

FRONTLINE

A conviction, finally
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It is an old adage that justice delayed is justice denied. However, delayed justice in a case relating to a horrific crime like genocide cannot be brushed aside on the only basis of such a perspective. More so when the issue concerns a three-decade-old genocide in a developing country like Cambodia, which is still coming to terms with its sense of national loss caused by that period of genocides.

On July 26, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) handed down the first-ever judicial verdict on the genocide committed by the Pol-Pot-led Khmer Rouge in that country during the 1970s – April 1975 to January 1979. An estimated three million people perished when they were subjected to physical, political and social forms of genocide.

Surely, the latest verdict in Phnom Penh is not about the notorious Pol Pot himself, who died over a decade ago. Nonetheless, the case relating to a Khmer Rouge prison chief, Kaing Guek Eav (67), also known as Duch, reflects a degree of social resilience that Cambodia can perhaps take credit for. The very fact of this judgment, not its finer details, can account for a celebration of justice. As of the end of July, the verdict is still open to the possibility of an appeal.

Cambodia, more particularly the present government led by Hun Sen, has often been criticised for being soft on the Khmer Rouge. Such criticism is particularly pronounced in the Western circles, well known for demanding differential standards of justice on different occasions and in respect of different places. All the same, the criticism stems from Hun Sen's old association with the Khmer Rouge, which began in 1970, several years after Pol Pot had taken control of it. And, although Hun Sen rose in the Khmer Rouge's military hierarchy in Cambodia's eastern zone to deputy regimental commander, he is known to have snapped his ties with the Pol Pot dispensation in 1977 and left for Vietnam. It was Vietnam that later brought the Khmer Rouge down, between December 1978-January 1979.

Besides the suspicions about Cambodia's lack of political will, especially under Hun Sen, to

bring a semblance of justice to the victims of the Khmer Rouge's genocide-defined rule, doubts were often expressed, especially in the West, over the poor South-East Asian country's legal competence.

A combination of such factors led to the constitution of the ECCC through a relevant law passed by the Cambodian National Assembly in 2001. However, the controversies did not stop with that. The Cambodian government would not budge from its stand that the trial of the captured-and-surviving officials of the Khmer Rouge regime should take place in Cambodia and not outside. Another of Cambodia's arguments, as it engaged the United Nations on the issue of a genocide trial, was that no anti-genocide norms would be meaningful to the Cambodian people if their own judges and law officials were to be excluded from the relevant judicial process. At the same time, the Hun Sen government expressed guarded readiness to have foreign participation in the judicial process in a suitable fashion.

Cambodia eventually entered into an agreement with the U.N. in June 2003. Broadly, the accord provided for a wide range of international assistance of the legal and financial kind to Cambodia. The objective was to help assess the conduct of the former officials of the Khmer Rouge on the touchstone of internationally recognised anti-genocide norms. Another stated objective was to ensure international standards of justice in a Cambodian ambience.

In the event, the ECCC was brought into being as a special judicial forum independent of both the Cambodian government and the U.N. Said to serve as a role model for the regular courts in other domains in that country, the ECCC was characterised as a Cambodian court with international participation and global characteristics of jurisprudence.

Significantly, India was the first country to render assistance for the constitution of the ECCC. A top ECCC official, Reach Sambath, who briefed this correspondent over the telephone from Phnom Penh on July 26 about the details of the verdict against Duch, emphasised that he should thank India for its timely role.

The ECCC Trial Chamber pronounced Duch guilty of crimes against humanity and sentenced him to 35 years of imprisonment. He was convicted for his supervisory and participatory role in the mass execution of the “enemies” of the Khmer Rouge at S-21, a security centre that was used as a prison and a killing field between 1975 and 1979.

The Trial Chamber decided, by a majority, that Duch was guilty of a range of crimes against

humanity such as persecution on political grounds, torture and extermination.

At the same time, the Trial Chamber took note of the “illegal detention” that Duch underwent at the hands of the Cambodian military court between 1999 and 2007. So, the pronounced sentence was reduced to 30 years of imprisonment. Applying international standards, the court also ruled that he was “further entitled to credit for [the] time [he] already spent in detention” under the jurisdiction of not only the military court but also the ECCC itself during his current judicial trial.

Reach Sambath said Duch would, as a result, be required to serve a total of 19 years in prison under the July 26 orders. Moreover, the defence lawyer indicated that Duch would file an appeal before the Supreme Chamber of the ECCC, said the court official. Duch, who at one stage apologised to the court for his crimes but later sought an absolute acquittal, was entitled to appeal within 30 days of the judgment.

Live telecast

The clamour for justice, over three decades after the exit of the Khmer Rouge, was so intense that the court proceedings were witnessed by nearly 30,000 Cambodians from the public gallery. In addition, several million Cambodians watched the live telecast of the proceedings. Many, who had lost their friends or relatives in the Khmer Rouge killing fields, were not at all satisfied with the sentencing of Duch to something less than life imprisonment, the maximum penalty under the national law. Others, not so directly affected by the stated pursuit of an agrarian order by the Khmer Rouge, expressed “understanding” of the logic behind the verdict.

No trial date has so far been set in respect of any other former official of the defunct Khmer Rouge. Beyond that, if the Khmer Rouge had, during its time, ruinously made a mockery of the political ideal of socialism, the ECCC may now have opened up the possibility of international cooperation on issues of global interest within the territorial limits of sovereign countries.