

# មជ្ឈមណ្ឌលឯកសារកម្ពុជា

DOCUMENTATION CENTER OF CAMBODIA  
VOICES OF GENOCIDE: JUSTICE AND THE KHMER ROUGE FAMINE

DC-Cam Community Radio Program (Episode #5):  
Famine in Democratic Kampuchea and Case 002 at the Khmer Rouge Tribunal  
(formally known as Extraordinary Chambers in the Court of Cambodia: ECCC)

## **Topic: Famine and Crimes Against Humanity**

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This is the fifth episode of a ten-episode radio series which explores the historical and legal aspects of the famine that took place in Cambodia under the Khmer Rouge from 1975-1979. The goal of this program is to better inform Cambodian people about a critical part of their shared history while encouraging active participate in the transitional justice process. The Documentation Center of Cambodia welcomes feedback about the program, including contact from people who would like to share their own experience of the famine under the Khmer Rouge or people who have questions for the Center about the Khmer Rouge famine or international law.

This episode focuses on the topic of crimes against humanity and their applicability to famine, both in Cambodia and generally. This episode will explain the concept of crimes against humanity, mention some specific crimes and discuss whether these crimes could be associated with periods of famine both generally and within the specific context of the Cambodian experience under the Khmer Rouge.

### **Update on the ECCC:**

As the Court continued to hear victim impact statements that repeated sad stories of loss, violence and starvation, it appeared that eventually these stories had some effect on Nuon Chea, who unexpectedly issued a partial apology and admission of responsibility for the crimes of the Khmer Rouge, stating:

"I, of course, was one of the leaders, so I am not rejecting responsibility ... I share some responsibility. But I was not part of the executive branch."

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Later, Nuon Chea further stated "I am bearing the responsibility from my heart ... In my capacity as a member of Democratic Kampuchea, I accept my responsibility." He later stated somewhat unclearly "I feel remorseful for the crimes committed, intentionally or unintentionally, whether I had known about it or had not known about it."

Although Nuon Chea's statements did not amount to an acceptance of any legal responsibility for the crimes he is charged with, it marked the first time at the ECCC that he has accepted any responsibility for the general mistreatment of the population by the Khmer Rouge.

### **Introduction: What are Crimes against Humanity?**

Use of the term "crimes against humanity" to refer to an event amounting to an alleged international crime dates back to 1915, when the French, British and Russian Governments issued a declaration condemning the mass killing of Armenians in the Turkish Ottoman Empire, calling the killings "new crimes of Turkey against humanity and civilization" and declaring that "all members of the Ottoman Empire and those of their agents who are implicated in such massacres."<sup>1</sup> Although this declaration did not precede any prosecutions, it nonetheless sowed the seeds for crimes against humanity, which were prosecuted extensively by courts and tribunals following World War II.<sup>2</sup> Adolf Eichmann was also later found guilty of numerous crimes against humanity by the District Court of Israel<sup>3</sup> and crimes against humanity have been charged extensively at the tribunals for the former Yugoslavia, Rwanda, Sierra Leone and at the International Criminal Court, along with the ECCC.<sup>4</sup>

Crimes against humanity are a set of crimes, elevated to the level of international criminal law by forming part of a "widespread or systematic attack against a civilian

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<sup>1</sup> Original language available in the dispatch of the U.S. Ambassador in France (Sharp) to the Secretary of State [telegram] (28 May 1915), available in U.S. Department of State, Papers relating to the foreign relations of the United States, 1915. Supplement, The World War (1915) 981 (U.S. Government Printing Office) (1928), available at <http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?id=FRUS.FRUS1915Supp> (visited 6 May 2010); see also Cassese, *supra* note 84, at 101.

<sup>2</sup> See Charter for the International Military Tribunal for the Far East, art. 5(c). Control Council Law No 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, art. II(1)(a); see also Cassese, *supra* note 84, at 101-106; Mohamed Elewa Badar, From the Nuremberg Charter to the Rome Statute: Defining the Elements of Crimes Against Humanity, 5 San Diego Int'l L.J. 73, 80-83 (2004); Beth Van Schaack, The Definition of Crimes Against Humanity: Resolving the Incoherence, 37 Colum. J. Transnat'l L., 787, 795-807 (1999).

<sup>3</sup> CrimC (Jer) 40/61, Israel v. Eichmann, [1961], para 244, available at [http://www.ess.uwe.ac.uk/genocide/Eichmann\\_Index.htm](http://www.ess.uwe.ac.uk/genocide/Eichmann_Index.htm) (accessed 6 May 2010).

