

DECCAN Chronicle

Justice, not catharsis
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As the second phase of the Khmer Rouge trials began last month with the indictment of the four members — Noun Chea, Ieng Sary, Ieng Thirath and Khieu Samphan — for genocide and crimes against humanity, there is a growing feeling that the trials may not prove to be effective in bringing closure for the millions of Cambodians who suffered human rights violations under the Khmer Rouge.

In July 2010, the verdict in the trial of Duch, alias Kaing Guek Eav, who was the chief of the dreaded S-21 interrogation centre also known as the Tuol Sleng Prison and facing charges for overseeing the deaths of about 15,000 people in the late 1970s, left the Cambodian people and the international community pitted against each other in a debate on the quantum of punishment. Following the announcement of the verdict by the Extraordinary Chambers in the Courts of Cambodia (ECCC) that Duch was to be given a 30-year jail sentence and that he would be free to leave the prison after 18 years, the public reaction was one of disappointment. The court had taken into consideration the fact that Duch had already served 11 years in prison since 1999 while awaiting trial, and hence commuted his sentence to 18 years. Prosecutors are demanding life imprisonment.

The dichotomy between the interpretations of humanitarian justice and the angst of the Cambodian people are on two distinct parallels. One of the victims who has lived to see the trials stated that the Duch verdict made those who suffered the atrocities go through the ordeal twice — once as victims of the Khmer Rouge and a second time when the punishment was less than expected.

In the context of crimes against humanity and the Geneva Conventions which lay out a code of conduct with relation to war and barbarity, the Khmer Rouge trial is very significant. The degree of atrocities carried out by the Khmer Rouge was of such serious nature that a strict implementation of the convention must be applied. In the context of the Khmer Rouge trials this has become somewhat diluted as a result of the ambiguous role played by the international community during the Cold War years.

Another process that is coming under scrutiny is the fact that in the case of the Cambodian trials the system of a hybrid international judicial system has been adopted. The hybrid system includes both international and domestic jurists and laws.

Also, for the first trial of Duch, the court included civil parties as part of the hybrid judicial process.

These consisted initially of both civil society groups and groups formed by members of victims and their families. However, out of the 87 civil parties that were formed, only 66 were recognised. The court felt that the other 21 groups did not qualify for consideration as civil parties. This announcement was made at the time of the Duch verdict and left several groups bewildered. Many felt that since in the context of the ECCC there is no trust fund to give monetary compensation to the aggrieved parties, there was no need to limit the number of civil parties. While their inclusion would in no way impact the trial process, it could have provided psychological closure to the victims and their families.

One of the stated objectives of the courts is to provide “collective and moral reparations”. Not including these parties does not fulfil that mandate.

The trial of Noun Chea, popularly known as Brother No. 2, second to Pol Pot in the Khmer Rouge hierarchy, is slated to commence early next year. Along with him will be three other key figures — Ieng Sary, his wife Ieng Thirath and Khieu Samphan. There is concern that their trial will lead to more divisiveness between the ruling government of Prime Minister Hun Sen and the United Nations because these men are the central figures of the Khmer Rouge and the current government is a breakaway faction of the Khmer Rouge. The revelations of these four could provide evidence leading to the ruling government.

A recent documentary, titled *Enemies of the People* (2009), by Thet Sambath and Rob Lemkin, has interviews with Noun Chea who highlights the power struggles within the Khmer Rouge and alleges the complicity of the current ruling establishment of Cambodia in the genocidal crimes.

This may indeed be credible information given that the early years of the Khmer Rouge were incoherent in terms of establishing its leadership. Even immediately after the Khmer Rouge victory, the administration remained weak and control was diffused among many leaders.

It is believed that the leadership of the Khmer Rouge was divided into two factions — anti- and pro-Vietnamese — and in the struggle between these conflicting ideologies, both sides indulged in genocidal crimes against the Cambodian people. Establishing this fact could lead to a more complex scenario for the ECCC. The dilemma would then be over whether only the core group of the Khmer Rouge needs to be tried for genocide or if the net needs to be cast over a larger group of individuals who may have also had a hand in the killings.

The trial of Brother No. 2 and others may reveal if more leaders were involved.

Though only five members of the Khmer Rouge are being prosecuted, five other former Khmer Rouge members are also on the ECCC’s agenda. However, their identities remain secret. The challenge for the ECCC will be to give a clear verdict in these cases and also bring others compliant in these crimes to book.

The four senior members, including Brother No. 2, were part of the core decision-making group which led the four-year-long darkest period in Cambodian history — from 1975 to 1979, an estimated 1.7 million people were executed or died from overwork, disease and malnutrition. While Duch may have appealed to the court for leniency stating that he was merely carrying out orders, the remaining four were the masterminds. The verdict in these four cases will highlight the seriousness of the trials. The collective psychology of an entire generation of victims will depend on what the courts are able to deliver.

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