



Scenes from a Khmer Rouge trial gone wrong

Julia Wallace

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PHNOM PENH, Cambodia -- Sem Hoeurn spent three years, eight months and 20 days of her childhood a virtual slave in the service of a government she knew only as Angkar - the Organization.

Hoeurn was 10 years old when the paranoid and murderous Khmer Rouge marched into Phnom Penh, seized power, and attempted to engineer an "awesomely great leap forward" that ultimately led to the deaths of some 1.7 million people. She was conscripted into a children's labor unit and ordered to collect piles of bones from execution sites to dispose of in nearby rice paddies. By the time the regime was ousted nearly four years later in 1979, Hoeurn's father and brothers had all been tortured and executed by Angkar, which had the all-seeing "eyes of a pineapple," as one revolutionary dictum had it.

But this summer, along with hundreds of other victims of the regime, Hoeurn finally caught a glimpse of the aged and ailing remnants of Angkar in person for the first time as they shuffled into the dock at the UN-backed Khmer Rouge tribunal, where a [landmark trial](#) against the Khmer Rouge regime's four senior-most surviving leaders began on June 27. The eyes of the Cambodian people were at last on them.

"When I first saw the four accused, the bitter memory of mass killing under the Pol Pot regime came back to my mind," Hoeurn said. "I wanted to run into them and tear them apart."

The case against these four senior living lieutenants of Pol Pot -- Brother Number Two Nuon Chea, the regime's chief ideologue; head of state Khieu Samphan; Foreign Minister Ieng Sary; and his wife, Social Action Minister Ieng Thirith, who was also the regime's de facto first lady -- is expected to be perhaps the most complex such trial ever prosecuted. The trial must explore a vast array of crimes committed decades ago, most of them indirectly and through an elaborate chain of command.

Unlike the tribunal's first defendant, the sycophantic prison commandant Kaing Guek Eav, who was tried in 2009, the four top leaders have remained sullen and defiant since their arrests, largely declining to cooperate with the court and fiercely contesting the charges against them. All four were detained in 2007 after years of freedom in semi-autonomous fiefdoms along the Thai border. Even after the Khmer Rouge splintered and

crumbled in the late 1990s, the top leaders were either pardoned or tolerated by the Cambodian government. Ieng Sary and Ieng Thirith lived in a luxurious mansion in central Phnom Penh. Khieu Samphan published a book blaming everything on Pol Pot.

In their sporadic public appearances since they were jailed, the four leaders have expressed a persistent sense of bewilderment at finding themselves up against a system they cannot wheedle or threaten their way out of. During a bail hearing in 2009, Ieng Thirith said that anyone accusing her of a crime would be cursed "to the seventh circle of hell."

Watching the defendants flail induces a certain amount of justifiable schadenfreude among Cambodians following the trial. (This is bolstered by the trial's frequent and detailed dissections of the defendants' health. Among other things, we have learned recently that Nuon Chea's balding pate gets chilly in air-conditioned rooms, and that Ieng Sary, beset with kidney problems, needs to urinate every 20 minutes.) Around Phnom Penh, some slyly transpose a vowel in the court's name, changing it from Sala Kat K'dey Khmer Krahom - "the court dealing with the issue of the Khmer Rouge" -- to Sala Kat K'daw Khmer Krahom, which translates to "the court for cutting off the dicks of the Khmer Rouge."

The public has been especially riveted by the bizarre sight of Nuon Chea, Pol Pot's remorseless second-in-command, sporting sunglasses and a striped ski cap pulled down low over his ears, practically swimming in his clothes. He resembled a superannuated bank robber as he rose on the first day of the trial to announce, "I am not happy with this hearing." He then staged a three-day walkout over the judges' refusal to hear the hundreds of witnesses he had proposed.

"Mr. Nuon Chea said he was unhappy with the court. Well, I wasn't so happy to see him either!" said Prach Vanna, a victim who was watching in the audience. "It wasn't much of a surprise to see him complaining."

