

*Searching for*

# THE TRUTH

- ◆ The Arrests of Ieng Sary and Ieng Thirith...
- ◆ Recent Developments at the ECCC

Duch photo by Simith Heng

*“Following the tragedy that Cambodia has lived, there was the time for journalist--there was the time for historians to try to understand and the time for NGO’s to attempt to try to rebuild. Now, today is the time for justice.”*

*-- François Roux*

**Special**  
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EDITORIAL:

# THE ARRESTS OF IENG SARY AND IENG THIRITH: A VICTORY FOR CAMBODIA'S "PEASANTS"

Cambodians often refer to the Democratic Kampuchea regime, which was responsible for the deaths of nearly a quarter of the population between 1975 and 1979, as the "Pol Pot-Ieng Sary clique." Although few people knew the identities of the secretive leaders of Democratic Kampuchea until after the regime fell, Ieng Sary's was known by the mid-1970s. By placing his name next to Pol Pot's (the two were also brothers-in-law), Cambodians clearly recognize him as one of the masterminds of the genocide.



Ieng Sary

Ieng Sary became an ardent communist while he and Pol Pot were studying in Paris in the 1950s. During Democratic Kampuchea, he served as both deputy prime minister and foreign minister. After escaping to the gem and timber rich zone of Pailin, near the Thai border in 1979, he continued to hold senior positions in the Khmer Rouge until 1982; despite being given an in-absentia death sentence by the Vietnamese-backed government in 1979. In 1996 King Sihanouk granted him a pardon, at the request of then Co-Prime Ministers Hun Sen and Prince Ranariddh, in exchange for his defection to the government in the name of peace and national reconciliation.

His wife, Ieng Thirith, was one of the few women who held power during the regime. This strong woman came from a well-to-do family; she met Ieng Sary while she was studying Shakespeare at the Sorbonne. Ieng Thirith was minister of social

affairs during Democratic Kampuchea and head of the regime's Red Cross Society. She has denied being a member of the Central Committee; saying she only wanted to serve her country and people and, never wanted any "high position." She



Ieng Thirith

also claims that, without the sacrifices of those who joined the revolution, Cambodia would have been erased from the world map.

Like perpetrators everywhere, both deny any wrongdoing and are seemingly without remorse. In 1999, Ieng Thirith wrote to a Phnom Penh newspaper, praising those who left their comfortable villas and took up residence in Cambodia's jungles during the early 1970s to defend their motherland. She has never wavered from the ideals of a Maoist-inspired revolution in which peasants would rule.

But the couple, who are now in their mid-70s, have not chosen to live according to their declared ideals. Instead of adopting the modest circumstances of the people they claim to revere, they have a lavish villa in downtown Phnom Penh and regularly fly to Bangkok for medical treatment. They are also active Buddhists and built a stupa at their local pagoda. They seem to have forgotten that the Communist Party of Kampuchea eliminated Buddhism, considering it, like all other religions, "reactionary."

Cambodians are quick to grasp the irony. This husband and wife, who were among the chief architects of Cambodia's "killing fields," served the revolution in name only. They live a privileged and

comfortable life while many Cambodians earn less than a dollar a day. The poor, in whose name the revolution was formed, are perhaps poorer because of them and still remain largely powerless today. The Khmer Rouge regime left Cambodia with a terrible legacy: a country whose education system, religion, banks, commerce, communications, and agriculture had all been destroyed. About three-quarters of the survivors were widows, who were left to pick up the pieces and move on.

Ieng Sary, Ieng Thirith, Pol Pot, Nuon Chea, Khieu Samphan and others turned all Cambodians (except themselves, of course) into peasants during Democratic Kampuchea. The entire population was forced into the fields to grow rice and build irrigation systems, yet a huge percentage of them starved to death or died of overwork and untreated diseases. Ieng Thirith visited the irrigation projects many

times during Democratic Kampuchea and doubtless saw the results of the regime's policies. The revolution may have failed, but its effects are still very much with us today.

The November 12 arrests of Ieng Sary and Ieng Thirith will at last give us ordinary Cambodians a victory. This couple, who have changed little and still fail to understand the pain their victims endured, will finally be called into account and we may soon see justice done in a court of law. The arrests of the most politically untouchable of the Khmer Rouge leaders is a powerful message to the people of Cambodia and gives us hope that our country will move toward a better future.

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*Youk Chhang is editor-in-chief and publisher of Searching for the Truth.*



Ieng Sary and Ieng Thirith

LETTER FROM YOUK CHHANG:

## THE VALUE OF DOCUMENTS IN THE KHMER ROUGE TRIBUNAL AND BEYOND

With the trials of senior Khmer Rouge now on the horizon, many Cambodians are eager to step forward as witnesses or civil parties. Their accounts will add greatly to the history of Cambodia's darkest years and will do much to further justice in our nation. DC-Cam is helping potential witnesses from around the country and abroad to file complaints with the Courts. We are also making an equally important contribution to justice through our documentary holdings. While witness accounts may be disputed at the Tribunal, the more than 600,000 documents DC-Cam has amassed since 1995 are hard evidence of the Democratic Kampuchea (DK) regime's inner workings.

Most of the documents in our archives were collected shortly after the fall of DK and later entrusted to DC-Cam. To this day we continue to receive documents from Cambodia and abroad.

We have divided our collection into two main categories: primary documents, which are from Democratic Kampuchea, and secondary documents, which were produced after the regime fell in 1979. The documents within these categories are of five types: 1) paper documents, 2) physical information

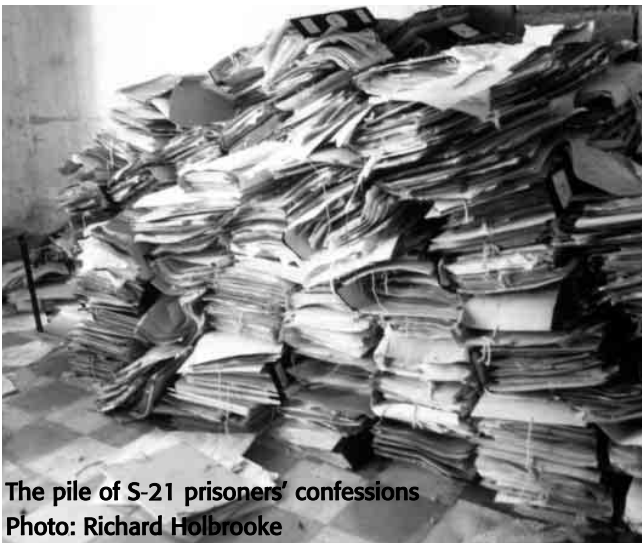
(on, for example, mass graves), 3) interviews, 4) photographs, and 5) films.

