

Cambodia's Court at a Crossroads

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Hun Sen will be responsible if the tribunal fails.

Thirty years after the end of Pol Pot's reign of terror, the Khmer Rouge tribunal is poised to release its first verdict and take on the regime's most senior surviving leaders. Yet political meddling by the Cambodian government and donor fatigue may prevent other perpetrators from ever facing trial.

The Extraordinary Chambers in the Courts of Cambodia—a hybrid court composed of Cambodian and international judges—has been an important, if limited, exercise in justice. Cambodians have packed the courtroom each day to watch Kaing Guek Eav, a former prison chief and executioner, finally held to account. Thousands more followed the proceedings on radio and television. By presenting the case publicly, the trial helped bridge the gap between younger generations of Cambodians—who do not learn about the Khmer Rouge in school and often doubt stories of victimization—and their parents and grandparents, who suffered directly under the regime.

But the real test of whether the court can fulfill its promise is yet to come. International donors met in early February in New York to review the court's budget, and will make critical funding decisions in the coming weeks. Meanwhile, Cambodian government officials—who apparently fear the prospect of judges deciding for themselves—are trying to block the potential trials of other guilty parties.

A second trial, of the four most senior surviving Khmer Rouge leaders, will start later this year or next. But last September, just as the court decided to allow investigations of five additional accused to proceed, the government stepped in. Cambodia's Prime Minister Hun Sen proclaimed, "If the court wants to charge more former senior Khmer Rouge cadres, [it] must show the reasons to Prime Minister Hun Sen," referring to himself in the third person. One month later, when the international investigating judge summoned six officials to testify, a government spokesperson said they would not comply. He warned foreign observers to "pack up their clothes and return home" if they were not satisfied.

Unfortunately, that may be just what the international community will do. Some diplomats are reportedly floating the idea of winding up operations after the second trial. Since 2006, when the court was born, the undertaking has cost \$40-50 million a year. This is less than most other international war crimes courts but enough to prompt some, including major donors like Japan, to ask how much justice is enough.

While this might please Cambodia's leaders, it would be a disservice to its people.

The court is admittedly an imperfect vehicle—the product of a decade of tortuous negotiations that gave the Cambodian government more influence than most international observers wanted. But it is the last chance to hold accountable those most responsible for the atrocities of the Khmer Rouge while they are still alive. And in a country where rule of law is little more than a phrase, it offers a rare opportunity to demonstrate what justice can and should look like.

To do so, the Khmer Rouge tribunal must be—and be seen to be—independent. Despite the government protests the pre-trial chamber in August authorized an investigation into two new cases, and now the judicial process must be allowed to run its proper course. In early February, a Cambodian judge serving on the court told me bluntly what is at stake: "How can we say that the court is a model of independent justice if the government does not let us do our job?"

The United Nations, Cambodia's partner in the court, has a major role to play. Secretary-General Ban Ki-moon should appoint a senior-level advisor with the title of assistant secretary-general to take on three tasks. First, make clear to Cambodia's leadership that continued threats of interference deprive the tribunal of legitimacy and undermine whatever international goodwill Phnom Penh has earned. Second, reinvigorate the court's anticorruption mechanism which, though presently moribund, remains essential to preserving public credibility. Third, marshal donor support to allow all four active cases to proceed to judicial conclusion.

To give heft to U.N. efforts, the United States could also step up its engagement. To date, Washington has taken a back seat, contributing just \$1.8 million to the court. That's inconsistent with America's historic responsibility as a former backer of the Khmer Rouge and its global interest in fostering respect for law. If a suitable U.N. advisor is designated, then the U.S. should go ahead and approve the \$5 million appropriation currently in the pipeline for fiscal year 2010. And Washington could consider giving more, conditioned on a commitment from the government of Cambodia to preserve judicial independence, end staff appointment delays and curb corruption.

If Hun Sen fails to deliver on these reforms, it is he who will bear responsibility for pulling the plug on the tribunal—not the international community. In the meantime, greater international commitment is needed if this fragile experiment is to succeed.

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