

Can Khmer Rouge conviction change anything?

By *Guest Writer*

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Subhead:

Analysis: Cambodia's judiciary may not benefit from UN-backed genocide trial after all.

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Caption:

Khmer Rouge survivors sit amongst a crowd watching the courtroom proceedings as the verdict is being announced at a screening outside the courthouse July 26, 2010 in Phnom Penh. (Paula Bronstein/ Getty Images)

PHNOM PENH, Cambodia — The first trial of a Khmer Rouge leader in Cambodia's U.N.-backed tribunal has been hailed as a model for the nation's struggling judiciary. But will the work of the tribunal really change anything in Cambodia's court system? Observers say it won't be easy.

Kaing Guek Eav was sentenced on Monday to 35 years in prison — which was reduced to 19 years for time served — by a joint U.N.-Cambodian court, a judgment that came more than three decades after the Khmer Rouge's murderous 1975-79 rule.

Better known as Duch, the gaunt former revolutionary oversaw the deaths of more than 12,000 people as head of torture center S-21, now the site of a museum in Phnom Penh. A court statement described him as showing a "high degree of efficiency and zeal" at the prison, where on a single day 160 children were executed.

His conviction was welcomed as a milestone, with some observers saying they hoped the court's example would strengthen Cambodia's much-criticized judiciary.

Surya Subedi, U.N. human rights envoy for Cambodia, said the "verdict signifies a commitment by the government of Cambodia to uphold the rule of law and ensure accountability according to internationally accepted standards for fair trial."

"I hope that this landmark conviction will serve as a catalyst for the government to address impunity and accelerate its legal and judicial reforms."

A local rights group said the reduction of Duch's sentence upheld his rights, although the 19-year punishment met with the dismay of some Cambodians. The court lessened Duch's sentence because of time served and because he was detained illegally from 1999 to 2007, a violation of his rights.

"This reduction in sentence provides 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," the Cambodian Center for Human Rights said.

These sentiments come against the backdrop of a national court system that is widely considered dysfunctional,

with corruption and violations of basic rights the norm.

A June report from the Center for Justice and Reconciliation, for example, said a third of roughly 800 monitored defendants were convicted in absentia, and that more than 90 percent of their trials lasted less than half an hour. A study this month from CCHR found that judges commonly answered cell phones during trials.

In its most recent annual report on human rights in Cambodia, the U.S. State Department painted a grim picture of corruption and independence of the judiciary.

“The courts were subject to influence and interference by the executive, and there was widespread corruption among judges, prosecutors and court officials,” the report said.

The lengthy process to create the Khmer Rouge tribunal began in 1997, when the Cambodian government asked for U.N. help to try those most responsible for the crimes of the regime, which is blamed for an estimated 1.7 million deaths. Negotiations broke down in 2002, but an agreement was eventually reached to set up a joint court in Cambodia composed of local and foreign staff.

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Duch’s trial at the tribunal, known officially as the Extraordinary Chambers in the Courts of Cambodia, began in 2009, and the trials of the four most-senior living members of the regime — Pol Pot died in 1998 — are expected to begin next year.

Observers say the tribunal is far from perfect, and some of their claims suggest a seepage of the type of problems for which the national judiciary is known.

Allegations have surfaced that employees at the court need to pay kickbacks to keep their jobs, which government officials have denied. The U.N. and the Cambodian government agreed last year to appoint an independent counselor to which staff can bring confidential complaints.

Observers have also pointed to mounting evidence of political interference at the tribunal after Prime Minister Hun

Sen and other top members of the government — which includes many former Khmer Rouge — publicly warned against the pursuit of more than the current five suspects, citing possible civil unrest. Officials have roundly denied this charge as well. Meanwhile, senior officials have refused to appear after being summoned as witnesses in the second, more complex case before the court, which includes the four other Khmer Rouge leaders in detention.

In a report this month on political interference at the tribunal, court-monitor Open Society Justice Initiative said Duch's trial "appeared to be a fair proceeding unmarred by political interference." But the group warned that if the government picks and chooses which cases go forward, this would "seriously undermine any hope that the E.C.C.C. could serve as a model of justice for the domestic courts in Cambodia."

If Duch's trial is to be a catalyst for change in Cambodia, "educational outreach and the pursuit of judicial reform must continue," according to an article last month by Kheang Un and Judy Ledgerwood for the East-West Center.

The authors wrote that Cambodian personnel will likely benefit from receiving training and experience alongside foreign colleagues at the tribunal. But they also said there is "ample reason" to be skeptical about the extent of positive influence, noting that the tribunal is much more well funded than national courts, and that police sometimes refuse to execute rulings in Cambodia's judiciary.

"The Cambodian judiciary needs additional resources to improve their position with the police force they rely upon to execute their rulings and to secure a degree of independence from the larger patrimonial system in which it is embedded," the article reads. "While these may be desirable outcomes for the future, they are unlikely to be an immediate result of the Khmer rouge tribunal."

Sok Sam Oeun, executive director of the Cambodian Defenders Project, cautioned that the Khmer Rouge tribunal and the Cambodian national courts were "very, very different." The tribunal document sentencing Duch runs to about 280 pages, whereas the judgment in a typical Cambodian court case might only be a few pages long, he pointed out.

As long as Cambodia's judiciary lacks independence, the question of whether the court system will benefit from the work of the tribunal ultimately depends on the country's leaders, especially the prime minister, he said.

“In fact, there is some good example to be used,” he said of the tribunal. “But the problem is the political will to use the E.C.C.C. as a model.”

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