

Disarray and Disappointment after Duch Verdict

by Dacil Keo



The verdict of Case 001 at the Khmer Rouge Tribunal involving former S-21 prison head Duch (Kaing Geuk Eav), delivered amidst intense speculation, considerable spectacle, and moderate disarray, disappointed more people than it satisfied. Convicted of crimes against humanity and grave breaches of the Geneva Conventions of 1949 for atrocities perpetrated at S-21 that left at least 14,000 people dead, Duch received 19 years in prison; a figure reduced from 35 years after consideration of mitigating factors. This historic conviction is the first judgment for the unspeakable horrors that occurred under the Khmer Rouge regime responsible for the deaths of nearly two million people from 1975-1979. It was also a judgment that was unsatisfactory and perplexing to many ordinary Cambodians who survived the regime's brutality. Many had expected the tribunal to deliver a harsher jail sentence. This expectation, along with initial misunderstandings of the verdict, has emphasized the injustice of the 19-year sentence even more.

The Verdict Reading

Several minutes before 10 a.m. inside the 500-seat courtroom, slate-blue curtains and vertical blinds opened to a packed audience of Khmer Rouge survivors, Buddhist monks, university students, scholars, dignitaries, and reporters. Inside the glass-enclosed wooden stage, court officials were already seated in position along with key S-21 witnesses. A few minutes later, Duch entered the stage escorted by two policemen. He is

neatly dressed in a pale blue Polo shirt layered over a white t-shirt and gray pants held in place by a metal buckle belt. Oddly, his attire matched the glass wall sectioned off by thick metal bars and curtains while contrasting the row of bright orange-robed Buddhist monks sitting in the front center.

At the beginning of the verdict reading, Duch sat leaning against his chair showcasing his usual stern expression. At times, his piercing black eyes darted back and forth while his body remained calm. Towards the middle of the hour-long reading, Duch leaned forward with his arms folded on the desk near his bottled water. As the verdict reading approached its end, a subtle intensity appeared in Duch's eyes. When the judge announced the 35-year sentence, murmurs immediately erupted in the audience. Now standing, Duch's eyes are noticeably red, although his countenance is still composed. The judge finished the verdict reading at 11 a.m. and Duch is escorted off stage.

Responses from the Courtroom

The spectacle of the verdict day, which began with security checks and the disorderly seating of national and foreign observers, heightened after the verdict was delivered. All spectators, those inside the courtroom, the several hundred sitting on plastic chairs on the court lawn, and the millions watching across the country, reacted strongly.

As audiences made their way out of the courtroom following the reading, the initial murmurs became open critiques. The most common among them was, "The sentencing was unclear, so just how many years will Duch serve in prison?" Villagers with limited education, reporters accustomed to legal proceedings, and scholars with decades of schooling alike all began to subtract numbers in their head. "So the judge said 35 years in prison, but minus five years because of illegal detention at a military prison, and minus another eight years of actual time spent in the military prison, and then three years at the tribunal detention center, so that makes...wait, or was it nine years in the military prison...so that makes...wait, was the five years awarded to him in addition to the nine years served in the military prison?" Others left out the five years awarded to Duch for being illegally detained. "No, no, it's just 35 years minus nine years and then minus five years for cooperating with the tribunal." Others were unclear with the starting figure. "Was the 35 years before or after the five years awarded for illegal detention? So does that mean the initial number of years was 40 as the prosecutors had wanted?" There was also a large portion of the audience that was unconcerned with the arithmetic and simply concluded that Duch will serve 35 years in prison. This figure of 35 years,

unsurprisingly, caught on among some members of the press and was used in their initial reporting of the verdict.

As the confused and disappointed observers descended the court stairs and stepped outside, members of the press, who had been waiting patiently by the entrance doors, quickly began to take photographs. Other members of the press were already interviewing people from among the several hundred who had watched the verdict delivery on the front lawn. Some of them had arrived as early as 7 a.m. to set up their equipment and to scout out a good location to conduct interviews. Famous S-21 survivor Bou Meng and almost equally famous former S-21 security head Him Huy were bombarded by the media. Other prominent interviewees included noted scholars, tribunal officials, civil society organization directors, government officials, and crying Khmer Rouge survivors.

