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"Khmer Krom Role in Cases 003 & 004 Hangs in the Balance"

Khmer Krom community members at Bakan District, Pursat province putting up their hands when asked if they believe that justice should be meted out for the crimes committed against their community. DC-Cam forum, June 13 2010. Photo by Rothany Srun. Courtesy of Access to Justice Asia LLP.

Originating from Kampuchea Krom (in Vietnam's lower Mekong Delta region), fluent in Vietnamese, and maintaining their own cultural practices, the Khmer Krom were targeted for elimination because the Khmer Rouge perceived them to be associated with the *Youn*.

The United Nations-backed court established to prosecute Khmer Rouge leaders did not include the crimes against the Khmer Krom as part of the three-year investigation it concluded last year for its second trial, Case 002. Indictments charge former senior Khmer Rouge leaders for genocide against Cambodia's Cham Muslim and ethnic Vietnamese minorities but not against the Khmer Krom.

This omission stemmed in part from the prosecution's exclusion of the Khmer Krom from its investigation, which left the tribunal's judges unable to pursue such charges, despite compelling evidence of mass killing and forced displacement of the Khmer Krom throughout Cambodia.

However, Khmer Krom survivors continued to press their case with the court, submitting clear and consistent evidence of the atrocities they suffered and detailing prison sites and mass graves.

These efforts helped to pave the way for more than 100 Khmer Krom survivors being formally admitted as civil parties in Case 002, some as recently as two months ago by the Pre-Trial Chamber.

These survivors are represented by lawyers at Access to Justice Asia LLP (AJA) which is led by Prof. Mahdev Mohan, and Legal Aid of Cambodia (LAC) led by Sokong Sam & Chanrith Ang. Also assisting is human rights expert and University of California Berkeley's Prof. Laurel Fletcher.

Leading watch-dogs such as the Open Society Justice Initiative (OSJI) have raised serious questions about judicial independence and competence at the court and remain skeptical about whether new cases at the court, Cases 003 and 004, will be heard. For the Khmer Krom, it is crucial that these cases be heard as unlike Case 002 they promise the prospect of evidence of their persecution by Khmer Rouge being considered in the context of their identity as Khmers who were mistaken, corralled and eliminated for having 'Vietnamese minds'.

On June 13 2010, co-prosecutor Andrew Cayley reached out to Khmer Krom survivors. Meeting for the first time with nearly 200 of them in Pursat province's Bakan district, on the grounds of the Rumlech pagoda where Khmer Krom had been executed, Cayley acknowledged the need to present to the court the atrocities committed against the Khmer Krom people.

A year later on 16 June 2011, Cayley filed a Request for Investigative Action and Supplementary Submission which adds additional crimes to **Case 004**, including crimes committed against the Khmer Krom population in Takeo and Pursat provinces, "based primarily" on evidence submitted by their lawyers AJA and LAC.

Another statement Cayley released around the same time mentioned that the judicial investigation of **Case 003** includes the DK's "incursions into Vietnam". Many Khmer Krom were persecuted in incursions into Kampuchea Krom (in Vietnam) and forcibly moved to Cambodia.

Under the ECCC's internal rules, it is incumbent on the Co-Investigating Judges to examine the clear and consistent evidence that has been put before them through the supplementary submission, and to charge persons who may have committed crimes against the Khmer Krom.

Yet, a notification issued by the Co-investigating Judges yesterday, 8 August 2011, reveals that Bakan district continues to be excluded from the scope of Case 004. Nor is there any mention about the status of the Co-Prosecutor's June 2011 request and submission for further investigations in Pursat province.

Khmer Krom survivors fear that history may repeat itself. That they may be excluded yet again, even though Cases 003 and 004 purports to relate to the very provinces and offences that concerns them.

According to Mohan, "our clients' chance to present evidence on crimes they suffered in their heartland districts because of their identity, and beyond what they witnessed, now hangs in the balance".

"Even though the ECCC has ruled that judges are obliged to keep victims informed throughout the proceedings – and not just at the beginning or at the end – our clients know next to nothing about what how to proceed from here. Despite written requests to re-submit their civil party applications to the court's Victim Support Section and the Co-Investigating Judges for Cass 003/004, our clients have been kept in the dark about their status in these cases.

"Despite Mr. Cayley's statement that certain submissions filed in Case 004 were 'based primarily' on their applications, our clients have no access to the Case file. Our clients are flummoxed and wonder whom they can believe and place their trust in. Nor are we, as their lawyers, in a position to advise them on how they can contribute to cases we have no sight of".

Sam and Ang add that "Together with our clients, we have spent a great deal of our own financial, physical and emotional energies to tell the court about the atrocities which occurred in Bakan district. That there is a possibility that all this may have been for nothing and the judges do not even wish to investigate it for their upcoming cases is unthinkable for us."

Speaking at a meeting with his lawyers last month, Khmer Krom civil party for Case 002 Meas Chanthan said, "Talk is cheap. We want to participate and we want investigations. We have asked to participate in case 003 and case 004. But we don't know where we stand. Countless Khmer Krom were targeted here in Bakan district, worse than elsewhere in Pursat and maybe the country. So we want answers. We want investigations to be done into why they were executed."

Tomorrow, on 11 August 2011, Cayley will speak once again to Khmer Krom survivors at Rumlech pagoda where he is expected to address the status of Case 003 and his decision to ask for further investigation in Case 004. They will be listening closely, but their patience and reserves are worn thin.

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