

# UN tribunal sentenced Ex-Khmer Rouge jailer to 19 years...how about Mahinda and Co!

*By Satheesan Kumaaran*

The United Nations-backed tribunal found the former Khmer Rouge chief jailer, Kaing Guek Eav, aka Duch, guilty of war crimes against humanity on July 26, 2010. During the four-year hard-line communist reign from 1975 to 1979, the Khmer Rouge, which was headed by Pol Pot, was blamed for the deaths of 1.7 million Cambodians. Duch was one of the perpetrators of the crimes against humanity and sentenced to 19 years. The question is, why doesn't the UN do the same for perpetrators in Sri Lanka for unleashing genocidal war against Tamils?

The sentencing of the former jailer, Duch, is the first verdict to be given against a senior member of the genocidal regime. The Maoist regime leader, Pol Pot, died in 1998. However, four other top members of the Khmer Rouge are awaiting trial, along with current ruling government leaders, including the prime minister and other senior ministers who were once low-level members of the Khmer Rouge.

Despite the fact that the victims of the genocidal war in Cambodia urged the tribunal to give a verdict of not less than the punishment of life sentence for Duch, the tribunal sentenced him to 35 years in prison, but subtracted the 11 years he had already spent in detention, and a further five for cooperating with the court. That means that the 67 year-old Duch could be released as little as 19 years.

## **Did the tribunal act impartially?**

The question of credibility of the tribunal is challenged by many Cambodians now. Yes, it is true that the tribunal did not fulfill the sentiments of the victims of the Cambodians. The victims clearly pointed out after the verdict was given that the tribunal should have sentenced Duch the maximum penalty for his heinous actions.

During his 77-day proceedings, Duch admitted to heading Toul Sleng, a top secret detention centre for the worst "enemies" of the state. More than 16,000 people passed through its gates before they were killed. Torture used to extract confessions included pulling out prisoners' toenails, administering electric shocks, and waterboarding.

The decision to shave 16 years for time already served and illegal detention in a military prison, triggered public outrage. "I can't accept this," said Saodi Ouch, 46. She was weeping so hard she could hardly talk. "My family died ... my older sister, my older brother. I'm the only one left."

After the Khmer Rouge was forced from power in 1979, Duch disappeared for almost two decades, living under various aliases in north western Cambodia, where he had converted to Christianity. His chance discovery by a British journalist led to his arrest in May 1999.

“I’m shocked, as everyone is right now,” said a human rights lawyer, Theary Seng, who lost both of her parents and has been working with other victims to get justice. “It’s just unacceptable to have a man who killed thousands of people serving just 19 years.” Despite the public’s outcry, sentencing for this criminal element has shown that justice at least has not yet died.

## **But then how about Mahinda and Co?**

After hearing the verdict on Duch, it is no doubt that the Sri Lankan President Mahinda Rajapaksa, Defence Secretary Gotabaya Rajapaksa, etc., would have gotten frustrated by this decision, and indeed they live in anxiety with the knowledge that the same fate will be directed against them next. In order to make it happen, the UN has taken serious steps to investigate the crime over the perpetrators in Sri Lanka.

Although the war with the LTTE ended last year, the government is still conducting its activities concerning the genocidal agenda. Despite that the UN Secretary-General Ban-ki Moon appointed a three-member panel to conduct the investigations into the events of last phase of the war, the Sri Lankan government is directly threatening the UN not to interfere with the sovereignty of Sri Lanka, and declared that it would not grant a visa to enter Sri Lanka. The members of the panel are: South African human rights lawyer, Yasmin Sooka; Steven Ratner, a US international law expert; and former attorney-general of Indonesia, Marzuki Darusman, who is heading the three-member panel.

UN sources revealed that the panel had their first meeting in New York early this week and they continue discussions with UN officials. Ban-ki Moon’s spokesman, Farhan Haq, told the media, “What they are doing is trying to see particularly judging from how other similar circumstances have been handled; how to deal with the question of accountability.”

The Cambodian case is an excellent one, which can be taken as a model to deal with Mahinda and Co. for the genocidal war committed by them against Tamils. The US State Department and leading international human rights organizations have well documented evidence concerning the Sri Lankan State’s war against Tamils, and how they massacred innocent Tamils.

The US Secretary of State, Mrs Clinton, said: “I think this commission holds promise and we hope and expect that it will fulfil that promise. We expect that the mandate will enable them to fully investigate serious allegations of violations.” She further said: “The panel should be independent, impartial and competent.” Yes, this is what the Tamils want for the perpetrators of the crime against humanity.

