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Cambodian justice moves forward

Kaing Guek Eav, known as Duch, was the first Khmer Rouge leader to appear publicly before the UN-backed war crimes tribunal in Phnom Penh Tuesday.

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Phnom Penh, Cambodia

Kaing Guek Eav, known as Duch, the director of the Khmer Rouge's notorious S21 prison, had his first day in court Tuesday, three decades after he allegedly oversaw the torture of over 14,000 people.

It was a day many thought would never come.

After a decade of delay, many observers have dismissed as hopelessly political the beleaguered UN backed tribunal set up last year to try aging leaders of the Khmer Rouge, a radical communist regime that killed and starved to death about 1.7 million Cambodians in the late 1970s.

On Monday, former Khmer Rouge head of state Khieu Samphan, 76, was arrested on charges of crimes against humanity and war crimes. Nuon Chea, the most senior member of the Khmer Rouge who is still alive, Khmer Rouge minister of foreign affairs Ieng Sary; and his wife, Ieng Thirith, have all been arrested on similar charges in recent weeks.

The recent rush of progress at the tribunal, which is on the eve of a major fundraising campaign, has started to bring Cambodia's millions of victims a measure of comfort and assuage some fears that the main perpetrators would die before they saw justice. But it's far from clear how clean this new Cambodian justice will be.

In recent weeks, top Cambodian officials have reiterated their support for the UN-backed court, called the Extraordinary Chambers in the Courts of Cambodia (ECCC). But critics argue that the government is willing to let these trials progress only to the extent that they can control them.

"We have always said that the test is not arrests ? the Cambodian government knows how to arrest people it doesn't like ? but whether fair trials can be carried out so that Cambodians can see that justice is possible in their country," Brad Adams, the Asia director for Human Rights Watch, said by e-mail. "Thus far, the Cambodian government has given no sign that it intends to allow the Cambodian judges and prosecutors assigned to the tribunal to act independently."

Fast-paced Khmer Rouge arrests

Despite the skepticism, the arrests, like that of Ieng Sary, who had long been deemed politically untouchable, did help answer critics of the court.

Documentation Center of Cambodia director Youk Chhang says that he hoped recent judicial progress was a sign the tribunal is finally shaking off years of political machinations from both inside Cambodia and out.

"Everyone wants to control this process because of past associations. There's no doubt about it," he says. "The ECCC is gradually becoming independent from the government and hopefully from the politics of the international community also. That is where this tribunal should stand."

On Tuesday, the tribunal's five pretrial chamber judges considered the question of whether Duch's detention, without trial, in a military prison since 1999 should have any bearing on his prosecution before the ECCC.

But the bigger issues now are how much further prosecutions will reach and how independent Cambodian judges will prove to be once actual trials get under way, perhaps sometime early next year.

Prosecutors are investigating more suspects, and UN officials at the court have made clear they want to go as far as the evidence demands. But Cambodian officials have been resolute in resisting too broad a scope of prosecution. They argue that digging too deeply into the Khmer Rouge killing machine could undermine the nation's hard-won peace because so many people – including ranking members of the government – were once Khmer Rouge members themselves.

The tribunal is legally restricted to trying top leaders and those most responsible for Khmer Rouge crimes. But just what "most responsible" means has yet to be tested.

"As stipulated in the convention, the ECCC is intended to bring to trial the 'mastermind' of the genocide and all human right violation," Information Minister Khieu Kanharith wrote in a recent e-mail.

"We do not intend to go deeper, this [is] for the sake of national reconciliation. If you want to go further it means you have to judge all the past three regimes, plus whoever cooperate[d] with the Khmer Rouge after 1979. Nobody wants that," Mr. Khieu added.

ECCC justice model put to the test

The ECCC is the only international tribunal in history with a majority of national judges and an administration controlled by Cambodians. Many have questioned the wisdom of this model, but Phnom Penh insists it's the best way to render meaningful local justice. And despite unresolved allegations that Cambodian staff had to pay kickbacks in exchange for their tribunal jobs, as well as two recent excoriating reviews that recommended that the UN consolidate its control of the court, Cambodia has made clear that it won't cede its position at the helm.

Still, Tuesday's hearing brought hope to survivors who thought Khmer Rouge leaders would all die, like Pol Pot – who passed away in 1998 – before the secrets of the regime can be vetted.

Of the 14,000 or more people tortured at S21, only a handful survived. Chum Mey was among them. He said his thumbnails were ripped out and he was electrocuted during his three-month incarceration, but he was always too afraid to look his guards in the face. On Tuesday, he sat not 15 feet away from the slim, calm man who allegedly masterminded his suffering. And when Duch looked at him, he looked back. Then he closed his eyes and sat for a few long minutes with his hands clenched in his lap. "I am not afraid anymore," he said after the hearing.

Khmer Rouge: A timeline

1975: Khmer Rouge, led by Pol Pot, comes to power. Cities are evacuated, ethnic minorities persecuted.

1977: Bloody purges, mass starvation bring death toll to 1.7 million.

1979: Vietnamese troops overthrow Pol Pot regime.

1994; Khmer Rouge outlawed; thousands surrender in amnesty scheme.

1998: Pol Pot dies in jungle hideout.

2001: Law passed to create tribunal to bring genocide charges against Khmer Rouge leaders.

2005: UN greenlights tribunal.

Source: Yale Cambodian Genocide Project; BBC

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