



New Momentum for Cambodia's Khmer Rouge Trial? August 17, 2012

Official says attempt will be made to indict five more top cadres

The long-stalled attempt to indict additional top former Khmer Rouge cadres for alleged war crimes could gain some traction when a new American investigating judge is added to a UN-backed court in Cambodia in September, an American UN official said this week.

The Nuremberg-style trial, which has droned on since 2009, is currently prosecuting only five of the late Pol Pot's senior leaders who abetted him in a murderous reign that caused the deaths of an estimated 1.7 million innocent Cambodians and resulted in the ruination of the country, from which it is still recovering 33 years later.

The five additional suspects who could be brought before the court are "former military commanders and former provincial chiefs, or leaders," who were among Pol Pot's 1975-79 Khmer Rouge regime, Ambassador David Scheffer, the United Nations Secretary-General's Special Expert on the U.N. Assistance to the Khmer Rouge Trials, said in an interview.

The five are all retired and currently being investigated for "war crimes and crimes against humanity," Scheffer said in a brief interview during a Bangkok stopover. Scheffer, who is also a law professor and director of the Center for International Human Rights at Northwestern University, declined to name them "because they are not officially designated."

Bringing them to trial at the Extraordinary Chambers in the Courts of Cambodia will be a challenge. The UN-backed court has faced problems trying to determine the guilt of four other elderly men and one woman for the deaths during Pol Pot's back-to-the-jungle "killing fields" regime. In addition, the tribunal has run into interference from the Cambodian government, which is on record opposing any new investigations of Khmer Rouge suspects.

Nonetheless, "The personal jurisdiction of this court was not intended to be relegated to only [those] five individuals," Scheffer told reporters during an earlier news conference Wednesday.

The five already on trial include Kaing Guek Eav -- known as Duch -- plus Nuon Chea, Khieu Samphan, Ieng Sary and his wife, Ieng Thirith. They are the only Cambodians who have been taken to the court.

"The figure that was finally understood in terms of the [tribunals'] negotiators that I knew

of -- namely the United States and the United Nations negotiators -- was a figure of between 10 to 15 [suspects], that would be sort of max for this court," Scheffer said. Those additional suspects "are not yet indicted, so they are not defendants yet, they are just suspects, but they are under investigation."

The court's investigation of the other suspects has already "led to much controversy, it led to turmoil with the international investigating judges."

To solve the crisis, a new investigating judge" was recently appointed to keep at it, Scheffer said,

The additional five suspects -- the former military commanders and former provincial chiefs -- "are not yet indicted, so they are not defendants yet, they are just suspects, but they are under investigation. This led to much controversy. It led to turmoil with the international investigating judges [Siegfried] Blunk and then [Laurent] Kasper-Ansermet [resigning] within the last year," Scheffer said at the news conference.

"With the resignation of Laurent Kasper-Ansermet from Switzerland in March, effective early May, our choice was two-fold. One, we could walk away from Cases Three and Four, which some members of the Cambodian government were voicing their desire we do, or we could appoint a new international co-investigating judge and keep at it. And it is the latter that the UN decided we would do.

"So we put forward Mark Harmon, of the United States, to the Cambodian government for official appointment by the Supreme Council of the Magistracy to sit as a judge on this court," Scheffer said at the news conference.

Harmon is an American who had "an 18-year career as a top prosecutor of the Yugoslav tribunal," Scheffer said. "Prior to that that, he was a prosecutor in the United States" and is scheduled to arrive in Cambodia in September "as the new international co-investigating judge."

Harmon and the other judges will determine how to proceed against the additional suspects, who are grouped in "Cases Three and Four."

"If there are disputes, it will be in the hands of the pre-trial chamber. And we'll let the court work its will," Scheffer said.

Duch confessed during Case Number One and was sentenced to life imprisonment in February for commanding the S-21 Tuol Sleng torture chamber in Phnom Penh, which sent 12,000 to 16,000 people to their death.

The ongoing Case Number Two includes Pol Pot's dreaded ideologue Nuon Chea, alongside Khieu Samphan, who became the regime's head of state in 1976, plus former Khmer Rouge Foreign Minister Ieng Sary.

