

The Sydney Morning Herald

Killing fields accused may not live to face court

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November 28, 2009

PHNOM PENH: It is easy to see that Kaing Guek Eav was once a high-school maths teacher.

In court, bespectacled and neatly dressed, he is a meticulous note-taker, noting each of the horrific accusations made against him. He is unemotional, inscrutable. When he speaks, he is deferential and polite. He does not appear to be a mass murderer and torturer.

But under his revolutionary name Comrade Duch, he ran the Khmer Rouge's notorious Tuol Sleng jail, where enemies of the party were brought to be tortured before being bludgeoned to death with ox-cart axles at the nearby killing fields.

Though he confessed this week to being "solely and individually responsible for the loss of at least 12,380 lives", Comrade Duch confused the court on the final day of his trial by asking to be acquitted and released. The court ordered he remain in custody.

With his seven-month hearing concluded, and awaiting only a sentencing decision early next year, Comrade Duch holds the dubious honour of being the only person ever to stand a full trial for the crimes of the Khmer Rouge.

And, with 30 years passed since the regime was toppled, it is possible he will remain the only one to face justice for the crimes of a reign that killed more than 1.7 million people in four blood-soaked years.

The Extraordinary Chambers in the Courts of Cambodia - the hybrid international and Cambodian court established to hear the Khmer Rouge trials - is slated to try four further regime officials, all more senior than Comrade Duch.

Nuon Chea, known as Brother No.2, was the Khmer Rouge's second-in-command and its chief ideologue. Ieng Sary was foreign minister and his wife, Ieng Thirith, the minister for social affairs. Khieu Samphan was the titular head of state. The youngest of these defendants is 77. And all the men are seriously ill.

Ieng Sary has suffered at least one major heart attack, and Khieu Samphan a serious stroke. Nuon Chea suffers heart disease and hypertension. Their time, and the court's, is running out.

The court's UN administrator, Knut Rosandhaug, said this week it would be mid-2011 before the trial of the four, known as Case Two, is ready to be heard. It will likely be "2014, maybe 2015", before it is wholly concluded.

A court monitor, Heather Ryan, of the Open Society Justice Initiative told the *Herald* it was a real possibility some, or all, of these defendants may die before they face their day in court.

"It's not inconceivable given the age of the accused. For these people to face justice they need to survive at least another 3 ½ years. I think it would be exceptionally unlikely that all of them could survive that long."

The Khmer Rouge's ideological leader, Pol Pot, died in 1998. The four defendants of Case Two are the most senior regime officials known to still be alive.

"Case Two is the most important," said Youk Chhang, the director of the Documentation Centre of Cambodia. "These were the leaders, none of them have apologised, none of them have asked for forgiveness, none of them speak."

But other concerns hang over the court too. There is growing concern the Cambodian Government is interfering in its work, refusing to co-operate with inquiries and trying to stifle further investigations it might find politically uncomfortable.

The Prime Minister, Hun Sen, himself a former low-level Khmer Rouge cadre, believes more charges could lead to civil war. "I wish the court would have a budget shortfall as soon as possible," he said.

A report this week from the Open Society Justice Initiative found Cambodian court staff are refusing to issue summons to witnesses who hold senior government posts. And investigations into another five Khmer Rouge leaders, understood to include senior Government figures, have been stifled by the Cambodian side of the court.

Although the court's international prosecutors have described the briefs on the five as "strong, solid cases", the Cambodian prosecutor, believed to be under instruction from the Government, has objected to further investigation.

Comrade Duch will have just one more day in court, next year, when he will learn his fate. Who follows him into the dock is unknown.