

Hard turn for Khmer Rouge trial October 7, 2010

PAILIN - Despite an awkwardly attached prosthetic leg, deputy governor Mey Meakk cut an authoritative figure as he strode into a recent community meeting in the former Khmer Rouge stronghold of Pailin along the Thai-Cambodian border.

The radical Maoist movement's former members have maintained political influence here in the transition from war to peace, despite atrocities committed during their rule that resulted in the deaths of perhaps 2.2 million people.

Provincial governor Y Chhean was formerly the head of Khmer Rouge leader Pol Pot's bodyguards; another deputy governor, Ieng Vuth, is the son of former Khmer Rouge foreign minister Ieng Sary and his wife, social action minister Ieng Thirith. Mey Meakk spoke admiringly of the elder Iengs at the forum, rejecting claims that their hands were "soiled with blood" as leaders of the former regime, which governed from 1975-79.

The two were indicted last month at Cambodia's United Nations-backed war crimes tribunal, along with former Khmer Rouge head of state Khieu Samphan and chief ideologue Nuon Chea, for genocide and crimes against humanity. Mey Meakk, himself a former secretary to Pol Pot, was joined at the meeting by tribunal staff, including British co-prosecutor Andrew Cayley, who were there as part of a community outreach effort to answer questions about the indictments and the work of the court.

While Mey Meakk's view that the four Khmer Rouge defendants are "victims" is a minority one, his broader concern points to the challenge the tribunal faces as it attempts to move forward with its work and build trust with the Cambodian government. "Continued, prolonged investigations of other people may not meet the goal of national reconciliation," Mey Meakk said.

In July, the tribunal sentenced former Khmer Rouge prison chief Kaing Guek Eav, better known as Duch, to 30 years in prison for crimes against humanity and breaches of the Geneva Conventions. While praise for the tribunal's first verdict came in immediately from the diplomatic community, outspoken Prime Minister Hun Sen's voice was conspicuously absent.

The 58-year-old strongman was not in the country on the day of the judgment and he offered no public comment on the landmark verdict in the days that followed. The silence was indicative of his government's often tense relationship with the court. It was over a week later that Hun Sen finally addressed the judgment, and only as part of a wide-ranging address at a graduation ceremony in Phnom Penh.

"I respect the verdict handed down by the court. The government has no right to interfere or put any pressure on the court," he said.

His comments offered an implicit rebuttal to critics who have charged that the prime minister and other officials have sought to influence the tribunal's work. Such charges have been levied by international civil society groups, with the New York-based Open Society Justice Initiative alleging in July that "the ability of individual Cambodian actors to resist interference by senior political figures and still maintain a position within the Cambodian legal system is limited".

The tribunal's hybrid setup has helped to drive those concerns. Unlike internationally administered war crimes tribunals created for Rwanda and the former Yugoslavia, the Khmer Rouge tribunal - or the Extraordinary Chambers in the Courts of Cambodia (ECCC), as it is formally known - prosecutes crimes under both domestic and international law and has international and Cambodian jurists working alongside one another.

Judicial chambers house Cambodian majorities, though super-majorities are required to secure judgments, meaning that at least one international judge must sign on for a decision issued by domestic judges to come into force. The task of applying international standards of justice to a Cambodian legal system still struggling to recover from the Khmer Rouge period has been considerable.

Yet over the course of the Duch case, the ECCC appeared to succeed in conducting a fair, procedurally sound trial, according to legal experts. Case 001, as the Duch proceedings were known, was seen in part as a dry run for the looming larger second trial.

Hard-core case

Hearings in Case 002, referred to by court officials as the ECCC's "core case", are expected to begin early next year and last at least two years. They will see the elderly Iengs, Khieu Samphan and Nuon Chea - the most senior surviving members of the Khmer Rouge - all brought together before the court's trial chamber.

Because the suspects will strongly contest the proceedings and the documentary evidence linking them to atrocities committed by low-level cadres is fragmented, their prosecution is expected to be significantly more difficult than that of Duch, who essentially pleaded guilty after leaving a voluminous paper trail from his time as a prison administrator.

"Case 002 is the most political, the most important, and the most difficult," said Youk Chhang, director of the Documentation Centre of Cambodia, which helped to compile much of the evidence used by the court. Chhang called the second case "a test of trust between the UN and the government in seeking justice for the Cambodian survivors".

The government already tussled with the UN over the handling of the next case. Last year, court investigators attempted to summon as witnesses six senior officials from Hun Sen's ruling political party. The summonses - signed by French investigating judge Marcel Lemonde, though not his Cambodian counterpart - were subsequently ignored, with the government supporting the officials' decision not to offer testimony.

Information Minister Khieu Kanharith said at the time that the tribunal's foreign staff could "pack their clothes and return home" if they were upset with the decision. Lemonde ultimately concluded that it would be impractical to try and compel the officials' testimony, and declined to pursue the matter further.

The two foreign judges in the court's pre-trial chamber last month recommended an internal investigation of alleged political interference in relation to the incident, though such an investigation was deemed unnecessary by their three Cambodian colleagues.

Court staff have also been divided on foreign versus local lines over the question of whether to pursue suspects beyond Case 002. Hun Sen has come out strongly against further prosecutions, claiming that they could stoke unrest and compromise the hard-won peace he achieved in the late 1990s when the Khmer Rouge movement finally collapsed.

"I prefer the failure of the tribunal than to let the country fall into war," the premier said last year.

His statement followed on the announcement that foreign prosecutor William Smith had made submissions for the investigations of five additional suspects - whose identities remain confidential - in two new cases. His Cambodian counterpart, Chea Leang, opposed the submissions, echoing the arguments by Hun Sen in claiming such prosecutions could threaten Cambodia's national security.

Nevertheless, Lemonde announced in June that he was moving forward with preliminary investigations into Cases 003 and 004, despite a last-second loss of backing from his Cambodian counterpart, You Bunleng, who initially signed off on the investigations before retracting his support. His sudden change of heart stoked further suspicions of government interference.

The prime minister's claims of a reignited civil war may be exaggerated. But it is certainly the case that former senior Khmer Rouge members continue to wield political influence in Cambodia. That's particularly true along the Thai border, where figures like Y Chhean preside over patronage networks established directly from their former status within the movement.

While court officials have said prosecutions will end following the third and fourth cases, Hun Sen, himself a former low-ranking Khmer Rouge soldier, may feel there is little to be gained by disturbing relations with ex-cadres who have been peacefully integrated into government.

Whether Cases 003 and 004 actually proceed, there is hope that the court has laid a foundation for the smooth completion of Case 002, where the defendants are already in their late 70s and 80s. Youk Chhang claimed that the Cambodian government had "begun to see the credibility of the court" following Duch's conviction, an important element for the tribunal's success.

"The court has to obtain trust, not only from the people of Cambodia, but also from the government," Chhang said.

Back in Pailin, the assembled audience of ex-Khmer Rouge members still harbored suspicions. The visiting tribunal staffers assured them, however, that the court's mandate is limited, and that rank-and-file members of the movement such as themselves had nothing to fear.

"I was so worried when I heard about the ECCC because I was afraid I would be arrested," said Pailin resident Meas Chea, 59, a former Khmer Rouge foot soldier. He professed remorse for his role in the conflict and said he had been following the progress of the court. 0 "I felt better after the court announced the Duch verdict," Chea said. "The court is finding justice not only for survivors, but for all those that died."

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