

Cambodia wants its day in court

Tom Fawthrop

February 20, 2009

Critics of the Khmer Rouge tribunal forget that Cambodians see a glass half full – finally some justice after 30 years

It has been 30 years of hoping, waiting and fearing that the day of justice would never arrive in Cambodia. The millions of victims and survivors of the Pol Pot nightmare have long feared that all the Khmer Rouge leaders would be allowed to escape accountability for their horrendous crimes, as did their supreme leader, Pol Pot, who died in 1998.

That is why the much-maligned Cambodia tribunal, backed by the UN, that has just opened in Phnom Penh is so important. No other genocide or crimes against humanity tribunal has confronted such a daunting series of obstacles to its creation.

Now the survivors of Khmer Rouge rule have finally been able to glimpse justice, seeing one of their prime tormentors – Kaing Gueck Eav, better known as Duch – in the dock. Three Cambodian judges and two international judges sit in the hybrid extraordinary chambers in the courts of Cambodia (ECCC), or Khmer Rouge tribunal.

Duch was the director of Tuol Sleng S-21, the Khmer Rouge special prison and interrogation centre, from which nobody was ever released, other than as a corpse or to be taken away for execution. The Khmer Rouge tribunal proceedings are broadcast live on national TV.

But even before the first day in court – a very emotional event for the victims – US lawyers, some western human rights groups and international media have painted an excessively negative image of the tribunal, all but writing it off even before the first trial, calling into question its integrity and credibility. So does this mean that all the dreams of 30 years, that all these long pent-up hopes of justice finally being delivered are destined to be dashed by a tribunal allegedly ridden with corruption, lacking independence and deeply flawed by political meddling?

There are many popular myths surrounding the tribunal. One is that Cambodians don't really care and are more worried about where the next day's meal is coming from, another is that the tribunal is the work of western governments prodding the Cambodian government to deal with the Pol Pot legacy.

From a historical point of view this is perverse. After the Vietnamese and Cambodian dissidents booted the Khmer Rouge out of power in 1979, nearly all the demands for justice came from the Cambodian side. During the cold war, Washington actively opposed putting Pol Pot on trial. Margaret Thatcher's government followed suit with the

shameful deployment of the SAS to Thailand in 1985 to promote the Khmer Rouge-led war against the Vietnamese-backed government in Phnom Penh.

In 1986, the prime minister, Hun Sen, asked the UN secretary general, Javier Pérez de Cuéllar, to set up an international tribunal. Haing Ngor and Dith Pran, who were portrayed in the 1985 movie *The Killing Fields*, appealed to the US Congress. All their demands for justice fell on deaf ears among western nations.

Even with the current barrage of criticism from international justice analysts and US legal experts about a deeply flawed judicial process, a poll conducted by the International Republican Institute in 2008 showed that more than 80% Cambodians supported the tribunal.

After the trial of Duch is completed, a second trial will indict together the four surviving Khmer Rouge leaders – Pol Pot's No 2 Nuon Chea, deputy prime minister and foreign minister Ieng Sary, former head of state Khieu Samphan and Ieng Sary's wife, Ieng Thirith, the minister for social affairs under Pol Pot.

The international prosecutor has proposed further investigation and the indictment of up to six more suspects to establish a third trial, but this has been opposed by the Cambodian co-prosecutor. It is the first major disagreement between them.

Open Society's Cambodia Justice Initiative (under the wing of the George Soros Foundation) and Human Rights Watch say that five defendants are not enough to achieve credible justice.

According to HRW, the Khmer Rouge tribunal is failing the most basic test of its independence and credibility. It claims the tribunal cannot bring justice to the millions of the Khmer Rouge's victims if it tries only a handful of the most notorious individuals while scores of former Khmer Rouge officials remain free.

The assumption of HRW is that Hun Sen, a junior Khmer Rouge officer when he was very young, has told the Cambodian prosecutor to block further investigation. In fact the tribunal's mandate is limited to the prosecution of senior Khmer Rouge leaders and "those most responsible" for atrocities. All parties, including the UN, endorsed a balance between justice and reconciliation, and a huge number of prosecutions was never envisaged.

A more compelling concern for many is that all genocide tribunals proceed at a snail's pace, and that in the second trial all four former Khmer Rouge leaders are both old and infirm.

The risk of another Khmer Rouge leader cheating justice and dying before their trial is even convened becomes all the greater if the tribunal's limited time, budget and resources is diverted into new channels of investigation. Youk Chhang, a tireless Cambodian campaigner for justice and the director of the Cambodian Documentation Centre, insists

that all priorities and resources of the tribunal must be focused on the five defendants already in custody.

The Cambodian government has been lambasted by many for delays in setting up the tribunal. They forget that the UN and western governments did not recognise the need for a tribunal until a UN resolution was passed in 1997, 18 years after the Khmer Rouge was ousted.

This gulf between Cambodian and western governments in the 1980s appears to be resurfacing in the acrimonious debates over the credibility of the tribunal. Youk Chhang feels more attention should be given to its achievements, although he wants issues of transparency and alleged corruption to be addressed.

It is also the first tribunal to allow victims to participate in proceedings as civil parties alongside the lawyers for the prosecution and defence. This has helped to galvanise Cambodian interest and ownership over the process that would have been impossible if it had been held in faraway The Hague. The investigation has received good co-operation from the authorities and unrestricted access to all person, records and places.

There is no perfect justice, with international tribunals and hybrid courts of justice still in their infancy. Tribunals for the former Yugoslavia, Rwanda and Sierra Leone have all been plagued by political, judicial and financial problems.

In Cambodia, the concern is not so much about how many people are finally put on trial, but how effective is the prosecution of the surviving leaders, the policy-makers, before they die. The quality of trials completed is more important than the quantity of suspects arrested. Most Cambodians seem to accept this as the priority, whereas many western analysts prefer to focus on the half-empty glass – the incomplete and so-called flawed justice.

After 30 years, when so many top Khmer Rouge have already died, there are inevitably gaps in the indictment, as well as people who can't be prosecuted, like the former US secretary of state Henry Kissinger, who authorised the carpet bombing of Cambodia. But incomplete justice is far better than no justice at all.