



INTERNAL AUDIT DIVISION

REPORT 2014/002

Audit of the United Nations Secretariat's management of the United Nations assistance to the Khmer Rouge Trials technical cooperation project

Overall results relating to effective and efficient management of the UNAKRT technical cooperation project by the Secretariat were initially assessed as partially satisfactory. Implementation of three important recommendations remains in progress.

FINAL OVERALL RATING: PARTIALLY SATISFACTORY

3 February 2014

Assignment No. AN2012/540/02

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AUDIT REPORT

Audit of the United Nations Secretariat's management of the United Nations assistance to the Khmer Rouge Trials technical cooperation project

I. BACKGROUND

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the United Nations Secretariat's management of the United Nations assistance to the Khmer Rouge Trials (UNAKRT) technical cooperation project.

2. In accordance with its mandate, OIOS provides assurance and advice on the adequacy and effectiveness of the United Nations internal control system, the primary objectives of which are to ensure (a) efficient and effective operations; (b) accurate financial and operational reporting; (c) safeguarding of assets; and (d) compliance with mandates, regulations and rules.

3. The Extraordinary Chambers in the Courts of Cambodia (ECCC) was established in accordance with the agreement of 6 June 2003 between the Royal Government of Cambodia and the United Nations for the prosecution of crimes committed during the period of Democratic Kampuchea. The General Assembly approved the agreement by its resolution 57/228(B) of 13 May 2003 which came into force on 29 April 2005. The operations of the Extraordinary Chambers commenced in February 2006. UNAKRT is the administrative mechanism which supports the United Nations role in the ECCC. Its central objective is to provide technical assistance to the ECCC in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations committed during the period 17 April 1975 to 6 January 1979. The Controller, who is also the Assistant Secretary-General of the Office of the Programme Planning, Budgeting and Accounts (OPPBA), is designated as the programme manager of the project. The administrative and management support is provided by the Capacity Development Office (CDO) of the Department of Economic and Social Affairs (DESA), under delegated authority from the Department of Management. The Office of Legal Affairs (OLA) provides support on legal and administrative issues.

4. The governance mechanisms, which provide strategic guidance and oversight to the UNAKRT project in the ECCC's programme of work, comprise the Group of Interested States (GIS), the Steering Committee and the Principal Donor Group (PDG). The GIS is a group of approximately 24 Member States which provides financial support to both the international and national components of the ECCC and deliberates on the project budget. The GIS meetings generally take place twice a year to discuss the project's achievements and challenges. The Steering Committee, which was established in 2008, consists of Cambodia and the principal donors to the Court. The PDG is a subset of the Steering Committee and functions as an informal consultative mechanism which discusses budget, administrative matters, and emerging operational issues, in preparation for formal Steering Committee meetings.

5. UNAKRT is located within the ECCC in Cambodia, and is headed by a Coordinator at the D1 level, who carries out the function of Deputy Director of Administration. The Coordinator heads the project's office of administration which was organized into: (1) Procurement Unit; (2) General Services Section; (3) Court Management Section; (4) Interpretation and Translation Unit; (5) Witness and Expert Support Unit; (6) ICT Unit; (7) Security and Safety Section; (8) Budget and Finance Section; (9) Defense Support Section; (10) Public Affairs Section; (11) Victims Support Section; and (12) Personnel Section. In early 2008, the Secretary-General designated a Special Expert to advise on the project and to

strengthen the management and administration of the international component of the ECCC. The approved staffing for 2012 was 175 posts (137 international, 38 local).

6. The General Assembly decided that the United Nations assistance to the ECCC shall be borne by voluntary contributions from the international community. Table 1 provides the financial position of the project as of 31 December 2012, including cumulative voluntary contributions and expenditures since the project became operational.

