

## **In the Cambodian Judges' Court**

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The Khmer Rouge Tribunal in Cambodia is facing a serious crisis stemming from unresolved allegations of a kickback scheme. Yet the United Nations, the Cambodian government and donor nations aren't dealing effectively with the allegations. That task has been handed to the tribunal judges, who have a golden opportunity to make a difference.

Cambodian government officials are alleged to have received kickbacks from Cambodian employees in exchange for securing them lucrative positions at the court. These are serious allegations. Refusing to address them could deal a fatal blow to the court's credibility. That would be a tragedy for the people of Cambodia, who seek justice for the Khmer Rouge's crimes. It would also be a blow for the international donors who funded this important court.

With the trials now underway, the need to finally address the allegations is urgent. And it's becoming clear that the tribunal's international and Cambodian judges are the court's best option to investigate and clear up the corruption claims. The Cambodian judges have vigorously denied that they have in any way been involved in improper practices. All the more reason, then, for them to investigate alleged corruption at their court with similar vigor.

They have already missed one opportunity. In March, defense lawyers for Nuon Chea, the former chief ideologist of the Khmer Rouge, filed a request asking the two co-investigating judges who are responsible for judicial investigation in the civil law tribunal to obtain the results of a U.N. investigation into possible corruption at the tribunal and to launch a review of the corruption allegations. The lawyers argued that this was needed to "assess what, if any, corrosive effects such alleged corruption has had on the administration of justice thus far at the [tribunal]" and to determine whether their client's right to a fair trial has been compromised. Co-Investigating Judges You Bun Leng and Marcelle Lemonde rejected that request.

The judges said that they lacked the jurisdiction to proceed as the requested information was "totally foreign to the facts covered by the current judicial investigations." They added that they couldn't intervene in response to "speculations as to hypothetical negative effects" of corruption, and that an administrative inquiry "would be superfluous" as the U.N. and Cambodian government were "seised of the situation." The defense teams filed an appeal May 4 with the tribunal's pre-trial chamber asking the three Cambodian and two international judges to reconsider the ruling of the co-investigating judges, arguing that "because exposure of the alleged scheme would likely discredit senior officials and

embarrass the U.N., neither institution possesses the requisite impartiality to deal with the matter." Lawyers representing civil parties have since joined the appeal.

If the judges continue to reject requests to investigate the allegations, they risk seeing their tribunal's successes overshadowed by persistent defense claims that corruption renders the trials unfair. Lawyers for civil parties have correctly warned that "arguments in this vein would not only undermine the principle of finality of proceedings, but would render elusive the justice and closure for which the victims of these proceedings have been waiting."

Judges have a responsibility to ensure the proper administration of justice within their court. The claim of the co-investigating judges that they lacked jurisdiction to investigate allegations of corruption involving court personnel was arguably in conflict with this core judicial responsibility. Moreover, a court must satisfy itself that the overall proceedings are fair. Yet the allegations implicate individuals responsible for making legal decisions and administrators and staff responsible for collecting, transcribing, translating and producing the evidence.

The judges' decision is crucial because there are few remaining options if the corruption allegations are ever going to be properly investigated. High-level negotiations between the U.N. and the Cambodian government to produce a credible investigative mechanism failed in April, and donor nations appear unwilling to press the point.

Donor nations have also failed to pressure the court into dealing with the allegations. Last year the U.N. Development Program froze donor funds to the Cambodian side of the tribunal pending a resolution of the allegations, but donors have recently signaled a willingness to support the tribunal regardless. Canberra has asked the UNDP to release Australian funds, stating that it is generally satisfied with the progress being made at the tribunal. When the UNDP refused, Japan provided more than \$4 million directly to the Cambodian government -- enough to fund the tribunal through the end of the year.

In an apparent tit-for-tat response to continuing calls for an investigation of Cambodian court officials, Phay Siphon, secretary of state and spokesman at the council of ministers, stated on May 11 that the Cambodian government is currently investigating allegations of undisclosed wrongdoing involving U.N. court personnel. He said: "We have a file of who's the enemy of the [tribunal]. We don't want to expose any wrongdoing of the U.N. side in order to discredit the [tribunal]. We know who's the enemy of the tribunal and we know who's trying to manipulate what's going on. One day, if we feel the need to release it, we will release it." Andrew Ianuzzi, a legal consultant for the defense team of Nuon Chea, characterized this as "the childish, thuggish behavior we have come to expect from the government."

With the U.N. stymied, donor nations lacking political will and leadership, and the Cambodian government stonewalling and raising counter allegations, all eyes are now on the tribunal's judges. Trial Chamber Judge Silvia Cartwright has stated that "one of the major issues that has been troubling for all the judges is that of corruption within the

[tribunal]. We welcome all efforts to ensure that the allegations are dealt with fully and fairly and that independent measures are put in place to make sure [that claims] are resolved in a transparent manner." The judges now have an opportunity to put these fine sentiments into concrete action and throw their weight behind a competent, credible and transparent investigation of the allegations. It is time for them to deal with an issue which if left unresolved will expose all future judgments to crippling legal challenges.