8 November 1994

³ The ICTR in Brief: <http://www.unictr.org/en/tribunal> (accessed on 1 May 2015)

⁴ Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, 27 October 2004 (the “ECCC Law”).

Rwandan court system and, secondly, whose personnel, both international and locally recruited, are all remunerated by the UN.

Moreover, unlike some of the other major tribunals such as the ICTR that are located in a neutral venue far from the crime sites, the ECCC is based in Cambodia where the crimes under its jurisdiction allegedly occurred. In addition, because the Cambodian legal system is modeled on the French civil law tradition, the ECCC follows the inquisitorial system rather than the adversarial system that is more common among the ICTR and other major tribunals. Further, the trials at the ECCC are being conducted some 35 to 40 years after the crimes were committed whereas at the ICTR the first cases were being tried within three years of the Rwandan genocide. Furthermore, the alleged victims of the crimes under the ECCC's jurisdiction are able to participate directly in the trial process either as certified civil parties, as witnesses or as direct observers of the courtroom proceedings. This is not the situation at the ICTR, where civil parties are not admitted to participate in the proceedings and the survivors of the 1994 Rwandan genocide cannot easily travel to Arusha, Tanzania to observe the court proceedings.

UN Cooperation

UN cooperation towards the functioning of the ECCC is primarily in the form of technical assistance delivered through the United Nations Assistance to the Khmer Rouge Trials (“UNAKRT”). This includes the provision of international judges, prosecutors and other qualified personnel for the chambers, the judicial offices and the various administrative units of the ECCC to work alongside their Cambodian counterparts whose costs are defrayed by the RGC. As observed earlier, the UN alone is responsible for the recruitment of all personnel at the ICRT.

It is noteworthy, however, that unlike the ICTR, UNAKRT is funded not through the regular UN budget but via the voluntary contributions of UN member states to the Trust Fund managed by the DSS. As the contributions are not fixed in terms of amount or timing, this sometimes causes considerable stress for the UN authorities as it is not unheard of for some states to use the political situation in Cambodia as an excuse for delaying or withholding the payment of funds they had pledged to provide to UNAKRT. The funding situation also has an impact on the types and duration of employment or consultancy contracts the UN can offer to its personnel, including international staff and defence consultants. This situation is often compounded by the inability of the RGC to meet its financial obligations towards the Cambodian staff of the ECCC. In fact, on a number of occasions in recent years the Cambodian staff members have been forced to stay for three or four months at a time without a salary and in one dramatic instance in 2013, the Khmer language interpreters had to stop work during trial proceedings in order to draw attention to their plight.

The ECCC, also known as the Khmer Rouge Tribunal, is thus a hybrid court and the product of a compromise between national and international interests. This duality is reflected in all the structures of the institution with almost every organ having both a national and an international component. In general, the RGC is responsible for the costs of recruiting and maintaining staff on the national side while the UN is responsible for the foreign or international personnel as well as for some locally recruited staff. In the judicial offices and chambers of the ECCC, for instance, the Office of the Co-Prosecutors (“OCP”) has one national and one international Co-Prosecutor; there is a national and an international Co-Investigating Judge in the Office of the Co-Investigating Judges (“OCIJ”); the Pre-Trial Chamber has three national and two international judges; the Trial Chamber is comprised of

three national and two international judges; and the Supreme Court Chamber has four national and three international judges. Besides having one national and one international “reserve” in each of these offices or chambers, there are also support personnel, recruited and remunerated by either the RGC or the UN, to assist these high-ranking individuals in their work. Here again there is a clear contrast with the ICTR which has no investigating judges or dedicated Pre-Trial Chamber and where the sole Prosecutor, all the judges and their support staff are appointed by the UN rather than by the Rwandan Government.

Decision-making at the ECCC is often complicated by the need to balance the views of the national and international judges, prosecutors and other personnel. Unlike the ICTR, for instance, where the Prosecutor has the sole responsibility for drawing up indictments, at the ECCC it generally requires the concurrence of both the national and the international Co-Prosecutors to open an investigation and forward the case file to the Co-Investigating Judges (“CIJs”). Where there is a disagreement between the CIJs about how to handle the investigation, the matter can be brought before the Pre-Trial Chamber, which in some instances is required to decide on issues by a “supermajority” of four out of five judges in order to include the views of both national and international judges.

