

From tragedy to sham in Cambodia
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Cambodia's United Nations-backed war crimes tribunal will finally begin hearings on Monday in its second case against senior surviving leaders of the former communist Khmer Rouge regime.

Three accused - Nuon Chea, the regime's chief ideologue, Ieng Sary, its foreign minister, and head of state Khieu Samphan - will face a raft of charges including crimes against humanity, war crimes and genocide for presiding over an agrarian revolution that led to the death of an estimated 1.7 million Cambodians during 1975-1979. Prosecutors and defense teams will deliver their opening statements to what is expected to be a packed gallery, followed over the coming weeks by witness testimonies.

The opening of the long-awaited second trial, known as Case 002, marks an important milestone for the Extraordinary Chambers in

the Courts of Cambodia (ECCC) following last year's landmark conviction of Khmer Rouge jailer Kaing Guek Eav. The three figures set to go on trial were more important in shaping the regime's overall policy than was the former school-teacher known also as "Duch", who was sentenced to 30 years jail for heading the grisly S-21 prison facility in Phnom Penh.

On Thursday, however, judges announced that the trial's fourth defendant, Ieng Thirith, the former Khmer Rouge minister of social affairs, was unfit to stand trial and should be released. The decision came after court-appointed medical experts testified last month that the 79-year-old - a sister-in-law of the regime's "Brother No 1", Pol Pot, and the wife of fellow accused Ieng Sary - was suffering from "moderate dementia" and would be unable to follow the complex trial proceedings.

"Trial and continued detention of an accused who lacks capacity to understand proceedings against her or to meaningfully participate in her own defense would not serve the interests of justice," the judges said.

The timing of the ruling - just days out from the second trial - only underscores the advanced age of the three remaining defendants, octogenarians who have been plagued by frequent health problems since their arrests in 2007. Recognizing that time is short, the ECCC has opted to try each of the charges in the complex second case separately.

After the opening statements, court spokesman Lars Olsen said, the court will examine the formation of the Khmer Rouge regime and the roles played by each of the defendants. Afterwards, attention will move to the regime's forced evacuation of Phnom Penh in April 1975 and other subsequent forced population movements.

"It was decided to sever the case because it would be too complex to do everything in one trial. We hope this will expedite the proceedings," Olsen said.

Aside from the race against time, the tribunal is also battling a rising tide of damaging allegations, including political interference, judicial misconduct and violations of victims' rights by some court staff - accusations that threaten to overshadow the trial proceedings. Court investigators have been accused of deliberately botching their investigation into a possible third case, known as Case 003, which was closed in April without any suspects or witnesses being interviewed or any examination of crime scenes.

Critics claim the two co-investigating judges - German Siegfried Blunk and Cambodian You Bunleng - bowed to pressure from the Cambodian government, which stridently opposes any future prosecutions. (Last year, Prime Minister Hun Sen told visiting United Nations Secretary General Ban Ki-moon that more trials were "not allowed".)

Blunk resigned his post on October 10, claiming officials' comments about the future cases gave an impression of "attempted interference" by the government. Facing increasing calls for action, the UN dispatched Patricia O'Brien, the head of its Office of Legal Affairs, to Phnom Penh, where she asked Cambodian officials to refrain from interfering in the tribunal's work. No move has yet been taken to investigate the court.

Virtual veto

A key problem is the ECCC's constitution, a unique hybrid model that pairs international and Cambodian judges under the auspices of the domestic court system. On controversial issues, the court's Pre-Trial Chamber, which handles disagreements between judges and prosecutors, has split cleanly along national lines, with the three Cambodian judges toeing the government's line and the remaining two international staff dissenting.

The fact that the ECCC operates under the jurisdiction of the domestic courts, which are closely controlled by Hun Sen's ruling Cambodian People's Party, gives the Cambodian strongman a virtual veto over much of the court's activities.

Though the public's focus is now on the second case, victims' advocates and court monitors say political interference - and the UN's weak response thus far - could affect perceptions of the current proceedings. Clair Duffy, a court monitor with the Open Society Justice Initiative (OSJI), said the constant split decisions in the Pre-Trial Chamber "raise the question of how far this issue of political interference has leaked."

While certain legal shortcomings could arguably be excused in the wider pursuit of justice, she said the principle of judicial independence was non-negotiable. "The

requirement of judicial independence is a fundamental one," she said. "I don't think that pragmatic allowances can be allowed to deviate from those requirements."

In a report last month, the OSJI called on the UN to launch an investigation into the investigation of Cases 003 and 004, including allegations of "misconduct, incompetence, and lack of independence" on the part of Judges Blunk and Bunleng. Writing in the Wall Street Journal, John Hall, a professor at Chapman University School of Law, said an "independent, credible and transparent" investigation was needed to establish the facts. "The stakes are too high for anything less," he wrote.

Duffy said her organization still had hope that the situation could be turned around at the ECCC, but that the UN would have to take concerted action. "If it goes unaddressed by the UN and the international community it risks undermining the achievements the court's made to date, as well as any future achievements in Case 002," she said. "There's too much history to this for them to just push ahead."

Olsen declined to comment in detail on how allegations of political interference might impact Case 002's proceedings, saying it was "too early to tell" what the tribunal's legacy would be. Others have gone further, arguing that the time might be ripe for the UN to pull the plug on the controversy-plagued court altogether. Last week, Theary Seng, a Cambodian-American survivor of the Khmer Rouge regime and a prominent advocate for victims' rights, withdrew her status as a civil party to the court, describing the proceedings as a "complete sham".

She said the UN should threaten to withdraw after setting some clear conditions for its continued participation. By pressing ahead, Seng said, the world body runs the risk of rubber-stamping a flawed process and further embedding cynicism in the Cambodian population.

"I understand the unwieldiness of any large bureaucracy, but at the end of the day it comes down to personalities, and there have been extremely weak personalities," she said. "In this regard, the UN is complicit."