



ECCC: Case 002 – “toxic atmosphere”

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Thirty-two years after the fall of one of the 20th century’s bloodiest regimes, a tribunal in Cambodia will begin trying the four most senior Khmer Rouge leaders still alive. But the trial commences under a cloud of controversy, with observers questioning the UN-backed court’s independence.

On June 27, the Trial Chamber will begin a four-day “Initial Hearing” to decide on the final witness list and to hear preliminary objections. Witnesses and suspects are due to take the stand in August.

The suspects in the court’s second case, known as Case 002 are: Nuon Chea, the regime’s chief ideologue, known as “Brother Number Two”; former foreign minister Ieng Sary; his wife, Ieng Thirith, who was Minister for Social Affairs; and Kheiu Samphan, the regime’s former head of state.

Last summer, in Case 001, judges sentenced torture centre chief Kaing Guek Eav, better known by his revolutionary name, “Duch”. He has filed an appeal.

Prosecutors have built two more cases – known as 003 and 004 – against an additional five suspects. But the Cambodian government has told the UN it will not allow those trials to go forward. And the investigating judges have been accused of bowing to political pressure by failing to properly investigate Case 003, thereby examining no evidence that would necessitate bringing the politically sensitive case to trial.

Observer groups were dismayed when the co-investigating judges announced on April 29 that they had concluded their investigation even though neither they nor their staff conducted interviews with the suspects or visited crime scenes that may contain mass graves. Several UN-employed members of the Office of the Co-investigating Judges (OCIJ) legal team have since resigned in protest, including Stephen Heder, who is considered one of the world’s leading Khmer Rouge historians.

In his resignation letter, Heder said the OCIJ ended the investigation into Case 003 “effectively without investigating it”. His letter, addressed to Siegfried Blunk, the German co-investigating judge, characterized the working environment at the OCIJ as a “toxic atmosphere of mutual distrust”.

Blunk and his Cambodian counterpart, You Bunleng, issued a statement in response

saying they “welcomed the departure” of employees who questioned their “sole responsibility” to make decisions regarding Case 003. In a previous statement they lashed out at “disloyal” staff who leaked confidential court documents.

Although the OCIJ has kept Cases 003 and 004 hidden behind a veil of secrecy, confidential documents reveal the identities of the suspects and some of the evidence against them. The suspects in Case 003 are Khmer Rouge Navy Commander Meas Mut and Air Force Commander Sou Met. In addition to their military roles, both men held influential political positions within the regime.

Case 004 involves three mid-level Khmer Rouge leaders: Ta Tith and Ta An were both second in command to Khmer Rouge officers who controlled areas where massacres took place. The third suspect is Im Chaem, a former district chief who prosecutors say oversaw construction of the regime’s biggest irrigation project, which involved the forced labour of thousands of people.

The Open Society Justice Initiative (OSJI) has called for an inquiry by the UN into alleged political interference and the conduct of UN officials, including the investigating judges, who are sworn to “act independently, and not upon the instructions of any government or any other source. These recent developments threaten the Court’s legacy for Cases 001 and 002, for Cambodia’s rule of law, and for the ongoing fight against impunity,” the group said in a report released June 14.

In response to such criticism and “media speculation” that there had been an internal decision to not to try Cases 003 and 004, UN Secretary General Ban Ki-moon issued a statement June 14 defending the co-investigating judges.

“The co-investigating judges are not under an obligation to provide reasons for their actions at this stage of the investigation in Case 003,” said the statement, noting that the decision to close the case is subject to “further consideration.” International Co-prosecutor Andrew Cayley has asked the Pre-trial Chamber to order the OCIJ to reopen the investigation into Case 003.

But OSJI noted that chamber judges have tended to split along national versus international lines. With the chamber containing more Cambodian than international judges, OSJI said the Pre-trial Chamber is “unlikely” to send case 003 back for further investigation.