

The Promotion and the Protection of the Right of Accused: Lesson Learnt from the Case of *Duch*

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Abstract

Court or authorities shall ensure the right of accused in criminal proceedings, including during the pre-trial period. In the case of Duch, a chief of the Toul Sleng Security Center (S-21), the issue whether alleged human rights violation during previous detention at the Military Court of Cambodia refraining the Extraordinary Chambers in the Courts of Cambodia (the ECCC) from proceeding further the investigation and prosecution of Duch by the ECCC is very controversial. In the judgment on 26 July 2010 of the Trial Chamber, remarkable promotion and protection of the right of accused is mentioned. This paper highlights and discusses those positive steps as regards promotion and protection of human rights in criminal justice, and argues that national courts should follow those legacies for protecting rights. They have enough and strong bases for doing so.

I. Introduction

In the period of the Democratic Kampuchea Regime (DK Regime) between April 1975 and January 1979, there was around 1.5 million peoples of Cambodia were killed and died due to starvation.¹⁾ After the complete end of the civil war in 1998, upon the request of the Royal Government of the Kingdom of Cambodia,²⁾ the Royal Government and the United Nations created the Extraordinary Chambers in the Courts of Cambodia (ECCC)³⁾ -a mixed international tribunal⁴⁾ -and the Chambers started fully its work in 2006.⁵⁾

The first accused is Kaing Guek Eav *alias* Duch, a chief of Toul Sleng

1) Ben Kiernan, *the Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge*, (1996) 1975–1979, p. 456.

2) UN Doc. A/51/930-S/1997/488 (24 June 1997); UN Doc. A/RES/52/135 (27 February 1998), para. 16.

3) For the ECCC Law, visit www.eccc.gov.kh.

4) The ECCC applies both national and international laws and was employed of both international and national staff and judges, *see* the ECCC Law, Art 41, Art. 33 (new).

5) The Internal Rules entered into force on 19 June 2007, *see* the Internal Rules, Rule 1 (1), available at www.eccc.gov.kh.

Security Center (S-21).⁶⁾ Before, he was transferred to the detention facility of the ECCC, he was detained in the Military Court detention of the Kingdom of Cambodia.⁷⁾ He was considered as a most responsible person, one of the two categories of accused falling with the personal jurisdiction of the ECCC.⁸⁾ The case of Duch triggers several issues, especially as regards whether allegedly illegal detention at the Military Court detention prevents the investigation and prosecution of Duch by the ECCC.⁹⁾ This issue has just been partially resolved by the judgment of the Trial Chamber in the case of Duch.¹⁰⁾

This paper tries to assess the judgment in the case of Duch in context of the promotion and protection of the rights of accused during the pre-trial detention, and provides some lessons to be learnt from by the national courts of the Kingdom of Cambodia. It asserted that the ECCC finds out that the violation of right of Duch by the Military Court is a landmark development. It argued that the national courts should follow such a positive move. In doing so, first, the paper highlights the background of the case, arguments raised by parties concerned; next, it will examine judgment to pick out what to be learnt by national courts.

II. Background of the Case

Duch was arrested by the authorities of the Kingdom of Cambodia and

6) Pre-Trial Chamber, Decision on Appeal against Provisional Detention Order of Kaing Guek Eav *alias* Duch, No. 001/18-07-2007-ECCC-PTC, 3 December 2007, para. 28.

7) Pre-Trial Chamber, Report of Examination, No. 001/18-07-2007-ECCC-PTC, C21, 19 November 2007, p. 2.

8) Art. 2 of the ECCC Law, *see supra* note 3.

9) The statute of limitation was one of issues raised by the defence of Duch as regards the proposed investigation and prosecution of the accused charged with national crimes; the defense asserted that the statute of limitation was expired before the adoption of the ECCC Law, and the law extends period of limitation, it is illegal; for more details, *see* Trial Chamber, Decision on the Defence Preliminary Objection Concerning the Statute of Limitations of Domestic Crimes, No. 001/18-07-2007-ECCC-TC, E187, 26 July 2010.

