

## Progress of the Extraordinary Chambers in the Courts of Cambodia

An estimated 1.7 million people died during the Democratic Kampuchea regime of the Khmer Rouge from 1975-79. After the overthrow of the regime, Cambodia continued to suffer through nearly two decades of conflict. The Cambodian government and the United Nations formally established the Extraordinary Chambers in the Courts of Cambodia (ECCC) in 2006 to try senior leaders of the Khmer Rouge and those “most responsible” for the crimes that took place. This “hybrid” tribunal—a tribunal that forms part of the Cambodian domestic legal system, but also incorporates international components—is the first internationally-backed criminal court to include a majority of national judges, to feature judicially-directed investigations that follow an inquisitorial procedural model, and to permit victims to participate as civil parties. The court has five suspects in custody and has completed its first trial.

### OVERVIEW OF DUCH’S TRIAL AND VERDICT

Kaing Guek Eav, also known as Duch, was the first Khmer Rouge leader to be tried by the ECCC. He is the former director of S-21, a notorious detention and torture center also known as Tuol Sleng (now the site of the Tuol Sleng genocide museum). Duch was arrested in 1999 and kept in military detention until his transfer to the ECCC in 2007. The trial officially started on Feb. 17, 2009 and closing statements were delivered in late November 2009. During the trial, the court heard extensive testimony from Duch, as well as 33 witnesses and 22 civil parties. In total, trial hearings took 77 days over almost nine months. Ninety-two civil parties participated in the case, represented by four groups of lawyers. The trial attracted considerable public interest in Cambodia, with proceedings broadcast on national television and many thousands of people attending the court hearings in person.

On July 26, 2010, the court found Duch guilty of grave breaches of the Geneva Conventions (war crimes) and crimes against humanity, including murder, extermination, enslavement, imprisonment, torture, rape and political persecution. All convictions related to crimes committed at S21, at S-24, an adjunct facility used as a re-education camp and at the Choeung Ek “killing field,” a mass execution and burial site located near Phnom Penh. Duch admitted his role in running S21

### THE ACCUSED IN CASE 002

**Nuon Chea**, born in 1926, is charged with crimes against humanity and grave breaches of the Geneva Conventions. He was second in command to the Khmer Rouge’s “Brother No. 1” Pol Pot.

**Ieng Sary**, born in 1925, was deputy prime minister and foreign affairs minister. He is charged with crimes against humanity and grave breaches of the Geneva Conventions. Although Ieng received a royal pardon after defecting in 1996, the pre-trial chamber ruled that he is still subject to prosecution.

**Ieng Thirith** is the wife of Ieng Sary. Born in 1932, she was Pol Pot’s sister-in-law and the social affairs and action minister. She is charged with crimes against humanity.

**Khieu Samphan** was born in 1931 and was the Khmer Rouge’s head of state. He is charged with crimes against humanity and grave breaches of the Geneva Conventions.

and had accepted responsibility for much of what took place there. The court concluded that Duch was criminally responsible both for his own actions as part of a joint plan to implement the criminal policies of Democratic Kampuchea, and for crimes committed by others under his command. The judges sentenced Duch to 35 years imprisonment, reduced by five years on account of his previous illegal detention by Cambodian military authorities. He will also receive credit for the 11 years he had already served in custody, leaving 19 years left to serve. The court took into account Duch’s cooperation with the court, his expressions of remorse, and the coercive environment in which Duch committed the crimes. They rejected Duch’s claims of duress. The parties have the opportunity to appeal the verdict within 30 days. Any appeal will be decided by a chamber of five Cambodian judges and three international judges.

The court accepted the claims of 66 victims: four were immediate victims of S-21 or S-24, and the rest had close relatives killed at S-21 or S-24. The court rejected the claims of 24 others for lack of proof of their connection to Duch's crimes. The court's mandate allowed it to only award symbolic and collective reparations, not individual monetary compensation. In the end, the court ordered the publication of Duch's statements of apology made during the trial and listed the names of civil parties and their relatives in the judgment. The court rejected all other claims for reparation on the basis that they were not specific and could not be enforced against Duch because he was indigent.

## PROGRESS OF OTHER PROCEEDINGS

The judicial investigation in the ECCC's second case, which is against Khmer Rouge leaders Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan is close to concluding. If the case is sent to trial, it is unlikely that trial hearings would commence before early 2011. As a result, the completion of the trial could be complicated because all four suspects are 80-years-old or older and their pre-trial detention cannot be extended past September 2010 unless a closing order is issued by that time.

Two further preliminary investigations against several other suspects are also underway. The Cambodian co-prosecutor opposed the decision to commence these investigations and, in accordance with ECCC procedure, the dispute was referred to the pre-trial chamber. However, the judges were unable to reach a supermajority, or a majority plus one, so the investigations are proceeding.

## ONGOING CHALLENGES

**Victim Participation** The ECCC is the first in the line of international and hybrid tribunals to allow victims to participate directly in proceedings as civil parties. For the case against Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan, more than 4000 victims applied to participate, and by October 2009, 190 civil parties had been officially admitted. The large number of civil party applicants and the challenges of managing their participation in the courtroom have caused the ECCC judges to move to limit victim participation for future cases. Victim participation should not be permitted to compromise the rights of the accused to a fair and expeditious trial, but it should be seen as an opportunity for the ECCC to attract broader public support and to contribute directly to a lasting impact on Cambodian society.

**Corruption** The ECCC has faced persistent concerns over allegations of corruption and a lack of transparency. In 2007 most international donors to the Cambodian side of the ECCC suspended funding until the claims were resolved. Pursuant to a new agreement between the United Nations and the Cambodian government, an independent counselor was appointed to help strengthen the entire ECCC administration by investigating good faith complaints and ensuring that complainants

are not targeted for retaliation. The new measure does not apply to past complaints and is yet to be tested.

**Political Interference** Despite measures to address corruption, concerns remain about attempted political interference by Cambodian government officials over national court officers, particularly regarding the future investigations. Some high-ranking government officials have suggested that pursuing additional investigations will destabilize Cambodia's peace. Such statements risk undermining respect for the work of the court as an independent judicial institution.

**Outreach** The slow progress in the judicial investigation in the ECCC's second case and the expected long gap between the trials risk creating a negative effect on public interest and on international support for the ECCC. The suspects' advanced age raises fears that delays could impact the trials' completion. Nonetheless, the gap between trials offers a chance for the court to strengthen its important outreach work with Cambodian communities and to encourage further discussion on expectations for other forms of accountability regarding Cambodia's past, namely reparations, truth-seeking, and memorialization.

**Legacy** Serious contributions to judicial reform cannot realistically be expected from the ECCC in the context of Cambodia's struggling justice sector. However, the ECCC's greatest positive legacy may be through the provision of fair trials, its treatment of victims, and the creation of space for broader public debate about justice for past impunity in Cambodia. For this to happen, the international community and Cambodian authorities must support the ECCC to complete its mandate.

## ICTJ IN CAMBODIA

ICTJ has been actively engaged with transitional justice issues in Cambodia since 2003.

- In 2006 ICTJ provided comments for the ECCC on drafting its internal rules and gave technical assistance to the development of a communication policy.
- ICTJ conducted a survey in November 2007 of the visitors to Choeung Ek, the public memorial of one of Cambodia's notorious "killing fields."
- Between 2007-2010 ICTJ has conducted workshops for ECCC judges, court officials and local civil society representatives on reparations, monitoring and outreach.
- ICTJ and the ECCC victims' unit facilitated a workshop on legacy for victims' representatives in 2009.

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