

International Criminal Court

Khmer Rouge Leaders Case

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INTRODUCTION TO THE CASE

“The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression”. The Court is participating in a global fight to end impunity, and through international criminal justice, the Court aims to hold those responsible accountable for their crimes and to help prevent these crimes from happening again. The Court cannot reach these goals alone. As a court of last resort, it seeks to complement, not replace, national Courts. (CPI/ICC, 2018)

There are over 600 staff members in the Court from approximately 100 States and there are 6 field offices. The official languages are 6: English, French, Arabic, Chinese, Russian and Spanish. The International Criminal Court is organized by the Rome Statute that establishes three separate bodies: The Assembly of States Parties, the International Criminal Court, which comprises four separate organs, and the Trust Fund for Victims. The legal process has to go through several stages: preliminary examination, investigations, pre-trial stage, trial stage, appeals stage and finally enforcement sentence. “Representatives of States Parties meet and provide management oversight for the Court, including electing judges and the Prosecutor and approving the ICC’s budget”. The ICC has four organs: The Presidency, Judicial Divisions, OTP and the Registry. The Presidency “conducts external relations with States, coordinates judicial matters such as assigning judges, situations and cases to divisions, and oversees the Registry’s administrative work”. In the Judicial Divisions there are 18 judges in 3 divisions which conduct judicial proceedings. The OTP carries out preliminary examinations, investigations and prosecutions and the

Registry manages non-judicial activities, such as security, interpretation, outreach, support to Defence and victims' lawyers, etc. (CPI/ICC, 2018)

In order for the world to achieve a lasting peace, justice is necessary. The use of justice throughout the world can help to long-term peace, stability and the same development in post-conflict societies. All these elements are necessary for a future without violence. "The ICC calls on all countries to join the fight against impunity, so that perpetrators of such crimes are punished, and to help prevent future occurrences of these crimes". The ICC has already issued 32 arrests and 9 people have been put in front of The Court. (CPI/ICC, 2018)

The Khmer Rouge Regime, also known as, the Communist Party of Kampuchea (CPK) took control of the country Cambodia on April 17 of 1975 and ruled until January 1979. The state of Democratic Kampuchea was created by the CPK in 1976. The existence of the party, as well as the identity of the leaders of the regime was kept in secret until 1977, they called themselves "Angkar Padevat". After they took control over Cambodia, the Regime forced approximately two million people in Phnom Penh and other cities located in rural areas to manage the agricultural work. A vast amount of people died during the evacuations. (Cambodia Tribunal Monitor, 2011). The leaders of the Khmer regime believed it was necessary to return to "Year Zero" in order to establish a communist nation from its base, getting rid of services such as banks and vanishing intellectuals and businessmen. Thus creating the idea of an agricultural utopia that exploited its people.

The CPK did many atrocities to the people, they emptied the cities and evacuated millions of people forcing them to relocate at labor camps in which they were raped and starved to death. Anyone who was against, or in opposition to this were tortured and killed. (United to End Genocide, 2016) The aim of the Khmer

Rouge was to transform Cambodia into a “communist agrarian utopia”.(United to End Genocide, 2016) They wanted to abolish the social classes and to achieve this the Khmer Rouge “abolished money, free markets, normal schooling, private property, foreign clothing styles, religious practices, and traditional Khmer culture”. Many things were starting to be restricted, like leisure activities and people’s basic rights were no longer respected. (Cambodia Tribunal Monitor, 2011) “Cambodians were subjected to constant psychological abuse through indoctrination and monitoring by CPK cadres”.(Hauser Global Law School Program, n.d). Through the use of these radical techniques, the Khmer Rouge Regime expected for the nation of Cambodia to be able to reinvent itself as the communist nation. Anyone that did not fit into this new ideal was exterminated in order to have control over the people and prevent a possible rebellion coming from the intellectuals.

While the Khmer Rouge was in power many of the Cambodia people were severely affected in a negative way. The Regime set up policies which “disregarded human life and produced repression and massacres on a massive scale”. Cambodia became a big detention center. Around two million people died thanks to the control taken by Khmer Rouge or CPK. (Cambodia Tribunal Monitor, 2011) One in four cambodians during this period died as a consequence of starvation, illness and/or execution. (Hauser Global Law School Program, n.d).

Aside from the persecution of those who were opposed to these new ideals, the Khmer Rouge Regime violated Cambodians human rights by denying the access to health care, food, water and proper living conditions to the people of Cambodia. These actions cannot go unsanctioned since the leaders of the Communist Party of Kampuchea did not only violate basic human rights, but are also responsible for the deaths of over 2 million people.