Ieng Sary's wife, Ieng Thirith, was social affairs minister during Pol Pot's reign, but she is currently being assessed for possible dementia to determine if she can stand trial.

Case Number Two is complex because it has three phases.

"We have the evacuation of people from the cities in 1975...and all the crimes against humanity that are related to that," Scheffer said. "We have phase two, which is basically the detention camps and everything that happened in those camps. We have phase three, which is the genocide [committed] against the Cham, the Muslim population of Cambodia. How many years does it take to prosecute all three phases, of Case Two, against these three men?"

To fund the court, Washington paid US\$11.2 million from 2009 to June 2012, and has "already committed US\$5 million for the 2013 cycle," totaling more than US\$16 million, Scheffer said.

Up until 2012, Japan had been the biggest donor. But after suffering an earthquake, tsunami and nuclear contamination in 2011, Tokyo did not match its previous contributions and dropped to second place behind Washington in funding the court this year, he said.

No one knows when the trials will end.

"It's very risky for me to sit here and say, 'Oh you know, maybe there will be six more years of operation, maybe seven, maybe eight. I don't know.'"

(Richard S. Ehrlich is a Bangkok-based journalist. His websites are <http://www.asia-correspondent.110mb.com> and <http://www.flickr.com/photos/animists/sets>)

Dear Editor,

Several errors appear in Richard Ehrlich's article, "New Momentum for Cambodia's Khmer Rouge trial? US official says attempt will be made to indict 15 more top cadres" First, the headline of the article is completely erroneous in light of the errors in the article. Second, I am not a United States official whatsoever, as erroneously described in the article. I am the UN Secretary-General's Special Expert on United Nations Assistance to the Khmer Rouge Trials, a fact reported only later in the article. Third, my comment about 10 to 15 suspects was made only in response to a question about how many suspects were contemplated during the negotiations in the 1990s that led to the creation of the Extraordinary Chambers in the Courts of Cambodia (ECCC). I emphasized that since then the Cambodian Government has disagreed with that figure.

The article correctly reports on the five indicted persons, one of which has been convicted, three of which are on trial, and one whose fate remains undetermined. In addition to the five persons already indicted, Cases 003 and 004 relate to five additional suspects. In my Bangkok briefing I emphasized that these two cases are now before the Co-Investigating Judges, who will investigate and decide if any of these additional five suspects will be indicted and sent for trial. The international Co-Prosecutor has on several occasions stated publicly that he does not intend to initiate prosecution against any new individuals not already identified in Cases 003 and 004. In my meeting with journalists in Bangkok I said nothing to suggest otherwise.

David Scheffer, UN Secretary-General's Special Expert on United Nations Assistance to the Khmer Rouge Trials"

=

Greetings Mr. Scheffer,

Many thanks your response. After you spoke about an additional 15 suspects in your news conference, I see that I mistakenly included them in Cases 003 and 004 -- which actually has only five additional suspects. I now understand that, in response to my later questions, you were still speaking about those *five additional suspects* in those cases, and not the *15*.

As a result, those numbers -- five instead of 15 -- have been fixed in a newer edit of the story, which is now online (see above text).

Concerning your other two points: As you know, you are an official -- in this case the UN Secretary-General's Special Expert on United Nations Assistance to the Khmer Rouge Trials -- which you agree was *a fact reported* in this story.

You are also an American (you did not mention any other nationality in your statement, or your response). Placing those two adjectives together in the story, introduces you as a US official, rather than for example, a Cambodian official, or -- if you had a different profession -- a US author, or Cambodian author etc.

As you see, the word "government" does not appear between the two adjectives "US" and "official,* just as they do not appear in the example *US* and *author*.

I'm always open to suggestions from readers, however, to make news stories easier to understand. If some readers, such as yourself, imagine the word *government* invisibly wedged between the adjectives *US* and *official* -- or personally *feel* that it *implies* such an impression -- then I will arrange those adjectives in a way less likely to confuse those readers.

If I knew in advance that you would have such an interpretation in mind, when reading those two adjectives together, I would have included a third *adjective* so it says: *an American UN official.*

As you will see in the newly posted edit, those *three* adjectives are included to introduce you.

Cheers, Richard S. Ehrlich