



## **Analysis: Cambodia's Khmer Rouge tribunal facing credibility crunch**

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Phnom Penh - Observers at the UN-backed war crimes tribunal fear political interference and UN inaction will soon see the end of two cases against several former Khmer Rouge cadres.

In October, Cambodian Prime Minister Hun Sen told visiting UN Secretary-General Ban Ki-moon that he would not permit the cases - known as Cases 003 and 004 - to proceed. They reportedly involve three mid-level Khmer Rouge cadres and two senior military officers from the 1975-79 regime.

Earlier this week the tribunal's investigation arm said it had handed over Case 003 to the prosecution for its assessment. That prompted calls for transparency over fears the process to shelve those cases had begun.

The tribunal's first case, in which former security chief Comrade Duch was convicted of war crimes, concluded in 2009 but is under appeal. The second case, against four elderly Khmer Rouge leaders, will likely begin later this year to determine their alleged roles in the deaths of up to 2.2 million people.

The Open Society Justice Initiative (OSJI), which is funded by US billionaire George Soros and which monitors the tribunal, was among the first to voice its concerns over Case 003.

The OSJI's Clair Duffy said Friday the chances of Case 003 proceeding to trial were 'very low,' not least due to a background of political interference and a recent statement by the Cambodian deputy prosecutor supporting the government line.

Duffy said the investigating judges had failed to speak out against overt political interference.

'And there's an obligation on the part of the UN to speak out on those issues particularly in terms of judicial independence, and they haven't. So why is that?' Duffy asked.

The hybrid tribunal has a parallel structure of international and Cambodian staff in each

area. On Friday, the international co-prosecutor Andrew Cayley said he would do his 'legal duty under the rules and the law of the court.'

'To that end my office is reviewing case file three in order to see what action we will need to take under the rules, in particular whether or not the requests for further investigative actions will be necessary, which I anticipate they will,' he said.

Observers said the case file Cayley's office has been handed is flawed not least since the tribunal's investigation section has done no fieldwork for at least six months despite the serious nature of the alleged crimes.

Anne Heindel, a legal adviser at the Phnom Penh-based genocide research organization DC-Cam, said opposition to the case by the investigating judges and by the Cambodian judges at the pre-trial chamber meant it was unlikely Cayley would be able to keep the case alive.

She said the chances of the case going to trial 'are at about zero' but said blame should be apportioned between the government, the UN and donors.

'There is a feeling that there is a lack of (financial) resources and a lot of people not wanting to move past case two,' she said.

Late last year Germany's Siegfried Blunk took up the position of international co-investigating judge after his predecessor resigned.

However, Blunk did not reply Friday to emailed questions, including why his offices had reportedly not questioned the suspects in Case 003 and had failed to release information about crime sites that would have allowed civil parties to choose whether to take part.

Cambodian-American rights activist Theary Seng, whose parents died under the Khmer Rouge regime and who has applied for civil party status in Cases 003 and 004, described the current process as 'tattered justice for the poor.'

'(This) is an affront to victims of the Khmer Rouge,' she said. 'We deserve more than the cheap justice that is being administered right now.'

Heindel said the decision by the investigating judges not to release any meaningful information over 20 months was likely an error of law since that had precluded potential civil parties from registering. Under the tribunal's rules, those who are granted civil party status are entitled to appeal a dismissal.

'It does indicate this is the end of this case,' Heindel said, but added what would ultimately count would be the reasons the tribunal gave for dismissing the cases in the likely event that happened.

'It's not whether they have these cases; it's the way they're handled,' Heindel said. 'And in

terms of the legacy of this court, that may well overshadow all of its achievements.'