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EDITORIAL:

JUSTICE FOR VICTIMS: PARTICIPATING IN THE ECCC

Chamroeun Bann

On February 25 and 26, the Documentation Center of Cambodia brought 488 survivors of the Khmer Rouge regime to Phnom Penh to help them become familiar with the trial process of the Extraordinary Chambers in the Courts of Cambodia (ECCC). The survivors visited the Tuol Sleng Genocide Museum, the Cheung Ek Killing Field, and the site of the ECCC's court.

The visitors – victims, low-ranking Khmer Rouge, nuns and students – came from villages throughout Cambodia. To show their commitment to seek justice for those who lost their lives during Democratic Kampuchea (April 17, 1975 to January 6, 1979), they agreed to visit these sites.

At the Tuol Sleng Genocide Museum, they were very interested to see the thousands of photos of Tuol Sleng prisoners. Some of the visitors hoped to see photographs of their family members and gain some closure. When seeing the photos, paintings, and implements of torture displayed at the museum, others recalled what happened to them and other Cambodians during the regime. They felt very angry with the Khmer Rouge. Hence, they want the coming tribunal to bring the regime's leaders to justice as soon as possible.

Cheung Ek contains many mass graves of Tuol Sleng prisoners. Today, many of the victims' skulls are kept in a stupa. The nuns who visited this site prayed for them.

On the morning of February 26, the villagers traveled about 20 km west of Phnom Penh in seven buses to visit to the court building of the Extraordinary Chambers. This military headquarters, which is being lent to the ECCC for the next four years, is now being administered by Sean Visoth,

chief Cambodian administrator of the ECCC, and Michel Lee, deputy chief.

Sean Visoth spoke to the visitors; he talked about the ECCC's purpose and creation, and explained why the trial process has been so slow. He then opened the forum to questions. The villagers had many questions for the court officials, and did not seem to feel nervous about expressing their views on the Khmer Rouge trials. They wanted to know how many people died during Democratic Kampuchea (although many scholars put the death toll at around 1.7 million, many villagers believe that 2 or 3 million people died). The visitors also wanted Sean Visoth to clarify how many former Khmer Rouge leaders will be tried and who they are.

In addition, the villagers were concerned that the senior Khmer Rouge leaders will die before the trials are over. The most important leader of Democratic Kampuchea, Pol Pot, for example, died in the jungle in 1998. The remaining leaders, such as Nuon Chea, Ieng Sary, and Khieu Samphan, are getting old and weak, so they could die before the court is convened. One woman interviewed by a foreign newspaper said that the tribunal should try the Khmer Rouge leaders soon because they were getting old and their health is becoming weaker.

After their two-day visit, the victims of the Khmer Rouge understood more about the trial process. They were also able to express the anger they have felt for over 25 years in front of Sean Visoth.

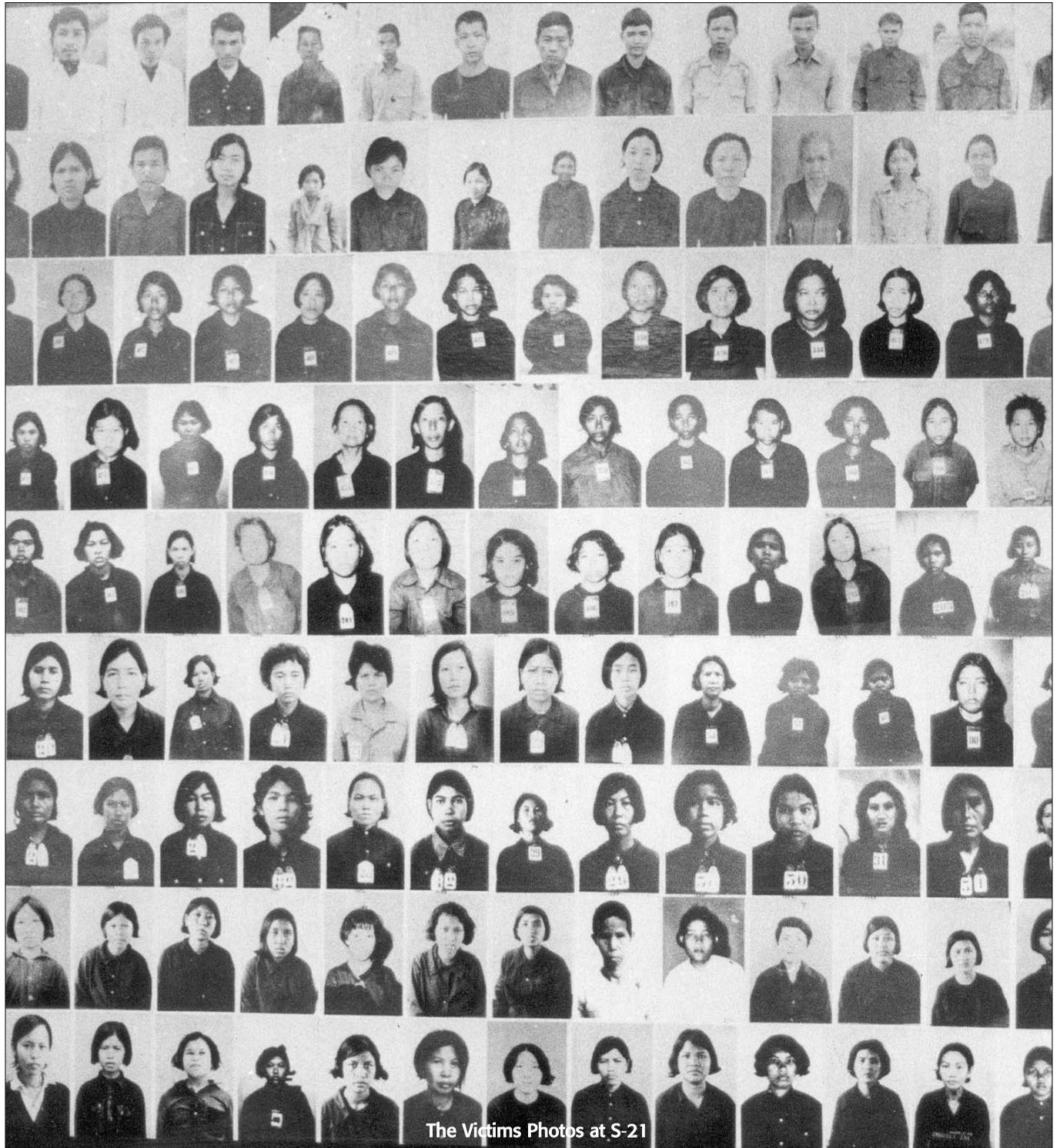
One area of difficulty in the visits was the use of legal terms, which many villagers had a hard time understanding. To help poorly educated Cambodians understand the court's format and the

legal issues to be addressed in the trials, it would be useful if officials give visitors a copy of the government-produced pamphlet *An Introduction of the Khmer Rouge Trials*.

In conclusion, despite the tribunal's efforts to see that the trials are fair and transparent, and that justice is done in Cambodia, more efforts need to

be made to explain the process to villagers. Tribunal personnel need to send clear messages in words the average person can understand.

Chamroeun Bann is the co-English editor-in-chief of the special English edition of Searching for the Truth.



LETTER FROM YOUK CHHANG:

THE LONG ROAD TO JUSTICE

During the Khmer Rouge time, all Cambodians walked and walked, from the cities to the countryside, from their villages to distant provinces, and from their rice fields to the battlefields. In 1979, the survivors of our country's genocide walked again; this time, back to their homes.

In 1997, Cambodia began another journey; this time to seek justice for the crimes committed by those responsible for their suffering. And today, 27 years after the Khmer Rouge fell, we are taking a giant step along the road to justice.

On February 6, the Extraordinary Chambers in the Courts of Cambodia – most people call this the Khmer Rouge Tribunal – officially began to set up its office at the military barracks outside Phnom Penh. Over the next year, the Extraordinary Chambers will hire and recruit staff, and begin their investigations to gather evidence for the trials. The UN and Royal Government hope that the judges, prosecutors, and lawyers for the tribunal will be appointed in about six months. If all goes well, the first of the trials should begin in January 2007.

Cambodia, the United Nations, and several other countries have worked for many years to help us see justice done. The United Nations has raised its share of the \$56 million cost of the tribunal from Japan, France, Germany, the United Kingdom, Australia, the Netherlands, Canada, the European Commission, Norway, Austria, Denmark, Belgium, Ireland, Sweden, the Republic of Korea, Luxemburg, Thailand, Armenia, and Namibia. The United States has pledged to contribute to the tribunal if it meets internationally recognized standards of justice in its first year. Since 1995, the US has donated millions of dollars for documentation, research, and public information on Democratic Kampuchea.

Many Cambodian human rights and international non-government organizations are also supporting the trial process. Their assistance includes providing documents that may serve as evidence during the trials, monitoring the activities of the government and UN, and providing counseling to those who suffered during Democratic Kampuchea.

Perhaps the most important way the NGOs can help is to work with the Extraordinary Chambers and each other to make certain that the public is informed about the trials and involved in them. These trials are about seeing justice done for the victims of the Khmer Rouge. These are your trials, and without your participation in them, the Cambodian people will



not be able to judge whether the trials are fair, of high quality, and open to all.

But how can the people of Cambodia participate in the trials? They are far away and it is expensive to travel to Phnom Penh. Many NGOs in Cambodia are working to make certain that people can read about the trials through magazines and other written materials that are delivered to sub-district and district offices across the country. Others will broadcast news on the radio, and the Documentation Center of Cambodia (DC-Cam) is working with TVK and other stations to produce programs that will help educate people about the Extraordinary Chambers.

And DC-Cam also has a project that will begin this month that will help bring many Cambodians to the courtroom. We call it the Living Documents Project. In the first part of this project, we will bring 300 to 400 villagers each month to visit the Khmer Rouge tribunal building and its officials.

The villagers we have selected are people that we have interviewed in the past as part of what we call our Victims of Torture Project, which provides counseling and healing services to people who suffered badly during Democratic Kampuchea and are still having a difficult time today. The people who will come to Phnom Penh include both victims and those who were low-ranking Khmer Rouge. Others who will visit the KRT building include Buddhist nuns, *tuon* and *hakem* from the Cham community, and students.

The villagers will stay in Phnom Penh for two days. They will also have a chance to meet

Cambodian lawmakers and tribunal officials while they are there.

This part of the project will help the villagers understand how the trials will work, and to become familiar with the tribunal process. After the trials begin, we will bring these and other villagers from all over Cambodia to attend a week of the trials. They will then return to their villages and discuss what they saw and learned with others in their communities. We will film some of the discussions and broadcast parts of them on the radio so that all Cambodians will have an opportunity to learn about the trials, not from officials, but from people



Peang Voar (in the photo on the wall) was arrested at the Ministry of Public Garments Industry on February 27, 1977, when he was 42 years old. He was held in Toul Sleng. No confessions or execution dates have been found for him or his son.

like themselves.

All of us want to see trials that are fair and just, and for the Cambodian people to participate in them without fear of intimidation or uncertainty. Learning about the tribunal from the written word, the radio and television, and from your family, friends and neighbors will help you see that justice can work in Cambodia and build a more just future for our children.

Youk Chhang
Editor-in-Chief and Publisher

CHEA BUN CHENG: A YOUTH IN THE K-15 OFFICE

Confession Summary

Sophal Ly

Chea Bun Cheng was born in Sangkat No. 3, Tik La-Ak, Phnom Penh. He was a student in France, whose major was oil distribution. He returned to Cambodia in response to the appeal of the revolutionary Angkar. When he arrived in Cambodia, Bun Cheng was sent to temper himself at the K-15 office in Boeng Trabek. Later, he was arrested and killed.

Study and Reasons for Arrest

During his childhood, Bun Cheng studied at Phnom Penh Primary School. Next, he attended Preah Chey Chesdar and obtained a primary certificate in 1957.

In 1958, Bun Cheng spent four years studying at a private high school called Rasmei Vichea, where he earned a secondary certificate in 1965. During his studies, he made two close friends, Sar Meas and Sek Samul, but after his exam for the Faculty of Upper Multitask, where he was to major in experimental chemistry, Bun Cheng had less contact with them.

From 1965 to 1966, Bun Cheng heard that Ing Krapum Phkar (after the coup he became the director of Civil Air and was later arrested by the Liberation Army while attempting to escape to Thailand), Dean of Polytechnic University, planned to open a coconut oil factory in Tik Sap district, so Bun Cheng asked him for a job. Krapum Phkar said that Bun Cheng could work for him after he graduated, and should visit him in the meantime. During each of Bun Cheng's visits, Krapum Phkar asked about his background, what lifestyles Bun Cheng admired, what he liked to eat, and what made a good society, particularly the development of capitalism in comparison with socialism in such

countries as the Soviet Union and China. When Bun Cheng met Krapum Phkar or Kek Bun Bong (a fellow chemistry student), each always gave Bun Cheng some money and brought him to a restaurant. Bun Cheng realized they wanted something in return for their kindness, and wondered why they were helping to educate him.

Once Krapum Phkar asked Bun Cheng, "Cambodian people are living happily; they never have any problem with starvation and hardship, as people do in China. Why do the communists want to sell the nation by enslaving the poor?" He also advised Bun Cheng and introduced him to the idea of revolting against communism in Cambodia. In addition, Kek Bun Bong asked Bun Cheng to join him in building forces to destroy communism in Cambodia.

In July 1966, Ing Krapum Phkar and Kek Bun Bong asked Bun Cheng and other two students (Chey Vit and Sam) to join the CIA. After the three took an oath, Krapum Phkar told them of a plan to destroy all communists, in both Cambodia and abroad.

Bun Bong introduced Bun Cheng to Thach Ung and Mai Sauphy, with whom he was to work. During the school vacation, Bun Cheng recruited fellow chemistry student Chou Sithan. Bun Cheng, Thach Ung and Kek Bun Bong encouraged students to write petitions against the closure of many associations; some petitions demanded the arrest of association members because their educational centers had served Chinese and Vietnamese communism. While the associations served the students' interest, they also educated them on Chinese communist ideology. Later, the petitions made by a small number of people forced the

associations to close.

About halfway through his studies, Chou Sithan introduced Bun Cheng to Seu Kek, a student of royal civil air at Pochentong. Through Chou Sithan, Bun Cheng worked with Pen Phy (a student majoring in construction at the Polytechnic School) for a short period; they spied on students and tracked activities at the Polytechnic School and the Khmer-Soviet Friendship Association. As a result, Bun Cheng found two Khmer Rouge students who had close connections with the closed associations. He also incited for the dismissal of professor Chamraen from the Chemistry School.

In his last year of school, Bun Cheng did not work at Ing Krapum Phkar's office because the factory had not yet been built. Krapum Phkar helped Bun Cheng continue his studies at the University of Science in Phnom Penh. In 1968, Bun Cheng persuaded two students (Chann Mean Than, a mathematics student, and Lam Sunry, a student of electrical sciences) to join the CIA and continue their studies in the US. Bun Cheng listed the names of all the educated people he knew who might also be persuaded. He and Chann Mean Than spied on two professors who talked about revolution with other faculty members. Later, the professors disappeared from the faculty.

In 1969, Bun Cheng began working at an oil factory at Kilometer 6, Phnom Penh. Soon after, the French Government awarded him a one-year scholarship to study oil distribution in France. Before he departed, Ing Krapum Phkar suggested that Bun Cheng join the Khmer Students Union there to search for qualified members and then send the names to him. He also gave him a letter to Yy Kim Sour (in France), who was also with the CIA.

Bun Cheng arrived in France on September 16, 1969. Two days later, he gave Yy Kim Sour the letter. Kim Sour asked Bun Cheng to work with him, but Bun Cheng declined because he was going to study in Marseilles and work with many other

associations to find core members. Bun Cheng's networks worked with Chou Sithan, Chann Mean Than and Thach Ung. These three men arrived in France just a month after Bun Cheng. Next, he found three more core members: Chuon Mum, Chuop Praseth and Men Vasey. He reported on them to Yy Kim Sour. The association initially supported the people's resistance movement during the armed struggle in Cambodia. In April 1970 Bun Cheng joined the revolutionary resistance movement.

From 1970 to 1971, Bun Cheng worked in Nice, France, where he was indoctrinated by a Cambodian student named Keo Sokh, who had convinced by Thach Ung to join the CIA in 1971. During the 1970 coup, Bun Cheng decided to stay in France and join the Front through the Khmer Students Union. Many associations supported the Front in Paris, such as the Youth Committee of the National United Front of Kampuchea, which included representatives from other associations. Bun Cheng was appointed to be a representative and to register the names of those who wanted to join the Front. He reported all these activities to Yy Kim Sour. Some diplomats also wanted to join the Front by donating cars, housing and money to the Cambodian people. Bun Cheng was helped in this important work through Khek Vandy, his brother-in-law's friend.

In 1970, Kim Sour returned to Phnom Penh. In 1971, Bun Cheng studied at the faculty in Sangkat 8, Paris. In July, he and Soeu Sameth convinced other two students, Van Phum and Tann Kim Dara, to join the CIA.

In 1972, the association dispersed, leaving only one Front student. The association in Phnom Penh subsequently sent its members to France to join the Front in attempts to destroy its intrinsic base. By the middle of 1972, Bun Cheng persuaded another student named Y Nara to join.

In 1973, Front students made up most of the

occupants of the Khmer Housing Association in France. Sensing trouble, the Association's director dismissed the Front students, accusing them of being hidden enemies burrowing from inside. Five months later, the chief of the Front students reassigned its members to other areas. Bun Cheng was assigned to take control of the southern region as a deputy regional chief with chief Try Meng Huot. At that time, Bun Cheng's networks under Saing Sirat's administration discussed how to ease the tension between the Front and the opposition. Bun Cheng communicated with students in Strasbourg, deceiving journalists into propagandizing to the world that Cambodia would talk with America because the Front students in foreign countries felt solidarity with Phnom Penh. Bun Cheng's first duty at that time was to be a spy and persuade reluctant students. By the end of 1974, Saing Sirath went back to Cambodia, replacing Thach Ung.

In early 1975 there was an attack in Cambodia, which made the US feel hopeless. At that time, Thach Ung abandoned his duty and took some money to run away. Y Cheng from Strasbourg replaced Ung. Bun Cheng's line included Y Cheng, Soeu Samet, Rang, Keo, Sokh, Van Phum, Tann Kim Dara and Y Nara and some spies in the revolution such as Soeu Sameth, Keo Sokh, and Y Nara. Bun Cheng received a new assignment: to go underground in order to get a position in the revolution.

From 1975 to 1976, the National United Front in France changed its name to the Association of Patriotic Khmer Foreigners of Democratic Kampuchea and its committee was reorganized. Bun Cheng was made secretary; he was responsible for internal work and receiving letters. He spread propaganda to instill fear in those wanting to return to Cambodia, making them suspend their travel or making their visa applications disappear (visa applications went to Cambodia through this association). In late 1976, Bun Cheng resigned as secretary because Angkar called him to return. On

November 23, 1976, Bun Cheng traveled by air across China and arrived in Cambodia on November 26, 1976.

In Phnom Penh, Angkar sent Bun Cheng to the K-15 Office in Boeng Trabek for a year. While there, he became interested in Angkar. The members of each group at the Office could only communicate with each other from 11 a.m. to 1 p.m. The K-15 Office held only intellectuals from foreign countries and some locals. He had many duties: from farming to pulling down buildings and cleaning, but his real duty was team chief.

In early 1977, Bun Cheng set fire to tables, cabinets and tools, and destroyed beautiful wooden furniture. In that year the K-15 Office made some changes in its unit chiefs. It removed Tuon Sarin aka Kaet. Bun Cheng used to meet Kaet occasionally, and they always talked about group solidarity when working with a new unit chief. Bun Cheng mentioned the lack of new chiefs and Kaet told him that the old ones were breaking the spirits of the people, convincing them not to struggle against the status quo. Lean Sereyvuth, part of handcraft group, also criticized the lack of unit chiefs and deputy chiefs, saying that all rich people against Angkar were being taken away, such as Koy Thuon, Hou Yun and Phok Chhay.

In July, Angkar arrested Kaet. At the time, there was a movement agitating some women and men against the Office's deputy chief on the recruitment of acting chiefs. Bun Cheng, Thun aka Daem, Nut Bun Sung and Lean Sereyvuth had a meeting to agitate against those influenced by feudalism.