Table 1: Financial position of the project as of 31 December 2012
(In million US\$)

	2006 – 2012
Contributions	132.7
Expenditures	131.2
Balance as of 31 December 2012	1.5

Source: CDO, DESA

7. Comments provided by the OPPBA also represent DESA and OLA, and are incorporated in *italics*.

II. OBJECTIVE AND SCOPE

8. The audit was conducted to assess the adequacy and effectiveness of the governance, risk management and control processes in providing reasonable assurance regarding the effective and efficient management of the UNAKRT technical cooperation project by the United Nations Secretariat.

9. The audit was included in the 2012 OIOS risk-based work plan due to the financial and reputational risks of managing the project, which was funded from voluntary contributions, and was facing a financial shortfall.

10. The key control tested for the audit was project management. For the purpose of this audit, OIOS defined this key control as one that provides reasonable assurance that there is adequate project management capacity to achieve the project objective. The key control includes activities and processes that support:

- Financial and human resources management comprising of the
 - Budgetary process;
 - Fundraising strategy implementation;
 - Coordination between OLA, DESA and OPPBA;
 - Compliance with financial regulations and rules, and delegation of authority for procurement and human resources activities; and,
- Accuracy of operational reporting on performance indicators.

11. The key control was assessed for the control objectives shown in Table 2.

12. OIOS conducted this audit from December 2012 to June 2013. The audit covered the period from January 2011 to December 2012 focusing on the international component of the project, which falls under the authority of the United Nations and is jointly managed by OLA, DESA and OPPBA in the Secretariat.

13. OIOS conducted an activity-level risk assessment to identify and assess specific risk exposures, and to confirm the relevance of the selected key controls in mitigating associated risks. Through interviews, analytical reviews and tests of controls, OIOS assessed the existence and adequacy of internal controls and conducted necessary tests to determine their effectiveness.

III. AUDIT RESULTS

14. The United Nations Secretariat's governance, risk management and control processes examined were **partially satisfactory** in providing reasonable assurance regarding **the effective and efficient management** of the UNAKRT technical cooperation project. OIOS made three recommendations to address issues identified in the audit. The Secretariat needed to strengthen the UNAKRT project's fundraising strategy to secure funding to support the financial sustainability of the project. Although controls over the project's budgeting and accounting, recruitment, and staff-management relations were adequate, the Secretariat needed to: (a) ensure that project consultants were selected on a competitive basis where relevant and evaluated in accordance with UN administrative instructions; and (b) report to the Office of Human Resources Management (OHRM) consultant contracts extended beyond 24 months and seek a related solution on ways of continuing to provide legal services to the accused for the duration of their cases. In addition, the Secretariat needed to identify and address the cause of the Technical Evaluation Committee's frequent non-compliance with established criteria when evaluating responses to Request for Proposals, and to issue instructions to the Committee to comply with UN rules and regulations.

15. The initial overall rating was based on the assessment of key control presented in Table 2 below. The final overall rating is **partially satisfactory** as the implementation of three important recommendations remain in progress.

Table 2: Assessment of key control

Business objective	Key control	Control objectives			
		Efficient and effective operations	Accurate financial and operational reporting	Safeguarding of assets	Compliance with mandates, regulations and rules
Effective and efficient management of the UNAKRT technical cooperation project by the United Nations Secretariat	Project management	Partially satisfactory	Satisfactory	Partially satisfactory	Partially satisfactory
FINAL OVERALL RATING: PARTIALLY SATISFACTORY					

Project management

Need to strengthen fundraising strategy to secure funding to sustain the project

16. The Secretary-General, in his report to the General Assembly in September 2012, reported that the international component of the project was facing a financial shortfall that could jeopardize future operations of the court, and the project was operating on a month by month basis, with a recruitment freeze in effect. One donor had historically provided approximately 50 per cent of the contributions. It

had reduced its contributions from \$11.6 million in 2011 to \$2.5 million in 2012. As of 31 December 2012, the estimated shortfall of project financial resources for 2013 was \$24.7 million.

17. The funding shortfall could put at risk the completion of on-going cases under the UNAKRT project as at the time of the audit only Case I had been concluded. Case II was ongoing with three accused on trial. Cases III and IV were under investigation and according to the project budget document for 2012-13 period, the proceedings in Case III could continue until 2018 and beyond.

