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Proceedings to Open on Aged Chiefs of Khmer Rouge

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PHNOM PENH—More than 27 years after the mass killings ended and after nearly a decade of wrangling between Cambodia and the United Nations, formal proceedings have begun against surviving leaders of the Khmer Rouge regime.

On July 10, the prosecutor's office began its investigation of the men accused of masterminding a killing regime that took 1.7 million lives between 1975 and 1979 through torture, execution, overwork, starvation and disease.

A first shipment of 383,149 pages of documentary evidence, contained on 524 reels of microfilm, was delivered to the prosecutors on July 17.

But even if a loose timetable holds, it will be a year and a half before the first defendant is brought before a mixed Cambodian-foreign tribunal. Because of limits on time, space and funding, only a small handful are likely to face trial for complicity in the deaths of as much as one-fourth of the country's population.

The tribunal proceedings face uncertainties and hurdles of both procedure and politics that could slow or stymie them. The United Nations has given the tribunal a budget of \$56.3 million for a three-year process that began with the investigation, which many experts say may have to be extended.

It is also racing against mortality as aging suspects die off and those who remain grow sicker and more frail. The Khmer Rouge leader, Pol Pot, died in 1998. Another leading figure, the military commander Ta Mok, died July 20.

Of the four most prominent names that remain, three are in their late 70s and report having medical problems. Some diplomats are concerned that one or two of them might have highly placed patrons who could help them disappear before they are arrested.

Only one, Kaing Guek Iev, also known as Duch, the commander of the torture chamber Tuol Sleng, is in custody. He has become

an evangelical Christian. An earlier interview suggests that he may be as enthusiastic now about repentance as he was then about slaughter.

The decades-long gap between the crimes and the trial, arising from various political and geopolitical agendas, is likely to dull the memories of both defendants and witnesses and raise questions about the purview of documentary evidence, experts said.

It was delayed throughout the 1980s when the United States and other nations insisted on recognizing the jungle-based Khmer Rouge guerrillas rather than the Vietnamese-backed government that ousted them in 1979.

In recent years, Prime Minister Hun Sen has raised obstacles, apparently concerned that the unpredictable process could weaken his firm grip on power.

Whether true or not, courtroom testimony could implicate members of the current government, several of whom were ranking Khmer Rouge cadres themselves. One of these is Hun Sen, who was a middle-ranking field officer but who scholars say was not involved in serious abuses.

The tribunal was established by an agreement between Cambodia and the United Nations in 2003 that grew out of a Cambodian request in 1997 for assistance. It has been controversial from the beginning, with Cambodia insisting that its shaky legal system form the basis for the complex tribunal.

Critics doubt the quality and independence of the 17 Cambodian judges and prosecutors, who are seen as poorly trained and subject to political manipulation. An analysis by the respected local human rights organization Licadho asserted that seven of the appointees "are clearly unsuited to the task" because of their records in politically manipulated trials. Four other men named to be judges have never served as judges before, it said.

Other unresolved issues - with the three-year clock already ticking - involve basic procedural guidelines, untrained Cambodian staff, the competence and integrity of the police who will carry out investigations, witness protection, and something as simple as language. The official languages of the trial are Khmer, English and French. None of the Cambodian judges are fluent in English; most of the documents are in Khmer and are far too numerous to translate, and there is a shortage of top-level translators in Cambodia.

In the mixed tribunal system, Cambodian and foreign prosecutors and judges will work in pairs or teams, with a complicated "supermajority" system for resolving any differences among them. Not only must a majority of the judges concur on any decision, but the majority must include both Cambodian and foreign judges.

But the lack of a common language will make it difficult for them to form working relationships and resolve complex legal questions.

The foreign prosecutor, a Canadian named Robert Petit, for example, speaks English and French; his Cambodian counterpart, Chea Leang, speaks Khmer, German and a little English.

Critics worry that the proceedings will fall well below international standards of justice, prompting debate over whether a flawed trial would be worse than no trial at all.

But Peter Maguire, an expert on international justice and author of *Facing Death* in Cambodia, suggested that international standards have already been lowered by the conduct of the campaign against terrorism, primarily by the United States.

"The process is sure to be flawed," said Diane Orentlicher, a professor of international law at the Washington College of Law at American University. "That's not really in question. But these trials are, to point out the obvious, the last chance that surviving victims have for justice."

Another controversy has involved the decision to try only senior leaders and those "most responsible" for crimes, with just half a dozen names generally mentioned.

"That raises issues about, what about this guy who lives just round the corner who I know, and who I know killed my family," said Heather Ryan, who is observing the trial for the Open Society Justice Initiative, a private group that monitors human rights issues. "Is he going to be put on trial too? And if not, why not?"

Some Cambodians say they are reluctant to see a trial that could open old wounds and revive faded enmities. Among those who say they favor it, fewer tend to say they are seeking justice than to say they simply want to understand what happened - to learn who caused them so much pain and why.

In deference to a tangle of political sensitivities, the Khmer Rouge years are omitted entirely from school textbooks and many young people

are ignorant of the events of the period. A growing number say they doubt that the mass killings took place.

Experts say much of the country's continuing violence and disorder grow out of the unresolved traumas of the past. A trial is crucial to breaking down what is known as a culture of impunity, they say, in which powerful figures are rarely punished, except in political cases with stage-managed verdicts.

There is a sense that no crime is so great that it must be punished, said the U.S. ambassador Joseph M. M. in a recent address, and that "whatever any Cambodian does is fine because it cannot possibly be worse than what the Khmer Rouge did - and got away with doing."

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