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Doubts cast over veracity of ECCC personnel audits observers say **Robbie Corey Boulet** **May 18, 2009**

Lawyers and court monitors maintain that reviews of UN-backed tribunal's human resources practices 'not designed' to unearth evidence of kickback scheme at the centre of graft row.

On February 4, Andrew Ianuzzi, a legal consultant for the defence team of former Khmer Rouge leader Nuon Chea, visited Phnom Penh Municipal Court for his third meeting in less than three weeks with Deputy Prosecutor Sok Kaliyan.

The topic of the meeting was a criminal complaint - filed in January by Ianuzzi and two other international lawyers for Nuon Chea - accusing officials, including then-director of administration Sean Visoth, of "perpetrating, facilitating, aiding and/or abetting" a kickback scheme in which Cambodian employees were forced to hand over portions of their salaries to top tribunal officials.

Government officials have repeatedly claimed that no evidence of such a scheme has ever surfaced, citing a series of international audits assessing, among other things, the court's human resources and management practices.

But lawyers and tribunal observers have dismissed this argument as disingenuous, saying that the audits were not designed to assess kickback allegations in the first place.

During the February 4 meeting, Ianuzzi recalled in an interview last week, Sok Kaliyan indicated - not for the first time - that the complaint would be thoroughly investigated.

But one week later, while at Phnom Penh International Airport to catch a flight to Bangkok, Ianuzzi saw a front page newspaper article reporting that the Municipal Court had abruptly ended the investigation on February 5.

When Ianuzzi returned to Phnom Penh and reviewed the case file, he noticed documents that weren't there when he checked the file on February 4: reports on the audits, which he and others insist don't actually clear the accused officials of anything.

"The audits ... were never intended to detect the type of corruption that has been alleged," John Hall, an associate professor at Chapman University School of Law in California who has written extensively about the tribunal, said via email.

"It is misleading to claim otherwise."

Court spokeswoman Helen Jarvis declined to answer questions for this article.

"I think we have canvassed this issue extensively, and there are reports on our website about all this, so I would refer you to that," she said.

Clean review

The website includes the 25-page Human Resources Management Review, an independent review released in April 2008.

"Robust [human resources] systems have been developed and implemented to address previous shortcomings, to give effective support to the judicial process and to minimize the risk of questionable HR practices occurring in the future," the review said in its conclusion.

"Zero tolerance for non-compliance with HR systems and the Code of Conduct will also support ongoing improvement in the performance of the ECCC."

Sean Visoth said during the press conference announcing the review's release that it was designed "to recap all the separate audits and reviews carried out during the past year, and to assess whether HR management policies and practices of the Cambodian side of the ECCC are transparent, accountable, meet international standards and provide consistent and effective measures against any mismanagement".

At the same press conference, Jo Scheuer, then the country director for the UN Development Program, said, "Based on audits conducted from 2006 to present, there have been no questionable financial transactions, no misallocated resources and no incomplete or missing documentation in support of disbursements made by [the tribunal]. All of their financial transactions have passed audit scrutiny."

But Scheuer said in an interview last month that any kickback scheme would have been "off the books", meaning "there are no figures" that would surface in an audit.

"All the audits are clean because the books are clean," Scheuer said.

Heather Ryan, who has been monitoring the tribunal for the Open Society Justice Initiative, also said it would be impossible to assess kickback allegations with an audit of financial records.

"All reports indicate that staff were paid their full salaries on the books and that it was only after they received them that they made a kickback payment," she said in a May 10 email.

"If this is in fact the case, an audit of the books would not reveal anything about the practice."

Scheuer argued that the only way to investigate the alleged kickbacks would be to interview those making the allegations.

Ianuzzi also said investigators looking to effectively assess the kickback allegations would need to "interview witnesses and try to obtain" all relevant documents.

Several lawyers and observers said the nature of the audits - which they described as inadequate - underscored the need for the government to release the results of a UN review of the most recent kickback allegations, which surfaced last June.

The review was given to government officials last September but has not been made public.

Civil party lawyer Alain Werner said the government's refusal thus far to release the review results was fuelling "the constant speculation, the allegations and the rumours that are going on".

"Let's just disclose this report," he said.

Phay Siphon said in an interview Tuesday that he did not know which government officials had seen the UN review, but argued that its release could sour relations between UN and Cambodian officials.

"We respect each other, as a husband a wife, to create a new baby: the ECCC," he said.

He also reiterated the government's position that there is no need for further investigations into the kickback allegations.

"There have already been audits," he said, "and the findings showed that not a penny has been lost."