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Observers say potential impediments await Cambodia's genocide tribunal

Efforts to prosecute Khmer Rouge leaders over the deaths of 1.7 million Cambodians during the 1970s could face further obstacles despite judges approving rules for the U.N.-backed genocide trials, observers said Thursday.

"The hardest part has yet to come, and that is who and how many (suspects) should be or should not be" indicted, said Youk Chhang, director of the Documentation Center of Cambodia, an independent group collecting evidence of the Khmer Rouge atrocities, said.

After repeated failures over the past six months, Cambodian and foreign judges announced the rules Wednesday that pave the way for the tribunal to begin investigating Khmer Rouge leaders for the mass killings during their 1975-79 communist rule.

The rules were one of the judges' last major tasks before they could begin working on the cases, but it was unlikely the trials would start anytime soon. That is a growing concern as there is a chance the aging defendants could all die before they are brought to justice.

The top Khmer Rouge leader, Pol Pot, died in 1998. Ta Mok, the Khmer Rouge army chief, died last July while in detention pending trial by the special tribunal. He was believed to be 80.

The only defendant now in custody is Kaing Guek Iev, also known as Duch, who headed the notorious S-21 torture center in the capital, Phnom Penh.

Their senior-level colleagues, Nuon Chea, the movement's chief ideologue; Ieng Sary, the former foreign minister; and Khieu Samphan, the former head of state, live freely in Cambodia but are in declining health.

Cambodia and the United Nations created the genocide tribunal last year under an agreement they reached in 2003. The 17 Cambodian and 12 foreign judges and prosecutors have spent the last six months in sometimes rancorous disagreement on guidelines for the trials.

The tribunal is an unprecedented hybrid. It will operate under the Cambodian judicial system often criticized as weak, corrupt and susceptible to political manipulation. Decisions require support from a majority of the Cambodian judges, backed by at least one U.N.-appointed judge.

On Wednesday, neither the Cambodian nor the foreign judicial officials would give details about their cases or reveal names and the number of potential suspects.

Legal scholars have suggested less than a dozen former Khmer Rouge, mostly in leadership positions, are the most likely targets for prosecution, given time and financial constraints.

But even though it will not be able to prosecute hundreds of defendants, the tribunal will not necessarily limit its targets to only the most senior Khmer Rouge leaders, Marcel Lemonde, a co-investigating judge from France, said recently. Those who have committed large-scale atrocities will have to answer for their crimes regardless of rank.

Kek Galabru, president of the non-governmental human rights group Licadho, warned the Cambodian and foreign co-prosecutors could fail to reach a consensus on which suspects should be indicted.

If the prosecutors fail to reach a consensus, they will have to refer their disagreement to the tribunal's pretrial chamber, she said. The chamber, made up of three Cambodian and two foreign judges, would need to obtain a majority vote plus one to decide whether to allow an indictment to go ahead.