(1) DESA, OPPBA, and OLA should strengthen the UNAKRT project's fundraising strategy to secure funding to support the financial sustainability of the project.

OPPBA accepted recommendation 1 and stated that the Secretariat Departments have continued to pursue new channels of funding, including through hosting a pledging conference chaired by the Deputy Secretary-General, as well as through joint missions of the Secretary-General's Special Expert and the Cambodian Government to the Association of Southeast Asian Nations states seeking funding for the national component. Unfortunately, these efforts did not result in any major contributions to the ECCC. In addition, the Secretary-General wrote to all 193 Member States, as well as the President of the General Assembly, to raise awareness of the acute financial challenges being faced by the Court, and seeking their financial support. These efforts also did not result in any new contributions. The Secretariat will develop a detailed fund raising strategy and endeavor to identify additional mechanisms for reaching out to new donors. Recommendation 1 remains open pending receipt of a documented fundraising strategy to support the financial sustainability of the project.

Some consultancies were not in compliance with administrative instruction on Consultants and Individual Contractors

18. According to the administrative instruction on Consultants and Individual Contractors, consultants shall be selected on a competitive basis from a roster of qualified candidates, their performance shall be evaluated on a six-month basis, and their assignments shall not extend beyond 24 months in a 36-month period. The UNAKRT project entered into special service agreements with 107 consultants in the 2011-12 biennium costing \$3.5 million. A review of 43 of these consultancy services showed that:

- a. nine consultancy services were entered into without going through the competitive process;
- b. performance evaluations were not undertaken for six consultants; and,
- c. special service agreements with 23 consultants amounting to \$1.25 million for lawyers in the Defense Support and the Civil Parties were extended beyond 24 months.

19. DESA explained that the consultancies beyond 24 months pertained to individuals selected by the Head Defense Lawyers as part of the accused's Defense team. Their contracts could not be terminated after 24 months as their continuity was needed in the defense team until the conclusion of the case.

(2) DESA should: (a) ensure that project consultants are selected on a competitive basis; (b) evaluate their performance in accordance with UN administrative instructions; and, (c) report to the Office of Human Resources Management on the contracts extended beyond 24 months and seek a solution for continuing to provide legal services to the accused for the duration of their cases.

OPPBA accepted recommendation 2 and stated that the Secretariat agrees that the consultants

should be selected on a competitive basis, and that their performance is properly evaluated. It should, however, be noted that these consultancies largely relate to expert witnesses called by the Judicial Officials for the trial proceedings. Therefore, the Court is obliged to issue contracts to these specific witnesses, without a competitive process. On consultants used for Defense Teams, DESA will consult with Office of Human Resources Management on the current modalities being followed and seek agreement on a solution to continue such services for the duration of the Case File. Recommendation 2 remains open pending receipt of (a) evidence that project consultants are selected on a competitive basis where relevant; (b) the performance of project consultants, where appropriate, is evaluated; and (c) a documented solution to continue providing legal services to the accused for the duration of the case and OHRM's agreement thereon.

Need for Technical Evaluation Committee to comply with evaluation criteria

20. The UNAKRT project had entered into 13 local systems contracts. A review of six of these contracts, totaling \$1.4 million, showed that: (a) five contracts were for translation and transliteration services and one contract was for internet services; and (b) the Request for Proposals (RFP) for these services elicited 12 to 18 responses. The project's Technical Evaluation Committee (TEC) examined these responses and recommended only a sole bidder as technically qualified in each case. The technical evaluation criteria required: (a) demonstrated ability based on a mandatory test; and (b) vendors' experience. In one case, it was required that the sole bidder have 7-10 years of experience, but in fact, the bidder had less than two years experience. The Local Committee on Contracts had deemed the decisions of the TEC as arbitrary, as the TEC was not applying the evaluation criteria uniformly. During deliberations, the LCC also regularly cited instances where the TCC did not carry out technical evaluations in accordance with the evaluation criteria, and rejected some of the concerned cases.

