

10TH ANNIVERSARY
OF THE SEARCHING FOR THE TRUTH

10

2000-2010

- ◆ Restoring Cambodian Community and Way of Life: Breaking the Silence
- ◆ The End of The Saloth Family

Special
English Edition
First Quarter 2010

«[ECCC] will not provide justice to me at all. How can it offer justice, while a perpetrator who is now living 100 meters from me never says the truth?»

-- A Khmer Rouge Prisoner

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Magazine of the Documentation Center of Cambodia
Special English Edition, First Quarter 2010

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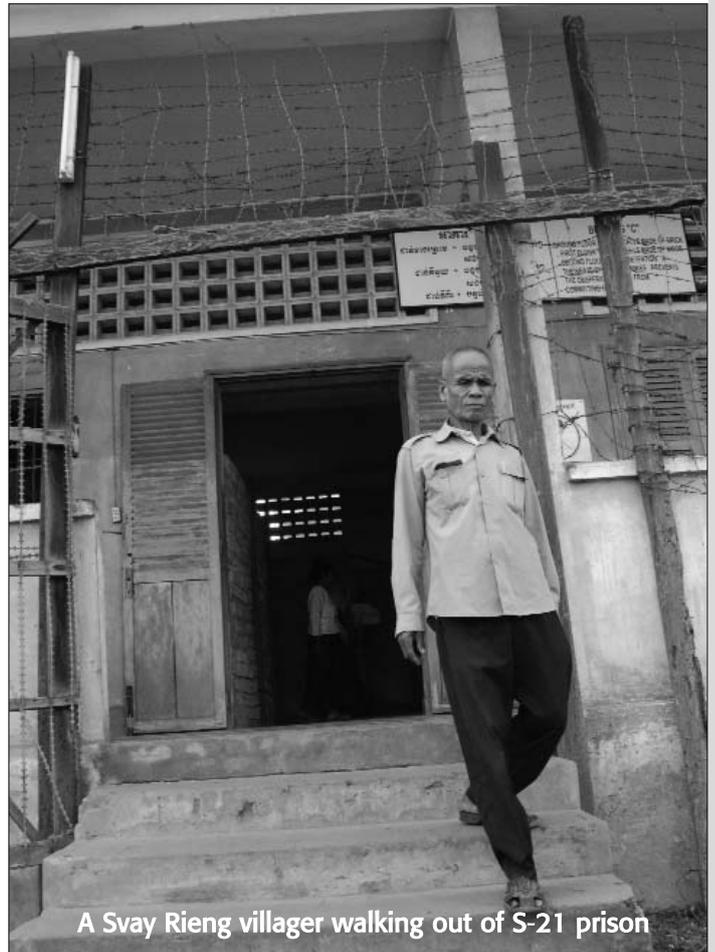
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A Svay Rieng villager walking out of S-21 prison

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LETTER FROM YOUK CHHANG:

RESTORING CAMBODIAN COMMUNITY AND WAY OF LIFE: BREAKING THE SILENCE

There has been a long silence in this country regarding the Khmer Rouge era, a silence that has lasted for decades and kept alive by fear, pain, and politics.

In recent years, however, there have been solid efforts to end this silence in form of legal justice, outreach programs and forthcoming genocide education in high schools in Cambodia. While each measure is valuable for the country's healing process, there needs also to be measures which focus on the emotional and psychological components of reconciliation and healing. This is where arts can make a significant contribution. Cambodian people are very artistic and it is their way of life. The Khmer Rouge have killed many artists but not the artistry of the Cambodian people. It is our soul. This play, "Breaking the Silence," produced by Amrita Performing Arts and directed by Annemarie Prins is the most powerful play since the collapse of the Khmer Rouge regime in 1979.

It is a play which seeks to break Cambodia's silence, as evident by its title. It is a play about the Cambodian people, their suffering, anger, and courage to move on no matter the circumstances. Khmer Rouge victims are emotionally broken people living in a broken society; a people without souls or with our souls wandering around. I have found our soul in this play, "Breaking the Silence." This play is very important for all Cambodians to see and hear. It will help restore our dignity and humanity and lift up our morality. It will also help our children to better understand their country. It is my hope that this play, and future plays and radios like it, will have a prominent role in the rebuilding of Cambodian society.

Youk Chhang is the Director of the Documentation Center of Cambodia and Editor-in-Chief of Searching for the Truth magazine.



A performance "Breaking the Silence"

10TH ANNIVERSARY OF THE *SEARCHING FOR THE TRUTH* MAGAZINE

Socheat Nhean

The year 2010 is the 10th anniversary of the Documentation Center of Cambodia's *Searching for the Truth* magazine. During that time, *Searching for the Truth* published hundreds of letters, confessions of prisoners at S-21, stories of victims and perpetrators, debates related to the Khmer Rouge issues, family tracing requests, and other documents. The first issue of *Searching for the Truth* was published less than a year after the arrests of Ta Mok, the last Khmer Rouge stronghold leader, and Kaing Guek Eav alias Duch, who led S-21 prison and was responsible for the execution of approximately 14,000 people. Their arrests signaled the final collapse of Khmer Rouge political and administrative structures and the appearance of potential justice. Simultaneously, *Searching for the Truth* was launched shortly before the history of DK was withdrawn from the Cambodian public school curriculum.

The objectives and purposes of creating *Searching for the Truth* are to support the tribunal to judge the crimes committed by the Khmer Rouge regime; to educate and contribute to the establishment of the rule of law in Cambodia; to promote a better understanding of the legal procedure of the Khmer Rouge tribunal and the history of DK; to serve as a forum for informed debate concerning the conduct of the Khmer Rouge trial and the history of DK; and to serve as a source of information for Cambodians to learn about and debate what is happening internationally concerning the prosecution of massive human rights abuses. In addition, *Searching for the Truth* is also to heal the suffering of survivors by giving them a forum to share their terrible experiences with others, to encourage reconciliation and understanding between victims and DK cadre, and most importantly, to educate the public about past events and prevent this tragedy from happening again.

For the past ten years, over one million copies of *Searching for the Truth* have been distributed to the public through libraries, embassies, government

offices, NGOs in Cambodia and abroad, and particularly to victims and perpetrators of the Khmer Rouge regime. The magazine targets students, researchers, independent scholars, government officials, as well as victims and former cadres of the Democratic Kampuchea (DK) regime and is distributed everywhere from the highest-level government offices to the homes of villagers in the far-off areas. *Searching for the Truth* played a role in providing basic education about the Khmer Rouge to the general public. Almost all parents share their bitter experiences of that time with their children through oral narration. *Searching for the Truth* has assisted those parents in transmitting more facts about DK to the younger generation.

Most recently, with the Khmer Rouge tribunal (officially known as the Extraordinary Chambers in the Courts of Cambodia) established and in the midst of its mandate to punish senior DK leaders and those most responsible for the crimes of that era, *Searching for the Truth* has become an important tool through which to disseminate up-to-date information about pre-trial and trial proceedings to Cambodians living both in the country and overseas. DC-Cam believed that seeking justice for the Cambodian genocide through an independent tribunal requires the participation and monitoring of everyone in society.

Searching for the Truth would like to thank the scholars, students, government officials, and NGO staff as well as victims and former DK cadre who have supported it during the last ten years. In the coming years, the magazine team will continue to provide information and scholarship about the DK period and the Khmer Rouge tribunal. Through this work, the team hopes to increasingly engage the Cambodian people in the process of seeking justice for the crimes of this era.

Socheat Nhean is the Team Leader of Searching for the Truth Magazine.

THE RISE AND FALL OF DEMOCRATIC KAMPUCHEA

Sok Udom Deth

Home to the Angkor Wat Temple, considered the largest religious edifice in the world, Cambodia was once the Khmer Empire, which dominated most of mainland Southeast Asia during the twelfth and thirteenth centuries. The eventual rise of Siam (now Thailand) and Vietnam as powerful neighbors helped perpetuate the decline of Cambodia. By the early nineteenth century, Cambodia had become a tributary state to both Siam and Vietnam. In 1863, Cambodia became a French protectorate (and eventually a colony), which would last for ninety years. The French served as a power to relinquish Siam's and Vietnam's control over Cambodia, regain some former Cambodian territories, and restore the famous Angkor ruins. The French also introduced modern infrastructure and an educational system in the country, albeit at a much slower pace compared to their activities in French-ruled Cochinchina (southern Vietnam). They did little to create a liberal ruling system for Cambodia, and indirectly, the French presence helped foster the emergence of a communist movement in the country.

The saddest episode of Cambodian history and certainly one of the greatest tragedies in the history of mankind occurred in Cambodia between 1975 and 1979, when the country (renamed Democratic Kampuchea) was ruled by a group of Cambodian communists that became infamous under the unofficial name of the "Khmer Rouge." Once in power, the leaders of Democratic Kampuchea (DK) embarked on a bloody revolution that resulted in the deaths of at least 1.7 out of seven million people from starvation, inhumane working conditions, disease, and execution. The essay that follows is an introduction to the saga of DK.

BACKGROUND

To understand how the Khmer Rouge came to power in Cambodia in 1975, it is imperative to look at the domestic and international politics of the time, as

well as the major actors who shaped and influenced the political developments in Cambodia and in the region.

Two years after helping Cambodia gain independence from France in 1953, King Norodom Sihanouk of Cambodia abdicated the throne in favor of his father, and pursued his political ambition by founding the Sangkum Reastr Niyum (usually translated as "People's Socialist Community.") Sihanouk claimed that the Sangkum was not a political party, but those who wished to join were required to relinquish their membership from other political parties. Thanks to his popularity among Cambodian peasants and suppression of other political parties, Sihanouk managed to win a landslide majority in the 1955 election. His ascendance to real power marked the decline of the hitherto popular Democratic Party, as well as increasing repression of communists inside the country, who were eventually driven underground. By 1967, all communists present in Sihanouk's government left their official posts to join their colleagues in the jungle.

Likewise, the international situation made it difficult for Cambodia to remain neutral. Following Cambodian independence, French Indochina became a hotbed for the Cold War. The Vietnam War was to become a great entanglement for the United States in the region. Believing in the "domino theory," the US did not wish to see Southeast Asia fall to communism. Despite declaring neutrality, Cambodia was geopolitically trapped, and soon dragged into the war.

While suppressing Cambodian communists within Cambodia, Sihanouk believed that communists in the region would win the war. He collaborated with China, and eventually had a secret alliance with North Vietnam, with the intention of keeping Cambodia out of the war and keeping himself in power. In 1963, Sihanouk decided to cut off US economic and military assistance, which had totaled about US \$404 million

since the country gained independence. Moreover, he nationalized Cambodia's banks and the country's export-import trade. By 1964, Cambodia broke off relations altogether with the United States, and turned to China for an international alliance. In doing so, Sihanouk alienated the right wing of his government (especially the army) who had benefited from American aid. More importantly, he angered Cambodian nationalists by secretly allowing the Vietnamese communists to establish sanctuaries inside Cambodian territory. Students and intellectuals in the city were increasingly disillusioned with unemployment and his mishandling of the economy.

In March 1970, while Sihanouk was abroad, the National Assembly voted him out of power and sentenced him to death in absentia. After almost two thousand years, monarchy was officially abolished for the first time in Cambodia. The Khmer Republic under General Lon Nol was proclaimed with the support of the US. This paved the way for wider scale US bombing of Vietnamese communists inside Cambodian territory, which had already begun in 1969 under President Nixon. For a period of four years, US bombing of Cambodia totaled more than half a million tons of explosives, exceeding the amount of bombs dropped by the Allies on Japan throughout World War II, and causing, at the very least, over 150,000 casualties. While the bombing temporarily prevented the communist victory in Cambodia, it also drove many peasants to the jungle, thereby strengthening the communist forces.

COMMUNIST MOVEMENTS IN CAMBODIA

Cambodian communists had been closely linked with (and relied on) communist movements in Vietnam to fight French colonialism. As early as the 1940s, there were a number of Cambodian members in the Vietnamese-controlled Indochinese Communist Party (ICP). In 1951, the Khmer People's Revolutionary Party (KPRP) was founded. In theory, the Cambodian and Vietnamese communist movements were supposed to be on equal terms. In practice, every decision was made by the Vietnamese communists, who viewed

their Cambodian counterparts as incompetent. This arrangement worked well to remind the Cambodians of Vietnamese control over Cambodia in the past, which Cambodians resented.

The mid-1950s marked the return of a number of Cambodian students from France, who had already embraced communism in France. Unlike their Vietnamese-trained counterparts, these Cambodians were more nationalist and also unhappy with Vietnamese tutelage of Cambodian communists. These new Cambodian communists led purges of pro-Vietnamese cadres. The returnees from France were mostly intellectuals who received scholarships from the Cambodian government to study there. By the early 1950s, they concerned themselves mainly with winning the country's independence from France. Saloth Sar, better known as Pol Pot, the future leader of DK, was one of them. Upon their return, they became teachers and worked clandestinely for their revolution. During the 1960s, Sihanouk's repression of the left eventually pushed all Cambodian communists into the jungle, from where they would lead their revolution. With the intensification of US bombing, the Khmer Rouge army gained more local support and became more fierce. After the 1970 coup, with China's urging, Sihanouk formed a tactical alliance with the Khmer Rouge believing that they could bring him back to power. Undoubtedly, Prince Sihanouk's call for his people to join the Khmer Rouge did much to strengthen them. As the US was losing the Vietnam War, the corrupt Khmer Republic eventually collapsed when the Khmer Rouge entered Phnom Penh on April 17, 1975.

THE TRAGEDY OF CAMBODIAN HISTORY

Many people initially greeted Khmer Rouge soldiers with joy, believing that peace had finally arrived. Before long, they would find themselves walking into a living hell. Pol Pot had envisioned a totally new, classless, and self-independent society, in which the peasants were regarded as the backbone of the society. He reputedly claimed that if the Khmers could build Angkor, they could do anything. Cambodia was to be started anew, at Year Zero.

As soon as they took over Phnom Penh, the Khmer Rouge ordered all citizens to evacuate to the countryside on the pretext that the US would bomb the city, and that there were food shortages for the overcrowded urban population. In fact, potential bombings by the US and food shortages were not the whole story. Pol Pot and the Khmer Rouge leadership had been planning Phnom Penh's evacuation since the early 1970s as part of their ideological scheme of a total communist revolution. Foreigners were ordered out of the country. Soldiers and officials of the Khmer Republic were immediately executed. Everybody, young and old, sick or not, was ordered to leave the city immediately to engage in agricultural activities. For many, the journey would become a trail of death. Patients died for lack of drugs; pregnant women delivered babies on the way, if they managed to survive. The capital was almost entirely vacated, with the exception of a few factories and a number of embassies of countries friendly to the Khmer Rouge, including China and Yugoslavia. Many schools were turned into animal farms or prisons, the most infamous of which was S-21 (formerly Tuol Svay Prey high school). Houses and shops were emptied; cars piled up on the streets. Phnom Penh came to be known as a "ghost town" during Khmer Rouge rule.

People who knew Pol Pot in the early days had little inkling of the person he would turn out to be. Even during his first year in Paris, Pol Pot was known as someone who "liked to have fun." His reading of Stalin and Mao later probably influenced his revolutionary conviction, along with other factors, including the hard days in the jungle, the destruction of Cambodia from the war, and his vision of Cambodia's glorious Angkorean past-which caused Pol Pot to emphasize "independence mastery."

Once the population was relocated to the countryside, people of all professions were to become farmers engaging mainly in rice production and building dams and irrigation systems in order to meet the communist party's goal of producing three tons of rice per hectare, three times a year. By doing so, the leaders

of DK also aimed to create a classless society, although in reality, those who joined the revolution before 1975 were relatively better off. Religion, the market economy, and family ties were all abolished. Everything belonged to Angkar Padevat (or the "revolutionary organization"), which was "righteous and enlightened" in carrying out the revolution that the entire population was expected to pursue with complete dedication.

While rice was exported abroad in exchange for military weapons, people were left with virtually nothing to eat and had to work the whole day but had only watery rice porridge to eat. Many people secretly tried to supplement their diets by eating roots, leaves, and insects. Hundreds of thousands of people died of starvation, overwork, and/or disease. However, suffering varied according to region and chronology. Life in the Eastern Zone was relatively better than in the Western and Southwest Zone. Also, food provision was slightly better before 1977, when Democratic Kampuchea began their border attacks on Vietnam.

PURGING THE ENEMIES

As in other communist regimes, the DK leaders were highly suspicious of enemies from within and sought to crush the mat all costs. The notorious prison, S-21 (known to Cambodians as kuk Tuol Sleng), was considered a place where people "entered but never returned." Khmer Rouge cadres and their family members who were arrested usually "confessed" under torture to working for the CIA or KGB.

DK's relations with Vietnam continued to



deteriorate. What caused the conflicts were not their ideological differences, but mainly Pol Pot's fear of Vietnam's geopolitical hegemony. Despite, or perhaps because Pol Pot had received training from the Vietnamese, he was increasingly intolerant of Vietnam's perceived domination. Pol Pot's cynicism became stronger after July 1977, when Vietnam signed a treaty of cooperation with Laos. Clashes between the Khmer Rouge and Vietnamese forces over ownership of some islands in the Gulf of Thailand and along the border took place as early as 1975. But the Khmer Rouge, believing that China would support their cause, began large-scale attacks in mid-1977 into bordering Vietnamese provinces with the intention of gaining back Cambodian territories lost to the Vietnamese a few centuries ago. The Vietnamese army retaliated and penetrated as deep as thirty-two kilometers into eastern Cambodia.

Already fearing a possible revolt, DK leaders suspected that the Eastern Zone cadres were siding with the Vietnamese. They were accused of having *kbal yuon kluon khmer* (Khmer bodies with Vietnamese heads). Pol Pot ordered a series of executions of the Eastern Zone cadres, many of whom were also brought to S-21. The leader of the Zone, So Phim, committed suicide in 1978 after he received an invitation to Phnom Penh from Pol Pot. Other Khmer Rouge cadres fled to Vietnam and later joined the Vietnamese army in overthrowing Democratic Kampuchea.

Democratic Kampuchea finally collapsed when the People's Army of Vietnam (PAVN) and the Kampuchean United Front for National Salvation (KUFNS), comprising former Khmer Rouge cadres and Cambodian communists exiled in Vietnam, took over Phnom Penh on January 7, 1979. Even so, the executioners of S-21 managed to take the lives of fourteen more victims on the morning of January 7, before their final escape. So many people lost their lives at S-21 (at least 12,000) that the foreign discoverers were alerted to its existence by the stench of decaying bodies coming from an enclosed compound behind an iron fence.

Even out of power, the Khmer Rouge remained a threat to Cambodia for several more years. Despite being the de facto Cambodian government during the 1980s, the People's Republic of Kampuchea (PRK), which was backed and supervised by Vietnam, was not recognized by the United Nations. Only Vietnam, Laos, the Soviet Union, and its allies considered the PRK a legitimate government. India was the only non-communist country to do so. The geopolitical environment created a bizarre situation in which the Khmer Rouge retained their UN seat, in spite of their widely known atrocities. In 1982, China and the Association of Southeast Asian Nations (ASEAN) countries pressured the Khmer Rouge to form an alliance with Sihanouk's forces and other republicans led by Son Sann along the Thai border, calling it the Coalition Government of Democratic Kampuchea (CGDK) under the presidency of Norodom Sihanouk. The CGDK was hardly a government, since the three factions had different bases along the Thai border and were hostile to one another. The only thing that tied them together was their anti-Vietnam stance. Nonetheless, CGDK was the legitimate government at the UN and remained so until 1991.

During the 1980s, the Khmer Rouge, more often than the other two groups, would lead guerilla warfare against the Vietnamese-backed PRK, while people in Cambodia were only slowly recovering without substantial international aid. A few hundred thousand refugees also fled to the Thai border because international aid poured in faster, but also out of frustration with another socialist regime in Cambodia.

Only with the signing of the Paris Peace Agreement in October 1991, following the Vietnamese withdrawal from Cambodia, did peace slowly return to the country. The United Nations Transitional Authority in Cambodia (UNTAC) was established as a peacekeeping force to ensure a free and fair election in 1993. Contrary to the agreements, however, the Khmer Rouge refused to disarm, because they believed there were still disguised Vietnamese troops inside Cambodia. The Khmer Rouge then boycotted the UN-sponsored 1993 election.

Retreating to western and northern parts of Cambodia, the Khmer Rouge was outlawed in 1994. The end of the Cold War meant that support for the Khmer Rouge drained out. Eventually, Ieng Sary (DK foreign minister), Khieu Samphan (DK head of state), and Noun Chea (president of DK national assembly) surrendered to the government along with most Khmer Rouge troops, who were incorporated into the Royal Cambodian Armed Forces. Pol Pot was arrested by his own commander-in-chief, Ta Mok, and died under house arrest in 1998. Ta Mok was captured the following year and died in custody in 2006. The Khmer Rouge resistance movements effectively ended.

In 2006, after a series of negotiations with the United Nations, the Royal Government of Cambodia approved the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC, aka Khmer Rouge Tribunal), to bring to trial the surviving top leaders of Democratic Kampuchea. Those who have been named thus far are: Ieng Sary, his wife Ieng Thirith (DK minister of Social Affairs), Khieu Samphan, Noun Chea, and S-21's director Kaing Guek Eav (alias "Duch"). With the exception of Duch, other leaders of DK have pleaded not guilty. Meanwhile, the ECCC has suffered from financial freezes over allegations of corruption within the institution. Likewise, while some Cambodians eagerly want to see the tribunal move forward, others show little interest in it thirty years after the crimes were committed. Recently, the ECCC has discussed bringing more Khmer Rouge leaders to trial, although Cambodia's Prime Minister, Hun Sen, claimed that doing so would destroy the reconciliation process, and that he would rather see the court fail than cause civil war.

Whether or not Cambodians feel the ECCC will eventually bring justice, the legacy of Khmer Rouge rule continues to affect the country. Close to two million people died, while those who survived, in addition to their own suffering, experienced the trauma of losing family members because of Khmer Rouge atrocities. There are still landmines in Cambodia, although de-mining efforts by some organizations show encouraging signs.

Cambodia has benefited from a booming economy, especially in the urban areas, but the destruction of the country's economy, infrastructure, and human resources under the Khmer Rouge means that recovery for the country still has a long way to go.

CONCLUSION

The geopolitical and ideological clashes of the Cold War and rivalry for regional hegemonic power helped bring about a bloody regime, and eventually its collapse, in Cambodia. Blaming outside forces is not entirely satisfactory for historical analysis, however. Whatever combination of factors influenced the decisions of the leaders of Democratic Kampuchea, that regime carried out extremist and disastrous policies, and should ultimately be responsible for the destruction of Cambodia.

Though limited in scope and detail, this essay introduces some of the factors that contributed to the Khmer Rouge accession to power, the tragedy of Cambodian history under Democratic Kampuchea rule, and some of the repercussions of Khmer Rouge rule. Fortunately, there are abundant resources to teach or learn more about the Khmer Rouge. Perhaps nothing brings a more vivid picture of life in Cambodia than the award-winning movie *The Killing Fields*. Besides the Genocide Studies Program at Yale University, the Documentation Center of Cambodia (DC-Cam) in Phnom Penh holds a vast collection of archives related to the regime. In 2007, a staff member of DC-Cam, Kamboly Dy, published a short book titled *A History of Democratic Kampuchea (1975-1979)* both in Khmer and in English. Philip Short's *Pol Pot: Anatomy of Nightmare*, Ben Kiernan's *How Pol Pot Came to Power*, and David Chandler's *The Tragedy of Cambodian History* are only a few works among many others on the Khmer Rouge, that provide detailed discussion on the context in which Democratic Kampuchea took place.