Bun Cheng was made second mobile chief; his job was to stir up his team members against the leadership of the unit and office chiefs. Sometimes, Bun Cheng took his lunchtime to persuade others to express their strong support of the Party's attackers. Neary Vichea, who was Kaet's wife, also joined the resistance movement against the party because she was very angry with the representative of the unit who had made her husband lose his

position. Bun Cheng's propaganda aroused people to struggle against the social order by destroying the class influenced by capitalism and feudalism. However, his goal was to destroy the Party elements, workers, and farmers through defaming the new unit representatives. Day by day Bun Cheng's activities against the revolution were becoming more apparent to the party and the public.

On November 12, 1977 Bun Cheng and all the people connected to him were captured by Angkar,

including Neary Phlek Vichea, Lean Sereyvuth, Chann Ky Suy and his family, Nut Bun Sung and his family, Tann Liek Pheng, Ke Thavarak aka Sam, Chea, Kung and his family, and Uo Sakorm aka Roeung. Bun Cheng's 30-page confession and the list he made of his connections were written over a period of 6 days. They were signed by the chief of the documentation team, Im Oeun.

Sophal Ly is a DC-Cam staff writer.

HY SOTHEARY: LAW STUDENT Confession Summary

Sophary Noy

Hy Sotheary aka Thea was a former student at the University of Law. He was born on February 12, 1950 in Ang Rakar village, Cheang Tong sub-district, Tram Kak district, Takeo province. When Sotheary was young, he lived with his father Hy Lim and mother Touch Phen in Peakk Bang Aong village, Northern Trapeang Thom sub-district, Tram Kak district.

In 1958, Sotheary began studying in Takeo, and received a diploma from Preah Yukunthor High School in Phnom Penh in 1970. She continued her higher education at the University of Law between 1971 and 1973. In 1973 Sotheary was appointed as a team chief of telegraphs at Office 801 in Rattanak Kiri province. He was transferred from Rattanak Kiri to Phnom Penh and arrested by Angkar on May 6, 1977.

In 1971, with the approval of Sin Kim Suy, a former professor and deputy director of the National Radio during the Lon Nol regime, Sotheary applied for a job translating articles from the AKP newspaper for broadcast on the radio under the guidance of Muong Sinuon, a former professor and manager who prepared materials for broadcast.

Sotheary was taken care of at work, given a bonus and educated by Kim Suy and Sinuon. They

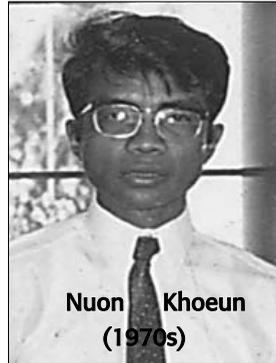
took his for walks and drinks so they could educate his on the ideology of capitalism in liberal economies and which allowed freedom of work, expression in the newspapers, and the right to vote, unlike communism, whose totalitarian leadership did not allow for relaxation or happiness. They explained to Sotheary that the Khmer Rouge were communists who followed Ho Chi Minh, an Indo-Chinese communist who wanted Khmer territory.

In September 1971, after he was trained and had some understanding of these ideas, Sotheary was called by Kim Suy and Sinuon to Kim Suy's home. Sinuon approved of Sotheary's fidelity to his ideas about love of liberalism, and introduced Sotheary to the CIA youth organization. Sotheary pledged that she would serve the CIA forever. The ceremony in which Sotheary was made a member of that organization was held in front of a blue flag with a wheel of power in the middle.

Sotheary's duties were to 1) write articles about politics for the radio, 2) spy on the Khmer Rouge movement in the Organization of Student Associations in Phnom Penh, 3) spread propaganda to make students detest and oppose the Khmer Rouge, 4) destroy the revolutionary Angkar in all

aspects even materials, individuals and ideology, and 5) burrow from inside the revolutionary Angkar to participate in the activities of eliminating communism from Cambodian society.

In February 1972, Sinuon introduced Sotheary to Loch Soeun aka Cheav, a literature student at the University. In the same month, Soeun introduced his to law student

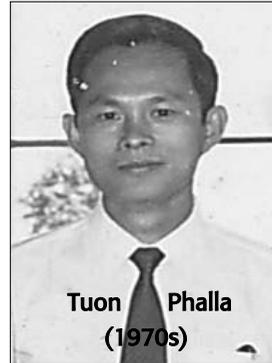


Khiev Sereyvuth aka Veang. Both Soeun and Sereyvuth advised Sotheary about Khmer Rouge activities in the Organization of Student Associations, for example, that youth in Phnom Penh were agitating by going on strike or not going to school. They also introduced his to other students: Kun Thonthanarakk aka Penh from the Faculty of Literature, Chuop Ret aka Hean from the Faculty of Pedagogy, Pek An aka Am from the Faculty of Literature, Meas Sarin from the Chamkar Daung Faculty of Agriculture, and Phaung Kim Hong from the Faculty of Law and Economy. Sotheary and her new friends from the Faculty of Literature discussed student attempts to stop riots against the authorities.

In February 1973, students from the Faculty of Law and Economy assigned Sotheary, Sereyvuth, and Kim Hong to direct their Student Association. Sereyvuth appointed Sotheary to burrow inside the revolutionary Angkar in rural areas by telling a messenger to bring his to the office of city communications in Kandal Stung district, Region 15, south of National Road 4. To do this, Sotheary had to work with Sokh, a major in Phnom Penh. He taught her much about vying for leadership in the revolutionary Angkar.

In April 1973 Sokh sent Sotheary to the zone office in the southern part of Phnom Penh. A month later, Angkar assigned his to work at the reception office at Kraing Kdep (Region 15, north of National Road 4). There, Sotheary met her old friends Nuon

Khoeun, Tuon Sokphalla, Phatt Sitho, Chuop Ret and Sbaong Run.



In June of the same year, Sotheary was assigned to provide intelligence on the situation in Military Office 11 of the Special Zone. A month later Angkar assigned his to work as a radio controller in Chhouk Saom, the military office of Region

15. Sokh recommended that Sotheary collect information on the revolutionary army's military plans and contact him via radio every noon. Moreover, Sokh introduced Sotheary to Chuon, a battalion commander in Region 15, and to Y, politics chief of a Special Zone battalion, in order to make it easier for Sotheary to observe and contact him about Angkar.

From April to June 1974 Sotheary went to the battlefields in Udoung, Kampong Luong, and Peam Setha under the leadership of Keo. He was assigned to make contact the air force and gather information on the bombing and shelling along the revolutionary army's lines. In July Sotheary observed the military situation in the Division 14 Office and sent Sokh daily reports. In September he reported on an oil warehouse in Kraing Kdep and other warehouses storing cloth, dresses, rice and fish. After he made her reports, aircraft bombed these two warehouses and destroyed five barrels of oil.

In late 1974 Sotheary reported to Sokh that forces were gathering in the North Zone, with Division 14, the Special Region and the Southwest Zone Division attacking Ang Snuol, Bek Chan, Tuol Sap, Paseth, Phoum Thom, Trapeang, Preay, and Peam Setha.

In early 1975 when a Division 801 company went past the Kapp Srauv dam to Khmuonh, Sotheary was appointed to be a geography assistant to Keo Saroeun, who was a company secretary.

Sotheary allowed Saroeun to contact Sokh directly over the radio, so he could recognize Saroeun's voice. Saroeun then asked Sotheary to give him information on Angkar's military camps northwest of Phnom Penh, as well as their artillery and the planes that would bomb the revolutionary army. Phnom Penh was liberated on April 17, 1975.

In May 1975 Sotheary attended a meeting at the Faculty of High Pedagogy. Sokh advised Sotheary to get out of Division 14 and gather forces for the CIA. Sotheary could not do this if he was in military.

A month later, Angkar transferred all factories to the Ministry of Industry; where Sokh was responsible for water and electricity factories. Sotheary and her group caused electrical disturbances in the city. They also observed the laborers' activities and tried to persuade them not to work.

The group responsible for machinery tried to gradually cut off the electricity supply in order to weaken the factories. After working in the electricity factory for a month, Sotheary attended a meeting with Sokh at the High Pedagogy School. He met Luch Soeun, Kun Thonthanarakk and Pek An at the meeting, and was given a new job: to spy on ministries in order to build the CIA forces and destroy the revolutionary authorities.

Sotheary began working at the radio station in Stung Meanchey in August 1975. In October he was transferred to Division 801 (former Division 14).

In late 1975 after Sotheary finished two months' of political studies, she traveled with Division 801 to Rattanak Kiri province. He was not given a new job when she arrived, so he cleared land for gardens and rice fields, and continued to persuade combatants in the division. While malaria was spreading, he agitated combatants to desert, steal and destroy collective goods, and make them furious with the party because of the lack of medicine and food, causing them join the CIA.

In mid-1976 when Sotheary was hospitalized, he took the opportunity to convince Than and Huot,

deputy platoon chiefs in Battalion 801, and Neun, telegraphy combatant of the Division 801 Office, that the revolutionary society was less careful about the bourgeois and students, and rarely provided upper leadership. Sotheary persuaded them completely believe in the principle of individual freedom, and that many people disliked being oppressed by the revolution.

In July 1976 Sotheary and other CIA operatives in Division 801 received a plan for destroying Division 801 with the assistance of Vietnamese CIA forces hiding along the Cambodia-Vietnam border and in Bar Keo.

Sotheary continued to be careful in his radio work, sending brief reports out quickly. If conditions were bad, he set a time to connect later. Sometimes the radio would only work for ten minutes, and then the connection would be lost. He was scheduled to report in Khmer once a week.

Sotheary transmitted the locations of the enemy army in Bar Keo, Sa La Khaong and O Tang to Vietnam, as part of a plan for that country to invade Cambodia by September. However, the plan was canceled because there was tension in the division. Moreover, the Vietnamese did not know Cambodia's geography well, so Sotheary continued persuading youth who disliked the revolutionary Angkar to join the CIA.

In March 1977, Sotheary again began planning to overthrow Angkar and kept connecting with the Vietnamese CIA. Under Sokh's instructions, he reported to Vietnam that Bar Keo was the last base and main headquarters of Regiment 81, and Sa La Khaong and O Tang were the army camps of Regiment 81 as well as a place for protecting areas along the Vietnamese border. In February, Vietnam had begun to control locations along the border, but it was very difficult to cross over to spy inside Cambodia because the area's many dense forests were patrolled by revolutionary mobile units. Later the CIA networks were discovered, and Sorn told Sotheary to stop making contact with Vietnam.

In late March, Angkar withdrew Sotheary from the division and assigned him to clear a garden for the division office. It was obvious to them that Sotheary had instructed Khan, a former grade 6 student in Region 15 and radio chief in Division 801, to destroy a Than Kolaing radio.

The division Angkar sent Sotheary from Rattanak Kiri province to Phnom Penh on May 3, 1977 and arrested him on three days later. Her confession reveals the names of six people she had connections with; she was interrogated by Oeun in Tuol Sleng Prison.

People were mentioned in Sotheary's confession:

Sin Kim Suy, male, was former professor and deputy director of Lon Nol Radio, and went to France in 1972 ♦ Muong Sinuon, male, was former professor and Information director of Lon Nol Radio, evacuated after April 17, 1975 ♦ Loch Soeun aka Chiv, male and former student of Faculty of Literature, worked in the Ministry of State Printing House ♦ Khiev Sereyvuth aka Vieng, male and former student of the Faculty of Law, was a chief of Phsar Touch Electricity Factory ♦ Kun Thonthannarakk aka Penh, male and former student of the Faculty of Literature, worked in the Ministry of State Printing House ♦ Chuop Ret aka Hean, former student of the Faculty of Pedagogy, was a medical staff of Hospital 28, Special Zone, and died in 1974 ♦ Pek An aka Am, former student of the Faculty of Literature, worked in the Ministry of State Printing House ♦ Meas Sarin, former student of the Faculty of Agriculture, lived in the East Zone ♦ Phaung Kim Hong, former student of the Faculty of Law, studied in France ♦ Ung Bel, male and former student of the Faculty of Law, studied in France in 1972 for a major: International Law ♦ Chao Seng, former student of the Faculty of Agriculture, worked in the Phsar Touch Electricity Factory ♦ Long Theun, male and former student of the Faculty of Law, worked in the Phsar Touch Electricity Factory ♦ Sath, former student of the Faculty of Literature, worked in the Phsar Touch Electricity Factory ♦ Phon, former student

of the Faculty of Medicine, worked in the Phsar Touch Electricity Factory ♦ Ngaouv Chip Eak was a former student of the Faculty of Law ♦ Pao Ly, former student, worked in the Ministry of State Printing House ♦ Ly, former professor, worked in the Ministry of State Printing House ♦ Pao It, former professor, worked in the Ministry of State Printing House ♦ Pen Manil aka Men, former professor, worked in the Ministry of State Printing House ♦ Sbaong Run, male and former professor, was a deputy chief of the Office of Division 801 ♦ Nuon Khoeun, male and former professor, worked in Preah Vihear province ♦ Phatt Siphon, former electrical engineer, worked in the Ministry of Public ♦ Tuon Sokh Phalla, former engineer, worked in the Ministry of Public ♦ Sokh was a chief of Phnom Penh city ♦ Hakk, chief of Economics, Region 15, worked in the Ministry of Logistics Staff ♦ Keo was an Oudong District secretary of the West Zone ♦ Y, former free laborer, was a politics chief of Battalion 114, Special Zone and joined the military ♦ Chuon, commander of Battalion 123, Region 15, joined the military in 1974 ♦ Keo Saroeun, male and member of Division 801, was a farm guardian in North-East Zone ♦ Sorn, member of Regiment 82, Division 801, guarded in the North-East Zone ♦ Teng, former grade-three student and member of Battalion 803, guarded in the North-East Zone ♦ Chhan, former free laborer, was a member of Battalion 802, Division 801, North-East Zone ♦ Ang was a member of Politics of Company 61, Battalion 806, Division 801, North-East Zone ♦ Uon was a member of Company Politics, Battalion 802, Division 801 ♦ Chauk was a Company member of Battalion 802, Division 801 ♦ Sarin was a team chief of Battalion 806, Division 801 ♦ Neun was a telegram combatant of the Office of Division 801 ♦ Khan was a Radio Communication team chief of the Office of Division 801 ♦ Huot was a Platoon military, Battalion 805, Division 801 ♦ Thang was a Platoon military, Battalion 805, Division 801, North-East Zone.

Sophary Noy is a DC-Cam staff writer.

RECALLING THE PAST TO PRESERVE HISTORY

Sokoeun Kong

Chak Thoeung, age 50, was a prisoner in Sa-ang Prison in Kandal Steung district of Kandal Province. He was born in Cheung Prey village, Ampoeu Prey sub-district, Kandal Steung district. His father Yim Chak and mother Mao Nuth had five children. In 1970, when Thoeung was 14, he became a monk at Vihear Bithmeas Pagoda in Sa-ang district. Four years later, he began studying at Koh Kel Pagoda.

A month after the Khmer Rouge came to power, the Sa-ang sub-district chief forced him and 33 other monks at Koh Kel Pagoda to disrobe. He threatened them saying, "It does not matter whether you want to disrobe or not, tomorrow Angkar will force you to."

After he disrobed, Thoeung went to live with a sub-district chief named Tatith. Three months later, Angkar called Tatith and he disappeared. Later, Thoeung was transferred to a mobile unit where he had to work hard for several hours a day. In return, he was given only porridge and watery black soup made of water convolvulus or cabbage without a gram of meat.

In the morning of January 1, 1978, two soldiers approached Thoeung and told him that he was assigned to make buckets, but they did not mention where he was to go to. Thoeung was sent to a truck which carried him, 43 other men and 4 women away. None of the people in the truck were tied or shackled.

The truck stopped at Sa-ang Prison. Guards pointed guns at Thoeung and the others, ordering them to put their hands up and get out of the truck. Then, the guards tied them with scarves and ropes,

and kicked them while they walked. They divided the prisoners according to whether they had committed minor, medium-level, or serious crimes – as defined by the Khmer Rouge. Those accused of a serious crime were placed in solitary confinement in dark cells. The mid-level offenders were shackled and put in cells that held two or three prisoners each. Those accused of minor crimes were placed in a cell with 30 or 40 other prisoners. During the day, the guards sent the minor offenders outside to work.

Thoeung was accused of committing a mid-level crime and was placed in a cell alone. Once each day, a guard brought him a meal. Sometimes the guard forgot, so Thoeung had nothing to eat the entire day. Thoeung said that he somehow drank his own urine when he was terribly thirsty.

Several times, a man named Chroeu took Thoeung for interrogation in a dark silent room. After he was questioned, Thoeung began to realize why Angkar had arrested him: some villagers had told Angkar that he was a former second lieutenant and member of

the CIA. When Thoeung denied this accusation, Chroeu beat him until he fell unconscious. Then Chroeu ordered the guards to take him back to the cell.

While he was imprisoned, Thoeung learned that his parents were there as well, but his father already died at Sa-ang.

Three months later, Thoeung was moved to a prison for those committing minor crimes. He was sent to work in a 17-member unit that produced



Chak Thoeung

fertilizer. Every day, Thoeung had to carry his guard on his back, both to and from work. During working hours, the male prisoners were shackled, but the females were not. Working under the hot sun, the shackles around Thoeung's ankles became hotter, causing them to burn and become infected. A militiaman named Tam who guarded the unit would box Thoeung's ears for fun. As a result, he went deaf in one ear.

While in prison, Thoeung was fed two spoonfuls of watery porridge twice a day: If anyone spilled the porridge that the commune cook delivered to the prisoners, Thoeung would collect it to eat. The worst time for him was sleeping: the prisoners had to lie on a rough floor of broken tiles that was full of ants and millipedes. The prisoners were shackled to a long bar and slept in row. If any of them needed to use the bathroom, he had to use a bowl that was passed to the next person until the last one threw the contents into a large jug. Thoeung slept next to the jug.

A month before the Khmer Rouge regime was overthrown, Angkar changed the chief of Sa-ang Prison. The new chief was Taneo. Under his control, there was better food to eat and less torture. One day, a guard named Chhoeun ordered Thoeun to cut bamboo shoots behind the prison. Since Thoeung was not familiar with the location, he walked on a small path, where he sunk into a hole up to the top of his legs. After he struggled out, his legs were covered with worms, and there was a terrible smell. When he examined the hole, Thoeung saw that it was a grave where many corpses had been buried. To keep the matter secret, he soaked his body in a pool containing fertilizer made of excrement. Afraid that he would be killed, he did not tell a soul, not even his mother or close friends, about it until 1979.

After the regime collapsed, Thoeung never slept soundly because he heard the villagers say something about the presence of former guards from Sa-ng Prison. It was said that the former chief

was searching houses, trying to find and kill the survivors. On hearing this, Thoeung was frightened. This affected him deeply, and he often dreamed that Khmer Rouge cadres were chasing him.

Today, Thoeung listens to Buddhist theology as a way to heal his spirit. He listens to the monks preach every holy day, and chats with friends of his age. Thoeung would not ask for retribution from those who killed his family, but he needs the Khmer Rouge leaders to be held responsible for the crimes they committed.

Thoeung has told the story of his life under the Khmer Rouge regime to his descendants and the children in his village. Talking about his bitter experiences does not mean he wants revenge on the Khmer Rouge. Actually, he just wants the next generation to learn about the history of the regime. Moreover, Thoeung wants to have Khmer Rouge history included in the high school curriculum so it remains in the next generation's consciousness.

Sokoeun Kong is a DC-Cam field investigator who works for the Victims of Torture Project.



At the court room, a survivor asking H.E. Sean Visoth on February 26, 2006

MASS GRAVES IN CHHEU NEANG FOREST

Pongrasy Pheng

On September 26, 2005 many of the people from Popreng village, Krang Dei Vai sub-district, Phnom Sruoch district, Kampong Speu province arrived en masse to dig up a grave, searching for gold. The story began when a local girl found a gold earring there.

Siem Phal, age 15, was trying to find a button she had lost while playing with her siblings Ra and Lim. Instead, she found a gold earring and gave it to her grandmother to keep. Then she went back to the grave to play with three other friends, Bann Boeun, Say Sa-deung, and Phal Phoeun. Within moments, the three children found 225 grams of gold. Ben Khom found a gold plate and an earring, while Phin By found an earring. This exciting news encouraged others to dig in hope of finding more of the valuable metal. But Mann Samen stated, "I could not find anything."

The digging stopped that evening after no one else had uncovered any gold. Vor Kaim, the chief of Krang Dei Vai sub-district, had told the villagers to cease, believing that the digging would disturb the spirits of the dead. He then wrote a report about what they found and informed the authorities.

The unearthed bones of about 60 people were exhumed. Both the skulls and bones were removed from the grave and placed in three piles. Most of the skulls were broken into pieces; only three were in tact. In addition, the villagers found torn clothing in the grave.

