



Is the Trial of ‘Duch’ a Catalyst for Change in Cambodia’s Courts?

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AsiaPacific

I S S U E S

**Analysis from the East-West Center
No. 95
June 2010**

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S U M M A R Y At his trial under an international hybrid tribunal, the notorious member of the Khmer Rouge regime Kaing Guek Eav, known as “Duch,” admitted to being responsible for the deaths of more than 12,000 people between 1975 and 1979. This admission and expected conviction (the only real question left is the level of punishment) signify a symbolic victory for the Cambodian people. It is important for Cambodia’s healing that the people know their history and believe that there can be justice. The coverage of Duch’s trial and associated community outreach have engaged the public in the process and have increased education about the country’s recent past. But whether the hopes that the hybrid tribunal in which his trial was conducted may serve as a model for a more transparent system of justice—as opposed to the endemic system of patronage and corruption that is the norm for Cambodia’s judiciary and law enforcement—has yet to be seen. For these hopes to be realized, the educational outreach and the pursuit of judicial reform must continue.

The trial of Kaing Guek Eav, known by his *nom de guerre* Duch, began in February 2009 under the Extraordinary Chambers of the Courts of Cambodia (ECCC), a hybrid tribunal of Cambodian and international jurists set up after years of protracted negotiation between the United Nations (UN) and the Cambodian government. Duch was charged with war crimes, murder, torture, and crimes against humanity. He admitted over the course of the trial to being responsible for the deaths of more than 12,000 people at S-21, the torture and execution center he ran during the reign of Democratic Kampuchea (DK)—more commonly known as the Khmer Rouge regime—between 1975 and 1979. Testimony by Duch and other witnesses offered details of the operations of S-21, a second prison S-24, and the execution site at Choeung Ek. In the closing arguments of the trial, the French defense lawyer lauded Duch's cooperation with the tribunal, highlighted his expressions of remorse, and asked for a lenient sentence. His Khmer lawyer, however, unexpectedly argued that the tribunal had no jurisdiction to prosecute Duch, and that all charges should be dropped and he be released immediately. On November 27, 2009, the closing day of his trial, Duch stood before the judges of the ECCC and asked to be released. It was a stunning conclusion to this long-awaited search for a measure of accountability.

The trial of Duch is the first step in bringing to justice the senior leaders and those most responsible for the crimes committed under the Khmer Rouge regime. In less than four years, 1.7 to 2 million people died, some 20 percent of the population. A second trial of Nuon Chea, Khieu Samphan, Ieng Sary, and Ieng Thirith, the surviving members of the Central Committee of the Kampuchean Communist Party (CPK), is set to begin in mid-2011.

While a verdict in Duch's trial is not expected until mid-2010, analyses of the benefits and weaknesses of this first trial are already underway.¹ Many of the discussions thus far have focused on legal issues, such as the use of the concept of joint criminal enterprise, Duch's long pretrial detention, the functioning of hybrid tribunals, and the importance of civil-party participation. The Cambodian tribunal has

implications in a Cambodian cultural, political, and legal context and these implications merit discussion. First, the trial is important for understanding the history of the DK period and for teaching this history to the Cambodian public as part of a reconciliation process. Second, while many are optimistic that these trials can produce a positive spillover into the domestic Cambodian judiciary in terms of impartiality, professionalism, and respect for the rule of law, there remains ample reason to be skeptical about the likelihood of such an outcome.

Some observers and entities criticize the legal inadequacies of the tribunal and express the idea that it would be preferable not to have the trial than to proceed with these limitations. Certainly there are flaws in the process (some inherent in the design of the proceedings), but the tribunal has nonetheless offered significant positive outcomes to date. The tribunal is important because it symbolizes the will of the international community to demand accountability for genocide and crimes against humanity according to internationally accepted standards of due process. Even if it takes a generation, there must be accountability for violence with impunity. Such evidence of long memory and dogged intent to secure justice on the part of the international community might serve as a deterrent to those who would contemplate future crimes against humanity. Additionally, as noted in a report from the Asian International Justice Initiative, the trial of Duch was "conducted in accordance with generally accepted standards of due process in international criminal tribunals"; that is, Duch is receiving the fair trial that the Khmer Rouge denied those tortured and executed under his command.²

Khmer Rouge History and Education of the Cambodian Public

During the horrors of the Khmer Rouge regime, urban people were evacuated to the countryside, to villages and worksites. Because of tight restrictions on movement and communications, people might have known of atrocities in their own locations, but not of wider patterns. They knew the cycles of work,

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lack of food, illness, and violence of their own place, but nothing about what was happening nationwide or at the top levels of the regime.

