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Cambodia Wrestles with Justice for Ex-Members of Khmer Rouge

Andrew Higgins

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Thim Sam, a former Khmer Rouge soldier in a revolution that abolished property, profit and even money, has never tried his luck at the casino that opened recently near his home in northwestern Cambodia. He said he's given up trying to fathom how the wheel of fortune turns.

At least 1.7 million of his compatriots died at the hands of the Khmer Rouge and its fanatically anti-capitalist cause, yet just four people have been put on trial for some of the 20th century's most horrific crimes. Slurping a chilled soda a few yards from a fenced-off mound of earth said to contain the remains of Pol Pot, the Khmer Rouge's murderous leader, Thim Sam says he joined Pol Pot's forces out of desperation, took no part in the slaughter and now "wants to forget."

What to remember and what to forget is a question that torments Cambodia 14 years after the last Khmer Rouge stronghold fell here, on the Thai border. Victims clamor for justice while others, including members of the current government who once sided with the Khmer Rouge, are deeply wary of allowing a full reckoning with the past.

Struggling to resolve these conflicting interests is a U.N.-backed tribunal set up in the capital, Phnom Penh, in 2006 with a mandate to judge Khmer Rouge "senior leaders" and others "most responsible" for the crimes of a regime that, between 1975 and 1979, killed at least a quarter of Cambodia's population through executions, starvation and overwork in brutal labor camps.

After five years of work at a cost of more than \$150 million, the Extraordinary Chambers in the Courts of Cambodia have convicted just one person, a former prison warden named Kaing Guek Iev, 67, who ran the notorious Tuol Sleng torture center. Better known as Duch, he was sentenced in February to 35 years for crimes against humanity. This was extended to life after he appealed the verdict claiming he had merely been a junior official who followed orders.

A second trial now underway has put three aged, senior Khmer Rouge leaders in the dock. (A fourth defendant, Ieng Thirith, Pol Pot's 80-year-old sister-in-law, is thought to be suffering from Alzheimer's disease and has been judged unfit to stand trial.)

Demands that the tribunal move beyond a small circle of Khmer Rouge leaders and widen its focus to include others "most responsible" have been firmly rebuffed by the Cambodian government. Prime Minister Hun Sen — himself a former Khmer Rouge

soldier who in 1998 declared that it was time to “dig a hole and bury the past” — has warned that opening new cases would risk civil war.

It would also likely risk severe embarrassment for the government, particularly its security apparatus, which has worked closely with former Khmer Rouge officials suspected of having roles in the communist movements’s “killing fields.” They include the Khmer Rouge’s former naval and air force commanders, Meas Mut and Sou Met, both of whom have held posts in Cambodia’s postwar military establishment and have been named as possible defendants.

The U.N.-supported tribunal, located far from the center of Phnom Penh on the grounds of a Cambodian military compound, has been dogged from the start by bitter arguments over just how far it should go in delving into the past and bringing those responsible for Khmer Rouge horrors to justice. More than 111,500 ordinary Cambodians, mostly villagers from the provinces, have been bused in to witness the proceedings from a spectators’ gallery.

“My anger is not over yet,” said Krahn Sophea, a recent visitor to the tribunal whose father and five other relatives were killed by the Khmer Rouge after filching food to ward off starvation in a work camp. “I want the tribunal to try those responsible for killing my relatives,” not just former Khmer Rouge chiefs, he said.

Phann Ngiem, an elderly mother who attended the tribunal in the hope of finding out what happened to her son, said Pol Pot and his lieutenants bear ultimate responsibility. “But who killed my son? I don’t know.”

Feuding over how far the tribunal should push in its pursuit of truth and justice burst into the open earlier this year when Laurent Kasper-Ansermet, an investigating judge with the tribunal from Switzerland, issued public statements alleging political interference and accusing his Cambodian colleague, You Bunleng, of working to block further trials.

After months of acrimonious squabbling, Kasper-Ansermet resigned in May, firing off a final shot at what he called the tribunal’s “dysfunctional situation.” An American judge, Mark Harmon, a veteran of the Yugoslav war crimes tribunal in The Hague, was appointed in July to take his place but has not yet arrived in Phnom Penh.

David Scheffer, a Northwestern University law professor who was appointed early this year to advise the U.N. secretary general on the Khmer Rouge tribunal, acknowledged that the Cambodian court has faced “serious problems” but noted that post-conflict judicial reckoning has always been difficult.

“The Nuremberg and Tokyo military tribunals were heavily criticized as victor’s justice,” said Scheffer, referring to the trials of German and Japanese leaders after World War II. He added that the Cambodian tribunal’s work, though limited in scope, has already established “a much-needed historical record of the Pol Pot era and a body of law that

will benefit Cambodia's legal system and its people, and international criminal law generally."

