



KKrom appeal ruling on genocide at ECCC

James O'Toole

March 3, 2010

LAWYERS for Khmer Krom civil parties at the Khmer Rouge tribunal have appealed the co-investigating judges' January decision not to bring genocide charges specific to the ethnic group, arguing that a narrow scope of investigation will prevent their clients and other civil party applicants from meaningfully participating at the court.

In the appeal, filed last month, lawyer Mahdev Mohan said his team had requested a public hearing before the Pre-Trial Chamber after judges declined to consider evidence of crimes against the Khmer Krom. In the decision, judges said that such evidence had not been included in prosecutors' introductory or supplementary submissions and was therefore outside the scope of their investigation according to court rules.

Four of Mohan's clients who had received preliminary acceptance of their civil party applications last year were then rejected based on the judges' January decision, a fate that Mohan said was likely to be repeated for many other applicants in the months to come.

"There's a likelihood that there are going to be a lot more rejections coming down based on this same issue," he said.

Mohan said the scope of the court's two-and-a-half year long investigation in its second case was released belatedly, and questioned to the extent to which crimes perpetrated against the Khmer Krom and others could be circumscribed to particular locations and events.

"When you're talking about genocide, it's very difficult to look at geographic scope, because it's not limited to a place – it's limited to a targeted group," he said.

In a statement released on Tuesday, Mohan and other civil party lawyers said the restriction of civil party participation to those who suffered at sites within the scope of the investigation in Case 002 was shutting out victims who had been led to believe that they would be accepted.

The lawyers objected to a rule change adapted in the court's latest plenary session,

which concluded last month, stipulating that admitted civil parties must “demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury”. In the original draft of the court’s internal rules, released in June 2007, the court merely stipulated that civil parties must prove that they suffered as a consequence of crimes committed under the jurisdiction of the court.

Anne Heindel, a legal adviser for the Documentation Centre of Cambodia, said she did not see the new rules as significantly changing the way in which civil parties are defined.

“In any system, civil parties have to be connected with the crimes that are being prosecuted,” she said. “This is the first [international war crimes] court to have civil parties, but if you’re going to call them civil parties, it’s appropriate that they should have a harm related to what’s being prosecuted.”

The ultimate rejection of civil party applications that were initially accepted is likely to upset many people who are unaware of the limitations on the scope of investigation, Heindel added, saying the court has “never adequately explained” this issue.