

February 11, 2007

Cambodia: Canadian Prosecutor Faces Special Challenges in Trying to Bring Khmer Rouge to Justice

By Olivia Ward

In Cambodia, where more than 1 million people perished at the hands of the Khmer Rouge, a quiet struggle is going on that will determine the fate of the survivors: whether they will receive justice in their lifetimes or be swept to the margins of their troubled country's history.

At issue are the rules for prosecuting suspects under a joint national and international tribunal sponsored by the United Nations and aimed at trying senior perpetrators of the crimes that took place in Cambodia's notorious "killing fields" between 1975 and 1979.

Cambodian and international judges are trying to hammer out a compromise between two very different systems of law so that trials can go ahead. And the man caught in the middle is the tribunal's Canadian prosecutor, Robert Petit.

"They have to come up with a comprehensive set of rules so everyone will be reading from the same book," Petit says in a phone interview from Phnom Penh, where he has been based for the past seven months.

Petit, a 45-year-old Montrealer and veteran of war-crimes tribunals in Rwanda, Sierra Leone, Kosovo and East Timor, was chosen by the United Nations to prosecute the trial, alongside Cambodian counterpart Chea Leang.

Petit has cases ready to launch and is aware that the top Khmer Rouge leaders are aging and dying. But he says nothing will happen until the Cambodian and international judges resolve their differences.

"Legally speaking, nothing stops the process from going on. But with the state of national law, and the differences in interpretations, we must wait until there is an agreement."

If that doesn't happen when the Cambodian and international judges meet in a plenary session next month, the outlook for the trials - and prospects for the victims - will be clouded. Reports say the international judges may quit in frustration.

Human Rights Watch and other critics have accused the Cambodian government of interfering in the tribunal and delaying prosecutions. Prime Minister Hun Sen, who has agreed to the trials, was a former member of the Khmer Rouge

but not at a level of command responsibility. He is not considered at risk of prosecution.

Human Rights Watch has called for open hearings, appointment of independent defence counsel and other international standards of justice that the Cambodian authorities may not be eager to embrace.

And, rights groups say, the government, though paying lip service to the trials, has appointed judges with close ties to the ruling Cambodian People's Party.

"Hun Sen supported the creation of the tribunal to a point, but he has heavily influenced who the judges were," says Noah Novogrodsky, director of the International Human Rights Program at University of Toronto and a visiting professor at Georgetown University's law faculty. "Cambodian politics infect the court."

Critics fear that the government will try to filter out information it does not want made public, destroying the credibility of the court as well as the victims' chances of achieving justice.

In contrast with other war-crimes sites where he has worked, Petit says "there is a striking lack of understanding on the part of the victims about why this happened to them.

"At the time, the reasons weren't clear, and since then there has been no education to make it any clearer. Now, there is a whole generation that wonders why a father, grandfather or grandmother died."

Led by the late dictator Pol Pot, the Khmer Rouge installed a reign of terror based on a radical communist ideology that called for elimination of educated, religious and middle-class people, including those who managed the country's basic services.

The international judges are now faced with a dilemma. If they soften their stance on the rules of justice, the exercise could become a travesty. But if the Cambodians refuse to bend, the trials might never proceed.

"If the tribunal ends up being an institution where the defendants don't enjoy the presumption of innocence, the judiciary is bent on revenge rather than evidence and there is an effort to scapegoat one part of the political community, it could turn into retributive justice," says Novogrodsky, who has helped train Cambodians to take part in the tribunal.

"That would not be restorative for the country as a whole."

But Petit is uneasy with the symbolic weight that has been heaped on the trials.

"The worst thing we can do is to make the criminal law process something it is not," he says. "We are not here to write history. Those things are better dealt with by truth and reconciliation commissions, education and government programs. Our role is very black and white - to find someone innocent or guilty beyond a reasonable doubt."

But he admits that "we are conscious that this is supposed to help people come to terms and move on from these dramatic and tragic events. Courts have a limited mandate, but they have to make a contribution on the personal, national and international level."

The tribunal has been given a three-year lifespan. And it has to work on a tight budget of \$56 million. Canada has donated \$2 million, but Cambodia says it may not be able to meet its \$13.3 million contribution.

"We are working with limited resources and the smallest staff I have seen (in a war-crimes court)," says Petit. The tribunal includes 17 Cambodian and 12 international judges and prosecutors.

By comparison, the International Criminal Tribunal for the Former Yugoslavia has a budget of more than \$150 million a year and a total staff of 1,200.

A criminal prosecutor in Montreal for eight years, Petit made his first trip overseas in 1995, applying for a post in the International Criminal Tribunal for Rwanda and ending up as a prosecutor of some of the most notorious leaders of the 1994 genocide. He worked as a legal adviser with the UN mission in Kosovo, a prosecutor with the UN in East Timor and a senior trial attorney with the Special Court for Sierra Leone.

In Cambodia, Petit has not released names of the prospective defendants, but a half dozen former Khmer Rouge officials are widely believed to be on the list, only one of whom is in custody.

Despite the daunting challenges, the prosecutor hopes trials will get underway this year.

"At the end of the day," he says, "I would like to be able to tell the people of Cambodia that, with the resources we have, we have managed to prosecute people who should be brought to justice, and in a sufficient number to be credible

"I hope Cambodians will feel that the prosecutions, and the judgments rendered, will help them understand what happened and that there was justice

done. And I hope we will leave some kind of imprint on the justice system, so it can also move forward in a better way."

Copyright 2007
The Toronto Star