The first, which will likely form the bulk of the **primary documentary** evidence at the Tribunal, are from Democratic Kampuchea. Although most of the documents from this period were systematically destroyed when the Khmer Rouge fled the invading forces in 1979, thousands survived. They can help to prove the occurrence of specific crimes, demonstrate the knowledge and complicity of DK leaders, and clarify the chain of command within the Communist Party of Kampuchea (CPK).

♦ One of the largest and most important bodies of surviving documents is confession transcripts. Many of the confessions were taken at Tuol Sleng Prison, and include reports by interrogators. Some of them have notes written in the margins by high-ranking officials. As part of this collection, DC-Cam maintains separate lists of the foreigners who were killed at Tuol Sleng, the confessions of members of the royal family, and lists of those who survived the prison.

♦ Another important source of primary documentation is CPK correspondence. This includes reports from lower-ranking officials to their superiors, directives from superiors, and requests for information.

♦ Committee minutes and reports comprise the minutes from meetings of the CPK Central Committee, the Standing Committee, zone and regional committees, and certain military bodies. In addition, we hold a limited number of public proclamations from DK leaders. Such documents help discern the authority of individuals in the CPK hierarchy and establish the mental states of party leaders. Some of these documents were donated to DC-Cam by scholars; others may still be in their personal collections.



The pile of S-21 prisoners' confessions  
Photo: Richard Holbrooke

◆ We hold several thousand biographies written by prisoners as they entered detention facilities and nearly 20,000 biographies written by CPK members; many of them have photographs attached. They can be valuable in determining the identities of victims and perpetrators and in establishing chains of command.

◆ The diaries and notebooks of 520 CPK cadres, soldiers, and other officials in our possession narrate day-to-day experiences under the DK regime and, in some cases, offer accounts of criminal behavior.

◆ Our media materials include copies of DK periodicals that hold advice and exhortations from Party leaders, news reports of alleged CPK successes, and sometimes even poetry. We also have 95 films and instructional videos produced by the regime and its allies. Many contain visual evidence of widespread criminal activity in DK.

◆ Foreign documents are another source of potential evidence. They describe the CPK's commercial dealings and the foreign supply of civilian and military goods to DK. In addition, in 2006, Sweden's Lund University shipped the Center a unique collection of documents related to DK that may prove useful to the Tribunal.

DC-Cam also holds extensive **secondary materials** produced after January 1979. They offer a great deal of information about the abuses suffered by survivors and the experiences of perpetrators during the Pol Pot era.

◆ The first are survivor petitions. After January 1979, officials of the Peoples Republic of Kampuchea collected over a million handwritten petitions from survivors; most of them are on file at DC-Cam. Many detail CPK atrocities and name victims, witnesses, and perpetrators. The petitions were not written under penalty of perjury, and their evidentiary weight will hinge on an assessment of their reliability.

◆ 1979 trial documents include witness statements, reports, press accounts and other materials from the 1979 Popular Revolutionary Tribunal. While many of these documents doubtlessly contain relevant factual material, an adjudicator

may consider them less reliable due to concerns of bias (for example, no evidence was introduced on behalf of the defendants, who were not present at their trials).

◆ Transcripts of interviews by scholars, journalists, and DC-Cam staff are a powerful source of potential evidence. Adjudicators will need to assess the reliability of the over 1,500 interviews we hold by considering the likelihood that the interviewee's memory permitted an accurate account. Their weight will be even greater if interviewers and interviewees are willing to testify to their conversations and affirm the accuracy of interview transcripts.

◆ Mapping reports prepared by DC-Cam are the last important form of potential secondary evidence. These reports detail the locations and characteristics of over 19,700 mass burial pits throughout Cambodia. They also include information about countless skeletal remains and nearly 200 detention facilities apparently dating from the DK era, many of which contain the remnants of torture devices. In combination with photographs and transcripts from witness interviews, the mapping reports highlight the abundant physical evidence of the crimes of the CPK.

These documents will be invaluable in helping the victims of the regime find justice, not through the revenge that was exacted in the early 1980s, but through the legal process. They also serve two other equally important purposes. First, they help us form our memory of the "Pol Pot era," allowing us to piece together and understand what really happened to individuals and to our nation. Second, by giving us a memory for all to examine and debate, they may just help us achieve a final reconciliation with our past. By bringing them to the forefront during the trials and holding the leaders of Democratic Kampuchea accountable for their actions, the Tribunal itself will help us achieve the goals of memory, justice, and reconciliation.

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***Youk Chhang is editor-in-chief and publisher of *Searching for the Truth*.***

# LONG MUY, KNOWN AS CHOUN: HEAD KHMER-CHINESE TRANSLATOR AT K-16

*Sophal Ly*

Long Muy served the revolution as the head of Chinese translation at K-16 during the Democratic Kampuchea era. In 1977 he was arrested and sent to Tuol Sleng prison for questioning after being charged as a CIA agent and traitor. Recently, Mr. Long's relatives and friends noticed his confession in Searching for the Truth magazine; they had not received news about him since late 1976.

## **The History of Long Muy, Taken from his Tuol Sleng Confession**

Long Muy, known as Chuon, was born on September 21, 1944 in Snay Pol village in Prey Veng province. His father immigrated to Cambodia to flee the Chinese Communist Party. Before arriving in Cambodia, his father became a member of the Kok Meng Taing Party.



