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BREAKING NEWS AND OPINION

A Joint Worthy Enterprise

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It may come as a surprise to some, but the United Nations-Khmer Rouge Tribunal is working. Over 30 years after Cambodia was left in bloody tatters, the victims of one of the most horrific atrocities in the modern age are finally receiving justice. A look at the tribunal's work to date, particularly its current trial, supports this conclusion. Victims are getting answers. New knowledge about the Khmer Rouge hierarchy, methods, and criminal acts are being discovered. A vetted historical record is being established. Most importantly, all of these developments are being accomplished in a transparent and fair trial where the accused can defend themselves as they see fit. While it is premature to claim that the entirety of the tribunal's purpose has been achieved, it is equally premature to give up on it now, with so much to show for and so much more to be attained.

Properly known as the Extraordinary Chambers in the Courts of Cambodia (ECCC), this internationalized tribunal was formed in 2003 by a treaty between the U.N. and the Kingdom of Cambodia. Operated jointly by Cambodian and international judges, prosecutors, defense attorneys, investigators and victim representatives, the ECCC was established to investigate and prosecute the surviving leaders of the 1970s ultra-radical Khmer Rouge regime. After their ruthless plan to turn Cambodia into an agrarian utopia failed, approximately 2 million Cambodians, Cham Muslims, ethnic Vietnamese, Buddhists and others were dead. Although the ECCC was created to prosecute crimes that occurred during this horrible era, it was never built to bring full justice, which is to say the prosecution of all perpetrators. The ECCC was devised to try only senior leaders and "those most responsible" for the crimes committed in Cambodia between April 17, 1975 and January 9, 1979.

If judged by news blurbs and cash reserves, the last few years of the Court have been trying. Yet international criminal tribunals are the only type of courts measured in such ways. In reality, the only true benchmark for a court of law is its cases: how fair and substantive are the trials while still being completed in a reasonably expeditious fashion? By this trusty criterion, the ECCC's track record is undeniably positive.

The Court's first case finished its trial and appellate proceedings in a relatively short two years. The defendant in Case 001, Kaing Guek Eav alias Duch, was the prison warden of the notorious S-21 Tuol Sleng Prison where over 12,000 "traitors" and perceived "enemies" of the regime were tortured, interrogated and killed. His trial, hailed even by persistent critiques of the ECCC to be overtly fair, resulted in convictions for numerous war crimes and crimes against humanity. On appeal, he was sentenced to life imprisonment.

Case 001's investigation, trial and appeal was the first international criminal case in history to have the full participation of lawyers representing victims throughout, rather than just victims as witnesses. Over 31,000 victims and citizens attended at least one day of this trial, a number that at the time dwarfed the attendance of any international trial in human history. A post-trial study by University of California, Berkeley showed a net increase in positive indicators of the ECCC within Cambodia's total population, such as attitude, knowledge, and expectations of the Court.

Today, the ECCC's second case involving the three most senior leaders of the Khmer Rouge regime alive is what the U.S. Ambassador for Global Criminal Justice called "the most important trial in the world." This mega-trial includes Nuon Chea (second Khmer Rouge cadre in charge behind Pol Pot), Ieng Sary (third in charge) and Khieu Samphan (seventh in charge). As these Accused are charged with multiple counts of war crimes, crimes against humanity, and genocide that allegedly occurred at numerous crime sites, this case is "probably... the largest and most complicated prosecution since Nuremberg in 1945."

Even though this trial is only half-way done, its achievements are creditworthy. Surpassing the previous record set by the Duch trial, Case 002's trial has had around 150,000 attendees. Comprehensive trial monitor reports from NGO -- academic consortiums like Cambodia Tribunal Monitor and KRT Trial Monitor display the multitude of historically and legally significant developments to come from the first 100 days of trial, many of which would never see the light of day without these trials.

