



## **Outside influence allegations dog Khmer Rouge trials**

**David Boyle**

**November 2, 2009**

The beleaguered Khmer Rouge trials in Cambodia have hit another obstacle. In a motion filed last week, two pre-trial judges, Australian Rowan Downing QC, and a Dutch national, have been accused of taking instruction from their respective governments.

The Khmer Rouge tribunal has endured considerable controversy in its four years of existence, and the latest scandal is yet another setback to expedient justice for victims.

BOYLE: The Extraordinary Chambers of the Courts of Cambodia were created to try the leaders of the Khmer Rouge regime, which is accused of killing more than two million people in the 1970s.

But instead of bringing justice to a generation, many believe its become entrenched in its own politics.

The lawyers of accused war criminal, Ieng Sary, have filed a motion requesting that two pre trial judges, including Australian Rowan Downing, be removed from the court due to a public perception of bias.

Radio Australia has obtained a copy of the motion that seizes on comments recently made by the Cambodian Prime Minister.

He's alleged the two judges have been acting on the orders of their respective foreign governments.

Michael Karnavas is one of the co-defence lawyers who filed the motion.

KARNAVAS: "What we're saying is we're caught in the middle of all of this, we're entitled to a fair trial. The average person in Cambodia believes their Prime Minister, the United Nations hasn't stepped up to the plate, to either defend these judges or to show that they've taken any action to look into these allegations. The judges haven't spoken up I expect because of their position, but we want this matter cleared."

BOYLE: The two pre-trial judges, Mr Downing and Dutch national Katinka Lahuis are

unable to comment on either Hun Sen's comments or the motion being filed against them.

But a spokeswoman for the court, Yuko Maeda, says the court believes all their court officials are behaving appropriately.

MAEDA: "We believe all the judicial officials who work at the ECCC are performing accordingly, independently from any of the executive bodies. This is the international standard, ECCC is following the international standard. We believe that none of the judicial officials who are working at the ECCC is influenced by any executive body."

BOYLE: Heather Ryan is a court monitor with the Open Society Justice Initiative.

She's seen no evidence to confirm the allegations, but says they should be publicly addressed to protect the credibility of the court.

RYAN: "Many of the international players and the judges are in my view, unfortunately reluctant to speak publicly when statements like this that impact the credibility of the court are made and I think it's part of that sort of general reluctance of commentators and officials of the courts to speak about what's going on in the court publicly. There's kind of a conspiracy of silence."

BOYLE: An early report into the court's activities prepared for the U.S. Agency for International Development concluded corruption was "pandemic" within the administration of local officials with bribery a widely accepted practice.

A subsequent report produced by the court, which was initially suppressed, revealed similar findings.

But there is no suggestion that these allegations relate to the judges of the court.

And lawyer Michael Karnavas dismisses any suggestion that his motion is designed to further erode the tribunal's reputation, arguing it upholds expectations of transparency and due diligence.

KARNAVAS: "I haven't made these allegations, somebody else has. I'm not the one getting kick backs from the national staff. I'm not the one who is hiding the UN report, others are doing that. So you can't blame the defence for trying to shed light and trying to make this process as transparent as possible."

BOYLE: Ms Ryan -- of the Open Society Justice Initiatives -- says the court should be concerned about mounting public scepticism over its transparency and capacity to deliver swift and effective justice.

RYAN: "The court has an obligation now, if its to preserve its obligation to the

people of Cambodia to go out of its way and take additional steps to be transparent, to scrupulously deal with any allegations of misconduct or wrong doing and to ensure that people can see that they actually are serving the interests of justice. Right now when everything is done behind closed doors people don't see that and so when statements like the one that is alleged by Ieng Sary's lawyers are made, it feeds on a kind of inherent suspicion."