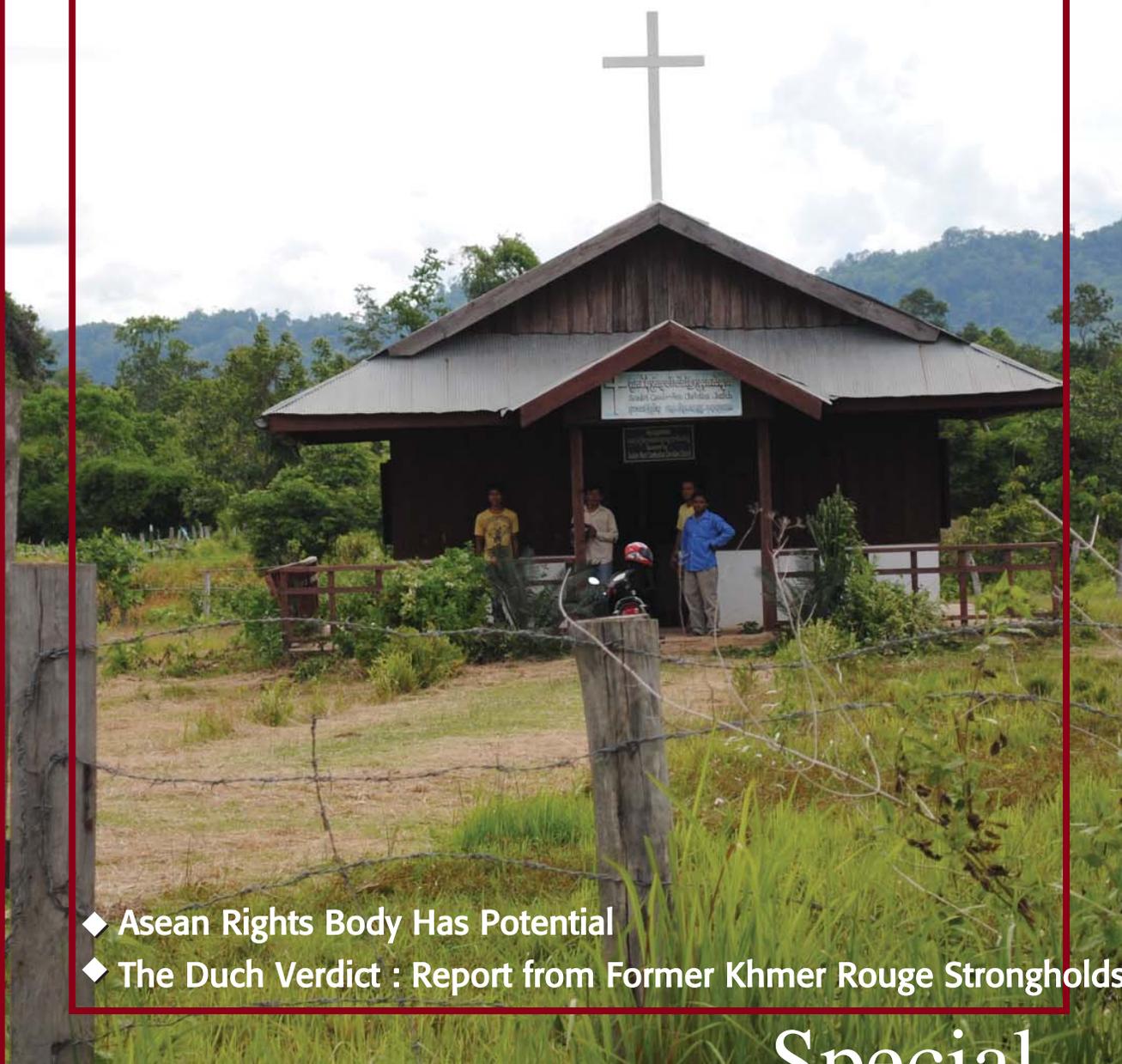


Searching for

THE TRUTH



- ◆ Asean Rights Body Has Potential
- ◆ The Duch Verdict : Report from Former Khmer Rouge Strongholds

«You could sentence him to more than 14,000 years, for each life, and even that wouldn't make it fair. But, finally, there's official accountability..»

-- Youk Chhang

Special
English Edition
Third Quarter 2010

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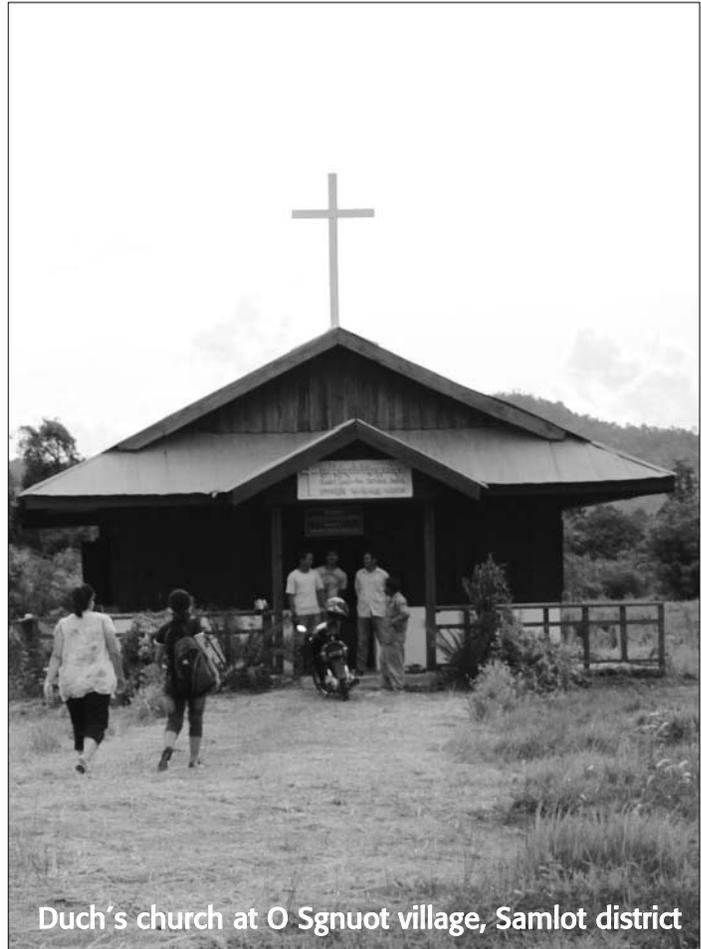
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Duch's church at O Sgnuot village, Samlot district

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LETTER FROM YOUK CHHANG:

ASEAN RIGHTS BODY HAS POTENTIAL

Last October, Southeast Asian leaders launched a new ASEAN Intergovernmental Commission on Human Rights (AICHR). The Commission has received mixed reactions in the human rights community. Some have lauded it as a step in the right direction, but many have dismissed it as toothless or damned it with faint praise. AICHR has both a duty and a viable opportunity to prove its critics wrong.

The Commission is part of a broader effort to boost ASEAN's relevance and credibility. ASEAN has traditionally emphasized non-interference and lagged behind other regional organizations in prioritizing human rights. Its reluctance to focus on human rights has drawn Western ire and frustrated ASEAN's attempt to plug further into the global economy. Friction inside the region has also increased due to changing norms, continuing ideological differences, and resentment of the collective price that ASEAN members must pay for individual members' malfeasance.

In 2006, an Eminent Persons Group of senior Southeast Asian statesmen recommended setting up an ASEAN human rights mechanism to manage these challenges. A year later, leaders signed the ASEAN Charter, which directed officials to create a new body for the "promotion and protection of human rights" in the region. However, most Southeast Asian governments eyed that clause with suspicion. Many have spotty human rights records, and almost all remain acutely sensitive to perceived interference in their internal affairs. Few if any welcomed the notion of a regional body that would shine light on

their own human right practices.

Consequently, the Commission they created has very limited powers. In its current form, it looks more like an effort to deflect external criticism than take it to heart. It includes representatives from the ten ASEAN countries, and they must reach decisions by consensus. That gives any recalcitrant member an effective veto on AICHR actions. The Commission lacks the powers needed to protect human rights, since it cannot solicit or respond to complaints of specific abuses from civil society. It can issue reports, but only when all of its government-appointed representatives agree on the content. It has little independent budget or bureaucratic support. Critiques of the AICHR's structure are thus well-founded.

Still, ASEAN is not at a dead-end. The creation of the new Commission is a meaningful acknowledgement by ASEAN capitals of the importance of human rights and fundamental freedoms. The best way forward for AICHR is to proceed on two parallel tracks. The first is for ASEAN and the more supportive Commissioners and governments to explore ways of building a role for AICHR in protecting human rights.

One proposal is for sympathetic governments to invite AICHR to examine and report upon sensitive situations. That idea makes good sense, provided that the governments in question agree not to censor the resulting reports. Major change will not happen overnight, but incremental change is possible. Modest advances can set the stage for meaningful reform when the Commission undergoes a planned review



on its fifth birthday.

The Commission has much greater immediate promise pursuing the other half of its mandate: promoting human rights. This means a variety of things, but ASEAN has rightly identified education as a key priority. Most Southeast Asians know too little about the basic rights to which they are entitled, both under international law and in their various domestic systems. Most also know little about ASEAN, an organization that acts in their name but too often confines itself to intergovernmental affairs.

Human rights education-particularly by teaching youth as early as possible in their schooling-is a way to make ASEAN more relevant to ordinary Southeast Asian people and to contribute to the goals set out in the Association's Charter. There will inevitably be political wrangling about what subjects to include and how to discuss the many sensitive issues in regional human rights. However, there are also good places to start.

In Cambodia, the establishment of the Khmer Rouge tribunal helped create political space for educating the public about genocide and other grave human rights violations. Most young Cambodians have only begun to learn about the human rights principles that can help prevent future atrocities. The recent verdict

against that tribunal's first defendant, Duch, provides one possible starting point for teaching those principles. AICHR can usefully assist Cambodians with that educational effort, working alongside experts and civil society organizations in the region. Surely, the goal of genocide prevention is widely shared throughout Southeast Asia.

Cambodia and other Southeast Asian countries have a chance to build regional leadership and international credibility by working with AICHR on human rights education. For ASEAN, effective human rights education will enhance the Association's public reputation and relevance. It will also convey regional interest in local futures and help build the sense of regional community to which the Association aspires.

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◆ *John D. Ciorciari is an assistant professor at the Gerald R. Ford School of Public Policy, University of Michigan, and DC-Cam senior legal advisor.*



Youk Chhang at Tuol Sleng's photo laboratory in 2006

DUCH CAN NEVER BE A FREE MAN: YOUK CHHANG

Dacil Q. Keo and Socheat Nhean

After nearly two decades of documenting the crimes of the Democratic Kampuchea period, on July 26, 2010 Youk Chhang, Director of the Documentation Center of Cambodia (DC-Cam), sat quietly in his Phnom Penh office watching the Duch verdict pronouncement. On that day, Duch's status had been changed; he was no longer an accused man but now a convicted man. Duch, as head of the S-21 prison, was found guilty of crimes against humanity and grave breaches of the Geneva Conventions of 1949. He was sentenced to 35 years in prison but will serve 19 years due to mitigating factors.

Mr. Chhang accepts the verdict because he believes that "Duch can never be a free man and will die in prison." He explains:

"The Duch verdict is not incorrect. Frustration with the sentence was bound to run high. Had the sentence been a bit longer, it would perhaps have provided greater satisfaction to the majority of the survivors, but nothing would have satisfied them completely. You could sentence him to more than 14,000 years, for each life, and even that wouldn't make it fair. But, finally, there's official accountability."

Now it is necessary to conduct meaningful outreach about the verdict to increase support for the Court in advance of Case 002, the next and most important trial."

DC-Cam has been assisting the tribunal since 2006. The Center has not only provided translation, photocopy, and delivery services to the tribunal but also has allowed all three units- the prosecution, defense, and investigating judges- to use DC-Cam offices for research and work. Many of the lawyers and judges have gladly utilized these services, with the exception of Duch's Cambodian defense lawyer Kar Savuth. Strangely, Mr. Kar has said that he cannot access the Center's resources or use its facilities. The Co-Prosecutors and Co-Investigating Judges offices, along with the defense lawyers for Nuon Chea, Ieng Sary, and Ieng Thirith have had no problems utilizing the Center's assistance however.

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



Duch and his messenger Sok during DK, 1977



Duch shortly before his arrest in 1999



Duch during his verdict at ECCC in 2010

TRIAL CHAMBER SENTENCE

Anne Heindel

Finding Duch guilty, the ECCC Trial Chamber followed international precedent in considering both “aggravating” and “mitigating” factors to determine the appropriate number of years he should be imprisoned. As aggravating factors—factors requiring a longer sentence—the Chamber noted the shocking and heinous character of the crimes and the way they were carried out, the defenselessness of the victims (including children), Duch’s abuse of power and his superior responsibility for the crimes committed by his subordinates.

The Chamber also recognized some mitigating factors requiring it to impose a sentence short of the maximum penalty—life imprisonment. These include: Duch’s general cooperation with the Court, admission of responsibility, expressions of remorse, and the potential impact of these factors on national reconciliation, as well as the coercive environment of Democratic Kampuchea and Duch’s potential for rehabilitation.

In considering the weight of these factors, the Chamber emphasized that Duch’s expressions of remorse were “limited.” On the second day of his trial, Duch said, “I would like to emphasize that I am responsible for the crimes committed at S-21, especially the tortures and execution of the people there.” He also apologized to the victims of S-21 and their families, asking them “to please leave an open window for me to seek forgiveness.” Due to his general cooperation and admission of documented facts, Duch was believed to be offering an informal “guilty” plea, while seeking to reduce his punishment. However, during closing arguments, Duch’s national co-lawyer Kar Savouth, apparently without the agreement of his international counterpart, argued that the charges against Duch should be dropped and that he should be acquitted and released because he was not a senior Khmer Rouge leader. Duch adopted this position and asked the Chamber to release him. Kar Savouth affirmed that “[r]elease means acquittal.” In its judgment, the Trial Chamber stated: *The Accused repeatedly made public apologies and expressed remorse for his crimes when given the opportunity. The Chamber*

finds, however, that the mitigating impact of his remorse is undermined by his failure to offer a full and unequivocal admission of his responsibility. In particular, the Accused’s request during the closing statements for acquittal, despite earlier apparent admissions of responsibility, diminishes the extent to which his remorse would otherwise mitigate his sentence.

Taking all these factors into account, the Chamber sentenced Duch to 35 years in prison. It then reduced his sentence by five years in order to remedy his provisional detention by the Cambodian Military Court for more than eight years in violation of national law. Taking into account the 11 years Duch has already spent in detention, he has less than 19 years left to serve of his 30-year sentence.

APPEAL

Immediately after the verdict was pronounced, Duch’s lawyer Kar Savouth announced that he would appeal the sentence to the Khmer Rouge tribunal’s Supreme Court Chamber. His primary argument is that in light of his official functions, Duch was neither a “senior leader” nor “most responsible” for crimes committed during the Democratic Kampuchea era and thus does not fall within the category of persons it was established to try.

The Prosecution is also appealing the length of Duch’s sentence because it believes that the Trial Chamber judgment “gives insufficient weight to the gravity of Duch’s crimes and his role and willing participation in those crimes.” It also believes that the Chamber placed undue weight on mitigating factors. Finally, the Prosecution is appealing the Chamber’s characterization of the crimes because it believes that “it fails to reflect the full extent of Duch’s criminal conduct.”

The ECCC Supreme Court Chamber will consider these arguments and is expected to pronounce its judgment sometime during the first half of 2011. According to the Court’s rules, the Chamber has the power to acquit Duch, or to shorten or lengthen his sentence, depending on its legal and factual findings.

DISARRAY AND DISAPPOINTMENT AFTER DUCH VERDICT

Dacil Q. Keo

The verdict of Case 001 at the Khmer Rouge Tribunal involving former S-21 prison head Duch (Kaing Geuk Eav), delivered amidst intense speculation, considerable spectacle, and moderate disarray, disappointed more people than it satisfied. Convicted of crimes against humanity and grave breaches of the Geneva Conventions of 1949 for atrocities perpetrated at S-21 that left at least 14,000 people dead, Duch received 19 years in prison; a figure reduced from 35 years after consideration of mitigating factors. This historic conviction is the first judgment for the unspeakable horrors that occurred under the Khmer Rouge regime responsible for the deaths of nearly two million people from 1975-1979. It was also a judgment that was unsatisfactory and perplexing to many ordinary Cambodians who survived the regime's brutality. Many had expected the tribunal to deliver a harsher jail sentence. This expectation, along with initial

misunderstandings of the verdict, has emphasized the injustice of the 19-year sentence even more.

The Verdict Reading

Several minutes before 10 a.m. inside the 500-seat courtroom, slate-blue curtains and vertical blinds opened to a packed audience of Khmer Rouge survivors, Buddhist monks, university students, scholars, dignitaries, and reporters. Inside the glass-enclosed wooden stage, court officials were already seated in position along with key S-21 witnesses. A few minutes later, Duch entered the stage escorted by two policemen. He is neatly dressed in a pale blue Polo shirt layered over a white t-shirt and gray pants held in place by a metal buckle belt. Oddly, his attire matched the glass wall sectioned off by thick metal bars and curtains while contrasting the row of bright orange-robed Buddhist monks sitting in the front center.

At the beginning of the verdict reading, Duch



Villagers and court observers standing in line before checking in

sat leaning against his chair showcasing his usual stern expression. At times, his piercing black eyes darted back and forth while his body remained calm. Towards the middle of the hour-long reading, Duch leaned forward with his arms folded on the desk near his bottled water. As the verdict reading approached its end, a subtle intensity appeared in Duch's eyes. When the judge announced the 35-year sentence, murmurs immediately erupted in the audience.

Now standing, Duch's eyes are noticeably red, although his countenance is still composed. The judge finished the verdict reading at 11 a.m. and Duch is escorted off stage.

Responses from the Courtroom

The spectacle of the verdict day, which began with security checks and the disorderly seating of national and foreign observers, heightened after the verdict was delivered. All spectators, those inside the courtroom, the several hundred sitting on plastic chairs on the court lawn, and the millions watching across the country, reacted strongly.

As audiences made their way out of the courtroom following the reading, the initial murmurs became open critiques. The most common among them was, "The sentencing was unclear, so just how many years will Duch serve in prison?" Villagers with limited education, reporters accustomed to legal proceedings, and scholars with decades of schooling alike all began to subtract numbers in their head. "So the judge said 35 years in prison, but minus five years because of illegal detention at a military prison, and minus another eight years of actual time spent in the military prison, and then three years at the tribunal detention center, so that makes...wait, or was it nine years in the military prison...so that makes...wait, was the five years awarded to him in addition to the nine years served in the military prison?" Others left out the five years awarded to Duch for being illegally detained. "No, no, it's just 35 years minus



While the courtroom is full, people sitting outside watching Duch verdict live

nine years and then minus five years for cooperating with the tribunal." Others were unclear with the starting figure. "Was the 35 years before or after the five years awarded for illegal detention? So does that mean the initial number of years was 40 as the prosecutors had wanted?" There was also a large portion of the audience that was unconcerned with the arithmetic and simply concluded that Duch will serve 35 years in prison. This figure of 35 years, unsurprisingly, caught on among some members of the press and was used in their initial reporting of the verdict.

As the confused and disappointed observers descended the court stairs and stepped outside, members of the press, who had been waiting patiently by the entrance doors, quickly began to take photographs. Other members of the press were already interviewing people from among the several hundred who had watched the verdict delivery on the front lawn. Some of them had arrived as early as 7 a.m. to set up their equipment and to scout out a good location to conduct interviews. Famous S-21 survivor Bou Meng and almost equally famous former S-21 security head Him Huy were bombarded by the media. Other prominent interviewees included noted scholars, tribunal officials, civil society organization directors, government officials, and crying Khmer Rouge survivors.

One episode involving three Khmer Rouge survivors on the courtroom lawn proved rather unfortunate.

Former S-21 child prisoner Norng Chan Phal, who resurfaced several years ago after two decades of quiet living, was sidelined by woman as press cameras scurried to capture survivors' reactions. Unbeknownst to many, before entering the courtroom Mr. Norng was approached by a reporter who requested to film and interview him immediately following the verdict announcement. Mr. Norng, a bit anxious but experienced from having done dozens of interviews in recent years, agreed. In a moment of genuine disappointment and heartache however, a Khmer Rouge survivor beside him began to cry as she walked out on the lawn. Alerted by her crying, the press swarmed to capture this emotional scene, including the very reporter that had made a deal with Mr. Norng to film him. Another woman, who spoke both Khmer and English, sensed this opportunity and rushed to the scene blocking Mr. Norng from the cameras' view. She offered to translate for the anguished woman. Upon seeing these two women, Mr. Norng, who was also distraught after hearing the verdict announcement, retreated alone to the parking lot and climbed inside the bus he arrived in to recover from the episode. He remained inside the bus until it left the courtroom compound. Mr. Norng, one of the rare survivors of the S-21 prison, regrettably was not interviewed following the historic verdict for crimes committed at the notorious prison.

Back inside the courtroom a press conference was underway. Four separate groups were lined up to speak to reporters: the ECCC Public Affairs Office, co-prosecutors, three civil party groups, and the defense (which later canceled). The most repeated question at the press conference concerned, unsurprisingly, the exact number of years that Duch is to serve in prison. After receiving an indefinite response from the first group, reporters asked Cambodian Co-Prosecutor Chea Leang from the second group. The Co-Prosecutor went through each mitigating factor one by one and gave a final figure of 18 years. This figure was slightly different from the 19 years given by the first group, and far different from the 35 years that had already been published in news reports.

Reactions in Phnom Penh

Throughout the day and evening, Public Affairs Chief Reach Sambath worked hard to explain the verdict, especially given that the full verdict document is over 400 pages in Khmer. Radio airplay of his explanation, along with expert commentaries and interviews with survivors, was pervasive throughout the night. The reactions to the verdict in Phnom Penh ranged from indifference to anger, although many appeared disappointed.

Youk Chhang, Director of the Documentation Center of Cambodia (DC-Cam), believes that "the verdict is correct, but it could have been harsher" and that "there is a lack of sensitivity to the reparations." Mr. Chhang also believes that "Duch can never be a free man and will die in prison." DC-Cam has been assisting the tribunal since 2006. The Center has not only provided translation, photocopy, and delivery services to the tribunal but also has allowed all three units- the prosecution, defense, and investigating judges, to use DC-Cam offices for research and work. Many of the lawyers and judges have gladly utilized these services, with the exception of Duch's Cambodian defense lawyer Ka Savut. Strangely, Mr. Ka has said that he cannot access the Center's resources or use its facilities. The Co-Prosecutors and Co-Investigating Judges offices, along with the defense lawyers for Nuon Chea, Ieng Sary, and Ieng Thirith have had no problems utilizing the Center's assistance however.

A few people interviewed on the streets said that they weren't aware of Duch's verdict announcement because they were busy making a living. Others had heard that Duch's verdict announcement would be announced on Monday, but got tied up with other things such as their children's high school exam which coincidentally began on the same day. In Cambodia, a series of exams lasting for two and a half days, determines whether students graduate high school and their college prospects.

