

DC-Cam Community Radio Program (Episode #9):
Famine in Democratic Kampuchea and Case 002 at the Khmer Rouge Tribunal
(formally known as Extraordinary Chambers in the Court of Cambodia: ECCC)

**Topic: Looking Forward Beyond International Criminal Law: the
Human Right to Adequate Food**

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This is the 9th 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 participation in the transitional justice process. The Documentation Center of Cambodia (DC-Cam) 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.

In earlier episodes issues related to famine, starvation and their treatment under international criminal law. This episode moves beyond the realm of international criminal law to explain how access to food and related issues are treated under international human rights law.

Introduction: What is International Human Rights Law?

The language of "human rights" is used in many different ways and in many different contexts. For example, when an event occurs that people believe is unjust or unfair, those affected and organizations such as NGOs often claim that the human rights of those affected have been violated. These types of injustices continue to happen regularly throughout the world everyday, including in Cambodia. Other times, the language of human rights is used to promote specific causes, groups of political movements. The many uses of the term "human rights" is reflective of the complex system of law that makes up international human rights law. Legally speaking, it is generally agreed that is the basic "dignity" of all human beings, to be ethically and

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fairly treated, along with their basic bodily integrity that human rights law is meant to protect. But determining what specific requirements must be in place to protect the dignity of all human beings is a complicated and difficult process. For some people, access to basic education is a major obstacle standing between them and a more dignified life. For others, it is receiving a sufficiently high wage to provide for themselves and their family. In some cases, people lack access to enough food to eat, which impairs their dignity and harms their physical health.

Due to the wide scope of international human rights law, this body of law is made up of many different sources and types of law. Human rights law can be found in international treaties and other documents such as the Universal Declaration of Human Rights. Human rights law can also be found in reports and statements published by the United Nations and other organizations.

The Human Right to Adequate Food

The human right to adequate food is mentioned in the United Nations' Universal Declaration of Human Rights of 1948, which states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food". This right is laid out in greater detail in the International Covenant on Economic, Social and Cultural Rights (ICESCR) a major human rights document of the United Nations.

The right to adequate food is also supported by language in other important legal instruments, including the International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of Discrimination Against Women (CEDAW), and Convention on the Rights of the Child (CRC), and has presumptively attained the status of customary international law.¹ The primary formulation of the human right to adequate food is contained in Article 11 of the ICESCR, which requires countries that are parties to the document to "recognize the right of everyone to an adequate standard of living for himself and his family, including ... adequate food ... [and] the fundamental right of everyone to be free from hunger". Thus, the right to adequate food is actually made up of two distinct rights: the right to generally have access to adequate food in the form of basic food security and also the "fundamental" right to be free from hunger.

According to human rights legal principles, countries wishing to satisfy their obligations under the ICESCR have an immediate duty to ensure that the "fundamental" right of freedom from hunger is immediately realized for its citizens, while also taking action to achieve the long-term objective of overall food security both domestically for its own citizens and to contribute to international efforts to

¹ For a detailed discussion of the right to food, including its sources and broad scope, see Laura Niada, *Hunger and International Law: The Far-Reaching Scope of the Right to Food*, 22 CONN. J. INT'L L. 131 (2006); see also Randle C. DeFalco, *The Right to Food in Gaza: Israel's Obligations Under International Law*, 35 RUTGERS L. REC. 12 (2009).

end food shortages globally. The fundamental right to be free from hunger cannot legally be ignored, "even in times of natural or other disasters."²

Guaranteeing the immediate fundamental right to be free from hunger involves more than merely providing the population with the minimum amount of food necessary to survive. Instead, the UN Special Rapporteur on the right to adequate food has stated that the fulfillment of the right:

is about being guaranteed the right to feed oneself, which requires not only that food be available (that the ratio of production to the population be sufficient), but also that it be accessible – that each household either have the means to produce its own food or have sufficient purchasing power to buy the food it needs.³

The UN Committee on Social and Cultural Rights has also stated that the "core content of the right to adequate food implies" that food be made available in a quantity and quality sufficient to satisfy the dietary needs of individuals; that the food be "acceptable within a given culture" and that ensuring access to sufficient food does not interfere with other human rights.⁴

The human right to adequate food therefore, basically requires that governments take immediate steps to ensure that its citizens all have access enough food to satisfy their basic food needs, while gradually taking steps to improve food availability both domestically and internationally.

