Good and bad at the ECCC as Duch’s prison sentence is extended to life

The Cambodian Center for Human Rights (CCHR) welcomes the final verdict in the case of Kaing Guek Eav at the Extraordinary Chambers in the Courts of Cambodia (ECCC) but is concerned by a number of issues arising from the judgement. The Supreme Court Chamber today, 3 February 2012, rejected Kaing Guek Eav, alias Comrade Duch’s, appeal against the jurisdiction of the ECCC to try him on the grounds that he was not a “senior leader” of the Khmer Rouge or one of “those most responsible” for the crimes committed under that regime. Ruling that the crimes committed by Duch were “among the worst in recorded human history” and that the 35 year sentence handed down to him by the Trial Chamber in July 2010 did not “reflect the gravity of the crimes”, the Supreme Court Chamber extended his sentence to life imprisonment.

The end of the first case before the ECCC is a historic occasion for Cambodia; one that the long suffering victims of the Khmer Rouge have yearned for for many years and, for long periods of time, probably thought would never arrive. It is hoped that the final verdict will go some way to healing the wounds inflicted on this country over thirty years ago by that regime and will give victims some sense that justice is being done for the crimes committed upon them. The judgement however does raise a number of concerns from a fair trial rights perspective and in relation to the legacy this institution will leave for the judiciary and the rule of law in Cambodia.

When the trial verdict was delivered in July 2010, CCHR welcomed the five year reduction in sentence given to Duch in recognition of his illegal detention by the Cambodian military for a period of eight years as “a good example to the domestic courts of Cambodia, whose detention practices remain a serious concern, and serves as a reminder of the universality of human rights.” In its ruling today, the Supreme Court Chamber ruled that the ECCC should not provide a remedy for this violation of Duch’s rights as the ECCC itself was not responsible for that violation. CCHR considers this a dangerous precedent for the Cambodian judiciary who may be encouraged to ignore human rights abuses by other branches or institutions of government and concurs with the dissenting opinions of Judges Agnieska Klonowiecka-Milart and Chandra Nihal Jayasinghe that the ECCC, being established within the existing court structure of Cambodia, was uniquely placed to grant a restorative remedy the a deprivation of liberty that was extreme by international standards.

Another issue of concern is the confusion the decision of the Supreme Court Chamber has brought about in relation to determinations of personal jurisdiction at the ECCC. The judgement states that “a fair trial demands that [an] Accused has the right to raise an objection to a patent or latent lack of
jurisdiction that could vitiate the trial at whatever time s/he decides safeguards his/her interests” and that the “Trial Chamber must entertain any and all such objections to jurisdiction raised by an accused person” but proceeds to remove the Trial Chamber from this process when it states questions as to whether an accused was a “senior leader” of the Khmer Rouge or one of those “most responsible” for the crimes committed by that regime are, in the absence of bad faith or unsound professional judgement, policy determinations to be made by the Co-Prosecutors and Co-Investigating Judges that are non-justiciable before the Trial Chamber of the ECCC.

Responding to the verdict by the Supreme Court Chamber, Chak Sopheap, CCHR Programs Director, stated:

“This is bittersweet. On the one hand, I am very pleased to see that a final verdict has been entered against an individual for the crimes committed between ’75 and ’79 and hope that victims finally feel that something is being done to provide some justice for their suffering. On the other hand, I am concerned about the human rights and legacy consequences of the verdict. It is deeply unsettling to see that the Supreme Court Chamber is willing to overlook an illegal deprivation of liberty on the grounds that the ECCC was not responsible for it. Such a decision pangs of a lack of understanding of the role of judicial institutions in upholding human rights standards. This is a terrible example in a country where the judiciary routinely overlooks rights violations involving other parts of the government machinery. The decision of the Supreme Court appears contradictory insofar as judicial review of decisions as to the jurisdiction of the Court by the Co-Investigating Judges and the Co-Prosecutors are concerned with the Supreme Chamber explicitly outlining the importance of the review of the Trial Chamber in this process only to later apparently remove the Trial Chamber from the process almost entirely.”

For more information, please contact CCHR Programs Director, Chak Sopheap, at +855 11 94 32 13 or chaksopheap@cchrcambodia.org