

THE KHMER KROM AND THE KHMER ROUGE TRIALS

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For centuries, ethnic Cambodians known as *Khmer Krom* (literally “the lower Khmers”) have inhabited the fertile lowlands around the Mekong River delta. They once occupied the southeastern lobe of a sprawling Khmer empire, and they retain deep linguistic and cultural links to Cambodia. However, after centuries of Vietnamese expansion and colonial rule, the Khmer Krom entered modern times living at the southern tail of the serpentine state of Vietnam. When tensions have flared between Cambodia and Vietnam, the Khmer Krom have often been caught in the middle. At times, their hybrid identity has enabled them to play the two national governments off against one another for profit, but in other cases perceptions of “dual allegiances” made the Khmer Krom targets for abuse. Never was their position more precarious than during the period of Democratic Kampuchea (DK). In this article, I briefly review the predicament of the lowland Khmers under Khmer Rouge rule and ask a legal question relevant to the proceedings at the Extraordinary Chambers in the Courts of Cambodia (ECCC): should Khmer Rouge atrocities against Khmer Krom be treated any differently than abuses against other segments of the population?

Historical Background

The Khmer Krom have a complicated history. Until the 14th century, the delta region was predominantly Khmer, but Vietnamese influence in the area rose over time. By the late 19th century, when French authorities included the Mekong delta region in the colony of Cochinchina, a Vietnamese majority and large settlements of ethnic Chinese traders joined the lowland Khmer population in an ethnic *mélange*. Although roughly one million ethnic Khmers lived in the area, they had become a relatively small minority by the era of South Vietnamese independence in the early 1950s. Nonetheless, Cambodians on both sides of the French-drawn boundary continued to refer to the delta as *Kampuchea Krom* (“lower Cambodia”), implicitly or explicitly expressing a sense of historical entitlement to the land.

During the Vietnam War, the U.S. government capitalized on that sense of injustice, training significant numbers of Khmer Krom to raise arms against the Viet Cong. Those lowland Khmer soldiers became known as “White Scarves” and later established the Struggle Front of the Khmer of Kampuchea Krom (KKK), an organization bent on the recapture of the delta for ethnic Cambodians. During the same period, Son Ngoc Thanh—who was himself Khmer Krom—attempted to revive the conservative *Khmer Serei* (“Free Khmer”) movement, oust Prince Sihanouk, and repel Cambodian communist advances. The Khmer Serei drew many of its guerilla soldiers from the lowland Khmer population. After Marshal Lon Nol

seized power in the coup of March 1970, Son Ngoc Thanh became a cabinet minister and enlisted Khmer Serei soldiers in the country's civil war. The Khmer Serei drew many of its guerilla soldiers from the lowland Khmer population.

Not all Khmer Krom aligned with the United States and local right-wing groups. In fact, two of the leaders of the Khmer Rouge movement—Ieng Sary and Son Sen—were lowland Khmers. Nevertheless, the prominent role that groups like the KKK and Khmer Serei played in both countries put the Khmer Krom in a precarious position after the Khmer Rouge and Vietnamese communist victories in spring 1975.

Khmer Krom in Democratic Kampuchea

Both Khmer Rouge and Vietnamese leaders viewed the Khmer Krom community with distrust, perceiving (correctly) that elements of the lowland Khmer community were engaged in resistance against their new regimes. Vietnamese troops continued to spar with KKK guerillas and saw the Khmer Krom population as a potential source of broader separatist movements that could challenge the Vietnamese concept of nationalism. Across the border, zealous Khmer Rouge revolutionaries had fresh memories of a war in which Khmer Serei troops had fought against them. They also saw the Khmer Krom as culturally impure and believed their twin cultural and political identities could complicate the business of constructing a new Cambodian state. Leaders in both countries feared that the lowland Khmers could serve as a channel for subversion by the dreaded American “imperialists,” whose deep footprints in Indochina had only begun to fade.

To make matters worse, many Khmer Krom became caught in the middle of rapidly deteriorating Viet-Kampuchean relations. Despite years of espoused “fraternity” during the Vietnam War, there was little love lost between new leaders in Phnom Penh and Hanoi. Almost immediately after the fall of Saigon, conflict erupted along their shared frontier. Spats over disputed islands in the Gulf of Thailand soon gave way to a simmering border conflict on the mainland. The border conflict became intimately entwined with questions of ethnic and national identity. Kampuchea Krom featured centrally in Khmer Rouge thinking. It represented a “lost province” and reminder of the historical humiliation that Cambodians had suffered during centuries of Siamese and Vietnamese expansion and subsequent imperial rule. As noted above, it was also a major source of perceived threat to the paranoid Pol Pot regime. Given their ability to blend into Cambodian society, Khmer Krom were potentially ideal agents for Vietnamese interference.