Sok Udom Deth

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COMMUNITY OUTREACH TRIP TO PHNOM PENH AND THE ECCC

Randle DeFalco

From February 10 to 12, 2010, the Living Documents Project of the Documentation Center of Cambodia (DC-Cam) hosted 93 visitors from the provinces of Banteay Meanchey, Svay Rieng and Kandal. The purpose of the trip was to help rural Cambodians better understand the proceedings ongoing at the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the history of the Democratic Kampuchea (DK) period in Cambodia.

The villagers were transported to Phnom Penh by bus and arrived Tuesday evening. The program

started the following morning at the National Senate building. For DC-Cam director Youk Chhang the group from Banteay Meanchey were especially significant, as they came from Trapeang Veng village, where Youk was sent to live during the period of Democratic Kampuchea from 1975 to 1979. Trapeang Veng is a small village in Preah Net Preah commune, located in northern Cambodia and is nearly a 400 km drive from Phnom Penh. In fact, at the request of some of the villagers, Youk brought his mother, Keo Nan to the morning event, where the Trapeang Veng villagers greeted Keo



Youk CHHANG's 82 year old mother, Keo Nan greets a resident of Trapeang Veng village, where she lived under the Khmer Rouge during the DK period. This was her first time seeing her former neighbors since the collapse of the DK regime. Some of the villagers present were responsible for the suffering of Keo Nan and her children, while others actually helped her and her family to survive. Despite the long period of time that has passed, Keo Nan's memories from that time remain vivid and she instantly recognized every one of her former neighbors. Mrs. Keo lost three of her brothers, one sister, one daughter, and many grandchildren under the Khmer Rouge regime. In total, nearly 60 of her relatives are still missing more than thirty years after the fall of the regime. Remarkably, for her "forgiveness" is still possible.

Nan with great respect.

Presentations on the Proceedings of the ECCC and Tuol Sleng Prison



Left to right: Kok-Thay Eng, ECCC Deputy International Co-Prosecutor William Smith, Youk Chhang, Vanthan Peoudara.

After the participants settled into their seats, Living Documents Project Leader Sirik Savina welcomed the group and went over the itinerary for day one, explaining that the morning session would consist of a series of presentations to help bring group up to speed regarding the proceedings of the ECCC. The first presentation of the day came from ECCC Deputy International Co-Prosecutor William Smith, who gave a talk on the challenges of prosecuting case 002 at the ECCC. The charged persons in Case 002 are, Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith, who are the four most senior former Khmer Rouge officials still alive. Mr. Smith opened with a short background of his professional experience, first as a police investigator in Australia and then as a lawyer at the International Criminal Tribunal for the former Yugoslavia (referred to as the ICTY). Mr. Smith then gave an overview of the challenges in creating the ECCC, including determining: where to place the Court; the ECCC's jurisdictional scope; the degree to which international and Cambodian law and personnel would be mixed; and whether to include civil parties, a first in international criminal law.

Mr. Smith then discussed the current, day to day challenges of administering the system created. Mr. Smith mentioned the difficulties of working at a Court with three official languages (Khmer, English and French) and colleagues from various professional backgrounds.

Additionally, Mr. Smith mentioned that the ECCC staff must be careful to set a good example, because of the current weakness of the Cambodian judiciary and the tenuous rule of law in Cambodia. Finally, Mr. Smith addressed two issues that are recurrent themes in debates concerning the ECCC. First, whether it is worthwhile to prosecute former senior DK leaders when they are all of advanced age and second, what the primary purposes of the Court are. Regarding the first issue, Mr. Smith noted that millions of Cambodians still suffer daily due to the crimes committed during the DK period and that the regime's former leaders should be tried despite their age because of the severe nature of the charges they currently face. Regarding the second issue, Mr. Smith stated that there are several objectives the creators of the ECCC had in mind when forming the Court. First and foremost, the ECCC is designed to provide some measure of justice to the millions of victims that suffered and/or died during DK. Second, the Court is designed to create an accurate history of the controversial DK period. Third, the ECCC's designers hoped to improve human rights and encourage the rule of law in Cambodia by creating a model Court as an example for the Cambodian judiciary. Finally, by addressing past atrocities, the ECCC will hopefully help contribute to reconciliation and memory in Cambodia.

Mr. Smith's presentation was followed by a short question and answer session. The first question was "why did the United Nations give the Khmer Rouge Cambodia's seat after 1979?" Mr. Smith responded that at the time, Cold War politics interfered with the United Nations and numerous powerful, anti-communist (and therefore anti-Vietnamese) nations supported any group that opposed Vietnamese influence in Cambodia, even the Khmer Rouge. The second question was "why was the ECCC created so late?" Mr. Smith responded that for a long time the Khmer Rouge remained a powerful military force and fought the government intermittently until the mid-1990s, making it impossible to capture former DK leaders. Furthermore, international politics prevented an

agreement to create a tribunal throughout the 1980s and 1990s. However, Mr. Smith explained the theories of justice that support prosecution of serious crimes well after their commission.

The third question was "why did the Khmer Rouge kill and starve people?" Mr. Smith responded that there is no single, clear answer to this important and fundamental question, but that there are several prominent causal factors to consider. First, the Khmer Rouge leaders wanted to radically change Cambodian society in a very short period of time. Additionally, these leaders tried to apply pure Marxist theory to Cambodian society and thus, were extremely absolute and rigid with their policies. Finally, it appears that the DK government valued revolutionary objectives more than human lives, meaning that anyone who did not benefit the revolution could be killed without remorse.

The fourth question was "are there other countries that experienced such mass killings?" Mr. Smith responded that unfortunately, there are several instances of mass killings similar to those that took place during DK in Cambodia. The prime examples of such killings are the holocaust of the Jews during World War II, the crimes committed during the 1990s in the former Yugoslavia and the genocidal killings in Rwanda in 1994. Mr. Smith noted that the crimes committed during DK were amongst the worst of the 20th century, as one quarter of Cambodia's population was killed, representing the highest percentage of any of the previous atrocities he mentioned.

The final question was from an attendee who was happy to see the ECCC created, but has been frustrated by the long delays and wanted to know when the ECCC would finish its mandate. Mr. Smith responded that he is unsure when the Court will conclude its work, but added that the ECCC staff is working hard every day to move the process along and that trials of crimes of such a massive scope necessarily take a long time. Mr. Smith then concluded by thanking the group for their attention and involving themselves in the process.

Mr. Smith was followed by DC-Cam Deputy Director Vanthan Peou Dara, who gave a presentation on Case 002 at the ECCC. Peou Dara explained that there will be four defendants in Case 002, who represent the most senior former Khmer Rouge officials still alive. He also explained the role of each of the four charged persons during DK and the crimes each of them are currently accused of, including: war crimes, crimes against humanity and genocide. Before ending his presentation, Peou Dara explained the layout of the ECCC courtroom to help the visitors follow the proceedings the next day. After the presentation, one attendee asked "is it true that Ieng Sary and the other charged persons are in jail?" Peou Dara assured him that all of the charged persons are currently in pretrial detention and that they would see this when they visited the ECCC the following day.



Villagers meeting with ECCC Deputy International Co-Prosecutor Bill Smith, Senate Building.



Villagers meeting with ECCC Deputy International Co-Prosecutor

After a short break, the group watched video footage of the Khmer Rouge Tuol Sleng prison in Phnom Penh, shot shortly after the Vietnamese entered Cambodia in January of 1979. This video was followed by a screening of "Behind the Walls of S-21," a documentary on the history of the Tuol Sleng prison. The last speaker of the morning session was Him Huy, who was a guard at Tuol Sleng during DK and was interviewed in the film. Him Huy gave a short summary of his experience of being drafted into the Khmer Rouge guerrilla army and subsequently being transferred to work at Tuol Sleng prison after refusing to join the DK navy due to his fear of water.

Him Huy said that prior to late 1976 only a few prisoners passed through Tuol Sleng, but that thereafter the secretive Angkar Padeveat ("revolutionary organization") and comrade Duch (the head of Tuol Sleng prison and accused person in Case 001 at the ECCC) became extremely suspicious and began a series of mass arrests, quickly escalating the number of prisoners who were arrested and subsequently tortured and executed. Him Huy also stated that he lived in a state of constant fear because many Tuol Sleng workers and guards were arrested and executed, including his former commanding officer. Him Huy claimed that he only killed one prisoner, after being ordered to do so by Duch as a test of his loyalty and that he fled the Khmer Rouge in 1979 when the Vietnamese entered Phnom Penh.

When Him Huy finished his talk, an attendee asked whether Huy personally observed any connection between the four charged persons in Case 002 and Tuol Sleng prison and if so, how close the connection was. Him Huy stated that he never saw any of the four charged persons at the prison, because Son Sen (another former high-level Khmer Rouge official who was murdered by Pol Pot in 1997) oversaw Tuol Sleng personally on behalf of Angkar. Huy did add however, that a group of victims that passed through the prison were Cambodian returnees from abroad who had been lured back to Cambodia personally by Ieng Sary and then immediately arrested.

Visit to Cheung Ek Memorial and Tuol Sleng Genocide Museum



Villagers at Tuol Sleng Genocide Museum

Following lunch, the group visited the Cheung Ek killing field memorial and Tuol Sleng genocide museum to see the places discussed in the morning session. The trip to Tuol Sleng was especially personal for one visitor named Sitha, who is chief of Rumduol commune, Svay Check district, Svay Rieng province. Sitha and his wife discovered a photograph of his cousin, Kim Nal, who worked for the DK ministry of information before disappearing sometime prior to 1979. Sitha asked DC-Cam staff member Men Pechet to take a photograph of him with this last known image of his cousin. Sitha is now sure that his cousin Nal was sent to Tuol Sleng because many high-ranking officials from his zone were arrested and disappeared along with their subordinates during the DK period. Men Pechet is currently searching to see if there is any additional information available regarding Sitha's cousin Nal. After leaving Tuol Sleng, the first day ended with dinner and a trip back to the hotel for the guests to rest before visiting the ECCC the following day.

Attending ECCC Proceedings

On the second day of the trip, the visitors travelled to the ECCC to observe its proceedings. Oral arguments were scheduled for Ieng Sary's appeal against the extension of his provisional detention order that was issued by the Co-Investigating Judges. An initial issue arose regarding the dress code at the Court. Many villagers wore t-shirts given to them by DC-Cam with the words



"Breaking the Silence for Case 002" printed on them in small letters. The security personnel at the ECCC initially refused attendees wearing these t-shirts admission, stating that they were inappropriate. After speaking with DC-Cam staff members, who explained that the t-shirts were merely a gift to the villagers from DC-Cam and not meant as any form of propaganda or message in the courtroom, security officials eventually relented and allowed the attendees to enter the courtroom.

After hearing of this incident, DC-Cam Director Youk Chhang contacted ECCC public affairs chief Reach Sambath and asked for clarification regarding why the t-shirts were deemed objectionable. Initially Youk received responses that were only general in nature, outlining the procedures of visiting the ECCC, but not mentioning any dress code restrictions. Only after making repeated inquiries did Youk receive a specific response. ECCC Legal Communications Officer Lars Olsen stated via email that the Internal Regulations

Governing the Courtroom on Hearing Days forbid any clothing "indicating support for Case 002." Mr. Olsen referred to paragraph two of the Internal Regulations which states:

"Participants shall wear appropriate clothing. Their clothing may not display slogans, indicate their support to a party to the proceedings, otherwise be offensive in any way."

DC-Cam plans to provide similar t-shirts in the future that do not include any references to Case 002, but hopes the ECCC administration will be more forthcoming and clear with their specific reasoning in the future.

Once the initial attire problem was resolved the villagers entered the courtroom, eager to see the ECCC in action. The guests watched intently and were quite interested to see Ieng Sary in person after hearing so much about the secretive leadership that formed the feared Angkar during the DK period. The day ended early after Ieng Sary appeared unwell and had to take several breaks due to his advanced age and ill health. This sparked concern amongst the audience that Mr. Ieng could die of natural causes before facing justice.

After visiting the ECCC for the first time, the visitors were taken back to Phnom Penh and treated to dinner and a performance by musician Kong Nai, who is renowned for his ability to play the cha pei (a traditional Cambodian instrument much like a guitar, but with only two strings) and improvise clever and meaningful



Villagers from Banteay Meanchey outside the ECCC

lyrics.

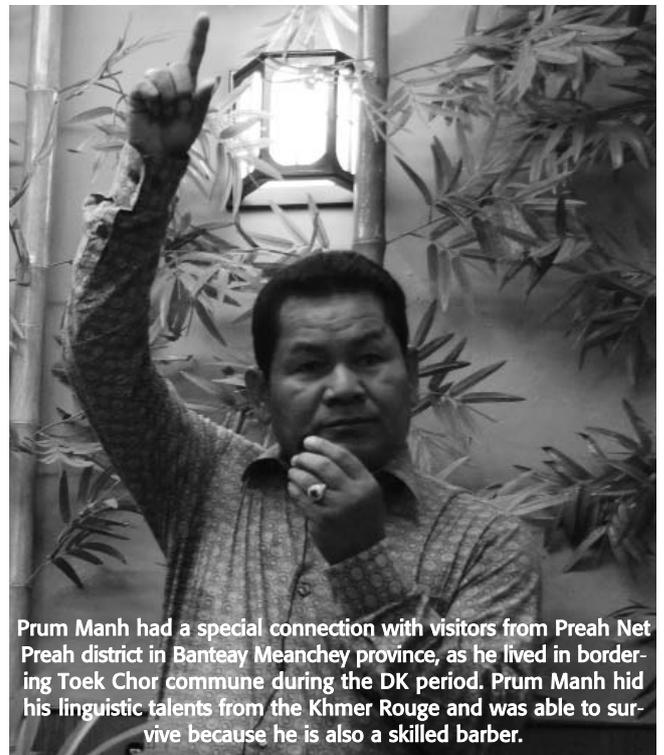
The morning of the final day of the trip was spent at the ECCC, where the visitors watched the oral hearing regarding Khieu Samphan's appeal against the extension his provisional detention order. While the legal arguments put forth by the parties were quite similar to those of the previous day, at the end of the hearing Khieu Samphan rose and spoke on his own behalf for several minutes. At this moment the audience perked up and paid rapt attention. Khieu Samphan claimed that everything he had done had been with the goal of helping Cambodia, that he was a nationalist first and foremost and that he had only joined the Khmer Rouge at the behest of the King Father. Furthermore, Khieu Samphan claimed that he was a figurehead only during DK, with no true power and that he did not have anyone under his command or even an office. He also claimed that the speeches he delivered during DK were actually written by others. Khieu Samphan concluded his statement by claiming that he was essentially a pawn of the DK government and is "not like the others," presumably referencing co-charged persons Ieng Sary, Ieng Thirith and Nuon Chea.

A few attendees shared their opinion of the ECCC proceedings with DC-Cam staff members during a short break. Lach Samnang, a 64 year old farmer from Banteay Mencheay province, stated that over the two days he spent at the Court he was generally



pleased with what he saw, especially because the ECCC has the power to capture former Khmer Rouge leaders. He feels that the Court is important to Cambodia in general, as well as victims and their families. Before the ECCC's creation Samnang did not believe that any Khmer Rouge leaders would ever be held accountable and he hopes that the Court can finally uncover the truth. As for the proceedings he saw, Samnang believes that the charged persons in Case 002 should all be kept in pretrial detention because if released they may escape and also, a small number of victims might seek violent revenge against them.

Royal Palace Visit and Performance by PRUM Manh



Prum Manh had a special connection with visitors from Preah Net Preah district in Banteay Meanchey province, as he lived in bordering Toek Chor commune during the DK period. Prum Manh hid his linguistic talents from the Khmer Rouge and was able to survive because he is also a skilled barber.

After spending the morning at the ECCC, the villagers had lunch at a local restaurant and then were treated to a trip to the Royal Palace in Phnom Penh. For virtually all of the villagers this was their first time inside the palace and for many of them, the trip itself was their first time in Phnom Penh. The group walked quietly around the palace grounds and many granted interviews to DC-Cam staff members concerning both their personal experiences during the DK period and their views on the ECCC. Dinner and a special performance by comedian Prum Manh followed the visit to the Royal Palace.

Prum Manh is famous throughout Cambodia for his comedy routines and ability to create new jokes and puns while involving the audience.

Performance of the Play "Breaking the Silence"

The final event of the trip was a performance of the play "Breaking the Silence" at the National Institute of Education. "Breaking the Silence" is a series of vignettes that depict the complex emotions that are aroused in survivors of the DK period when trying to speak about their experiences. The audience of the play also included approximately 200 university students from Phnom Penh.

After the play, two audience members provided their impressions of the performance. Hong Huy, commune chief of Preah Net Preah, opined that the play provided an accurate representation of what occurred during DK. Hong Huy also stated that it is important for the younger generation of Cambodians to learn about the DK period and for survivors to tell their stories. He believes that "Breaking the Silence" serves as a mechanism to help survivors both remember and discuss their experiences during DK.

The other audience member who commented on the play was Long Sokhni, a university student.

Long Sokhni stated that he believes "Breaking the Silence" is an accurate depiction of the DK period because it is exactly the same as what he has studied concerning the period in school. He then asked about the significance of the play's title. "Breaking the Silence" director Suon Bunrith responded that the title was chosen because the main purpose of the play is to promote the sharing of stories and experiences of DK survivors, both amongst themselves and with the younger generation. Suon Bunrith continued by stating that this process can encourage survivors to tell the truth about their experiences during DK. He noted that the secondary purpose of the play is to promote the study of the DK period in Cambodia, especially amongst the nation's youth. Finally, Suon Bunrith said that "Breaking the Silence" is not designed to ask or grant forgiveness, but merely to promote dialogue.

After the audience comments, DC-Cam Director Youk Chhang closed the evening with a few personal remarks. Youk specifically addressed why he invited people from Trapeang Veng village, despite the fact that he had suffered so much there. Youk said that after the DK period, no one from Banteay Meanchey province knew what became of him. Furthermore,



Villagers and University students watching "Breaking the Silence"

Youk admitted that he used to be very angry with many people from the village and hated the area because it was the site of so much sorrow for him. As time progressed however, Youk found that, just like in "Breaking the Silence," sharing his experiences was a method of healing for him, allowing him to move on. Youk believes that the play can help to change the attitudes of victims who see it and help them find forgiveness, tolerance and reconciliation.

Over time, Youk has tried to find forgiveness within himself for those people who hurt him in the past. By trying to forgive individuals who wronged him in the past, Youk hopes to provide an example for others to follow in reconciling with one another. Additionally, as a token of both his gratefulness to those who helped him and towards forgiveness to those who mistreated him and his family during his time in Banteay Meanchey, Youk and his mother are currently funding the construction of a road in Preah Net Preah district near a local pagoda where a public execution of a couple took place during the DK period and close to where Youk was imprisoned by the Khmer Rouge at age fifteen. Youk ended the evening by reminding the students in the audience of the importance of studying the history of the DK period and preserving the memories of survivors.

When Broken Glass Floats: Personal Expressions of Remorse

The trip to Phnom Penh to learn about the Khmer Rouge and the proceedings of the ECCC aroused strong and complex emotions amongst many of the attendees, all of whom survived the DK period. This was especially true for participants from Trapeang Veng village, who lived alongside Youk Chhang during the DK period. Expressing such complex feelings of remorse is a difficult process for all human beings. Such expressions are especially difficult for Cambodians, whose culture

eschews direct, public apologies and places high value on respecting hierarchical social strata. Accordingly, Cambodians do not typically discuss shameful or regrettable events openly, but express their remorse through indirect, generalized statements and assuming a humble posture and countenance.

The complexity and nuances of interpersonal communication in Cambodia was evident in the discussions between Youk and two villagers from Trapeang Veng village. One villager, named Chhoeung approached Youk during a break to discuss the actions of his son named Khai, during the DK period. Chhoeung waited for an opportunity to quietly take Youk aside, rather than discussing the matter publicly amongst the group. Chhoeung then slowly and quietly informed Youk that Khai became ill and died not long after 1979. He further mentioned that he did not feel remorse that his son had died because he is aware that Khai had committed bad acts during the Khmer Rouge time, when he had been a village security guard. Chhoeung then stated that he believes Khai died young as a result of bad karma, attributable to these bad acts.

Although this conversation was brief and general, it had much greater significance to both Chhoeung and Youk than its content would suggest to a casual observer. Both Chhoeung and Youk were aware that during DK, Khai had in fact, arrested Youk himself and beaten him severely with an ax. Although Chhoeung



Youk Chhang talking to Trapeang Veng villagers

did not mention these specific acts, he was indirectly expressing remorse that his son had hurt and mistreated Youk.

Another participant named Hoeun who is now an achar (non-ordained Buddhist scholar) at Preah Net Preah pagoda, also approached Youk alone during a morning break. Hoeun told Youk that he remembered the Chhang family well from the DK period. Hoeun then quietly recounted an incident he remembers from that time, when fire engulfed a dry rice field during a group work trip to cut hay. Hoeun then asked about Youk's sister and brother-in-law, expressed his hope that they are both doing well.

Again, this brief interaction was full of important subtext. During the DK period, Hoeun was the deputy village chief of Trapeang Veng and was a very absolute and harsh Khmer Rouge official. In fact, when recounting the story to Youk, both men were well aware that after the fire Hoeun had accused Youk's sister of causing the fire because she had been the only "new person" (urban evacuee) from Phnom Penh in Hoeun's unit at the time. This caused Youk's sister great danger and distress, as she could have easily been killed as a result of Hoeun's accusations. Additionally, fellow villager HONG Huy informed Youk that during DK, Hoeun had reported Mr. Hong to Angkar as an enemy of the revolution in late 1978. Fortunately Mr. Hong survived because the Vietnamese entered Cambodia and ousted the Khmer Rouge in early 1979, before he could be arrested and executed.

During his brief interaction with Youk, Hoeun purposefully omitted the key elements of his narrative that made it especially relevant to Youk and his family. However, both men were well aware of this background information. By Hoeun approaching Youk in this manner and through his lowered posture and tone, the former Khmer Rouge official implicitly admitted that he had acted wrongly. This admission was a significant act for Hoeun because at the time of the fire incident he surely considered himself victimized, as Hoeun was not immune from the wrath of his superiors in the Khmer Rouge and could have been killed for allowing the fire to happen. Thus, the short narration of the story of the fire during the trip to cut hay was a mechanism for Hoeun to admit he had wronged Youk's sister and thereby try to move forward from the past.

These two, brief interactions are emblematic of the private nature of expressions of remorse in Cambodian culture. Both villagers approached Youk alone and in a private setting. Also, both villagers addressed Youk as "elder" (bong), despite being significantly older than him and assumed an inferior posture to Youk by lowering themselves, looking downward, forcing themselves to smile and speaking in a quiet, trembling voice. Chhoeung even went so far as to forbid himself from mourning the death of his son, which was obviously painful for the elderly man. Youk's relatively high social status, as director of a large organization who has travelled abroad and speaks foreign languages, also contributed to the overt displays of respect exhibited by the two men.

There is a folk saying in Cambodia that during times of strife, "squash drowns, broken glass floats" (*khlok lich, ambaeng andaet*). his saying connotes an unnatural and dangerous upheaval in society because usually "squash floats and glass drowns" (*khlok andaet, ambaeng lich*) meaning that people who are useful, like a dried squash containers used for carrying water, rise to the top of society and those who are jagged and dangerous, like shards of broken glass,



Pharat, Hoeun, Phara and Nil. The three women were in the same Children Unit with Youk during the Khmer Rouge.

are held down or sink. This metaphor has been used to describe the DK period, when dangerous people assumed power in Cambodia and everyone else sunk to the bottom, many of them drowning in the process. Through their body language and tone, both Chhoeung and Hoeun acknowledged that broken glass floated during the DK period and that Khai and Hoeun had been shards of this "floating glass" that cut many Youk and his family deeply.