10) The Trial Chamber, No. 001/18-07-2007-ECCC-TC, Judgment of 26 July 2010, para. 631.

brought before the Military Court of Phnom Penh on 10 May 1999. This Court indicted him for crime against domestic security.¹¹⁾ On 6 September 1999, the Military Court Prosecutor indicted him for the crime of genocide allegedly violated Article 2 of Degree Law No. 1.¹²⁾ On 22 February 2002, with a purpose of ensuring good investigation, the Military Court issued an detention order for crime against humanity according to Articles 5 and 39 of the 2001 Law on Extraordinary Chambers in the Courts of Cambodia (ECCC Law), and for the same purpose, this court issued another detention order basing on the charge of war crime and crime against internationally protected persons pursuant to Articles 6 and 8 of the same Law.¹³⁾

The Co-Prosecutors of the ECCC issued Introductory Submission (IS) on 18 July 2007, asking the Co-Investigating Judges to open a judicial investigation against five persons, including Duch.¹⁴⁾ The latter issued a warrant to bring Duch before them on 30 July 2007,¹⁵⁾ and one day later, issued the provisional detention order.¹⁶⁾

As indicated in the preceding paragraphs, Duch was detained for long time basing on orders charging him for various crimes, some of them provided in the ECCC Law adopted after the initial arrest of Duch by military court in 1999. This fact leads to controversial viewpoints among parties concerned, such as legality of detention and violation of rights of accused, any possibility of remedy for such a violation.

11) The Pre-Trial Chamber, Report of Examination, No. 001/18-07-2007-ECCC-PTC, C21, p. 2; Trial Chamber, the Decision on Request for Release, No. 001/18-07-2007-ECCC-TC, E39/5, 15 June 2009, para. 2.

12) The Pre-Trial Chamber, Report of Examination, *supra* note 7, p. 2; Trial Chamber, the Decision on Request for Release, *id.*, para. 2.

13) *Id.*, para. 3.

14) On the ground for expeditious investigation and prosecution and since that case of Duch is mainly related to incidents happened in S21 Security Center of which he was a chief, the Co-Investigating Judges issued its separation order, *see* the Office of the Co-Investigating Judges, Separation Order, No. 001/18-07-2007-ECCC-OCIJ, D18, 19 September 2007, p. 2.

15) The Co-Investigating Judges, the Arrest Warrant, No. 001/18-02-2007-ECCC-OCIJ, C1/1, 30 July 2007.

16) The Pre-Trial Chamber, Report of Examination, *supra* note 7, p. 2.

III. Pre-Trial Detention of Duch

3.1. The Argument of the Co-Prosecutors

The Prosecutors in their IS considered Duch as a most responsible person, and requested the Co-Investigating Judges to detain Duch.¹⁷⁾ In response to brief of the defence as regards the pre-trial detention of Duch, the Co-Prosecutors argued that the ECCC is mixed criminal tribunal, and despite it was situated in the existing Court System of the Kingdom of Cambodia, the ECCC is independent court since it has its own functioning law.¹⁸⁾ Military Court extended the pre-trial detention of Duch in waiting for the establishment of the ECCC is not implicated by the ECCC.¹⁹⁾ Finally, the Co-Prosecutors, referring to jurisprudences to other international courts or tribunals, asserted that the pre-trial detention at the Military Court did not seriously violated any rights of Duch as the accused; thus, the previous detention does not deprive the ECCC from prosecution of Duch.²⁰⁾

3.2. The Argument of the Co-Investigating Judges

This judges encountered the legal challenges arising from the case of Duch earlier than other office since it shall decide whether long detention by Military Courts bars further detention by the ECCC or whether previous detention allegedly breached Duch's right to fair trial legally refrains the ECCC from investigation, and whether there are warrant conditions for detaining Duch.

