

# **Cambodia**

## **After 30 years**

### **Khmer Rouge crimes on trial**

The trial of the chief of Khmer Rouge's most notorious torture centre finally signals the possibility of accountability for millions of Cambodians who for 30 years have been denied justice, truth and reparations for crimes committed during the Khmer Rouge period.

On 30 March 2009, the "Extraordinary Chambers" set up in the Courts of Cambodia to address Khmer Rouge atrocities will hold the initial substantive hearing in its first trial. Kaing Guek Eav, also known as Duch, is charged with crimes against humanity and war crimes committed while he was the head of the S-21 Security Office (better known as Tuol Sleng).<sup>1</sup> Duch himself has publicly acknowledged responsibility for mass executions, torture and other crimes. At least 14,000 people are believed to have been tortured and then killed at S-21 during the Khmer Rouge (Democratic Kampuchea) period between April 1975 and January 1979.

The hearing marks a first historic step towards holding to public account a few out of the thousands of persons responsible for crimes against humanity and other serious crimes under international law committed under Khmer Rouge rule and affecting millions of people, the legacy of which still lives on today.

Up to two million Cambodians out of a population of an estimated seven to eight million died under Khmer Rouge rule. The Khmer Rouge security apparatus oversaw extrajudicial killings, arbitrary detention, torture and forced labour on a massive scale. Its cadre executed hundreds of thousands of people to eliminate perceived opposition; they purged educated groups, and summarily executed leaders and members of religious and ethnic communities. Starvation and disease were widespread.

Duch's trial is scheduled to continue until July 2009. Trial preparations are also underway for four other detained suspects, all leading politicians of the

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<sup>1</sup> Duch faces charges of crimes committed at S-21 as well as S-24 (Prey Sar) and the execution site of Choeung Ek, both of which were entities under S-21. Charges also include torture and pre-meditated murder under domestic law.

Khmer Rouge government. They are its head of state, Khieu Samphan; Foreign Minister Ieng Sary; Minister of Social Affairs Ieng Thirith (f); and Nuon Chea, a senior official of the Communist Party of Kampuchea, known as “Brother No 2”.

The Khmer Rouge’s undisputed leader, Brother No 1 Saloth Sar—far more notorious as Pol Pot—died in 1998, without facing justice for his actions.

These first trials are crucial. The Extraordinary Chambers faces serious challenges that must be urgently addressed if it is to meet standards of international justice and satisfy the rights of victims and their families to justice, truth and reparations. In this regard Amnesty International makes the following recommendations to the Extraordinary Chambers, the United Nations and the Cambodian government.

## **1. The Extraordinary Chambers should implement its mandate to prosecute those “most responsible”**

The Agreement between the United Nations and the government of Cambodia and Article 2 of the Law establishing the Extraordinary Chambers set out the institution’s mandate “to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian laws related to crimes, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979”.

The issue of determining who is “most responsible” rests with the Extraordinary Chambers, which is limited in the number of cases it can prosecute. But it is clear that the current caseload fails to address the majority of the crimes under the jurisdiction of the Extraordinary Chambers. These prosecutions are not sufficient to fulfill the mandate and to deliver justice to Cambodians, and will not achieve the level of accountability that was envisaged when creating the Extraordinary Chambers.

A dispute has arisen following the Cambodian co-Prosecutor’s refusal – citing a number of political reasons – to proceed with six new cases identified by the international co-Prosecutor. It is vital that the Pre-Trial Chamber, which is currently considering the dispute, decides that more cases should be prosecuted.

The Cambodian justice system requires substantial legal and judicial reform before it can effectively prosecute other cases of crimes committed by the Khmer Rouge. Moreover, many victims and suspects are now elderly. The Extraordinary Chambers is therefore the only meaningful opportunity for victims to receive justice without further long delays.

The Extraordinary Chambers should urgently develop a more comprehensive prosecution strategy to investigate and prosecute many more cases. These cases should be representative of the scope of crimes committed, taking into account the types of crimes, the context in which they were committed and the communities and groups affected.

## **2. Address allegations of corruption**

Allegations that Cambodian staff have been required to pay “kickbacks” to government officials following their appointment to the Extraordinary Chambers have cast significant doubts on the Extraordinary Chambers’ competence, independence and impartiality. The failure of the government and the UN to respond to the allegations in a transparent way further threatens to undermine the institution’s credibility. A UN investigation, the findings of which have not been made public, resulted in the UN Development Programme suspending payments to the Extraordinary Chambers.

The UN and the government of Cambodia have been negotiating a new system to respond to complaints about misconduct, but the proposal does not guarantee prompt, thorough, independent and impartial investigation of allegations. It also fails to provide for the protection of whistleblowers, who would still have to make complaints to the government.

Amnesty International calls on the government and the UN to ensure that all corruption allegations are promptly and thoroughly investigated by an independent and impartial mechanism and that, where misconduct is found to have occurred, the case is submitted to the authorities for the purpose of prosecution. Effective mechanisms must also provide for the protection for court staff who report misconduct. International donors have an important role to play in demanding that the Cambodian government and the UN commit to the establishment of such a system.

### **3. Deliver justice to victims**

The Extraordinary Chambers' ability to fulfill Cambodia's obligations to the victims of these horrific crimes and their families should be a key indicator of the success of the institution. They have been denied justice for 30 years. It is essential that they can both participate meaningfully in this judicial process before the Extraordinary Chambers and seek and obtain reparations.

Despite provisions in the Statute and the Rules providing for victims' participation and seeking of "collective and moral" reparations, funding allocated to the Extraordinary Chambers' Victims Unit, which is an essential mechanism to implement the victims' mandate, was inadequate. The Victims Unit has only recently become operational as a result of external funding by the German government.

The victims' mandate is central to the functioning of the Extraordinary Chambers, which is reflected in the Court's constituting documents. Therefore it should not be treated as an additional luxury. The Victims Unit must have the resources and cooperation from all organs of the Extraordinary Chambers it requires to perform its key roles, including outreach to victims and providing them with legal services. A Court-wide strategy should be established without delay to ensure that the victims' mandate is incorporated in all the work of the Extraordinary Chambers.

In addition, there is also a need to establish effective systems to ensure that the Extraordinary Chambers reparation orders for victims are fully implemented.

### **4. Develop and implement a legacy strategy**

Cambodia's national justice system falls far short of international standards of competence, independence and impartiality. This situation has contributed significantly to impunity in Cambodia, where the lack of rule of law perpetuates serious human rights violations in a number of areas, including the rights to adequate housing, freedom of expression and assembly.

So far, national courts have failed to investigate and prosecute crimes committed during the Democratic Kampuchea period. The work of the Extraordinary Chambers presents a unique opportunity to strengthen the Cambodian justice system so that national courts may investigate and

prosecute the thousands of other cases of Khmer Rouge crimes that the Chambers will not be able to deal with as well as other serious human rights violations. Therefore the government of Cambodia, the Extraordinary Chambers, the UN and international donors should consult with civil society to develop a legacy strategy to ensure that the national courts benefit from the experience and capacity of the Extraordinary Chambers.

Some suggestions, drawn from experience from the International Criminal Tribunals for the former Yugoslavia and Rwanda and the Special Court for Sierra Leone, include ensuring that Cambodian lawyers have access to library facilities; establishment of best practices training programs organized by the court staff on a range of issues; visiting professional programs; and effective outreach.