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Waiting in Pain for Justice on Genocide

By Connie Levett

PHNOM PENH — Vann Nath is a good witness, a rare survivor of Cambodia's most notorious Khmer Rouge torture prison, and he is willing to re-awaken the demons of his past in a genocide tribunal. The question is, will he survive long enough to do that?

The 60-year-old is fighting serious kidney disease with twice-weekly dialysis, while the 29 judges—17 Cambodian and 12 international—of the United Nations-backed genocide tribunal battle each other over the rules of engagement.

There is a threat of a walkout by the international judges, amid allegations of government interference and concerns about the independence of the Cambodian judges. Many high government officials, including the Prime Minister, Hun Sen, were mid-ranking Khmer Rouge officers.

At stake is justice for more than 1.7 million Cambodians who died between 1975 and 1979 under the murderous regime of Brother No.1, Pol Pot.

"I have never forgotten what happened in Pol Pot's regime," said Vann Nath, a painter and writer. "They tortured me brutally, and not only me. All people in Pol Pot's regime cannot forget."

Vann Nath was one of only seven survivors from the 17,000 prisoners sent to Tool Sleng, the Phnom Penh prison which was the country's largest torture and detention centre. Only three of those seven are still alive.

He was spared after the prison commander, Commodore Duch, discovered his artistic talent and set him to work painting portraits of Pol Pot.

The aim of the genocide trial is to bring "senior leaders and those most responsible" to court. Pol Pot escaped justice when he died in 1998. Since 2003, when the tribunal was agreed to in principle, two more leaders have died. Duch is the only senior Khmer Rouge figure in jail awaiting trial.

"There is tremendous pressure, unbelievable pressure, a number of the potential defendants have died, a number of the potential witnesses have died," said Helen Jarvis, head of public affairs at the Extraordinary Chambers of the Courts of Cambodia. "On a larger scale, many Cambodians who hoped to see justice in their lifetime didn't make it. The pressure is immense but I don't think we in the courts can make up for 30 years of lost time ... and it would be foolish to

establish the court on unsound basis, since we have to have a good legal structure."

For Vann Nath the trial matters for two reasons. "If they don't bring them to court [the Khmer Rouge] won't know what they did [was wrong]. We need them to be responsible for what they did. If we don't do it, the young generation will not know what is wrong and what is right."

Close to half of the 14 million Cambodians are under 18, born at least a decade after the event.

At the tribunal this week, when a group of 200 Cambodian law students met the French tribunal judge, Marcel Lemonde, they wanted assurances the trial would go ahead. All have family who were victims of genocide.

One law student, Nhean Raksmy, 22, said the tribunal was needed to ensure the mass killings never happened again. "Twenty-eight years ago Cambodia went through war and fear, and now we are living in peace. We have modern equipment, modern education and we can travel wherever we want. I hope Cambodians are walking in the right direction and will be recognised internationally," he said.

How Cambodian justice is perceived internationally will depend on the outcome of the tussle over the tribunal's internal regulations. Two sources of tension are the judges' independence and the role of foreign prosecutors.

It is unlikely hearings will start before 2008, according to Judge Lemonde. "There is one point on which the international judges are unanimous - these trials should take quickly or not at all," he said recently.

The judicial tensions come from the need to harmonise Cambodian and international laws, Dr Jarvis said. "I think both sides have gone into it with good faith and the judges, as individuals, will bring their own judicial integrity to it. It's naive to imagine anyone operates in a complete vacuum, free from historical circumstances or environment."

In the West, questions are raised about how free and fair a genocidal tribunal can be when 19 local judges were appointed by the thuggish Prime Minister and former Khmer Rouge soldier, Hun Sen. There are also questions about China's involvement in the delay, analysts say, because it does not want its role as a Khmer Rouge backer re-examined.

What you hear less of in the West is the ambiguous role of the UN. Youk Chhang, the director of the Documentation Centre of Cambodia, which has chronicled the genocide, said the Cambodian people had reservations about both sides of the tribunal and the UN needed to document its own role. "The conflict is that both

sides are associated with the Khmer Rouge," he said. "So far the UN has not faced up to its own role."

Youk Chhang said that at a March 2006 meeting between a UN coordinator and genocide survivors, they asked her: "Where were you in 1979? What were you doing?"

In 1979 the UN refused to recognise the Vietnamese-backed government installed after the Khmer Rouge were defeated. When 1.1 million signatures testifying to the genocide were collected in 1982, they were never presented to the UN because the Khmer Rouge retained Cambodia's seat in the UN General Assembly. The records remain intact at the Documentation Centre.

There is no sunset clause on the tribunal but it has funding for only three years, and seven months into the process it is still wrangling over the rules of engagement. For Vann Nath, time is precious. His life-saving dialysis costs \$US1000 (\$1275) a month, but he receives no support from the Government. A Swedish non-government organisation gives him some help.

After 28 years he still has the bad dreams but he also has a wife, three children and two grandchildren who bring him great joy. "Sometimes, when I talk about the regime I will dream again, [then] I cannot sleep. And if I sleep, I dream."

Yet despite the nightmares of the past, Vann Nath wants his day in court to talk about the Pol Pot regime one more time—for his country's sake.

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