Sometime after 1975, the land around Popreng village had become eroded from heavy rain, burying the three graves about 3 meters under the ground. The villagers called these graves "Raloh." This is the name for a place where water collects during the rainy season. During Democratic Kampuchea, the

Khmer Rouge militiamen killed people and threw their bodies into the graves without even covering them with earth. Vor Kaim and the elderly residents of Popreng village recalled that the victims were "new people" who had been evacuated from Phnom Penh. After several years, water had entered the graves. Later, trees and shrubs grew on the surface of the land and covered the graves by the 1980s. Villagers said that the trees and shrubs grew better over the graves than at other locations.

After the Khmer Rouge collapsed, few adults walked near this place, but children who tended cows and collected firewood often went there. The children liked to hop on the surface. Siem Phal, who collects firewood every day with her friend, said: "I brought my younger siblings Ra and Lim to see the skulls jutting out. I wondered whose skeleton I saw."

After 26 years, the spirits of those in the grave are still in Chheu Neang Forest. They cannot leave the place where they died because justice has not been found. No one has ever invited Buddhist monks to perform rituals and dedicate good deeds to those spirits. Vor Khaim believes that some strange events have occurred in Por Preng village because the spirits are hungry. In 2004, a girl dreamt of a soul telling her to find gold in the grave. Thinking that it was just a dream, she dared not tell anyone about it. The villagers believe that the spirit who appeared in the girl's dream caused many people to dig up the grave. That spirit had been hungry for over 20 years. It guided Siem Phal (the girl) to the grave and then the others so that it would get offerings to ease its hunger. Muy Chhoeun, age 60, is the chief of Krasang Khpoh village. He said that he is convinced that such spirits are the cause of rapid land clearing in the area today. The spirits of the people who died

during Democratic Kampuchea want the survivors and their descendants to alleviate their hunger and find justice for them.

In the *Ben* season last year, Por Preng villagers invited Buddhist monks for the first time to pray and dedicate offerings to those dead victims. The Krang Dei Vai sub-district plans to build a memorial

near the graves and place the bones they have unearthed in it.

The grave was assigned number 381 in the list compiled by the Documentation Center of Cambodia.

Pengrasy Pheng is a DC-Cam field investigator who works for the Legal Response Team.

ANNOUNCEMENT

DC-CAM LOOKING FOR PHOTOGRAPHS OF FORMER NEW PEOPLE

DC-Cam recently wrote a book called *Stilled Lives: Photographs from the Cambodian Genocide*. It describes the lives of 51 men and women who joined the Khmer Rouge revolution. Thirty-nine of these fifty-one people died at Tuol Sleng prison. Only nine are alive today.

We will soon read selected stories from the book on our radio program. The stories will air on: FM 102 MHz, Phnom Penh, FM 93.25 MHz, Kampot, FM 99 MHz, Preah Vihear, and FM 103.25 MHz, Battambang.

To write the book, we interviewed former cadres, base people, and their family members. They also gave us photographs of themselves. Many of the pictures were taken before the Khmer Rouge came to power, but some show the cadres during the revolution.

Funding for the book was provided by the National Endowment for Democracy. The book revealed that those joining the revolution had the same hopes and needs as other Cambodian people, and also lost their loved ones. We hope this book will help Cambodian people to understand that both victims and perpetrators share a common humanity.

We are now planning a book that will tell the stories of the new people and their families during Democratic Kampuchea. If you or one of your relatives was a new person and would like to tell your stories for the book, we would like to interview you. We welcome the contributions of Cambodians from both at home and abroad.



Because photographs will be a very important part of this book, we are only asking help from people who would agree to share their photographs with us. They must have been taken before or during Democratic Kampuchea. We will scan the photographs and return the originals to you. Please call DC-Cam at 023-211-875 or write us at Box 1110, Phnom Penh. Email: truthpivoine@dccam.org or truthsavina@dccam.org.

Thank You

A HOPE TO SEE A BROTHER

Khamboly Dy

Kuon Yan's older brother Khuon Roeung disappeared in early 1979 when the Khmer Rouge regime collapsed. Yan has been searching for his brother ever since, but has found only five photographs taken of Roeung, his wife and colleagues while they were working in Phnom Penh during the regime. A friend of Roeung's who lives in Pailin kept the photographs. Yan met him while he was searching for his brother there and recovered the photographs.

A research team from the Documentation Center of Cambodia arrived in Yan's village while he was harvesting rice near his house. The team brought with them the biographies of Yan and his brother. They were written when the two men were working in Phnom Penh during the Khmer Rouge regime.

Both Yan and Roeung were serving the revolution in April 1975 when the Khmer Rouge took control of Phnom Penh. Yan had been assigned by the village chiefs Em and Nhok to join the Khmer Rouge. At first, he was happy to join because he thought that it would improve his standard of living. Moreover, the public was also happy with the revolution. Before he departed to Phnom Penh, Yan stayed in Kbear village in Kong Pisey district, which had a large hospital that treated Khmer Rouge patients. From there, two large trucks carried the men to Phnom Penh.

Yan and his brother were assigned to work at 17-April Hospital in Phnom Penh (today, it is called Preah Bat Norodom Sihanuok Hospital). But when Yan first arrived, he was told to grow vegetables across the street from the hospital. After about six months, he was sent to work in the kitchen, preparing food for the hospital's staff and patients. Yan usually put aside some good food for Roeung.

Roeung was a construction worker in the hospital. In 1977, he married a nurse named Yiem who was born in Takeo province.

Having worked in the kitchen for some time, Yan was assigned to take care of orphans, but he did not know anything about health care and medicine. All he had was a little knowledge and advice given to him by his unit chief. Yan said, "I had been educated about politics, morality and work." Poeun, the chief in charge of the hospital and its medical cadres, taught politics.

At the hospital, Yan saw the Chinese advisor who had come many times to train the medical staff and to give medicine to the hospital. Yan knew that it was medicine from China because he saw Chinese characters printed on the boxes. Sometimes, Yan saw trainees from the province coming to learn medical skills with that advisor.

In 1978, many Khmer Rouge soldiers were wounded during battles with Vietnam. The presence of the injured soldiers kept Yan busy all day. Despite the hard work, he found life in the hospital much better than life in the remote countryside. Yan got two meals a day, even though there wasn't enough all the time. He supplemented his diet with porridge or bread.

Yan and Roeung worked at the hospital until the Vietnamese invaded Phnom Penh in early January 1979. On the day the men were to leave, Yan and his brother became separated in the chaos. Yan rode a train to Tmar Kol district in Battambang province, hoping to cross the border to Thailand. However, his plan failed because he did not have enough food or transportation to support his journey. Many people died on the road from hunger, disease, or injury. So Yan and 29 of his friends decided to

make their way back. When they arrived at Pursat, Vietnamese soldiers arrested them and searched them for weapons. They did not intend to harm Yan and his friends, and later released them so they could return home.

In 1980, Yan returned to his home village. Today, he is a farmer in Trapaing Prey village, Kak sub-district, Baseth district, Kampong Speu province. In his 50s now, Yan was still single because he has been caring for two nieces and a nephew who were orphaned. Their mother died two months after delivering her youngest daughter. Their father married again and

moved to another province, abandoning his children. As a result, Yan is now impoverished because he had to spend his income to feed these children and pay for their schooling.

Other than the three orphans, Roeung Kuon Yan has no relatives. He feels lonely and even though his brother disappeared almost 30 years ago, he still hopes that one day he will meet him again. Yan always looks at his brother's photographs whenever he misses him.

Khamboly Dy is a DC-Cam researcher.

PUBLIC INFORMATION ROOM

DC-Cam's Public Information Room (PIR) is open to students, researchers, government and non-government organizations, and interested members of the public who want to learn more about the history of Democratic Kampuchea and the developments of the coming Khmer Rouge tribunal.

DC-Cam is the largest repository of primary materials on Democratic Kampuchea. Through the PIR, the public can read the documents and use them for research. The documents in our possession include biographies, confessions, party records, correspondence, and interview transcripts. We also have a database that can be used to find information on mass graves, prisons, and genocide memorial sites throughout Cambodia.

The PIR offers four services:

1. **Library:** Through our library, the public can read documents, books and magazine, listen to tapes, watch documentary films, and view photographs held at DC-Cam, the Tuol Sleng Genocide Museum, National Archives and other locations.
2. **Educational Center:** DC-Cam shows documentary films and offers lectures on Khmer Rouge history, the upcoming tribunal, and other related subjects.
3. **Tribunal Response Team:** Our document and legal advisors will provide research assistance to the tribunal's legal experts from both Cambodia and the United Nations, as well as to the public.

Khmer Rouge documentary films are shown every Tuesday and Thursday at 9 a.m. and 3 p.m.

The PIR is located at House 66, Preah Sihanouk Blvd, east of the Independence Monument. It is open to the public from Monday to Friday, 8 a.m. to 12 p.m. and 2 to 5 p.m. For more information or if you want to arrange a group event, please contact our staff, Phearum or Pidoa, at 023 211 875. Thank you.



CHILD RECRUITMENT AND WAR CRIMES: THE SPECIAL COURT FOR SIERRA LEONE'S DECISION ON A PRELIMINARY MOTION

Bunsou Sour

1. Introduction

On 31 May 2004, in its divided panel in the Appeals Chamber, the Special Court for Sierra Leone (SCSL) ruled that child recruitment is a crime. This is one of the world's foremost and controversial human rights cases.

To assess the soundness of the decision, this article first evaluates how the court concluded that the prohibition of child recruitment gained the status of norm in customary international law and to what degree one would agree with this conclusion. It then discusses whether the court took an appropriate approach to determine that child recruitment is an international crime under international law. Next, it examines the nature of the relationship between customary law and treaty law. Last, the article looks closely at the way the court handled the issue of the principle of legality. In doing so, it is necessary to establish parameters by drawing on the World Court's judgments and advisory opinions.

It is not the purpose of this article to argue the nature of the norms prohibiting child recruitment prior to 1996. Nor does it reveal possible clashes between the rule of law and the morality principle, or the post-conflict approach pursued by the international community that was behind the creation of the statute and the SCSL *per se*. Rather, the core objective is to highlight the problems of the international legal methodologies the court employed to achieve the dismissal of a preliminary motion – based on lack of jurisdiction – to prosecute the accused of child recruitment under Article 4(c) of the court statute. Before discussing the substantive issues, this article provides background

on the decision.

2. Overview of the Court's Decision

In the Norman case, the SCSL's Appeals Chamber held that the recruitment of child soldiers was a war crime and a violation of international law. The defense argued, *inter alia*, that the SCSL had no jurisdiction to try the accused for crimes under Article 4(c) of the statute prohibiting the recruitment of child soldiers under the age of 15 "into armed forces or groups or using them to participate actively in hostilities," because the crime of child recruitment was not part of customary international law at the time relevant to the indictment of the accused. It further argued that while the Protocol II Additional to the Geneva Convention of 1977 and the Convention of the Rights of the Child of 1990 may have created an obligation on the part of states to refrain from recruiting child soldiers, such legal instruments did not render such recruitment a crime. Finally, the defense submitted that, although the 1998 Rome Statute of the International Criminal Court (ICC) criminalizes the recruitment of child soldiers, it does not codify customary international law.

The prosecution argued, *inter alia*, that the crime of recruiting child soldiers was a part of customary international law at the time relevant to the indictment, and that the Rome Statute did codify customary international law. The prosecutor further cited the prosecution's response in the Tadic case of the ICTY, noting that "in any case, individual criminal responsibility can exist notwithstanding lack of treaty provisions specifically referring to criminal liability in accordance with the Tadic case." The prosecution also argued that international

criminal liability for child recruitment resulted from various factors that accumulated over time, and that, unlike a national legal system, international law is without a parliament with legislative powers. Thus, there cannot be a statute that declares certain activity as criminal under customary international law. In the alternative, the prosecution argued that the Cape Town Principles, adopted by the Symposium on the Prevention of Children into Armed Forces and Demobilization and Social Reintegration of Child Soldiers in Africa, established individual criminal responsibility by 30 April 1997. The prosecution made further arguments, submitting (1) that individual criminal responsibility for child recruitment had been established by 29 June 1998, at which time the President of the United Nations Security Council condemned the recruitment of child soldiers and called on the parties to act in accordance with their obligations under international law and to prosecute those responsible for grave breaches of international humanitarian law; and (2) individual criminal responsibility for child recruitment was established by 17 July 1998, following the adoption of the Rome Statute.

The Appeals Chamber observed that prior to November 1996 the prohibition on child recruitment had become customary in international law. The court noted that Sierra Leone ratified the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War and that Articles 14 and 24 provided that the contracting parties should protect children under 15 from the effects of war. The court further noted that Sierra Leone ratified the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), and the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts. These protocols, the SCSL observed, also prohibit the recruitment of child soldiers.

In terms of state practice as an element of customary international law, the court noted that “the list of states having legislation concerning recruitment or voluntary enlistment clearly shows that almost all states prohibit (and have done so for a long time) the recruitment of children under the age of 15. Since 185 states, including Sierra Leone, were parties to the Geneva Conventions prior to 1996, it follows that the provisions of those conventions were widely recognized as customary international law.”

The SCSL further noted that all but six states had ratified the Convention on the Rights of the Child by 1996. In regard to this Convention, the court noted that “the widespread recognition and acceptance of the norm prohibiting child recruitment in Additional Protocol II and the [Convention on the Rights of the Child] provides compelling evidence that the conventional norm entered customary international law well before 1996. The fact that there was not a single reservation to lower the legal obligation under Article 38 is one of the very few conventional provisions which can claim universal acceptance.”

Having found that child recruitment was criminalized before it was explicitly set out as a criminal prohibition in a treaty law and certainly by November 1996, the starting point of the time frame relevant to the indictments, the court dismissed the preliminary motion based on lack of jurisdiction.

In a dissenting opinion, Justice Geoffrey Robertson argued that the recruitment of child soldiers was not a crime under international criminal law until the creation of the Rome Statute in 1998, which established the ICC.

The following section will elaborate on norms of customary rule and evaluate how the SCSL determined that the prohibition of child recruitment gained the status of customary international law. An assessment will also be made in light of case law and legal scholarship.

3. Child Recruitment and Norms of Customary International Law

While rules of customary international law are of an inherently changeable nature and therefore cannot be the subject of a definitive or exhaustive enumeration, there nevertheless exists a broad consensus in respect of the component elements required to establish a norm of customary international law. According to the International Law Commission, these include: (a) a concordant practice by a number of states with reference to a type of situation falling within the domain of international relations; (b) a continuation or repetition of the practice over a considerable period of time; (c) a conception that the practice is required by or consistent with prevailing international law; and (d) general acquiescence in the practice by other states.

By way of analogy, Professor Ian Brownlie identifies four attributes of a rule of customary international law: duration; uniformity and consistency of practice; generality of practice; and *opinio juris et necessitatis*. To express this simply, as a prominent expert has written, “the best evidence for a customary rule of international law is to be found in what states say they think the rule is (*opinio juris*), and what they say they are doing (or not doing) in terms of that rule.”

By the same token, the SCSL rationally articulated that the formation of custom requires both state practice and a sense of pre-existing obligation (*opinio juris*) and that “an articulated sense of obligation, without implementing usage, is nothing more than rhetoric and state practice without *opinio juris* is a habit.” In terms of state practice, the fact that the SCSL put forward the number of states that had ratified the relevant conventions and treaties, including Additional Protocol II of the Geneva Conventions and the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child is of great relevance. It is accepted that treaties are parts of state practice and

can create customary rules if the requirements of *opinio juris* are met, for example, if the treaty or its *travaux préparatoires* contain a claim that the treaty is declaratory of pre-existing customary law. Sometimes a treaty that is not accompanied by *opinio juris* may nevertheless be imitated in subsequent practice; but in such cases it is the subsequent practice (accompanied by *opinio juris*), and not the treaty, that creates customary rules.

Despite the SCSL making the point of treaty provisions, it failed to produce any evidence of actual practice and those of obligation necessary to prove an existence of a norm of customary rule prohibiting child recruitment. Arguably, it needs to establish general considerations and local custom in relation to child recruitment, which will come into play in the following section.

General Considerations. The frequency, or even the habitual character, of the act is not in itself enough. There are many international acts, for example, ceremonial and protocol, that are performed almost invariably, but are motivated only by considerations of courtesy, convenience or tradition, and not by any sense of legal duty.

The fact that governments do not always practice what they preach comes as no surprise; indeed, we would be surprised if they did, at least in some areas. Still, under the canons of positivist international law, we lawyers are called upon to determine whether a putative rule of customary law meets the requirements of general and consistent practice followed by states from a sense of legal obligation. The latter requirement – the *opinio juris sive necessitates* – calls for a “belief” by states that the practice in question is obligatory by virtue of a rule of law requiring this. In the words of an International Court of Justice judgment, “Not only must the acts concerned amount to a settled practice, they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a

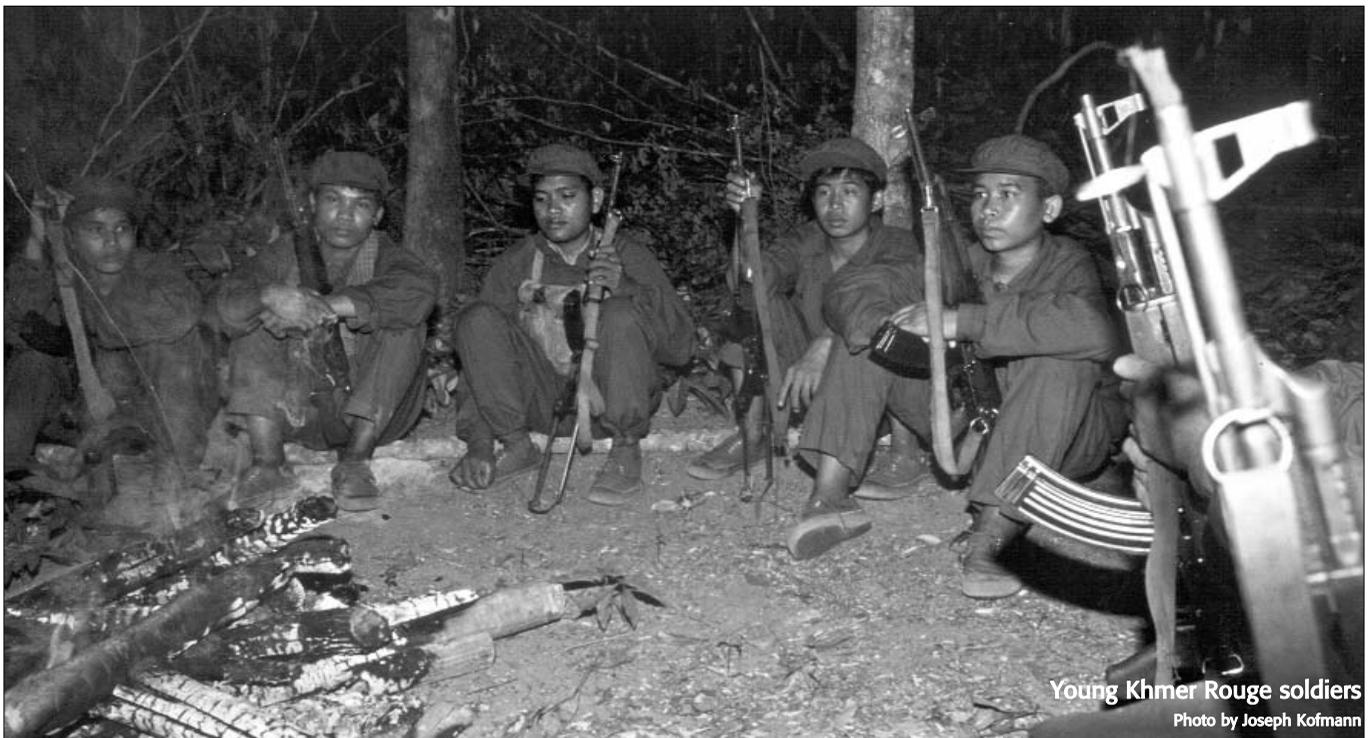
rule of law requiring it.” As this passage indicates, custom begins with “acts” that become a “settled practice”; that practice may then give rise to the belief that it had become obligatory.