The trial so far has been largely procedural, with evidence hearing delayed until early 2012. There are serious concerns that one or more of the defendants will not live through the end of the proceedings, which will likely last for years. Ieng Thirith is already displaying signs of dementia and may not be able to be tried at all. But the very fact that the case is creeping forward is a powerful symbol of justice for Cambodians, given the impunity and corruption that have plagued this nation for decades.

But just at the moment the tribunal, the culmination of 14 years of painstaking negotiations, should be enjoying its greatest triumph, it is being riven by internal politics. The conflicts are over two other cases, known in court parlance as 003 and 004, that many people -- including the Cambodian prime minister and his entire government -- hope never get tried at all.

The United Nations agreed to back the \$150-million tribunal on the condition that it enjoy complete judicial independence from the Cambodian government. Its "hybrid"

structure, with Cambodian and foreign judges and lawyers working in teams, was meant to provide a check against the hopelessly corrupt Cambodian judicial system. Meanwhile, the influence of the foreigners would, theoretically, help train Cambodian jurists -- who tend to range from breezily inept to brazenly crooked -- in international best practices.

Instead, it has worked the other way around, as the highly politicized Cambodian judicial system has seeped into the fabric of the court, apparently influencing both local and foreign judges alike. Prime Minister Hun Sen, whose musings and caprices are as good as law here, has insisted for at least a decade, loudly and publicly, that he would only allow five suspects to be prosecuted at the court.

Hun Sen, a former Khmer Rouge soldier himself who defected to Vietnam early enough to avoid prosecution, has repeatedly warned of mass bloodshed and civil war if additional Khmer Rouge were pursued. And it turns out the UN should probably have listened a little harder to what he was saying all along.

In 2009, over the objections of the court's Cambodian prosecutor, international prosecutors opened two new cases, known as 003 and 004. They dealt with crimes committed by two revolutionary military commanders -- the heads of the Khmer Rouge navy and air force -- as well as three mid-level leaders allegedly responsible for over 100,000 deaths at brutal prison camps and worksites in the country's north and northwest.

The two commanders, Meas Muth and Sou Met, have since become high-ranking members of Cambodia's military, where they still are. One of the other leaders, Im Chaem, is a local government official in Hun Sen's political party. Less is known about the other two, known as Grandfather Tith and Grandfather An, but one is believed to be a wealthy businessman in Phnom Penh.

At the tribunal, which derives its structure from French civil law, prosecutors open cases and hand them off to investigating judges, who are supposed to meticulously examine the alleged crimes before issuing indictments or dismissing charges. But under the glare of Hun Sen's fierce disapprobation, the two investigating judges agreed to quietly close Case 003 in April without interviewing Meas Muth or Sou Met, visiting crime scenes pinpointed by prosecutors, or apparently doing much at all. Rumor here had it the judges stuffed case files with papers to make them appear bigger.

By all accounts, the investigating judges are conducting an equally shoddy investigation in Case 004 and are poised to close it as quickly as they can. They have issued unusually sparse public information about both cases, withholding even a key list of crime scenes, without which victims are unable to file civil complaints. Meanwhile, the judges' investigating staff -- including Stephen Heder, one of the world's top experts on the Khmer Rouge -- have fled the court en masse. In his widely circulated resignation e-mail, Heder cited a "toxic" working environment and the judges' decision to close Case 003 "effectively without investigating it."

The tribunal's most bitter intramural duel has pitted British Co-Prosecutor Andrew

Cayley against the erratic and defensive German Investigating Judge Siegfried Blunk, who joined the court in December. Cayley has pushed the judges to conduct a better investigation, filing a formal request that would require them to take remedial steps such as actually interviewing the suspects in the case. Cayley also revealed the long-delayed list of crime scenes in Case 003 and requested more time for victims to file their claims. Blunk and his Cambodian counterpart, You Bunleng, promptly censured Cayley, ordering him to "retract" the information within three days and publicly considering contempt-of-court charges against their colleague.