The judges, in deciding the detention, first discussed the concept: “*male captus, bene detentus*”. It is a doctrine whether the circumstances which

17) Co-Prosecutors, the Introductory Submission, No. 001/18-07-2007-ECCC-OCP, D1, 18 August 2007, para. 124.

18) Trial Chamber, Decision on Request for Release, *supra* note 11, para. 7.

19) Trial Chamber, Decision on Request for Release, *id.*, para. 7.

20) Pre-Trial Chamber, Decision on Appeal against Provisional Detention Order of Kaing Guek Eav *alias* Duch, *supra* note 6, para. 13.

bring an accused before a tribunal have no effect on the judgment of the accused.²¹⁾ The judges conducted own analyses of national jurisprudences, and concluded that there is a separation of legal procedure before one court and the prior illegal arrest or detention.²²⁾ This first issue was resolved at the cost of Duch. The remaining question is whether the “*abuse of process*” doctrine is relevant.²³⁾ It is a concept that an act by authorities breaching law or procedure leads to the release of accused. Again, the judges made their own analyses of national and international jurisprudence.²⁴⁾ The cited jurisprudence asserted that, in case of serious violation of the right of accused, if tribunal did not decline to exercise jurisdiction, it would be detrimental to integrity of tribunal.²⁵⁾ The judges assessed whether right of Duch was seriously violated during the detention by the Military Court, namely whether he suffered from act of torture. Since there was not any act of torture, the judges argued that the abuse of process doctrine does not apply in the case at hand.²⁶⁾

In spite of positive tendency of ensuring rights of accused, regrettably, the judges considered that they do not have jurisdiction to determine the legality of Duch’s detention at the Military Court detention facilities.²⁷⁾

3.3. The Argument of the Defense

The defense on 23 August 2007 filed an appeal against detention order of the Co-Investigating Judge.²⁸⁾ The defense emphasizes that Duch was

21) The Office of the Co-Investigating Judges, Order of the Provisional Detention, No. 001/18-07-2007-ECCC-OCIJ, 31 July 2007, para. 5.

22) *Id.*, para. 11.

23) *Id.*, para. 12.

24) *Id.*, paras. 12–19.

25) Appeal Chamber, Jean-Bosco Barayagwiza v. Prosecutor, Decision on Appeal, ICTR, 3 November 1999, para 77; *id.*, paras. 12.

26) The Office of the Co-Investigating Judges, Order of the Provisional Detention, *supra* note 21, para. 21.

27) *Id.*, para. 20.

28) Defense’s Appeal Brief on Challenging the Order of the Provisional Detention dated 31 July 2007, No. 001/18-07-2007-ECCC-Defence, 5 September 2007, para. 8.

already detained for eight years since 10 May 1999 violating Cambodian law and international human rights standards. The Co-Investigating Judge shall draw legal inference from such a violation and thus release Duch.²⁹⁾ Finally, the defense requested compensation for Duch as a result of violation of his rights.³⁰⁾ For the basis, the defense referred to the 1993 Cambodian Constitution which required the detention pursuant to law,³¹⁾ and relevant applicable laws which limited the pre-trial detention period to the maximum of three year.³²⁾

The defence seemed to suggest that there are interrelation between the ECCC and the Military Court. Duch was accused by the military court of crimes set forth by the ECCC law.³³⁾ The long detention was not attributed to Duch.³⁴⁾ Despite there were strong legal arguments challenging the detention order, nowhere in the Appeal Brief of the defense, mentioned directly that Duch was physically or mentally tortured, and according to which, the proceeding of the ECCC shall as whole ends. If Duch was proved as suffering from an act of mental torture, the doctrine of abuse of power would be applied and his case will not be investigated and prosecuted by the ECCC.

3.4. The Views of the Pre-Trial Chamber

The Pre-Trial Chamber (PTC), vested powered to decide appeal against order by parties, heard the appeal from 15 to 21 November 2007 partly *in camera* and in public.³⁵⁾ Like the view of the Co-Investigating Judges, the PTC said that no provision of relevant laws allows the PTC to rule on

29) *Id.*, para. 11.

