

All the News Without Fear or Favor

The CAMBODIA DAILY

Political Interference Takes Toll at KR Tribunal

Without full UN investigation, credibility of the court in tatters

By JULIA WALLACE
THE CAMBODIA DAILY

In 2002, former UN Secretary-General Kofi Annan pulled out of talks to form the Khmer Rouge tribunal, citing his grave reservations about possible political interference in the work of the court.

Nearly 10 years and \$150 million later, the court's international investigating judge has just resigned, saying that government interference made it impossible

for him to continue in his job.

In his resignation statement, Siegfried Blunk referred to comments made by Prime Minister Hun Sen, Information Minister Khieu Kanharith and Foreign Minister Hor Namhong warning judges not to pursue two hot-button cases known as 003 and 004.

But Judge Blunk could easily have found dozens of others. The prime minister was known to oppose the two cases even before they were formally opened in September 2009. Over the past 10

years, he has made repeated public statements that no more than five Khmer Rouge suspects should be tried.

Just days before prosecutors forwarded cases 003 and 004 for investigation, Mr Hun Sen gave a speech predicting that mass bloodshed lay ahead for Cambodia. He said up to 300,000 people could die if the court "prosecuted without thinking of peace and national reconciliation."

In October 2010, Mr Hun Sen

Continued on page 2

Tribunal...

CONTINUED FROM PAGE 1

bluntly told visiting UN Secretary-General Ban Ki-moon that cases 003 and 004 were "not allowed."

Judge Blunk claimed in his resignation that, until recently, he believed this statement by the prime minister "did not reflect general government policy." But it is hard to imagine how government officials could have more clearly articulated their feelings about the cases over the past several years.

"All the information that Judge Blunk provides is already public," said Anne Heindel, an adviser to the Documentation Center of Cambodia (DC-Cam). "The government's position against additional trials has been well known all along. The major significance of his statement is thus his acknowledgement that the public's perception of the integrity of the court has been severely compromised by alleged corruption in the Office of Co-Investigating Judges."

Outrage over Judges Blunk and You Bunleng's handling of the government-opposed cases has mounted since April, when they prematurely closed Case 003—which involves war crimes and crimes against humanity allegedly committed by Khmer Rouge army and navy commanders—without even interviewing the suspects.

The judges reportedly did an equally poor job investigating Case 004, even as they refused to release crucial information on crime scenes to victims and the public.

The court's reputation may now be beyond the point of salvaging due to the circumstances of Judge Blunk's resignation. What happens next depends largely on the UN, which reacted to the judge's resignation with what has become characteristic reticence.

In a short statement, echoing words the UN has used before on several occasions, a spokesman for Mr Ban said he "emphasized



Prime Minister Hun Sen, right, with UN Secretary-General Ban Ki-moon in Phnom Penh in October 2010. Mr Hun Sen has publicly opposed the Khmer Rouge tribunal cases 003 and 004, and he bluntly told Mr Ban during his visit that the cases would not be 'allowed.'

that the ECCC must be permitted to proceed with its work without interference from any entity."

But this time, words of appeasement from UN headquarters may not be enough.

Several tribunal observers said the UN-backed court simply cannot move forward without an independent investigation into charges of political interference.

"Judge Blunk's admission that he has faced sustained governmental pressure over cases 003 and 004 compromises the Office of the Co-Investigating Judges and all of its work," said Ms Heindel. "Whether or not it is fatal to the integrity of the court as a whole, including Case 002, can only be determined by a full and independent UN investigation."

Clair Duffy, who monitors the tribunal for New York-based Open Society Justice Initiative, called the UN's statement "shocking" in its refusal to address the underlying causes of Judge Blunk's resignation.

"We're going to run into the exact same problem a little bit down the track until the UN has

called for an absolute and unequivocal withdrawal of all Cambodian government expressions of will about these cases," she said.

The UN said it hoped to replace Judge Blunk with his reserve, Laurent Kasper-Ansermet, as soon as possible, but installing another international judge in the seat will only offer a cosmetic fix, Ms Duffy said, pointing out that both Judge Blunk and his predecessor, Marcel Lemonde, had struggled to deal with government interference.

John Hall, a professor at Chapman University School of Law in California, said the future of the court depended on whether the UN would support Judge Kasper-Ansermet in reopening Case 003 and making "a thorough, credible and transparent investigation of the additional suspects."

"If he does, then the ECCC may yet preserve some degree of legitimacy," he added. "But if the UN simply allows business as usual, unable or unwilling to demand that the political interference cease, then the future of the ECCC is necessarily bleak."

What comes next for the court

will also depend substantially on its donors, who supply nearly its entire budget.

In December 2009, a budget projection forecast that the court would spend another \$148 million between 2012 and 2015. But donors could prove less than keen to provide these funds for a court now proven to have had its work disrupted by a controlling government.

"The court is already short of donations, and it is hard to imagine that any states will be willing to provide additional financial support until this matter is resolved," said Ms Heindel of DC-Cam.

Up until now, donors have declined to make strong statements on the progress of cases 003 and 004, focusing instead on the crucial importance of the upcoming trial of four senior regime leaders. But defense lawyers for Khmer Rouge Foreign Minister Ieng Sary, Social Action Minister Ieng Thirith, Brother Number Two Nuon Chea and head of state Khieu Samphan have been arguing for years that political interference

Continued on page 3

Tribunal...

CONTINUED FROM PAGE 2

has tainted all the cases at the court, not just the ones opposed by the government. And Mr Blunk's resignation just made their job much easier.

"They are definitely going to have more fodder for the allegations they have already made that their clients cannot be fairly tried by this court," said Ms Duffy. "That is why, until the UN addresses it head-on, it threatens the absolute foundation of the institution."

Michiel Pestman, a defense lawyer for Nuon Chea, who has long complained of interference

and bias at the court, said his team would be exploring "all the necessary and possible legal steps and avenues" in response to Judge Blunk's statement.

"He is resigning because of government interference in his judicial investigation," Mr Pestman said. "We should understand what that means. It means that the national judge is not acting independently, the same judge who investigated in Case 002."

"The question now is, does this court have a future?" he asked.

"Something fundamental has to change, or this court has no future as an internationalized court able to give a fair trial independently from outside interference."