

## **When does a massacre become a genocide? September 17, 2010**

Cambodia's United Nations-backed war-crimes court formally indicted four former Khmer Rouge leaders on September 16th. Their trial, set to begin next year, will be the second of its kind. In July Comrade Duch, the commandant of an infamous prison, was handed a 35-year sentence for war crimes and crimes against humanity, reduced to 19 years against time served and a period of illegal detention. Next in the dock are the Khmers Rouges' chief ideologue, Nuon Chea, their former head of state, Khieu Samphan, and Ieng Sary and his wife, Ieng Thirith, both ministers in their government. The four stand charged, like Duch, with war crimes and crimes against humanity—and also with genocide. The court's new charge should prove most contentious yet.

The term genocide has been used freely by Cambodians and foreign observers alike in reference to the atrocities committed during the Khmers Rouges' ultra-Maoist revolution. In the mid- to late 1970s it cost the lives of nearly one in four Cambodians; all told, at least 1.7m people died. But the tribunal, started in 2007, only introduced this monumental charge at the end of last year. Investigating judges and prosecutors proposed adding it on the basis of their research into the defendants' alleged role in the slaughter of Cambodia's ethnic Vietnamese and Cham Muslims.

In 1999, UN experts concluded that there was strong evidence pointing to genocide by the Khmer Rouge. Ben Kiernan, a scholar of the Khmer Rouge and founder of Yale University's Cambodian Genocide Project, for one, is adamant that the mass killing in Cambodia constitutes a genocide. In his research Mr Kiernan cites the disproportionate death toll inflicted on those two non-Khmer ethnic groups. He argues further that the regime called officially for the elimination of both minorities.

Many advocates contend that the symbolic weight carried by the charge of genocide will prove to the Cambodian public that the Western-backed tribunal—known officially as the Extraordinary Chambers in the Courts of Cambodia—acknowledges the gravity of their

country's loss. Theary Seng, a survivor who works as a rights advocate in Phnom Penh, believes there is a strong legal basis for prosecuting the regime's leaders for genocide. Moreover, she says, it can be an effective means of bringing "gravitas to the tribunal".

"Genocide" is increasingly being used as a generic label for all the world's most serious mass crimes. "As a result, the absence of the term 'genocide' can be interpreted by survivors as meaning they didn't suffer as much as others"—ie those who have been deemed survivors of genocide—says John Ciorciari, a lawyer and assistant professor at University of Michigan's School of Public Policy. He has been tracking the tribunal's genesis and operations for 11 years in his capacity as a legal adviser to the Documentation Centre of Cambodia, which conducts research for the court.

Despite its growing popularity, the concept of genocide maintains a narrow legal definition which hinges on specific intent. This makes it especially hard to prove. Few dispute that the Khmer Rouge led a campaign to annihilate groups of people whom were considered to be incompatible with its revolutionary aims. The question is whether these groups were targeted first and foremost because of their ethnic or religious type, or rather because they represented perceived political and economic enemies. Somewhat perversely, victims belonging to the latter lot fall outside the crime's definition.

Not everyone involved with the trial is eager to see the charge introduced. Some have argued that introducing genocide will further entangle a process already beset by delays and confusion. The "Extraordinary Chambers" have already suffered extraordinarily complex internal disputes and accusations of various improprieties, political interference and even outright corruption. One sharply pointed criticism sees the charge of genocide as a cynical move foisted on the proceedings by foreign jurists who want to enhance the profile of the court's work and their role in it—thereby distracting attention from the Western powers' history of wrongdoing in Cambodia. "This tribunal has from the beginning been muddled by political objectives," says Philip Short, who wrote a biography of the late Pol Pot, the Khmer Rouge's paramount leader.

Many scholars of the Vietnam war blame the American bombing of eastern Cambodia for having driven much of the peasantry into the hands of the Khmer Rouge. America's role in Cambodia became even grimmer during the 1980s, after the Khmer Rouge were driven from power by a Vietnamese invasion force. In a terrible exercise of cold-war realpolitik, American agents supported the Khmer Rouge in exile as a means of resisting the regime installed by Vietnam.

Or, perhaps, the court is simply following through on its mandate. “The purpose of the tribunal is to adjudicate the most serious crimes,” as Mr Ciorciari says. “To the extent that genocide is distinct from war crimes and crimes against humanity, it’s productive to consider this specific charge.” There is, after all, evidence to support it.