Yet another important distinction with the ICTR is that the ECCC does not have a Registry responsible for servicing the chambers. Rather, the ECCC has an Office of Administration (“OA”) which is jointly managed by a Cambodian Director appointed by the RGC and an international Deputy Director appointed by the UN and serving simultaneously as the Coordinator of UNAKRT. The Office of Administration comprises several administrative sections and units that provide various services to support the work of the judicial offices and chambers. One such section is the Defence Support Section, commonly known by its

acronym DSS. In the ICTR context, the equivalent institution is the Defence Counsel and Detention Management Section (“DCDMS”) of the Registry.

The Defence Support Section

Any analysis of the institutional framework of the ECCC must contend with the concept of duality as it quickly becomes apparent to the analyst that the drafters of the Agreement between the UN and the RGC, in seeking to create a balance between the two sides, ended up creating two parallel structures. Significantly, one area in which the UN bears the sole financial responsibility is that of defence costs. Pursuant to Article 17(c) of the Agreement, the UN is responsible for the remuneration of defence counsel. This is one of the few aspects in which UNART remains similar to ICTR. Accordingly, unlike other organs and offices of the court that are jointly managed by national and international personnel, defence matters at the ECCC are administered exclusively by UN staff. It is also worth pointing out that at the ECCC there is no “Defence Office” with powers similar to those of the Office of the Co-Prosecutors (“OCP”), the Office of the Co-Investigating Judges (“OCIJ”) or the three judicial chambers. Rather, there is a Defence Support Section (“DSS”) placed under the administrative authority of the Office of Administration (“OA”) but with considerable autonomy in substantive defence matters. The DSS is headed by a Chief of Section who reports administratively to the Deputy Director of the Office of Administration (“DDOA”), the UN’s highest-ranking administrative official at the ECCC. As noted *supra*, if the ECCC’s Office of Administration is comparable to the ICTR’s Registry, then the DSS is similar to the ICTR’s DCDMS in terms of the role it fulfills within the judicial system.

Despite the structural constraints, the DSS has proved to be one of the most important organs of the ECCC. That is partly because in today’s world, any court of law worthy of the name

must have not only impartial judges and good prosecutors but also competent defence lawyers who can vigorously and zealously represent the interests of the defendants. This requirement is even more important in an international (or “internationalized”) tribunal such as the ECCC which seeks to uphold basic standards of justice and the rule of law and to leave a positive legacy to the Cambodian people. Not only should the rules on paper be seen as being fair and just, but the practical application of those rules must also be seen to be fair, balanced and transparent in order for the tribunal to be credible and for its rulings to be viewed as just. In principle, if the international community is going to charge someone with the most serious crimes known to humanity (such as genocide, crimes against humanity and other serious violations of international law), it must provide that person with the means and the opportunity to mount a robust defence before passing judgement on him or her.

It is the primary responsibility of the DSS to ensure that all suspects, charged persons and accused (collectively referred to here as defendants) appearing before the ECCC have adequate legal representation and adequate facilities to prepare and present their defence. The DSS performs this role through its administration of the ECCC’s Legal Assistance Scheme (“LAS”), as detailed below. The comparable provision at the ICTR is the *New Lump-Sum System for the Remuneration of Defence Teams at ICTR* adopted by DCDMS in February 2009. First, however, it is necessary to set out the sources of law on which the DSS bases its actions.

Legal Basis

The legal basis for the establishment of the DSS can be found in the three foundational documents of the ECCC. These are: (1) the Agreement between the UN and the RGC, (2) the Law on the Establishment of the ECCC, and (3) the Internal Rules of the ECCC.