Long Muy

The Kok Meng Taing Party was created during the 1950s in Prey Veng province, an area that contained the largest ethnic Chinese community in Cambodia. Under the leadership of Tai Heng Gri, known as Chriel, the party's policies were against communism and supported democracy. In 1957, there was a meeting to select teachers for schools in Snay Pol. Party leadership wanted teachers who followed the Party's teachings. Each school was decorated with the Kok Meng Taing flag, a symbol representing honesty to themselves and the party; on the walls hung proverbs against the Khmer Rouge. At that time, Mr. Long worked as a teacher and was assigned to control the ethnic Chinese community in Prek Pnœou sub-district.

When Long Muy worked in Phnom Penh he had good relations with his cousin Yann Pheng. Yann eventually persuaded him to join the revolution on May 1, 1969. He was then sent to work with the chief of Pie Raing district, Kev Vann. He was ordered to conceal himself to find traitorous networks. For 10 days Mr. Long waited, standing by in Region 22. He was eventually assigned to work in Kong Meas district. He worked there for nearly 3 months before being transferred to work as chief of art in Region 22. Due to his good relationship with the chief in Region 22, his request to be moved to the Ministry of Culture in his hometown was granted.

Once there, Long Muy reconnected with Kok Meng Taing party members and was assigned to lead the ethnic Chinese community in Prek Pnœou. Besides working hard to satisfy his superiors, he educated Kok Meng Taing party youths about communist dictatorialness and permitted them to transport food to enemy areas. Chen Seng and You Lim noticed Mr. Long's hard work and appointed



him assistant to the Ministry of Culture and inserted him as a CIA agent in May of 1973. From that time on he had the ability to travel to bases and propagandize people against Angkar. He encouraged Kok Meng Taing party children to act against the revolution by helping them transport goods to enemy areas and recruiting more people for the CIA.

Also during 1973, Long Muy's traitorous network received plans from The Kok Meng Taing Party ordering them to bid higher prices than the Communists for rice. In February 1974, Mr. Long and his friends recruited four men to work as CIA agents. He left plans for the new members to commit activities against Angkar. He also personally participated in traitorous activities; such as throwing bombs into ponds and causing boats to sink in the Sray Mon River. In 1975, He advised members of the Ministry of Culture to commit economic sabotage after Angkar created village cooperatives. He then directed Kok Meng Taing party forces to destroy a dam.

On August 17, 1975, Long Muy was sent to translate Chinese at K-16 in Phnom Penh. The workload was heavy so he requested the assistance of another translator from Region 22. While at K-16, he implemented plans that damaged Cambodia-Chinese solidarity, degraded state properties, and created inter-group conflicts within the chief's office. He recruited three additional men for the CIA. Long Muy committed activities against Angkar until the day he was arrested.

The prisoner list from S-21 states, "Long Muy, alias Chuon, was the head of K-16 and occupied the headquarters. He was arrested on July 16 in 1977, and razed on October 23 in 1977."

#### **Long Muy's History According to his Family and Friends**

Long Muy was part of an ethnical Chinese family from Koang Tong province in the Republic of China. His father, Liv Hann Phin, moved to Pie Raing district to escape the Chinese Communist Party. Once in Cambodia, he married, had a family, and started a business in Snay Pol market. At the age of 9, Long Muy was sent to study Khmer in Snay Pol Chinese School. Because Liv Hann Phin worried about the

quality of his son's studies, Muy was sent to study in Song Cheng private school in Phnom Penh. He transferred to Meng Se School where he graduated with a degree in Chinese. Mr. Long then returned to his village and worked as a teacher in Snay Pol School from 1963-66.

In 1967, following the guidance of his cousin, Yann Pheng, known as Ieng Si Pheng, Mr. Long returned to Phnom Penh and taught at Chug Kok, a Chinese private school, until the start of the revolution. Liv Hann Phin worried about his son constantly and gave him advice not to teach things relating to policy. Liv Hann Phin was afraid his son's activities would be seen in the wrong light because the country's political situation was unstable. Long Muy's father was especially concerned because Ieng Si Pheng graduated from school in China and was fully versed in Maoist teachings.

At first Mr. Long followed his father's advice. In his lessons he taught his students not to associate themselves with politics. At that time, his relatives did not know about his secret affiliations. Sometime between 1971 and 1972, when the Khmer Rouge forces regional forces took control of Region 22, Mr. Long left to work in Ponhea Leu and Muk Kompoul districts. Shortly after, he returned to his hometown and worked in the Ministry of Culture. Each time he visited his home, he told his relatives some aspects of his work. He did not, however, tell them specifically what he was doing. Just after April 17, 1975, Long Muy's family discovered that he was serving the revolution. But by that time there was nothing that could be done; his parents could not refuse to let him serve because at that time, all youths in the village were conscripted into the army. If he did not join, his family would be in trouble with the district managers. Following Mr. Long's example, two of his brother also joined the revolution. This protected his family from disgrace and other attacks by the chief of the village.

In 1976 Long Muy returned home to visit his relatives. He told his elder sister, "I will go back to Phnom Penh. I may not come back again because Angkar will let me study in China." Just before it was time for him to leave, he visited again. This time he



brought two photos from Wat Phnom. Tai, his sixth younger brother said, "He visited our hometown several times. He told us that when he returned he would go to study in China. After that we heard nothing from him."

After the Khmer Rouge regime collapsed Long Muy's parents and siblings looked forward to his return. They searched for information about him from people who came back to the village. In 2000, a friend of Tai's read *Searching for the Truth* magazine. He told Tai that he had just seen his brother's confession. Tai borrowed the magazine from the district office and then spread the news to his relatives. The printed confession let his family know some of the facts about what happened to Mr. Long but it was not 100 percent clear. The brief did not classify his date of death.

