



Cambodia: Political Pressure Undermining Tribunal Independent, Prompt Decision Needed on Additional Prosecutions

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(New York) - Pronouncements by Cambodian Prime Minister Hun Sen that the UN-backed tribunal on Khmer Rouge atrocities should not prosecute additional suspects call into question the court's independence, Human Rights Watch said today.

In the latest in a series of similar statements, Hun Sen told President Nicolas Sarkozy of France last week that the tribunal should not threaten the peace in Cambodia, which "means only prosecuting these five people," according to a senior Cambodian aide present at their meeting.

"Hun Sen has no role in this court, yet he keeps trying to use his hold over its Cambodian personnel to interfere," said Brad Adams, Asia director at Human Rights Watch. "The UN and international donors need to put their foot down so that the court can get on with its work in an independent and impartial manner."

In a public speech in March, Hun Sen said he would rather see the tribunal fail than have war return to Cambodia as a result of additional trials. "I would pray for this court to run out of money and for the foreign judges and prosecutors to walk out," Hun Sen said.

After the speech, Judge Silvia Cartwright, the most senior international judge at the tribunal, said, "Countries where the rule of law is respected and where their citizens can be sure of a fair trial are those in which the independence of the courts and judges is guaranteed. ... Comments, politically motivated or otherwise, which appear to be an attempt to interfere with that independence are therefore to be deplored."

Based in Phnom Penh, the UN-backed tribunal, known as the Extraordinary Chambers in the Court of Cambodia (ECCC), is prosecuting Khmer Rouge leaders for crimes against humanity in the deaths of up to 2 million people in the late 1970s. Five senior Khmer Rouge officials are in custody: Kaing Guek Iev (Duch), the former chief of Tuol Sleng prison; Nuon Chea, who was the deputy to the Khmer Rouge leader, Pol Pot; the Khmer Rouge foreign minister, Ieng Sary; social affairs minister, Ieng Thirith; and head of state, Khieu Samphan.

Human Rights Watch called for the tribunal's pre-trial chamber, scheduled to meet next week in Phnom Penh, to make a prompt, transparent, and independent decision about the scope of the prosecutions to thwart growing perceptions that court decisions are directed by the government. The issue has been referred to the pre-trial chamber following a dispute between the Cambodian and international co-prosecutors on the referral of additional cases.

In January 2009, the Cambodian co-prosecutor, Chea Leang, rejected the submission of an additional six suspects (one of whom has since died) by the international co-prosecutor, Robert Petit, who asserted that the additional prosecutions fall within the court's mandate and "would lead to a more comprehensive accounting of the crimes that were committed."

While not contesting the strength of the evidence in the individual cases, Chea Leang defended her decision by citing considerations about "Cambodia's past instability and the continued need for national reconciliation." She asserted that the tribunal's mandate - to try senior Khmer Rouge leaders and those most responsible for crimes committed during their four-year rule - can be fulfilled by prosecuting the five people already detained.

The pre-trial chamber, consisting of three Cambodian and two international judges, was designed to resolve disagreements between co-prosecutors and between co-investigating judges. Its decisions are made by a "super majority" of four of these five judges. Four judges would have to agree with the Cambodian co-prosecutor in order to stop the prosecutions from going ahead.

"It is specious for the Cambodian prosecutor to assert that prosecuting five people for the deaths of as many as 2 million people is sufficient," said Adams. "The court has the capacity to take on additional cases. Each decision to prosecute an individual should be based on evidence, not politics."

The Cambodian Judiciary is notoriously corrupt and subject to political interference. Rather than a fully international tribunal as initially proposed by UN experts, at Hun Sen's insistence the ECCC was established as a Cambodian tribunal with UN involvement. A majority of Cambodian judges sit alongside a minority of international judges, with international and Cambodian co-prosecutors.

Human Rights Watch said that attempts to politically influence the tribunal's proceedings violate Cambodia's agreement with the UN in 2004 establishing the tribunal, in which Cambodia agreed to abide by "international standards of justice, fairness, and due process of law."

Ten years in the making and more than three years in operation, the US\$100 million tribunal has been plagued by credible reports of corruption and political interference, as well as difficulty raising funds.

"Declarations by Hun Sen and other Cambodian officials that peace would be threatened by more prosecutions are a red herring," said Adams. "The Khmer Rouge no longer exists and, particularly with Hun Sen's authoritarian grip on the country, no group has the capacity to cause unrest over this."