Targeting the Lowland Khmers

Few scholars have focused on the predicament of the Khmer Krom population during the DK era. The principal exception is Ben Kiernan, who conducted extensive interview research in and around Cambodia shortly after the fall of the Pol Pot regime. Kiernan has examined in great detail how the regime victimized various minority groups and elements of the ethnic Khmer majority population who were suspected of disloyalty to the revolution. His findings make it

clear—from a historical if not legal standpoint—that Khmer Krom were sometimes singled out for particular abuse.

As one lurid example, Kiernan has described a series of events in the spring of 1976, when the Vietnamese army drove 68 members of the KKK fighters across the border into Cambodia. The Khmer Krom guerillas reached out to local Khmer Rouge officials, asked to meet with DK president Khieu Samphan, and voiced their desire to ally with DK forces against Vietnam. Their request was denied. Instead, their leader was taken to Tuol Sleng for torture and execution. The other 67 were driven off to face a firing squad. Despite obvious ethnic affinity, DK forces perceived Khmer Krom as a political risk, because they were identified with “annexationist” Vietnam and the dreaded American imperialists. Kiernan’s field research suggests that the KKK soldiers were identified as possible American spies or traitors for the most superficial of reasons, such as their long hair or habit of drinking milk (an “imperialist” beverage.)i[1] That episode does not appear to have been unique. Kiernan also draws attention to killings of Khmer Krom in two southwestern districts—Prey Krabas and Bati—in 1975-76.ii[2]

The plight of the Khmer Krom only worsened over time. By 1977, a significant number of Cambodians in the DK “eastern zone” had defected across the border to join the resistance to the Pol Pot regime. Paranoia in Phnom Penh reached a crescendo, and the hunt for Vietnamese agents in Cambodia correspondingly peaked. Khmer Krom living in Cambodia were among the prime suspects. The convictions of the DK inner circle only grew after a few dozen Khmer Krom prisoners at the infamous Tuol Sleng Prison confessed—truthfully or simply to stop the torture—to spying for Vietnam. Similar abuses took place in the Kraing Ta Chan prison in Takeo, not far from the Vietnamese border. Documents from that prison—the only provincial prison to leave behind a large trove of paperwork—reveal that Khmer Krom were frequent suspects of espionage and other “counter-revolutionary” activities.iii[3] The documents suggest that most prisoners at the Kraing Ta Chan facility were Khmer Krom.

In 1977, other gruesome abuses against Khmer Krom took place in the Bakan district of Pursat province, shortly after the provincial chief was accused of treason by the central leadership in Phnom Penh. Through interview research, Kim Keokanitha has found that in Rumlech district, Khmer Rouge officials compiled personal histories of people working in the area cooperatives, identified Khmer Krom, and physically separated them from the rest of the community for observation. She shows that officials acting in the name of *Angkar* (the “Organization,” a term usually reserved for senior DK leadership) first sent Khmer Krom villagers to nearby Khnar Toteung sub-district. She then documents the disappearance and execution of lowland Khmers, noting that members of the ethnic Cambodian majority were spared that atrocity. Her interviews with numerous survivors suggest that Khmer Krom were targeted for execution due to their perceived links to Vietnam.iv[4] Kiernan’s research suggests that roughly 500 to 700 Khmer Krom were killed and dumped into mass graves.v[5]

The Ironies of Khmer Rouge Policy

These and other attacks ironically took place during an alleged DK campaign to liberate Kampuchea Krom. In an infamous May 1978 radio address, Pol Pot attempted to rally the army and the population, painting the struggle with Vietnam as one of national and racial survival. He exhorted each Khmer Rouge soldier to “kill 30 Vietnamese” in view of Cambodia’s smaller numbers and urged the general population to resist Vietnam on all fronts “in defense of Cambodian territory and the Cambodian race.” vi[6] He also accused Vietnam of a plan to “swallow” Cambodia, first by capturing “Prey Nokor” (the Khmer name for Saigon) and then by attacking Phnom Penh. Pol Pot thus suggested that the Khmer Krom were part of a unified Cambodian “race” that needed to be liberated from venal Vietnamese rule. By 1977, DK forces were indeed funneling arms to Khmer Krom rebels in southern Vietnam to foment resistance against the central government in Hanoi.

