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## **Cambodia's first war crimes trial marred by flaws**

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*The trial of Khmer Rouge prison commander Comrade Duch underscores the difficulties of such an endeavor in a country with a reputation for corruption and a compromised judiciary.*

Reporting from Phnom Penh, Cambodia - The scene at the untidy conclusion of Cambodia's first war crimes trial was telling: a French defense lawyer with his face buried in his hands.

The tribunal promised a more inclusive approach than its counterparts at the International Criminal Court at The Hague. Instead, the trial closed in disarray late last month after an eleventh-hour disagreement between the Cambodian and foreign defense counsels, offering a stark reminder of the difficulties in carrying out international standards of justice in a country with a reputation for corruption and a deeply compromised legal system.

Kang Kek Ieu, referred to as Kaing Guek Eav in tribunal filings, but better known by his revolutionary alias, Comrade Duch, ran the infamous prison where 15,000 supposed enemies of the revolution were tortured before being executed in the nearby "killing fields."

Despite his seeming enthusiasm for the job at the notorious S-21 prison, Duch argued that he and his family would have been killed had he not carried out his superiors' orders.

For nine months, French lawyer Francois Roux crafted a defense strategy of admission and apology that implied the team would seek a lenient sentence. But in the trial's final moments, Duch and his Cambodian lawyer, Kar Savuth, broke with this posture, disputing the legitimacy of the court and calling for Duch's immediate release.

Roux's head-in-hands reaction underlined the rifts in this complex tribunal, a tenuous coalition of domestic and international judges, lawyers and administrators.

Speaking to journalists, Roux even hinted that his colleague's move was motivated by political pressure. Many members of the current government were Khmer Rouge

cadres and remain opposed to the tribunal, which is trying the architects of the group's fanatical rule in the late 1970s, during which an estimated 1.7 million Cambodians were slain or died from overwork or starvation.

Over the last two years, claims of governmental interference and kickbacks have underscored the disadvantages of holding the tribunal in Cambodia.

The difficult negotiations to bring former Khmer Rouge leaders to justice started in 1997. By 2003, then-U.N. Secretary-General Kofi Annan said the extreme politicization of Cambodia's judiciary required that the tribunal be held outside the Cambodian system.

But after long negotiations, the Extraordinary Chambers in the Courts of Cambodia was developed as a locally housed tribunal running largely under local laws, with the United Nations as a minor partner.

"No one in the U.N. or elsewhere will ever copy the Cambodian model," said Brad Adams, Asia head of Human Rights Watch. "It's the lowest standard the United Nations has been willing to go."

The most detrimental compromise in the tribunal's composition, Adams said, was a requirement that the prosecution and investigating judges seek approval from the Cambodian side of the court to conduct research, summon testimony and expand the docket.

"The Cambodian side has interpreted it as the international side shouldn't do anything without their permission," he said.

Adams said the Special Court for Sierra Leone, set up in 2002 to address war crimes committed during the country's civil war, has been more effective because the U.N. holds a majority on the judicial panel and has independent powers of investigation.

The U.N.'s current main body for prosecuting war criminals, the International Criminal Court, was established in 2002 in part to provide a permanent tribunal that is independent and financially secure.

Ex-Khmer Rouge leaders, however, don't fall under the court's jurisdiction because it can investigate only crimes committed after its founding.

"The hope with establishing the ICC was that it would obviate the need for ad hoc courts," said Beth Van Schaack, a law professor at Santa Clara University who attended the hearings. "They're expensive, time-consuming and require negotiations with governments."

But many hoped the tribunal would promote reconciliation and healing.

Had the hearings been held abroad, Van Schaack said, the 4,500 Cambodians who attended in the last week would have had to watch it on television or not followed it all.

The trial of the other four, more senior, Khmer Rouge leaders in detention is not expected to start until 2011. They are believed to be the masterminds of the vision to forge an agrarian utopia by abolishing religion, money and schools and forcing most of the population onto collective farms.

Prosecutors have doubted the sincerity of Duch's cooperation and have asked for a 40-year prison sentence. The judges are expected to deliver a ruling in March. The maximum penalty is life imprisonment.

"No one is happy about his request to be freed; in fact, most people want him killed," said Chum Mey, one of only a few people to survive Duch's prison, and now a civil party participant in the trial.

But despite the bitter insult of Duch's about-face, Chum said, the anger that once consumed him from memories of being horse-whipped and given electrical shocks has been released by his contact with the tribunal.

"After coming here, I feel very relieved to be able to see this process," he said. "Until they come to the tribunal to see it themselves, I think the pain for many Cambodians will never go away."