HISTORY OF THE CASE

Cambodia was finally independent in November 1954 after being a French protectorate since 1863. After this, Prince Norodom Sihanouk ruled for 16 years. During this period Saloth Star, that later took the pseudonym Pol Pot, joined the underground communist movement.(Mount Holyoke College, 2005) The Communist Party of Kampuchea, informally known as Khmer Regime, was born thanks to the struggle that Cambodia had against French colonization and was influenced by the Vietnamese. The first Indochina War in the 1950s was the one that incite the movement to begin making it an official party in 1968 which grew over the next twenty years.(United to End Genocide, 2016)

In March, 1970 a Cambodian politician who had served before as a primer minister, named Marshal Lon Nol, and his pro-American associates achieved a coup in order to overthrow Prince Sihanouk as head of state. During this period, the Khmer Rouge gained several members and was “positioned to become a major player in the civil war due to its alliance with Sihanouk”. Pol Pot was the one in charge of their army, who was the CPK’s party secretary and leader in 1963.(Cambodia Tribunal Monitor, 2011)

The leader of the CPK, Pol Pot, was born in Cambodia in 1925, he later spent time in France and eventually became a member of the French Communist Party. Then, he return to Cambodia in 1953 and joined a “clandestine communist movement” where he began to rise up to later become one of the world's most outrageous dictators.(Cambodia Tribunal Monitor, 2011)

With the support of the Vietnamese, the Khmer Rouge was able to defeat Lon Nol’s forces and by the end of 1972, the Vietnamese decide to set aside from the battlefield and gave the control to the CPK. The Khmer Rouge along with the U.S

dropped approximately half a million tons of bombs on Cambodia from January to August 1973. The bombs killed around 300, 000 cambodians. After this, many people joined the Khmer Rouge's revolution. In the beginning of 1973, Khmer Rouge controlled the majority of the Cambodian territory, approximately 85%, and Lon Nol army had almost no power at all. On April 17, 1975 the five years of foreign interventions, bombardment and civil war ended and Phnom Penh, the capital of Cambodia, fell to the communist forces.(Cambodia Tribunal Monitor, 2011).

The CPK viewed cities as the “heart of capitalism” and that is why they decided that they had to be eliminated.(Mount Holyoke College, 2005) After Khmer Rouge took power they forced around “two million people in Phnom Penh and other cities into the countryside to undertake agricultural work”. Many people died during the evacuations. Their objective was to abolish the social classes and in order to achieve this they abolished money, free markets, normal schooling, private property, foreign clothing styles, religious practices, and traditional Khmer culture. Many places were shut and turned into prisons stables, reeducation camps and granaries. Everyone, including the leaders of the CPK, was forced to wear black clothing and they were deprived of their basic rights. People were forced to work more than 12 hours a day without any type of rest or a good alimentation. “The Khmer Rouge claimed that only pure people were qualified to build the revolution”.(Cambodia Tribunal Monitor, 2011) The reason to convert everyone to peasants and abolish social classes was that peasants were believed to be “simple, uneducated, hard-working and not prone to exploiting others.” The Khmer Rouge considered this class as the ideal communists and they called the “old people”.(Mount Holyoke College, 2005)

In 1979, tired of the killings and the corruption, the Vietnamese troops came in and invaded Cambodia and sent the Khmer Regime back to the jungle. Pol Pot, leader of the Regime, continued to lead the Khmer Rouge as an insurgent movement until 1997. Then he was arrested and sentenced to house arrest by his own followers after killing one of his closest advisers and died in 1998 in a tiny jungle village where he never had to face any charges.(Time, 2009)

CURRENT SITUATION

Even though, the Khmer Rouge stop existing in 1999, their legacy still remains. “Democratic Kampuchea was one of the worst human tragedies of the 20th century”. Around two million of cambodians died due to lack of medicines and medical assistance, starvation, execution, or exhaustion from overwork. Those who experienced this period were severely traumatized by all the experiences. Approximately hundred thousand Cambodians escape from their country and became refugees. All these factors “are one of the major causes of the poverty that plagues Cambodia today”(Cambodia Tribunal monitor, 2011). As a result of the Khmer Rouge’s outdated agricultural economy, 90 percent of Cambodia’s poor live in rural areas. Agricultural development is often stunted by landmines, which continue to be a daily problem for 8 out of 10 Cambodians in rural areas. Furthermore, the lack of both infrastructure and modernized farming techniques makes for crop yields that are lower and more susceptible to severe weather patterns. In an effort to make the greatest profit in agriculture, illegal farming practices have exploited natural resources and been a major contributor to deforestation.

The tribunal has secured three convictions since it opened in 2006. They produced life sentences for Kaing Guek Eav, or Duch, the brutal head of an interrogation center, and for the two current defendants, Mr. Nuon Chea and Mr.

