

## **Tensions rise at Khmer Rouge genocide tribunal**

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The international genocide tribunal in Cambodia, established to try former Khmer Rouge leaders allegedly involved in crimes against humanity, is facing a severe crisis amid accusations the Cambodian authorities are blocking the prosecution of several ageing suspects.

In a rare public airing of long-simmering differences, judges overseeing the \$200m tribunal yesterday ordered the international prosecutor withdraw within three days his demand for further investigations into five potential defendants. The prosecutor, Andrew Cayley, who has made clear he believes there is sufficient evidence to merit further inquiry into the actions of several former Khmer Rouge members, has refused to do so. He said he will appeal against the judges' demands.

"I am following procedure," Mr Cayley, a British lawyer, told The Independent last night. "The procedures give me the right to review the investigation that has been carried out by the judges. If I think it's appropriate, I can ask for further investigation to take place."

At the heart of a dispute currently, being played out in legal filings and statements, is a seemingly intractable disagreement over how many potential suspects should be brought before the court. Five suspects, among them Comrade Duch, or Kaing Guek Eav, who was convicted last summer, have been formally charged. According to Cambodian prime minister Hun Sen, himself a former Khmer Rouge commander, that is where the matter should end; last year, in a clear transgression of the rules on which the tribunal was set-up, he told UN secretary general Ban ki-Moon that he wanted to see no more people brought to trial. He claimed it would be damaging to the nation.

But many associated with the tribunal, believe others could be brought before the court and that the rules allow for an investigation into such individuals. Accordingly, in addition to the case of Comrade Duch, known as case 001, and case 002 which will hear allegations against Khieu Samphan, the former head of state, Ieng Sary, the foreign minister, his wife Ieng Thirith, the minister for social affairs, and Nuon Chea, the prime minister, the tribunal has formally established cases 003 and 004 for preliminary inquiries by the investigating judges.

Officially, the identity of those named in the additional cases remains secret. But it is widely assumed that case 003 relates to Meas Muth, a former commander of the Khmer

Rouge navy who is accused, among other things, with the kidnap and murder of several foreign tourists, and air force commander Sou Met.

In late April, the investigating judges declared they had finished their inquiries into case 003 despite having interviewed just a small number of potential witnesses and having not even spoken to the suspects themselves. Their announcement was quickly followed by a statement from the Cambodian co-prosecutor, Chea Leang, who is close to the family of Hun Sen, who said she believed those named in case 003 were not “senior” or “most responsible” Khmer Rouge members, as required by the court.

It was that decision that led Mr Cayley to request a further investigation into five potential defendants. “Case 003 addresses alleged crimes of murder, extermination, torture, unlawful imprisonment, enslavement, persecution and other inhumane acts,” he said. “If proven, these acts would constitute crimes against humanity.”

Alex Bates, who spent three years at the tribunal as a prosecutor and led the prosecution of Duch, said he believed it was now very unlikely there would be any further prosecutions. He said he was shocked the judges were not making efforts to carry out full investigations into the potential defendants of cases 003 and 004. “It seems pretty obvious it’s because of the [influence] of the Cambodian government,” he said. “I find it depressing that this is the case.”

Johnathan Birchall of the Open Society Justice Initiative, which has been monitoring the tribunal, said it was concerned about the transparency of proceedings. “Because the Cambodian government has clearly expressed against pursuing cases 003 and 004, if the court is not acting for political reasons it needs to say on what legal basis it is making the decision,” he said.

Anywhere up to 2m people may have died during the rule of the Maoist-inspired Khmer Rouge, which seized power in Cambodia in 1975. Hundreds of thousands died from disease and starvation, or else were murdered in “killing fields” established in rural areas where the regime established agricultural labour camps.

The process to establish a tribunal to try the most senior surviving members has been fraught with difficulty. Hun Sen, who has doggedly held onto power for more than 25 years, always dragged his heels over the process. Many observers have accused him of trying to undermine the proceedings. Two years ago when another international prosecutor, Robert Petit, stood down, he warned that the tribunal needed to act against guard against corruption, political meddling and a debilitating lack of funds.”

Theary Seng, whose parents were killed by the regime and who spent time as child in the labour camps, said she was angry with the tribunal’s judges. In particular she criticised the court’s international co-investigating judge Siegfried Blunk . “I am repulsed and disappointed by the UN,” said Ms Seng, author of a memoir, Daughter of The Killing Fields. “We expected more.”

Many believe cases 003 and 004 will now not proceed. Yesterday, in a potentially vital indication, New Zealander Rob Hamill, whose brother Kerry was captured and killed by the Khmer Rouge while sailing with friends in the Gulf of Thailand in 1978, revealed he had failed in application to be a civil party to case 003.

He told the Phnom Penh Post he believed Meas Muth played a “pivotal role” in his brother’s capture. In his statement Mr Cayley said the “capture of foreign nationals off the coast of Cambodia and their unlawful imprisonment” constituted part of the evidence in case 003. “Given the ‘confidential’ classification of the decision – which in itself is baffling – I can only say that it appears the decision is based on political convenience rather than a proper application of the law,” Mr Hamill said in a statement. “The conduct of Cases 003 and 004 appear[s] to be politically influenced and the actions of the investigating judges are an affront to the principles behind the establishment of this tribunal.”