Some followers of the verdict listened to radio for several hours, including Ros Sokhal who lost her husband, only child born ten days before the Khmer Rouge takeover, and numerous relatives during the

Khmer Rouge regime. A resident of Phnom Penh, Ms. Ros had been following tribunal developments regularly and like many who followed the spectacle of the verdict reading, was unclear about the final number of years Duch was to serve in prison. At the Finance Office in the Council of Ministers where she works, the office television played the verdict screening as employees watched on and off. The majority of people in her office, like many in Cambodia, were most interested in finding out the number of years that Duch will serve in jail. Once the verdict reading was over, Ms. Ros along with her co-workers expressed disappointment



Journalists interviewing civil parties, national and foreign court observers after the verdict

and confusion. If Duch serves 35 years in jail, Ms. Ros said that she would accept the judgment because this meant that he would die in jail. However, if it is 19 years then she cannot accept the judgment because there is a possibility that he will be alive after serving time. Mr. Ros also commented on Duch's character, "He is a coward. His stern and cold expression and his audacity to kill people are opposite of his cowardice." According to her, someone like Duch who is "brave enough to kill someone" should also be "brave enough to accept life imprisonment." Life imprisonment, she explained, is much easier to accept than being tortured and killed at S-21. Clearly, Ms. Ros was deeply upset by the judgment.

A Survey Across Provinces

The reaction from survivors across Cambodia was

also diverse, but again, disappointment and dissatisfaction were the most common responses. DC-Cam organized live screenings of the verdict in seven provinces: Kandal, Kampong Thom, Kampong Cham, Banteay Meanchey, Takeo, Svay Rieng, and Pursat. Approximately 200 or more local villagers attended these screenings, although in a few areas the number was considerably less because villagers were occupied with transplanting rice seedlings. Depending on the size of the rice field, transplanting rice seedlings can take several days or up to a week during Cambodia's rainy season.

Reactions from the provinces can be divided

into four groups: (1) those who think the sentence is 35 years and are disappointed; (2) those who think the sentence is 35 years and accept it; (3) those who think the sentence is 19 years and are disappointed; and (4) those who think the sentence is 19 years and accept it. Several interesting patterns appear. First, many who reject the 35-year sentence feel that the brutal acts of Duch deserve a harsher sentence such as life imprisonment. Second, those that accept the 35-year sentence do so because they think

that he will die in prison. Among those that reject the 19-year sentence, many feel 19 years is vastly disproportionate to his crimes and that he could possibly live after serving his sentence. The few that accept the 19-year sentence cite being sympathetic to his age, believe that he will die in prison, or reason according to the teachings of Buddhism. Lastly, as more information on the mitigating factors, which reduced the sentence to 19 years, became available, the majority of people from the second group (who believed that the sentence is 35 years and were satisfied), instantly became dissatisfied with the 19 years. Overall, there is a feeling of dissatisfaction and to lesser a extent, anger, among survivors of the Pol Pot regime.

Group 1: Dissatisfied with 35 Years

Many ordinary Cambodians understood Duch's

sentence to be 35 years immediately following the verdict announcement. For most, this was tolerable because they believed that Duch would die in jail. However, there were quite a few Cambodians who were not satisfied with 35 years. In Cha commune, Takeo province, many of the people interviewed following the verdict screening wanted Duch to be imprisoned for life.

In Svay Chek commune, Svay Rieng province, DC-Cam interviewed people who were upset by the verdict. Oum Sokhom, who was imprisoned under the Khmer Rouge regime, felt that Duch should have been given the death sentence because he is responsible for the deaths of thousands of people. Similarly, Va Samut was also upset by the 35-year sentence and said that she is still angry with Duch and other perpetrators. Yim Min and Kong Rong also felt that 35 years is too short because Duch killed a large number of people as head of S-21, however they also felt that the tribunal is still beneficial for Cambodia because it can help teach the younger generations that crimes will be punished.

Several survivors from Svay Khleang commune, Kampong Cham province, wanted Duch to suffer the way he made others suffer at S-21. Unaware that the Cambodian Constitution prohibits the death penalty, Sreang Srang wanted Duch to be executed by hanging. Sa Habb Sas wanted Duch to receive life imprisonment but also added that, "If I were the judge, I would torture Duch in the same way he tortured others." Ms. Sa felt that the court was partial towards the defense. No Sadass, whose entire family of eight died under the Khmer Rouge regime, also wanted Duch to be tortured for his role at S-21. Mr. No explained, "I want to punish Duch in the same way he tortured people at Tuol Sleng; to put him in handcuffs, [and] let him starve." Prak Rem from Banteay Meanchey province lost five relatives and is also still angry at Duch. She wanted him to receive the death penalty.

Group 2: Accepts 35 Years

The general reaction among Khmer Rouge survivors from Kampong Thom province and Banteay Meanchey province was, initially, mild acceptance of

what they believed to be a 35-year sentence. After finding out that the sentence is 19 years however, the dominant majority of these people expressed great dissatisfaction. Nuon Chean of Khum O Kunthor sub-district, Kampong Thom province said that 35 years is enough because Duch would die in jail. He added that the Khmer Rouge tribunal is important because it teaches the world about what happened in Cambodia under the government of Democratic Kampuchea and it can also serve as a model for other tribunals. Huy Ehheut of Preah Net Preah commune, Banteay Meanchey province, felt that the 35-year sentence was not enough given the crimes that Duch committed, but nevertheless felt that it was appropriate given Duch's age of 68 years because he would die in jail. Both Phan Sia and Buoy Phan of Rumlech commune, Pursat province, also accepted the 35-year sentence because of Duch's age and the certainty that he will die in prison after 35 years.

In Rumlech commune, Pursat province, Kim Hauoy expressed acceptance of the 35-year sentence for a different reason. Ms. Kim lost 22 family members under the regime including her parents, siblings, and her husband. For a long time she believed that Khmer Rouge leaders would go unpunished. "I never thought that there would be a tribunal in the first place," stated Ms. Kim. For her, acceptance of the sentence is not because she wanted Duch to die in prison. She elaborated, "I accept this sentence because I want reconciliation. If Duch were executed that would not bring back my parents."

Kao Tong, from Preah Net Preah commune, likewise begrudgingly accepted the 35-year sentence based on the reasoning that Duch would die in jail, although he too would have liked to see Duch receive a much longer sentence. After finding out that the actual sentence was 19 years however, Mr. Kao became deeply disappointed and felt "little and powerless."

Group 3: Dissatisfied with 19 Years

For better or worse, the unclear manner in which the tribunal judge explained Duch's jail sentence has caused many to compare the fairness of a 35-year

sentence with a 19-year sentence. After some of the confusion surrounding the sentencing had been cleared, an overwhelming feeling of dissatisfaction grew among survivors of the Khmer Rouge regime, especially those that initially believe the sentence to be 35 years.

Prak Vuthy and Tep Chan Thon, both from Katok commune, Kandal province, are both unhappy with the 19 year-sentence because they felt that the sentence is greatly disproportionate to the thousands of people who died under his orders at S-21. They both felt that the court made the wrong decision.

Aok Touch and Vat Nhit of Khum O Kunthor commune, Kampong Thom province, were both initially not satisfied with a 35-year sentence and became even more upset when they learned that the sentence was actually 19 years. Both Ms. Aok and Ms. Nhit lost relatives at S-21. For them, Duch can never be forgiven. They believe that he is dishonest and insincere because he strategically acknowledged only the lighter crimes at S-21 in order to receive a reduced sentence. Ms. Srey wants Duch to be imprisoned in a jail cell that does not have air conditioning or good food. She also

wants him to read the confessions that he and his interrogation staff forced S-21 prisoners to write.

Group 4: Accepts 19 Years

Among the small number of interviewees who were satisfied with the 19-year sentence, several reasoned that Duch would die in jail. Both Oeun Ret and Suon Auok of Katok commune, Kandal province, think that the 19-year jail sentence is fair given Duch's old age and the likelihood that he will die jail before being freed.

Pel Kimlang, of Svay Khleang Commune, Kampong Cham province, also accepted the sentencing, although for a very different reason. She turned to her understanding of Buddhism to form her perspective on the case. She explained, "We follow the Buddha, and he asks that we forgive, so if there are three choices of release, execution, or imprisonment, I would chose the middle choice of imprisonment so that Duch can have a few years to be with his family and die at home because he also has a wife and children." She further added that killing someone as a form of punishment would only result in continuous revenge-taking. "If someone who kills a person is crazy, and if we did same [thing], we would also be crazy too," reasoned Ms. Pel.

Perhaps the interesting interviewee who also accepted the 19-year sentence is Pol Pot's nephew, Srey Hean. Mr. Srey, from Khum O Kunthor commune, Kampong Thom province, felt that a 19-year sentence is appropriate. He did warn however that if Duch is still alive after serving his term, Duch might seek revenge or create other safety concerns.

Morning after the Verdict: Kandal Province

Interviews with people in Katok commune, Kandal province, right next to Phnom Penh where the Khmer Rouge tribunal is located, revealed quite a number of people who were unaware of or indifferent to the verdict announcement. Although many did know about the verdict from television, radio, relatives, and even neighbors, many others were completely unaware of the verdict announcement and some were even unaware of the Khmer Rouge tribunal in general. Of the 27 people interviewed by DC-Cam on the



An audience sharing her views on Duch

morning after the verdict hearing, 13 of them said that they were unaware or unconcerned with Duch's verdict. Soam Aum, Say Pen, and Chat Samnang were unaware that Duch's verdict was delivered the day before. Likewise, Las Mao and Say Sophat did not know that the court announced Duch's verdict because they were busy transplanting rice.

Interviews the day after also revealed that some people still believed that Duch was sentenced to 35 years in prison despite intense on-air clarifications from tribunal officials. Phun Savon expressed disapproval with Duch serving 35 years in jail. For her, justice has not been delivered. Su Hean, also believing that the sentence was 35 years the day after, was likewise disappointed. She felt that his crimes were too heinous to warrant only 35 years in jail. She requested that the tribunal reconsider its decision. However, Tep Somaly and Chuob Nim said that they accepted the 35-year sentence when interviewed the following day.

Beyond the Jail Sentence: Civil Parties and Reparations

Although much of the attention after the Duch verdict has focused on his jail sentence, the issues of civil parties and reparations are also important and no doubt will generate greater attention once the shock

of the 19-year sentence wears down. At the press conference following the verdict announcement, all three civil party groups expressed grave disapproval with Duch's 19-year sentence, the tribunal's disregard for civil party participation, and the rejection of reparations.

Many Cambodians had wanted Duch to receive life imprisonment since Cambodia does not allow the death penalty. The prosecution asked for 40 years imprisonment. Given Duch's age of 67, a 40-year sentence guaranteed that he would die in prison, providing some comfort to those who wanted a life sentence. The harsh reality of 19 years however is considerably less than what people wanted and does not guarantee that Duch will die in prison. Further, the judges' decision to frame the punishment as 35 years, rather than 19 years, has not only misled many people, but has some wondering whether it was strategic or not. Whatever the tribunal's intentions, it has created increased frustration and anger among civil party participants who already were having a difficult time dealing with the court since Case 001 began in March 2009. Another major blow to civil parties was the court's declaration on the verdict date that at least 24 civil parties are not recognized



People in Kandal watching documentary about Tuol Sleng Prison

by the court. These were civil parties that had been engaging with the court for many months under the assumption that they were a legitimate part of the process.

Perhaps the least talked about issue immediately following the verdict by ordinary Cambodians is that of reparations. Among the more than sixty people interviewed by DC-Cam during the film screenings, only a few of them talked about reparations. There are several reasons for this. First, many Cambodians aren't aware that it is possible to seek, or attempt to seek, reparations from the tribunal for what occurred under the Khmer Rouge regime. Second, the process by which this is achieved (through civil parties), is also little known to many Cambodians. Third and perhaps more fundamentally, many survivors are not interested in receiving material compensation for what is undeniably an irreplaceable loss. The fact that 20% of the population perished meant that at least every person in Cambodia lost a family member, in addition nearly all of their property. Thus the main attraction of the Khmer Rouge tribunal for survivors has been to simply find out what happened during the three years, eight months, and the twenty days of Khmer Rouge rule.

Nevertheless, denial of civil parties' reparation requests (with the exception of two: the inclusion of the names of S-21 victims in the verdict judgment and

the distribution of Duch's apology) delivers a very cold message to victims, especially given that many of these requests required relatively little time and money such as the conservation of the paintings of S-21 survivor Vann Nath which are already displayed at the Tuol Sleng Genocide Museum, construction of a walkway along the outside wall of S-21, and writing a letter to the Cambodian government to request an apology for the civil parties. Agreeing to a small portion of these requests would have placed the tribunal in a much better standing among survivors. John D. Ciorciari, a professor of Public Policy and Cambodia expert at the University of Michigan, believes that "the tribunal does have a role in reparations." He further believes that the tribunal should have worked with civil society from the very beginning to work out arrangements in order to fulfill some of the civil parties' requests and that failure to do this was a "missed opportunity." As more attention is given to the matter of reparations in the coming days, perhaps more Cambodians will begin to think about the court's role in not just delivering legal justice, but also in helping to memorialize the tragedy of the Khmer Rouge regime. Moreover, given that many are displeased with the light jail sentence, agreement to some reparations that benefit society as whole such as those focused on genocide education, mental health clinics, or the construction of memorial

or pagodas, would help to lessen the anger and disappointment that many feel. Chab Khoung of Rumlech commune, Pursat province, in reacting to what he believed to be a 35-year sentence, responded "I think that 35 years in prison is not enough, however there is nothing that I can do about it...I would like to see reparations like the construction of pagodas in the future."

Dacil Keo, PhD Candidate at the University of Wisconsin-Madison, DC-Cam Public Affairs officer.



Villagers reading DC-Cam's *Searching for the Truth* before the verdict was screened

THE DUCH VERDICT: REPORT FROM FORMER KHMER ROUGE STRONGHOLDS OF SAMLOT AND PAILIN

Anne Heindel and Savina Sirik

I. Overview

The Documentation Center of Cambodia (DC-Cam)'s Living Documents Program recently held forums about the Extraordinary Chambers in the Courts of Cambodia (ECCC)'s first verdict in two former Khmer Rouge strongholds: Pailin town, Pailin Province on August 16, and O Snuot village, Samlot district, Battambang Province, on August 17.

On July 26, the ECCC issued its judgment against Kaing Guek Eav alias Duch for crimes committed in connection with the S-21 detention center. DC-Cam hosted live and replayed screenings of the verdict pronouncement in seven provinces to collect participants' reactions. It also sought to evaluate the reaction to the Duch verdict and encourage discussion about its meaning in advance of the trial of Nuon Chea, Khieu Samphan, Ieng Sary, and Ieng Thirith—the four most senior living Khmer Rouge leaders.

Although limited to one detention site, the Duch trial provided the first opportunity for Cambodians to hear public discussion and debate on policies of the Democratic Kampuchea period that resulted in the deaths of nearly two million people in only three years, eight months, and twenty days. Duch's confession of his crimes and the court's judgment of his actions can be meaningful even for survivors unconnected to S-21, as they speak to the responsibility of the many other prison chiefs still living who will never be held accountable for similar acts.

The residents of Samlot and Pailin offer unique perspectives on the verdict and who bears responsibility for the abuses of the Democratic

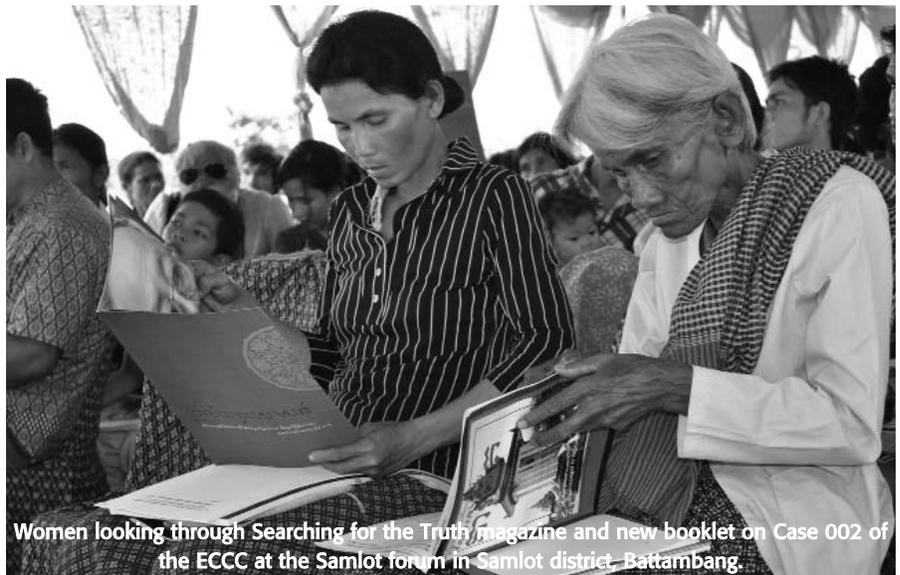
Kampuchea era. Samlot, where Duch converted to Christianity and was discovered living under an assumed name in 1999, hosts a large Christian community, whereas Pailin is overwhelmingly Buddhist. They were two of the last Khmer Rouge strongholds and are home to many former KR cadre and their families.

After screening the ECCC verdict pronouncement, the Living Documents Team led an exchange of views on the judgment and Duch's 30-year sentence among the more than 100 participants—including students, teachers and parents, both victims and perpetrators—attending each forum. Discussion centered around two questions:

1. How does the Duch verdict contribute to forgiveness?
2. How does the Duch verdict contribute to genocide education?

In addition to eliciting participants' personal reactions to the judgment, the team solicited their religious perspectives.

The team screened two films at both locations: "Behind the Walls of S-21" and "Tuol Sleng 1979." It



Women looking through *Searching for the Truth* magazine and new booklet on Case 002 of the ECCC at the Samlot forum in Samlot district, Battambang.

also distributed copies of the Duch verdict, DC-Cam's booklet entitled *Genocide: The Importance of Case 002*, *Searching for the Truth* magazine, the textbook "A History of Democratic Kampuchea (1975-1979)," and ECCC materials.



Monks and community members attending Duch's verdict and film screening in Wat Kaong Kang, Pailin sub-district, Pailin city.

The Living Document's Program seeks to increase the participation of ordinary Cambodians in the work of the ECCC, help them better understand DK history and the court's legal processes, and provide them with an opportunity to see court proceedings and to speak to court officials. Since ECCC proceedings began in 2007, the Program has brought around 10,000 people, including 1,500 commune chiefs and nearly 400 Cham Muslim religious leaders, to Phnom Penh to receive legal training, observe proceedings at the ECCC, and participate in discussions about what they have seen.

The screenings were held in cooperation with the Ministry of Interior and funded by U.S. Department of State Bureau of Democracy, Human Rights and Labor (DRL) with the core support from USAID and Sweden. OSI, Denmark, Australia and Norway provided the screening materials.

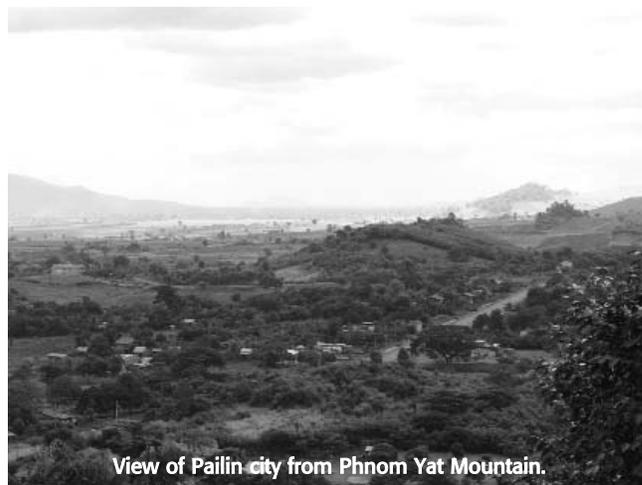
II. Pailin Screening

Pailin is located in the Northwest of Cambodia, just kilometers from the Thai border. Before the Cambodian civil war in 1970, Pailin was a small town made up primarily of ethnic Burmese Kola people,

who were wealthy due to the abundance of gems in the area, primarily rubies and sapphires. According to many anecdotal accounts, until the late 1990s, gems were so plentiful in the region that it was possible to find them lying on top of the ground after a heavy rain.

When the Khmer Rouge took over the country in 1975, they attempted to drive the Kola out of the area. Instead of moving south toward Battambang, they attempted to move toward the Thai border to escape. As a consequence, they were massacred en masse and very few survived. It is not clear how many live today in Cambodia; a small number live in the United States, providing funding for Wat Kaong Kang where the verdict screening was held.

The Khmer Rouge moved to and controlled the Thai border area after the Vietnamese chased them out of Phnom Penh in 1979. Though primarily based in Thai territory, they also operated within Cambodia from Anlong Veng in the north down through the Cardamom Mountains all the way to Koh Kong province in the south. Pailin became a staging area for regular battles between KR soldiers and People's Republic of Kampuchea (PRK) soldiers, supported by Vietnamese forces, until the early 1990s. Due to this protracted conflict, the area of Pailin, like much of the border area, was some of the most heav-



View of Pailin city from Phnom Yat Mountain.

ily land mined in the country. After most Vietnamese troops left Cambodia in 1989, Khmer Rouge cadre and soldiers seized the area. From then until 1996, the KR held almost uninterrupted control of the district and it became one of their major strongholds.

In 1996, the second co-prime minister struck a deal with Ieng Sary to win his defection to the new Royal Government of Cambodia. In return for Ieng's surrender with around 10,000 supporters (comprised of a reported 3,000 soldiers and 7,000 civilians-possibly amounting to as much as half of the KR's military strength), Ieng received a limited pardon from the King, and Pailin was made a semi-autonomous special economic zone under Ieng's control. By 1998 the city had its first bank. Local officials were given the authority to collect and use all city revenue until 2001. Y Chhuan, a former Khmer Rouge commander and Pol Pot body-guard became municipal governor, and Ieng Vuth, Ieng Sary's son, became deputy governor. Y Chhuan, a member of the Cambodian People's Party (CPP), is also a member of parliament. They retain these positions today. They and Sok Pheap, a former KR military commander, were instrumental in breaking the power of the Khmer Rouge from within by integrating KR soldiers into the national army. Most soldiers merely switched uniforms, or wore some combination of the two. This was part of Prime Minister's "win-win" policy for disarmament and reconciliation, through which "those who integrated into the government became the government."

After he defected, Ieng Sary founded a political party called the Democratic National Union Movement, including membership from Pailin, Malai, and South and North Sisophon. All top officials were former Khmer Rouge. Ieng Sary attempted to distance the party from the Pol Pot faction, claiming that the new party had no ideology or party apparatus but was established "for the necessary purpose of Reconciliation, Unity and to Stop Fighting." Yet the party included a central committee, comprised seven members including Y Chhuan, Chairman; Sok Pheap, Vice Chairman; and Ieng Vuth, member. Moreover, eight divisions of KR soldiers each had three

representatives on the "permanent committee for each battle field." After setting up these committees, the leadership "would step ahead towards courage its spirit for the strengthening the Talk Process in purpose of Stopping the Complete Bloodshed in Cambodia for her lovely People of Cambodia" (sic). The movement appears to have disbanded after the defections of Nuon Chea and Khieu Samphan, but it never formally dissolved so its status today remains unclear.

From the beginning of the 1990s until the early 2000s, the KR, including primarily Ieng Sary and his loyalists, exploited Pailin's abundant natural resources. After his defection, Ieng Sary controlled most of the KR border trade and sold concessions to Thai companies for large-scale gem excavation operations. After the 1996 reintegration, brothels, gambling, and drug trafficking became a feature of the local economy, and the area suffered from delinquent youth. By the beginning of the decade, most of the area's gems and once abundant timber were gone and the formerly booming economy suffered from a lack of alternative investment. In 2008, with tensions building between Cambodia and Thailand over control of Preah Vihear temple, KR troops were actively recruited to protect the border area, this time to fight against Thai instead of Cambodian government troops.

