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## Southeast Asia

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### Killing time at Cambodia's 'show trial'

By Stephen Kurczy

PHNOM PENH - Judges at the United Nations-backed Khmer Rouge tribunal in Phnom Penh have cleared the way for the regime's former chief executioner to stand trial by March. Yet stalling tactics from the defense - specifically from the team of legendary French [attorney](#) Jacques Verges - and unresolved corruption allegations threaten to derail this progress.

"The court has made a great deal of progress in the past year, and I think that with a strong push from the UN it will also show itself capable of resolving the corruption charges," said Anne Heindel, a legal advisor with the [Documentation](#) Center of

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Cambodia. "Of greater concern is the possibility that the Cambodian people may lose faith in the process along the way."

Talks this week in Phnom Penh were expected to address allegations of bribery within the court. In 2007, Billionaire George Soros' Open Society Justice Initiative reported that tribunal staff had paid kickbacks for their positions. In August, the UN Office of International Oversight Services announced that multiple tribunal staffers had complained of corruption. This department is working with the UN Office of [Legal Counsel](#) to determine whether the allegations warrant an investigation.

The head of the UN Office of Legal Counsel, Peter Taksoe-Jensen, met this week with Cambodian Deputy Prime Minister Sok An to "address a number of issues of common concern to the UN and the Cambodian authorities", according to a [press release](#). This was expected to include the corruption allegations, Heindel said. "My hope is that this high-level visit will signal to the Cambodian leadership that they need to take strong and public action to address the corruption allegations so that the process is not tainted going forward," she told Asia Times Online.

Headway had appeared elusive. Taksoe-Jensen canceled his Wednesday press conference and departed Cambodia without speaking to the media. A joint statement issued on Wednesday from the UN and the Cambodian government said, "The parties agreed on the need to strengthen the ECCC's [Extraordinary Chambers of the Courts of Cambodia's] human resources management, including anti-corruption measures." The parties decided that UN and Cambodian officials would begin conducting joint meetings "to ensure that the entire administration operates in a transparent, fair and efficient manner". The results of these joint sessions are to be reported by the end of January.

The failure to resolve corruption allegations follows a raucous public hearing last week that also drew criticism. Defense stall tactics provoked victims of the Khmer Rouge to fury. One woman, whose parents died when the ultra-Maoist regime emptied all cities and forced the nation into collectivized labor in the 1970s, almost got into a physical fight with a defense attorney.

Verges, who's been called "the Devil's Advocate" for his infamous roster of former clients, angered victims by demanding the release of his old friend and former Khmer Rouge head-of-state Khieu Samphan. Verges has accused the ECCC of being a show trial. Ironically, the show always starts when he's in town. On December 4, Verges and Cambodian co-counsel Sa Sovan argued that the court had violated their client's rights by failing to translate all documents into French.

Sa attacked the competence of the translators, saying he personally knew that some "do not have a good background in legal matters". Verges took a more bombastic approach, criticizing the five pre-trial chamber judges and the two co-prosecutors. He also accused the court administration of wasted millions in French donor funds on public outreach posters and trips to the countryside.

"Money has been used in a manner for which it was not intended. What have you done with this money?" Verges said in a five-minute tirade. "Five million dollars and you can't translate 60,000 pages?"

That the co-prosecutors' produced a copy of Verges' Paris Bar license, which states he is capable of working in French and English, seemed beside the point. Verges said he would continue to demand that all documents be translated into French, even if the court warned him again - as it did in April - that he risked removal for refusing to participate in the hearings. Verges compared himself to former UN secretary general Kofi Annan, who in 2004 allegedly also said that all documents deserved translation. "Perhaps you should recommend that the United Nations change its secretary general," Verges quipped. The court's translator, rapidly translating into English from Verges'

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rapid French, could barely withhold a chuckle.

Verges continued: "I am wearing the robe that gives me dignity, not the slippers of a servant. I laugh in the face of your threats."

Exactly how the judges attempted to reduce Verges to servitude was unclear, though this didn't spoil his intended effect: calling a court's validity into question is his tried-and-true method of *defense de rupture*. Verges perfected this technique while defending criminals such as Nazi Gestapo officer Klaus Barbie and the Venezuelan terrorist Carlos the Jackal.

He continued this strategy at a press conference after the four-hour hearing. Seated at a table lined with tape recorders, Verges demonstrated how he fills the Madeleine Theater in Paris twice a week for his ongoing one-man play. At turns sitting, standing, pointing and slamming the table, Verges accused the prosecutors - who had called his appeal "devoid of merit" - of lacking ethics and challenged them to an open debate. This continued for 30 minutes.

Almost on cue, an anxious and irritated civil party victim finally shouted at Verges to allow someone else to speak. A court official asked the attorneys to step down. As the men began to exit, the victim accused Sa Sovan of cowering from her questions. Sa pointed a finger back at the woman and said he had also lost family to the Khmer Rouge. Verges put his arm around Sa to guide him away. The victim continued shouting at Sa, who turned back and lunged at the woman. Defense support coordinator Richard Rogers rushed to stand in front of Sa and escort him out.