The planned recapture of Kampuchea Krom became something of an article of faith in DK policy. For example, a set of ten key regulations at Tuol Sleng Prison included the following: “Do not make pretexts about Kampuchea Krom to hide your jaw of traitor.” vii[7] This awkward phrase suggests that at least some prisoners voiced support for the “liberation” of Kampuchea Krom to establish their bona fides with DK interrogators.

At the same time, as noted above, the Khmer Rouge inner circle oversaw a domestic political machine that was sending significant numbers of lowland Khmer suspects to prison or the grave. Kim points to evidence of a “political education meeting” in late 1977 or early 1978, in which Pol Pot himself hosted a group of Khmer Krom in the Olympic Stadium in Phnom Penh, telling them that he would “keep” only those who agreed to follow *Angkar*. viii[8] Drawing from interviews, Kiernan argues that by 1978, there existed a general nationwide DK policy of “screening” the ethnic Vietnamese and Khmer Krom populations and killing them. Kiernan also interviewed a number of lowland Khmers who were kidnapped by DK forces from Vietnamese soil and brought into Cambodia to perform brute labor. One interviewee noted that he and others denied their knowledge of Vietnamese, because to acknowledge they could speak the language would have meant almost certain death. ix[9]

Adjudicating Crimes against the Khmer Krom

It is beyond dispute that many members of the Khmer Krom community suffered grave abuses in Democratic Kampuchea. With the trials of at least five former Khmer Rouge leaders approaching, prosecutors and judges face an important legal question: should the abuses against the Khmer Krom be treated differently than offenses against other victims?

The Relevant Legal Provisions

International law has long included provisions designed to protect vulnerable minority groups. The 1948 Genocide Convention, drafted in the wake of the Nazi Holocaust, outlawed the intentional destruction of racial, religious, national, and ethnic groups. The offense of “crimes against humanity” also evolved to protect certain groups that had suffered frequent abuse throughout history. As developed

at the International Criminal Tribunal at Nuremberg, it prohibited widespread or systematic attacks against civilian populations on racial, religious, national, ethnic, or political grounds.

Countless critics have argued that these definitions are too narrow, because they exclude certain types of victims from protection, and indeed the law has begun to change. Most notably, the 1998 Rome Statute broadened the definition of crimes against humanity to include attacks against any non-military civilian populations. However, the law governing the ECCC uses the traditional definitions, and there is a compelling legal reason for doing so. The Khmer Rouge regime committed its misdeeds in the late 1970s, and basic principles of justice require that a person can only be convicted for a crime that existed when he or she committed the acts in question. Most international jurists and scholars agree that as of the late 1970s, a defendant could be convicted of genocide or crimes against humanity only if he or she committed certain abuses against one or more specific protected groups.

To date, five former Khmer Rouge leaders—namely Nuon Chea, Khieu Samphan, Ieng Sary, Ieng Thirith, and Duch—have been arrested and charged with crimes against humanity. None has yet been charged with genocide against the Khmer Krom. However, if such charges are brought, the question of how to characterize abuses against the lowland Khmers will become considerably more salient, because the ECCC provision against genocide does not protect political groups. Did the defendant(s) simply view the Khmer Krom as a group that had to be watched carefully for political reasons—like intellectuals or former city dwellers—or did the defendant(s) see the lowland Khmers as an ethnic group or part of a Vietnamese national group that had to be destroyed? The former may produce a conviction for crimes against humanity, but only the latter will lead to a guilty verdict for genocide.

Classifying the Khmer Krom

The law governing the ECCC offers no definition of racial, religious, ethnic, national, or political groups, but if past international practice is any guide, the court will almost certainly be willing to recognize some Khmer Krom individuals members of larger racial, religious, national, or political groups. For example, Khmer Krom attacked because of past affiliation with the conservative Lon Nol regime could constitute part of a protected political group. Similarly, Khmer Krom attacked for being Buddhist monks could comprise part of a protected religious group.

