



Credibility of Khmer Rouge tribunal under threat May 11, 2011

Observers at the UN-backed Khmer Rouge tribunal in Phnom Penh fear political pressure and UN-donor inaction have doomed its third and fourth cases. On Monday the court's international prosecutor called on the investigating judges to do more work on the third case. But that likely won't make much difference.

CARMICHAEL: The wheels of international justice tend to move slowly, and the Khmer Rouge tribunal in Phnom Penh is no exception. It didn't hear its first case until 2009, three decades after the Khmer Rouge were overthrown having caused the deaths of around 2 million people. The prosecution has long envisaged no more than 10 people would face trial in four separate cases. Case One involved a man called Comrade Duch, the former security chief, whom the court last year convicted of war crimes and crimes against humanity. Case Two involves the four senior surviving leaders of the Khmer Rouge movement, and is scheduled to start later this year.

But it is the final two cases - known as Cases Three and Four - that are causing concern. They involve the last five suspects, as well as tens - if not hundreds - of thousands of deaths. However many observers fear they are doomed, thanks to political interference from the Cambodian government, which has said repeatedly it would not permit them to proceed. Its stance has led most Cambodian staff at the tribunal to stop working on the cases. Inaction by the United Nations and donor reluctance to keep funding the court have also not helped.

A fortnight ago Case Three was in the tribunal's investigation's office, its home for nearly two years. The role of the investigating judges is to examine the allegations against the suspects - by interviewing witnesses, visiting crime sites, that sort of thing - as they seek to find evidence of guilt or innocence. Case Four is still with the investigating judges, but on April 29 they announced they had closed their Case Three investigation and handed the file to the prosecution. This week international co-prosecutor Andrew Cayley handed it back, saying it needed a lot more work.

CAYLEY: If you're asking me how much more investigation needs to be done, I would simply use the words "a significant amount" of investigation is still left to be done in that case. So what has Cayley asked the investigating judges to do?

CAYLEY: I don't consider that the investigation is concluded and I've asked for a number of steps to be taken including the interviewing of the suspects who are named in the introductory submission, and a number of other steps including investigation of crime sites also originally named by the prosecution in the introductory submission, which

haven't been investigated at all.

CARMICHAEL: Under the tribunal's rules, the investigating judges can ignore Cayley's requests. If that happens the international prosecutor's last chance is to appeal to a bench of five judges - three of whom are Cambodian. The case hasn't got there yet. However we do know the investigating judges failed to interview the suspects in Case Three and did not even tell them they were under investigation. Clair Duffy is a trial monitor for the Open Society Justice Initiative, or OSJI, which is funded by US billionaire George Soros. She says it's the first time she has heard of that happening at an international tribunal.

DUFFY: I think it's surprising, shocking even that at the very least they weren't offered to participate in interviews and that the allegations - very, very serious allegations against them - weren't put to them and them asked to respond to that. To me that's a very basic investigative act to undertake in any investigation.

CARMICHAEL: Case Three has got victims' lawyers worried too. The Khmer Rouge tribunal was the first to allow victims - who are known as civil parties - to take part. They played a key role in Duch's trial and will do so again in Case Two. But the investigating judges refused to say which crime sites they were looking at, which meant ordinary Cambodians had no idea whether the crimes being examined affected them personally. And that meant they could not apply to register as civil parties with the investigating judges.

In the past week or so just four people have applied as civil parties for Case Three. None has yet been approved, and the deadline for applications expires in a week. Civil party lawyers say the investigating judges have deliberately excluded their clients. The OSJI's Clair Duffy says it appears the investigating judges have "next to zero" interest in the rights of civil parties to take part in Case Three.

On Tuesday the international investigating judge, Siegfried Blunk, replied to a list of emailed questions, one of which asked whether he thought his office had kept potential civil parties for Case Three sufficiently informed. He replied they had "ample opportunities" to find out what was going on through the tribunal's Victims' Support unit. But that is at best disingenuous: The victims' unit has no access to the case file, and until prosecutor Andrew Cayley took it upon himself to publish the crime sites this week, the unit itself did not know what sites Judge Blunk's office had investigated. Judge Blunk did not reply to further emailed questions.

The combination of political interference, United Nations' silence and donor fatigue mean Cases Three and Four are highly unlikely to proceed. Some suspect the UN is colluding to shut them down. If true, that could account for what looks to be a very poor Case Three investigation.

The bigger picture is that this tribunal was meant to provide some accountability and answers for what happened to millions of Cambodians during their nation's darkest days. The tribunal has made important strides in that direction, but the way it deals with Cases Three and Four could significantly undermine that legacy. This is Robert Carmichael in Phnom Penh.