Explanations for the mass violence and loss of life put forward during the subsequent People's Republic of Kampuchea (PRK) period (1979–1989), including the People's Revolutionary Tribunal in 1979 that found Pol Pot and Ieng Sary guilty of genocide, focused on the Khmer Rouge ties to global geopolitics and a personalization of the crimes of the period to the "Pol Pot/Ieng Sary genocidal clique." Discussions of Democratic Kampuchea (DK) crimes were framed within the context of a looming threat of the return to power of the Khmer Rouge and a second genocide.³ The questions of how and why the Khmer Rouge killed so many of their fellow Cambodians were not adequately or objectively addressed. The ruling coalition in the aftermath of the 1993 UN-sponsored elections could not agree on how to describe the Khmer Rouge period, or the subsequent Vietnamese invasion/liberation of Cambodia, and thus decided to exclude Khmer Rouge atrocities from school textbooks and ignore any public appeals to bring the Khmer Rouge leaders to justice. This political compromise shielded a whole generation of Cambodians from learning about the Khmer Rouge crimes.⁴ Not only did the school system fail to teach about the DK period, but also many parents were reluctant to talk with their children about their own experiences. Thus, many young people have no information, or inaccurate information, on the era.

Efforts to educate. Comprehensive efforts to assemble, preserve, and study historical information on the Khmer Rouge period have been undertaken within Cambodia by the Documentation Center of Cambodia (DC-Cam). Established in 1995, DC-Cam began as the field office of Yale University's Cambodian Genocide Program, funded by the U.S. Department of State. DC-Cam, under the direction of Youk Chhang, conducts research, trains researchers, and collects and preserves documentation on the Khmer Rouge period. It became an independent institution in 1997, and now acts as a nonpartisan,

nongovernmental organization. DC-Cam has two main objectives. The first is to record and preserve the history of the Khmer Rouge regime for future generations. The second is to compile and organize information that can serve as potential evidence in a legal accounting for the crimes of the Khmer Rouge. These objectives represent the promotion of *memory* and *justice*, both of which are critical foundations for the rule of law and genuine national reconciliation in Cambodia.⁵

Indeed, the tribunal would have faced a daunting task of collecting evidence without DC-Cam, which had already processed more than 155,000 pages of documentation on the era currently being used by the tribunal.

The Public Affairs Section of the Extraordinary Chambers of the Courts of Cambodia (ECCC) was underfunded and understaffed from the outset, and much of the publicity for the tribunal was undertaken by nongovernmental organizations (NGOs), including DC-Cam.⁶ The range of activities conducted by these NGOs varies greatly, including running educational programs on the tribunal, organizing groups to attend the proceedings, helping people file the paperwork to join the tribunal as civil parties, and publicizing the contents of the proceedings.

Research measuring the level of knowledge regarding the ECCC shows progress over time. In surveys conducted by the Berkeley Human Rights Center in September–October 2008, 39 percent of respondents had no knowledge of the ECCC, and 46 percent said they had only limited knowledge.⁷ In a survey conducted by DC-Cam in early 2009, the numbers had shifted: 17 percent of those interviewed had still not heard of the tribunal, 44.2 percent had heard a little, 26 percent a medium amount, and 11 percent a lot.⁸ In this survey, 92.7 percent of those interviewed expressed strong support for the tribunal, up from 69 percent in a survey conducted by the International Republican Institute the year before, and up from 57 percent in a previous DC-Cam survey in 2004.⁹ The catalyst for this change is the trial of Duch and media coverage of the proceedings.

DC-Cam's coverage of the tribunal includes publishing *Searching for the Truth* magazine, broadcasting

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radio reports that highlight the magazine articles, gathering people from around the country to attend daily sessions of the tribunal, organizing trips to the countryside to present portions of the hearings, maintaining a public information room, and helping to design a new school curriculum and textbook to teach about the era. DC-Cam also formed a partnership with Northwestern University's School of Law to establish and maintain the Cambodia Tribunal Monitor website (CambodiaTribunal.org), which posts the trial proceedings in Khmer and English.

