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No charges of genocide of K Krom
James O'Toole
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KRT judges' Case 002 decision based on procedural factors

GENOCIDE charges specific to the Khmer Krom will not be brought by the Khmer Rouge tribunal against the regime leaders awaiting trial, judges have ruled, sparking accusations that the suffering endured by the ethnic minority group has been overlooked by the court.

Co-investigating judges You Bunleng and Marcel Lemonde ruled last week that investigative requests related to the Khmer Krom submitted earlier this month and in December by prosecutors and civil parties fell outside the scope of the court's investigation in Case 002, as the factual situations and crime sites they mentioned were not included in the prosecution's July 2007 introductory submission, nor in subsequent supplementary submissions.

"There will be no genocide charges in that respect, as targeting the Khmer Krom as a group itself," UN court spokesman Lars Olsen said, adding:
"The question of whether or not individual members of the Khmer Krom may fall within the Vietnamese group will be decided in the closing order."

"Khmer Krom" is a term for ethnic Khmer from the Mekong Delta region of Vietnam.

In December, the court announced that the four Democratic Kampuchea leaders currently awaiting a first round of indictments were facing genocide charges in connection with the regime's treatment of Cham Muslims and Vietnamese. Judges intend to issue a closing order – which will take the form of indictments or dismissals of the case – by September.

Olsen noted that the judges' decision did not reflect a historical judgment that the Khmer Krom were not victims of genocide, but rather was made for procedural reasons: Crimes against the Khmer Krom were not formally named in the prosecution's introductory or supplementary submissions.

The prosecution and civil party filings related to the Khmer Krom were termed not

“supplementary submissions” but “investigative requests”, which the judges ruled were insufficient on their own to widen the scope of the investigation.

Mahdev Mohan, the head of a team of lawyers representing Khmer Krom civil parties, said the decision “leaves a really bad taste in the mouths of our clients”.

“That’s a really pontificating legal distinction – it’s a very, very, small legal distinction without a significant difference,” he said.

Devil in the details

Mohan said prosecutors and civil party lawyers had hoped to use their recent submissions to rectify the fact that the Khmer Krom were not mentioned as a group in the prosecution’s 2007 introductory submission.

“What’s especially difficult is to explain to [Khmer Krom civil parties] the arbitrariness of how this came to be, and that for some reason they are not within the scope of the investigation, despite the submissions that we have put forward, and even despite the submissions that the prosecution has put forward,” he said.

Anne Heindel, a legal adviser for the Documentation Centre of Cambodia, said that given the rules of the court, the judges’ decision “makes sense that it would be limited in that strict a way”. The sheer volume of potential evidence in the case, she added, made the prosecution’s initial omission of the Khmer Krom understandable.

“There’s so many documents.... As [prosecutors] come across new information, they’re constantly refining their views on this stuff,” she said.

Mohan said there was nothing to suggest the omission had been deliberate.

“From what I gather from the prosecution, it was a completely inadvertent omission. The prosecution just didn’t quite realise that they were an ethnic minority at the time,” he said, adding that in the judges’ recent decision, he was “very sure that the prosecution wouldn’t have expected this kind of outcome to turn on such a semantic difference”.

Judges announced last week that they considered their investigation in Case 002 concluded, meaning that supplementary submissions are no longer being accepted.

Prosecutors said little about the Khmer Krom decision as they contemplated their options going forward.

“We are currently in the process of reviewing all of these decisions to determine the course of action we will take,” deputy co-prosecutor William Smith said Monday.

Historians have debated whether the Khmer Rouge were guilty of genocide according to its legal definition: criminal acts committed “with intent to destroy, in

whole or in part, a national, ethnical, racial or religious group". Newly appointed international co-prosecutor Andrew Cayley said last month that in his judgment, however, the Khmer Krom had clearly been singled out for their ethnicity by the regime.

"These people were targeted because of an ethnic quality. This is the basis of genocide. When you target a group for total and partial destruction for the reason of their ethnicity and nationality – you know, a certain characteristic that identifies them as a group of people – if you can identify them as a group, and then that group is basically targeted for total or partial destruction, that's genocide," he said.

Mohan planned to appeal the judges' decision, saying the Khmer Krom deserved legal recognition of the suffering they experienced because of their identity.

"They've been completely erased from the historical and legal record, and we'd hoped to kind of remedy that," he said.