As of 1999, a reported 25,000 KR defectors lived in Pailin, including ten of the 12 most significant KR leaders. For that reason, many thousands of former KR and their children live in Pailin to this day, although a near equal number of new people have also moved in seeking business opportunities. Close to 50% of students, including just a few years ago the children of Pol Pot and Khieu Samphan, are related to former KR members. For this reason, before the arrest of Khieu, Nuon Chea, and Ieng Sary, teaching Khmer Rouge history was challenging. Because of reduced KR influence and the removal of these leaders from the community, tensions raised by the new curriculum have been reduced, if not erased. Still, it will take time for the expanded coverage of the KR period to make an impact here. Children of former KR soldiers for the most part receive only partial

histories and justifications of having acted for the "national good" from their parents. It can be daunting for the students and teachers to reconcile those accounts with the new official version of the history, which names some former Pailin residents as perpetrators. But complete rejection of Khmer Rouge studies is no longer possible. Last year questions about KR history were included in final secondary school exams for a second year in a row, making study of this topic now mandatory.

Wat Kaong Kang

DC-Cam's Pailin verdict screening was held at Wat Kaong Kang. Wat Kaong Kang is unique compared to other Buddhist pagodas. The structure of the temple



Wat Kaong Kang, Pailin city, where Duch's verdict screening and forum took place.

and its bright colors show influences other than Cambodian. According to one of the monks, the architecture was strongly influenced by the Burmese Kola people who migrated to this part of Cambodia after the Thai-Burmese War centuries ago. They built their own community in the Pailin area and took part in the construction of the pagoda about 84-85 years ago. The head monk named Lok Ta Ouv was not Burmese himself, but collaborated with the Burmese community in its creation. Despite their near extermination during the KR period, some Kola people occasionally visit, offer financial support to the wat, and are able to read the scriptures on the

walls today.

Participant's views of verdict

On August 16, DC-Cam screened two Tuol Sleng films and the Duch verdict, and held a discussion at the Wat. Seng Sitha, a history teacher who has participated in DC-Cam's Genocide Education program, and Savina Sirik, DC-Cam's Living Document's team leader, facilitated the forum. Nop Pol, a representative of Buddhism for Development, assisted the discussion.

Around 100 people watched the verdict and film screenings, 30 of whom were Buddhist monks. Most accepted the legal sentence of 35 years, minus 11 years time served, and felt that it was long enough because it would bring Duch to the end of his life, or at least to an advanced age by the time of his released. Moreover, they did not believe that the sentence was vindictive. They expressed that it is what Duch must receive under human law for what he has done. However, participants did not believe that Duch could be forgiven in this life, as under religious law, he would still receive karma—religious punishment—in the future until he repays what he has done.

For example, Kaoy Luom, aged 73, said that he believe the verdict is acceptable. Although to his mind Duch should have received a life sentence, it was nevertheless suitable owing to Duch's cooperation with the court. According to Buddhism, Duch still has to face punishment after he dies. He might be punished



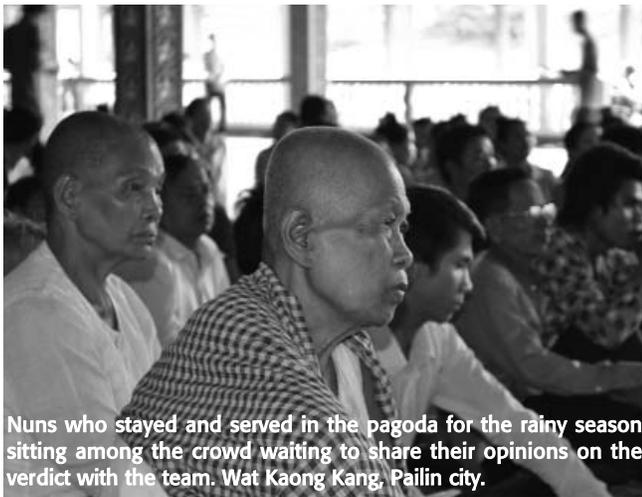
Local villagers and monks viewing Duch's verdict from a white screen in the dining hall of Wat Kaong-Kang, Pailin sub-district, Pailin city.

by going to hell. Kaoy Luom said, "No matter how many years the tribunal sentenced him to, I think this tribunal is established to set a good example for the young generation."

A pagoda elder said that he thought the verdict was just and he could accept it. "Either 35 or 19 years, I believe he still has to die in prison as he's quite old



A pagoda elder sharing his view on Duch's sentence with screening participants.



Nuns who stayed and served in the pagoda for the rainy season sitting among the crowd waiting to share their opinions on the verdict with the team. Wat Kaong Kang, Pailin city.

now. We are Buddhist followers. We should be able to share and forgive. We should also be able to spread our compassion and accept the verdict."

One monk emphasized that the trial and sentence was not meant to take revenge against Duch. Because Duch committed evil deeds, he must receive those bad deeds back in equal measure. If Duch had done a lot of good deeds he would have been able to delay receiving the bad, perhaps until the next life. A second monk noted that killing and harming others is a sinful act and said that Duch should go to the 8th hell since

he harmed and killed a lot of people. A third monk said that in respect for the rule of law, Duch must be brought to trial and sentenced. By doing this, he will not be able to commit more crimes. Moreover, the tribunal can set a good example for the younger generation that a wrongdoer should be punished for their wrongdoing. Nevertheless, Buddhists believe that in the next life Duch must be punished for his bad acts with another level of suffering and must go to hell.

Notably however, Nop Pol from Buddhism for Development did not think 19 years was acceptable because it wasn't enough to pay back such a grave crime. He worried about what would happen if in the future Duch's sentence is reduced to 10 or 12 years. He said, "In Buddhism, we believe that killing is a gravely sinful act. People should go to hell for killing people. Although Duch was sentenced to 19 years in prison in the human world, he will have to face hell for years before he's reborn as a human." He said that in his view, the ECCC was like the 1993 election assisted by UNTAC: Although the international community has spent millions of dollars to run the tribunal, it has not been so beneficial for Cambodian people.

III. Screening in Samlot

Samlot is 50 kilometers from Pailin, and even closer to the Thai border. It is a fertile land surrounded



Corn fields and mountains, Samlot district, Battambang province.

by low mountains, and in the rainy season is lush and vibrant green, untouched by modernity. If not for its distinction of being the most heavily mined area of the country, it would be one of the most desirable

places to live in the country. It is a much poorer and less developed area than Pailin, and residents' battle scars are more obvious: a high proportion of residence have missing limbs or other wounds not primarily from land mines, but from their time fighting for the KR. Many Samlot residents lived for years in KR camps on the border, participating in fighting against the PRK government, and only settled down to a peaceful life in 1999 in this enchanging area when the district became the last KR area to come under government control.

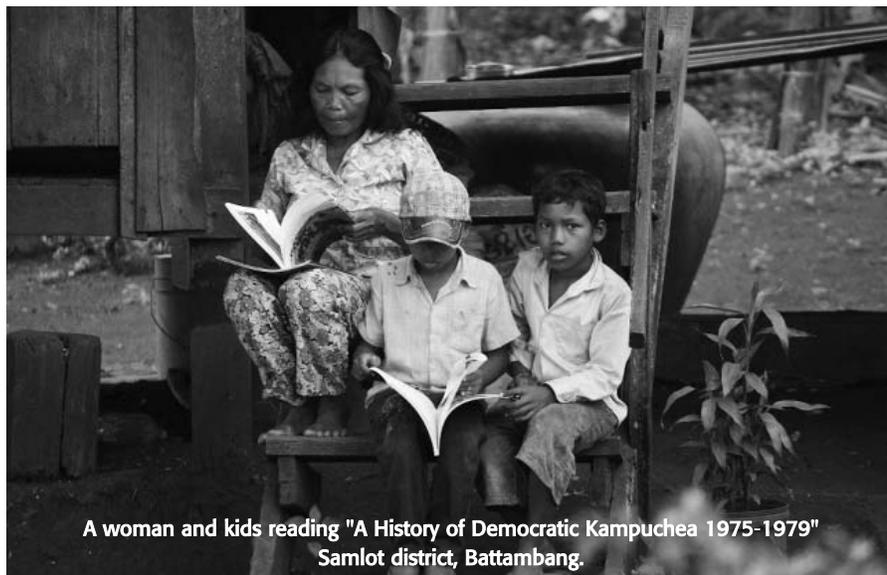
KR members living in Samlot are not as notorious those who have settled in Pailin. Most are lower level cadre and soldiers. Yet, those seeking to escape their pasts make up a high proportion of residents, including Meas Muth, a former military division commander and son-in-law of Ta Mok. He is one of the named cadre in "Seven Candidates for Prosecution: Accountability for the Crimes of the Khmer Rouge," by Stephen Heder with Brian D. Tittmore, which claims that Meas Muth was present at and endorsed planning sessions authorizing political purges. Today, Meas Muth is a Royal Cambodian Armed Forces (RCAF) brigadier general.

Samlot was the site of early Khmer Rouge rebellions against Prince Sihanouk's Sangkum government. In 1967, there was a peasant uprising that is considered by some to signal the official start of the KR's armed struggle. That year the new Lon Nol government brought in the army to assist the collection of rice in order to

ensure that most of the crop would be sold to the government instead of on the black market as in previous years, and for a price around a third of the market rate. In April, around 100 villagers burned a government farm, killed soldiers and village chiefs, and stole their weapons. Violence lasted until August, spreading to other districts. According to Ben Kiernan, the rebellion was the most serious violence to erupt in the country since an 1885-86 uprising against the French. Over 4,000 villagers fled from June-July, and as many as 10,000 people may have been killed during the government's subsequent repression. Khmer Rouge leaders such as Khieu Samphan were aware of the situation, and agitated in Phnom Penh for the withdrawal of troops. Due to the political fallout, Lon Nol was forced to resign as prime minister. After the violence ended in August, the Khmer Rouge, reportedly commanded by Khieu Samphan, began conducting organizational work in Samlot and other rebel areas. In January 1968, 5,000 or more villagers left their homes, with 400 imprisoned. This time the rebellion was planned, and quickly spread to other provinces.

In response to the government's crackdown on the Samlot villagers, Kaing Guek Eav alias Duch, the future director of the S-21 detention center, reportedly sent a group of his students to Kampong Cham town to protest. He was arrested shortly after, and only released as part of a large political amnesty in 1970 after the Lon Nol coup, after which he devoted himself fully to the KR.

After the overthrow of the Khmer Rouge in 1979, Samlot, like Pailin, was an epicenter of KR-PRK fighting and KR refugee camps lined the border. When Ieng Sary defected in 1996, a reported 1,800 KR soldiers in Samlot surrendered and were integrated into the RCAF. However, in 1997, after open violence between the two Cambodian co-prime ministers broke out, these defectors attacked Hun Sen troops and took control of much of



A woman and kids reading "A History of Democratic Kampuchea 1975-1979"
Samlot district, Battambang.

western Samlot. They engaged in low intensity fighting against his government, moving with their families to the Thai border area and living in camps. After the surrender of Nuon Chea and Khieu Samphan in 1999, they defected a second time, and began moving back to rebuild their destroyed homes despite the prevalent land mine danger.

Duch moved to Samlot in 1995, then worked in the camps along the Thai border with non-governmental organizations, settling back in Samlot in 1998. During that period he converted to Christianity and joined the local church. DC-Cam's Living Document's team visited the home of Duch's sister, Hang Kim Hong, and briefly spoke to her and her husband Nop Bun Long at the house where Duch lived before his arrest in 1999. Kim Hong was reticent to speak or to have her photograph taken and did not wish to attend the verdict forum. In previous comments to a journalist she said that she was not in contact with Duch. She did say, however, that she was upset that the Western journalist who called authorities attention to her brother in 1999 had misled Duch by bringing UN personnel and implying

that they were there to help him find refuge in a third country. Although she did not name the journalist, it appeared she may have been speaking about Nic Dunlop. DC-Cam Director therefore arranged to have a Khmer language copy of Dunlop's biography of Duch, "The Lost Executioner," sent to Samlot and left it for her with a note asking that she let him know if there are any portions of it that she finds inaccurate.

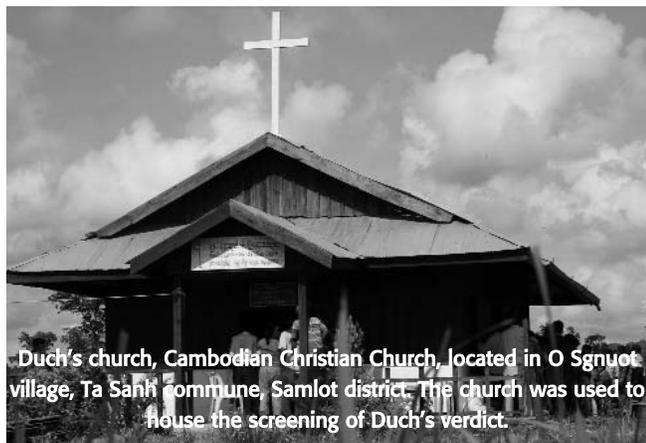
In an effort to provide information to villagers who did not attend the Church screening, after the forum the team drove through the district from house to house distributing to former Khmer Rouge soldiers and their families at least 150 copies of "The History of Democratic Kampuchea (1975-1979)," the Genocide: The Importance of Case 002 booklet, Searching for the Truth magazine.

O Sgnuot village church

The small wooden church of O Sgnuot village, Ta Sahn commune, Samlot district, was the locale for the Samlot forum. The church covers only a small area of the vast green fields. The Christian community was formed by the support and initiative of a Cambodian



DC-Cam staff members visited Duch's sister's house located in Ta Sanh commune, Samlot district, Battambang. Duch's sister, a midwife, was however reluctant to speak to DC-Cam staff and declined to attend the screening.

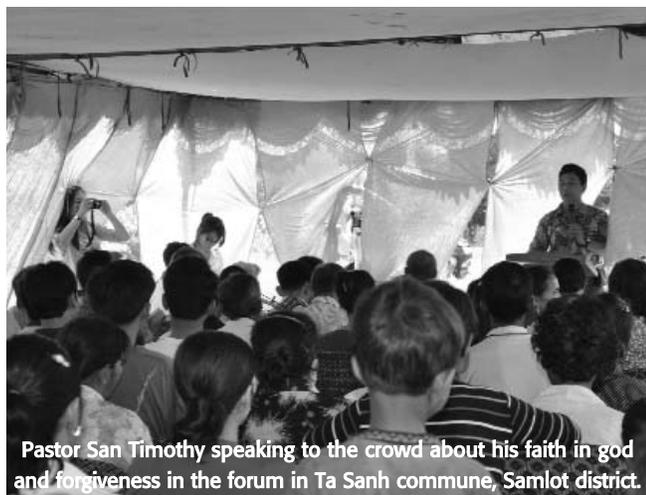


Duch's church, Cambodian Christian Church, located in O Sgnuot village, Ta Sanh commune, Samlot district. The church was used to house the screening of Duch's verdict.

American named Christopher Lapel. He helped convert people all over the country, including Duch, and met Pastor Kimmoung Kry of the Golden West Cambodian Christian Church in 2002. The former Pastor passed away three years ago and now an acting Pastor, Saing Kimsrieng, has taken over. Only five families in the area have formally converted, though others attend church functions. Most are former Khmer Rouge cadres. Some knew Duch, and remarked that he is looking healthier since his arrest.

Participant's views of verdict

Prior to the screening of the films and verdict reading to around 100 people, the man introduced Duch to Christopher Lapel and provided Duch spiritual guidance, Pastor San Timothy, spoke to the crowd assembled in a colorful tent outside the church. He said that he had introduced Duch (known at that time as Hang Pin) to Jesus, and that Duch served God. "God brought him to lovingness—to appear in the court and



Pastor San Timothy speaking to the crowd about his faith in god and forgiveness in the forum in Ta Sanh commune, Samlot district.

confess everything," he said. "God always forgives people, even though this person was his enemy: He is the sample of forgiveness." In Pastor Timothy's mind, god brought Duch to court to bring justice to the people. God is the model of forgiveness so that all people can forgive. God died on the cross because he loves justice. He teaches us to forgive everyone, even our enemies. Pastor Timothy regularly visits prisoners and believes that we must love them because god allows us to live with prisons. Despite his acceptance of the verdict, Pastor Timothy expressed doubts about Duch's expressions of faith after he reversed his guilty plea and asked to be set free at the end of his trial. In the Cambodia Daily he was quoted as saying, "Duch told everyone that he believed in Jesus, but to change like this means that he was just using Jesus' name. So that's double guilt."

DC-Cam Director Youk Chhang then read from the Bible: Genesis 9:6. "If anyone sheds the blood of man, by man shall his blood be shed; for in the image of God has man been made," he read. He asked a participant to come up and read portions of the text. When the footage of Duch was shown, the crowd immediately recognized him and called him "elephant man," a nickname they had for him because of his wide ears.

After the screening, Youk Chhang asked the crowd if the Duch judgment was just. Some who spoke up emphasized that verdict was just because it was long. Chab Mao said that during the DK she had worked in a mobile unit in Kandal Province. She was put in a labor camp because her parents had been Lon Nol Soldiers. Because she broke a shower there, she had been imprisoned for a week and been given limited food rations. Yet still she said that she felt the verdict was okay because it is sufficiently long. To her, because Duch confessed his mistakes he should be forgiven. "His confession is a good example for others who killed people and have not acknowledged their responsibility," she said. Chao Kim Leng, 30, said that "It is not much of a sentence, but as people are kind and feel sympathetic to old people, we think that it is

enough for him."

A few participants would have preferred that Duch receive a life sentence, but noted that he was old so it should be okay, implying that they hoped he would die in prison. Chey Veasna pointed out that some people who make small mistakes end up in



Ms. Chab Mao sharing their views on the verdict at the forum at O Sgnuot church, Ta Sanh commune, Samlot district.



Chuon Pheng sharing his views on the verdict at the forum at O Sgnuot church, Ta Sanh commune, Samlot district.

prison for 15 years. He would have been satisfied if the verdict going forward was 30 years, but he considered Duch's 19 years left to serve too low. He wanted Duch to have a life sentence so he would die in prison. Nevertheless, he thought a 19-year sentence may be enough to ensure that he does die there. One man had tears and openly expressed anger with the length of sentence because five of his siblings had died during the regime.

A majority of participants said they knew little of the trial but felt Duch had already paid for his sins. One person said, "I think Duch has suffered enough

already." Commune Chief Chuon Pheng told the forum that he and other villagers were neither aware of the leaders of the Pol Pot regime, nor the Toul Sleng interrogation camp. He found the verdict acceptable, but emphasized that the people in his commune were busy with family and economic life and don't have much time to think about the tribunal. "We experienced the regime, but we were not aware of Pol Pot. We only try to work for our living. The tribunal is related to politics." San Timothy's fellow pastor Sang Horn even called Duch a "hero" for having the courage to repent.

Then Youk Chhang tried a new approach, asking participants where they were from: how many from Takeo, how many from Pursat? People enthusiastically raised their hands until Youk Chhang pressed, "So why are you here now?," forcing them to consider their own participation in the regime instead of distancing themselves from their responsibility. Once the import of his question became apparent, hands went down and participants became less excited to explain their journey to Samlot.

As has happened before in KR areas, a young man turned the question back on Youk Chhang, saying, "I like your question asking if the verdict is fair or not. What is your view?" In response, Youk said that to him, the verdict is right. The court is for peaceful living in the future. If there were no tribunal, relatives who died during the regime would have died without justice and their deaths would be meaningless."

IV. Screening in Phnom Penh

After learning about the scheduled Pailin and Samlot forums, Pastor Moses Samol Seth of Phnom Penh asked that DC-Cam lead a discussion about the verdict among 50 representatives of the 800 Christian Churches in Cambodia. This event was held at AGAPE International Mission, Phnom Penh Thmei, on August 12 and led by Savina Sirik and Director Youk Chhang.

As he did in later Samlot, Director Youk Chhang started off the discussion by quoting Genesis 9:6, "If anyone sheds the blood of man, by man shall his blood be shed; for in the image of God has man been made." Following this logic, "Because Duch took

blood from others we have to pay them back; Duch must receive what he has done" by being sentenced by the court.

Unlike the Christian community in Samlot, the participants in Phnom Penh were well versed in biblical scripture. They accepted the verdict as appropriate earthly justice, but believed that it was important that Duch forgive himself and that others forgive him in order to promote long-term reconciliation.

Participants offered the view that Duch confessed because he has god in his heart, and that he can be forgiven. For example, a priest attending the forum who lost several family members under the regime said that Duch should not be put in jail, but instead made to do work beneficial to the community. He should be made to walk from house to house, province to province, to say that he is sorry to victims. This would give him time to change himself and make himself pure. The priest believes that everyone should forgive Duch. If he is killed, the dead will still not come to life. The most important thing is that Duch acknowledged wrong doing and confessed to his crimes.

Similarly a Christian student who is studying in Thailand said that Duch should be allowed to speak

about his experiences so that the crimes committed during the Khmer Rouge period cannot happen again. Duch should walk from house to house, from one victim to another, to help prevent future genocides and promote reconciliation. If Duch is kept in jail like a bird in a cage he will seek freedom. Therefore he will have sin in his heart forever.

The director of International Mission requested that DC-Cam provide books and film screenings about the Khmer Rouge period for all Christians so that they can learn about what happened and prevent future genocide. For him, the prosecution of Duch is the duty of the government and the court, yet we should forgive him and not treat him badly even though he did bad things in the past. He said, "Loving is giving. Love is sharing. Love is caring. Love is protecting." By this he meant that we must share love with others, preserve love, so that the country can move forward and develop.

◆ *Anne Heindel is an American lawyer and currently a DC-Cam legal advisor.*

◆ *Savina Sirik is a team leader of Living Document Project.*



BEFRIENDED WITH MURDERER'S SON

Socheat Nhean

Hang Sok Sopheara had never seen his father, except in a four by six centimeter student photo that survived the Khmer Rouge regime hidden in his mother's cloth pack. The bitter history of Cambodia in the 1970s separated him from his father forever.

One day in mid-1977, Sopheara's father, a school teacher, was taken away by one of his neighbors when his son was too young to learn how to talk and love him. Two years earlier, in February 1975, his son was born in a small house near Silip market in Phnom Penh, just three months before a group of Khmer Rouge soldiers entered the heart of Phnom Penh. In early April, as the situation in Phnom Penh worsened due to Khmer Rouge attacks on all sides, the family of four, including two-month-old Hang Sok Sopheara, migrated to Taing Krasaing commune, Kampong Thom province, for safety. Thirty-five years later, in a small hut on a high school campus, Hang Sok Sopheara said that Taing Krasaing was his mother's homeland. It was true; and it was controlled by the Khmer Rouge years before their arrival. What Sopheara has learned about the Khmer Rouge regime comes from his mother. His

sister, who is now living in the United States and is three years older than him, knows little about the regime or about what happened to her father.

Nevertheless, the school teacher who died in 1977 influenced his son, who is now a history teacher at a high school near Kampong Thom provincial town. Sopheara confidently said, "It was my father who inspired me to study history and then become a history teacher; he taught history at a Prey Veng High School before the Khmer Rouge time." Now, as a teacher, Sopheara is teaching the history of Democratic Kampuchea, which his parents lived through, to students of the younger generation.

