

**ក្រុមបេធាវីការពារក្តី អៀង សារី**  
**IENG SARY DEFENCE TEAM**  
**EQUIPE DE DEFENSE DE IENG SARY**

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ANG Udom and Michael G. KARNAVAS

Co-Lawyers for IENG Sary

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To: Editor

Re: *Donors and diplomats show their disapproval of political interference at the ECCC by politically interfering themselves*

Dear Editor,

It was recently reported by Mike Eckel in his article *Cambodia's Kangaroo Court* (Foreign Policy Magazine, 20 July 2011) that “officials from the court’s main donors, which include the United States, Australia, and others, [were prompted] to intervene directly with [International Co-Investigating Judge Siegfried] Blunk and [International Co-Prosecutor Andrew] Cayley multiple times -- by phone and in person,” concerning the very public controversy over Case 003. Eckel also describes how the US war crimes ambassador, Stephen Rapp had “spoken to Judge Blunk directly, informing him that Washington had warned the Cambodian government not to interfere. But he also suggested that money was as much a factor as jurisdiction in deciding which cases to pursue.” Reports of this nature should raise genuine concerns amongst all of those with an interest in the ECCC. This Court was established to show Cambodians and the wider international community that justice is possible here, free from unwanted political interference. It is surprising and saddening to learn of allegations concerning the very people who should have the best interests of the Court at heart.

Whether the outcomes of Cases 003 and 004 have been predetermined because of political interference by the Cambodian government, or because the UN and the donors want to cut their losses, or a bit of both, is a serious matter deserving serious measures with serious answers. The public controversy over the investigation of Cases 003 and 004 has virtually

engulfed the ECCC during the past few months. Fresh allegations of interference are simply adding to this sideshow, distracting attention from the real issues at stake. Since the investigation is expected to be conducted confidentially and since the Investigating Judges are purported to act independently in carrying out their mandate, it may be prudent to be circumspect before casting aspersions and jumping to conclusions. There are procedural mechanisms in place designed to deal with a perceived incomplete investigation or corrupt judicial practices. If there is a belief that one or more of the Investigating Judges are acting unethically, the appropriate solution is to seek their disqualification.


The most troubling aspect of this entire affair is the fact that there are diplomats and representatives from donor countries who think it is appropriate to have private discussions with judges about cases which they are working on. This is not only highly unusual, but highly unethical. Pressure – political interference – can come in many fashions, especially from the end of a telephone from an embassy representing a cash contributor to the ECCC. It is antithetical to judicial independence for diplomats to meddle in the judicial affairs of an ongoing case. Let us be frank, the repugnant *quid pro quo* is almost a given, even if it is unspoken.


Perhaps some diplomats and government representatives are unaware of the fact that there are procedural mechanisms in place to ensure that the parties can raise objections to the results of the investigation. As limiting and frustrating as these procedural mechanisms can often seem, they are precisely introduced to foster fairness, uniformity and accountability, and to minimize, if not totally prevent the parties and outsiders (such as diplomats and government representatives) from interfering with the integrity of the proceedings. What some diplomats and government representatives are doing, however, is nothing short of calling for interference with the judicial process, thereby engaging in the same sort of conduct which they claim to be fighting against. It is truly reprehensible for donor countries to be using the *power of the purse* to achieve a certain outcome, which, undoubtedly, they view as the correct one. Engaging in judicial interference through the use of coercive tactics – all in pursuit of effectuating an independent ECCC judiciary – is contrary to the rule of law.

The rule of law should be applied uniformly by all, including the UN and donor countries such as the US. The Investigating Judges should be left alone to carry out their mandate without any direct or indirect political interference from anyone. If there is cause to believe

that the Investigating Judges are not acting in accordance with their ethical and professional obligations, immediate action should be taken by using the appropriate avenues. To this end, the ECCC would be better served to allow full disclosure and public scrutiny. This would be far more beneficial to building the judicial capacity of the ECCC, and Cambodia at large, than any clandestine meeting scheduled by a powerful diplomat for the purposes of directing the flow of the investigation.

Sincerely,

  
**ANG Udom**

  
**Michael G. KARNAVAS**

Co-Lawyers for Mr. IENG Sary