Collectively, the Khmer Krom arguably belong to one of two national groups. First, those who were Vietnamese citizens could be considered part of a Vietnamese national group. To include Khmer Krom in a protected Vietnamese national group, judges would need to conclude, on the basis of some evidence, that Khmer Rouge defendants perceived them as Vietnamese nationals and abused them on that basis. Khmer Krom who were Cambodian citizens are less likely to be considered part of a protected national group. Some scholars have argued that DK policies amounted to a form of “self-genocide” in which the Khmer Rouge sought to destroy the Cambodian national group “in part.” It is conceivable but unlikely that ECCC

prosecutors would bring a case arguing that Khmer Rouge leaders targeted Cambodian citizens for genocide or crimes against humanity on the grounds of nationality.

Ascertaining whether the Khmer Krom constituted a distinct ethnic group is a thornier question. Under international criminal law, an “ethnic group” usually refers to a minority population with distinct cultural or historical characteristics, such as a distinct language, religion or shared history. Detectable differences in between Khmer Krom and other Cambodians do exist—such as different linguistic accents and different habits of custom and dress. Objective cultural and historical differences between the Khmer Krom and the Khmer majority are relevant, because they are the basis upon which DK officials could distinguish between the two, but they are probably not enough to establish protected group status. The prosecutors would also need to show evidence that DK defendants perceived the lowland Khmers as a distinct ethnic group and treated them as such. That task could be more difficult.

Why Were the Khmer Krom Singled Out?

Of course, establishing that the Khmer Krom were a protected group does not mean that they were necessarily victims of genocide or crimes against humanity. To be held guilty of genocide, a defendant must have attempted to destroy a protected group in whole or in part. To be convicted of crimes against humanity, he or she must be guilty of “widespread and systematic” abuses against a protected group across a reasonably wide geographic area on the grounds of that protected group’s identity.

Historical evidence suggests strongly that the DK regime at least sometimes singled out Khmer Krom for criminal abuse on the basis of their perceived links to Vietnam. It is also easy to show that Khmer Rouge leaders frequently identified the Vietnamese as mortal adversaries, especially in the latter phases of their rule. As Kiernan, Alexander Hinton, and other scholars have emphasized, DK correspondence documents, radio addresses, and publications are replete with references to the dreaded *yuon* (a slanderous term for Vietnamese) and often disparaged domestic opponents as “Khmer bodies with Vietnamese minds.”

The much tougher legal (and historical) question is to determine precisely why the Khmer Krom were targeted. Was it primarily on the basis of their imputed politics, their identity as ethnic minorities, or their nationality as citizens of Vietnam? In some cases, when they were accused of being employed spies of the Vietnamese state, it may be fair for the ECCC to treat them as part of a protected Vietnamese national group. However, in many other instances, it appears that DK officials mistreated Khmer Krom due to a perception that lowland Khmers were likely to be politically sympathetic to Vietnam, the Lon Nol regime, or the United States. In those cases, the Khmer Krom look less like victims of targeted genocide than a subset of Cambodian victims of ideologically and politically inspired crimes against humanity.

Why the Khmer Krom Case Matters

One might ask why it is important to focus on abuses against the Khmer Krom, given that so many other groups also suffered unspeakable abuses at the hands of the Pol Pot regime. The Khmer Krom case is worth examining for at least two reasons:

Understanding the Tragedy

First, the ECCC's role is partly to deliver justice and provide a definitive legal judgment but also to help Cambodians improve their understanding of the regime. What may sound like hair-splitting legal questions about Khmer Rouge intent are in fact fundamental to fathoming the Khmer Rouge tragedy. For years, scholars have engaged in furious debates over the driving impetus for Khmer Rouge atrocities. To what extent did racial or ethnic prejudices drive Khmer Rouge policies? To what extent were communist ideology or power politics responsible?

The debate about the motives for Khmer Rouge killing has immense historical importance. If one focuses on the genocidal or racist motives of Khmer Rouge abuses, one implicitly associates the Pol Pot regime with fascism and regimes on the far right of the political spectrum. If one stresses the ideological rationale for the killings, one shines light instead on the Maoist and Stalinist strands of Khmer Rouge policy. Most scholars have tilted toward the latter interpretation, and indeed much evidence supports placing priority on the political motives for DK terror. Khmer Rouge purges were often justified in richly communist terms. Officials frequently depicted them as efforts to defend "the revolution" against a wide range of "enemies" and "reactionary elements" working in tandem with foreign foes and "imperialists." In the vast majority of cases, detainees at prisons like Tuol Sleng were accused of crimes like espionage and subversion that implied political motives for their mistreatment. Even when definable ethnic, religious, or national groups were clearly singled out for abuse, those offenses were often justified politically or occurred in the context of broader Khmer Rouge efforts to "screen" or "smash" perceived political foes.