30) *Id.*, para. 13.

31) *Id.*, para. 22 (referring to the Art. 38 of the 1993 Constitution of the Kingdom of Cambodia).

32) *Id.*, para. 24.

33) *Id.*, paras. 58, 68 and 69.

34) *Id.*, para. 60.

35) Pre-Trial Chamber, Decision on Appeal against Provisional Detention Order of Kaing Guek Eav *alias* Duch, *supra* note 6, para. 2.

legality of act of the military court.³⁶⁾

For the detention at the ECCC, the PTC namely looked into the conditions for warranting the detention of Duch at the ECCC detention facility. The PTC considered whether detention of Duch would preserve public order; it found in favor of the Co-Investigating Judges, saying that although Duch was at liberty between 1979 till his arrest in 1999 by Military Court, currently, his identity as the chairman of S-21 is well-known; his release would not serve public order, and if release, his life would be in danger.³⁷⁾ Finally, the chamber found that there has been sufficient evidence to justify the provisional detention of Duch.³⁸⁾

3.5. The Judgment of the Trial Chamber

The Trial Chamber rendered its judgment in the case of Duch in June 2010. The judgment indirectly says that the pre-trial detention under the Military Court jurisdiction is illegal.³⁹⁾ The chamber sentenced Duch 35 year imprisonment⁴⁰⁾; however, citing the international and national jurisprudence, Duch received reducing 5 year imprisonment compensated for violation of Duch's rights during the Military Court Detention.⁴¹⁾ Moreover, the total term of imprisonment was reduced with 11 years (3 year detention at the ECCC and eight year detention in Military Court).⁴²⁾ Further the judgment hints on possible statement although very week statement:

“[notes] that the Accused, in the event of acquittal, may seek appropriate remedies for time spent in detention at the Military Court and for the violation of his rights before the national courts of

36) *Id.*, para. 17.

37) *Id.*, para. 55.

38) *Id.*, para. 59.

39) Trial Chamber, Judgment of 26 July 2010, *supra* note 10, para. 632; see also, Trial Chamber, Decision on Request for Release, *supra* note 11, p. 15.

40) Trial Chamber, Judgment of 26 July 2010, *supra* note 10, para. 631.

41) *Id.*, para. 632.

42) *Id.*, para. 633.

Cambodia”⁴³⁾

The chamber might think that there was no need to pronounce mandatorily the sentence in the above quotation such since it found that Duch was guilty. One might interpret such a silence in this regard of the trial chamber means that it was enough for Duch who received reduction of sentence for violations of his rights, and no need to grand legal standing to seek for compensation, such as for the lost of daily income due to the detention at the military court detention place. On the contrary, one might asserted that Duch was already affected by illegal detention, and only reduction of sentence is not enough. There should be a remedy granted or further proceeding shall be undertaken to get know whether the Military Court itself or individual judge or prosecutor violated Duch rights.

IV. Discussion

4.1. Pre-Trial Detention: Cambodian Laws and Practices

The pre-trial detention period under Cambodian laws is 4 months, and if necessary with reasons, the period might be extended to 6 months.⁴⁴⁾ New Code of Criminal Procedure sets for six month pre-trial detention and be legally extended twice, each for six months.⁴⁵⁾ For the crimes under international law: genocide, crime against humanity and war crimes, pre-trial detention is one year, and might be extended up to three years, once for one year.⁴⁶⁾ Both old criminal law and new code did not say about regular review of the detention conditions; however, issue of review might be raised before the end of each pre-trial detention space (first 6 months)

43) Trial Chamber, Decision on Request for Release, *supra* note 11, p. 15.

44) Provisions relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (1992), Art. 14 (4) in Compilation of Existing Laws in the Kingdom of Cambodia, the United Nations, Cambodian Office of the High Commissioner for Human Rights, 2005, p. 2197.

