

The question of punishment

Written by
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In the wake of Duch's verdict, commentary has been pouring in about the appropriateness of the sentence and future of the tribunal itself. I believe much of the outrage surrounding the sentence underscores conflicting expectations regarding the tribunal's mission: While it has a relatively limited prosecutorial mandate, the court has been tasked, in the minds of many observers and victims, with helping complete a more truthful narrative of the Khmer Rouge period and with fostering national reconciliation. Yet these are objectives that no court can truly attain given the gravity of the crimes committed.

As scholar [Peter Maguire wrote](#) in Wednesday's *International Herald Tribune*, "the biggest problem facing the ECCC is living up to its own hype. Claims that such trials can lead to healing, closure, truth and reconciliation are speculative at best. How does one measure 'healing, closure and reconciliation?' While most Cambodians would like to see the Khmer Rouge leaders punished, they've grown used to seeing common thieves and their government's political opponents suffer far worse punishment than that meted out to Duch."

Yet, Duch is only one person – a relatively low-ranking Khmer Rouge cadre at that – and nothing done to him can make up for the thousands of lives lost. As television news director [Hu y Vannak told the New York Times](#), "even if we chop him up into two million pieces it will not bring our family members back."

There simply is no punishment commensurate with mass atrocity.

Given this fact, while it may seem "like a slap in the face," as Tuol Sleng survivor Bou Meng said, to sentence Duch to anything less than life in prison, it is also necessary to realistically assess what the court is able to accomplish. There is no death penalty in Cambodia, so the harshest sentences any of the former Khmer Rouge leaders could get is life in prison. I am not a lawyer, but I assume that in order to coax defendants to cooperate to the extent that Duch did, the court needs to offer incentives. Were the harshest penalty death, then the chance for a life sentence would no doubt be incentive enough. But since this is not the case, it seems to me all the court can offer is a possible sentence reduction in the effort to have defendants cooperate and offer information. (And in the case of Duch, we cannot forget that his [illegal detention by the Cambodian military](#) also affected his sentence.)

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Thus, in assessing the second case, people should consider what is truly most important to them: punishing these particular individuals, or perhaps gaining more insight into this incredibly secretive period in Cambodian history? No doubt the answer will vary from person to person.

Of course, it is entirely possible that no matter what incentives they are offered, all of the defendants in the second case will refuse to cooperate with the court. But if they did, and the result was a (most likely symbolically) reduced sentence, is that a tradeoff survivors would accept? I'm not sure, but it is something to consider.

Not only do humans not have the ability to psychologically and emotionally process mass killing; they have no idea how to redress such atrocities. Even those who adopt an "eye for an eye" mentality have no solution for someone like Duch – "an eye for 28,000 eyes?" And this is why, when evaluating the tribunal's progress, we must take into account what it is truly capable of accomplishing, perhaps even when that means making some symbolic sacrifices.

* In a recent *Wall Street Journal* article, scholar John Hall raises issues of the court's legitimacy going into the second trial give allegations of corruption and interference.

[You can read it here](#)

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