

August 2, 2007

Cambodia's first step toward justice for Khmer Rouge

Kaing Guek Eav, who led the Khmer Rouge's notorious S-21 prison, was indicted Tuesday.

By: Erika Kinetz

Just after dawn Tuesday, Kaing Guek Eav, better known as Duch, gathered his clothes from the military prison cell he has lived in for the last eight years and walked, silent and expressionless, to a waiting car.

Duch is the only man facing charges for the crimes committed by the Khmer Rouge, a radical communist regime that oversaw the deaths of some 1.7 million people – roughly one quarter of the population – when it ruled Cambodia in the late 1970s.

Experts say Duch could be a key witness in the long-delayed efforts to bring justice to the people of Cambodia, and in a Wednesday statement from the court Duch said he "is ready to reveal the crimes committed by the Khmer Rouge."

For Cambodians, Duch's journey to the international criminal court represents the culmination of a decades-long wait for justice followed by more than a year of legal wrangling between the international community and the Cambodian judicial system.

Duch's indictment is surely a sign of progress for the troubled court, but many still worry that the justice handed down will be too late and too narrow to permeate the cover of impunity and secrecy that surrounds Cambodia's Khmer Rouge past. Duch's arrest and detention surprised no one, and some argue that the real tests of this court, which unlike any other international criminal court, operates under national control, are still to come.

"We hope that charging Duch is the start of real progress on the trials," Brad Adams, Asia director for Human Rights Watch, wrote by email from London. "But it was impossible not to charge him, as he was already in custody and has confessed to his crimes in media interviews. The first real test is whether Nuon Chea, Khieu Samphan, Ieng Sary, and Ieng

Thirith are soon charged and arrested," said Mr. Adams, referring to other Khmer Rouge leaders who have been implicated in human rights crimes.

Adams added that real justice – and a true justification of the court's \$56 million price tag – means going after more than just five people, and making decisions that are clearly based on evidence, not politics.

Tribunal judges on Tuesday charged Duch with crimes against humanity for his role as the director of the notorious S21 prison, where some 14,000 people are thought to have been tortured before being sent to their deaths in the killing fields outside Phnom Penh.

To some extent, the tribunal is at long last bringing the judicial record into line with the historical one. Duch is the first of five suspects identified by tribunal prosecutors earlier this month to be publicly named, but the local press was quick to name the other historical headliners of the failed revolution as top candidates for prosecution.

In addition to Duch, they fingered Nuon Chea, the movement's chief ideologue and second in command to the late Pol Pot; Khieu Samphan, the regime's head of state; Ieng Sary, the Khmer Rouge foreign minister; and his wife, Ieng Thirith, who served as minister of social affairs.

All but Duch still live with impunity in Cambodia.

The tribunal announced Wednesday that Duch had chosen his defense team: Kar Savuth, a Cambodian who has been his lawyer for eight years and has also represented Cambodia's Prime Minister, Hun Sen; and François Roux, a French attorney who was part of the defense team for Zacarias Moussaoui, a French citizen of Moroccan descent now serving a life sentence for his involvement with the 9/11 terror attacks.

Duch has already served eight years without trial, which promises to be a thorny legal issue for the court to resolve.

Duch's attorney argues that his client's long detention meets neither Cambodian nor international standards of justice and has asked that he be released on bail. The judges decided to detain him for up to a year anyway, on the grounds that the crimes he's accused of are so grievous that releasing him might disrupt Cambodia's "fragile" public order and threaten his personal safety. It was not immediately clear whether Duch would choose to appeal his yearlong detention under the authority of the court, called the Extraordinary Chambers in the Courts of Cambodia.

Duch's personal safety has been a question ever since photojournalist Nic Dunlop unmasked him in 1999. A Christian convert, Duch had been living in rural Cambodia under a pseudonym.

A vital link for the Khmer Rouge

Youk Chhang, the director of the Documentation Center of Cambodia, an independent archive that has supplied reams of historical evidence to the tribunal, said that as the commander of a special state prison for Khmer Rouge members suspected of treason, Duch was a vital link between the cadres on the ground and the regime's top leadership.

"He is the middle person, the joint," Mr. Youk said. And that, he added, could be dangerous.

In a 1999 interview with the Far Eastern Economic Review, Duch – and the UN – expressed concerns for his safety. At that point, Duch brashly implicated Nuon Chea, Khieu Samphan, Ta Mok – a notoriously brutal Khmer Rouge commander who died last year – and Son Sen, the Khmer Rouge defense minister, who was executed in 1997, in the carnage of those years.

Mr. Dunlop, who wrote about his discovery of Duch in "The Lost Executioner," said he worried that Duch might distance himself from his past and try to hide behind claims that he was just following orders once he takes the stand.

"When [Duch] spoke in 1999, he accepted his own role in the killings and began to establish a chain of command of how orders were given and carried out and by who. His testimony should be a pivotal moment if he does speak the truth on the stand and so it could be very damaging," Dunlop wrote in an email.

An even longer wait

Even as the judicial process moves forward, other parts of the court are lagging. Victims still eagerly circle outside the tribunal, unsure how to get involved. A promised victim's unit, which would oversee victims' claims, has yet to take shape. Witness protection remains a key concern for court staffers. Charges of corruption at the highest levels of the court have yet to be publicly investigated, and the Cambodian side of the tribunal is facing an imminent budgetary crisis. Fundraising will have to begin soon if the court is to function as planned.

Meanwhile, the United States is still withholding direct funding from the tribunal. Piper Campbell, the chargé d'affaires at the US Embassy in Phnom Penh, said charging Duch was a "welcome step forward." But she added: "The tribunal's proceedings, which under the civil law system are still at a stage where most of the work is conducted confidentially, have not yet reached a point" where the Department of State can assess whether they meet international standards.

All this adds to the skepticism among Cambodians and international observers. For some of Duch's alleged victims – of whom only a handful survived – justice still seems elusive at best.

Painter Vann Nath, one of a handful of survivors of S21, says it's still too early to celebrate. "I'm not happy yet," he says. "I'm waiting to see the result. It has already been too long."