



Justice in the Dock at Khmer Rouge Trials

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September 30, 2012

In September 2009, the Extraordinary Chambers in the Courts of Cambodia (ECCC) seemed to be running smoothly, bringing long-awaited justice and closure to a country that had suffered for years under the ultra-Communist Khmer Rouge regime, whose ruthless social engineering experiments resulted in millions of deaths in the 1970s.

Duch, the repentant chief jailer of the Khmer Rouge, was on trial for the torture and slaughter of nearly 14,000 prisoners at the secret prison S-21. At the same time, an indictment was being prepared for the regime's four top living leaders, who would soon be charged with genocide, war crimes and crimes against humanity. And prosecutors were on the verge of accusing five additional mid-level Khmer Rouge leaders of the same crimes, fulfilling the UN's expectations that the court would ultimately try between 10 and 15 defendants.

But now, three years later, each of these efforts has faltered, and the court is struggling to get donors to pay \$45m per year it needs to stay afloat. In a country where the average per capita income is just \$830, the ECCC has already spent more than \$150m to obtain just one conviction, and donor nations are weary of funding a court plagued by interference and corruption scandals.

Victim of interference

Most disastrous have been the cases against the mid-level leaders, which the Cambodian government has vigorously opposed - dramatically claiming that civil war would break out if the five suspects were prosecuted. The cases, known as 003 and 004, have stagnated for three years now.

Cambodian court staff, following the government line, have balked at pursuing the cases, and two international investigating judges have quit abruptly in the past year, saying that political interference and obstruction within the office made it impossible for them to do their jobs.

Duch, the tribunal's poster child for repentance and redemption, has also been a disappointment. After an emotional nine-month trial during which he made frequent tearful apologies and admitted his guilt, he demanded to be acquitted and released on the very last day of the trial.

And the tribunal's showpiece case against the four senior regime leaders, which has now progressed to the trial phase, has run into one problem after the other. To begin with, only three of the four leaders made it to the trial.

Then, in August last year, it emerged that one of the defendants, the Sorbonne-trained Shakespeare scholar Ieng Thirith, who served as the Khmer Rouge's minister of social action, had developed full-blown Alzheimer's disease during the four years she spent in pre-trial detention. She was released last week into the custody of her family, who drove her directly from the ECCC's detention facility to her luxurious villa in Phnom Penh.

Her husband, former Foreign Affairs Minister Ieng Sary, looks to be on his last legs, and was hospitalised in early September for a litany of ailments. His doctors testified last week that he would not be discharged for at least another month and that his prospects for recovery are uncertain.

Many court insiders fear he will die soon and elude justice.

Equally devastating for many Cambodians is the decision of the judges to hear just a few charges at a time against the three defendants for the purpose of quicker verdicts. So Nuon Chea, Khieu Samphan and Ieng Sary are currently being tried only for their role in forced evacuations of the population from Phnom Penh and other areas. The more serious crimes committed by the Khmer Rouge, including genocide, mass murder and torture, are not on the agenda and may never be, given how long the first trial is taking.

"Anyone experienced in these sort of mega-cases would readily foresee, when factoring the evidence involved and ages of the accused, that the odds of trying the remainder ... was nil. Fantasy," admits Michael Karnavas, Ieng Sary's defence lawyer.

Prosecutors have pushed hard for the truncated "mini-trials" to be expanded, saying repeatedly that justice will not be done if the defendants are not held accountable for a broader range of crimes.

"A second trial against these accused is unlikely... We have a responsibility to make sure the accused are on trial for the most representative, egregious and pervasive crimes it is alleged that they committed," says the court's Australian deputy prosecutor, William Smith.

So far, though, judges have made no move to broaden the trial and victims have repeatedly said they do not understand why the case was split this way.

"I am so concerned about this, because the court is prosecuting only one issue, not all the issues," says Soum Rithy, 59, a survivor of torture in a Khmer Rouge prison, and a plaintiff in the case. "And the issue they are prosecuting isn't even the most serious compared to other crimes like genocide and torture. They need to take those first."

Cash-starved court

"We are on a financial precipice," David Scheffer, who serves as the UN secretary-general's liaison between donors and the Cambodian government, said. "This court is under enormous budget pressures... I'm asking [governments] for donations to keep the court alive, literally."

Meanwhile, the inordinate delay in delivering justice is exacting a heavy toll. The court, which is almost entirely paid for by contributions from donor nations, has always struggled to pay its bills, but now it is in a full-blown financial crisis. Earlier this summer the ECCC was forced to freeze hiring of international staff.

The irony is the cash-starved court, touted as a cheaper alternative to UN-run courts such as the International Criminal Tribunal for the former Yugoslavia (ICTY), may end up handing down the most expensive convictions in history. The ICTY has indicted 161 defendants and achieved 64 convictions. By the time the ECCC ends its operations in 2020, it is likely that it will have spent \$100m per successful conviction.

"It's the most expensive court by far per defendant, especially if you consider that Ieng Thirith won't be tried and now it's questionable whether Ieng Sary will make it to the judgment. If only three in total are convicted it would be the most expensive in history," said Anne Heindel, an expert in international law who monitors the court as an adviser to the Documentation Centre of Cambodia.

The court has, however, had some successes. It brings poor Cambodians from remote villages to watch court proceedings, and sends court officials to conduct forums around the country. The system allowing victims to participate in trials as plaintiffs, an innovation of the ECCC, has broken new ground.

But in the end, none of this may matter if the defendants do not live long enough to be convicted, or if they are not held accountable for the more heinous crimes they are alleged to have committed during their reign.