



Cambodia tribunal – judges bowing to political pressure?

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Judges will announce “sometime next year” if two politically sensitive cases will be heard at Cambodia’s tribunal, according to the court’s international co-prosecutor. The decision will hinge on whether the suspects can be considered “senior leaders or those most responsible” for crimes committed by the Khmer Rouge regime.

Andrew Cayley made the comments during a presentation to about 70 teachers attending a training course on Khmer Rouge history. In a question and answer period following his talk, one teacher asked about the status of the court's third and fourth cases (003 and 004), which the government has warned will not be “allowed” to go to trial.

Cayley noted that prosecutors built those cases before he was appointed to the court in 2009.

“They were put into my lap,” he told the teachers. “The only thing I can do is follow the law and the rules of the court in addressing these case. Ultimately, it will be a matter for the judges to decide whether people involved in these cases were senior leaders or those most responsible.”

Mid-ranking cadres

The identities of the suspects have not been released, but leaked documents reveal that 003 involves the heads of the Khmer Rouge navy and air force, while the suspects in 004 were mid-ranking cadres who allegedly oversaw mass killings and other atrocities in areas under their control.

In a recent statement, the co-investigating judges said they had “serious doubts about whether the suspects (in 004) are ‘most responsible’”. But the judges shared no information about the nature of those doubts.

In an interview last month with VOA, Investigating Judge Siegfried Blunk expressed similar doubts about the suspects in 003.

Political pressure

Observers worry that such statements indicate the judges are bowing to political pressure and preparing to dismiss the cases. The judges ignited an ongoing controversy when they closed down the investigation into 003 despite failing to interview suspects or examine sites that may contain mass graves.

Cayley has lodged an appeal with the Pre-Trial Chamber, which can ask the judges to re-open the investigation. He said in an interview that Blunk's statements regarding doubts that the suspects fall under the jurisdiction of the court are premature.

"I believe that you've actually got to carry out a full investigation before you can make that determination of whether somebody is either senior or most responsible," he said.

An August 5 "Court Report", released by the public affairs section of the tribunal, notes that investigations are ongoing into 004. An investigating judge interviewed key witnesses in July, and legal staff members are examining more than 50,000 pages of "evidentiary material", according to the report.

On August 19, the court also released a redacted version of Cayley's appeal to the Pre-Trial Chamber – a move Cayley had requested in its text.

Inadequate investigation

Among other arguments, the appeal states that the investigation carried out by the investigating judges was inadequate and did not produce enough information to determine whether the suspects fall under the court's jurisdiction.

"Given that the PTC (Pre-Trial Chamber) has ruled that jurisdictional issues are fundamental, without further investigations it is highly possible that the entire Case 003 could be dismissed," the document reads.

In an interview, Cayley noted that Blunk told VOA that he and his Cambodian counterpart, You Bunleng, developed a criteria to determine whether suspects fall under the jurisdiction of the court, under the categories of senior leaders or those most responsible".

"My office will be asking for those criteria because we haven't seen them so far," he said. "And certainly when we can make an assessment ourselves whether that test actually falls within the remit of international criminal law."

Jurisdiction

He added that the Supreme Court Chamber is expected to issue a judgement soon regarding the court's first case, which will deal with the issue of jurisdiction.

"I anticipate they will be coming up with their own set of criteria which Judge Blunk will be bound by," he said.

Cayley was referring to an upcoming judgment in response to an appeal by Duch, a Khmer Rouge prison chief who was convicted last summer. He appealed his sentence, arguing that he had no choice but to follow orders and thus did not fall under the court's jurisdiction.

Cayley said the court is expected to issue a verdict by the end of this year.