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Conflicts imperil future Khmer Rouge trials

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BANGKOK — As it prepares to open its most complex and significant case, a United Nations-backed Cambodian tribunal trying former Khmer Rouge leaders has been torn by conflict over what critics are calling interference by the Cambodian government and inaction by the United Nations.

At least four foreign members of the legal staff have walked out in recent weeks to protest an apparent decision by top investigators not to pursue new prosecutions beyond the first two cases, which involve the conviction of a prison chief last July and the impending trial of four leaders of the movement, which was responsible for the deaths of 1.7 million people from 1975-79.

Political and legal analysts say the investigators' stance casts a shadow over a tribunal that had been intended, among other things, to demonstrate the workings of a legal system untainted by politics and the official impunity that has been common in Cambodia.

The investigators' actions conform with the frequently and forcefully stated view of Prime Minister Hun Sen that two trials were enough and that, as he told the United Nations secretary general, Ban Ki-moon, last October, a so-called Case 3 was "not allowed."

The tribunal is an often contentious joint endeavor between the Cambodian government and the United Nations and includes partnerships of Cambodian and foreign co-prosecutors and co-judges. It uses a civil law system in which investigating judges pursue possible indictments forwarded to them after a preliminary investigation by prosecutors.

In what is known as Case 3, the co-investigating judges conducted only perfunctory interviews of witnesses and visits to alleged crime sites and did not inform the potential defendants, both accused of being senior Khmer Rouge military commanders, according to a detailed report released Tuesday by the Open Society Justice Initiative, an independent legal and human rights advocacy group.

About 20 months after the files were forwarded to them by the prosecutors, the co-investigating judges — Siegfried Blunk of Germany and You Bunleng of Cambodia — announced in April that their investigations were complete.

The case is still technically open until the judges issue a "closing order" that can amount

to an indictment.

“The court’s actions suggest that the outcome of a case has been predetermined, and that judges have refused to gather evidence or investigate facts, possibly in response to repeated and publicly expressed demands of senior political leadership,” said the Justice Initiative, which has been closely monitoring the trial.

The judges strongly asserted in a statement last month that they had acted independently, without outside interference.

On Tuesday, Mr. Ban issued a statement denying critics’ accusations that the United Nations was not pushing for more prosecutions in a tribunal that has already lasted nearly five years and cost more than \$100 million.

“The United Nations categorically rejects media speculation that we have instructed the co-investigating judges to dismiss Case 3,” the statement reads.

So far, the tribunal has produced one conviction, after an eight-month trial, of Kaing Guek Eav, known as Duch, the commandant of Tuol Sleng prison. He was sentenced to 35 years, which was reduced to 19 years. An appeal is pending.

The second case, to begin on June 27, is expected to be more complex and to last longer, with more defendants, more tenuous charges of command responsibility and more aggressive defense lawyers who have already filed a flurry of pretrial motions.

The defendants, who are in custody on the grounds of the tribunal, are aging and mostly in poor health, and there are concerns that some may not live to hear verdicts on their cases. The Khmer Rouge leader, Pol Pot, died in 1998.

The defendants are Khieu Samphan, 79, the nominal head of state; Nuon Chea, 84, described as the movement’s ideologue; Ieng Sary, 85, the foreign minister; and his wife, Ieng Thirith, 79, who was minister of social affairs.

As for Case 3, although the defendants have not been publicly named, leaked documents show that they are Sou Met and Meas Mut, both of whom are now believed to be generals in the Cambodian armed forces following an amnesty when the last guerrilla remnants surrendered in the late 1990s.

The prosecutor’s submission accuses them of responsibility for “forced labor, inhumane living conditions, unlawful arrest and detention, physical and mental abuse, torture and killing” and of taking part in purges “which resulted in at least thousands and quite probably tens of thousands of deaths.”

Alone in pushing Case 3 forward is the international co-prosecutor, Andrew Cayley, who has filed motions asking the judges to reopen their investigations.

In any case, he said, Case 2 would be the court's main legacy.

“The second case that is about to commence is extremely important,” he said. “The four most senior living members of the Khmer Rouge regime. It will probably be the largest and most complicated prosecution since Nuremberg in 1945.”