A 'line in the sand'

Thim Sam and other retired Khmer Rouge soldiers in the mountains along Cambodia's border with Thailand scoff at the tribunal as political theater and ask why it is not looking beyond a small group of long-out-of-power figures to examine the deeds of those who served the Khmer Rouge but still have influence in Cambodia today.

"This tribunal is all political," said Taen Seng, a former Khmer Rouge fighter who has settled with his family in a forest village near Anlong Veng. Like many Khmer Rouge veterans, he bristles at any discussion of his own past, but nonetheless thinks that others now in positions of influence should be forced to come clean about their biographies.

That is unlikely to happen any time soon, said Clair Duffy, an Australian lawyer who monitors the Khmer Rouge tribunal for the Open Society Justice Initiative, a program funded by investor George Soros. Government officials, she said, want the tribunal's work wound up once the current trial is over.

"Everything suggests they want to draw a line in the sand about their own Khmer Rouge past," said Duffy, who previously worked with the International Criminal Tribunal for Rwanda. "The government has made it clear that they only want their version of history to appear in court: Here are the bad guys, and that is it." No evidence has come to light that Hun Sen or other senior officials who previously served the Khmer Rouge were directly involved in atrocities. But the government's determination to keep the tribunal tightly focused has provided a field day for defense lawyers, who have seized on official stonewalling to paint the whole process as contaminated by political expediency.

Among those who have refused to give evidence is Foreign Minister Hor Namhong. He has been shadowed for years by allegations that he helped the Khmer Rouge, which he has strenuously denied. A cable written in 2002 by the U.S. Embassy in Phnom Penh and made public last year by WikiLeaks said the veteran diplomat returned to Cambodia after the Khmer Rouge took power in 1975 and "became head" of the Boeng Trabek reeducation camp, where "he and his wife collaborated in the killing of many prisoners." Hor Namhong denounced the cable as "highly defamatory."

Similar allegations resurfaced at the tribunal in July when a witness called by the defense team for Nuon Chea, Pol Pot's deputy and one of a trio defendants now on trial, recounted how Hor Namhong, though himself imprisoned by the Khmer Rouge, had been given a leadership position at Boeng Trabek. Hor Namhong responded with an angry letter to local newspapers that denounced "stirring up controversy around public figures like myself" as a ploy to distract attention from the real culprits. He said he had lost several of his own relatives to the Khmer Rouge and "has nothing but sorrow and empathy for the victims."

The witness then quickly withdrew his testimony, prompting a complaint from the defense team that the foreign minister had interfered in the judicial process. Andrew Ianuzzi, an American lawyer for the defense, said he and his colleagues are “not in any way, shape or form apologists for the Khmer Rouge,” but they want to “defend the integrity of the process” against political manipulation.

Justice, obscured

From the moment the Khmer Rouge regime collapsed in Phnom Penh in 1979, the search for both truth and justice in Cambodia has been entangled with politics. Vietnam, whose invading army drove Pol Pot from power, staged a show trial in absentia of Khmer Rouge leaders. Pol Pot and his foreign minister, Ieng Sary, who is now on trial in person before the U.N.-backed tribunal, were sentenced to death. But that court showed scant regard for due process and was primarily concerned with justifying Vietnam’s invasion.

As the Cambodian government installed by Vietnam battled to dislodge remnants of the Khmer Rouge from Anlong Veng and other strongholds along the border with Thailand, Hun Sen turned to the United Nations, appealing in a 1997 letter to then-Secretary General Kofi Annan for help “in bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge.”

China, a permanent member of the U.N. Security Council and the Khmer Rouge’s principal source of arms and aid during Pol Pot’s bloodiest excesses, swiftly made clear it would block any move to establish a U.N. tribunal to investigate and judge past atrocities. This and the Cambodian government’s own reluctance to have independent outsiders in full control of the judicial process led, after years of tense negotiations, to the current set-up — a mixed court comprising both foreign and Cambodian judges.

The Khmer Rouge, meanwhile, announced that it was holding its own trial of Pol Pot in Anlong Veng — an attempt to burnish the image of a movement then collapsing under the weight of military defeat, defections and internal power struggles. Pol Pot was swiftly declared guilty of treason and died soon afterward.

Cremated on a pyre of burning rubber tires in April 1998, Pol Pot has now been turned into a ghoulish tourist attraction: His ashes are said to lie under rusty sheets of metal in a muddy grove across the road from the newly built casino. The only regular visitors, said a caretaker hired by the government to watch over the site, are casino managers and gamblers, who believe that the remains of Pol Pot can bring good luck.