For instance, the full extent of Khmer Rouge's medical experiments on living people came out through the testimony of a former Khmer Rouge medic. He described how gruesome experiments were done on patients, sometimes for the simple purpose of teaching others. Another insider witness undercut the popular defense of the Accused that they were unaware of the activities of subordinates, like Foreign Minister Ieng Sary's argument that crimes occurred when he was abroad and out of touch. Renowned Khmer Rouge scholar David Chandler, who spent years pouring over contemporaneous Khmer Rouge documents and interviewing former insiders, gave probably the most revealing testimony to date. Over six days, Mr. Chandler had the unique public opportunity to give details about the Khmer Rouge history, organizational structure, activities and modus operandi. He, for example, discussed in detail how the meticulous use of evolving "biographies" was used by the regime to identify individuals for brutal "re-education" or death, which in turn gave them strict control of friends and foes alike.

Another underreported positive coming out of the ECCC is the fulfillment, in part, of its secondary purpose, which is to instill the rule of law in Cambodia through example. Recently, the ECCC prosecutors recommended that Ieng Thirith, a defendant in Case 002 accused of heinous crimes, be conditionally released due to her dementia. Such a move showcases that the ECCC process is not about revenge, and that fairness is not just a word. Similarly, the ECCC Trial Chamber pushed back on a statement by Cambodian Prime Minister Hun Sen that the Accused Nuon Chea was guilty as charged, stating that such a statement by a political official was "incompatible with the presumption of

innocence." While seemingly mild to the casual observer, it is extremely significant for a Cambodian government official to reproach the powerful Hun Sen in such a public manner, especially in the context of the headline grabbing ECCC.

Probably most noteworthy, Cambodian judges, lawyers and staff are assuming a large portion of the Court's complicated work. Daily trial monitor reports show, for example, Cambodian prosecutors examining witnesses, Cambodian defense lawyers objecting, Cambodian victims lawyers arguing in favor of or against the objections, and Cambodian judges ruling on such objections. Not only are these legal practitioners improving upon their country's present capacity but, more importantly, they will be the rule-of-law leaders and role models for the next generation of Cambodians. No other international criminal tribunal can lay claim to such a direct impact on the local legal profession.

This praise of the ECCC does not and should not gloss over the significant problems that the Court has faced and may continue to face in the future. From allegations of kickbacks and accusations of political interference to the controversial resignation of two international investigating judges, the road for the ECCC has been curious, rough and, at times, troubling. The voluntarily-funded ECCC has paid the price, having to exist in perpetual financial crises as donor countries express concern. Yet these concerns are largely overstated, because the headlines fail to mention that the Court has overcome every one of these pitfalls.

The most recent challenge is no exception. Controversy has swirled around two additional cases under investigation, Case 003 and 004, which allegedly involve former Khmer Rouge leaders who enjoy governmental protection. After the most recent international investigating judge resigned, citing political interference, the popular belief was that these cases would never proceed. Instead of panic, the ECCC and the UN stayed the course. As a result, an internationally acclaimed lawyer has since been officially confirmed as the new international investigating judge, and there is newfound "momentum" that these once stalled cases will proceed. While it remains to be seen how Case 003 and 004 will end, this episode exemplifies that persistent predictions of the Court's demise have all gone unfulfilled. Criticisms that the ECCC lacks independence and credibility have yet to make its proceedings unfair or unjust. Most astonishingly, the Court has persevered through all of these traumas on a shoestring budget, which raises the question: how well could the ECCC work if its coffers were not in constant jeopardy?

When we look back at the Nuremberg Tribunal, officially the International Military Tribunal, there is a deep reverence for this monumental court that prosecuted the Nazi leadership. Yet, the Nuremberg Tribunal was certainly not perfect and its worth was heavily debated at the time. During the trial in 1946, *The Atlantic* published an article called "Nuremberg: A Fair Trial? A Dangerous Precedent". Hindsight allows us to see the shortsightedness of this commentary. Thankfully, the legacy of the Nuremberg Tribunal and its progeny courts is rightly measured by the overwhelmingly positive impact they had on ending impunity for international crimes, and most importantly, the good they did for the victims of the Nazi regime. The ECCC will one day be looked upon in a similar

light, as this Court will be remembered for the historical significance of its work. It is not only adding another chapter in the fight against impunity, but also formally recording the horrible story of the Khmer Rouge that was experienced by so many innocent people. This hybrid Cambodian-international tribunal is a joint enterprise worthy of strong support. It is time for the international community to see through the headlines and support the ECCC.

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