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Justice, Interrupted

Cambodia's Khmer Rouge tribunal risks becoming a sham.

By **JAMES A. GOLDSTON**

No court can be considered legitimate if its judges and prosecutors submit to political diktat. Tragically, the United Nations-backed court in Phnom Penh investigating and prosecuting those most responsible for the Khmer Rouge's crimes in Cambodia is at risk of doing just that.

The Court, called the Extraordinary Chambers in the Courts of Cambodia, has indicted a mere five people for the murder of close to two million between 1975 and 1979. Last week, the court's international co-prosecutor, Robert Petit, proposed that an undisclosed number of additional suspects be formally investigated -- a prelude to indictment. According to a Dec. 8 press release from Mr. Petit's office, his local counterpart, co-prosecutor Chea Lang, opposed the move. Because the process for resolving disputes between prosecutors is confidential, Ms. Lang's reasons for opposing additional investigations are unknown.

Mr. Petit has filed a formal "statement of disagreement" indicating his commitment to press ahead with additional charges. Under the Court's complicated structure, he can do this if authorized by the pre-trial chamber, an organ of the Court responsible for overseeing proceedings prior to trial and resolving disputes between co-prosecutors and co-judges. Prime Minister Hun Sen has in the past suggested that trying "four or five" people would be enough. Although most Cambodian officials today say that the government would not limit the number of people charged, the attitude persists that trying more people might be detrimental or destabilizing. Absent agreement between the two co-prosecutors, the Court's judges will be asked to resolve the dispute.

If ever there was a moment to show that the Court is not a tool of the Cambodian government, this is it. Unfortunately, court rules provide that this issue must be addressed out of public view. All should understand, however, that the court's very legitimacy to Cambodians and the international community is at stake. The Court must operate as transparently as possible in the coming days.

That will be difficult, given that the Court is the product of 10 years of negotiation between the U.N. and the Cambodian government. As a hybrid court, it has an awkward structure. The international and domestic co-prosecutors and

co-investigating judges must agree before proceeding on major decisions. Where consensus cannot be achieved, a "super-majority" composed of at least one international judge is required for most significant action. This fragile arrangement has given rise to much skepticism about the Court's capacity to reverse a long Cambodian history of improper interference in judicial operations.

In the past year, too, serious allegations of corrupt employment practices on the Cambodian side of the court have emerged. The U.N. investigated the matter in September, but did not release its findings. A pervasive lack of openness at the Court has not helped. This is an especially serious situation as any forthcoming judgments will be potentially vulnerable to crippling legal challenges.

Yet the Court's greatest challenge by far is the new roadblock preventing further prosecutions. It has long been suggested that the limitation of charges to the five accused -- all former Khmer Rouge members, unconnected to any current senior government figures -- was a central part of the "unwritten bargain" that led the government to accept the Court. A number of senior figures in the current government apparently fear the potential consequences of establishing a model of transparency and accountability that might be applied more generally. Given the scale of the crimes and the breadth of criminal responsibility, any judicial process that arbitrarily narrows its focus to only those individuals would be a sham.

It is time for the donor governments that support the Court -- including Japan, France and the U.S., which recently pledged its first contribution -- to insist that the Court operate as a court of law. Anything less would be a betrayal of the memory of two million dead and numerous others who endured physical and psychological wounds. Both the victims of the Khmer Rouge and the next generation of Cambodians deserve an honest, judicial accounting of one of the worst atrocities of the 20th century.

Mr. Goldston is the executive director of the Open Society Justice Initiative, which provided advice and technical assistance during some early stages of the tribunal.

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