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A promising, if tenuous, start

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Duch's trial is just the first step on the road to national recovery as interference threatens to jeopardise the tribunal's mission.

LAST month, the first trial of a Khmer Rouge leader ended with a simple, though not surprising, request from the defendant: Set me free.

For almost nine months, Cambodians have watched with fascination the trial of Kaing Guek Eav, known as Duch. As commander of the infamous Tuol Sleng S-21 prison, Duch oversaw the torture and execution of thousands of Cambodians. His testimony brought into stark view a picture of the Khmer Rouge that had been buried in politically self-serving caricature since 1979.

Throughout the trial, Duch appeared to accept responsibility for the crimes committed at Tuol Sleng. His last-minute change in strategy thrust this case – which had been sailing smoothly toward conclusion – into a state of uncertainty. More importantly, it underscored the fact that the trial of one person – however cathartic – will never provide sufficient accountability for the 1.7 million Cambodians who died at the hands of the Khmer Rouge. If justice is to be served, more trials will be needed.

But it is not at all clear that more will follow. A second case involving four of the most senior surviving Khmer Rouge leaders remains under an investigation that has proceeded slowly. Trial is not expected to commence before 2011, if it happens at all. Six Cambodian government witnesses, with the encouragement of their superiors, have refused to honour summons requiring their testimony before the investigating judges.

An international co-prosecutor launched two additional cases over factually unsupported objections of his Cambodian counterpart and Cambodian judges. Since the cases were launched, confidential sources inside the court have warned that Cambodian officers and staff may be barred by their government from cooperating with the prosecution.

It is not news that some in Phnom Penh resist judicial proceedings that might shine

a light on Khmer Rouge abuses or establish a model of genuine justice. What is striking is that, after more than 10 years of negotiations with the international community, the expenditure of tens of millions of dollars, and the positive example of Duch's trial, such intransigence persists at the highest levels.

As recently as September, just as the court's Pre-Trial Chamber issued a divided opinion allowing investigations in Cases 003 and 004 to go ahead, Prime Minister Hun Sen warned that further prosecutions risked plunging the nation into renewed war, "killing 200,000 to 300,000 more".

According to press accounts, the prime minister said, "We have allowed the court to decide on the additional former Khmer Rouge cadre following the majority.... If the court wants to charge more former senior Khmer Rouge cadres, the court must show the reasons to Prime Minister Hun Sen." So much for judicial independence.

If the court is to fulfil even the modest aspirations of its progenitors, judicial proceedings must be allowed to run their course in all four of the cases now under way. Government officials, like others, must be permitted to give evidence wherever it leads. Investigators must be free to investigate, prosecutors to prosecute, and judges to judge without fear of retribution.

For too long, international donors funding the court have sat back and watched as threats of political interference and widely reported corruption have sapped the court's credibility. It is time for the United States, Japan, France and other donor countries to reaffirm publicly the importance of prosecutorial and judicial independence, and to make clear that Cambodian government transgressions will not be tolerated.

Within the court, senior prosecutorial and judicial investigative officers should be requested to verify on an ongoing basis the full, active and independent cooperation of both international and Cambodian staff and officers. As a measure of its good faith, the Cambodian government should invite the United Nations to appoint a high-level representative to ensure that the agreement establishing the court is complied with and that fundamental fair trial principles are protected.

It is now more than 12 years since Prime Minister Hun Sen joined Prince Norodom Ranariddh in asking "the United Nations and the international community" to "assist the Cambodian people in establishing the truth about [the Khmer Rouge] period and bringing those responsible to justice".

The court's first trial has marked a promising, if belated, start down this path. It has defied the sceptics in offering a long-overdue history lesson that penetrated far beyond the courtroom to towns and villages across the country. Against the odds, it has contributed more than many had thought possible to Cambodia's understanding of its past.

But Duch's trial is only the beginning. There is still much left to accomplish if Cambodia's people are to redeem the court's promise and come to terms with the horrors of their past.