(3) The UNAKRT Project Coordinator should identify and address the cause of the Technical Evaluation Committee's non-compliance with established evaluation criteria when evaluating responses to Request for Proposals, and should issue instructions to the Committee to comply with UN regulations and rules.

OPPBA accepted recommendation 3 and stated that the Secretariat agrees that the Technical Evaluation Committee should adhere to the established evaluation criteria when evaluating responses to RFPs. The issue will be discussed with the Procurement Division, and updated instructions issued to the Evaluation Committee. Recommendation 3 remains open pending receipt of the results of DESA's discussions with the Procurement Division and instructions issued to the Evaluation Committee.

IV. ACKNOWLEDGEMENT

21. OIOS wishes to express its appreciation to the Management and staff of DESA, OPPBA and OLA for the assistance and cooperation extended to the auditors during this assignment.

(Signed) David Kanja
Assistant Secretary-General for Internal Oversight Services

STATUS OF AUDIT RECOMMENDATIONS

**Audit of the United Nations Secretariat's management of the United Nations assistance to the Khmer Rouge Trials
technical cooperation project**

Recom. no.	Recommendation	Critical¹/ Important²	C/ O³	Actions needed to close recommendation	Implementation date⁴
1	DESA, OPPBA, and OLA should strengthen the UNAKRT project's fundraising strategy to secure funding to support the financial sustainability of the project.	Important	O	Receipt of documented fundraising strategy to support the financial sustainability of the project.	March 2014
2	DESA should: (a) ensure that project consultants are selected on a competitive basis; (b) evaluate their performance in accordance with UN administrative instructions; and, (c) report to the Office of Human Resources Management on the contracts extended beyond 24 months and seek a solution for continuing to provide legal services to the accused for the duration of their cases.	Important	O	Receipt of receipt of (a) evidence that project consultants are selected on a competitive basis where relevant; (b) the performance of project consultants, where appropriate, is evaluated; and (c) a documented solution to continue providing legal services to the accused for the duration of the case and OHRM's agreement thereon.	March 2014
3	The UNAKRT Project Coordinator should identify and address the cause of the Technical Evaluation Committee's non-compliance with established evaluation criteria when evaluating responses to Request for Proposals, and should issue instructions to the Committee to comply with UN rules and regulations.	Important	O	Receipt of the results of DESA's discussions with the Procurement Division and instructions issued to the Evaluation Committee.	March 2014

¹ Critical recommendations address significant and/or pervasive deficiencies or weaknesses in governance, risk management or internal control processes, such that reasonable assurance cannot be provided regarding the achievement of control and/or business objectives under review.

² Important recommendations address important deficiencies or weaknesses in governance, risk management or internal control processes, such that reasonable assurance may be at risk regarding the achievement of control and/or business objectives under review.

³ C = closed, O = open

⁴ Date provided by OPPBA in response to recommendations.

APPENDIX I

Management Response

TO: Ms. Carmen Vierula, Chief, New York Audit Service
A: Internal Audit Division, OIOS

DATE: 20 December 2013

REFERENCE:

THROUGH:

S/C DE:

FROM: Maria Eugenia Casar, Assistant Secretary-General, Controller

DE:

SUBJECT: **Draft report on an audit of the United Nations Secretariat's management of the United Nations assistance to the Khmer Rouge Trials technical cooperation project (Assignment No. AN2012/540/02)**
OBJET: **assistance to the Khmer Rouge Trials technical cooperation project (Assignment No. AN2012/540/02)**

Reference is made to your memorandum dated 13 November 2013 forwarding the above-mentioned draft audit report.

I am pleased to return Appendix I, duly completed, which contains a consolidated management response of the three Secretariat departments involved in providing management support to the international component of the Extraordinary Chambers. It is our intention to implement the OIOS recommendations expeditiously, and we will keep your office informed as these are completed.

