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## **Khmer Rouge Tribunal vs. Karmic Justice**

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When my mother — who saved me and four siblings from starvation under the Khmer Rouge in 1976 — passed away in October 2009 at the age of 73, I realized that for her justice delayed had become justice denied. (I'm embarrassed to admit it, but the words "justice delayed is justice denied" had never really sunk in until my mother's passing.)

As an observant Buddhist, however, my mother probably had the last word. She always said that no matter what happened to the Khmer Rouge leadership in their current lifetime, Karmic justice would prevail in the next: They would be reborn as cockroaches.

I am certain that this belief has helped millions of survivors cope with the reality that, after more than three decades since the fall of the Khmer Rouge, not a single leader has been held to account.

Indeed, Cambodians will largely be yawning when the Khmer Rouge tribunal, known formally as the Extraordinary Chambers in the Courts of Cambodia and jointly organized with the United Nations, issues its first verdict, on the guilt or innocence of Kaing Guek Eav, widely known as Comrade Duch.

The man who headed S-21, a torture center to which an estimated 16,000 people were sent and where less than a dozen survived, confessed his crimes seven years before the tribunal started, saying: "My confession is rather like Saint Paul's. I'm the chief of sinners."

Even during the tribunal itself, Duch declared: "To the survivors, I stand by my acknowledgment of all crimes inflicted on you at S-21. I acknowledge them in both the moral and legal context."

After nine months of testimony and millions of dollars spent, what verdict but guilty can there be when the defendant has made such statements under oath? What purpose has going through the motions served?

Whether the issue is degree of guilt (no one claims Duch was in charge of policy and he has testified that "even though I knew these orders were criminal ... it was a life

and death problem for me and my family”) or plain punishment (the maximum sentence is life in prison), each day that has passed is itself an injustice.

If, after four years and \$13 million in contributions to the Cambodian government from Japan, the Europe Commission and others, and \$76 million in contributions to the United Nations by more than 21 donors, one guilty verdict is all the tribunal has to show, survivors of the Khmer Rouge may just as well consider justice denied. Plagued by corruption, the tribunal was essentially hijacked to advance domestic and international agendas. For domestic politicians, the goal was to control the process by placing it in a heavily secured military base some 20 kilometers from Phnom Penh and to reduce its scope by limiting the number of individuals it could indict (five) while currying international favor for addressing, superficially at least, crimes against humanity.

The Cambodian government has even sought to limit the witnesses the tribunal could call to testify under the oft-repeated claim of the threat of another civil war. “If the court wants to charge more former senior Khmer Rouge cadres, [it] must show the reasons to Prime Minister Hun Sen,” the prime minister said, referring to himself in the third person. In any case, the tribunal has no independent means of enforcing its subpoenas without government cooperation.

For many of the foreigners involved, Cambodia served as yet another venue for pushing hybrid models of transitional justice while creating jobs for international civil servants and a stage for foreign lawyers whose careers depend on adding another tribunal to their curriculum vitae. If nothing else, they can pat themselves on the back for showing the Cambodians how justice is done.

But what has happened is the reverse. The tribunal was plagued by corruption, lack of judicial independence and shattered integrity. The appointment of a devout Marxist-Leninist as head of the Victims Unit in May 2009, fully endorsed by the U.N. head of the tribunal, sealed the tribunal’s fate as an international and domestic farce.

Thus, the euphemistically “streamlined” participation of about 4,000 “Civil Parties” (tribunal-recognized victims, including me) who shall be represented in court by only two “civil party lead co-lawyers” (with as yet undefined internal procedures of accountability and selection) imposed by the tribunal on Feb. 9, 2010, came as no surprise.

When I filed my civil complaint in 2008, I was required to outline what compensation I wanted. When I said I didn’t want any compensation and that this isn’t about money, it’s about justice for the past and accountability for the future, you could have heard a pin drop. I should have said that I would like my father and brother back; no amount of compensation can do that.

Justice in that sense is meaningless, but my hope was that in the not-too-distant future the next Pol Pot might have to think twice about genocide.

A truth commission would have been a marked contrast to the combative style of the current tribunal, which has seen denials by anyone potentially indictable and even those ready to confess. Indeed, as South Africa's experience has shown, truth commissions can work under the right circumstances.

But I doubt the circumstances were ever right in Cambodia. The Khmer Rouge had a sense of irony when they created a Ministry of Truth. Ever since then, the first casualty of Cambodian politics has been truth.

Lost in all this are those very Cambodians for whom the tribunal was supposed to enact international standards of justice and be a cathartic experience. Instead, the tribunal has been corrosive. Jaded from a failed 1993 U.N. exercise in democracy that led inexorably toward authoritarianism, Cambodians have learned their lesson: Don't believe in international promises; they are not kept.

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