The considerable amount of unspoken subtext that occurs during emotionally charged interactions between Cambodians must be considered when choosing mechanisms to facilitate dialogue amongst former perpetrators and victims of the Khmer Rouge. Members of neither of these groups are homogenous in their feelings or opinions. Furthermore, many survivors cannot be neatly categorized as belonging solely to one of the two groups, as many former perpetrators themselves suffered immense trauma during DK. What is important however, is that the fundamental humanity of all survivors, victims and perpetrators alike, be emphasized so that everyone can speak the truth freely. This can only be achieved by acknowledging and addressing the manner in which Cambodian people express the extremely powerful, yet delicate emotions associated with the DK period.

Conclusion

Overall, throughout the trip the general sentiment amongst the visitors was strongly positive. The entire group paid careful attention to the information they were given concerning the DK period and the ECCC and listened intently to the arguments put forth by all parties at the Court. Bin Ouch, a 63 year old farmer from Banteay Meanchey province, was pleased with his experience in Phnom Penh and felt that he learned a lot about the ECCC and the history of the DK period. Ouch stated that he is also pleased that DC-Cam plays an active role in providing information for Cambodians searching for family members who disappeared during DK and helping explain to them what happened. Additionally, Ouch is satisfied with the overall process at the ECCC because the judges appeared fair and

impartial, although he did take issue with some of the arguments raised by defense counsel during the Khieu Samphan hearing and believes that the charged persons should all continue to be detained leading up to trial.

Mea Somaly, a 48 year old farmer from Banteay Meanchey shared similar sentiments to Bin Ouch. Somaly said that she had been very excited for the trip and had enjoyed it very much. She also feels that she learned a lot about the ECCC's proceedings and now understands what is going on at the Court much better. Somaly is satisfied with what she learned about the ECCC and believes that the Court is worthwhile because it has the power to punish Khmer Rouge criminals.

Some attendees even made efforts to express their gratitude after returning to their home villages. Several DC-Cam staff members received telephone calls from attendees thanking them for the trip. This expression of gratitude was no small act for many of the villagers who had to seek out and pay for the use of a telephone because they are very poor and do not have their own. Hopefully, continuing outreach programs, such as DC-Cam's Living Documents Project, will help to spread awareness and understanding of the trials at the ECCC and facilitate open dialogue and reconciliation amongst Cambodians.

Randle DeFalco is currently DC-Cam legal associate and a student at Rutgers University School of law-Newark.



The Thnork Toek (water carrier) flower in bloom. The flower is emblematic of rural Cambodia as it blooms in rice fields after the harvest, Banteay Meanchey province.

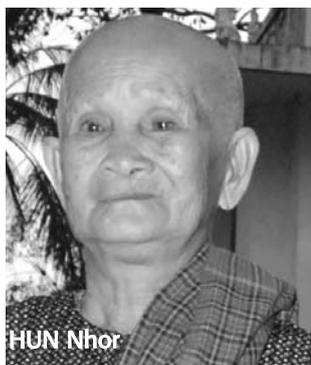
"BREAKING THE SILENCE" PERFORMANCE AT KRAING TA CHAN PRISON

Randle DeFalco and Socheat Nhean

On February 5th and 6th 2010, the Documentation Center of Cambodia (DC-Cam) hosted two special performances of the play "Breaking the Silence" at the site of the former Khmer Rouge Kraing Ta Chan security prison in Takeo province. Kraing Ta Chan was the largest prison in the Southwest Zone during the period of Democratic Kampuchea (DK) in Cambodia from 1975-1979 and claimed at least 1,000 lives. Kraing Ta Chan is also located near the birthplace of Ta Mok, a major Khmer Rouge figure who was in charge of the Southwest Zone throughout the DK period. All important leaders of the prison were from Mok's revolutionary base area and several of the prison's most important figures were familial relations of his.

Over two days, a total of approximately 1,000 people watched "Breaking the Silence," which is designed to help unravel some of the difficulties Cambodians encounter when trying to address traumatic memories from the DK era. Viewers ranged from young children and Chea Sim Takeo High School students, to older members of the community who are survivors of the DK period. Both days, the audience watched attentively and appeared satisfied with the play's treatment of the delicate topics of trauma, honesty and reconciliation.

Two attendees were survivors of Kraing Ta Chan prison. After watching the play, both of these survivors offered their thoughts on both the performance and the larger issue of reconciliation in Cambodia. HUN



Nhor, who is now 78, said that the play evoked painful memories for her, made even more visceral by watching it where she had suffered so much. Nhor was however, appreciative of the effort of everyone involved and is happy that

the play is being shown so that people can learn about and address their history. Nhor mentioned that the play "reminded [her] again of the Khmer Rouge regime" and also remarked the scenarios shown in the play were "just like what happened during the Khmer Rouge."



SOY Sen was also a prisoner at Kraing Ta Chan and was only freed after the Vietnamese army invaded Cambodia in January of 1979. Sen believes that it is hard to reconcile former prisoners and perpetrators because the latter never want to tell the full truth about their actions during DK. For example, Sen stated that former Kraing Ta Chan workers never voluntarily visited the site or discussed their actions during DK. Sen also believes that former perpetrators generally try to ignore their past actions, rather than admitting or confronting them and thus, avoid activities like watching the play. We asked Sen if he was satisfied with the Khmer Rouge tribunal so far and if it could provide him justice. Sen replied "no," and stated that the Tribunal "will not provide justice to me at all." Sen then asked, "how can it offer justice, while a perpetrator who is now living 100 meters from me never says the truth?"

After the play, one high school student from Takeo province asked why Cambodians killed their own people. DC-Cam staff member and project facilitator SER Sayana replied that the Khmer Rouge not only killed ethnic Khmer people, but also targeted minority groups such as Vietnamese, Cham and Kampuchea Krom people for especially harsh treatment and extermination. Another student asked why other characters in the play did not want to talk to the character of Chea, who had been under suspicion by

the Khmer Rouge. SUON Bunrith, a facilitator from Amrita Performing Arts, responded that during the DK period people avoided connecting with others who were accused of being traitors out of fear. He added that any of Chea's relatives discovered by the Khmer Rouge would be persecuted, arrested and/or executed, or might simply vanish one day.

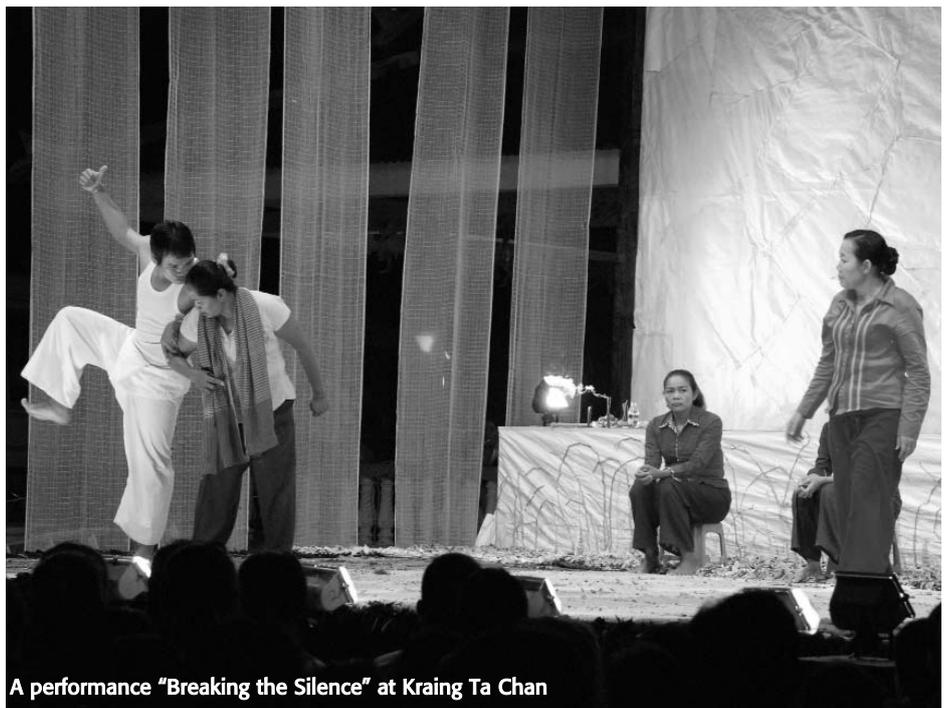
A third student asked about the current situation at the Khmer Rouge Tribunal in Phnom Penh. Bunrith and Sayana replied that the trial of four surviving former senior Khmer Rouge leaders has not yet finished, but that the accused persons are currently being detained and the case is in the investigative phase. A fourth student took the microphone and asked if the DK government had diplomatic relations with other countries, specifically mentioning China. Sayana replied that DK had diplomatic relations with some countries however, other than high-level Khmer Rouge officials, all Cambodians were restricted from travelling during DK. Also, Chinese advisors had freedom to travel and work with Khmer Rouge cadre. The final question of the first evening came from a former resident of Tramkok, a model communal district during DK, who asked why people were starved while they worked so hard in the farmland. Sayana responded that at the time the DK cadre in the local area tried to save face and gain prestige by producing the most rice to give to the DK government. Additionally, the Khmer Rouge traded rice in exchange for weapons to fight Vietnam.

On the second night of the play about 300 people attended, some of whom were 11th grade students from Chea Sim Takeo High School. Although few people asked questions, a woman named KHATT Khorn remained at the site after the rest of the audience had left. Khorn, now 68, said that she has been waiting for Khmer Rouge researchers for a long time and

wanted to share her experiences. In 1971 Khorn joined the revolution as a soldier, hoping that she could help liberate Cambodia from American imperialism and corruption. She fought until 1975 when she was suddenly arrested by the Khmer Rouge and sent to a nearby prison. Khorn was unsure what prison she had been sent to, but it appears that she was incarcerated at nearby Security Center 204, established before Kraing Ta Chan prison. Khorn added that she was happy to see the play near her village and hopes that the young generation will learn about the regime by watching "Breaking the Silence."

Overall, the event was a success. The performance brought together multiple generations of villagers to discuss a painful and controversial chapter of Cambodian history. While these types of discussions are often uncomfortable and sometimes evoke painful memories in participants, they are important to national reconciliation after a national trauma on the scale of that which occurred during the DK period in Cambodia.

Randle DeFalco is currently DC-Cam legal associates and a student at Rutgers School of law-Newark and Socheat Nhean is the Team Leader of Searching for the Truth Magazine.



A performance "Breaking the Silence" at Kraing Ta Chan

THE END OF THE SALOTH FAMILY

Socheat Nhean

It was on a hot, sunny day that I paid a visit to the place where Saloth Sar, widely known as Pol Pot, was born. The purpose of the visit was to meet with one of Saloth Sar's nieces after learning that one of Sar's brothers, Saloth Nhep, had died. The house I visited was where Pol Pot and his siblings were born and raised. The house faces the Sen River, approximately three miles to the west of Kampong Thom town. According to Sar's niece and Nhep's daughter, Nhep Thol, Pol Pot never visited his hometown. Now 47 years old, Nhep Thol said that she had never seen her uncle (Pol Pot) in person.

When I arrived at the house, only Thol was there and a few children were playing nearby. Thol was cooking and after seeing me, she quit her work to greet me. Wearing a sarong and a blouse, Thol politely asked me, "What is your purpose for coming here?" As a guest, I introduced myself to her as a researcher from the Documentation Center of Cambodia (DC-Cam).

The house I spoke to Thol in had been occupied by the last brother of Pol Pot, Saloth Nhep, until he passed away on February 4, 2010, at 84. Thol is the only one of Nhep's daughters that still lives in the house, as the others have all moved out.

When Pol Pot was a student in Kampong Cham town and then in France, Nhep was one of the well-off men in the village. "My father had several buffalos and paddy fields. We had enough to eat," said Thol. However, while Pol Pot was leader of the country between 1975 and 1979, Nhep was an ordinary man who worked as hard as other people at the time. "I took a pity on my father; he worked so hard and once in 1976 he was so skinny. He was going to die," said Thol.

Nhep and the other siblings did not know that their brother Pol Pot was the Prime Minister until they saw a poster of him at the cooperative kitchen in 1978. Saloth Sar had disappeared from the family for at least a decade until Nhep saw his brother's face

again.

When asked if the village or cooperative chiefs knew that Nhep was Pol Pot's brother, Thol said, "No one in the village knew about that. One of my cousins who used to be a Lon Nol soldier was also killed by that [Khmer Rouge] regime. One of my uncles [Pol Pot's brother] died in April 1975 at Prek Anchanh."

After the Khmer Rouge regime collapsed in 1979, Pol Pot never reunited with Nhep or other siblings. Pol Pot never visited his hometown and Nhep never had a chance to visit Anlong Veng until the civil war ended in the late 1990s.

According to Thol, Nhep could not remember last time Saloth Sar said good-bye to the family. Nhep could only describe Sar from his memories of Sar's childhood. In an interview with a DC-Cam research team in November 2009, Nhep said that Pol Pot was smart and obedient. "He was a nice boy and never got into fights with mates of his age," said Nhep. Nhep met with his brother after he came back from studies in France and Nhep found that Sar's behavior remained the same. "His character was not changed,



Saloth Roeung



Saloth Seng

although I did not know his mind."

After the Khmer Rouge collapsed, Nhep did not return to his home village until 1982. Upon arriving, although villagers knew that he was a brother of the leader of the murderous Khmer Rouge, he was favored by villagers because of the good merit he had gained, as villagers knew that he suffered like others during the Khmer Rouge regime. Thol said that all Saloth family's did not have a connection with Saloth Sar. Thol always viewed her father as a good person and said that he was not involved in the death of millions of Cambodians.

I continued to ask Thol how and when she knew Pol Pot had died. She said she knew little about the death of Pol Pot and what she knew about him came from journalists who visited her house. "He [Pol Pot] looked like my father," said Thol. She saw his picture for the first time in late 1990s or early 2000s. Another thing that Thol knew about Pol Pot was the prosecution against him by Ta Mok in 1997. After I briefed Thol about Mok's prosecution of Pol Pot, his house arrest in Anlong Veng, and his death there a year later, Thol asked how he died. Just as I started answering the question, Thol continued, "He may have had a disease like my father's. I heard that he had high blood pressure."

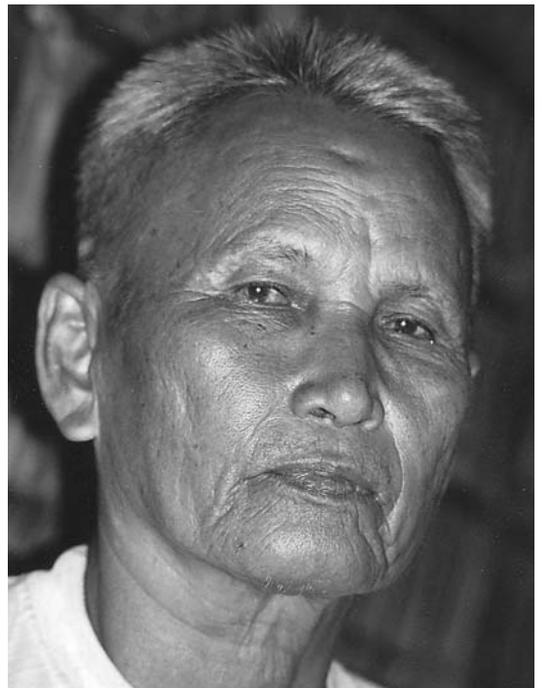
Saloth Nhep was the youngest and last brother

of Pol Pot. Nhep died on February 4 on the way from Phnom Penh to his hometown in Kampong Thom province after being released from a Phnom Penh hospital. Thol told me how healthy her father was before he died. "A few days ago, he said he did not feel well and I thought it was normal for an old man of over 80," said Thol with tears in her eyes, "he was seen riding bicycle a couple days ago before he felt very ill. He did not say good-bye to me. He died peacefully," explained Thol.

Thol asked her son to go upstairs to bring an album of Nhep's funeral and a photo of Nhep sitting by the door on the stilt house taken by her son a couple months ago. From the photo, it appeared that the funeral was attended by many villagers. "Nobody hated my father, that's why lots of villages came to his funeral."

Saloth Nhep was cremated in front of his house near a stand of bamboo trees on the bank of the Sen River. Saloth Nhep was the youngest son of Phem Saloth and Suk Nem. Saloth and Nem had seven children. Nhep's wife died of high blood-pressure in 2001 and his death marked the end of the Saloth family.

Socheat Nhean is the Team Leader of Searching for the Truth Magazine.



THACH CHOV: A FORMER STUDENT OF KHIEU SAMPHAN

Bunthorn Som

Thach Chov, age 80, was born at North Dai Teung village, Song Lok sub-district, Travin province, South Vietnam. After the Khmer Rouge regime collapsed, Thach Chov served as a chair of the education department at Svay Rieng province for over two decades. Today as a retired official, Thach assists an orphanage center in Svay Rieng town.

Early life

Thach has four siblings. His father was Thach Long and his mother was Thach Ieng. His father, Thach Long, was conscripted into the French Army and then was sent to Europe to fight during WWI. When he was young, Thach Chov spoke Vietnamese poorly, so it was hard to communicate with the Vietnamese in Vietnam. Because of this challenge, Thach's father sent him to a Vietnamese school where he studied for three years. Afterward, Thach went to study at a Franco-Khmer school for Ethnic Khmer in Travin provincial town, South Vietnam. Vietnamese attended a Franco-Vietnamese school that was completely different from the Franco-Khmer school. At the Franco-Khmer class, Thach studied with Son Sen, who later became defense minister during the Democratic Kampuchea era (1975-1979). Thach said that his and Son Sen's houses are just about one kilometer away from each other. As close classmates, young Thach and Sen packed lunch to eat at school every day; ate together and came home together in the evening. The school was about six Kilometers from Thach's house.

Later, the Issarak movement, a resistance group fighting against the French, released propaganda at Dai Teung village. Viet Minh troops arrived at the village shortly after. Fearing his safety, Thach quit school for a

short period of time. However, Son Sen did not and after completing Travin School, he went on to pursue further studies at a pedagogy school in Phnom Penh.

The Issarak Movement and the Viet Minh often forced people to join their movement. In order to avoid persecution, Thach was ordained as a monk after quitting school. Later, Thach thought of leaving his monkhood and going back to school, but his French teacher would not readmit him because he had been away from school for a long time already and would not be able to catch up with other students in the class. His teacher told him to go back home to help parents herd the cows and rice farm.

Thach was pretty upset with his teacher. Because he always wanted to study, Thach asked his parent to go to Phnom Penh so that he could continue his studies.

In 1951, Thach left the monkhood and decided to take a boat from South Vietnam to Phnom Penh although he had nowhere to stay. On the boat traveling to Phnom Penh, Thach met a monk from Travin who went to study Pali in Phnom Penh. The monk offered him a place to stay at Unalom pagoda because he had a friend who was a monk there. Unfortunately, arriving at Unalom, Thach did not meet the monk he had been told to meet. Instead, Thach met with a deputy head of the monastery who would not let him stay at Unalom because there was no room.

Because he had no other options, Thach begged the deputy head for his permission to sleep in the kitchen. The deputy head agreed. One day, Thach accidentally met another monk who was also from South Vietnam who came to teach at Dei Ith School in Kien Svay district and who used to stay at Unalom Pagoda. The monk invited Thach to stay with him at Dei Ith School Kandal province. Thach agreed and he stayed there for one and a half years and studied until he completed 7th grade at Junior High School.



At that time he was 21 and too old to go to high school, as students had to be less than 16 years of age to attend. Instead, Thach decided to attend the Pedagogy School for Primary School level teachers located behind Sisowath High School (Present-day Don Penh Junior Primary School). At this pedagogy school Thach had Khieu Samphan as a teacher during his first year. Thach said that at the pedagogy school Khieu Samphan taught him mathematics around three hours per week. "Khieu Samphan was a thoughtful and serious teacher; he never shared jokes with other students and he was very strict during the exam," said Thach, "however, he was favored by students; he was quiet, but he explained the lesson so clearly."

During his second year at Pedagogy School, Thach never saw Khieu Samphan again. Thach assumed that he went to France for further education, although Khieu Samphan didn't say anything to his students about this. After Khieu Samphan left, a French teacher replaced him in mathematics class. All students complained and were upset because the new teacher did not explain the lesson well and all the students had trouble understanding French.

Thach spent five years at pedagogy school and in 1956 he graduated. He was assigned by the State to teach at Preah Monivong High School in Battambang town. After teaching there for two years, Thach returned to Phnom Penh to continue his studies at the National Institute of Pedagogy (present-day National Institute of Education), located near Independence Monument. There, Professor Keng Vansack was the president and his former classmate, Son Sen, was a vice-president. During his first year at the National Institute of Pedagogy, Thach had a chance to visit his homeland in South Vietnam during school vacation. Son Sen did not go, but he asked Thach to send a message to his parents and relatives there. This was the last time Thach met with and the last words he received from Son Sen. When Thach returned to Phnom Penh from South Vietnam to continue his second year at school, he no longer saw Son Sen. He was told that that Son Sen left Phnom Penh to join the resistance movement against

the Sihanouk government.

In 1961, Thach completed his studies at the National Institute of Pedagogy and then he was assigned to teach at Baphnom High School in Prey Veng province. Thach said that he was very careful in teaching and he always helped needy students. Therefore, he was very much favored by his students and their parents. Soon, Thach was promoted to be the president of Baphnom High School, a position he held until 1970 when there was chaos after the coup, causing students to quit school and join Khmer Rouge movement. The Khmer Rouge took over the village soon afterwards and organized people into mutual aid teams. The school was shut down. Because the situation at Baphnom was not secure, Thach asked the Ministry of Education to transfer him to present-day Svay Rieng High School on the basis that this new place was nearer for him and his children. At Svay Rieng High School, Thach served as the director of the governance office.

He served in that position until the Khmer Rouge achieved victory over the country. After the Khmer Rouge took power, Thach and his family were evacuated to Tasuos village in late 1975. Staying there for seven days, he was separated from his wife and children when Khmer Rouge cadre told him to join a meeting at Chheu Teal village, Svay Chrum district. He could not bring any clothes with him. Instead, the Khmer Rouge cadre brought him to a school located at Prey Beung village, Meun Chey sub-district, Romduol district, and then to study about Communist Party of Kampuchea Party morals and the division of people (New and Old people) for three weeks. After he left Tasuos village, he and his family were separated.

In 1976, Thach was allowed to return to Tasuos sub-district and hoped that he could reunite with his family. However, he did not meet with them and later he found out that all his family members had fled to Vietnam. However, Thach was not persecuted and he was assigned to work in fertilizer making unit in which his team was responsible for collecting human waste to make fertilizer.

Meeting an old friend

One morning at around 10 am, when Thach was walking home from work, he spotted his old friend whom he had not met for a long time. It was Son Sen. Thach said that he saw Son Sen in a Jeep with some bodyguards traveling to the border area to see the troops near Tasuos Pagoda. However, Son Sen did not see him and he dared not call his name. The two did not talk and they were separated again.

