

## **Trial and tribulations in Cambodia**

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**October 6, 2009**

In a legal landmark for Cambodians and for international justice, testimony at the first trial of the Khmer Rouge tribunal has successfully come to a close. But as judges deliberate the verdict of one self-confessed former torture chief, the fate of the tribunal itself is also in question.

A series of controversies, including Prime Minister Hun Sen's warnings that more trials would undermine national security and potentially re-ignite civil war, threaten to unravel future cases against former leaders of the radical Maoist regime. The man who stirred the controversy, former international prosecutor Robert Petit, left his post on September 1 for "personal and family reasons" as testimony was wrapping up.

Petit announced last December that he intended to charge six more suspects up and beyond the five who have already been detained and await trial. That sparked a legal dispute with his Cambodian co-prosecutor, who filed an objection, and the ire of Hun Sen.

"If you tried [more suspects] without taking national unification and peace into consideration, and if war re-occurred, killing between 200,000 and 300,000 people more, who would be responsible for it?" Hun Sen asked in a speech to mark the release of census results on September 7. Hun Sen said previously that he would rather see the court fail than pursue more prosecutions.

International rights groups such as Human Rights Watch and Amnesty International have condemned his statements as political interference in the legal process. Other analysts have dismissed his civil war threat, speculating instead that Hun Sen is bidding to protect political allies in his government.

The prime minister was once a low level member of the Khmer Rouge, but he defected and fled to Vietnam. Other former Khmer Rouge members in government include Deputy Prime Minister and Finance Minister Keat Chhon and president of the National Assembly Heng Samrin.

On September 2, the tribunal ruled that prosecutors could make submissions to the investigating judges in order to open up judicial investigations of the former Khmer Rouge members Petit had been building cases against. It was a split decision: Cambodian judges on the tribunal tried to block the move, while the international judges allowed for

it.

Since his political and legal bombshell, Petit has been tight-lipped with the media. But in an interview the day before his departure from Cambodia, he spoke more openly to this correspondent.

"I am unconcerned about any politician's opinion about my work. It's not their job to take that on. It's mine; it's the court's," he said over coffee at Le Royal, the hotel immortalized in the film *The Killing Fields* as the refuge of the last rag-tag band of journalists left in Phnom Penh when the Khmer Rouge took over the city in 1975.

Petit said he hoped the prosecution would continue to pursue charges against six more suspects, in addition to the five who have already been arrested, "without any priorities other than the law and the evidence".

The five former leaders who await or are on trial include: Khieu Samphan, the former Khmer Rouge head of state; Ieng Sary, who held the post of foreign minister; Ieng Thirith, his wife and former minister for social affairs; Nuon Chea, known as "Brother Number Two", who served as deceased Khmer Rouge leader Pol Pot's deputy; and former S-21 prison warden Kaing Guek Eav, better known by his revolutionary name Duch.

The additional six suspects identified by Petit have not been named publicly, but a source familiar with the investigation said they include at least one government official and a retired general. The source also said one of the suspects has already died. The Cambodia Daily newspaper identified him as the Khmer Rouge's former commerce minister, Van Rith, who died in November.

In a 2001 publication, Stephen Heder and Brian Tittmore named seven former Khmer Rouge leaders who they said the strongest cases could be made against. The list included some of these currently facing charges, but the authors also mentioned Meah Mut, a former Khmer Rouge commander, who now serves in an advisory position to the Ministry of Defense. He stands accused of transferring members of his division to the S-21 detention center.

"I believe there's enough evidence to justify prosecuting [the six unnamed suspects] and qualifying them as either senior leaders or the most responsible," said Petit, without referring to specific individuals. "That's my only concern."

### **Legal threats**

He rejected the claim that expanding the scope of the prosecution would spark armed conflict, saying that Cambodians have no wish to return to war after suffering some of the worst atrocities of the 20th century. Petit suggested that if violence were to occur following an arrest, it would most likely be politically orchestrated. "It's not going to happen," he said. "And if something were going to happen, I would question the

genuineness of it."

Hun Sen, who until recently had presided over fast economic growth and relative political stability, seems determined to thwart further prosecutions, judging from his September 7 speech. "I have achieved this work [peace], I will not allow anybody to destroy it," he said.

However the tribunal is in danger of collapse even without political interference. Claims that Cambodian administrative staff at the tribunal were forced to pay kickbacks to superiors in order to acquire and maintain their jobs were made in a United Nations report leaked to the media over two years ago. Yet no one has yet been named or charged for corruption.

The UN and Cambodian government appointed Uth Chhorn in August as an independent counselor, a position created in part to investigate the corruption allegations. But, on September 24, he told reporters that his job is not to resolve corruption charges. Rather, he said he will pass on information provided to him about corrupt practices to senior UN and government officials.

A German parliamentary delegation published a report last November implicating Sean Visoth, the head of the tribunal's administration, in the alleged corruption. He went on sick leave that same month and has not yet returned to work.

As the corruption controversy simmers, and as judges consider the case against the first defendant, Duch, prosecutors are already busy trying to build solid cases against the four suspects remaining to be tried. Those cases promise to be far more complex as Duch is the only one of the original five suspects who has admitted his guilt.

To be sure, it would have been hard for Duch to deny his role in the atrocities carried out by the Khmer Rouge. There are thousands of pages of documentary evidence linking him to the crimes committed at the S-21 prison, where as many as 17,000 people were tortured before being executed.

Under Duch's supervision, meticulous records of interrogation and torture were kept at S-21. While apologizing repeatedly in court to his victims, Duch also said he and his family would have been killed had he not carried out the murders ordered by his Khmer Rouge superiors.

The remaining four suspects, all of whom held much higher ranks, reject accusations that they led a regime that presided over the deaths of at least 1.7 million of its own citizens. All four suspects deny any knowledge of atrocities committed under the Khmer Rouge. Petit however said he was not worried about the cases against them.

"It is true that in general this regime did have secrecy and paranoia as some of its hallmarks. But if you've created that secrecy, if you've created that paranoia, if you've enforced it and made sure it permeates the structure that you're running ... then it doesn't

help you much provided that it can be proven that you were in charge and that you did create these institutions," he said. "And I don't think that's going to be much of an issue here."

Of greater concern, perhaps, is the question of whether the suspects will live long enough to have their day in court. They are all elderly and some are known to have serious health problems.

Closing arguments in the Duch trial are set for November and a verdict is expected in 2010. A date has not been set for the trial of the remaining four suspects that have been identified and are currently incarcerated. Although prosecutors are now free to investigate and bring charges against the additional unnamed six suspects mentioned by Petit, nobody has been willing, at least publicly, to say if or when that might happen.

"It is important to say that this does not automatically mean there will be more prosecutions," Lars Olsen, a spokesman for the court, told reporters on September 2. "It means [the international prosecutor] is no longer barred by the disagreement with Cambodian colleagues."

Still, there is still a strong possibility that Duch will be the only Khmer Rouge member to be tried for his role in the regime that prompted historians to add "autogenocide", a term that refers to the extermination of citizens by a regime that shares the same ethnicity, to the English language.

After decades of ignoring almost inconceivable atrocities, and then finally pouring more than US\$150 million into a tribunal now hotly contested by politicians and officials, the international community may yet fail to bring justice to Cambodia.