

Letters from the Editors:

DEAR READER

In publishing the new, quarterly *Special English Edition* issues of *Searching for the Truth*, we recognize the important role played by the publication and the need to provide our English-speaking audience with current, first-rate educational information regarding the Khmer Rouge (KR) regime and its atrocities from 1975-1979. These articles are appropriate for students, researchers, and professionals seeking accurate, current material to help bridge the gap between rumor and reality on Khmer Rouge issues. These articles become more useful for study when those of lasting value are carefully collected, organized, reproduced in a low-cost format, and made available to a wide range of stakeholders.

This is the first *Special English Edition* of *Searching for the Truth*, the Documentation Center of Cambodia (DC-Cam) magazine dealing with history, law, and human rights concerns. The Khmer language version of the magazine is a monthly publication designed for local readers, high school students, civil servants, and law professionals, who are interested in these subjects. However, as the matter of a Khmer Rouge trial becomes more important through time, we have worked to publish an English version as well. To date, the English version has been published one year after the Khmer version. Yet, as the matter of time becomes ever more pressing, we have decided to publish a quarterly English language magazine (*Special English Edition*) in order to better inform our diverse English-speaking audience with accurate, up-to-date information regarding KR history and the quest for truth and justice.

We also recognize the difficulties in translation of the odd language and eccentric literature utilized by the Khmer Rouge in various fields of their administration (e.g. the KR communication files archived at the DC-Cam). The vernacular used by the KR was often obscure and hard to define. To cope with such a challenge, we have developed a Democratic Kampuchea (DK) glossary of terms and language used by the KR. This glossary was compiled by national and international Cambodia scholars who speak Khmer fluently and have lived with local villagers for long periods during their studies and research

on the Khmer Rouge revolution. Translation improves over time, as we hone our skills through experience. Translators, including myself, often go into the field and listen to former Khmer Rouge cadres recall their stories. This is a challenging, yet critical aspect of our work. It allows us to accurately translate Khmer Rouge terminology.

Articles are grouped according to subject matter. Topics addressed include: alleged Khmer Rouge crimes against humanity (including genocide and other atrocities criminalized by Cambodian penal code and international law); narratives from villagers (especially from aging witnesses); and public debate in the fields of human rights and transitional justice. This issue includes all such topics. The paper in the "Legal" section details a 2003 draft agreement between the Royal Government of Cambodia and the United Nations. The debate section provides comments, both positive and negative, on the draft agreement to establish an Extraordinary Chambers for the prosecution of Khmer Rouge leaders. In addition, a peace and reconciliation specialist airs his views via our "Comment and Analysis" forum. He argues that Cambodia, in order to heal old wounds, has to take the middle path, by choosing "Symbolic Justice."

Deciding what articles to use in this edition was not an easy task. I tried to assess articles according to significance and relevance of subject matter. I also took into account readability and utility for stimulating local and international readers' interest in this subject area. Potential selections were evaluated not only as they stood alone, but also as complements to other article selections.

I want to thank the English editors, Youk Chhang, and Jeffrey Straka who endeavored to sharpen the English translation. I gladly solicit reactions to this magazine as well as topical suggestions for future editions. Readers are cordially invited to become advisors and collaborators in future editions by sending mail or e-mail to DC-Cam.

Bunsou Sour
English Editor-in-Chief
Special English Edition



than it because we are in our land, we are well aware of our geographical location, we have people, we have food. With these advantages, we can easily defeat them, we can launch large or small attacks, anytime, from the front, from behind, with artilleries, small guns, infantry troops, and guerilla forces. We can also lay mines everywhere.

“During WWII, when the invading forces entered some countries, there were places for them to drink, dance and have parties. But for [Vietnamese] soldiers inside Kampuchea, they will have no place to do so; they will have to stay in underground tunnels, be constantly on the alert, and be worried all the time. Thus, the [Vietnamese] soldiers will be isolated and vulnerable to counterattacks once they are in Kampuchea. The Kampuchean commanders are well aware of the enemy’s plan. When [Vietnam’s] troops are ready to move into Kampuchean territory, they will storm-in in one quick attack to show their might. However, once inside Kampuchean territory, they have to spread out and they will lose. As they move forward, their troops dissipate in number and it will be harder for them to transport supplies and ammunition to the front line. As a result, the revolutionary army will intercept them, cut them into small groups, and destroy them.

Pol Pot told the press agency that in the war against the [Vietnamese] in defense of the DK, Kampuchea takes into consideration political, military and food issues, and friendship factors with other countries in the world.

“In the past year, since the government of DK alerted the world to the invasion plans of the [Vietnamese], several things have happened:

“1) Beginning in 1977, [Vietnam] spread fake propaganda offending the DK and Kampuchean revolution. At the time [Vietnam] was still well-liked internationally, so it could mislead others without question. Now as the situation turns up side down, it only has about ten countries on its side. It is very isolated. Kampuchean independence is important for Asian countries and the world. When they can no longer cheat, [Vietnam] turns to the expansionist Soviet Union. It does so in order to get help from the Soviet Union. In so doing it becomes even more isolated. Everyone knows its real face. Even the Soviet Union can’t help [Vietnam] recover from its failures and its isolation. If the Soviet Union could

help [Vietnam] itself, it wouldn’t seek help from the Warsaw Military Alliance. But this move by the Soviet Union will only make [Vietnam] more isolated because members of the [Warsaw Military Alliance] will oppose bringing forces to Asia. As more and more people come to dislike [Vietnam], the world will cut off food aid, the Soviet economic organization COMECON will not be able to help and Vietnam will be doomed. [COMECON] might help temporarily, but not for the long length of time it would take [Vietnam] to wage war against Kampuchea. Eastern European people will rise up to oppose. In short, [Vietnam] has only one country to rely on and this country is not a good supporter. In short, this year the world’s view toward [Vietnam] has changed and [Vietnam] is very isolated.

“2) If we compare Kampuchea’s economy and food supplies to [Vietnam]’s, We can see that [Vietnam] is starving, while Kampuchea has rice to eat. Thus, Kampuchea has an advantage on food; [Vietnam] has a food shortage and it can’t solve this problem itself. It asks for help from the world. But only the Soviet Union is still helping it. The situation is grave for [Vietnam]. If the war continues, they will suffer more misery.

“3) Kampuchea’s politics are stable. [Vietnam]’s internal policy is not agreed to by all of its members. When the plan to attack Kampuchea was presented, every one of them seemed to agree. But when they failed in their attack of Kampuchea, the Vietnamese began reconsidering. Now this war is becoming more complicated and the [Vietnamese] are trying to make trouble with China, causing itself even more internal disagreement. Also, an economic crisis worsens the situation. The South Vietnamese people oppose the leadership of the North Vietnamese leaders. Insecurity is ever present, especially in the South.” Pol Pot mentioned three opposition movements appearing in the South:

- 1) the Khmer Krom,
- 2) a highland ethnic minority group called Folrau, formerly called [Highlander Liberation Movement in Vietnam], and
- 3) Thiv’s men, Catholic congregations, Hua Hav, and Kao Day.

Pol Pot said that, “...after considering the international, economic, and food factors, Kampuchea has

IENG SARY'S 1996 DECLARATION



Ieng Sary

When I heard the broadcast on the radio of the Democratic Kampuchea on 8 August 1996, accusing me of breaking ranks and betraying the nation and the people, I, who was receiving medical treatment, was completely surprised. Because in tens of years of my life

as a movement leader for my nation and people, I have never betrayed my country—even in my thoughts. I totally reject the cowardly, unreasonable, baseless allegation. Cadres, youths, families, the military, and the people who know me do not believe it.

Distortion and fabrication have been used by Saloth Sar, called Pol Pot, for a long time since the historic struggle. In his three-year [1975-79] dictatorship, Pol Pot made all decisions on all matters by himself, killed people without careful consideration, and in strengthening his power, indiscriminately [expelled, or did away with] innocent Khmers from Hanoi after the Geneva Convention in 1954. At the same time, Saloth Sar evicted people from Phnom Penh and cities without thinking about society or preparing in advance for good living conditions. This resulted in misery and family separation. Furthermore, he ruined scholars returning from overseas. Scholars who wanted to rebuild the country. [Pol Pot] accused them of working for the CIA, KGB or agencies of countries in which they had studied. In addition, he used his dictatorial powers to [expel, or do away with] [cadres] from the Communist Party of Kampuchea (CPK) from 1975 to 1978. He is dictatorial toward good cadres who were supported by the people and had the ability to lead for him. This rampant [“house cleaning”] caused chaos in the whole party and suspicion among colleagues.

After hearing the allegation, cadres, soldiers, friends, and their families of Division 415 in Pailin, Division 450 in Malai, Division 250 in southern Sisophon, and Division 519 in northern Sisophon sent me letters asking me to explain it to them. Pol Pot, Ta Mok, and Son

Sen plan to destroy Divisions 450 and 415 by saying we betrayed the country and are corrupt.

A few days ago Pol Pot, who is the most barbarous murderer, sent out his dictatorial partners Ta Mok and Son Sen (a.k.a. Khieu) to solve the dispute with Divisions 450 and 415. The dispute originated from the struggle of the military and the people against the Pol Pot dictatorship; against the killings, the property confiscation, and destruction of people’s homes. In this fierce dispute, Ta Mok acted as arbitrator to solve the dispute, but he dared not do anything, since the dispute was about the Pol Pot dictatorship and crimes of Son Sen. However, Ta Mok did use an “unacceptable” document in an attempt to solve the problem. This only fueled the anger of the military.

Based on thorough consideration of the reports and concerns of the military and people of Divisions 415 and 450, we are certain that Pol Pot, Ta Mok, and Son Sen wanted to return to the ways of their most brutal, three-year regime, which everyone in the world fears and abhors.

Confronting this serious situation, people of the two divisions did not know what to do. They lost their confidence in, and were disappointed with, the leaders Pol Pot, Ta Mok, and Son Sen. With support from Divisions 250 and 519, Divisions 415 and 450 sent a letter to me telling me (a former democratic leader of the Democratic Kampuchea, a nationalist, and has experience in developing the Malai region) about the true situation and the actions of the three murderers so that I would return to lead the people.

Therefore, even though I had not been treated to full recovery, I decided to return to leadership, independent of Pol Pot’s dictatorship and fascism, using democracy which is acceptable to the people and the military.

My return is not a result of the request of people who are allies of the communist Vietnamese that Pol Pot, Ta Mok, and Son Sen distorted. It is at the request of the military and the people that I take on my leadership role in this most complicated situation.



THAI POLICY VIS-À-VIS KAMPUCHEA

This article provides an analysis of Thai policy regarding Kampuchea during the Pol Pot regime. It includes background information from the Thai Foreign Ministry, as well as the Ministry of Foreign Affairs, People’s Republic of Kampuchea from September 1983. It provides a window into how the PRK interpreted Thai policy towards Kampuchea.

Illegal Thai Policy Against Kampuchea In Recent Years

The Thai rulers have colluded with Beijing and Pol Pot against the three Indochinese countries with a view to carrying out their expansionist and hegemonist designs.

People must remember that during the first years of the Pol Pot regime, when Chinese policy had not yet begun openly opposing the three Indochinese countries, Thai authorities continued to carry out their policy of hostility against both Beijing and Pol Pot. From 17 April 1975, Pol Pot carried out an extremely ruthless and reactionary policy against Kampuchea. He usurped the fruits of the Khmer victory over the American aggressors, betrayed the national interest, and committed horrible massacres. He drove the nation into the hell of an unprecedented genocide, while starting armed conflicts with all neighboring countries. The Thai authorities and press repeatedly reported bloody clashes and encroachments on Thai territory by Pol Pot troops in the border region. During 1977, over four hundred such incidents were reported, averaging more than one each day, many of which involved 600 to 800 Pol Pot troops.

The following reports are excerpted from a white book published by the Thai Foreign Ministry:

“At 23:00 hours on Friday night of 28 January 1977, large units of the armed forces of Democratic Kampuchea, numbering approximately 300 Khmer Rouge soldiers armed with powerful and deadly weapons intruded into Thai territory and, without giving any warning, launched attacks on three Thai villages, namely Baan Nong Dor, Baan Klong Kor, and Baan Noi Parai of Aranyaprathet district, Prachinburi

province in southeast Thailand. The said Khmer Rouge soldiers fired their guns at the innocent Thai villagers and burnt all houses to the ground.... The losses are as follows:

1. At Baan Nong Dor, 21 Thai residents were killed including a pregnant woman, children, and babies who were badly mutilated. All the houses were burnt down.
2. At Baan Klong Kor, 8 Thai residents were killed and all houses burnt down.
3. At Baan Noi Parai, all 200 residents were forced to abandon their homes and a large number of people were seriously wounded.

...The Government of Thailand accordingly demanded that the Government of Democratic Kampuchea assume full responsibility for the incident and make a prompt and just compensation for the loss of life and damage to property incurred as a result of the said incident.”

During the first half of 1978 there occurred over one hundred incidents in which many Thai villages were burnt down, many Thai civilians were abducted and over one hundred Thai civilians were killed (Thai newspaper *The Nation*, 14 July 1978).

Official documents of the Thai authorities denouncing the Pol Pot clique’s crimes against the Thai people can be found in the files of the UN General Assembly in New York City, USA.

Defending the client Pol Pot clique, Geng Biao’s report on 16 January 1979 claimed that, “the bloody clashes” that occurred frequently on the Kampuchean border were due to indiscipline within the Kampuchean troops (of Pol Pot).... Those conflicts were only a problem of sectarianism and blind action in the Kampuchean army (of Pol Pot), and did not constitute any threat to Thailand (from *Studies of Communist China*, No. 10/80, published in Taiwan).

When Beijing openly entered into collusion with the US imperialists to carry out its expansionist and



hegemonist designs in Southeast Asia, frantically opposing the three Indochinese countries, using the Pol Pot clique as a tool. Thailand promptly switched over to collaboration with China, making use of China, relying on Sino-US collusion, getting reconciled with the Pol Pot clique, opposing the three Indochinese peoples in order to further Thai expansionist and hegemonist designs.

Thailand was given assurances by China that Democratic Kampuchea was not a threat to the former. According to the Bangkok Post of 4 November 1977, Chinese Vice-Premier Li Xiannian receiving Thai journalists in Beijing assured them: “Thailand and ASEAN have nothing to fear from Democratic Kampuchea and our Kampuchean friends have said that they want to improve relations with Thailand.” Later on, according to Geng Biao’s report of 16 January 1979, “during his visit to Thailand, Vice-Chairman Deng Xiaoping told Prime Minister Kriangsak Chomanand that Kampuchea (Pol Pot) had no expansionist intentions. China can guarantee that Kampuchea wants to develop good relations with Thailand (*Studies of Communist China*, No. 10/80, published in Taiwan). What is more, the Thais also found that with the Pol Pot regime it would be easier to subjugate Kampuchea by means of the aggressors’ classical scheme of “pitting Kampuchians against Kampuchians, Indochinese against Indochinese.”

On 30 January 1978, during his visit to Phnom Penh, Thai Foreign Minister Upadit not only turned a blind eye to the crimes of genocide committed by Pol Pot clique against Kampuchean people, but even tried to absolve Pol Pot from the crimes against the Thai people themselves. He said that the clashes on the Thai-Kampuchean border were “caused by a third party” (Upadit’s speech at the reception in honor of Ieng Sary, UPI, 31 January 1978). He also stressed that “Thailand and Kampuchea are inseparable” (AFP, Bangkok, 31 January 1978). According to the same source, Upadit loudly “welcomed the efforts made by Democratic Kampuchea in developing the country,” right at the time when the Pol Pot clique was throwing the whole society into a chaos and drawing the Kampuchean people into a blood bath.

The Thai authorities saw Ieng Sary’s visit to Bangkok on 14 July 1978 as a good opportunity for them to please China once again and woo Democratic

Kampuchea by giving a most ceremonious welcome to the representative of the genocidal regime. The Thai Foreign Minister went up to the border to welcome Ieng Sary and bring him to Bangkok. As a gift to Thailand, before coming to Bangkok Ieng Sary had instructed his troops “not to use force against Thai villagers” (*The Nation*, 17 July 1979).

During his visit, both sides agreed on measures to “end clashes on the border between the two countries.” In fact, this agreement was by no means designed to settle the disputes between the two countries peacefully or to reduce sufferings and death for Thais and Kampuchians in the border areas, but to unburden Pol Pot so that he may have a free hand in suppressing the Kampuchean people who were rising up against his regime. Therefore, he could concentrate almost all his armed forces on the eastern part of his country and expand the war of aggression against Vietnam. Following this agreement, 19 out of the 23 Pol Pot divisions were deployed in the areas bordering on Vietnam, while only three divisions remained on the western border with Thailand as agreed upon during Deng Xiaoping’s visit to Bangkok on 5 November 1978, Thailand allowed China to airlift weapons and war equipment to the Pol Pot clique over Thai airspace.

KHMER ROUGE SLOGANS

- ◆ Based on self-reliance, we must strive to cooperate with Marxist-Leninist Party, the revolutionary forces and progressive forces; we love independence and all justice in the world; and we are against imperialism, territorial expansionism and all other reactionary acts for the sake of peace, freedom, democracy, equality, justice and true social development. (D13792)
- ◆ Provoke revolutionary spirit of the masses, defend the country, build the country, stage socialist revolution continuously in order to create, to judge, to screen and to select dedicated cadres from the masses. (D13792)
- ◆ Screen and get rid of the internal enemies burrowing us from within, who disguise themselves as cadres in the authority hierarchy and various units. (D13792)

A Khmer Rouge Telegram 25:

Dear respected Brother,

In the afternoon of 6 March, the Group 7 [delegation] arrived at our office as planned.

1. Delegation Composition:

◆ The delegation of Military Region 5 comprised of 15 members, led by Li Giang, of whom three cadres were responsible for Phe Cu and Kontum provinces, two for Dac Lac province, and two cadres Li Giang and Y Blu of Military Region 5.

◆ There were four people of the Vietnamese-Cambodian delegation led by Teu Cam and his deputy Ba Tin. Others were assistants, and Li Giang held overall responsibility.

2. The meeting was to start at 3 p.m. and Group 7 was the first to talk. Li Giang made a speech with a typed passage. We would like to summarize its meaning to Angkar as follows:

a. [They] raised the situation in Mun O Vay village, saying there have been mutual clashes and bloodshed. They said that the place [where the clashes happened] was in their territory, etc.

b. [They] raised the problem that Cambodia gathered and transferred people of Saop village.

c. [They] raised the situation in 105 [Region 105] where fighting had occurred once again on 25 and 29 February. They said Cambodian side entered Group 7's territory as far as about 4 to 5 kilometers.

Finally, they made three requests:

a. While waiting for an actual decision on the border matter from the governments of both countries, [they requested] both sides use a temporary borderline to avoid conflicts as well as to make it easy for various cooperation along the border—both in Rattanak Kiri and Mondul Kiri.

b. They asked us to hand the Saop villagers to them.

c. They requested talks on border access so as to have an agreement in principle because they were interested in making contacts through provincial level between bordering provinces such as, Phe Cu and Kontum, Rattanak Kiri, and Dac Lac and Ban Thuoc, Mondul Kiri.

The atmosphere of the meeting was warm and friendly.

◆ The way they behaved and spoke was more proper and polite than before. According to an observer of Comrade But, [they] did not use the word “invade” like before.

◆ Li Giang finished his speech at 5:30 p.m. Tired by the long journey, we proposed a rest in the night of 6 March and would make our speech in the morning of 7 March.

3. We have planned the following projects:

1. Facilitating the building up if the country after the 4 April liberation in the framework and in 109;

2. The special points of 109 that has relationship with the South Vietnamese revolution, especially from 1970 to the liberation day;

3. Mutual support between the two parties and the two peoples Vietnamese and Cambodian during the national liberation war;

4. Raising a number of regrettable events with regards to the border after the liberation;

◆ Regarding the September events at O Ta Bauk, O Tak Yak, and O La Peung, Group 7 arranged for an assigned pickup on 16 March of this year [The Vietnamese assigned their men to pick up KR delegation].