Graca Machel, author of the United Nations Report on the Impact of Armed Conflict on Children, has estimated that in 1995 and 1996 alone, 250,000 children were serving either in government armies or opposition forces. She recalled the participation of child soldiers in war as “one of the most alarming trends in armed conflict.” By 2001, more than 300,000 children were fighting with governments and armed groups in more than 40 countries around the world. Specifically, in 87 countries children are recruited into government armed forces, paramilitaries, civil militia and non-state armed groups. The Global Report on Child Soldiers, which analyzed military recruitment by governments and armed groups in 180 countries, found that 87 states were recruiting children into government armed forces, paramilitaries, civil militia and non-state armed groups.

Local Custom. As far as the local custom is concerned, the SCSL failed to conduct sufficient

research on the actual domestic practice of states with a sense of obligation – to repeat Professor Rodly, “what states say they think the rule is (*opinio juris*), and what they say they are doing.” Most African countries did and have been practicing child recruitment. Apparently, more than 120,000 children, some no more than seven or eight years of age, are currently fighting in armed conflicts across Africa in Angola, Burundi, Congo-Brazzaville, the Democratic Republic of Congo, Ethiopia, Liberia, Rwanda, Sierra Leone, Sudan and Uganda, despite the fact that many of them have signed and ratified the Optional Protocol to CRC or Additional Protocol II of the Geneva Conventions. In Sierra Leone, more than 5,000 children served among government and opposition and a further 5,000 are being recruited for labor among armed groups. Very importantly, all those states have signed or ratified the relevant treaties.

Inconsistencies may also be problematic. However, in light of the data, it could be argued that there are contradictions and inconsistencies in terms of the prohibition of child recruitment in the region. Therefore, the SCSL failed to establish an



undisputed existence of a custom that banned recruiting and using child soldiers. The World Court, in the Asylum Case, established that a custom could not appear in light of uncertainty and contradiction. In this case, following an unsuccessful coup in Peru in 1948, the leader of the rebel movement sought refuge and “diplomatic asylum” in the Colombian Embassy in Lima, Peru. The Peruvian Government subsequently refused safe conduct for the rebel leader and the dispute was referred by agreement to the International Court of Justice (ICJ). One issue was whether a “local custom” existed in Latin America permitting one state to grant political asylum and thereby offer consequential protection to the asylum seeker. The ICJ found against the existence of local custom because of lack of evidence.

The facts brought to the knowledge of the Court disclose much uncertainty and contradiction, much fluctuation and discrepancy in the exercise of diplomatic asylum and in the official views expressed on various occasions. There has also been much inconsistency in the rapid succession of conventions on asylum, ratified by some States and rejected by others, and the practice has been influenced by considerations of political expediency in the various cases. It has thus not been possible to discern in all this any constant and uniform usage, accepted as law, with regard to the alleged rule of unilateral and definitive qualification of the offense.

By not invoking any customary norms in making an appeal for state compliance and only referring to the conventional international law commitments under the Convention on the Rights of the Child and other treaties, the Security Council implicitly rejected the notion that there was also a customary international law against child recruitment.

Taken together – the World Court’s decisions and advisory opinions in combination with those of highly qualified publicists – it is generally accepted that there are four elements for a custom to exist: state practice, consistency of practice with general

and specific considerations, duration of practice, and *opinio juris*.

The prosecution’s submission and the SCSL’s conclusion that the crime of child recruitment was part of customary international law at the relevant time (before the establishment of the SCSL) fails to take into account the fact that there may be common knowledge that many states have ratified treaties but failed to implement the obligations that they have assumed under those instruments. This provides an additional reason why reference to treaty provisions prohibiting child recruitment is not sufficient to establish state practice necessary for customary international law. Moreover, in focusing on the domestic practice of states, the SCSL ignored *opinio juris* as a necessary element of customary international law. Finally, inconsistency in the practice may erode the legitimacy of the decision. By way of assessment, the SCSL decision included parts of state practice by referring to the number of states which had ratified the relevant treaties and duration of practice, regardless of its failure to pinpoint the movement where the prohibition of child recruitment allegedly gained the status of customary international law. The most important point to note, however, is that it failed to take into account the elements of general considerations and local custom as well as *opinio juris*.

A number of states have legislations concerning voluntary child recruitment, and a number of state parties, including Sierra Leone, were signatories to the Geneva Conventions prior to 1996, Additional Protocol II, CRC and African Charter on the Rights and Welfare of the Child. The SCSL reached a conclusion that prohibition of child recruitment had gained the status of customary international law prior to 1996. Since it is true, as spelled out by the dissenting opinion that those conventions may have created an obligation on the part of states to refrain from breaching the relevant provisions, the central question that must be considered here is

whether the prohibition of child recruitment also entailed individual culpability at the times alleged in the indictments. To test the hypothesis, it is necessary to determine first whether child recruitment is an international crime under international law. The following section will discuss certain criteria needed for an offense to become an international crime, specifically a war crime, and whether the SCSL took an appropriate approach to reach its conclusion.

4. Child Recruitment and War Crimes

Notwithstanding that there has been no consensus on the complex definition of international crime, an eminent scholar has given a general understanding by referring to international crime as an act which the international community recognizes as not only a violation of ordinary state criminal law but one which is so serious that it must be regarded as a matter for international concern. He argues that, for a variety of reasons, it cannot be left to the state which would normally have jurisdiction over it. Such reasons include efficiency, practicality, and fears about the likelihood of prosecution by the state with jurisdiction. The authority accepts that almost all international crimes also qualify as serious human rights violations and many as violations of international humanitarian law, a factor which has done little to assist the clarity of principles or boundaries of international criminal law.

The list of international crimes has been expanding rapidly since the 1940s, but there is still disagreement as to its precise content. Many authors argue that a crime is not an international crime unless it can be prosecuted in an international criminal tribunal whether permanent or ad hoc (ICTY, ICTR, and the ICC), but that definition would exclude some of the oldest international crimes with the most accepted status, including piracy. Than and Shorts submitted, therefore, that such a definition is only a helpful starting point. The authors admitted that “each international crime has its source in

international treaty/convention, a rule of customary international law, or a combination of the two.” The former tend to be very specific and a response to a particular perceived crisis (genocide, hijack, torture), whereas “customary international law is amorphous and elusive, yet far more flexible.”

Undisputedly, genocide is an international crime under customary international law and is subject to the principle of universality for the purposes of asserting jurisdiction. If a state is not a party to the Genocide Convention, it is still bound by it.

At the same time, the definition of international criminal law is still difficult to formulate; only recently has it become possible to identify an international criminal legal system, and it remains a somewhat primitive one. The existence of the ICC will in time add sophistication to that system, but it still lacks comprehensive penal sanctions, a centralized law enforcement agency or strategy, and universal agreement as to the scope of its offenses. Even once the ICC has been functioning for many years, international criminal law will still require a third party, states, to enforce it through their domestic courts. Further, the scope of international criminal law will always evolve to meet new needs and priorities of the international community, both through treaties and through the development of new rules of customary international law. Any legal system, whatever its size and scope, requires some basic rules, principles, concepts and procedures; these could be discerned within international criminal law even before the ICC existed, with great input from ICTY and ICTR. What is lacking is a comprehensive nature, consistency of approach and interpretation.

In view of the general considerations of the nature of international crimes within the body of international criminal law, one may enquire further as to what constitutes war crimes and whether recruiting child soldiers is a war crime under international law prior to 1996.

To be straightforward, war crimes are defined as “grave” or “serious” violations of the rules or customs of war – or as it is now more commonly called, of international humanitarian law – for which individuals can be held individually responsible.

In order for a serious violation of international humanitarian law to become a war crime, an authority asserted, it is necessary that the “violation be criminalized.” The question then becomes one of how to determine whether this is the case.

The prosecution in the present case submitted, while deciding that the crime of child recruitment

was part of customary international law at the relevant time, that in international law, unlike in the national legal system, there is no parliament with legislative power with respect to the world as a whole and thus there will never be a statute declaring conduct to be criminal under customary law as from a specific date. It is true that international law lacks many of the formal institutions present in the

national legal system. There is no formal legislative body, as yet no court machinery with general compulsory jurisdiction and no police force, and it sometimes seems that many of the disputes between states occur because the rule of international law governing their conduct is not clear, rather than that one state is deliberately behaving illegally.

However, in the case under discussion, it is not a matter of a weak judicial system. Rather, it deals with the methodologies of interpretation of international law. The SCSL has the complete

power to prosecute individuals accused of certain violations criminalized by its own statute which codifies certain offenses that were contrary to norms of customary international law since its adoption. It should have proved child recruitment was criminalized prior to 1996, where the current decision may be considered, to a great extent, groundless and vague.

It is undisputed that international crimes, particularly war crimes, can be established in two legal grounds, either through treaty or custom.

Customary Law. According to Cassese, for an



Young Khmer Rouge soldiers

offense to be established as a war crime, several situations need to be distinguished. First, a violation has been consistently considered a war crime by national or international courts. In his words, “The existence of war crimes cases on a particular matter may sometimes be considered sufficient for holding the breach to be a war crime under customary international law, in which case there would have to be widespread evidence that States customarily prosecute such breaches as war crimes and that they do so because they believe themselves to be acting under a binding rule of international law

(opinio juris)."

This argument is supported by dissenting Judge Robertson. He argued that he was in no doubt that the crime of non-forcible enlistment of children did not enter international criminal law until the Rome Treaty for the ICC in July 1998. Judge Robertson traced the preparatory work leading to the adoption of the Special Court Statute and argued that the state of international law in 1996 with respect to child enlistment was unclear to the UN Secretary General himself. He pointed out that the question of whether an act "was criminalized" should be carefully separated from whether "it should be criminalized" and considered in depth the principle of "no punishment without law." He went on to look at customary international law and emphasized that the question was whether child recruitment was a criminal law prohibited under customary international law prior to 1996. He then traced the relevant treaty law and developments up to 1996. He found that the Rome Statute was a "landmark in the international criminal law" and that, with its adoption, child recruitment crystallized as a crime entailing individual responsibility.

Both customary rules and principles may normally be drawn or inferred from case law, which to a very large extent emanates from national courts. As each state court tends to apply the general notions of national criminal law even when adjudicating international crimes, it often proves arduous to find views and concepts that are so uniform and consistent as to provide evidence for the formation of an international customary rule. The same holds true for principles.

By drawing on jurisprudence, it is submitted that war crimes are serious violations of customary or, whenever applicable, treaty rules belonging to the corpus of the international humanitarian law of armed conflict. As the Appeals Chamber of the ICTY stated in *Tadic*, war crimes must consist of "a

serious infringement" of an international rule, and the breach must involve grave consequences for the victim; the rule violated must either belong to the corpus of customary law or be part of an applicable treaty; and "the violations must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule." In other words, the conduct constituting a serious breach of international law must be criminalized.

One authority has written that the starting point is to observe that the failure of the relevant rules of international humanitarian law to provide for any courts or criminal proceedings in the event that the rule being breached is not determinative of the issue. What matters is that criminal or military courts have in fact adjudicated breaches of international humanitarian law.

Treaty Law. A second possible instance, as Cassese suggested, is that a breach is termed a war crime by the statute of an international tribunal. In this case, even if the breach has never been brought before a national or international tribunal, it may justifiably be regarded as a war crime. In the current case, the SCSL statute criminalizes the act of child recruitment. Under Article 4(c) of its statute, the Special Court has the power to prosecute persons who committed serious violations of international humanitarian law including "Conscripting or enlisting children under the age of 15 years into armed forces or groups using them to participate actively in hostilities." Nevertheless, the statute was adopted after the alleged crimes in the indictment – which was committed before 1996. The principle of individual criminal responsibility for violations of certain international norms has now crystallized in treaty law as well as customary international law. The Rome Statute of the ICC provided the most comprehensive codification to date of international criminal law.

Admittedly, the third and more difficult category

is when the case law and statutes of international tribunals are absent or silent on the matter; for instance, the prohibition of the use of weapons that are inherently indiscriminate or that cause unnecessary suffering. This case is of great relevance to the methodologies of the SCSL's decision. In this situation, how is one to determine whether violating a prohibition of international humanitarian law amounts to a war crime? By referring to various jurists, including List and others (Hostages case), John G. Schultz, Tadic (Interlocutory Appeal), and Blaskic, and the general principles of international criminal law, Judge Cassese suggested that a court is entitled, in seeking an answer to the question, to examine various sources including: (a) military manuals; (b) the national legislation of states belonging to the major legal systems of the world, or, if these elements are lacking; (c) the general principles of criminal justice common to nations of the world, as set out in international instruments, acts, resolutions and the like; and (d) the legislation and judicial practice of the state to which the accused belongs or on whose territory the crime has allegedly been committed.

Given the three possibilities for an offense to be a war crime, it is submitted that one should not take as simplistic approach as the SCSL appeared to have used. It may be logical to argue that not all violations of international humanitarian law amount to war crimes. By rejecting the simplistic assumption, Judge Cassese asserted:

It is important to note that a ... remark concerns the need to avoid the following simplistic proposition: to determine whether a particular act may be termed a war crime, one need only establish that the act breaches international humanitarian law.

In short, to establish whether a breach of that body of law, in addition to giving rise to state responsibility (if the act was performed by a state agent), is also criminalized, the simple equation, breach of international humanitarian law equals a

war crime, may not suffice, in light of case law and the general principles of criminal justice, in particular the principle of legality (*nullum crimen sine lege*).

In light of the lack of consistent state practice in the earlier section, the SCSL failed to establish customary rule of international law prohibiting child recruitment. At this stage, the better approach for the SCSL is to use the general principles of criminal justice common to nations of the world, rather than arguing that there is an existence of customary rule criminalizing the act of such recruitment. However, it is suspected that, despite the SCSL using this approach, it might still be problematic to prove, with the methodologies and the limited research it utilized, the criminalization of child recruitment before 1996.

Furthermore, the SCSL made a rhetorical argument that the dictates of the public conscience are important in determining what constitutes a criminal act. It is too simplistic. In light of this argument, it would be said the rule of law is eroding and there may be no need to ratify treaties or conventions or to codify customary law. The SCSL should take more serious consideration of case law and general accepted practice. Local customs are also of great relevance.

Without a legal standing, in addition to the first two arguments, the SCSL put forward that individual criminal responsibility for child recruitment had become established by 30 April 1997, referring to the date of adoption of the so-called "Cape Town Principles" made by an NGO working group, which provides, *inter alia*, that "those responsible for illegally recruiting children should be brought to justice." Regardless of the legal force of the principles per se, the date of the adoption is beyond doubt irrelevant. It was nine months after the alleged crimes in the indictment. It might not even be considered as a source of soft law to build on the Rome Statute of the ICC and the Statute of the SCSL itself. It is thus not applicable to the indictment.

In its fourth proposition, individual criminal responsibility for child recruitment had become established by 29 June 1998, the date on which the President of the Security Council condemned the use of child soldiers and called on parties to comply with their obligations under international law and prosecute those responsible for grave breaches of international humanitarian law. And finally, it submitted the right point but for an irrelevant time – “Alternatively, individual criminal responsibility for child recruitment had become established by 17 July 1998 when the ICC Statute was adopted.” It is undisputed that Security Council resolutions are binding to all states. Nonetheless, the force of this statement is no more than an appeal to member states to adopt legislation to criminalize the act of child recruitment, which explicitly shows that the norms of customary rule have a long way to go.

It is proposed that the approach the SCSL took is an overstatement and most cases are beyond the legal framework of international law. The SCSL should be more realistic and utilize stronger legal arguments in light of, for instance, case law and highly qualified publicists.

Taken together, the SCSL failed to establish rules of customary international law criminalizing child recruitment and the cited treaties and principles are of no legal effect. Nonetheless, there is another appropriate approach it might have resorted to: where the Rome Treaty is proved to have a relationship with such a customary rule.

Relationship between Customary Law and Treaty Law. It is a common thought that, to a great extent, custom and treaty are not in competition. They have different purposes and are quite complementary, as pointed out by the ICJ in the merits phase of Military and Paramilitary Activities in and against Nicaragua, which discussed the relationship between treaty and custom. The ICJ stated that “even if two norms belonging to two sources of international law appear identical in

content and even if the States in question are bound by these rules both on the level of treaty law and on that of customary international law, these norms retain a separate existence.”

The treaty may codify custom or may lead to the development of new customary law through the impetus it gives to state practice. As a general rule, a treaty only binds the parties to it, while a rule of customary international law binds all states unless there is some local custom or persistent and effective objection.

If the treaty on its face purports to be declaratory of customary international law or if it can be established that such was the intent of the people who drafted it, the treaty may be accepted as valid evidence of the state of customary international law. The weight it carries varies in proportion to the number of parties and is also affected by the amount of consistent or inconsistent evidence of the state in customary international law available from other sources, such as judicial decisions or diplomatic correspondence.

The SCSL had tried to show that the Rome Treaty for the ICC codified the rule of customary international law criminalizing child recruitment. It is of great relevance to the point being discussed that the SCSL chose the Rome Treaty as a legal ground, rather than the other reference, namely the Cape Town Principles. However, given that there might be no evidence per se, the SCSL failed to prove that the treaty is of declaratory nature. Many prominent experts and scholars, including Judge Cassese and Judge Robertson, give strong objection to the proposition that the ICC Statute under Article 8 intended to codify customary law. Even the Secretary General himself was uncertain as to the customary international law nature of the crime of conscripting or enlisting children as defined in the Rome Statute of the ICC.

The SCSL failed to pinpoint the moment at which child recruitment became a crime in order to

determine over which acts the SCSL had jurisdiction. As discussed earlier, for an offense to become a war crime, it needs a number of criteria which the court at issue failed to establish. As a legal consequence, a core principle which is undisputedly a general rule of international law may have been breached. The following section is devoted to a discussion on the principle of legality – *nullum crimen sine lege* and *nulla poena sine lege*, which deal specifically with the legal status of Article 4(c) of the Statute of the SCSL.

5. Statute of the Special Court and the Principle of Legality

It is not uncommon in many jurisdictions, especially within Europe, to provoke a debate on general principles of the criminal law by stating the maxim *nullum crimen sine lege*, sometimes known as the principle of legality. Given the wide-ranging nature of the principle of legality, however, three distinct principles are desired for division – the principle of non-retroactivity, the “principle of maximum certainty and the principle of strict construction of penal statutes”; the latter two categories – dealing with “fair warning and fair labeling and respect for the citizen as a rational, autonomous individual and as a person with social and political duties” – are

not discussed in the limited space here.

The essence of the non-retroactivity principle is that a person should never be convicted or punished except in accordance with the previously declared offense governing the conduct in question. This principle is to be found in the European Convention on Human Rights, Article 7: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.” This principle, also enunciated in Article I of the United States Constitution, forbids a legislature to create a criminal offense that applies to behavior prior to its enactment. As far as the discretion of the courts is concerned, it may seem rational that they should not invent crimes and then punish people for conduct which falls within the new definition. It appears that the English courts no longer claim the power to create new criminal offenses, apparently accepting the force of the principle of non-retroactivity.

It is not within the scope of this article to devote discussion to the legality of all provisions stipulated in the SCSL’s statute. This portion focuses specifically on the disputed Article 4(c). Based on the thresholds illustrated earlier, the only approach



Young Khmer Rouge messengers responsible for carrying food and ammunition for front line combatants

the SCSL could prosecute Norman for the alleged crime of child recruitment prior to 1996 is via Article 4, which, there is no doubt, will bring us to the discussion on the rights of the accused.

By and large, the goals of principles of legality are to provide notice as part of general prevention, as well as notice to the accused as part of fairness. The latter is intended to limit prosecutorial and judicial discretion without a clear pronouncement of the law's requirements, which would allow the extension of the criminal norms beyond its intended legislative scope. If Norman is to be convicted or/and punished, he will face criminal responsibility and a penalty beyond the scope of the statute. It would place him in the unfair position of not knowing precisely the criminal charge faced and the penalty expected if found guilty. As Bassiouni asserted, the expectation of the law's certainty and of the penalty's specificities are, therefore, the substantive goals sought to be preserved by the principles of legality.

It is well accepted that international crimes are created not only by international law, mostly through conventions, but also through custom. General principles of law are also a source of the ICL, but this source is much less susceptible to legal specificity than the other two. No matter what the source, the legal proscriptions established in the ICL must satisfy the requirements of the principles of legality.

These principles require that there be no crime without a law, no punishment without a law, and no *ex post facto* application of laws. To satisfy the principles, a crime must be sufficiently defined to put people on notice that a particular conduct has been characterized as criminal. The principles of legality thus require a clear and unambiguous identification of the prohibited conduct. These principles are deemed to be part of fundamental justice because they protect against potential judicial abuse and the arbitrary application of the law.

The UN Secretary General has taken a similar

view: "In the view of the Secretary General, the application of the principle *nullum crimen sine lege* requires that the international tribunal should apply rules of international humanitarian law which are beyond any doubt part of the customary law so that the problem of adherence of some but not all states to specific convention does not arise." This would appear to be particularly important in the context of the "hybrid court" at issue.

