



# USALI Perspectives

## Reassessing Cambodia's Khmer Rouge Tribunal

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On December 23, 2022, the Extraordinary Chambers in the Courts of Cambodia—better known as the Khmer Rouge Tribunal—issued its [final, written judgment](#) in the case against Khieu Samphan, the highest-ranked surviving member of the Khmer Rouge. The court affirmed his convictions for genocide, crimes against humanity, and other international crimes, as well as his life sentence. The judgment brought to a close the tribunal's judicial proceedings and marked the improbable achievement of a measure of justice for the millions of victims of the Khmer Rouge regime.

The Khmer Rouge, a Maoist-inspired Communist movement, ruled Cambodia from 1975 to 1979. Their [reign of terror](#) included the torture and murder of enemies real and imagined on a vast scale, the enslavement of large portions of the population in deadly conditions, and widespread forced marriages to control the population and produce more workers. The Khmer Rouge's brutality and incompetence led to the death of [as many as 1.5 million Cambodians](#).

For two decades, it appeared that there would be no accountability for these crimes. Then, in 1997, the Cambodian government requested the assistance of

the UN to bring the senior leaders of the Khmer Rouge to justice. Following lengthy negotiations, the tribunal began its work in 2006.

In the 16 years since then, the tribunal's achievements were remarkable. It conducted an investigation of vast scope, examining events that occurred over the span of nearly four years across the entire territory of Cambodia. It conducted professional and fair trials of the highest-ranking surviving members of the regime. And it adjudicated their guilt for the most serious crimes known to mankind: crimes against humanity and genocide.

Unfortunately, a narrative has emerged among international human rights organizations and commentators that [dismisses the court's achievements and focuses on its flaws](#). While some criticisms are clearly justified, human rights advocates should acknowledge the importance of its work for the Khmer Rouge's surviving victims, young Cambodians seeking to understand the past, and the international human rights regime itself.

Moreover, some of the most commonly raised critiques fail upon closer examination. For example, reports about the court frequently point out that it tried and convicted "only" three Khmer Rouge officials. Yes, more convictions would have been better. But

the number is not wildly out of line with proceedings at the International Criminal Court, which has achieved [eight convictions](#) (of which only three were for war crimes or crimes against humanity) over its 20-year lifespan with a significantly larger budget.

The small number of defendants was in part a result of the significant period of time that elapsed between the crimes and the launch of the tribunal. One defendant, Ieng Sary, a co-founder and senior member of the Khmer Rouge, died during the proceedings at age 87. Another, Ieng Thirith, Ieng Sary's wife and a senior official in her own right, became unfit to stand trial due to dementia and died a few years later at age 83. The delay in bringing them to trial was caused by forces outside the tribunal's control: namely, an ongoing civil war between the Khmer Rouge and the authorities in Phnom Penh and [regrettable support](#) for the Khmer Rouge from much of the international community, which regarded it as a bulwark against Vietnamese (and by proxy, Soviet) expansion in Southeast Asia.

Most importantly, it is critical to look not only at the number of convictions but also at who was convicted and the gravity of their crimes.

- Kaing Guek Eav, aka Duch, oversaw a detention and

execution center in which **at least 12,000 people were killed**.

- Nuon Chea was the second most powerful figure in the Khmer Rouge, after Pol Pot, and was instrumental in the Khmer Rouge's implacable search for internal enemies, which resulted in the torture and murder of so many Cambodians.
- Khieu Samphan was the public face of the Khmer Rouge, helping to recruit Cambodians and managing relationships with the international community. Most significantly, he was the head of state of Democratic Kampuchea, the state declared by the Khmer Rouge following their victory in Cambodia's civil war.

Of the dozens of mass atrocity investigations and trials that have taken place since the rebirth of international criminal law in the 1990s, **only a handful** have been against heads of state. Bringing high-level leaders to justice is indispensable to the task of deterrence: the architects of mass atrocity crimes must be made to understand that there is a real chance they will end their days in a prison instead of a palace. The conviction of national leaders like Nuon Chea and Khieu Samphan sends a much stronger message to other national leaders than does the conviction of lower-level perpetrators.

The tribunal's failure to proceed with the trials of other individuals whose cases were fully investigated is the basis for the most serious criticism of the court. Cases 003 and 004 – involving relatively lower but still important Khmer Rouge officials -- were left in **legal limbo** after judges were unable to agree on whether they should be prosecuted or dismissed as outside the tribunal's mandate. This failure was the result of a controversial **supermajority voting rule** that made it impossible for either the national judges or international judges alone to control decision-making.

The judicial deadlock was complicated by repeated **statements from the Cambodian government** that no trials beyond Case 002 (Nuon Chea, Khieu Samphan, Ieng Sary, and Ieng Thirith) would be allowed to proceed, creating a **widespread perception** that the Cambodian judges were yielding to government pressure.

The unsatisfactory fate of Cases 003 and 004 reflects genuine shortcomings in the design of the Khmer Rouge Tribunal and offers a cautionary tale for those considering internationalized tribunals in other places such as **Ukraine**. But to conclude that the tribunal was therefore a **failure** (as Human Rights Watch has opined) is excessive and shortsighted.

Other criticisms of the court have focused on the size of its budget (\$330

million) and the length of time required for its work (16 years). But high-quality criminal investigations and trials are by nature expensive, time-consuming endeavors. When compared to complex domestic investigations and trials, which are rarely criticized on the basis of their cost or duration, the work of the Khmer Rouge Tribunal was neither unusually costly nor excessively lengthy.

The US federal government spent \$82.5 million between 1995 and 1998 (the equivalent of more than \$130 million today) on the investigation and prosecution of Timothy McVeigh and Terry Nichols for the Oklahoma City bombing, a vastly simpler factual and legal situation that involved one location, one day, and the direct, physical perpetrators of the crimes.

The Netherlands' investigation and trial *in absentia* of the men responsible for the 2014 downing of Malaysian Airlines flight MH17 over Ukraine lasted eight years, despite the fact that it dealt with a single incident, four defendants, and approximately 300 victims.

One of the court's most overlooked accomplishments is its contribution to public awareness and understanding of the Khmer Rouge period among Cambodians themselves. A massive

public outreach program brought more than 240,000 ordinary Cambodians from across the country to attend hearings. More than one percent of Cambodia's population sat in the public gallery and watched the trials of the men who destroyed their country. As former US Ambassador-at-Large for War Crimes Issues David Scheffer noted, the number of individuals who watched the proceedings in person exceeded "the total number of spectators for the Nuremberg and Tokyo military tribunals after World War II, the International Criminal Tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, the Special Tribunal for Lebanon, and the International Criminal Court, combined." In a country with a very young population and a struggling educational system, the impact of this outreach mission has been one of the tribunal's key legacies.

While the Khmer Rouge Tribunal was clearly flawed, it brought a measure of justice to victims of one of the 20th century's most horrific crimes. Given the horrors of the Khmer Rouge regime, the investigations, trials, and convictions of Duch, Nuon Chea, and Khieu Samphan were indispensable and manifestly worth the time, effort, and expense required.



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