

## **Time running out for Cambodia justice**

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*If the trial of four elderly former Khmer Rouge leaders is not expedited, it may degenerate into a death watch*

The clock is ticking away at the Khmer Rouge tribunal in Phnom Penh. Only one trial has been completed so far. The next case: the all-important trial of four surviving senior Khmer Rouge leaders is shrouded in doubt, given the court's timetable and calculations that the trial not begin until mid-2011.

But by 2011, who knows how many of these ageing former leaders will still be alive? Nuon Chea, right-hand man of Pol Pot and Ieng Sary, former foreign minister, are both octogenarians. Former head of state Khieu Samphan and "Khmer Rouge first lady" Ieng Thirith are in their late 70s. They are in frail health and have received periodic hospital attention during the two years they have been detained in cells under UN supervision and control.

The crimes of the Khmer Rouge regime were committed in the late 1970s. The first trial was the case of Kaing Guek Eav, better known as Comrade Duch, the director and chief interrogator of the Khmer Rouge regime's chamber of horrors S21 prison. The trial finished last month, with the five judges due to deliver their verdict in the new year.

Now the attention switches to the second case – the joint trial of four other Khmer Rouge leaders. According to the legal timetable, Cambodians and the world may have to wait until 2011 to find out more about how the Khmer Rouge leadership orchestrated the policies that led to such a massive death toll of nearly 2 million between 1975 and 1979.

The tribunal's continued success beyond the Duch trial heavily depends on keeping these elderly men and women alive. Other senior Khmer Rouge leaders are dead, including Pol Pot. Cambodians bitterly complain about the ponderous pace of legal proceedings. Why is it taking so long, they anxiously ask? The victims are eager to see justice done, but unfamiliar with the full protection of the rights of the accused, afforded by a UN-backed tribunal, concerned to ensure that it is a fair trial.

The court's UN administrator, Knut Rosandhaug, has said it that the joint trial of the leaders will not be concluded before 2014 or even 2015. That seems to stack the odds even further against the surviving leaders ever facing the final verdict.

Now that the painful memories of the past – torture, starvation and the death of so many relatives – have been rekindled by the tribunal, ordinary Cambodians are eager for a faster justice and closure, not a trial that drags on and on.

Lawyers say most of 2010 will be taken up with time-consuming applications, appeals and objections to the evidence gathered by the investigating judge, which may have to be resolved by the pre-trial chamber of judges. Unlike the Duch case, in this trial the ex-Khmer Rouge leaders have so far conceded very little, and have never expressed any serious remorse over the mass killings. Defence lawyers can be expected to slow everything down with aggressive challenges to the evidence compiled by the investigation so far.

This will be a supreme test of how to balance the rights of the accused, and a plethora of legal challenges, against the rights of the victims and society that require a speedier justice. Providing the best possible medical attention to septuagenarians and octogenarians in frail health is not enough. The long history of this tribunal being blocked by China and western governments during the cold war needs to be taken into account. It was not until 1999 that serious efforts to organise a tribunal started and it wasn't established until July 2006.

The victims of the Cambodian holocaust have already suffered agonising decades of frustration, waiting for the UN-backed tribunal to be finally set up. If the tribunal drags on and on and the defendants die off, Youk Chhang – director of the Documentation Centre of Cambodia, which researches Khmer Rouge crimes – predicts the court will lose public support. Robert Petit, the international prosecutor in the first trial, recognised this concern about age and health, remarking that "it is certainly an issue we've got to consider in the conduct of our work".

In this tribunal the race against time has always been the enemy of justice. The whiff of defendants in their death throes is the hovering menace that threatens to derail justice, but it appears that the judges, the court and the UN administration, are not facing up to it. They cannot just allow things to take their normal time-consuming legalistic course and ignore the geriatric factor – the probability that one or more untimely deaths will cloud diminish and undermine the proceedings. If justice is to be realised, all sides need to recognise the need to expedite the hearings, while still respecting the rights of the accused.

The judges – both Cambodian and international in this mixed tribunal – have a special duty to the victims of the Pol Pot regime, to ensure that this trial does not degenerate into a death watch. They need to address the issue of how to fast-track a complex trial in which the tortoise slow pace of international justice has become accepted practice, is urgent and overwhelming in this case.

The conviction of only one man, Duch, for the death of nearly 2 million, cannot possibly satisfy the need for accountability and closure. Unless the trial is expedited and the geriatric leaders live long enough to face justice, the tribunal that has

chalked up many achievements, will sadly always be judged, by its failure to beat the clock.