



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

DC-Cam Community Radio Program (Episode #6):
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 War Crimes

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This is the 6th 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.

This episode focuses on the topic of war crimes and their applicability to famine, both in Cambodia and generally. This episode will explain the basic concept of what war crimes are, mention some specific war crimes that could be relevant to certain famine situations and discuss whether these crimes could be implicated within the specific context of the Cambodian famine under the Khmer Rouge.

Introduction: What are War Crimes?

"War crimes" are especially serious violations of the law of warfare, which is officially named "international humanitarian law" and is a set of rules designed to minimize the damage periods of war cause to both people not involved in the fighting and civilian property. Only the most serious violations of humanitarian law constitute war crimes. Humanitarian law itself is a relatively old part of international law and some modern war crimes can be traced back to rules of war laid out in international treaties from the early 1900s or even earlier.

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Like crimes against humanity, war crimes were first prosecuted on a large scale following the end of World War II. Many of the main war crimes still applicable today are based on rules set out in four international humanitarian law documents called the "Geneva Conventions of 1949," and two additional "protocols" to these Conventions from 1977. Certain serious violations of the Geneva Conventions, called "grave breaches" are war crimes. War crimes can also be created as part of general customary public international law or through the development of further conventions or treaties.

Therefore, on a basic level war crimes are acts, committed during an armed conflict, that violate the most basic rules concerning the treatment of people not involved in the fighting, such as civilians, the wounded and prisoners of war. Categories of people whom war crimes can be committed against are referred to as "protected persons."

When are War Crimes Applicable?

War crimes can only be committed during periods of armed conflict. Also, some war crimes can only be committed during international conflicts, meaning that these crimes are not available during periods of fighting, such as civil wars, where only fighters from one country are involved. Furthermore, any war crimes charged must be related to the actual armed conflict. This second requirement is often called the need for war crimes to share a "nexus" with the armed conflict and means that criminal acts committed during an armed conflict that are unrelated to the conflict do not qualify as war crimes. For example if a person commits the murder of a civilian for purely personal reasons unrelated to the fighting, this is not made a war crime simply because the ordinary murder took place during a period of armed conflict.

As mentioned above, war crimes can also only be committed against so-called "protected persons" consisting of groups of people not involved in the fighting, including: civilians, health and aid workers, wounded soldiers who can no longer fight and prisoners of war. Because most of the law related to war crimes was written at a time when most wars were fought between countries and the main abuses of civilians during wars were committed by foreign forces, some war crimes drawn from the Geneva Conventions can only be committed against civilians who are under the power of a foreign occupying power. This is because war crimes were not designed to protect civilians from being harmed by their own government during wartime, but instead were intended to regulate how invading armies had to treat civilians in newly conquered territories.

War Crimes at the ECCC and Famine

Under modern war crimes law, it is a crime to "intentionally use starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival,

including wilfully impeding relief supplies as provided for under the Geneva Conventions” during a period of international armed conflict. This crime is drawn from one of the 1977 Protocols to the Geneva Conventions and is available at the International Criminal Court (ICC). This crime addresses the problem of powerful militaries cutting off food supplies to the civilian population of an enemy during an armed conflict or acts to prevent international relief efforts. This crime however, still is inapplicable to address acts by a home government that cause starvation of their own civilians, as the crime does not contemplate that a military would intentionally starve its own home civilian population as part of a war effort.

As it is a violation of fair trial standards for an accused to be convicted of a crime that did not exist when the actual acts took place, the ECCC Law provides the Court with jurisdiction over only a limited number of war crimes, all of which are known as grave breaches of the Geneva Conventions. Although the crime of intentionally using starvation as a method of warfare is not available at the ECCC, some basic war that are included in the Court’s jurisdiction could be relevant to certain famine and starvation scenarios. Of these crimes, at first glance several appear to be potentially relevant to the Khmer Rouge period famine at first glance, including the crimes of:

- wilful killing;
- torture or inhumane treatment;
- wilfully causing great suffering or serious injury to body or health;
- and
- unlawful deportation or transfer or unlawful confinement of a civilian.

In a general sense, wilful killing can be implicated if starvation conditions are intentionally enforced on a civilian or other protected population, with the intent to cause their deaths.

Similarly, torture or inhumane treatment could be implicated if civilians or other protected persons are intentionally mistreated by withholding food from them, for example to torture prisoners of war by locking them up and not feeding them.

Wilfully causing great suffering or serious injury is less clear in its meaning, but could be applicable to situations where food supplies to a protected population are intentionally reduced or famine conditions are otherwise intentionally enforced on the population with the intent to cause suffering.

Furthermore, famines are often caused or worsened by acts of armed groups which serve to prevent the affected population from moving freely in order to relocate to areas with more abundant food or to travel to locations where humanitarian food aid is being distributed, such as refugee sites.

None of these crimes however, appear suitable to account for the Khmer Rouge period famine in Cambodia, both for some general rules concerning war crimes applicability mentioned above and issues specific to each of the four listed crimes.

As a general matter, the main victims of the Khmer Rouge famine were Cambodian civilians, who were not protected persons under the rules of the Geneva Conventions and also, the famine was mostly unrelated to the armed conflict with Vietnam at the time.

First, the Khmer Rouge was not a foreign occupying power in Cambodia while it held power, but was actually the official government of the country, meaning that Cambodian victims of famine were not members of protected population.

