

TIME

Why some Khmer Rouge suspects may never face trial

Brendan Brady and Phnom Srok

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At first blush, it seems like a nourishing gift. The Phnom Srok reservoir in northwest Cambodia spreads nearly as far as the eye can see, providing water year-round for agriculture, fishing and swimming. But the human bones that, according to locals, still lie on the floor of the reservoir tell a different story. The reservoir's primitive, earthen dam was constructed in 1977 at a cost of an estimated 5,000 to 10,000 lives. Some collapsed and died from endless days of work; others were executed because they had become too weak to work effectively.

As part of their vision to transform Cambodia into an agrarian utopia, Khmer Rouge leaders ordered starving villagers to build dams like this by hand. Len Chovvy remembers digging for 14 hours a day as a young girl, surviving only on rice porridge. "When my father was old and sick, they took him to the base of the dam and smashed his head from behind with a wooden bat until he died," says Len, who now runs a food stall along the reservoir. "His blood was stuck there for days." She recalls the names of the two cadres who oversaw the dam's construction. One of them, "Comrade Im," was feared in those days for her uncompromising rule, she says.

These days, the elderly Im Chaem cuts a far less imposing figure: she speaks softly and her smile is as wide as a jack-o'-lantern. Her tone hardens, though, when asked about the U.N.-backed war crimes tribunal confronting the atrocities of the Pol Pot-led Khmer Rouge, whose reign of terror from 1975 to 1979 left an estimated 1.7 million dead from execution, starvation and overwork. The court began proceedings in 2006 to try the "senior leaders" and "those most responsible" for the deaths, but, thus far, neither category has been well defined.

"The Khmer Rouge involved many people, not just me. If I had known the Khmer Rouge were going to be bad, I would not have joined them. I just followed the orders of the high level. If I did not fulfill them, I would have been killed myself," Im Chaem tells TIME, intoning an argument commonly used by former cadres to justify their roles. "I try to forget my background but some people won't let me, they want to keep digging it up." Oddly, though, the tribunal judges in charge of investigating Im Chaem and other Khmer Rouge suspects living freely in Cambodia have done little prying themselves.

Last year, the tribunal sentenced Kaing Guek Eav (best known by his revolutionary name Duch), the former commandant of a Khmer Rouge torture facility, to 35 years in jail. It has recently started on its second case against the regime's four highest-ranking surviving leaders for war crimes, crimes against humanity and genocide. The international co-prosecutor, Andrew Cayley, has also pushed for a third and fourth case (officially named

Case 003 and Case 004) that, according to leaked court documents, target Im Chaem and four other suspects accused of implementing some of the regime's most catastrophic policies. But he's limited by the structure of the tribunal. In most war crimes courts, prosecutors may gather their own evidence, but in Cambodia's tribunal, they are limited to using evidence gathered by an investigating office headed by two judges who local and international court monitors say have made little effort to build a case file for a third and fourth trial.

Prime Minister Hun Sen, who served as a mid-ranking Khmer Rouge officer himself until he fled the regime's capricious purges in 1978, has said he would rather have the tribunal fail than see further prosecutions. His public explanation is that if judicial scrutiny goes any further, areas still populated by former cadres could rebel, thereby destabilizing the country — an effective argument for a country wary of war.

However, some court observers say Hun Sen may also be worried that further investigations could dig up unflattering information about the Khmer Rouge positions held by members of the current ruling elite, causing him public embarrassment. Hun Sen himself has never been accused of involvement in any Khmer Rouge crimes. And though it's a fact often reduced to a footnote in debates about the U.N.'s role in Cambodia's war crimes court, Hun Sen has not forgotten the U.N. once supported the Khmer Rouge leaders in exile as a means of opposing the regime installed by Vietnam in 1979, which has evolved into his current ruling party.

Critics contend that the prime minister's direction for the court is prevailing, with top-level Cambodian political directives steering the court's work while the U.N. stands idly by. The judges in charge of investigations — a Cambodian and a German — have mostly sat on their hands in response to submissions by Cayley for judicial inquiries into the Case 003 and Case 004 suspects, conducting only cursory interviews and visits to crime sites and not even informing the suspects that they were under investigation, according to a report published this year by the Open Justice Society Initiative (OSJI), a legal advocacy group monitoring the tribunal's work, which called for an investigation into potential judicial misconduct. The report came after 32 Cambodian NGOs released a statement expressing concern that the "impartiality, integrity and the independence of [the tribunal's] judges are being tainted."

After the judges closed their investigation into Case 003 in April, a handful of legal staffers in the court's investigative branch quit to protest their superiors' lackluster effort. One of those who walked out, Stephen Heder, a Khmer Rouge historian, wrote in his resignation letter that the judges closed the third case "effectively without investigating it." OSJI and other observers say the judges are doing little more for Case 004. The judges' own statements appear to corroborate this assessment: last month they expressed "serious doubts" over whether the suspects in Case 004 are "most responsible" and thus fall within the court's jurisdiction.

"Even if the judges want to argue [the Case 004 suspects] aren't 'those most responsible,' they would have to investigate the crimes to determine that, which they haven't," says

Anne Heindel, a legal advisor to the Documentation Center of Cambodia, which collects and analyzes information on the Khmer Rouge's rule and legacy. "If the court doesn't follow through on its own rules, it will undermine the court's legitimacy."

The tribunal was meant to be a model of independent and transparent legal procedures for the local judiciary, which is dogged by corruption. It was also supposed to clarify the historical record in a country where the high school curriculum abstained from discussing the Khmer Rouge era until just two years ago and even now carefully apportioned blame, leaving students to believe that only a handful of villains hijacked the country. The impact of this silence and selective history can be seen everywhere, including around Phnom Srok reservoir. "I don't know much about the dam but if it never got built, we wouldn't have as many crops today," said Sdeng Leak, a young woman who was grilling snake for a group of high school boys on the reservoir's banks. "So, in some ways I am thankful to Im Chaem."