Forcing to marry

Thach never stop missing his wife and family who successfully fled to Vietnam. Back in Cambodia, Thach was asked by the Khmer Rouge cadre to marry twice. He refused. Thach tried to convince the Khmer Rouge cadre that he preferred and did not mind living alone. One day when he was walking to the fertilizer making unit, he met with a former student from Baphnom High School who was now a chief of the social affairs unit. The student still respected Thach as his teacher, stopped his bicycle, took his hat off and shouted at Thach, "Teacher! Do you recognize me?" Thach was unable to recognize him because he stopped teaching there six years previously and he had lots of students. Thach replied "I recognize your face, but I

forgot your name." It was this student who save Thach's life. Thach said, "My student told the group leader and sub-district secretary to look after me and told them that I was a [Khmer Rouge] agent who spied Lon Nol government in Svay Rieng before 1975." However, his student also said that Thach had to accept Angkar's request to marry; otherwise, he would be killed. Knowing this, Thach agreed to marry; however, many women refused because he was originally from Vietnam and the women were worried that their lives would be endangered if they decided to marry Thach. Nevertheless, one woman decided to marry him although she knew about Thach's identity. The couple lives together until today in Svay Rieng provincial town.

After the Khmer Rouge collapsed in 1979, Thach managed to go to Phnom Penh and was asked by the Minister of Education to serve as the president of the education department in Svay Rieng Province. Today at 80 years of age, a retired Thach Chov spends his time teaching French and helping the orphanage center in Svay Rieng town.

Bunthorn Som is the Staff Writer for Searching for the Truth Magazine.



A KHMER ROUGE CHILD WHO BECAME AN EDUCATOR

Phalla Chea

In childhood, Ten Kimton and other children were sent to school with the hope that they would acquire knowledge and obtain good job in the future. Kimton started his first class at Kumarey Primary School (today called Chaktumuk Primary School), north of Independence Monument in Phnom Penh. In 1972, after reaching what was formerly called grade 9, his father, a former primary school teacher in Prey Veng who later transferred to a Lon Nol Artery Unit in Neak Loeung due to his dislike of Khmer Rouge communism, was killed by a shell. Consequently, Kimton's mother brought him and his two younger brothers to settle in Battambang town with his uncle, a governmental official for the railway, and lived there until the Lon Nol regime collapsed.

Once the Khmer Rouge gained complete power, Kimton's family was evacuated to Bay Damram village, Banan district, Battambang province. At first, they were assigned to live with a base family: a husband named Seng and his wife called Nam. Three months later, his family was moved to live temporarily in a chicken loft, and then built a cottage nearby for them. Then the family was separated. His mother, who was

a widow, was appointed to the battlefield. He and one of his brothers were sent to the children's unit in Kraloeng Dum controlled by Sam Oeun, chief, Nang, deputy chief, and Seng, cooperative chief. The youngest child was sent to Angkar's children's unit.

In the children's unit, Kimton was forced to work hard on only two meals of gruel porridge a day. First, he was ordered to collect cattle waste, and later to carry earth and dig canals and in his spare time to transport rice to the eating hall and also collect firewood. Kimton had no time to study as he had to work 7-8 hours a day. Children who were lazy and did not want to work or ran home would be punished by being tied to a Nha Prey tree, beaten with stick and then left for red ants bite. Sometimes they were also covered with a plastic rain coat on their face for 5 minutes to restrict their breathing. Though there were no executions, these harsh tortures caused Choek and Sina, who had ran home, to be so scared that they decided to hide at a nearby mound until they died of illness and starvation. Because of this, Kimton had never run home, and thus was able to meet his mother only twice a year when his mother asked permission from Angkar to visit her

children during Angkar's anniversaries. After seeing her children, Kimton's mother always cried from missing them, showered them, and sometimes gave them potatoes she had hidden.

Later, due to inadequate food, over work, and living in a place vulnerable to malaria, Kimton, his brother and many other children in the unit suffered from jaundice. To heal the disease, Angkar burned *puy* (thread) mixed with



Phalla Chea

Kimton

whitewash, and then lighted it on the patients' bellies. Following that, the patients were provided some medicine made of tree root found in the forest, and medicine that looked like rabbit feces. They also received rice and three weeks holiday. After that most children recovered from their illness.

In 1978, after Southwestern zone cadres captured the region Kimton inhabited, the cadre told him and his brother to go back home because the two looked young. Without waiting, the two ran back to Bay Damram village. There, Kimton was ordered to collect cattle excrement, morning glory and vegetables for cooperative chiefs. Subsequently, Kimton's youngest brother who lived in another unit became sick and was sent back home. His mother was also allowed to come back home because she was bitten by a snake. Therefore, he was able to be reunited with his family again.

One day, a villager asked Kimton to spin a dynamo generate electricity to listen to news on the radio. A radio broadcast said that Vietnamese troops had captured Battambang town. The Khmer Rouge, however, moved the all villagers to Sampoeu Mountain. Nevertheless, having this information, and having children which made for difficult traveling, Kimton's mother brought all the children to hide at a lake, and then moved backward to Bay Damram village, an area Renakse and Vietnamese armies had liberated.

Shortly after that, Kimton's family returned to live with his uncle in Battambang. However, after realizing that relatives in Prey Veng had all been executed except two aunts, Kimton's mother made up her mind to relocate to Prey Veng. There, when the situation became stable and schools were established, Kimton resumed his studies in grade 4. He graduated from senior high school in grade 11 (grade 12 today) in Prey Veng, and then went to Phnom Penh to continue his studies. In Phnom Penh, he was granted a scholarship from the government to study literature in Russian language in Laos. The language was not an obstacle for him as he had studied it since high school and the university in Laos required him to study Russian for a

year before starting the first year of his bachelor degree. Kimton graduated and returned to Cambodia in 1994. He worked for the Pedagogy Research Department, and then he was assigned to be a member of a committee responsible for producing Khmer study books by UNICEF for five years. He has produced Khmer study books for grades 3, 4 and 5, teacher guide books, and social study books for grade 8 and 10. In 2009, he was selected to be a national teacher trainer for DC-Cam's Genocide Education Project.

Kimton says that generating a curriculum the history of Democratic Kampuchea is appropriate now that the Khmer Rouge tribunal is under way. Moreover, teaching history about Khmer Rouge increases knowledge about the impact of the regime, and can help prevent such a heinous crimes from taking place again. These studies will also help the younger generation learn to forgive, avoid committing violence, and not racially discriminate. As a consequence, the country will become developed.

Phalla Chea is the Translator for Searching for the Truth Magazine.

SIGNIFICANCE OF GENOCIDE EDUCATION

- ◆ *Your questions empower and give meaning to those who have suffered. Asking your parents and grand-parents about the Khmer Rouge will further there conciliation of the Cambodian nation.*
- ◆ *Teaching children about the Khmer Rouge regime means teaching students the difference between good and evil and how to forgive. Broken societies must know their past in order to rebuild for their future.*
- ◆ *Teaching children about the history of the Khmer Rouge regime, as well as stimulating discussion between children and their parents and grant-parents about what happened, are important to preventing genocide both in Cambodia and the world at-large.*

BEN NEANG: TEACHING THE HISTORY OF DEMOCRATIC KAMPUCHEA

Leakhena Tat

Ben Neang is a national teacher who has participated in teaching the history of Democratic Kampuchea. During the Lon Nol regime, Neang's father was a government officer working for Battambang provincial hall. Later, during Khmer Rouge regime, because he told the truth about his past to Angkar, his name was listed in Angkar's black list. As a result, Neang and her family lived in fear for the regime's 3 years, 8 months and 20 days. What did the Khmer Rouge do to Neang's family?

Neang's mother became a vendor after four of her family members (her parents, older brother and her) migrated to Chamkar Samraong II village, Chamkar Samraong sub-district, Battambang district, Battambang province. Neang recalled that in 1975, a few days before the Khmer Rouge evacuated people from the city, Chamkar Samraong II village was in chaos and there was constant gunfire sounding. Later, the Khmer Rouge ordered Neang's family to leave their house in three days. Neang's family and other villagers began packing and left for the locations determined by Angkar. After staying in Andaung Chen for two nights, they headed Kruos village (region 3) and reached it in the evening. Neang's family as well as other's had to chop down trees to make a temporary shelter. In the morning, the entire village was required to find trees in order to build cottages. Each cottage must be one meter far from each other. Later on, the Khmer Rouge announced that private belongings must be given to the cooperative, which was 4-5 meters from Neang's house. The villagers were also required to eat communally. A few months later, the Khmer Rouge began separating Neang's family, ordering her to the children unit; her older brother to a mobile unit; her father to the front lines; and her mother to the home front. Fortunately, Neang was later sent to elderly female unit as she was too small. Sadly, her family was inspected all the time after her father revealed the

truth to the Khmer Rouge that he had been an officer of Battambang Hall.

Subsequently, Neang's mother was placed at front line while her father was sent back. Meanwhile, villagers who lived nearby the two whispered that this change was a signal that they should be careful. Neang said with tears, "That's why my father was always worried about his safety, and had never done something wrong to let Angkar suspect him." With difficult work and less food at the front line, Neang's mother gradually became sick. Knowing that, Neang stole some rice from the rice husking store to cook porridge for her mother.

Later her mother recovered from her illness. Around the same time, Angkar allowed people to travel from one village to another during a celebration. Having this opportunity, Neang's mother brought her to visit her father, and took him roasted corn mixed with bananas that she put in a can. Neang and her mother sympathized with him as they saw him working despite a wound on his leg that prevented him from walking. "Although the Khmer Rouge had a hospital, they did not allow my father to relax or send him there."

Following the visit, her parents were sent to the front line together, while her brother raised ducks in the village. On the Khmer Rouge's 17 April celebration, Angkar sanctioned her parents and her to visit her brother. There, they saw him with a wound on his leg preventing him from walking. He was then sent to a hospital. Later, the three of them were allowed to visit him at the hospital. During the visit, Neang saw her brother moving around on his rump being provided medicine like rabbit excrement to cure his illness. Today that wound is a scar on his leg.

One day Neang's father was assigned to chop down the trees at O-Porn Moan. It was lucky that he did not refuse the order though he had a serious illness. Those who had not been out with the group were

escorted in line to be killed. That situation made the entire Neang family feel worried that they might be in the same situation one day.

Due to insufficient food rations, Neang and other children went to the village to steal pumpkins. While she put a pumpkin in her skirt pleat, the Khmer Rouge army arrived. Fortunately, they did not see her stealing. She told her parents the whole story when she entered the house. Nevertheless, owing to his honesty, Neang's father forced Neang to admit her fault to Angkar. But she refused and held the house pillar tightly to show her unwillingness. Therefore her father told her to give the pumpkin to other children. "I did not want to give it to the others. I stole it but I could not eat it," she said. A few months later, the Neang family was sent to another village. There, she stole *Phnov* fruit to eat and came back home very late. Due to her worry, her mother beat her with a stick many times.

In 1978, Ben Neang witnessed a situation that still remains vivid in her mind. A day after the arrest of two women and a man who ran to region 3 and who were accused of committing moral offenses, the Khmer Rouge called the inhabitants in the cooperative to have a meeting and reminded them not to follow the three's behavior. Neang's mother told her that the three were tied with blue string during the meeting. Soon after the meeting ended, blue string was replaced by red string, meaning that they would be killed soon. What her mother said was true as uncle Touch, her mother's friend who was responsible for escorting people to be killed and had cut a human's belly to take the lung, said that the three were appointed to dig their own graves and then executed. Uncle Touch claimed that after the killing, he was given a branch of a Ko tree, which was a sign of being dumb.

Early 1979, prior to Vietnamese army's liberation, Neang saw airplanes and black uniformed armies riding horses toward the village. Later, the unit chiefs said that there were enemies hidden inside the village, so if anyone saw them, he or she must report it or the enemies would kill all the villagers. Meanwhile,

Neang's father and mother said, "If we do not escape now, the Khmer Rouge will kill us all." Not long after, the Khmer Rouge soldiers ran to hide in the forest, while all people living in the village stopped working and returned to their hometowns. On reaching Thma Kol, Neang's family heard that those who had not left Anlong Run village had vanished. Along the way to Samrong plantation, the family discovered abandoned smelly corpses.

Eventually, Neang's family reached their destination. Her house was filled with three new families, but they later left the country. Then Neang's father was selected to be commune deputy chief of Battambang province.

In 1990, Neang graduated from Monivong High School, and then studied Khmer literature at the University of Phnom Penh. She liked that subject since she liked reading. After graduating, she went to teach at Net Yong high school, Battambang province. The following year, Neang moved to work for the Science Research Institution (today called the Department of Curriculum Development Program), in charge of the library. Later on, she was placed to work in the office of research and evaluation. This work was harder since she had to develop a plan to conduct school evaluations and then report on the strong and weak points of teachers, students, and each school's curriculum. Moreover, Neang was responsible for writing her lesson plan for teaching.

Neang is happy to be a national teacher trainer for DC-Cam's Genocide Education Program because it provides her a chance to introduce the young generation to the Khmer Rouge regime. Neang believes that the insertion of the history of Democratic Kampuchea into the curriculum is good because it can encourage discussion among the younger generation about the death of approximately two million Cambodian people. She insisted that this job is necessary because it involves in the future development of country. "When the younger generation knows more about the regime, they can prevent it happening again, and avoid family separations and misery."

Leakhena Tat is the Staff Writer for Searching for the Truth Magazine.

REPORT ON PRE-TRIAL HEARINGS ON APPEALS AGAINST EXTENSIONS OF PROVISIONAL DETENTION ORDERS

Sarah Thomas

1. INTRODUCTION TO THE PRE-TRIAL HEARINGS

On February 11, 12 and 15, the ECCC Pre-Trial Chamber heard oral argument on the appeals against the extension of the provisional detention orders of three of the four Charged Persons in Case 002, Ieng Sary, Khieu Samphan, and Ieng Thirith. Since their arrest in November 2007, the Co-Investigating Judges have ordered their provisional detention pending trial and have extended this detention each year as required by the Court's Internal Rules. The Judges last ordered extensions of provisional detention in mid-November 2009 - just before the second anniversary of their detention - which the three Charged Persons all appealed in early December. At the hearings, the Co-Lawyers for the Charged Person requested that the Chamber order their clients' release or house arrest. All alleged that the Co-Investigating Judges had erred in ordering extensions, as the evidence did not support the conclusion that their clients had committed the charged crimes and the Judges had failed to provide reasoned decisions explaining why the conditions for provisional detention were met. The hearings were well attended with large groups invited by both the Victims Support Section and local NGOs. Several civil parties were in attendance each day.

2. LEGAL BACKGROUND TO PROVISIONAL DETENTION AT THE ECCC

The ECCC Internal Rules permit the Co-Investigating Judges ("CIJs") or the Pre-Trial Chamber to order the "provisional detention" of a Charged Person pending final judgment. As Charged Persons enjoy a presumption of innocence, provisional detention is not a form of punishment and has been described by the CIJs as "as an exception to the general rule of liberty at the pretrial phase." Given its exceptional status, the CIJs may only order provisional detention at the pre-trial stage if they find two conditions required by Rule 63(3) to exist. First, there is "well-founded reason to believe that the person may have committed the crime or crimes specified in the Introductory or Supplementary Submission" (Rule 63(3)(a)). Second, provisional detention is necessary: (a) to prevent the exertion of pressure on witnesses or victims or collusion with accomplices; (b) to preserve or prevent the destruction of evidence; (c) to ensure presence during the proceedings; (d) to protect the Charged Person's security; or (e) to preserve public order (Rule 63(3)(b)).

The Charged Person has the right to appeal an order of provisional detention to the Pre-Trial Chamber (Rule 63(4)). The CIJs may only order provisional



Ieng Thirith



Ieng Sary



Khieu Samphan

detention for up to one year if the charges include genocide, war crimes or crimes against humanity (limited to six months for all other crimes) (Rule 63(6)). The CIJs may order an extension of provisional detention after one year and the Charged Person has the right to appeal such an order to the Pre-Trial Chamber (Rule 63(7)). As the Co-Investigating Judges may not order more than two extensions (Rule 63(7)), the Charged Person cannot be provisionally detained for more than 3 years at the pretrial stage. The Co-Investigating Judges have the power to order by reasoned decision the continued provisional detention of the Charged Person in the Closing Order until he or she is brought before the Trial Chamber (Rule 68(1)). The Charged Person must be brought before the Trial Chamber within 4 months of this decision (Rule 68(3)).

3. PROCEDURAL BACKGROUND TO THE PRE-TRIAL HEARINGS

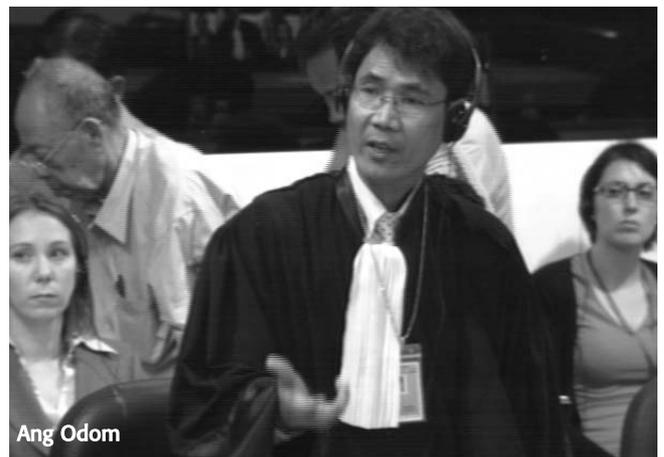
In mid November 2009, the CIJs ordered a second extension of the provisional detention of Ieng Sary, Khieu Samphan and Ieng Thirith for a period not exceeding one year. In their Orders, the CIJs found that, as required by Rule 63(3)(a), there was well-founded reason to believe based on the evidence that the three Charged Persons had committed the charged crimes. The CIJs further concluded that, in accordance with Rule 63(3)(b), their continued provisional detention was necessary in order to ensure their presence at trial (Ieng Sary, Ieng Thirith), to ensure their safety (Ieng Sary, Khieu Samphan), to avoid threats to witnesses (Ieng Thirith), and to preserve public order (Ieng Sary, Khieu Samphan, Ieng Thirith). Rather than showing the existence of these conditions, the CIJs merely cited the Pre-Trial Chamber's prior decisions and concluded that circumstances have not changed. While recognizing twenty-four months as "significant," the CIJs found the detention period to be reasonable given the complexity of the investigation.

In early December 2009, the Co-Lawyers for the three Charged Persons filed separate appeals against the CIJs' Orders. In all three appeal briefs, the Co-Lawyers claimed that the CIJs had erred in ordering the continued

detention of their clients at the detention facility. The brief of Ieng Sary's Co-Lawyers differed from the others in that, instead of requesting release, it asserted that he should be placed under house arrest. Broadly speaking, all three appeal briefs argued that detention was unjustified based on the evidence and unnecessary. The Co-Lawyers argued that the burden of proof lies with the CIJs and, as such, the CIJs erred in failing to provide a written, reasoned decision justifying the necessity of provisional detention. Thereafter, the Co-Prosecutors and the civil parties filed responses requesting denial of the appeals, arguing that extension was reasonable, justifiable, and a proper exercise of discretion.

4. SUMMARY OF PRE-TRIAL HEARINGS

a. Hearing on Appeal of Ieng Sary, February 11



Ang Odom



Michael Karnavas

Both the National (Ang Odom) and International (Michael Karnavas) Co-Lawyers for Ieng Sary participated in the hearing on the appeal. The Co-Lawyers argued that the CIJs had erred by: (a) failing to act with

required due diligence, as the evidence would not lead an objective observer to conclude that their client committed the crimes alleged; (b) failing to provide a written, reasoned opinion showing that the conditions for detention have been met, as the burden of proof is on the CIJs; and (c) failing to consider less restrictive alternatives to detention. The Co-Lawyers argued that provisional detention is unnecessary as: (a) there is no credible risk of flight, as Ieng is too unwell and too well-known; (b) there is no credible risk to his safety, as the documented aggression towards Duch would not be transferred; and (c) there is no credible risk of public order. The Co-Lawyers requested that their client be placed under house arrest or in hospital detention for health reasons. National (Chan Dararasmey) and International (Anees Ahmed) Senior Assistant

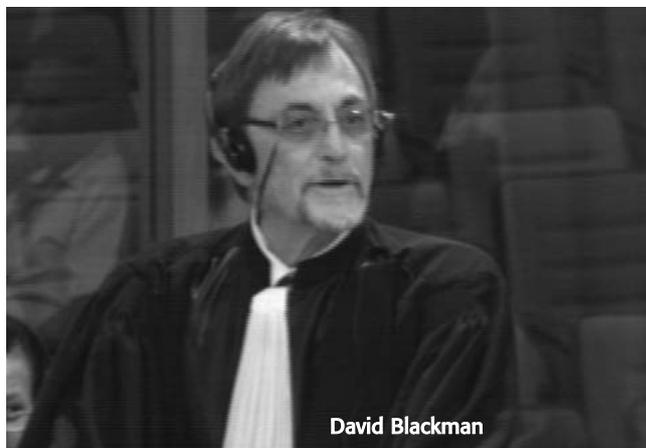


Anees Ahmed

Prosecutors made submissions for the Office of the Co-Prosecutors. The Senior Assistant Prosecutors argued for denial of the appeal, as there is well-founded reason to believe based on the evidence that Ieng committed the charged crimes. Ahmed noted that more than 96 statements speak of his role in the crimes. The Senior Assistant Prosecutors further argued that provisional detention is necessary, as three of the five Rule 63(3)(b) conditions have been satisfied. With respect to these conditions, the Senior Assistant Prosecutors asserted that the burden is on the Charged Person to show changed circumstances and that he had failed to do so. Responding to the proposal of house arrest, Ahmed argued that provisional detention was more appropriate given the gravity of

the charged crimes and that the ECCC Detention Facility is best equipped to care for Ieng's ailments.

All International Civil Party Co-Lawyers were absent from the hearing, with the exception of David Blackman, who made his first appearance. Ny Chandy

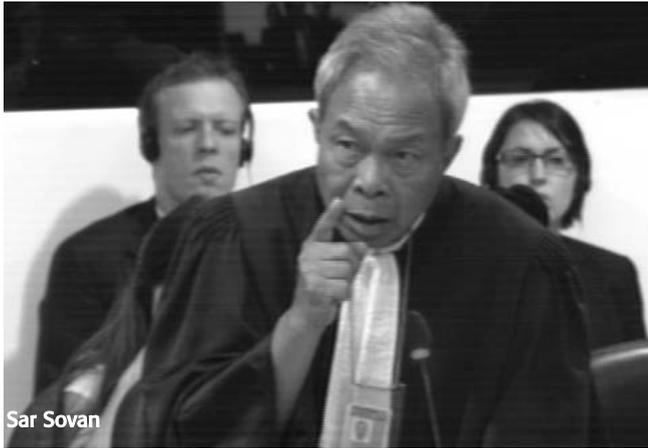


David Blackman

and Blackman both made brief oral submissions. While largely repeating the Senior Assistant Prosecutors' submissions, Ny urged the Chamber not to order release in reliance on the judicial police's ability to re-arrest Ieng if necessary, as, Ny alleged, he has "connections to the authorities." He further warned that the Cambodian people may misinterpret house arrest as release due to their poor understanding of legal procedures and that this may cause civil unrest. Blackman echoed this concern, arguing out that Ieng's transportation from his house to the Court every day would cause significant disruption and upset the residents of Phnom Penh. Very surprisingly, Karnavas conceded in response that detention would be more "secure" and "convenient" at the trial stage.

b. Hearing on Appeal of Khieu Samphan, February 12

The International Co-Lawyer for Khieu Samphan, Jacques Vergès, was absent from Friday's hearing; reasons for his absence were not given. His National Co-Lawyer, Sar Sovan, appeared alone. In their brief, the Co-Lawyers had argued inter alia that their client should be released due to the CIJs's alleged bias and alleged a lack of due diligence for failing to provide a written, reasoned opinion justifying detention. Vergès' absence did not appear to serve his client well, as the unaccompanied



Sar Sovan

Sar made little in the way of legal argumentation. Instead, he used his time to highlight that his own father's death during the regime and that he too was at the Court to "search for the truth." Having known his client for many years, he proclaimed his personal belief in his innocence, saying that he had never known him to "steal a chicken." In a surprising departure from the appeal brief, Sar asked the Chamber to consider alternative measures to detention in the ECCC Detention Facility (i.e., house arrest).