Like other human rights requirements, the primary obligations placed on countries by the human right to adequate food are domestic. A country violates the requirements of the right to adequate food under the ICESCR if it "fails to ensure the satisfaction of, at the very least, the minimum level required to be free from hunger."⁵ Furthermore, if a country argues "that resource constraints make it impossible to provide access to food for those who are unable by themselves to secure such access, the State has to demonstrate that every effort has been made to use all the resources at its disposal ... [to meet] those minimum obligations."⁶

The Right to Adequate Food in Cambodia and the Khmer Rouge Legacy

When the broad requirements of the human right to adequate food are considered within the context of the Khmer Rouge period famine in Cambodia, it is clear that the Khmer Rouge government completely failed its obligations to ensure the basic right

² See U.N. Econ. and Soc. Council, *General Comment 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic Social and Cultural Rights*, ¶ 6, U.N. Doc. E/C.12/1999/5 (May 12, 1999).

³ *Report of the Special Rapporteur on the right to food*, ¶ 9, delivered to the General Assembly, U.N. Doc. A/63/278 (Oct. 21, 2008).

⁴ *General Comment 12*, ¶ 8.

⁵ *General Comment 12*, ¶ 17.

⁶ *General Comment 12*, ¶ 17.

of its own civilian population to be free from hunger. Although Cambodia did not become a member of the ICESCR until 1992, the basic rights to a minimum standard of living for everyone recognized in the Universal Declaration of Human Rights was clearly flagrantly violated from 1975-1979 by the Khmer Rouge government in many ways, including the creation of widespread famine conditions.

If the Khmer Rouge government had been a member of the ICESCR, which was drafted in 1966, it would have also violated its human rights obligations under that document as well. First, the regime could not argue that the poor food situation it inherited from the Lon Nol regime after the civil war was an excuse for not ensuring that the minimum food needs of the population were met, as even natural disasters do not excuse a country's failure to ensure that the basic food needs of its population are met. Second, the right to adequate food requires that if a country wants to argue that it does not have enough resources to ensure that every citizen is provided enough food, the country's government must demonstrate that it has used all resources at its disposal to try and feed the population. The Khmer Rouge government, despite suffering from a chronic shortage of resources, could not argue that it had used all the resources at its disposal to feed the population, as the government exported rice throughout its time in power, even as famine spread and mass starvation events began to take place throughout the countryside.

Thus, the Khmer Rouge government clearly failed to meet even its most basic human rights obligations, including its obligation to ensure that the population had access to the minimum resources needed for survival. As argued in previous episodes of this radio program, especially severe violations of the food rights of Cambodian civilians during the Khmer Rouge period appear to have gone beyond human rights violations and amounted to crimes against humanity. Finally, the legacy of the Khmer Rouge period and its famine can still be witnessed in modern Cambodia. Many Cambodians still chronically lack access to sufficient food to keep them and their families healthy. As a result, the right to adequate food remains largely not achieved in Cambodia, despite the fact that the country signed onto the ICESCR over twenty years ago, in 1992. While some steps have been taken, many Cambodians remain chronically food insecure. This lack of security in ensuring that the entire population has access to one of the basic requirements of life – sufficient food – demonstrates that far-reaching legacy of the Khmer Rouge period and the ongoing challenges that modern Cambodia faces. Through constant effort, gradual reform and the pursuit of transitional justice for past traumas, Cambodia can continue to move towards a more stable and food-secure future, where everyone in the country has enough to eat.

