



ALLEGATIONS OF POLITICAL INTERFERENCE AT ECCC: OVERVIEW

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The Extraordinary Chambers in the Courts of Cambodia (ECCC) has long been plagued by concerns about political interference. At the heart of this controversy are allegations that the government of Cambodia is exerting undue influence which is dictating the decisions taken by the national co-prosecutor and the rest of the national staff of the ECCC. This controversy resurfaced in full force recently as the tribunal ended a nine month impasse by allowing the international co-prosecutor to officially request the investigation of additional suspects for crimes committed during the period of Democratic Kampuchea.

The dispute over additional criminal investigations officially came before the tribunal in December 2008 when the former international co-prosecutor, Robert Petit, filed a statement of disagreement between the two co-prosecutors with the Pre-Trial Chamber. He wanted to open judicial investigations into a number of additional Khmer Rouge leaders, but such an action was opposed by the national co-prosecutor, Chea Leang. Among several other legal arguments, she cited strong concerns for the peace and stability of Cambodia should such additional inquiries be carried out.

Critics argued that her position was not based upon a legitimate exertion of prosecutorial discretion but rather a direct result of political influence wielded by the government of Cambodia. The Prime Minister, Hun Sen, publicly criticized efforts to prosecute more than the five individuals currently on trial or scheduled for trial. He warned of possible social unrest and of a return to a civil war, suggesting that those who were in favor of additional prosecutions would be responsible for any new hostilities. He argued that a fragile peace formed when the Khmer Rouge was re-integrated into the government would be put in jeopardy as former members of the movement began to fear prosecution. However, the assertion that the country risks returning to civil war has been contested by many people who are familiar with the situation and who argue that there is nothing to suggest the possibility of an outbreak of a civil war.

The Prime Minister also publicly lobbed similar accusations at foreign judges and prosecutors. He accused foreign governments of ordering their nationals at the tribunal to make decisions that would stir unrest and destabilize Cambodia. Creating divisions within Cambodian society, he argued, would allow foreign governments to more easily

occupy Cambodia. The deputy director of administration at the ECCC responded that he had no reason to suspect that there was merit to such accusations. He expected both national and international personnel of the ECCC to act free of political considerations and reiterated his earlier statement that as an established principle, judicial courts do not seek approval from the executive branch.

Human Rights Watch characterized the Prime Minister's reactions to additional investigations as further attempts to influence the court's work and reiterated previous accusations that he was trying to use his hold over the tribunal's Cambodian personnel to interfere with the court. This was the latest in a string of allegations of political interference made by court monitors. A report from the Open Society Justice Initiative alleged that the government was attempting to block the investigating judges from interviewing certain "insider" or "high-level witnesses" who may hold current positions of power and be embarrassed to testify about their involvement with the Khmer Rouge. Moreover, back in June, the defense lawyers for Nuon Chea asserted that they were reliably informed that the national co-prosecutor had received instructions from the government of Cambodia not to pursue additional prosecutions.

It is clear that the Prime Minister is against any new prosecutions. However, it is unclear whether his opposition arises primarily from legitimate concerns about security in the country or from other political objectives. To be sure, there are many grounds upon which one may oppose additional prosecutions. For example, given the wide-spread nature of the crimes, the tribunal is unable to prosecute all those who were responsible so any final number of prosecutions may be seen as arbitrary. Therefore, many people believe that it is better to prosecute those perpetrators currently in custody as a form of symbolic justice and establish another, more efficient, mechanism to pursue other suspects.

It is unclear whether the Prime Minister has influenced tribunal personnel through his public statements or otherwise. The ECCC's judicial integrity and its independence from political interference are fundamental requirements to ensure fair and impartial trials that meet international standards of due process.