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Case 002

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In an effort to prove that justice has no time limit, the Extraordinary Chambers in the Courts of Cambodia (ECCC) indicted four former officials of the Khmer Rouge regime on Thursday for a host of crimes including war crimes, crimes against humanity, and genocide under international law and murder, torture, and religious persecution under the Cambodian penal code. The indictment, which is the second to be handed down by the ECCC, comes nearly 32 years after the Khmer Rouge lost power to a Vietnamese intervention in early 1979.

The history of the ECCC has been fraught with charges of inefficiency, political interference, and the inevitable question of whether seeking justice for events that happened so long ago is worthwhile. Many of the highest ranking officials of the Khmer Rouge, who oversaw the deaths of an estimated two million people in their four year reign, died before the court was ever created. Those that remain are elderly and near the end of their lives. In a country still trying to figure out how to deal with the social, political, and historical legacy of tragedies past, the tribunal can at times seem to be an unwelcomed reminder of the worst chapter of Cambodian history. While some victims and their children have embraced the court, the ECCC still holds a peculiar spot amongst international and hybrid tribunals for the ambivalent position that the receiving country holds towards it and its fundamental mission to bring to justice those that caused such devastation.

Yet, these issues did not stop hundreds of victims of the Khmer Rouge from coming to Phnom Penh to witness the tribunal's first trial of Kaing Guek Eav. Also known as "Comrade Duch", he served as the Director of S-21, the school turned notorious detention and torture facility in central Phnom Pehn where possibly as many as 30,000 people were interrogated, tortured and killed under the regime. For a time it appeared that only Duch would be tried by the ECCC, so the trial garnered significant media coverage. As a recent Christian convert, Duch initially admitted his crimes and merely requested a lenient sentence, thereby providing the chance for possible catharsis for victims without the drawn out saga of a typical trial. But even this proved to be wishful thinking, as Duch requested on the last day of testimony that he be acquitted of all charges and his defense attorney charged that the ECCC did not have the authority to try him. Ultimately, the tribunal convicted and sentenced him to 35 years - 19 years with time served and other factors - a sentence that Duch is currently appealing to the consternation of Cambodia's victims. With this drama still unfolding in the background, the tribunal's indictment of four more Khmer Rouge officials officially opens Case 002 for the ECCC.

The new case places many of the regime's remaining command structure on trial. The indicted include Nuon Chea, former Deputy Secretary of the Khmer Rouge, along with former Foreign Minister Ieng Sary and his wife Ieng Thirith who served as the former Minister of Social Action. Last of the four indicted is the regime's former Head of State and Chairman of the party's Central Committee, Khieu Samphan; all are believed to have been intimately involved in the purges that devastated the Cambodian population under the Khmer Rouge. Thus while there is little question that the acts of these defendants is deserving of a trial, most of the media coverage so far has focused on the addition of an unexpected charge to the indictment: the charge of genocide.

The applicability of the crime of genocide to the Khmer Rouge has been debated among scholars and human rights practitioners for several years. While certain ethnic groups like Cham Muslims were clearly targeted for their faith, numerous other groups also suffered from the regime's purges as the result of not fitting into the group's vision of revolution, including members of the Khmer Rouge. It is for this reason that the seemingly contradictory term 'auto-genocide' is frequently attached to the situation in Cambodia. But the concept of auto-genocide faces many legal hurdles and is generally not recognized in international criminal law. With the inclusion of the count on the indictment, the ECCC may be attempting to change that although it remains unclear if such a change is welcomed.

This and the other issues highlighted here demonstrate the difficult task that still awaits the ECCC and the Cambodian people as they try to move on from the past. As international criminal law becomes more prominent in international relations, it is important to note that the experience of Cambodia and the ECCC offers many lessons for post-conflict situations to come. In the end it may not be the actual trial of these defendants or their sentences that matter, but the last-ditch effort by the international community to find justice for victims in some form and the inherent problems that have come with waiting for so long.