The tribunal is being covered by the Cambodian Television Network, including a 24-minute weekly show called *Duch on Trial*, which is funded by the British government and is the result of collaboration between the East-West Center, the University of California–Berkeley War Crimes Studies Center, Khmer Mekong Films, and the Open Society Justice Initiative. *Duch on Trial* provides highlights of the week's testimony, clear explanations of legal concepts and issues, behind-the-scenes interviews with visitors to the courtroom, and answers to common questions about the events of the week. The program attracts more than three million viewers a week, some 20 percent of the country's population, which is an impressive number given the country's largely poor, rural, and uneducated population.¹⁰

These various outreach methods have meant that, for the first time, survivors are hearing the stories of Chum Mey, Vann Nath, Bou Meng, and other S-21 survivors. They hear tales of suffering from those with family members who died at this site, and from Duch himself, who recounts the details of how people were questioned, tortured, and killed (or, in the parlance of the regime, "smashed"). These testimonies reveal the horrific cruelty of the site, where children were murdered along with their parents, where people were brutally tortured, and where everyone who came through the gates, save a handful of survivors, was predestined to die from the moment of their arrest.

The broader significance of Duch's trial. To begin the tribunal with the trial of Duch has particular implications for the way the story of the DK regime is told. S-21 becomes the epicenter, with the most



One in five Cambodians watched the weekly 24-minute show, Duch on Trial. At home, in Phnom Penh cafés, in remote villages, on televisions hooked up to car batteries, they watched. What Time magazine called "a sleeper hit" on Cambodian television, the show featured summary and analysis of the trial of Duch, who ran the Khmer Rouge's notorious S-21 interrogation facility. (Photo courtesy of East-West Center.)

horrific details taken as the model narrative for the period. This, in fact, is the way the story has been imparted in public narratives since 1979. Historian Michael Vickery called this pattern the "standard total view," noting that while it had elements of truth, it was oversimplified and misleading. His book *Cambodia 1975–1982* set out to uncover regional variations and variations across time in the DK regime.¹¹ Judy Ledgerwood (one of the co-authors of this piece) later argued that a parallel pattern of distortion, which collapsed all stories of the DK period into a standard narrative, was also deliberately constructed as a "national narrative" by the People's Republic of Kampuchea (PRK) government. The Tuol Sleng Museum of Genocidal Crimes told the story of the DK period as though all places and times were uniformly as horrific as S-21.¹² This feature of the tribunal is made more powerful by the fact that Duch, a "born-again" Christian, has cooperated with the tribunal and expressed sorrow and remorse. It was only through his cooperation that the tribunal was so successful. People watching and listening heard the terrible stories from S-21 that corresponded, at least to some degree, with their own memories of suffering. Although S-21 was only one of many sites of suffering of the DK

Educational outreach has meant that, for the first time, people are hearing stories of S-21 survivors

regime, the top Khmer Rouge cadre from that institution has publicly admitted that the regime engaged in wide-scale torture and murder, and has expressed remorse and begged for forgiveness. S-21, then, symbolically represents the larger suffering that people experienced; in some sense, it stands in for and embodies their own suffering.

This process, then, leads others to tell their piece of the story. Complexities will emerge, as stories of the consequences of mass relocations and other disastrous policies will certainly come to light in the second trial. DC-Cam has long been active in collecting victim and perpetrator narratives for archiving, and the Duch trial has generated a more active interest in discussing these stories. It is not just that the trial teaches history, but that it generates interest in people to learn more.¹³

Participation in the process. More than 27,000 people attended the tribunal in person, with many using free bus transportation provided by the ECCC and by NGOs.¹⁴ The mood in the courtroom varied from day to day, with the crowd expressing boredom when procedural matters were discussed, but rapt attention when key eyewitness testimony was underway. Spectators often voiced their appreciation at being able to witness firsthand even a small portion of the trial. Reach Sambath of the ECCC Office of Public Affairs is quoted in *Time* magazine as saying: “The witnesses cry. The accused cries. The audience that comes to the court or watches on television cries. But they cry not to be more painful, but to release their pain that they have been holding for 30 years.”¹⁵

While Cambodians and concerned foreigners have been divided on the value of the tribunal, particularly given the hybrid nature of the tribunal and the limited number of prosecutions, the public education value of the trial of Duch has been worth the expense and difficulties faced thus far. For some Cambodians and foreigners, watching the workings of the Khmer Rouge Tribunal have raised hope for improvements in the local courts. However, the expectation that the tribunal will serve as a model for the domestic Cambodian judiciary is far less likely to succeed.