One episode involving three Khmer Rouge survivors on the courtroom lawn proved rather unfortunate. Former S-21 child prisoner Norng Chan Phal, who resurfaced several years ago after two decades of quiet living, was sidelined by woman as press cameras scurried to capture survivors' reactions. Unbeknownst to many, before entering the courtroom Mr. Norng was approached by a reporter who requested to film and interview him immediately following the verdict announcement. Mr. Norng, a bit anxious but experienced from having done dozens of interviews in recent years, agreed. In a moment of genuine disappointment and heartache however, a Khmer Rouge survivor beside him began to cry as she walked out on the lawn. Alerted by her crying, the press swarmed to capture this emotional scene, including the very reporter that had made a deal with Mr. Norng to film him. Another woman, who spoke both Khmer and English, sensed this opportunity and rushed to the scene blocking Mr. Norng from the cameras' view. She offered to translate for the anguished woman. Upon seeing these two women, Mr. Norng, who was also distraught after hearing the verdict announcement, retreated alone to the parking lot and climbed inside the bus he arrived in to recover from the episode. He remained inside the bus until it left the courtroom compound. Mr. Norng, one of the rare survivors of the S-21 prison, regrettably was not interviewed following the historic verdict for crimes committed at the notorious prison.

Back inside the courtroom a press conference was underway. Four separate groups were lined up to speak to reporters: the ECCC Public Affairs Office, co-prosecutors, three civil

party groups, and the defense (which later canceled). The most repeated question at the press conference concerned, unsurprisingly, the exact number of years that Duch is to serve in prison. After receiving an indefinite response from the first group, reporters asked Cambodian Co-Prosecutor Chea Leang from the second group. The Co-Prosecutor went through each mitigating factor one by one and gave a final figure of 18 years. This figure was slightly different from the 19 years given by the first group, and far different from the 35 years that had already been published in news reports.

Reactions in Phnom Penh

Throughout the day and evening, Public Affairs Chief Reach Sambath worked hard to explain the verdict, especially given that the full verdict document is over 400 pages in Khmer. Radio airplay of his explanation, along with expert commentaries and interviews with survivors, was pervasive throughout the night. The reactions to the verdict in Phnom Penh ranged from indifference to anger, although many appeared disappointed.

Youk Chhang, Director of the Documentation Center of Cambodia (DC-Cam), believes that “the verdict is correct, but it could have been harsher” and that “there is a lack of sensitivity to the reparations.” Mr. Chhang also believes that “Duch can never be a free man and will die in prison.” DC-Cam has been assisting the tribunal since 2006. The Center has not only provided translation, photocopy, and delivery services to the tribunal but also has allowed all three units- the prosecution, defense, and investigating judges, to use DC-Cam offices for research and work. Many of the lawyers and judges have gladly utilized these services, with the exception of Duch’s Cambodian defense lawyer Ka Savut. Strangely, Mr. Ka has said that he cannot access the Center’s resources or use its facilities. The Co-Prosecutors and Co-Investigating Judges offices, along with the defense lawyers for Noun Chea, Ieng Sary, and Ieng Thirith have had no problems utilizing the Center’s assistance however.

A few people interviewed on the streets said that they weren’t aware of Duch’s verdict announcement because they were busy making a living. Others had heard that Duch’s verdict announcement would be announced on Monday, but got tied up with other things such as their children’s high school exam which coincidentally began on the same day. In Cambodia, a series of exams lasting for two and a half days, determines whether students graduate high school and their college prospects.

Some followers of the verdict listened to radio for several hours, including Ros Sokhal who lost her husband, only child born ten days before the Khmer Rouge takeover, and numerous relatives during the Khmer Rouge regime. A resident of Phnom Penh, Ms. Ros had been following tribunal developments regularly and like many who followed the spectacle of the verdict reading, was unclear about the final number of years Duch was to serve in prison. At the Finance Office in the Council of Ministers where she works, the office television played the verdict screening as employees watched on and off. The majority of people in her office, like many in Cambodia, were most interested in finding out the number of years that Duch will serve in jail. Once the verdict reading was over, Ms. Ros along with her co-workers expressed disappointment and confusion. If Duch serves 35 years in jail, Ms. Ros said that she would accept the judgment because this meant that he would die in jail. However, if it is 19 years then she cannot accept the judgment because there is a possibility that he will be alive after serving time. Mr. Ros also commented on Duch's character, "He is a coward. His stern and cold expression and his audacity to kill people are opposite of his cowardice." According to her, someone like Duch who is "brave enough to kill someone" should also be "brave enough to accept life imprisonment." Life imprisonment, she explained, is much easier to accept than being tortured and killed at S-21. Clearly, Ms. Ros was deeply upset by the judgment.

