

OPINION

New Corruption Allegations Pose Test for Future of KR Tribunal

BY JOHN HALL

More than one Cambodian staff member at the Khmer Rouge tribunal has now come forward with new allegations of kickbacks and corruption involving the court's administration. The tribunal has faced similar allegations before, but this is the first occasion that staff members have been willing to file written complaints, and it seems unlikely that the allegations can be swept under the carpet this time around.

The new allegations, under review by the UN in New York, are an opportunity to test the tribunal's new anti-corruption mechanisms.

Even more importantly, they will test the Cambodian government's commitment to upholding the international standards it promised to honor when it negotiated with the UN to establish the tribunal.

If the Cambodian government fails this test—if it refuses to fully cooperate with the international management's efforts to stamp out corruption, obstructs the process, fails to conduct a thorough and honest investigation, or if the whistleblowers are not protected from retribution—the tribunal will be critically and, in all likelihood, fatally damaged.

Donor nations, already skittish from earlier scandals, are worried.

The UN Development Program has announced that it is withholding donor money earmarked for the tribunal pending a reassessment of the situation in light of the new corruption charges.

Cambodian staff have not been paid, money is drying up fast, and the tribunal faces death by financial starvation.

The Cambodians who have filed the complaints are taking a huge risk: No whistleblower protections exist for them, and they are staking not just their careers but also quite possibly their personal safety on their identities never being revealed.

That such complaints have been filed at all is unprecedented within the notoriously corrupt Cambodian judicial system.

The recent changes in the international management team at the tribunal appear to have encouraged the Cambodians to step forward.

The first brave soul approached deputy director Knut Rosandhaug in June after he announced to his staff on his arrival at the tribunal that he would take corruption seriously.

Similarly, David Tolbert, the UN's Special Expert, announced that dealing with corruption allegations would be one of the mandates of his

appointment. The UN has now received multiple written complaints alleging corrupt practices on the Cambodian side of the tribunal.

Tolbert, who was brought in to put in place policies that would enable the tribunal to move forward, has been formulating an anti-corruption policy in recent months.

He has presented the outline of his much-anticipated policy to the donor nations and to the international and Cambodian staff at the tribunal.

Tolbert's plan consists of three parts in ascending importance.

First, hiring a program officer responsible for training staff in ethics and serving as a conduit for the filing of complaints.

Second, strengthening the existing codes of conduct for Cambodian staff and judges, including a clear statement that giving bribes—not just requesting them—is a violation.

Third, affirming the UN's right to review allegations involving Cambodian staff.

Previously the position had been that only the Cambodian government had jurisdiction in these cases.

When kickback allegations were raised in 2007, the UN was reduced to simply asking the Cambodian side to investigate. UNDP sent a let-

ter to that effect to Cabinet Minister Sok An in January 2008. The result was predictable: Nothing.

Tolbert's markedly different approach is to distinguish between an initial review (intended to assess whether a complaint, prima facie, is adequate to warrant an investigation), and an investigation (the examination of evidence to determine the merits of the allegations).

The former falls within the jurisdiction of the UN, and reflects the responsibility of the international management team to uphold the integrity of the entire tribunal.

Under Tolbert's plan, allegations of corrupt activities are forwarded to New York for review by the Office of Internal Oversight Services, the inspector-general arm of the UN.

OIOS will determine whether the allegations warrant an investigation and, if so, the Office of Legal Counsel will transmit the OIOS report to the Cambodian government.

This plan is a good one—and probably the best available without rewriting the agreement establishing the tribunal.

By having OIOS conduct a review, the UN will be much better informed of the substance and weight of the allegations and in a much stronger position to demand that the Cam-

bodian government proceed.

In addition, the fact that OIOS has conducted a review and recommended an investigation will be made public, which will turn up the pressure on the Cambodians to act.

But there are potential problems ahead. It is unclear, for example, whether the Cambodian government will accept Tolbert's neat distinction between a review and an investigation. Indeed, Sok An has just sent a letter to the Office of Legal Affairs apparently asserting that the UN lacks jurisdiction.

And what if the Cambodian government simply ignores any OIOS recommendation, or launches a half-hearted or sham investigation? If that happens, those individuals who have come forward at great risk will have done so for nothing.

One possible solution is for the tribunal's Project Board and donors to require that a UN-appointed observer be assigned to monitor the investigation and report how carefully it adheres to international standards. The Project Board, in turn, should explicitly withhold future funding if no adequate investigations have been carried out in a timely fashion in response to OIOS recommendations, or if there are any reports of retaliation or threats to witnesses as a result of the investigation.

The fact that Cambodian court staffers have filed complaints about corruption suggests that they desire a tribunal that does more than merely pay lip-service to fighting corruption.

It suggests also that they have faith in the new international management team. And it suggests that some Cambodians seek a legal system freed from political cronyism, patronage and corruption.

This could be the most important legacy of a successful tribunal: serving as a practical example of a court that, though far from perfect, strives to meet international standards.

Let's be clear: The allegations pose an important test for Tolbert's new anti-corruption strategy, but an even more significant test of the commitment of the Cambodian government to upholding international standards. The future of the Khmer Rouge tribunal depends on the response.

(John Hall is an associate professor at Chapman University School of Law in Orange, California and a research fellow at the Center for Global Trade & Development.)

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