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The Tribunal and Rule of Law

The national court system is considered ineffective and inspires little confidence from the Cambodian people for a variety of reasons.¹⁶ First, the national courts face low intrainstitutional cooperation, especially from the justice police. The justice police are an auxiliary arm of the court and, theoretically, under the supervision of the court. They assist on judicial issues, including investigations and the execution of court warrants and rulings. However, the court and the justice police are in constant confrontation with one another, and the police routinely threaten, ignore, or, at best, offer lukewarm support to the court. There have been numerous instances and allegations of cases in which the police refused to execute court warrants or rulings. The police have at times asserted that their refusal to execute court warrants or rulings was because they were unjust. Some observers, in fact, view police noncollaborative behavior as reasonable resistance to yielding power to the judiciary. Research shows that in the national courts, due to security problems and a lack of resources, judges generally fail to conduct investigations. In many cases, judges rely on patchy information provided to them by the police, which has sometimes been obtained using coercion.

Patronage and corruption in the courts. The power structure in Cambodia is built upon a leader’s ability to capture and maintain the loyalty of key political elites through the distribution of perquisites. It is the norm within the ruling Cambodian People’s Party (CPP) and the government that if people play by the rules of patronage, in ways that pose no threat to the power of the most influential members of the party, corrupt acts would go unpunished.

The Cambodian national courts are embedded within these extensive patrimonial networks. Experiences from other countries indicate that when corrupt practices are considered to be the norm, judges, even if they are clean, bear the pressure from political, cultural, and societal conditions of which they are a part.¹⁷ Court officials, including judges and prosecutors, publicly state that low salaries are a

On the Khmer Rouge Tribunal process

François Roux, international counsel for the defendant, said, “At times, we had the impression as though we were taking part in a truth and reconciliation commission in this courtroom. It is to the honor of Cambodia that this court has allowed so many to follow the trial, which serves as a model for that purpose.” (Cited by Professor David Scheffer, November 26, 2009, CambodiaTribunal.org)

Professor David Chandler, in response to a question on whether or not he thinks this trial will be of service to history: “I think the trial, at least as it has developed so far...has a use by confronting the defendant, and I hope confronting subsequent defendants, with some evidence that they will be in a position to accept or deny, and that this confrontation is one that has never happened with the Khmer Rouge: they did what they did; they walked away from it. And now the higher—not the current defendant, but the higher brothers, the ones who are still alive—say they had nothing to do with anything that occurred. I think it is important that all of these accused people face up to their responsibilities to the truth of what happened when they had positions of power, to question that evidence if it's unreliable or false, and to allow the Cambodian people, at least some of them, to have some awareness of what had happened in a scale wider than their horrific stories anybody in this room can pick up from any Cambodian person over 40, except of course those over 40 who played an active role in the Khmer Rouge administration.” (Trial transcript, August 6, 2009)

factor contributing to judicial corruption. As part of judicial reform, the salaries of judges and prosecutors have been substantially increased, from starting pays of US\$250 per month to over US\$600 per month, depending on seniority.¹⁸ Despite this salary increase, corruption within the judiciary remains high, and public perception toward the judiciary continues to be negative.¹⁹ Across a range of countries where pay is

inadequate, and where judges, prosecutors, and clerks have to buy their positions, daily income-generating activities are a way to recoup their investments.²⁰

An absence of institutional constraints coupled with a wider sociopolitical environment dominated by patronage and corruption blurs judges' perceptions of what constitutes legality and illegality, and morality verses immorality. Judges who were interviewed did not reject the allegation that the national courts are corrupt. However, they defended their actions, forcefully arguing that the acceptance of money from litigants does not constitute corruption. Rather, they argued that these monetary transactions can rightfully be called “fees.” Defending the practice of accepting money, a judge explained: “We [judges] help those who are right. [When] they have won their cases, they repay their gratitude to us.”²¹

The Cambodian courts also experience direct interference from the executive branch. Interference by the executive branch and powerful individuals into court affairs occurs, though the frequency of interference varies from one judge to another. A general consensus among those interviewed was that judges and prosecutors needed to accommodate these interventions, particularly those of high-ranking government officials. This submission results from either “affection” or fear. Affection is the product of reciprocal relationships, whereby people return favors for what others did for them; such relationships have become a standard practice that is difficult to avoid in the patronage-based society of Cambodia. The need to maintain a personal relationship and ongoing backing from higher authorities stands in contrast to how “corruption” is often conceived in the West, which is as a purely financial transaction.

It has been a concern that the issues faced by the Cambodian national courts will affect the quality and credibility of the tribunal for two fundamental reasons. The first is that Cambodian judges, prosecutors, and clerks, following their appointments to the tribunal, will bring with them Cambodian standard practices and procedures. The second is that these personnel will serve as a conduit through which the government can extend its influence over the tribunal.

