

Khmer Rouge tribunal delivers judgment but not justice

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Authors: Kevin Boreham, ANU and Harry Hobbs, NYU

On 7 August, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) found the two most senior surviving leaders of the Khmer Rouge — Khieu Samphan, aged 83, and Nuon Chea, 88 — guilty of crimes against humanity and [sentenced both to life imprisonment](#)^[1]. They will probably be the last Khmer Rouge defendants tried by the ECCC.

These convictions do not provide accountability for the crimes of the Khmer Rouge.

The only other Khmer Rouge defendant convicted by the ECCC has been Kaing Guek Eav, or Duch, the leader of the notorious S-21 security prison, who was the defendant in the ECCC's Case 001. Khieu Samphan and Nuon Chea were the last surviving defendants in Case 002. There were originally two other [Case 002](#)^[2] defendants: Ieng Sary, the Khmer Rouge Foreign Minister, and his wife Ieng Thirith, the Khmer Rouge Minister for Social Affairs. The ECCC halted proceedings against Ieng Thirith because she was said to be suffering from dementia. Ieng Sary died in 2013.



Two further cases before the ECCC, Cases 003 and 004, remain mired in controversy. The names of the 003 and 004 suspects have remained confidential but are known to be Meas Muth, the Khmer Rouge navy commander; Sou Met, the Khmer Rouge air force commander; Im Cheam, leader of a forced labour camp; and Ta Ann and Ta Tith, two deputies who oversaw massacres in that labour camp. As Khmer Rouge navy commander, Meas Muth was responsible for the torture and murder of two Australian sailors who strayed into Cambodian waters in 1978. Sou Met died last year.

Cambodian Prime Minister Hun Sen has publicly stated that the 003 and 004 trials 'will not be

allowed’.

In September 2011, concerns around the defendants’ advanced age and the volume and complexity of material led the Trial Chamber to divide Case 002 into a series of smaller trials. Case 002/01, the decision of which was handed down this month, was limited in scope to the forced movement of the civilian population between 1975 and 1977, and the execution of Khmer Republic officials in the immediate aftermath of the Khmer Rouge capture of Phnom Penh. Future cases will examine further significant allegations of crimes against humanity, genocide and breaches of international humanitarian law between 1975 and 1979. But this will depend on whether Khieu Samphan and Nuon Chea live long enough — the Trial Chamber has indicated that Case 002 may finally conclude in 2020–21.

The ECCC was established in 2005 by an agreement between the Cambodian government and the United Nations, in order to try the senior leaders and those most responsible for the atrocities committed by the Khmer Rouge. Its complex ‘hybrid’ structure of international and Cambodian judges and personnel has made it subject to Cambodian government pressure. The ECCC has been dogged by Cambodian government interference, funding problems and delays.

The ECCC’s failings mainly stem from problems within Cambodia. The judiciary was decimated by the Khmer Rouge’s violent anti-intellectualism, with only [six law school graduates surviving the regime](#) ^[3]. Today the Cambodian judiciary [is perceived as](#) ^[4] the sector ‘[most affected by corruption](#)’ ^[5]. [According to some reports](#) ^[6], ‘[only one in six judges has a law degree](#)’ ^[7].

The limited temporal jurisdiction of the Court also prevents full accountability for the crimes of the Khmer Rouge. The ECCC is limited to investigating atrocities and human rights violations committed in the three-and-a-half year Khmer Rouge regime. Atrocities committed by long-standing Prime Minister Hun Sen, a former Khmer Rouge cadre, cannot be investigated.

That said, the Court has had some positive effects. [Over 140,000 people attended Case 001 and 002, and more than 390,000 people](#) ^[8] have been directly exposed to the ECCC through its outreach activities, which focus on educating Cambodians about the Court and the Khmer Rouge regime. The Court has provided an opportunity for Cambodian judges, lawyers and students to work with international counterparts. Through mentoring, training programs and guest lectures, the Court has worked to build capacity in trial management, substantive law and advocacy.

More broadly, the ECCC is one of just a few hybrid tribunals established over the past 20 years in order to satisfy demands for a national justice process with some international guarantee of acceptable due process. Other hybrid tribunals include the Special Court for Sierra Leone and the Special Panels for Serious Crimes in East Timor. Each was established under different circumstances and has many different features. But the ECCC has been one of the least effective and most controversial.

The Office of the United Nations High Commissioner for Human Rights has [defined the legacy of these hybrid tribunals as](#) ^[9] ‘a lasting impact on bolstering the rule of law in a particular society, by conducting effective trials to contribute to ending impunity, while also strengthening

domestic judicial capacity’.

Unfortunately, the limited results have shown that Cambodia has not made a full transition to a culture of rule of law.

Kevin Boreham is Lecturer in international law at the ANU College of Law, The Australian National University.

Harry Hobbs is a Transitional Justice Leadership Scholar studying an LLM at New York University. He has previously interned at the ECCC.

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<http://www.eastasiaforum.org/2014/08/30/khmer-rouge-tribunal-delivers-judgment-but-not-justice/>

[1] sentenced both to life imprisonment:

<http://www.eccc.gov.kh/en/document/court/case-00201-judgement>

[2] Case 002: <http://www.eastasiaforum.org/2011/12/22/justice-denied-for-cambodia/>

[3] six law school graduates surviving the regime:

<http://www.pbs.org/frontlineworld/stories/cambodia/diary04.html>

[4] is perceived as:

<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB8QFjAA&url=http%3Aper%2Fper%2Fwww.u4.noper%2Fpublicationsper%2Foverview-of-corruption-in-cambodiaper%2Fdownloadassetper%2F394&ei=HVvvU9DLN8j9yQSqwlGgCA&usg=AFQjCNGbdapOf1mXcvkVDpGdoGZfRu9y2Q&sig2=2e0LxqzwJPvJA9voFg0Ehw&bvm=bv.73231344,d.aWw>

[5] most affected by corruption:

<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB8QFjAA&url=http%3Aper%2Fper%2Fwww.u4.noper%2Fpublicationsper%2Foverview-of-corruption-in-cambodiaper%2Fdownloadassetper%2F394&ei=HVvvU9DLN8j9yQSqwlGgCA&usg=AFQjCNGbdapOf1mXcvkVDpGdoGZfRu9y2Q&sig2=2e0LxqzwJPvJA9voFg0Ehw&bvm=bv.73231344,d.aWw>

[6] According to some reports:

<http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=0CEAQFjAF&url=http%3Aper%2Fper%2Fwww.u4.noper%2Fpublicationsper%2Foverview-of-corruption-in-cambodiaper%2Fdownloadassetper%2F394&ei=aUPuU5-7NoqLyASJ1YDABw&usg=AFQjCNGbd>

apOf1mXcvkVDpGdoGZfRu9y2Q

[7] only one in six judges has a law degree:

<http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=0CEAQFjAF&url=http%2Fwww.u4.noper%2Fpublications%2Foverview-of-corruption-in-cambodiaper%2Fdownloadasset%2F394&ei=aUPuU5-7NoqLyASJ1YDABw&usg=AFQjCNGBd>
apOf1mXcvkVDpGdoGZfRu9y2Q

[8] Over 140,000 people attended Case 001 and 002, and more than 390,000 people:

http://www.eccc.gov.kh/sites/default/files/ECCC%20atper%20aper%20Glanceper%20-per%20ENper%20-per%20Aprilper%202014_FINAL.pdf

[9] defined the legacy of these hybrid tribunals as:

<http://www.ohchr.org/Documents/Publications/HybridCourts.pdf>