A friend, named Sou, said that he was very surprised to see the confession of Long Muy in *Searching for the Truth*; Muy was a man he knew 30 years ago. The first time they met was June 15, 1970, when Long Muy got his assignment from Leng Si Pheng. The leader of the ethnic Chinese in the city brought Mr. Long, with his wife and two other people, to liberate the area. At the time Sou did not know his name because personal information like that was not shared. Mr. Long installed 4 Kok Meng Taing party members on the board in Prek Po and then continued to Svay Reang province, in order to meet district chief Keo Vann. Sou did not see him again until 1971. The two men met again at the ministry of culture in Region 22. Long Muy asked Sou to visit Leng Si Pheng's house in order to make their relationship closer. It was then that Sou learned Long Muy's real name. After that meeting the two had no further contact.

After reading his friend's confession, Sou pointed out that some parts were exaggerated. The exaggerations may be due to the fact that the confession was given under torture. In fact, Mr. Long was generally honest with Angkar but he was swept up with the upper level partisans of Sao Phoem; all of whom were arrested because it was thought that "Eastern People" betrayed Angkar.

After reading his brother's confession, Tai and

his siblings had little hope that their older brother was still alive. Tai agreed that his older brother's confession was authentic due to the fact that many of his answers mentioned the names of people from his village. "When seeing his answers, they must be his. Besides other villagers, no one can write down the names of people from my village." Tai also maintains that some of the other answers are exaggerated. "Until read it, I didn't realize that some answers were true and some are untrue. They just tried to say other things.... for complements. For a long, long time people would not trust each other. Muy's purpose was his country and he hoped to help develop the country. He was true to the country but was charged with betraying it,"

This confession is an important source of information for Tai's siblings who have looked for Long Muy for many years. Tai shared his feelings that "the documents answer my questions. I know where he died. I feel released from having anger at the Khmer Rouge's activities. It has been boring to me for a long time." The confession showed some of the reasons why he was killed and also why the Khmer Rouge Tribunal is necessary. Tai continued, "This document is important because it shows the cause of the victim's death and other crimes. It is important to keep the documents in the museum for future generations to know the atrocities committed by the regime and as evidence for the trial."

Tai worries that the next generations will not know what life was like under the Khmer Rouge. "In Cambodia, students have not studied about their own history yet. In the future, the next generation may not believe that the Khmer Rouge was so cruel." Tai does not know what to do because he does not have complete confidence that the Tribunal will sentence the leaders of Khmer Rouge in time. Tai added that he does not demand anything. He only hopes the Tribunal, which is currently underway, can find real justice depending on law.

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***Sophal Ly is the Team Leader of the Searching for the Truth Magazine.***

# STILL LOOKING FOR ANSWERS

*Tat Leakhena*

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When Democratic Kampuchea was formed its leaders instituted an ambitious new policy, the Great Kampuchean Revolution, which was designed to create a powerful and prosperous nation. In reality however, the Khmer Rouge's policies systematically dragged the country into a state of collapse; a condition that has taken decades to recover from. The first step in the Khmer Rouge's master plan was to kill all educated people, government employees and soldiers who served the Khmer Republic. Over time the purges gradually expanded and ordinary people began to disappear in large numbers. In addition to facing near constant threat of death for political reasons, starvation and poor medical care caused millions of innocent Cambodians to die. In order to protect themselves, many people tried to hide their background and worked hard to ensure they had the trust of Angkar.

Unlike most people during the Democratic Kampuchea era, who were forced to eat only the meager rations allowed by Angkar, Touch always had enough food. She did not go hungry because at an early age she joined the revolution. Despite her service to the Khmer Rouge, she was sent for re-education at Office 204 without any explanation.

Touch was born into a farming family in Kraing Sbek village and was the 5th of 7 children. She grew up while the country was at war and received only a basic education. After the coup in 1970, she stopped studying and stayed home to help her family. Around that time, the people of her village began to worry about their safety because both Lon Nol and Khmer Rouge forces used the village as a base. During the day, Lon Nol forces were in control and during the night, the Khmer Rouge took over. Every time they came, both forces demanded food from the population. None of the villagers dared to refuse their requests for materials. In 1973 the Khmer Rouge fought and won complete control of Touch's village. They immediately began conscripting

youths to serve the revolution.

## **Order to Serve the Revolution**

Touch began her revolutionary life when she received a subpoena from the chief of her sub-district. She was 17 years old in 1974, but she still remembers that day vividly. At around 8 a.m. a messenger brought a letter to Touch's parents. In the letter, Touch and another villager, named Y (disappeared), were told to meet at Ang Kunh pagoda where she was to begin serving the revolution. Touch's parents did not want her to go because three of her brothers had already joined and only she remained to help care for her younger brothers and sisters. Touch did not want to go but she could not decline the appointment; it was part of her obligation to the nation.

One hour after the messenger delivered the letter, Touch left her home. When she arrived at Ang Kunh pagoda, she was put into a 100 person youth unit that was to work out of Office K-105 in the Tram Kak district. This large force was divided into smaller units that had specific tasks; like a tree cutting unit, a collections unit and a smashing unit. Touch was assigned to a 10 person tree cutting unit. They cleared land for future agricultural uses at Domrey Romeal Mountain. Her unit worked from 7 a.m. to 11 a.m. and from 1 p.m. until 5 p.m. They ate their meals, usually watery porridge, at the work site. Touch observed her group being watched by armed soldiers, who prevented the young workers from escaping and returning to their families.

One month after her conscription, Angkar developed a plan to send all the females workers in her unit to labor in the salt fields. Touch was not allowed to travel because she was recovering from an injury she received when a tree fell on her. Even though she knew she could not, she nonetheless asked for permission from the leader to go to the salt fields. If she stayed, she would have had to eat porridge every day.



