



Sheen comes off Khmer Rouge trial

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The courtroom on the dusty outskirts of the Cambodian capital may have been hosting what has been described as 'the most important trial in the world.' But the sheen is already coming off a case aimed at holding to account four accused of being closely involved in the deaths of more than 2 million people during the Khmer Rouge's reign in the 1970s.

The problems in the UN-backed case centre on additional investigations pending at the tribunal. Although prosecutors have said they will pursue just two more cases beyond the current 'Case 002', Cambodian Prime Minister Hun Sen has already come out strongly against doing so, reportedly telling UN Secretary General Ban Ki-moon last year that Cases 003 and 004 'will not be allowed.'

Now, it appears UN court staff may be bowing to this political meddling, raising uncomfortable questions for a court that was established in part to combat Cambodia's culture of impunity.

'There's no question that this is a crucial moment in the court's history,' says Clair Duffy, a trial monitor with the Open Society Justice Initiative. 'Judicial independence is an issue that goes to the heart of this institution, and not something that just relates to Cases 003 and 004.'

Under the court's procedural rules, modelled on the French civil law system, prosecutors make initial submissions to a pair of judges who then make a decision on whether to indict or dismiss a case after conducting an investigation. The court's foreign prosecutors made submissions in Cases 003 and 004 in 2009 – notably without the support of their Cambodian counterparts – and in April, the judges announced the conclusion of investigations in the third case.

While the suspects' names remain officially confidential, court documents reveal them as Khmer Rouge navy commander Meas Mut and air force commander Sou Met, aging former cadres now living quiet lives after defecting to the government years ago.

The judges provided scant public information about the investigation of these men during the roughly 20 months that it was open, leading court observers to question whether the case was being handled properly. With the announcement of the investigation's closure – which came in a terse, late-afternoon press release on the Friday before a holiday

weekend – those fears gained new urgency.

In response, British prosecutor Andrew Cayley requested that the judges perform a series of additional investigative steps, as he's permitted to do prior to a final decision from the judges on whether the case will go to trial. Among the steps Cayley said had yet to be taken were tasks so basic as to put the integrity of the original investigation into doubt.

The investigating judges apparently made no effort to solicit complaints from victims during their probe, after hundreds gave statements in the first and second cases, nor did they conduct detailed investigations of a series of potential crime sites named by the prosecution. The suspects themselves weren't even questioned.

At least three UN staff members from the investigating judges' office have resigned in protest over the judges' handling of Case 003. Noted Khmer Rouge-era historian Stephen Heder, who served as a consultant to the investigating judges, accused them of shutting down the case 'effectively without investigating it,' and spoke in his resignation letter of a 'toxic atmosphere of mutual mistrust' within the office. The judges themselves, Cambodian You Bunleng and German Siegfried Blunk, have declared their judicial independence in a series of increasingly hostile public statements in recent weeks, though this has done little to assuage public concerns; the Open Society Justice Initiative called last month for a UN investigation into the matter.

The Cambodian government has long been against the third and fourth cases, and has shown no sign that it will change its views any time soon – Minister of Information Khieu Kanharith said in May that foreign court staff interested in pursuing the cases could 'pack their bags and return home.' Cambodian court staff, meanwhile, have toed the government line in opposing Cases 003 and 004, claiming that these suspects don't fall within the tribunal's mandate to investigate 'senior leaders' and those 'most responsible' for Khmer Rouge crimes.

The country's domestic courts are thoroughly controlled by the executive branch, so it's little wonder that Hun Sen feels he can manipulate the genocide tribunal as well. The precise source of the government's opposition, however, remains unclear. Hun Sen has warned that prosecutions in Cases 003 and 004 could plunge Cambodia back into 'civil war,' though few observers see this as likely. The legacy of distrust between the United Nations and Cambodia likely plays a role – as a result of the cynical Cold War calculus of the age, the Khmer Rouge held Cambodia's seat in the UN General Assembly until 1991, as Hun Sen often points out.

Also of concern for the prime minister, himself a former KR battalion commander, may be the numerous Khmer Rouge defectors who were gradually lured to the government side in the years leading up to the collapse of the movement in 1998. Even with a guarantee from prosecutors that the court will shut down after Case 004, the sight of fellow mid-level cadres on trial may be enough to strike fear into some current members of government and destabilize Hun Sen's carefully crafted patronage network.

In a political climate as authoritarian as Cambodia's, it's likely unrealistic to believe that the will of well-intentioned international lawyers will prevail over the entrenched views of the government. The court's international donors, meanwhile, have been publicly silent on the matter, amid suggestions that they may be reluctant to fund the chronically cash-strapped institution for several more years.

Whatever the result of all the legal wrangling still to come, the unwillingness of either Cambodian or foreign staff to take a principled stand against government interference would be a blow to the much-discussed legacy of the tribunal. For the Cambodian public, the message sent by quiet dismissals of the court's new cases would be heard 'loud and clear,' says Ou Virak, president of the Cambodian Center for Human Rights.

'The message will be that the government gets what it wants, always,' he said.

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