◆ In principle, an agreement on an assigned committee for receiving [delegation] from bordering provinces has been made. Request that Group 7 arrange for cadres in [their] provinces and introduce them to come to 109 via route 19. On my part, we will actually arrange for a meeting of both sides and introduce them to each other. We already have Comrade But as a representative from Rattanakiri, Comrade Nea as a representative from 801 and another from Region 1 on Comrade Lao's side. As for 105, [its representatives] will discuss with Comrade Laing later.

Please give us advice, Brother.

With warmest revolutionary fraternity and respect,
Ya

7 March 1975

Note: If Angkar agrees to it we request 89's side to advise 920's side to slow down the fighting for a while. We have tried to contact 920's side for quite a long time, but could not make it.

Copied to: Brother Pol, Brother Nuon, Brother Khieu, Brother Van, Brother Doeun, Documentation



TA MOK'S BRIEF BIOGRAPHY

Ta Mok's original name is Ung Choeun. He has many nicknames including Ta 15, Chhit Choeun, Ek Choeun, Achar Choeun, and Nhuon Kang. He was born in 1926, the year of the tiger, in Brakeab village, Trapeang Thom sub-district, Tram Kak district, Takeo province, Region 33, Southwestern Zone. He married his cousin named Uk Khoem.

He is the oldest brother of the seven siblings—three brothers and four sisters. His first sibling is Ung Chok, called Chong, male. During the Khmer Rouge regime he served as the chief of Prey Kabass district, secretary of CPK for Prey Kabass district (Takeo), and the secretary of region 33. His second sibling, Ung Poun, 64, female, was married to Nit (died), a former chief of Noreay district. At the present he is a farmer in Trapeang Thom village, Trapeang Thom sub-district, Tram Kak district, Takeo province. His third sibling, Ung Cham, male (died), a former chief of Pauk Trabek sub-district, Tram Kak district. Fourth sibling, Ung Kuob, female. Fifth sibling, Ung Kien, female. Sixth sibling, Ung Ken, female.

Roles and activities through 1974

Ta Mok lived with his grandmother when he was young. He was educated in his birthplace up until he was 18.

At 19, he studied in a pagoda's school (Wat School) and later received a Triputika certificate. He shaved in Mohamuntri pagoda. In his early 30s, he left the pagoda and married his cousin in his home village, Takeo province.

As a father of two, he fled to the jungle, Kampot province, to join the movement. Later he sent his wife to Leach district, Pursat province. In 1949, he was a district Isarrak Khmer leader in Takeo. In 1963, he was one of the members of the CPK—"Member of Central Committee of Pol Pot's Party." In 1968-1969, he was appointed as the secretary of southwestern zone. In the same years, he had ideological clashes with Hou Nim. In early 1970s, he was the secretary of southwestern zone. (Some documents reveal that Chou Chet was the secretary and he was the deputy secretary of the zone.) In June 1971, he was a member of the CPK's congress. The congress lasted for two weeks and held in Pol Pot's office in northern zone. In 1972, Ta Mok's daughter was selected as a regional deputy secretary. In the same year, Ta Mok convened a meeting in Kampong Chhnang province. The meeting was attended by approximately 3,000 Buddhist monks. The meeting asked the monks to join the army. In 1972-1973, Ta Mok was a Khmer Rouge leader in Tram Kak district. In 1973, Ta Mok became responsible for military section in southwestern zone. He began to kill traitors in Kampong Speu after forcing them to undertake hard labor and killed Hanoi supporters in southwestern zone. In 1974, Ta Mok co-led the army with Pol Pot to take over Udong and Kampong Chhnang.

Roles and activities after 1974

Ta Mok was a military commander of the central committee. In September 1975, he was a member of the standing committee. On 30 March 1976, Ta Mok was selected by the central committee as a second deputy secretary of the standing committee of the people's representative assembly of the Democratic Kampuchea. In 1977, he was a commander-in-chief of the army. A large amount of weapon was allocated to the southwestern zone. In late 1977 and early 1978, Ta Mok had a very close relationship with Von Vet. He met him for six times at the Ministry of Economy about requesting for equipment. In August 1978, he joined a central committee meeting with Von Vet. "After the central committee meeting in August 1978, Von said that Ta Mok has a lot of soldiers positioning all over the country." In 1978, Ta Mok was appointed as the secretary of the northwestern zone of the CPK. He was accused of purging a whole village of people who supported guerrillas and his soldiers killed 30,000 people in Angkor Chey district alone. In November 1978, he was appointed as a deputy secretary of the CPK. In 1979, he was a division commander in Kampong Tralach district, Kampong Chhnang province. From 1999 to the present, he has been detained in the military prison after being captured on 6 March 1999.

Compiled by Rasy P. Pheng, Nean Yin, and Veng Chheng

Summarized by Dara P. Vanthann

BLIND BUT FULL OF MEMORY:

THE MISERY OF AN AGING VICTIM

Bunsou Sour and Sophal Ly

Recently concerns have been raised about the aging of former Khmer Rouge leaders. People fear these leaders might die before any tribunal is established. Nuon Chea, Ieng Sary, Khieu Samphan, and many former Khmer Rouge leaders are free and living in happiness, while the surviving victims of the Khmer Rouge regime are living in desperate conditions. Does anyone care about the aging of the victims? Who will be left to testify as more and more witnesses, those who survived the crimes and cruelty of the KR, succumb to sickness and old age?



Chan Yim with her daughter

Eyewitnesses who live and remember and are casualties of the DK are important in many ways. First, they can transfer their bitter experiences to the next generations to learn, thereby preventing the DK from happening again in Cambodia or societies throughout the globe. Second, they are potential witnesses to that can testify against the former Khmer Rouge leaders. First-hand testimony and physical evidence are equally important. The stark reality is that these future witnesses are not immortal. They are being lost through attrition to old age. In addition, physical evidence of the KR atrocities continues to deteriorate.

One of the victims who used to work for Khmer Rouge cadres is living quietly in a remote village waiting for justice to be done.

In December 2002, the *Searching for the Truth* team traveled to Kampong Cham through a large rubber plantation to Thnal Bek Kaet village, Chamkar Leu district, to visit and interview an elderly survivor of the Khmer Rouge rule of 1975-1979. She had been a masseuse for Khmer Rouge leaders. After driving along the bumpy road, we arrived at an old, tattered, raised wooden house perched about a meter from the ground. From outside, the house seemed to be in ruins and

uninhabited. But as we climbed the precariously hung stairs, the first thing we saw was an old woman and a white cat sitting near the pans and bowls. The elderly woman was bony and thin. She was blind (since the mid-1980s) and too weak to stand.

The elderly woman's name is Chan Yim, called Yeay Yim; the person we had hoped to meet. We exchanged greetings and explained our mission. She said she was interested in what we were doing. She had just finished her lunch and started crawling very slowly back to her nylon sleeping-mat using her forearms as supports. When we tried to assist her, she politely declined our help. She laid down on her mat and enthusiastically told us her story.

Yim is 83. Her father was Chann, a former deputy sub-district chief in Mong Russey district, Battambang province. Her mother was Siem. Yim was the second child among her nine siblings. She does not remember which siblings are still alive.

At 19, she was married to a man and had one daughter (who died after the Khmer Rouge regime) and two sons, who were executed by Ke Pauk. After the death of her husband, she married a second husband named Suos Ven (a laborer who died in about 1984). They had a

daughter named Suos Sokha. During the KR regime, Suos Ven was a medicine maker and was assigned to work in a party hospital.

Today, Yim lives in the most desperate conditions. She murmured that since she became blind, more than a decade ago, she has never left home. She has never left her hut because she is unable and has no-one to help her. At this point she said, “I am in agony; I want to die.... Lately, I’ve become confused.” She wants someone to help her before she passes away.

Before 1975, because of poverty, her cousin, named Pen Chann, brought her to Rumlorng sub-district, Kampong Cham province, to farm. Later her cousin was killed.

In 1975, when the Khmer Rouge took power, Ke Pauk, the secretary of northern zone, sent her to work in a hospital as a midwife and masseuse. At that time she was 57. She was an expert masseuse for Ke Pauk and other cadres in his office. She said she also has a keen eye for identifying women’s illnesses. She told us she has had her skills since she was 15 and learned from no one. She said one day when she was in a deep sleep under a tree and a strange elder appeared in front of her, handed her a bunch of incenses and candles, and said, “If you’ve learned it, use it to protect your life.” Yim felt she had the skills since then. She thought that person was the spirit of the tree. At Ke Pauk’s office she worked from 2 to 10 p.m. Sometimes Ke Pauk’s wife woke her up in the middle of her sleep to massage those who felt sick at night.

In the same year, her two sons were sent to be killed. Ke Pauk told them Yim wanted them to work in an office. But she knew they killed her sons because they thought she had worked for the Lon Nol government. She also asked Ke Pauk where he had taken her sons to. Ke Pauk forbade her to ask, “Stop asking, your sons are sent to work in the office.”

According to Yim, when she worked for Ke Pauk, she used to have meals with Pauk’s family. Ke Pauk’s wife always left food for her. She said, “I had to eat with them to gain trust from them, if not they won’t believe me to be one of them.” Only she was allowed to eat with Ke Pauk.

For three years and eight months, under Ke Pauk’s command, she was worried and in fear of being severely punished or killed, because Ke Pauk always threatened to

take her life away. She said she used to speak a few times in meetings and she spoke exactly what Ke Pauk told her. Ke Pauk terrorized her, “If you speak out of topic, you’ll be killed.” One day, Ke Pauk’s wife (Soeun) fell from the stairs when she was eight-months pregnant. Ke Pauk threatened to kill her if his wife and child died. One of Ke Pauk’s children died one week after birth. Although Ke Pauk was furious, he did not punish her. However, she was in constant fear of being killed. She said her life at Ke Pauk’s house was like water in a piece of broken cup, which could spill easily. She said only 8 among 100 midwives survived.

When he traveled to other provinces like Kampong Cham, Kratie, and Kampong Chhnang, Ke Pauk always brought her with him to massage him. In about 1977, Ke Pauk sent her to Peking for 9 days to massage about 15 wives of Chinese leaders.

In 1979, when Vietnamese soldiers arrived, she fled with Ke Pauk’s family. She returned, but two of Ke Pauk’s men took her back. They hid in a cave for three days, but in the end Yim reunited with her family.

Five years after the implosion of the Khmer Rouge regime, her vision blurred. After a year in pain, her eyes burst and she became completely blind. At the present, she has a heart disease and is being treated with tablets Sokha purchases from a local pharmacy. Sokha said she will not marry so as to have enough time to take care of her aging mother. To support her mother, she sells snacks to children at school and some vegetables in the market. Because she was young, she remembers very little about what happened during the KR regime. She said she saw lines of prisoners taken away to be killed. She wants a Khmer Rouge tribunal to prosecute KR leaders and lower ranking cadres. She said, “The top gave orders, but sometimes the bottom did worse than told.” Yim said what the KR did was not right.

Although she knows that both of her sons were killed by Ke Pauk, she is not angry at him. She respected his honesty and sensible decisions, but she hated him for his cruelty. Ke Pauk used to curse and insult her. When told about the death of Ke Pauk, she was surprised, but not sad. She wants a tribunal to seek justice for her sons and other Cambodian victims. She said, “I want to see justice before I die.”

THE CHINESE COMMUNITY IN CAMBODIA

Sambath Chan

Introduction

Historically, Cambodia's rulers and the Khmer have been quite accepting of the country's Chinese minority community. Conflicts have been few. However, under French colonial administration, and since independence, the Chinese have experienced significant discrimination. Their rights have been denied and there have been prohibitions against their languages and their cultural practices. This report specifically examines evidence of human rights violations against Chinese minority in Cambodia under Democratic Kampuchea (DK).

After their defeat of the Khmer Republic in 1975, the leaders of DK (Angkar, the Organization) put into place plans similar to those of Maoist China in the 1960s. These plans were intended to restructure Cambodian society. Although DK looked to China for political and financial support for these ideas, they did not hesitate to target the Chinese in Cambodia as enemies of the new state. The Chinese, many of whom lived in the cities, were forcibly evacuated to the countryside. For DK, the cities, their businesses, the urban lifestyle and thus their inhabitants were symbols of western oppression. Cambodia's Chinese were blacklisted as internal enemies together with the educated, the corrupt, capitalists, former soldiers, and traitors. The persecution of the Chinese was depicted as

part of a revolutionary class struggle. Of the 400,000 Chinese in Cambodia in 1975, nearly 225,000 Chinese died under the rule of DK (Kiernan 1986; 1990).

However, there seems to be one reason, which fully accounts for DK's persecution and the killing of the Chinese. Like their national government, many Chinese were initially supporters of the Cambodian communists. Indications that race or ethnicity were problematic in their relations only began to surface in 1973. At that time the insurgents issued a decree stating that Cambodia had only one nationality and only one language, Khmer, and from then on there would be no other race (Becker 1986; Kiernan 1985).

If DK's persecution of minority ethnic groups (the Vietnamese, Chams, Chinese, and Khmer highlanders) had been uniform and nationally consistent, then it could be interpreted as part of an extremely radical and brutal process of defining the national identity such as that in Nazi Germany, and more recently in Rwanda and Bosnia. Certainly DK favored the Khmer, but whether their persecution of the other minorities was systematic and determined solely by ethnicity or an interpretation of race is less easily ascertained. The experiences of the Chinese under DK were so varied as to make it exceptionally difficult to characterize the collective experience.



Chinese advisors and KR cadres

Ethnicity, social and geographical conditions all seem to have affected their circumstances. These differences are evident in interviewees' accounts; some felt targeted as Chinese, while others did not. Significantly, most believed there was no central policy against them, but that their treatment was contingent on a range of factors including individual racial hatred and personal revenge, which differed according to region and time.

These scholars, however, explain the persecution of the Chinese by the DK to be more a matter of general



policy or class. Their explanations need not be mutually exclusive. Researcher Elizabeth Becker (1986) argues that DK policy called for destruction of all religion and culture, Khmer or otherwise. Therefore, the Chinese died not because they were Chinese per se, but because they engaged in cultural practices prohibited by DK. Similarly, William Willmott, who has extensively examined the Chinese in Cambodia society, argues that race cannot be used to explain the discrimination against them. His findings point to class as the key factor, particularly as it coincided with the fact that most Chinese lived in the cities and towns (Willmott 1981). According to American historian Michael Vickery, the hatred generated by the DK was a consequence of hostility related to the rural-urban divide. The rural people turned against their urban counterparts. Thus, the Chinese were persecuted because they were town and city inhabitants, and more died because they were unaccustomed to the physically difficult circumstances of rural life and work (Vickery 1986). American historian David Chandler believes that the abuse of the Cham was based more on politics than ethnicity or religion; the DK regime hated those who rebelled against it more than it hated ethnic or religious groups (Chandler 1991). Controversial French scholar Serge Thion dismisses ethnicity as sufficient to account for the killing under DK. He argues that the DK killings resulted not from race but from their politics and the unrealistic economic policies. According to Thion the Chinese and all other victims of the DK died because they were politically dangerous or because they were starved, diseased or exhausted (Thion 1993). Historian Ben Kiernan also believes that Cambodia's minorities were killed because of social rather than racial considerations (Kiernan 1986; 1990).

Definition

Describing the Chinese minority in Cambodia is a complex task. Neither physical characteristics nor the practice of Chinese customs delineate it effectively. Discerning Cambodia's Chinese has been made more difficult by the Khmer and Chinese integration of the other community's practices. Many Chinese have maintained their historical connection to China through the practice of ancestor worship, but have also adopted Khmer cultural practices such as visiting pagoda and celebrating various

Khmer festivals. Similarly some Khmer celebrate the Chinese New Year, Qing Ming, and worship the Chinese God Bentougong (Népoté 1994). Therefore, interpreting certain practices as typically Chinese (or Khmer) is inappropriate in the Cambodian context. However, it is important to note that in spite of this degree of cultural sharing, the Khmer and Chinese interpretations of Chinese ethnic identity are quite distinct as are the five smaller dialect communities—the Cantonese, Hainanese, Hakka, Hokkien, and Teochew (Willmott 1967, 1970). Although the Khmer acknowledge the dialect differences, they nonetheless use Chen Chao to refer to all immigrants from China to Cambodia regardless of whether they adopt aspects of Khmer culture or not. Thus, to the Khmer the Chinese are always Chinese.

Given these complexities William Willmott's definition of the Chinese in Cambodia seems most relevant to this study. In *The Political Structure of the Chinese Community in Cambodia*, Willmott defines the Chinese as those individuals supported by or participating in Chinese communities (Willmott 1970). Unlike the narrow definition used in the 1962 Cambodian census, which categorized as Chinese those who spoke Chinese or had Chinese nationality, Willmott's definition includes those who feel they are Chinese (Willmott 1970). This definition is well suited to this study because it allows for the effects that the recent Cambodian history and the fact that not all of those who consider themselves to be Chinese will have joined the community and, conversely, not all members in the community consider themselves to be solely Chinese. They may feel that they have two nationalities: An emotional connection to their ancestral homeland and political loyalty to Cambodia and its king (Edwards and Sambath).

History

Most Chinese migrants came to Cambodia as a consequence of circumstances in China (Yen Ching Hwang 1985). A special Chinese ambassador in the late thirteenth century wrote that southern Chinese sailors migrated to Cambodia in the hope of a more comfortable life. Others came to Cambodia in search of food, wives, housing, furniture, trade possibilities (Edwards and Sambath, Willmott 1966), to avoid taxation, and to escape famine. Among their number there were also some



political refugees (Yen Ching Hwang 1985; Crozier 1977). Generally, there was little nationalist cooperation among the Chinese in Cambodia. It was not until the mid-seventh century that there was any evidence of their acting as a Chinese community (Yen Ching Hwang 1977; Willmott 1967).

Historically, Cambodia's Chinese have engaged in business. Economic exchanges between the Khmer and Chinese began as early as the third century, with the first recorded tributary mission from Cambodia to China in 225 A.D. (Zhang Shi et al. 1985). From the thirteenth to the nineteenth centuries Cambodia's rulers recognized the economic and cultural value of the non-Khmer settlers. They were given the same legal rights as other Cambodians. At the court level, as a result of the land law announced in 1693, they and Cambodia's Vietnamese, Javanese, Malays, and Japanese were able to become provincial governors in return for regular tributes (Leclère 1907). As officials of the throne, the Chinese participated in Cambodian society, but they maintained their cultural identity as indicated by their hairstyle, dress, worshiping practices, arts, and entertainment; for which, they were often praised (Leclère 1907). At the local level the Chinese were also partially integrated into Khmer society. As French colonial authorities had prohibited the immigration of Chinese women, many Chinese men married local Khmer women. The Khmer wives could enter people's homes to exchange goods for crops at harvest time making it easier for the Chinese to develop their business (Xia Nai (ed.) 1981). Later changes allowing the immigration of Chinese women, therefore, resulted in fewer inter-marriages and greater community segregation.

Despite official agreements with the Chinese government, the French attitude to Chinese migration to Cambodia was ambivalent at best. In 1860 the convention on the French protectorate of Cambodia allowed more Chinese immigration and the Qing agreements with the British and French recognized the rights of Chinese to employment and protection in their colonies (Yen Ching-Hwang 1985). The French were suspicious of the Chinese migrants. They believed the Chinese were greedy traders who relished the vices of smoking opium, gambling and extortion and who siphoned off the wealth of their host countries, sending it to their families in China. They

insisted that math be taught at schools so that the Khmer would be protected from the "dishonest Chinese" (Teston and Percheron 1931). However, contrary to French concerns, some Khmer seem to have respected the Chinese business character. A 1937 article in *Nagaravatta*, the first Khmer national newspaper, commented that the Chinese qualities of industriousness and thrift were admirable. The author urged the Khmer to emulate the Chinese. The author argued that Khmer people were no less intelligent than Chinese, but the key differences were the Chinese willingness to work and their social arrangements. The Khmer, the author suggested, should adopt the Chinese way of behaving as their model (Pol-saksaa jie gamlang rboh jiet 1937; Khing and Khing 1981).

