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Scant justice expected from Khmer Rouge trials

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Khmer Rouge soldiers, ordered to execute without wasting bullets, forced tortured captives to dig their own mass graves, hoping to wrest the last shimmer of life from their emaciated bodies—all in the name of creating a communist utopia in Cambodia.

Between 1975 and 1979, Pol Pot's Khmer Rouge slaughtered roughly 2 million people out of total population of 5 million Cambodians. The goal was to reset the country to Year Zero, erasing all culture, traditions, family bonds, and memories of anything good.

Decades later, some of the key perpetrators of those crimes are on trial in Cambodia in the second round of a special tribunal that promised to bring about healing, closure, and justice.

However, the Extraordinary Chambers in the Courts of Cambodia (ECCC)—a hybrid venture between the government of Cambodia and the United Nations—has been fraught with endless delays, fading memories, and allegations of corruption and influence.

While the tribunal has been called a turning point after 30 years of denial and silence, at the same time, many feel it comes too late to offer more than symbolic emotional relief.

Failed Expectations

The ECCC was conceived in 1997 and first convened in 2003. The court was to hear four cases, but the first concluded only last year.

Case 001 ended with the conviction of Kaing Guek Eav, or "Duch," the director of the notorious S-21, Tuol Sleng torture camp. He was found guilty of crimes against humanity and war crimes, and sentenced to 35 years in prison, later commuted to 19 years.

Case 002 is now open against three top Khmer Rouge leaders all in their 80s: Nuon Chea, known as Brother Number Two, the second-in-command under Pol Pot, former head of state Khieu Samphan, and former Foreign Minister Ieng Sary. Ieng Sary's wife, former Social Affairs Minister Ieng Thirith faces similar charges, but was ruled unfit to stand trial as she suffers from Alzheimer's.

After so many years of waiting, time is not on the victims' side.

“Memory has already become a problem for the trial as the first witness brought before the court could hardly recall many of the events in which he was brought to testify,” says Nushin Sarkarati, an American lawyer for Center for Justice and Accountability, representing 45 members of the Cambodian Diaspora in the trial.

“One of the biggest fears amongst victims is that the defendants will not live long enough to see a judgment against them,” added Nushin Sarkarati in an email interview.

Due to the complexity of the case, the court has split up the charges into “mini trials” in which the trial chamber will issue a decision after the conclusion of evidence on each major crime under investigation. The first trial is focused on the relatively lesser crime of forced displacement. The next would address genocide and war crimes, and the third crimes against humanity.

Political Influence

The ability for the ECCC to be independent, particular when former Khmer Rouge officers hold positions in the current government, including the Prime Minister, was at issue from the start.

“We the victims only agreed to participate in this KRT [Khmer Rouge Trial] at the beginning as civil parties because the U.N. participated. We never, never trusted our government or our judiciary; but we had hopes that the U.N. would counterbalance any shenanigans of this government. But as you and I have witnessed, the U.N. failed us miserably in their silence,” wrote Theary Seng, president of the Association of Khmer Rouge Victims in Cambodia, in an email from Phnom Penh.

Last April, tribunal co-investigating judges, Siegfried Blunk of Germany and Cambodian You Bunleng, announced, “The investigation of Case 003 is now closed,” shocking survivors and rights groups. The case ended without any field investigations, interviews with suspects, or disclosure of those under investigation.

However, the Cambodian administration had made it clear repeatedly that cases 003 and 004 should never see the light of day arguing it will only bring social disruption.

“If they want to go into case 003 and 004, they should just pack their bags and leave,” Cambodia’s information minister said last May.

In October, Judge Blunk resigned citing “attempted” interference by PM Hun Sen’s government in his decision. Blunk himself faced serious criticism from victims and rights organizations for misconduct and giving into external pressure.

“For over five years, I believed in this tribunal. Now I attend the hearings the way I would attend a play or a circus performance,” wrote Seng.

Seng, who lost her parents in the mass slaughters known as the killing fields, said that the ECCC has now tipped to the point of illegitimacy and blames the U.N. for turning the tribunal into a “farce and sham” and becoming an accomplice of the regime.

Many groups want the U.N. to conduct an independent investigation into allegations of political interference and they want the U.N. to push for cases 003 and 004 to go ahead.

“It is not enough to push the matter aside and hope that it will be forgotten,” wrote Ou Virak, president of the Cambodian Center for Human Rights, via email.

Two weeks ago, Blunk’s understudy, Swiss national Laurent Kasper-Ansermet, arrived in Phnom Penh to take over Blunk’s duties, only to be immediately undermined by counterpart, Judge Bunleng. Bunleng issued a statement the same day saying that without Cambodian government approval, “[A]ny procedural action taken by Judge Laurent Kasper-Ansermet is not legally valid.”

Measure of Relief

Despite the Cambodian government’s apparent determination to bury cases 003 and 004, most observers expect Case 002 to eventually end in convictions and this has some measure of satisfaction.

“The tribunal was a long time coming and I think a lot of Cambodian people probably gave up hope of ever seeing the Khmer Rouge in the dock,” writes Ou Virak.

Indeed Terith Chy, former head of the Victim Participation Project of the Documentation Center of Cambodia, said that the trial might provide some degree of emotional satisfaction for many survivors who told him they are worried that younger generations will not believe or simply forget this painful past. For some victims, he said, it was more than enough just to be able to share their suffering with somebody.

“Many of the people I interviewed told me they had never seen the faces of those accused of inflicting the most painful experience in Cambodian history,” wrote Terith Chy from the U.K.

He hopes the tribunal will educate people about the Khmer Rouge and “serve as a reminder and to prevent this similar catastrophe from ever happening again in Cambodia.”

The trial can also have important spinoff effects, notes Clair Duffy, a court monitor for advocacy group Open Society Justice Initiative. The process, “provides impetus for further truth-telling and reconciliation processes to take place,” wrote Duffy, from Phnom Penh.

As an example, Duffy mentioned the holding of a women’s hearing, which recently took place in Phnom Penh. Women survivors were given a forum, presided over by a panel of Cambodian and international experts, to describe the crimes of sexual violence they suffered under the Khmer Rouge.

Finally, the fact that some of the worst perpetrators have been brought to justice itself sends an important message that there is no impunity, no matter how high a position someone holds.

“These trials show that even 30 years on, you may be prosecuted for allegations of the most serious violations of international criminal and humanitarian law,” wrote court spokesperson Lars Olsen.

The current trial on forced displacement is expected to take around two years.