

Prosecutor speaks out
James O'Toole and Cheang Sokha
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Khmer Rouge tribunal co-prosecutor Andrew Cayley has announced plans to request additional investigation in the court's controversial third case, saying allegations of grave crimes including enslavement, torture and murder "have not been fully investigated".

The announcement comes amid speculation from court observers that the tribunal's investigating judges may have deliberately botched the investigation in the face of opposition from the Cambodian government.

Last month, the court's co-investigating judges announced the conclusion of their investigation in Case 003, the suspects in which remain officially confidential but whom court documents reveal as former KR navy commander Meas Muth and air force commander Sou Met.

During the roughly 20 months of investigation, however, judges filed no charges against the men, and they were not even summoned for questioning.

In a statement released yesterday, Cayley listed a series of additional investigative steps he plans to ask the judges to perform, as he is permitted to do under court rules. Among these requests are the questioning of the suspects, additional interviews with witnesses and further investigation of the alleged crime sites.

"The International Co-Prosecutor will request these actions as he is of the view that the crimes alleged in the Introductory Submission [submitted by the prosecution in 2009] have not been fully investigated," the statement read.

The tribunal's third case as well as its fourth, the investigation for which is still pending, have come under fierce criticism from Cambodian officials. During a visit to the Kingdom by Ban Ki-moon last year, Prime Minister Hun Sen told the United Nations secretary general that Cases 003 and 004 "will not be allowed".

Prosecutors have said they will not pursue cases beyond these two.

Information Minister Khieu Kanharith said yesterday that the government's stance on the investigations was unchanged, repeating a warning about them to the United Nations-backed court's international staff.

“If they want to go into Case 003 or 004, they should just pack their bags and return home,” he said.

Cayley responded that he was only doing his legal duty, which he called “not just a matter of law, but also a matter of conscience”.

“The day that the government or that the Minister of Information dictates that we are not to follow the internal rules and the laws of the court is obviously a day when the government needs to very seriously consider whether or not it wants to go on supporting the court,” he said.

International prosecutor William Smith made submissions for Cases 003 and 004 to the investigating judges in 2009, despite opposition from Cambodian co-prosecutor Chea Leang, who has argued that the five suspects in these cases do not fall within the tribunal’s mandate to investigate “senior leaders” and those “most responsible” for crimes during the Khmer Rouge era. Chea Leang said yesterday that her position on the matter remained unchanged.

Over the course of the Case 003 probe, the judges provided no public updates on their investigation to guide victim complaints and civil party applications. Their silence stood in marked contrast to the frequent updates offered during investigations in the court’s first and second cases for the hundreds of KR victims who became civil parties.

Cayley thus took it upon himself yesterday to offer details of the Case 003 investigation. In addition to several crime sites that also appear in Case 002, the following new sites, he said, feature in the third case: the S-22 security centre in Phnom Penh; Wat Eng Tea Nhien security centre in Kampong Som province; Stung Hav rock quarry in Kampong Som province; the capture of foreign nationals off the coast of Cambodia and their incarceration at S-21 prison; and security centres in Ratanakkiri province.

With time running out for victims to apply as civil parties in Case 003 – the deadline is May 18 – Cayley said he would request that the investigating judges extend the application period for an additional six weeks.

“I think that the experience of the first and second case has demonstrated how important the civil parties are, both in terms of their fundamental right to participate and also the fact that a number of them turned out to be extremely effective witnesses in the trial,” he said.

Whether or not the Cambodian government ultimately succeeds in blocking Cases 003 and 004, Clair Duffy, a trial monitor with the Open Society Justice Initiative, said the court would tarnish its legacy if it declines to pursue these investigations properly.

“There’s no question that this is a crucial moment in the court’s history,” she said. “This is a moment when the court can actually set this situation right and avoid a lot of damage being done to its overall reputation and credibility.”

Cayley himself also acknowledged these broader concerns.

“I think that the court has to ensure that due process takes place, and I think that if it doesn’t do that, we’re going to end up in a very difficult situation for the institution generally,” he said.