45) 2007 Code of the Criminal Procedure, Art. 208 (in the file of the author), and available at the Bar Association of the Kingdom of Cambodia, www.bakc.org.kh.

46) *Id.*, Art. 210.

when the co-investigating judge reviews whether the warranting conditions for continuing detention of the accused still exist or anytime during the detention period raised by the defense.⁴⁷⁾ This implied prescription goes theoretically along with the international human rights norms which requires the review of necessary conditions for detention whether they still exist or not; if not, the accused shall be released.⁴⁸⁾ Finally, basing on the new code of criminal procedure, bail is also allowed.⁴⁹⁾

Despite that human rights treaty provisions were incorporated in national law provisions, practically, it has been reported that the pre-trial detention period, in some cases, exceeds the allowed time limit.⁵⁰⁾ There are several reasons, such as a slow of investigations⁵¹⁾ or caseload.⁵²⁾ Parties or other interested person are allowed to file complaint for release of the accused, but it seems that remedies are rarely provided or unknown. The authorities concerned had denied their responsibilities as regards excessive pre-trial detention. Prison officials said that: *“he knew some laws concerning the duration of pre-trial detention; he knew when pre-trial detention would expire; but he had not authority to deal with the issue. In the meantime the current Prison Manual, issued by the Ministry of Interior, does not stipulate any provision regarding prison officials’ responsibility for excessive pre-trial detention, thus prison officials can not be held responsible”*⁵³⁾

During the pre-trial detention period, although there are reviews of

47) *Id.*, Art. 208.

48) A. v. Australia, Communication No. 560/1993, U. N. Doc. CCPR/C/59/D/560/1993 (1997), para. 94; General Comment No. 08: Right to Liberty and Security of Persons (Art. 9), 06/30/1982, para. 3, available at www.unhchr.ch.

49) 2007 Code of the Criminal Procedure, *supra* note 45, Art. 223 (9).

50) Concluding Observations of the Committee against Torture from the consideration of reports submitted by States parties under Art. 19 of the Convention, Cambodia, forty-fifth session, 1–19 November 2010, para. 17, CAT/C/KHM/CO/2, at www2.ochchr.org/English/bodies/cat/cats45.htm; Center for Social Development. Court Watch Bulletin, Vol. 3, No. 15, p. 8, at www.csdcambodia.org.

51) Gerald Leather, Pre-Trial Criminal Justice in Cambodia under the new Code of Criminal Procedure-A Lost Opportunity, 2007, *see* note 198 in the text, at www.victoria.ac.nz/slc/asi/publications/asi-newsletter-02112007.pdf

52) *Id.*, *see* note 165 in the ext; Legal Aid of Cambodia, who is responsible for excessive pretrial detention? at www.lac.org.kh, visited on 31 December 2010.

53) Legal Aid of Cambodia, who is responsible for excessive pretrial detention? *Id.*

conditions for detention, they were not regular. Finally, whether in case of violations of human rights, the court will allow accused whose right violated during pre-trial period to benefit, by providing reduction of imposed imprisonment sentence from actual detention period.

4.2. Pre-Trial Detention: ECCC Laws and Practices

The ECCC operates the pre-trial detention in according to its Internal Rules.⁵⁴⁾ There are not problems as regards the detention facilities of the ECCC if compared with those required by the international criminal justice standards.⁵⁵⁾ Consistent with the relevant Cambodian criminal law, the pre-trial detention period is one year, and can be extended up to 3 years by reasoned decision of the Co-Investigating Judges.⁵⁶⁾ The Internal Rules clearly requires the regular review of the detention conditions,⁵⁷⁾ and also a remedy if any unit concerned of the ECCC breached required rules. For example, if there are not strong reasons for continuing detention, the accused shall be released.⁵⁸⁾ There are also mechanisms for nullifying act of investigation or other judicial act by parties concerned if such an act breaches any required rule and violates rights of accused.⁵⁹⁾

Reflecting the laws and practices done by the ECCC reveals that the ECCC has adhered to legal norms as regard the pre-trial detention. The detention facilities meet the internationally required standards.⁶⁰⁾ There are always review of the detention conditions with fair challenges and equal status of all relevant parties in the case.⁶¹⁾ The Trial Chamber of the ECCC has done

54) The Internal Rules entered into force on 19 June 2007; as of November 2010, the some rules of Internal Rules, especially ones dealing with civil parties, are 6 times amended, see *supra* note 5.

