

Khmer Rouge tribunal must have autonomy

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Hong Kong, China — It took the Cambodian government and the United Nations almost 10 years to agree on a U.N.-assisted tribunal under Cambodian jurisdiction to try leaders of the former Khmer Rouge regime for their crimes. This tribunal – officially known as the Extraordinary Chambers in the Courts of Cambodia, also known as the Khmer Rouge Tribunal – has a trial chamber and a Supreme Court chamber. Cambodian judges are the majority in both.

It also has two co-prosecutors, one Cambodian and the other international, and two co-investigating judges, again one Cambodian and the other international. The United Nations proposed the international judges and prosecutors for appointment by the Cambodian authorities

The tribunal was formed in May 2006 with the appointment of all judges and prosecutors. Not long after, it was hit by allegations that Cambodian court personnel, including judges, had to kick back a significant percentage of their wages to Cambodian government officials in exchange for their positions on the tribunal. The same allegations of kickbacks have been made again over recent months.

While neither the Cambodian nor the U.N. authorities have denied or confirmed these allegations, the tribunal is further facing a shortage of funds, as its original budget of US\$56.3 million donated by the international community is about to run out. It needs an additional US\$44.1 million for 2009, and the international community will not come forth with this new funding until it is confident of a corruption-free environment for the trials.

Another unwelcome development, which has been a serious concern right from the beginning and has now come to mar the tribunal's credibility, is political interference. One foreign official reportedly told a visiting German delegation in November 2008 that the Cambodian government "tries to interfere in the work of the tribunal." That delegation's report says, "The government of Cambodia has already signaled that it will not allow for additional criminal investigations to be opened."

These additional investigations came into the open when the tribunal made public a disagreement over them between the international and the Cambodian prosecutors. According to a tribunal statement dated Jan. 5, the international prosecutor, Robert Petit, wants to "open new judicial investigations against certain additional suspects."

According to Petit, “There are reasons to believe that (1) the crimes described in those submissions were committed, (2) these crimes are within the jurisdiction of this Court, and (3) they should be investigated by the Co-Investigating Judges.” The same statement added that Petit “does not believe that such prosecutions would endanger Cambodia’s peace and stability.”

The same statement said that the Cambodian prosecutor, Chea Leang, “believes that these investigations should not proceed on account of Cambodia’s past instability and the continued need for national reconciliation, (2) the spirit of the agreement between the United Nations and the Government of Cambodia (“Agreement”) and the spirit of the law that established this Court (“ECCC Law”), and (3) the limited duration and budget of this Court.”

Chea Leang “feels that this Court should instead prioritize the trials of the five suspects already detained” and “maintains that this Court’s mandate can be adequately fulfilled by the prosecution of the suspects already detained,” the same statement added.

Following this disagreement, there was public support for additional investigations and concomitant criticism of Chea Leang’s disagreement. Though the names of additional suspects are not known, it has been suggested they could include those serving in the present government.

The Cambodian government objected to the additional investigations and sided with Chea Leang, who is known to be a deputy prime minister’s niece. On Feb. 24, referring to the continued recognition of the Khmer Rouge as the legitimate government of Cambodia after it was ousted, Prime Minister Hun Sen said, “The U.N. and countries that supported (Khmer Rouge Leader) Pol Pot to occupy (Cambodia’s) seat at the U.N. from 1979 to 1991 should be tried first ... They should be sentenced more heavily than Pol Pot.” He acknowledged that their trial was not possible, however.

Later, on March 10, the government spokesman and Minister of Information Khieu Kanharith amplified his prime minister’s unhappiness with additional investigations and urged the tribunal to deal with the five suspects it had detained, accusing the tribunal’s foreign staff of dragging their feet so as to get more pay.

He said: “They have not even heard one case, yet they have created another. They are simply dragging their feet so as to receive more salaries. If they really want to push the process forward, when they have five cases at hand, they should hear these five cases first. When they have finished with them, then they can think of others.”

These reactions have confirmed the allegation that the Cambodian government is interfering in the tribunal’s work. By doing so, the Cambodian government has violated the principle of separation of powers, the independence of the judiciary and the prosecutors’ exclusive power to prosecute, which are all enshrined in Cambodia’s Constitution.

It has also breached the ECCC Law, which gives the tribunal all power to bring to trial Khmer Rouge leaders and those most responsible for crimes committed in that specified period. It has further violated Article 20 of this law on the settlement of the difference between the co-prosecutors by a pre-trial chamber.

The government should let this chamber settle this difference free from any influence. The tribunal will be seen as having been under government pressure if this chamber rules against the additional investigations.

Together with the alleged corruption, the government interference has seriously undermined the majesty and dignity the Khmer Rouge Tribunal must have in order to assert its authority, maintain its credibility and win the public trust.

The Cambodian government must help the tribunal by dealing firmly with corruption in its midst, and heads must roll if need be. But it must absolutely keep its hands off and let the tribunal function free of any interference.

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