Some evidence does exist to support the view that Khmer Rouge officials at various levels were driven partly by deep-seated racial animosity, particularly toward the Vietnamese. However, segregating racist and political motives is difficult. The perceived imperatives of "the revolution" may have allowed some Khmer Rouge officials to justify acting upon their ethnic or national antipathies. Ethnic and political motives also became entangled in Khmer Rouge discourse. Over time, the DK leadership began to emphasize the national and ethnic dimensions of the conflict with Vietnam. Was this the regime showing its true genocidal colors? Or was it simply an attempt to galvanize the beleaguered Cambodian masses and draw attention away from the bankruptcy and brutality of the Khmer Rouge's domestic political regime?

The role of the ECCC is not to resolve longstanding scholarly debates about the fundamental nature of the DK regime. Its proceedings will rightly focus on particular defendants. Still, by choosing which prosecutions to undertake, holding

public hearings, making arguments, and ultimately issuing verdicts, court officials can contribute meaningfully to an important debate. In that sense, the ECCC will play an important part in shaping the public's understanding of the Khmer Rouge era.

Addressing Perceptions of Justice

The second reason why the Khmer Krom case is important has to do with perceptions of justice. Many victims of Democratic Kampuchea—including some lowland Khmers—rightly perceive certain aspects of their experiences as unique. Many believe that they suffered through “genocide,” in part because the popular connotation of that term has come to be associated with the very gravest of crimes in history. Some survivors of Democratic Kampuchea could therefore feel cheated if the ECCC does not conclude that they were not victims of genocide. The case of the Khmer Krom may prove to be contentious, because it sits close to the border of what might be considered ethnically motivated genocide or politically driven crimes against humanity. In fact, neither of these crimes is inherently “worse” than the other. Public education needs to dispel the notion that the absence of a genocide conviction signifies diminished acknowledgement of human suffering. Nevertheless, the label of “genocide” will remain powerfully evocative for the foreseeable future.

The ECCC has an obligation to deliver justice to victims, but it has an equally important obligation to advance what the relevant court officials believe—in their best professional judgment—to be the truth. This article has not attempted to adjudicate whether the Khmer Krom suffered abuses that meet the legal definition of genocide or whether they were victims of other similarly grave human right violations. The court can usefully contribute to this important debate by determining, on the basis of the best available evidence, how to most accurately characterize the conduct of the individual defendants now set to stand trial. In that manner, the ECCC will best deliver justice and best contribute to an enhanced public understanding of the Khmer Rouge tragedy.

i[1] Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide under the Khmer Rouge, 1975-1979* (New Haven, CT: Yale University Press, 1996), pp. 1-4.

ii[2] Kiernan, p. 299.

iii[3] Roughly 1,000 pages of documentary material from Kraing Ta Chan are on file at the Documentation Center of Cambodia.

iv[4] Kim Keokanitha, “Rumlech Sub-district: Khmer Krom under Khmer Rouge,” unpublished essay on file with the Documentation Center of Cambodia.

v[5] Kiernan, pp. 423-25.

vi[6] See “Cambodia’s Strategy of Defence against Vietnam,” Phnom Penh Radio Home Service, May 10, 1978, quoted in *BBC Summary of World Broadcasts*, FE/5813/A3/1.

vii[7] Tuol Sleng Regulations, No. 8. The regulations are reprinted in a number of secondary works, including Khamboly Dy, *A History of Democratic Kampuchea* (Phnom Penh: Documentation Center of Cambodia, 2007), p. 50. A photographic copy is on file at the Tuol Sleng Genocide Museum.

viii[8] Kim, pp. 10-11.

ix[9] Kiernan, pp. 423-25. Timothy Carney makes a similar argument, asserting that a “nationwide campaign” against ethnic Vietnamese and Khmer Krom was in place by 1978. See Timothy Carney, “The Organization of Power,” in Karl D. Jackson, *Cambodia 1975-1978: Rendezvous with Death* (Princeton, NJ: Princeton University Press), p. 83, note 3.