



Khmer Rouge tribunal may widen investigations
Presenter Liam Cochrane with Speaker Michelle Staggs
September 4, 2009

Cambodia's war crimes tribunal has indicated it might investigate another five or six senior Khmer Rouge leaders for their part in the genocide of the 1970s. Five top officials are currently being prosecuted and the trial for the first, Duch, the chief of the torture prison Tuol Sleng, or S-21 is underway.

KELSALL: I think the short answer is that it's at the start of a longer process, although the international prosecutor has said in the media that he will go ahead with forwarding two introductory missions to the co-investigating judges, which basically will kick-start an investigation. So I think at least there is going to be the start of an investigation by the co-investigating judges. Now whether there is further dispute at that level as to whether the investigation should go forward is yet to be seen.

COCHRANE: And do you know who those two submissions are - who the people possibly to be investigated are?

KELSALL: No, in order to protect the fair trial rights of any new suspects, as well as the integrity of the investigations process, the names of those identified have not been publicly disclosed. There is some media speculation as to who they might be or at least what positions they might hold, with most people speculating that they would be senior government and military people, potentially people who have held positions in those states as late as 2006.

COCHRANE: Has the testimony of Duch, the first person to be tried, has he named anyone outside of the five defendants already on the list?

KELSALL: Oh, during the course of the proceedings, Duch certainly mentioned a number of people predominantly who worked under his authority at S-21 or who he reported to particularly Son Sen. The majority of people however he has named are currently deceased.

COCHRANE: Now, once these, let me ask you, once the list has been, the extra names have been put forward, who makes the final decision on whether they are prosecuted?

KELSALL: Well, the closing order which is tantamount to indictment in the civil law system is issued by the co-investigating judges, so it's really their determination ultimately that will decide whether to go ahead to prosecution. There are a number of issues that can be appealed by the prosecutor of course after that order is issued and prior

to that point, any disputes between the national and international side have to be settled by a pre-trial chamber. But the short answer is it will be the co-investigating judges that issue the indictment.

COCHRANE: Just on that tension between the national and international sides of the trial. Is this development something of a compromise between the two views, one wanting to expand and at least one wanting to keep it to those five already named?

KELSALL: Well, I am not sure whether we would characterise it as a compromise at this stage, given the judgement issued by the pre-trial chamber clearly shows an ongoing disagreement between the national and international sides of the judges as to how this issue should be handled. It was clear from the decision that the Cambodian judges did not believe that there was grounds to continue with additional investigations and that their international colleagues disagreed with them. However, under the court's internal rules and the law, the investigation has to go forward if there is a disagreement at this stage. However, at the stage of determining whether the accused persons at that point are guilty or innocent. If there is any dispute and no resolution is reached, it will then mean an acquittal, so...

COCHRANE: Just finally and very briefly, this is a politically sensitive issue I understand. Cambodia's Prime Minister Hun Sen has said that expanding the number of people on the list could destabilise Cambodia. Just how politically sensitive is it within the country?

KELSALL: It really depends on who you speak to on that issue. Obviously, Prime Minister Hun Sen has given statements to the media earlier this year saying that he believes it would cause further political unrest and possibly a return to conflict with former Khmer Rouge cadre. However, people I speak to on the ground say that they don't have any indication of this and they think that any real threat of that nature is completely unfounded.