Efforts by the international community to institute a system of accountability at the tribunal have proven ineffective

Nepotism and corruption are alleged to have been carried over to the tribunal, including kickbacks paid by Cambodian court personnel for appointments. However, this corruption would not necessarily lessen the quality of the trial at the tribunal. The reason is that the tribunal is under international scrutiny and is important to the ruling party. In a way, the tribunal is an ideal place for judicial staff to exercise fair justice, given that the surviving Khmer Rouge defendants are clearly the vanquished, old, and powerless, and no longer politically valuable for domestic and international political consumption, thus ensuring them no influence over the court.

Firsthand research indicates that Cambodian judges at the tribunal are able to conduct investigations, if needed, without security concerns or resource constraints, both of which they face daily in the national courts. Because the tribunal is under the Council of Ministers, with the direct involvement of Sok An, an influential figure within the ruling party, it receives timely cooperation from government ministries and agencies.

Supporting and monitoring the KRT. Efforts by the international community to institute a system of accountability at the Khmer Rouge Tribunal, however, have proven ineffective. Although monitoring institutions were established to curb malfeasance, they appear to be nonfunctional. Soun Visal, the director of administration of the tribunal, who is alleged to have been involved in receiving kickbacks, has thus far not faced any punitive action. Rather, he has been placed on leave and continues to collect his salary from the tribunal payroll.²²

With the goal of applying pressure on the Cambodian government to adopt transparency and international standards of justice during the tribunal, former United Nations Secretary-General Kofi Annan issued this threat: “Any deviation by the [Cambodian] government from its obligations could lead to the United Nations withdrawing its cooperation and assistance from the process.”²³ Such a threat has minimal, if any, effect on the Cambodian government. The efforts of the UN and other donors to make funding dependent on the Cambodian government’s

ability to apply transparency at the tribunal is ineffective because it does not affect the legitimacy of the ruling party. On the other hand, donors in development areas can, to a certain extent, withhold funding to force the government to curb corruption in certain donor-funded projects.

Discontinuation of funding for development projects would affect the ruling party’s legitimacy, which has become based on service provision and infrastructure building. Many people would agree with one observer of the tribunal that “the Khmer Rouge trials could, indeed, have some impact on public perceptions of the Cambodian People’s Party (CPP). If they proceed well, the CPP will probably reap a modest political benefit. If the trials are botched, they may have the opposite effect.”²⁴ But a more likely outcome is that the success or failure of the tribunal will not affect the CPP’s legitimacy. The worst-case scenario for the Cambodian government is that, were the UN to withdraw from the process, it might have to try the current defendants on its own and pronounce them guilty of genocide and crimes against humanity.

Meanwhile, to defend its position, the CPP would highlight the opposition that the United Nations and Western governments mounted against Cambodia’s prior efforts to bring the Khmer Rouge leaders to justice, thus exposing their hypocrisy. The government will surely remind the Cambodian public of the 1979 Tribunal that tried the “Pol Pot–Ieng Sary clique” on charges of genocide. But because of cold war politics, not only did many Western powers fail to support this tribunal, they also funneled weapons and supplies to a reconstituted Democratic Kampuchea force on the Thai border and helped prevent the Khmer Rouge leaders from being apprehended.

Although the 1979 Tribunal contained procedural flaws, showed little respect for defendants’ rights, and presented a “distorted version of history,”²⁵ the aggrieved majority of Cambodians were readily convinced of the Khmer Rouge’s guilt and endorsed the government’s verdict. This was true then, and it is still true now. During the peace negotiations and the drafting of the Paris Peace Agreements, the CPP delegates fought hard to include reference to the Khmer Rouge’s crimes. Once again, the forces driving the

international politicization of justice blocked any mention of genocide, but made only vague reference to not repeating the “policies and practices of the past.”

Furthermore, before the mass campaign by non-governmental organizations and foreign media and governments in support of the Khmer Rouge Tribunal, many Cambodians agreed with Cambodian Prime Minister Hun Sen’s stance that trying the Khmer Rouge leaders for genocide and crimes against humanity was unnecessary. Hun Sen had repeatedly stated that as long as there were “no secessionist areas” and “no armed rebels,” then “justice has already been found...for the Cambodian people.”²⁶ He further stated that Cambodia “should dig a hole and bury the past and look ahead to the twenty-first century with a clean slate.”²⁷

Given that all the former Khmer Rouge leaders and military officers have been integrated into Cambodian society and economic growth has helped produce stability, the government’s claim that prosecuting Khmer Rouge leaders might cause renewed fighting and political instability is weak. However, it is plausible that the investigation could implicate some of the current CPP’s leaders and, thus, “could reveal some of the CPP’s dirty laundry.”²⁸ Although Hun Sen’s position is based on self-interest, it has legitimate appeal to many Cambodians who have been physically and psychologically traumatized by years of war.