The French profited from the presence of the Chinese in Cambodia, but continually attempted, unsuccessfully, to limit their business activities. The Chinese were Cambodia's economic middlemen. Early colonial records show that the Chinese were mostly engaged in small trading activities, shop owning, selling food, and buying agricultural products from Khmer farmers (Meyer 1985; Mouhot 1986). Some colonial governors and entrepreneurs also imported Chinese coolies to set up farming communities and plantations (Forest 1980). However, the French wanted to protect the Khmer from the business prowess of the Chinese by restricting the latter's land ownership and access to certain employment. They also tried to limit the special arrangements between some Chinese and the palace for protected monopolies and the influence of the Chinese by imposing financial reforms, closing gambling dens and banning opium production (Edwards and Sambath). But, overall their efforts had little effect on the economic and labor divisions between the Khmer and Chinese (Chandler 1992a). Further, the colonial city planners spatially reinforced the economic and divisions by having Khmer, Chinese, Vietnamese, and Europeans live in different quarters of the cities (Forest 1980).

Although confronted with French antipathy, nationalism in Cambodia's Chinese community seems to have been initially the consequence of political developments in China. The struggle between the Qing government and the nationalist Guomintang, led by Sun Yatsen was particularly important. The latter's

dangerous.

The Chinese in Cambodia, China, and Democratic Kampuchea

In the three and a half years of Democratic Kampuchea more than half of the Chinese population in Cambodia died. Their previous support of the communist insurgents and the friendly relations between the PRC and DK provided no protection. Counting against the likelihood of their survival were that the Chinese had been engaged in business and that they had lived in the cities and towns. According to DK propaganda these characteristics made the Chinese dangerous enemies of the revolution and exploiters of the Khmer. DK propaganda also said that the Chinese had been living comfortably at the expense of the Khmer. More vulnerable to identification than the Cham, Thai, and Laos, the Chinese were frequently the targets of violence. In the countryside, local inhabitants were instructed to hate the newcomers, who included many Chinese from the cities. But, as mentioned previously, their experience with DK did vary according to region and time. Some were forcibly “Khmerized,” banned from speaking Chinese, separated from family members and their community, or segregated from the Khmer and other ethnic groups. The experiences of reeducation, hard labor, incarceration, starvation, disease, exhaustion, and fear of execution characterized their lives. Many were unaccustomed to the physical demands of manual labor. Some died from overwork and starvation. The accounts of those who survived under DK point to the difficulty of developing a paradigm for explaining the human rights violations of the Chinese under the DK rule. Certainly general factors and influences can be described, but at any one time, several or none may have been determining the fate of the Chinese.

The Cambodian Communists and the Chinese

Before coming to power in 1975, Cambodia’s communist insurgents received considerable support from Chinese sympathizers. Lon Nol’s closure of their schools had antagonized the Chinese and, in turn, increased their support of the communists. Some Chinese also joined the communist rebels in response to Sihanouk’s appeal to fight against the Republicans. In the liberated areas the Chinese provided information translated from Radio Beijing and food supplies. However, towards the end of

1973 the leaders of the insurgents began to suspect the Chinese living east of the Mekong River of being sympathetic to Guomindang and working for the CIA. No longer were the communists prepared to accept a multi-ethnic coexistence of cultures, arts, and customs in the liberated areas. Their pamphlets began to portray Chinese as capitalists who “sucked the blood of Khmer people.”

Regional Variations

A general survey of interviewees’ accounts presented in recent research indicates that location was a significant determinant of the fate of the Chinese under DK rule. In April of 1975, when the Chinese were forced out of the cities and towns with the rest of the population, most went to villages and the countryside in the east and southwest of Cambodia. Later they were moved to the northwest. As stated previously, those who were sent to the northwest were less likely to survive. According to a former soldier of the Khmer Republic, DK cadre massacred soldiers of the former Khmer Republic and the Chinese. He believes that all the Chinese in Kampong Trach, Kampot and Longvek, Kampong Chhnang were killed during 1977 and 1978. Another witness recalls how in some regions the Chinese were executed for minor infractions. In one instance when two Chinese stole a potato from a commune field, they were arrested, taken to a field about 500 meters from the village and killed. Also, a survivor from the northwest, Hong Var, knew that if she admitted she had been a teacher, then she would have been murdered. She said she had been a fried banana seller in Psa Thmei, Phnom Penh. Much the same happened in Region 37 in the west. Here the Chinese were targeted for persecution. Generally they were given less to eat and were killed more frequently. Specifically, in 1977 they were accused of betraying China, which made their situation all the more precarious.

As Kiernan indicates, the Chinese minority in the zones of the southwest or in the east (numerically smaller groups) fared better than those in the northwest and west until 1978. Ly Chhiv Ha, lived in Prey Veng, in the eastern region for eight months in 1975. Together with six other families from Phnom Penh, she was settled alongside seventy families of grassroots people loyal to DK. Initially food ration were large, the workload light and she heard

If the Chinese were to live, then they were to adopt Khmer ways of living. For some, like Muk Chot, a Chinese from Phnom Penh, the coerced cultural assimilation such as eating communally with the Khmer was essential because he and his family did not know how to fish or look for food.

The ban on speaking Chinese language seems to have been the most prevalent as a means of justifying persecution. Certainly deaths related to the use of Chinese as a prohibited language could be interpreted as ethnically based, but equally they can be explained (as Chandler does) the DK persecution of the Cham Muslim minority. Language-related abuses were more about contravening the orders of those who hold power, more than representing a particular ethnic group. That is to say, the DK regime hated those who rebelled against its rules more than ethnic difference.

Generally, all those under the control of DK were prohibited from speaking in polite Khmer or their own Chinese dialects. There were exceptions. While some dared not whisper to each other for fear of being heard by the militia, others spoke Chinese freely without impunity. Chim, a farmer from Stung district of Battambang, recalls that once she was heard speaking Chinese for which she was criticized and had one day's food ration withheld. Thereafter, anyone heard speaking Chinese was arrested. The writing of Chinese was also banned. Those who disobeyed the prohibition were given hard labor or executed. Some spoke Chinese by mistake. Of these, some were punished, others lost their lives. In Chub village two middle-aged women were heard speaking Chinese. The following day they were executed as were twenty-seven Chinese families. Again regional and other factors affected degrees of leniency in relation to non-Khmer language usage. Language is critical to survival, without an effective means of communication the Chinese were more vulnerable to DK.

Other factors influencing the circumstances of the Chinese throughout Cambodia were community segregation or familial separation. Tang Eng, described that these practices were used in Region 2. Ethnic segregation was also enforced in Battambang, Kampong Chhnang, and Kampong Speu. In some instances segregation was initially imposed according to racial background, but later

the Chinese were sent to live among the Khmer. In and of themselves, such social adjustments were not murderous, but ethnic segregation made the Chinese easier to target as a group. Separation was probably more difficult for children. They were separated from parents and taken away to work with other children, only rarely seeing their parents. Muk Chot, for example, only saw his four children, aged between 8 to 10 years old, once every two months. Such an approach systemically undermined the social structures linked to the perpetuation of culture and community.

Further, these circumstances must surely have created greater duress and increased the likelihood of contravening regulations. However, the segregation of ethnic groups may have inadvertently served to restore some community ties.

Threats to Democratic Kampuchea

The perception of threat (actual or otherwise) was also a significant determinant shaping the circumstances of the Chinese under DK. Some were linked to internal anti-Chinese purges in the Party concerning possible Guomindang penetration. DK investigations conducted in early 1978 confirmed their fears that DK members of Chinese descent were supporting the Guomindang and plotting to take control by cooperating with the Vietnamese troops. Following this discovery in early 1978, there was a DK purge of the party and the Chinese in cities and provinces. For example, in Kam Chai village some Chinese were killed because they were accused of being Guomindang agents. In Phnom Penh and Kandal about twenty-six Chinese were arrested and tortured to death in Tuol Sleng.

Relations between Democratic Kampuchea and China

Although the government of the PRC had shown a willingness to interfere in Cambodian politics in the late 1960s, neither at that time nor when DK was in power did it act on behalf of its overseas nationals. Particularly in the case of DK, the government shunned the Chinese in favor of maintaining political relations with the regime that was killing them. Initially Democratic Kampuchea enjoyed significant support from the Chinese government. Since 1970 they encouraged Sihanouk's alliance with the communist insurgents. They offered support for DK's radical ideological perspectives and responded to requests for economic and military assistance. Problems in the

relationship between the DK leadership and the Chinese government developed not as a consequence of the former's persecution of the Chinese minority, but because of political changes in China and the geopolitical circumstances of the region. There can be no doubt that the Chinese leadership knew of DK's treatment of the Cambodian Chinese minority. Ieng Sary admitted to as much in 1977. Further, the Chinese government had also received requests from Cambodian Chinese in Paris to set up a rescue committee to help save Chinese from being massacred. The Chinese government told the committee to be patient. Publicly, Chinese spokesmen continued to praise DK. The Chinese advisors in Cambodia offered no support to the Chinese nationals. Again they responded that DK's accusers should "be patient." The Chinese government's perspective on DK was mainly influenced by its internal politics, specifically the death of Mao, the arrest of the Gang of Four, and the changing geopolitics of the region. In short, Deng Xiaoping's leadership and DK's radicalism were less compatible. This became apparent when the Chinese government showed its reluctance to support DK's attacks on Vietnam, especially after 1977. Initially the Chinese government had shown itself a willing supporter of DK in the region. At a celebration on 17 April 1976 in Beijing for the first anniversary of the "liberation" of Cambodia, it was declared that the Chinese people would fight alongside the Cambodian people and march forward together forever. But from 1977 this seemed less likely, and DK's leadership became increasingly recalcitrant in its relations with its main patron. Although it was concerned about the security of Cambodia in the face of Vietnam's military superiority, China's unwillingness to support the DK's border provocations were possibly a result of the concern that geopolitical developments may disrupt its modernization program.

Conclusion

Democratic Kampuchea was responsible for the deaths of many Chinese in the process of attempting to construct their new revolutionary society. Research data clearly shows that under the DK rule all ethnic groups suffered significantly. The degree to which they did and whether, in fact, ethnicity was the primary cause is difficult to determine. Evidence shows that for the Chinese under Democratic Kampuchea, ethnicity was only one of a range

of factors that determined how they were treated. Certainly the extremist nationalism of DK's leaders meant that the Chinese—as with Cambodia's other ethnic minorities—were more vulnerable to persecution. But this only partially accounts for their oppression and the incitement of anti-Chinese sentiments. To comprehend more of the Chinese situation, first it is essential to see that their economic position was viewed as exploitative by DK's leaders. Since French colonial rule, attempts to limit the business influence of the Chinese and increase Khmer activity in this sector, generally had the reverse effect. The Chinese were entrenched in commerce and combined with the urbanization of the business sector meant that they were obvious targets of the communist and pseudo-traditionalist DK regime. They were the quintessential symbols of exploitative capitalism and corrupt modern urbanism. Second, it is essential to understand the political mentality of DK's leaders and their cadre. As previous researchers have stressed the Us-Them dichotomy informing the chain of command was not necessarily systematic, rather constituted by whatever seemed to oppose its rule at any given time. At a macro-level this could be viewed in terms of ethnicity or the urban-rural divide. At the micro-level it may have been dependent on the peculiarities of the given circumstances and specific personalities. In both, aspects of ethnicity may have been incorporated to construct an oppressive environment. This correlates with the findings of previous researchers. Therefore, to interpret the Chinese experience of DK as one based solely on ethnicity would be a mistake. Ethnicity should be viewed instead as providing a cumulative historical effect on the position of the Chinese in Cambodia, which together with the representation of its cultural attributes made the Chinese more likely targets of DK persecution in spite of DK's relationship with the Chinese government.

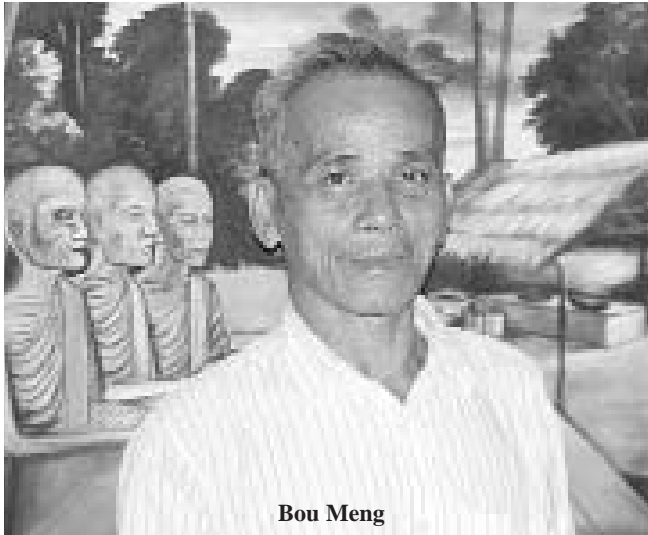
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BOU MENG, SURVIVOR OF S-21

Vannak Huy



Bou Meng

On 22 January 2003, Bou Meng, 61, a former S-21 (Tuol Sleng prison) prisoner, returned to S-21 again, now the Tuol Sleng Genocide Museum, to tell Cambodians and the world about the ruthless torture he suffered at the hands of the Khmer Rouge (KR). He came because of an article about the survivors of S-21 published in *Searching for the Truth*, Issue 22 in October 2002.

Bou Meng received a copy of *Searching for the Truth*, which talked about him, from the head of a pagoda named Samlar Chhao in Svay Rieng province. He said at the Tuol Sleng genocide museum, “I am not dead. I am one of the victims of this prison. I want to see former KR leaders prosecuted and I’ll be a witness.”

S-21 was a former detention, interrogation and torture facility. It was founded by leaders of the KR regime and in the period of more than three years of its operation, there were more than ten thousand innocents detained, tortured and executed. After the collapse of the KR regime in 1979, there were only a handful of prisoners that exited alive, one of whom was Bou Meng.

Bou Meng’s original name was Bou Mongsiem. He changed his name in 1970 when he joined the KR revolution through the introduction of a Vietnamese-born Cambodian. Meng and his wife served in the logistic unit headed by Chhon in the northern zone. Occasionally, he saw Koy Thuon coming to his office. From 1975 to his

arrest, he worked in the logistic office in the northern zone located north of the Japanese bridge in Phnom Penh. At the same time, he also painted engine parts for teaching purposes at Russey Keo technical school.

In June 1977, Bou Meng and his wife, Ma Yoeun, were sent from Talei tempering work site, southwest of Phnom Penh, to S-21 as prisoners. His wife was detained in a different room. He was arrested while the KR worked to sweep and clean “internal enemies” who were hiding in the northern zone. Koy Thuon, the secretary of the zone, and the commerce minister had already been arrested. Meng assumed his arrest was due to his being a staff in an office of the zone. He was separated from his wife, son, and daughter when he arrived at S-21, and never saw them again. He is convinced that his wife was executed at Cheung Ek. His children are still missing and he is not sure whether they are dead or alive.

Since he walked out of S-21 prison in 1979 as a survivor, he had never thought of returning... until now. As he stepped into the compound of Tuol Sleng museum, he was thunderstruck by thoughts of his agonizing experience as a prisoner. Although now more than twenty years ago, it seemed much more recent.

He described the techniques that S-21 youths used to interrogate and torture him. He said that after his photograph was taken and biography recorded, the guards took he and about thirty other prisoners to the second floor of building “C.” He was interrogated in a flat in front of the S-21 buildings for approximately two weeks. There were four interrogators, but he recognized only one, Ho, the deputy chief of the prison. The interrogators questioned him, “Who do you join the CIA or KGB with? When? ...”

Meng said he did not know what CIA or KGB was and he replied, “I don’t know.” Because he kept the same answer many times, the interrogators slapped him hard across his face and hit him with bamboo sticks until his back bled and he fell unconscious. Then the interrogators sent him to the health unit of the prison. The medical staff “treated” him by applying salt water to his wounds. “It is hard to describe the suffering that they inflicted on me,” he

said. After he recovered from his injuries, the interrogation continued. The interrogators asked him the same question over and over again, and he always gave them the same answer. He said, “To hurt me, the interrogators did not need to hit me; they just poked the sticks into the old wound and it was enough to put me into agony.” Because of the torture inflicted on him at S-21, one of his ears is permanently deaf and his back is covered with scars.

Meng remembered that the prison guards always abused the prisoners. Prisoners were shackled in lines and male and female prisoners were put in different rooms. Meng saw a prison guard stomp a prisoner in his room to death.

Meng said that because they had insufficient answers for the S-21 chief, the interrogators cried out to him, “Angkar has eyes like a pineapple’s; she never catches the wrong person. You’re a painter, you must have worked for the CIA. Now do as I tell you.” Meng did not remember how many pages the pre-prepared confession was.

The prisoners who were lucky enough to walk out of S-21 prison alive had special skills. Bou Meng was an artist. His skill as a painter likely saved his life. He has enjoyed painting ever since he was a child, and today he paints pictures of Buddhist tales onto pagoda walls to support his family. People used to say that his pictures were as good as those of Nheok Dim [a famous Khmer painter]. When Meng studied painting (a generation later than Nheok

Dim), he observed the influential painting of Pablo Picasso. However, his favorites are those of flowers and women.

A month after the interrogation, Duch looked for a painter to paint a portrait of Pol Pot. Meng volunteered. Duch yelled at Meng, “If the portrait is not lifelike, you will be killed.” During his detention in S-21, he painted four portraits of Pol Pot. Because of his painting skill, he was treated less harshly than other prisoners and survived.

On a list entitled “prisoners who can be used,” dated 22 August 1978, 24 names appear, Bou Meng’s is twelfth. A remark reads, “Bou Meng, 37, from state industry unit, a youth of Russey Keo technical school, a painter who arrived in 1977.” The names of other S-21 survivors were also listed in the same document including: Ruy Nea Khong (carpenter), Heng Nath (sculptor), Iem Chan (sculptor), and Ing Pech (machinery repairman). Chum Manh, called Mei, another S-21 survivor (not on the above list), was listed in another document entitled, “prisoners from state garment.” In front of Chum Manh’s name, a handwritten note reads “keep for a while.”

Of these six S-21 survivors, only three are alive today, and they are still awaiting justice.

Vanak Huy is a supervisor of DC-Cam’s Publication Project. He is also the author of Khmer Rouge Division 703: From Victory to Self-destruction.

“I WILL EXPLAIN THE PAST TO MY GRANDCHILDREN”

Kalyan Sann

Aging witnesses of the Khmer Rouge-era keep the past alive by relating that history to their children, grandchildren, and neighbors. In this article, Ms. Kim Moen, 75, tells her life story. She lives in Kampong Kdei village, Kampong Chen Tbaung sub-district, Stung district, Kampong Thom province. She explains, “I am not a native of Stung. In fact, I left my place of birth to escape Issarak [rebels]. I first came to Stung alone and with nothing. I worked to build a huge house, and acquired farmland, cattle, [etc.]. Unfortunately, my possessions and my family, vanished into thin air at the hands of Pol Pot. Now, as I grow older, I again have nothing and feel alone.”

Moen is a native of Cheung Ak village, Rum Hach



Kim Moen with her granddaughter



sub-district, Angksnuol district, Kandal province. Born in Year of the Dragon (1928), she came from a family with eight siblings, four sisters and three brothers. She was the fourth child. Her father was Nhoung Kim, former First Deputy Chief of a subdistrict of Angksnuol. Her mother, Kao Pil, died when she was 17 years old. They owned a tile-roofed house, 6 hectares of rice fields, yielding approximately 20 Thang a year, 13 hectares of farmlands, some 500 palm trees and 40 cows. She says her family was never hungry and they also gave food to their neighbors.