(1) The Agreement between the UN and the RGC concerning the prosecution of crimes committed during the Democratic Kampuchea (or Khmer Rouge) era, signed on 6 June 2003, contains several provisions protecting the fundamental rights of the defence. In particular, Article 13 (“Rights of the Accused”) incorporates all the fundamental rights enshrined in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights (“ICCPR”). It mandates that these rights shall be respected throughout the trial process. Article 17 covers various aspects of the financial assistance to be provided by the UN. In accordance with its paragraph (c), the UN shall be responsible for the remuneration of Defence Counsel. Finally, Article 21 deals specifically with defence counsel and grants them immunity from personal arrest or detention and from seizure of personal baggage; protects their documents and work product; and grants them immunity from criminal or civil prosecution in respect of words spoken or written and acts performed by them in their capacity as counsel. For the ICTR, the primary legal instrument establishing the tribunal was UN Security Council Resolution 955 of 8 November 1994. While the Resolution itself deals mainly with broad principles regarding international standards, it lays the basis for the drafting of the other texts dealing in greater detail with defence matters, among others.

(2) The Law on the Establishment of the ECCC (“ECCC Law”), done on the same date as the Agreement and promulgated on 27 October 2004, also serves as a legal basis for the establishment of the DSS. Article 35 new of the ECCC Law reiterates the minimum guarantees enshrined in Article 14 of the ICCPR. Article 42 new also repeats the protections and immunities afforded to defence counsel, including immunity from arrest and detention, search and seizure and immunity from civil or criminal prosecution for words or acts of counsel. Finally, Article 44 new, paragraph 3, recognises the right of defence counsel to

receive fees for mounting a defence. The comparable legal instrument for the ICTR is the Statute of the tribunal, which is annexed to UN Security Council Resolution 95. Article 20 of the Statute (“Rights of the Accused”) also incorporates key provisions of the fundamental rights enshrined in Articles 14 and 15 of the ICCPR.

(3) The Internal Rules of the ECCC, as amended on 16 January 2015, constitute the third source of law underpinning the existence and functioning of the Defence Support Section. Rule 11 establishes the DSS under the general authority of the Office of Administration but grants the DSS the power to prepare its own administrative regulations. The provision also mandates the DSS to handle all issues related to defence counsel, including: working in collaboration with the Bar Association of the Kingdom of Cambodia (“BAKC”) to determine the eligibility of foreign and Cambodian lawyers to appear before the ECCC; determining the criteria for indigence for defendants; entering into contracts with defence counsel to represent indigent suspects, charged persons or accused; providing adequate facilities and resources to the defence counsel; assisting the defence teams with legal research and providing other necessary support services; remunerating defence counsel and their support staff; authorising their official travel and reimbursing them for necessary and reasonable costs incurred in the course of their assignment. Further, Rule 22 of the Internal Rules deals with the general terms and conditions of the work of defence counsel, including the applicable laws and the eligibility criteria to practice before the ECCC. Part 4, Section 2 of the ICTR’s Rules of Procedure and Evidence (Rules 44 to 46) is dedicated to defence counsel matters. In addition, the ICTR Registrar issued a *Directive on the Assignment of Defence Counsel* that provides specific details on the manner in which lawyers are recruited, remunerated, disciplined or dismissed.

The DSS and the Fundamental Rights of the Defence

As noted earlier, key provisions Article 14 of the ICCPR related to defence rights have been incorporated into the foundational documents of the ECCC, including Article 13 of the Agreement between the UN and the RGC and Article 35 new of the ECCC Law. The basic documents of the ICTR also include some of these key provisions. These instruments refer back to certain important parts of the UN Charter and the Universal Declaration of Human Rights. Moreover, ECCC Internal Rule 21 and Article 31 of the Cambodian Constitution also guarantee respect for the fundamental rights of defendants before the ECCC. Thus, in fulfilling its mandate, the DSS takes special care to ensure that the minimum guarantees envisaged by all these legal instruments are scrupulously respected.