National (Veng Huot) and International (Tarik Abdulh) Senior Assistant Prosecutors argued for



Tarik Abdulh

denial of the appeal on behalf of the Office of the Co-Prosecutors. Speaking to the requirement of Rule 63(3)(a), Abdulhak noted that there is evidence that Khieu was aware of, promoted, disseminated, and implemented CPK policies, including purges of suspected enemies. He further noted that there is evidence of his involvement in the evacuation of Phnom Penh. Abdulhak argued that provisional detention is necessary,

as there is a "present and real risk" to Khieu's safety and as Cambodia's fragile society is susceptible to civil unrest. Informed that he had two minutes left to speak, Abdulhak was unable to speak to the CIJs' exercise of discretion and the alleged breaches of due process rights as intended. Instead, he concluded merely by submitting that any alternative to detention at the ECCC Detention Facility would be inappropriate.

Again, the International Co-Lawyers for the Civil Parties were all absent, with the exception of David Blackman. Although the civil parties had not filed responses, President Prak Kim San permitted the Co-Lawyers to make oral submissions in light of the new request for house arrest. Blackman and one National Co-Lawyer made brief oral submissions urging continued detention in the ECCC Detention Facility. Thereafter, Sar responded rather erratically to the oral submissions of the Senior Assistant Prosecutors and civil parties, accusing Co-Investigating Judge Lemonde of searching for inculpatory evidence only and urging the Judges not to base their Rule 63(3)(a) analysis upon evidence collected by Youk Chhang and DC-Cam. He concluded by reminding the Judges that, in any event, his client would be released after 36 months barring an amendment to the Internal Rules, which he described as "unlikely," and by asking that his client be released under judicial supervision.

The hearing closed with a statement by Khieu Samphan to the Chamber, in which he claimed that he lacked any real power in Democratic Kampuchea. He joined the State Presidium, he told the Chamber, only in order "to represent the entire Cambodian nation" when the country was in a state of chaos. He emphasized that he had no soldiers under his command and said that people referred to him as a leader without power. He pointed out that he was merely a member of the Central Committee and not the Standing Committee.

c. Hearing on Appeal of Ieng Thirith, February 15

The International Co-Lawyer for Ieng Thirith, Diana Ellis Q.C., was absent from Monday's hearing due to a prior commitment. The team's International

Legal Consultant, Karlijn van der Voort, made oral



Karlijn van der Voort

submissions in her absence alongside the National Co-Lawyer, Phat Pouy Seang. Phat opened and gave an impressive performance, clearly setting out the grounds on which the order should be quashed. He argued that: (a) the CIJs failed to act with due diligence in automatically ordering continued provisional detention without considering changed circumstances; (b) the CIJs failed to apply the correct standard when they required the defense to show changed circumstances; (c) there is no well-founded reason to believe that she committed the charged crimes; and (d) the grounds in Rule 63(3)(b) have not been met. He highlighted that Article 9(3) of the ICCPR imposes strict guidelines for detention and argued that the ECCC's practice clearly contradicts international human rights law.

National (Seng Bunkeang) and International (Vincent de Wilde) Senior Assistant Prosecutors argued for denial of the appeal on behalf of the Office of the Co-Prosecutors. The Senior Assistant Prosecutors



Vincent de Wilde

argued that there is well-founded reason to believe based on the evidence that Madame Ieng committed the charged crimes. In support of this, de Wilde referred to two recent rogatory letters, which aid understanding of Madame Ieng's control over hospitals, pharmaceutical companies and the Ministry of Social Affairs. He further argued that provisional detention is necessary, as three of the five Rule 63(3)(b) conditions exist. In support of the likelihood of threats to witnesses, de Wilde cited her threats against judicial officers in the last pre-trial hearing and at least 70 threats made against guards and her fellow detainees. He asserted that witnesses and victims are particularly susceptible to effect of threats due to the prevalence of PTSD.

The Co-Lawyers for the Civil Parties had not filed responses and did not make oral submissions. The Co-Lawyers for Madame Ieng responded to the Senior Assistant Prosecutors' oral submissions. Phat accused de Wilde of trying to "exploit his client" and of trying to "provoke her" by referring to her earlier threats. In response to an allegation made that Madame Ieng has the resources necessary to abscond, Phat reminded the Chamber that she had been found unable to pay her legal fees following a U.N. investigation. Van der Voort reasserted their argument that a material change has taken place with respect to the Rule 63(3)(b) conditions and that, even if such a change had not occurred, the burden is not on the defense to show changed circumstances. She further alleged that the Senior Assistant Prosecutors had failed to show any link between the allegedly inculpatory evidence and the Introductory Submission.

The hearing closed with a somewhat incoherent statement by Madame Ieng to the Chamber, in which she informed the Judges that she hails from an elite family with a background in the law. She stated that she had been a law student, that both her father and grandfather had been lawyers, and that her father had worked in the court in Battambang.

5. KEY LEGAL ARGUMENTS

a. Alleged Lack of Evidence Suggesting Commission or Responsibility

All defense teams argued that the CIJs erred in ordering an extension of provisional detention, as an objective observer would not conclude based on the evidence that there is well-founded reason to believe that their clients may have committed the crimes specified in the Introductory Submission as required by Rule 63(3)(a). The Co-Lawyers for Ieng Thirith were particularly vociferous proponents of this argument, alleging the "absence of real power and responsibility" on her part. Her National Co-Lawyer, Phat Pov Seang, alleged that the evidence on the case file is such that "hardly any connection" can be made between his client and the charged crimes. Her International Legal Consultant, Karlijn van der Voort, similarly alleged that the Senior Assistant Prosecutors had failed to show any link between the allegedly inculpatory evidence and the Introductory Submission.

b. Obligation on CIJs to Give Reasons and Burden of Proof for Showing Changed Circumstances

With respect to the conditions required by Rule 63(3)(b), all defense teams objected to the CIJs' mere adoption of the Pre-Trial Chamber's earlier decisions and unreasoned conclusion that circumstances have not changed. The Co-Lawyers argued that the Rule 63(7) imposes a burden on the CIJs to justify the existence of one of these conditions in a reasoned, written decision. As such, the Co-Lawyers argued, the CIJs' summary conclusion that the Charged Person has failed to show changed circumstances does not suffice to discharge this burden. In response, the Senior Assistant Prosecutors argued that the Rule 63(7) does not require the CIJs to justify provisional detention; instead, they argued, it only requires the CIJs to give reasons for extension. They argued that the burden is on the Charged Person to show changed circumstances and pointed to practice in other international and internationalized tribunals requiring Charged Persons to show changed circumstances in making applications for release.

c. Alleged Requirement of Necessity Independent of Existence of Rule 63(3)(b) Conditions

The International Legal Consultant for Ieng

Thirith, Karlijn van der Voort, argued that necessity is a separate element of Rule 63(3)(b) and that its existence must be considered independently of the existence of the five listed conditions. Citing case law from the European Court of Human Rights, she argued that necessity requires that the measure be the least intrusive possible. She argued that the CIJs have, by failing to consider necessity independently, failed to show that Rule 63(3)(b) has been satisfied.

d. Request for House Arrest and Alleged Failure to Consider Less Restrictive Form of Detention

Consistent with their earlier strategy, the Co-Lawyers for Ieng Sary requested that their client be placed under house arrest at his home or in hospital, instead of requesting his release. The Co-Lawyers argued that house arrest: (a) would be a lesser infringement of their client's right to liberty and the presumption of innocence; (b) would be beneficial for his health; and (c) would be less costly, as the government would only need to station an armed guard at his house. In his oral submission, Karnavas asserted that house arrest would be feasible and would not endanger his client's safety. In a surprising concession in response to an argument made by the civil parties, Karnavas stated that he recognized that it would be more "secure" and "convenient" to have the Charged Person detained at court at the trial stage. The International Senior Assistant Prosecutor, Anees Ahmed, argued that neither the Internal Rules nor the Cambodian Code of Criminal Procedure provides for house arrest; Rule 65(1) speaks only of bail.

In support of house arrest, Ang claimed the existence of both national and international precedent and controversially cited the Supreme Court's release of those accused of murdering a union leader, Chea Vichea. In response, Ahmed distinguished the Chea Vichea case by pointing out that the Supreme Court released the accused only after declaring a mistrial. He further stated that no major international criminal tribunal has granted house arrest, with a few limited exceptions in early ICTY case law. In *Prosecutor v. Blaškić*, the ICTY found house arrest to be permissible only if there

is: (a) no evidence that the person will escape; (b) no likelihood of witness/evidence tampering; (c) no likelihood of continued criminality; and (d) no threat to peace and security. Ieng, Ahmed argued, does not meet these conditions. Karnavas sought to distinguish Blaškic, as it involved an exceptional house arrest in the Netherlands. He argued that the later case of Prosecutor v. Plavšic applied, in which Plavšic was placed under house arrest in Belgrade pending trial and sentencing.

The Co-Lawyers alleged that, by failing to consider house arrest as a less restrictive alternative to detention, the CIJs had violated their client's right to liberty and the presumption of innocence in Rule 21(1)-(2). Ang alleged that the CIJs failed to make any efforts to determine whether it would be feasible to place Ieng under house arrest with armed guard. Karnavas asserted that house arrest would be feasible and would not endanger his client's safety. He stated mockingly that he could not believe that the Cambodian authorities are "incapable of keeping someone under house arrest who can barely walk to the toilet." In support of their legal argument, the Co-Lawyers cited recognition by the ICC Pre-Trial Chamber in Prosecutor v. Bemba that provisional detention is not a form of punishment and must take the least restrictive means possible.

Although not requested in the appeal brief, the National Co-Lawyer for Khieu Samphan, Sar Sovan, similarly requested house arrest for his client during oral argument.

6. NOTABLE ISSUES ARISING DURING THE HEARINGS

a. Alleged Bias of CIJs Against Charged Persons

All defense teams alleged that there is a systemic bias against the Charged Persons in the Office of the Co-Investigating Judges and that this has caused the CIJs to discharge their duties in a biased manner and without the required due diligence. The Co-Lawyers for Ieng Sary advanced this argument particularly vociferously, describing the CIJs as "second prosecutors." Karnavas provocatively questioned the impartiality of David Boyle and Steve Heder, and raised the instructions allegedly

given by Co-Investigating Judge Marcel Lemonde to his investigators to find more inculpatory evidence. He criticized the Chamber for refusing to hear evidence of this bias. Judge Lahuis appeared very frustrated by Karnavas' line of argument; she told him curtly that he was "overdoing it" and "made [her] uncomfortable." Cutting Karnavas off, she granted the International Senior Assistant Prosecutor (Anees Ahmed) leave to speak.

In response, Ahmed pointed out that these allegations of bias against Lemonde have been found not to have any validity and, thus, are barred by *res judicata*.

Furthermore, he argued, a pre-trial hearing is not an appropriate venue in which to raise this issue. During the hearing on Ieng Thirith's appeal, International Senior Assistant Prosecutor (Vincent de Wilde) argued that there is a strong presumption of a judge's impartiality. He argued that, if a party wishes to question a Co-Investigating Judge's impartiality, it must submit an application to the Pre-Trial Chamber for disqualification pursuant to Internal Rule 34.

b. Ill Health of Ieng Sary

Throughout oral argument, the Co-Lawyers for Ieng Sary emphasized their client's advanced age (pointing out that he will soon turn 85 years old) and his ill health (stating that he can hardly walk, cannot sit for longer than 30 minutes, and must visit the restroom regularly). Ieng suffers from heart problems, lumbar arthritis (back pain), and urinary problems. He appeared to experience difficulty in moving around the courtroom and had to be aided by guards. Before the end of the Senior Assistant Prosecutors' oral argument, the Co-Lawyers requested that he be permitted to rest in another room and to participate in the hearing remotely. The Judges granted this request and Ieng left the courtroom. He ultimately did not return, waiving his right to make concluding remarks. The Co-Lawyers used his ill health to justify their argument that he should be placed under house arrest in his home or in hospital and further to argue that he does not pose a credible flight risk.

The Senior Assistant Prosecutors and Co-Lawyers for the Civil Parties all argued that Ieng should not be placed under house arrest on health grounds, as he receives the best medical care at the ECCC Detention Facility. The Senior Assistant Prosecutor (Anees Ahmed) cited international jurisprudence establishing that bail is only necessitated on health grounds if medical treatment is unavailable in the detention unit or the host country. This is not, he asserted, the case here. He explained that, in fact, Ieng has benefitted from an array of services, which has included: "dozens" of physiotherapy sessions, installation of a special handrail, a buzzer system for 24-hour nurse care, and a total of 17 doctors available on call around the clock. Ahmed pointed out that Ieng's ailments are not immediately life threatening and cited jurisprudence establishing that serious illness on its own does not justify release on bail unless terminal in nature, immediately life threatening, and untreatable in detention.

The Senior Assistant Prosecutors and Co-Lawyers for the Civil Parties both highlighted that the CIJs and the Pre-Trial Chamber have already taken his age and health into consideration in reaching this and prior decisions. Furthermore, they argued, his age and ill health should be considered aggravating - not mitigating - factors and provide greater motivation for flight, as these factors make it a distinct possibility that Ieng would die in prison if convicted. Ahmed argued that assessments do not suggest that Ieng's health problems are life threatening or render him unfit to stand trial. In response, Karnavas pointed out that OCIJ-selected doctors conducted the fitness examinations with no provision for input on their selection from the defense. Furthermore, he alleged, these fitness examinations were not proper medical or psychological examinations, as the examiners asked only simple questions, such as his client's name. He described the report on fitness to stand trial as "laughable."

c. Mental Health and Apparent Memory Loss of Ieng Thirith

At the outset of her hearing, Ieng Thirith claimed to forget basic information about herself

when asked by the President, Prak Kim San. When asked her husband's name, she appeared confused and looked around the courtroom and to her defense team, stating that she could not remember his name, but knew that he was also in detention. She asked those in the courtroom for assistance and, apparently after prompting from her defense team, gave his name as "Ieng Sary." When later asked for the number of her children, she again looked confused and said that she could not remember because she was "so busy," eventually giving the number as four.

c. Alleged Provocation of Ieng Thirith by Senior Assistant Prosecutor

In support of his argument that provisional detention is necessary to prevent the exertion of pressure on witnesses and victims, the International Senior Assistant Prosecutor (Vincent de Wilde) began his oral submission by reminding the Chamber of Ieng Thirith's statement at her last pre-trial hearing on provisional detention on February 24, 2009. At that time, she had threatened that her accusers would be "cursed to the seventh level of hell." Van der Voort immediately interrupted de Wilde, requesting that the Judges order him not to make inflammatory statements likely to provoke her client. She urged the Judges to consider her client's "vulnerable state." Judge Rowan Downing, speaking for the Chamber, denied this request, explaining that it was not for the Judges to direct the prosecution's submissions.

d. Lengthy and Repetitive Presentation of Procedural History by Senior Assistant Prosecutors

As is customary, one of the national Judges read the Report of Examination at the start of each hearing. Despite being expressly intended to "assist those who are not parties to the proceedings to understand the matters before the Court," this Report is a lengthy description of the appeal's procedural history. Frustratingly, each of the National Co-Prosecutors also read very similar narratives describing the procedural history. On Friday, this prompted Sar Sovan to interrupt the National Senior Assistant Prosecutor (Veng Huot), opining that the audience was bored and pointing out

that Huot was merely repeating the procedural history. Huot's presentation of the procedural history certainly was lengthy - likely half of the hour allocated to the Co-Prosecutors - and left his international counterpart, Tarik Abdulhak, little time to address the requirements of Rule 63(3)(b). Due to the lack of time, Abdulhak was unable to present his arguments related to the CIJs' exercise of discretion and the alleged breaches of due process as he had informed the Chamber he would.

7. PUBLIC ATTENDANCE AT THE HEARINGS

a. Attendance Figures and Public Reaction

The hearings were well attended with the Public Gallery reaching close to its full capacity of around 500 seats on all three days thanks to the efforts of the Public Affairs Section and local NGOs. On Thursday, with the assistance of Public Affairs, a large group from Siem Reap watched the hearing on Ieng Sary's appeal. On Friday, also with the assistance of Public Affairs, a group of 350 students and teachers from the Hun Sen Teacher Training School in Acha Lakh Commune, Stung Sen District, Kampong Thom, and students from Phnom Penh High School watched the hearing on Khieu Samphan's appeal. On Thursday and Friday, 93 visitors from Banteay Meanchey, Svay Rieng and Kandal attended with the assistance of DC-Cam. The Victims Support Section also invited civil parties to the hearings. Groups in attendance at Monday's hearing on Ieng Thirith's appeal are unknown. On Thursday and Friday, staff members interviewed attendees about their experiences.

Many of the interviewees, such as Sam Chan, a DC-Cam invitee from Kandal, said that they found the hearings interesting and expressed optimism about the tribunal process. Sam told interviewers that he believed that "the Court would find justice for us and provide a fair trial to the accused." Sing Sita, from Svay Rieng, reported that he had been skeptical of the Court's fairness before the hearing, but that "after watching it with [his] own eyes, [he] realized that it is doing the right thing and following its ethics code." Many reported having watched hearings on TV or having listened to them

on the radio previously. Many interviewees complained of their inability to understand the hearings. Mok Sophat, a DC-Cam invitee, and Khim Vuthy, a civil party from Kampong Speu, both expressed disappointment to interviewers that the Charged Person had not acknowledged his wrongdoing. Mok said that she felt distressed by the harsh language employed by Sar Sovan, National Co-Lawyer for Khieu Samphan.

b. Support to Visitors From the Court and NGOs

The interviews revealed that the support received by the visitors from their inviting organizations varied. Visitors invited by DC-Cam attended the hearing as part of a three-day trip to Phnom Penh, during which they also attended a presentation on the Court by William Smith (Deputy International Co-Prosecutor), watched several documentary films on the regime, visited the Cheung Ek memorial site, Tuol Sleng Genocide Museum and the Royal Palace, and watched a performance of the play, "Breaking the Silence." Khim Vuthy, an ADHOC-assisted civil party from Kampong Speu, told interviewers that she had been invited to attend by the Victims Support Section, but had not been provided any financial support.

Visitors invited by the Public Affairs Section were brought to the Court on buses from their villages early in the morning and returned in the afternoon. Invitees from Kampong Thom reported that, on Thursday evening, Public Affairs had shown a video at their school to introduce them to the proceedings. The interviews show that, while broadly satisfied with the support provided, many of these invitees found the schedule set for them to have been extremely arduous. The towns of Kampong Thom and Siem Reap are located 162km and 321km north of Phnom Penh respectively. On Thursday, the Siem Reap attendees reported that they had departed for Phnom Penh at 3 a.m., arrived at the hearing late, and departed for Siem Reap after lunch.

On Friday, the Kampong Thom attendees reported that they had departed for Phnom Penh at 5 a.m. and were not given food until lunchtime. Many complained of exhaustion due to a lack of sleep

and/or hunger. Chan Srey Pum, 22, a teacher trainee from Kampong Thom, told interviewers that she had woken at 2 a.m. and felt dizzy. The Public Affairs Section declined to comment.

8. EXPECTED FUTURE DEVELOPMENTS

At the conclusion of the hearings, President Prak Kim San informed the public that the Chamber

would announce the date for the reading of the decision two days in advance. Past practice shows that the Pre-Trial Chamber typically takes 3-5 months to issue its decisions on appeals against provisional detention orders and extensions of such orders, though this time may be decreased given that the Court announced in late February 2010 that the Pre-Trial Chamber will now be sitting full-time.

Looking forward, the Internal Rules provide that the Co-Investigating Judges may not order more than two extensions of provisional detention for a total of 3 years' imprisonment at the pre-trial stage for individuals charged with war crimes, crimes against humanity and/or genocide (Rule 63(6)-(7)). This time elapses in September 2010 for Nuon Chea and November 2010 for Ieng Sary, Ieng Thirith and Khieu Samphan. Thus, even if the Pre-Trial Chamber upholds the CIJs' orders extending provisional detention, the CIJs cannot order further extensions this year and must release the Charged Persons. If, however, the CIJs succeed in issuing the Closing Order before the third anniversary of their detention, they have the power to order by reasoned decision continued provisional detention in the Closing Order (Rule 68(1)).

As such, the Internal Rules set a very tight deadline for conclusion of the pre-trial stage, if the Charged Persons are to remain in provisional detention. Given that Nuon Chea was detained on September 17, 2007, the CIJs must either issue the Closing Order by September 17, 2010, or order his release. This likely explains the CIJs' statement that they will issue the Closing Order by September 2010.

Furthermore, if provisional detention is to be continued through trial, the Charged Persons must be brought before the Trial Chamber within 4 months of the CIJs' decision extending provisional detention in the Closing Order (Rule 68(3)).

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Villagers from Banteay Meanchey province

CASE 002: A HISTORIC CASE FOR CAMBODIAN PEOPLE

Socheat Nhean

Recently, DC-Cam published a booklet about case 002 which is going to be judged at the Extraordinary Chambers in the Court of Cambodia (ECCC). The previous case 001, which referred to Duch's hearing, ended in late 2009. The case has paved an important way to the next case and Duch, after he confessed what he did during DK, shed light to the next case who confirmed that Nuon Chea (one of the accused for case 002) was the most powerful leaders who ordered several killings during DK. It is expected that Case 002 will reveal what happened during DK,

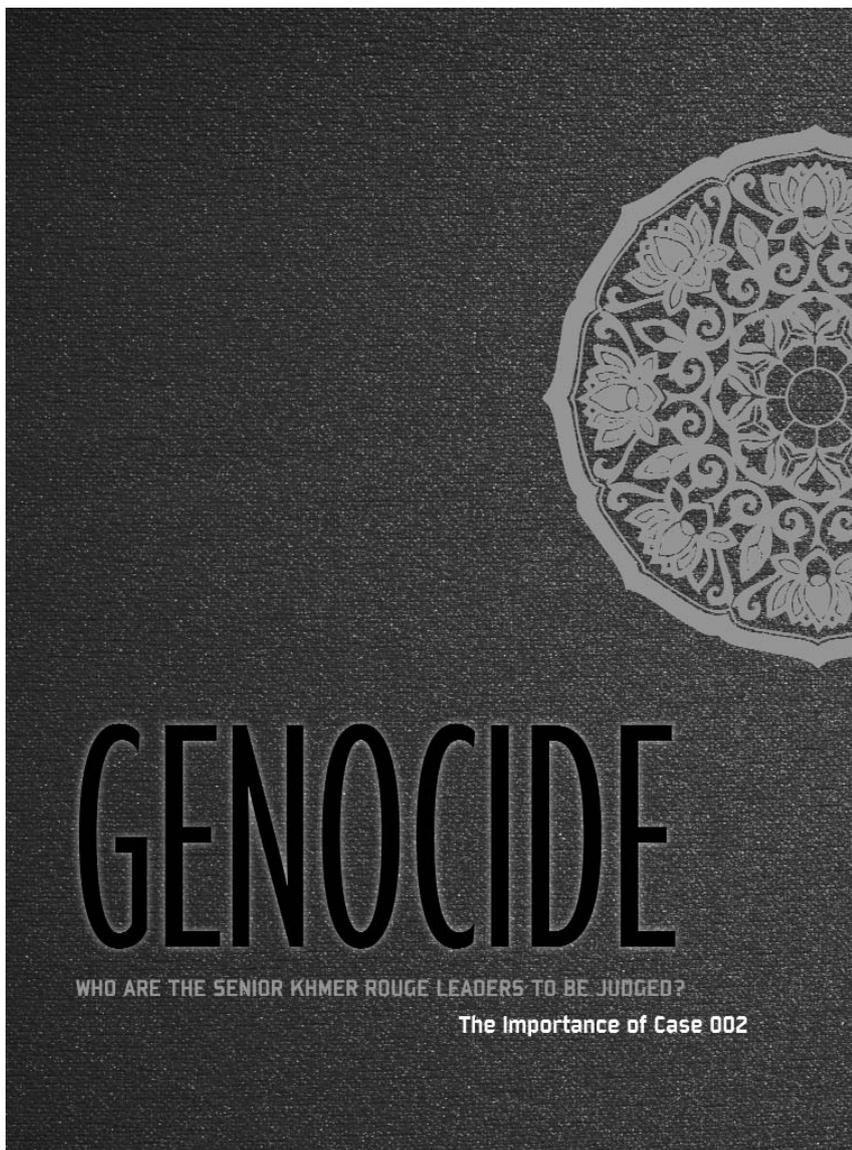
as the accused are the decision makers of policy that resulted in catastrophe in Cambodia. DC-Cam director Youk Chhang refers this case to the historic event for the Cambodian people as a whole. "Case 002 is the most important Khmer Rouge trial because it involves the four most senior leaders who are still alive," said Chhang. "The trial offers an important chance to show that the DK regime made decisions that caused the deaths of nearly two million Cambodians." Case 002 is the first and the last step to make sure justice is provided to the survivors of the Democratic

Kampuchea (DK) regime who had been waiting for trial for three decades after the DK regime collapsed in January 1979.

