



Cambodia's elusive justice: how the Khmer Rouge Tribunal finds itself in a loaded minefield

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PHNOM PENH, Cambodia—Like those lush green pastures with roaming cows and floating pink water lilies in rural Cambodia, where children still lose limbs every year by taking just one wrong step, this little country's road to justice has been marred by mines. Those judicial bombs have exploded almost annually since the inception in 2003 of a United Nations-backed Khmer Rouge genocide tribunal mandated to hold accountable the architects of one of the deadliest political and military regimes of the 20th century.

But unlike the victims of unexploded ordnances left behind by 20 years of war either by American, Vietnamese or Khmer Rouge forces and lurking between tall rice paddy and zigzagging crocodiles, the victims of these blasts are still nursing old wounds.

In Cambodia, anyone roughly older than 43 years old, making them 7 at the time of the “liberation” of Phnom Penh in April 1975 by young, stoic guerillas dressed in black calling themselves the “Red Khmers,” remembers the military dictatorship. If they weren't part of the at least 2 million people who died of torture, executions or starvation while laboring in the countryside as part of the government's “year zero” agrarian policy, they know someone who did. And though many would rather forget, others want justice.

But adding insult to injury for the regime's survivors—and a vigilante international community—is the controversy that has incessantly plagued the tribunal, known as the Extraordinary Chambers in the Courts of Cambodia (ECCC), almost since day one.

Last month, crisis at the court reached a boiling point. It began October 9, when one of two investigating judges hearing the court's hallmark Case 002, meant to try the four last living senior leaders of the regime for war crimes, crimes against humanity and genocide, resigned, citing government interference. And with that, like dominoes, the bombs just kept on dropping. On October 24, lawyers for “Brother Number Two” Nuon Chea, the most high profile Khmer Rouge leader still living today, sued Prime Minister Hun Sen for criminal interference into the trial. That same day, two international judges in another chamber of the tribunal uncovered what could amount to judicial misconduct in the office of the two investigating judges, putting in doubt much of the work of the tribunal. The revelations were so big, observers feared the court was on its last legs. But the biggest bombshell of all dropped just this past Thursday, when court judges ruled to free the regime's former Social Action Minister Ieng Thirith after medical experts determined her dementia would render her unfit to stand trial in the tribunal's hallmark Case 002, which began Monday.

Court Losing ‘Final Shreds of Credibility’

A highly unpopular judge for his—along with his Cambodian counterpart You Bunleng’s—premature dismissal of two government-opposed cases, 003 and 004, German Co-Investigating Judge Siegfried Blunk made headlines last month when he cited government interference for his resignation.

Despite the court being mandated to try those “most responsible” for crimes during the 1975 to 1979 regime, Blunk and Bunleng in August said they had doubt the defendants in the two cases, five Khmer Rouge leaders allegedly responsible for large-scale purges and executions, met that criterion.

In Case 003, very few crime scenes went investigated and suspects questioned. In April, investigation into the case was closed, with fear that Case 004, which had slightly more investigation, is headed for the same fate.

Following the shelving of both cases, international pressure began to mount for their reopening or the judges’ resignation.

Just a week before Blunk resigned, Human Rights Watch issued a scathing admonition of the judges, calling for their removal and arguing they “egregiously violated their legal and judicial duties” by turning a blind eye to the cases. The organization warned the UN to open an inquiry into the matter before the court’s “final shreds of credibility” were lost.

But the cases fell out of favor with the government long ago. Prime Minister Hun Sen, himself a Khmer Rouge soldier who defected to the Vietnamese in 1977 and whose fight for Phnom Penh against Lon Nol forces in April 1975 with the guerrilla group earned him a glass eye for the one he lost in the battle, has publically stated that the current Case 002 will be the last to be heard.

In October 2010, he told then-UN Secretary General Ban Ki-moon that the two additional cases would not be “allowed.”

Blunk cited in the letter comments by three government officials against the court’s investigating the two cases, including Information Minister Khieu Kanharith, who said in May that “if they [judges] want to go into Case 003 and 004, they should just pack their bags and leave.”

Hun Sen has warned of civil war if the two cases—and any additional suspects—go before the court.

But some say the Prime Minister’s vehement opposition to the cases results more from his desire to let sleeping dogs lie—especially since several former Khmer Rouge soldiers now hold high-ranking positions within the government.

“[The fear of] cases 003 and 004 causing instability and risks to national security is probably real, but completely blown out of proportion,” said Clair Duffy, who monitors the tribunal for the

Open Society Justice Initiative. “With the historic distrust between the government and the UN, the thing we hear more is that the cases might uncover more evidence against other individuals.”

Blunk’s resignation has also added fuel to repeated attempts by lawyers of the four originally accused in Case 002—Nuon Chea, 85, right hand man to deceased Khmer Rouge mastermind Pol Pol; Khmer Rouge Head of State Khieu Samphan, 80; Social Action Minister Ieng Thirith, 79; and Deputy Prime Minister Ieng Sary, 86—to draw attention to their claims of political interference in the court for years.

On October 24, Nuon Chea lawyers Andy Ianuzzi and Michiel Pestman sued Prime Minister Hun Sen and 10 other government and ruling party officials for meddling in the court.

They weren’t the only ones that welcomed Blunk’s resignation.

Former Ambassador-at-Large for War Crimes Issues under the Bill Clinton administration and co-editor of ECCC watchdog The Cambodia Tribunal Monitor David Scheffer wrote in a statement that the resignation “demonstrates that the ECCC has the capacity to self-correct when confronted with unique challenges.”