Such basic concepts of fairness and justice are articulated in certain international and regional human rights instruments. Article 15 of the ICCPR states:

No one shall be guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

The African Charter on Human and Peoples' Rights articulated a similar prohibition that "no one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed."

The Rome Statute of the ICC codifies these principles in Articles 22-23. The prohibition on retroactive penal legislation is linked to the right to a fair trial. Legal certainty demands that criminal offenses are defined and prescribed in law.

As Judge Robertson reminded us, one thing that his colleagues seem to have forgotten is that human rights include the rights of the accused. The majority's decision does violence to the ancient

principle of *nulla poena sine lege*: that is, no act can be punished as a crime unless specifically made so by penal legislation. To do otherwise would open the door to unlimited prosecution on the basis of vaguely defined “customary norms” of which the defendant may not have notice until he is indicted. Recruitment of child soldiers is an affront to any civilized person, but it was not a crime until 1998, and, in their zeal to punish the abuses of the Sierra Leone conflict, the panel has dangerously extended the reach of international penal law.

The prosecution submitted and the SCSL concluded with a similar line that the fact that an accused could not foresee the creation of an international criminal tribunal is of no consequence, as long as it was foreseeable to them that the underlying acts were punishable. It further argued that the possible perpetrator did not need to know the specific description of the offense and that the “public conscience is important in determining what constitutes a criminal act.”

This conclusion is in complete contrast to the European Court’s judgments dealing with a number of varied cases under Article 7(1). To the European Court, Article 7(1) not only prohibits “the retrospective application of the criminal law to an accused’s disadvantage” but also “embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*), as well as the principle that the criminal law must not be extensively construed to an accused’s detriment, for instance, by analogy.”

6. Conclusion

The editor of the law reports of the post-Second World War crimes trials – selected and prepared by the United Nations War Crimes Commission – observes, in the context of the 1946 Hagendorf case, that “not every violation” of the law of warfare “would necessarily constitute a punishable act.” This article has sought to evaluate the international legal methodologies the “hybrid court” utilized to dismiss the preliminary motion

based on lack of jurisdiction appealed by Norman. The reasoning behind the three broad strands of conclusion – that by 1996 prohibition of child recruitment had gained the status of rule of customary international law, that child recruitment was an international crime under international law, and that the emphasis on conduct, rather than on the specific description of the offense in substantive criminal law, is of primary relevance – highlights methodological differences that permit interpretational variations. The following conclusions seem warranted: (1) The court should trace back more consciously the evolution of a norm of customary rule prohibiting child recruitment before 1996; (2) It should examine the complexity of elements of a norm to be a customary rule (general and specific considerations and *opinio juris*); (3) It should distinguish between customary rule prohibiting child recruitment and those criminalizing or punishing the act of child recruitment; (4) The general principle of international law might be better positioned than customary rule for prohibiting child recruitment; (5) The declaratory nature of the mentioned treaties and principles reflecting a norm of customary rule criminalizing child recruitment should be well established; (6) Should it not convincingly prove this evidence to be relevant, the existence of Article 4(c) of the statute beyond doubt will be contrary to the fundamental principle *nullum crimen sine lege* and *nulla poena sine lege* which is linked to the right to a fair trial (including pre-trial) and which is fundamental in a society governed by the rule of law. True, the statute definitely reinforces and amplifies the nature of criminality of the act of child recruitment as a war crime to other warring parties, present and future. And it, to a great extent, serves as a deterrent to such an act – “fair warning” and “legal predictability.” Nonetheless, it is not unwise to suggest that it might not be a crime before 1996 in the absence of a deeper legal scholarship.

Bunsou Sour is team leader of DC-Cam’s Response Team.

STATEMENT ON THE HANDOVER OF THE PREMISES FOR THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

By His Excellency Sean Visoth, Director of the Office of Administration and Executive Secretary of the Royal Government Task Force for the Khmer Rouge Trials

Today, Wednesday 18 January 2006, part of the High Command Headquarters of the Royal Cambodian Armed Forces at Kambol is being handed over to the Royal Government Task Force for the Khmer Rouge Trials. Two buildings and their surrounds are to be dedicated for use as the premises of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (ECCC).

This handover is an important milestone in the long history of bringing accountability for these crimes – committed almost 30 years ago. The forthcoming trials have three goals: to offer justice to the victims and survivors, to prevent similar atrocities in the future and to give the younger generation a clear picture of what happened. A whole generation has grown up and is seeking information on what happened and who should be held responsible.

On behalf of the Task Force, chaired by Deputy Prime Minister Sok An, we wish to express our appreciation to the RCAF for agreeing to postpone by three years their occupancy of the new headquarters, which they have been so looking forward to. Both the Cambodian side and the United Nations side believe that this is an ideal site for the ECCC - providing in a single site the necessary space for both offices and the court room, as well as being more secure and less disruptive to the population of Phnom Penh during the duration of the proceedings.

We take this opportunity also to thank the donors – both those who have contributed to the UN side of the budget as well as to the Cambodian side, which has received recent contributions from the European Union

(\$1.2 million) and Thailand (\$25,000) to complement those from India (\$1 million) and the Royal Government of Cambodia (\$1.5 million). We are confident that the remaining funds will be soon be secured.

We are now building a joint start-up team for the Office of Administration. Our counterparts from the United Nations, led by Deputy Director of the Office of Administration Michelle Lee, will be arriving in Phnom Penh in the following weeks and we intend to move into these premises in early February after some necessary minor alterations are undertaken.

In the legal and judicial area, the final stages of appointing both Cambodian and international judges, co-prosecutors and co-investigating judges are under way, and we would expect to be able to announce their names shortly. Other preparations are also being carried out, such as development of a compendium of over 100 basic legal documents in the official languages of the court (with assistance from the Government of Norway) and for a regional outreach program (funded by the Government of Australia).

Today marks in bricks and mortar the realisation of the long-awaited establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

We know that the tasks ahead for all the staff and judicial officers will be challenging and demanding, but we pledge to do our best to carry out the responsibilities to which we have been assigned so that justice delayed will not mean justice denied for the Cambodian people.

Kambol

18 January 2006

JOINT STATEMENT ON THE ESTABLISHMENT OF THE OFFICE OF ADMINISTRATION OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

By His Excellency Sean Visoth, Director of the Office of Administration
and Ms. Michelle Lee, Deputy Director

This week the Office of Administration of the Extraordinary Chambers in the Courts of Cambodia is being opened and the joint start-up team is commencing its work.

It is a pleasure for us to welcome the press for the first time in the new premises – an office building and a court room with generous surrounds – now dedicated for use as the premises of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

We can now say clearly that we have moved from the planning phase into the actual establishment of the Extraordinary Chambers in the Courts of Cambodia or ECCC.

We take this opportunity to thank the donors – both those who have contributed to the UN side of the budget as well as to the Cambodian side, which is still lacking \$9.6 million. We are confident that the remaining funds will be soon be secured and repeat our appeal for such assistance.

We are not allowing the current shortfall to impede the opening of the Office of Administration, and are now putting into place the joint start-up team for the Office of Administration. Our counterparts from the United Nations, led by Deputy Director of the Office of Administration Michelle Lee, have started to arrive in Phnom Penh to take up their positions in the ECCC.

In the legal and judicial area, the final stages of appointing both Cambodian and international judges, co-prosecutors and co-investigating judges are well under way, and we would expect to be able to announce

their names shortly. On 6 February, the United Nations General Assembly approved the recommendation of the Secretary-General that the international judges, co-prosecutor and co-investigating judge will be deemed as officials of the UN for the purposes of their terms and conditions of service and approve the granting of that status to them for those purpose.

On the United Nations side, the selected judicial officers are now undergoing medical examinations, and the Secretary-General is expected to send the list of nominees to the Royal Government of Cambodia for final selection and appointment by the Supreme Council of the Magistracy. We expect that the Supreme Council of the Magistracy will at the same time announce the names of the Cambodian judicial officers it has appointed.

Other preparations are also being carried out, such as reprinting the information booklet, development of a compendium of over 100 basic legal documents in the official languages of the court and designing a regional outreach program (funded by the Governments of Australia and Norway).

We know that the tasks ahead for all the staff and judicial officers will be challenging and demanding, but we pledge to do our best to carry out the responsibilities to which we have been assigned so that justice delayed will not mean justice denied for the Cambodian people, who have waited so long.

Extraordinary Chambers in the Courts of Cambodia, Kantok

9 February 2006 (text corrected from delivery)

PRESS STATEMENT, 8 MARCH 2006

UNITED NATIONS ASSISTANCE TO THE KHMER ROUGE TRIALS

The Secretary-General wrote yesterday to Prime Minister Hun Sen of Cambodia, submitting his nominees for international judges, international co-investigating judge, international co-prosecutor and Pre-Trial Chamber judges of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea.

The Agreement that was concluded between the United Nations and the Royal Government of Cambodia in 2003 provides for a Trial Chamber, composed of three Cambodian judges and two international judges, and a Supreme Court Chamber, composed of four Cambodian judges and three international judges. The Agreement provides that these five international judges are to be appointed by the Supreme Council of the Magistracy of Cambodia from a list of not less than seven nominees forwarded by the Secretary-General.

The Secretary-General yesterday forwarded the following list of seven nominees for international judges:

- Ms. Silvia Cartwright (New Zealand)
- Ms. Claudia Fenz (Austria)
- Mr. Chandra Nihal Jayasinghe (Sri Lanka)
- Mr. Martin Karopkin (United States of America)
- Ms. Agnieszka Klonowiecka-Milart (Poland)
- Mr. Jean-Marc Lavergne (France)
- Mr. Motoo Noguchi (Japan)

The Agreement also provides for one Cambodian investigating judge and one international investigating judge, serving as co-investigating judges. The international co-investigating judge is to be appointed by the Supreme Council of the Magistracy of Cambodia from a list of two nominees submitted by the Secretary-General. The other nominee is to be appointed as the reserve

international co-investigating judge.

The Secretary-General yesterday submitted the following nomination for international co-investigating judge:

Mr. Marcel Lemonde (France)

The Secretary-General promised to submit an additional nominee for reserve international co-investigating judge at a later date.

The Agreement further provides for one Cambodian prosecutor and one international prosecutor, serving as co-prosecutors. The international co-prosecutor is to be appointed by the Supreme Council of the Magistracy of Cambodia from a list of two nominees forwarded by the Secretary-General. The other nominee is to be appointed as the reserve international co-prosecutor.

The Secretary-General forwarded the following list of nominees for international co-prosecutor:

- Mr. Paul Coffey (United States of America)
- Mr. Robert Petit (Canada)

Finally, the Agreement provides for a Pre-Trial Chamber of five judges; three appointed by the Supreme Council of the Magistracy and two appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General.

The Secretary-General yesterday forwarded the names of the following two nominees for appointment as judges of the Pre-Trial Chamber:

- Mr. Rowan Downing (Australia)
- Ms. Katinka Lahuis (Netherlands)

The Secretary-General has requested Prime Minister Hun Sen to transmit his nominations to the Supreme Council of the Magistracy of Cambodia.

There is not yet any indication when Cambodia's Supreme Council of the Magistracy will announce whom it is appointing from among these nominees.

**REMARKS BY
HIS EXCELLENCY SEAN VISOTH, DIRECTOR OF THE OFFICE OF ADMINISTRATION
OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**AT THE SIGNING CEREMONY OF THE TWO SUPPLEMENTARY AGREEMENTS
BETWEEN THE UNITED NATIONS AND THE ROYAL GOVERNMENT OF CAMBODIA
CONCERNING THE PROSECUTION UNDER CAMBODIAN LAW OF CRIMES
COMMITTED DURING THE PERIOD OF DEMOCRATIC KAMPUCHEA**

14 MARCH 2006

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, PHNOM PENH

We come together today to mark the occasion of the signing of two Supplementary Agreements between the United Nations and the Royal Government of Cambodia. While this occasion may not be as dramatic as others in the establishment of a court and the carrying out of a trial, it is nonetheless of equal importance in that it represents the conclusion of the legal framework for the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC).

On 6 June 2003, the main Agreement was signed by Their Excellencies Hans Corell and Sok An. It stated clearly that two Supplementary Agreements would need to be concluded to spell out in detail the rights and obligations of each party regarding Security and Safety and also regarding a number of matters grouped together under the heading of Utilities, Facilities and Services. Such specifics as laid out in these two Supplementary Agreements had to be mutually agreed before the ECCC could become operational.

A great deal of behind-the-scenes work has been undertaken during the intervening period, both in New York and in Phnom Penh. The main task has, of course, been the effort to secure the financial underpinning for the ECCC. But alongside this fund-raising endeavour, the start-up teams

have been engaged in determining its operational requirements - securing the transfer of these premises; ironing out details of the alterations required for it to serve as the court and office accommodation for the ECCC; appointing the initial staff on both sides; and preparing the public face of the ECCC, such as its emblem, which represents the combination of a symbol of ancient Cambodian justice with the olive branch of peace of the United Nations.

May I take this opportunity to say that although we are more than satisfied with these premises, we still have to make some further alterations and enhancements so that they meet the requirements of the ECCC. For instance, today we have installed temporary fans, as we do not yet have funds for the installation of the air conditioning system. Likewise, construction of the fence separating the ECCC from the military High Command, the detention facility and safe housing for witnesses and roads, guard houses and car parking facilities all await the successful conclusion of the fund-raising phase of our work.

Permit me to outline briefly the content of the two Supplementary Agreements.

The Supplementary Agreement on Security and Safety, to be signed by the Deputy Director of Administration, Ms Michelle Lee representing the

United Nations and by His Excellency Em Sam An, Secretary of State of the Ministry of Interior and Chairman of the Extraordinary Chambers Security Commission representing the Royal Government of Cambodia, reaffirms the Agreement's assignment of responsibility for the security, safety and protection of all persons referred to in the Agreement to the Royal Government of Cambodia (under Article 24). It then goes on to divide operational responsibility between the United Nations (for security within the court room and the premises) and the Royal Government of Cambodia (for general security outside the grounds of the ECCC). It also outlines the rights and responsibilities of individual security officers on both sides, including the right of the United Nations to import and certain uniformed officers to bear arms while on duty.

The Supplementary Agreement on Utilities, Facilities and Services, to be signed by the Deputy Director of Administration, Ms Michelle Lee representing the United Nations and by myself representing the Royal Government of Cambodia, likewise reaffirms the responsibilities assigned under the main Agreement, but amplifies and outlines in some detail exactly

which side is responsible for different items of expenditure. These include on the United Nations side equipment, vehicles, computer hardware and software, telecommunications running costs, training, support for the defence and for witnesses and victims. On the Cambodian side responsibility is assigned for provision of the necessary buildings for the court, for office accommodation, for detention of defendants and safe housing of witnesses and victims requiring protection, all electricity and water, and for provision of services for telecommunications.

It is obvious that a clear delineation of these various responsibilities between the two parties is absolutely necessary as an underpinning for our work over the coming years. Drafts for the two Supplementary Agreements were agreed last December, and have now been finalised and approved by both sides, and the appropriate delegation of powers have been assigned to the officers who will sign the documents today.

I would like now to hand over to the Deputy Director of Administration in her capacity as representative of the Secretary-General of the United Nations.



The nuns visiting the ECCC on February 26, 2006

REMARKS BY
DEPUTY DIRECTOR OF ECCC/COORDINATOR UNAKRT
Ms. MICHELLE LEE

ON THE OCCASION OF THE SIGNING CEREMONY OF THE ECCC
SUPPLEMENTARY AGREEMENTS

TUESDAY 14 MARCH 2006
ECCC, CAMBODIA

Your Excellency, Deputy Prime Minister,
Minister in Charge of the Office of the Council of
Ministers and Chairman of the Royal Government
Task Force for Khmer Rouge Trials;

Honourable Guests from the Diplomatic
Community;

Representatives of the Non-Governmental
Organizations;

Members of the Press;

Friends of the ECCC;

Ladies and Gentlemen.

Today represents a
landmark event in the short
history of the ECCC. In a
moment we will witness the
signing of the final part of
the agreement between the
Royal Government of

Cambodia and the United Nations; setting the stage
for our work in the months and years to come.

Today also marks another landmark event.
Until only a few days ago, the seats in this venue
were still covered in plastic, there was no electricity
and only an empty stage to see. You are the very
first official audience to sit in the gallery of this
court.

Soon this building will be transformed. Judges
will hear cases on this very stage; behind you
translators will be working in Khmer, English and
French; a media centre will record and broadcast

the proceedings of the court to the world; And from
the chairs in which you are now seated- the people
of Cambodia will finally witness the judicial process
for which they have long waited.

Today's event is the result of the support, hard
work and dedication of many people. In particular,
I would like to recognize H.E. Sean Visoth and his

entire team for their
professionalism during
this difficult phase. It is
never easy starting up a
new office, but we have
been fortunate in having
assembled an excellent
team, and I am confident
that we will continue to
enjoy a productive working
relationship.



Finally, I would also like to take this opportunity
to thank all of you. The strong participation of the
international community, NGOs and the press in
today's event is a visible example of the importance
you have placed on the success of our work.

The coming months will be challenging for all
of us here at the ECCC. We have made progress, but
there is still much work left to be done.

I know that with all of your support behind us,
the ECCC has the potential to be a model of
international cooperation to achieve justice.

Thank you

REMARKS BY

HIS EXCELLENCY SOK AN, DEPUTY PRIME MINISTER, MINISTER IN CHARGE OF THE OFFICE OF THE COUNCIL OF MINISTERS AND CHAIRMAN OF THE TASK FORCE FOR COOPERATION WITH FOREIGN LEGAL EXPERTS AND PREPARATION OF THE PROCEEDINGS FOR THE TRIAL OF SENIOR KHMER ROUGE LEADERS

AT THE SIGNING CEREMONY OF THE TWO SUPPLEMENTARY AGREEMENTS BETWEEN THE UNITED NATIONS AND THE ROYAL GOVERNMENT OF CAMBODIA CONCERNING THE PROSECUTION UNDER CAMBODIAN LAW OF CRIMES COMMITTED DURING THE PERIOD OF DEMOCRATIC KAMPUCHEA

14 MARCH 2006

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Today, with the signing of these two Supplementary Agreements, we conclude the legal framework for the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC).

At the same time we can also say that we are well on the way to concluding the financial arrangements, and that the work of setting into place this new and unprecedented institution is beginning to take place.

Firstly, we have secured these most suitable and appropriate premises for the trials – as you can see for yourselves, a brand new court room with space for over 500 people to observe the proceedings and generous room for a media centre; ample office accommodation for the almost 300 staff expected to be employed; and grounds sufficient to allow construction of detention facilities, secure housing for victims and witnesses

coming to testify, and to provide ample parking for press and the public.

Secondly, on both the Cambodian and United Nations sides we have begun to appoint well-

qualified and competent people to take up positions with the Office of Administration for the ECCC. I would like here to mention specifically the Director (Sean Visoth) and Deputy Director (Michelle Lee), who have over the past month worked together in a spirit of harmony and positive cooperation in the task of assembling staff to run the nine sections of the Office of Administration.

Thirdly, the Secretary-General has now transmitted to the Royal Government of Cambodia his list of nominees for the positions of international

judges, co-prosecutor and co-investigating judge as well as their reserves. I would like to thank the Secretary-General and also the Member States who



proposed their nationals for these important positions for proposing people of such calibre and experience from all corners of the globe. The Supreme Council of the Magistracy is now in the process of making a final selection from this list of nominees, and will soon announce the final list of both international and Cambodian judicial officers. I have every confidence that these eminent individuals will work together to build an institution unprecedented, for the ECCC is something new – a national court with international characteristics. If we succeed with the challenge of forging the strong, independent and competent court that we have in mind, then we will not only have set up a pilot court for Cambodia but also we will have built a new model in the annals of international justice.

I take the occasion today to pay tribute to the work of all those in the United Nations Secretariat – from Hans Corell and his successor as Legal Counsel Nicholas Michel and the team from the Office of Legal Affairs, the Department of Political Affairs, the Office of the Controller as well as the United Nations representatives on the ground here in Phnom Penh.

I wish to express my heartfelt thanks to the

Member States of the United Nations who have maintained their confidence and commitment to this process, without which we would not be signing these Supplementary Agreements today. We appreciate the assistance and advice given to us by the Group of Interested States and over recent months their financial contributions, especially by Japan, India, the European Union, France, Australia, Germany, Norway, the United Kingdom, Sweden, the Netherlands, Canada, Austria, Denmark, Belgium, Ireland, the Republic of Korea, Luxemburg, Thailand, Armenia, and Namibia.

