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Trial on Trial

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The latest revelations about alleged misconduct and corruption at the Khmer Rouge tribunal have startled even its most jaded critics. Indeed, the nature of this dirty laundry suggests that the UN-backed tribunal is so deeply flawed that its very existence needs to be reevaluated.

Corruption allegations are unfortunately nothing new at the Extraordinary Chambers of the Courts of Cambodia, or ECCC. Since 2006 there have been repeated calls by watchdog groups for an investigation into media reports that Cambodian staff and judges at the ECCC had to pay up to 30 percent of their salary to get and keep their job.

In 2008, several Cambodian whistle-blowers filed complaints with UN staff members alleging corruption at the tribunal. The UN carried out a review of these complaints, and in August 2008 sent a report directly to the Cambodian government. The UN has refused to make public the results of its review, and no details of the underlying allegations have been made public. The Cambodian government, predictably, dismissed the allegations out-of-hand as "unsubstantiated," and rejected the authority of the UN to investigate Cambodian nationals.

In January, the defense team representing Nuon Chea, "Brother No. 2," filed a complaint with the municipal court in Phnom Penh claiming that unresolved allegations of corruption violated their client's right to a fair trial. The complaint mentioned two senior Cambodian tribunal administrators - Keo Thyvuth, the former chief of personnel, and Sean Visoth, the head of administration. Predictably, the municipal court refused to act on the complaint.

The report of a delegation from the German Parliament that visited the tribunal in October 2008 raises serious new questions about the nature of the corruption, as well as what the UN knew and when.

In that report - available online at the Bundestag's Web site until apparently being removed on Feb. 25 - the delegates described a meeting with Knut Rosandhaug, deputy director of administration at the ECCC, during which he indicated that the UN had investigated Sean Visoth and "had come to the conclusion that he is guilty of corruption." This is an extraordinary assertion, which, if true, goes to the very heart of the tribunal. Sean Visoth, director of the Office of Administration, is the most senior Cambodian

administrator at the tribunal. In August 2008, he promised to resign if ever found guilty of corruption. He is currently on medical leave.

A presumption of innocence is a cornerstone of justice, and it would be inappropriate to rush to judgment on Sean and assume that the comments reportedly made by Rosandhaug - even if they were in fact made - are in fact accurate. The Bundestag report is hearsay and cannot be used as proof of the truth of the statements alleged to have been made by Rosandhaug.

Nevertheless, the allegations are extremely serious and must be addressed. To this point the Cambodian authorities have routinely dismissed as "unverified" all allegations of corruption that have been brought to their attention. But now the chief Cambodian administrator at the tribunal is implicated by name in the parliamentary report of a donor nation, and that requires clear, thorough and independent review by a competent investigative body.

One thing is clear: The recently agreed-upon mechanism to investigate corruption at the ECCC is woefully inadequate and falls far short of being the competent body required to instill confidence and adequately undertake this important task.

On Feb. 23, the UN and the Cambodian government announced that they had agreed upon parallel but autonomous national and international mechanisms to receive complaints regarding wrongdoing at the tribunal, which would apparently give the Cambodians power to veto any joint investigations of Cambodian staff or administrators. A system where each side handles the complaints of its own staff has already been tried and has failed at the tribunal. The Open Society Justice Initiative, a nongovernmental organization, has criticized the new parallel mechanism as being merely a continuation of the failed current policy while doing "nothing to alter the de facto Cambodian government veto, which has stymied genuine investigations of corruption to date."

Can we trust Cambodian appointees to honestly investigate allegations of corrupt practices by senior Cambodian administrators? Surely not, given the perception of political influence and widespread corruption within the Cambodian judicial system. What is urgently needed is a demonstrably trustworthy investigative mechanism - one free from possible manipulation by Cambodian appointees. Ideally such a mechanism should be independent, with judicial authority and with broad-ranging investigative powers. One option would be to hire an experienced auditing company to conduct a review, with a public report made to the tribunal's judges, containing recommendations for the filing of criminal charges in the municipal court if warranted.

The Bundestag report also suggests disturbing questions about what the UN knew and when, and raises the specter that the UN has once again been complicit in keeping secret the wrongdoings of senior Cambodian tribunal staff.

This would not be the first time that the UN has been accused of covering up evidence of Cambodian misdeeds at the ECCC. In 2007, the UN Development Program attempted,

unsuccessfully, to keep secret the report of independent auditors that had found evidence of such serious flaws in the hiring practices at the tribunal that they recommended the wholesale firing of all Cambodian tribunal staff.

Given the history of allegations about corrupt practices at the tribunal and the level of skepticism and distrust evident amongst donors, civil society and monitors, surely a policy of full disclosure is called for? Leaked reports can seriously undermine credibility, and credibility is a commodity in short supply at the moment in Phnom Penh.

The problem is not so much the whiff of corruption but rather that the UN refuses to deal with it in a direct, transparent and credible way that enhances the credibility of the court.