Still, even though many were happy to see him go, Blunk’s admission has overwhelmingly left the international community fearful that the reputation of the court is beyond repair.

‘The UN Must Change Course’

Almost immediately following Blunk’s resignation, anger quickly turned toward the court’s big brother, the UN. In a recent op-ed to *The International Herald Tribune*, Duffy’s boss, James Goldston, berated the UN for continuously bending to the will of the Cambodian government.

“...business as usual has led to his impasse. At virtually every step along the path since the Khmer Rouge left Phnom Penh in 1979, the UN...[has] disappointed public expectations,” he wrote.

In 2008, the court’s then-Cambodian-staff director Sean Visoth went on “sick leave” after mounting criticism of his instituting a kickback system that netted tens of thousands of dollars each month. “...the UN resisted a full-blown inquiry and then accepted the appointment of a watchdog who...has done little to stem corruption,” Goldston wrote of the scandal.

“In recent months, when Judge Blunk and his Cambodian counterpart seemed determined to shut down an investigation [into case 003] without carrying out any field investigation, interviewing the prime suspects, or allowing victims any say, UN officials again refused to act, claiming, wrongly, that ‘judicial independence’ precluded them from addressing any judicial misconduct short of an express bribe,” he wrote.

And now Blunk’s revelation about government interference in the cases: “Going forward, bland declarations of support for the process will not cut it. The UN must change course.” Seemingly in response, the UN dispatched Under-Secretary-General for Legal Affairs Patricia O’Brien to Phnom Penh to do damage control. Meeting with Deputy Prime Minister Sok An on October 22,

O'Brien told the government to "refrain" from statements opposing the cases and from interfering "in any way whatsoever" in the court.

While applauding O'Brien's timely trip to Phnom Penh as a "good start," Duffy said it wasn't enough. "We've been saying since June there needs to be a full inquiry into the Office of the Co-Investigating Judges."

The latest controversy comes at an inopportune time for the tribunal. On November 21, opening statements were heard in the most-anticipated case of the tribunal, Case 002, with evidence set to be heard Dec 5.

But many worry that this time, even if justice is not obstructed by interference, it just won't move fast enough.

'What Would the Court do if they Died Tomorrow?'

Both Ieng Thirith and Nuon Chea contested their fitness to stand trial, their lawyers arguing they were too sick. And now that medical experts have concluded Ieng Thirith's Alzheimer's-associated dementia undermines her ability to participate in her own trial, she's been ordered to be released. Without an appeal, she could be back in Pailin province, a former Khmer Rouge stronghold, within the week.

With increasing health worries that come with their old age, many in Cambodia are questioning whether the accused will actually be sentenced before they die.

"What would the court do if they died tomorrow?" Ang Moeun rhetorically asked a reporter from the Tribunal Monitor outside the health hearings in August. "And how could the court persecute the dead? Could the dead answer questions?"

Out of more than 14,000 men, women and children tortured at Phnom Penh's S-21 before execution, Vann Nath was one of seven prisoners that walked out on both feet—Duch kept him alive to paint portraits of Pol Pot, who died in 1998.

Testifying at Duch's trial, Vann Nath wept as he remembered being shackled at the feet, hunger forcing him to eat insects that fell from the ceiling. "Even had they given me the flesh of a human being, I would have eaten it," he told the court.

But the horrors of Khmer Rouge atrocities aren't felt only by Cambodians. At the time 27, Kerry Hamill was on top of the world when he left the coast of New Zealand to sail the waters of Southeast Asia with his best friend and a charter passenger in the summer of 1978. On August 13, he would encounter paradise lost.

After being blown off course into Cambodian waters, Hamill and crew would be fired on by Khmer Rouge soldiers while their yacht, the *Foxy Lady*, took shelter behind an island off the south coast of Cambodia. The shots would kill Canadian Stuart Glass, who would be buried at sea.

Shackled and blindfolded, Hamill and Englishman John Dewhirst would be taken to S-21, where they would be interrogated, tortured with a variety of techniques including electric shock, and made to sign confessions admitting they were part of the CIA, which they were not.

Two months after his capture, Hamill would be executed. Following news of Kerry's death, his brother John Hamill would throw himself off a cliff.

To this day, no one knows exactly how Kerry died. There are whispers he was burned alive. More than thirty years later, in April 2011, Blunk and Bunleng told Rob Hamill that he didn't qualify to receive reparations as a civil party in Case 003 because he was not a "direct victim" of the crimes of the accused, said Hamill's lawyer, Lyma Nguyen.

"There was no doubt, from the very beginning—from when the investigative phase in Case 003 was announced to have been concluded to when Rob Hamill received his appalling rejection letter—that political interference was at play," Nguyen said.

But despite a bombshell October 24 decision by two international judges in another chamber of the court calling into doubt Blunk and Bunleng's judicial integrity after uncovering widespread procedural violations in their handling of Hamill's civil party claim, they couldn't overturn the rejection because of a vote split 3-2 along national and international lines.

After reading the decision, which alluded to violations of victims' rights and slammed the judges' handling of the investigations and civil party appeals in Case 003, Nguyen called for a criminal investigation.

"Given the looming specter of injustice, the only remaining hope is that, with the arrival of the new international [Co-Investigating Judge], both [Co-Investigating Judges] will take a different approach," she said in a statement, "by reconsidering the previous rejections of the Civil Party applicants as well as the premature closing of the investigations in Case 003."

That's the best case scenario.

"The worst case scenario is that the court is going to acutely whitewash allegations of Khmer Rouge atrocities," Duffy said.

With odds like those, the UN must be praying there are no more hidden bombs on the road to justice in this traumatized little pocket of Southeast Asia.