

## **Again, justice for Cambodia** **July 19, 2011**

The wheels of justice turn slowly in Cambodia, but they grind nevertheless. Last month, a United Nations-backed tribunal began the second war crimes trials that attempt to hold accountable the former leaders of the Khmer Rouge. This trial is proving more contentious than its predecessor — in which the defendant accepted both the legitimacy of the tribunal and the need for an accounting. This time, however, the four defendants remain steadfast in their conviction that they did nothing wrong and that even if they did, the court has no authority over them.

This proceeding will render imperfect justice at best. But it will provide some relief for victims and their families. More significantly, it will send the signal — as do all such prosecutions — that there is no escaping such monstrous acts. The reckoning may come late, but it must be seen to be inevitable.

The Extraordinary Chambers of the Courts of Cambodia, commonly known as the Khmer Rouge Tribunal, was set up by the U.N. to try former Khmer Rouge leaders charged with genocide and other war crimes. The court, which has a mix of Cambodian and international judges, along with international prosecutors, was established because of fears that a Cambodian tribunal would be undermined by political interference or sheer incompetence.

Its first trial concluded last year, resulting in the conviction of former prison commandant Kaing Guek Eav, usually referred to as Comrade Duch, for the torture and murder of an estimated 16,000 people; only a handful survived detention in the notorious Tuol Sleng prison he oversaw. He was sentenced to 35 years in prison. But Duch converted to Christianity late in life and accepted the legitimacy of the tribunal and that he committed the deeds in question, but insisted that he was only following orders.

The four defendants in this trial — former head of state Khieu Samphan, 79; former Foreign Minister Ieng Sary, 85; his wife, former Social Affairs Minister Ieng Thirith, 79; and the chief ideologue of the Khmer Rouge, Nuon Chea, 85, — do not acknowledge the authority of the court nor the legal basis of the actions against them. All four defendants claim to be innocent of the charges of war crimes, crimes against humanity and genocide.

Three of the four — all save Nuon Chea — argue that a 10-year statute of limitations of the previous Cambodian legal statutes bar their prosecution. Ieng Sary's lawyers claim that prosecution is barred because of double jeopardy: He was tried in absentia by the Vietnamese in 1979 after they drove the Khmer Rouge from power; he was then

pardoned by the king of Cambodia when he broke with the Khmer Rouge in 1996. The court is hearing all those claims.

While procedural issues are important to the defendants, the most critical questions surrounding the proceedings are moral and philosophical. First, can there be real justice when trials are held more than three decades after the crimes were committed? Of course, many would say — and we agree — that is precisely the knowledge that there is no escaping justice that gives the law its force and its deterrent effect. Justice delayed is most assuredly not justice denied.

But many counter that proceedings such as these merely reopen old wounds, and threaten to undo the progress that has been made in national reconciliation. It is a powerful argument, but one that is rarely made by the victims. Indeed, the most vocal advocates of moving on tend to be those individuals who have a stake in forgetting.

Thus, the biggest obstacle to additional trials appears to be Prime Minister Hun Sen — a former mid-ranking Khmer Rouge cadre. He is unlikely to be a part of the trial, while other prominent members of the Cambodian elite including his inner circle have questionable pasts. Mr. Hun Sen claims that additional trials risk dividing the country and could be destabilizing.

That is possible but unlikely. The guilty parties are old — the four defendants in the current trial range from 77 to 85 — and unlikely to rally significant forces on their behalf — at least, not if the prime minister does not choose to indulge them.

While justice is the most compelling reason to proceed, there is another equally powerful reason for letting the tribunal go forward: the need to educate the Cambodian people about their past. For years, political tensions dampened attempts to explain and understand Cambodia's past. A generation has come of age in the country that has little knowledge of its history. This may have been expedient, but the failure to understand history or its causes is a dangerous foundation upon which to build a state. Ignorance is the very opposite of reconciliation.

The growing popular interest in the tribunal suggests that the "forgetting school" is wrong. It is estimated that at least 100,000 Cambodians have visited the tribunal since 2005. The 500 seats in the court are fully occupied every day. The hearings are being broadcast live on radio and television.

The Cambodian people understand that they have a stake in their past. That is the foundation of justice.