Sopheara learned from his mother that his family was well-off before the Khmer Rouge regime. His father was the breadwinner in the family, and had little knowledge of farming. By the time the Khmer Rouge took power in April 1975, his father did not know how to plough and farm and was very bad at transplanting rice stalk. His mother often helped his father in order to not to lose credit. Once in 1976, the Khmer Rouge cadres assigned his father to herd buffalos; unfortunately,



Hang Sok Sopheara being interviewed by a staff writer Sothida Sin

one of them went missing. The whole family was in great sorrow until the missing buffalo appeared a few days later. At a later date, his father was assigned to weave a string for the cows and this task was hard for him to do.

Sopheara's mother said that his father made mistakes and could not complete his job well. His background as a teacher put him in danger. Then the day arrived. Sopheara was in a grandma unit while his parents were at work in the field. From what his mother told him, the night before his father was taken away, he cried a lot. An old lady who was responsible for looking after babies while their parents were working brought Sopheara to his mother that night. The evening of the next day his father was taken away. "It was during dinner time and he was eating," recalled Sopheara. His mother watched quietly as her husband was escorted by Khmer Rouge cadres and walked away, but her heart was in great pain. His father looked into her eyes for the last time and did not say a word; but he knew that he would never have a chance to return. Sopheara, his sister, and mother never saw him come back home since then. The one who took his father away was his neighbor. On the night his father was taken away, the Khmer Rouge cadres returned, but only to take the buffalos that belonged to his father. It was that night that Sopheara's family knew clearly that his father was killed.

Today, Sopheara doesn't want to take revenge against the family of his father's murderer. He understands the situation of the Khmer Rouge regime well, saying that "if the murderer did not kill my father, then he would have been killed too." This is the attitude that allows Sopheara to keep calm about those who killed his father. Now he is friends with a son of that murderer, a mathematics teacher at a high school in Kampong Thom. However, Sopheara takes soft revenge by telling other colleagues about the mathematics teacher whose father caused Sopheara's father's death. Sopheara and the mathematics teacher are friends, but the latter would have been shameful of his father's act towards Sopheara's father. Sopheara

believes that the murderer was paid back for his sin when he was killed by angry survivors in 1979 after the Khmer Rouge regime collapsed.

In Buddhism, those who have done bad deeds receive harm in either the current or next life. Sopheara believes in this concept and believes that the murderer of his father received what he deserved. Nevertheless, Sopheara wants a tribunal to bring those who initiated the brutal regime to justice. He watched Duch's hearing at the Khmer Rouge Tribunal and is looking forward to seeing other senior leaders on trial. With the announcement of Duch's verdict is coming near, Sopheara cannot wait to hear it. With hope, he expects Duch to be jailed. Upset with Duch's efforts to be freed, he wants him to be imprisoned as long as possible. "If the verdict says Duch is not guilty, I would say that the Khmer Rouge tribunal is not fair." Emphasized Sopheara, "children of next generation would say the same." Finally, Sopheara confirmed that Cambodian people need to be reconciled. He said, "It is time to reconcile in order for our country to move forward."

Socheat Nhean is the Team Leader of 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 their 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 grand-parents about what happened, are important to preventing genocide both in Cambodia and the world at-large.*

MURDERER'S NEIGHBORS FEEL NO SHAME

Socheat Nhean

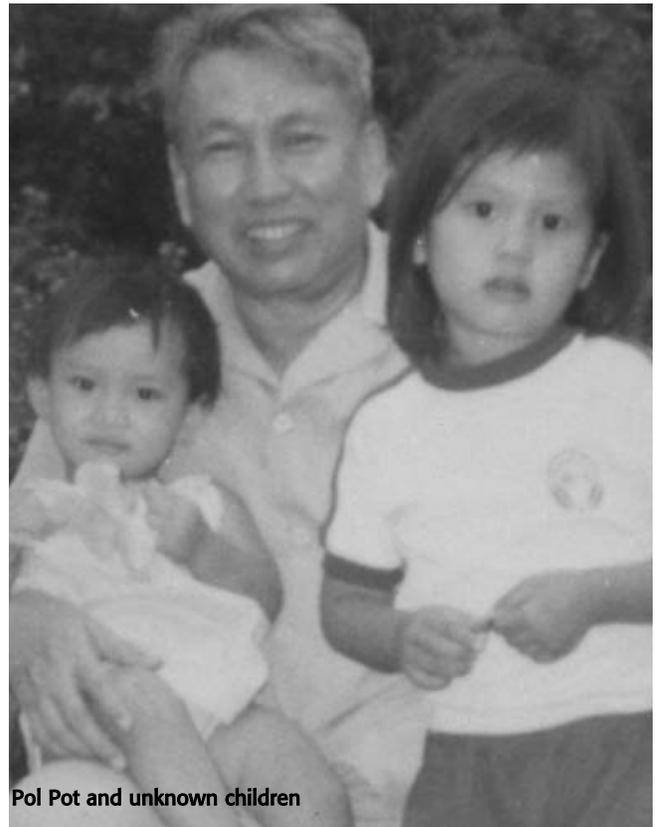
If Pol Pot were alive, I would ask the court to prosecute him and his low-ranking cadres." Marina, a neighbor of Pol Pot in Prek Sbov village

An old lady of Prek Sbov village whom I will call Marina has never given up her desire to take revenge against Saloth Sar, known as Pol Pot, although she follows the principles of Buddhism, which ask every follower to keep calm and forget the past. Marina is seventy-nine years old; she was born at Prek Sbov village. With chronic pain in her knees, she struggles to make Cambodian traditional cake for her daughter to sell at a small shop at the front of her house at Prek Sbov. She shares the same home village as Saloth Sar, whose house is just a few yards away. Because she is younger than Saloth Sar, Marina had never been a close friend of his; however, she was very close to Sar's youngest brother, Saloth Nhep, who was five years old older than her.

Marina knew Sar's parents well when she was a child. "We were neighbors; we farmed together; we participated in ceremonies in the village together and we exchanged food at lunch or dinner time," said Marina. Marina recalled that Sar was a son of Saloth and Nem. Saloth and Nem were a prestigious farmer family. Having a daughter who was a servant of King Monivong, Saloth and Nem were highly respected and honored by the villagers. The presence of a sister in the royal palace likely provided Saloth Sar the opportunity to pursue higher education in Cambodia and then in France.

Kin Choeun, 63, who moved to Prek Sbov in the early 1970s and is currently the village chief, said that Saloth Sar had little emotional attachment to the villagers. "Everyone knows that Saloth Sar was born here; but he left when he was young." Marina seemed to agree with Choeun, saying, "[Saloth] Sar like to study; he visited home occasionally and during his visits he did not get

close to other villagers." Saloth Sar visited home occasionally when he was a student in Kampong Cham and in Phnom Penh. He isolated himself from the villagers of Prek Sbov after he went Phnom Penh to pursue his studies and he permanently left his village after he studied in Paris.



Pol Pot and unknown children

Marina did not know much about Saloth Sar, neither did the other villagers of Prek Sbov who survived the Khmer Rouge regime. Even Saloth Sar's youngest brother, Saloth Nhep, did not know what became of his brother after he went to France. Saloth Sar's destiny was not known. When the country was plunged into forced labor, starvation, and killing, none of Saloth Sar's relatives knew that it was their brother's doing. When he found out later, Saloth Seng, Saloth Sar's older brother, was angry with Sar for the death of his son named Kong in April 1975.

Reminded about Saloth Sar, Marina began recounting what life was like under her neighbor's harsh policies. Although Saloth Sar never visited Prek Sbov, Marina was very friendly to his siblings there, especially Saloth Seng and Saloth Nhep. As neighbors, Marina played and spent time with Seng and Nhep until 1972 or 1973 when the villagers of Prek Sbov were evacuated by Khmer Republic government and relocated to many other parts of Kampong Thom in present-day Kampong Svay and Prasat Sambo districts. Marina was separated from her friends Seng and Nhep because she needed to follow her family to settle in Kampong Thom town during the civil war.

After the Khmer Republic government was defeated by the Khmer communists in April 1975, Marina was evacuated to live in Sala Visay commune. Her old friends, Nhep and Seng, whom Marina had not met for two years, were living at Ta Ho commune, about fifteen miles away. The three still had not met. Like other new people at the time, Marina struggled and worked extremely hard to survive; her two sons and a grandchild did not live through this period.

Her experiences during the Democratic Kampuchea regime have made Marina hate Sar. Marina blames her neighbor for the death of her sons,

one of whom was sent to the battlefield and is still missing. When asked how angry she is with Saloth Sar, Marina replied, "I cannot find the words to say how much I hated him." Marina added that her desire for revenge towards him was stronger thirty years ago, shortly after the Khmer Rouge regime collapsed. As an acquaintance of Saloth Sar, Marina was disappointed that Sar brought the country to period of darkness. "His parents were very nice, gentle and well-off in the village and Sar himself was an educated man. He should not have acted brutally to his friends like me."

Forgiving Pol Pot is not possible for Marina. Although aware of the contradiction with her Buddhist faith, she believes that Pol Pot should be prosecuted because he made lots of people suffer and that lower-ranking cadres who abused people at the cooperatives should be prosecuted as well.

Like other villagers, Marina feels no shame for living where a murderer was born. Some villagers see the village as where Saloth Sar was born, but not where he learned to love. Saloth Sar left Prek Sbov before most of people in this village were born.

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



Housing at Prek Sbov village

NOB BUNNA: AN UNFORGETTABLE MEMORY

Phalla Chea



Nob Bunna

Democratic Kampuchea was a malicious regime that abused many Cambodians and took the lives of approximately two million innocent people. Although the regime has been over for over three decades, those who experienced that brutal era cannot forget what happened to them. A case in point is Nob Bunna—a teacher participating in a training organized by the Documentation Center of Cambodia in cooperation with Ministry of Education on how to teach the textbook "History of Democratic Kampuchea (1975-1979)" who still vividly remembers what happened to him.

Nob Bunna was born in 1960 in Bram Bey Mom village, Treang district, and Takeo province. Wanting to have education, Bunna decided to leave his parents and went to live at a pagoda with Chouch, chief of the pagoda, and Chin, a teacher at the pagoda. In 1970, when the Khmer Rouge army and Lon Nol troops battled against each other in the village, Bunna was injured by an artillery shell. When the Lon Nol army withdrew to Takeo town, Bunna asked them for a lift to a provincial hospital in the town in order to receive treatment. After staying in the hospital for three months, Bunna settled with his aunt's family in the town and furthered his studies at Bros Primary School. The situation in town, however, was not convenient

since Bunna and other inhabitants were unable to travel to far since the Khmer Rouge army had captured many areas in the province.

With the Lon Nol government's power becoming weak, in 1975 the Khmer Rouge captured all of Takeo province. Not long after, the Khmer Rouge evacuated all residents in the town to the countryside. At night, the Khmer Rouge arrested people who had served in the army or worked for the previous government in order to interrogate them. Later, the Khmer Rouge used Trakuon Tek (a kind of vine) to tie the hands of those who had been arrested behind their backs and escorted them away. Every ten people were accompanied by a Khmer Rouge soldier who wore a black uniform and was armed with a gun. Unfortunately, Bunna's uncle was one of those taken away and no one has ever heard anything of him since. The remaining people were classified as "new people" or "17 April people," and evacuated to Champa pagoda located in Ang Tasom sub-district.

A week after he was evacuated, Bunna was assigned by Angkar to live in his home village. However, Bunna was able to live with his parents for short time only because he then was sent to work in mobile unit consisting of 30-40 members and supervised by a unit chief named Tong. At first, Bunna's unit was appointed to build dike at the rate of 15 meters of land a day, and then 25 meters per-day. Afraid of not completing the task, all members in the unit tried to work very hard. However, they were only allotted watery porridge; three cans of rice for ten people.

One day, Bunna's brother called him to a rice field in order to find fishes. There, Bunna saw plenty of rice. In a state of hunger and exhaustion, Bunna grasped three bunches of rice. Sadly, the Khmer Rouge arrived; they arrested him and sent him to a prison in Svay Seh village. While walking to the prison, Bunna was terrified and thought that his life was

going to end soon. After reaching the prison, Bunna became more frightened because he saw prisoners tortured by being fought, kicked, and sometimes cut with palm leaves or left in a chicken cage under the sun. Moreover, Bunna witnessed some prisoners disappear after being interrogated. Those who still alive were forced to do work such as transferring water from ponds to water plantation fields, planting crops, and building dikes. Fortunately, the Khmer Rouge did not hurt Bunna because it was his first time making a mistake. He was ordered to carry water from a pond to water the crops 300-400 times a day. Three months later he was released and sent back to his cooperative.

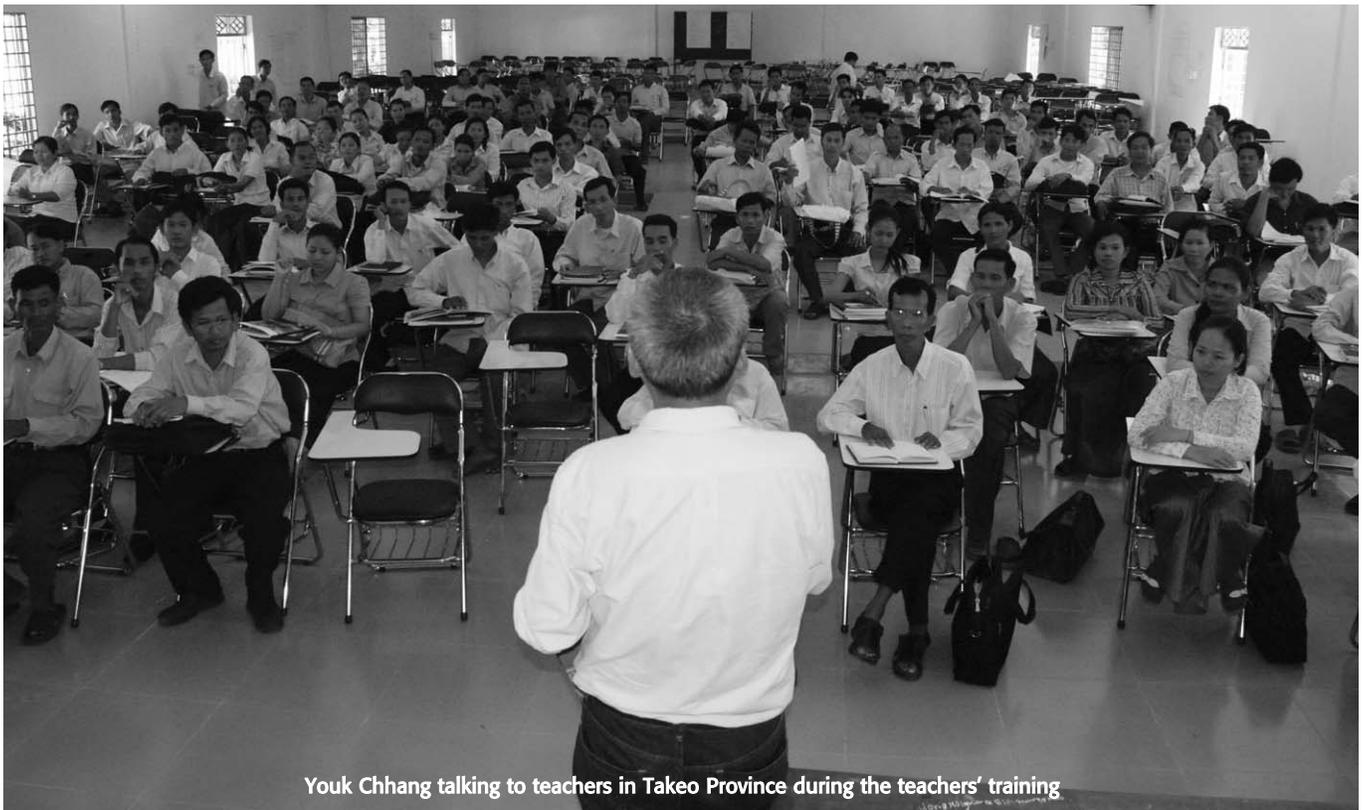
Even though he was freed, Bunna was still investigated by the Khmer Rouge, and ordered to carry earth with a digging hoe every day until his neck became swollen. Seeing many people got sick because of overwork, some 17 April people refused to follow the Khmer Rouge's order. The Khmer Rouge then pushed their head in water to torture them. Later, in mid-1978, Bunna received the bad news that his parents had gotten a serious illness and passed

away because of not receiving treatment.

In 1979, after the Khmer Rouge collapsed, Bunna went to live with his brother in his home village. However, because of living in terrible conditions Bunna made up his mind to be ordained a monk at Bram Bey Mom pagoda where he had previously studied. At the pagoda, Chouch, the chief of the pagoda, and Bunna found nothing so they traveled to Phnom Penh to find books for study materials and supplies to use at the pagoda. Shortly after, he found a case of books including law books and scriptures from an abandon library, and transported them by train back to the pagoda.

Because of his love of learning and the return of stability to the country, in 1983, Bunna was able to restart his studies again from grade 4. Subsequently, he went to study in Prey Sandek Secondary School situated in Treang district. After that, he entered Takeo pedagogy school. Today, Bunna is a history teacher at Sonlong High School, Treang district, Takeo province.

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



Youk Chhang talking to teachers in Takeo Province during the teachers' training

POLITICAL INTERFERENCE AT THE ECCC?

Della Sentilles

On 26 July 2010 the Extraordinary Chambers in the Courts of Cambodia ("ECCC") is scheduled to announce its first verdict in the Khmer Rouge tribunals. The verdict for Guek Eav Kaing, alias "Duch," the former head of S-21, one of the most notorious prisons under the Khmer Rouge, will be an historic occasion for both Cambodians and the international community. Not only will it be a sign of progress, as the war-ravaged country continues to rebuild itself, it may also mark a significant milestone for international human rights advocates who have worked tirelessly to bring this unique, hybrid tribunal into being.

The work of the ECCC is a new experiment in international law and it has generated its fair share of criticism. Recently, the Open Society Justice Initiative ("OSJI") released a report alleging political interference by the Royal Government of Cambodia ("Cambodia") in the court's proceedings. The report supports its allegations with two principal examples: (1) the controversy over pursuing five additional suspects for cases 003 and 004; and (2) the refusal of six high-ranking government officials to submit to questioning by the office of the co-investigating judges.

While some criticism of the Cambodian justice system and the ECCC itself may be merited, and indeed useful, the OSJI report is flawed for a number of reasons. First, the report infers that political interference in the ECCC is inevitable based on studies that focus primarily on Cambodia's domestic court system. Secondly, the dispute over cases 003 and 004 provides evidence that the tribunal's internal rules are effective in checking political interference. Thirdly, the government officials' refusal to cooperate is actually more an example of the United Nations' ("UN") inaction and even impotence rather than political interference. And finally, the OSJI report overlooks the significance of the ECCC in both the development of Cambodian law

and international criminal law.

OSJI inferences of political interference based on studies are invalid

The OSJI report uses studies on the inadequacy of Cambodia's domestic courts as evidence of the ECCC's short comings. Yet the report fails to cite a single study that supports allegations of political interference in the ECCC proceedings. In fact, most of the studies cited refer solely to Cambodia's domestic courts and were written prior to February 2009, when the Duch trial began. For instance, a report from the Cambodian League for the Promotion of Defense and Human Rights was completed in 2007. Two other reports, one from Human Rights Watch and another from Amnesty International, were published in April 2003.

Further, no reports from the United States Bureau of Democracy, Human Rights and Labor, two of which are cited by OSJI, allege bias or political interference in the ECCC proceedings. The US report from 2008 only mentions the ECCC in one paragraph under its section on public trials. The report from 2009 goes so far as to suggest that allegations of political interference in the ECCC are unfounded:

There were no allegations of corruption in the court's administration during the year. Some observers believed that public comments by government leaders on matters related to the ECCC's jurisdictional mandate constituted a form of political interference; however, there was no evidence that the work of the court was inhibited in any way, and national authorities successfully fulfilled their responsibility to apprehend and hand over to the tribunal all individuals indicted by the ECCC.

The OSJI report also cites an evaluation of the ECCC by Carolyn Dubay, associated editor of the International Judicial Reporter. Like OSJI, Dubay bases her criticism of the ECCC primarily on reports regarding

the inadequacy of Cambodia's existing domestic court system. The article largely speculates that Cambodia's lack of an educated judiciary and fair trial practices in domestic trials will spill over into the ECCC. In fact, the only specific allegation of corruption at the ECCC refers to an internal audit from January 2007 investigating the use of UN tribunal funds as kickbacks for court employees. Additionally Dubay concludes her report by acknowledging that despite the potential domestic obstacles, "tangible effects of the presence of the Khmer Rouge Tribunal in terms of domestic and international focus on accountability proceedings and investing in reforming the justice sector are positive."

It is misleading to suggest political interference in the ECCC is inevitable because such interference is rampant in Cambodia's domestic judiciary. It also tends to undermine the public legitimacy of the ECCC.

While technically the ECCC is part of the domestic judiciary, it is by no means the same. The whole point of establishing the ECCC was to make sure it was separate from and different than the rest of Cambodia's legal system.

As the OSJI report acknowledges, there are substantial checks against political interference written into the Agreement between the UN and the Royal Government of Cambodia. Specifically, the report outlines three safeguards: (1) the requirement that judicial decisions be made by a supermajority vote; (2) a weighted dispute resolution procedure to resolve disagreements between the co-prosecutors and co-investigating judges; and (3) an express provision allowing the UN to withdraw its assistance if the Cambodian government fails to comply with the Agreement.

The OSJI report suggests that these three checks are inadequate. Yet it bases these assumptions largely on speculation and hypothetical situations. In fact, the report acknowledges that thus far the supermajority vote, which requires that at least one international judge side with the national judges, has not been a problem. The report concludes that during the Duch trial, the supermajority requirement "did not appear to prove an obstacle in the trial itself."

Furthermore, when the trial chamber judges failed to reach a unanimous decision on other trial-related matters, the split was not along national and international lines, which again suggests that political interference by the Cambodian government was not an issue at least on those points.

The Disagreement Over Cases 003 and 004

The OSJI report is correct in asserting that the nature of the disagreement over whether to pursue cases 003 and 004 suggests political interference. Prime Minister Hun Sen and other government officials' remarks in support of the national co-prosecutor's refusal to refer cases 003 and 004 and the co-investigating judge's delay in initiating the investigation of those cases further support this allegation.

Yet the effect of that interference appears to have been minimized by the rules set up in anticipation of such disagreements. Rule 72 of the ECCC's internal rules states that when there is a disagreement between co-investigating judges "the action or decision which is subject of the disagreement shall be executed." Although You Bunleng, the national co-investigating judge, is not yet working on cases 003 and 004, Marcel Lemonde, the international co-investigating judge, is going forward. Lemonde's decision and ability to pursue cases 003 and 004 suggests that the tribunal's checks on political interference are actually effective.

It is also important to keep the dispute over cases 003 and 004 in perspective. It is no secret that there has been a major disagreement between the international community and the Cambodian government over the scope of the tribunal. While the UN has publicly stated it would like to try as many as twenty former Khmer Rouge leaders, the Cambodian government has stated it would prefer to limit the number to five. The refusal of national officials to charge or investigate more suspects should not be a surprise.

What should be surprising is that You Bunleng initially signed on to pursue the investigations of cases 003 and 004. While his renegeing is unfortunate, his initial willingness suggests he may ultimately agree to investigate the crimes. In a letter to Lemonde, You

Bunleng did not say that he was against the investigations only that he was not ready to make a decision until September 2010, when the closing order for case 002 is completed. You Bunleng's decision in September will be an important test of the efficacy of the tribunal's internal rules.

The Noncompliance of Government Officials

OSJI is right to assert that the six high-ranking government officials' refusal to cooperate with the office of the co-investigating judges is problematic. It is also correct in admonishing the Cambodian government for its public support of the officials. Yet such meddling can and should be checked by both the UN and other international court officials. For instance, Rule 60(3) allows a co-investigating judge to order the judicial police to compel the witness to appear. No one has invoked such a provision.

