

## **Khmer Rouge Trial Threatened**

**Susan Postlewaite**

**April 24, 2009**

### *Long-delayed justice in Cambodia may be denied yet*

Although the atrocities of the Khmer Rouge have been unfolding in a Phnom Penh courtroom for three weeks, a toxic mix of corruption allegations, political interference and a money shortage threaten to shut the tribunal down, even as the world reads that justice is finally being done after 30 years of inaction.

The situation hit a low point with a blunt threat by Prime Minister Hun Sen recently that if the court runs out of money it's fine with him. He said the international prosecutor's desire to arrest more Khmer Rouge leaders living freely in Cambodia is "propaganda."

"Do not believe the propaganda there will be a widespread trial," Hun Sen told reporters, adding that any more arrests beyond the five suspects in custody could create civil war. "I agree to accept the defeat of this court or the collapse of the court, but I will not let this country have civil war again," Hun Sen said. He was in the Khmer Rouge himself but defected to help Vietnam liberate Cambodia in 1979.

Meanwhile the trial of the regime's lead torturer Kaing Guek Eav, 66, also known as Duch, was off to what prosecutor Robert Petit said was a "good beginning," with four other aging Khmer Rouge leaders in custody and supposed to be tried in 2010. The Khmer Rouge were responsible for 1.7 million deaths by starvation, torture, execution, and overwork in Cambodia from 1975 to 1979. Petit wants more than five leaders tried, but his Cambodian co-prosecutor does not agree.

The dispute was turned over to the judges in December along with Petit's potential arrest list of five or six names. There is no indication when they will decide.

"The trial of Kaing Guek Eav is extremely exciting and there is a sense that justice is finally unfolding for the millions of victims," said John Hall, a professor at Chapman University's School of Law in California. But, he said, the inability of the court to credibly investigate allegations that Cambodian court personnel had to pay kickbacks to get and keep their jobs is fraying the patience of the donors who support the court. "At some point the UN and the international judges must seriously consider what Judge (Marcel) LeMonde called the nuclear option - to walk away," he said.

The problems have taken on renewed urgency as the court does not have money to pay Cambodian staff salaries for April. Australia offered to release funds that had been put on hold for six months pending an investigation into the corruption allegations. But the UN blocked the release. The UN has refused to release funds since last July when allegations resurfaced by Cambodian staff that a kickback ring operates at the court and they have to pay a percentage of their monthly salaries to a middleman.

Court spokeswoman Helen Jarvis said Friday that "we're confident" that the staff salaries will be paid next week. She said she could not say what country will shoulder the expense. (Japan came in with a \$200,000 "urgent" donation to pay March salaries.)

Jarvis also said the judges are still considering whether more arrests will be allowed.

"They're working on it. They have given questions back to the co-prosecutors. It's very complex," she said.

The UN investigated last fall but refuses to release its findings. UN Assistant-Secretary-General for Legal Affairs Peter Taksoe-Jensen has met three times since January, most recently for three days ending April 9, with Cambodian officials about the alleged kickbacks. But no resolution has been reached.

The court's senior Cambodian administrator, Sean Visoth, was named in November as a participant in a report by a German parliamentary delegation after their meeting with the court's UN administrator. Visoth has been sick leave since then.

Human rights groups and defense attorneys believe the corruption is widespread and could well extend to the judicial side, although they have not submitted evidence of that.

"The Cambodian judges and prosecutors receive their orders directly or indirectly from Hun Sen. They cannot act independently for fear of being removed or worse," said Brad Adams, executive director of Human Rights Watch Asia division.

"I've said for years that Hun Sen will try at key moments to sabotage the tribunal, and sadly, yet again he has done so," Adams said. "It is ridiculous to suggest the possibility of a spontaneous security threat from former Khmer Rouge, as they have no ability to take up arms against the government. If anything happens, it will only happen with Hun Sen's blessing."

Prosecutor Petit, veteran of war crimes courts in Rwanda and East Timor, said he still hopes that the judges will agree with his request to arrest more leaders. He also said the graft allegations have to be dealt with.

"This has to go away so it no longer shares the headlines with the more important work of the court. Half the headlines are about the problem they refuse to deal with," said Petit. "It threatens the continuation of the court. It's a very real problem."

Three of the defense attorneys representing the other suspects in custody asked the court to investigate the corruption, but the court's co-investigating judges said they don't have jurisdiction.

"The corruption is like a plague where everybody gets tainted," said defense attorney Michael Karnavas who represents 82-year-old Ieng Sary, the Khmer Rouge's foreign minister. He said if the UN is "worried that Hun Sen is going to kick them out they should be out the door first."

Others pointed out that Hun Sen has the UN over a barrel because the UN doesn't want to walk away from the tribunal, but it also doesn't want to be seen supporting a court that doesn't meet international standards of justice.

Hall said as unpalatable as it would be to halt the trial, it may "be preferable than to continue to condone a court whose legitimacy has been so seriously undermined."  
"Is a flawed court better than no court? Not necessarily," he said.