Khieu Samphan, who were found guilty in an earlier trial of crimes against humanity. Mr. Nuon Chea and Mr. Khieu Samphan were being tried on a different set of charges this time. Mr. Nuon Chea and Mr. Khieu Samphan are the last survivors of a tight knit group that tried to turn Cambodia into an agrarian utopia, killing off its educated people and reorganizing the country into what amounted to a nationwide labor camp (New York Times, 2017). Mr Khieu Samphan has pled ignorance about the forced labor and killings that terrorized the country while he was in power. On the other hand, Mr. Nuon Chea refused to attend the hearings that took place on June 23rd, 2017. One of his lawyers, Victor Koppe, spoke on his behalf stating the proceedings were “some sort of circus” and said: “Nuon Chea couldn’t care less if you convict him again to a life sentence. He really doesn’t care because, rightfully so, he doesn’t take this institution seriously”. The verdict could

Cambodia’s UN-backed court upheld life sentences for two top former Khmer Rouge leaders for crimes against humanity, delivering a blow to their hopes of release as they face a second trial for genocide. “Brother Number Two” Nuon Chea, 90, and ex-head of state Khieu Samphan, 85, were in 2014 the first top leaders to be jailed from a regime responsible for the deaths of up to two million Cambodians from 1975 to 1979. They appealed against their convictions, accusing the court of a string of errors and the judges of failing to remain impartial due to their personal experiences under the regime. (The guardian, 2016)

UN ACTIONS

“In 1979 the United States and China wielded their influence and pushed through a vote in the UN General Assembly in favor of granting Cambodia’s UN seat to the ousted Khmer Rouge regime, and terminated a UN investigation into Khmer

Rouge crimes.” The next year, the United States, kept supporting the cambodians and became their legitimate representative.(Counter Punch, 2014)

Due to the amount of concern that arose around this case, on 23 October 1991, the Paris Peace Agreements were signed, which established the United Nations Transitional Authority on Cambodia (UNTAC) to implement the accords. Though the accords were damage at the initial stage.”The major successes of UNTAC were the conduct of the elections, in which 90 per cent of eligible voters participated, and the return of 370,000 refugees from the Thai border camps”. (UN Chronicle, 2008) According to David Chandler, who wrote “Brother Number One: A Political Biography of Pol Pot”, claimed that UNTAC’s operation was the most expensive. More than 25,000 people were involved and over \$3 billion was spent on the mission. The UN achieve to bring a partial national reconciliation and gave the Cambodians the option, after 40 years, to choose their government in a fair, honest and democratic way. Still the United Nations did not achieve to bring total peace to the Cambodians, ending up in a division. The Khmer Rouge still had in their power some territories along the border. Unfortunately, UNTAC started to develop a bad reputation and putting its effectiveness in jeopardy.(The Phnom Penh Post, 2016)

The UN efforts to help the pursuit of justice have not stopped. In 2006, the Khmer Rouge Tribunal, officially known as Extraordinary Chambers in the Courts of Cambodia (ECCC), was established with the support of the United Nations. This tribunal is “a UN-assisted national court, with international participation of prosecutors and judges”. Nuon Chea, the Khmer Rouge’s second in command, made his first appearance in the tribunal on February 4th, 2008, though it had a delay of 29 years. (UN Chronicle, 2008) This tribunal has been active ever since it

was established and it still there has not been made a decision regarding the future of the Khmer Rouge leaders since there is some evidence or lack of to be debated.

The Extraordinary Chambers in the Courts of Cambodia (ECCC) “is a domestic court supported with international staff, established in accordance with Cambodian law.” With the support of the United Nations, the ECC is meant to put into trial the senior leaders of Democratic Kampuchea and people who were most responsible for the crimes and serious violations recognized by the Cambodian laws during the period from from 17 April 1975 to 6 January 1979.(UNAKRT, 2016)

POSSIBLE PENAL ACTIONS

After an in-depth analysis of the situation, the International Criminal Court has deliberated that charges of homicide, torture, genocide, religious persecution, mass killings, starvation, amongst others, can be imputed against Nuon Chea and Khieu Samphan as the remaining leaders of the Khmer Rouge Regime. Thus, the International Criminal Court suggests the following criminal charges:

- Against Nuon Chea
 - Crimes against humanity
 - Homicide (art.501, 503, 504, 505, 506, 507 and 508)
 - Torture (art. 500)
 - Genocide
 - Religious persecution (art. 209 and 210)
- Against Khieu Samphan
 - Crimes against humanity
 - Homicide (art.501, 503, 504, 505, 506, 507 and 508)
 - Torture (art. 500)
 - Genocide
 - Religious persecution (art. 209 and 210)

These charges are not arbitrary until Nuon Chea and Khieu Samphan have been found guilty or innocent and can be adjusted to Domestic Penal Laws of each

country in question or what the attorneys suggest the Court has to consider to make the sentences harsher or softer. The Court forbids any sentence involving Capital Punishment.

In the given case both Khmer Rouge Regime leaders are found innocent, reparations towards Nuon Chea and Khieu Samphan should be paid by the ICC and a proper apology for all the possible incidents that the investigation and judgement may have cause.



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