



Amnesty, double jeopardy on agenda for tribunal hearing

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In the days leading into the trial of four Khmer Rouge leaders, legal analysts say there are few if any past hindrances to the prosecution that would prevent full proceedings.

The trial for Nuon Chea, Khieu Samphan, Ieng Sary and Ieng Thirith officially begins Monday, when the four senior regime leaders will appear before the Trial Chamber of the UN-backed Khmer Rouge tribunal in a preliminary hearing.

The hearing will tackle some of the tougher questions for moving the proceedings forward for the accused, who are charged with a raft of atrocity crimes, including genocide, in what is expected to be a long, complicated trial, known as Case 002.

In the time since all four were arrested in 2007, defense lawyers have argued that amnesties promised by the government in the late 1990s, which helped dissolve the last of the Khmer Rouge after decades of civil war, would be relevant.

Likewise, they have argued that a trial of Khmer Rouge leaders staged by the Vietnamese occupation in 1979 means that Ieng Sary will be charged twice for the same crime, which is barred under a legal concept called double jeopardy.

Ieng Sary, the former foreign minister for the Khmer Rouge, led a breakaway of 20,000 troops in exchange for a government amnesty in 1996. Nuon Chea, the regime's ideologue; Khieu Samphan, its nominal head; and Ieng Thirith, the social affairs minister and wife of Ieng Sary, followed him.

All four lived freely among ordinary Cambodians for more than a decade before they were arrested and put in the custody of the tribunal.

However, legal analysts said in recent interviews neither the amnesty, the Vietnamese trial nor other obstructions are likely to impede the prosecution.

"None of the Case 002 defendants should be able to use the 1996 amnesty as a successful defense," John Ciorciari, a professor of public policy at the University of Michigan, told VOA Khmer in an e-mail.

Nor will Ieng Sary be shielded from double jeopardy after the Vietnamese trials, which found him guilty in absentia for war crimes but were widely considered illegitimate, Ciorciari said.

“Firstly, Ieng Sary is being charged for some crimes that were not a part of the 1979 proceedings,” he wrote. “Second, where a trial was highly defective—like the sham trial of 1979—most leading legal systems allow offenses to be tried again. Third, a major aim of the double jeopardy principle is to prevent defendants from being punished twice for the same offense.”

“The text of the amnesty agreement quite specifically granted Ieng Sary immunity from prosecution under a 1994 law outlawing the Khmer Rouge organization,” he continued. “It says nothing about barring prosecution for the grave international crimes that will be addressed in Case 002.”

Still, the rights of defendants must also be protected, legal analysts told VOA Khmer.

“It is why the good work of the defense sections at the tribunal is so critical,” said Jeffrey Brand, dean of the University of San Francisco’s law school. “We need to candidly confront the reasons that we reject a particular prior proceeding or political deal if an accused is going to be tried.”

Clair Duffy, a tribunal monitor for the Open Society Justice Initiative, said the court’s Pre-Trial Chamber has already ruled out the questions of double jeopardy and the amnesty.

“While the Pre-Trial Chamber’s position isn’t determinative of the issue, the reasoning considers all of the arguments which are likely to be raised by Ieng Sary again in the initial hearing,” she said. “One thing that can be said is that courts around the world exercising international criminal jurisdiction are always likely to read down any amnesty provisions because of the nature of the crimes under their jurisdiction.”

Meanwhile, national and international lawyers have said they are skeptical about the interpretation of the laws governing the tribunal, which was established under Cambodian courts and law. This could allow arguments by the defendants regarding the amnesty or double jeopardy, they said.

Sok Sam Oeun, head of the Cambodian Defenders project, said a good court model that follows the proper interpretation of the laws will be more important to Cambodia than the prosecution of the accused.

“We want the court to legally adjudicate, to provide a good example for Cambodia,” he said. “Essentially, how is the court going to interpret [the law], on a legal and rational basis, or not? If they reasonably interpret, then we can accept it.”

Tribunal spokesman Huy Vannak said the court will have ample jurisdiction over Ieng Sary’s case and will not be hindered by the double jeopardy question. However, he said these questions will be discussed in the initial hearing that starts Monday.

“The court has enough competency and enough of a role in Ieng Sary’s case over genocidal crimes, and other crimes...to try him under its jurisdiction,” he said.

The tribunal has also taken criticism for a lack of independence, following the refusal of senior government officials to testify before judges, as well the public opposition to further indictments by Prime Minister Hun Sen and others.

That criticism has been particularly sharp in recent weeks, following the hasty conclusion of a third case, yet to be tried, by investigating judges.

However, the University of Michigan’s Ciorciari said it is “unlikely” members of the government have exerted pressure to prevent Case 002 from going forward.

“The Cambodian judges at the Pre-Trial Chamber did not appear to be under pressure to support the double jeopardy or amnesty defenses,” he said.

On the other hand, Peter Maguire, a law professor and author of a book on the Cambodian genocide, said he doubts the tribunal will end in acquittal of the accused.

“It is unlikely to me that the Cambodian government would waste this much time and money,” he said, “only to set these high-profile defendants free.”