The booklet titled "Genocide: who are the senior Khmer Rouge leaders to be judged: The Importance of case 002." The booklet contains biographies and crimes charged of the four senior leaders of DK who includes Nuon Chea, Ieng Thirith, Ieng Sary and Khieu Samphan. The four are currently in detention awaiting trial. The booklets are to be distributed to the public so that they could learn about the biographies and the crimes charged of the accused.

On February 26, the brochures were distributed to approximately 900 students of National Polytechnic Institute of Cambodia (NPIC) presided over by Youk Chhang and NPIC President Bun Pharin. The brochures are to be distributed free of charge to people across the country in order to inform them about upcoming case 002.

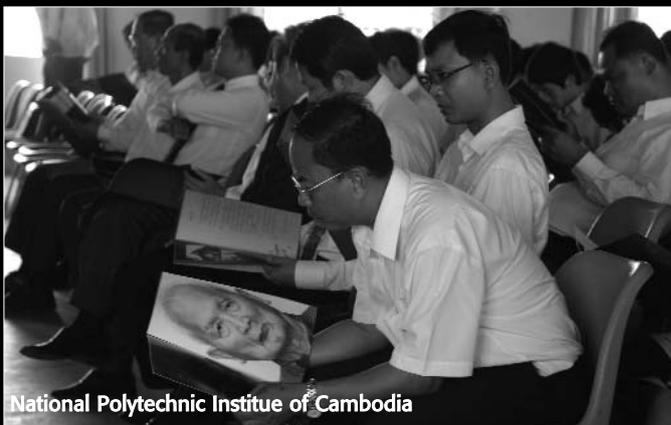
Socheat Nhean is the Team Leader of Searching for the Truth Magazine.



THE DISTRIBUTION OF CASE 002 BROCHURE TO UNIVERSITY AND HIGH SCHOOL STUDENTS



National Polytechnic Institute of Cambodia



National Polytechnic Institute of Cambodia



National Polytechnic Institute of Cambodia



Hun Sen Khla Kon High School, Banteay Meanchey



La Yom

Hun Sen Khla Kon High School, Banteay Meanchey

BLURRING TRANSITIONAL JUSTICE IN ORANIA AND PAILIN

Kyle Delbyck

"The past is not dead. In fact, it's not even the past." William Faulkner's words hold resonance in post-conflict societies throughout the world. With "drawing a line under the past" no longer considered a feasible solution, countries recovering from political violence must decide what route to take in confronting legacies of repression and bloodshed. All too frequently, post-conflict discourse assumes a mutually exclusive framework, the new regime faced with the choice to pursue either justice or reconciliation. The ensuing debate over remedial mechanisms oftentimes results in the construction of two supposedly discrete categories: war crimes tribunal and truth commission, the first associated primarily with justice, the latter primarily with reconciliation. In response, many have disputed the validity of the dichotomous approach, arguing that justice and reconciliation blur together during the rebuilding period. From this perspective, the relationship between transitional mechanisms and the recovery process does not operate on a linear trajectory. Post-conflict reconstruction is instead rife with deviations, potholes, and blind-spots, a hazy web of overlap and crisscross that renders any universalist interpretation futile. "Blurring Transitional Justice in Orania and Pailin" takes a stand in this ideological tug of war through case studies of Orania, South Africa, and Pailin, Cambodia. Interviews with local residents shed light on the failures of rigid paradigms, instead lending credence to theories that embrace the "blurring" of it all.

Orania, a small town in the Karoo, was founded in the early 1990s, in the midst of South Africa's democratic transition. Established by conservative Afrikaners dissatisfied with the new, post-apartheid South Africa, the settlement has attracted both individuals affiliated with the former National Party government and proponents of a separatist Afrikaner homeland.

The province of Pailin, meanwhile, previously a prosperous mining area, served as a Khmer Rouge stronghold during the reign of Democratic Kampuchea. In the aftermath of the Vietnamese occupation of Cambodia, many Khmer Rouge soldiers fled to the province, taking advantage of Pailin's border location to launch a guerilla civil war. One of the last areas integrated into the new government, Pailin spent several decades under Khmer Rouge control and, like Orania, is home to a number of former regime members.

The two regions are unique and, as such, admittedly constitute a particular window into post-conflict issues. Given their histories, however, the experiences of Orania and Pailin provide valuable insights into how justice and reconciliation manifest themselves during the transitional period. South Africa and Cambodia have taken vastly different paths in their respective quests to deal with the past. The post-apartheid African National Congress government implemented the Truth and Reconciliation Commission, a public mechanism that addressed crimes committed between 1960 and 1994, the heart of the apartheid era. In the pursuit of historical "truth," the commission offered perpetrators amnesty in exchange for full disclosure of their actions. Cambodia, on the other hand, recently established the Extraordinary Chambers in the Courts of Cambodia, a war crimes tribunal in the process of prosecuting several high-ranking Khmer Rouge leaders. While the ECCC has limited its scope to senior officials, proponents conceive of the court as a means of challenging impunity and establishing accountability for Democratic Kampuchea crimes. Positioned at the crux of controversial attempts at transitional justice, residents within Pailin and Orania had much to say about the success of reconstruction efforts and the extent to which their respective countries have achieved the goals of justice and reconciliation.

What can locals tell us about the use of dichotomous models? Do their views legitimize a universalist understanding of transitional mechanisms? Or do their perceptions of post-conflict recovery call for more fluid modes of analysis?

The experiences of Orania and Pailin tend to undermine the traditional alignment of commission with reconciliation and tribunal with justice. As referenced above, war crimes trials are often perceived as threats to processes of reconciliation. Political leaders and scholars alike have repeatedly stated that retributive punishment exacerbates tensions and, in the worst-case scenarios, incites further violence. In Cambodia, ECCC advocates encountered significant resistance from those who claimed that a far-reaching penal mechanism would destabilize the country. Reflecting on the tribunal's impact thus far, however, Pailin residents consistently expressed the opinion that Cambodia has attained reconciliation. Some interviewees even cited the tribunal as a significant catalyst in peace-building efforts. Former Khmer Rouge cadre Dara, for example, noted of the ECCC, "by prosecuting these people, we as Cambodians can help national reconciliation and move forward and develop the country." While this positive conception of the tribunal depends on its narrow punitive scope, the ECCC itself did not appear to generate the widespread hostility predicted by prevailing transitional justice theories.

Such theories often depict post-conflict nations as societies forced into an unenviable dilemma, a "cruel short-term tradeoff between reconciliation and justice." In terms of tribunals, this "tradeoff" manifests itself in the swap of appeasement for the prize of accountability. Truth commissions, on the other hand, supposedly submit to the opposite exchange, forfeiting justice for the sake of peace-building. In response, Pailin residents contested the terms of this bartering process. Like Dara. Laska, a Khmer Rouge medic, regards the tribunal as a vehicle to "make sure people live peacefully together": his statement resists the "either/or" framework. Correspondingly, Sovannah, a high-ranking former soldier, remarked, "the tribunal will help people talk to each

other and be able to forgive and forget." Though numerous interviewees expressed fears that the ECCC will eventually turn its sights on lower level cadres, they did not criticize the tribunal for increasing communal friction or hindering reconciliation efforts.

Comments like Sovannah's are even more striking when compared with the tone of Orania residents' reactions to the TRC. As noted previously, truth commissions are by and large considered a far more effective peace-building mechanism than the punitive hand of tribunals. While it is widely acknowledged that disputes over historical "truth" possess the potential to divide a populace, commission-like mechanisms tend to be associated with the goals of forgiveness, pacification, cathartic healing, and understanding. South Africa went so far as to christen its transitional endeavor by placing truth and reconciliation in conjunction, an appellative alliance that has permanently shaped societal notions of the purpose of such mechanisms. In contrast, no war crimes tribunal has thus far included "reconciliation" in its official title. Taking into account the sentiments voiced in Pailin and Orania, however, one would think the opposite was true. Without fail, Orania interviewees blamed the commission for alienating South Africa's Afrikaner population. Despite the commission's stated goals of compassion and acceptance, Orania official Johan's description of the process as a "witch hunt on one side" reflects the bitterness that pervaded all references to the TRC. Several locals labeled the hearings a tool to "other" Afrikaners, forcing the entire community to take responsibility for apartheid crimes.

Even the commission's amnesty provisions did not mollify Orania locals. Instead, in the eyes of interviewees, the immunity compromise was inconsequential, engulfed by the commission's overarching message of antagonism: the insinuation that "Afrikaners are a people who need to make room for other people." As such, former soldier Henrik conceives of the Afrikaner population as "flattened by the accusations," isolated within the new South Africa and far removed from any form of meaningful reconciliation. The contrast between

this alleged "flattening" and the optimism expressed by Pailin residents raises several questions. Why, in these two cases, were normative alignments turned on their heads? What contributing factors have shaped locals' ideas about justice and reconciliation? In what ways do the experiences of those who call Pailin and Orania home expose the limitations of dichotomous paradigms?

Time and again, interviewees pointed to the societal standing of former regime members as playing a large role in the reconciliation process, disrupting the "traditional" functions of tribunal and commission. Khmer Rouge soldiers like Dara and Laska, for example, seemingly satisfied with Cambodia's post-conflict transition, linked the success of peace-building efforts to the integration of Khmer Rouge leaders into the new government. Citing the prominent position of numerous such cadres in both the Pailin municipality and national administration, Bunthan, a high ranking chief under Democratic Kampuchea, remarked, "with Khmer Rouge cadres here in government, we are now all together and want to live in peace, helping to better the future of the country." Fellow soldier Terit likewise noted, "I feel like a part of society since integration, because I see people like myself in leadership-the Khmer Rouge are now united with the government and we can work as one." From the perspective of interviewees, the power held by the Men Sam Ans and Chea Sims of Cambodia has facilitated reconciliation and diminished societal tensions. Furthermore, several Pailin residents identified their own government careers after integration as an important factor in preventing the marginalization experienced by Orania locals. Terit, for example, had a difficult time even understanding why he might feel excluded from post-Khmer Rouge Cambodia, commenting, "I served as a government soldier, received salary from the government, so of course am a part of society." Therefore, in evaluating the impact of the ECCC, the significance of the integration process should not be underestimated. In Pailin at least, the absorption of Democratic Kampuchea officials into the state apparatus has detracted from the "justice

over reconciliation" sacrifice, curbing the brunt of potential hostility toward the tribunal.

Conversely, in Orania, the political concessions correlated with the TRC have rendered the supposed "reconciliation over justice" exchange moot. Residents frequently drew a connection between their frustration with the commission and the lack of Afrikaner representation in the new ANC government. Johan, for example, stated, "it is difficult to get things close to your heart on the agenda, being a minority..." Others attributed their sense of alienation to the shock of transitioning from an Afrikaner-run National Party government to an ANC regime devoid of Afrikaner influence. The disorientation produced by this shift permeated the interviews, with volkstaat pioneer Hans observing, "this had been a confused experience for Afrikaners, who do not know what their future is, or what to expect, or where they are going." Orania's prevailing climate of "confusion" and isolation stands in stark contrast to the atmosphere in Pailin, where residents consistently expressed confidence in both their own positions and Cambodia's future as a nation.

For South Africans like Hans, lacking Pailin locals' sense of security, the repositioning of state power structures vastly overshadowed the TRC's attempts at reconciliation. Furthermore, in light of transformed political dynamics, the commission's role in exposing the crimes of National Party members assumed heightened significance, perceived as just another step in the "psychological oppression" of Afrikaners. Conservative political leader Wilhelm's quote says it all: "we saw SABC evening after evening with ANC people testifying, women crying, getting emotional, and they would blame us all as these bad whites." Wilhelm does not draw attention to the amnesty process or Desmond Tutu's message of forgiveness. Instead, the alienation engendered by the terms of the peace settlement leads to words of resentment and division, the type of statement one might expect in the context of a tribunal.

Similar to the influence of such political compromises, the history behind the two countries'

respective conflicts has also molded local impressions of transitional mechanisms. While this may appear an obvious point, it is habitually ignored in favor of the temptations of clarity, the allure of drawing lines between commission and tribunal, reconciliation and justice. Comments made by interviewees expose such lines as vulnerable in the face of historical forces. Former Khmer Rouge soldiers, for example, consistently brought up national traditions of harmony and cultural homogeneity, lamenting the shame of any conflict "between Khmer and Khmer." As Terith stated, "there is no use for Khmer people to fight Khmer people, only we suffer. I am not upset with either side, the government or Pol Pot, I am just happy to see the war end." Pailin residents accordingly appeared receptive to the idea of reconciliation, confident in the healing powers of common ancestry and repulsed by the prospect of another civil war. Citing historical precedent, Bunthan pointed to the Khmer people's combined power in challenging French colonialism, deeming the independence movement an example of the country's ability to "come together as one."

Others referenced Cambodia's history of uniting behind strong leaders. Sidestepping the issue that Democratic Kampuchea exemplifies this type of cohesion, locals expressed certainty that the populace will put old grudges aside and join forces to support Hun Sen's administration and the ECCC. Such assertions stem from a past in which grassroots opposition to repressive governments has been sparse: democratic resistance has not featured heavily in Cambodia's political development. As former Khmer Rouge bureaucrat Rakana stated, "whatever governmental policy is, I will follow it. I abided by the rules of the old regime and I will do the same with the rules of the Hun Sen regime. As the government has endorsed the tribunal, it is not my position to criticize it. Instead, all Khmer people will go along with it." Laska likewise remarked, "it is the government's choice to create the tribunal, I do not know about politics, I will respect their decision, like everyone else." As evidenced by the above comments, interviewees conceive of their positions in the current

administration as a direct continuation of their positions in Democratic Kampuchea: citizens obligated to comply with the course of action prescribed by ruling authorities. Consequently, in light of this legacy of authoritarian governance, Hun Sen's sponsorship of the ECCC has significantly reduced the risk of widespread unrest or opposition. Instead, cadres such as Sovannah proclaimed a desire to move forward en masse under the government's directive, fulfilling their historical roles with "no separation between different groups of Khmer people, victims and perpetrators."

In contrast, Orania residents repeatedly pointed to South Africa's history of racial division in their critiques of the TRC, labeling preceding centuries of ethnic strife a major impediment to the country's transformation into a so-called rainbow nation. Without Cambodia's "common ancestry" to rely upon, interviewees asserted that different groups within South Africa do not possess a shared national experience or sense of cohesive identity. Several mentioned the first Boer settlements, the subsequent British concentration camps, and the segregating nature of the industrial revolution in their attempts to explain continuing hostilities. Others cited past Afrikaner efforts to create separate homelands, or *volkstaats*, stating that the issue of societal discord stretches far beyond the relatively recent actions of the apartheid government. As such, lacking evidence of the country's potential to unite, interviewees were much less trusting in the remedial powers of the TRC. While Pailin resident Dara commented of former Khmer Rouge members, "we are not alone," seclusion and marginalization are defining elements of the Afrikaner mindset, the psychological consequence of complex historical dynamics. As illustrated by the telling disparity between Dara's proclamation and Oranian conceptions of reconciliation, the unique trajectory of every society's political evolution shapes local views on post-conflict reconstruction. It is accordingly impossible to create universal guidelines as to how nations will react to transitional mechanisms. The contradictory experiences of Orania and Pailin prove this point, thus problematizing normative understandings of justice and reconciliation.

Part Two

The flaws in intellectually rigid interpretations of transitional justice are further revealed by interviewees' commentary on the respective "stories" promoted by the ECCC and TRC. Their conflicting interpretations of historical narrative reflect the problems inherent in limiting notions of justice to retribution. In recent years, post-conflict scholars have developed a model of accountability that extends beyond traditional justice paradigms. Restorative justice, as this model has been labeled, is a term that "encompasses a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights." Such "peaceful approaches" place emphasis on rebuilding broken communities and relationships, engaging both victims and perpetrators in processes that benefit society as a whole. Truth commissions, reparations payments, enhanced social services, school renovations, perpetrator apologies, and the like all fall under the purview of the restorative method. In response to this practice, some scholars have argued that restorative remedies represent a less meaningful form of justice, a poor substitute for retributive penalties.

Conversations with Orania and Pailin residents, however, expose justice to be a more complex, capricious creature. Challenging narrow ideological frameworks, locals in the two regions serve as evidence of the many different ways in which accountability can manifest itself. As noted above, the primary objective of war crimes tribunals is the effective prosecution of conflict "perpetrators" and the consequent establishment of legal precedent. From a long-term perspective, accountability mechanisms, the ECCC included, hope to challenge the impunity of previous eras and, through retributive punishment, achieve justice for conflict victims. Tribunals accordingly focus on the specific cases that come before the court, leaving the creation of a broader historical narrative to other sectors of society. In contrast, truth commissions often set their foremost goal as the construction of a definitive historical account: allocating responsibility for bloodshed,

debunking any remaining myths, explaining underlying causes of conflict, setting the record straight about controversial incidents, and so on. Interviewees' remarks shed light on the important role this narrative plays in holding perpetrators responsible for their actions. While the restorative justice model includes truth recovery under its comprehensive umbrella, the experiences of Pailin and Orania locals suggest that historical narrative should occupy a leading position in societal conceptions of accountability.

Turning first to Cambodia, Pailin residents spoke of the ECCC in an untroubled manner, seemingly impervious to the ongoing proceedings. Time and again, former Khmer Rouge soldiers failed to correlate the tribunal with any substantive verdict on the actions of the DK regime. Instead, interviewees described the process in narrow terms, concentrating on the court's prosecution of five senior leaders. Dara, for example, remarked, "a country has to have a court in order to practice the law, with the courts and with this tribunal, they find out whether people are guilty or innocent, then find out who made mistakes and did bad things." In this quote, Dara depicts the tribunal as a mechanism concerned solely with the legal system; unrelated to the formation of historical narrative. Savannah likewise noted, "I don't think the trial is saying whether I am a good or bad person, the government never said anything like that or considered our group a bad group." Taking such comments into account, interviewees do not believe the tribunal has passed moral judgment on their individual roles under the Democratic Kampuchea government.

The TRC's mission, on the other hand, centered on the "investigation and establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights," exploring who was responsible for the apartheid system and whence unequal political structures originated. Fully aware of the scope of the commission's aspirations, Orania residents interpreted the hearings as a broader societal condemnation of the Afrikaner community. Along this line, Wilhelm stated that the TRC's account of events

severely damaged Afrikaner morale. In his eyes, the commission was "used as an instrument to depict some as good guys and others as bad guys and to add credibility to that." Others labeled the process a "big theater" and a "one sided opening of a can of worms." As illustrated by the resentment evident in the aforementioned remarks, disagreements over historical narrative can throw a wrench into the traditional grouping of commission with reconciliation and justice with tribunal. In certain cases, a former regime member may find it more painful to witness the government he served being publicly condemned than to see a fellow soldier face jail time: the officially sanctioned destruction or, at the very least, critique of one's deep-seated ideology is potentially devastating, striking at the heart of personal identity.

Analyzing the effects of this type of ideological scrutiny, post-conflict expert Michael Ignatieff theorizes that, while commissions rarely produce the whole truth, they are valuable in that they "narrow the range of permissible lies." The TRC, its flaws notwithstanding, was able to establish certain indisputable truths, opening the country's eyes to the horrors of apartheid. Though certain parts of South African history remain points of fierce contention, the commission created the public consensus that apartheid was an unjust and shameful system. As such, Orania interviewees, loath to unequivocally denounce the regime, nonetheless acknowledged the "indisputable truths" generated by the commission's historical narrative. Wilhelm, for example, admitted that the TRC resulted in "baseline facts," whilst Hans deemed evidence of apartheid's brutality "undeniable." All thus conceded that the position of blacks under the National Party government was indefensible, "a real nightmare." Bearing such observations in mind, it becomes evident that Orania residents have mulled over the moral implications of the regime, confronted with facts and stories antithetical to their convictions.

Furthermore, throughout the course of the interviews, each person inevitably cited a moment in history when he or she felt the apartheid system

veered off its ethical tracks: during the "integration of black labor" into cities, amidst the deterioration of the security situation in the townships, and so on. Though some took care to also highlight positive aspects of National Party doctrine, the thoughtfulness of their responses and the numerous references to historical turning points support the conclusion that interviewees have spent time contemplating the apartheid legacy. Henrik, for instance, unable to ignore the sins of the past, noted, "these things are difficult to explain today." Why the recurrent attempts to "explain" and analyze apartheid brutality? Most interviewees invoked the TRC's account of apartheid as the catalyst for their reflections on the National Party system, bemoaning the impossibility of escaping the din generated by the commission's historical narrative. Consequently, the popular perception that South African whites got off scot free, rewarded by the TRC's amnesty stipulations, is valid only if one focuses exclusively on tangible penalties. Disregarding the significance of ideological and psychological ramifications is a mistake. As Afrikaner scholar Lize Van Roebbreck puts it, the commission made it impossible for "whites in South Africa to remain blind to the immorality of apartheid" and thereby impossible for those implicated in the system to emerge from the period with fully clear consciences. Is this purging of "blindness" not some form of justice or, at the very least, punishment?

On the other hand, interviewees in Pailin appeared content to remain in the dark, unruffled by the specter of the past and unscathed by the scrutiny of historical narrative. Without fail, former cadres admitted that they had not devoted much energy to pondering Democratic Kampuchea, instead rarely affording their actions a second thought. Terit, for example, stated, "I never look back and do not think about it. Everything keeps moving forward and there is no need to look back." Laska similarly remarked, "I don't think about it, I am a good citizen." Unlike the TRC hearings, the ECCC process thus far does not seem to have either upset interviewees or roused them to evaluate the ethos of the Khmer Rouge system.

