

Legacy of the Khmer Rouge Tribunal December 17, 2011

On Monday 5 December, the Extraordinary Chambers in the Courts of Cambodia ('ECCC'), better known as the Khmer Rouge Tribunal, started hearing evidence in Case 002. After waiting for over 30 years, the Cambodian people have finally got the opportunity to witness the case against the leaders of the Khmer Rouge, and hope to see justice done.

This trial is the second the Court has presided over. The first case, Case 001, was against KaingGuekEav alias Duch, the former Chairman of the notorious S-21 Security Center in Phnom Penh where over 20,000 people were detained and later executed. On 26 July 2010, Duch was found guilty of crimes against humanity, torture, and murder, and sentenced to 35 years in prison.

Case 002 is more significant as it involves more senior members of the Khmer Rouge, including NuonChea, or "Brother No.2", the most senior member of the organisation still alive. The other defendants are IengSary, the former Deputy Prime Minister for Foreign Affairs, and KhieuSamphan, the former Head of State. These defendants are accused of presiding over the brutal Khmer Rouge regime and are charged with, among other things, crimes against humanity, genocide, and torture.

The Khmer Rouge

The Khmer Rouge was an ultra-Maoist Communist regime that controlled Cambodia from 1975 to 1979. The leader, Pol Pot, wanted to turn the country into an agrarian utopia. In doing so, millions of people were forcibly relocated to the countryside and up to 3 million people died from famine, exhaustion, or execution for being "enemies of the revolution".

In 1979, a tribunal tried IengSary and Pol Pot and found both guilty of genocide.

However, this trial did not accord with international standards, and neither appeared in court nor served any sentence. In 1996, IengSary was granted a Royal Pardon and amnesty in return for his surrender. In 1997, the Khmer Rouge themselves tried Pol Pot, and sentenced him to life imprisonment. However, he died before this sentence could be served.

The ECCC

The delay in this trial – over 30 years, was in part due to the civil war that raged in Cambodia during the 1980s. The country officially found peace in 1991; however, the

Khmer Rouge did not disarm until 1998 when the group was dismantled and the remaining leaders surrendered or defected to the government. Cambodia approached the United Nations (UN) for assistance in conducting a trial of the Khmer Rouge leaders in 1997. Unfortunately, there were then years of political wrangling between the international community and the national leadership as to how a Court should operate and who would be tried. An agreement was ultimately reached in 2003, and the ECCC became operational in June 2007.

The Court is unique in that it is the first international criminal court in which victims of the alleged crimes can participate as Civil Parties; in Case 002, nearly 4,000 people are seeking “moral and collective” reparations. However, the Court only has jurisdiction to try the most senior members of the Khmer Rouge, who were often removed from the killing itself. Those at the community level, who still live among the people they harmed, will not face the Court.

The delay has taken its toll on those involved. Most significantly, Pol Pot and other potential defendants have died, and will never face justice for the murderous regime he oversaw. Ieng Thirith, the former Minister of Social Affairs, was also accused as part of Case 002, but was recently declared unfit to stand trial as she suffers from dementia. She remains in detention until her condition can be reassessed. In addition to this, the witnesses and Civil Parties are frail, their memories are failing, and they struggle to remember the evidence they are trying to present. To address these concerns, in September 2011, the ECCC split Case 002 into a series of mini-trials, starting with a trial on forced movements and related crimes against humanity. It is hoped that this will mean a verdict can be reached faster. However, as the process continues to be riddled with delays, it is feared that witnesses, or even the accused, may die before any verdict is reached.

Legacy of the Court

The main objective of the Court is to provide justice to the Cambodian people – those who died, survived, or were born after the regime. It seems that what the people want most is answers from their leadership about a period that is shrouded in secrecy. However, whether the people will receive any answers from the accused, some of whom are exercising their right to remain silent, is yet to be seen.

Further, in a country that is riddled with human rights injustices and impunity, it is hoped that the Court will become a beacon of justice and accountability that will leave a lasting legacy of the importance of fair and open trials, and strengthen the rule of law.

However, the Court is facing institutional shortcomings, even with extensive involvement of the UN, and there are continuous claims of corruption and political interference.

Decisions of the Court are often split between the national and international judges, which raises questions about whether they are truly independent and impartial. International Co-Investigating Judge Siegfried Blunk was a controversial figure who was

seen by many as failing to move forward the investigation into whether to bring cases against additional individuals. He resigned from the Court in October 2011 citing repeated statements by Cambodian government officials that indicated political interference. The defence team of NuonChea has also commenced legal proceedings in the Phnom Penh Court against the Cambodian government for corruption and interference, although the Court has rejected this motion.

These shortcomings could undermine the overall legacy of the ECCC, even if the allegations are only made in relation to cases that have not yet commenced. They need to be addressed in order to restore confidence in the Court and ensure that the Cambodian people can accept the decisions made. Otherwise, any justice served will be met with suspicion, and the victims of the Khmer Rouge and the Cambodian people as a whole, will be deprived of their day in Court.

Ultimately, the ECCC is a process which many Cambodians thought would never take place. While it might not be perfect, there is currently no alternative to address the crimes committed by the Khmer Rouge. Whatever the outcome, the trial itself, and the public discussions about the Khmer Rouge, will hopefully bring some closure to the Cambodian people, and allow the country to move on from this dark period of its history.