

Film Tells Tale of Lost Brother

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On Aug. 13, 1978, the yacht Foxy Lady and its crew were sheltering near the island of Koh Tang, just off the Cambodian coast.

As evening fell, the silence was broken, first by the sound of an engine, then by gunfire.

What followed for the yacht's crew, including skipper Kerry Hamill, was capture, months-long imprisonment in the infamous S-21 prison centre, interrogations, torture and ultimately execution and an unceremonious cremation at the hands of the Khmer Rouge.

Yesterday, more than 30 years after the death of his brother Kerry, New Zealander Rob Hamill hosted the Cambodian premiere of Brother Number One, a documentary film he hopes will tell "the history of the Khmer Rouge through my process of learning more about Kerry's story".

"I think that for the people who watch this film who are involved [in the Khmer Rouge tribunal], it'll be very affirming that what they're doing is a great thing," Hamill said.

And he would know. Hamill has been intimately involved with the court's proceedings since he was granted civil-party status in Case 001, the trial of S-21 jailer Kaing Guek Eav, aka Duch.

Now, he is a civil party in Case 002 and, since 2011, Case 003 — or so he assumes.

"There's a question; it could be raised at any time," Hamill's civil-party counsel, Lyma Nguyen, said, noting that the fact the decision was made by blocked reserve investigating judge Laurent Kasper-Ansermet put it on a shaky footing.

"The way I'm taking it at the moment is that Rob Hamill is a civil party, and there has been a judgment made on his acceptability."

Hamill's struggle to become a civil party in Case 003 has traced the arc of the court's government-opposed third case — an arc fraught with document-tampering, scuttled investigations and high-profile resignations.

"The co-investigative judges decided to close the case very early, even before a substantial investigation had been done," said Nguyen, who called the judges' initial refusal to acknowledge Hamill — or anyone else, for that matter — in Case 003

“outrageous”.

“It was like we were operating in the dark so to speak, not even knowing what parameters we were dealing with,” she said, citing a number of “irregularities” including withholding access to the case file and refusing to acknowledge that Nguyen even had “legitimate standing” to represent Hamill.

Although part of the point of Hamill’s documentary was to jump-start the conversation on cases 003 and 004, he holds out little hope of the cases advancing.

“I don’t think the potential defendants have too much to be worried about, frankly,” he said, chuckling and shaking his head at the mention of the stalled case.

In fact, despite Case 003 suspect Meas Muth being thought to have directly overseen his brother’s capture, Hamill suggested that after Case 002 wraps, the court might be better off giving up on future prosecutions in favor of a truth and reconciliation inquest.

“I only say that, more because I don’t believe the court can change the course it’s on at the moment, primarily because of the national [side],” he said, noting that the arrival of new co-investigating judge Mark Harmon was unlikely to change the situation “for the same reasons that the last two [judges] failed”.

Open Society Justice Initiative monitor Clair Duffy called Harmon’s arrival “a fresh opportunity for some integrity to be restored to Case 003”, but said that since he arrived, it had been “very quiet”.

“I’m hopeful that work is going on behind the scenes, as it should be, but I also don’t want to ignore the protracted controversy in those cases for the last three years,” she said.

The court’s latest funding crunch was unlikely to help matters, Duffy said.

“If this is the level of donor fatigue the court is at right now, it doesn’t bode well for cases 003 and 004,” she said.

“I definitely think the controversy surrounding the court about political interference is not an open invitation to give to the court.”