

# THE Nation.

## **Khmer Rouge tribunal in jeopardy**

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**November 15, 2010**

Surrounded from its inception by squabbles between the Cambodian government and the United Nations, mired in charges of corruption and perennially short of cash, the tribunal set up to judge surviving leaders of the Khmer Rouge regime is once again in jeopardy.

The question of where the tribunal is headed arose again in early November because of two events: an unusually candid and critical farewell message from the departing chief of the defense support section and the publication by the New York–based Open Society Justice Initiative of a report acknowledging that the court will sooner or later be wound down, and that plans should be made now to avoid having its work cut short by the government of Prime Minister Hun Sen, who has made no effort to hide his distaste for it.

In a third, separate but not unrelated development, Hun Sen has told the UN that unless it removes its chief human rights representative in Cambodia, Christophe Peschoux, the government will close down the Phnom Penh office of the UN High Commissioner for Human Rights, the first of its kind to be established in a national capital. Peschoux, who is accused by officials of favoring opposition politicians, has been outspoken on threatened political and economic rights, including the beating of protesters and the practice of "land-grabbing," when poor Cambodians' properties are seized illegally for the use of politically well-connected people or foreign companies.

The Paris-based International Federation for Human Rights said on November 2 that the dual threats to the Khmer Rouge tribunal and the UN human rights office "seriously question the state of the rule of law and the development of democratic institutions in the country."

Though the Cambodian government has usually been cast as the villain in this long-running story—the court was first proposed formally in 1997 and took a decade to be fully functioning—both the UN and the United States are complicit, given their missteps in the years leading to the tribunal's creation.

Cambodia's autocratic and uncooperative government, and Hun Sen himself, might not be so strongly and willfully entrenched if the UN, running a transitional administration in the early 1990s, had not so readily

given in to his bullying. Hun Sen was a holdover from a government installed under virtual Vietnamese occupation after Hanoi's troops overthrew the Khmer Rouge in 1979, and he stood for reelection in 1993, under UN oversight. His Cambodian Peoples Party lost decisively to a royalist party led by Nordon Ranariddh, a son of King Norodom Sihanouk.

In the years that followed, Hun Sen, as co-prime minister with Ranariddh in an unworkable coalition, simply pushed the victor aside by claiming key ministries—with UN acquiescence—and finishing the job with a coup after the UN was no longer in charge.

From the American side, UN legal experts say that there was intense pressure on them to set up a tribunal to try Khmer Rouge figures. The United States and Southeast Asian nations had in the 1980s backed an armed opposition arrayed against Hun Sen and the Vietnamese that included the defeated Khmer Rouge. There was something exculpatory about the way Washington campaigned for a tribunal to try leaders of the monstrous regime after that fact. The State Department also funded the Cambodia Genocide Project, an archive of Khmer Rouge atrocities based at Yale that later moved much of its operation to Phnom Penh.

Kofi Annan, then UN secretary-general, and his top legal advisor, Hans Corell, a Swedish judge, were skeptical of the odd hybrid of a tribunal being created, and wanted to back out at one point, but the United States pressed on, at times in almost a threatening manner, UN officials said. What resulted was a court based in Cambodia (on a military outpost no less) that is officially part of the Cambodian justice system. It is a half-and-half setup, with the UN supplying half the professional legal staff and the Cambodians the other half. Prosecution and defense teams have to work in tandem, one local and one international, literally side by side. Judges are an international mix. To make life even more complicated, the court uses three languages: Khmer, English and French. Finding quality translators and interpreters have been persistent problems.

On November 10, Richard J. Rogers, the British-born international lawyer who has been chief of the defense support section—not an easy mantle to wear when the Khmer Rouge are the defendants—said in his departing statement that the court operates "in a country where the institutions of justice and respect for the rule of law are still developing." He added that "the greatest challenge for the defense remains the threat of political interference that may undermine the independence of the court."

Rogers and others working in the defense section were not only under constant scrutiny by the government (which has former Khmer Rouge figures in its ranks) but also faced strong public reaction against the very idea that Khmer Rouge leaders should have their day in court. A weak and politically manipulated judicial system has not taught Cambodians the principle of fair trial.

Hun Sen, a former Khmer Rouge regional official himself who fled to Vietnam when the movement split in the late 1970s—is content to see the biggest names of the "other" faction on trial, but wants to leave it at that. The danger to him seems to be that more prosecutions would sooner or later focus on some people in his government.

As the showcase trial of four top Khmer Rouge leaders still alive looms in the new year, pressure is mounting on the court to wind up its business and not indict any further figures from the 1975–79 experiment the revolutionaries called Democratic Kampuchea, which left up to 2 million Cambodians dead or in exile.

So far only one trial has been completed, that of Kaing Guek Eav, known as Duch, the commander of Tuol Sleng prison and torture center, who was convicted in July and is appealing a jail sentence.

Next on the docket—combined into one case—are Nuon Chea, “Brother Number Two” to Pol Pot, who died in 1998; Khieu Samphan, the regime’s head of state, and the powerful couple of Ieng Sary, foreign minister, and his wife, Ieng Thirith, minister for social affairs. All are in their 80s or late 70s, none of them in robust health, and there are concerns that one or more of them may die before the completion of their trials, due to start in mid-2011.

Prosecutors for the court want to add another round of cases, with a total of five more defendants, none of them named so far. That provoked Hun Sen, who told Secretary-General Ban Ki-moon in October that new cases beyond that of the big four now preparing to go on trial will not be allowed.

The report from the Open Society Justice Initiative, part of the Open Society Institute founded and funded by George Soros, suggests that additional trials would not necessarily have to prolong the tribunal’s life, since they could take place parallel to the one beginning in 2011, which is bound to be dragged out, possibly over a year or more.

The report—Salvaging Judicial Independence: The Need for a Principled Completion Plan—strongly rejects the proposal that any new cases should be turned over to Cambodian national courts. The Justice Initiative, which has a Cambodian branch in Phnom Penh, says that both the UN and donor countries, chafing at perennial demands for more funds, would be failing in their responsibility to insure that trials would meet international standards if cases were transferred entirely to Cambodian jurisdiction from the hybrid tribunal, formally titled Extraordinary Chambers in the Courts of Cambodia, or ECCC.

This would amount, the report says, to the tribunal risking the appearance that it is "dumping" new cases "because it is unwilling or unable to deal with the political interference that has come to haunt the ECCC."