These have generally come to be known as "fair-trial rights" and they include the right for each defendant to be informed promptly and in detail of the charges against him or her; the right to be provided adequate time and facilities to prepare his or her defence; the right to be represented by counsel of his or her own choosing; the right to communicate freely with such counsel; the right to be tried without undue delay; the right for the trial to be conducted following due process of the law; the right for an accused to be tried in his or her presence; the right for the defendant to confront and examine witnesses presented against him or her; the right of the defendant to call witnesses to testify in his or her favour; and the right against self-incrimination. The DSS takes the presumption of innocence very seriously: each accused is presumed innocent until proven guilty and every effort is made to ensure that other sections of the ECCC treat the defendants with the utmost respect and courtesy.

Beyond merely asserting these rights on paper, however, the DSS goes a step further to ensure that practical steps are taken on the ground to protect the defendants both

substantively and procedurally. It does this through a rigorous process of recruiting competent and experienced defence counsel and by providing them with qualified support staff to help represent the defendants. It also advocates vigorously before the ECCC administrative authorities on behalf of the defence and engages occasionally in outreach activities to inform the public about defence matters.

Composition of the Defence Teams

The DSS administers the ECCC's Legal Assistance Scheme through which resources are allocated to the various defence teams. One uncommon aspect of the scheme is that even a suspect who has merely been notified that he or she is under investigation but has not yet been charged with any crime may file a request for free legal representation. This is different from the ICTR where it is only after a person has been indicted and brought into custody that he or she may have counsel assigned under the legal assistance programme. At the ECCC each suspect, charged person or accused is entitled to have a national lawyer, who may be assisted by another national lawyer or by a foreign lawyer. In practice, each defendant has one national lawyer and one international lawyer, known collectively as co-lawyers. They have equal status and, unlike at the ICTR, neither of them is designated as the "lead" lawyer. All court submissions made by the defence team are co-signed by both co-lawyers, as are all requests for the recruitment of personnel or for the allocation of resources addressed to the DSS.

Pursuant to Rule 11 of the Internal Rules, the DSS maintains a list of national and foreign lawyers eligible to represent indigent persons before the ECCC. A defendant who claims indigence may request the DSS for the assignment of counsel at the UN's expense. The DSS will then present that list of names to the defendant to select his or her co-lawyers. Based on

the observation that it costs in excess of \$500,000 per annum to fund a full defence team at the ECCC, most suspects or accused are considered indigent. Their entire defence is therefore funded by the UN and covered under the LAS.

The co-lawyers may have support staff comprising junior lawyers known as legal consultants, evidence analysts and case managers. They are also assisted periodically by legal interns, who are typically law students and recent graduates. The DSS also maintains a list of Cambodian and foreign personnel pre-approved to perform these support services. The DSS requires that every request for the recruitment of support staff be co-signed and justified by both co-lawyers.

Each defence team has a fixed annual budget for the remuneration of support staff. This budget is generally managed by the DSS and the co-lawyers have some flexibility in determining the skill sets and salary levels of their support staff. From time to time the co-lawyers also engage experts to assist with specific projects. During periods of intense activity some teams can have up to a dozen members working on the case. To ensure confidentiality, each defence team has an office to itself, with multiple desks, chairs and telephones and each team member is provided with a computer and other necessary office equipment.

Under the ICTR's new Lump-Sum System, by comparison, there are very strict limits on the number of legal assistants or investigators that the defence counsel can recruit at any particular stage of the case. At the preliminary stage, which may last a few weeks, only the lead counsel is allowed to be on board. During the pre-trial phase he or she may choose a co-counsel as well as a combination of up to three legal assistants and/or investigators. The numbers remain the same throughout the trial phase but investigators are dropped at the

appeals stage and the need for a co-counsel needs to be separately justified and approved by the Registrar.

