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On the Eve of the Duch Judgment

by
David Scheffer

On Monday, July 26, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia will render its judgment in the case of Kaing Guek Eav (alias Duch), who ran Tuol Sleng Prison in Phnom Penh during much of the Pol Pot regime. The Cambodia Tribunal Monitor (www.cambodiatribunal.org) will provide full coverage of this historic event as it unfolds, beginning on the morning of July 26 and over the following week in Cambodia. We will have two correspondents in Phnom Penh and in the courtroom blogging and interviewing key individuals, including victims, in the aftermath.

What is the significance of this forthcoming landmark judgment by the ECCC, regardless of whether it results in acquittal or a guilty verdict, on the responsibility of one of the most notorious figures in the Khmer Rouge?

Cambodia no longer will stand silent among the worst atrocities of the 20th century as the nation that feared justice. Total accountability for the deaths of an estimated 1.7 million Cambodians is impossible. But the Duch judgment should send a powerful signal to the victims who survived and their families that there is a reckoning for at least some of the leaders who bear responsibility. It also holds the potential of inspiring greater credibility and integrity in Cambodia's other courts, which remain susceptible to corruption.

One can reasonably conclude at this stage that the Duch trial conformed to international standards of due process, so it was a fair trial and Duch's rights as a defendant were well protected. The dilemma that the Trial Chamber must address in its judgment is the contradictory character of his defense strategy. On the one hand, Duch confessed responsibility for the torture and deaths at Tuol Sleng in an apparent attempt to seek mitigation in the event of a guilty verdict. On the other hand, in the final hours of the closing arguments, Duch and his Cambodian defense counsel sought an acquittal. That plea reflected disarray between his international and Cambodian defense lawyers. In fact, Duch recently fired his international defense counsel, which suggests he is sticking to his acquittal plea. It would be surprising if the judges take that plea seriously after such a long trial of testimony and evidence pointing towards some degree of responsibility for the horrors of Tuol Sleng, including Duch's own admissions.

The Duch trial has been worth the cost, particularly for the more than 14,000 victims who perished there. There has always been the dilemma of high cost confronting all of the war crimes tribunals built in the last 17 years. Cambodia certainly is not unique in this respect. But international justice is expensive given the enormity of the killings

and what is required to prove that political and military leaders directed others to carry out atrocity crimes. The legacy of the ECCC will resonate for generations in Cambodia, just as the Nuremberg and Tokyo Military Tribunals did elsewhere in the decades following World War II.

In fact, an objective analysis of the cost of the ECCC trials would show that, compared to the expenses of local trials for single murders in advanced western legal systems, these trials for the torture and deaths of tens of thousands are relatively very cheap. It also is a fallacy to imagine that the funds devoted to ECCC prosecuting the surviving Khmer Rouge leaders, with international participation and oversight, would have been magically committed by foreign donors to Cambodia's domestic justice system or development priorities in the alternative. I hope that the Duch judgment will generate greater interest among donor nations to provide additional voluntary funding to the ECCC to carry on its critical mandate.

Duch likely will not be the only Khmer Rouge defendant tried before the ECCC. Even if, in the second joint trial, four senior Khmer Rouge leaders are acquitted, I expect fair justice to be rendered by the Trial Chamber. The fact that the ECCC has required each of these individuals to prepare for possible trials where they have to defend themselves against the prosecutor's charges is a victory for justice and for the historical record in Cambodia.

Duch is not a scapegoat because Trial 002 remains on track where his superiors will be held accountable. There also is a strong possibility of a third and perhaps fourth trial of likely defendant leaders of the Khmer Rouge, despite the rumblings of political interference to block them. The Duch trial laid the groundwork, though, on some fundamental issues regarding the Pol Pot atrocities and that will facilitate further trials. Duch already is a symbol of the Pol Pot regime's atrocity crimes, but I believe he will not be the only one when this is all over. Others wait in the wings to share that dubious honor with him.

The test of the Trial Chamber's judgment on Duch will be how sophisticated it examines the many legal and due process issues that arose during the trial and whether it stands toe to toe with the well reasoned judgments of other war crimes tribunals. We can expect a lengthy judgment, one that will be examined for years to come.

This moment has been a long time coming for the Cambodian people and for the international community. Justice has been delayed in Cambodia, but it will not be denied.

David Scheffer is the Mayer Brown/Robert A. Helman Professor of Law and Director of the Center for International Human Rights at Northwestern University School of Law. He is Managing Co-Editor and an expert commentator of the Cambodia Tribunal Monitor.