

# BusinessWeek

## **With a \$170 million price tag, the genocide trial of former Khmer Rouge leaders could be imperiled for lack of donor funds**

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Dressed in a khaki shirt and slumped in his chair, eyes closed as the judges read the proceedings, the frail and white-haired "Brother No. 2" doesn't look the part of a mastermind of the 1970s reign of terror in Cambodia. Arrested at home near the Thai border last September, 82-year-old Nuon Chea is the top-ranking Khmer Rouge official to face trial for his role in the Cambodian genocide. But with his health deteriorating, the court worries he may die before the trial's conclusion. So haste is of the essence.

That's one factor that international aid donors must consider when deciding whether to foot the \$170 million bill for the U.N.-sponsored trials of Nuon Chea and four other former Khmer Rouge officials. Trying them is proving far more costly than organizers had planned. The court's budget, originally \$53 million for three years, has ballooned to \$170 million for five years. And after a year and a half of operations, the hybrid court (run by both the U.N. and the Cambodian government) is running out of money. The Cambodian side has announced it runs out of funds in April.

Nearly 30 years after the end of the "killing fields" that left 2 million people dead, many Cambodians are wondering whether getting justice is worth the expense. Some think the trials in Cambodia are, as the former U.N. Secretary-General's representative in Cambodia Benny Widyono says, "a little too late."

### Report of Overspending

But others feel that closure is necessary. "We want to see who is responsible for the killing," says Touch Vunly, a retired government soldier who now farms near Cambodia's border with Thailand, not far from the house where Khieu Samphan, who was a member of the Khmer Rouge central committee, lived before his arrest. Touch Vunly says he has no grudges, but he adds that he would like to know whether "the leaders have to take responsibility if they do wrong." In a country where criminal behavior has for years gone unpunished, that may be the argument that persuades donors that spending as much as it takes on the Khmer Rouge trials is good value.

One problem: Donors want to know what's happened to some of the money they've already pledged. A U.N. audit report found inflated salaries and overstaffing on the Cambodian side of the court and harshly criticized the court for paying Cambodian staff \$3,500 to \$5,300 a month—in a country where teachers and civil servants still get less than \$100. The high salaries mean the court has not been able to use lower local costs to make proceedings less expensive than in places such as The Hague, Netherlands, home to the war crimes trials for the former Yugoslavia.

Donors who have funded the tribunal until now aren't saying how much more they're willing to spend. The biggest donors have been Japan (\$21.6 million) and France (\$3.2 million). The European Commission, Australia, Canada, Germany, Britain, the Netherlands, Norway, and India have limited their contributions to a few million dollars or less, according to the court's financial statements. (The U.S. hasn't contributed anything.) The donors declined to comment on future pledges except to say they have sent questions to the U.N. about the expense. Cambodia has pledged \$1.5 million cash, but says in-kind contributions would bump it to about \$5 million for such things as taking care of the defendants

in jail and the land for the court.

The new budget would cover expenses including more than \$120,000 a year in medical costs for the five elderly defendants: Nuon Chea; Khieu Samphan; Kaing Guek Eav, better known as "Duch"; and Ieng Sary and his wife, Ieng Thirith. That includes round-the-clock doctor and nurse coverage at the court and an ambulance that often ferries defendants to Calmette Hospital 45 minutes away. And it also would pay for international doctor visits, particularly for Ieng Sary, the 82-year-old former Khmer Rouge Foreign Minister, who has heart problems.

#### War Crimes Trials Are Expensive

Lawyers leading the case against the Khmer Rouge officials are hopeful that a lack of funds won't shut down the court. "I don't think we will stop in mid-stride," says Robert Petit, chief co-prosecutor for the Extraordinary Chambers in the Court of Cambodia (ECCC), the tribunal's official name. Petit, a veteran of war crimes tribunals in Rwanda, Kosovo, East Timor, and Sierra Leone, says war crimes trials are expensive. The ECCC, for instance, requires translation of documents and proceedings into English, French, and Khmer. While only five defendants are facing trial now, the prosecutors' office is investigating others as well.

Petit won't say whether more arrests will come. But he argues one measure of the court's success will be its ability to create a legacy for future generations. "We have to make sure at the end the evidence and our interpretation of the evidence is available so they can use it to move forward. That is complex and requires funding." The donors' funding also is helping to pay for attorneys for the accused. Defense Support Section chief Rupert Skilbeck says he has funding to provide a strong enough defense for the five to envision possible acquittals. "Usually everyone thinks they're guilty, but they have not looked at the evidence," says Skilbeck, a British lawyer and also a veteran of other war crimes tribunals.

Cambodia isn't the only court that has faced money problems due to a lack of accountability or financial controls, says Michael Johnson, the former chief prosecutor for the International Criminal Tribunal for the former Yugoslavia who was also involved in the International Criminal Tribunal for Rwanda and the Bosnia and Herzegovina War Crimes Chamber. He says the Bosnia court—eight courtrooms and about 400 defendants—is running about \$10 million to \$11 million per defendant. But other courts such as Rwanda—purely an international court (not a hybrid local/international as in Cambodia)—ran about \$30 million per defendant; Sierra Leone was also high. In East Timor, another hybrid court came out at about \$10 million per defendant, but critics say it ended up with a standard of justice that did not meet international criteria. "There is a real lack of accountability within the administration of these systems," says Johnson, who favors a special adviser to monitor and cut costs.

#### U.N. Appoints Veteran Prosecutor

However the Cambodian side of the court does not want a special adviser, insisting it doesn't want "a new party to be above the court," according to a spokesperson. And if the U.N. side got a special adviser, the Cambodian side would also be entitled to one at 50% of the U.N. adviser's salary.

The U.N. intervened last week, announcing after a meeting in New York with officials of the ECCC that David Tolbert, who has been prosecuting at the International Criminal Tribunal for the former Yugoslavia, will become Assistant Secretary-General of the U.N. for three months to "advise the U.N. on its assistance to the ECCC." The U.N. says the appointment is "essential during the forthcoming months leading up to the first trial." Donors did not immediately react, but Heather Ryan, monitor of the Khmer Rouge tribunal for the Open Society Justice Initiative, says Tolbert's "leadership" will be a welcome addition at a time when the ECCC faces "pressing issues."

Support among Cambodians for the trials always has been mixed, but watching the defendants on TV is

popular. Plus, more than a third of Cambodian's population is under age 15, and the younger generation knows little to nothing about the Khmer Rouge era, which is considered by the current regime to be too politically controversial to be taught in schools. Court supporters say the trials will set the historical record straight.

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