Further, unlike at the ICTR and other major tribunals where cases are generally named after the accused, at the ECCC the cases are numbered. So far the ECCC has initiated four cases involving nine defendants. The first case, known as Case 001, was completed in early 2012 and the defence team representing the convicted person was immediately disbanded. As of 1 May 2015, there are six active defence teams and one inactive team remaining under the ECCC's Legal Assistance Scheme. Two of the fully active teams are those representing the two accused in the ECCC's Case 002, which is concurrently at the appeals stage in the first part of the severed indictment (known as Case 002/01) and at the trial stage in the second part of the same indictment (known as Case 002/02). In Cases 003, the International Co-Investigating Judge ("ICIJ"), acting without the support of his Cambodian counterpart, formally charged one defendant in March 2015. Similarly, in Case 004 the same ICIJ unilaterally charged two persons in March 2015. The ICIJ also granted the defendants' lawyers access to their respective case files, thereby increasing their workload and triggering multiple requests for additional human and financial resources under the LAS. That leaves only one Case 004 suspect who is still under investigation and has not yet been charged with any crimes, but who still has a defence team working to protect his interests and remunerated under the LAS. Finally, a team of only two co-lawyers and no support staff continues to represent one accused in Case 002 who was released from court custody on medical grounds, but against whom charges have not yet been dropped. Meanwhile, the DSS itself, which is responsible for managing the LAS and providing administrative support to all the defence teams, is comprised of a Chief of Section, one Legal Officer, one Administrative Assistant,

and two Case Assistants who also serve as Translators and Interpreters between the Khmer language and English or French.

Defence Funding

As noted earlier, pursuant to Article 17 of the Agreement, all defence costs at the ECCC are borne by the UN. Thus, the UN provides all the funding for the legal representation of every defendant declared indigent, including the remuneration for both the national and the international co-lawyers and all their support staff. This has led to the establishment of the LAS administered by the DSS and, to facilitate its management of the LAS, the DSS has developed a series of guiding principles that it strives to apply uniformly across the board. In deciding on a request from the co-lawyers for the allocation of resources, for instance, the DSS is guided by a determination of whether the expense can be justified as necessary and reasonable for the defence of the client.

Each defence co-lawyer practicing at the ECCC can be remunerated for up to 150 hours of work per month on a case but a co-lawyer who represents multiple defendants may be remunerated for a maximum of 175 hours per month for all the cases combined. The hourly fee rate paid to a lawyer depends on his or her level of experience and the professional charges necessary to maintain a law practice in his or her home jurisdiction. The situation of defence counsel at the ICTR seems better by comparison, since they can be remunerated for up to 175 hours of work per month on a single case. The introduction of the Lump-Sum System in 2009 also presents the ICTR defence counsel with an additional advantage as they are allocated blocs of hours to perform specific tasks during specified phases of the case and may spread out the work and claim the hours as they deem appropriate.

The legal consultants and other support staff assisting the ECCC defence co-lawyers are usually paid a flat monthly salary. Over the years the DSS has developed four separate salary levels corresponding to the amount of relevant experience required to perform the tasks. A consultant at Level 1 is usually a recent graduate or someone with only a few years' working experience while a consultant at Level 4 is usually quite senior and very experienced. Each defence team is allocated a fixed annual budget for the recruitment of support staff but the co-lawyers have considerable flexibility in determining the levels at which to recruit them, and hence the salary level at which they are remunerated. This system appears more favourable to the support staff than that of the ICTR, where all legal assistants and investigators are paid exactly the same hourly fee regardless of their years of experience or skill sets.

In addition to the monthly honorariums and salaries of the defence team members, some of the costs generally covered under the LAS include travel expenses for foreign lawyers and other foreign personnel between their place of residence and the seat of the ECCC, and a flat monthly fee for the co-lawyers' administrative and related expenses. Unlike at the ICTR, defence team members at the ECCC do not receive a daily subsistence allowance ("DSA"). They are generally required to reside in Phnom Penh on a long-term basis, particularly during the trial phase of proceedings and the cost of living as well as the related relocation expenses are factored into the salary scheme under the LAS.

The DSS is always deeply involved in the preparation of the ECCC's biennial budget as well as in the periodic performance reviews of the budget and on each occasion it encounters considerable difficulty in having the defence budget proposal approved, including instructions to drastically reduce planned expenditures. Marginal salary increases for defence

team members are often dismissed without much consideration. The ECCC defence budget has therefore stagnated (and even regressed) over the last few years. It remains significantly smaller than the Co-Prosecutors' budget but must be used to cover the legal representation of at least seven defendants currently. Besides, unlike UN staff members who receive an automatic step increase within their grade level each year, the defence team members are considered as consultants or independent contractors and have continued to be paid at the same rate for a few years. Donor fatigue and the need for austerity are often cited by the authorities as the reason for not increasing the defence budget.

