



Cambodia:

Verdict against high-ranking Khmer Rouge: It is possible!

A commentary by Henry Schürmann

The sentencing in Phnom Penh on 7 August 2014 of the two highest-ranking surviving Khmer Rouge* leaders for only some of the alleged crimes against humanity they were charged with for the period from 1975 to 1979 should not be dismissed a failure of justice.

A panel of three Cambodian and two international judges in the Extraordinary Chambers in the Courts of Cambodia (ECCC)** sentenced the two accused Nuon Chea, 88, and Khieu Samphan, 83, to life imprisonment following 222 days of proceedings since 2011. They had only been arrested in September and November 2007. Both were leading party officials in the “Democratic Kampuchea”, Nuon Chea (bottom left) as second in command to Khmer Rouge leader Pol Pot as well as Chairman of the Democratic Kampuchea People’s Assembly, and Khieu Samphan (bottom right) as Head of State.

They were found guilty of expulsion of civilian populations from Phnom Penh and other



areas following Pol Pot’s takeover of Cambodia, as well as of mass executions of civilians and former soldiers. The verdict is especially based on the following crimes against humanity: murder, extermination, political persecution and other “inhumane acts” in the form of forced resettlement, disappearances and attacks against human dignity.



The defendants and their attorneys in the Extraordinary Chambers in the Courts of Cambodia. Copyright: courtesy of ECCC

For good reasons, proceedings and ruling are met with mixed reactions: It is easy to feel disappointed with the trial considering the suffering of millions of victims and the need to deal with the legacy of history. For many people affected, the court case came too late; the proceedings were cumbersome, very expensive, and had to be carried out under very restrictive conditions. On the other hand, it was a historically significant event with a signal effect beyond the immediate

scope of the formal proceedings. In the end, neither manifold obstructions of the trial by apparent corruption in the Cambodian justice system, nor the refusal of Prime Minister Hun Sen – himself once a Khmer Rouge commander – to have additional suspects brought to trial and facilitate government officials to appear as witnesses, have prevented this judgement. In fact, the verdict was made possible only because the trial judges were able to separate important charges from originally much more complex and lengthy proceedings and to prepare these charges for sentencing within only two years (2011-2013).

Lame compromises

From the beginning of the negotiations between the United Nations and Cambodia on the establishment of the court in 1997, there have been serious reasons for doubt. The process had been delayed by Phnom Penh until 2006 and was affected by setbacks and tradeoffs. Would proceedings and results eventually justify the effort, at least in a way which might still be rated “acceptable”? Aversion against the court among the Cambodian elites was as palpable as was the case in Jakarta against the United Nations referendum in 1999 which led to the independence of East Timor from Indonesia. The circumstances in which several judges of the tribunal resigned over alleged Cambodian attempts to manipulate proceedings added fuel to these doubts. Repeatedly, the court’s work was hampered by lack of funding, and an independent evaluation was demanded, not least because of the total trial costs which amounted to over US\$ 200,000,000.

Perhaps it was one of the most serious birth defects of the tribunal that it is a national Cambodian institution with only international participation and co-funding, and not a fully-fledged international institution such as the International Criminal Court in The Hague. Despite its flaws, and following a first war crimes judgment in 2010, the court has man-

aged to firmly insert a chapter of hope into the history books for victims of crimes against humanity, genocide and grave breaches of the Geneva Conventions.

4,000 process participants

Those with intimate experience of the painstaking and demanding political struggle by, for example, the United Nations and many dedicated civilian human rights organizations, to establish international institutions, standards and trials maybe are the best placed to pay respect to the participants of this trial, particularly the more than 4,000 victims participating directly in the proceedings as parties. They may also be able to, on balance, reach a positive assessment of the process and its outcome.

It is remarkable, after all, that instead of mere subordinates, two of the arguably most important decision-makers still alive and responsible for mass killings as well as other inhuman acts have faced trial and sentencing. It is also remarkable that separate proceedings against those convicted, this time for crimes including genocide and enforced starvation of hundreds of thousands, have already started.