While personal interference from powerful individuals (so common in the national courts) is impossible at the tribunal, political interference is likely, particularly concerning the question of expanding the pool of defendants. This is an area that was not completely ironed out during the negotiation process between the United Nations and the Cambodian government. It is not known whether any of the Cambodian judges and prosecutors at the tribunal would prefer to expand the number of defendants. However, even if some did, they would not dare to deviate from the government line. Because of the high level of politicization in most affairs in Cambodia, Cambodian judges and prosecutors have to bear in mind the Khmer saying that *touk tov kompong nov* (when the boat departs, the dock stays behind). The

tribunal could be a temporary safe enclave for Cambodian judges and prosecutors to exercise international standards of justice. However, their future careers would be in jeopardy when they return to the realities of the national system.

The Question of Long-Term Impact

One of the oft-expressed ideas about the tribunal is that it will have a positive residual effect upon the Cambodian judiciary. As court personnel receive training and experience alongside foreign judges and lawyers, there will likely be a positive influence on the Cambodian judiciary in terms of impartiality, professionalism, and respect for the rule of law.

In one of the interviews with judges and prosecutors working for the tribunal, a number of positive points were observed.²⁹ The first observation concerned resources. The tribunal has spent tens of millions of U.S. dollars on Duch’s case alone. The availability of resources has enabled the tribunal to conduct extensive investigations into the case. It has also allowed the tribunal to hire competent people and purchase modern office equipment. Second, the tribunal adjudicates cases based on clear evidence, rules, and proper procedures, with thorough investigation and deliberation. Judges and prosecutors, however, expressed little optimism about the possibility of spillover effects because of the politicized nature of Cambodia’s judiciary. Although these judges, prosecutors, and clerks would reap the benefits to a fully resourced judiciary, funding the national judicial system at such levels is not on the government agenda.

Cambodian judges, prosecutors, and clerks enjoy a certain level of independence while working at the tribunal. The tribunal is, however complex, a narrow and unique case. The politics of the case have been ironed out during the protracted negotiations between the Cambodian government and the United Nations. As a result, judges, prosecutors, and other personnel have freedom to maneuver within already established parameters, and without frequent interference from other political and institutional entities—a daily occurrence within the national courts. Some would certainly want to retain this independence when they

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return to serve in the national court, but it is unlikely they would advocate for judicial independence.

Resistance to change. The government is well aware of the concept of judicial independence and its implications. As is true with regard to the concept of human rights, the problem is not the absence of knowledge among Cambodian leaders, but a failure to recognize the significance of the rule of law in ending widespread impunity and promoting accountability. On the issue of the protection of human rights, Western donors since 1993 have promoted extensive public-education campaigns and training programs for police officers and other government officials. Their view is that perceptions toward human rights and democracy would change once people learned these Western concepts. However, Evan Gottesman, who conducted extensive research on the PRK and was involved in promoting human rights and the rule of law in Cambodia in the early 1990s, concluded that it is an illusion that Cambodian government leaders lacked knowledge about human rights and the rule of law. He writes:

Most of the arguments that I and other foreigners have been making, especially about human rights, had been the subjects of extensive internal debate for years. I found this revelation reassuring because it confirmed that human rights were not a foreign concept...Cambodia's top leaders were clearly familiar with the concepts of human rights and rule of law. Having thought through their political and legal options and having already made what they felt were informed policy choices, they were unlikely to alter the way they governed the country merely in response to Western advisors.³⁰

A similar pattern is clear concerning judicial reform in Cambodia. The government understands how the rule of law, backed by a fully resourced and independent judiciary, could reduce impunity and promote social and political justice, but such change would undermine the government's grip on power. Any potential spillovers that the tribunal might generate, therefore, whether through public awareness or through the work of judges, clerks, and prosecutors who serve on the tribunal, will not be allowed to take root.