In 1950, when she was 22, her third brother, Kim Sin, was killed by Issarak soldiers after being accused of siding with the French. Kim Sin had just left the monkhood and was asked by a nephew (a clerk of the Phnom Penh municipality) to work with him. Knowing this, Issarak accused him of being a traitor. For this they executed him.

Moen recalls, “When Issarak came and took my brother I was not at home, I was tending cows in the field.

My sister came and told me he had been taken by Issarak. I searched for him everywhere. I asked villagers if they could tell me where he was. I gathered some money hoping to exchange it for my brother’s life. I searched for six or seven days, but heard nothing. Finally, I found the Issarak base where my brother was being held. I asked to see my brother and was made to wait a long time. When I entered, I was shocked to find my brother in a cage. My heart sank further when I saw his hands and feet shackled. He asked me for help, promising that when he was released, he would go into the monkhood for the rest of his life to express his gratitude. Unfortunately, I could not help him. Perhaps two days later, he was taken to a nearby Prey Khmaoch (ghost field) to be killed. He was killed exactly one year after he exited his monkhood—the month of Kadoek.”

Moeun paused for a while and used her scarf to wipe away her tears. She continued, “They killed my brother at dusk, and they told us to take his body and bury



Kim Moen, her husband and Buddhist followers accompany Prum Cheng to ordain a Buddhist monk

Prum Cheng aka Phan

Kim Moen

Prum Nhem



it. When morning came, we began searching for him. We finally found his body lying in the dirt at the Issarak military base. He had been decapitated and his wrists were maimed. I pitied him so very much.”

After the murder of Kim Sin, the Issarak rebels made Kim Moen promise not bring any action against them or she would be killed. The district court summoned her father to tell what happened to Kim Sin, but he did not go for fear of an Issarak reprisal. Then the court subpoenaed him, but again he refused to appear. A final order was issued, warning that the family would be found guilty of any potential charges if they did not appear before the court. Therefore, Moen decided to act on behalf of her father, and testify before the court. News of her plan to testify leaked to the Issarak rebels. They were determined to stop her. Moen’s cousin heard that Issarak soldiers were searching for her and warned her. Moen decided to escape to Stung district where her father’s relatives had a palm sugar plantation.

Sobbing, she recalls, “When I left home I brought only a set of clothes, 500 riel, a ring, and a pair of earrings. I left the rest for my family. I was so sad, I had never been separated from my Daddy. I knelt down beside him and said good bye to him. I could not stop crying. Then I went to live strangers.” She never saw her father again. When she finally returned home after Cambodia received independence from the French and the Issarak movement had quieted, she had had two children of her own, and, sadly, her father had already passed away.

When she moved to Stung to escape Issarak, she asked for asylum in the house of an elderly woman who lived in Kampong Kdei, Kampong Chen Tbaung sub-district. Her name was Phin, and she treated Moen as her daughter. Moreover, elders in the village loved Moen and arranged her marriage with Prum Nhem, a native of Stung. They were married in 1952 when she was twenty-four years old. Like Moen, Prum Nhem was also born in the Year of the Dragon, but 24 years earlier. She said that he passed away in 1968 of old age. When asked why she decided to married a man so much older than her, Moen replied, “At that time, marriage was arranged at the discretion of elders. If they made a marital match, no one dared refuse. That is why we say, ‘we have to accept our mates even if they are dogs or cats.’”

They worked hard and saved their money. Her husband farmed and worshipped in the pagoda, and she grew vegetables and raised animals. They used their hard earned savings to buy a vast piece of land on which she built a house. She bought many hectares of farmland and many cows for her children.

Moen had four children, three sons and a daughter. She gave a birth to her first child, a son, after she had been married for a year. Her experience as a mother led her to become a midwife. Several years after the birth of her first child, she took a literacy course conducted by foresters based in the village. She learned to read and write, which gave her the ability to study medical textbooks. She eventually became a certified midwife in the provincial town of Kampong Thom town.

In 1971, her eldest son, then 20, was recruited to serve in the Khmer Rouge revolutionary army. She remembers, “At that time, [KR] people at the district and sub-district levels came and urged him to join. They said that he would benefit from the revolution. They said that the army was a very good place for him because he knew how to fight. My son was cold-blooded, he loved guns. He eventually joined.

“The Khmer Rouge recruited [every able-bodied adult] from every house. Even children were recruited to join the army or mobile work brigades. In [my] village, only elders and youngsters remained at home.” In 1973, her son visited her as his unit passed the home village. She recalls, “My son did not stay for long. He just came and paid homage to me, saying, ‘Hello.’ When he left, I watched him wave until he disappeared into the forest. I haven’t heard from him since. His name is Prum Cheng (revolutionary name: Phanh), and if he is still alive he would be 49 years old.”

One night in 1974, the Khmer Rouge evicted her family and the villagers of Stung and relocated them to a densely forested village known as Ta Pich. She drove an ox-cart loaded food, clothes, blankets [and] plates. Her remaining three children carried other luggage and led as many cows as they could. Moen led the big cows, her children led the small ones.

Soon, the Khmer Rouge relocated them again, this time to Prey Kap Ruos. Here there were more changes.

Moen’s daughter Prum Sam An (revolutionary



name: Prum Sam En) was sent to work in a mobile brigade at a remote construction site and was only able to visit Moen once or twice a month. Her second son, then 10, also worked in a far-away mobile brigade and only visited occasionally. Her youngest son stayed in Prey Kap Ruos and collected dung to fertilize the rice fields. After defeating the Khmer Republic on 17 April 1975, the Khmer Rouge's Angkar sent Sam An to work in a garment factory in Phnom Penh. Moen lost track of her daughter until 1988, when she heard that her daughter was living in Khav Y Dang camp along the Cambodian-Thai border. She has not heard anything since.

When the KR took Phnom Penh on 17 April 1975, they forced everyone out of the city. The Khmer Rouge also sent many people in Prey Kap Ruos to an area west of National Road Number 6. Moen took the opportunity to go to her house to retrieve more luggage. However, the remaining luggage had been seized by the Khmer Rouge and the house destroyed, only five posts remained. She says, "They did not allow me to take anything, they accused me of lacking the ability to sacrifice."

In Prey Kap Ruos, the Khmer Rouge assigned Moen to transplant rice, build dams, and to make compost. She was then made chief of the cooperative for almost a year. She was responsible for distributing food, tools, and other equipment to other villages and mobile brigades. The policy of communal eating was not yet in practice, people cooked at their own homes with unmilled rice from the cooperative. She always gave people more rice than she was supposed to, knowing that any remaining unmilled rice would just be taken from her coop, to a larger cooperative barn.

Moen always worried that she would be replaced for giving out the stores of unmilled rice. In all, she gave out about 600 Thangs of rice. Then it happened, she was summoned to the headquarters. She remembers, "Five coop chiefs (two women and three men) wanted to see me. I was so frightened, I thought I would be killed. The sub-district chief questioned me, 'Who decided to distribute the unmilled rice? How much did you distribute?' I replied, '200 Thangs,' but actually it was 600. I reasoned that the newly harvested rice, not well-dried, would rot in the heat. So I just delivered it to the villagers [before it spoiled]. The chiefs were baffled and didn't know what

to say."

Moen was demoted from coop chief to chief of the eating hall when the communal eating policy was in practice. She says that when on duty she always hid extra food and rice from the logistic chief, so that the villagers could have enough to eat. For example, she said, if the rice ration was three cans per person, she served two cans per person so that the rice they were given would last longer. And if the logistic chief delivered too little salt, she wouldn't salt his food, which made him realize that more was needed. She says she always gave extra rice, salt, and sugar to those who asked, regardless of whether they were 'base people' or 'new people.'

After working for a year as chief of the eating hall, she was made chief of the Women's Rescue Team (Midwife Unit). She says the Angkar provided nothing to the unit, except for a tool to cut the umbilical cord. They were not provided with medicine, and had to explore traditional medicine such as boiled tree bark. Moen recalled the increasing brutality during the KR rule. The Khmer Rouge gradually began killing more and more people, until "[the killing] reached its peak in 1977. Food rations were reduced and people in my cooperative died one after another due to starvation, overwork, and execution."

Today, Kim Moen lives with her youngest child, her son Prum Nuon, who works for the public school in Stung district. Her second youngest, son Prum Chuon, earns his living fishing in Kampong Thom. Moen continues to wonder what became of her oldest child, son Prum Cheng. She has not seen him since the day he walked into the forest in 1993. She says that for years she would watch the road and anticipate his return, but now she tries to stop thinking about him. "If he was alive, he would have come [home by now]." Her second oldest, her daughter Sam An, now lives in Sweden. Moen touches a photo of her daughter and says, "I have only one daughter and now she lives in a place far away from me. Sometimes I cry when I feel sorry for myself, getting older and older, while children and grandchildren are far away." Moen will continue to tell her stories of the Issarak and Pol Pot era. She suggests that it is up to us to teach our children to be good, honest, and just. This is the only way to ensure that the tragedy of the Khmer Rouge-era never happens again.

17 March, 2003

DRAFT AGREEMENT
BETWEEN THE UNITED NATIONS
AND THE ROYAL GOVERNMENT OF CAMBODIA
CONCERNING THE PROSECUTION UNDER CAMBODIAN LAW OF CRIMES
COMMITTED DURING THE PERIOD OF DEMOCRATIC KAMPUCHEA

WHEREAS the General Assembly of the United Nations, in its resolution 57/228 of 18 December 2002, recalled that the serious violations of Cambodian and international humanitarian law during the period of Democratic Kampuchea from 1975 to 1979 continued to be matters of vitally important concern to the international community as a whole;

WHEREAS in the same resolution the General Assembly recognized the legitimate concern of the Government and the people of Cambodia in the pursuit of justice and national reconciliation, stability, peace and security;

WHEREAS the Cambodian authorities have requested assistance from the United Nations in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979;

WHEREAS prior to the negotiation of the present Agreement substantial progress had been made by the Secretary-General of the United Nations (hereinafter, “the Secretary-General”) and the Royal Government of Cambodia towards the establishment, with international assistance, of Extraordinary Chambers within the existing court structure of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea;

WHEREAS by its resolution 57/228, the General Assembly welcomed the promulgation of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea and requested the Secretary-General to resume negotiations without delay, to conclude an agreement with the Government based on previous negotiations on the establishment of the Extraordinary Chambers consistent with the provisions of the said resolution, so that the Extraordinary Chambers may begin to function promptly;

WHEREAS the Secretary-General and the Royal Government of Cambodia have held negotiations on the establishment of the Extraordinary Chambers;

NOW THEREFORE the United Nations and the Royal Government of Cambodia have agreed as follows:

Article 1

Purpose

The purpose of the present Agreement is to regulate the cooperation between the United Nations and the Royal Government of Cambodia in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979. The Agreement provides, inter alia, the legal basis and the principles and modalities for such cooperation.

Article 2

The Law on the Establishment of Extraordinary Chambers

1. The present Agreement recognizes that the Extraordinary Chambers have subject matter jurisdiction consistent with that set forth in “the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea” (hereinafter: “the Law on the Establishment of the Extraordinary Chambers”), as adopted and amended by the Cambodian Legislature under the Constitution of Cambodia. The present Agreement further recognizes that the Extraordinary Chambers have personal jurisdiction over senior leaders of Democratic Kampuchea and those who were most responsible for the crimes referred



to in Article 1 of the Agreement.

2. The present Agreement shall be implemented in Cambodia through the Law on the Establishment of the Extraordinary Chambers as adopted and amended. The Vienna Convention on the Law of Treaties, and in particular its Articles 26 and 27, applies to the Agreement.

3. In case amendments to the Law on the Establishment of the Extraordinary Chambers are deemed necessary, such amendments shall always be preceded by consultations between the parties.

Article 3

Judges

1. Cambodian judges, on the one hand, and judges appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General of the United Nations (hereinafter: “international judges”), on the other hand, shall serve in each of the two Extraordinary Chambers.

2. The composition of the Chambers shall be as follows:

- a. The Trial Chamber: three Cambodian judges and two international judges;
- b. The Supreme Court Chamber, which shall serve as both appellate chamber and final instance: four Cambodian judges and three international judges.

3. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to judicial offices. They shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

4. In the overall composition of the Chambers due account should be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

5. The Secretary-General of the United Nations undertakes to forward a list of not less than seven nominees for international judges from which the Supreme Council of the Magistracy shall appoint five to serve as judges in the two Chambers. Appointment of international judges by the Supreme Council of the Magistracy shall be made only from the list submitted by the Secretary-General.

6. In the event of a vacancy of an international judges, the Supreme Council of the Magistracy shall appoint another international judge from the same list.

7. The judges shall be appointed for the duration of the proceedings.

8. In addition to the international judges sitting in the Chambers and present at every stage of the proceedings, the President of a Chamber may, on a case-by-case basis, designate from the list of nominees submitted by the Secretary-General, one or more alternate judges to be present at each stage of the proceedings, and to replace an international judge if the judge is unable to continue sitting.

Article 4

Decision-making

1. The judges shall attempt to achieve unanimity in their decisions. If this is not possible, the following shall apply:

- a. A decision by the Trial Chamber shall require the affirmative vote of at least four judges;
- b. A decision by the Supreme Court Chamber shall require the affirmative vote of at least five judges.

2. When there is no unanimity, the decision of the Chamber shall contain the views of the majority and the minority.

Article 5

Investigating judges

1. There shall be one Cambodian and one international investigating judge serving as co- investigating judges. They shall be responsible for the conduct of investigations.

2. The co-investigating judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to such a judicial office.

3. The co-investigating judges shall be independent in the performance of their functions and shall not accept or

seek instructions from any Government or any other source. It is understood, however, that the scope of the investigation is limited to senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.

4. The co-investigating judges shall cooperate with a view to arriving at a common approach to the investigation. In case the co-investigating judges are unable to agree whether to proceed with an investigation, the investigation shall proceed unless the judges or one of them requests within thirty days that the difference shall be settled in accordance with Article 7.

5. In addition to the list of nominees provided for in Article 3, paragraph 5, the Secretary-General shall submit a list of two nominees from which the Supreme Council of the Magistracy shall appoint one to serve as an international co-investigating judge, and one as a reserve international co-investigating judge.

6. In case there is a vacancy or a need to fill the post of the international co-investigating judge, the person appointed to fill this post must be the reserve international co-investigating judge.

7. The co-investigating judges shall be appointed for the duration of the proceedings.

Article 6

Prosecutors

1. There shall be one Cambodian prosecutor and one international prosecutor competent to appear in both Chambers, serving as co-prosecutors. They shall be responsible for the conduct of the prosecutions.

2. The co-prosecutors shall be of high moral character and possess a high level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases.

3. The co-prosecutors shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source. It is understood, however, that the scope of the prosecution is limited to senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.

4. The co-prosecutors shall cooperate with a view to arriving at a common approach to the prosecution. In case the prosecutors are unable to agree whether to proceed with a prosecution, the prosecution shall proceed unless the prosecutors or one of them requests within thirty days that the difference shall be settled in accordance with Article 7.

5. The Secretary-General undertakes to forward a list of two nominees from which the Supreme Council of the Magistracy shall select one international co-prosecutor and one reserve international co-prosecutor.

6. In case there is a vacancy or a need to fill the post of the international co-prosecutor, the person appointed to fill this post must be the reserve international co-prosecutor.

7. The co-prosecutors shall be appointed for the duration of the proceedings.

8. Each co-prosecutor shall have one or more deputy prosecutors to assist him or her with prosecutions before the Chambers. Deputy international prosecutors shall be appointed by the international co-prosecutor from a list provided by the Secretary-General.

Article 7

Settlement of differences between the co-investigating judges or the co-prosecutors

1. In case the co-investigating judges or the co-prosecutors have made a request in accordance with Article 5, paragraph 4, or Article 6, paragraph 4, as the case may be, they shall submit written statements of facts and the reasons for their different positions to the Director of the Office of Administration.

2. The difference shall be settled forthwith by a Pre-Trial Chamber of five judges, three appointed by the Supreme Council of the Magistracy, with one as President, and two appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General. Article 3, paragraph 3, shall apply to the judges.



3. Upon receipt of the statements referred to in paragraph 1, the Director of the Office of Administration shall immediately convene the Pre-Trial Chamber and communicate the statements to its members.

4. A decision of the Pre-Trial Chamber, against which there is no appeal, requires the affirmative vote of at least four judges. The decision shall be communicated to the Director of the Office of Administration, who shall publish it and communicate it to the co-investigating judges or the co-prosecutors. They shall immediately proceed in accordance with the decision of the Chamber. If there is no majority, as required for a decision, the investigation or prosecution shall proceed.

Article 8

Office of Administration

1. There shall be an Office of Administration to service the Extraordinary Chambers, the Pre-Trial Chamber, the co-investigating judges and the Prosecutors' Office.

2. There shall be a Cambodian Director of this Office, who shall be appointed by the Royal Government of Cambodia. The Director shall be responsible for the overall management of the Office of Administration, except in matters that are subject to United Nations rules and procedures.

3. There shall be an international Deputy Director of the Office of Administration, who shall be appointed by the Secretary-General. The Deputy Director shall be responsible for the recruitment of all international staff and all administration of the international components of the Extraordinary Chambers, the Pre-Trial Chamber, the co-investigation judges, the Prosecutors' Office and the Office of Administration. The United Nations and the Royal Government of Cambodia agree that, when an international Deputy Director has been appointed by the Secretary-General, the assignment of that person to the position by the Royal Government of Cambodia shall take place forthwith.

4. The Director and the Deputy Director shall cooperate in order to ensure an effective and efficient functioning of the administration.

Article 9

Crimes falling within the jurisdiction of the Extraordinary Chambers

1. The subject-matter jurisdiction of the Extraordinary Chambers shall be the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, crimes against humanity as defined in the 1998 Rome Statute of the International Criminal Court and grave breaches of the 1949 Geneva Conventions and such other crimes as defined in Chapter II of the Law on the Establishment of the Extraordinary Chambers as promulgated on 10 August 2001.

Article 10

Penalties

The maximum penalty for conviction for crimes falling within the jurisdiction of the Extraordinary Chambers shall be life imprisonment.

Article 11

Amnesty

1. The Royal Government of Cambodia shall not request an amnesty or pardon for any persons who may be investigated for or convicted of crimes referred to in the present Agreement.

2. This provision is based upon a declaration by the Royal Government of Cambodia that until now, with regard to matters covered in the law, there has been only one case, dated 14 September 1996, when a pardon was granted to only one person with regard to a 1979 conviction on the charge of genocide. The United Nations and the Royal Government of Cambodia agree that the scope of this pardon is a matter to be decided by the Extraordinary Chambers.

Article 12

Procedure

1. The procedure shall be in accordance with Cambodian law. Where Cambodian law does not deal with a particular matter, or where there is uncertainty regarding the interpretation or application of a relevant rule of

Cambodian law, or where there is a question regarding the consistency of such a rule with international standards, guidance may also be sought in procedural rules established at the international level.

2. The Extraordinary Chambers shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights, to which Cambodia is a party. In the interest of securing a fair and public hearing and credibility of the procedure, it is understood that representatives of Member States of the United Nations, of the Secretary-General, of the media and of national and international non-governmental organizations will at all times have access to the proceedings before the Extraordinary Chambers. Any exclusion from such proceedings in accordance with the provisions of Article 14 of the Covenant shall only be to the extent strictly necessary in the opinion of the Chamber concerned and where publicity would prejudice the interests of justice.

Article 13

Rights of the accused

1. The rights of the accused enshrined in Article 14 and 15 of the 1966 International Covenant on Civil and Political Rights shall be respected throughout the trial process. Such rights shall, in particular, include the right: to a fair and public hearing; to be presumed innocent until proved guilty; to engage a counsel of his or her choice; to have adequate time and facilities for the preparation of his or her defence; to have counsel provided if he or she does not have sufficient means to pay for it; and to examine or have examined the witnesses against him or her.

2. The United Nations and the Royal Government of Cambodia agree that the provisions on the right to defence counsel in the Law on the Establishment of Extraordinary Chambers mean that the accused has the right to engage counsel of his or her own choosing as guaranteed by the International Covenant on Civil and Political Rights.

