

The shortcomings of the Khmer Rouge Tribunal
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The UN-Cambodia hybrid Khmer Rouge Tribunal, known formally as the Extraordinary Chambers in the Courts of Cambodia (ECCC), will deliver its first verdict in the trial of Kaing Guek Eav (or “Duch”) on July 26.

Duch was the torturer-in-chief of the S-21 prison during the rule of the Khmer Rouge regime, which ruled Cambodia from 1975 to 1979. An estimated 1.7 million Cambodians were believed to have been killed or died from hard labor and starvation during this period.

I recall from a visit to the prison-turned-genocide museum the nerve-racking effects of the mug shot photos of the thousand of victims—men, women, and children—taken before they were tortured, interrogated and murdered. Of the 12,380 people who were imprisoned at S-21, only seven survived.

The ECCC is also in the process of investigating four senior former Khmer Rouge members who are charged with crimes against humanity. They are Nuon Chea (second-in-command after Pol Pot), Ieng Sary (Khmer Rouge deputy prime minister for foreign affairs), Ieng Thirith (minister of social affairs and education), and Khieu Samphan (head-of-state).

Has the progress of the ECCC trial since it began in March 2009 been up to the expectation of the political observers? Here are some criticisms and concerns...

First, the ECCC is believed to have been suffering from political interference from Phnom Penh. Early this month, the New York-based Open Society Justice Initiative (OSJI) issued a report highlighting the impediment facing the ECCC after the UN prosecutor wanted to extend the investigation to include five more suspects, apart from the existing five that are being investigated by the ECCC.

Prime Minister Hun Sen’s response was: “If the court wants to charge more senior Khmer Rouge

cadres, the court must show the reasons to Prime Minister Hun Sen...Hun Sen only protects the peace of the nation”.

The UN-Cambodia agreement establishing the ECCC underlines the responsibility of Phnom Penh to give it full assistance.

In 2009, the court attempted to summons six-high ranking government officials to give facts in the case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan. However, the court did not receiving much cooperation from the government after the officials did not show up to give evidence.

According to OSJI, a government spokesperson stated that: “except for individuals who volunteer to go, the government’s position is ‘no’ to this” and that foreign officials involved in the tribunal “can pack up their clothes and return home” if they are not satisfied.

With the recent decision by UN Secretary-General Ban Ki-moon to appoint a UN Special Expert on the ECCC, we shall see whether the issue of political interference will be thoroughly addressed.

Second, the mandate of the ECCC has been much politicized and is limited to trying the atrocities committed during the Khmer Rouge period of April 1975 to January 1979.

In his interview with the Phnom Penh Post, Noam Chomsky, emeritus professor at the Massachusetts Institute of Technology, pointed out that “the leading US political establishment like Henry Kissinger, a member of the late president Richard Nixon’s administration...should also be held accountable for creating the conditions that paved the way for the rise of the [Khmer Rouge]”.

While acknowledging the mass atrocities committed by the Khmer Rouge regime, we should never forget the level of atrocities committed during the US secretive bombing of Cambodia from 1968-1973. A declassified telephone discussion between Henry Kissinger and General Alexander Haig, Nixon's deputy assistant for national security affairs, recorded that Nixon had ordered a “massive bombing campaign in Cambodia [to use] anything that flies [sic] on anything that moves”.

The map of US bombing targets released by Yale University’s Cambodian Genocide Program shows that more than half of the country was affected by the indiscriminate bombings. Professor Ben Kierman, director of the program, puts the casualties figure from the bombing at 150,000 deaths, while Edward Herman, a professor of Wharton School, and Noam Chomsky put the toll

at 600,000 using figures provided by a Finnish Commission of Inquiry.

Based on this, we can never naively claim that US bombing led to the mass executions by the Khmer Rouge or refuted the regime's mass atrocities. But, to certain extent, the blanket bombing, which directly led to the destruction of livestock and agricultural land, could have definitely played a role in the mass starvation.

From new data released during the Clinton administration, Taylor Owen, a doctoral student at Oxford University, and Professor Kierman noted that 2,756,941 tons of bombs were dropped on Cambodia.

To put the figure into perspective, just over 2 million tons of bombs were dropped by the allies during all of World War II. The bombs dropped in Cambodia represented about 184 Hiroshima atomic bombs combined, making Cambodia the most bombed nation in the world. Based on the new data, Professor Kierman also stressed that the casualties might be much higher than his earlier predicted 150,000.

Based on this, the bombing contributed to the rise of the Khmer Rouge. The number of Khmer Rouge cadres rose from a group that had an insignificant prospect ousting the US-backed Lon Nol's regime, roughly from 1,000 in 1969 to 220,000 in 1973.

Professor Kierman observed that the Khmer Rouge "profited greatly from the US bombing [and] used the widespread devastation and massacre of civilians...for recruitment purposes".

As the ECCC's trials are being conducted, very little attention has been given by Southeast Asia governments to the lessons to be derived from this. The understanding of this period of history in Cambodia remains a mystery and is kept out of the school textbooks.

Many scholars argue that the member states of the Association of Southeast Asian Nations [Asean] do not want to talk much about the ECCC, fearing their own roles could be exposed.

"Asean has been largely silent on the issue of the Khmer Rouge," said Dr. Lee Jones, a Southeast Asia expert at the Department of Politics of Queen Mary University of London. "[It] also reflects the often-ignored fact that Asean also backed the [Khmer Rouge], materially and diplomatically, once they had been overthrown by Vietnam.

"They sheltered, re-armed and helped rebuild the [Khmer Rouge], and helped them retain Cambodia's seat at the UN, so they could form a buffer against Vietnam, fueling a decade-long civil war. Just like China and the US...regional governments would prefer their grisly

collaboration with the [Khmer Rouge] to be quietly forgotten rather than exposed to scrutiny."

With all these issues and concerns in mind, we shall await and see if the ECCC can improve and develop into a tribunal offering to Cambodians a genuine justice that is not based on selectivity and discrimination. And whether it can shed light on the true roles of different actors in a conflict that is still affecting one of the poorest countries in the world.