The OSJI report does lay part of the blame on the United Nations and its inaction. What the report does not acknowledge enough, however, is that political interference is a two-way street: if and when the Cambodian government gets in the way of ECCC proceedings, the international community, especially ECCC officials, are obliged to step in and to use the resources provided in the Agreement and the internal rules to address the matter. As stated above, it is because of these safeguards that the ECCC should be differentiated from a regular domestic court in Cambodia.

Placing the ECCC in context

Cambodia is a nation struggling to rebuild itself. And its judiciary is no exception. What is frustrating about the OSJI report, and others like it, is that it bases its evaluation on a few speculative examples and Cambodia's stunted past. While a healthy dose of valid criticism may be constructive, it is also important to remember that the ECCC is in large part an experiment in international criminal law.

Since the late 1990s, the international legal community has been advocating a shift away from larger and costlier tribunals toward smaller, hybrid tribunals like the ECCC in Cambodia. This movement is supported by the Rome Statute, which not only

advocates victim participation but also limits the jurisdiction of International Criminal Courts so as to encourage domestic courts to take the lead. Specifically, the ICC jurisdiction is limited to trying alleged war criminals, if and only if, the domestic courts are unwilling or unable to try them -- the idea being that by locating war crimes tribunals within post-conflict societies, the tribunals not only offer the local population the opportunity to be active participants, but also provide practitioners, judges and lawyers alike, the opportunity to incorporate international standards into developing domestic law.

Like any experiment, the ECCC has had its fair share of setbacks - the thirty-year delay in justice, the derailed negotiations between Cambodia and the United Nations, the internal disputes between co-investigating judges and co-prosecutors. But experiments also carry an extraordinary amount of potential: it is quite possible the ECCC can change the way the international community thinks about the role and function of war crime tribunals today and going forward.

What is happening in Cambodia today is revolutionary: Never before have victims had the chance to be civil parties in the proceedings. Never before have over 30,000 nationals visited their nation's war crime tribunal. Never before have over 2 million nationals watched the proceedings on television. The ECCC has the potential, then, not only to deliver legal justice but also restorative, social justice to Cambodia and its people.

Della Sentilles is a DC-Cam legal associate, Summer 2010.

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

THE DISMISSAL OF FRANCOIS ROUX: THEORIES OF DUCH'S UNDERMINED CONFIDENCE

Chad Kilpatrick

Just weeks prior to being convicted of crimes against humanity and grave breaches of the Geneva Conventions, Kaing Guek Eav alias Duch, the former Chairman of Phnom Penh's infamous S-21 interrogation center, requested the withdrawal of his international co-lawyer, Francois Roux. Duch cited three underlying reasons for his "loss of confidence" in a letter to the ECCC's Defense Support Section (DSS), all of which are undisclosed.

The DSS subsequently granted Duch's request in a published letter to the President of the Trial Chamber explaining:

- (a) There is no reason to doubt that Mr. Kaing's loss of confidence is genuine;
- (b) There is no reason to believe that the Request is aimed at obstructing the proceedings;
- (c) The withdrawal of Maitre Roux at this stage will not unduly delay the proceedings;
- (d) The loss of confidence amounts to exceptional circumstances.

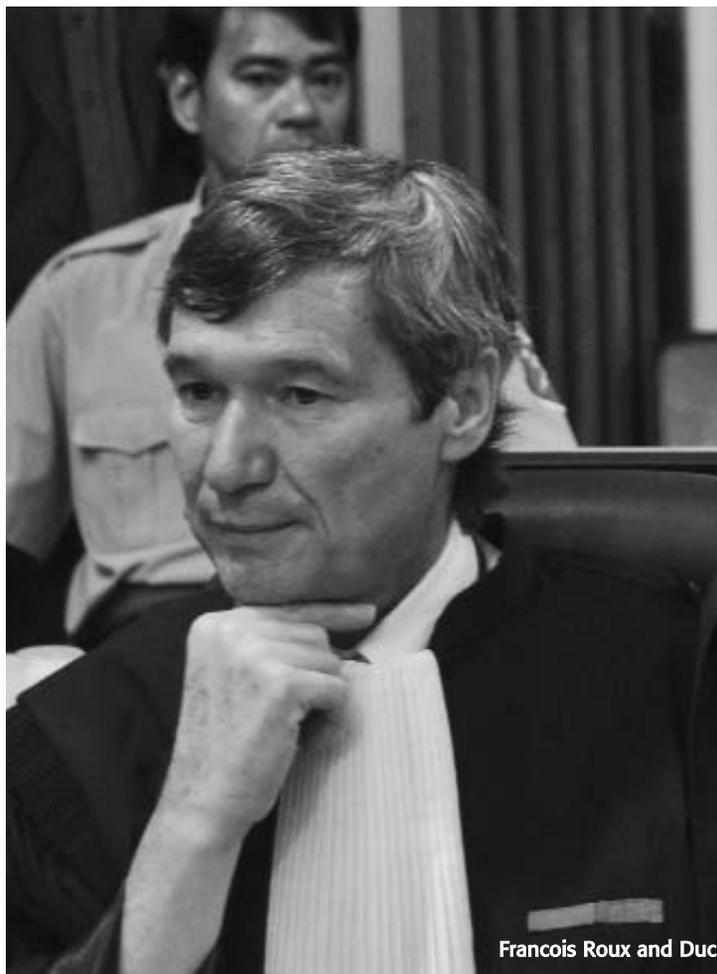
The ECCC Trial Chamber then took note that the withdrawal had been granted.

In the days following the withdrawal, national co-defense counsel Kar Savuth made several telling statements. In an interview with Radio France Internationale, Mr. Kar said that Duch did not ask for a dismissal of the French lawyer because of a conflict between Mr. Roux and himself. He did say, however, that Duch wanted to hire a Chinese lawyer because "China is a communist country and the Pol Pot regime was communist." He also said that Duch "...doesn't want a lawyer from a free country to judge the communist people" and that his client's view was that "communist law is contradictory to free law." However mystifying these comments are, they do suggest that Duch's

decision to release his international defense counsel may be related to the complicated hybrid Cambodian and international structure of the ECCC and Duch's own perception of his criminal responsibility in the context of a communist state.

Confusion Over Plea Strategy: Ineffective Assistance of Counsel?

Mr. Roux, as part of his opening statement on March 31, 2009, said, "There is no difference... between national and international lawyers." He also explicitly pointed out his personal respect for national co-counsel, Kar Savuth, calling him a "credit to the



Francois Roux and Duch

profession" because he was committed to defending Duch even though he himself was a former prisoner of the Khmer Rouge.

From the beginning of the proceedings, Duch's co-defense lawyers both expressed that their client acknowledged his guilt, even calling it "common knowledge." Mr. Kar, in particular said, "Whatever the Co-Prosecutors raised, Duch accepted it with both hands." Indeed, Duch himself told the Court that he ordered "the implementation of...activities which affected many innocent people including women and children" and that he was "solely responsible for those crimes." He even said that he "would like to acknowledge... responsibility through legal means" and emphasized that he was responsible for the crimes committed at S-21, "especially the tortures and execution of the people there."

However, much has been made of the controversial final days of the trial where there appeared to be



h in the background

inconsistencies in the positions of co-defense lawyers, Mr. Kar and Mr. Roux, regarding Duch's presumed guilty plea. On November 27, 2009, the last day of proceedings, Mr. Kar surprisingly argued that the ECCC did not have proper jurisdiction over Duch, reasoning that he was not a senior leader of the Pol Pot regime. He also argued that it was comparatively unjust to prosecute Duch for crimes committed at S-21 and not those responsible for crimes committed at other prisons. He then branded Duch a "scapegoat" and controversially requested that the court "[r]elease him and let him go home."

The Prosecution subsequently challenged Duch's international defense lawyer, Mr. Roux, on this apparent change of plea. If his co-counsel does not comply with Duch's instructions, the Prosecution team argued, the court may be exposed to the possibility of an appeal. It also argued that Duch's request of an acquittal undermined his expressions of remorse and invited a longer sentence.

Mr. Roux responded that the co-prosecutor "must not have been listening to us. The word 'acquittal' was not used this morning. Both defense lawyers urged mitigation and that he be freed as soon as possible. He should be freed after being imprisoned for ten years and after having acknowledged the crimes."

The judges then asked Duch whether he wished to speak, saying "[t]here have been some doubts in the comments by counsel for the accused. The Chamber expected the defense to clarify its position. Our question was not well answered yet...we wish to hear the personal position of the accused."

Duch then said that he had expressed his apologies and guilty admission and that he was "responsible for crimes without denial." But he went on to say that he was not part of the senior leadership of the Khmer Rouge and that the purpose of the ECCC is to bring senior leaders of the regime to justice. He then said that he had "served for ten years, six months and 18 days" and that he did not challenge the legality of his detention. He ended his statement with this: "I ask the Chamber to release me."

The President of the Chamber responded, "You asked to be released. The question now is what made you ask for a release. Are you seeking an acquittal of all charges against you or a reduction of sentence for your cooperation and time detained since 1999?" Duch then said, "My ability to analyze is limited to what I can report. I would like the Chamber to release me."

The judge then asked Duch's national co-defense lawyer, Mr. Kar, to "clarify the position of the defense." Mr. Kar reiterated that Duch was not a senior leader of the Khmer Rouge and that he was not among those most responsible for the crimes alleged. When pressed by the judges concerning whether an acquittal was sought, Mr. Kar said, "Release means acquittal."

The proceedings thus ended with Duch's co-defense counsel taking ostensibly different positions on whether an acquittal was sought. Mr. Roux's argument was that various mitigating factors including Duch's demonstrated remorse should allow his sentence to be limited to the time already served in detention, while Mr. Kar stressed other legal arguments such as lack of ECCC jurisdiction that should warrant acquittal. It is arguable that the discrepancy was more an issue of semantics rooted in the language barrier than a fundamentally different legal strategy. Indeed, both attorneys sought the same outcome—immediate release. Nonetheless, distinguishing between the two positions was significant to the Trial Chamber.

In a telephone interview after the conclusion of proceedings, Mr. Roux said that he was "very saddened" by the discrepancy during the closing remarks. He said that he was surprised by Mr. Kar's final pleading and that "it was surely a mistake in this tribunal to have two co-lawyers." He also said that he "profoundly" regretted the way that the trial concluded.

Nevertheless, Mr. Roux's theory of mitigation was akin to the position the Trial Chamber adopted in its July 26 judgment sentencing Duch to 35 years in prison while subtracting 11 years for time already served and five more for illegal detention. Mr. Kar has already made it clear that he plans to appeal for a

lower sentence, challenging the 19 years Duch is left to serve.

One question to be considered is whether the confusion over plea strategy led Duch to dismiss Mr. Roux for ineffective assistance of counsel. It does appear that Mr. Kar's statements on the plea issue are more congruent with Duch's request than Mr. Roux's statements, if Duch indeed understood the legal distinction. This could be significant, as the Prosecution noted, because if Mr. Roux did not adequately represent his client's position and comply with his instructions, Duch could possibly appeal on those grounds. Although the standard for appeal on this basis remains uncertain as it is not addressed in the ECCC Internal Rules, such a claim would likely be unsuccessful as standards of effectiveness are generally strict. For example, in American jurisprudence to successfully assert such a claim a defendant must demonstrate that counsel was so ineffective that there has been a "mockery of justice." The plea discrepancy, although troubling, would be unlikely to meet this threshold. Nonetheless, the contention over Duch's plea on the final days of trial does suggest one possible source of Duch's "loss of confidence" in Mr. Roux.

Defense Grounded in CPK History

Duch's final submission to the court provides a fascinating yet perplexing account of his role in the Communist Party of Kampuchea (CPK) hierarchical structure, particularly in relation to the rationale driving the interrogations at S-21. In his submission, Duch described the inner workings of the CPK security apparatus and his responsibilities in deriving "a proper interrogation tactic" that would involve "inevitable" physical torture. He claimed that he was "like a cog in a running machine" of the CPK structure, but that he was "solely responsible for the loss of at least 12,380 lives. He continued, "These people, before their deaths, had endured a great and prolonging suffering and countless inhuman conditions" and he acknowledged responsibility for all of the crimes committed at S-21 "in the legal and moral context."

Duch's statements may be considered consistent

with Mr. Roux's legal strategy of candid acknowledgment of guilt paired with a request for mitigation of sentencing. However, the general complexity of his narrative pertaining to the structure of the CPK also suggests a compelling basis for his reported desire for international counsel who better understands communist ideology. Indeed, Duch might believe that Chinese counsel would be better equipped to articulate the relationship between the communist system he served and his crimes. Assuming Duch's final written submission provides an accurate depiction of his personal position that he is a guilty man both motivated and constrained by the intricate and ideologically-driven CPK structure-in-essence a plea of duress-this is perhaps a reasonable request. If Duch does not feel that Roux adequately understood or represented his defense, his undermined confidence in Roux can only be expected.

The Impact of Legacy Projects

Another theory regarding Mr. Roux's dismissal is connected to various legacy projects affiliated with the ECCC. For example, it has been widely reported and criticized that a French documentary film team has been given access to parts of ECCC proceedings while other media are excluded. This preferential access was highly publicized regarding the "reenactment" at Tuol Sleng, where Duch accompanied ECCC staff and met with S-21 victims as part of the investigation. Some experts involved in the proceedings have even suggested that the activities of the French filmmakers may have influenced Mr. Roux's performance as Duch's defense attorney, or at least Duch's perception of his performance. While such assessments are difficult to substantiate, the role of legacy projects should not be overlooked as a source of distrust between Duch and his international counsel.

Political Interference

Kar Savuth is well known not only for representing Duch but also Prime Minister Hun Sen. Accordingly, there has been speculation that political influence may have played a role in Mr. Kar's untimely jurisdictional argument that Duch was not a senior leader of the Khmer Rouge. The Prime Minister has voiced publicly

his opposition to trials of Khmer Rouge beyond the four currently detained (Nuon Chea, Ieng Sary, Khieu Samphan, Ieng Thirith) in Case 002, even suggesting that putting more people on trial for crimes committed during Democratic Kampuchea could plunge the country back into civil war. Thus, it has been suggested that if Duch were able to elude the court's jurisdiction on the grounds that he is not a senior leader, the five suspects in potential Cases 003 and 004 would also be found to fall outside of the court's reach. Some have accordingly suggested that Mr. Kar may have orchestrated the removal of Mr. Roux under political pressure to further advance this argument, a view that Mr. Roux refused to voice. These suspicions were intensified by the fact that the dismissal took place only days before the verdict. Although reports of corruption in the Cambodian government and of undue political influence at the ECCC make such conspiracy theories plausible, they remain uncorroborated.

Looking Forward

With Duch's rationale for withdrawing Mr. Roux as counsel undisclosed by defense counsel or the Defense Support Section, we can only speculate as to why it occurred and whether the foregoing reasons provide insight into his lost confidence. As a consequence, the man convicted of some of the most horrific crimes prosecuted to date remains ever-enigmatic as an appeal likely looms.

Chad Kilpatrick, Tulane University Law School JD Candidate 2012, DC-Cam legal associate, Summer 2010.

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THE VOICES OF THE ECCC COMPLAINANTS: TEN DAYS WITH THE VICTIM PARTICIPATION TEAM IN THE PROVINCES OF KAMPONG THOM & SIEM REAP

Yannek Smith

On May 21-31 2010 I joined the eight members of the Victim Participation Team[1] (VPA) of the Documentation Center of Cambodia (DC-Cam) on their trip north to the provinces of Kampong Thom and Siem Reap. The objective of the field trip was to deliver notification letters from the Office of the Co-Prosecutors of the Extraordinary Chambers in the Courts of Cambodia (ECCC) to the complainants in these areas. The complainants are survivors of Democratic Kampuchea (DK) who filed applications against the Khmer Rouge approximately two years ago. The ECCC letters confirm to the complainants that the court has received their applications, thanks them for their contribution, and tells them about the progress that court has made as a result of their contribution. Throughout our ten day trip, the Victim Participation Team conducted video and recorder interviews of the villagers who wished to have their experiences and opinions documented.

My personal goal during our daily trips to the villages was to conduct ethnographically inspired interviews of the complainants to learn more about how they feel about the ECCC trials, their personal experiences during the DK regime, and hear their views on justice, punishment and forgiveness. The purpose was mainly to gain a better understanding of how (and to what extent) the court is meaningful to the survivors, how much they know about what is going on with the legal process, and to look at individual notions of justice and social reconciliation.

VPA Preparation and Introduction

Kampong Thom province, around a three and a half hour drive north of Phnom Penh, has the distinction of being the birthplace of both Kaing Guek Eav, otherwise known as "Duch", and Saloth Sar, more commonly

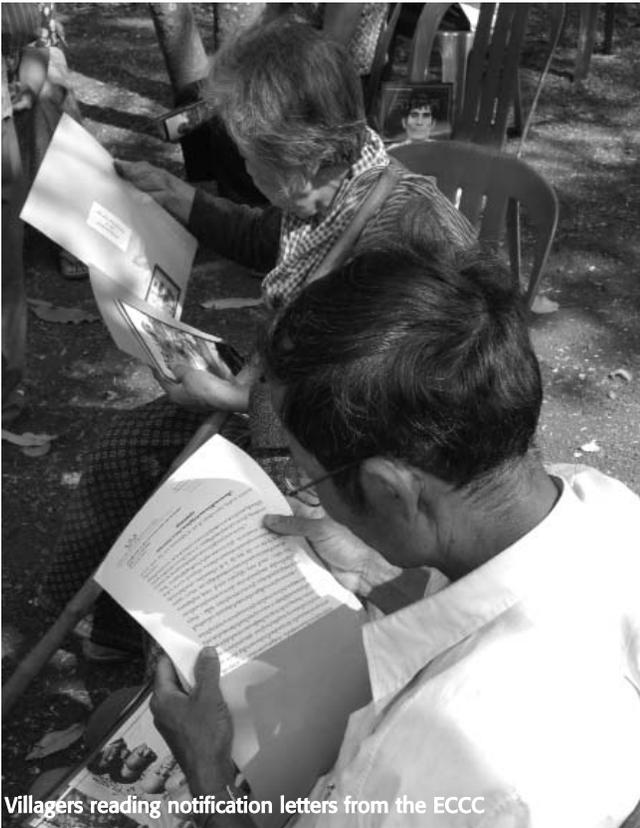
known as Pol Pot. The province is known for its dams, which were constructed during the Democratic Kampuchea period; they are products of forced labor, starvation, and extreme human suffering under the Khmer Rouge regime. During our trip we travelled around Kampong Thom and Siem Reap, going to different villages every day. We would generally meet the groups of complainants at the houses of the local village chiefs.

To the meetings we would bring the notifications from the ECCC, booklets with information on case 002, letters from DC-Cam's director Youk Chhang, video and camera equipment, and plenty of durian cookies and water bottles. This would be our routine preparation for the next nine days; the VPA's way of setting up the villagers up for serious discussion about the ECCC and the Khmer Rouge.

Team leader Chy Terith is the main speaker at the meetings. After taking attendance, he begins by asking the villagers if they remember DC-Cam and filling out the complaints against the Khmer Rouge. Most of the complainants that we visited remembered DC-Cam, but many people had forgotten about the complaints that they had filed in 2008. On day three of our trip a woman told us that her faded memory was largely due to the busy work schedule of the villagers. "How can we keep up with what is going on, when we have to spend our days looking after the water buffalo?" she asked the VPA team. Indeed, many villagers we talked to emphasized their difficult and demanding lifestyles to explain why they could not follow up with the trials. Although most villagers do have at least some access to television and radio, the more immediate need of providing for their families takes up the bulk of their time. In this context DC-Cam plays a very important role, as the connection between the legal

system and the victims that it is intended to be working for.

Telling the People about the ECCC and Case 002



Villagers reading notification letters from the ECCC

After reminding the villagers of what DC-Cam is and explaining the purpose of the meeting, Terith goes over the backgrounds of the four Khmer Rouge leaders on trial in case 002. For many complainants, seeing the large images of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan marked the first time that they put a face to the name of the infamous Khmer Rouge leaders. For some, it was the first time that they had ever heard the names. Stung district, where we spent our first few days, is the birthplace of Duch. The VPA asked all of the complainant groups of this area if they knew Duch personally or had seen him before. Although of them knew his name, few could recall ever seeing the man. We did however come across a village chief who said that he had known Duch and had seen him before.

Following the explanation of what the ECCC is doing and a brief overview of case 002, the team hands out the letters from the Office of the Co-Prosecutors to

the complainants. After getting the letters, each complainant is required to fill out a form, confirming that he or she has received it. Most of the complainants cannot read or write, so the VPA reads them the notification, and helps them fill out the confirmation form. This generation, as a result of having lived through decades of war and instability, received little or no formal education in their lives.

Findings from the Interviews:

The complainants from the provinces of Kampong Thom and Siem Reap were generally receptive to doing interviews. The diverse opinions and perspectives of the interviews were good indicators that the interviewees were open about their feelings. It was very touching that the villagers shared so much, many telling us about some of the most tragic and difficult moments of their lives. Consistent with Chy Terith's findings, the complainants were generally pleased to receive the ECCC confirmation notifications and felt like they had a voice in trials.

From just fifteen interviews, it was clear that the complainants have very different views when it comes to punishment. In many cases the villagers said that they forgive the Khmer Rouge, seeing the emotion of anger and the act of revenge as undesired and going against Buddhist principles. This was the belief of Pot Som, a 56 year old woman from Phoeu village in Siem Reap, whose father and brother were killed:

"There is no reason for revenge. Shortly after the collapse of the Khmer Rouge I was still angry, but later on I practiced Buddhism to get rid of the anger. I just want the Khmer Rouge to never come back."

Piousness did not always go hand in hand with forgiveness. Measkin Yon, a 60 year old woman from Kampong Kdy village in Kampong Thom, is a devout follower of Buddhism who believes that "justice still needs to be served." In her opinion the ECCC is too soft on the accused, making "their participation optional." She told VPA that the accused former Khmer Rouge members "do not answer all of the questions asked." Measkin, like Pot Som and several other interviewees, does not consider anger to be an appropriate response.

But Measkin Yon, a woman who lost many relatives to the Khmer Rouge, still suffers from trauma. Since Democratic Kampuchea, she tells us, she has never stopped living in fear. "There is no particular reason why I am still afraid, just that the fear is inside of me," she explained.

