

# The Salt Lake Tribune

## **Decades after genocide, is justice even possible?**

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**July 8, 2010**

*With many defendants close to death, survivors wonder if trials have purpose.*

Sath Prum was just a boy when the Khmer Rouge came to take away his father. But he was old enough to know that he would never see his dad again.

“I knew that they would execute him,” Prum said. “They tied him up and put a blindfold on him. I didn’t know where they were going to take him. I didn’t know how it would be done. I just knew that he would be killed.”

Prum’s sister, two brothers and a brother-in-law were also killed during Pol Pot’s four-year reign of terror in Cambodia, when about 1.7 million people died of hunger, disease and execution.

On July 26, Cambodians scattered across the world will gather around computers, television sets and radios to hear the verdict in the case of Kaing Guek Eav, better known as “Comrade Duch,” who oversaw a Khmer Rouge prison system in which thousands of Cambodians were tortured and executed between 1975 and 1979.

Three decades have passed, but Duch is the only Khmer Rouge leader who has been tried for crimes against humanity. Pol Pot died in 1998. The trials of four additional defendants are expected to begin later this year. But it is uncertain if the U.N.-backed Extraordinary Chambers in the Courts of Cambodia will indict many others — if anyone at all.

And that has left many Cambodians, like Prum, feeling as though the tribunal has failed to achieve anything resembling justice.

“It’s too late to save anyone,” said Prum, a 49-year-old assembly line worker who lives in West Valley City. “They cannot give me my father back.”

The handful of indicted leaders “are very old now,” Prum said. “They’re going to die soon anyway. So what is the point?”

Donor countries have poured more than \$100 million into the tribunal, but on the eve of the Duch verdict, Japan sent an emergency payment of \$2.26 million to keep the cash-strapped court solvent.

Prum doesn't think that's a good investment — particularly not given the small number of people the court has managed to indict. He believes the money could have been better spent in a nation that continues to suffer from the economic legacy of decades of war and political strife.

Markus Zimmer, who recently returned home to Utah after an assignment as a judicial systems consultant to the Cambodian court, understands the criticism. Zimmer noted that Duch was a cooperative and contrite defendant. The next trial will likely be more complicated, with the defendants mounting "vigorous defenses with international defense teams."

Those cases could take years to complete.

"There's kind of a race going on," he said. "They're trying to get these cases processed before people die or before they become mentally incompetent."

But Zimmer, who has served as an advisor in 27 nations, also sees promise in tribunals like the one in Cambodia, which have the potential to leave the legacy of a better functioning justice system. After all, he said, a nation that can handle the complexities of decades-old war crimes cases should be better situated, in the future, for simpler criminal prosecutions.

What the courts can't do is promise even justice for every offender and every victim. They also set a standard that some believe is unsustainable for nations with few legal resources and little experience.

The justice provided in U.N.-backed tribunals "is a standard of justice that would be justice in a really good world," said University of Utah philosophy professor Leslie Francis, who lectures on the intersection of international law and ethics. "But that's not the world we live in."

"That's not to say you should abandon due process and other types of guarantees," Francis said, "but one of the things that needs to be thought about is how to institution build. If you don't ever punish anybody, how do you build institutions of justice that work?"

She questioned whether building courts capable of handling "big fish" is the best way of creating institutions of justice that work for everyone else.

Among other failings, war crimes courts don't generally address the individual perpetrators of war crimes — the soldiers who actually arrested and executed Phum's father, for instance.

Utah lawyer David Schwendiman, the former head of the Special Department of War Crimes for the Prosecutor's Office of Bosnia and Herzegovina, lamented the

impossibility of achieving a standard of justice that satisfies everyone touched by crimes of war.

“Ask someone what justice is and you will get as many definitions as there are people,” he said.

During his time in Bosnia, Schwendiman helped develop an elaborate system to prioritize crimes for prosecution. “Our goal was to do as much as possible with the amount of time we were given and the amount of resources we had available,” he said.

The system rated the level of the atrocity, the number of victims, status of the perpetrator, geography of the event and time span in which the crime occurred. Even still, he said, it was a largely subjective exercise and not everyone agreed with the results.

“We heard complaints every day,” Schwendiman said. “We heard it publicly. We heard it privately.”

Schwendiman agrees that war crimes courts do not provide an efficient foundation upon which to build a more comprehensive criminal justice system. But he said it’s vital to demonstrate that institutional justice is possible.

“For those that have been so affected by tragedy, it so important that they can have some confidence in the system in the future,” lest they decide to take matters into their own hands, he said.

There is one thing that war crimes courts appear to do quite well: Helping piece together, out of the chaos of war, an historical record that can be passed down to future generations.

“Education is one of the most important means for healing,” said Youk Chhang, director of the Documentation Center of Cambodia, which works with the court to collect evidence about the Khmer Rouge era for the purpose of teaching Cambodian students about the past. “Healing begins at home and it also begins with your own children.”

Chhang said education might appear to be an “unconfrontational and indirect way” to face the problems of the past, but in lieu of “justice as defined by a court of law, the victims have come to understand justice in many different ways.”

Out of the chaos of Pot Pot’s regime, Chhang said, few Cambodians believe that anything resembling pure justice could be possible.

“Even God cannot fulfill our wish for a complete justice,” he said.

And so, he said, everyone just does the best he can.