<sup>4</sup> Rome Statute, art. 7.

population." Widespread means that the attack takes place over a large area or an extended period of time. Systematic means that the attack is highly planned and organized. This requirement is a general element and for each prosecution of an individual crime against humanity, the prosecution must demonstrate that both the required attack occurred, and that the specific alleged individual crime fit within this attack. For example, within the context of the Democratic Kampuchea period in Cambodia, there are many actions taken by the Khmer Rouge that could be considered to form the required attack against the civilian population in Cambodia. Executions, general abuse, forced labour and many other official state policies that occurred throughout the countryside were both widespread and systematic because these policies were widespread throughout the country, took place over more than three years and were organized by the Communist Party of Kampuchea's Party Center in Phnom Penh. Therefore, crimes against humanity, out of the three main categories of international crimes also including genocide and war crimes, is a useful legal tool for accounting for many of the most important sources of suffering and death associated with the Khmer Rouge.

Also, arguably policies relating to living conditions, including lack of sufficient food, overwork and the threat of violent repercussions for seeking additional food could themselves be considered to form part of a widespread and systematic attack against civilians in Cambodia perpetrated by the Khmer Rouge regime under the authority of the Party Center. Specifically, the crimes against humanity of extermination, persecution and other inhumane acts can be implicated during periods of famine and each of these crimes will be explained in turn.

### **Extermination**

Extermination is a crime defined by the element of "mass" killing and includes "any act, omission, or combination thereof which contributes directly or indirectly to the killing of a large number of individuals" including "subjecting a number of people to conditions of living that would inevitably lead to death." Article 7 of the Statute of the International Criminal Court specifically states that extermination can be committed through the "deprivation of access to food and medicine." In the Khmer Rouge context, famine resulted in at the very least, several hundred thousand deaths and likely many more, which would satisfy any definition of the "mass death" requirement. These deaths were also caused by the specific policies of the Khmer Rouge government, laid down by the Party Center and discussed previously as part of this radio program. Through these policies of forced labour, forced communal living, rice expropriation, bans on private food cultivation, collection or consumption and the ever-present threat of violence, the civilian population was forcibly overworked and made wholly dependent on insufficient communal rations.

For an individual accused to be convicted of extermination as a crime against

humanity, such accused must have "intended, by his acts or omissions ... the subjection of a widespread number of people, or the systematic subjection of a number of people, to conditions of living that would lead to their deaths."

Arguably, available documentary evidence, survivor interviews and testimony at the ECCC so far demonstrates that the as famine progressed and worsened in Cambodia, the members of the Khmer Rouge Party Center became generally aware that civilians were starving by the thousands in the countryside. These individuals however, continued to enforce the policies that were causing this famine. As a result, if this fact that the members of the Party Center knew their policies were resulting in mass starvation, it is possible that such individuals could be successfully prosecuted for extermination as a crime against humanity predicated on killing civilians by enforcing famine conditions on them. Therefore, in many cases, including the Khmer Rouge situation, extermination is the single international crime that best reflects how victims are killed by famine, as it applies to situations where conditions of life result in mass death within an affected victim group without regard to whether individual deaths can be predicted.

### **Persecution**

Although famine affected the entire civilian population under the Khmer Rouge, it was especially acute amongst civilians who were perceived to be political enemies of the revolution. These people, including anyone who lived in areas controlled by the Lon Nol government when the Khmer Rouge seized power, intellectuals, city dwellers, the educated and former Lon Nol government officials, were referred to derogatorily as "new" or "17 April" people and subjected to especially harsh living conditions.

The crime against humanity of persecution is the intentional deprivation of a fundamental right protected under international law, carried out deliberately with the intention to discriminate on the grounds of race, religion or politics. As such, persecution could offer a useful crime to account specifically for the especially harsh famine conditions enforced on "new" people by the Khmer Rouge Party Center.

The Khmer Rouge Party Center ordered that "new" people be evacuated to wherever human labour was deemed necessary. These victims suffered from lack of food along the way and typically arrived at areas completely unprepared to house and feed them, for example during the mass deportation to the Northwest Zone. As such, "new" people were often left exposed to the elements without proper food or sanitation, fomenting the spread of famine and associated diseases. The Party Center also specifically demeaned "new" people as a source of enemies of the revolution and referred to them as "parasites" who could be discarded without cost. "New" people were also often used as scapegoats to excuse the failings of Khmer Rouge agricultural policies. When crops failed or rice quotas were not met, often "new"

people were arrested and induced to falsely “confess” to sabotaging crops under torture before being executed. As such, it is likely that the manifest dislike of “new” people, combined with their especially harsh living conditions would satisfy the requirements of persecution by depriving them of fundamental rights to health, dignity and bodily integrity.