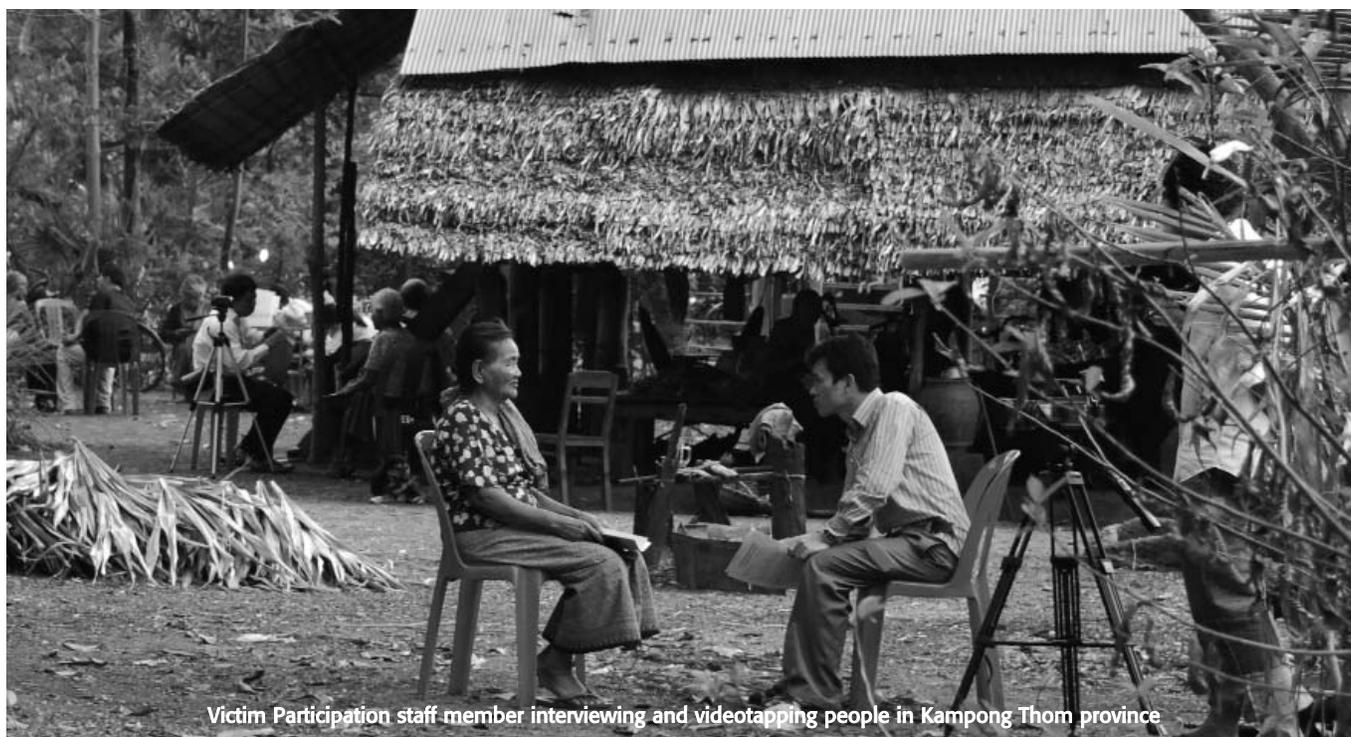
Yen Yat, the 65 year old village chief of Daun Laor village, says he is glad that the ECCC will "help people find out who the real killers are", adding afterwards that he "[hopes] that they find more top Khmer Rouge killers, so that they can get what they deserve." For him, the long awaited prosecution of top Khmer Rouge leaders will bring justice to the victims, not only because it will punish the former leaders for the atrocities they committed, but because it will spread awareness and official recognition of who these people are and what they did.

There were a few people who did not give their opinion when asked questions pertaining to the ECCC and the prosecution of the top Khmer Rouge leaders, simply saying that "it is up to the court" to decide what to do. It was unclear whether if this kind of response demonstrated trust in the court, distrust, a sense of alienation from the legal process, or a way of avoiding a strong emotional response.

An interesting finding of the interviews was that most of the survivors did not like the idea of trying more Khmer Rouge members. While all of the complaints felt good that the top Khmer Rouge leaders would finally be put on trial, only three out of fifteen interviewees expressed a desire to see more Khmer Rouge be put on trial. One man named Krouch Noeum (from Rokar Thoun village, Srangae district, Siem Reap province) explained his opposition to trying more Khmer Rouge in the following way:

"There are so many former Khmer Rouge living in this district. They all got their orders from the top, so the court should not condemn them."

Another focus of the interviews was on the education of the genocide and the Khmer Rouge. All of my interviewees were asked whether or not they play a role in educating people about the Democratic Kampuchea period. Most of the complainants said that their contribution is through the personal stories that they tell to their families and relatives. Village chiefs Yen Yat and But Ban both emphasized how important the education of what happened under the Khmer Rouge is for their villages. Yen Yat of Daun Laor village told the team how discussion about the Khmer Rouge is an important part of the village meetings:



Victim Participation staff member interviewing and videotaping people in Kampong Thom province

"I usually raise the issue of killing during every village meeting. During the meetings I ask them about all the positive developments that have happened since that time [Democratic Kampuchea]. We discuss how killing is bad. Improvements are noticeable and there have been many developments in the village."

The developments that Yen Yat is referring to are the roads, houses, and schools of the area. But Ban, the village chief of Samprouch village, tells us that "education in the schools is most important." Asked about the education of the Khmer Rouge in his village's school, he told VPA, "There is a teacher in school who talks about the DK regime, and this has been effective." This is good news to hear, at a time when DC-Cam is launching its national Genocide Education initiative.

Despite this positive attitude and eagerness to teach young people about the Khmer Rouge, there is continued doubt and disbelief among younger children in both Kampong Thom and Siem Reap provinces. Not only are many young people unaware of what happened under the Khmer Rouge, many do not even believe that the stories that the older generation tell are true. Several of the complainants said that children, sometimes even their own, did not believe what had happened to them under the DK regime.

When asked why this is so, various explanations were offered. During one meeting a woman said, that "it is hard for the young people to believe the stories because the elderly people could be telling them anything." Saing Sam Hor of Ampov Prey village, Stung district, Kampong Thom province says that "it is because the young generation did not see these things for themselves. Now they live comfortably, and cannot believe what it was like under the Khmer Rouge." Perhaps it is because she is unable to convince young people that her stories are true that she later says that "the role [of educating the young] is best done by organizations outside of the country and by the national government." There was a belief among many of the survivors that the young generation cannot believe how the country was during DK because they

did not experience it themselves.

However there are numerous ways to convince the younger generation that the Khmer Rouge did exist and did commit atrocities. Interviewee Pot Som touched on the role of media in educating the younger generation, saying "[the children] used to not believe me, but when they saw the things that I started to talk about on television they started to believe." Village chief But Ban has found other means to teach the children:

"The children do not fully believe what we say, so we give them examples such as the dams that were built under the Khmer Rouge and the information that is given out by DC-Cam. Once they see these things, they start to believe as a result."

There are many channels that have the potential to teach young children about the DK period: schools, family histories, commemorative ceremonies (like the May 20th Day of Anger[6]), village meetings, television and radio, and NGO initiatives. Hopefully, these sources will continue to progress and spread knowledge of DK throughout the consciousness of the young Cambodian population.

Conclusion

The DC-Cam Victim Participation Team has proved to be very adept at keeping the process professional and organized, yet also connecting with the villagers and creating a comfortable and productive atmosphere. With Duch's verdict taking place on the 26th of July, the court confirmation notices are reminders to the complainants that their stories are the reason that the long awaited prosecution is possible. Over thirty years after the reign of the Khmer Rouge, the villagers that I interviewed almost unanimously believe that the trials have not lost their significance or importance. It has been a very long road to get to this point in the legal process, but in their old age many of the surviving complainants will finally see the results of their testimony.

Yannek Smith is a student at Rutgers University, DC-Cam legal associate, Summer 2010.

A TRIBUNAL FOR THE VICTIMS

Dacil Keo and Outreach Team

The Extraordinary Chambers' goal is to deliver justice to victims of the Khmer Rouge regime; as such this tribunal should be sensitive to the perspectives and the emotions of those it is suppose to serve. The tribunal should keep in mind that amidst all the legal, bureaucratic, procedural, and investigative details that it attends to, its ultimate purpose is to deliver justice to victims of one of the most horrific periods of the twentieth century.

During the trial hearings of Case 001 involving former S-21 leader Duch at the Extraordinary Chambers, an underlying but critical injustice persists noticeable to the observant eye. It is not an injustice of a legal or procedural nature as might be expected in a courtroom; rather, it an injustice of status and dignity. The tribunal, in its mission to deliver justice to victims of the Khmer Rouge regime, has sometimes forgotten to treat victims with dignity and respect.

A front profile inside the courtroom provides a simple illustration: a tall glass wall separates well-paid and well-dressed lawyers and judges, who sit above a raised platform, from victims of the Khmer Rouge regime, who predominantly are poor and dressed in simple clothing. In Cambodian culture, relative status and honor between individuals can be inferred simply by who sits higher than whom. This imposing glass wall extends the width and height of the wooden platform where tribunal officials sit, creating an absolute barrier between these stately officials and the thousands of ordinary Cambodian villagers that have attended Duch's trial hearings from March 2009 to November 2009. The wall's purpose, one guesses, is safety and organization. However, it can have the implied meaning that victims have the potential for violence and are likely to physically disrupt the trial proceedings. Villagers, whose horrific experiences defy human morality and conscience, are the real victims that need

protection and respect, not court officials.

Further examples of insensitivity to victims include the busing in of villagers by the tribunal's Public Affairs Office from far away provinces as early as 3 a.m. for a half a day program, the strict interpretation of the tribunal's dress code, and chastising villagers for the way they sit in the courtroom. The middle of the night busing in of villagers fails to consider the mental and physical health and well-being of victims. Moreover, inadequate sleep and vehicle motion sickness makes it even harder for ordinary Cambodians to follow the already complex legal proceedings. In Cambodia, where almost a third of the population live below the national poverty line and nearly 70% earn less than \$2 a day, villagers' best attire might be a new t-shirt. While a dress code prohibiting clothing which shows partiality towards the prosecution or defense is understandable, prohibiting all t-shirts which say only "Case 002" seems unreasonably strict. In addition, after villagers pass through security checks in order to enter the courtroom, they are sometimes reprimanded during the trial hearings for sitting inappropriately.

Such barriers and reactions intimidate victims and further distinguish the backgrounds, knowledge, and privileges of the officials who sit comfortably inside the glass wall from the villagers who watch from the outside. Highly educated, scripted in legal terminology, and articulate in persuasive speech, the officials carry out their work in the language of criminal law that only an elite population of the world can fully comprehend. The villagers, many of whom lack a high school degree, find it difficult sometimes to follow the formal conversations between prosecutors, defense lawyers, and investigative judges.

The verdict of Duch (Kaing Guek Eav) will be delivered on July 26, 1010. This will be the first verdict of the Extraordinary Chambers and will be the first rec-

ognized verdict for crimes committed during Democratic Kampuchea. Survivors of the Khmer Rouge regime have waited for more than three decades for this moment. It is a moment that, given the poor health and old age of the defendants along with unyielding budgetary and temporal problems of the tribunal, could be survivors' only chance at seeing a Khmer Rouge leader convicted. Case 002 involving the four highest-level living Khmer Rouge leaders is not expected to start until early 2012 and presumably the verdict for this case will be delivered no earlier than 2013.

Never has there been a more important time for the court to reach out and connect with the very people that it was created for. Therefore, the tribunal should give special attention and preparation to victims who attend the verdict reading. Such attention will demonstrate the tribunal's respect and honor towards victims which has been lacking in the past. Such action will not only leave a good impression among survivors and all Cambodians alike, but it will also show the international community, which no doubt will also be watching the verdict delivery, that the tribunal cares about survivors

and their dignity.

To give honor and respect to victims for their past sufferings, the Extraordinary Chambers can do a number of small but meaningful preparations. The tribunal can lay out a red carpet along the isles of the 500-seat courtroom. A red carpet in Cambodian culture represents respect and honor. The tribunal can also decorate the sections of the public seating area and entryways with flower bouquets and cloth ribbons. Special banners that focus on victim's courage and strength can also be created to commemorate the historic moment. These and other preparations would only cost a tiny fraction of the court's overall budget, but would have a tremendous and lasting impact on survivors. In the end, the tribunal will be remembered not only for how it handled the legal, procedural, and criminal aspects of the cases, but also for how it treated victims of the Khmer Rouge regime throughout its existence. After all, the court was created for the victims.

Dacil Keo, PhD Candidate at the University of Wisconsin-Madison, DC-Cam Public Affair officer.



Villagers from Svay Rieng and Kandal provinces taking pictures before entering the courtroom

ALTERNATIVE VIEW OF THE DUCH VERDICT IN CAMBODIA

Benny Widyono

The conviction, on July 26, of Kang Guek Eav-- "Duch"-- former prison chief of the Khmer Rouge regime in Cambodia, drew international media attention to Cambodia, at least for one news cycle. The verdict of the UN- sponsored tribunal, was important in that, for the first time, a key Khmer Rouge official was held accountable for the unspeakable crimes of the regime. The press highlighted the outcry that the sentence, 19 years in jail, was too lenient.

International coverage of the Duch verdict eclipses two issues. First, the international community is ambivalent about the tribunal. Many consider it deeply flawed by corruption and interference by the Cambodian government. Others, especially in the West, insist that the tribunal must continue, as if this were the only road to justice and reconciliation in post-Khmer Rouge Cambodia. Nothing is farther from the truth.

Given the trial's thirty-year delay, Cambodia has since returned to stability and won the confidence of both donor and business communities. Cambodia's growth rate over ten years stands at 7 - 13%. This is the result of a rise in tourism and private investment, but also of the generous inflow of foreign aid, since 1993, when a new Cambodian government was formed after UN-sponsored elections. Given the Cambodia's expanding population pyramid, today, a majority know very little about and have no experience of the Khmer Rouge era. Recent surveys indicate in fact that Cambodians are paying little attention to the tribunal. The youth of Cambodia, like their peers in Hong Kong, Shanghai and elsewhere are more focused on building the future.

A less evident problem is that the past role of international actors in the Cambodian tragedy has been whitewashed. Almost in unison, they now assert that the Vietnamese liberation of Cambodia

from Khmer Rouge rule, in January 1979, was followed by "ten years of civil war". What they fail to report is that this civil war was largely brought on by what happened in faraway New York, where, incredibly enough, spearheaded by the US and China, the United Nations continued to recognize the ousted Khmer Rouge as the legitimate government of Cambodia, rather than the new People's Republic of Kampuchea, which soon gained control over 90% of the country. The alleged reason was that Vietnam had invaded Cambodia, but the obvious truth was that Vietnam was on the wrong side.

Opposing this UN decision to maintain Khmer Rouge representation were the Soviet bloc, India and



Monks at Rattanak Malai pagoda in Malai district watching Duch verdict

a number of others, who were easily outvoted. This stalemate continued for 11 years during which the Khmer Rouge flag continued to fly over Manhattan. To disguise this outrage, the Khmer Rouge was draped in sheep's clothing, as a "Coalition Government of Democratic Kampuchea (CGDK)", with two non-communist factions—the Royalist FUNCINPEC and a pro-American group, the KPNLF. In the field, this CGDK received ample aid from its Western backers, fueling and prolonging the "civil war" referred to by the international press today. With the end of the Cold War, in 1991, the Paris Peace Agreements were signed, and the United Nations Transitional Authority in Cambodia brought the stalemate to an end by organizing elections that established a new legitimate coalition government in Cambodia.

Having succeeded in seating the Khmer Rouge in the UN General Assembly for eleven more years, obviously the West was not in a big hurry to put the

Khmer Rouge on trial. It is ironic that the international press and Western academics, almost in unison, now insist that the K.R. trials must continue, and that the Cambodian government should not protect anyone from the tribunal.

If the international tribunal were to end tomorrow, Cambodia would continue on its path to progress and reconciliation, aided by private investment and generous donors, whose efforts continue to lift Cambodia from poverty. This, understandably, is the subject that concerns Cambodians today.

*Ambassador Benny Widyono, from Indonesia, was Governor of Siem Reap Province under the United Nations Transitional Authority in Cambodia, 1992-1993, and the Secretary-General's Representative to Cambodia 1994-97. He is the author of *Dancing in Shadows: Sihanouk, the Khmer Rouge and the United Nations*, Rowman Littlefield, Lanham: 2008.*



DUCH SENTENCED TO 35 YEARS IN PRISON; WILL SERVE ONLY 19

Michael Saliba and Tyler Nims

Today—35 years, three months, and nine days after the Khmer Rouge entered Phnom Penh and 31 years, six months, and nineteen days after they were driven out by Vietnamese forces—Kaing Guek Eav (alias Duch), the infamous chief of Tuol Sleng prison (S-21), became the first Khmer Rouge held accountable for his crimes in a court of law meeting international fair trial standards. This morning, the Extraordinary Chambers in the Courts of Cambodia (ECCC) sentenced Duch to 35 years in prison. Over one thousand Cambodians of all ages and backgrounds arrived early in the morning to the gates of the ECCC to witness the pronouncement of the judgment. Some gathered in the courtyard of the ECCC to watch screens delivering a live feed of the judgment, while others who had received prior access proceeded directly to the courtroom. Visitors filing into the courtyard of the tribunal were met by a host of reporters from international and national media outlets, marking the great significance of this moment for Cambodia and for the international cause of accountability for atrocity crimes.

The public viewing gallery of the courtroom was filled with a diverse crowd: civil parties like the few survivors of Tuol Sleng and relatives of those tortured and sentenced to death at the prison, their families, villagers from across Cambodia, orange-robed monks, foreign dignitaries, and national and international members of the press and human rights non-governmental organizations. A group of about fifteen civil parties—several of whom had attended nearly all of the proceedings—sat behind their lawyers in the courtroom, facing Duch and his lawyer. Noticeably absent from the courtroom was Francois Roux, Duch's international defense counsel, who had been swiftly and suddenly relieved of his position two weeks ago after Duch informed the

Defense Support Section that he had lost confidence in Roux's ability to provide adequate representation.

The crowd rose at 10:00 sharp as the judges entered the courtroom to read a summary of the long-anticipated judgment. The president of the Trial Chamber, Judge Nil Nonn, speaking for the court, called Duch to the stand to listen to the judgment as it was read out in open court. Duch, wearing eyeglasses and a light blue button-down shirt, glanced quickly into the public gallery as he approached the stand, but otherwise sat expressionless throughout the remainder of the proceedings.

The court emphasized the historic nature of the verdict, the first such judgment against a high-ranking member of the Khmer Rouge. The court explained that Duch faced charges of crimes against humanity, grave breaches of the Geneva conventions (commonly referred to as war crimes), and violations of the 1956 Cambodian penal code. But because the judges did not achieve a four-member consensus on the issue of whether the statute of limitations had run on the crimes under the Cambodian penal code, they concluded that they lacked jurisdiction to consider these crimes.

The court made some important findings as it provided the historical and political context of Democratic Kampuchea, including that a state of international armed conflict existed between Vietnam and Cambodia during the entirety of the Democratic Kampuchea regime—meaning that Khmer Rouge defendants could be convicted of war crimes—and that the standing executive committee of the Communist Party of Kampuchea directed the Democratic Kampuchea state. The court also stressed the fact that Nuon Chea was Duch's direct supervisor in the hierarchy of the CPK, a finding which will likely have consequences for

case 002.

Next, the court read out the crimes with which Duch was charged. Despite the fact that Duch confessed to many of the crimes during the trial, no provision is in place at the ECCC to accept a guilty plea and therefore the court reviewed the all of the evidence and pronounced Duch guilty on all counts except those domestic crimes over which the court had earlier found that it lacked jurisdiction.

In sum, Duch was convicted of the crimes against humanity of persecution on political grounds, extermination, enslavement, imprisonment, torture, one instance of rape, and other inhumane acts. He was convicted of the war crimes of willful killing, torture, willfully causing great suffering and injury, depriving civilians and prisoners of war of the right to a fair trial, and the unlawful confinement of civilians.

Though the court concluded that there was insufficient evidence to indicate that Duch personally tortured victims and committed other inhumane acts, it held that he had participated in the crimes as part of a joint criminal enterprise. Duch had zealously worked within and presided over a system of terror with the intent to further the criminal purpose of the enterprise. For purposes of sentencing, the court also noted that Duch had planned, ordered, and aided and abetted many of these crimes and would also have been liable for the crimes committed at S-21 under a theory of superior liability.

The court rejected the defense of superior orders proffered by Duch's defense because it is not recognized as a defense for Duch's international crimes. The court also rejected Duch's claim that he committed the crimes under duress because the evidence showed that he not only consciously partook in the criminal enterprise but also planned it.

Before announcing Duch's sentence, the court addressed the civil parties. Stressing the importance of establishing both a direct injury and a causal connection to the charged person, the court recognized 70 of the civil parties and read out their names and their connection to the crimes committed at S-21 and Choeung Ek. Yet

in what must have come as a great shock to some of the civil parties, the court rejected several applications. Those rejected learned of the court's decision only after it finished reading the list of recognized parties. The court then turned its attention to the moral and collective reparations they were permitted to award under the ECCC law. It announced that all of the names of the civil parties would be written into the judgment with a description of their relation to S-21 and any relatives that perished there. The court also promised to post a compilation of statements of apology and remorse that Duch has made during the trial on the ECCC website. The court did not award any other reparations, stressing that it had no jurisdiction to enforce any government implementation of awards. This was a conclusion that caused much grief among the civil parties, although it was not unexpected.

Finally, Judge Nil Nonn asked Duch to stand as his sentence was pronounced. The court explained



Duch in the courtroom

that it had considered mitigating factors-like cooperation with the court, limited expressions of remorse and guilt, and the coercive nature of Democratic Kampuchea-and aggravating factors-such as the heinous nature of the crimes and the long period over which they occurred. The gallery then let out a collective gasp, and several people wept quietly, as the court announced that Duch had been sentenced to serve 35 years in prison for the crimes he oversaw at S-21.

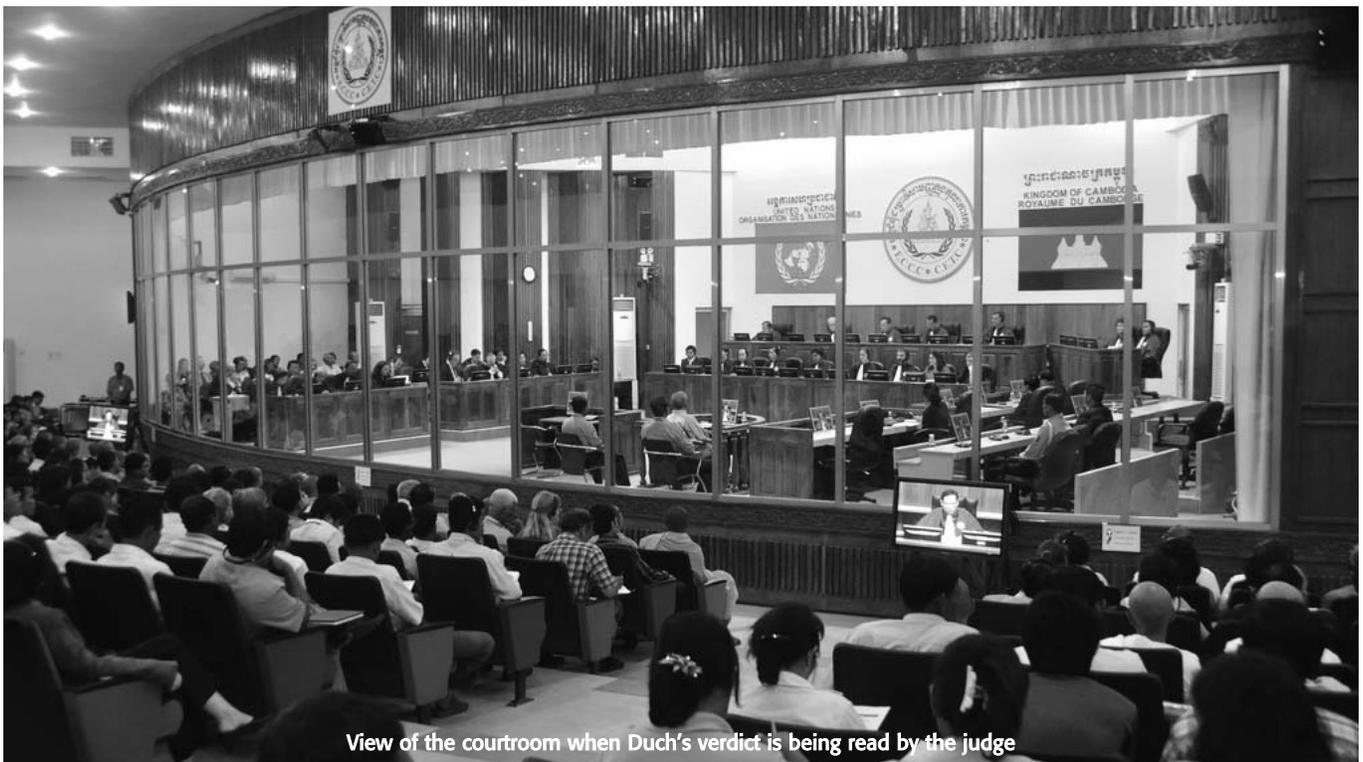
However, Duch's sentence was reduced by five years because of his illegal detention from 1999-2007 at the hands of the military. He was also credited with the eleven years of time served since his initial arrest. In sum, Duch is now left with 19 years in prison. This means that Duch, now at age 67, may well walk again as a free man. The court ordered Duch back to his detention cell. He left as expressionless as he had arrived, and victims and court observers were left to react to the historic judgment.

