

April 16, 2003

## Flawed Khmer Rouge Trial Better Than None

By SETH MYDANS

PHNOM PENH, Cambodia, April 15 — It seems straightforward enough. Some of the worst mass killers of our times are living freely now in Cambodia, playing with their grandchildren and tending their flower gardens. They should be put on trial.

Last month, after six years of difficult negotiations, Cambodia and the United Nations agreed to set up an international tribunal to try the top leaders of the Khmer Rouge, inventors of the killing fields. But instead of cheering, human rights groups have risen up in opposition.

The problem is that — retreating from its policy in similar tribunals in other countries — the United Nations has effectively ceded control of the proceedings to local judges under a complex formula that gives them the power to make the final call on who is prosecuted and who is convicted. Cambodian law will take precedence over the guidelines agreed upon for the tribunal, reducing the United Nations — in the words of its legal counsel, Hans Corell, last year — to "a technical assistance provider to a Cambodian court."

In Cambodia, where the judiciary is weak, corrupt and politically docile, that means Prime Minister Hun Sen will be the master of ceremonies, with results that are predictable only to him. On the world stage, it means that the new Cambodian formula, with its more relaxed approach to international law, will now be a United Nations-sanctioned precedent that other countries can demand for themselves.

"Justice is not served by diluting international standards to suit the occasion or a government in power," Amnesty International said in a statement last December.

In addition, some experts are challenging the decision to limit the trial to the top leaders and "those who were most responsible," effectively granting amnesty for lower ranking killers.

"From the perspective of truth and justice, a de facto show trial of a few senior political figures would almost be a worst-case scenario," said Steve Heder, an expert on Cambodia at the School of Oriental and African Studies in London.

But this trial is the only one on offer. The Cambodian formula is the best the United Nations is going to get after running up against a brick wall in its talks with Mr. Hun Sen's men.

Time is on the side of the killers, who caused the deaths of 1.7 million people through execution, starvation, disease and overwork when they ruled Cambodia from 1975 to

1979. Their chief, Pol Pot, is dead. With the surviving leaders old and sick, this could be the last chance to put them in the dock.

So at its bluntest, the question now is whether a potentially flawed trial is better than no trial at all. Even if real justice is not done, will it be worth it to see these extraordinary creatures on display, facing their accusers and making their elaborate excuses?

It would offer at least a gesture to their victims.

The formula agreed upon is not in itself fatally flawed. It's how it's applied that counts. "The proof of the pudding is in the eating," said the former American ambassador, Kent Weidemann, admittedly stringing together clichés. "Don't let the perfect be the enemy of the good. Let's give it a shot."

The worry is that the door has been left open to the kind of manipulation that is standard practice in Cambodia.

After much wrangling, the two sides agreed to set up a mixed tribunal with both foreign and Cambodian prosecutors and judges. In an awkward supermajority formula, Cambodian judges would dominate but would need the vote of at least one foreign judge for any decision.

The Cambodians would have the advantage in resolving disputed rulings.

The first caution in any analysis is that a trial could still be derailed. Mr. Hun Sen has an almost perfect record of making promises he has no intention of keeping and of undermining the country's democratic processes. Negotiations to create a tribunal have been punctuated by breakthroughs that came to nothing.

The arguments in favor of proceeding are essentially based on wishful thinking: Who knows? Things could go well.

Mr. Hun Sen could break his habit of preaching what he does not practice. He could turn out to be a champion of democracy in disguise. He could loosen his dictatorial grip and let justice take its course.

If things go terribly wrong, the United Nations can pull out at any point.

"It would be a shame to waste this opportunity," Mr. Weidemann said. "If it fails, it fails; but honestly, I think that would be a real shame."

Certainly, the arguments of the idealists stand on firmer ground.

International standards must not be compromised. It is foolhardy to base one's hopes on the good faith of the Cambodian government. The country needs to see real justice done

as a foundation for democratic reform. The Cambodian people deserve better than this after all they have suffered.

The alternative, though, seems to be to let the old killers fade away undisturbed. Do the people who make these sensible arguments really want to be the ones who finally close the door on any trial for Khmer Rouge leaders? Honestly, it would be a real shame.

Copyright 2003 The New York Times Company