

# The Phnom Penh Post

## **KRT needs endgame: report**

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The Khmer Rouge tribunal must not send its politically sensitive third and fourth cases to Cambodia's domestic courts if it hopes to preserve fair trial standards and its own judicial legacy, the Open Society Justice Initiative says in a report set to be released today.

Government officials and Cambodian staff at the Extraordinary Chambers in the Courts of Cambodia, as the tribunal is formally known, have expressed opposition to Cases 003 and 004, which feature five suspects whose names remained confidential. Referring these cases to domestic courts, the OSJI says, risks diminishing "not only the credibility of the referred cases but also the confidence in the application of international standards ... to the other cases before the court".

"The Cambodian government's continuing (and apparently successful) efforts to politically influence the ECCC make it impossible to believe that an entirely Cambodian institution could operate independently," the report says.

The court's "completion strategy" has been a topic of discussion for officials from the UN, the government and donor countries in recent months as they consider the court's uncertain future beyond its second case, which is due to start some time next year.

"These discussions are actively going on at the moment," international co-prosecutor Andrew Cayley said in September.

"Certainly, the motivation for that is partly to satisfy the donors that we're not going to keep on spending their money forever, and partly also, and probably more importantly, for the government to know that the mandate of the court is going to come to an end in the not-so-distant future."

In a meeting with United Nations Secretary General Ban Ki-moon last month, Prime Minister Hun Sen said he would not allow Cases 003 and 004 to move forward due to concerns about national security. Minister of Information Khieu Kanharith later suggested that the cases could be remanded to domestic courts.

Council of Ministers spokesman Phay Siphon said yesterday that prosecutions following Case 002 would exceed the tribunal's mandate, which, according to a 2003 agreement between the government and the UN, limits prosecutions to "senior leaders" and those "most responsible" for crimes under Democratic Kampuchea. Additional prosecutions, if necessary, could be handled within the Cambodian judiciary, he said.

"If something's happening, we could handle it through the local courts," Phay Siphon said. "We understand that our agreement between the Royal Government of Cambodia and the UN is [for Cases] 001 and 002, and we've learned so much from that experience."

The OSJI argues, however, that the court's experience has demonstrated that the Cambodian legal system alone cannot be relied upon for a fair trial.

"In view of the consistently voiced threats of political interference ... there is currently no reason to believe that, absent a requirement capable of ensuring meaningful international engagement, a fully domestic successor court would be capable of conducting fair trials or of acting independently and impartially," the report says.

Last year, international prosecutor William Smith made introductory submissions for Cases 003 and 004 to the court's Co-Investigating Judges over opposition from Cambodian Co-Prosecutor Chea Leang; in June, French Co-Investigating Judge Marcel Lemonde announced that he was moving forward with the investigations despite a lack of support from You Bunleng, his Cambodian counterpart.

In September, the two international judges in the court's Pre-Trial Chamber recommended an investigation into alleged political interference in the work of the court, though the three Cambodian PTC judges said this was unnecessary.

UN court spokesman Lars Olsen said the tribunal was "planning its operations according to the current caseload it has", including Cases 003 and 004.

"Any deviation from that would have to be initiated by the signatories to the 2003 agreement, which would be the Royal Government of Cambodia and the United Nations leadership," he said.