Furthermore, several former soldiers went so far as to deny that the regime had committed any serious crimes. In this vein, Bunthan commented, "life during Democratic Kampuchea, it was not wrong, it was autonomous. I did not see the loss of life..." Conceding that there were issues with living standards and freedom of movement, Bunthan nevertheless believes that "people loved the regime because it was so pure, there was no corruption, and people lived equally." The representation of the Khmer Rouge as a benevolent force formed a common refrain throughout the interviews. Like Bunthan, Rakana argued that claims of suffering under Democratic Kampuchea were exaggerated, as she herself "did not witness any killing" and considers Khieu Samphan, Ieng Sary, and their brethren "good and simple people." When questioned as to how she behaves when interacting with victims, Rakana noted, "I feel normal, because I don't believe anything actually happened." Employing the same line of reasoning, a number of other former cadres asserted that neither they themselves nor Khmer Rouge leaders had anything to apologize for.

Before commencing upon further analysis of the interviews, it would be irresponsible to ignore the fact that Orania interviewees are positioned in an educational culture that places more emphasis on the apartheid regime than its Cambodian counterpart does on the Khmer Rouge era. The contrast between statements like Rakana's and Orania locals' sophisticated conceptions of apartheid reflect the fact that Cambodians and Afrikaners have undergone vastly different systems of schooling, a disparity that has contributed to their perspectives on historical narrative. However, this recognition of the potent effects of education does not detract from the similarly potent effects of transitional justice mechanisms, the subject that this article has set as its focus. The two instead merge, along with the host of factors discussed above, to produce the political and social climate within which former Khmer Rouge members developed the lack of remorse palpable throughout their remarks. Accordingly, Pailin interviewees' ability to deflect the

burden of inward reflection, a burden that has etched its mark on the shoulders of Orania residents, partially stems from the absence of a process comparable to the TRC: a public mechanism (whether in the form of a commission, a comprehensive history education curriculum, or an informal initiative) that has made it its mission to produce a widely accepted historical narrative and "narrow the range of permissible lies." The ECCC has certainly set admirable goals for itself, such as the reduction of impunity, the inclusion of victims' voices, the establishment of legal precedent, the prosecution of senior Khmer Rouge officials, and so on. This article does not seek to undermine the tribunal's achievements or claim that the intangible holds greater importance than the tangible. Nonetheless, its triumphs notwithstanding, the ECCC has not provided for a definitive verdict on the regime as a whole, thereby allowing Pailin interviewees the wiggle room to continue living their lives in the "blindness" denied to Orania residents: an undeserved freedom comparable to more commonly recognized modes of impunity. Comments made by former Khmer Rouge members, like those of Orania locals, thus demand that post-conflict discourse recognize historical narrative as a powerful and effective medium of accountability. Moreover, as with the problems inherent in creating an automatic alliance between truth commission and reconciliation, the experiences of interviewees illustrate the issues in restricting justice to the domain of a tribunal. In both cases, the groupings prove themselves to be invalid.

In light of the failings of "unblurred" paradigms, interviews in Orania and Pailin suggest that post-conflict societies should pursue a multi-faceted approach towards transitional justice, utilizing a variety of formal and informal mechanisms. In employing processes that complement each other, countries in the midst of difficult transitions will ensure that they address the challenges of rebuilding from a sufficient number of angles. If Cambodia had chosen to solely implement a tribunal, for example, the country would have disregarded the impact of historical narrative. Instead, with the introduction of genocide education textbooks and the

possibility of future grassroots truth-telling mechanisms, the post-Khmer Rouge populace has taken crucial steps towards recovery. This symbiotic union of different methodologies acknowledges the need to broaden societal notions of justice and reconciliation, anticipating the whole range of potential outcomes and thereby guaranteeing that glaring issues are not overlooked.

As far as these "outcomes" go, within the framework of normative discourse, Orania and Pailin simply do not make sense. If one adheres to universalist paradigms, it is surprising that the TRC has generated such hostility amongst Afrikaners: surprising that, while the commission achieved some justice by means of historical truth-telling, it did not facilitate a greater level of reconciliation in Orania. Moreover, though it was initially assumed that a tribunal would divide South Africa and derail the peace-building process, in retrospect, it is possible that an ECCC-style mechanism would have resulted in less mistrust and hostility. In terms of Cambodia, again utilizing normative criteria, it is similarly surprising that the tribunal has not inspired a large amount of bitterness in Pailin. Soldiers' comments instead indicate that a comprehensive truth recovery mechanism, despite its lack of retributive penalties, might have inflicted a more meaningful form of punishment on former cadres. In the context of post-conflict transitions, the list of so-called "unforeseen" results goes on and on, by no means limited to the small regions of Orania and Pailin.

Why these seemingly erratic results? Why do case studies of Orania and Pailin defy standard models of the rebuilding process? In conclusion, the answer lies in the recognition that justice and reconciliation simply cannot be placed in finite categories. Each contains elements of the other, and, over the course of reconstruction efforts, the two blur, oftentimes almost indistinguishable. Accordingly, in evaluating justice and reconciliation and their relationships to various transitional justice mechanisms, the creation of dichotomous classifications is an untenable juxtaposition; any such universalist framework belies the complexities of the post-conflict experience. To sum up, allow me

to turn to a hypothetical example of the "blurring" process. Speculating as to the possible effects of "A History of Democratic Kampuchea," the new Cambodian history textbook, it is likely that improvements in genocide education will bring about justice through the aforementioned "narrowing of the range of permissible lies," which could subsequently lead to resentment amongst former Khmer Rouge cadres. Following the chain of potential consequences even further, however, initial tensions could eventually ricochet back towards reconciliation, the dissemination of the "lessons of history" laying the seeds for national peace. In turn, the lessons themselves can alternately be conceived of as a form of justice for victims, an attempt to ensure that the past does not repeat itself and that no more Cambodians fall prey to intra-Khmer violence. Puzzling through this hazy mess of ideas is certainly a formidable undertaking. However, if post-conflict societies hope to ever move on from their turbulent pasts, it is essential that they deny themselves the safe haven of easy answers. The stories of locals in Orania and Pailin chip away at any such refuge of simplicity, challenging us all to delve beyond our core assumptions and explore murkier waters, the undercurrents of a world in which the past is not the past and things are not always as they seem.

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READING HISTORY OF DEMOCRATIC KAMPUCHEA

DC-Cam's publication History of Democratic Kampuchea written by Dy Kamboly and teacher guidebooks can be downloaded with free of charge at http://dccam.org/Projects/Genocide/Genocide_Education.htm

CLOSING STATEMENTS: PROSECUTOR V. DUCH

Beth Van Schaack

I. Introduction

After 73 days of trial, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) recently heard the Closing Statements in the trial of Kaing Guek Eav (alias Duch), the former head of Tuol Sleng prison (a.k.a. S-21). The statements were a moving, intense, and at times baffling exercise. (A more detailed account of the proceedings is available at the Cambodia Tribunal Monitor.) The public gallery was full the entire week with members of the public, NGO representatives, VIPs representing various foreign embassies, monks in saffron robes and nuns in white robes, uniformed school children, the head of security of the Special Court for Lebanon with his own security detail, and journalists. Hundreds of people were bused in from all over the country by DC-Cam and other organizations. The Civil Parties and the Co-Prosecutors were each given 5 hours to present their Closing Statements. The defendant and his counsel had 7.5 hours. An additional 3 hours was reserved for rebuttal.

The Closing Statement is the final act of persuasion by the parties before the trier of fact. Counsel are expected to connect the facts with the law in such a way that leads the trier of fact (in this case the ECCC judges) to the verdict sought. The Closing is also a time to point out weaknesses in the opponent's case, evidence, or logic; attack the credulity of the other party's witnesses; and seek to resolve inconsistencies in the evidence. In addition to accurately portraying the direct and indirect proof, the closing must resonate with the triers of fact on the basis of their life experiences, common sense, and world view. Criminal defendants will also emphasize that the prosecutor bears the burden of proof and highlight instances in the record where the prosecutor failed to meet this burden. A parties' closing strategy and tone will depend on the theory and nature of the case and the way in which the evidence unfolded during trial. Closing arguments rarely make

or break a case. A fabulous closing argument cannot rescue a poorly litigated case; likewise, a terrible closing will not doom a well-litigated case. Observers of the Closing Statements in the Duch case were treated to a vast array of forensic styles and arguments—both legal and extra-legal.

II. Civil Parties

The 90 Civil Parties—some of whom rotated through the courtroom while the rest occupied the front rows of the public gallery—were invited to speak first. The victims were represented by four sets of counsel, each of which was allocated equal time. Karim Khan, co-counsel to 37 Civil Parties, began by emphasizing the novelty of the civil parties' participatory rights and acknowledging some bumps along the road in coordinating Civil Party participation over the course of the trial. Anticipating an inequality of arms allegation, Khan noted that the Civil Parties were not to duplicate the work of the Co-Prosecutors, and he pointed out a number of instances in the course of the trial when the position of the Civil Parties differed from that of the Co-Prosecutors (for example, his team opposed the inclusion of joint criminal enterprise allegations). He accentuated the unique perspectives and contributions of the Civil Parties to the proceedings in terms of providing testimony about the impact of the defendant's actions on direct and secondary victims and providing a fuller truth about the crimes committed. He closed by subtly critiquing the ECCC for not providing financial assistance to counsel for the Civil Parties.

His Cambodian co-counsel, Ty Srinna, unfortunately used up much of the remainder of this team's time reviewing basic biographical data about each of her clients, much of it already in the record. After numerous notes and whispers, she finally concluded and ceded the podium to Khan again. After an abbreviated statement on reparations, Khan—sounding much like the former prosecutor that he is—argued that Duch's claims of

contrition were equivocal and not genuine. Khan challenged Duch's protestations at trial that he was acting under duress and pursuant to superior orders. Instead, Khan argued that the evidence demonstrated that Duch was ideologically loyal to the Khmer Rouge enterprise, sought to ingratiate himself with his superiors, and used his substantial autonomy to increase, rather than alleviate, the suffering of the detainees—stating at one point that "this is no Schindler." Potentially undermining the Co-Prosecutors' theory in Case 002 involving the regime leaders, Khan emphasized the lack of documentation in the record from the Standing Committee concerning the types and severity of torture, implying that Duch took it upon himself to design and implement the horrific torture practices employed at Tuol Sleng. In addition, Khan highlighted the larger impact of Duch's work, arguing that Duch's unearthing of supposed CIA and KGB spies actually fueled the Khmer Rouge paranoia and led to additional abuses and purges around the country as the Khmer Rouge sought to exterminate real or perceived enemies of the revolution. Khan also addressed Duch's challenges at the end of trial to the standing of several of the Civil Parties, particularly those individuals who could not provide documentary "proof" of their kinship with someone who died at S-21. Although the Court certified the Civil Parties early on, the judges have taken Duch's subsequent arguments under advisement.

The second group of 17 civil parties was co-represented by Silke Studzinsky of Germany. Studzinsky's presentation focused on the goals of her clients—understanding why they or their loved ones were targeted for detention and abuse at Tuol Sleng. Studzinsky's Cambodian counterpart, Kong Pisey, then presented evidence of sexual assault and abuse that occurred in Tuol Sleng but that was not formally part of the Closing Order (analogous to an indictment). Both counsel implicitly critiqued the Co-Prosecutors for not focusing on sexual violence crimes committed at Tuol Sleng. Pisey also sought to deconstruct Duch's complicated defense, arguing that Duch was a willing executioner who failed to contribute to the truth at

trial as promised. At one point, Studzinsky launched into a bizarre and potentially alienating invective on how the victims felt unwelcome before the ECCC because the judges: were not receptive to the victims' suffering, insensitively asked the victims to show their scars in open court, interrupted the civil parties lawyers, and did not thank the victims for their appearance before the Court. These lines of argument eventually provoked a response from the Trial Chamber, who reminded counsel that prior rulings of the Chamber are not the proper subject of a Closing Statement. This team spent more time on reparations, suggesting that the defendant could write his autobiography and provide the proceeds to the victims (sort of a reverse Son-of-Sam rule). In addition, it was suggested that some portion of the proceeds from the Tuol Sleng museum could go to the victims, and Duch ask the Cambodian government to issue a formal apology.

The third team of Civil Party representatives—including French advocates Philippe Cannone and Martine Jacquin—described their 28 clients as "helpers of justice" and eloquently invoked literature, poetry, and philosophy in their presentations to the relative exclusion of references to the law or evidence. In their remarks, the lawyers for the first time addressed Duch directly, rather than the judges. They called upon Duch to look at the victims and questioned how a man who appeared so respectable could actually be so terrifying. Cannone too acknowledged that the Civil Parties had been disorganized at trial, but considered it a mistake to criticize those for whom the trial was convened and warned of efforts to silence the victims and render them, once again, "voiceless icons." They invoked the testimony and writing of Francois Bizot, a French ethnologist who testified at trial. Bizot was captured by the Khmer Rouge in 1971, prior to the 1975 coup d'état and thus outside the temporal jurisdiction of the Court, and was in the custody of Duch whom Bizot described as a "pure, fervent, idealist." Bizot movingly recounted his experience in his compelling and at times horrific memoir, *The Gate*. Cannone also criticized Duch's invocation of Alfred de Vigny's poem, "Death of

the Wolf" ("La Mort de Lupe"), and his apparent identification with the wolf, who suffers in stoic silence as it carries out its difficult work. Jacquin emphasized that the Khmer Rouge perpetrators were not mentally ill; rather, they took calculated pleasure in their sickening skills.

The lawyers argued that the ECCC had already provided the victims with most valuable reparations of all: the right to be present, the right to participate, and an opportunity for solidarity. Sympathy, empathy, and compassion alone are insufficient. They also suggested the creation of a voluntary trust fund for victims. The third members of their team, Cambodian lawyer Moch Sovannary, proposed more symbolic options, such as posting a list of names at S-21; ensuring the preservation of crime scenes, documents and graves; and establishing plaques and contemplative sites for the victims around the country. Sovannary also stressed the need to assist with the rehabilitation of victims through medical care. Like all the teams, many of the proposed reparations do not involve the accused or his resources, but rather require governmental involvement beyond what the ECCC can order.

The fourth team represented 10 victims. Hong Kim Suon spent considerable time recounting the details of his clients; it is unclear if these were efforts to honor the memory of each of the clients or just cautionary examples of poor time management. French co-counsel Pierre-Oliver Sur argued that his clients could only forgive if they were offered a sincere and complete confession, which Duch has failed to provide. Sur reminded the Court of the testimony of the psychological expert who examined Duch and found that he espoused to a pragmatic theory of survival of the fittest and manifested a shortage of empathy and an inability to understand the suffering experienced by others. Sur accused Duch of monopolizing the proceedings and indirectly accused the Court of being complicit with Duch in limiting the participation of the victims.

III. Co-Prosecutors

The Co-Prosecutors-acting prosecutor William

Smith of the U.K. and Chea Leang of Cambodia-delivered the most traditional closing statement of the proceedings from prepared remarks that had clearly been translated in advance. They emphasized their role in the trial: to prove their allegations of fact with the evidence in the record in accordance with international standards of justice. They addressed arguments concerning the jurisdictional basis of the Chamber, they reviewed the charges against Duch, they canvassed the evidence that supports the counts against Duch, and they closed with a discussion of factors relevant to sentencing.

Leang emphasized that Duch could be considered both a senior leader, even though he was not a member of the Khmer Rouge Standing Committee and did not have a policy-making role, as well as someone "most responsible" for crimes within the ECCC's jurisdiction. Leang acknowledged Duch's claims that he is a scapegoat, facing prosecution when other security chiefs are not, and will not likely be, before the Court. In response, Leang emphasized that S-21 was in many ways at the apex of the Khmer Rouge extermination regime. Duch had unique access to, and influence over, senior leaders. His prison-which, Leang argued, should be considered a death chamber since there was no realistic chance of release-received high value prisoners from all over the country, including purged Khmer Rouge cadre. Duch's exhaustive confession analysis laid the groundwork for additional purges and political persecution on a national scale. Leang's impassioned account in the Khmer language of how prisoners arrived, were processed, were forced to give nonsensical confessions, and ultimately expired at S-21 drew tears from observers in the courtroom. She also described the more sadistic forms of torture and mistreatment (such as forcing inmates to eat excrement), as well as medical experiments and live surgeries committed on prisoners at S-21.

In a strongly doctrinal presentation, Leang then recounted the elements of the crimes charged-crimes against humanity (imprisonment, enslavement, torture, murder, extermination, persecution, and other inhumane acts), war crimes (confinement of civilians, due

process violations, cruel treatment, torture, and willful killing), and national crimes under the 1956 Penal Code (torture and murder). Here, she reminded the Court that the Co-Prosecutors' final submissions did in fact discuss crimes of sexual violence at Toul Sleng, contrary to claims by some of the Civil Parties. In setting out the elements of these international crimes, Leang relied heavily on the ICC Statute and its Elements of Crimes.

Addressing the question of why the Co-Prosecutors sought to charge Duch with war crimes in addition to crimes against humanity, Leang explained that the rule of law requires that the Co-Prosecutors apply the terms of the ECCC Statute and international law. In addition, she noted the importance of enforcing the grave breaches regime of the Geneva Conventions to ensure that those provisions are not mere words on paper, of accurately reflecting the criminality of the accused, and of telling a fuller story of the crimes committed at Toul Sleng, particularly against Vietnamese civilians and prisoners of war. (Leang was forced to admit, however, that there was no specific evidence that Vietnamese detainees were tortured; she argued that it could be inferred that they would have received equal-if not worse-treatment than Khmer detainees). Leang argued that the evidence in the record-including media reports, Khmer Rouge internal documents, and the expert testimony of Nayan Chanda (a former editor of the *Far Eastern Economic Review* and co-author of several books on Asia)-an international armed conflict commenced in Cambodia in April 1975, several months after the Khmer Rouge invaded Cambodia. By contrast, the defense later argued that no international armed conflict existed until December 1979 when the Vietnamese invaded Cambodia to oust the Khmer Rouge.

Acting Co-Prosecutor Smith took charge of elucidating Duch's individual responsibility for the crimes committed at Tuol Sleng, Smith emphasized that Duch manifested all forms of responsibility-as a planner; a giver of orders; an instigator, aider, and abettor; and a direct perpetrator. Smith also argued that the doctrine of joint criminal enterprise (JCE) perfectly

captures the essence of the accused's liability. He noted that other tribunals have found JCE to be a form of commission and that the drafters of the ECCC Statute chose language identical to that of the other ad hoc tribunals in order to import the JCE doctrine as well. The Trial Chamber reserved ruling on the applicability of the JCE doctrine until the judgment.

Smith noted that Duch has admitted his "absolute authority" over S-21 and his general responsibility for the crimes committed and that he assented to a list of agreed facts concerning the structure of S-21 and its staff. Smith noted, however, that there were omissions and gaps in Duch's testimony. Duch also advanced a superior orders defense and did not admit to undertaking his functions willingly, claiming instead to be a "hostage to the regime." Although Duch tried to portray himself as ignorant of the details of the day-to-day operations in Toul Sleng, or as dependent on orders from his superiors, these claims are not borne out by the evidence. Smith reminded the Court that 155 individuals executed at Toul Sleng were former prison staff members-Duch's direct subordinates. Smith described Duch and his superiors, one of whom will be on trial next year, as "brothers in arms." He also demonstrated that Duch lived a comfortable family life during the Khmer Rouge era in a spacious villa while his prisoners were shackled to the floor.

Turning to the appropriate sentence, Smith emphasized that given the magnitude and gravity of Duch's crimes, it was inconceivable that Duch would receive less than a lengthy imprisonment. Smith emphasized the impact of the crimes on the victims and their network of traumatized friends and relatives around the globe, the degree of direct participation of the accused, and his zealous participation in the crimes. As aggravating factors, Smith highlighted Duch's abuse of power, the unusual cruelty of his actions, and the defenselessness of the victims. Smith then discounted mitigating factors he anticipated from the accused, such as that Duch was acting under duress or pursuant to superior orders. To this, Smith recounted the testimony of Bizot that Duch was not a

man in terror, but a man of terror. Smith argued that Duch believed in the validity of any orders he received and implemented them willingly. Although he provided some cooperation after his arrest, Duch lived under an assumed name and remained with his former Khmer Rouge colleagues for years prior to his detention. He only started cooperating when Irish photographer Nic Dunlop discovered his whereabouts in 1999, as recounted in Dunlop's book, *The Lost Executioner*. Duch also fought the admission of certain evidence (such as his involvement in crimes at the M-13 detention center prior to the Khmer Rouge assuming power) and resisted the introduction of reserve witness lists or even witness statements in lieu of live testimony. These acts, in Smith's estimation, attested to Duch's unwillingness to accept full responsibility for his actions or allow the truth to flow freely. Smith emphasized that opposing the introduction of inculpatory evidence is within Duch's right as a defendant, but is inherently inconsistent with his claims of cooperation and admissions of responsibility.

Turning to concrete issues of sentencing, Smith noted that national reconciliation is a byproduct of a trial process, not its purpose and that a steeply reduced sentence would do little to contribute to such a goal. He conceded that Duch should receive credit for time already served in military custody prior to his transfer to the ECCC. Given that Duch was unlawfully detained for a period of time and subjected to other legal irregularities, Smith argued that a sentence of life imprisonment—which would otherwise have been appropriate—should be commuted to a determinate sentence of 45 years. Smith suggested that the Court should carve off another 5 years to reflect Duch's limited cooperation with the tribunal and conditional expressions of remorse.

IV. The Defense

Duch next took the stand. His presentation was a didactic, rambling, and at times seemingly random exposition correcting or underscoring references in the trial record that are likely of interest to only a few beyond the Khmer Rouge historians in the audience.

He peppered his testimony with Khmer aphorisms, such as "before harvesting the bamboo, you must remove the thorns," that in context seemed chilling, especially when he later described purged Khmer Rouge cadre as "thorns in the eyes" of the Standing Committee. His testimony ranged from the founding of the Party of Democratic Kampuchea to the end of the Khmer Rouge era. He testified that "politics governed technique" and described torture as "inevitable." He claimed that the purges terrified him and that he was afraid of being removed himself. At various points, his statement addressed issues (such as Khmer Rouge leadership structures throughout the different zones) that were so tedious and arcane that members of the audience began to fall asleep, although they were regularly awoken by Court staff under orders from the Chamber to prevent such naps. Addressing his role within this history, he described himself as having been "plunged" into a criminal act with little right to challenge decisions on who should be "smashed."

Finally, Duch's statement became more introspective. He stated clearly, "I still am solely and individually responsible for the deaths of 12,000 people and will be forever liable." Still reading from his prepared remarks and not looking at the Civil Parties in the courtroom, he testified that he owed an accounting to the people of Cambodia and that he was deeply remorseful for having devoted his strength and skills to a criminal organization rather than to serving his people. He implied that early on, he had been given the choice of two paths and, in a split second decision, took a path that led him to a life of endless suffering. Once he became a cog in the machine, he could not withdraw. He humbly apologized to the dead and to the survivors. He asked the victims to leave a door open for him to make an apology and to recognize him as a member of humankind.

Duch's apparently monotonous delivery of this statement, with nary a glance toward the Civil Parties, made it difficult to glean how sincere and heartfelt these expressions of contrition came across in his native language. Indeed, any emotional impact Duch

might have made was no doubt mitigated when, at the close of his remarks, he proceeded to read 34 footnotes aloud, without no indication of their textual referent.

