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Decades After Cambodia Genocide, a Verdict

By Patrick Barta

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PHNOM PENH, Cambodia—A United Nations-backed tribunal will issue its first verdict here Monday after years of investigating the Khmer Rouge genocide and arguing the case for justice in Cambodia.

But while the initial verdict, in the case of former prison commander Kaing Guek Eav, known as Duch, will mark a major achievement for Cambodia, a series of more complicated and potentially divisive cases lies ahead.

Those cases involve former senior officials of the Khmer Rouge regime; legal experts say they must be prosecuted before Cambodia can bury its past and complete its re-emergence as one of Asia's most promising frontier economies, which analysts say has been held back by worries over the lack of legal accountability for wrongdoers.

The prosecution of these still-untried senior officials "is essentially the Nuremberg trial of Cambodia," says David Scheffer, a professor at Northwestern University School of Law and former U.S. ambassador-at-large for war-crimes issues. "While Duch is a very significant figure in the Pol Pot atrocities, he wasn't at the top of the leadership pyramid."

An estimated 1.7 million people—or a fifth of Cambodia's population at the time—died of starvation, illness or were killed during the reign of the Khmer Rouge, a radical Communist rebel group that ruled Cambodia from 1975 to 1979 under the leadership of the late Pol Pot.

The regime was toppled by Vietnamese forces in 1979, and after more than a decade of civil war, Cambodia is peaceful again. It has begun to attract interest from foreign investors who see Cambodia as an important new emerging market, with cheaper labor than China and fertile land for agricultural projects.

But the country is still struggling to escape its reputation as a dangerous and unpredictable place. Many investors are watching the tribunal carefully for a final confirmation that rule of law has returned.

The process has struggled from the start. Before launching the tribunal in 2006, Cambodian leaders and international donors argued for years over its powers and composition, with Cambodia seeking more control over the proceedings.

The government still has some former Khmer Rouge cadres in its ranks, including Prime Minister Hun Sen, who served in the Khmer Rouge but later defected. He isn't under suspicion of involvement in the atrocities, legal analysts say, but other officials or politicians could be. Attempts to reach a government spokesman were unsuccessful.

Mr. Hun Sen has argued that aggressive investigations could destabilize Cambodia and possibly trigger civil war—an outcome political analysts describe as unlikely.

"If you prosecute [more leaders] without thinking beforehand about national reconciliation and peace, and if war breaks out again and kills 20,000 or 30,000 people, who will be responsible?" he said in September.

Advocacy groups have repeatedly complained of interference from Cambodian officials. Mr. Hun Sen has denied interfering with the tribunal process.

Such disputes have made it harder for the tribunal to raise money from foreign countries to fund its operations. In April, it suspended salary payments to Cambodian staff when money ran out, though staff got their back pay after Japanese donors provided \$2.2 million in early July. The tribunal remains about \$50 million short of its projected \$87 million budget for 2010-11.

Despite those problems, legal experts say the Duch case went smoothly after its start in March 2009, and should greatly bolster the tribunal's credibility as an independent and viable institution.

Monday's verdict "is an important milestone and shows that this court can function," says Alex Hinton, a professor and expert on the Khmer Rouge genocide at Rutgers University.

Mr. Duch, 67 years old, has been charged with committing crimes against humanity and war crimes, as well as torture and homicide, in his role as chief jailer at the notorious Tuol Sleng prison in Phnom Penh, where some 14,000 Cambodians were detained before being killed.

Mr. Duch has denied killing or torturing anyone. He has, however, acknowledged an oversight role at the jail, and has repeatedly expressed remorse. He has sought leniency on the basis that he was following orders, and has cooperated with the tribunal.

Mr. Duch faces a sentence of five years to life in prison if convicted.

The next case is more important, legal experts say, and also likely more difficult. It is expected to involve four members of the Khmer Rouge's inner circle: Nuon Chea, a former acting prime minister who is considered one of the group's main ideologues; Ieng Sary, a former deputy prime minister and minister of foreign affairs; his wife Ieng Thirith, a Shakespeare scholar who was also a government minister; and Khieu Samphan, a former head of state.

All four were arrested in 2007 and are accused of crimes against humanity; all have denied the charges. The tribunal is aiming to make a decision by September on whether to take them to trial, which is widely expected, with the trial expected to begin next year.

Some advocates fear the trial won't be completed. All four of the accused are in their late 70s or mid-80s and in declining health. Any further delays could test donors' willingness to keep spending, particularly after the tribunal has yielded a verdict in its first case.

"The problem of donor fatigue and the desire of the donors to take their winnings and move on—that remains a significant problem," says James Goldston, executive director of the Open Society Justice Initiative, a global group that promotes legal reform.

There are also questions about whether additional trials will—or should—occur. Rights advocates have argued at least another 10 or so Khmer Rouge leaders must be taken to trial before the full truth is known.

Prosecutors have submitted the names of five more possible defendants. Those names haven't been released and Cambodian authorities have said they don't want to pursue the cases.