A Survey Across Provinces

The reaction from survivors across Cambodia was also diverse, but again, disappointment and dissatisfaction were the most common responses. DC-Cam organized live screenings of the verdict in seven provinces: Kandal, Kampong Thom, Kampong Cham, Banteay Meanchey, Takeo, Svay Rieng, and Pursat. Approximately 200 or more local villagers attended these screenings, although in a few areas the number was considerably less because villagers were occupied with transplanting rice seedlings. Depending on the size of the rice field, transplanting rice seedlings can take several days or up to a week during Cambodia's rainy season.

Reactions from the provinces can be divided into four groups: (1) those who think the sentence is 35 years and are disappointed; (2) those who think the sentence is 35 years and accept it; (3) those who think the sentence is 19 years and are disappointed; and (4) those who think the sentence is 19 years and accept it. Several interesting patterns appear. First, many who reject the 35-year sentence feel that the brutal acts of Duch deserve a harsher sentence such as life imprisonment. Second, those that accept the 35-

year sentence do so because they think that he will die in prison. Among those that reject the 19-year sentence, many feel 19 years is vastly disproportionate to his crimes and that he could possibly live after serving his sentence. The few that accept the 19-year sentence cite being sympathetic to his age, believe that he will die in prison, or reason according to the teachings of Buddhism. Lastly, as more information on the mitigating factors, which reduced the sentence to 19 years, became available, the majority of people from the second group (who believed that the sentence is 35 years and were satisfied), instantly became dissatisfied with the 19 years. Overall, there is a feeling of dissatisfaction and to lesser a extent, anger, among survivors of the Pol Pot regime.

Group 1: Dissatisfied with 35 Years

Many ordinary Cambodians understood Duch's sentence to be 35 years immediately following the verdict announcement. For most, this was tolerable because they believed that Duch would die in jail. However, there were quite a few Cambodians who were not satisfied with 35 years. In Cha commune, Takeo province, many of the people interviewed following the verdict screening wanted Duch to be imprisoned for life.

In Svay Chek commune, Svay Rieng province, DC-Cam interviewed people who were upset by the verdict. Oum Sokhom, who was imprisoned under the Khmer Rouge regime, felt that Duch should have been given the death sentence because he is responsible for the deaths of thousands of people. Similarly, Va Samut was also upset by the 35-year sentence and said that she is still angry with Duch and other perpetrators. Yim Min and Kong Rong also felt that 35 years is too short because Duch killed a large number of people as head of S-21, however they also felt that the tribunal is still beneficial for Cambodia because it can help teach the younger generations that crimes will be punished.

Several survivors from Svay Khleang commune, Kampong Cham province, wanted Duch to suffer the way he made others suffer at S-21. Unaware that the Cambodian Constitution prohibits the death penalty, Sreang Srang wanted Duch to be executed by hanging. Sa Habb Sas wanted Duch to receive life imprisonment but also added that, "If I were the judge, I would torture Duch in the same way he tortured others." Ms. Sa felt that the court was partial towards the defense. No Sadass, whose entire family of eight died under the Khmer Rouge regime, also wanted Duch to be tortured for his role at S-21. Mr. No explained, "I want to punish Duch in the same way he tortured people at Tuol

Sleng; to put him in handcuffs, [and] let him starve." Prak Rem from Banteay Meanchey province lost five relatives and is also still angry at Duch. She wanted him to receive the death penalty.

Group 2: Accepts 35 Years

The general reaction among Khmer Rouge survivors from Kampong Thom province and Banteay Meanchey province was, initially, mild acceptance of what they believed to be a 35-year sentence. After finding out that the sentence is 19 years however, the dominant majority of these people expressed great dissatisfaction. Nuon Chean of Khum O Kunthor sub-district, Kampong Thom province said that 35 years is enough because Duch would die in jail. He added that the Khmer Rouge tribunal is important because it teaches the world about what happened in Cambodia under the government of Democratic Kampuchea and it can also serve as a model for other tribunals. Huy Ehheut of Preah Net Preah commune, Banteay Meanchey province, felt that the 35-year sentence was not enough given the crimes that Duch committed, but nevertheless felt that it was appropriate given Duch's age of 68 years because he would die in jail. Both Phan Sia and Buoy Phan of Rumlech commune, Pursat province, also accepted the 35-year sentence because of Duch's age and the certainty that he will die in prison after 35 years.

