



The Khmer Rouge Tribunal: Caught Between Multiple Masters?
Seth Korman
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Last week, nearly five years after it was created, the Khmer Rouge tribunal handed down its first sentence. It found the defendant, Kaing Guek Eav, or "Duch," the former head of the infamous Tuol Sleng prison, guilty of crimes against humanity and violations of the Geneva Conventions, and sentenced him to nineteen additional years in prison. He will be eighty-seven when he is eligible for release. The public reaction to the sentence has been mostly negative. Many Cambodians expressed frustration, as did some members of the Cambodian-American community, finding the two-decade sentence disproportionate to the suffering of the thousands of victims that passed through Duch's prison, or the million-plus that perished at the hands of the Khmer Rouge.

Yet many within the legal community, as well as a number of international observers, see the verdict differently.

The Cambodian co-prosecutor explained, "From a legal perspective this is a good judgment. Not only did the court find Duch guilty of crimes with which he was charged, it also adequately protected his rights."

Legal scholars have likewise noted that the sentence was similar to those in other war crimes tribunals, and that Duch duly earned a reduction in sentence through his candor and general cooperation. Former Ambassador David Scheffer writes that, while the sentence was light, the trial succeeded in further establishing a persuasive legal argument against the "I was only following orders" defense, and that the court's "holdings on joint criminal enterprise and superior responsibility spell more trouble for other defendants."

Still others see the trial from a development perspective. Eric Stover, commenting on the verdict, sees the court as a critical building block for a sound, democratic Cambodia, and

explains that its "infrastructure for democracy [and] infrastructure for the rule of law" are important to Cambodia's overall development.

The court -- like other international war crimes tribunals -- is thus caught between several constituencies: On one hand, it seeks to uphold rule-of-law norms, provide defendants with adequate legal resources and procedural safeguards, and ensure a modicum of judicial independence from both the Cambodian government and populist sentiment. On another, it must serve the international community that both funds and staffs it and sees in international tribunals a mechanism to spread legal and humanitarian norms. Finally, and most importantly, it must appease the Cambodian people, the true source of the tribunal's legitimacy.

These competing interests -- international lawyers, human rights and development advocates, and victims -- have combined to create in Cambodia a truly unique tribunal, in which each of these parties has a meaningful role.

Yet at the same time, by working to appease each constituency, the court is bound to leave some of them unhappy. In this instance, the victims appear to have received short shrift.

That Duch's sentence appears relatively light compared to the gravity of his crimes is understandably of great concern. After all, the tribunal's legitimacy rests on its acceptance by the Cambodian people. If their faith in the court's work is tempered by a lenient sentence, the tribunal's other legal and institution-building influence is likely to be similarly diminished.

The court therefore has put itself in a difficult position. By following the law and decreasing Duch's sentence (because of an illegal pre-trial detention), the court has appeared to position itself alongside the legal advisors and international commentators, and against the will of many Cambodians. While the decision bolsters the efforts of those who seek to use international humanitarian law as an effective and legitimate prosecutorial tool, it undermines victims' understandably visceral need for closure and retribution.

Furthermore, it puts the court in a real bind, both in handling Duch's appeal and, more importantly, in ruling over the upcoming Case 2, in which four leaders of the Khmer Rouge regime will be put on trial. Given Duch's light sentence, the court will be under real pressure to hand down heavier penalties, as victims might be able to forgive the court's light sentence if it ensures much longer ones in the next trial. Yet such judicial predisposition -- or a need to tip the scales in favor of conviction and long sentences -- belies the notion of a free and impartial judiciary.

In other words, the court will again find itself caught between its multiple masters.

This raises a host of additional questions: Is the court trying to do too much? Should it focus only on providing Cambodian citizens with what they want, and less on legal and procedural safeguards that might prevent the passing of harsher sentences? Or should it ignore popular sentiment, and focus instead on legal accountability, transparency, and rule-of-law creation, even if doing so frustrates the will of the victim community?

By handing down a relatively light sentence in the Duch trial, the court has indicated a desire to balance these various pressures. This, however, has only served to further delegitimize the tribunal in the eyes of many victims.

As it weighs Duch's appeal and conducts the second, more important trial, don't be surprised then if the court reluctantly responds to public outcry and seeks to ensure a more punitive outcome.