55) *Id.*, Rule 63 (8).

56) *Id.*, Rule 63 (6).

57) *Id.*, Rule 63 (8).

58) *Id.*, Rule 63 (1).

59) *Id.*, Rule 48, Rule 76, Rule 53 and Rule 67 (2).

60) Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, A/HRC/15/46, 16 September 2010, paras. 58 and 61.

61) The ECCC, Internal Rules, *supra* note 5, Rule 63 (8).

a good job in the context of right-based approach. As indicated above, the Trial Chamber, independent of the Military Court, found that the detention for 8 years at the military court facility violated the rights of Duch, and Duch received five year reduction from total 35 year imprisonment imposed by it.⁶²⁾

4.2.1. Positive Aspects

At least two positive aspects can be extracted from the judgment. First, it is a positively landmark decision and precedent, especially for national courts, that alleged victim of human rights violation was given with legal status for complaining, and he or she is entitled to have his imprisonment sentence reduced and compensation for his right violation. The pronouncement of the Trial Chamber in this respect is consistent with required international norms.

International criminal justice norms requires that the detention shall be necessary⁶³⁾ since even one day detention, the integrity of a person concerned has already affected, irrespective of any effects resulting from detention. This is reflected from the requirement of high standard of proof in criminal proceeding; that is “beyond reasonable doubt” so that the detention shall be given effect.⁶⁴⁾ The Trial Chamber gave a clear message to law enforcement officers inside or outside of the ECCC that they shall adhere to national and international laws and take rights seriously; otherwise, their acts will be reviewed, and if breaching any laws, authorities concerned shall be responsible and remedy shall be granted to victims of their acts.

As mentioned above, the silence of the Trial Chamber does not mean that Duch as a victim of human rights violation is not entitled to seek for

62) Trial Chamber, Judgment of 26 July 2010, *supra* note 10, para. 631.

63) 2007 Code of Criminal Procedure, *supra* note 45, Art. 203; General Comment No. 08: Right to Liberty and Security of Persons (Art. 9), *supra* note 48, para. 3.

64) General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, the Human Rights Committee, Ninetieth session, 9–27 July 2007, CCPR/C/GC/32 (23 August 2007), para. 30.

compensation with national court. Illegal detention might not be an act of Military Court, but it is act of staff of the court personally not in official capacity. Such a finding might relieve the Military Court from allegation of human rights violation of Duch. Such a finding would require the staff committing violations of human rights of Duch, as result of his act, to pay compensation for Duch. Although it is a minor effect upon such a staff, it helps to prevent human rights violation by authority.

Articles of the ECCC law just says that in case that there are not national laws or national laws are vague, international norms shall be referred.⁶⁵⁾ In rendering judgment, the Trial Chamber freely referred to international norms and jurisprudence, and with its own initiatives. The Chamber referred to various types of norms, not just ones in Article 14 of the International Covenant on Civil and Political Rights incorporated in the ECCC law.⁶⁶⁾ This author asserted that that the ECCC, namely the Trial Chambers, has applied international law directly, and practically, in the sense that Duch was provided with reduced sentence due to his rights were violated. To do as such would help ensure respect for and protection of human rights.

4.2.2. Lessons to Be Learnt

National courts might learn many positive aspects from the judgment of the ECCC, such as adherence to international law; not just referring to international law, but actual application in the sense that there must be holding that alleged act breaching international law and such a breaching leads to any actual compensation. Finally, it is the bravery of the Trial Chamber holding that institution breached rights of individual.

