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The People vs. Khmer Rouge

Bringing a case against the bloody regime is a race against time

By Chris Tenove

Nuon Chea lives in an unpainted wooden shack on stilts, near a sluggish creek that marks the boundary between Cambodia and Thailand. A plank staircase leads up into his home. Out front, next to the narrow dirt road, several men lounge in the shade. They claim to be farmers, but AK-47s rest at their feet. Inside, Nuon Chea sits in a sturdy wooden chair, dressed in a billowing white shirt, with his hands resting calmly in his lap and a metal cane leaning against his knee. He is in his early eighties with receding white hair, and his cheeks are slightly hollowed with age. He appears to be daydreaming— but when he turns to greet a visitor, his gaze is sharp and probing. He reaches for a bamboo fan, waves it briskly, and asks, "What exactly is it that you want to know?"

He has good reason to be guarded. Nuon Chea was second-in-command of the Khmer Rouge, responsible for one of the bloodiest regimes in history. The Khmer Rouge was driven by a toxic mixture of nationalism, Maoism and paranoia, and intent on creating a "pure" agrarian society. Between 1975 and 1979, they outlawed money, separated families, pillaged temples, killed those who were well-educated, and elevated simple villagers to positions of authority. The result was a ruined economy and widespread hunger, which in turn caused outbreaks of dysentery and tuberculosis. Rather than change their policies, Khmer Rouge leaders performed increasingly brutal purges of their imagined "enemies." To dispose of these unwanted elements, the regime created hundreds of prisons, torture centers and execution sites— the infamous "killing fields." An estimated 1.7 million people were executed or died of torture, starvation or disease.

After the Khmer Rouge was driven from power, they spent the next two decades waging an insurgency from Cambodia's hinterlands. Finally, in the late 1990s, they disbanded. Since then, former Khmer Rouge leaders like Nuon Chea have lived as free men.

That may soon change. In Phnom Penh, a bone-rattling 12-hour drive from Nuon Chea's home, an empty theatre is being converted into a courtroom where former Khmer Rouge leaders will be put on trial. A team of war crimes investigators, led by a Canadian prosecutor, is at work building the cases. No suspects have been announced, but Nuon Chea will almost certainly be one of them. As "Brother Number Two" of the Khmer Rouge— Pol Pot was known as "Brother Number One"— he is believed to have helped develop and oversee their deadly policies. Documents have linked him to incidents of torture and execution. One former Khmer Rouge officer has accused him of having a prisoner's body exhumed and photographed, so he would have proof of the man's death.

Liver spots speckle Nuon Chea's high forehead and his chin shakes slightly when he speaks, but his voice is firm with authority. "If they invite, I will go and testify," he says. A smile tugs at the corners of his thin lips, as if he were amused by the possibility. "I will go and I will explain the real truth."

The man who will likely face Nuon Chea in that courtroom is a former Crown attorney from Montreal. Since last July, Robert Petit has been sifting through decades-old documents and tracking down witnesses. If Nuon Chea is put on trial, it is up to Petit, his co-prosecutor Chea Leang, and their team of 15 lawyers and investigators to make sure that the charges stick.

For that to happen, Petit must race against time. It has been almost a decade since Pol Pot died. Ta Mok, a former commander known as "the Butcher," died last year. Other Khmer Rouge leaders, including Nuon Chea, are reportedly in poor health. So, too, are some of the witnesses needed to provide evidence against them. All of this may be why, on this Friday afternoon in late February, there is a battered and fatigued look in Petit's dark eyes. He distractedly spins a business card in his fingers and scratches at his salt-and-pepper goatee. "I apologize if I seem rude," he says, speaking with a faint French-Canadian accent, "but it's been a long week."

Above Petit's computer hang pictures of two young children and a beautiful Rwandan woman, his wife. Petit says his wedding was the most important thing to happen to him in Rwanda, though it is also where he found his calling. He arrived in the central African country in 1995 as a seasoned criminal prosecutor—he had been a Crown attorney for eight years—but with little international experience. When offered a position at the Rwandan war crimes tribunal, the first thing he did was crack open his atlas to see where he was going. "I couldn't find Rwanda anywhere," he chuckles. "The country is so tiny that it had disappeared into the crease between two pages." He walked the trails between huts in Rwandan villages, searching for witnesses and suspects for war crimes trials, and later went on to prosecute war crimes in Sierra Leone, East Timor and Kosovo.

What makes Cambodia different from these other postwar countries, he says, is that so few Cambodians understand why the starvation, disease and murder happened. "In Rwanda, if you were a Tutsi, you knew that you were being attacked by the Hutus because of your ethnic identity," Petit says. "But here, I am constantly asked, 'Why would Cambodians kill so many Cambodians?'"

That question plagues survivors of the Khmer Rouge era, but also younger generations. For three decades, history has been alternately distorted and avoided in public debate. Confusion about the past has been heightened by the fact that former Khmer Rouge leaders continue to proclaim their innocence. "People have a very deep need to try to understand what happened here," says Petit. "These trials will probably be the best chance to establish some historical record."

It's easy, then, to imagine the pressure the 45-year-old lawyer is under. Not only are these historic and complex cases, but the tribunal itself—the Extraordinary Chambers in the Courts of Cambodia (ECCC)—is an awkward compromise between international legal standards and Cambodian sovereignty. Cambodia has no tradition of judicial independence, and Prime Minister Hun Sen has not been willing to surrender control over his nation's most important trials. The ECCC was created with 10 years of fraught negotiation between the United Nations and the Cambodian government. From day one there have been rumors of political interference.

