



Cambodia's Khmer Rouge tribunal draws new criticisms

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In Cambodia, there is continuing controversy about the United Nations-backed court aimed at prosecuting members of the former Khmer Rouge government. The tribunal is the first of its kind to allow victims of specific crimes to participate.

Prosecution of Khmer Rouge members

German Judge Siegfried Blunk -- who was appointed by the United Nations -- and his Cambodian counterpart, You Bunleng, first drew criticism in April for closing down the investigation into the court's third case against two senior Khmer Rouge military leaders suspected of thousands of deaths. Much of their international staff resigned after the case was shelved.

While Case Three is still under consideration by the court, judges are now determining which victims can participate as civil parties.

Applications rejected

The judges recently rejected the applications of at least three people seeking to participate as victims. One is a Cambodian woman whose husband suffered hard labor and was then executed by the Khmer Rouge.

In their rejection, the judges said her claimed psychological harm was "highly unlikely to be true". They also defined the requirement of "direct" harm so narrowly as to exclude anyone other than the actual victim.

The applicant's lawyer is Silke Studzinsky, who describes the ruling as outrageous. Speaking on Skype, Studzinsky explains why she has appealed.

"None of the reasons has any legal basis. The first reason expresses that our client is only an indirect victim and (is) therefore rejected," Studzinsky said.

Studzinsky says that is "nonsense" since indirect victims were permitted in the tribunal's first two cases - in fact her client was a civil party in those cases, which makes this rejection even harder to comprehend.

Reasoning called into question

Anne Heindel is a legal advisor with the genocide research organization in Phnom Penh called the Documentation Center of Cambodia.

She says the reasoning in the rejection of the civil party applicant failed to meet the minimum standards. "Again it's just the convoluted legal reasoning. It's a clearly outcome-driven process. It doesn't meet the minimum standards of legal reasoning, and, honestly, it's the worst reasoned order I've ever read," Heindel said.

Heindel accuses the judges of applying legal standards that do not fit with the court's jurisprudence, or any other legal authority applying to civil parties.

She says it seems that they are trying to exclude anyone who was not a direct victim from taking part. "And, it's clear and well established that immediate family members are recognized as victims and can participate in these circumstances," Heindel added. "So there's no precedent anywhere that supports the legal reasoning of this decision."

Case Three

More than 300 people applied to be accepted as civil parties in Case Three. The judges have refused to say how many of those applicants have been accepted or rejected.

Although the judges involved in the case have largely declined to defend their decisions, court officials say it is still premature to pass judgment on its work.

Lars Olsen is the legal communications officer for the tribunal. He spoke, earlier this month, at the Foreign Correspondents Club of Thailand.

"The legacy and the final judgement over whether this court was worth the money, the efforts, the resources, will have to wait until we have seen the end of it," Lars said. "And, then, you know, basically what happened, what was the end game, and then was it all worth it. Until then, we are just speculating."

When asked about the latest controversy about the judges' decisions, Olsen says those decisions are subject to appeal and that process is underway.

While the Khmer Rouge victims are working with the court, outside observers are appealing to the United Nations to investigate the work of the co-investigating judges.

Outside observers monitoring tribunal

The [Open Society Justice Initiative](#), which has been monitoring the tribunal since its creation, has issued harsh criticisms of the decisions, saying they violate basic legal norms and call into question the independence and competence of the investigating judges.

Clair Duffy is a trial monitor for the Open Society Justice Initiative. She has called for the United Nations to investigate the court. "Most recently there's been a whole string of decisions coming out of the Office of the Co-Investigating Judges that don't meet basic

requirements or adhere to international standards or even comply with the court's own prior jurisprudence," she stated.

This is the second time the OSJI has appealed to the United Nations for an investigation, but so far the U.N. has given no indication that it plans to do so.

Martin Nesirky, a spokesman for U.N. Secretary-General Ban Ki-moon, said by email that the United Nations expects the judicial process to be free from external interference. He wrote that the U.N. would not comment on issues under judicial consideration including the civil party appeals.

Nesirky did not reply to a question asking whether the U.N. appointed Judge Siegfried Blunk retains the support of Ban and U.N. headquarters.