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Foreign Powers behind “Cambodia Killing Fields”?

Trial of Khmer Rouge leaders underway

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The trial of four senior former Khmer Rouge officials opened with an initial session at the Extraordinary Chambers of the Courts of Cambodia in Phnom Penh on June 27.

Nuon Chea, regarded as the Khmer Rouge’s chief ideologue; Khieu Samphan, the former head of state; Ieng Sary, the ex-foreign minister; and Sary’s wife and former social action minister, Ieng Thirith, are charged with various offences, including genocide, crimes against humanity, war crimes and murder, committed between 1975 and 1979.

The trial is expected to last months or even years. It is already clear from the investigative phase of the cases which began in 2007 that the main aim of the process is to not to bring justice for the survivors. Rather it is a show trial designed to close the book on the Khmer Rouge genocide while covering up the responsibility of others, inside Cambodia and internationally.

The Khmer Rouge, which was based on a form of Maoism, was profoundly hostile to urban workers and intellectuals and was undoubtedly guilty of mass murder during its reign of terror. However, those implicated in these crimes also include members of the present Cambodian government and the major powers, such as China and the US, that in one way or another supported the Khmer Rouge.

The present Cambodian premier Hun Sen was himself a district deputy leader for the Khmer Rouge government until he fled to Vietnam to avoid being purged. He returned in January 1979 to lead the new regime set up after Vietnamese troops invaded the country.

US President Richard Nixon was directly responsible for destabilising Cambodia as part of the neo-colonial war in Vietnam, leading to the rise of the Khmer Rouge. Washington organised the coup that ousted Prince Norodom Sihanouk in 1970 and installed General Lon Nol, triggering a civil war. A massive bombing campaign, illegal even under US law, from 1969 to 1973 killed an estimated 700,000 Cambodians and wrecked the economy.

The US, China and the European powers recognised the Khmer Rouge as the legitimate government of Cambodia until 1991. With the end of the Cold War, the major powers struck a deal with the Hun Sen government to open up Cambodia as a cheap labour platform. Under the 1991 Paris Peace Agreement, Vietnam withdrew its military, paving the way for elections and an influx of foreign investment.

However, the crimes of the Khmer Rouge were too enormous to be ignored. They had to be addressed, but without opening up a historical can of worms. As a result, the formation of the Extraordinary Chambers of the Courts of Cambodia (ECCC) has been a lengthy and

tortuous process aimed at protecting the interests of all countries involved.

The first trial, which concluded last July, resulted in the conviction of Kaing Guek Eav, also known as Duch, who was in charge of the notorious S-21 prison in Phnom Penh where 12,272 people were murdered. Duch, a relatively low-level Khmer Rouge functionary, cooperated with the ECCC proceedings, admitted his crimes, expressed remorse and based his defence on the fact that he was obeying orders.

Duch's case was designed to prepare the ground for the current trial, formally known as "Case Number 2." It is likely to be far more complex, not least because the defendants have denied the charges.

The prosecution alleges that the four defendants, along with Khmer Rouge leader Pol Pot, who died in 1998, were responsible for bloody purges and forcing the urban population into the countryside. The Documentation Centre of Cambodia estimates that some two million people were executed and another million died from starvation, overwork and disease.

The prosecution claims to have ample evidence of communications between the Khmer Rouge government and the killers in the countryside. It alleges that by virtue of their leadership positions the accused are guilty of a "joint criminal enterprise." The four have, however, pleaded not guilty and might well try to implicate others in the crimes.

Commenting on the opening session, the *New York Times* noted: "The trial is confined to the years of Khmer Rouge rule, with minimal reference to historical context, and the defence lawyers' demands to broaden testimony appeared to be a foretaste of vigorous legal wrangling that is expected to last for years."

On the first day in court, defence lawyer Michiel Pestman told the five-judge panel that a fair trial was not possible. Pestman addressed the court after his client, 84-year-old Nuon Chea, was allowed to leave the court room to watch the trial from his cell.

"Our main objections", Pestman told the court, "were against the judicial investigation carried out by the investigative judges that was so unfair and so harmful to the rights of our client, Nuon Chea, that we think these proceedings should be terminated."

In the intricate ECCC system, drawn up in 2006 after more than a decade of haggling between the Hun Sen regime and the UN, the investigative phase is quite important. The report by the investigative judges set the parameters for the trial: the charges, the list of witnesses and the evidence that can be presented. The trial judges can overrule the investigative judges and even order a new investigative phase but it is already clear that this will not happen.

Pestman protested that 300 witnesses whom Nuon had wanted to call had been ruled out by the court. In addition, the investigative judges had rejected every defence argument. Some of the accused had reportedly called for Sihanouk, senior Cambodian government ministers and officials, and witnesses to the role of Vietnam and the US, to testify.

In October 2009, a scandal erupted over the bias of investigative judge Marcel Lemonde. A senior member of the French judge's investigative team, Wayne Bastin, signed a statement at an Australian police station that month saying that Lemonde had shocked his staff by telling them: "I would prefer that we find more inculpatory evidence than exculpatory

evidence." In plain language, Lemonde was only interested in evidence that might prove the guilt of the four, not their innocence.

Michael Karnavas and Ang Udom, counsel for Ieng Sary, applied to the ECCC to have Lemonde removed as he was "giving instructions to his investigators to game the process. In other words, to look primarily for evidence that supports the prosecution." The job of the investigative judges, according to the ECCC rules, is to consider all evidence regardless of which side it favours.

In October 2010, the ECCC Pre-Trial Chamber dismissed the request for annulment of all investigations and brushed aside claims of bias. It ruled that there was a presumption of the judge's impartiality and that, notwithstanding Lemonde's comment, the defence had not met its burden of proof to prove bias.

The Pre-Trial Chamber similarly overruled defence objections that a French television crew had been allowed to interview a witness contrary to the ECCC rules establishing the confidentiality of all investigations.

These rulings point to the manner in which the trial will be conducted. Any attempt by the defence to point to the broader political context, especially to the crimes of US imperialism in Indochina during the 1960s and 1970s, will be summarily ruled out of order. The judges are clearly determined to find the accused guilty and suppress any evidence that might embarrass or incriminate the major powers.

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