Article 14

Premises

The Royal Government of Cambodia shall provide at its expense the premises for the co-investigating judges, the Prosecutors' Office, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration. It shall also provide for such utilities, facilities and other services necessary for their operation that may be mutually agreed upon by separate agreement between the United Nations and the Government.

Article 15

Cambodian personnel

Salaries and emoluments of Cambodian judges and other Cambodian personnel shall be defrayed by the Royal Government of Cambodia.

Article 16

International personnel

Salaries and emoluments of international judges, the international co-investigating judge, the international co-prosecutor and other personnel recruited by the United Nations shall be defrayed by the United Nations.

Article 17

Financial and other assistance of the United Nations

The United Nations shall be responsible for the following:

- a. remuneration of the international judges, the international co-investigating judge, the international co-prosecutor, the Deputy Director of the Office of Administration and other international personnel;
- b. costs for utilities and services as agreed separately between the United Nations and the Royal Government of Cambodia;
- c. remuneration of defence counsel;
- d. witnesses' travel from within Cambodia and from abroad;
- e. safety and security arrangements as agreed separately between the United Nations and the Government;



Royal Government of Cambodia at its discretion and expense on condition that such services do not hinder the proceedings before the Extraordinary Chambers.

Article 27

Practical arrangements

1. With a view to achieving efficiency and cost-effectiveness in the operation of the Extraordinary Chambers, a phased-in approach shall be adopted for their establishment in accordance with the chronological order of the legal process.

2. In the first phase of the operation of the Extraordinary Chambers, the judges, the co- investigating judges and the co-prosecutors will be appointed along with investigative and prosecutorial staff, and the process of investigations and prosecutions shall be initiated.

3. The trial process of those already in custody shall proceed simultaneously with the investigation of other person responsible for crimes falling within the jurisdiction of the Extraordinary Chambers.

4. With the completion of the investigation of persons suspected of having committed the crimes falling within the jurisdiction of the Extraordinary Chambers, arrest warrants shall be issued and submitted to the Royal Government of Cambodia to effectuate the arrest.

5. With the arrest by the Royal Government of Cambodia of indicted persons situated in its territory, the Extraordinary Chambers shall be fully operational, provided that the judges of the Supreme Court Chamber shall serve when seized with a matter. The judges of the Pre- Trial Chamber shall serve only if and when their services are needed.

Article 28

Withdrawal of cooperation

Should the Royal Government of Cambodia change the structure or organization of the Extraordinary Chambers or otherwise cause them to function in a manner that does not conform with the terms of the present Agreement, the United Nations reserves the right to cease to provide assistance, financial or otherwise, pursuant to the present Agreement.

Article 29

Settlement of disputes

Any dispute between the Parties concerning the interpretation or application of the present Agreement shall be settled by negotiation, or by any other mutually agreed upon mode of settlement.

Article 30

Approval

To be binding on the parties, the present Agreement must be approved by the General Assembly of the United Nations and ratified by Cambodia. The Royal Government of Cambodia will make its best endeavours to obtain this ratification by the earliest possible date.

Article 31

Application within Cambodia

The present Agreement shall apply as law within the Kingdom of Cambodia following its ratification in accordance with the relevant provisions of the internal law of the Kingdom of Cambodia regarding competence to conclude treaties.

Article 32

Entry into force

The present Agreement shall enter into force on the day after both parties have notified each other in writing that the legal requirements for entry into force have been complied with.

Done at [place] on [day, month] 2003 in two copies in the English language.

For the United Nations For the Royal Government of Cambodia

[HC] [SA]

**COMMENTS ON THE DRAFT AGREEMENT BETWEEN THE UNITED NATIONS
AND THE ROYAL GOVERNMENT OF CAMBODIA CONCERNING THE
PROSECUTION UNDER CAMBODIAN LAW OF CRIMES COMMITTED
DURING THE PERIOD OF DEMOCRATIC KAMPUCHEA**

Suzannah Linton, 23 March 2003

Before commencing on this assessment of the agreement, I must confess that as a foreign observer, I am torn between being happy for Cambodians that they will finally have some accountability for the utter depravity and suffering caused in the Democratic Kampuchea era and at the same time being deeply disturbed that a third rate compromise is all that they have been given. Yet, given that this is what has been agreed after so much trouble, the best way forward must surely be to make the most of it. I therefore offer these comments with best intentions.

Stakeholders and interested parties must do whatever is possible to ensure that this mechanism of accountability brings a modicum of justice to Cambodia and to harness the opportunity of the trials to develop a complementary strategy for desperately needed social repair. Expectations must be realistic. All the wishful thinking in the world is not going to enable the trials of a handful of elderly Khmer Rouge (KR) on their own to provide sudden repair to the damage that continues to eat away at Cambodian society. Civil society has a particularly important role in providing support to, but at the same time being a watchdog of, the Extraordinary Chambers project. It also has a vital role in pressuring the Royal Government (RGC) and the United Nations (UN) to design and implement the many supporting programs that will be needed, such as witness protection, psychiatric care, public debate and information/outreach.

Overall, the agreement is an improvement on the earlier draft Memorandum of Understanding. But the core problem is still there, namely the integrity of the process arising from the basic concept of mixed nationality chambers controlled by Cambodian personnel making decisions on the basis of a highly irregular voting mechanism, with two co-investigating judges and two co-

prosecutors essentially running separate offices, whose disagreements on investigation and prosecution are to be settled by a panel of judges. Current Cambodian criminal procedure law continues to apply. There remain no provisions for reparations, which is an important issue given that the former Khmer Rouge leaders control significant resources while most Cambodian survivors of their rule live in abject poverty. These matters are not to be papered over with more words about respect for basic norms of human rights—there are already enough such pledges in the Cambodian Constitution and in the Law on Extraordinary Chambers. Unfortunately, the reality is that these fine words are not being implemented in the Cambodian justice system. There is little point in stressing that the key officials are not to take instructions from any Government or outside source if there is no way to enforce that prohibition. In addition, whether or not it was feasible within the timeframe that the parties had, this agreement is haunted by a number of important missed opportunities that could have substantially strengthened the process. And, as Amnesty International has pointed out, the capacity building element of this project is minimal. This is a one-off exercise with no eye on developing the capacity of the Cambodian judicial system.

NGOs have highlighted the potential problem with control of the tribunal being in the hands of Cambodian personnel, given the degree of political influence over them and their professional weaknesses. This situation remains unchanged—Cambodian judges will control the process and the weighted majority formula called the ‘Super Majority’ applies. The quality of personnel is going to be the factor that makes or breaks the tribunal’s contribution to Cambodia if, as surveys suggest, people want a quality process that meets international standards. On the other hand, if Cambodians are actually simply interested in the



spectacle of seeing the leaders of Democratic Kampuchea in the dock, then the quality of the personnel or the process is not relevant to them. But I believe that Cambodians want much more than the mere spectacle of a legal process—they want a quality process that is worthy of the losses they have suffered. Here civil society has an enormous role to play in lobbying to ensure that only the finest, most ethical and principled Cambodian jurists are selected to take part. The same must be said for the candidates put forward by the UN. Cambodians have every right to demand that the UN designates only top class international personnel with the necessary experience and unquestionable integrity to the Extraordinary Chambers.

To begin with the less controversial matters, the removal of the appeal court and reduction of the number of judges on the Supreme Court are to be welcomed. The three layer model reflected the structure of Cambodian courts, was cumbersome and would have been unnecessarily costly, given that at the top layer, nine judges were envisaged. The new agreement is that there will be two chambers—a Trial Chamber comprised of three Cambodians and two internationals, and a Supreme Court comprised of four Cambodians and three internationals.

A number of practical amendments like provision for reserve international prosecutors and investigating judges have been made—these are helpful. There has also been clarification of the role of the Office of Administration, which is also welcome. The office is meant to “service the Extraordinary Chambers, the Pre-Trial Chamber, the co-investigating judges and the Prosecutor’s office” (Article 7(1)). But it is still not clear if these services include being responsible for witness protection, accused protection, security in the court, filing and circulation of documents, transcription, translation, public information, outreach etc. One would assume so but given the lack of experience with this sort of thing in Cambodia, it would have been helpful for the agreement to have at least spelt out more explicitly what the job of the Office of Administration actually is. Apart from the designated international personnel—the judges, one co-investigating judge plus reserve, one co-prosecutor plus reserve, the deputy director of the Office of Administration and deputy prosecutors—it is still not clear if there will be other international involvement in day to day work. For example, can skilled

international investigators with ICTY (International Criminal Tribunal for the former Yugoslavia) or ICTR (International Criminal Tribunal for Rwanda) experience be recruited to assist the co-investigating judges or are all the investigators to be from the Cambodian police? What about international legal advisors with specialist expertise in the subject matter?

The UN has dropped its earlier provision which essentially stated that if-we-don’t-get-the-money-we-are-backing-out, contained in Article 26 of the draft Memorandum of Understanding. This indicates that it has had behind the scenes guarantees of complete funding for its involvement in the project. Various technical points which really were to do with the UN’s internal management of its contribution to the project, such as the Trust Fund, have also been removed from the agreement. And, in light of the troubled history of relations between the UN and the RGC, Article 28 on withdrawal of cooperation is to be expected. This article provides that should the RGC “change the structure or organization of the Extraordinary Chambers or otherwise cause them to function in a manner that does not conform with the terms of the present Agreement, the United Nations reserves the right to cease to provide assistance, financial or otherwise, pursuant to the present Agreement.”

There is potentially a problem with Article 9 in the draft agreement which I have examined. It says that the Crimes against Humanity definition of the Rome Statute of the International Criminal Court (ICC) applies. Either this is a typographical error or the UN and RGC have agreed to change the definition used in the Law on Extraordinary Chambers. The definition in the law itself is akin to the definition of the Statute of the International Criminal Tribunal for Rwanda (ICTR) with its use of discriminatory intent as a requirement for all Crimes against Humanity and not just persecution. The problem with using the Rome Statute definition is that the crimes which are to be adjudicated by the Extraordinary Chambers took place between 1975-1979. The definition of Crimes against Humanity agreed in 1998 for the ICC was a progressive one that advanced the definitions used in both the ICTR Statute and that of its sister tribunal, the International Criminal Tribunal for the former Yugoslavia (ICTY). It is a cardinal principle of human rights law that



a person can only be tried, convicted and punished on the basis of conduct that was criminal at the time the act was committed. However, I suspect this is simply a typographical error as Article 2 of the agreement states that the agreement recognizes the subject matter jurisdiction as set out in the Law on Extraordinary Chambers, with no comment about changing the definition of Crimes against Humanity.

Not surprisingly, the UN and RGC have agreed to wash their hands of the amnesty/pardon issue. They have passed the buck to the judges. Article 11 repeats the terms of the Law on Extraordinary Chambers (“The Royal Government of Cambodia shall not request an amnesty or pardon for any persons who may be investigated for or convicted of crimes referred to in the present Agreement”). It also adds a sub-clause that crystallizes the RGC’s statement that only one person has received a pardon in relation to a 1979 conviction on genocide, and the parties agree that the scope of this pardon is a matter to be decided by the Extraordinary Chambers. Nuon Chea and Khieu Samphan were never convicted so they were never pardoned, and they did not get a legally recognized amnesty from prosecution. The government is now bound not to seek an amnesty from prosecution for them and it is unlikely that the King would draw on his Constitutional powers without such a request. It would therefore seem that the road is theoretically clear to prosecute them.

But the controversy about Ieng Sary will run and run. The following seems a very likely scenario. The international co-investigating judge will want to investigate Ieng Sary and the Cambodian will not. Article 5(4) of the UN-RGC agreement says that if they don’t agree they have to proceed with the investigation, unless one of them refers it to a pretrial chamber. Let us assume it is referred to the chamber. Assume the Cambodian judges behave the way that is anticipated and say no investigation of Ieng Sary is possible by international human rights standards and Cambodian law because he was lawfully pardoned, cannot be tried again for what he has already been convicted of. The two international judges would be most likely to take the standard international community position on the 1979 trials and say that the conviction was the result of an illegitimate process that has been near universally rejected as a show trial. They would vote for the investigation to proceed. All judicial decision-making

is to be by Super Majority, which means that one of the international judges must agree with the Cambodian judges. So, there will be no Super Majority. This means that under Article 7(4), the investigation or prosecution will proceed. The case will go forward and if there is indeed the hard evidence, Ieng Sary will be indicted. Once indicted/charged, he would probably challenge the jurisdiction of the court (as is his right, and the court should not say the issue has been decided already because the previous decision was only applicable to the investigations and this time it is challenged by the accused), saying he was convicted and pardoned and it is a fundamental violation of his rights to try him again. This time the matter goes to the Trial Chamber itself, which will also have to decide on the basis of the Super Majority. But at this level, there is no equivalent of Article 7(4) to say that the case must proceed if the judges cannot agree on a supermajority. What happens if the three Cambodians say the court has no jurisdiction over Ieng Sary because of the pardon and the two internationals say it does? The Super Majority provision means that without the affirmative vote of four judges, the chamber cannot make a decision. This could lead to the extraordinary situation where the court simply cannot issue a decision that says yes or no on the question of whether Ieng Sary is immune from prosecution because of the pardon.

It is good to see some strengthening of the fair trial and due process provisions. But these are just more words to complement those already in the Law on Extraordinary Chambers (Article 35 of which repeats Article 14(3) of the International Covenant on Civil and Political Rights) and the Cambodian Constitution. The challenge for those working on judicial reform in Cambodia has always been to get fine words implemented in Cambodian courts. As anyone who has worked with Cambodian judges and prosecutors will confirm, they do not like working with general principles of the kind that require them to “exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law” (Article 12(2)). They like ‘black and white letter law,’ technical rules that spell out exactly what they should or should not do. They are extremely unwilling to involve themselves in legal interpretation or extracting practical rules out of abstract concepts. And, in



the confused state of Cambodian criminal procedure law, internationals and Cambodians can be expected to have major disagreements on the procedure to follow. The internationals will probably be inclined towards the law drafted by the United Nations Transitional Authority in Cambodia (UNTAC) (1992 Supreme National Council Decree on Criminal Law and Procedure); the Cambodians will probably say that the State of Cambodia (SOC) Law (1993 State of Cambodia Law on Criminal Procedure) is the one to be followed. In the background there will be mutterings about the French Penal Procedure Code and the Cambodian Constitution. Thus, it is a real shame that the UN and RGC did not explicitly agree to adopt special rules of procedure based on those of the ICTY, ICTR or even the ICC. The UN was able to agree with the Sierra Leone Government that the ICTR rules of procedure and evidence would apply *mutatis mutandis* to proceedings at the Special Court but the judges would be able to adapt them as necessary. The judges (local and foreign nationals) have already adapted those rules to fit their particular circumstances and the first appearances by accused before the Special Court took place a week ago. Given the circumstances, it is not at all helpful for the UN and RGC to have left it hanging in the air with a phrase like “[w]here Cambodian law does not deal with a particular matter, or where there is uncertainty regarding the interpretation or application of a relevant rule of Cambodian law, or where there is a question regarding the consistency of such a rule with international standards, guidance may also be sought in procedural rules established at the international level.” Who decides what that guidance is to be? Going to the judges, whose hands are tied by the Super Majority requirement, may not help. Sometimes one needs more considered interpretation, advice or guidance and not just a yes or no answer.

One particularly serious missed opportunity in this agreement is to do with witness protection and care. Article 23 has been amended but remains weak: The co-investigating judges, the co-prosecutors and the Extraordinary Chambers shall provide for the protection of victims and witnesses. Such protection shall not be limited to the conduct of *in camera* proceedings and the protection of the identity of a victim or witness. After all the UN’s experience with victims and witnesses at the

ICTR and ICTY, which has left it with a pool of staff having a wealth of expertise that could be so usefully shared with Cambodia, one would have thought it could have taken responsibility for witness protection or at least committed itself to providing substantial assistance to Cambodia. Instead, the responsibility for witness protection is placed on the co-investigating judges, the co-prosecutors and the Extraordinary Chambers with no mention of any particular role for the UN. So is each of the named parties to design their own mini witness protection program? Are the Cambodian police obliged to assist in all of this? And, it is not just about witness protection, witness care should also be part of the package—retraumatization is a very real danger that arises from testifying about horrifying atrocities and personal losses and counseling services are absolutely vital. Surely it is not too late for the UN to give a commitment to assist its Cambodian counterparts in setting up a Victims and Witnesses Unit and provide it with qualified staff?

The provision that legal counsel will be provided if the accused cannot pay has not been altered in this new UN-RGC agreement, and counsel retain their privileges and immunities. An important addition is the provision that the accused has the right to choose his own counsel—which means that foreign lawyers may represent the accused. The accused is no longer limited to Cambodian lawyers. However, the freedom of choice really only applies if the accused is able to pay his own legal costs; if he cannot, he will be limited by the rules of the body that pays the legal costs. For example, at the ICTY and ICTR, indigent accused (those who cannot pay for their own costs) may only choose counsel from a list provided by the Registrar of the court who is the paymaster on behalf of the UN. But the UN and RGC have not addressed the issue of who is going to pay for international or local counsel and provide them with adequate means with which to do their job of defending their clients. What if they need to travel to countries like China and Vietnam to conduct intensive investigations? What if they need to have large quantities of documents translated? Who will pay for foreign counsel to have translators through whom they may communicate with their clients? What assistance can the Extraordinary Chambers provide to defense counsel seeking to obtain documents that parties



refuse to surrender to them? The Office of Administration is not made responsible for assisting defense counsel—it helps everyone else including one of the parties (the prosecution) - but not the other party, the defense. The RGC helps everyone else with office premises, but not defense counsel. So, despite the one change, there still seems to be no equality of arms between the parties as required by International Law.

And, the new agreement has still not clarified the question of the defenses that can be raised in these trials. Cambodia's current criminal procedure laws, which will apply to the KR Tribunal, do not contain any provisions on defenses although the UNTAC Code identifies factors that can mitigate sentence. So what about the 1956 Code which seems to have still be the applicable law in Cambodia during the Democratic Kampuchea era even though it was not applied? And International Law? It is very worrying that accused persons may go to trial not even knowing what defenses they are able to rely on, and in which body of law they are to found them. Clarifying this matter would have made a far greater contribution towards fair trial at the Extraordinary Chambers than adding a few more words about the International Covenant on Civil and Political Rights, as was done in Article 12 on procedure. The judges of the International Criminal Court have had almost all the substantive legal issues worked out in advance for them through the court's Statute, Rules of Procedure and Evidence and a document called Elements of Crimes. If ever there was a court that should not be left to its own devices in crucial and complex matters such as identifying the amorphous content of Cambodian and International Law between 1975-1979 or interpreting general principles of law, it is these Extraordinary Chambers. Thus, it seems very strange that substantive issues such as the defenses that will apply have not been worked out in advance.

Finally, given the fuss about the status of the UN-RGC Memorandum of Understanding, it is surprising that this new agreement still does not clarify how it formally relates to the Law on Extraordinary Chambers, i.e. the exact legal status and hierarchy between the two. Which should the court look at—the Law on Extraordinary Chambers or the UN-RGC Agreement? It is a bilateral agreement, expressed in very mild terms as simply

regulating the cooperation between the UN and RGC on the trials, which is to become law in accordance with normal ratification procedures in Cambodia. But in substance it obviously goes much further with its many substantive provisions on rights of the accused, amnesty, procedure etc, and it of course requires changes to a valid Cambodian law. Article 2 recognizes only a few things in the Law on Extraordinary Chambers—subject matter and personal jurisdiction—leading one to ask if the rest of the law is not recognised? It skirts around the issue of what to do with the Law on Extraordinary Chambers—no matter what the legal position, as a result of this agreement Cambodia will surely either have to amend the Law on Extraordinary Chambers directly or do it via the law approving the agreement. And what if there is a conflict between the two laws? The underlying problem is that the UN and RGC have agreed that certain changes have to be made to a valid Cambodian law passed by the legislature, which was not a party to this agreement. Of course the legislature will probably agree at the end of the day, but the ritual requires pretending that it is not just going to be rubber-stamped (it would be very interesting if they refused to pass it!).

