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The Khmer Rouge Tribunal – A Legacy Yet to be Written

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Despite the many problems that have beset the Khmer Rouge tribunal, there was still hope that the U.N.-backed court would one day be a model for the rule of law for Cambodia, a former investigating judge who helped draw up the court's internal rules said yesterday.

Speaking at a conference in Phnom Penh on the legacy of the Extraordinary Chambers in the Courts of Cambodia (ECCC), Marcel Lemonde, who stepped down as the tribunal's co-investigating judge in 2010, also conceded that efforts to meld the local court system with international judicial practices had failed to deliver an "efficient" mix.

As Mr. Lemonde put it, the ECCC today is not what some had expected.

"The dish was not exactly what we ordered," he said.

The aim of the hybrid court, where national and international staff would work together, Mr. Lemonde explained, was to combine a model that focused on pre-trial investigation with another that focused on the trial itself.

Instead of ending up with the best of both, he said, "we actually accumulated the cons of both systems, which is rather sad."

And despite its lofty objectives, the ECCC also hasn't fostered local respect for international standards of justice, Mr. Lemonde conceded, citing the passing of the Asean Human Rights Declaration last month under Cambodia's chairmanship of the regional bloc. The Asean declaration has been widely panned by the U.N., European Union and human rights groups as a step in the wrong direction.

But Mr. Lemonde also defended the Khmer Rouge tribunal against those who thought it should be making more headway in improving the local court system.

"I still believe it will bring some positive impact for Cambodia," he said. "The rule of law can't be built within a day. Cambodia cannot, from one day to another, become Sweden." Besides putting the most senior surviving Khmer Rouge leaders on trial, the countries mostly footing the tribunal's hefty bills hope to see the international legal practices in use at the ECCC rub off on the much-criticized local courts.

One of those donors, the E.U., commissioned a report looking at what the ECCC could teach the Cambodian court system, and yesterday's conference revolved around a first draft of that report by David Boyle, a former legal officer for the tribunal's investigating judges.

Drawing on some of the many legal decisions handed down by the ECCC, the 250-page report makes recommendations for how Cambodia could bring its 2007 Criminal Procedure Code in line with the latest international standards. For one, Mr. Boyle suggests giving detainees access to legal counsel right away. Current Cambodian law only guarantees access to a lawyer after 24 hours of detention.

Mr. Boyle said the report could both offer model orders for the local courts to draw on and "a timely starting point for any legislative reform process." As he pointed out, the French criminal laws that Cambodia drew on for its own current Criminal Code were now about 15 years old.

Cambodia, Mr. Lemonde said, was "using a code that was not adapted to the 21st century. I regret that the French experts gave Cambodia a tool that was obsolete before it was even used."

You Bunleng, a co-investigating judge at the tribunal and the president of Cambodia's Court of Appeal, welcomed Mr. Boyle's report.

"It is not only a document for further study," he said. "This will be an important tool for judicial reform."

Mr. Bunleng, however, has come to represent the very antithesis of that reform ideal among some of the tribunal's critics by consistently blocking all international efforts to expand the ECCC's scope of investigation beyond the current three defendants—Nuon Chea, Ieng Sary and Khieu Samphan.

That position to limit the scope of Pol Pot regime prosecutions falls in line with Prime Minister Hun Sen's oft-repeated wish to see the ECCC wrap up its work after convicting the three, though Mr. Bunleng denies any connection.

Other ECCC staff and local lawyers yesterday raised further hindrances to the ECCC's ability to help the local courts, from lack of funding to local judges being intimidated by the tribunal's lengthy rulings to a belief that the ECCC's decisions were simply too alien to matter to local prosecutors and judges.

The U.N. and others are trying to bridge the gap between the Khmer Rouge tribunal and local courts with roundtable discussions, seminars and conferences such as yesterday's. But hardly anyone yesterday spoke of probably the greatest fissures of all between the ECCC and local courts and the potential legacy of the tribunal—corruption and political interference.

In his 2010 report, the U.N. human rights envoy to Cambodia, Surya Subedi, described a local court system riddled with corruption and political influence from top to bottom.

In October, the Phnom Penh Municipal Court handed down what human rights groups called one of the most blatantly political rulings in years, against independent radio station owner and frequent government critic Mam Sonando. While attending a regional summit here last month, U.S. President Barack Obama called Mr. Sonando a political prisoner and urged Mr. Hun Sen to set him free.

One of the few to broach the issue at the ECCC's legacy conference was Latt Ky, who monitors the tribunal for rights group Adhoc.

"Money and experience cannot solve anything," Mr. Ky told the conference. "It depends on conscience and political will."