In Rumlech commune, Pursat province, Kim Hauoy expressed acceptance of the 35-year sentence for a different reason. Ms. Kim lost 22 family members under the regime including her parents, siblings, and her husband. For a long time she believed that Khmer Rouge leaders would go unpunished. "I never thought that there would be a tribunal in the first place," stated Ms. Kim. For her, acceptance of the sentence is not because she wanted Duch to die in prison. She elaborated, "I accept this sentence because I want reconciliation. If Duch were executed that would not bring back my parents."

Kao Tong, from Preah Net Preah commune, likewise begrudgingly accepted the 35-year sentence based on the reasoning that Duch would die in jail, although he too would have liked to see Duch receive a much longer sentence. After finding out that the actual sentence was 19 years however, Mr. Kao became deeply disappointed and felt "little and powerless."

Group 3: Dissatisfied with 19 Years

For better or worse, the unclear manner in which the tribunal judge explained Duch's jail sentence has caused many to compare the fairness of a 35-year sentence with a 19-year sentence. After some of the confusion surrounding the sentencing had been cleared, an overwhelming feeling of dissatisfaction grew among survivors of the Khmer Rouge regime, especially those that initially believe the sentence to be 35 years.

Prak Vuthy and Tep Chan Thon, both from Katok commune, Kandal province, are both unhappy with the 19 year-sentence because they felt that the sentence is greatly disproportionate to the thousands of people who died under his orders at S-21. They both felt that the court made the wrong decision.

Aok Touch and Vat Nhit of Khum O Kunthor commune, Kampong Thom province, were both initially not satisfied with a 35-year sentence and became even more upset when they learned that the sentence was actually 19 years. Both Ms. Aok and Ms. Nhit lost relatives at S-21. For them, Duch can never be forgiven. They believe that he is dishonest and insincere because he strategically acknowledged only the lighter crimes at S-21 in order to receive a reduced sentence. Ms. Srey wants Duch to be imprisoned in a jail cell that does not have air conditioning or good food. She also wants him to read the confessions that he and his interrogation staff forced S-21 prisoners to write.

Group 4: Accepts 19 Years

Among the small number of interviewees who were satisfied with the 19-year sentence, several reasoned that Duch would die in jail. Both Oeun Ret and Suon Auok of Katok commune, Kandal province, think that the 19-year jail sentence is fair given Duch's old age and the likelihood that he will die jail before being freed.

Pel Kimlang, of Svay Khleang Commune, Kampong Cham province, also accepted the sentencing, although for a very different reason. She turned to her understanding of Buddhism to form her perspective on the case. She explained, "We follow the Buddha, and he asks that we forgive, so if there are three choices of release, execution, or imprisonment, I would chose the middle choice of imprisonment so that Duch can have a few years to be with his family and die at home because he also has a wife and children." She further added that killing someone as a form of punishment would only result in continuous revenge-taking. "If someone who kills a person is crazy, and if we did same [thing], we would also be crazy too," reasoned Ms. Pel.

Perhaps the interesting interviewee who also accepted the 19-year sentence is Pol Pot's nephew, Srey Hean. Mr. Srey, from Khum O Kunthor commune, Kampong Thom province, felt that a 19-year sentence is appropriate. He did warn however that if Duch is still alive after serving his term, Duch might seek revenge or create other safety concerns.

Morning after the Verdict: Kandal Province

Interviews with people in Katok commune, Kandal province, right next to Phnom Penh where the Khmer Rouge tribunal is located, revealed quite a number of people who were unaware of or indifferent to the verdict announcement. Although many did know about the verdict from television, radio, relatives, and even neighbors, many others were completely unaware of the verdict announcement and some were even unaware of the Khmer Rouge tribunal in general. Of the 27 people interviewed by DC-Cam on the morning after the verdict hearing, 13 of them said that they were unaware or unconcerned with Duch's verdict. Soam Aum, Say Pen, and Chat Samnang were unaware that Duch's verdict was delivered the day before. Likewise, Las Mao and Say Sophat did not know that the court announced Duch's verdict because they were busy transplanting rice.

