

Justice denied for Cambodia

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The trial of three senior leaders of the Khmer Rouge — Ieng Sary, Nuon Chea and Khieu Samphan (known as Case 002) — began in November in Phnom Penh before the Extraordinary Chambers in the Courts of Cambodia (ECCC).



Each is charged with genocide, crimes against humanity and grave breaches of the Geneva Conventions. The ECCC has the jurisdiction to try the 'senior leaders of Democratic Kampuchea' and 'those who were most responsible' for the atrocities committed between 17 April 1975 and 6 January 1979.

But Cambodian Prime Minister Hun Sen wants to stop further trials of Khmer Rouge military and political leaders who were among the most responsible for one of the 20th century's bloodiest genocides. The Cambodian government's obstructive approach to justice for the 2.2 million victims of Cambodia's Killing Fields goes back to the tense and often acrimonious negotiations surrounding the court's establishment.

The Cambodian government requested UN assistance in bringing the Khmer Rouge to justice in 1997. In 1999, a UN-mandated Group of Experts called for the establishment of an international tribunal to investigate and prosecute those responsible for serious violations of international law.

However, Hun Sen then argued that any international criminal prosecutions could threaten Cambodia's national reconciliation and therefore insisted that any tribunal should be entirely Cambodian. Many observers believe Hun Sen was concerned about the possibility that such trials could expose the responsibility of current Cambodian political leaders for atrocities committed during the Khmer Rouge period.

A compromise was ultimately found in 2005 with the establishment of a 'hybrid tribunal', staffed by both Cambodian and foreign nationals, and jurisdictionally located within the Cambodian court system. In every chamber there is a majority of Cambodian jurists, but any

decision not to proceed with a case requires a super-majority, requiring the support of at least one international judge. Many court watchers and NGOs believe this system has enabled the Cambodian executive to wield enormous influence within the tribunal.

Case 002 concerns the prosecution of the Khmer Rouge's senior leadership; Cases 003 and 004 are focused on 'those most responsible' for atrocities but who are not part of the regime's senior leadership. The suspects in these cases are well known. In Case 003, Meas Muth, the Khmer Rouge navy commander, and Sou Met, the air force commander, are accused of crimes against humanity and war crimes. In Case 004, three regional officials, Aom An, Yim Tith and Im Chem, are alleged to have committed genocide and crimes against humanity.

[Hun Sen has consistently stated](#) ^[1] that no more than four or five individuals will be charged, and Cases 003 and 004 'will not be allowed'. In May this year, Information Minister Khieu Kanharith reaffirmed this, warning international staff that 'if they want to go into Case 003 and 004, they should just pack their bags and leave'. The Cambodian and international co-investigating judges closed the investigation of Case 003 in April 2011, without questioning the suspects, or even examining the alleged crime sites.

Criminal prosecutions are a crucial element in restoring and rebuilding societies which have suffered from mass-atrocity crimes. They provide victims with cathartic relief and a sense of justice, promote individual recovery, psychological healing and collective relief. As an international criminal court, the ECCC promises the global community's support for the victims of Cambodia's genocide, and it must be allowed to operate independently.

Ending the court before the trial of all those most culpable for the Khmer Rouge's crimes would also contradict emergent norms in international criminal law, regarding the culpability of individual perpetrators of crimes against humanity. Moreover, the statute of the International Criminal Court (ICC) provides that cases will be inadmissible only under exceptional circumstances. The ICC's Appeals Chamber decided in July 2006 in its *Decision on the Prosecutor's Application for Warrants of Arrest* that arrest warrants for crimes committed in the Democratic Republic of the Congo should not be limited to the most senior leaders. The Appeals Chamber said that excluding all but the most senior leaders from prosecution '[could severely hamper](#)' ^[2] the preventive, or deterrent, role of the Court by announcing that any perpetrators other than those at the very top are automatically excluded from the exercise of jurisdiction by the Court'.

Prevention is the most important objective of international criminal law, and is not served by token prosecutions of the best-known and most-senior violators of crimes against humanity. The Cambodian government should be pressured to ensure all three trials are held, thus avoiding a very bad precedent.

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[1] Hun Sen has consistently stated:

<http://www.eccc.gov.kh/en/articles/statement-international-co-investigating-judge>

[2] could severely hamper: <http://www.icc-cpi.int/iccdocs/doc/doc1246070.pdf>

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