



The 'killing fields' trial of Comrade Duch

Brendan Brady

November 25, 2009

With the death, in custody, of the murderous Pol Pot in 1998, Cambodians were deprived of the chance to hold accountable the leader of the reign of terror that was visited upon them three decades ago.

While there is no substitute for Brother Number One, as Pol Pot was called, Cambodians may yet find some closure this week as the Extraordinary Chambers in the Courts of Cambodia hears closing arguments in the trial of the Khmer Rouge's top jailer — a blank-faced former math teacher who now wants to formally apologize to his victims.

Kaing Ghek Eav, better known by his nom de guerre, Comrade Duch, was head of the notorious S-21 prison, a converted schoolhouse, where more than 15,000 "enemies" of the ultra-Maoist revolution were tortured before execution.

Now 67, Duch is one of five aging senior Khmer Rouge members facing trial for the estimated 1.7 million Cambodians who died from overwork, starvation and murder under the regime's attempt to forge an agrarian utopia by abolishing religion, money and schools, and forcing most of the population onto collective farms between 1975 and 1979.

Watching from inside the specially-built courthouse just outside the capital city of Phnom Penh, or on daily television, Cambodians have now been able to witness such cathartic scenes as Duch and one of S-21's few survivors, Bou Meng, crying together as they recalled the grisly tortures to which victims were subjected.

For the first time, Cambodians heard it acknowledged from a former high-level official in a legal setting what they already knew: That prisoners detained for trumped-up crimes against the revolution were repeatedly bludgeoned, electrocuted, water-boarded and forced to eat their own feces.

That their babies were smashed against trees.

Historic breakthrough

Just getting to this point has not been easy. This UN-backed trial was established in 2003 and has been teetering with uncertainty for the past two years as the current government resisted expanding the docket and the international community balked at the growing financial tab.

In fact, the trial opened in a near state of bankruptcy after widely corroborated allegations that Cambodian staff were forced to pay kick-backs to secure their jobs put a freeze on international funding.

But such obstacles have not stopped this first case from making a historic breakthrough.

Duch, who converted to Christianity after the fall of the regime, has admitted to his role as prison chief and asked for forgiveness.

However, the remaining defendants — who by all accounts were chief architects in the revolution's policy making — have denied any involvement in the atrocities, making Duch's co-operation all the more important for laying the ground work for their prosecution.

International prosecutor William Smith said the prosecution approached this trial with the case against the remaining defendants "very much in mind," a strategy that looks like it may succeed.

"The major fact remains that he has confessed to his crimes, and his trial will make it nearly impossible for the other defendants to deny that they committed the crimes that Duch witnessed," observes Gregory Stanton, president of the Washington-based Genocide Watch.

"That is why his trial is so important, and why prosecutors were right to open with it."

Expanding the docket

Still, despite the apparent success of the Duch trial, a fresh series of incidents has shaken up the tribunal as it heads into closing arguments.

Claims of government interference have plagued the court since its inception.

The former top international prosecutor, Quebec-native Robert Petit, was made to feel he overstepped his mandate when he proposed adding more suspects to the docket.

Petit ended up leaving his position as co-prosecutor in September 2009, for personal reasons he said at the time.

Four other former Khmer Rouge directors are expected to be tried next: ideologue Nuon Chea, former head of state Khieu Samphan, former foreign minister Ieng Sary and his wife, then social affairs minister Ieng Thirith.

But Petit wanted to also prosecute as many as six other figures he described as having been key to implementing the policies these leaders set.

A poll in March indicated that a modest majority of Cambodians favored trying additional high level cadre. But the move was blocked by Petit's Cambodian co-prosecutor, Chea Leang, who observers assume was under pressure from the government to limit the court's probe.

Chea had argued that additional prosecutions could prove destabilizing, overstretch the tribunal's limited resources and would run against the 2003 UN agreement establishing the court, which called only for "senior leaders" and "those who were most responsible" to be tried.

The current government, which is filled with former Khmer Rouge members, has strongly resisted expanding the docket.

And rights groups have long suspected that Prime Minister Hun Sen, himself a former low-ranking commander in the regime, does not want the probe to go too deep for fear it will uncover secrets about former Khmer Rouge figures inside his administration.

Hun Sen has even warned of a return to civil war if more suspects are reigned in.

Rule of law

Adding to the intrigue, international judge Marcel Lemonde from France, faces the possibility of removal after his former assistant said that Lemonde had, contrary to the rules of the court, instructed his investigating team only to pursue evidence that is incriminating of the suspects.

"The case is at a critical stage now, and a delay because of change of personnel could delay the close of the investigation and the issuing of any indictment," said Heather Ryan, a court monitor with the Open Society Justice Initiative. "Given the age of the accused persons, delay at this point could be fatal to the case."

Besides Duch, all of the suspects are in their seventies or eighties and are ailing. Their condition has raised fears that some will not live long enough to face trial.

But even if these future trials face roadblocks, for many here the biggest gain has been the precedent of trying to establish rule of law — one of the UN mandates for creating this war crimes court in 2003 — in a country where official impunity has long reigned.

"We are now trying people by the law, unlike the Khmer Rouge, who murdered just because of an accusation or for no reason at all," observed No Min, a 51-year-old fisherman from a remote village.

That a fisherman like No was able to attend a trial where the man called Duch has had to answer for himself is a sign that accountability, however limited it may be, is taking root.