The Closing offered by Kar Savuth, Duch's Cambodian Co-Defense Counsel, was so inconsistent that one could have been forgiven for thinking that he represented a different client. Rather than focus on Duch's cooperation and entitlement to mitigation, Savuth attacked the very jurisdiction of the ECCC, arguing that Duch cannot be considered one "most responsible" for the Khmer Rouge's crimes when there were 196 prisons around the country during the Khmer Rouge era and so many other prison heads are enjoying their golden years. He attacked the Co-Prosecutors' cumulative charging, he presented evidence that argued against the existence of an international armed conflict, he claimed there were few if any Vietnamese prisoners of war at Tuol Sleng until 1978, and he argued that Duch should benefit from the application of the statute of limitations and the amnesty law.

In his review of the evidence, Savuth suggested that the members of the Standing Committee were solely responsible for the evacuation of Phnom Penh and the execution of members of the prior regime-crimes, incidentally, that were not charged against Duch. Savuth argued that after the Khmer Rouge consolidated their power around the country, only zone standing committees, members of the general staff, and comparable cadre had the authority to execute prisoners. Here, Savuth implicated Nuon Chea and Khieu Samphon in the crimes at S-21, two defendants who will be tried in case 002 next year, and announced that Pol Pot, who has been dead for 10 years, should also be prosecuted. Savuth repeatedly echoed the scapegoat argument, emphasizing that the record showed that Duch never killed anyone directly and that none of Duch's subordinates was now on trial. He concluded by arguing that Duch should be exonerated because he was just following orders-someone who "fell victim as a loyal servant to the regime" and would

have himself been killed by Angkar if he had resisted. Savuth emphasized that only if the proceedings are fair will the dead souls rest and justice be done.

The next morning, Duch's French counsel, Françoise Roux, took the podium. Roux is a legend in international criminal law, having-among other high profile clients-successfully defended Ignace Bagileshima before the Rwanda Tribunal and avoided the death penalty for the so-called 20th hijacker Zacarias Moussaoui following the September 11th attacks. Roux began his presentation by announcing that this would be his last appearance in court as he was on the eve of assuming a position of head of the defense section for the Special Tribunal for Lebanon. He also admitted that he had been forced to amend his remarks in light of his co-counsel's presentation the day before, and he suggested that he disagreed with several of the arguments advanced on his client's behalf. Roux acknowledged the paradox he now faced of having a client who had apparently simultaneously pled guilty and also asked for acquittal, likening his client to Albert Speer, who admitted his responsibility without a formal guilty plea and was accorded a 20-year sentence. Roux tried to rehabilitate Duch's closing remarks, noting that his apologies were sincere "moments of truth" and that no one should doubt the tears that accompanied his testimony over the course of the trial.

The rest of Roux's presentation was aimed at the Co-Prosecutors and their failure to give Duch sufficient credit for giving them the bulk of the evidence against him. In this regard, Roux played a moving video excerpt from the Closing Statement of Peter McCloskey of the Yugoslav Tribunal in the Obrenovis case. In this case, involving a military commander charged with responsibility for the crimes committed at Srebrenica, the Prosecutor in open court gratefully acknowledged the guilty plea of the defendant, his sincere remorse, and his cooperation during the course of the trial and then sought a mere 17-year sentence. At the close of the video, Roux announced, "this is what this trial should have been" and implied that more dialog

between the defense and the prosecution would have avoided the debacle of the day before. Roux urged the tribunal to regard superior orders in mitigation, especially given Duch's continued cooperation with Case 002 and the fact that he had already spent 30 years in captivity of sorts (as a fugitive and then in military custody).

Roux also repeatedly invoked the concept of obedience, arguing that his client never enjoyed full autonomy and to argue otherwise was to "re-write history." Roux critiqued the prosecution for implying that his client bore the same degree of responsibility as a Pol Pot when the evidence, including testimony from the Prosecution's own witnesses, revealed that Duch would have been killed had he not complied. Turning to some of the legal issues, Roux rejected the Prosecution's efforts to invoke the joint criminal enterprise doctrine, arguing that others who were part of the supposed JCE should be entitled to defend themselves. He also argued that Duch cannot be charged with the direct commission of torture, as the Prosecution implied. He suggested that Duch might, like so many other victims of the regime, be suffering from post-traumatic stress disorder/syndrome, which might explain Duch's apparent emotional insensitivity. Roux urged the tribunal to bring Duch "back into the fold of humanity."

V. Rebuttal

The rebuttals-which offer the parties to comment on each other's Closing Statements-began immediately. The Civil Parties accused the defendant of trying to ride on two horses at once, implying that his inconsistent statements were, in effect, an abuse of process that should have been resolved between the defense counsel. Khan accused Duch of turning away from the prosecutors rather than engaging them. Studzinsky called the defense's volte face a "slap in the face" of the Civil Parties. The Civil Parties argued collectively that statute of limitations, personal jurisdiction, and other such defenses should have been raised as preliminary matters and, as such, were waived. They all doubted Duch's sincerity, and Jacquin accused Duch of seeking the pity his victims never had. After praising Roux's service to international justice, Cannone

accused his compatriot of insulting Cannone's clients when he sought to minimize the horrors of S-21 by comparing the number dead to the hundreds of thousands of Cambodians killed throughout the Khmer Rouge era. Suon, himself a victim, lost his composure twice over the course of his rebuttal. He accused Savuth of contradicting his own client's testimony at trial and, in so doing, paining the victims.

The Co-Prosecutors next presented their rebuttal and things got even more combative. Smith told the judges they had been "misled" by virtue of Savuth's sudden request for an acquittal. Indeed, both Co-Prosecutors argued that, Duch should not benefit from any mitigation for his cooperation if he now seeks acquittal. Smith also wondered aloud whether Savuth had been following instructions from his counsel or if he had acted on his own, "leaving behind" his client. Smith-a former ICTY prosecutor himself-distinguished the situation of Obrenovi? from the current case on the ground that the former had enjoyed a distinguished military career prior to the disintegration of Yugoslavia and was accused of command responsibility-i.e., failing to supervise his troops-with respect to a single, albeit horrific, massacre. Duch, on the other hand, has a long history of participating in abuses that pre-dates the Khmer Rouge era.

Leang addressed Savuth's legal arguments, rebutting each one with references to international law, domestic precedent, and prior rulings of the tribunal. She also suggested that if Duch had maintained a consistent position during the trial, the victims might have accepted his apology. At one point, Khan intervened in the Co-Prosecutors' rebuttal and asked the Court to invite Duch to re-plead and clarify his position. Savuth and Roux largely echoed the themes of their original Closing Statements, though Roux also argued that had Duch stepped down, someone else would have simply taken his place as chairman of S-21. Although the Rules say nothing of a rebuttal to a rebuttal, Smith nonetheless rose once more and called upon the defendant to pick a defense.

The President of the tribunal, Nil Nonn, finally

invited the accused to make a final statement at the close of the defense's rebuttal and clarify his position. Duch rose and stated:

I am most grateful for the opportunity offered to me to make my last words. First, I would like to tell the Court about the spirit of my co-operation with the Court. ... I was determined to report to the Court sincerely, honestly based on my best memories and to prove it, at the Military Court, all the documents that I already co-operated in responding to the questions of the judges have already been provided to the Trial Chamber. And here, at this Court, I have responded to all the questions put to me by the Co-Investigating Judges and additional questions by the Co-Prosecutors. The records of the interviews at the ECCC are well used as the evidence and proof. ... Questions have been fully been put by parties to me and by the Bench to me, and I have fully responded to such questions and the proof can be found in the transcript, hundreds of pages of transcript. ...

So I am here to tell the Court that I have fully co-operated with all levels of the Court, including that of the Domestic Court, the Military Court and this hybrid Court. Second point, I would like to express concerning my apologies, and rather my guilt admission. ... Having taken into account the more than one million souls who perished, I never forget them, including those of my relatives, and I have acknowledged how these people had suffered before they died. And I also used another word that all crimes committed by the CPK, I myself, as the member of the Party, acknowledge and apologize for them as the member of the Party, and Pol Pot relied heavily on the members of the Party and those members-and I was among them. So I would like to seek for apologies before my people and my nation. Yesterday the prosecutor, the national prosecutor indicated the new number of 12,300 [who died at S-21]. I never challenged such number anyway because I admit that even more than-there were more than the number that already indicated who died at S-21, and I am responsible for the crimes without any denial. ... I still maintain my position that I am responsible

for the crimes as the member of the criminal party.

Duch then said: "I will leave it to the Court to decide. I would ask the Chamber to release me. I'm very grateful." Judge Sylvia Cartwright of New Zealand once again asked Duch for clarification of his position, and he indicated his preference that his national lawyer speak for him. Savuth then rose and confirmed that the request for release was in essence a request to be acquitted, not a plea for complete mitigation. With these final words, Duch and his counsel largely destroyed the painstakingly constructed strategy of accepting responsibility, expressing contrition, and hoping for mitigation.

VI. Conclusion

There were some exceedingly odd moments over the course of the week. For example, when Duch would enter the courtroom, he would often bow to the public gallery, generating laughs among the audience and an occasional bow in return. At one point, Duch pressed a note to the glass facing the public gallery, which was acknowledged by someone in the audience. At another point, a foreigner placed a note on the glass for Duch, who saluted in response. Several of the lawyers questioned Duch's conversion to Christianity, noting his opportune choice of a religion that embodies a notion of forgiveness. The lawyering was at times brilliant, contestable, and unsettling and the last minute schism between Duch's lawyers will no doubt go down in history as an example of a fatal flaw in the hybrid systems. A verdict is expected this spring.

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THE BOOK OF MEMORY OF THOSE WHO DIED UNDER THE KHMER ROUGE

Kok-Thay Eng

A Story of a Phnom Penh's Elite Family under the Khmer Rouge

Sisamuth Eng Sunnari was the oldest daughter of a large family of eight children. When the Khmer Rouge took Phnom Penh she was about 15 years old. She remembers the day of the evacuation vividly. Her family lived in a villa near Pasteur street in Phnom Penh. On the day the Khmer Rouge came to Phnom Penh, like other families, Sunnari's family was busy gathering and counting members to make sure everybody was onboard for the hasty trip to the countryside. After loading belongings onto a wagon, her father Sisamuth Chan Sari, wrote a note and stuck it on the front gate of their villa. Sunnari remembers her asking her father the purpose of the letter. He said the letter was for an old friend named Khieu Samphan to read when would arrive in Phnom Penh. It said in Sunnari's words: "Brother, if you saw this letter, please help us. We have left to our hometown in Kartie." Sunnari did not

know who Khieu Samphan was. So she asked her father about the person. Her father told her that Khieu Samphan used to stay in her grandfather's house when Khieu Samphan was a young student, coming to the city to study. Now Sunnari's father expected Khieu Samphan to return some favor to the family. Sunnari's family never met and never heard about Khieu Samphan for a long time since the war began.

The family was evacuated to Khsach Andet commune, Chhlong district, Kratie province. They were put in a Cham village. By this time the Khmer Rouge had intended to mix Cham and Khmer families together in an attempt to mix cultures and diffuse ethnical religions. Sometimes they dispersed the Chams from their traditional villages to other parts of the country. In November 1975 the Khmer Rouge had already planned to relocate more than 150,000 Chams from Eastern zone after a rebellion by the same people against the Khmer Rouge earlier in the year. In a cold,



Khmer Rouge Cadre pictured between 1975-1979

winter night in the early 1976, Sunnari's father (Sisamuth Chan Sari) was taken away by the Khmer Rouge. He was loaded onto a boat along with many other people. Sunnari never saw her father since then. In around May 1978, two years after the devastating disappearance of her father, Sunnari's mother (Tep Kim Seng) and her seven younger siblings were taken away by the Khmer Rouge. Sunnari was not at the scene when it happened. She was sent to the border and was later sheltered from the Khmer Rouge by a Cham family. Sunnari was told that many black trucks came to the village and took many people away along with her family.

Sunnari's mother Tep Kim Seng was the second wife of her father Sisamuth Chan Sari who had married a French wife and had eight children with her. Today members of his first wife are living in France. Chan Sari was a staff member of the Commisier Central. He later became an employee of the Cambodian Red Cross. His father named Sam Sisamuth was a former mayor of Phnom Penh city. Sunnari's experience was a story of an upper class Phnom Penh family which was devastated by the Khmer Rouge. Today she lives in Kampong Thom province. As she reveals the plight of her family, for the first time in a formal way to DC-Cam, she cried and she wanted to send her words to Khieu Samphan. How could he be so ungrateful toward the people who had sheltered and cared for him?

Surviving relative: Sisamuth Eng Sunnari, Age: 50, Address: Kampong Thom province.

Relatives Died Under the Khmer Rouge:

Sisamuth Chan Sari (a.k.a Chhaom)

-Sex: Male

-Age: Born in the year of the tiger

-Died: Early 1976, at age 50

-Relation with survivor: Father

-Story: Left Phnom Penh on April 17, 1975 and headed for birthplace in Kratie along with family, but was settled in Prek Tahub village, Ksach Andet commune, Chhlong district, Kratie province. He was taken by the Khmer Rouge at 12 pm at night and then loaded onto a boat with many other peoples, according to

Sisamuth Eng Sunnari.

Tep Kim Seng (a.k.a Eng)

-Sex: Female

-Age: Born in the year of the dragon

-Died: In May 1978, at age 35

-Relation with survivor: Mother

-Story: In May 1978, many trucks came to the village and loaded people away, along with seven siblings of Sisamuth Chan Sari. They include:

Sisamuth Eng Sunnarong (called Pach), female, year of tiger

Sisamuth Chandarit (called Bros), male, year of rabbit

Sisamuth Chansori (called Srei), female, year of dragon

Sisamuth Chanyurann, male, year of snake

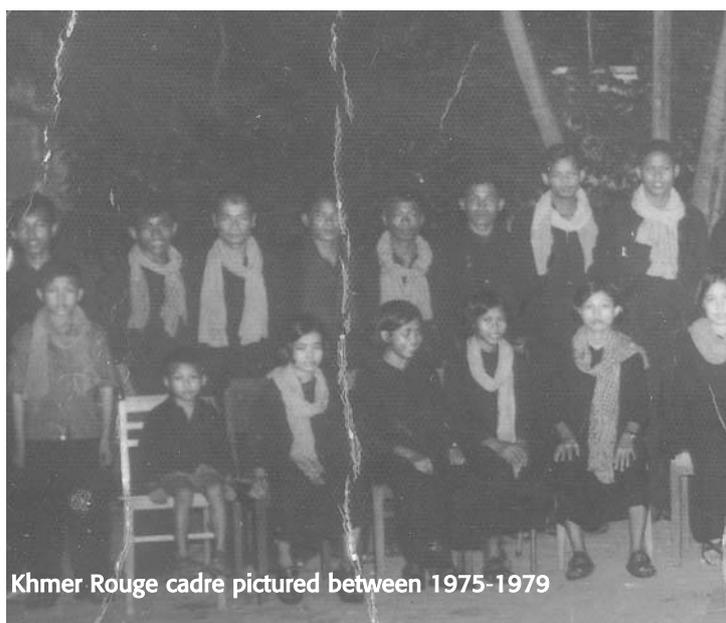
Sisamuth Chansomaly, female, year of horse

Sisamuth Keomony, female, year of goat

Sisamuth Kati, female, year of monkey

Letter from Thai Sokhom

My name is Thai Sokhom, daughter of Thai Cho (dead) and Khut Hakk, 76. I reside in Snar Py Muk village, Prek Khporp sub-district, Ek Phnom Phnom district, (former Sangke district), Battambang province. I would like to search for a person by the name of Thai Han (now 50), who left the Faculty of Law while he was taking a preparatory course for the official entry exam. He stayed in the care of his cousin Chum Chuop and her husband Ven Von, a worker at the



Khmer Rouge cadre pictured between 1975-1979

Seng Thai Textile Factory, Kilometer 6, Phnom Penh. Around April 17, 1975 I heard that Thai Han visited [our] homestead by bicycle, driving across Kampong Thom province. When he reached Kampong Kdei district, Siem Reap, information about him stopped. Therefore I would call for your return because our mother is getting older, while waiting for you all the time. I would also like to appeal to the general public that if Thai Han is found, I can be reached at House No.135, Group 9, Sna Mukpy village, Ek Phnom district, Battambang province.

Letter from Ly La

My father's name was Korn Ty Chheang, but in Pol Pot time he changed it to Lim Chor to avoid detection. However, they still found him in 1977. My father was born in Takeo in 1929 and joined the French Colonial Army around 1948. He was stationed in Thmar Pech, Kampong Cham province until the French left and Cambodia gained independence. He was later transferred to Kampong Speu and then to Phnom Penh after the coup in 1970. He was a major in the Artillery Division.

After Pol Pot entered Phnom Penh, we went to his hometown in Takeo province, and later were put on the train to Sisophon. My family was "distributed" to Bos-sbov village in Phnom Srok district in late 1975. There, my father still went by the name of Lim Chor, hoping that no one knew his background. But



unfortunately, there were people from his home town who knew him and were sent to the same village with us. To gain favor from the village leadership, they reported my father's army background to the district security chief. However, with luck and hard work, my father managed to hang on until March or April of 1977. One night around 10:00, according to my mother, the group leader came to the hut and called him see the village chief for a meeting. My mother knew right away that this must be the end, but dared not to ask or do anything. My sisters and I were in the fields at that time. My father never returned. Thereafter, we were warned to shut up and forced to take double workloads every day.

A few weeks later, I was told that my father was seen in Phnom Srok, the district capital, which is about 5 km from Bos-Sbov. But back then, there were all kinds of rumors and it was hard to verify because, as you know, you could only whisper to close friends.

I know that there is almost no chance that my father is still alive, but I just want to get a sense of closure on this ordeal. Moreover, after reading Issue 9 of your magazine (September 2000) on Mass Graves in Banteay Meanchey, I hope that there may be some documents or witnesses that can shed some light on what happened to my father, especially Mr. Chhum Ruom, a deputy district governor and former prisoner in Phnom Srok, who was interviewed by your magazine. Maybe he can help if we can contact him.

Letter of Gratitude for Identification of a Father

My name is Khun Kol Phievatej, and I reside in Svay Rieng Province. I would like to express my gratitude to Mr. Youk Chhang, director of the Documentation Center of Cambodia's Searching for the truth, and his colleagues for finding my father's identification. He was captured and killed by Angkar at Tuol Sleng Prison (S-21).

With this thanks, I would also like to make another request: In the next volume of your magazine, please publish my father's picture and the confession he recorded at S-21 so that I can see his face and read the dreadful words. I strongly hope that you will fulfill

my request as well as those of Cambodian citizens who wish to learn the truth. I wish you and your subordinates happiness and safety.

The Book of Memory of Those Who Died under the Khmer Rouge

The Documentation Center of Cambodia is writing and compiling a book of records of names of those who died under the Khmer Rouge regime from 1975 to 1979 and those who disappeared during the period, who are still not known by their relatives. It also includes a section for family tracing purposes. DC-Cam already has in its database up to a million names of those who may have died under the Khmer Rouge.

This book of memory and records also lists names of prisoners found at S-21 and 200 other security centers under the Khmer Rouge regime. Under the Khmer Rouge regime nearly two million people died of four main causes: execution by the Khmer Rouge, starvation, forced labors and malnutrition. The four causes are interconnected. People were executed in the villages, in the rice fields, in a nearby forest or simply around the compound of a security center. Some died along the border in the war between Cambodia and Vietnam. The other causes of death include that of starvation, forced labors and malnutrition. Although the Khmer Rouge put virtually all ordinary people to work in the fields to grow food or do field-supporting activities, they were given little food to eat in return. As a result starvation was a major cause of death under the Khmer Rouge. Many of these people were forced to work long hours, up to 12 or 14 hours a day, without rest seven days a week. With very little food and virtually no modern medical care, many people died as a result.

There are many ways in which people were separated from their families. The civil war between 1970 and 1975 effectively divided Cambodia between the "liberated area" controlled by the Khmer Rouge and areas controlled by the Khmer Republic led by General Lon Nol. Families and relatives were often separated. In some instances, brothers fought on either side of the war. They were unable to reconcile

even when the war was over in 1975. In addition, as the Khmer Rouge was overthrown by the Vietnamese, a large portion of the population moved along with the retreating Khmer Rouge to the west and the Thai border, instead of returning home. Some were able to move to third countries. Others repatriated in the early 1990s.

In addition, families were torn apart when the Khmer Rouge finally took over Cambodia in April 1975. This time deliberate policies were set up to make sure that the family institution was destroyed. During the Khmer Rouge regime of three years, eight months and twenty days, almost two million Cambodian people of all creeds, political orientations and ethnicities perished due to summary execution, malnutrition, starvation and forced labor. Families were deliberately separated and put into labor units. Various work brigades were created to replace previous social units. Marriages were organized en masse by Angkar (the name for the shadowy Khmer Rouge leadership). Children were put in child units and taught that their parents were Angkar. At the end of the Khmer Rouge regime in January 1979, people walked back to their homes of 1975 hoping that they would meet their family members. However, only some families were rejoined with their lost relatives during that time. With a minimal death rate of up to one in seven, most people arrived home alone, and almost everyone found some of their family members missing as they tried to rebuild their lives. People made efforts both during the Khmer Rouge regime and after to locate their lost relatives, but their efforts have too often been futile. We are consistently told that the most important piece of information that survivors of the Khmer Rouge regime would like to know with certainty is the fate of their lost loved ones.

The book of records would also include basic information relating to the Khmer Rouge history, its security apparatus, its rise and its demise. It would also discuss concepts relating to disappearance and its impacts on psychological well-being of survivors today. This book would also include names of those

DC-Cam has in its Biographical Database, which DC-Cam is not certain whether they were dead or alive. These names would help in family tracing efforts. The book would be distributed free of charge to commune offices in Cambodia, so that people can see the names of their lost relatives and search for those names that DC-Cam has on records. The book would then receive comments from villagers on accuracy of the information and family tracing requests.

By publishing names of those people who died under the Khmer Rouge and their stories, the book has many roles. It is an acknowledgement of the suffering of those who died under the Khmer Rouge. For thirty years after the Khmer Rouge regime ended in 1979, people have talked about the regime in formal and informal settings, 80 memorials were constructed around the country and a few genocide museums were built including Tuol Sleng. However, these places tend to be nameless and faceless. Many of them exhibit skulls and bones. They signify the gross violence of genocide, but they have very few individualistic characters. This is the gap that this book attempts to fill in. The book not only for the first time in thirty years record names of those people who died under the

Khmer Rouge, it also includes a short story about of each individual, relating to the moment they were evacuated from cities or their early experience with the Khmer Rouge in the "liberated areas", the work teams they were assigned to and ultimately the story relating to their death. These stories would be told through the memories of their surviving relatives. The book would also include any memories of the victims, including photographs, handwriting and pictures of their artifacts. For those victims who were prisoners of a security center, a summary of their confessions would be included to reveal their suffering under the torture center. By helping to locate lost family members or to determine whether they are dead or alive, the book would play important parts in process of closure for survivors.

If you would like to have your relatives' names, who died under the Khmer Rouge or disappeared then, appearing in this book, please contact Mr. Kok-Thay ENG at tel: 012-955-858 or email: truthkokthay@dccam.org.

Kok-Thay Eng is the Deputy Director of the Documentation Center of Cambodia.



Khmer Rouge cadre pictured between 1975-1979



THE BOOK OF MEMORY OF THOSE WHO DIED UNDER THE KHMER ROUGE



The Documentation Center of Cambodia is writing and compiling a book of records of names of those who died under the Khmer Rouge regime from 1975 to 1979 and those who disappeared during the period, who are still not known by their relatives. It also includes a section for family tracing purposes. DC-Cam already has in its database up to a million names of those who may have died under the Khmer Rouge. If you would like to have your relatives' names, who died under the Khmer Rouge or disappeared then, appearing in this book.

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