



Khmer Rouge Leaders Indicted; Reparations Uncertain, However Irwin Loy September 21, 2010

September 21, 2010 | A war crimes tribunal in Cambodia may have reached a major milestone this week by indicting four former leaders of the genocidal Khmer Rouge. But much more needs to be done to ensure that the long-awaited trial is meaningful to the regime's victims, analysts say.

On Sep. 16, the tribunal announced the indictment of four Khmer Rouge leaders: Nuon Chea, the party's chief ideologue; Ieng Sary, the foreign minister; Ieng Thirith, the social affairs minister; and Khieu Samphan, the party's head of state.

They face charges including crimes against humanity, murder and genocide and are accused of being among the architects of a regime that caused the deaths of up to 2.2 million people during the Khmer Rouge rule from 1975 to 1979.

More than three decades after the regime collapsed, the four ageing suspects are also the only senior Khmer Rouge leaders to be charged by the United Nations-backed tribunal.

"I think the case is going to be the most important trial in Cambodian history. It could allow Cambodians to turn to the next page and move on," said Youk Chhang, director of the Documentation Centre of Cambodia, whose researchers have compiled a vault of evidence archiving the regime's abuses.

Officials with the Extraordinary Chambers in the Courts of Cambodia (ECCC), the tribunal's official name, say they hope a trial will begin during the first half of 2011.

However, some observers say the court will not truly be effective unless it can properly address the crucial issue of how reparations will be given to victims of the regime.

In July, the court convicted former Khmer Rouge prison chief Kaing Guek Eav, Duch, as he is better known, was convicted of overseeing the murders of an estimated 14,000 people judged to have been enemies of the regime. But advocates for victims and their surviving families said the court did not go far enough to address the hugely symbolic issue of reparations.

Part of the court's mandate is to give a voice to victims. And so it allowed qualified victims and their families to participate directly in the proceedings as civil parties – and at levels that were unprecedented in international justice.

The tribunal is also able to award "collective and moral reparations" to approved victims. Demands from civil parties in the Duch case included free medical care, the creation of staffed education facilities and a curriculum about human rights abuses and genocide, as well as a trust fund that could provide vocational training and small-business loans.

But in the end, the court consented only to having the names of approved civil parties and victims listed in the final written judgment and for transcripts of Duch's apologies and admissions of responsibility to be posted to the court website. This latter gesture was derided by some as being severely inadequate in a country where few rural residents have access to the Internet.

"It's not meaningful to victims," said Sok Leang, the interim director and victims outreach manager for the NGO Centre for Justice and Reconciliation. "The names of the victims will be listed in the final verdict and then they will be digitised and posted on websites so everyone can see. This is just ridiculous in light of the technologies that victims living in remote areas have access to."

But in their decision, trial chamber judges noted that they were "constrained" by the rules of the court. It was not within the tribunal's scope, they said, to award reparations the court had no jurisdiction to enforce – thus ruling out civil party demands to create school curriculums or national memorials.

And while the court's legal framework stipulated that the accused was to be solely responsible for reparations, there were no measures allowing the ECCC to enforce its rulings if Duch was unwilling or unable to comply. The court was also unable to draw funding for reparations from

third parties like donor countries or government.

Sok said the first case was a "test" – one that he said produced very mixed results. "I think it was a lesson for the victims as well as a lesson for the panel of judges," he said of some of the harsh reactions to the decision on reparations.

In the second case involving the four senior Khmer Rouge leaders, then, the tribunal must find more creative and symbolic solutions to the issue of reparations, should the accused be found guilty, Sok said.

"People have to have something to take away and be proud of this court; to be proud of the trial," he said. "If the reparations after this second case are similar to the first case, then most victims will not be satisfied. If the reparations are still the same, I think it will not be successful."

But the tribunal has taken measures that could see the matter handled differently in the second case. A day after the indictments were publicised, the court announced it had approved new rules that will expand its options for reparation during the second case.

The court will now be allowed to award reparations that may be funded by donor contributions. This would mean that potential reparations that would have been excluded under the old rules because the accused lacked the money to pay for them, could now be covered by donors. The rule changes do not affect the reparations rulings for the Duch trial.

"I think we are learning throughout the process what is working and what is not working," said Lars Olsen, a court spokesman. "Remember, this is the first time in international criminal justice that we have victim participation on this scale."

But while reparations have a highly symbolic meaning for victims, Olsen said the focus must remain on the trial's criminal proceedings. "By the end of the day I believe the most important factor for any victim is to see that justice is being served," he said. "This can mainly be done through criminal proceedings, holding perpetrators responsible for crimes."

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