Second, throughout the Khmer Rouge period, there was tension and intermittent fighting along the Vietnamese border with Cambodia and the ECCC has ruled that this fighting qualified as an international armed conflict for the purposes of war crimes applicability. As such, generally, grave breach war crimes can be prosecuted at the ECCC, but does not relieve the prosecution of the burden of showing how each charged war crime has a nexus (or is related) to the armed conflict with Vietnam. It does not appear that the Khmer Rouge period famine was very much related to this conflict, as famine conditions were caused by the Khmer Rouge government itself in its domestic policy and it the fighting was not a major cause which contributed to lessen crop yields. In fact, some of the worst areas for famine conditions at the time were in Cambodia's Northwest Zone and other locations very far away from the border conflict with Vietnam, showing that it was not the conflict that was causing food shortages for civilians.

Conclusion

Famines have routinely accompanied periods of armed conflict and war throughout human history. Over the past century, humanitarian law has evolved to include various requirements designed to minimize the suffering of non-combatants during war, including by criminalizing the use of starvation of civilians as a method of warfare. As such, for many modern famines, such as those in the Darfur region of the Sudan or possibly Somalia, war crimes present a promising entry point for addressing famine through international criminal law. Only the most serious violations of humanitarian law however, rise to the level of war crimes and these crimes are primarily designed to prevent collateral damage to "enemy" civilian populations, limiting the coverage of war crimes over common modern famine scenarios. Despite these limitations, war crimes do continue to have relevance to very specific famine scenarios, particularly those involving sieges, expropriation of civilian foodstuffs by military forces, the destruction of civilian food production capacities or severe violations of civilian food rights in occupied territory. These war crime scenarios do not reflect the reality of the Khmer Rouge period famine, which was largely unrelated

to the regime's conflict with Vietnam and as discussed in previous episodes, was primarily the result of domestic Khmer Rouge policy. Moreover, as discussed in episode 5 of this series, it is crimes against humanity that are more appropriately used to respond to circumstances where a government abuses its own citizens. Therefore, while war crimes may be very relevant to famine conditions resulting directly from armed conflict, these crimes do not appear to be a suitable point of entry in any pursuit of justice of the Khmer Rouge famine in Cambodia.

Survivor Story:

My Family's Life in Khmer Rouge Regime

By Nhil Sal

I am Nhil Sal and I was born on October 15, 1976 in Roka village, Roka commune, Pea Raing district, Prey Veng province. My father's name is Hel Nhil, and he lives in Pea Raing district, Prey Veng province currently. My mother's name is Sokh Pleanh, and she died in 1993 because of sickness. I have 7 siblings, 5 of whom are male.

In 1975, my parents were sellers at Snay Pol market located in Snay Pol village, Prey Veng province. They had to keep moving all the time due to the bombardment from the American army to destroy the camp of the anti-Lon Nol government movement. On April 17, 1975, when Khmer Rouge soldiers took control of Phnom Penh, my family was not moved from my village. Only in 1976, my family and other families in the village were evacuated to Roka village which was 3 kilometers away from Snay Pol village.

Upon arrival, new people evacuated from Phnom Penh were given two model houses for resting. My family was then separated by Angkar to work and live in a distance from each other. My father was sent to work in the paddy field about 20 meters from his residence. He had to work from dawn to dusk without complaining. Though he worked relentlessly, he received little food rations. He secretly caught crabs and tadpoles to eat for his survival. Unfortunately, he was caught once by the Khmer Rouge security unit, and was sent to be educated for four days and three nights. After he was released, he dared not steal Angkar's possessions anymore even if he was hungry.

After she was evacuated to Roka village, my mother was assigned to be the chief of the eating hall in Cooperative 4 which was her new living place. She worked from dawn to dusk like my father as well. Nevertheless, she did not suffer much since her uncle was the chief of the village. Moreover, she had enough food rations to eat.

My older brother and sister were assigned to work in the mobile work unit and were asked to build the river dyke in Prek Champa village, Mesa Prachan commune, Peareang district, Prey Veng province. There, they were asked to do manual work such as carrying heavy objects and tilling land from dawn to dusk until they got sick. In return, they were given insufficient food. Thus, they discreetly dug potatoes to eat and hid some of them in their scarves to bring them home. One day they were caught by the Khmer Rouge, and the soldiers beat them heavily. They then sent them to a detention center for 5 days for reeducation. They were cruelly tortured and starved in there. Because it was their first

mistake, the Khmer Rouge decided to free them. However, they were assigned much heavier work to do as a warning to other people. My sister was dead on her feet because of the heavy work. My mother was so concerned about her daughter and went to seek approval to take care of her daughter until she recovered.

After liberation day on January 07, 1979, my family including my parents, brother, sister, and aunt returned to Snay Pol village, Roka commune, Peareang district, Prey Veng province.

Though none of my family died during the regime, I have to admit that it was a gruesome and inhuman era that took away million people's lives. As a history educator, I will put all my efforts into transferring this piece of Democratic Kampuchean history to all students as a means of reconciliation and development of the country. This will help our country to develop to the same level as other countries and prevent such a regime from reoccurring.

This concludes episode 6 of the Documentation Center radio series on famine under the Khmer Rouge. The next episode will discuss the topic of the Khmer Rouge period in a historical context by comparing it to other famines of the twentieth century.

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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