I would like to say personally how deeply touched we were to hear of two very special contributions. We understand the deep significance of donations of \$1,000 from Armenia and \$500 from Namibia because we know how those countries have suffered, and we understand that their contributions come from the heart, to encourage us to right the wrongs of our own history as they too are struggling to do.

It has taken many years to get to this point but we now stand on the brink of finally establishing an internationally recognised judicial procedure to address the crimes committed in Cambodia between 1975 and 1979. I urge all those working

in the ECCC to devote themselves wholeheartedly to their duties. To all those observing its work, both within and outside the country – whether in the press, the NGOs, in governments and in the community at large – I appeal to you to extend your assistance and support in the coming years so that we finally discharge our historic obligation to the victims of these crimes.

Thank you for your attention.



The trial building of the ECCC

REDEFINING GENOCIDE

Kok Thay-Eng

Introduction

The 20th century was the bloodiest period in human history. It was plagued by two major world wars and the “cold war” between the West and the Soviet Union, which fought proxy wars in decolonizing and developing countries. In World War I, the Turkish government appalled the world by staging one of the most barbaric massacres in modern times: the death march of the Armenians in Turkey. Never having witnessed such enormous crimes in modern times, the world stood by helplessly, perhaps unable to grasp the scope of the atrocity. Not until the war ended was the extent of the massacres revealed and even then, the crimes were not defined in the fledgling international laws.

In World War II, six million Jews were exterminated by Nazi Germany under its grandiose plan to establish a great nation without Jews and other “undesirable” elements, such as gypsies and homosexuals. Elsewhere Stalin starved to death and executed millions of Soviet citizens that his regime deemed dangerous. The Japanese ruthlessly butchered the Chinese, and raped and enslaved Chinese and Korean women. Cities, most notably Dresden and Hamburg, were razed by bombings by both sides. The war ended with the Americans dropping atomic bombs on Hiroshima and Nagasaki.

The destruction of Europe’s Jews and the realization of the flaws of state sovereignty allowed Germany’s leaders to exterminate their own people. It also awakened the world and forced it to tackle mass killings, which culminated with the UN’s establishment of the Genocide Convention in 1948. The world pledged not to allow such crimes to occur again.

However, such crimes have occurred many times since, even in the early 1990s in the backyard of civilized Europe, where Serbs incarcerated Muslims in concentration camps closely resembling those of the Nazi’s. The Darfur genocide is ongoing.

Thus, genocide is not as easy to prevent, stop and eradicate as originally thought. One of the main issues related to the prevention of genocide is its definition. Since Raphael Lemkin first coined the term in 1944, genocide has been understood differently by different people. This paper attempts to give genocide a new definition.

Why Should Genocide be Redefined?

Under the UN Convention on the Prevention and Punishment of the Crime of Genocide adopted in 1948, genocide was defined in Article 2 as:

...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

Killing members of the group;

Causing serious bodily or mental harm to members of the group;

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

Imposing measures intended to prevent births within the group;

Forcibly transferring children of the group to another group.

There are a few shortcomings in this definition. First, as Chalk and Jonassohn suggest, there is a widespread application of the term genocide to a variety of unrelated situations.¹ This confusion seems to be a result of the broad physical elements in the Convention’s definition. Elements (a) through (e) mix lethal with non-lethal acts, which

allows many individuals opposed to particular actions (relating to birth control, cultural assimilation and the prohibition of a particular language or religion, etc.) to invoke the Genocide Convention. For example, many people point out that China's one-child policy is genocidal because it limits or reduces the population growth of particular segments of China's ethnic groups. However, it is obvious that China's aim is to reduce the growth rate of its enormous population. Second, ethnocide, which is reflected in (c) and (e), is also a part of the definition that many scholars reject. Third, it is generally agreed that Convention's definition includes only four protected groups; political groups, which have been the main victims since World War II, should be included. It seems that the perpetrators of World War II's genocide, as the French delegates correctly predicted, tried to victimize the four protected groups on political grounds.

Nonetheless, the Convention is not completely useless. As Kuper noted, in many cases the four protected groups and political groups are closely connected. If the victims consistently belong to a racial, ethnic, national or religious group, even though the perpetrators claim their victims are political, the Genocide Convention can be invoked. The problem is that it is more difficult to prove guilt if the political group targeted is not explicitly stated. It is also possible that a political group could be victimized for purely political ends. This argument applies equally to socio-economic and other groups that should be included in the definition.

Many observers have noted that there was an "under-the-table" compromise made during the Convention to exclude political groups. This was done to secure ratification by member states that feared that their internal suppression of dissents might be subject to external interference under the Convention. Without the member states' support, the Genocide Convention would not get off the ground. However, as Kuper noted, interference in a

sovereign state to protect victimized groups was the main purpose of the Convention. This seems to suggest that not including political groups in the definition is a failure of the Convention.

Finally, being inclusive and exclusive at the same time seems to cause other problems. The inclusiveness of the physical elements detracts attention from the main emphasis of the Convention: the killing of part or an entire group as such. And by excluding political groups, internal massacres carried out under any of the five grounds mentioned could go unnoticed by the outside world, as the perpetrators can claim that what they are committing is a "political suppression." The international community would then act only when killings are enormous in scope and carried out over an extended period of time. Thus, the Convention does not cover small-scale genocide as it should. Coupled with the general view of genocide as something similar to the Holocaust or the total destruction of a race, ethnic group or nation, there is a tendency to not interpret the legal definition of genocide as the physical destruction of a part of a group. Over time, this false interpretation has become what the public understands as genocide. This explains the creation of confusing terms such as "genocidal massacre" to fit in a situation where only a small part of a group is destroyed.

The solution is simple: omit some of the physical elements and expand the protected groups.

Lemkin's Principle

In 1933 Lemkin made a proposal to the International Conference for Unification of Criminal Law convened in Madrid. He requested the codification of what he called the connected crimes of "barbarity and vandalism" to prohibit the annihilation of racial, ethnic and religious groups. His proposal drew attention to the slaughter of Armenians during World War I and warned the conference of the rise of Hitler. By barbarity Lemkin meant "the premeditated destruction of national, racial, religious and social collectivities." Vandalism

meant “the destruction of works of art and culture, being the expression of the particular genius of these collectivities.” Because the crimes against the Armenians shocked the world, Lemkin proposed that they be repressed universally wherever and whenever they were committed, disregarding state borders and under universal jurisdiction. During the interwar period when many states were looking inward, concerned about their internal affairs, Lemkin’s proposal for collective action was considered but not taken seriously.

During World War II as the Nazi horrors predicted by Lemkin became real, he coined genocide to replace “barbarity and vandalism” because the Nazi’s crimes further extended the old phenomenon of destroying a particular group. By



genocide he meant “a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups with the aims of annihilating the groups themselves.” Lemkin intended to cover the protection of all groups including “physical, biological, political, social, cultural, economic, and religious.” Believing that particular cultures take thousands of years to form, Lemkin considered the destruction of culture a second type of genocide, later known as ethnocide. The first type of genocide was the total or near annihilation of a group and the second was the combination of massacre and eliminating a culture.

There are two notable points in Lemkin’s principle. First, he intended to protect *all* groups

within a nation. Second, he included ethnocide as a type of genocide. The 1948 Convention was a compromise of his original goals. It included ethnic groups and acts (c) and (e) as a partial measure to protect a culture. At the same time, it listed only four protected groups.

In the early 1900s, Lemkin might have been right in valuing a culture because it is unique and takes a long time to establish. But in today’s world of “fraggementation,” in which we witness the fission and fusion of old and new cultures, cultures seem too mutable and unstable to define for protection. Equating their destruction with genocide seems odd. This is not meant to be disrespectful of Lemkin. As some delegates noted, “there was no absolute concept of genocide.” It is an evolving

concept.

Genocide Definitions Advanced by Scholars

With regard to the shortcomings of the definition in the Convention and its failure to prevent genocide, how have scholars redefined genocide?

Herve Savon placed emphasis on the motives and consequences of perpetrators. Thus he categorized genocides of substitution, devastation and elimination. Irving Louis Horowitz defined genocide as “a structural and systematic destruction of innocent people by a state bureaucratic apparatus.” On a social spectrum he placed genocidal society on the far left followed by repressive society, liberal society in the center and permissive society on the far right. He concluded

that fanaticism is not a sufficient condition for genocide, but national culture is. Accordingly, it seems that the Turkish, German, Cambodian, Rwandan, Yugoslav and Darfur cultures, not to mention approximately forty other unofficially recognized instances of other countries' genocides suggested by Harff and Gurr and Gregory Stanton, are less gentle than others. In addition, Horowitz's concept runs counter to the common perception that all human beings are capable of doing evil.

Vahagn Dadrian was more focused on the imbalance between social groups and the materialistic nature of genocide. Based on empirical evidence, he suggested that genocide is the conduct of the majority against the minority. This is contradicted, however, by the Serbs' massacre of

in the aftermath of a crisis, but did not limit its perpetrators to the state. However, there is no need to mention crisis, as it is a general factor. Genocide, war, conflicts and social upheavals do not happen without a cause.

Chalk and Jonassohn wrongly criticized Kuper for including the US bombings of Hiroshima, Nagasaki, Dresden and Vietnam as genocide. They were confused between criminal motive and intent. They defined genocide as "a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator." This definition limits genocide to the one-sided total destruction of a group. However, Chalk and Jonassohn resolved the difficulty of including



Bosnia's Muslims in the early 1990s: the Serbs comprised only about thirty percent of Bosnia's population.

The respected sociologist Helen Fein said:

Genocide is the calculated murder of a segment or all of a group defined outside of the universe of obligation of the perpetrator by a government, elite, staff or crowd representing the perpetrator in response to a crisis or opportunity perceived to be caused by or impeded by the victim.

This definition consists of physical destruction, dehumanization and social crisis. Fein listed all known conditions of genocide, but by including only calculated murder, her definition is narrow. She limited genocide to occurring during a crisis or

political groups in the definition of genocide by relying on how the perpetrators defined them. Because the perpetrators could identify their victims, they argued, the victim group had to exist. This is an ingenious solution, but could be problematic. Under their definition, the efforts by a government to eliminate gangs, drug dealers, terrorists and other anti-social groups could be dubbed as genocide because the definition only mentions how the targeted group is viewed, but not its real characteristics. In the perpetrator's eyes, the victims never exist as a group; they are enemies; they are anti-social.

Yehuda Bauer interestingly resolved the problem of being unable to find common grounds between the Holocaust and smaller mass killings by

giving them different names: the Holocaust and genocide. Bauer referred to the Holocaust as “planned physical annihilation, for ideological or pseudo-religious reasons, of all the members of a national, ethnic, or racial group.” His genocide definition was more inclusive. It encompassed ethnocide and killing part of a racial, national or ethnic group as such and/or with an intent of denationalization. However, Harff and Gurr criticized Bauer, saying his separation might lead to the belief that only the Nazi-type ideology utilized in Western culture was capable of annihilating a race and that if the uniqueness was accepted over time, the Holocaust would be a concern only to Jews and Germans.

Another criticism can be made about the



separation of these acts. Genocide is not only a connotation of human atrocity and barbarity; it also has symbolic value. Since the term genocide was coined in the wake of the Holocaust, it has come to encompass it as well. It carries with it the Nazi horror and the symbol of the world awakening to indiscriminate mass murder against a group. By separating the two, genocide might entirely lose its significance, thus making it difficult to mobilize public support for intervention in future genocides. The same argument can be made about Harff and Gurr’s division of genocide into genocide and politicide. In this case, politicide will become less noticed.

Based on his study of Soviet mass killings, Lyman Legters argued that socioeconomic groups

should be included in the UN definition, as the Soviets had targeted the Kulaks for destruction even when some of their attacks on the Kulaks were covered by the UN definition. However Legters was supportive of the UN definition for its exclusion of political group.

In short, Drost, Fein, Kuper, Harff and Gurr, Legters and to some extent Bauer were more supportive of the UN definition. Since the 1990s, the UN definition has been used with international support to convict many perpetrators of genocide and to establish more legal precedents. This expands the Convention’s capacity to prevent and punish the crime of genocide. However, it does not mean the UN definition does not need amendments. Problems still exist with this

definition, no matter how many legal precedents are established.

Legal and Sociological Definitions

The legal definitions of genocide are more specific than the sociological ones. Legal definitions are mainly used to prevent and identify the crime of genocide, whereas sociological definitions seem to be coined more broadly to assist research. Some scholars, however, do not make a distinction.

Many scholars give much emphasis to historical instances of genocide and shape their definitions by incorporating the common characteristics of each case. As such they lack concerns about the future, and scholars do not predict how their definitions would become relevant in future circumstances. The UN made this

same error in its exclusions of political groups. In contrast, this paper's definition is more future-oriented, flexible and harmonized with current moral standards, emphasizing the extreme barbarity of destroying members of a group because of who they are.

Many scholars are preoccupied with comparative studies of genocide and theorizing about genocide for sociological research. There is little focus on barbarity and prevention in their definitions. Genocide might not be a new social phenomenon that could be theorized. It could be an old practice of brutal massacres commonly committed in antiquity and the Middle Ages. As we are in the modern age and have a higher moral standard, genocide has become more despised and emphasized. If we are to prevent genocide, then its definition should prevent it. The way is now open for a new definition.

How Should Genocide Be Redefined?

As mentioned above, from 1915 to 1918 more than one million Armenians, including women and children, were moved from their homeland through death marches and massacres by the Turkish government. From 1938 to 1945 six million European Jews were exterminated by Nazi Germany as part of Hitler's quest to establish a great German empire of pure race. From 1932 to 1933 Stalin starved up to seven million Ukrainians as a part of an ideological genocide (up to 66 million Soviet citizens died from 1917 to 1957). From 1975 to 1979 the Khmer Rouge implemented an extreme plan to turn Cambodia into an agricultural utopia, resulting in nearly 2 million deaths. In Rwanda in 1994 up to 800,000 Tutsis and moderate Hutus were hacked to death with machetes in only three months, and from 1992 to 1995 200,000 Muslims were killed by the Serbs in the former Yugoslavia. Adding to these high-profile cases are many others.

While these atrocities occurred at different

times and places, and under varied socio-political circumstances, they share a common characteristic: the indiscriminate and systematic destruction of the members of a group, simply because they belonged to that group. Therefore, to make use of the existing, formally recognized UN definition, genocide should be redefined as:

Any of the following acts committed with the intent to destroy, in whole or in part, a group, as such:

Killing members of the group;

Causing serious bodily or mental harm to members of the group; and/or

Imposing measures intended to prevent births with the group.

Explanation

The basic principle of this definition is: indiscriminate and systematic destruction of members of a group because they belong to that group. Genocides can be small (for example, where a small number of victims are systematically massacred over a relatively short period of time) or large and mature (where a large number of victims are killed over an extended period of time). Mature genocides include the Armenian death march, the Jewish Holocaust, the Cambodian Killing Fields, and the massacre of Tutsis in Rwanda. However, the number of victims does not make one genocide more or less barbaric than another. Calling both types "genocide" resolves the problem Bauer faced in separating the Holocaust from genocide.

By making the victim group inclusive, conforming to the UN's original idea and Lemkin's objective to protect all human groups, and limiting physical elements to exclude traces of ethnocide, this definition resolves the problems inherent in the UN definition. In this definition any indiscriminate, systematic killing of one group, whether in time of war or peace, can be labeled as genocide. When one group plans on destroying another, the result will be more than a few victims. As such, there is no

need to use qualifying phrase such as genocidal massacre. It is either small or large-scale genocide.

How the word “group” should be defined is very important as perpetrators can use this loophole to make a socially acceptable group look like an anti-social one and thus liable for destruction. In this paper, group is defined as pro-social, not anti-social such as gangs, thieves or terrorists. It includes, but is not limited to, national, ethnic, racial, religious, political and socio-economic groups.

Although intent is hard to prove, it is a basic mental element of all crimes which has to be proved. In some instances there is no need to find written intent. The systematic character of destruction of a group inherently consists of criminal acts and intent.

The phrase “in whole or in part” implies that in the event that the plan to destroy all members of the group fails, the successful destruction of part of the group also constitutes genocide. In that case all members of the group or part of it who suffered are counted as victims of genocide. For example, although Hitler failed to exterminate all Jews under his plan, he still committed genocide. In addition, the plan to destroy in part also constitutes genocide.

This definition is similar to that of Pieter N. Drost, a Dutch law professor, who defined genocide as “the deliberate destruction of physical life of individual human beings by reason of their membership of any human collectivities as such.” The problem with Drost’s definition is that it tends to allow the killing of a few people on racial grounds, for example, to be counted as genocide. The new definition compensates for this by considering the systematic manner of the killing.

It differs from Fein’s 1984 definition only on the point that Fein limited genocide to occurring during a crisis. As argued earlier, crisis is a general condition of a conflict. Placing the word “crisis” in a

legal definition can be a burden because one has to prove the existence of a crisis in order to prove genocide.

This paper’s definition follows the pattern of the UN’s for many reasons. If the UN definition has been criticized because it was a political compromise resulting in the deletion of political groups, it seems that all parties agreed to the definition except on that one issue. Thus, it could be concluded that without the compromise, an ideal definition of genocide should include political groups.

Indeed, the failure of the Convention to stop genocide rests primarily on other factors such as state sovereignty and state interest to intervene. When a state such as the United States had an interest to intervene (e.g., its recent invasion of Iraq), it could find suitable reasons to do so. In contrast, without such interest, there will not be adequate evidence of genocide until it is too late. In Cambodia and in the gassing of the Kurds, people questioned the authenticity of the second- and third-hand refugee testimonies in an effort to support their lack of action. And the invasion of Iraq was based on “unspecified” intelligence. Of course, that intelligence has proved to be false.

Although he criticized the UN definition, by later accepting it, Kuper seems to recognize its viability. One of his reasons for supporting the definition likely stemmed from his argument that political groups and the four groups mentioned are always connected and that the perpetrators can exterminate an ethnic group by identifying them as politically affiliated. Conversely, if political and other groups are intertwined, then killing on political grounds could be proved as racial or ethnic when members of that group are consistently and systematically killed.

Explaining the Underlying Concept

Why should “indiscriminate and systematic destruction of members of a group because they

belong to that group” make genocide the gravest crime? The killing of members of a group as such is not just barbaric, but also an irrational manner of killing which has a tendency to result in enormous loss of life for many reasons. First, it generalizes the culpability of members of the victim group, mixing real with perceived threats. By associating the innocents with the real enemies, it dehumanizes all members of the group which, in Chalk and Jonnassohn’s view, is one necessary precondition of genocide.

Second, this manner of killing has the potential to proliferate and become uncontrollable as the very ideology or reasoning which supports such killing can easily be interpreted in killing an entire group or later be used against other groups. The Khmer Rouge originally planned to execute all Lon Nol officials and civil servants, but later urban people were targeted, then they purged their own cadres. Power quotes Galbraith’s realization of the proliferation effect of the indiscriminate killing of the Kurds in Iraq under the Anfal campaign:

These things accelerate.... Hitler when he took power in 1933, did not have a plan to exterminate all the Jews in Europe. Evil begets evil.... While at that time the extermination campaign was focused on Kurds in rural areas and small towns, I thought that the logic of his program could culminate in the elimination of the entire Kurdish population of Iraq.

Third, left unchecked, killing people has the effect of desensitizing members of the perpetrating community, making a full-scale genocide more likely given the right opportunity. This is different from a soldier who might be desensitized to kill other soldiers after being on the battlefield for a long time. Desensitized genocidal perpetrators would not hesitate to kill women and children of the victim groups. An example can be drawn from the suicide bombers who blow up Israeli gatherings. The desensitizing effect can also be noted in the statement of the new Iranian

president, Mohammad Khatami, who spoke of wiping Israel from the map. A large number of Iranians supported his speech. In fact, a suicide bombing campaign would fall under this paper’s definition of genocide.

Finally, when the victim group is broadly defined, it allows for the inclusion of crimes committed by perpetrators who kill by virtue of the victims’ collective identity. It would include, for example, the Soviet Union’s purges, which claimed the highest number of victims in history. With regard to killing under extremist communist ideology, which envisioned an ideal society without a certain social group, victims were not limited by borders or to those living in the Soviet Union, but in China, Cambodia and other countries as well.

Therefore, using this basic principle as the backbone for defining genocide, it is possible to predict future full-scale genocide and prevent genocide from becoming mature.

