

# A Difficult Defense

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## **A court-appointed attorney seeks to defend Cambodia's indefensible Khmer Rouge**

After decades of delay, an international trial starts this week in Cambodia against five of Pol Pot's Khmer Rouge, whom most of the world hold responsible for one of history's most heartless and murderous regimes. But the British lawyer who seeks to defend them warns that "it is not a clear-cut murder case" despite the inconvenient presence of skeletons in mass graves, survivors who describe torture and executions in minute detail, and at least one of the five who has confessed. *"The prosecution will say that the Khmer Rouge evacuated people from the cities as part of a master plan to imprison them. There is another theory that will say they evacuated them to protect them from the American bombing, which had been going on for many, many years,"* Richard J. Rogers said in an interview Wednesday.

Rogers is officer in charge of the Defense Support Section at the Extraordinary Chambers in the Courts of Cambodia, which is the United Nations-backed international trial against the five. He has the extraordinarily difficult job of trying, with a straight face, to defend some of the worst murderers of the 20<sup>th</sup> Century in a case where the evidence against them is overwhelming. When Pol Pot's Khmer Rouge guerrillas toppled Cambodia's US-backed regime in 1975, Pol Pot suddenly forced all Phnom Penh residents at gunpoint into the jungle, where many perished after they were enslaved, tortured, starved, or executed.

Nonetheless, Rogers said he "put together a team of varied and very competent defense lawyers" for the trial, which begins Tuesday on the outskirts of Cambodia's capital, Phnom Penh.

*"With the starvation, a lot of people with the prosecution might say that the Khmer Rouge intentionally starved people, or was negligent,"* Rogers said. *"One alternative theory is that there simply wasn't enough food around, because of the five-year civil war before the Khmer Rouge took power." There are plenty of alternative theories to most of the allegations. For example, the mass graves. We don't know that they were killed under the Khmer Rouge,"* the U.N.'s Defense Support officer said.

In 1998, American investigator Craig Etcheson said in an interview he found nearly 10,000 mass graves "dating from the Khmer Rouge era, containing an estimated 500,000 victims of execution," which could be used as evidence.

*"They could have been killed by the American bombing,"* Rogers said. *"None of them have been properly excavated. The numbers in the mass graves have been estimated. There aren't accurate numbers. So it is very difficult to tell exactly what happened."*

An estimated 1.7 million Cambodians died under the Khmer Rouge's leadership, which was ousted by Vietnam's 1979 invasion. In January 1979, the Vietnam News Agency said the Khmer Rouge murdered Cambodians "with hammers, knives, sticks and hoes, like killing wee insects." Rogers said the Khmer Rouge's "killing and torture" is "accepted by most people," so defense lawyers will focus their strategy elsewhere.

*"Most people condemn all those [five Khmer Rouge] that are in custody at the moment, and I think the evidence is much less clear than that. For example, the regional leaders used a lot of their discretion, or disobeyed orders, and a lot of the crimes were committed in the regions. One thing we do know is that the leaders spent most of their time in Phnom Penh, they weren't out in the fields knocking people on the head and shooting them. That simply didn't happen," he said. "It is not a clear-cut murder case."*

One of the accused, Khieu Samphan, enjoys support from French lawyer Jacques Verges, who defended several infamous criminals, including a beautiful Algerian bomber who killed French military officers in the 1950s, and who Verges later married. Verges also defended "Carlos the Jackal" who led a 1975 assault on OPEC in Vienna, and Nazi war criminal Klaus Barbie, known as "The Butcher of Lyon," in 1987.

Verges did not win those cases.

*"I think Jacques Verges is an excellent lawyer," Rogers said. "He's done amazing work in the past, and I'm sure he's going to do a great job defending Khieu Samphan."*

Khieu Samphan and Verges, 83, became friends in the early 1950s when several Khmer Rouge, including Pol Pot, were scholarship students in Paris.

Another accused, Kaing Guek Eav, commonly known as Duch, has confessed and repented. Duch, 65, is expected to reveal horrific details about how he ran the S-21 Tuol Sleng torture chambers in Phnom Penh, which sent at least 16,000 people to their death.

Pol Pot died in 1998. But others on trial include his so-called "Brother Number 2" ideologue Nuon Chea, plus former Khmer Rouge Foreign Minister Ieng Sary and his wife Ieng Thirith, who was "social affairs" minister.

Rogers says he expects the trial to be complicated.

*"I run the Defense Support Section, which fits together the defense team, supports them legally with logistics and administration, and runs the legal aid system. We help ensure fair trials for the accused."*

Prosecutors will insist the five Khmer Rouge were responsible.

*"This is something the prosecution are very keen on, because it means that it is far easier to convict. That is, when a group of people make a decision to carry out certain acts for a criminal purpose, and then they could be held liable for all the acts that were done in furtherance of that purpose." The prosecution have charged 'joint criminal enterprise' in their introductory submission," he said.*

The trial is to open with a scrutiny of the witness list and confirmation that everything is ready. A date will be set for testimony, probably in March.

Cambodia no longer metes out the death penalty, so maximum punishment would be life imprisonment.

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