Voeng Phen⁷

⁷ Interview with Mr. Voeng Phen by Kim Leng and Mao Chandaly in August 2013 during the Radio's student trip to Kep Province; Translated by Lorn Dalin; edited by Tan Sock Keng

Summary by Men Pechet

I am Voeng Phen, 54 years old. During the Khmer Rouge period, I lived in Kampong Tralach commune. I was not evacuated to somewhere else like the others, just only separated from my parents. I have 7 family members. In 1974, I was 16 years old and I was assigned to work in the mobile unit at Koh Sla. My job was to carry soil, build dam, and work in the rice fields. My working hours were from 6am to 11am and from 1pm to 5pm. Living conditions were horrible. I got only one big spoon of porridge. Food was never enough, and it led to disease. Some people died but others could survive.

Daly : Had you ever witnessed any torture while you were working?

Phen : Some people had accidents while they were working. Some died when the soil fell over. Some people collapsed because of exhaustion while they were carrying soil, and some others died because they were not sent to hospital on time. Disappearances happened every day, but no one dared to ask. We just worked. I was afraid if I did not work hard, my life was not in secure.

Daly : Do you know why they were disappearing?

Phen : I know a little, but I did not dare to speak during that time. They may have had arguments with cadres, lazy, or could not reach the goals. And some of them may have had relative who were Lon Nol's soldiers. Those who survived hid their background during that time.

Leng : What did Angkar do with those who died?

Phen : They were buried, and their parents would get only the news. There was no religious ceremony. When I grew up, I was selected to be a soldier. Then I had not much time to meet my parents at all. I worked as a Khmer Rouge soldier for about three years, then Vietnamese soldiers came. At that time I had a position as a corporal sergeant. Life as a soldier was not easy. Soldiers could die at any time in the battlefield. At that time I was a soldier at Koh Chonloh. Soldiers had no enough time to relax. Soldiers had to be careful all the time; otherwise the other side would kill us at any time. During the time I was a soldier, I visited home only once.

Leng : What would happen if Khmer Rouge knew that you visited home without permission?

Phen : I took turns with other soldiers to visit home, but I did not dare to stay home at night. However, if I was very busy with work, I would not go home at all. I do not know much about the executions in the village at all.

Daly : Did Khmer Rouge train young people to be soldiers?

Phen : Yes.

Daly : How did they train them?

Phen : They were assigned to be in the child unit. Those children were fed by Angkar and had a unit chief to lead and teach them to work. Those children would be selected to be soldiers when they grew up.

Leng : Were you married during the Khmer Rouge period?

Phen : Not yet.
Leng : Do you know about marriage during Khmer Rouge period?
Phen : Yes. Marriage during the Khmer Rouge period was different from today. Let me raise an example from when I worked in a mobile unit in Koh Sla. Weddings were not only for one couple or pair; there were at least 20 pairs in one time. Men and women stood in rows. Some may know each other while others did not. Some were very shy and did not even look up to face their partners. Couples had no house after marriage. After marriage they were allowed to relax for one week. Then they had to work as usual.
Daly : Where did you go when the Vietnamese soldiers came?
Phen : I escaped from the border to the forest in Pech Nil. I stayed there for 6 months. I just followed other soldiers. The Khmer Rouge told us not to return home otherwise Vietnamese soldiers would kill us. Some soldiers were dead during the time we escaped.
Leng : Did you meet your family members when you returned home?
Phen : Soon after my return I did not meet all my family members since they had been assigned to work in different places. I met only my parents.
Leng : Are all your siblings still alive?
Phen : Yes. They all are still alive.

This concludes episode 9 of the Documentation Center radio series on famine under the Khmer Rouge. The next and last program in this radio series will provide a summary of some of the issues related to justice and the Khmer Rouge famine explored throughout this radio series and provide some topics for further discussion on this still-unresolved topic.

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. Thank you.

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