Two yelling victims followed Sa and Verges out of the room, several others wept.

"It was anarchic," tribunal press officer Reach Sambath said afterward. "It's a good lesson for us. We don't put the blame on anyone, but in the future I think we need to take precautionary measures."

In addition to banning political t-shirts (at the December 4 public hearing, victims wore matching shirts that said "I am a civil party"), press conferences for legal teams and victims will now be conducted separately and must be pre-scheduled. Also, Reach added, it's probably unwise to hold a press conference during lunchtime. "When you get hungry, you get angry quickly," he explained. "People were hungry for lunch."

Hunger pains are hardly how victim Ly Monysak, who lost both his parents to the regime, would describe his anger toward Khieu Samphan's attorneys. "You are performing a circus, or a play in a theater!" Ly shouted after Verges left the press conference room inside the court compound.

If the court fails to bring justice expeditiously, if [lawyers](#) continue to use stall tactics and if the court remains hung-up on technical delays, Ly said he would ask al-Qaeda to bring a remedy. Another victim of the regime said she would lose all faith in the court unless it removed Khieu Samphan's attorneys from proceedings, while another said she wanted to "eat" Verges and Sa. In addition to the attorneys' behavior, the unresolved corruption allegations also upset the victims, they said.

The events overshadowed progress made the next day toward bringing the Khmer Rouge's alleged chief executioner, Kaing Guek Eav, alias Duch, to trial. The court on December 5 finalized Duch's indictment, paving the way for the start of the first trial. His indictment, for crimes against humanity and grave breaches of the Geneva [conventions](#), had been delayed since August when the court's co-prosecutors appealed for Duch to also be tried for additional crimes.

While the judges on December 5 added the crimes of premeditated murder and torture found under the 1956 Cambodian Penal Code, they rejected the appeal that he also be tried for his membership in a joint criminal enterprise (JCE), or a conspiracy to commit all 15,000 killings at S-21 torture prison and Choeng Ek, the infamous facility's "killing fields". The court concluded that the prosecutor's request was "vague", long overdue and that the co-investigating judges did not conduct their work with JCE specifically in mind. "The alleged S-21 JCE expands the type of conduct attributable to Duch," the judges wrote in the ruling, and Duch "had the right to be informed of the charges at the investigative stage".

Because the judges chose not to answer whether JCE existed as a form of liability when Pol Pot's army marched into Phnom Penh on April 17, 1975, Duch and the other four detainees - Ieng Sary, Ieng Thirith, Nuon Chea and Khieu Samphan - may still be charged with it in the ECCC's joint case against all five current detainees. [Legal experts](#) have said liability under a JCE would reduce the need for smoking-gun evidence and help link Duch's crimes - to which he has confessed - to the four other former Khmer Rouge leaders in detention.

"I think [the ruling] opened the floor to the prosecutors to rethink their appeal," civil party attorney Hong Kimsuon, who represents 13 victims of the regime, said after the December 5 ruling.

"The regime did not work alone," he said as he stood outside the tribunal, dragging on a cigarette. "I think it would be good if they accept the charge of JCE."

The Khmer Rouge tribunal's final hearings of 2008 boiled down to a question of fairness versus expeditiousness. International deputy co-prosecutor William Smith called the Khieu Samphan hearing a mere delay in proceedings and asked the judges to return a decision in line with international court rulings and the internal rules of the court, which state that all documents need only be translated into Khmer and one other language. Smith said there are less than 3,000 pieces of evidence not translated into French - not 60,000 as Verges said - and the defense can request the translation of any document. Yet "not one translation has been requested in the past six months by Khieu Samphan's team", Smith said.

"The delay itself affects the rights of the charged person to a fair and expeditious trial," Smith told the courtroom. "Is it possible to have a fair and expeditious trial?" Verges asked the court. Or will the trials "proceed expeditiously at the cost of justice?" he continued.

For the victims of the Khmer Rouge, justice won't be served unless the court expedites the cases against the regime's former leaders. To prevent Cambodians from losing faith in the tribunal,

said court monitor Anne Heindel, "Not only must there be a robust solution to the corruption charges, the court must provide more public information about what progress is being made in the investigation against the four senior leaders and explain why it is taking so long to indict them."

The court's international prosecutor wants to open investigations into more former Khmer Rouge leaders, but his Cambodian co-prosecutor disagrees, the two said in a joint statement December 8. Meanwhile, the five former cadres already in detention range in age from 66 to 83. The average Cambodian lifespan is 59.

"What I have heard is just delays, delays and delays," said civil party victim Khut Samnang, who said she was raped and dragged behind a car by Khmer Rouge cadres. "If they die, how can we have justice?"

**Stephen Kurczy** is a Cambodia-based journalist.

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