I would like to take this opportunity to thank you for the very fruitful discussions held throughout the audit period, and for OIOS' positive consideration of the views expressed by the Secretariat, resulting in the final audit report.

Let me take this opportunity to wish you and the OIOS team a Merry Christmas and wonderful holiday season.

cc: Mr. Wu Hongbo, Under-Secretary-General for DESA
Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and The Legal Counsel
Ms. Marie Oveissi, Head, Capacity Development Office, DESA
Mr. Ivan Koulov, Executive Officer, DESA
Ms. Brigitte Benoit-Landale, Legal Officer, Office of the Legal Counsel, OLA
Mr. Knut Rosandhaug, Coordinator, UNAKRT, Phnom Penh, Cambodia
Mr. David Scheffer, Special Expert, UNAKRT
Mr. Anna Halassan, Professional Practices Section, International Audit Division, OIOS

Management Response

**Audit of the United Nations Secretariat's management of the United Nations assistance to the Khmer Rouge Trials
technical cooperation project**

Rec. no.	Recommendation	Critical ¹ / Important ²	Accepted? (Yes/No)	Title of responsible individual	Implementation date	Client comments
1	DESA, OPPBA, and OLA should strengthen the UNAKRT project's fundraising strategy to secure funding to support the financial sustainability of the project.	Important	Yes	Secretary-General's Special Expert in consultation with OLA/DESA/OPPBA	March 2014	<p>The Secretariat Departments have continued to pursue new channels of funding, including through hosting a pledging conference chaired by the Deputy Secretary-General, as well as through joint missions of the Secretary-General's Special Expert and the Cambodian Government to the Association of Southeast Asian Nations states seeking funding for the national component. Unfortunately, these efforts did not result in any major contributions to the ECCC. In addition, the Secretary-General wrote to all 193 Member States, as well as the President of the General Assembly, to raise awareness of the acute financial challenges being faced by the Court, and seeking their financial support. These efforts also did not result in any new contributions.</p> <p>The Secretariat will develop a detailed fund raising strategy and</p>

¹ Critical recommendations address significant and/or pervasive deficiencies or weaknesses in governance, risk management or internal control processes, such that reasonable assurance cannot be provided regarding the achievement of control and/or business objectives under review.

² Important recommendations address important deficiencies or weaknesses in governance, risk management or internal control processes, such that reasonable assurance may be at risk regarding the achievement of control and/or business objectives under review.

Management Response

**Audit of the United Nations Secretariat's management of the United Nations assistance to the Khmer Rouge Trials
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Rec. no.	Recommendation	Critical ¹ / Important ²	Accepted? (Yes/No)	Title of responsible individual	Implementation date	Client comments
						endeavor to identify additional mechanisms for reaching out to new donors.
2	DESA should: (a) ensure that project consultants are selected on a competitive basis; (b) evaluate their performance in accordance with UN administrative instructions; and, (c) report to OHRM on the contracts extended beyond 24 months and seek a solution to continue providing legal services to the accused for the duration of the case.	Important	Yes	Coordinator, UNAKRT (a and b); Director, Capacity Development Office, DESA(c)	March 2014	The Secretariat agrees that the consultants should be selected on a competitive basis, and that their performance is properly evaluated. It should, however, be noted that these consultancies largely relate to expert witnesses called by the Judicial Officials for the trial proceedings. Therefore, the Court is obliged to issue contracts to these specific witnesses, without a competitive process. On the consultants used for the Defense Teams, DESA will seek approval from OHRM on the current modalities being followed.
3	The UNAKRT Project Coordinator should identify and address the cause of the Technical Evaluation Committee's non-compliance with established evaluation criteria when evaluating responses to Request for Proposals, and should issue instructions to the Committee to comply with UN rules and regulations.	Important	Yes	Coordinator, UNAKRT	March 2014	The Secretariat agrees that the Technical Evaluation Committee should adhere to the established evaluation criteria when evaluating responses to RFPs. This issue will be discussed with the Procurement Division, and updated instructions issued to the Evaluation Committee.