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Cheung Ek Killing Site

SEPARATION OF POWERS AND IMPORTANCE OF THE INDEPENDENCE OF JUDICIARY

Muth Chantha

An independent judiciary is the most important means of protecting human rights and fundamental freedoms. It is also essential in the creation of a state that upholds the rule of law.

One can argue that according to the spirit of a democratic constitution, the ultimate power of a State is vested in its people. The very nature of a democratic constitution implies that the government is formed to reflect the will of the people and it is “of the people, by the people, and for the people.” As stipulated in the 1993 Constitution of the Kingdom of Cambodia, “we the people of the Kingdom of Cambodia resolve in the constitution adopted in 1993 to constitute Cambodia as a



sovereign, liberal and pluralistic” state.

Constitutionally, the sovereign power of the people is expressed and exercised by their elected representatives or legislators. However, it is evident that these representatives have granted sovereignty (the greatest power) to themselves, giving themselves a status that is beyond the spirit of a democratic constitutional doctrine.

And what about the judiciary? The judiciary is

even more beyond the reach of the people, even though it is one of the vital components of a democratic constitution. The Cambodian judiciary – like that of certain other countries – does not derive its powers from a representative body of legislators who are elected by the people. Further, the powers it exercises are beyond the jurisdiction and control of the people. People are constitutionally not allowed to participate in the vetting and selection of judges and prosecutors because the judiciary is not elected by the people, directly or indirectly.

Rather, it is appointed by the “Supreme Council of Magistracy.” This body claims to be an independent body charged with overseeing the judiciary’s recruitment and selection, as well as their promotion and transfer, and the disciplinary actions taken against them. But its independence can be called into question. More or less, this body’s composition is controlled by political appointees. The only person to hold the independence of the judiciary in high regard is His Majesty the King, who is the president of the Supreme Council. However, since this body was first formed (when King Sihanouk was on the throne), the king has failed to preside over its meetings. Instead, he has designated the president of the Senate to take his place. It is obvious that designating the Senate’s president to chair the meeting is incompatible with, and runs contrary to, the principles of separation of powers and checks and balance. Therefore, it can be argued that the judiciary does not reflect the will of people.

The independence of the judiciary can be guaranteed only if a government of the people, by the

people, and for the people is in place. The tool for guaranteeing an independent judiciary is the separation of powers of the three branches of government: legislative, executive, and judicial, which creates a system of checks and balances. Although the separation of powers and checks and balances was clearly stated in the Constitution, it has not been put into practice.

In several instances, the executive body of the government has violated the power of an independent judiciary by overruling the court's decisions, for example, its orders to re-arrest accused who have been released by court orders or to release suspects arrested under court orders. This clearly illustrates that the executive branch has given itself a dual role and operates under a double standard: it is the judge

the judiciary or its judges. It should not be forgotten that in an overwhelming number of cases before the courts, the government is one of the parties.

Also, a judge should not only be impartial but also appear to be so. It may thus be suggested that if unobstructed authority is given to the executive branch or a political party to identify and select a person for appointment as a judge or member of the higher judiciary, it would subvert the independence of the judiciary. The independence of judiciary will disappear when judges owe their appointment to politicians. This would suggest that any method of judicial selection should safeguard against judicial appointments for improper motives. Persons selected for judicial office must be individuals of integrity, merit, and ability, and have



and prosecutor at the same time.

Other arguments have been made that Cambodia is not run by the spirit of the laws adopted by the legislative body, but is rather run by sub-decrees. Most of the laws adopted by the National Assembly are subject to sub-decrees that are issued by the government (Council of Ministers) before the laws can be enacted. Whereas sub-decrees are left unchallenged or their constitutionality unchecked, the laws adopted by the National Assembly require comment from the Senate and their constitutionality is checked by the Constitutional Council.

Therefore, the "independence" of the judiciary in Cambodia must be understood in its true sense, which is vital because of the tendency to run down

appropriate training or qualifications in law. Therefore, any judicial selection based on political affiliation or political loyalty must be severed.

In order to make the concept of judicial independence a reality, it is imperative that the higher judiciary enjoy immunity from executive interference. There must be no inappropriate or unwarranted interference with the judicial process, nor should judicial decisions by the courts be subject to revision. This principle must be applied without prejudice to judicial reviews and to authorities' mitigation or commutation of sentences imposed by the judiciary.

An important factor that tends to contribute to judicial independence is salary. Hence, a judge should – consistent with his social status and the

dignity of his office – receive an adequate and preferably fixed salary, and a decent pension. Further, the age of retirement should be secured by law. In this regard, the government should consider or review the budgetary allocations to the Ministry of Justice and compare them to those for parliamentarians and senators. Where possible, an autonomous budget should be created for the courts in order to distance them from the Ministry of Justice.

From this critical appraisal of the judiciary, one can conclude that an independent judiciary is of paramount importance in the context of guaranteeing the human rights and fundamental freedoms inscribed in the Constitution as well as internationally recognized human rights. No structural issue is more important to the long-term advancement of human rights in Cambodia than judicial reform. Indeed, all aspects of economic and social development in Cambodia are affected by the inadequacy of the present system, which constitutes a real obstacle to progress. Only a strong independent judiciary and an effective court system can break the cycle of longstanding impunity in Cambodia and provide the public with an alternative to violence as a means of resolving conflicts. If the judiciary is not independent from the executive branch, the laws cannot be enforced for the government and its functionaries.

Once the judiciary's independence is undermined and judges who lack scruples are appointed, constitutional anarchy and legal chaos would follow. Once judges with "pliable" consciences and who are subservient to the wishes of politicians are appointed, the independence of the judiciary is weakened, and social justice and the rule of law are in vain.

The equality of human beings before the law and their equal protection under the law are fundamental for human rights and may also be regarded as critical in the sense that they are the

basis for the development of guarantees of specific human rights. If these rights are deprived or priority is given only to those who are privileged, legal rights will be totally decried and justice can never be achieved.

Last but not least, if an independent judiciary is not strengthened and guaranteed, social justice cannot be rendered. Likewise, absent an independent judiciary, basic human rights and freedoms, and due process of law (such as the rights to physical security and life, and freedom of expression, speech, association, and press) can also not be guaranteed, and the rule of law will never exist.

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The Gallows

The pole with cables attached to it had been used for the student to conduct their exercise. This Khmer Rouge utilized this place as interrogation room. The interrogators tied both hands of the prisoners to the back by a rope and lift the prisoners upside down. They did like this until the prisoners lost consciousness. Then they dipped the prisoner's head into a jar of smelly, filthy water, which the normally used as fertilizer for the crops in the terrace outside. By doing so, the victims quickly regain consciousness, and that the interrogators could continued their interrogation.

THE KHMER ROUGE GENOCIDE AND THE NEED FOR JUSTICE REMARKS BY U.S. AMBASSADOR JOSEPH A. MUSSOMELI AT A MEETING WITH KHMER ROUGE VICTIMS MARCH 28, 2006

One of the greatest crimes of the 20th century has gone unpunished for 30 years. As you all know, between April 17, 1975 and January 8, 1979 – a period of less than four years – the Khmer Rouge systematically tortured, starved, and eradicated («smashed» was their preferred term) approximately 2.2 million fellow Cambodians. This constituted between one-fourth and one-third of the entire population. No one was safe from these «liberators of the people.» Their list of enemies was long: the indigenous Muslim population, the Vietnamese minority, Buddhist monks, city dwellers, anyone with a diploma, anyone who wore eye glasses, and especially fellow Khmer Rouge suspected of treason. All these groups and many others – along with wives, husbands, and children – were annihilated in arguably the worst genocide ever perpetrated.

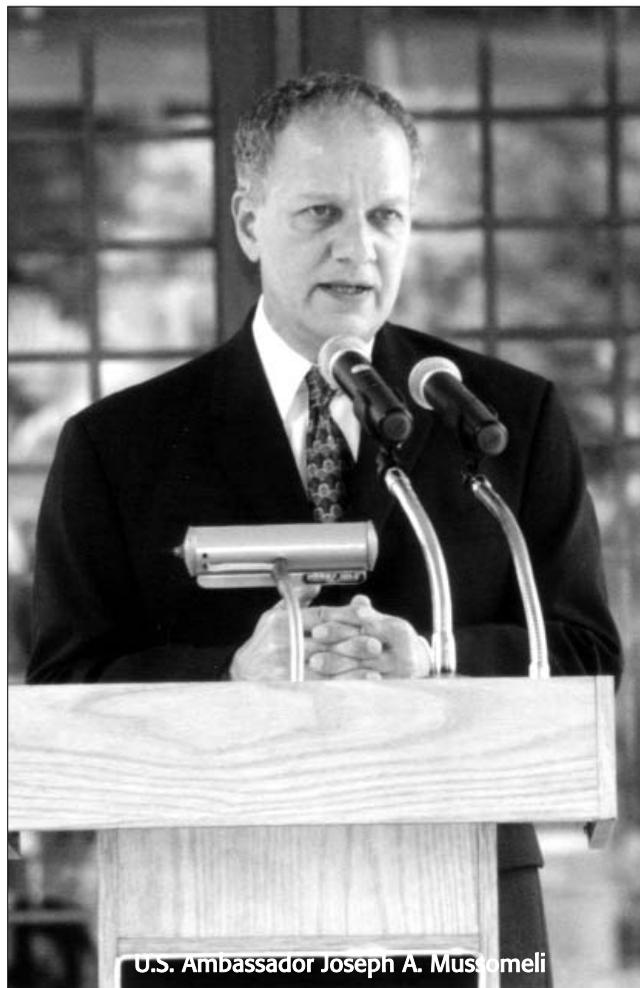
Why do I say the «worst genocide ever» when there has been such stiff competition in a world that sometimes seems to have lost any sense of decency and compassion? Because this genocide stands alone as having failed to bring any of the

guilty to justice. From the Nuremberg Trials to the more recent international and national tribunals to try the mass murderers in Bosnia, Serbia, Liberia, Ethiopia, and Rwanda, the victimized, their families, and the international community have been given some semblance of justice, some degree of retribution. But not here in Cambodia.

Recently, there has been some progress in creating a Khmer Rouge Tribunal (KRT) with UN cooperation. But time is running out as the killers grow old and fade away, but the pain and the horror that they perpetrated ought never to never run out, ought never to fade away.

Why does this matter? Some would argue that expending scarce funding for a 30-year old crime when Cambodia suffers from so many other more immediate problems is absurd. I hope the vast majority of Cambodians

would disagree. In Cambodia those who were responsible for the genocide for the most part live safe, free, even prosperous lives among the very people they terrorized. There is not a single family in Cambodia that was not affected by the genocide. Everyone alive today had fathers, mothers, siblings,



U.S. Ambassador Joseph A. Mussomeli

aunts and uncles who perished in the slaughter.

The Khmer Rouge declared that they would bring the country back to «year zero.» They kept good their promise and now 30 years later the country is still lost and broken. Cambodia's brokenness is more than just political and economic. It is also legal and psychological and spiritual. All the flaws of modern Cambodia – from trafficking in persons to the drug trade and from the plundering of its natural and cultural resources to the



U.S. Ambassador greeting KR victims at his residence on March 28, 2006

rampant corruption that pervades all levels of the government - all have been exacerbated by the failure of the international community to bring the leaders of the Khmer Rouge to justice.

The culture of impunity that we see throughout Cambodia today is rooted in the

irrefutable belief among its people that no crime is so great that it must be punished, and that whatever any Cambodian does is fine because it cannot possibly be worse than what the Khmer Rouge did - and got away with doing. A Khmer Rouge Tribunal is a necessary first step to healing the three decades old wound that continues to fester. There will remain severe limitations on how far Cambodia can progress and reform until some degree of justice is rendered. All those who died and all those who suffered:

their deaths and their pain need to be vindicated, need to be sacramentalized. The victims of the genocide deserve justice; the victims of the genocide demand justice. It is their right to receive justice, and it is our obligation to ensure that justice is done.



U.S. Ambassador greeting KR victims at his residence on March 28, 2006

ALL FOR ONLY TO SURVIVE

Sim Soth aka Koy

Early in the morning on April 17, 1975, I was riding a *cyclo* (a three-wheel bike where the customer sits in front) as usual. I used the income I earned from this business to support my studies. That morning was quite different from the other days, as there were more customers who offered me a higher fare than usual. Suddenly, there were crowds of people milling around noisily and the sporadic sounds of gunfire. Sensing a bad situation, I sped up and returned to House 15 in the compound of Prayouvong Pagoda. A while later, the situation became less confused. The city dwellers were happy and congregated along the sidewalk of Norodom Boulevard, applauding and waving white cloths or even the shirts from their backs to congratulate the soldiers of the liberating army. They thought the war was over. Like others, the monks and I came out from the pagoda and waved to the soldiers.

A Journey to the Black Devil

Suddenly, everything changed, and things were not what we had expected. The Khmer Rouge soldiers, dressed in black, were carrying various kinds of weapons. They walked in two rows down Norodom Boulevard, heading toward the Independence Monument. They had terrifying looks on their faces and their words were unpleasant.

There was a man riding his bicycle at a leisurely pace near the sidewalk. A Khmer Rouge soldier pointed his gun at the man, and ordered him to leave his bike, and take off his watch and all of his clothing except his underwear. After he took the man's valuable belongings, the soldier shouted, "Go away now or you will die!"

Next, the Khmer Rouge shot their handguns at the crowd and cried out, "Leave the city at once!

The U.S. aircraft are coming to bombard the city. In only three days, Angkar will allow you to return." On hearing this, the people hurriedly packed their belongings. Some people delayed, waiting for their relatives so they could leave the city together. I did not leave right away because I had to prepare lunch for the monks. But the Khmer Rouge soldiers shouted even louder, forcing us to rush. To reinforce their orders, they fired M-79s, injuring several people.

At 10 a.m., my older brother, a monk named Loeung Sok, I and four others who lived at the pagoda hastily departed to Kbal Tha-nal with crowds of people. Everyone was converging on the street, making it difficult to move.

When we reached the Kbal Tha-nal roundabout, I saw a many corpses of soldiers and civilians who had just died, lying on the streets. At the same time, I heard continual gunfire coming from the other side of Monivong Bridge. The Khmer Rouge shot and killed four people who were trying to cross the bridge.

Under the scorching sun, the streets were crammed full of people walking at a snail's pace. Sometimes the movement paused for a moment, and one could hear people calling for their lost relatives and children crying out in hunger. To make them move faster, the Khmer Rouge fired guns just over the heads of the crowd.

In the afternoon, I reached Takmao. A female Khmer Rouge soldier with a grenade in her hand darted toward me, grabbed my collar, and asked, "Are you a commando?" I answered nervously, "No, I am a student." As proof, I took out my student identity card. Without glancing at it, she pushed me back and I almost hit the ground. Sensing danger, I

squeezed through the crowds and walked as fast as my legs could carry me.

After a three-day rest, I walked to Prey La-Vear sub-district in Prey Kabah district. On my way, I saw many dead bodies; they were probably city residents. Some bodies were in military uniform. The Khmer Rouge soldiers were inspecting people at “Angkar’s request” for any valuables they could confiscate. If anyone argued or refused, they would be shot or tied with a rope and taken away. I had no valuables to be seized since my package contained only rice and a bag of sugar which I intended to give to the monks.

The Malicious Village Chief Murders Hundreds of People

After I arrived at my home village, my brother and I were called to be questioned. Tang, the village chief, forced me to describe my work in the Lon Nol regime. He said that Angkar would send me back to my former position. I always gave them the same answer: I was just a student in the pagoda. Those who had told Angkar about their real careers or positions were taken away and disappeared. At twilight, the militiamen and village chief assembled a meeting. They called the men and youths who had come from Phnom Penh to be re-educated, and took entire families. They simply told those new people that they were going to move them to a new settlement, but they were taken to be killed.

At the worksite where people were digging channels, the village chief and militiamen walked on the levee to observe people. Then, smoking cigarettes, they sat down among the new (April 17) youths. I dared not stare at them. I was working hard to dig earth, trying to forget my thirst and control my bladder. The village-level Angkar were chatting happily about the pleasure of killing people. Sometimes, they raised their voices so I could hear what they were saying, “Where have those CIA men, individualists and private owners gone since last night? Let’s see how many of them

are left.” “They will be there only 9 months and 10 days,” answered one of the Khmer Rouge. “Human lives are sizzling in the frying pan,” said another. Hearing these cruel words, I worked with fear and dejection.

One night, Angkar did not call people to work on the channels; instead, it summoned them to attend a meeting in the compound of Angkanh Pagoda. Angkar had people walk in rows, with each row signifying a particular unit. Base people and new people were sitting separately.

When I arrived at the meeting, I saw many red flags. The cries, “Bravo! Our determination!” could be heard from an amplifier. In front of the crowd, the sub-district chief, village chiefs and unit chiefs were sitting on chairs. A prisoner named An was shackled to the front pillar of the meeting hall; militiamen pointed guns and knives at his back. The unit chief made a speech about the earlier acts of An, who was accused of betraying the revolution. A representative of each village shouted, condemning the prisoner to death. “We are determined to break An’s head! Cut off his head! Use his corpse as fertilizer for our land!” they shouted. After the militiamen executed the prisoner, and the crowd broke up.

Saying We have Enough to Eat, But Actually Hunger is Always with Us

Angkar sent both male and female youths to build Kampong Chak Dam at the eastern edge of Prey La-Via. Before the dam was completed, many lives were sacrificed. Angkar forced our mobile unit to work day and night. People were allowed to sleep only on the damp dirty ground during at night. Worse still, we had only a cup of watery porridge for each meal. Although this region had abundant fish, we were not allowed to fish. If someone broke this rule, they would be taken to be tortured or killed. If someone caught a tortoise or python, the unit chiefs would take it and cook it for themselves. However, Angkar told us that they were

trading tortoises and pythons internationally for trains and tractors.

One day, Ta Mok, an important Khmer Rouge, visited our mobile unit's work site with three armed bodyguards. He wore black pants and his shirt was unbuttoned, showing a white T-shirt underneath. He had a purple scarf around his waist. Seeing him, our unit pretended to work even harder. He asked, "Do all comrades have sufficient food?" We all answered, "Yes, we do." No one dared to speak his mind. Ta Mok continued, "We will have three meals with three different dishes per day, dish washers, and feeding machines."

A Life Bartered for Food

Each day, members of the mobile unit died from malnutrition or snake bites, or they simply disappeared. I was becoming emaciated, my hair was almost gone, my clothing was in tatters, and my legs were weak, so I had to use a walking stick. Because we had so little food, everyone risked his life to find and eat wild leaves, raw meat, and even live animals. We tried to chew and swallow just to make our hunger fade away. Sometimes, we had

only tasteless porridge, without even salt. When this happened, the unit chief told us that Angkar could not manage to deliver the salt on time. When we were lining up to get porridge, the chief village searched our pockets to make sure that we had not concealed food there. Some people tried to hide crabs, snails, and frogs, but when the unit chief found them, he threw them on the ground. People who were caught hiding such animals were beaten, tortured, and starved.

A young man in my unit was accused of eating twice at one meal. The Khmer Rouge tied his arms in back of him and made him lie on the ground with his head raised. They slapped him on the face with a rubber-soled sandal until he became unconsciousness. Then they carried him away. He disappeared after that.

One day at dusk, my unit chief Touch entered the dining hall, chewing a crust of overcooked rice. Seeing this, I could no longer control my hunger, and took a few spoons of porridge and swallowed them. Touch gave me a hard kick and shouted, "Seeing I was eating, you wanted to do so? Want to



U.S. Ambassador greeting KR victims at his residence on March 28, 2006

breathe your last breath?"

The following evening while I was lining up waiting for my portion of porridge, I saw three Khmer Rouge walking toward me. One of them was armed, another was carrying a sharp pointed knife, and one was carrying hammock string. They did not arrest me, but arrested the man standing beside me. They tied his arms tightly behind his back and walked him out. This man was accused of stealing pig feed at the hospital. Later, those who had eaten the unit chief's dog's food were also killed. There was more cruelty in store for those who stole crusty rice, palm sugar, salt, and yams. Angkar would force them to eat a huge amount of the item they had stolen. For instance, Angkar would force them to finish a large basket of crusty rice, a big jar of brown



palm sugar, a big bowl of salt, and so on. If they could not eat all of it at once, they would be taken away and killed.

In the rainy season, I worked in flooded fields all day and night, and my body was sometimes covered with leeches. Each day, I was becoming more frail and my clothes no longer covered all of my body. During the cold weather, I was almost unable to breathe. One day, while I was on my way back from work, I passed a scarecrow and saw that its clothing was in better condition than mine. To keep myself warm, I took its clothing and put mine on the scarecrow.

