



Khmer Rouge jailer pleads for freedom **March 30, 2011**

In Cambodia this week, the Khmer Rouge tribunal has been hearing an appeal by Duch, the head of a detention centre that oversaw the deaths of around 15,000 people in the late 1970s.

During his trial last year, Duch repeatedly apologised and asked for forgiveness for the deaths he oversaw... but then at the last minute, to the shock of many including his own international lawyer, he asked to be acquitted of the charges. The 68-year-old, whose real name is Kaing Guek Eav was found guilty and sentenced to 35 years jail for crimes against humanity. Today, his legal team will wrap up their appeal.

Presenter: Liam Cochrane

Speaker: Clair Duffy, Open Society Justice Initiative

COCHRANE: Now what was Duch's legal teams main appeal argument? DUFFY: Well, his main argument was really that he should never have been prosecuted by the Khmer Rouge court at all. The court's equivalent of a Constitution gives the court power to try senior leaders from the Khmer Rouge era and those who are said to be most responsible. But Duch says he wasn't a senior leader or somebody who was most responsible and so he should never have been tried in the first place. I suppose it's what in legal terms we would call it jurisdictional argument.

COCHRANE: And is that consistent with the arguments that were made in the main body of the trial?

DUFFY: It's not consistent with the arguments that were made during the trial. In fact this argument was really raised very late on in Duch's trial, mostly during the closing arguments. Essentially Duch pleaded guilty, that's at least what we would understand in places like Australia where we have a common law system, but there was no real provision for him to do that in the Khmer Rouge court. But as you just said, Liam, he did admit responsibility for the detention, torture and execution of thousands of people. He apologised on a number of occasions during his trial for what he had done, but then at the eleventh hour in his closing arguments, he said he should be set free.

COCHRANE: He wasn't set free. He was sentenced to 35 years jail and given the time already served, it's expected that he could possibly walk free in 19 years if the sentence is upheld. Are there calls now with this appeal under way to increase his sentence?

DUFFY: There definitely are. As you probably know, there was also a prosecution appeal and that was heard yesterday and the prosecution's seeking to have Duch's sentence increased for the maximum term which is life imprisonment, but with the possibility of a five year reduction, that relates to the time that Duch was illegally detained by Cambodian military authorities and the trial chamber found that that had breached his right to be tried in a timely manner.

COCHRANE: Now as you said, Duch did admit some responsibility and many people thought this would be the most straightforward of the cases. There's another four senior Khmer Rouge leaders who are waiting to be tried. Where's that case at?

DUFFY: Since January of this year, the trial chamber, that's the bench who ultimately hear the case. They have been official seized of the case. It's expected to start in July or August this year, but between now and then, there will be a couple of short hearings may be of a day or two each and those are mainly to do with trial management type issues, talking about, for example, how are they actually going to run a case of this size, how are they going to manage it, particularly because all four of the accused are in their late 70s or 80s and they're definitely going to be issues related to that.

COCHRANE: And how is their health, are they still healthy at this point?

DUFFY: Well, the information from the court side is that all four of them have regular health checkups and that the health issues they face are mainly age-related. But from my understanding, this is one of the issues that's going to be dealt with further before the trial begins. There's talk about some plans to conduct medical checks and if necessary to bring in medical experts to conduct those checks. But this is really about how they're going to manage these ongoing health issues in the court room, because the trials going to last likely two to three years. Clearly the trial chambers thinking about these kind of issues, because some amendments were made to the court rules just recently to allow for the participation of the accused in the trial via video link. So it's clearly in the minds, these concerns are clearly in the minds of the judges.

COCHRANE: Clair Duffy, I think we've discussed Duch and four other senior KR leaders. There has been talk of a further five Khmer Rouge leaders that could be brought to trial. The Cambodian Prime Minister, Hun Sen, has said this case will never happen. Is there any new information on this front?

DUFFY: This dispute actually started between the Cambodian and international co-prosecutors. The five were only first referred for investigation by the international co-prosecutor. Those cases are now in the hands of the co-investigating judges, but it's been there for over 18 months now.

In February, the judges issued a statement saying they weren't conducting field investigations, so it's largely been a paper investigation to date. I think this is a real concern for the court, because of the history of opposition to these cases by the

Cambodian government and in fact just a couple of weeks ago, another really concerning thing happened. The national deputy co-prosecutor told a room full of civil party representatives that there would be no cases three and four, that is those five suspects.