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THE KHMER ROUGE TRIALS: NOW, NEVER, OR SOMEWHERE IN BETWEEN?

John D. Ciorciari

On March 17, after years of diplomatic haggling, representatives from the Royal Government of Cambodia (RGC) and United Nations (UN) initialed a draft agreement to establish the long-awaited Khmer Rouge tribunal. Under the agreement, a mixed panel of Cambodian and international judges would hear cases against some of the most notorious former members of the Pol Pot regime. The recent breakthrough in UN-RGC negotiations marks a major step toward establishing a tribunal and ensuring legal accountability for the crimes of Democratic Kampuchea.

Victims of the Khmer Rouge regime have awaited justice for over 24 years, while some of the chief architects of the regime's abuses—including Son Sen and Pol Pot himself—have passed from the scene with nearly unfettered impunity. Other principal suspects now live comfortably in villas, while the families of their estimated two million victims continue to wait for some of the most basic and universal laws to be applied. However, the momentum created by the March 17 agreement is once again under challenge.

Final approval of the draft requires approval by both the UN General Assembly and Cambodian National Assembly. With support from the latter expected, the UN General Assembly vote is widely perceived as the pivotal step in the movement toward a tribunal. During the past five weeks, supporters and critics of the draft have begun to weigh in on the debate. Public and private attacks on the agreement cast doubt on both the timing and outcome of the General Assembly vote.

The draft agreement remains far from perfect. For example, the draft does not clarify its precise relationship to the 2001 Cambodian law that established extraordinary chambers in Cambodian courts to hear the cases. The draft requires super-majority decisions, but it does not specify how the tribunal will function if a motion requires a “yes or no” answer and no super-majority exists. The

draft also fails to enumerate the defenses available to the defendants, and its definition of “crimes against humanity” appears to violate the universal norm against ex post facto laws. Furthermore, it leaves the relationship between Cambodian and international prosecutors and investigators murky and omits clear rules of evidence and procedure. Finally, the draft says little about important issues such as witness protection and local capacity building.

These deficiencies are important and demand attention, but they are manageable in scale. They should not progress toward the creation of the planned tribunal. The UN and RGC should undertake a binding pledge to address outstanding issues in good faith after the agreement is approved. With ongoing UN-RGC collaboration and help from experienced human rights organizations, the problems in the agreement can be resolved. The UN General Assembly should give the current draft its blessing and focus on constructive means of ensuring that the tribunal meets international standards. Cambodians have waited long enough.

Some critics disagree. Amnesty International asserts that the agreement has “serious deficiencies ...that reflect a significant retreat from current international law and standards” and that “the deficiencies in the draft are so serious...that Amnesty International would oppose the United Nations signing the agreement without major revision.” This and similar critiques are premised partly on the specific problems outlined above. However, the real issues relate to who will “control” the tribunal and who will receive political credit for bringing the Khmer Rouge to justice.

Many human rights advocates remain skeptical about the integrity of the Cambodian government and judiciary. Brad Abrams, head of the Asia Division of Human Rights Watch, has stated that concern quite clearly: “Hun Sen must be very pleased; he can control

everything. No Cambodian judge or prosecutor is going to act without his permission.” Amnesty International adds that: “the Cambodian judicial system is weak and subject to political pressures, especially in high-profile cases. It is therefore currently unable to ensure that such trials are conducted in a manner that would conform to international standards of fairness.”

It is certainly appropriate to subject the tribunal process to close public scrutiny, and concerns about potential corruption or bias are not unfounded. Putting significant procedural safeguards in place is essential, as major human rights organizations rightly emphasize. However, critics of the RGC should avoid sweeping conclusions in advance of a tribunal that Cambodian judges and officials cannot be trusted. By announcing that the Cambodian judiciary is unreliable and taking all possible measures to minimize its room for maneuver, critics of the proposed tribunal would deny the Cambodian government an opportunity to contribute meaningfully to the search for justice.

A Khmer Rouge tribunal is partly about the past, about justice for the horrific wrongs committed by the Pol Pot regime. Strong foreign involvement in the trials is important in ensuring that justice is done and in reducing concerns of judicial impropriety. However, the tribunal process is also about the future and the construction of a rule of law in Cambodia. For better or for worse, the future of Cambodia’s legal system lies predominantly in Cambodian hands. The more that the trials are perceived to be dominated by foreigners, the less opportunity that the RGC will have to establish its own trustworthiness and secure greater public confidence. International law could triumph in the courtroom, but Cambodians would scarcely feel better about the rule of law in their own neighborhoods.

After 24 years in a holding pattern, Cambodians need to see that their government is capable of administering real justice. Foreign investors, who offer promise for the future economic development of Cambodia, also need evidence that Cambodia’s judicial system is regaining competence and credibility. For the rule of law to take firm hold in Cambodia, and for human security conditions to improve, public and international confidence in the legal system is imperative. This objective must be carefully balanced with the more

immediate goal of securing credible justice for the atrocities of Democratic Kampuchea. Both the United Nations and the RGC have indispensable roles to play in the quest for justice in Cambodia.

There is no objective manner to determine what constitutes the optimal division of Cambodian and UN roles in the accountability process. By requiring supermajority decisions, employing local and international investigators and prosecutors, and giving the United Nations the right to withdraw support if the RGC fails to cooperate (Article 28), the draft includes significant provisions designed to ensure that the tribunal meets international standards. By creating a large role for Cambodians, the agreement also gives the RGC an opportunity to establish that it can be trusted with issues of law and justice. After years of negotiation, this is the basic balance that the two parties struck, and should the draft agreement be rejected, the opportunity to try aging members of the Pol Pot regime may not come again.

Some critics of the RGC are resolved to delay the process again, waiting until after the summer elections in Cambodia to hold a United Nations vote. They seek to prevent Hun Sen and his Cambodian People’s Party (CPP) from winning the political spoils of a Khmer Rouge tribunal. In a January letter to Kofi Annan, U.S. Senators Mitch McConnell and Patrick Leahy wrote that “Hun Sen does not possess the political will necessary to uphold a fair and impartial tribunal.” “We believe greater opportunities may lie with new Cambodian leaders, should the Cambodian people be allowed to participate in free and fair parliamentary elections later this year,” they concluded. It is likely that certain key members of the U.S. Congress remain actively committed to that position and favor delaying the UN General Assembly vote until after the upcoming Cambodian summer elections. They fear that a pre-election agreement would benefit the CCP and reduce any chances of victory by the opposition Sam Rainsy Party. If their efforts are successful, a UN General Assembly vote could be pushed back to August, September, or beyond.

After years of undelivered justice, such proposals for further delay grate like broken records. Time and time again, considerations of political impact have denied justice to the victims of the Khmer Rouge regime. The argument



that waiting will resolve problems is no longer convincing. In four or five months, events could change the willingness of the parties to cooperate. The likely CPP electoral victory could reduce Cambodian incentives to push for a tribunal or result in further international calls for delay. In addition, an international crisis could once again divert UN attention from Cambodia. In either case, the CPP would find itself in the driver's seat. This would be an ironic outcome indeed—the government that has been so heavily critiqued from abroad would be able to control the process with minimal international scrutiny.

In short, there is little reason for optimism that this opportunity for credible justice will come again before Pol Pot's henchmen pass from the scene. The time has long since passed to seize the initiative. The UN General Assembly should approve the draft promptly and turn its attention to fine-tuning the arrangements for a tribunal. As Gregory Stanton of Genocide Watch has argued, perfection can be the enemy of justice.

The most severe critics of the draft agreement insist that the UN General Assembly should not sign it unless

major changes are made. Concerned that a trial would be unfair and damage the reputation of the United Nations, they would prefer to see continued negotiations—or perhaps an end to them. They argue quite reasonably that the danger of accepting the current draft is that the RGC will prevent the tribunal from achieving international standards of justice, perhaps even necessitating a UN withdrawal. If the RGC elects to defy international public opinion and the spirit of the draft agreement, that result is indeed conceivable. However, at this stage of negotiations, and at this stage in the lives of the elderly defendants, the risk of rejecting the draft agreement is even greater—that the United Nations and Cambodian government would hold no trials at all. That outcome would be certain to leave the untried crimes of Democratic Kampuchea as a scar on the reputation of the United Nations and an open wound on Cambodia's future.

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A witness testifying before the 1979 tribunal



are the two main concepts that contribute to collective violence in society. She argues that, “...restoring dignity to victims would be part of this process, but so would dealing respectfully with those who assisted or were complicit with the violence. Otherwise, new rifts and resentments are likely to emerge and grow.” However, which of these two objectives; restoring victims’ dignity or dealing respectfully with perpetrators; should take priority?

Whatever path is taken in dealing with a past violation, Parlevliet (1999) points out that “...ethical and political considerations need to be balanced: the demands of justice must be weighted against what is politically feasible. A tension is then often perceived to exist between the pursuit of both justice and peace, given the politically precarious nature of a transition. It is clear that the former may jeopardize the latter when a democracy or peace agreement is still fragile”.

Approaches to reconciliation

Reaching lasting and sustainable reconciliation involves transition and there are several ways to approach the reconciliation process. On the following pages I describe several examples of methods used to achieve reconciliation in other countries. Then I detail the reconciliation process in Cambodia. And finally, I argue that symbolic justice is the best approach in promoting peace and reconciliation in Cambodia.

Huntington (1993) described three types of transition: transforming—when two conflicting parties agree to negotiate and bring about change; replacement—when, by force or pressure, the views of one party are rejected and replaced; and transplacement—when one party is forced to negotiate and move to change. These types of transition can be applied to the reconciliation process and here I discuss two: transplacement and replacement.

Transplacement favors truth over justice. The transplacement approach was used to deal with the past atrocities in South Africa, Spain, Argentina and Chile. South Africa’s Truth and Reconciliation Commission was set up in May of 1995 as a compromise between the outgoing segregationist regime of De Klerk, and the newly elected (in 1994) anti-apartheid regime of President Nelson Mandela. The objective of the Truth and Reconciliation Commission was to focus on finding and disclosing the truth of abuses and atrocities committed

under De Klerk’s Apartheid policies, and not the prosecution of the perpetrators. Therefore, the Commission created a direct linkage between amnesty and truth, and those perpetrators given amnesty were not prosecuted. This tradeoff, truth over justice, was also made in Argentina and Chile.

The advocates of the “transplacement” approach to reconciliation argue that it is necessary in fragile, newly free societies in order to keep the peace. They argue that simply purging a country of an outgoing, or defeated offending regime through trial and prosecution could lead to chaos and even war. The central question in reconciliation is not about pursuing justice, but about creating a “...harmonious and positive relationship...” [between the victims and perpetrators] (Assefa 1999). He also states that, “Justice is necessary but not sufficient...” for reconciliation.

As you would imagine, a lack of justice makes people unhappy. Not all South Africans are satisfied by the Truth and Reconciliation Commission. The survivors and former victims in particular are refusing to accept the way in which the Truth and Reconciliation functioned. Minow asks, “What is the point of knowledge without justice?” The leaders of the regimes responsible for human rights abuses and atrocities enjoy amnesty, while the victims continue to suffer.

While transplacement largely ignores the issue of justice, the replacement approach focuses on the pursuit of justice in dealing with those accused of human rights abuses. There are examples of the replacement approach from Europe and Africa. There were the Nuremberg trials for Nazi war criminals and International Criminal Tribunals for leaders of the Yugoslavia and Rwanda. Advocates feel that the main benefit of the replacement approach is that the pursuit of justice will deter future crimes against humanity. One thing is clear, neither victims nor perpetrators will be able to live with the other until the crimes are acknowledged and some punishment, compensation, or sign of remorse is given.

However, it is often difficult to distinguish between victims and perpetrators, in a civil war everyone has been guilty of participating with one side or the other at different times. Then who is to draw the line between victims and perpetrators? For the sake of finding the truth about past



Cambodian government, where the surviving senior Khmer Rouge leaders are provided amnesty for truth. This approach belongs to Cambodian Prime Minister Hun Sen who suggested it in 1996, calling it a “win-win approach.” He says that peace is of the utmost importance, and whatever solution is chosen, it must not damage peace and stability.

Hun Sen reasons that Cambodia is still emerging from decades of war and its peace is fragile. He claims that peace and poverty reduction have priority over justice. He argues that making a clear distinction between the guilty and innocent, the perpetrators and victims of the Khmer Rouge regime, is inappropriate and does not help Cambodia’s past, present or future. He also believes that prosecution of former KR leaders, especially “Brother Number 2” Ieng Sary, would destroy Cambodia’s current peace and disrupt its fragile society. He says, “Trying Ieng Sary (the Khmer Rouge) may create problems for Cambodia.” Surviving KR leaders including Khieu Samphan and Nuon Chea are now living along the Cambodia-Thailand border and also favor the truth commission approach. Khieu Samphan promises that if a South Africa-style truth commission was organized he and other senior KR leaders would be happy to give evidence on the killing that happened between 1975 and 1979. Khieu Samphan added, “And there would be no retaliation [against us].”

Not all Cambodians agree with Hun Sen’s national reconciliation policy and truth commission approach to dealing with Khmer Rouge atrocities. Many leaders in civil society favor an approach that seeks both truth and justice. This is especially true of Youk Chhang, the director of the Documentation Center of Cambodia (DC-Cam). For years, he has worked for “memory and justice,” to document and preserve the history of the KR’s atrocities. He and other community leaders argue that establishment of the rule of law and the end of a culture of impunity are the basis for justice, and that justice is a precondition for peace. In other words, a just society is a peaceful society.

Cambodians still have fear in their hearts, because those that perpetrated genocide against them, live freely among them. Therefore, in order to have peace of heart and mind, and a peaceful society Cambodia must bring the perpetrators to justice. Youk Chhang points out that Hun

Sen’s government has defeated the genocidal Khmer Rouge regime in war, not in law. Without the rule of law, Cambodia cannot develop. In the words of Youk Chhang, “For real peace, for real national reconciliation, for real development, and for real stability, Cambodia must confront the truth and find justice... Only then can Cambodians put their terrible past behind them and begin to build a new future....”

The truth commission approach seeks a seek a swift and expedient conflict resolution, without addressing the events that sparked the conflict. Youk Chhang believes strongly that “The truth commission approach is inappropriate for Cambodia. The Khmer Rouge leadership such as Ieng Sary, Khieu Samphan, Nuon Chea, and Ieng Thirith should not qualify for forgiveness by a truth commission.”

To date, no scientific study has been conducted to determine which approach is favored most by Cambodians. Advocacy for either approach has primarily been made through articles and letters in newspapers, and these writings generally express only individual opinions or results of small group discussion on the Khmer Rouge tribunal.

When I was a researcher at the Documentation Center of Cambodia, I interviewed hundreds of people about the reconciliation issue. The results of my studies revealed that aspects of both approaches to reconciliation (legal justice, and amnesty for truth) are important to people. And aspects of both should be combined in order to find a practical solution for future reconciliation in Cambodia. Therefore, I argue that a compromise concept is the best. We must take the “middle path.” The middle path concept calls for a degree of justice that does not jeopardize our current peace and stability. It also calls for truth, the acknowledgement or crimes and injustice. This middle path approach would prosecute only the senior Khmer Rouge leaders, while subordinate Khmer Rouge cadres would receive amnesty for disclosing the truth about their atrocities.

The supporters of this “middle path” concept are primarily survivors of the Khmer Rouge regime living in the countryside. Most of these survivors lost family members during the genocide, and at the same time had relatives taking part in the Khmer Rouge revolution. They



are all Buddhists who believe in Khama (sin) and support the good Buddha's middle path concept for a conflict resolution.

Mohasomethea Thepdei Tep Vong, Supreme Head of the Sangha of the Maha nikay of the Kingdom of Cambodia explains the Buddha's middle concept as encouragement to stop the circle of debt. He agrees that prosecution is necessary, but stresses that only, "[T]he Khmer Rouge leaders should be punished according to their crimes. But do not intimidate others or force innocent people to take accountability for the crime of genocide." The venerable Yuos Hut Kemecaro calls for Khmer Rouge leaders to "live in exile" as punishment. He explains that this method of punishment is described in the story of Prince Vesandar (a Buddhist tale depicting the previous life of Buddha) and this punishment will provide "truth" and "accountability" which prevents additional bad deeds.

The term "middle path" is common to Buddhists, especially in Cambodia. The legal term that represents the middle path concept is "symbolic justice." Lambourne's paper, *Justice and Reconciliation: Post conflict Peace building in Cambodia and Rwanda*, explains that symbolic justice is different from substantive justice or socioeconomic justice, and can be achieved when victims know who did what to their loved ones. At the same time, the community and the perpetrators acknowledge the injustices committed, and the perpetrators express regret for their wrongdoing in the absence of "substantive retributive or restitutive justice."

To achieve symbolic justice, Cambodia must prosecute the senior Khmer Rouge leaders and all those who bear the highest responsibility for the crimes and serious violations that were committed from 17 April 1975 to 6 January 1979. A Khmer Rouge tribunal will render a major blow to the culture of impunity, and begin to establish the rule of law in Cambodia. Trials will provide a sense of relief and closure to victims and perpetrators alike. Public acknowledgement of their crimes and abuses will serve as a historical record and will help victims to move on with their lives. It will also help us to forgive the former low-ranking Khmer Rouge cadres living among us. Only then will we be able to live peacefully together. Symbolic justice creates a place for justice to meet peace, and a time for apologies to meet mercy by agreeing to

accept some degree of justice for the sake of peace and security.

Conclusions and recommendations

The ultimate approach for reconciliation in Cambodia must be based on the needs of the survivors with a vision for the future of the nation, rather than on expediency and political priorities. While some people want legal justice, others want a public process of apology and forgiveness, and others want punishment. We must follow the "middle path" to reconciliation in Cambodia. Symbolic justice takes all of these needs into account and will encourage all sides to work together in the reconciliation process. I strongly support symbolic justice in order to achieve reconciliation in Cambodia. I believe that symbolic justice is the middle path and that this approach will make the god Buddha happy, because it will eventually lead us to live in peace and harmony.

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◆ *Huntington, Samuel, The Third Wave (Oklahoma City: University of Oklahoma Press, 1993) See also Rigby, Andrew, Justice and Reconciliation after violence, 2001, p.184.*

◆ *Lambourne, Wendy. 1999. The pursuit of justice and reconciliation: Responding to genocide in Cambodia and Rwanda. Paper presented at the 40th Annual International Studies Association Convention. Washington, DC, 16-20 February. Columbia International Affairs Online 6/99.*

◆ *Lederach, John Paul, Building Peace: Sustainable Reconciliation in Divided Societies (Washington D.C.: United State Institute of Peace Press, 1997) p.29.*

◆ *Minow, Martha, Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence (Boston: Beacon press 1998) p.23.*

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THE RULE OF LAW AND THE LEGACY OF CONFLICT

Gaborone, Botswana, 16-19 January 2003

PRESENTATION BY HIS EXCELLENCY SOK AN, SENIOR MINISTER, MINISTER IN CHARGE OF THE OFFICE OF THE COUNCIL OF MINISTERS, KINGDOM OF CAMBODIA, AND PRESIDENT OF THE TASK FORCE FOR COOPERATION WITH FOREIGN LEGAL EXPERTS AND PREPARATION OF THE PROCEEDINGS FOR THE TRIAL OF SENIOR KHMER ROUGE LEADERS

Your Excellencies, Diplomatic Representatives and Participants

Allow me first of all to thank all those who organized this meeting, and made it possible for the Cambodian delegation to participate, giving us the valuable chance to meet and exchange views with leaders, scholars, diplomats and legal experts from around the world. The prestigious organizers, including Harvard University, the United Nations Association - USA, and the University of Botswana have rendered great service by deciding to hold such a gathering, and we are privileged to be invited to attend in order to learn from others' experiences and to share our own.