### **“Other Inhumane Acts”**

The crime against humanity of other inhumane acts is a residual, catch-all provision used to capture mistreatment of civilians that fails to satisfy the elements of any other crime against humanity, yet rise to a comparable level of gravity. The International Law Commission and international criminal tribunals in the former Yugoslavia and Rwanda have all concluded that comparable gravity refers to acts that injure the victim in terms of his or her “physical or mental integrity, health or human dignity.”

The suffering victims of famine endure, including those who ultimately survive, severely compromises their physical and mental integrity as well as their overall health and human dignity. This is especially true of the Khmer Rouge famine, which lasted for over three years. During this famine, the entire civilian population slowly wasted away from lack of food while being overworked and subjected to routine acts of violence. Indeed, when asked about their experiences, survivors often highlight starvation as the most important issue they want to see addressed by a court. Furthermore, for the same reasons discussed above, if it could be proved that Party Center became aware that they were subjecting the civilian population to inhumane living conditions, including severe famine, yet chose to continue with such policies, these leaders could be found individually liable for the crime against humanity of other inhumane acts for enforcing terrible living conditions, including famine, on the entire civilian population.

This final crime against humanity is important as a tool that could be used to tell the whole story of famine suffering in Cambodia under the Khmer Rouge. This is because the crimes against humanity of extermination and persecution are concerned solely with mass death and the targeted mistreatment of particular groups of people, while inhumane acts include suffering that does not result in death and that can be inflicted indiscriminately against an entire civilian population. Therefore, inhumane acts could potentially be used to hold individual Khmer Rouge leaders responsible criminally for the full amount of physical and mental suffering caused by the famine they enforced through their policies, including the lasting effects of that famine that continue today in the form of unresolved mental trauma and long-term health problems faced by survivors of the Khmer Rouge period famine.

### **Conclusion**

In sum, it can be strongly argued that the policies of the Khmer Rouge Party Center actively enforced famine on the civilian population in Cambodia from 1975 to 1979 and amounted to crimes against humanity because they combined to form a widespread and systematic attack that victimized civilians. Specifically, the crimes against humanity of extermination, persecution and other inhumane acts form a combination of crimes that both could potentially be successfully prosecuted and would, as a group, reflect the most important harms associated with famine in Democratic Kampuchea.

It is important however, to note that it is very unlikely that the ECCC will ever address the issues of living conditions, famine and starvation in any detail and this program does not suggest that the Court will do so. As mentioned previously, the ECCC has split the Case concerning the two most senior former Khmer Rouge officials still alive and fit to stand trial-Nuon Chea and Khieu Samphan-into a series of trials because of the large number of crimes alleged and complex issues of proof. The topic most closely related to famine would be that of living conditions in cooperatives and at work sites, but this topic will not be addressed in the first Case 002 trial. Therefore, it is very likely that a full legal analysis of living conditions and famine issues under the Khmer Rouge will never take place, as these issues would not be addressed until later trials that may never occur.

As such, this episode is designed to present three crimes-extermination, persecution and other inhumane acts-and to describe what kinds of acts these crimes against humanity are designed to criminalize. Without a final court determination of whether these crimes were committed within the context of the Khmer Rouge period famine, it is up to individual opinion regarding whether certain members of the Khmer Rouge committed these crimes by enforcing famine conditions on the civilian population during the DK period. Listeners are therefore encouraged to think about this issue, make their own conclusions and discuss these opinions with other people whose opinions they value. Any listener who has questions about the evidence, Khmer Rouge history or the legal topics discussed in this or any episode of this radio program, is also encouraged to contact the Documentation Center with their inquiry.

This concludes episode 5 of the Documentation Center radio series on famine under the Khmer Rouge. The next episode will discuss the topic of war crimes and how these crimes can be applied to famine situations, including the Khmer Rouge famine in Cambodia.

*If you have any comment or question, please send your letter to Mr. Men Pechet, an organizer of DC-Cam's radio program, at house number 66, Preah Sihanouk Blvd, Phnom Penh, or send to P.O Box 1110, Phnom Penh, or call to 023-211-875 or fax to 023-210-358. Email: [truthmpechet@dccam.org](mailto:truthmpechet@dccam.org). Thank you.*

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