

THE ASIAN AGE

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Khmer Rouge Trials **Shankari Sundararaman** **July 22, 2010**

On July 26, 2010, the first verdict of the Khmer Rouge trials is awaited. This will decide the fate of Kaing Guek Eav alias “Duch”, the jailer at the dreaded Tuol Sleng prison, or the S-21 interrogation centre, in Phnom Penh. He is the first perpetrator against whom the Extraordinary Chambers in the Courts of Cambodia (ECCC) will deliver its verdict for crimes against humanity and genocide. Even as the decision is awaited amidst speculation and debates, the July 26 verdict will also be critical for the United Nations which is primarily responsible for the implementation of the trials. The UN’s role in the Cambodian conflict will come a full circle with this verdict.

From April 1975 to December 1978, Cambodia went through a period of genocide under the rule of the Khmer Rouge. This period was a reversion to what was called the “Year Zero” when the Khmer Rouge sought to bring to a standstill the entire history of the country and begin its rule from scratch. During this period nearly two million people lost their lives due to starvation, disease and torture. The Khmer Rouge period was ended by Vietnamese intervention and occupation which lasted for over 12 years, until the Cambodian peace settlement of 1991.

Reports of the genocide within Cambodia first emerged because of refugee accounts. The stories contained tales of forced labour in agricultural lands, an agrarian style model that was brutally enforced, and mass execution of people suspected to be loyal to the former government that assisted the United States’ war efforts in Vietnam.

What is significant today is the role played by the UN in pushing forward the genocidal tribunal for crimes against humanity and bringing to trial the surviving leaders of the Khmer Rouge. Five members, including Duch, of the immediate group that controlled Cambodia during this period are facing trial, all of them in their seventies. There’s Ieng

Sary, Ieng Thirith, Khieu Samphan and Nuon Chea — these four were closest to Pol Pot and were significant players in pushing the agendas and vision of the Khmer Rouge. Pol Pot, who should have been brought to book, escaped by a quirk of fate and died as a result of malaria. While today the UN is responsible to a great extent to push forward the Khmer Rouge trials, at the height of the Cambodian conflict the UN had in some sense kept the conflict alive. The intransigence of the Cold War is nowhere more visible than in the context of Cambodia where the UN was stymied by its inability to assist in finding a resolution in the initial years of the conflict. During the Khmer Rouge period, the UN was unable to take steps to prevent the genocide because of a clause within their charter. The clause, that pertains to domestic jurisdiction, in effect said that even in cases where there have been gross human rights violations, the UN may not be able to act since the issue may fall within the limits of internal affairs of member states. In the aftermath of the Vietnamese intervention, the debate in the UN raged over the issue of representation of the UN seat — the seat was occupied by the Khmer Rouge government which was officially known as the Democratic Kampuchea (DK) regime. The government which replaced the Khmer Rouge was that of Heng Samrin and was officially called the People's Republic of Kampuchea (PRK). However, because this government was backed by the Vietnamese forces, it was not accepted as the legal government within the UN. And as a result, the seat in the UN remained with the Khmer Rouge for most of the conflict.

In 1982, three years after the conflict had begun, three political factions combined together to form the Coalition Government of Democratic Kampuchea (CGDK). This was a grouping of three political factions that were against the Vietnamese-backed Heng Samrin government. It comprised the royalists under Sinhanouk, the republicans under Son Sann and the Khmer Rouge. In fact, the formation of this coalition lent greater credibility to the Khmer Rouge which handled the foreign affairs of the CGDK and continued to retain the UN seat. While this dichotomy in the UN's stand was a critical issue, in the run-up to the Cambodian peace settlement the UN emerged as the main arbiter. It was under the auspices of the UN that a transitional authority oversaw the elections in Cambodia in 1993. This resulted in the victory of both the royalists under Norodom Ranariddh and the Cambodian People's Party under Hun Sen. For the first five years, from 1993 to 1998, power was shared between two conflicting groups. The 1998 election onwards Hun Sen has emerged victorious and there has been little political change within Cambodia since. With the first verdict awaited in the Khmer Rouge trials on July 26, the debate rages over the extent to which punishment should be given. In fact,

this first trial sets the stage for the other four high-ranking members of the Khmer Rouge who are to be tried. The trials of these four will be far more significant than the first one against Duch. Duch in his statements has claimed that he was merely an instrument of state policy. He even argued that he was carrying out orders given by the higher authorities within the Khmer Rouge and as a result should be acquitted rather than be found guilty.

There have been debates over verdicts such as life imprisonment, death penalty and other punishments. Interestingly, the political leadership within Cambodia has been less than willing to let the process take a conclusive course. Prime Minister Hun Sen has even hinted that the trials could lead his country to another civil war. While there is an opinion that the degree of punishment needs to be muted, given the age of the perpetrators and the time that has elapsed, it still needs to be weighed very seriously. Bringing justice to the victims of genocidal crimes is a crucial part of putting to rest a phase of history that is best forgotten. However, to forget that history without due justice to the victims would be to undermine the sufferings of thousands of people. The United Nations' efforts to bring the issue to a completion must not be based on principle alone, it needs to be tangible in terms of its outcomes as well.