Other DSS Support

In addition to financial matters, the DSS also provides other forms of administrative support to the ECCC defence teams. For instance, its Legal Officer assists the co-lawyers and consultants by conducting legal research on general points of law and matters of general interest. The DSS also advocates on behalf of the defence vis-à-vis the ECCC administration and the UN and represents the defence at plenary meetings of the ECCC judges.

The DSS also serves as the liaison between the defence teams and the other sections and offices of the ECCC. Since the defence team members are treated as consultants rather than UN staff members, they cannot exercise any authority or control over UN personnel or property. They must therefore go through the DSS to obtain everything they need for their work, from office supplies to additional support staff.

For instance, on a monthly basis the DSS sends to the ECCC detention facility an updated list of defence team members authorised to visit the defendants being held there. It is worth noting that whereas at the ICTR the Defence Counsel and Detention Management Section

(“DCDMS”) has a level of oversight of the work of the UN Detention Facility, this is not the case at the ECCC, where the court’s Detention Facility is under the direct control of the RGC. The DSS and the defence lawyers therefore work through a UN Liaison Officer to have access to the detainees.

It also collaborates with the Human Resources Section for the processing of consultancy contracts for the co-lawyers and their support staff; with the Finance Section for the payment of lawyers’ fees and the reimbursement of the necessary and reasonable expenses; with the Travel Unit to arrange foreign travel for co-lawyers, legal consultants or other defence experts; with the Court Management Section to facilitate defence team members’ access to court filings and other documents; with the Interpretation and Translation Unit for the translation of defence court filings and other important court documents; with the Computer and Information Technology Section to ensure computer network access or to resolve computer issues affecting the work of the defence teams; with the Interpretation and Translation Unit to ensure the timely filing of defence submissions in at least two of the court’s three official languages; and with any other section of the ECCC whose input might affect the work of the defence teams.

The DSS is also mandated to work in close collaboration with the Bar Association of the Kingdom of Cambodia (“BAKC”) in relation to matters affecting the rights of all defence counsel practicing at the ECCC. In this connection, the DSS Chief holds periodic meetings with the BAKC President and forwards to the BAKC Council the applications of all foreign lawyers wishing to be included in the DSS list of defence lawyers.

Similarly, the DSS participates in ECCC outreach activities (such as high school visits around Phnom Penh, town hall meetings in the various provinces of Cambodia, radio broadcasts) to explain the role of the defence to the general public. DSS representatives also attend seminars, workshops and conferences dealing with the legacy of the ECCC and addressing various aspects of the work of the court, particularly as concerns defence matters. Moreover, several times every month the DSS consults with the individual defence teams and prepares submissions for various legal publications with a focus on the work of the defence.

The DSS also maintains regular contact with other tribunals, NGOs and some universities on matters related to recent developments and best practices in the field of international criminal defence. Whenever the funding has been available, the DSS has organised training courses for young Cambodian lawyers and law students. In the past, before the individual defence teams were constituted, the DSS used to conduct considerable amounts of legal and factual research that it would share with the co-lawyers. In recent years, however, the teams have been given the capacity to conduct their own research and define their own strategies individually. As the DSS is not a party to the proceedings, it is not involved in the substantive issues and respects the confidentiality of the teams.

Conclusion

The DSS is in a truly “extraordinary” situation both within the context of the ECCC and by comparison with the defence offices at the world’s other major tribunals such as the ICTR. The DSS strives to fulfill its mandate of upholding the rights of the defence by striking a careful balance between the meagre resources at its disposal and the demands of a truly robust defence at the international level. The challenges are great but the tasks to be

undertaken are crucial to the proper functioning of the international criminal justice system even as it is hoped that the work of defence lawyers will soon receive greater recognition.