



The Khmer Rouge Tribunal: Cambodia's Healing Process

Christopher Shay

November 30, 2009

When the Khmer Rouge emptied the Cambodian capital Phnom Penh of human inhabitants in 1975, one of Pol Pot's soldiers murdered 4-year-old Theary Seng's father. Later, Theary Seng, her mother and siblings ended up in a prison in southeast Cambodia. One day, Theary Seng awoke to an empty cell — the prison population had been massacred overnight. In a rare act of mercy, the Khmer Rouge soldiers allowed the handful of children to survive. Theary Seng eventually escaped to a Thai refugee camp and then to the U.S. Her story is by no means unique in Cambodia. In just this one prison in Svay Rieng province, between 20,000 and 30,000 people were executed, and during the Pol Pot era, about 1.7 million Cambodians died — more than 20% of the country's population.

Still traumatized by those years and subsequent decades of political instability, many Cambodians had hoped that the U.N.-backed Khmer Rouge tribunal, a hybrid Cambodian-international court, would help push the country toward reconciliation. In November 2007, Theary Seng, now a human-rights lawyer in Phnom Penh, applied to become the first civil party at the Khmer Rouge tribunal — whereby she and other Khmer Rouge victims are participating in the criminal proceedings with their own set of lawyers. On Friday, the Extraordinary Chambers in the Courts of Cambodia (ECCC) — the official name of the tribunal — finished hearing its first case. Prosecutors sought a 40-year jail sentence for Kaing Guek Eav, known as Duch, (pronounced Doik) who ran the notorious S-21 prison, a Phnom Penh high school transformed into an interrogation center where Duch is accused of overseeing the grisly deaths of approximately 15,000 people. Over the last six months of hearings, the court heard accounts of interrogators who ripped off toenails, suffocated prisoners with plastic bags, forced people to eat feces, electrocuted prisoners and drained blood to extract confessions. During the trial, Duch, 67, said that Cambodians should hold him to the "highest level of punishment." But he also begged for forgiveness, saying he was only "a cog in a running machine." Duch's defense team painted the former math instructor as a mid-level bureaucrat who didn't personally torture anyone and was only following orders, and on Friday, Duch pleaded for the tribunal to release him.

Such has been the topsy-turvy nature of the tribunal. Indeed, just getting to the end of the first case was an ordeal. There have been allegations of a kickback scheme where Cambodian employees at the tribunal are forced to pay back a part of their

salaries to the government officials who gave them their jobs. On two different occasions, only last-minute donations from Japan allowed the Cambodian side of the court to pay its staff. Then, in a fiasco dubbed Waterlilygate, one of the international lawyers said documents found in a moat filled with lilies had been stolen from his office. And last week the New York-based Open Society Justice Initiative, an international law monitor, accused the Cambodian government of meddling with the tribunal, claiming "political interference at the ECCC poses a serious challenge to both the credibility of the court and its ability to meet international fair trial standards."

Despite these issues, Theary Seng says the tribunal has ultimately helped the healing process by encouraging people to talk openly about the Khmer Rouge era. She says that though most Cambodians assume there is some degree of corruption at the tribunal, "we are not to the point where it should shut down." She says that the Khmer Rouge tribunal is more than a court of law — "it's also a court of public opinion."

About 28,000 people attended Duch's trial at the ECCC on the outskirts of Phnom Penh, and millions more Cambodians followed the tribunal on television and the radio. With about 70% of the Cambodia's 14 million people born after the Khmer Rouge regime, the trial enabled an entire generation to learn about their country's terrible past. Youk Chhang, the director of the Documentation Center of Cambodia, says that the fact that the tribunal was held in Cambodia was key to sparking interest in the trial and knowledge about the period. In January, the University of California at Berkeley's Human Rights Center released a report saying that 85% of Cambodians had little or no knowledge of the trial. Now, with the distribution of a new textbook on the Khmer Rouge coinciding with the trial, Youk Chhang says "the whole country is aware."

The tribunal has also helped Cambodians in unexpected ways. A counselor sits next to every survivor who testifies — at one point during the Duch trial, a judge even ordered a witness to see a psychiatrist, according to Sotheara Chhim, a Cambodian psychiatrist and director of the Transcultural Psychosocial Organization (TPO). An estimated 14% of the population suffers from post-traumatic stress disorder, and Sotheara Chhim says the number of people who suffer from depression or anxiety is likely much higher than that. Though information about mental health is still limited in rural Cambodia, "the trial brought out a lot," Sotheara says.

Now comes the waiting. A verdict for Duch isn't expected until March. For Theary Seng, the Duch case "is sort of a test trial" for the more important Case Two when four high-ranking Khmer Rouge leaders will be in the dock: Nuon Chea, 83, who was second in command to Pol Pot; former head of state Khieu Samphan, 78; former Foreign Affairs Minister Ieng Sary, 84; and Ieng Thirith, 77, the former Social Affairs Minister. They are expected to face the tribunal in 2011 in a case that could last years. Case Two, says Theary Seng, will make Duch's case look like "a cakewalk."

Unlike Duch, the four defendants held high-level positions in the Khmer Rouge, have denied complicity in war crimes and refused to apologize. Time is also running out. With the youngest defendant aged 77, some or all of the defendants may not live long enough to face the tribunal.

If the past year is any indication, the tribunal will face many more hurdles, but Theory Seng says it has benefited Cambodia. The trial, she argues, has generated much needed discussions about history as well as mercy across the country. Says Theory Seng: "The Khmer Rouge tribunal has triggered a process of forgiveness." And perhaps a process leading finally to closure.