### Work in the Salt Field

Four trucks carried all of the female workers from Office K-150 to the regional salt field in Angko village, located in Kampong Trolach district, Kampot province. Touch and 100 other workers stayed in a house that looked like a salt stock not far from the fields. The workers were divided into four large units of single females, each with approximately 100 members. Two all male units controlled the pumping machines. The salt fields and workers were under the control of Comrade Neary Choeun. Each unit was divided into small units that did work like clearing land, hauling salt, and bringing in water. Touch was assigned to the unit in charge of clearing land for salt production. The job was time consuming and difficult, however, the unit produced good salt and had a high output. Besides her work clearing land, Touch had to collect the salt from the field with another unit so it would not get ruined by rain. Touch described working in the fields as a very hard time. "Whenever there was a project people were working on, if we did not finish during the day, we had to continue through the night. No one dared to complain about this." Only when all of the work had been finished were the people able to relax. During these rare moments of rest, workers would go by truck to bathe in a waterfall in Kampot province. Each vehicle carried about 30 women. They were not allowed to bathe near the salt fields,

water there was used to drink and cook only.

Touch did not dare to have fun or ask about the lives of the other women in her unit. She had met workers who had asked other people about their past. Angkar sent them all to be re-educated and they never came back. One day, Touch saw militiaman escort a group of 10 to 15 people out of the fields. A few days later their clothes were given to other workers.

Even though the work was difficult and the supervisors were strict, the workers were allowed to eat rice every day. The only times they were forced to eat porridge was when the rice delivery was late. Each week the workers were given dessert, a scarf and «new» clothes. Work at the salt field was only possible in the dry season, in the rainy season the workers grew rice in Kampot province.

While Touch was working at the salt field she met and spoke to Foreign Minister Ieng Sary. Touch recollected that before Ieng Sary arrived, Neary Choeun told the workers to be ready to work hard because upper level Angkar would be visiting. Not long after, Ieng Sary's car arrived at the salt field; it was escorted by two armed military vehicles. She remembers Ieng Sary walking onto the worksite and asking her, "How long did we take to make this salt field? How many days did we have to add water in order to collect the salt?" Touch responded without looking at him, "In 3 or 4 days the salt will grow but during that time the salt is still new and we can't smash it. If we keep it for one week the salt will become hard enough."

In 1975, after the Khmer Rouge took control of Cambodia, Touch was sent to work in a State salt field in Kampong Trolach. This field was also under the control of Neary Choeun. The field was the biggest salt producer in Democratic Kampuchea and the salt collected there was sent to every province. Angkar appointed Touch to work as the head of a 40 member unit; Khun was her direct supervisor. The workers from the salt fields were not allowed to visit their homes. Touch asked Khun once for permission to visit her family but her request was

refused. Khun told her, "If one is allowed to go, next time others will have to be allowed also."

### **Work in the Sack Factory**

In 1977, Angkar selected Touch and three other women from her unit to work in a sack factory in Battambang province. Touch was assigned to work as the head of the group that made the cotton part of the sacks. She controlled a 50 member unit; a woman named Bo worked as general manager of the factory. During her first two weeks there the older workers showed Touch how to operate the machines and other jobs around the factory. After they finished teaching her, the older workers were sent to cooperatives. Touch worked from the early morning until 10 p.m. at night, after that she could relax. Even though the hours were long, the work was not difficult and she did not feel much pressure from her bosses. Touch was able to eat a steady diet of rice and porridge.

Besides her work, Touch had to have meetings with Bo to get the daily work assignments, report on the previous day's production and inform the managers of obstacles that may slow down the work, such as a malfunctioning machine or poor quality cotton. Most of the workers in her unit were women of a similar age, there were a few males but they worked as mechanics. Touch believed that she had a position of responsibility because she was a hard worker and never made mistakes.

### **Office 204**

According to Touch, most youths in the revolution worked very hard and never complained. They did whatever was necessary to complete a project or they risked Angkar not trusting them and would be in danger. Touch never thought she acted against Angkar because she always finished her work. Despite her efforts, Touch was arrested and sent to Office 204 in Tram Kak district, Takeo province. Touch remembers that day in 1978, she was 21 years old. At 4 a.m. she saw two cars drive into the factory. She wondered why cars were coming at that hour. At 7 a.m. a female messenger, named Un, told her to prepare her luggage because she

was being sent to Office 204 in the Southwest region. In addition to Touch, two other women from the salt fields were told to prepare to leave, Roeun from Prey Kabas village and Soeun from Kampong Speu village. Touch knew that all of the people who were sent to Office 204 were guilty, she thought as hard as she could but she did not remember making a mistake.

Touch remembered the truck that carried her and the other prisoners had a closed covering. Also in the truck were four men, their hands were tied behind their backs. The prisoners looked sad and worried but Touch did not feel fear. She thought, "If the Khmer Rouge is going to kill me, it is better than being kept in prison." She described her feelings on the revolution and her life. "I was fed up with the revolution because I had lived away from my parents and my siblings since I was 17 years old. I sacrificed for Angkar but in the end they said I was guilty."

The group did not stop until they reached the airport in Kampong Chhnang. A security guard stopped so the prisoners could find a place to use the bathroom. They then continued throughout the night until they reached Office 204, which was controlled by a man named Cheuk. The prisoners were taken out of the car and told to find a temporary place to sleep. In the morning Angkar gave each person a sickle and ordered them to work on a farm in a far away forest that grew rice to feed the army. Touch noticed that even though there were prisoners working everywhere, security guards still controlled their every movement. The older prisoners told her that the office was created in 1970. The grounds of the office were covered with coconut and fruit trees because the soil was fertilized by the mass graves. One day Touch saw a few Khmer Rouge cadres (one walked in the front, one walked in the middle and the last walked in the back) walk besides a line of people. The line contained male and female prisoners of all ages, they were being taken away to be killed.

### **No Clear Answers**

Even though the Khmer Rouge regime fell nearly 30 years ago, the doubt in Touch's mind is

still not resolved. Touch says that since the day of the revolution she tried to work hard and not make mistakes. She followed the orders of Angkar and never refused or complained about the hard work. None of her relatives were former officers or soldiers. After she returned to her hometown, some villagers told Touch that the chief of the sub-district and district, who ordered her to work for the revolution, were both arrested by the Khmer Rouge. Touch thought that she might have been arrested because of those connections but she still can not remove her doubt that she made a mistake.