Since change would undermine the government's grip on power, spillovers the tribunal might generate will not be allowed to take root

Policy Recommendations

In terms of outreach/educational programming and documentation, funding must be found to continue some of the successes achieved during the trial of Duch and extend them to the second trial of the other four defendants. These include coverage of the tribunal on television, online, on the radio, and in print, as well as adoption by the Ministry of Education, Youth, and Sport of a new classroom curriculum that includes information on the Khmer Rouge period. With regard to educational programs, there needs to be ongoing support for DC-Cam as the permanent repository of documents of the era and as a site of national memory. Testimony and evidence from the tribunal proceedings must be preserved and used for further research and analysis of what happened and—an area the tribunal will fail to adequately address—why it happened. John Ciorciari, assistant professor of public policy at the University of Michigan, sums it up when he says, “The historical record developed by the ECCC must be communicated effectively to the public if the tribunal is to be a success.”³¹

The Cambodian case, with a hybrid tribunal that allowed for civil-party participation and use of national and international media to involve the victims in the trial, offers a new model for the future. While civil-party participation has had drawbacks, including being time-consuming and not well coordinated, these procedural issues can be corrected without doing away with civil-party participation altogether. Sarah Thomas and Terith Chy of DC-Cam's Victim Participation Project described the survivors' testimony at the trial of Duch as being among the most powerful and important moments of the proceedings. The testimony of Chum Mey, for example, was described as “the most powerful day of the trial.”³² Survivor participation was extremely limited, and facilitated more by DC-Cam and other NGOs than by the tribunal itself, but people interviewed about the experience of telling their stories and having them recorded for the proceedings—even if they were never formally read or introduced—said that it was empowering and helped them deal with the suffering they still experience.

Expectations for the Cambodian judiciary must be tempered with a realistic appraisal of the current political context

Civil-party participation could be adapted by coordinating counseling and selecting representative witnesses to appear, for example, rather than abandoning that participation.³³ This is important not only for the Cambodian tribunal, but for the precedence it sets for future international tribunals.

Finally, the expectations for the Cambodian judiciary in the aftermath of the tribunal must be tempered with a realistic appraisal of the current political context. The Cambodian judiciary needs additional

resources to improve their position with the police force they rely upon to execute their rulings and to secure a degree of independence from the larger patrimonial system in which it is embedded. While these may be desirable outcomes for the future, they are unlikely to be an immediate result of the Khmer Rouge Tribunal. The outcomes would require involvement from donors who could project a unified, consistent, and forceful stance on judicial reform. To date, such a stance has been missing.

Notes

¹ See, for example, John D. Ciorciari and Anne Heindel, *On Trial: The Khmer Rouge Accountability Process* (Phnom Penh: Documentation Center of Cambodia, 2009); and Michelle Staggs Kelsall et al., *Lessons Learned from the Duch Trial* (Berkeley, CA: Asian International Justice Initiative's KRT Trial Monitoring Group, December 2009), socrates.berkeley.edu/~warcrime/KRT_reports.html, accessed December 12, 2009.

² Michelle Staggs Kelsall et al., *Lessons Learned from the Duch Trial* (Berkeley, CA: Asian International Justice Initiative's KRT Trial Monitoring Group, December 2009), 6.

³ See John Ciorciari and Sok-Kheang Ly, "The ECCC's Role in Reconciliation," in *On Trial*, ed. John Ciorciari and Anne Heindel (Phnom Penh: Documentation Center of Cambodia, 2009), 294–347.

⁴ Surveys have shown that survivors are keenly interested in learning more about the history of the period. In a 2002 survey conducted by DC-Cam, 73% expressed desire to learn more; in a 2008 survey by the Human Rights Center at the University of California at Berkeley, the number was 85%. From Michelle Staggs Kelsall et al., *Lessons Learned from the Duch Trial* (Berkeley, CA: Asian International Justice Initiative's KRT Trial Monitoring Group, December 2009), 320.

⁵ Documentation Center of Cambodia available online at www.dccam.org, accessed on December 12, 2009.

⁶ Other NGOs that have worked to provide information on the proceedings and encourage participation in the tribunal include: the Center for Social Development, the Cambodian Defenders League, the Cambodian Human Rights and Development Association, the Khmer Institute of Democracy, Legal Aid of Cambodia, Cambodian Human Rights Action Committee, and the Transcultural Psychosocial Organization.

⁷ Phuong Pham et al., *So We Will Never Forget* (Berkeley: University of California Human Rights Center, 2009), 3.

⁸ Terith Chy, *A Thousand Voices*, (Phnom Penh: Documentation Center of Cambodia, 2009), 13.

⁹ *Ibid.*, 13–14.

¹⁰ Christopher Shay, "Cambodia's Trial of the Century, Televised," *Time*, September 11, 2009.

