



Tribunal set for case 002

James O'Toole

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This morning, in a courtroom in Dangkor district, on the dusty outskirts of Phnom Penh, will begin what United States Ambassador-at-Large for War Crimes Issues Stephen Rapp has called “the most important trial in the world”.

In the dock will be a quartet of aged defendants, the most senior surviving leaders of the Khmer Rouge regime: former KR Brother Number 2 Nuon Chea; head of state Khieu Samphan; foreign minister Ieng Sary; and his wife, social action minister Ieng Thirith.

The four face charges including genocide and crimes against humanity in what has long been described as the tribunal’s “core case”.

“The legacy of this case will be very important in that it’s bringing to trial some of the most senior leaders of Democratic Kampuchea,” deputy prosecutor William Smith said. “This will be the most significant case for the court.”

Tribunal officials including co-prosecutor Andrew Cayley and former co-investigating judge Marcel Lemonde have compared the looming case in its complexity to the Nuremberg trials for former Nazi leaders, and although the defendants may already have been judged guilty in the court of public opinion, significant challenges remain before the tribunal can consider a verdict in the historic case.

“There are a number of things,” Smith said. “One is the fact that it’s being prosecuted 30 years after the event, so the evidence-collection exercise is more difficult.

“It’s also complex because it deals with criminal policies that occurred country-wide, and the scale of the crimes [is] particularly large.”

In the first verdict at the tribunal, handed down last July against former S-21 prison chief Kaing Guek Eav, alias Duch, the court found the infamous jailer guilty of crimes against humanity and grave breaches of the Geneva Conventions.

Duch’s testimony forms a significant part of the evidence against the Case 002 defendants, yet his trial will likely bear only limited resemblance to the proceedings in the second case.

Although Duch was convicted for implementing criminal policies at S-21, the Case 002 defendants stand accused of devising such policies as part of a “joint criminal enterprise”.

“You have . . . crimes alleged through the entire country,” said Anne Heindel, a legal adviser at the Documentation Centre of Cambodia. Prosecutors, she added, must “tie these crime sites to these senior leaders to show that the policies they enacted are responsible for the atrocities committed at these sites”.

Prosecutors have previously said that the trial is likely to last at least two years. The four days of hearings this week will focus on procedural issues including witness lists and the statute of limitations for the alleged crimes in the case. The so-called “substantive hearings”, involving evidence and witness testimony, will not begin until August or September.

With the defendants aged between 79 and 85, health concerns may affect the pace of the proceedings.

“When you have an old client, it’s very, very difficult to communicate with them, to get them to focus, to get them to help out,” said Michael Karnavas, a lawyer for Ieng Sary.

Ieng Sary has complained of back pain and urological problems that prevent him sitting in the court for long periods.

Nuon Chea and Ieng Thirith have also excused themselves early from previous hearings.

In view of such concerns, the Trial Chamber has the opportunity to split the proceedings against the various defendants, or to allow the suspects to monitor the trial via video link.

However the hearings are organised, defence lawyers are sure to offer challenges to the case on a variety of issues.

“They’re challenging every possible aspect of the court’s authority, including its ability to prosecute both national and international crimes, its jurisdiction in some cases, its procedural fairness, the adequacy of the investigation and its legitimacy,” Heindel said.

The recent controversy over the tribunal’s third case, in which the co-investigating judges have apparently sabotaged the investigation amid opposition to the case from the Cambodian government, is likely to be raised by the defence teams, said Clair Duffy, a trial monitor with the Open Society Justice Initiative.

“The issue is, how selective have these proceedings been?” Duffy said.

Although the process is sure to be contentious, Karnavas said he hoped it would ultimately be instructive for the Cambodian population.

“This is an exquisite opportunity for the Cambodian public to see how a trial can be conducted and how justice can be done . . . assuming it is done properly,” he said. “You want Cambodians to really know how trials are conducted so they have this expectation

when the [tribunal] is gone.”

Beyond the legal ramifications, Cambodian Centre for Human Rights president Ou Virak called the opening of Case 002 “a cathartic moment” and an opportunity for Cambodians to understand “the darkest chapter” of their country’s recent history.

“While the crimes of the Khmer Rouge were committed over a quarter of a century ago, they remain ingrained in Cambodia’s collective psyche,” he said in a statement yesterday.

“I hope this trial – coming as it does so many years after the crimes alleged against the accused were committed – provides all victims with some sense of justice, however delayed that justice may be.”