### 1979: After the Revolution

After the regime collapsed in 1979, Touch and other prisoners continued to live in Office 204 for many months until Vietnam's troops liberated the area. The head of the office escaped just as the Vietnamese Army arrived. All of the prisoners were allowed to return home. Touch wanted desperately to return to her home and family but she heard rumors that if the Vietnamese Army discovered someone who used to work for the Khmer Rouge, that person would be arrested. Furthermore, she didn't have people to stay with so she decided to travel to a refugee camp while she still had the chance. The trip was hard because the only food she had to eat along the way was potato and *Kduoch* (a kind of rhizome).

In the sanctuary, Touch was obligated to help build roads and transport food to the people who cut trees. In 1980, Touch married a man named Khann Meas. Their wedding was small because they followed Khmer custom and only invited the older people from the sanctuary. Unfortunately, in 1983 Touch's husband stepped on a land mine that the Khmer Rouge had hidden in the ground near the sanctuary. He lost a leg and Touch was forced to be the sole person supporting the family. In 1987, their living standards in the sanctuary got worse and Touch volunteered to work in a children's hospital. She left her children to be looked after by her husband. She worked under the guidance of a French doctor and a translator. After the hospital, Touch

worked for another organization but this one did not provide her with a salary, they paid her with rice.

In 1992, the people who lived in the sanctuary were allowed to repatriate. Some people had a better standard of living in the sanctuary than at home and didn't want to leave. To leave the sanctuary the refugees had to mail a form requesting an interview with the Sanctuary Authority. In her first interview, Touch asked to live in her husband's hometown in Siem Reap province but her request was denied because Siem Reap was not a safe place. In a second interview, the Authority approved her request to return to her hometown at Treang district, Takeo province. Before she left, the Sanctuary Authority gave her enough rice, canned fish, and oil to sustain the family during the one month journey.

Touch did not feel joy when she returned to her hometown. She said the revolution destroyed her family. Her parents died while she was away and she did not get to say goodbye. Her three brothers, who were also conscripted into the revolution, disappeared. Her younger brother never left the village and thought she had died during the regime. There was even a funeral ritual performed for her. Touch started her new life in her old hometown with almost no property, only what she had managed to save while she lived in the sanctuary.

Nowadays Touch farms and makes pottery in her free time. She lives happily with her husband and 3 children. She says her living standard is getting better and she has more freedom than when she lived in the sanctuary. She is most happy that she can grow whatever she wants on her farm, unlike during the Khmer Rouge.

Touch thinks the Khmer Rouge Tribunal is useful for punishing guilty people in the regime. She thinks it is especially important for the safety of the population. She believes that this special court can give justice to those who died and those who survived.

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## A FORMER S-21 PHOTOGRAPHER DID NOT CLAIM HE REMEMBERED A NEW ZEALANDER, A CUBAN, A SWISS AND THEIR THAI BOAT DRIVER

*Phalla Prum*

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S-21 was the highest level security office of the Khmer Rouge regime (1975-1979). It was a security office that functioned in reality like a brutal prison. The "S" in S-21 stands for *santebal*, a Khmer word roughly translating to "security police." The few who survived the prison are still haunted by what took place inside its walls. Yet, one need not be a survivor to be appalled, terrified, and even moved to tears when standing outside the compound's fence; many survivors of Democratic Kampuchea become emotional as they approach the gates of the former prison.

During the years when Pol Pot was in power, the general population did not know about the prison or the torture, dehumanization, and killings that occurred inside. The prison was intended to be a secret institution that was known only to the top echelon of Khmer Rouge (KR). It was only after Vietnamese troops and the Nationalist Front for the Salvation of Cambodia (made up in part of defected KR cadres) battled into Cambodia in early 1979 that the secret prison was disclosed to Cambodians and the world.

Nim Im, a former S-21 photographer, believes that every government has an office where they manage the security affairs of the country; S-21 was the security office for the KR regime. Similar to



Nim Im in 2007

other workers' accounts of S-21, Mr. Nim claims he knew little about what took place inside the prison. He does acknowledge that some foreigners were brought to the prison, most of whom were Vietnamese. He asserts, however, that

he does not remember (or ever claimed to have remembered) a group of foreigners consisting of a New Zealander, a Cuban, a Swiss, and their Thai boat driver, who were held in the prison. This contradicts an article produced by Deutsche Presse-Agentur that claims Mr. Nim knew about foreign prisoners.

Nim Im's biography is among the thousands of biographies currently held at the Documentation Center of Cambodia (DC-Cam). The goals of DC-Cam are memory and justice and as such, launched the Promoting Accountability (PA) project several years ago with the aim of gathering information on former KR cadres and soldiers in order to understand the KR chain of command. The PA team interviews former KR cadres in their home villages (as stated in their biography). If the former cadre has passed away, the PA team will interview family members and try to obtain as much information as possible about the former cadre.

In 2003, a three person PA team arrived at Mr. Nim's home village. Unfortunately, at the time, he was imprisoned for an unrelated criminal offense and could not be interviewed. The DC-Cam group was able to speak to his elder sister and provided her with his detailed biography. Recently, Mr. Nim was released from prison and agreed to talk to DC-Cam about his experiences so the next generation can understand what took place during the KR regime.

Nim Im joined the revolution in 1970 in order to liberate King Sihanouk and the people of Cambodia (in particular the poor) from imperialist, capitalist, and feudal forces that had dominated the country. His first official duty was as a militiaman in his home village. Later, he was sent to different regions of the country to fight Lon Nol soldiers during the civil war. Mr. Nim said that he fought in many battles and even suffered injuries to his arms and

lungs. After April 17, 1975 when the KR regime took control of Cambodia, Division 703 chief, Nat, assigned him to be a division photographer. In 1977, he was sent to S-21 to take photographs of prisoners. At S-21, Mr. Nim recalled that there were many different photographer units.

