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No justice in the killing fields

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More than 30 years after the murderous Khmer Rouge were driven from power in Cambodia, the U.N.-backed effort to bring justice to the victims of the killing fields stands on the brink of ignominious failure due to political interference from the Cambodian government and the indifference of the international community.

A hybrid court, the Extraordinary Chambers in the Courts of Cambodia, has spent over \$200 million since it was set up in 2003 with both international and local judges and prosecutors. It has tried only one person: Kang Kech Eav, or Duch, the head of the notorious Tuol Sleng prison complex, who is appealing his conviction for crimes against humanity, murder and torture.

Now Cambodia's Prime Minister Hun Sen has taken an axe to further proceedings. In power for over 25 years, Hun Sen has repeatedly and publicly declared that the court should try only one more case (case "002" in court parlance), against four detained senior ex-Khmer Rouge leaders, all of whom are in their late 70s or 80s.

As for five additional unnamed suspects, whom the court's pre-trial chamber approved for investigation, Hun Sen bluntly informed U.N. Secretary General Ban Ki-moon late last year that they would not be "allowed" to go forward.

The reason offered is the supposed threat any additional trial would pose to peace in Cambodia. Others suspect that the prime minister is simply enforcing a pact he long ago cut within his ruling Cambodian People's Party that none of its ex-Khmer Rouge members would ever be tried or otherwise exposed for crimes they committed, no matter how serious.

Other actors have their own reasons for acquiescing in this. Donors want to save money and are anxious for the court to wind up operations.

Having invested more than a decade in negotiations to launch the court and keep it alive, the United Nations finds it hard to walk away now. It is institutionally committed to the court, even though in 2002, then-secretary general Kofi Annan recommended against U.N. involvement in a tribunal which he rightly believed lacked adequate protections against precisely the kind of political interference that is blocking the additional cases.

Mr. Annan was compelled by pressure from the United States, Australia, France and

Japan to accept the present flawed structure (the International Criminal Court is limited to prosecuting crimes that were committed after it was established in 2002).

Court officials are thus caught in a trap. The fearful Cambodian staff must respond to political pressures. Even international staffers feel constrained to focus their efforts on making the most of case 002, given the unlikelihood of any further trials.

As a result, the right course of action — allowing all cases currently before the judges to proceed through to completion — now seems unattainable. Advocates of impartial justice are faced, as they have been throughout the morally tainted history of this tribunal, with a choice of lesser evils.

One option under discussion would involve deception. According to various sources, court officials might “gracefully” dispose of the additional five suspects, for example, by presumptively finding that none of them are among those “most responsible” for Khmer Rouge crimes, as the governing statute requires. Such a move would implicate the court in a political decision to halt proceedings.

Unfortunately, this is where things seem to be headed. By their own awkward admission, the Cambodian and international judges responsible for investigating the additional cases have restricted their staff to desk review; no field investigation is underway. This month the deputy national co-prosecutor reaffirmed there would be no further prosecutions. The fix, it seems, is in.

A preferable, if still distasteful, alternative, would be to honestly horse-trade abandonment of the additional cases in exchange for a guarantee of total government cooperation, and full donor resources, for case 002.

The United Nations and the Cambodian authorities should openly declare that the hybrid court will cease operations after conclusion of case 002 due to government objections and the lack of continued funding. As part of the squalid bargain, the government should publicly commit itself to lifting its illegal veto of the pending witness summonses and comply swiftly with any other court order or request.

Even with these conditions fulfilled, victims of the Khmer Rouge will be cheated of the more comprehensive accountability further trials would have produced. And every Cambodian will know that all the will the international community could muster was not sufficient to create a truly independent court. It's time for the U.N. to end the charade.