As we stand at the beginning of the 21st century the issues encompassed in the title of this meeting, *The Rule of Law and the Legacy of Conflict*, are seen to be posing great challenges to us in many countries of the world as we come to terms with our own past. Unfortunately, however, conflicts are not confined to the past, and those of today are undoubtedly themselves sowing the seeds for future legacies of pain and bitterness.

In sharing with you the Cambodian situation, we must look both backwards to the situation we faced in 1979 immediately after overthrowing the genocidal Pol Pot regime of Democratic Kampuchea, and to the present period since July 1997, when the Royal Government of Cambodia requested assistance and involvement by the United Nations. It is necessary to take this bi-polar view because the questions our conference organizers have posed for us yield different answers if our focus is post-1979 or post-1997.

Unfortunately, very few members of the international community helped us to rebuild our country after the overthrow of the Khmer Rouge in January 1979, due to the prevailing cold-war geopolitical situation and the lingering after-effect of what is commonly known as "the Vietnam War." I wish today to reaffirm our eternal gratitude to those who did assist our efforts, but to our great amazement and distress, those who had carried out horrendous crimes continued to be accorded the right to represent Cambodia in the United Nations General Assembly throughout the 1980s, and were given political, economic and even military assistance in their efforts to overthrow the actual government of the country.

Commencing immediately after Khmer Rouge was driven out, important efforts began to uncover and document the truth of what happened under their rule, when several million people—over a quarter of our population—perished. But, in addition to documenting and memorializing, we knew we had to take action to determine the accountability of those who had committed such crimes. The political importance of some kind of tribunal was understood, and so, scarce resources were allocated to collect evidence and establish the legal framework for a trial. The importance the government of the day placed on this process is shown by the fact that it was Decree Law No. 1, passed on 15 July 1979, that laid the basis for the People's Revolutionary Tribunal "to try the Pol Pot - Ieng Sary Clique for the Crime of

Genocide.” The scope for the trials was limited to two individuals, regarded as the “ringleaders,” and the Decree Law, stipulated a “policy of leniency towards those people who participated in the armed forces or the administration of the Pol Pot - Ieng Sary Clique but are sincerely repentant.”

Warrants were issued for Pol Pot and Ieng Sary, together with a call for them to surrender to the authorities, but they failed to appear and the trial went ahead without them. The “People’s Revolutionary Tribunal held in Phnom Penh for the trial of the genocide crime of the Pol Pot - Ieng Sary clique” was held from August 15-19, 1979, in the symbolic center of the capital—Chaktomuk Hall at the junction of the Mekong and Tonle Sap Rivers. The tribunal found the two accused ‘guilty’ of the crime of genocide and sentenced them to death and confiscation of all property.

We must recall that our People’s Revolutionary Tribunal of August 1979 was the very first time anywhere in the world that individuals were placed on trial (and convicted) for the crime of genocide, but it took place with scarcely a mention in the foreign press, and its proceedings were not published in full until the year 2000.

President Heng Samrin said in the closing reception, “The tribunal of history, the tribunal of mankind’s conscience...will join with the Kampuchean people in pronouncing its verdict.” But a quarter of a century later this has not yet come to pass. Western media paid scant attention to the trial and the genocide verdicts, and most western governments peremptorily dismissed the tribunal as a mere “show trial” without making the slightest effort to study the evidence or monitor the proceedings. Incredibly, those convicted of genocide continued to be accorded wide international recognition and assistance.

Our situation then was similar to that faced by many of our brothers and sisters in the African countries who are present here today. Of the hundreds of Cambodian lawyers, judges and para-legal workers from the pre-1975 period, only nine were known to have survived, and so we sought help from abroad. Fourteen foreign lawyers were invited to participate. They came from Algeria, Cuba, India, Japan, Laos, Syria, the former USSR, the USA and Vietnam, and in addition, the following international organizations observed the proceedings: World Council of Peace; Afro-Asian People’s Solidarity Organization; Solidarity Organization of the People of Asia, Africa and Latin America; and the Asian Church Council.

It is incumbent upon me now to acknowledge the deficiencies in the 1979 process, which was conducted hastily and in a tense post-conflict atmosphere, with which you here will be all too familiar. In particular, the defense offered by the court-appointed lawyers was extremely weak, even though in all fairness it would have been an extraordinary defense that could succeed in exonerating the defendants. How tragic it was that in 1979 the international community did not assemble the level of expertise and financial support required to carry out a trial that met internationally accepted standards. We must remember that at that time the large body of people who are today committed to advancing international humanitarian law did not yet exist.

As a result of this continuing support to the Khmer Rouge, hundreds of thousands of Cambodian people lost their lives and suffered from landmine accidents despite the fact they had been liberated from the genocidal regime. Ideology and interests of certain powerful countries caused the international community to forget truth, justice and human rights and to ignore the tragedy and the deaths of millions of Cambodians. Instead of justice, the prize awarded to Cambodia was more than 10 years in a situation swinging between peace and civil war, of stunted economic development and the laying of millions of landmines that still threaten our poor people in remote rural areas.

The Paris Peace Agreements of 1991 accorded political legitimacy to the Khmer Rouge and, when UNTAC (United Nations Transitional Authority in Cambodia) left Cambodia in 1993, the new coalition government had to cope with the Khmer Rouge continuing policy of civil war and destabilization.

We then launched a multi-faceted strategy involving political, legal, economic and military campaigns. In 1994 our National Assembly passed legislation to outlaw the Khmer Rouge, and efforts to encourage its members to defect and split. The legislation included a six-month period of suspension to encourage surrenders, and many Khmer Rouge



rank and file soldiers and indeed whole units came over to the government during this period, although no top military commanders or political leaders took advantage of this opportunity.

Prime Minister Hun Sen then embarked upon what he has described as a “win-win” policy involving five facets: “Divide, isolate, finish, integrate and develop” in which the Khmer Rouge political and military structure was ended, including by military assaults, but those Khmer Rouge who defected and surrendered were assured of their physical safety and survival, the right to work and to carry out their professions, and the security of their property.

By the end of December 1998 we had managed to put an end to the Khmer Rouge political and military structure, and were faced with the twin tasks of national reconciliation and justice. Cambodia can perhaps offer the lessons of our experience in the long and complex process of reconciliation. Today former Khmer Rouge have put down their guns and have recommenced their lives within the general community, and the former factions have taken up the challenge of working together to develop the country.

In Cambodia, reconciliation has not meant amnesia. The Cambodian government continued through the 1980s to collect evidence and testimony, and to call for an internationally recognized trial.

We must acknowledge, however, that Cambodia’s achievements in the fields of truth and reconciliation have not been paralleled by advances in the matter of achieving justice for the victims of that genocidal regime. Now as we once again throw our efforts into this quest for justice, we keep in our minds firmly that this must not damage the process of reconciliation that I have described above. In Cambodia we seek restorative justice to heal the wounds in our society as a whole, while still wishing those who planned and ordered, and were ultimately responsible for the crimes to be made accountable.

In June 1997 the then Cambodian Co-Prime Ministers requested assistance from the United Nations in organizing the process for Khmer Rouge trial. Regrettably, more than five years later, we are still in the process of working through the form and content of such international assistance and involvement. However, I am happy to be able to tell you that we hope we are now entering the final phase of preparation, before proceeding on the task of actually establishing the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea on the basis of the Law passed by both houses of our legislature and promulgated on August 10, 200—a law that was itself a product of the negotiations with the United Nations.

In these negotiations we have been guided by three fundamental principles.

The first is respect for, and the search for justice. We condemn the crimes of the Khmer Rouge as crimes of genocide and crimes against humanity. We seek justice for their victims, and for the entire Cambodian people, and we wish also to contribute to the development of international humanitarian principles, condemning genocidal crimes and seeking to prevent their recurrence. The Cambodian people express their deep thanks to the international community for joining this justice-seeking process over the last few years, although they had turned their heads away during the Pol Pot regime and immediately afterwards.

The second principle is maintaining peace, political stability and national unity. This has only just been achieved, ushering in an unprecedented atmosphere of optimism and relative absence of violence—in stark contrast to our previous situation, even though we have not yet ensured 100% social law and order, and 100% security. That would be impossible in the light of the recent traumatic past. We however are proud of moving forward in the process of strengthening political stability, peace and security in Cambodia, and this is a valuable achievement for our beloved motherland. Whatever we do must not damage our peace and stability, and throughout the process over the past four years of designing the Khmer Rouge trials we have always sought to gain consensus, based on respect for the highest national interests.

Some have criticized the slow pace of the process, but to achieve national consensus is a difficult task, one whose



success was demonstrated by the unanimous vote achieved in both houses of our legislature. The Law was promulgated almost exactly two years after the first draft was placed on the negotiating table—by no means a long time to develop unprecedented legislation on such a sensitive and important issue.

Some months elapsed for the Constitutional Council to review the Law, finding that it was insufficiently clear that the maximum penalty was life imprisonment, and therefore could be in conflict with our Constitution, which explicitly outlaws the death penalty. As a result, the government amended the draft and re-submitted it for debate in the National Assembly and the Senate. It is important for us to recognize that our country is now undergoing a process of democratization and that the Constitutional Council is one of the recently established institutions whose authority and decisions should be respected as part of this process.

Further, we seek justice that contributes to the reconstruction and democratization of our society as a whole. To embark on a process of prosecuting crimes for genocide and other crimes against humanity is not without risk, and so we have devoted enormous efforts to gaining the support of our people for this effort. The unanimous votes in the National Assembly and Senate for this legislation were unprecedented, and testify to the results of this effort to reinforce and not jeopardize our fragile peace. Any estimation of time taken is of course subjective, but the past three years of negotiation must be viewed as part of this 24-year historic process, and can be compared with other countries which have taken more than years or even decades to attempt to deal with crimes of this nature.

The third principle is respect for national sovereignty. This is enshrined as a fundamental principle in the Charter of the United Nations. Our raising the principle of respect for our national sovereignty is reasonable; and we have struggled hard for this principle. The Royal Government of Cambodia did not accept the recommendation of the 1999 report of the UN’s Group of Experts, which proposed a trial held entirely outside the country, with no Cambodians participating, except as defendants or spectators. As our Prime Minister Hun Sen remarked at the time, the only jobs the Secretary-General would like to give to Cambodians would be to “go into the jungle to capture the tiger”, and to be “the watchdog for the UN.”

It has been our consistent view that Cambodia has the primary obligation to prosecute under Article 6 of the Genocide Convention, and could proceed with a trial within the domestic courts. Let me remind critics of this approach that the principle of complementarity is fundamental to the International Criminal Court, of which Cambodia is proud to have been one of the 60th member states to ratify and bring into reality last year.

However, despite the fact that we were fully entitled to prosecute the Khmer Rouge in a national court, we sought international involvement in the process, preferably through the United Nations. Why? On the one hand because we were all too acutely aware of the weaknesses in our judiciary, and we wanted help to make certain this trial was able to meet internationally accepted standards. On the other hand, and let me be frank here, we felt that it was important for the international community to share in carrying out this task in order to clear its own record on previous support for the Khmer Rouge. This was our reasoning when in 1997 we asked for assistance, in 1999 when we reached an in principle understanding with the UN to hold a national trial with international participation, and it is still our reasoning today, even in face of the February 2002 unilateral decision of the UN Secretariat to withdraw from the negotiations.

From 1999 to 2000 Cambodia and the United Nations negotiated the “Cambodia model.” We moved from the initial UN proposal (which closely resembles that adopted for the Special Court for Sierra Leone) to a carefully balanced formula: Cambodian judges have the majority in each chamber, but any decision requires a super-majority (which would thereby necessitate the positive vote of at least one international judge, there will be Co-Prosecutors and Co-Investigating Judges (one each Cambodian and international) with a Pre-Trial Chamber to settle any differences between them. This formula does not give control to one or other side, but rather seeks to lay the ground for a shared enterprise.

When the Group of Experts report was delivered in 1999 our two positions were far apart, with the UN calling



for a totally international tribunal, and Cambodia for a national process. It would be unthinkable now to return to these positions and abandon our hard-won gains. We are confident that the “Cambodian model” is not only credible, but represents a historic milestone in international humanitarian law, now moving away from externally imposed and run International Criminal Tribunals as have been seen over half a century in Nuremberg and Tokyo and more recently The Hague and Arusha towards complementarity, encouraging each country to exercise justice at the national level in a manner that meets international standards, and accords with our responsibility under the principal instruments, especially the Genocide Convention.

The problems that Cambodia faced in 1979 and again in 2002 with regard to the international community’s position on accountability for the Khmer Rouge show that post-conflict situations are complex, and the weaknesses are not only on one side. Cambodia readily acknowledges “deficiencies in local institutional capabilities... and resources,” which formed one reason that led us to seek international assistance “to deal with the evils of the period just past.” But in the Cambodian case, at least, “deficiencies in ... political will” have lain, I dare to say, principally not on our side.

In fact, the international community’s delay in dealing with the issue of judicial accountability in Cambodia is one distinguishing feature of our country’s situation compared to the others we have heard of around the table during this conference. The temporal jurisdiction for the trials is 1975-1979—that is, the crimes were committed almost a generation ago. Our society has achieved peace and stability and the trials are not an integral part of the ending of the internal fighting. Yes, we are in a post-conflict situation but not in the immediate aftermath of the crimes and in the shadow of their perpetrators and threats to repeat the crimes. In this sense perhaps Cambodia is in a stronger position in asserting its right and responsibility to play a real role, its “ownership” of the process, while inviting and truly desiring the international community to join with us in this task.

Our delegation has just spent the past week in New York working with the Under-Secretary for Legal Affairs, commencing what we hope will be the final phase of preparation for the Extraordinary Chambers. This phase was ushered in by the vote in the UN General Assembly on 18 December 2002 welcoming the Law on the Extraordinary Chambers and requesting the Secretary-General to resume negotiations with Cambodia.

I would like to acknowledge with gratitude the support of many countries last year, during the difficult effort to get the UN to come back, and especially of France and Japan, which placed the recent resolution on the agenda paper of the General Assembly, as well as the 150 countries that voted in favor.

We are hopeful that the “Cambodian model” of national trials with international participation will become a reality in the near future, albeit a quarter of a century after the crimes were committed. The “Cambodian model” may indeed be appropriate in other cases, since the role of the international community ideally is to support national jurisdictions, helping them carry out their international obligations according to international standards of justice, fairness and due process of the law.

The Royal Government of Cambodia remains committed to seeking justice for the crimes perpetrated by the Khmer Rouge on behalf of the Cambodian people and of humanity as a whole. Our seriousness in this effort can be measured by the large amounts of time and energy we have expended over the past three and a half years since the Prime Minister established the high-level Task Force for Cooperation with Foreign Legal Experts and Preparation of the Proceedings for the Trial of Senior Khmer Rouge Leaders, of which I have the honor to be Chairman.

I should point out that this is time and energy that has been diverted from the many pressing tasks of our national reconstruction, but we are ready to make such a sacrifice in the interests of achieving justice. The Law promulgated on 10 August 2001 emerged from serious negotiations and compromises between the United Nations and Cambodia benefiting from expert input from a number of countries. It provides a sound foundation and we hope that the United Nations will, in the end, join with us in its implementation.

Thank you.



FLAWS: WHY THE U.N. GENERAL ASSEMBLY SHOULD REQUIRE CHANGES TO THE DRAFT KHMER ROUGE TRIBUNAL AGREEMENT

HRW Briefing Paper, April 30, 2003

Cambodia: Khmer Rouge Tribunal Must Meet International Standards HRW Press Release, December 19, 2002 “Cambodians deserve the highest standards of justice to prosecute those responsible. They deserve to know the truth about what happened, and why. Instead, this proposal represents the lowest standards yet for a tribunal with U.N. participation.”

Mike Jendrzeczyk

Washington director of the Asia division of Human Rights Watch A committee of the General Assembly is expected to consider the draft later this week.

The Human Rights Watch briefing paper cites concerns about Cambodian government interference in the work of the tribunal, confused and contradictory laws under which the tribunal would operate, and a lack of serious plans for the protection of witnesses, victims and court personnel.

“Cambodians deserve the highest standards of justice to prosecute those responsible. They deserve to know the truth about what happened, and why,” said Mike Jendrzeczyk, Washington director of the Asia division of Human Rights Watch. “Instead, this proposal represents the lowest standards yet for a tribunal with U.N. participation.”

After almost five years of negotiations, and under pressure from France, Japan, the United States and others, the United Nations initialed an agreement with Cambodia on March 17, 2003. The agreement would create a “mixed tribunal” based in Cambodia to try “senior leaders” of the Khmer Rouge and “those who were most responsible” for the crimes of genocide, war crimes and crimes against humanity.

The proposed tribunal would have a majority of Cambodian judges and a minority of international judges, working alongside Cambodian and international co-prosecutors. Cambodia’s judiciary has been widely condemned by the United Nations and many of its

member states for lack of independence, low levels of competence, and corruption.

“With Cambodia’s judiciary at the center of the tribunal, the agreement ensures that it will be politics and not law that will dominate the tribunal’s work,” said Jendrzeczyk.

“The Cambodian government under Hun Sen has a long and well-documented record of control, interference and intimidation in the work of the courts. Members of the U.N. General Assembly should consider that history before they vote for this seriously flawed plan.”

U.N. Secretary-General Kofi Annan has made plain his unease over an agreement that key U.N. member states had pressured him to sign. In a report to the General Assembly last month he said, “I cannot but recall the reports of my Special Representative for human rights in Cambodia, who has consistently found there to be little respect on the part of Cambodian courts for the most elementary features of the right to a fair trial. I consequently remain concerned that these important provisions of the draft agreement might not be fully respected by the Extraordinary Chambers and that established international standards of justice, fairness and due process might therefore not be ensured.”

Human Rights Watch believes that a tribunal meeting international standards should have been created many years ago. However, a combination of international and local politics prevented this from happening.

France is a leading proponent of the new International Criminal Court (ICC). The United States has been a supporter of the international tribunals for the former Yugoslavia and Rwanda and for many years the strongest voice for an international tribunal for the Khmer Rouge. Yet both countries have been among the most ardent proponents of a tribunal in Cambodia that fails the basic tests of judicial independence and due process.

“What is good enough for the ICC, former



Yugoslavia and Rwanda is apparently not good enough for Cambodia,” said Jendrzejczyk. “It is remarkable that some member states would act so brazenly to undermine U.N. attempts to ensure the credibility of this tribunal. But in the end, politics and pragmatism won out over principles.”

The Cambodian government has also acted hypocritically, signing up to the ICC but refusing to allow ICC principles to be applied to international crimes committed on its own soil.

Approximately two million Cambodians died from executions, disease and starvation during the Khmer

Rouge period from 1975-79. The Khmer Rouge engaged in forced evacuations of cities, forced labor, and banned all religious activities. Not one person has been prosecuted for these crimes. Many Khmer Rouge leaders, such as Ieng Sary, Nuon Chea and Khieu Samphan, live freely in Cambodia as the result of political deals with Cambodian Prime Minister Hun Sen.

Human Rights Watch, 350 Fifth Avenue, 34th Floor, New York, NY 10118-3299, USA

CAMBODIA: AMNESTY INTERNATIONAL’S PRELIMINARY VIEWS AND CONCERNS ABOUT THE DRAFT AGREEMENT FOR THE ESTABLISHMENT OF A KHMER ROUGE SPECIAL TRIBUNAL

Amnesty International

Public Statement

AI Index: ASA 23/003/2003 (Public)

News Service No: 065

21 March 2003

On 18 December 2002, the United Nations General Assembly adopted resolution (57/228), calling on the Secretary-General of the United Nations to resume negotiations with the Cambodian authorities to reach agreement on the establishment of an international tribunal under UN auspices, for the prosecution of those charged with the most grave international crimes committed during the Khmer Rouge period between 1975-1979.

Following two rounds of negotiations, in New York and in Phnom Penh, a draft agreement was issued by the two sides on 17 March 2003.

Amnesty International welcomes any steps that ensure that those responsible for the most serious violations of human rights be held to account, provided that this is achieved according to the highest international legal standards.

