

[Back to headlines](#)

Kickback claims stain the KRT

By Cat Barton

Rumors of political interference have dogged the Extraordinary Chambers in the Courts of Cambodia (ECCC) since its inception. Now, recent allegations that Cambodian staffers must provide a portion of their wages to government officials have highlighted the difficulties of introducing international legal standards to a country widely considered to be systemically corrupt.

"The kickbacks have been an open secret for months," said one person close to the trial, who requested anonymity. "The problem with this type of corruption is that it is woven into the fabric of society. The employees who are paying the kickbacks are benefiting. No one is inclined to talk on the record and lose their job. There is a very real fear of retaliation."

Reports concerning a lack of transparency in the hiring procedures of the ECCC began surfacing late in 2006, said the United Nations Development Program (UNDP) in a statement released on February 20. This prompted the UNDP - which has provided \$5 million to the tribunal - to commission an internal audit of the ECCC between January 29 and February 2. The results have not yet been made public.

On January 31, the Khmer-language paper Voice of Khmer Youth, now aligned with the Norodom Ranariddh Party, printed a story that claimed Cambodian ECCC officials - including judges - were paying 30 percent of the salaries to government officials to secure their positions. On February 14, the New York-based Open Society Justice Initiative (OSJI) issued a statement calling for a comprehensive investigation into the allegations.

"The official line is that we are supporting OSJI's determination to ensure the ECCC is a transparent and independent court," said ECCC press officer Peter Foster.

Sean Visoth, the tribunal's administrative director, responded by banning OSJI officials from his offices, and writing a letter to the NGO in which he called the statement "offensive and destructive." He announced he no longer wished to cooperate with OSJI.

"The disconnect between the official line and Visoth's response is understandable," said Theary Seng, director of the Center for Social Development. "Because the ECCC is also a court of public opinion, appearances must be maintained. Part of it is to obscure, part of it is misguided hopefulness, part of it is to buy time, part of it is to shape public perception."

One UN official, speaking on the condition of anonymity, expressed "grave concern" that Helen Jarvis, head of the ECCC press office, "speaks at the behest of the Cambodian government and not for the tribunal as a whole."

Jarvis told the Post on February 22, "It is impossible to respond to anonymous blanket slander. I am carrying out the job for which I have been appointed."

The press office has maintained a positive stance on the discussions over the court's draft internal rules. But people close to the court have said the judges are divided along Cambodian and international lines. One observer described it as a "clash of legal cultures."

"Public statements that the negotiations are going well, when they are not, compromise and even sabotage the negotiations," said Chantal Beaubien, legal adviser for ADHOC's KRT program. "Such statements imply that the international judges will not pull out of the negotiations and abandon the ECCC if international standards are not being met. This weakens the position of the international judges."

Unlike some other hybrid tribunals, the ECCC does not have a separate press office for the administrative and judicial components of the trial. There are no specific plans to create one, Foster said. International judges have chosen to express their thoughts on the progress of discussions over the court's internal rules to the press directly.

"It's part of our job to explain what's going on in this court," Marcel LEMONDE, international investigating judge, told the Post on February 21. "People have been awaiting this trial for 30 years, they wonder why the judicial process appears to be delayed and I believe it would be absurd for judicial officers to refuse to give information at all."

According to Beaubien, international judges bypassing the press office and making statements about their positions directly to the local and international media, means there is a lack of coherence between the position of the judges and that of the press office.

"The channeling of information and statements through the press office is no longer functioning correctly," she said.

ECCC officials are using the media to raise their concerns and communicate their stance on key issues both to the general public and to their colleagues, Seng said.

"There are cultural, linguistic, and political divides between the Khmer and international ECCC officials," she said. "They are using the media as a medium of communicating to their other colleagues. For example, Khmer officials do not believe the UN will pull out of the ECCC."

The international judges have maintained that they cannot participate in a trial that would not be a fair trial, before an independent and impartial court, LEMONDE said.

"This is a non-negotiable issue and, if these conditions were not met, the judges would just have no choice but require the UN to withdraw," he said. "This is not a threat or, worse, bluff - it's just the reality."

It may be tempting to employ threats of a pullout in the heat of the talks,

but it would be premature to walk at this stage, said David Scheffer, the United States Ambassador at Large for War Crimes Issues from 1997 to 2001.

"An enormous amount is now invested in this process of accountability for the atrocities of the Pol Pot regime," he said by email. "Everyone must keep the victims and the larger purpose in focus - justice for the atrocity crimes that devastated Cambodia."

Direct communication and compromise will prove key to resolving the current division over the IRs, Scheffer said.

"Achieving agreement here is not 'mission impossible,' and everyone surely understands how historically significant their decisions will be in the weeks ahead," he said. "Failure now will never be forgiven by the families of the victims or by historians, regardless of what excuses are given."

As the judges seek consensus over the internal rules, and the administrative office deals with allegations of corruption, accurate information, not excuses, is what the public requires, Beaubien said.

"If press office statements are whitewashing the discussions by failing to disclose that they are going badly, the public is no longer properly informed," she said.

Regardless of the problems the trial may encounter - be it audits, allegations, or arguments over the IRs - it is imperative that they are honestly and openly addressed that the trial might go on, Scheffer said.

"If the ECCC fails to become operational and hold trials then I believe that Cambodian society will be taking an enormous risk," he said. "Without the accountability and historical record that ECCC trials can establish, however partial, for the atrocity crimes of the Pol Pot regime, Cambodian society will never fully recognize the significance of what occurred and of the nation's responsibility to prevent such crimes in the future."

[Back to headlines](#)

Phnom Penh Post, Issue 16 / 04, February 23 - March 8, 2007

© Michael Hayes, 2007. All rights revert to authors and artists on publication.

For permission to publish any part of this publication, contact [Michael Hayes, Editor-in-Chief](#)

<http://www.PhnomPenhPost.com> - Any comments on the website to [Webmaster](#)