As everybody gathered outside, opinions were mixed. Some wept loudly and openly. Others, while somber, expressed their satisfaction with the verdict. The Cambodia Tribunal Monitor spoke with several individuals with differing opinions. Teary Seng, a civil

party in case 002 and civil society activist, castigated the sentence as far too light and stressed the fact that with 19 more years in prison, Duch would serve less than 11 hours for every life he took. Robert Hamill, a civil party from New Zealand whose brother was captured by Khmer Rouge and then tortured and killed at S-21 after his sailboat strayed too close to the Cambodian coast, expressed some satisfaction with the judgment because it was close to the prosecution request of 40 years. However, he questioned why prosecutors requested what he considered a relatively light sentence, and expressed his disgust at the idea of Duch possibly walking around as a free man again.

Despite differing opinions with regard to the verdict, however, everybody agreed that this was an important day in Cambodia's history and was perhaps one small step toward achieving some sort of accountability and reconciliation for a country that has waited too long for justice.

Michael Saliba, J.D., and Tyler Nims, J.D., Center for International Human Rights, Northwestern University School of Law.



View of the courtroom when Duch's verdict is being read by the judge

THE DUCH VERDICT

John D. Ciorciari

On July 26, the Extraordinary Chambers in the Courts of Cambodia (ECCC) issued its first verdict in the case against Duch. The tribunal found Duch guilty of war crimes and crimes against humanity for atrocities committed at "Office S-21," the infamous Khmer Rouge prison at Tuol Sleng. The verdict was an important watershed for Cambodia. For the first time, a key Khmer Rouge official has been held accountable in a credible court of law for crimes of the Pol Pot era.

Nevertheless, the verdict immediately attracted substantial criticism from Cambodian survivors, including Foreign Minister Hor Nam Hong. This article briefly discusses two key sources of consternation. First, many victims have complained bitterly that Duch's punishment was too light. The Trial Chamber sentenced him to 30 years in prison, which amounts to less than 20 years after subtracting time Duch has already served. Second, civil parties-individuals who joined the case to pursue redress for injuries they suffered as a result of Duch's conduct-were disappointed with the Trial Chamber's award of reparations. The judges promised only to publish the names of the victims in the verdict and to compile a record of Duch's statements of confession and contrition.

The Sentence

Duch's sentence was the primary source of frustration. It is roughly in line with precedents from other international tribunals, but for survivors, it is understandably difficult to stomach the fact that Duch could walk free if he reaches the age of 86. Even the strictest penalty available to the tribunal-a life sentence-pales beside the thousands of lives lost at the Killing Fields. The ECCC co-prosecutors requested a sentence of 40 years, but the Trial Chamber opted for a shorter 30-year prison term. It held that Duch's cooperation and contrition merited a sentence of a term of years rather than life imprisonment. It also reasoned that Duch

was entitled to a sentence reduction for the violation of his rights, because he was illegally detained for several years prior to the commencement of the ECCC proceedings. The Trial Chamber was in an unenviable position, trying to balance the interests of suitable retribution against considerations of fairness and due process.

Duch's illegal pre-trial detention probably furnishes the most compelling reason to curtail his prison term. Although few victims will have sympathy for the former S-21 chief-who imposed infinitely harsher imprisonment on his victims-the ECCC can only promote norms of fairness and justice if it abides by them itself. Indeed, one of the best features of the Duch trial is that it was fair to the defendant despite overwhelming historical evidence of his guilt. The court should be commended for taking due process norms seriously and setting a useful example for the Cambodian judicial system. Its award of a modest sentence reduction to Duch was by no means out of order.

The Trial Chamber also based its decision on the argument that Duch had been cooperative and contrite. Courts have good reasons to incentivize defendants to speak, reveal the truth, and aid in the quest for accountability. Duch is the only well-known Khmer Rouge official to date to acknowledge culpability. At trial, he also confirmed numerous facts and introduced bits of new information about the workings of S-21. However, his acknowledgements added marginally at best in the search for the historical truth about the atrocities at Tuol Sleng, and his cooperation was not needed to convict him, because documentary and other evidence against him abounded.

It was more important to give Duch an incentive to testify against four senior Khmer Rouge leaders in Case No. 2. The evidence connecting those individuals directly to physical acts of atrocity is less overwhelming

than it was for Duch, and thus his willing testimony could be valuable. It is unclear whether Duch's sentence will indeed prompt him to offer useful testimony in Case No. 2. If he has useful information, he may already possess ample incentive to share it. Impugning his superiors would emphasize the limits of his own responsibility and ensure that those who ordered him to commit atrocities would not go free.

In theory, the prospect of a light sentence could also lure one or more Case No. 2 defendants into breaking ranks, acknowledging crimes, and accepting responsibility. However, this seems unlikely. All four charged persons are considerably older than Duch and in ill health. None could reasonably expect to outlive a sentence of the length Duch received. Their greater incentive to speak will be to impugn one another to avoid taking responsibility.

The case for reducing Duch's sentence due to contrition is relatively weak. When courts reward apologies, they need to do so carefully to avoid encouraging false or empty shows of regret. Acts matter more. Duch did express regret to the court, but he missed his opportunities to issue a direct apology to victims. At the end of his trial, after months of acknowledging guilt and asking for mercy, he reversed course and entered a plea through his domestic defense lawyer of "not guilty." If the scale of his crimes had not been so great, his shows of regret would merit serious consideration. Given the horrors he oversaw at S-21, his apologies cannot alone support a significant sentence reduction.

The Trial Chamber opted for a sentence toward the lower bound of reasonable options. To exact retributive justice, it had to deliver a sentence that is likely to consume all or nearly all of Duch's life. To uphold due process norms and promote truth-telling and apologies, it had to start from a figure that would make its sentence reductions at least potentially meaningful. Duch has already announced that he plans to appeal, and the co-prosecutors are weighing the possibility.

The Appeals Chamber should not reduce the

sentence but should consider a slightly longer prison term. A sensible approach would be to begin with the 40 years requested by the co-prosecutors-which took account of mitigating factors and is already generous in relation to Duch's crimes-and include a minor reduction as a remedy for his illegal detention. The result would be a term of 35 to 38 years. This would make it highly unlikely that Duch will walk free and better satisfy retributive interests without gutting the court's efforts to promote due process and truth-telling.

Collective and Moral Reparations

A second major criticism of the verdict relates to reparations for civil parties. The ECCC has neither the budget nor the authority to provide financial reparations to individual victims. It also lacks legal authority to enforce implementation of reparation measures by the Cambodian government. However, it does have a mandate to provide "collective and moral reparations" to civil parties found to have suffered wrongs. Civil parties had good grounds for disappointment; the Trial Chamber's awards of reparation were sorely lacking. The



Villagers in Malai district watching Duch verdict

Trial Chamber found 66 civil parties to qualify for redress but offered them only token acknowledgement by publishing their names and selected statements by Duch. Numerous civil parties have criticized them as a sign of dismissal and disrespect.

The ECCC has been a pioneer in victim participation, largely by implementing a civil party scheme, and has won donor support partly for that reason. The participation of civil parties in the Duch trial generated controversy, consuming time and sometimes drawing legitimate complaints from judges and prosecutors. The role of civil parties has thus been drastically curtailed in Case No. 2. That policy change is defensible but does not absolve the ECCC's responsibility to respond meaningfully to the requests of civil parties in the Duch trial. They played an active and important role, and the Trial Chamber erred by providing minimal reparations that fell short of their modest and reasonable expectations of a collective remedy.

The Trial Chamber should have been much more creative on the issue of reparations. There are many possibilities short of financial awards. It can recommend measures, help to catalyze action by donors and civil society, or bless actions undertaken by other entities even if it does not physically implement or fund a reparations scheme itself. The ideas proposed by survivors and civil society organizations are not radical. They include establishing simple memorials, commemorative gatherings of survivors, or establishing drop-boxes where ordinary citizens can contribute funds to address victims' needs. The ECCC's support for such initiatives would entail minimal funds and organizational risk but would have a strong legitimating effect and real meaning for survivors. Fortunately, the Duch verdict is not necessarily the tribunal's last opportunity. If the co-prosecutors appeal, civil parties can request that the ECCC Appeals Chamber make amends. The tribunal should also have an opportunity at the conclusion of Case No. 2.

The ECCC can never make the survivors of Tuol Sleng and their families whole. The Trial Chamber's duties included conducting a fair trial, rendering a

credible judgment of guilt or innocence, imposing suitable punishment, and issuing reasonable collective reparations within its modest means. It performed admirably on the first two of these tasks, which are probably the most important for a criminal tribunal of its kind. It also made a reasonable effort to manage Duch's punishment, which was bound to be controversial. The greatest area for improvement going forward is to manage its innovative civil party process more effectively. Otherwise, the ECCC process risks further frustrating many of the survivors it is meant to serve.

John D. Ciorciari is an assistant professor at the Gerald R. Ford School of Public Policy, University of Michigan, and DC-Cam senior legal advisor.

SEARCHING FOR FATHER IN LAW

My name is Robert Tillman. My wife escaped Cambodia at the onset of the Khmer Rouge. She escaped with her Mother, 2 aunts & her grandfather. They escaped on foot from Battambang and travelled on foot to the Thai border where they lived in refugee camps there & then in the Philippines before making it to the US in 1982.

Her father was well-established and relatively wealthy for the time & location and it is believed (but not known for sure) that he was killed by the Khmer Rouge. The best information that she has indicates her father's name was Danh (Dahn?) Sithon (or Sithon Danh in American context).

She has been unable to find any information on him and has spent the last 20 yrs of her life wondering what happened to her father and wondering if he is dead or alive.

I'm sure this is like a needle in a haystack, but if you have any means of getting any information on this, I would forever be indebted to you and your organization.

Please feel free to contact me at this email address: robert_tillman@verizon.net

DUCH VERDICT SCREENING: HOPE FOR PEACE

Natalae Anderson

Every since the verdict, I've been trying to capture the events of that day and what I felt in writing. I have started and stopped several times-abandoning whole paragraphs and starting anew. For once, the girl who feels more comfortable expressing herself in writing than by talking could not write. Maybe when my spirit has fully processed the day the words will come to me. But now, words elude me. In the meantime, I want to dedicate this note and my profile picture to these two women, the children and all of the other villagers that I witnessed the verdict with.

For some unknown reason, these two women came up to me after the verdict. One of them grabbed my hand and began speaking in Khmer. I tried to explain that I couldn't understand her but she seemed undaunted by the fact that I was speaking English. She continued holding my hand and I couldn't let it go. I had to know what she was saying. I held up one finger hoping that she would understand I was telling her to wait while we found a translator. The translator said that her leg was hurting. She was trying to tell me that while sitting there listening to the verdict all of that time that her leg had begun to hurt and she was asking for medicine. I didn't have any. I asked some DC-Cam staff members and anyone else that I thought might have some aspirin or other pain reliever but no one had anything. While we waited for another staff member that we thought might have medicine to show up, the elderly women and I sat on the wooden pagoda floor.

The same woman who initially grabbed my hand continued talking to me-sometimes touching her leg, no doubt detailing her pain. We waited, but the staff member didn't show up. Abruptly, she grabbed my hand, stood me up, and she and her friend began to lead me to eat. Lunch had been set up in the pagoda for all of the villagers following the verdict.

No other foreigners were eating, they were only serving. I hadn't planned to eat because I knew that if I did, I was likely to get sick. I had already gotten sick once after my first visit to the provinces and I wasn't eager to repeat the experience. The food had been prepared in the village-I didn't know what the water source was or if the soup had been heated warm enough to kill any bacteria or parasites. The noodles that were being



served were being put into bowls by the hands of several villagers. I really wanted to avoid eating. I tried to explain that I wasn't hungry and encouraged them to eat without me, but they continued to lead me to the eating area. I knew that the ladies were being extremely kind and by the time they got me to my sitting place, I knew that it was more important to accept their act of kindness than to succumb to my fear. I sat down to eat.

I saw an ant crawling on my noodles, but before I could take it off of my food, the lady next to me grabbed my bowl and ladled soup into it. The ant

disappeared into the broth. Oh well, I thought, one ant never hurt anybody. After finishing half of my food, I put my palms together and slightly bowed my head and said "Aw koon" (thank you) to the people around me. I then went back to my task of trying to find medicine for the women. I went to find the remaining DC-Cam staff member and she told me that she usually kept a pain reliever in her bag but that she had taken it out. I went back to tell the women that I didn't have any medicine for them. I felt defeated. As I was sitting with them on the floor, still hoping that we could find something, Orlando showed up. He handed me two pills in hard plastic shrink wrap. Unbeknownst to me, he had taken a trip down the road with a little kid who knew where to buy some medicine. The little kid took him to someone's home that was also a makeshift store where he could buy a pain reliever.

We handed her the medicine and then promptly had to send the little boy back to the store with money because her friend's leg was also hurting. As we sat there with the women, they sometimes spoke, smiled, touched my hair or face and explained to me about the pain in their legs. I wished that I could understand exactly what they were saying and speak back to them, but instead I held her hand tightly hoping that act conveyed my wish.

I still don't know how I feel about the verdict.

Duch is responsible for the torture and deaths of tens of thousands of people. I walked through S-21-the prison that he was in charge of-and saw the old blood stains that refuse to disappear-saw the pictures of people that were tortured-including children. Do I think the verdict was unfair? Do I think that no number could ever fully satisfy every Cambodian, so his guilty verdict and the sentence were merely symbolic? Do I think that serving time in jail isn't a befitting punishment anyway-instead he should be made to read the confessions of everyone he tortured every day or forced to do some other act that brings the victims' families satisfaction? I don't know. What I do know is that Cambodia is a country that is still in great pain from what happened during the Khmer Rouge. Many adults still suffer from post traumatic stress disorder, depression and substance abuse because of what they lived through. I know that I wish the world would understand that as a community everything we do affects other countries. None of us lives in a bubble. The Khmer Rouge did not come to power simply because of the events that took place within Cambodia. World events and politics played a part. I know that I unrealistically pray that the world will never let such atrocities happen again.

I dedicate this note and my profile picture to these two beautiful women who like the country of

Cambodia just want the pain that they feel to be eased-they want to be healed-they want someone to listen-they want peace. I hope that peace will someday release them and this country from its tortured past.

Natalae Anderson is a student at Rutgers University, DC-Cam legal associate, Summer 2010.



Natalae Anderson with villagers in Kandal province

THE PATH TOWARD JUSTICE

Jennifer Ka

Cambodians were stuck in a nightmare they could not wake up from. I cannot imagine the brutality of the Khmer Rouge period because it was too chaotic. There was no mercy, no compassion, and no rules. The savagery makes me question the goodness of humanity. The act of genocide will always keep us wondering how this happened. We ask these questions to appease our virtuous hearts because we are too afraid of what we are all capable of.

Tuol Sleng prison was full of horror. Everything was left untouched after the fall of Democratic Kampuchea. I could still see the blood stains on the floors of the innocent victims who were tortured. I saw the torture methods, the narrow rooms, and the pictures of victims. The eyes of the victims stared timelessly back into mine. I saw the suffering and the agony deep within them. They knew that they could do nothing. I began to feel my hate and anger grow. They did not deserve this treatment; the prisoners didn't have a chance. The Khmer Rouge was blinded by their own distrust toward others leading to the unneeded deaths. They really did not care if you were innocent or not. At Cheoung Ek, I roamed around the Killing Fields of the buried souls. Most of the former prisoners were taken here after mutilation or were killed here. It felt empty and silent because there was nothing left. The lives of Cambodians were gone leaving only the clothes they once wore. I saw the desolate skulls that once belonged to a baby, an elder, a woman or a man piled together. My emotions began to overwhelm me as I tried

to soak in the truth. I wanted justice for Cambodian people.

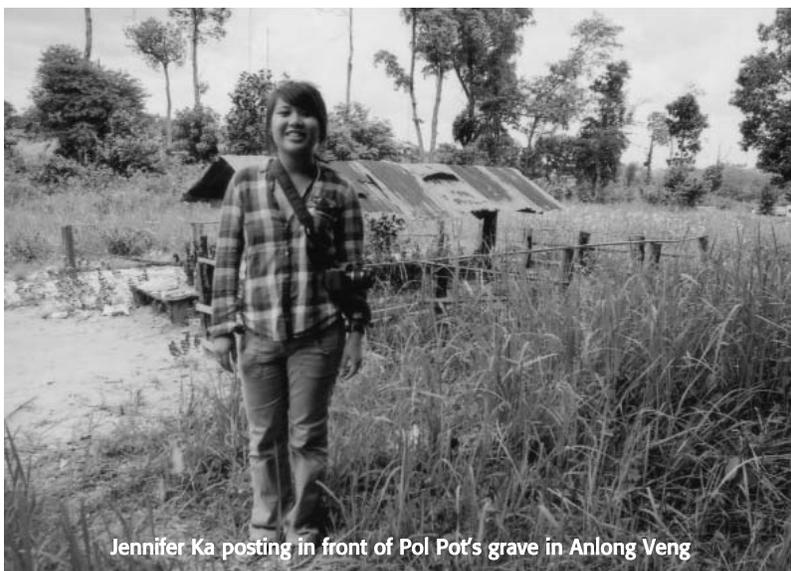
I went to the Khmer Rouge Tribunal for the long awaited verdict of Duch with hundreds of others including the civil parties, monks, reporters, and other interested viewers. The energy of the courtroom was bleak and apathetic. There seemed to be no remorse for the victims, it wasn't enough. After the controversial verdict was read, people scattered around expressing all kind of emotions. Some cried, some were angry, some wanted to get a great story out of it, and some

did not really care at all. Me, myself didn't really know what to feel. I just stared at this wild scene of humans hovering over each other to catch the reactions. The tribunal's significance began to fade away because the whole process seemed like a spectacle instead of a path toward justice.

I was then confused

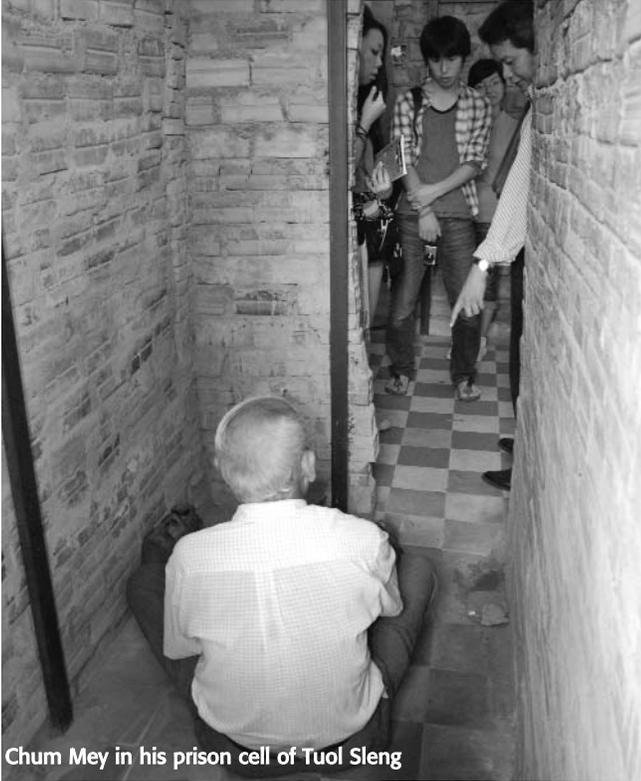
and disappointed by the unsatisfactory result of the tribunal. However, I soon realized that the tribunal itself was not as important as what the tribunal symbolized. Yes, the survivors searched for justice within the court and most of them left disappointed, but the truth is they will never be completely satisfied. Nothing can ever bring back their loved ones.

We all search for a cure to heal our emotional wounds, but the only way is to face the pain itself. The tribunal set the past free allowing the victims to face the truth. It gave them a chance to tell their stories and have a voice. The people of Cambodia must see the tribunal as the foundation for the future. The revival of the country can begin as the basis of her



Jennifer Ka posing in front of Pol Pot's grave in Anlong Veng

wounds is learning to heal. It is a long process we all must contribute to as a collective community to rebuild what was lost. Cambodia has lost so much already, but she shall no longer be victimized by the Khmer Rouge. This regime has taken too much power



Chum Mey in his prison cell of Tuol Sleng



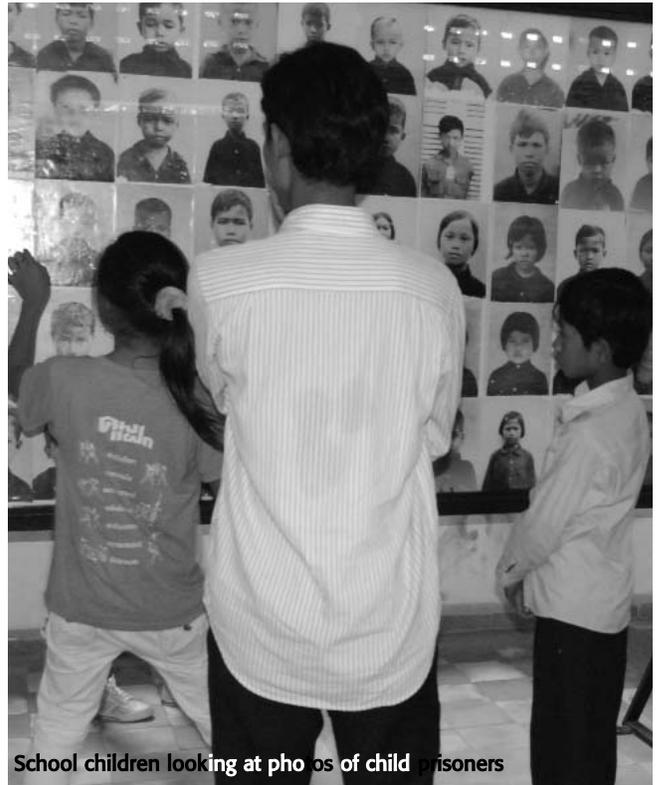
Handcuffs and shackles at Tuol Sleng Prison

from her already to let them do it once again. She knows the younger generations are the future and will bring back justice for her people. Together with the wisdom of the old generation and the strength of the new, we can build a better tomorrow for Cambodia.

I did not want to hate or be angry anymore. The negative energies wanted to take over and take me to complete darkness. It wanted me to remain detached from the world and fall into my own self pity. But I couldn't let it. I know now that we all have a choice in what we do with our emotions. We must believe that our pure hearts will override the fouls of evil. As humans, we are capable of so much which still scares me, but we cannot lose sight of what is needed. We must continue to fight the invisible armies of evil with our weapons of truth and love.