In the article, titled "Photographers Claim Foreigners Killed in Pol Pot's Prison," the writer makes several errors regarding Nim Im's testimony. Mr. Nim asserts that he did not know much about the work of other parts of the prison and stressed that he never claimed to remember a group of foreigners who were taken to S-21, as the article alleges. The notorious security prison had strict regulations for workers and any deviations from their duties would be met with serious consequences. Mr. Nim's sole duty was to take photographs of prisoners inside a receiving room; he did not know what happened to them afterward. The author of the article wrote that Nim Im "remembered a New Zealander, a Cuban, a Swiss, their Thai boat driver and more who he says may have simply disappeared from the records." This statement is extremely questionable and if we take Mr. Nim's word on the matter, simply false.

Nim Im stated that he does not know about the foreign prisoners in the article. His only memory relating to the foreign prisoners in question is that of a photograph of three men. There was one instance in which he was told to develop a photo that contained an image of three men, one of whom had a beard. The negative was given to him by a KR cadre and after he brought the developed photograph back, the cadre told him that the man with the beard was Cuban. Mr. Nim did not know how or why the three men were bought to the prison and what happened to them at the prison. Therefore he does not know the nature of their arrest and whether or not they were killed. Any claims made that a Cuban was killed and buried at S-21 based on Nim Im's statements is incorrect.

The article also contained two other erroneous explanations according to Mr. Nim. The first involves the issue of how frequently plaques were used. The

article quoted him as having said, "In 1977, we didn't hang plaques around most of their necks. We just photographed them." In contrast however, Mr. Nim said that he always placed a plaque on prisoners since working there in 1977. Initially, only a number was written on the plaques but later, more information, such as name and date, was added. The second inaccurate statement is that Nim Im and Nhem Em were colleagues and knew each other when they worked at the prison. Nim Im denies knowing Nhem Em at that time and Nhem Em confirms this. Mr. Nim supposes that Nhem Em could have worked in a different unit at S-21, but he is not certain.

Although Nim Im speaks in a matter of fact tone about S-21 and his work there, he does not hide his support for the Khmer Rouge Tribunal (officially known as the Extraordinary Chambers in the Courts of Cambodia). He believes that the tribunal "is an example for future leaders not to commit such killings and an assurance against allowing such acts from happening again." Mr. Nim said that many people died in the prison due to mistreatment. Two of his younger brothers died during the regime. Looking back, Mr. Nim is regretful that he served a communist revolution that took the lives of almost two million of his countrymen.

It is the goal of DC-Cam to emphasize that the history of the Khmer Rouge regime is important to Cambodians (and the world) and as such, we must do our best as journalists, scholars, and historians to publish well-researched and accurate information. Despite the fall of the Khmer Rouge regime nearly thirty years ago, the history and memory of what took place are exceptionally alive, painfully personal, and incredibly relevant to the present lives of survivors. We should never let sensationalism, deadlines, misquoting, or even translation error cause us to incorrectly tell the history of a people, especially in case of something as tragic as genocide.

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# LETTER FROM CAMBODIA: AT LAST, A TRIBUNAL FOR KHMER ROUGE ATROCITIES

*Dustin Roasa*

Monysophak Temple sits in a tranquil rice field about three hours southwest of Phnom Penh, in Cambodia's Kompong Speu province. Not so long ago, that rice field was jungle. During the second half of the 1970s, Khmer Rouge soldiers regularly led groups of local residents into the dense foliage, where they bound them, shot them, and drove tanks over their bodies.

Non Rin, a 68-year-old Buddhist nun with creased skin and bristly silver hair, still remembers the victims' last moments. "They called out to their mothers for help before being shot. I could hear their voices coming through the trees," she said. The Khmer Rouge executed her husband this way after accusing him of laziness; he had fallen ill and didn't have the strength to rise out of bed.

Non sat around a low wooden table with Min Chon, another nun, and Eh Hav, an aging monk, as they recounted their experiences under the Khmer Rouge. There hadn't been many occasions to do so since the regime lost power 30 years ago, and the two women began to weep into their checkered shawls. "I still feel sad about the old days," Ms. Min said.

Like most Cambodians, the three spent the Khmer Rouge years working long hours in the fields while subsisting on little food - in their case, one bowl of water porridge with cassava leaves per day. Starvation, disease, and executions were widespread in Cambodia between 1975 and 1979, when the regime engineered the deaths of an estimated 1.7 million people, almost a quarter of the population, in the name of a radical Communist agenda that rejected markets, religion, and cities.

In the time that has passed since Vietnam invaded in 1979 and ended Khmer Rouge rule, not a single member of the movement has been punished. In 2003, after years of negotiations, the United Nations and the Cambodian government established a war-crimes tribunal that is expected to begin hearing cases early next year. Known as the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (ECCC), the court includes Cambodian and foreign judges and will prosecute defendants under both domestic and international law.

The hope is that the tribunal will bring a sense of finality to the Khmer Rouge period. Cambodians have waited 30 years for justice, much longer than the victims of atrocities in Yugoslavia and Rwanda. Consequently, they are living in a society where psychological problems are rife, official impunity is pervasive and endemic, and - perhaps most shocking - an entire generation of young people is growing up doubting the existence of the Khmer Rouge. If the court is to stand any chance of addressing these issues, however, it will have to overcome some major obstacles. With only around



\$20 million a year at its disposal, the ECCC's budget is the lowest of any similar tribunal in history. (A court in Sierra Leone, previously the world's most poorly funded, had an annual budget of \$40 million, and the International Criminal Court at The Hague operates on \$100 million yearly.) In addition, the indicted former leaders are aging and in danger of dying, while an awkward "super-majority" structure that divides power between the Cambodian and foreign judges has rendered the court opaque to average observers.

Yet most Cambodians' concerns are more fundamental. They fear that the worst perpetrators won't be punished, that only a small part of the whole story will be told, and that the government will interfere with the outcome. I spent several weeks last November listening to dozens of farmers and villagers throughout the country's impoverished rural provinces. Many feel disconnected from a process ostensibly being conducted in their name. And while almost all welcome the idea of the court, they have doubts about what it will be able to achieve. Indeed, the more time I spent in the country, the more I wondered whether the court in its present form will be able to provide what Cambodians say they need: a full public reckoning with their Khmer Rouge nightmare.