Amnesty International welcomes some of the provisions in the draft. However, the organization is deeply concerned about serious deficiencies in the proposed agreement that reflect a significant retreat from current international law and standards. The organization therefore calls on all members of the General Assembly to ensure

that these concerns are addressed without delay before the agreement is signed. The deficiencies in the draft are so serious that Amnesty International would oppose the United Nations signing the agreement without major revision .

On the positive side, the draft provisions which Amnesty International welcomes, include the exclusion of amnesty or pardon for anyone investigated or convicted for crimes covered by the agreement, a clause which potentially applies to anyone previously granted an amnesty by the Cambodian authorities (draft Article 11); provisions for proceedings at all times to be held in public (draft Article 12.2); and the exclusion of the death penalty (draft Article 10), which is consistent with other international courts.

Amnesty International’s preliminary concerns about the current draft text are the following:

Insufficient guarantees for international fair trial standards

The current draft agreement limits the applicable international standards of justice, fairness and due process of law to those set out in articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR) of 1966, but does not incorporate other important provisions of the ICCPR (for example article 9). Clearly, the full provisions of the ICCPR must apply. In addition, the draft does not make reference to many other stronger contemporary international standards including those in



the Rome Statute of the International Criminal Court and other United Nations standards such as the Basic Principles on the Independence of the Judiciary .

Insufficient guarantees for an independent and impartial court

In Amnesty International's view, the Cambodian judicial system is weak and subject to political pressures, especially in high profile cases. It is therefore currently unable to ensure that such trials are conducted in a manner that would conform to international standards of fairness. Cambodian citizens are well aware of the inadequacies and the political interference in the judicial system where corruption is also commonplace. Amnesty International therefore welcomes the inclusion of international judges, an international co-investigating judge and an international co-prosecutor in the draft proposal as essential to address current weaknesses. However, current proposals fail to guarantee the necessary independence and impartiality of the judicial process. The proposed mixture of Cambodian and international judges and complicated decision making process has no precedent in any domestic or international court. Amnesty International is also concerned about provisions for Cambodian judicial control to settle potential differences between the Cambodian and international co-investigating judges and co-prosecutors over investigations and indictments. Amnesty International believes that this proposed structure could seriously compromise the integrity of the judicial process.

Failure to incorporate strongest principles of criminal responsibility and law on defenses

The draft agreement fails to incorporate the strongest possible international principles of criminal responsibility and limits on defenses as recognized in conventional and customary international law. For example, nothing in the agreement prevents an accused from successfully claiming superior orders as a defense.

Inadequate victim and witness protection

There is scant provision for victim and witness protection. Amnesty International recommends that these deficiencies are remedied in a subsequent accompanying document detailing the procedures of the Extraordinary Chambers that should provide an effective victim and witness protection program with sufficient resources, built on the extensive experience gained by existing international

tribunals. Such a program would need to apply to judges, prosecutors, defense lawyers and others. Victims and witnesses will not come forward to testify without the necessary assurances for their safety from international, rather than domestic authorities.

Absence of provisions on reparations

It is a matter of grave concern that there is no provision in the draft agreement for the Extraordinary Chambers to award reparations. Unless this is provided, it would constitute a major retreat from the Rome Statute. The Extraordinary Chambers should be able to award all forms of reparations to victims and their families, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Failure to link the proposed judicial procedure to the rebuilding of the Cambodian criminal justice system

There is virtually nothing in the present, draft agreement that will help address the longer-term deficiencies and weakness of the present Cambodian judicial system. Amnesty International believes that the considerable investment required from both the international community and Cambodia to set-up a judicial process that meets international standards to try only a handful of people responsible for serious crimes must also be made to benefit the Cambodian judicial system as a whole. The work of the Extraordinary Chambers must be used to assist the continuing program of capacity building and technical assistance in the Cambodian judicial sector. The problems of impunity in Cambodia cannot be addressed simply by a handful of high profile prosecutions. Amnesty International is reviewing the draft agreement in detail and plans to comment further after it has time to study it.

Amnesty International has for many years urged that those responsible for crimes against humanity, committed during this dark period in Cambodian history, be held to account. This is important for two reasons: first, in order at last to ensure that justice is done for the victims and their families who suffered the most serious international crimes under Khmer Rouge rule and, second, to put an end to the culture of impunity that has plagued Cambodia to this day.

Public Document

Amnesty International's press office in London

WHAT MY FATHER NEEDED WAS PEACE

Keo Kanitha Kim



Keo Kanitha Kim

In the early 1980s when I was young, war was raging between the People's Republic of Kampuchea and the Khmer Rouge. The country was full of chaos. Frequently there was news about bombings in cities around the country, especially in Phnom

Penh during national events. I used to hear explosions near my house. They frightened me. I had nightmares that the KR regime was returning. Through stories told by elders and lessons at school, I knew that if the KR returned I wouldn't be able to study, meet my friends, or even worse. The most unpleasant thing in my mind was that I would have to walk on a very long road to an unknown destination accompanied by sounds of explosions and gunfire. I wished I grew up quickly so that it was easy for me to help myself in the event of an evacuation.

My fears terrorized me during my childhood. One night during a Khmer New Year's celebration when I was studying at Chaktomuk school, people began firing guns into the sky to welcome the arrival of the spirits. The noise woke me from a deep sleep and I jumped off my bed and ran to close the windows to prevent bullets from coming in. I then hid myself under my bed, because I thought there was a fighting going on. I was so afraid, I could not sleep.

That night, my father, Kim Phien, and mother, Chen Thida, told me the story of Khmer New Year in 1975, a time they will never forget. I was too young to remember, but back then, my family lived in Kampong Cham. We moved there after my second older sister Chan Tevy was born in 1973 because my father had been appointed as the supervisor of an animal hospital in Kampong Cham province. There, the war between the Khmer Rouge and the Republican government was in full force and people were injured or killed everyday. People grew tired as the war dragged on and casualties increased.

On 16 April 1975, the radio broadcast an order for

the Republican soldiers to disarm, stop fighting and prepare some boats to receive KR soldiers on the other side of the river to come to Kampong Cham provincial town. In town, the KR summoned all former governmental staff to a meeting—my father also attended. When he returned he was happy and spoke of one word, "peace." Since he was tired of war, he was content with peace even though he knew he might lose his job.

On the morning of 17 April 1975, Ta Soem and Yeay Kou, our housemaids, went to the market. Before long they returned to the house with the frightening news that wives of soldiers of the Republican government were in tears and moving out of the military camp along with their belongings. Their husbands had already been taken out of the camp by the KR. Half an hour later, two KR soldiers walked into our house and, at gunpoint, ordered us to leave in 15 minutes. They said that Angkar needed to clean the enemy from the town and people were to return in three days. Because they believed the soldiers, my parents brought very few things along, like food and household items.

The road was jammed with people; the KR soldiers shot into the sky to make people walk faster. No one knew where we were headed. At that time some hospital staff had not yet received their salaries. My father brought their salaries with and paid the staff he encountered along the way. He knew that in such a chaotic time the staff would need money desperately. However, when we arrived at Chamkar 30 village on the afternoon of 17 April my parents learned that money was no longer in use. It was here that Ta Soem and Yeay Kou were separated from my family. We never saw them again.

My family left Chamkar 30 village for Hasiak village, Mohakhnhaung sub-district, Koh Sotin district, by boat. There my parents were sent to work with former government staff. Mother was the only woman in the group.

One day my sister Chan Tevy fell sick. Mother asked for medicine from the hospital chief. When my sister put her palms together and told her thank you, the chief said,

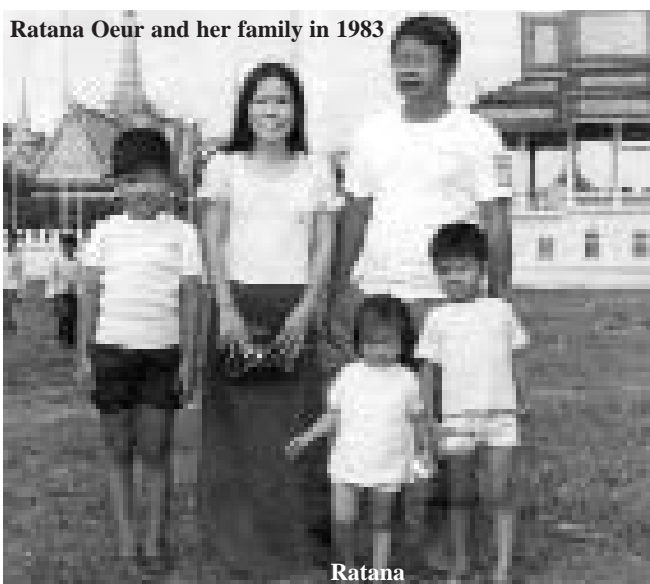
history.

One night when I was 15, my family gathered together to watch the film, *The Killing Fields*, which portrayed the tragedy of Cambodian people during Democratic Kampuchea. It reminded my family of their family evacuation.

Before 1975, my family lived near Pochentong market. In early 1975, because there were too many bombs raining down around the airport, my family and my mother's relatives fleeing from Kampong Cham stayed in my uncle's house near Santhormuk school. By then it was chaotic in Phnom Penh; there were continuous sounds of gunfire and shell explosions.

At daybreak of 17 April 1975 the fighting between KR and Lon Nol soldiers grew louder and moved closer to the city. Phnom Penh residents were restless. They began to pack their belongings and left their homes to find safer places to stay. Lon Nol soldiers ran from the west in disarray, while panic-stricken people were running on the street in no particular direction along with their loosely hung bags of belongings. Seeing this event, and fearful of being hit by a shell, my parents decided to do the same, and fled to my uncle's house near Veal Meru [near the national museum] as they thought it would be safer. On the roads, many people were doing the same. Traffic jammed most streets. And blockades forced people to travel further than they should. To reach Veal Meru we had to travel for many hours. My family saw corpses of soldiers and civilians lying in the streets.

Ratana Oeur and her family in 1983



Ratana

Soon after they arrived, my parents heard a radio broadcast proclaiming that, "now the war is over, please brothers and sisters be calm. We finally have peace. The liberating army and Lon Nol soldiers are now holding each other's hands...." From then on, radio and telecommunication system was cut off.

My father found a piece of cloth and tied it to his car. Then he drove off with my grandfather to his friend's house at Chamkar Morn to understand the situation. My father told the family that there were no Lon Nol soldiers in the streets, except heavily armed black-clothed KR soldiers. Some of them ordered people to leave town at gunpoint. They took over cars and motorcycles of people as they wanted. My father and grandfather were not allowed to turn on the road to his friend's house. Instead they were ordered to return to Kbal Thnal, even though my father pleaded to be allowed to go home first and get his family members. Luckily he saw a few soldiers looking for gasoline to fill their car. He told them, "If brothers need gas, please come to my home; I store a lot of gas." They climbed up and he drove off. As a result my father was able to return home.

When they had gasoline, they told my family, "Now our army needs to clean enemies hiding in the city. You are to leave your home for two or three days. You don't need to bring many belongings." My father told me that no one dared to reject this order, for they looked frightening. In addition, he thought they might have told him the truth and that our family should be able to return home once their mission was completed. Grandmother said, "we don't need to bring many things, because we're heading to another house near Chamkar Morn. There it should be fine; they are only checking the area around the Royal Palace." So, seventeen of my family and their friends departed in two cars, while the KR soldiers got a ride back to their original position.

When my family turned down Norodom street, it was already 7 p.m., but the traffic jam got worse. Some had vehicles loaded with their stuff, while others had to walk, carrying their bulky possessions. Sick or old family members were put on carts or were carried piggy-back. And each person took their turn carrying the sick and old.

At Chamkar Morn, the KR did not allow my family to get into the house as grandmother had expected. They



were ordered to continue to Kbal Thnal. At Kbal Thnal the KR spoke on loudspeaker telling people to fetch rice from a nearby store. My father and uncle brought back two sacks of rice. Then the KR told them to cross the Monivong bridge and take road 1, since the road to Ta Khmao was already stuck with people. My parents did not want to cross the bridge, because at the other side, a block of buildings was in flames and the bridge was crowded. But they had to. My mother told me that they did not walk, but were pushed forward. It took them until 11 p.m. to cross the bridge.

People gathered at Chbar Ampoeu. Some spent the night there. Others moved on. My family decided to stay there waiting for the call back to Phnom Penh. They stayed in an unoccupied house whose owner had been forced to leave.

Everyone still thought they could return to their homes in the very near future. Money could still be used, but without much value. Things, especially food, were expensive.

Three days later, my grandfather's relatives arrived from Dei Ed to take the family to their homes where food was easier to find. At Dei Ed, my family and grandfather's family lived in separate houses. Everyday they left the houses to collect firewood, food and water, and at the same time, they asked people the news and looked for people they knew. Bartering with money was difficult, since its price fell day by day. People no longer needed money; they needed necessities like rice, salt and clothes. Soon money was worthless. At Dei Ed, the KR provided a small portion of rice to the people. The KR soldiers shouted into the loudspeaker that former soldiers were required to list their names at Dei Ed pagoda to resume their works. My father then said this was just the KR pretext to arrest former Lon Nol soldiers and officers to kill. There were KR soldiers coming to the house asking my family about their occupations and salaries, but father told our family members not to say anything until he returned.

We could not return to Phnom Penh. A month later, my family (9 people) decided to travel to Kampong Cham, while my father's uncle's family (8 people) went to Battambang.

My parents wanted to leave as soon as possible, he knew sooner or later the KR would send people to

designated places; my family would not have the right to choose like they did now. They walked all the way to the boat at Chroy Ampil. In Kampong Cham the KR did not allow them to go to the village they wanted, but they were brought to Kork Sralao village, Chong Dach sub-district, Dambe district, Kampong Cham province. Two or three months later my family was once again relocated to Trapeang Chrey village, because many people died at Sralao village due to an infectious disease.

My family continued to live in difficulty from one village to another for three years. During the day they worked in the fields or in the forest, far away from home with very little food to eat. At night they feared, for the KR came to take people to kill only at night....

After three years, eight months, and twenty days under the Pol Pot regime, my family returned to Phnom Penh. Fortunately, all nine members of my family survived and we gained a new member, my brother born in 1977 in Kampong Cham province. But only four of eight survived in my uncle's family. And my grandfather and uncles were killed by execution, starvation, and disease.

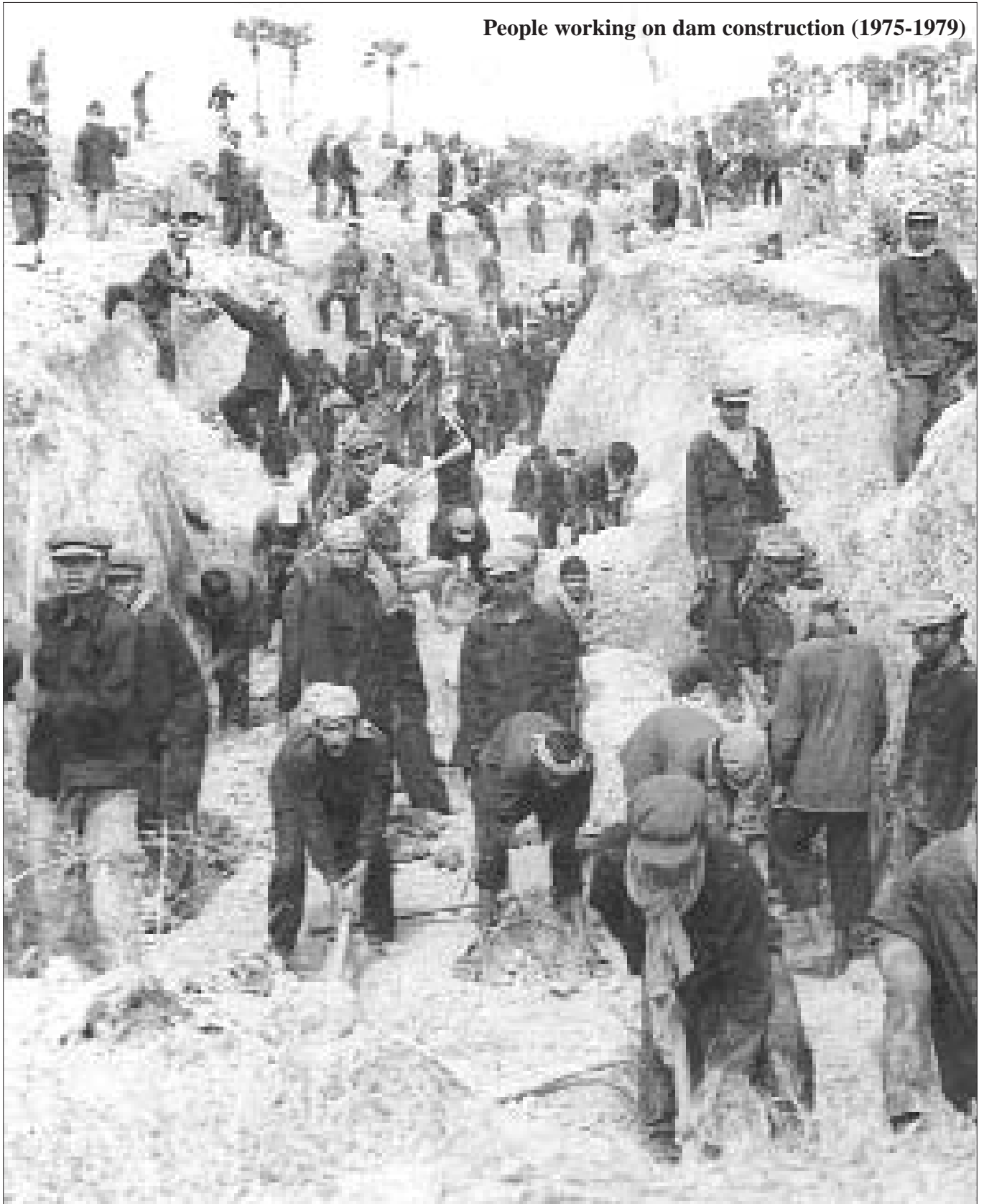
Now I have learned much more about the KR regime through reading and my daily work at DC-Cam. I am aware of the life experiences of other families during KR regime. I have read Luong Ung's book, *First They Killed My Father*, which describes the misery of the KR years and the painful death of family members. I have also read *The Diary of Anne Frank* and know that genocide did not happen only in Cambodia, but other places in the world, as well.

Today, I rarely hear my parents' story about the Pol Pot regime. I think because as time passes the regime has been talked about too many times that it becomes uninteresting and the present society has not paid attention to the KR issue. Another reason is that there is no action taken to force the KR to account for what they did to Cambodians. However, I strongly believe that the misery and the dreadful events that people saw with their own eyes will not be forgotten. Even though now they talk of it less, when the chance arises to provide testimony before a KR tribunal, they will share their memories again.

Ratana Oeur is a DC-Cam staff member working for the Publication Project.



People working on dam construction (1975-1979)



មជ្ឈមណ្ឌលឯកសារកម្ពុជាអំពីរវាងវ័យក្រហម មូលនិធិនិង វិនិយោគិនណាមួយ គ្រប់គ្នា សូមជួយទប់ទល់ការបោះពុម្ពផ្សាយទស្សនវិធីនេះទៅតាមលទ្ធភាពដែលអាចធ្វើបាន ។ ព័ត៌មានបន្ថែមចំពោះការបោះពុម្ពផ្សាយទស្សនវិធីស្រុកកាករពិត សូមមេត្តាទាក់ទងមកកាន់នាយកមជ្ឈមណ្ឌលឯកសារកម្ពុជាតាមស្តារលេខ (៨៥៥) ២៣ ២១១ ៨៧៥ ។ សូមអរគុណ!

Documentation Center of Cambodia would like to appeal to governments, foundations and individuals for support of the publication of *Searching for the truth*. For contribution, please contact (855) 23 211 875 or (855) 12 90 55 95 or By Email: dccam@online.com.kh.. Thank you.

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