One might argue that the ECCC is international criminal tribunal different from national courts of Cambodia. The former is entitled to apply international law directly. Leaving behind the status of the ECCC, we need to keep in mind that the judgment of the Trial Chamber needs support

65) The ECCC Law, *supra* note 3, Art. 15.

66) *Id.*

from at least two national judges.⁶⁷⁾ Therefore, any pronouncement in the judgment of the Trial Chambers reflected the viewpoint of the national judges as well.

Important thing is to provide justice to victim and to adhere to international norms of treaties to which the Kingdom of Cambodia is a party. Provisions of human rights treaties were incorporated in the 1993 Constitution⁶⁸⁾ and several national laws.⁶⁹⁾ In addition to this, the Constitutional Council, through its decision, asserted that international law shall be applied as national ones by the judges in deciding cases.⁷⁰⁾ Although it is not clear to what extent and how international laws would be applied, it is almost clear that international law shall be practically and effectively applied. Otherwise interpretation would render the decision of this prestige council futile. This pronouncement suggests being consistency with the obligation to fulfill the right to effective remedy that State party shall be bound. To ensure the right to effective remedy, judicial organ as one of the State organ, play central role to give effect to international law domestically. Breaching international law or obligation by courts might be considered for holding that the Kingdom as a State breaches the international obligation. To easily understand, the courts, besides helping upholding justice, helps raise reputation of State. In this connection, like the ECCC, national courts shall apply international law directly. The Cambodian Legal Regime has been influenced by Civil Law Tradition of France which allows direct application of international law. This author did not see provision of any national laws preventing courts from applying international law directly.

It is already a positive tendency that some judges in their judgments

67) *Id.*, Art. 14 (new).

68) THE CAMBODIAN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, a Selection of Laws Currently in Force in the Kingdom of Cambodia, Cambodian Office of the High Commissioner for Human Rights, 5 (2005), available at http://cambodia.ohchr.org/KLC_pages/klc_english.htm

69) Article 611 of the 2007 Code of Criminal Procedure of the Kingdom of Cambodia, *supra* note 45, Art. 611.

70) Constitutional Council of Cambodia (CCC), decision dated on June 26, 2007, http://www.ccc.gov.kh/english/cont_dec_year.php (visit on Jan 21, 2009).

referring to international human rights covenant to which Cambodia is a party; however, like the ECCC, the courts shall go beyond just referring, they should analyze relevant raised international norms, find out whether there are any violations of the rights, and if there are, actual compensation or remedy for victim shall be pronounced. After pronouncing by the court about the human rights violator, she or he shall be sentenced according to criminal law.

Illegal arrest or abuse of process, such as illegal detention, might bar investigation and prosecution. According to the judgment in the case of Duch, illegal arrest by one different authority does not bar investigation or prosecution by the other; however, serious violations of human rights of accused by different authorities would bar investigation and prosecution by another court. In case of Duch, if rights of Duch were seriously violated by the Military Court, the ECCC will legally bar investigation and prosecution of Duch. This pronouncement should be learnt by national court. Illegal arrest by judicial police in one province of the Kingdom of Cambodia will not bar any investigation or prosecution by another court; however, serious violations of rights of accused will bar. The lesson learnt will help judicial police or court to promote and protection of human rights. Their act violating human rights would result in release of accused, and in serious case, they are themselves responsible for violating acts.

V. Conclusion

Through the judgment, the Trial Chambers composed of national judges provided positive developments in the context of the international criminal justice. The trial applied international law by own initiative, directly and practically in the sense that allegation of violations of rights of the accused was considered and rendered remedy for violations. This is thing to be learnt by national courts from the work of the ECCC. It is not just for the justice for victim, but also integrity of the courts, and helps ensure respect for and protect rights prescribed in human rights treaties to which Cambodia

〈16〉 The Promotion and the Protection of the Right of Accused (MEAS Bora)

is a party.