The UN should not adjust its mandate to investigate the crime just because the UN faces pressure from Sinhala extremists like JHU, etc. The Buddhist monks led Jathika Hela Urumaya (JHU), a coalition partner in the ruling government led by Mahinda Rajapaksa, a well documented Sinhala extremist party, which vomited venomous words against Tamils. Recently, this party staged a protest in front of the UN headquarters in Colombo against Ban ki-Moon’s move to appoint a panel to advise him on alleged human rights violations during the last phase of the war.

The newly appointed JHU leader, Prof Omalpe Sobhitha thero, said it is ironic that an organisation “formed to unite the world, to resolve conflicts are engaged in an international conspiracy against re-establishing peace in Sri Lanka.” He added that Mr. Moon’s move was an intervention in Sri Lankan affairs and an undemocratic. “This is an uncivilised, uncultured, and impolite act,” the thero added.

Also, the legal advisor to the JHU and a minister in Western Provincial Council, Udaya Gammanpila, accused the West of being jealous of Sri Lanka’s war victory against the LTTE. He said: “America and England are struggling to fight against lame Taliban while we defeated the LTTE. That is why they are jealous.”

Most recently, Mr. Wimal Weerawansa, who is a Cabinet Minister in the Mahinda-led government, also conducted a fast unto death to oppose the UN's move to investigate the war crime allegations. In fact, the UN closed its Colombo office as a result of what it calls unruly protests organized and led by a Cabinet Minister of the Government. The UN termed the event unacceptable that the Sri Lankan authorities had failed to prevent the disruption of the normal functioning of the UN offices in Colombo. A step further, Moon recalled the Resident Coordinator, Neil Buhne, to New York for consultation. After few days, Buhne returned to Colombo following his discussions with Moon.

Despite the feud between the Sri Lankan government and the United Nations, the Sri Lankan government is on the move to form an ally to oppose Moon's second term. Moon's first term ends on December 31, 2011, and the possibility for a second consecutive term is challenged by Sri Lanka with the support of countries such as Russia, China, India, and Brazil. Moon will be a potential candidate for the second term with the support of western countries.

In the meantime, the Sri Lankan high commission officials in New York said on condition of anonymity that the UN never requested the Sri Lankan government to issue the visa for the three members of the panel to conduct the war crime investigations.

Inner City Press reported this week that there was a heated argument between UN officials and reporters last week and this week over Sri Lankan soldiers' misconduct in the Sudan where the Sri Lankan soldiers conducted sexual abuses. The reporters pointed out how could it possible for the UN to admit the Sri Lankan soldiers who unleashed genocidal war against Tamils in Sri Lanka, as well as facing war crime investigations by the UN, to act as UN peace mission abroad? The UN officials replied saying that they did not have to reveal everything to the reporters.

The double-standard play of the UN over Sri Lanka is the question in the hearts and minds of the Tamils who were victims of the genocidal war instigated by the Sri Lankan State. Tamils are eagerly waiting to see whether the UN will bring the perpetrators of the crime to justice through tribunal as a precedent of former Khmer Rouge's chief jailer who has been found guilty with the sentence of 19 years. The UN, as a world organization, has the mandate to bring the perpetrators of the crimes against humanity whether they live in Cambodia, Yugoslavia, Sudan, Rwanda, or Sri Lanka.

The United Nations, at any cost, should stick to its stand to complete its investigation into war crime allegations in Sri Lanka without succumbing to any pressure from Sri Lanka and its new friends. It is the UN, the only world organization, which has to prevent recurrences of war crimes and crimes against humanity. Any failure of the UN to bring Mahinda and his accomplices to book for their crimes against humanity will encourage others to commit similar crimes in the days to come.

As Moon is considered a potential candidate for the second term by the western countries, there is no room for him to compromise. The western world also has a moral responsibility to extend their fullest cooperation to the UN's move so that justice prevails in Sri Lanka. Like the tribunal sentenced Duch to 19 years, the UN should do the same thing in other places where thousands of people have been massacred in the guise of fighting terrorism. The perpetrators of crimes against humanity should be sentenced. A classic example is Sri Lanka, where tens of thousands of people were killed and tortured in a clear genocidal war. The Sri Lankan government is still engaging in genocide to cleanse the Tamils. This is clear evidence of ethnic cleansing. Human rights activists expect that the UN will do the same thing against the war criminals in Sri Lanka as they did in Cambodia.

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