The latest accusation, from the Open Society Justice Initiative, a New York-based watchdog organization, is that Cambodian staff at the ECCC paid kickbacks to government officials in exchange for their positions. Cambodian judges denied the allegations, but the United Nations Development Programme is investigating. (Canada has pledged to give \$2 million to the ECCC.)

What's more, the tribunal's work has been delayed because the ECCC's international and Cambodian judges have disagreed on the procedures that will govern the trials. Behind closed doors, judges have reportedly clashed over issues such as when the court can publicly disclose the identity of accused persons. In mid-March, the judges announced that they had reached agreement. Then a new obstacle arose. Cambodia's Bar Association revealed its plan to charge foreign defense lawyers nearly \$5,000 to work at the ECCC for a year. The international judges say this fee will limit defendants' ability to choose their counsel, and they have refused to let the trials proceed until it is changed.

Petit says that he will walk away from the ECCC if its procedures don't meet internationally accepted legal standards. But he hopes the issues are resolved soon. Trials, which could begin in early 2008, would send an important message, says Petit. "Sooner or later, you will be held accountable for your crimes."

This justice can't come early enough for Theary Seng. In 2005 she published a book on her ordeal called *Daughter of the Killing Fields*. She steels herself before describing being thrown in jail at age 7, along with her widowed mother and four older brothers. Because Seng's wrists and ankles were too small for the iron shackles that restrained other prisoners, it became her job to empty toilet buckets and search for extra food. Four months later, a Khmer Rouge cadre executed her mother, then released Seng and her brothers. She went as a refugee to the United States.

Seng, 36, now directs the Center for Social Development in Phnom Penh, a local human rights organization. She believes that trials of former leaders like Nuon Chea could help Cambodian society address the painful legacies of the Khmer Rouge era. "We remain very much a broken people," says Seng, glancing at a shelf of reports detailing social problems from mental illness to domestic violence. "Many survivors have been unable to talk about their trauma, they keep it inside them like a hard seed."

By finally bringing the former leaders to justice, she says, the ECCC could help undermine Cambodia's "culture of impunity"— a general belief that people with power can flout the rule of law. However, she, too, fears interference from the government. Some members of the ruling Cambodian People's Party were once Khmer Rouge soldiers themselves, including Prime Minister Hun Sen. None of today's leading politicians were senior enough to warrant prosecution by Petit, Seng says, but embarrassing information could surface in the trials. And it's not just Cambodians who are nervous. China provided the Khmer Rouge with material support and training, and Chinese diplomats have reportedly put pressure on the Cambodian government to rein in the tribunal.

Still, Seng believes the tribunal can achieve some good. "Cambodians need a chance to reflect on what happened 30 years ago, and talk about how it is affecting us today."

Many Cambodians want more than talk. Pok Savoeth, a 50-year-old farmer from Battambang province, stares intently at the picture of a young man with his hands lashed behind his back and one eye clotted shut. It is just one of hundreds of photographs of inmates who were tortured and then executed in Tuol Sleng, a torture centre that has been turned into a museum. "If we don't sentence the Khmer Rouge leaders, our anger will be coming to us over and over again," she says, trembling with emotion. "They must face the law."

Even some former Khmer Rouge soldiers agree. Ngem En joined the Khmer Rouge as a teenager and soon became a photographer at Tuol Sleng. He took pictures of prisoners after they were tortured or before execution, and his diligence later earned him a job as the personal photographer to the Khmer Rouge leaders. "I want to build a museum for reconciliation between Khmer Rouge and other Cambodians," he says, flipping through snapshots of Pol Pot, Nuon Chea and other leaders in uniform and at play. Like many former Khmer Rouge soldiers, Ngem En supports the tribunal because it lays responsibility for atrocities at the feet of the top leaders. Some experts worry that this approach reinforces a tendency in Cambodian society toward blind obedience and rigid hierarchy, a tendency that the Khmer Rouge exploited.

Ngem En's photos suggest he was on good terms with the Khmer Rouge leaders, but he insists that he had no choice but to follow orders. "During that time you could not protest or interfere with other people's work, or you would be killed," he says. "The leaders were responsible for great injustices, and the world needs to be shown their mistakes." About Nuon Chea, he adds, "He may try and do good now, but you can't change history."

While renovations take place in the Phnom Penh theatre-turned-courtroom, while Robert Petit gathers his documents and witness testimonies, Nuon Chea waits out his days in his bucolic retreat near the Thai border. How does he explain the deaths that occurred during his government's rule? He smooths his loose white shirt and then says, "The problems began in 1862, when the French colonizers took control of Cambodia." He blames the French, he blames the Americans, and he blames an unnamed "foreign power"—presumably Vietnam. But he does not admit to any serious mistakes made by his own government. The number of deaths caused by the Khmer Rouge has been greatly exaggerated, he suggests. There may have been a few missteps, he admitted in a 2004 interview with the *Cambodian Daily*, "but in principle we were right."

When questions persist, Nuon Chea becomes irritated by the topic. He's old. He complains of high blood pressure. "I am a sick man," he says, and he grimaces as he shifts one of his swollen ankles. "I need to go lie down." Putting Nuon Chea on trial could help illuminate a dark chapter in Cambodia's history. But if Robert Petit and the people of Cambodia are going to get any answers out of this man, they'll have to act quickly.