Steps against amnesia

Nobody will ever be able to sweep under the carpet the documented wealth of evidence, witness statements and judicial analysis of the alleged crimes. Nobody will be able to eradicate from memory the experiences gained and lessons learnt by more than 100,000 Cambodian trial observers in the court house, and by countless others watching video screenings, online and television coverage. No political, judicial, police or military decision-maker anywhere in the world will in future be able to come up with easy excuses when thousands of victims of grave human rights violations demand more substantial recognition of their interests and those of witnesses in court proceedings. In

this respect also, the Phnom Penh trial has made history.

In part as an antidote to potential future “amnesia”, the court has approved a range of measures for reparations and reconciliation, which can be implemented upon coming into force of the judgment, with funding already secured by international donors. Since 2005, a substantial part of the 17 million Euro German contribution has been specifically provided for reparations and reconciliation, the witness protection and the interests of victims. Assistance is also provided through grass-roots-based dialogue activities by ex-

that people who know about their rights and who have seen even the highest-ranking officials face trial are generally better able to prevent themselves becoming victims of human rights violations or to seek redress.

Arduous but potentially important ground work may have been done in this trial for the way in which some human rights violations can be dealt with at international level. One example affects the way in which witness statements from the proceedings in this case can be used in the second trial against the same accused. This second trial includes indictments for genocide, one of the most de-



Beginning of the proceedings in the Extraordinary Chambers in the Courts of Cambodia in November 2011. Copyright: Courtesy of

perts of the Civil Peace Service (CPS) funded by the German Government. Like other victims support programmes of non-governmental organizations, these activities outside the spotlight of headline-making judicial pronouncements constitute valuable leg work required to ensure widely-accessible historical documentation and rehabilitation, to enhance the interests of victims and witnesses and to counter the risks of events being gradually forgotten. Experience shows

manding charges of all, as well as for forced marriages and rape on a massive scale, which were organized to help serve the realization of the Khmer Rouge vision of a communist peasant republic. Considering how long it has taken for international justice to accept gender-related human rights violations as such, and as potential charges in high-ranking and international courts, the latter indictment may also be seen as a step forward.

Giving a voice to the victims

Internationally, countless victims have suffered from serious flaws in proceedings like this one – consider the Nuremberg Trials of 1945-46, the reconciliation process in post-Apartheid South Africa, events in Rwanda, Chile, Sri Lanka or the former, Indonesian-occupied East Timor. In the end, many victims have cast their disappointed hopes for justice into the wind. However, in the interest of the fight against massive and grave human rights violations it does matter that such tribunals are established at all, and that transparent access to their criminal investigation results, methods and complex proceedings enable lessons to be learnt from their flaws and challenges, both during trial and for years to come. If human rights work also means giving a voice to victims and their relatives, then a failure to go ahead with this flawed tribunal would most likely have silenced them for the rest of their lives.

* The Khmer Rouge were a nationalist movement that ruled Cambodia from 1975 till 1979. They were under the leadership of Pol Pot (1928-1998). After being expelled from the capital by Vietnamese troops they unaffectedly lived in various parts of the country until 2006. They are primarily known for trying to change Cambodian society into a farming state according to Maoist communism using brutal methods – at the cost of up to 2 million lives.

** The international court of justice, i.e. the Extraordinary Chambers in the Courts of Cambodia (ECCC), is a judicial novelty agreed between the Royal Cambodian Government and the United Nations in 2003. It refers to itself as a “hybrid” court of justice embedded in national law but enables international participation.

Related links:

Extraordinary Chambers in the Courts of Cambodia (ECCC)
www.eccc.gov.kh/en

Cambodia Defenders Project
www.cdpcambodia.org

Gender-based Violence during the Khmer Rouge Regime
gbvkr-org

Civil Peace Service in Cambodia
giz-cambodia.com/?page_id=1070

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