

**Cambodian Atrocities Court Struggles with Advanced Age of Accused****Tu Thanh Ha****December 6, 2012**

The court hearing on Wednesday began with witness Pech Srey Phal recalling how, deprived of food and shelter by Khmer Rouge soldiers, she saw her first-born child starve to death and had to bury the baby in a forest “like an animal.”

The tribunal then learned that one of the Khmer Rouge leaders on trial for war crimes committed during its bloody rule in Cambodia was not even listening to the wrenching testimony against him. He was dozing.

The 87-year-old defendant, Ieng Sary, had been watching the proceedings from a holding cell out of the judges’ view, lying on a bed because of his poor health.

“My client, Mr. Ieng Sary, fell asleep,” defence lawyer Ang Udom told the court as he asked for an adjournment.

The surreal moment encapsulates the challenges faced by the special court set up in Phnom Penh to prosecute those responsible for the atrocities in Cambodia, from 1975 to 1979, when some two million people were exterminated or starved to death.

The trial, Case 002 of the special tribunal, deals with the four highest-ranking surviving Khmer Rouge leaders. They are charged with genocide, crimes against humanity and grave breaches of the 1949 Geneva Conventions that require protection of civilians in war. The trial began last year, more than three decades after the Khmer Rouges had been out of power.

“The fact that it has taken so long has already caused much harm and placed enormous pressure on the proceedings,” said James Goldston, executive assistant of the Open Society Justice Initiative.

Cash-strapped and dogged by allegations of political meddling, the court has also struggled with the advancing age of the accused.

One defendant, Mr. Ieng’s 80-year-old wife, Ieng Thirith, was freed after she was declared mentally unfit. The youngest defendant, Khieu Samphan, is 81.

When Mr. Ang requested an adjournment because his client slept through the testimony, he received a sharp and clearly frustrated rebuke. “There is a simple solution to that,” said Silvia Cartwright, one of the judges. “Your case manager could wake him up. It is

not an indication of any mental-health issue. ... Falling asleep may simply indicate that Ieng Sary has no direct interest in the testimony.”

Andrew Ianuzzi, a lawyer for another defendant, 86-year-old Nuon Chea, then objected to the judge’s remarks, noting that his client “also has often fallen asleep.”

McGill University law professor Payam Akhavan, who took part in the talks that set up the special court, said the trial is still of immense value, despite its delays and handicaps. “Some justice is better than no justice,” said Prof. Akhavan in an e-mail to The Globe and Mail. “The mere image of once-untouchable leaders in the defendant’s dock is important for healing victims and national reconciliation.”

The delay in bringing the notorious Khmer Rouge leaders to justice are partly attributable to the country’s chaotic politics, he added. After Vietnam invaded Cambodia in 1979, the international community backed the Khmer Rouges to contain Soviet influence in the region. Hun Sen, the former Khmer Rouge cadre who took power in 1997, initially wanted trials but then struck deals with Mr. Nuon, Mr. Khieu and Mr. Ieng to allow them to defect to his side. Talks with the United Nations dragged on until, as a compromise, a hybrid court was established.

“It is unfortunate that because of terribly cynical politics, it took so long to bring them to some form of accountability for past crimes,” Prof. Akhavan said in the e-mail.

Even now, there are allegations the Cambodian government, which still has links to former Khmer Rouge members, is trying to impede the tribunal. Only two cases have gone to trial. Cases 003 and 004 are still being investigated, amid delays and resignations from two investigating judges, who complained of interference.

The tribunal is being closely watched internationally. Japan, Australia and the United States have been the main donors while Canada contributed \$2.9-million, according to the tribunal’s financial statements. One suspect in Case 003 is reported to be Meas Muth, former head of the Khmer Rouge navy. If he comes to court, his case could delve into the death of a Canadian, Stuart Robert Glass, who was gunned down by a Khmer Rouge patrol boat that intercepted his yacht in 1978.

“Ensuring that those cases proceed to their judicial conclusions and are not halted for political reasons is a major challenge,” Mr. Goldston said.

He said all those controversies have made it harder for foreign countries to keep bankrolling the tribunal’s operations, especially since the start of the global financial crisis. But despite all the hurdles, both Mr. Goldston and Prof. Akhavan said the work of the tribunal remained crucial.

“This tribunal is not everything one might have hoped,” Mr. Goldston said. “But it’s the only and final opportunity for the victims of Khmer Rouges to see some semblance of independent, impartial legal justice.”