

Last chance to try the Khmer Rouge

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Thirty-one years ago next week, a peasant army clad in the black of the Khmer Rouge marched into Phnom Penh and quickly emptied Cambodia's capital of human life. "This is Year Zero," Khmer Rouge leader Pol Pot declared as Cambodia began one of the darkest chapters in world history.

For most Cambodians, time did not so much begin as end in April 1975. Over the next three and a half years, as many as two million people - nearly a third of Cambodia's population - were either executed or died from starvation or disease resulting from Khmer Rouge policies.

In 1984, we visited the Khmer Rouge, by then a guerrilla force opposing the government installed by Vietnam in 1979 and operating from a base near the Thai border. Our main minder, who identified herself as the head of the Khmer Red Cross, giggled when she reminded us that when the last Westerners visited the Khmer Rouge (during its final weeks in power), one of them was murdered.

As night fell on the first day of our visit, a group of Khmer Rouge leaders suddenly materialized out of the jungle. They included Pol Pot's brother-in-law, Ieng Sary, and his wife, Ieng Thirith. Pol Pot did not come - he was busy, Sary explained, leading his forces in battle.

Thus began the most surreal evening of our lives. Our hosts served up imported shrimp, champagne and other delicacies under a bright lightbulb (the only sign of electricity we could see). Insects crowded into the glasses of champagne.

How do you broach the subject of mass murder when your hosts, responsible for crimes of mind-numbing magnitude, offer a sumptuous feast at the outer edges of the earth?

In response to our questions, Ieng Sary acknowledged that the Khmer Rouge "owe the world an accounting" for what he termed "the unfortunate events of the 1970s." "But as you know," he continued, "Pol Pot is very busy right now fighting a war." The accounting would have to wait.

More than three decades after the fall of Phnom Penh, Cambodians are still waiting. Pol Pot's death in April 1998 forever deprived Cambodians of the justice of seeing him tried, but it created new impetus to seek some measure of accountability for surviving leaders of the Khmer Rouge.

Negotiations between the Cambodian government and the United Nations to establish a special tribunal to prosecute Khmer Rouge atrocities, triggered by a Cambodian request in 1997, have been agonizingly slow. At last, however, the court is becoming a reality.

In February, the deputy director of the court's administrative office, a UN appointee, arrived in Phnom Penh. Later that month, hundreds of Cambodian witnesses visited the courtroom in which surviving leaders of Khmer Rouge atrocities will be tried. Confronted with the material reality of the Khmer Rouge tribunal, many visitors wept.

Last month, UN Secretary General Kofi Annan submitted a list of international judges to serve on the court - formally the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea.

Every Nuremberg-type tribunal is fraught with challenges and risks, and significant perils are woven into the very fabric of this one. Unlike international courts operating in The Hague, Arusha and Freetown, local judges will constitute a majority in the Cambodian court, which is established within Cambodia's national court system.

Given well-founded concerns about the susceptibility of Cambodian judges to political interference by Cambodia's longtime leader, Prime Minister Hun Sen, this has led some international organizations to condemn the Extraordinary Chambers before its work has begun.

While aware of the perils, supporters of the process, including the United Nations, argue that it is the last chance to deliver some measure of justice to survivors of Cambodia's killing fields. They say safeguards against abuse have been built into the tribunal's structure. For example, at least one foreign judge must agree with the Cambodian judges to reach a verdict.

The fact is that Khmer Rouge leaders are aging and dying. Pol Pot and another prime suspect, Kae Pok, are dead, while our dinner host, Ieng Sary, is said to suffer from a serious heart condition. For Cambodian victims, the principal lesson of the protracted trial of Slobodan Milosevic, which was terminated last month by his death, is clear: Justice further delayed may be justice forever denied.

The experiences of other recent war crimes courts offer other lessons as well.

They have shown that the way survivors perceive the proceedings is powerfully affected by their treatment as witnesses. Donors should ensure that adequate funds are devoted to supporting and protecting witnesses.

The judges, prosecutors and defense counsel should receive intensive training in both international and Cambodian law and procedure to ensure effective trial proceedings.

The Extraordinary Chambers should also ensure that the public is informed about their work, and should be aware of how Cambodians perceive the tribunal.

A significant failure of the Yugoslavia tribunal was its belated engagement with citizens in the Balkans. The void was readily filled by hostile nationalist propaganda.

While these concerns are common to all such tribunals, the Cambodia court presents especial risks of political interference. Hun Sen has repeatedly delayed the creation of the tribunal and tightly controls all political life in the country.

Foreign donors who support the tribunal must carefully monitor the proceedings and should establish an institutionalized process for doing so.

The donors should also provide significant support for empowering Cambodian civic organizations to monitor and engage with the Extraordinary Chambers.

Even if the process is flawed - unfortunately a virtual certainty - it can serve as a vehicle for further enhancing the skills and influence of Cambodia's vibrant and sophisticated civil society, which has faced particularly severe repression this past year.

This itself would be an invaluable legacy of trials that are long past due the aging survivors of Cambodia's killing fields.

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