Feeling what is real can be overbearing and cause us to feel weak, but when we choose to make a change, our weakness becomes our strength.

Jennifer Ka is a junior of psychology at the University of California at San Diego, DC-Cam volunteer, Summer 2010.



School children looking at photos of child prisoners

IMPLICATIONS OF THE AGE AND HEALTH OF THE CHARGED PERSONS & ACCUSED BEFORE THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Spencer Cryder

The Extraordinary Chambers in the Courts of Cambodia (ECCC) is unique among the international tribunals due to, *inter alia*, the advanced ages of the Charged Persons and the Accused and their corresponding declining health. Born 17 November 1942, and starting his trial at the age of 66, Kaing Guek Eav (alias "Duch") is the youngest individual before the ECCC. The other four Charged Persons are at least ten years older than Duch, and their dates of birth are as follows: Ieng Thirith—10 March 1932, Khieu Samphan—27 July 1931, Nuon Chea—7 July 1926, and Ieng Sary—24 October 1925. An international tribunal dealing exclusively with Charged Persons/Accused in their late sixties, late seventies, or early eighties presents challenges to the ECCC's objective of "bringing to trial senior leaders...and those who were most responsible" for the violations of international or Cambodian law during the reign of Democratic Kampuchea. In particular, because there are only five Charged Persons/Accused, the death or incapacity of one, or all, of them before the completion of their respective trial would inflict a serious blow to the ECCC as an institution and deny the rule of law from running its natural course.

This article will explore the implications of the age and health of the five Charged Persons/Accused on their mental fitness to stand trial, to be detained, and to be physically present or effectively participate at trial, as well as possible accommodations or proactive measures that the ECCC could implement to protect and respect the rights of the Accused to a fair trial while allowing the Court to reach a verdict before the inevitable organic death or mental or physical incapacitation of the elderly Charged Persons/Accused.

Internationalized courts have found that an

Accused's right to be mentally present is protected by the fitness to stand trial requirement, *i.e.*, endowment with a mental capacity sufficient to exercise his or her implied or expressed procedural rights to make his or her defense. As well as defining fitness to stand trial, the 2004 ICTY *Strugar* decision also provided the now-widely-accepted standard for assessing an Accused's fitness to stand trial: "[A]n accused is considered fit to stand trial...when an accused has those capacities, viewed overall and in a reasonable and commonsense manner, at such a level that it is possible for the accused to participate in the proceedings (in some cases with assistance) and sufficiently exercise the identified rights." The main focus of the fitness to stand trial requirement is the capacity and functioning of an Accused's mind. The mere presence of a physical or mental ailment and the corresponding possibility that it could affect the Accused's mind or mental capacity is not determinative. A mental or physical ailment will only be relevant to the fitness assessment if it actually affects the individual's mental capacity to exercise his or her procedural rights.

Furthermore, to be fit to stand trial the capacities of an Accused do not need to be present at their hypothetical highest level, or at the highest level that a particular Accused has ever enjoyed in respect of each capacity. Similarly, courts have found that it is a fact of nature that individuals vary as to their intelligence and understanding and these normal variations among individuals do not raise concerns about fitness for trial. Thus, a finding of incompetence to stand trial must be based on something more significant than merely low intelligence on the part of a defendant or a decrease in his or her capacity compared to the past.

If the issue of fitness to stand trial arises, the

ECCC will presumably use the Strugar standard. At the ECCC, the advanced ages of the Charged Persons/Accused should not affect or alter the application of the clearly established Strugar standard. The Strugar standard essentially determines whether an Accused has the mental capacity to effectively utilize his or her express and implied procedural rights to make his or her case. The source that limits the mental capacity—be it purely physical, purely mental, a combination of both, or simply old age—is irrelevant. The determinative issue is the mental capacity of an Accused, i.e., the mental presence of an Accused during preparation for trial and at the trial itself. If a one-hundred-year-old individual can still participate effectively and exercise his or her procedural rights before the ECCC, then that person is mentally present before the court and fit to stand trial. Therefore, the Strugar standard, as currently stated, would be the most appropriate gauge of an Accused's mental capacity to exercise his or her procedural rights.

Questions have been raised at the ECCC about when, i.e., at what stage of the proceedings, a party can request an assessment of the Charged Person's fitness to stand trial. A Charged Person/Accused can request that the Pre-Trial or Trial Chamber appoint an expert to assess his or her fitness to stand trial during the Investigation and Trial stages of the ECCC. However, the Chambers require an adequate reason to question the Charged Person's capacity to participate before appointing an expert to assess fitness to stand trial. While the ECCC has previously denied both of the requests for the appointment of an expert to assess the fitness of Nuon Chea and Ieng Sary, the ECCC has yet to consider recent jurisprudence from the International Criminal Tribunal for the Former Yugoslavia (ICTY) that suggests doctors and experts should comment only with respect to issues that fall within their area of expertise. The ICTY Chamber provided a concrete example of how an expert appointed to comment on the physical ailment should not comment on psychological issues, "[L]imited weight will be given to...a gastroenterologist's comments about the mental health of the Accused." The ECCC previously allowed cardiologists to comment on the mental health

of the Accused, something not allowed under the ICTY's latest jurisprudence. Furthermore, if the ECCC adopts the ICTY's reasoning, the Trial Chamber should also consider whether the medical reports relied on in its decisions are the product of a primary care physician or a medical specialist, because the two should not be accorded the same weight.

If the question of an Accused's fitness to stand trial arises before the ECCC, one party will be assigned the burden of proof. There are essentially two options when assigning the burden of proof: the burden is on the Prosecution to prove that an Accused is fit to stand trial or the burden is on the Defense to prove that an Accused is not fit to stand trial. As the ECCC has already indicated in its PTC decisions, it will presumptively adopt the Strugar reasoning and allocate the burden of proof to the Defense. However, according to the more recent and nuanced Nahak reasoning, when determining which party has the burden of proving fitness to stand trial, the Court should consider whether the PTC or TC appointed an expert and whether the Prosecution supported or objected to such an appointment. If the PTC or TC appointed an expert to evaluate the detainee's condition, thus acknowledging doubt as to the Accused's fitness, then the burden should be shifted to the Prosecution. Similarly, if the Prosecution initially raised or supported a request by the Defense to assess the Accused's fitness to stand trial, then the burden should be shifted to the Prosecution. It would be consistent with Nahak's interpretation of Strugar for the ECCC to place the burden on the Prosecution to prove the Accused's fitness to stand trial in all circumstances, even when the Chambers did not appoint an expert and the Prosecution did not raise or support the appointment of an expert. In this instance, the Chamber could rely on the language and structure of the Strugar assessment itself to justify its decision to place the burden on the Prosecution. Additionally, the Chamber could note that, since the arrest and detention of the Charged Persons, an inherent doubt has always existed about the Charged Persons' fitness to stand trial due to their extraordinarily advanced ages and deteriorating

health. Moreover, any unstated "presumption of fitness to stand" that might exist, would hold little weight considering the age and health of the Charged Persons.

While waiting to stand trial, all of the Charged Persons before the ECCC are currently provisionally detained. Consensus exists among the internationalized tribunals on releasing pre-trial detainees on humanitarian grounds when they are diagnosed with a terminal or life-threatening disease. Additionally, an Accused can be conditionally released for health reasons if effective medical treatment is not available at the detention unit or inside the host country. In either of these situations, an Accused does not need to be released to a hospital or private residence in the Accused's hometown or province. Currently, no evidence exists showing that either the Accused or Charged Persons before the ECCC suffer from a life-threatening or terminal disease, and according to the general practice of the ECCC, they will continue to be detained during the pre-trial phase. However, a shift is occurring at international tribunals toward a presumption that detainees should be provisionally released unless clear circumstances warrant their detention. The ECCC's presumption to detain Charged Persons could be challenged on the grounds that the detention of aging and infirm Charged Persons' would be more appropriate—and more in line with the shift occurring at internationalized courts—in the form of "house arrest" at a hospital or private residence.

The mental presence of an Accused during the proceedings, protected by the fitness to stand trial requirement, and the right to be physically present at trial are both mechanisms that guard against trials where an Accused is absent—be it in mind or body. The general prohibition of international law against trials in absentia would be void of any substance if it only required the physical—without the mental—presence of an Accused at trial. But does the same logic apply when an Accused is mentally fit to stand trial, but physically unable to attend the trial because of illness or disease? In those circumstances, courts must decide

whether to proceed in an Accused's absence (i.e., a trial in absentia), implement accommodating measures that may derogate from the Accused's right to be present (e.g., require an Accused to participate using a videoconference link from the hospital or detention unit bed), or adjourn the proceedings. Internationalized courts have grappled with this question and no fully satisfactory answer has materialized.

International law provides an Accused with the general right to be tried in his or her physical presence. The right to be present protects the right of an Accused to be physically present in the courtroom and therefore able to personally confront witnesses and mount a defense utilizing his or her procedural rights. Furthermore, the physical presence of an Accused at trial is of vital importance, not only because it is one of the minimum guarantees of the International Covenant on Civil and Political Rights (ICCPR), but for the practical considerations of establishing the facts of the case and, if an Accused is convicted, to enable an appropriate and enforceable sentence to be passed.

The right of an Accused to be physically present at trial is not absolute. Internationalized courts and the ECCC have specific rules allowing them to proceed in the absence of an Accused if he or she is intentionally disrupting the trial or refusing to attend. However, the analysis becomes much more complex when a delay, disruption, or absence of an Accused is due to an unintentional act—e.g., a health condition. If absent for health reasons, the ECCC is in a particularly difficult situation because the ECCC Internal Rules require the consent of the Accused before the Trial Chamber can implement accommodating measures that prevent the physical presence of the Accused or continue the trial in absentia. While the Chamber can proactively implement an adjusted trial regime to accommodate the Accused's physical inability to participate in long trial sessions taking place several days a week, the trial schedule can only be adjusted to a certain point before the trial comes to an effective halt (e.g., trial for half a day, one day a week). Likewise, an Accused can always waive his or her right to be present, but it is

highly unlikely to occur when an Accused alleges that he or she is ill and believes that the proper course of action is the adjournment of the proceedings. If this situation arises, the ECCC will have to weigh the medical reports and decide whether or not an Accused's illness or ailment in fact prevents him or her from being physically present at trial or participating via a video-link. At least one court has held that an Accused who claims to be too unwell to attend court on a particular day bears the burden of showing that that is indeed the case.

If the Trial Chamber finds that an Accused is capable of being physically present or effectively participating via a video-link, but the Accused refuses to attend, the ECCC will most likely be forced to derogate from the Accused's right to be physically present at trial. In order to derogate from a fundamental right, the ECCC must be satisfied that no reasonable alternative exists—e.g., adjourn the proceedings to facilitate recovery—and the derogation serves a sufficiently important objective—e.g., avoiding substantial trial delays. If derogation is required, then the restriction or derogation must impair the right no more than is necessary to accomplish the objective.

A Trial Chamber's determination of whether an Accused's condition or act is intentional—in the form of a delay, refusal to attend, or disruption of trial—or unintentional, is of great significance. While intentional acts may be held to be implied waivers of the right to be present, unintentional acts or conditions that are no fault of an Accused, but delay the trial, generally lead to a trial or appeals chamber emphasizing that derogation of the right to be present should be avoided if at all possible. The ECCC Trial Chamber will have to walk a fine line between "over" restricting the right of an Accused to be present and achieving the objective of a reasonably expeditious resolution of the trial.

If the ailment is not of the nature that recovery is possible or probable, the ECCC will most likely be forced to require an Accused to participate effectively via video link. Furthermore, if the Accused refuses to participate via the video link, then the ECCC will have to continue in absentia. The ECCC will be able to justify

the trial in absentia because at some point an Accused who claims to be incapable of attending trial due to an alleged illness or medical condition may be found to be refusing to attend trial, one of the enumerated exceptions in the ECCC Internal Rules that allows trials in absentia when an Accused refuses to attend trial. On whatever grounds the Trial Chamber justifies a potential trial in absentia, it will likely tarnish the appearance of a fair trial. While by no means the ideal solution, continuing the trial in absentia may be the only option that allows for the trial to continue and preventing it from grinding to an effective halt.

Finally, while a trial proceeding with the joinder of multiple Accuseds may ostensibly appear to save time, it should be noted that the right to be present requires the contemporaneous physical presence of all of the Co-Accused at trial. If the Chamber is required to sever the cases of one or more of the Co-Accuseds due to trial delays as a result of health issues, an adjusted trial regime could be implemented. For example, trying some of the Co-Accuseds in the morning session and trying the remaining Co-Accuseds in the afternoon session.

The advanced ages and deteriorating health of the Charged Persons/Accused will undoubtedly place unique strains on the ECCC. However, those inevitable strains can be proactively countered by acknowledging and implementing mechanisms that will decrease the likelihood of trials in absentia. While an Accused may legitimately reach the point where he or she cannot physically attend trial, accommodating measures should be ready for implementation from the outset. Even if a trial in absentia is required because the Accused refuses to participate, the act of providing accommodating measures throughout will increase the appearance of a fair trial and signal a genuine effort by the ECCC to honor an Accused's right to be present.

*Spencer Cryder, Tulane University Law School
DC-Cam legal associate, Summer 2009.*

SEARCHING FOR THE LOCATION OF CAMBODIAN REFUGEES WHO MADE THEIR WAY BACK TO FRANCE

Tim Page

On April 12, 1979 the Thai army forced a group of 1,728 Cambodian refugees, at gunpoint back into Cambodia from the temporary camp where they had been held at Wat Koh in Aranyaprathet on the far west border of Cambodia. Seven hundred of them were children under the age of twelve. David Taylor, an Australian Field Officer for UNHCR had had enough. He heard that within a week two hundred of them had already died or been killed by the Khmer Rouge. In an attempt to stop the forced repatriations, on April 16, 1979, Taylor persuaded a senior Thai army officer to allow him to enter a restricted military district from where they were being forced back.

He arrived at Barn Taprick Noie with his driver at about 3.30 p.m. and immediately noticed a group of people sitting on the ground talking with Thai villagers and about 8 soldiers. They were thirty-two in total-thirteen adults, one of them a woman who was eight months pregnant and nineteen children-who had just crossed the border. The women were crying, they were told they were being sent back. The soldiers told them they must stand up and walk to the border immediately. David told them not to stand up but to remain together as a group while he talked to the soldiers and his driver went back to Aranyaprathet to talk to his supervisor. David's boss could not be contacted and the soldiers were becoming more insistent that the Cambodians should leave immediately; they said that the border was dangerous in the dark and they could no longer wait. David Taylor said "I thought if I could keep the Cambodians a little longer the soldiers would not send them back until the next day. I thought if I could keep them in Thailand for one night it would give me time to talk to local military and civilian officials and to my bosses Leslie Goodyear and Martin Barber", both UNHCR official representatives.

The soldiers, however, clearly were preparing to carry out their orders. "The patrol leader tried to push me away from the Cambodians and one of the soldiers raised his gun at me. The Thai villagers were also saying that the Cambodians should leave since they 'didn't want the Khmer Rouge in Thailand, they had already burnt down some of their houses". The tension eased when the villagers shouted, "some more are coming!" Five more Cambodians, two men, two women and a child were walking down the path towards them. They were immediately searched and David insisted that the five sit together with the other thirty-two.

The patrol leader meanwhile had talked to his superior and David was told that if he would write a letter accepting responsibility for the thirty-seven they could go to the Wat Koh camp for new refugees. "I immediately accepted responsibility and said that I



Tim Page

would write a letter saying so. I hired a truck from the village and told the Cambodians to get into the truck. Some of them were clearly afraid. I explained that they were to trust me and that I would ride in the truck with them". He took them to Wat Koh and the next day returned to Barn Taprick Noie to thank the villagers and the soldiers for their kindness.

Meanwhile word had got out about what was happening on the border and journalists were there to meet them at Aranyaprathet and the story captured the attention of the worlds press. Official statements of damage control kicked into gear while David Taylor set about making sure they would not suffer the same fate as the 1,728 who had been forced out of Wat Koh four days before.

David approached a French priest, Father Venet, a refugee official working with the French Embassy and asked for help in resettling the Cambodians in France. Venet discussed the request with M. Jean Soulier, French ambassador to Thailand. M. Soulier accepted the Cambodians for resettlement. On June 12, 1979 the Cambodians whom David Taylor had saved from forced repatriation were flown to safety in France, there number now thirty-eight, the pregnant woman having given birth to a son whom she called David.

Since then this story has slipped into history and been forgotten; but we are sure that the thirty-eight people whose lives were changed on that day have never forgotten David Taylor.

We are trying to trace any of these survivors to be able to write an in depth story on their lives and how it was changed by this humanitarian.

Here are the following survivors:

NAME	DATE OF BIRTH
♦ Mr. Poeng Sorn	17. 04. 1940
♦ Mrs. Sao Yin and 7 Children	1945
♦ Mr. Chea Thon	28. 07. 1936
♦ Mrs. Eang Han and 3 children	1944

♦ Mr. Ok Seng Hak	1950
♦ Mrs. In Pren and 1 child	1954
♦ Mr. Chak Keo	1947
♦ Mrs. Thong Savou	1952
♦ Mrs. Lim Lon and 3 children	1937
♦ Mrs. Ing Suy Kim and 1 child	1946
♦ Mrs. Ing Suy Heng and 2 children	1939
♦ Mr. Long Neang	1944
♦ Mrs. Keo Lean and 6 children	1944
♦ Mr. Kong Kang	1943

Tim Page is a former Life-Time photographer.

MISSING FATHER

I am an American with a Cambodian wife. We are looking for her father who was last seen near Phum Thnot between Sisophon and Poipet around 1978 near Hwy 6. The Khmer Rouge came to retrieve him but he never returned to the commune. The bodies of the people he was with were found but not his body.

He was forced to marry my wife's mother by the Khmer Rouge. He gave a name of Sor Sith. But we recently discovered that he may have been named Thim and was from Prey Chhor village (Kampong Cham). He may have been a General pre-DK.

I realize the chances to find him are slim—but it is rumored he went to Pailin then Thailand, then another country (France?). If found, please contact me at: pooh4sean@aol.com

Sean Higgins and Met Sith

JUSTICE AND SUFFERING

Hav Sophea

Dear respected director and all staff at the Documentation Center of Cambodia,



Hav Sophea

I, Hav Sophea, first of all would like to express my gratitude to Mr. Director and all staff who have been working actively and tirelessly to seek justice for those who lost their lives, including my father and relatives, during the

unjust regime of Democratic Kampuchea.

For about three decades, my mother and I never knew where exactly my father had disappeared. The only thing we knew was that he was separated from the family during that dark regime and we never thought of bringing him justice. However, as the proverb says "there are no secrets in this world." Finally, in late 2006, I received a list of Tuol Sleng prisoners from the Documentation Center of Cambodia. The information terrified me and my hope and dreams for my father to return suddenly melted away.

I'm thinking of my father, thinking of the pain he suffered under that inhumane treatment at Tuol Sleng. I'm so heartsick.

On February 7, 1976, I was brought into this world to open my eyes and see everything except my father's face. I never saw his smile; I never receive his gift, his encouragement and his care; and I had no father to take me to school like other kids. This, I know, was not his fault; it was because he was executed and thus his wife and daughter were to live a lonely life just as birds live without a net. My mother struggled to play the double-role of being father and mother at the same time. My good mother tried to stand up so as to live in this society again though she was still deeply

hurt. Because of her child, she never complained nor feared exhaustion except to say that if your father was still alive, we would not live such difficult life as today. This dark regime changed our entire lives to live in worse conditions.

"Your father used to say that when peace prevailed in the country, he would resign from the military and open a business," Mother recalled.

And she continued, "But who knew that he would die in such an unjust manner?" Dad struggled to liberate the country from foreign colonialism and hoped to ultimately enjoy peace and freedom on our Golden Land-Sovann Phumi. But in the end, on the contrary, he was termed a "party traitor" and these two-words brought him death, stripping him the chance of even to know whether his baby was a boy or girl, and whether his parents and siblings were dead or alive. This was how he was rewarded by the Khmer Rouge [for his sacrifice]. I am disgusted with this regime for it separated me from my father-the one who was the hope, the leader, the primary teacher and Love provider to the family. In the end, father was separated from us forever. That's what I'm not able to forget.

I never forget my father. I always think that he lives with us and is watching us every day. I always pray to his soul so that he will be in a peaceful place. Besides through religious mean, I also have participated in justice seeking via legal means before the tribunal. And these urged me to file Complaint through the Documentation Center of Cambodia. Despite the fact that I do not have high expectations of acquiring full justice from the court, I still believe that in the tribunal's judgment that they will understand the sufferings of Cambodian people. I'm waiting for the judgment; one that is more acceptable. I want to know who was involved in the massacre of more than one million Cambodian people.

I often asked myself, "Why did the Khmer Rouge

leaders kill their own people? For what reason they did they do that? Were all of those who were killed traitors? Were those who were killed loyal to the Party?" I believe many Cambodians have had these same questions for a long time. The KR never regretted what they did. They left behind lot of orphans and widows who have lived with physical, mental and financial privation until today; and some could hardly free themselves from poverty and serious psychological trauma.

I filed the Complaint without expecting to receive any monetary reparation or other benefits because my father's life could not be exchanged for money. A person's life is so priceless that nothing could be compared. What I want is justice for my father. He died in the most unjust conditions by not even knowing his wrong doing, and he didn't receive a fair trial before he died. I pray to my father's soul and let him know that this daughter will not ignore the loss of his life. I will bring you justice. I hope you will receive justice soon. The sufferings of mother and I as well as the Cambodian people will be reduced once the tribunal pronounces its verdict. However, if the verdict is not just enough, the victims will feel even more painful because everyone expects the tribunal to deliver justice for those who died as well as the survivors of the regime.

Once again, I would lastly express my appreciation of all the hard work that the director and all staff at the Documentation Center of Cambodia have done for me as well as other victims, in particular, helping me find a legal representative. And this helps me to receive a sense of justice; also it acts as a lantern shining throughout the whole world so as to see what actually befell upon people of Cambodia in the past thirty years.

Finally, I would like to pray to the holy things of Cambodia to take care of Mr. Director and all staff to have

safe trips wherever they go; also, to be in good health, happiness, and to advance all work and achieve all tasks. With my greatest respect,

Name of my relatives who lost lives during the Khmer Rouge Regime

1. Chen Hav, grandfather, died at Cha Huoy Cooperative in Pursat province.
2. Saom Khay, grandmother, died at Cha Huoy Cooperative in Pursat province.
3. Chen Hea (uncle), his wife and four children, died at Cha Huoy Cooperative in Pursat province.
4. Chen Sea alias Hav Han, father, died at Tuol Sleng.
5. Chen Chhon (uncle), his wife and six children, died at Cha Huoy Cooperative in Pursat province.
6. Chen Sam-At (uncle), his wife and three children, died at Cha Huoy Cooperative in Pursat province.
7. Reach Sopath, uncle, died in SvayRieng province.
8. Reach Sa-em (uncle), his wife and his six children disappeared.
9. Nhem Kim Suo, uncle, died in Kampong Thom province.
10. Nhem Kim Sieng, uncle, died in Phnom Penh.
11. Nhem Chanty, uncle, died in Kampong Thom province.

Hav Sophea is a civil party against case 001 at ECCC.



Hav Sophea visiting the Royal Palace

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.

Please contact Kok-Thay ENG Tel: 012-955-858

Email: truthkokthay@dccam.org Website : www.dccam.org or www.cambodiatribunal.org