¹¹ Michael Vickery, *Cambodia 1975–1982* (Seattle: University of Washington Press, 2000); see also David Chandler's comments on the STV in *The Tragedy of Cambodian History* (New Haven: Yale University Press, 1993), 266–67.

¹² Judy Ledgerwood, "The Cambodian Tuol Sleng Museum of Genocidal Crimes: National Narrative," *Museum Anthropology* 2, no. 1 (1997): 82–98.

¹³ One coauthor is currently working on a life history project of accounts of DK survivors in Chicago that is, in part, timed to coincide with the tribunal. The life histories will be used in an exhibit on the DK era at the Cambodian American Heritage Museum and Killing Fields Memorial.

¹⁴ Michelle Staggs Kelsall et al., *Lessons Learned from the Duch Trial* (Berkeley, CA: Asian International Justice Initiative's KRT Trial Monitoring Group, December 2009), 42.

¹⁵ Christopher Shay, "Cambodia's Trial of the Century, Televised," *Time*, September 11, 2009.

¹⁶ For detailed discussion of the Cambodian national court system, see Kheang Un, "The Judicial System and Democratization in Post-Conflict Cambodia," in *Beyond Democracy in Cambodia: Political Reconstruction in a Post-Conflict Society*, ed. Joakim Ojendal and Mona Lilja (Copenhagen: NIAS Press, 2009), 70–100.

¹⁷ Marina Kurkchiyan, "Judicial Corruption in the Context of Legal Culture," in *Global Corruption Report 2007: Corruption in Judicial Systems*, compiled by Transparency International (Cambridge, UK: Cambridge University Press, 2007), 103.

¹⁸ World Bank, *Cambodia: Legal and Judicial Sector Assessment* (Phnom Penh: Legal Vice Presidency, World Bank, 2003), 25.

¹⁹ International Republican Institute, "Poll Results," (Phnom Penh: International Republican Institute, 2004).

²⁰ Mary Noel Pepys, "Corruption within the Judiciary: Causes and Remedies," in *Global Corruption Report 2007: Corruption in Judicial Systems*, compiled by Transparency International (Cambridge, UK: Cambridge University Press, 2007), 4–5.

²¹ J 24, interview with author, 18 October 2002. All names of interviewees are coded in order to protect the subjects, in accordance with NIU Institutional Review Board policies.

²² Youk Chang, interview, December 2009.

²³ John Ciorciari, "History and Politics Behind the Khmer Rouge Trials," in *On Trial: The Khmer Rouge Accountability Process*, ed. John Ciorciari and Anne Heindel (Phnom Penh: Documentation Center of Cambodia, 2009), 76.

²⁴ John Ciorciari, "Introduction," in *On Trial: The Khmer Rouge Accountability Process*, ed. John Ciorciari and Anne Heindel (Phnom Penh: Documentation Center of Cambodia, 2009), 20.

²⁵ Evan Gottesman, *Cambodia after the Khmer Rouge: The Politics of Nation Building* (New Haven: Yale University Press, 2004), 221.

²⁶ Steven Heder, "Hun Sen and Genocide Trials in Cambodia: International Impacts, Impunity, and Justice," in *Cambodia Emerges from the Past: Eight Essays*, ed. Judy Ledgerwood (DeKalb, IL: Northern Illinois University Center for Southeast Asian Studies, 2002), 208.

²⁷ John Ciorciari, "History and Politics Behind the Khmer Rouge Trials," in *On Trial: The Khmer Rouge Accountability Process*, ed. John Ciorciari and Anne Heindel (Phnom Penh: Documentation Center of Cambodia, 2009), 66.

²⁸ *Ibid.*, 72–73.

²⁹ Interviews were conducted by Kheang Un between December 2009 and January 2010.

³⁰ Evan Gottesman, *Cambodia after the Khmer Rouge: The Politics of Nation Building* (New Haven: Yale University Press, 2004), xiii.

³¹ John Ciorciari and Sok-Kheang Ly, "The ECCC's Role in Reconciliation," in *On Trial: The Khmer Rouge Accountability Process*, ed. John Ciorciari and Anne Heindel (Phnom Penh: Documentation Center of Cambodia, 2009), 322.

³² Sarah Thomas and Terith Chy, "Including Survivors in the Tribunal Process," in *On Trial: The Khmer Rouge Accountability Process*, ed. John Ciorciari and Anne Heindel (Phnom Penh: Documentation Center of Cambodia, 2009), 254–55.

³³ *Ibid.*, 263–88.

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ISSN: 1522-0966

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