

Justice and Judicial Corruption

By

John D. Ciorciari

Senior Legal Advisor, Documentation Center of Cambodia (DC-Cam)/
Shorenstein Postdoctoral Fellow at Stanford University's Asia-Pacific Research Center

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Justice in Cambodia is again in jeopardy after the recent publication of a scathing audit of the Extraordinary Chambers in the Courts of Cambodia (ECCC). The audit-prepared by the UN Development Program (UNDP), which administers \$6.4 for the tribunal-accused Cambodian officials on the ECCC of improper recruitment, unwarranted salary increases, and general mismanagement of court operations. The auditors' conclusion was blunt: if the tribunal fails to enact appropriate reforms, the UNDP should consider pulling out.

Cambodian officials have acknowledged "mistakes" but argue that those mistakes do not warrant scrapping the trials altogether. After a decade of arduous negotiations, international officials are also not eager to return to the bargaining table and defer justice once again.

During the tribunal negotiations, this author and many others argued that the international community should not let perfection be the enemy of the good. A mixed tribunal would be difficult to administer, and there would be inevitable tensions and occasional clashes between UN-appointed and domestic officials. Many of the former would lack detailed country knowledge and language skills; many of the latter would lack experience in international criminal law. There would also be difficult gaps to bridge between Cambodian and international laws and procedures. In short, a hybrid tribunal would not be as legally "neat" or efficient as an international court in The Hague, but a balance of considerations made it the best way to advance the aims of justice, reconciliation, and development.

On the whole, the ECCC has made solid progress toward the trials of key defendants. As expected, it is enduring some growing pains. While important, most of these do not challenge the fundamental integrity of the proceedings. For example, the court's

detention orders for Duch and Nuon Chea possess ambiguities, partly due to the application of principles from different legal systems. The existence of three official languages-Khmer, English, and French-has resulted in occasional translation glitches and a serious shortage of translation capacity. The ECCC's office of administration has yet to devise an efficient mechanism for distributing copies of incoming documents to the relevant court officials. The concurrent appointment of Cambodian co-Investigating Judge You Bunleng to the ECCC Appeals Chamber raises questions about conflicts of interest. Other examples exist as well. However, these are the types of problems one would expect to confront in starting a new tribunal.

Corruption is different. Misallocation of funds, bribes, and cronyism are not the type of "imperfection" that the international community or Cambodian public should tolerate as part of the difficult process of running a mixed tribunal and complex criminal proceeding. If the UNDP allegations are true, some officials have abused their power. The Cambodian government and donor community should immediately convene an ad hoc committee or similar body to investigate the allegations further. Corruption would seriously undermine the tribunal's ability to set a positive example for the rule of law in Cambodia. It would also be a grave insult to the survivors of the Democratic Kampuchea regime, who have waited three decades for justice. Corrupt behavior by ECCC officials who themselves survived the Khmer Rouge regime would be a particularly painful betrayal.

Helping to eliminate judicial corruption is one of the goals that the ECCC should seek to achieve. Corruption is commonplace in Cambodia. It involves both local and international actors and has a cancerous effect on the country's governance and growth. Transparency International routinely ranks Cambodia among the world's most corrupt countries-162 out of 179 in the latest survey. During a recent visit to Cambodia, World Bank President Robert Zoellick emphasized the depth of the problem, which has severely undermined a series of development projects in the country. Corruption decreases confidence in contract and property rights, diminishes legitimate foreign investment, and stunts economic development. It also results in countless injustices at local levels. The NGO Global Witness published a damning report on

corruption in resource extractive industries, providing evidence of abuses perpetrated against rural Cambodian communities and the environment. In years ahead, corruption could deny ordinary Cambodians the benefits of the country's newfound oil wealth.

Corruption cannot be allowed to consume either the Khmer Rouge trials or Cambodia's future development. Of course, the Cambodian government has a critical role to play.

The Khmer Rouge trials provide an opportunity to showcase the improvements in Cambodia's governance and legal system, which will garner prestige and much-needed investment. A weak or failed ECCC process would entail considerable reputational costs and damage the country's regional standing, as well as the government's public legitimacy.

The major donors to the tribunal also need to be active. They should organize a task force and ruthlessly pursue any allegations of corruption by international or Cambodian personnel in the ECCC. In addition to creating a mixed committee to review allegations of malfeasance, donors should insist on the immediate correction of any agreed errors to date. More broadly, donors should make it clear to both UN-appointed and Cambodian personnel that the corruption issue is not a red herring. It is one of a few true "deal-breakers" if it is not promptly addressed, and the consequences will extend far beyond the tribunal. Western governments cannot deliver that message alone. Japan must exercise leadership as the primary sponsor of the tribunal, and China and Southeast Asian governments should not be allowed to skirt the issue easily, as they often have in the past.

Putting such a high priority on corruption is a risky proposition. Litigating the issue entails the risk that the trials could again be delayed or collapse altogether. However, corruption is one issue that simply cannot be ignored. The ECCC cannot make survivors of Democratic Kampuchea whole for the abuses they suffered. What it can do is deliver a set of credible verdicts and the promise of a judicial system that will better protect and uphold Cambodians' rights in the future. That is the standard to which it should be held.