

THE DIPLOMAT

Justice vs. Stability

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It's an inevitable debate in countries scarred by the horrors of war, ethnic conflict or genocide. Incoming governments tasked with leading their country out of the dark must ask themselves what their priority should be in the quest for reconciliation: Leading the country forward and turning the page on history, or prosecuting those responsible to the fullest extent of the law? And so it is in Cambodia, as the [trial of four former Khmer Rouge members](#) is set to recommence in late November after being hit by numerous delays and postponements.

There are strong arguments – and plenty of studies and other evidence – to support both answers to the above question. In Sierra Leone, for example, an independent judicial body was established to try individuals who bore the ‘greatest responsibility’ for crimes that were committed during the country’s civil war in the late 1990s. As of today, 20 individuals have been indicted.

After apartheid was abolished in South Africa, however, the idea of a special court was never followed up by African National Congress leaders. Instead, the country’s Truth and Reconciliation Commission was set up to give victims a voice while guaranteeing amnesty for perpetrators of the crimes in exchange for honest testimony. Truth commissions have since been replicated across the globe in areas of post-conflict transition, from Latin American countries such as El Salvador and Chile, to Asian states such as Timor-Leste and South Korea.

Finding the right balance between ascertaining the truth and providing justice for victims through criminal prosecutions is an exceptionally delicate issue, requiring the utmost sensitivity among political leaders, some of whom themselves may have been involved in abhorrent criminal acts during times of conflict.

In Cambodia, where the brutal Khmer Rouge regime was ultimately responsible for the deaths of an estimated 1.5 million people (about 20 percent of the country’s population), [legal analysts postulated](#) that the Extraordinary Chambers in the Courts of Cambodia, which was created in 2003, would be ‘seen as a model of international justice and reconciliation for mass atrocities like genocide.’

But as of today, only five Khmer Rouge leaders have been indicted by the tribunal. While popular support for prosecution amongst survivors of the Khmer Rouge’s reign of terror remains high, political pressure from Phnom Penh has curtailed the court’s prosecution mechanisms. The trials, some government officials argue, will only serve to destabilize the country. Meanwhile, it has been four long years since indictments were handed down on ‘Brother Number Two’ Nuon Chea, former Foreign Minister Ieng Sary, his wife and

ex-Social Affairs Minister Ieng Thirith, and former head of state Khieu Samphan. After several procedural hearings over the summer, only in this past week has a date of November 21 [been set](#) to begin trial proceedings. The tribunal has also been contemplating bringing indictments against five additional unnamed Khmer Rouge members, a move that the government in Phnom Penh has expressed some apprehension about.

There's no right or wrong answer to the justice vs. stability debate. On the one hand, past is prologue, and we must always be cognizant of the conditions under which such crimes were allowed to occur. However, there's a compelling argument for looking forward and moving on (though of course this raises the question of whether a people can ever truly move on without closure).

And in addition to justice, there's the issue of forgiveness. Across the world, truth commissions and reconciliation workshops have facilitated an extraordinary amount of forgiveness among those who have been wronged. With the trial of these four former Khmer Rouge members scheduled to begin soon, it can only be hoped that the proceedings will be allowed the independence and space they need to provide the victims with the closure they require.