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Khmer Rouge Genocide Tribunal Stumbles as French Defense Lawyer Demands New Translation

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The proceedings of Cambodia's United Nations-backed genocide tribunal briefly descended into chaos last week, as defense lawyers for [Khieu Samphan](#), former Cambodian head-of-state under the Khmer Rouge, argued the case must halt until all documents are translated into French.

A tumultuous press conference on Dec. 4, marked by the trademark antics of Samphan's French defense attorney, [Jacques Vergès](#), preceded a more productive hearing on Dec. 5 that paved the way for the first of five regime leaders detained by the tribunal to go to trial. Accusations of corruption, disagreement among prosecutors and overspending have all helped delay the trials. According to a timeline created in 2006, all five trials should already be completed. Now, they are expected to continue through 2010.

At the press conference, Khmer Rouge victims bemoaned the slow and disjointed progress of the [Extraordinary Chambers in the Courts of Cambodia](#), the tribunal's official name. "We don't want a trial by media," complained Australian prosecutor William Smith, from underneath a canopy of sound booms. Chaos, however, is exactly what Jacques Vergès appears to want.

The French lawyer, nicknamed "devil's advocate," gained notoriety for representing a slew of infamous clients, including Nazi leader Klaus Barbie and terrorist Ramirez "Carlos the Jackal" Sanchez. In his one-man play currently at the Theatre de Madeleine in Paris, Vergès describes his strategy as "defense de rupture," characterized by interrupting trials by any means necessary.

At last Thursday's hearing, Vergès employed this approach by demanding that his client, Khieu, be released because most of the documents are not translated into French. In addition to English and Cambodia's mother tongue, Khmer, French is one of the court's three working languages.

Vergès filed his complaint in July and, last week, he and his Cambodian co-counsel Sa Sovan came before a panel of pre-trial judges inside the glassed-in courtroom outside Phnom Penh. Cambodia and the U.N. created this hybrid court, composed of domestic and international lawyers and judges, in 2001 to try Khmer Rouge leaders for international war crimes and crimes against humanity. During its reign from 1975 through 1979, the regime emptied cities and forced citizens to toil in fields. In an attempt to produce huge sums of rice and create an agricultural peasant Utopia, the party executed tens of thousands of people deemed disloyal, educated or simply lazy. Hundreds of thousands more died from overwork or starvation.

In addition to Khieu, detainees include the Khmer Rouge's former prison chief, its social action minister, its foreign minister and the second-in-command to party leader Pol Pot, who died 10 years ago.

Vergès says his client didn't know about the group's murderous tactics. During his presentation last Thursday, [Vergès pounded his fists, pointed his finger and spoke at a pace that left his translator breathless.](#)

Little of the French lawyer's discourse resembled traditional legal arguments. He quoted French King Louis XIV, recited his career highlights and suggested the court appeal to the U.N. to replace its former secretary-general, Kofi Annan, who supposedly agreed with Vergès that all documents should be translated. Hundreds of Cambodians, Westerners and saffron-robed monks listened in on headsets from behind the glass partition. Some sat silently, while others chuckled when Vergès made statements such as, "I laugh in the face of your threats." Still others moaned in disapproval.

When deputy international prosecutor William Smith presented oral arguments, he preemptively apologized for his

performance's comparative lack of flair. Smith, who spent 11 years as a prosecutor at The Hague before joining the ECCC, then explained that international tribunal precedent requires that all court documents be in the mother tongue and one other language, not two. The ECCC printed all documents in Khmer and either English or French. Translating the pages into all three languages is unnecessary, he argued. He criticized Vergès and Sa for prolonging their clients' detention with a "meritless action." The judges said they would decide on the issue at an unspecified later date.

At a press conference after the hearing, Vergès and Sa appeared to revel in the press attention, ratcheting up their indignation over the untranslated documents and challenging Smith to an impromptu debate rather than cede the floor to him. Suth Ny, a petite, 51-year-old Cambodian woman in the crowd, shouted at the men to step down. Sa yelled back and rushed toward the woman, pointing his finger at her and telling her that he, too, lost family under the Khmer Rouge. Defense coordinator Richard Rogers blocked Sa's advance and tribunal employees then escorted the attorneys from the room. A small smile could be seen on the corners of Vergès' mouth amidst the chaos.

Organizers then gave victims a chance to speak, aided by an English translator. "You are performing a circus," scolded a middle-aged man named Ly Monysak. He and several other victims implored the court to replace Khieu Samphan's attorneys.

The next day, a quieter proceeding in the same courtroom determined a far more significant issue. The court denied prosecutors' request to use a legal theory, called Joint Criminal Enterprise (JCE), against torture prison chief Kaing Guek Eay, alias "Duch," but agreed to add domestic murder and torture charges to his indictment. JCE could have made Duch liable for all 15,000 deaths at his prison, simply for having participated in its operation. Instead, prosecutors must prove his direct involvement with every murder. If allowed to proceed, JCE would also have helped link evidence against Duch to the other defendants.

The court's case is strongest against Duch, who left behind a trail of execution orders. The born-again Christian is also the only defendant to admit guilt. Duch, indicted in August, might now go to trial by March 2009.

After the back-to-back hearings, the court grappled with several more hurdles early this week. On Sunday, a U.N. delegation, led by Assistant Secretary General for legal affairs Peter Taksoe-Jensen, arrived in Cambodia to help the court address corruption allegations filed against lawyers and judges by several administrative staff. On Tuesday, prosecutors issued a "statement of disagreement" over whether the court should seek to try additional defendants. Lead Cambodian prosecutor Chea Leang opposes further investigations while lead international prosecutor, Canadian Robert Petit who has worked for U.N.-backed tribunals in Rwanda and Sierra Leone, supports them.

Before indictments against the remaining four detainees -- and possibly others -- can proceed, the court must investigate the corruption charges, mediate the co-prosecutors' dispute, and sort through hundreds of remaining pre-trial legal questions and appeals. Reining in Jacques Vergès is another big hurdle.

"I am not leaving this position," Vergès shouted during last Thursday's hearing. "I will come at it again and again."

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