Both the UN and the court's major international donors -- which include the U.S., Great Britain, Australia, and Japan -- have largely declined to address the deteriorating situation, focusing instead on getting Case 002 under way. Donors seem to be hoping hard that everyone will forget about the other two cases and focus on the business of prosecuting the four top leaders, whom everyone can happily agree should be tried, and soon.

But it will not be so easy. For one thing, the implosion of the final two cases is not self-contained. If 003 and 004 are dismissed after shoddy investigations, it will call into question the legitimacy of the court's first two trials, and the tribunal itself.

"This court was created with the full knowledge that the Cambodian prosecutors and judges would be subject to pressure from the Cambodian government, and there are rules in place to insulate the proceedings from that possibility," said Anne Heindel, an expert in international law who monitors the tribunal for a local NGO.

"However, the rules are impotent when a UN-appointed judge colludes in a sham. And that's why the brazen failure to investigate the suspects and the crime sites in Cases 003 and Case 004 is so menacing -- it threatens to taint the entire investigative process and thus the legitimacy of all the Court's proceedings."

Defense lawyers for the four senior leaders have complained for years that political interference would make it hard for their clients to get a truly fair trial. In 2009, the court attempted to question six senior members of the current ruling party, including the presidents of the Senate and National Assembly and the ministers of finance and foreign affairs. Most of them were former Khmer Rouge members -- one a former assistant to Pol Pot -- with knowledge that could have shed light on the internal mechanics of the regime. But the government immediately announced the six would flout the summonses, and their evidence has never been heard.

In an impassioned speech immediately after the trial in Case 002 began, Nuon Chea's lawyer Michiel Pestman reminded listeners of these facts, arguing that the debacle of cases 003 and 004 was symptomatic of a much larger problem.

"The government has from the very beginning obstructed the investigation against our client, as they are now doing in cases 003 and 004," he said. "The way the initial investigation unfolded shows that this government still fails to understand the crucial

importance of an independent judiciary. Government should not tell judges what to do."

It's not clear what, if anything, the UN can do to resolve the situation, or whether it even wants to. When UN Secretary-General Ban Ki-moon visited Phnom Penh last year, Hun Sen told him flatly that cases 003 and 004 were "not allowed." Ban never directly addressed the comments, even when queried by concerned tribunal staffers, saying only that the UN expects that the court would remain independent. In June, Ban's office issued an unusual media statement explicitly declining to comment on the work of the investigating judges in cases 003 and 004, but emphasizing the "true international significance" of Case 002.

"The Khmer Rouge tribunal has become a court for cutting off the dick of the UN," a Cambodian friend of mine observed shortly after the statement was released, playing off the graffiti here.

And though Sem Hoern and many other victims of the regime are enjoying their day in court, their long-delayed opportunity to look their tormentors in the eye, countless others will not be given the same chance.

Im Chaem, the suspected former Khmer Rouge official who would likely have been indicted had Cases 003 and 004 moved forward, is now a spry, tiny old woman with a toothy perma-grin, known to her neighbors as Grandmother Chaem. When I met her last year at an NGO-sponsored forum near her home near the Thai border, she chatted and bantered happily with attendees before retiring to a refreshment table, where she proceeded to put away dozens of the sweet glutinous rice cakes known as num ko'am at an astonishing pace, discarding their banana-leaf wrappers in a neat pile at her feet. It was hard to square her essential adorableness with her fearsome reputation. Under the tutelage of her mentor, the notorious peg-legged warlord Ta Mok, she is accused of overseeing ideological purges, forced labor sites, and mass executions that killed thousands.

But I did glimpse her inner steel in a later interview. Reached by telephone, Chaem said talk of her involvement in Case 004 was just a "rumor" that had been cleared up by the government's assurances that the case did not exist. She insisted she had never committed a crime during the regime, and that any killings that occurred at the time were due to disagreements between individuals, not Khmer Rouge policies.

"I have no intention of going to court," she said. "I'm happy because I feel protected by the government, especially Prime Minister Hun Sen."