

# Justice Delayed, But Justice Nonetheless

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## **Cambodia finally starts to bring a handful of ageing war criminals to trial for sowing the killing fields.**

Nearly three decades after Cambodia's murderous Khmer Rouge were ousted from power, the first of a handful of geriatric accused war criminals — a 66 year-old former prison chief named Duch — is finally being brought to justice.

The war crimes tribunal ruled Monday that Duch, whose real name is Kaing Guek Eav, must remain behind bars while he awaits trial for allegedly overseeing the torture of some 14,000 people. In the court's first-ever ruling, a panel of five judges unanimously denied bail to the defendant, who was arrested in July on charges of crimes against humanity. Duch has publicly admitted to serving as the director of the infamous S-21 prison, where thousands were tortured before being executed between 1975 and 1979.

For the past decade, the United Nations and Cambodia have been in desultory negotiations to establish the court and hold the former Khmer Rouge leaders accountable for their crimes. The Extraordinary Chambers in the Courts of Cambodia, as the tribunal is known, is unique in that it is a domestic Cambodian court functioning in partnership with the UN and embracing international criminal law and standards of due process. At one point, the UN cut off talks after concluding that Phnom Penh would not guarantee a free and fair trial. But after marathon delays—due as well to politics and civil war — the tribunal opened on November 20-21 with Duch's bail hearing

The court is now racing against time to try the regime's ageing leaders. The leader of the Khmer Rouge, Pol Pot, was never brought to justice, dying in a jungle clearing in 1998. Duch is the youngest of the five regime officials arrested to date, some of whom have complained of health problems that could threaten to derail the proceedings. In an appeal brief released last week, Nuon Chea, 82, known as "Brother Number Two," was described as suffering from hypertension, cardiovascular disease, impaired memory, and gout, resulting in "diminished mental abilities" that allegedly compromised the court hearings following his arrest in September.

Khieu Samphan, 76, the former Khmer Rouge president, suffered an apparent stroke last month and was arrested only days afterward on charges of war crimes and crimes against humanity. The regime's ex-foreign minister, Ieng Sary, 82, and his wife, Ieng Thirith, 75, the former social affairs minister, were also arrested last month by the tribunal, which is restricted to trying the "most senior" regime officials.

In dismissing Duch's appeal for bail, the judges cited the need to guard potential witnesses from the defendant and to protect Duch himself from survivors and victims' families who could be seeking vengeance.

"Thousands were tortured before being executed by the cruellest means," said Prak Kimsan, president of the pre-trial chamber, as he read out the judges' decision. "The passage of time has not diminished the importance of the [Khmer Rouge regime] on Cambodian society....[and] revenge is

easily accessible."

Duch sat in court with his eyes slightly downcast, rarely changing his expression during the hour-long proceeding. His trial is expected to begin in June 2008.

The November start of the UN-backed court has brought a measure of hope to a country that remains haunted by its brutal past. An estimated 1.7 million people perished during the four-year Khmer Rouge regime as a result of starvation, disease, overwork, and execution. Not a single person has been held accountable to date for the atrocities, and many feared that surviving regime leaders would die before ever being brought to justice.

"We cannot wait anymore," said Thun Saray, director of local rights organization Adhoc, which has been conducting outreach activities about the court. "We delayed and delayed lots of times in the past...And if we give bail to the other Khmer Rouge leaders, it would delay the process again."

As news of the trials has begun spreading across Cambodia's provinces, more regime victims have been coming forward to issue complaints as civil parties to the court, Thun Saray said, adding that he was heartened by the public's reception of the tribunal.

Nevertheless, the passage of 30 years' time has led others to wonder if the trials will resonate with most Cambodians, the vast majority of whom were born after the regime ended. Official textbooks still barely mention the period, and despite the steady stream of tourists to Cambodia's genocide memorials—which include Duch's own S-21 prison—shockingly little about the past atrocities seems to have trickled down to the next generation.

The tribunal "has to be something of an education for Cambodia's young generation, said photojournalist Nic Dunlop, who tracked down and uncovered Duch in the 1996."It's important that justice is not only being done, but also understood."Gau Mat, 38, echoed Dunlop's sentiments at the tribunal's opening proceedings last month."If we don't have this [trial], maybe the new generation will follow the regime people,"said the Cham Muslim, one of the many Khmer Rouge survivors attending the hearing."If there's no justice, in the future, [the guilty] will be released if they give money. The regime leaders should have to pay for what they have done."

But while a sense of reprisal may already be in the air, court analysts maintain that the tribunal's impact will depend as much upon a strong defense as the final verdict.

Evaluating Monday's ruling, Youk Chhang, the director of the Documentation Center of Cambodia, said that the judges' decision sharply exposed the defense's weaknesses. During the hearing last month, he said, one of the defense lawyers introduced Duch to the court as the director of S-21—effectively implicating his client before the trials had even begun.

"The idea of a defense is a new concept [in Cambodia], and it's very important that it cross into the minds of the public," Youk Chhang said. "The defense needs to work harder, be stronger...and do its homework already."

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