Interviews the day after also revealed that some people still believed that Duch was sentenced to 35 years in prison despite intense on-air clarifications from tribunal officials. Phun Savon expressed disapproval with Duch serving 35 years in jail. For her, justice has not been delivered. Su Hean, also believing that the sentence was 35 years the day after, was likewise disappointed. She felt that his crimes were too heinous to warrant only 35 years in jail. She requested that the tribunal reconsider its decision. However, Tep Somaly and Chuob Nim said that they accepted the 35-year sentence when interviewed the following day.

Beyond the Jail Sentence: Civil Parties and Reparations

Although much of the attention after the Duch verdict has focused on his jail sentence, the issues of civil parties and reparations are also important and no doubt will generate greater attention once the shock of the 19-year sentence wears down. At the press conference following the verdict announcement, all three civil party groups expressed grave disapproval with Duch's 19-year sentence, the tribunal's disregard for civil party participation, and the rejection of reparations.

Many Cambodians had wanted Duch to receive life imprisonment since Cambodia does not allow the death penalty. The prosecution asked for 40 years imprisonment. Given Duch's age of 67, a 40-year sentence guaranteed that he would die in prison, providing some comfort to those who wanted a life sentence. The harsh reality of 19 years however is considerably less than what people wanted and does not guarantee that Duch will die in prison. Further, the judges' decision to frame the punishment as 35 years, rather than 19 years, has not only misled many people, but has some wondering whether it was strategic or not. Whatever the tribunal's intentions, it has created increased frustration and anger among civil party participants who already were having a difficult time dealing with the court since Case 001 began in March 2009. Another major blow to civil parties was the court's declaration on the verdict date that at least 24 civil parties are not recognized by the court. These were civil parties that had been engaging with the court for many months under the assumption that they were a legitimate part of the process.

Perhaps the least talked about issue immediately following the verdict by ordinary Cambodians is that of reparations. Among the more than sixty people interviewed by DC-Cam during the film screenings, only a few of them talked about reparations. There are several reasons for this. First, many Cambodians aren't aware that it is possible to seek, or attempt to seek, reparations from the tribunal for what occurred under the Khmer Rouge regime. Second, the process by which this is achieved (through civil parties), is also little known to many Cambodians. Third and perhaps more fundamentally, many survivors are not interested in receiving material compensation for what is undeniably an irreplaceable loss. The fact that 20% of the population perished meant that at least every person in Cambodia lost a family member, in addition nearly all of their property. Thus the main attraction of the Khmer Rouge tribunal for survivors has been to simply find out what happened during the three years, eight months, and the twenty days of Khmer Rouge rule.

Nevertheless, denial of civil parties' reparation requests (with the exception of two: the inclusion of the names of S-21 victims in the verdict judgment and the distribution of Duch's apology) delivers a very cold message to victims, especially given that many of these requests required relatively little time and money such as the conservation of the paintings of S-21 survivor Vann Nath which are already displayed at the Tuol Sleng Genocide Museum, construction of a walkway along the outside wall of S-21, and writing a letter to the Cambodian government to request an apology for the civil parties.

Agreeing to a small portion of these requests would have placed the tribunal in a much better standing among survivors. John D. Ciorciari, a professor of Public Policy and Cambodia expert at the University of Michigan, believes that “the tribunal does have a role in reparations.” He further believes that the tribunal should have worked with civil society from the very beginning to work out arrangements in order to fulfill some of the civil parties’ requests and that failure to do this was a “missed opportunity.” As more attention is given to the matter of reparations in the coming days, perhaps more Cambodians will begin to think about the court’s role in not just delivering legal justice, but also in helping to memorialize the tragedy of the Khmer Rouge regime. Moreover, given that many are displeased with the light jail sentence, agreement to some reparations that benefit society as whole such as those focused on genocide education, mental health clinics, or the construction of memorial or pagodas, would help to lessen the anger and disappointment that many feel. Chab Khoung of Rumlech commune, Pursat province, in reacting to what he believed to be a 35-year sentence, responded “I think that 35 years in prison is not enough, however there is nothing that I can do about it...I would like to see reparations like the construction of pagodas in the future.”

Dacil Q. Keo, Public Affairs Officer at the Documentation Center of Cambodia and a PhD Candidate, Political Science Department at the University of Wisconsin-Madison