Mount Anlong, the Gait of Hell

In March 1977 our mobile unit was sent to Mount Sanlong. No one lived there except mobile

unit cadres and condemned soldiers. The mountain was surrounded by armed soldiers. The Khmer Rouge chiefs in Mount Sanlong were Soeun and Seng; both of them always carried guns.

Angkar told us, "You were brought here because you are from units whose chiefs were traitors. It is just like picking vegetable. The stump is kept, while leaves on top are removed. If any of you cannot catch up with the revolution, the historic wheel will run over you."

Escape from to the Militiamen's Trap

One night, I whispered our plan to escape to a man named Song Deledk. I told him, "Because we cannot tell where the guards are at night, we should escape during the day by mingling with other workers, so they won't recognize us. If we

bump into a Khmer Rouge soldier on the way, I will talk to them to avoid inconsistent answers."

In early the morning when I had a break from work, Song and I left the unit after informing the chief that we were going to the toilet. Then we walked up to National Road 2. By the time the sun was bright, we had left Mount Sanlong and reached Ang Taphouk village, where we met two young militiamen on patrol. Trying to be natural, I asked them, "Have you comrades seen anybody cutting bamboo trees with the handle of a hoe?" They glanced at each other and answered abruptly, "No." Knowing that continuing was impossible, I walked back in hope of taking another road. However, the Khmer Rouge walked us to a hill where we were forced to carry earth taken from the bottom of a

deep pond. One of the militiamen watched us while another went to inform the sub-district chief. At noon, they let us have porridge and then locked us up.

In the late afternoon, I looked through a hole in the wall and saw the sub-district messenger on his horse followed by the sub-district chief on his bicycle. I was frightened, but I tried to behave naturally. The district-chief stared at me and said, "You both have to return to Mount Sanlong. We have been so busy there. No one will accompany you on the way back. But before you go, you must clear the grass and shrubs growing near the duck pen." Hearing his words, I felt relieved.

After clearing grass for a while, Song and I greeted the sub-district chief before we departed. On the way to Mount Sanlong, we often glanced in back of us to make sure that that we weren't being followed. When dusk fell, we threw ourselves in a canal, hiding silently and waiting for nightfall. When the sky turned completely black and it began to drizzle, I shivered and the wound on my leg bled.

Later, Song and I took a shortcut to the national road. Unfortunately, we met a convoy of Khmer Rouge water tanks, so we had to detour to avoid being caught. We got lost; when dawn broke, we were at the same spot. Exhausted and hungry, we stole raw yams from a nearby farm and ate them.

In the morning we reached the Thmar Sar dam, which led to Angkor Borey. We saw Khmer Rouge soldiers scattered in the fields, pulling and transplanting young seedling. We came upon a Khmer Rouge cadre sitting on a motorbike who staring hard at us. We pretended nothing had happened. When we walked by him, he called to us, asking, "Where are you two going?" I replied, "We have just left the hospital. We are trying to find our unit." The cadre shouted at me, "Kampong Youl Hospital is to the east, why did you walk from the west?" I explained, "After leaving the hospital, I

went to my aunt in Angknol village, but did not see her. Now, I am on the way home." Pointing his finger at me, that cadre rose from his motorbike and said, "Your unit has gone to Mount Sanlong. Now, get into the field and work!"

After being Released, We Return to Mount Salong

Only 10 days later, the Khmer Rouge cadres sent us back in a truck that was loaded with granite; it was being taken from Mount Salong to build bridges. When we arrived at Mount Sanlong, I saw cadres Souen and Seng, but pretended not to know them. Soeun pointed at me, saying, "Your faces are familiar; you have lived in Mount Salong before." I replied, "I have never been to Sanlong." Then the driver chimed in: "The chief of the military unit from Kampong Youl sent them." Soeun then ordered two militiamen to arrest me.

Torture before Death

We were locked in a house which had shackles, chains, sticks, knives, and all kinds of equipment used for torture. The many people held there were shackled; some were covered with blood. Most of them were former Khmer Rouge soldiers.

Only a day later, I was moved to another place. Angkar forced me to break and carry stones. I was given only a bowl of watery porridge to eat; it was mixed with either water lily or banana tree stalks. Sometimes, Angkar starved the prisoners, using the pretext that people were short of food, so Angkar had to share rice with them. The prisoners had nothing to eat besides insects and leaves.

My health was becoming frail because I had been severely tortured. To avoid being tortured, I tried to work as hard as I could. Even though I could not carry two earth moving buckets at the same time, I carried one and pulled another by a rope tied to my shoulders. Each Khmer Rouge guarding us had a gun, a beating stick and a slingshot. They ordered the prisoners to dig clay and mould it in to little balls that were left to dry under the sun. The

guards used these clay balls to shoot the prisoners for fun. Sometimes, the guards shot, beat, or kicked the prisoners until they were unconscious. Other prisoners were beaten until they bled, tied with rope, and forced to say out loud repeatedly, "Do not take me as your model because I argue with Angkar."

One day, Souen, a Khmer Rouge cadre, and his three large dogs came to our worksite. Soeun called his dogs to bite two prisoners who were walking slowing. After they were bitten, the prisoners fell to the ground in convulsions.

The next morning, the Khmer Rouge commanded the prisoners to dig a large grave that would be filled with corpses in the evening. The dead bodies were thrown in the grave and covered with earth. On the following day, a new grave was dug. At dusk, Angkar gave the prisoners a break and had them line up, with the men and women in different rows. Then they counted by knocking a torch on the head of each prisoner, shouting, "one, two, three...." Somehow Angkar was confused and started counting again. I stood at the beginning of the row and was knocked twice. After counting the number of prisoners, the guards sent the male prisoners to a room where there they were shackled to long locking iron bars. The female prisoners were kept in a long narrow, earthen room which was locked most of the time. The guards didn't bother to shackle those who could not walk; they let them lie on the floor because there were so many security guards on duty that they didn't worry. Near dawn, the guards blew a whistle to wake the prisoners, unlocked the shackles, and lined them up.

Water Left from Boiled Rice Helped me Survive

After much hard labor, I became so weak that I could not even walk. I tried to stay close to Comrade Sin by crawling to sleep beside him at a house near the communal kitchen. Angkar left the severely sick prisoners to wait for death. I received so little food that I was starving; I had to forage for

additional food such as insects and wild leaves just to fill my stomach.

One morning, I was so weak that I could not move my arms or legs. I was hallucinating and was temporarily deaf. After a moment of sleep, I woke up and saw Sin sitting beside me. His hand was holding a coconut shell that contained water left from boiled rice. Another hand was holding a spoon, feeding me the liquid. Sin mumbled, "I have just begged for water left from boiled rice that was cooked for the unit chief. I took it to feed you." I was stunned, unable to speak. Three days later, I saw Sin lying dead. I prayed that he would find nirvana, and not to be born again in this brutal world.

Angkar gathered the weak prisoners and kept them in a long narrow room with a thatched roof but no walls. The prisoners were ordered to sleep in two rows, one for men and one for women. All of them were skinny and hairless, with hollow eyes and cheeks. Their bodies had a corpse-like smell, and lice emerged from the seams of their clothing. Many had gangrene. When they moved their arms or legs, they made a sound like a broken bicycle. Every two or three days, medical cadres who were under the age of ten came to give them injections of a red or colorless liquid.

Thanks to the Coconut Juice, I Survived a Second Time

One day, I was so tired and frail, I was almost unconscious. When I woke up, I saw two coconuts hanging over my legs. They were used as a serum and injected into my blood vessels. Seeing me awake, a Khmer Rouge medical cadre took out the serum and poured out the remaining coconut juice for me to drink. Because of the juice, I was able to gather my strength and survive.

Amongst the Corpses, I Cannot Move

One evening, a prisoner sleeping on my right died miserably. Angkar did not take his body right away because the graves were full. It took another

day to have a new grave dug. While I was dealing with this, a prisoner to my left began to shake and died a moment later. I was unable to move because I was wedged between the two corpses. Near dawn, their bodies became cold and so did I. So, I took the thin blanket from one of the corpses and covered myself. Both bodies were soon covered with red ants. In the morning, two female medical cadres carried the bodies away in a hammock made of cannabis. I saw them throw the bodies into a nearby grave.

Angkar Can Make a Dead Body Useful

In six or seven days' time, Angkar took the sick prisoners away. Those who were able to walk were sent out to dig graves and haul cremated corpses. Angkar assigned those who were weaker to pulverize the corpses and make them into fertilizer. Angkar considered this sort of fertilizer to be the best type.

Phnom Chrey Hopnoeu, My Last Shelter

In February 1977, Angkar gathered the remaining prisoners from Mount Sanlong and did not make us work. Moreover, we were given more porridge than usual. After we eaten, a roofless truck arrived, and the Khmer Rouge ordered us to get in. Those who could not walk were thrown into the truck. Not knowing where Angkar was sending us, we sat quietly.

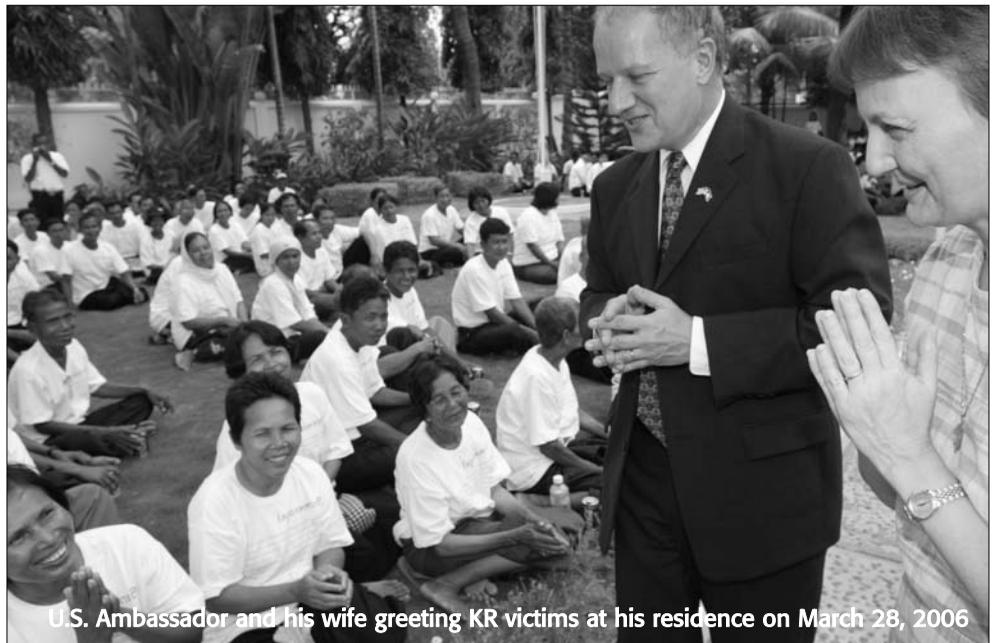
In the late afternoon, the truck reached Phnom [mountain] Chrey Hophnoeu. The militiamen handed us to a new unit chief, while the frail people were taken away in the truck.

Die of the Desire to Eat

The new unit chief divided us into units, told

us to line up and had us walk toward a stable to eat. He said, "This time Angkar has given you enough food, but you must not take the leftovers with you." I was so hungry that I ate too much pumpkin flower soup and became bloated. I dared not pack the leftovers, although plenty remained. Some people hid rice, wrapping it in leaves and putting it in their pockets or trouser waists.

After eating, the unit chief ordered us to line up again and walk through a dark passage. When we reached a corner, we saw several Khmer Rouge militiamen with flashlights checking the prisoners. Those who had taken leftovers were separated.



U.S. Ambassador and his wife greeting KR victims at his residence on March 28, 2006

They disappeared. Those the Khmer Rouge deemed innocent were brought to Rieng village to do light work. However, many prisoners disappeared or died there.

Just Two Words Can Bring Either Death or Survival

One day, the unit chief Ten appointed me to take care of a skinny cow. I was left alone in the farthest edge of the village. Ten said, "Cut grass to feed this cow. If the cow dies, she would have you accompany her." I found tender grass for her, but she refused to eat. Day by day, she became weaker. Seeing her frailty, I thought that I had survived Mount Salong but would not this time. My life

would be over if the cow died.

The next evening, Angkar called all the prisoners to a field near the village. The unit chief declared that those who wanted to work in the front worksite should form one line and those who wanted to work in the village should form another. I hesitated at first, but after a moment, decided to work at the worksite for two reasons. There was more food at the worksite despite the hard work. Also, the cow I was responsible for had little chance of surviving. Most other people chose to work in the village.

The unit chief then ordered those who volunteered to work at the front worksite to leave. Just after we departed, the militiamen pointed their guns at the villagers. They tied them up and walked them away. The next morning, the unit chief said, "Those who wanted to work in the village are lazy. They were afraid of hard work, so Angkar threw them all in the valley."

Better to Fall Down at the Worksite than to Die

The unit chief forced us to work all day and night, but we got little food. After a month, I was so weak that I fell down at the worksite. The unit chief sent me to a hospital where there was little medicine and just two meals a day.

I was in the hospital for ten days before I started to recover. Then Angkar sent me to break stones in a cooperative south of mountain. Later, I was sent to herd cattle in another cooperative.

To be Bereaved Again and Again

One day (probably January 5 or 6, 1979), Angkar celebrated "The Great Eating Festival" in every cooperative, and gave people Khmer noodles. But before we had eaten, the important Khmer Rouge leaders fled. In the turmoil, I saw a plane overhead. The unit chief forced people to move west toward the jungle. While walking, I was able to escape. When we reach the foot of mountain, I secretly moved to National Road 3.

I walked through several battles between

Khmer Rouge and Vietnamese soldiers, carrying a can of rice, some tattered clothes, and a piece of torn cloth I found along the way. I arrived at my house in Prey Kabah District at dusk. My parents could hardly recognize me. We all greeted each other with tears.

Under the light of a fish oil lamp, we had dinner together. The food was the most delicious I had ever had. We cooked rice in a kettle and used basins as dishes. My father said, "If only we had our two daughters back, our family would be together as before."

In less than a week, the Vietnamese soldiers withdrew, so the Khmer Rouge cadre, sub-district chief, village chief, and militia chief came back to control the villages and sub-districts. The village chief arrested my older brother. At noon, they took him away to be tortured and killed that night. My father and pregnant sister-in-law were also arrested and killed.

I had lived in misery and exhaustion for 1,300 days without a shoe, a change of clothing, a mirror, or soap to wash with. I lived under the regime ruled by black devils for three years and nine months. All I saw was hunger, sadness, trauma, and physical and psychological suffering. Life under the Khmer Rouge regime was like this: "When the dawn breaks, it means you have survived for a night; when the dusk falls, it means you have survived for a day."

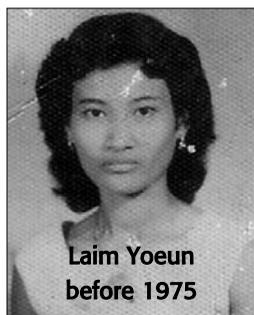
Sim Soth is a villager in Takeo province who submitted this article to Searching for the Truth.

*Please send letters or articles to
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P.O. Box 1110, Phnom Penh, Cambodia
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Fax: (855) 23-210-358
Email: dccam@online.com.kh
Homepage: www.dccam.org*

SEARCHING FOR MISSING FAMILY MEMBERS

If you have information on any people who disappeared during Democratic Kampuchea, please contact the letter writers directly or the Documentation Center of Cambodia via phone: 023 211 875 or Fax: 023 210 358 or P.O. Box 1110, Phnom Penh.

Missing Brother



I am Laim Yeun, age 65, now living in Lar Tik Trei village, Kampong Chhnang sub-district, Kampong Chhnang district, Kampong Chhnang province. Prior to the regime of Democratic Kampuchea, I had lived in Krang Phtel village, Bralay Meas sub-district, Kampong Leng district, Kampong Chhnang province.

I would like to search for my younger brother Laim Sam Orn, who has been missing since the day the Khmer Rouge was evacuating people from Bralay Meas to Kampong Leng district. Before this, he had been ordained a Buddhist monk in Bralay Meas pagoda, his home village, for three years. Then he left the monkhood in 1975 at the age of 21.

In 1980s Chhing Kaun and Sun, sharing the village, informed me that they met Sam Orn in Samlot, Battambang province and convinced him to return home, but he refused to come because he was afraid he might have been killed by the Khmer Rouge on the way. I also know he has changed his name from Laim Sam Orn to Orn Kamsott.

Missing Sister

My name is Chhim Sokhom; my father Chhim Krip and my mother Peou (died of illness in 1977). I am living in Sre Chenda village, Preah Sre sub-district, Oudong district, Kampong Speu province.

I would like to search for my younger sister named Chhim Tort, also known as Sophal who has gone missing since the Khmer Rouge regime. Through her brother named Chhim Sung who was a sub-district Chief, Sophal had joined Khmer Rouge in 1974 at the sub-district office. After 1976, Sophal was selected to work in Phnom Penh at 17-April Hospital. In the same year she had visited her ill mother in the village for five days and then returned to her work. She has disappeared since.

Missing Son

I am Im Yeav, aged 70, living in Svay Teap village, Ampil Krao sub-district, Sithor Kandal district, Prey Veng province.

I would like to search for my son named Meas Sokhom, who has gone missing since 1978 when Khmer Rouge assigned him to fight against the Vietnamese along the border of Kampong Cham province. Sokhom had been a messenger of Ampil Krao sub-district since 1974. Then he with the same position was moved to Sithor Kandal district. Before Khmer Rouge sent him to the battlefield, Sokhom had visited home once.

Missing Parents and Six Siblings

My name is Sun Sira. I am 53 years old and live in House 63, St. 350, Group 35, Village 6, Sangkat Boeng Kengkang 3, Khan Chamkar Mon, Phnom Penh, near Tuol Sleng Museum. I would like to search for my parents and six of my younger siblings.

My father, Sun Tho, was a teacher at Thmar Sar pagoda school in Kampong Chhnang province, and my mother was Khim Thon. My siblings are:

Brothers: Sun Saroeun and Sun Sarann

Sisters: Sun Sophany, Sun Sophanna, Sun Sophalla, and Sun Somaly.

All of them were born in Kampong Chhnang province and lived in front of Aranh Pagoda. Sun Sira was separated from the family in 1975 when I was studying medical in Phnom Penh. After the liberation of January 7, 1979, I looked for my family in Kampong Chhnang and was told by neighbors that all of them were killed by the Khmer Rouge after April 1975. A year later, I was informed on Pchum Ben day by villagers that some people have also come to look for my family in Kampong Chhnang.

Missing Brother

My name is Chuon Song, female, age 52. Today I live in Pat Lang village, Kraing Leav sub-district, Rolea Pha-Ea district, Kampong Chhnang province. My father's name was Chap Kun (he died of illness in 1976) and my mother's is Siv Sim (she died of illness in 1975).

I had ten siblings. alive; below are the information of the other eight:

1) Chuon Sos, female, (died of disease in 1974); 2) Chuon Song, female, 52, (alive); 3) Chuon Kim, male (died in 1975); 4) Chuon Sao, female (died of disease in 1992); 5) Chuon Kei, male (missing since the age of 17); 6) Chuon Put, female (alive); 7) Chuon Kin, male (died of disease in 2001); 8) Chuon Peun, male (died of disease in 1975); 9) Chuon Kin, male (died of disease in 1973); and 10) Chuon Thy, female (died of disease in 1979).

KHMER ROUGE HISTORY AVAILABLE ON AIR

DC-Cam has produced a radio program focused on readings from its magazine Searching for the Truth and other books published by DC-Cam. Our program can be heard on:

- ♦ FM 102 MHz of the Women's Media Center, Phnom Penh, every Wednesday and Thursday from 7:30 to 7:45 p.m.
- ♦ FM 93.25 MHz, Kampot, daily from 7:00 to 7:30 a.m. and 7:00 to 7:30 p.m.
- ♦ FM 99 MHz, Preah Vihear, daily from 7:00 to 7:30 a.m. and 6:30 to 7:00 p.m.
- ♦ FM 103.25 MHz, Battambang, daily from 9:00 to 9:30 a.m. and 3:00 to 3:30 p.m.

Soon DC-Cam will also extend its radio program to Siem Reap. We anticipate that the program will contribute to the enlargement of people's understanding on Khmer Rouge history and the prevention of the repetition of such a regime.

For comments or questions on our programming, please contact Sophorn Lath or Rattanak Leng at P.O. Box 1110, Phnom Penh or 023 211 875.



Choeng Ek Memorial Site
Photo by Phat Piset

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