Non Rin, Min Chon, and Eh Hav worry about a lot of things, but they are most concerned about perpetrators escaping punishment. Boset Commune, where their temple is located, was treated especially harshly during the Khmer Rouge years. It is situated in Cambodia's southwest, the region that zone Commander Ta Mok, nicknamed "The Butcher," ruled with notorious brutality. Ms. Non, Ms. Min, and Mr. Eh are still angry at Ta Mok, who faced likely indictment before dying of natural causes last year, but they do not blame him solely for the suffering their community endured.

"Ta Mok never directly killed anyone himself. The local cadres actually carried out these killings," Mr. Eh said. He still remembers the names and faces of Boset Commune's leaders, but they have

long since relocated to other parts of the country. "Some of them are dead, and maybe others were granted amnesty or given deals by the government," he said.

Anger like Mr. Eh's is common among survivors. For them, local cadres were the public face of a paranoid central government that concealed its identity from the people. But local authorities were more than just tools of the central government. According to official Khmer Rouge documents, they had significant autonomy within the regime's hierarchy to carry out atrocities as they saw fit. The experiences of survivors, many of whom lived in several parts of the country as a result of forced relocation, reflect this. Conditions varied widely among regions, depending on who was in charge locally. A humane cadre could make a village relatively bearable; a cruel one could render it hellish.

Regardless, the court will not prosecute these men. According to rules agreed to by the United Nations and the Cambodian government, indictments will be limited to senior leaders and "those most responsible for serious crimes." Prime Minister Hun Sen insisted on these limits throughout negotiations with the United Nations.

Yet information exists on many people who were not top leaders. Much of it can be found at the Documentation Center of Cambodia. The Documentation Center has compiled dossiers on thousands of former regime members at all levels - including cadres and soldiers - through interviews and field research, but "it's up to the prosecutors to determine if this is to become part of the evidence or whether these people should be on trial," said Youk Chhang, the center's director. Many of them have gone into hiding out of shame or fear of retribution. "That doesn't hide their original identity. They can be found," he said.

I wanted to do just that. Armed with the names and locations of several former cadres, I set out to track them down. I wanted to ask them if they supported the tribunal. If so, who should be prosecuted? And how did they feel about their own

## Khmer Rouge pasts?

In search of a man named Sang Soeun, I traveled to Battambang province, along the Thai border. I arrived at Ek Phnom Temple, the location given as his address, at midmorning. I spent half an hour asking around for Mr. Sang, but no one had heard of him. I was about to give up when a man with piercing eyes walked up to me in short, forceful strides. He wore his robe tucked below his right shoulder, exposing taut muscles and a small tattoo of an X below his collarbone. The other monks looked ethereal next to him. I knew it was him.

A teenage monk introduced us, and we walked across the dusty grass of the temple grounds to his room. My interpreter and I sat on the floor as Mr. Sang, placid except for a vein that bulged above his right eye when he spoke, held court on a raised bamboo platform. He became a monk two years ago, he explained, to do good deeds and "work for the future." Like all monks, he leads a Spartan life funded by small donations. He hadn't joined the temple until he was in his 50s, however, having spent his early adulthood outfitted in the black garb of the Khmer Rouge.

A poor farmer, he joined the revolution because he felt "bitter toward the oppressive class." He was quickly reassigned from Battambang province to the Ministry of Commerce in Phnom Penh, where he worked in a cotton distribution center. It was 1976 and the city was a ghost town, its residents relocated at gunpoint to outlying labor camps. He was unaware of the suffering occurring at the time, he said, because he and his coworkers were cut off from any contact with the countryside. He believed he would be executed had he tried to desert. When the regime fell, he left Phnom Penh and worked as a spy for the Vietnamese occupation.

The tribunal was a good idea, he said, because "the Khmer Rouge was a dictatorship that made the people suffer." The top leaders should face trial first, he said, but then prosecutors should work their way down the chain of command to the lower levels. But wouldn't that expose him to prosecution? "I

was just following orders from the big boss," he said. "I was a victim."

Later, Youk Chhang of the Documentation Center told me that former cadres commonly portray themselves this way. Public expression of remorse is rare in Cambodia. Further complicating matters, the line between perpetrator and victim is blurry. Many cadres lost family members and experienced immense suffering themselves, and not all of them joined the movement out of conviction. One I spoke to said he did so to avoid starvation; another was conscripted into the army under threat of execution.

Some Cambodians even feel sympathy toward their former tormentors. Suffering was so ubiquitous that almost all cadres can--and indeed do--claim to be victims. What is left are millions of victims and no perpetrators. "We've interviewed over 4,000 former Khmer Rouge, and only one confessed to killing," Chhang told me. "Can you imagine?"

Consequently, there is little information in the archives explaining how or why a majority of the victims died. Only survivors and cadres know what really happened, but few of them are likely to be involved in the court - if they are allowed to witness the proceedings as spectators at all. As with the trial of Saddam Hussein, prosecutors can be expected to present narrow cases designed to win a handful of convictions at the expense of establishing a comprehensive historical record of the period. That the court's first indictment was for Duch, the man in charge of S-21, does little to dispel this notion.

Heather Ryan, who monitors the court for the Open Society Justice Initiative, said these issues have provoked a discussion in Cambodia's human rights community. "The question is does Cambodia also need other ways of dealing with lower-level cadres?" she said. In the former Yugoslavia, domestic courts handled cases not taken by the International Criminal Tribunal for the former Yugoslavia in The Hague, while truth commissions have been used in places like South Africa and East Timor. In Cambodia, however, such forums would go beyond the ECCC's mandate. When the court's three-year

term expires and the international community goes home, the onus will fall squarely on the Cambodian government.

In Kandal province, about an hour and a half outside of Phnom Penh, I talked with members of a family gathered on the dirt floor beneath their stilt house. As I discussed the court with the adults, several children inched forward to listen. When I asked the children what they thought about the tribunal, they were reluctant to talk. I asked their grandfather, Chhay Hay, a slightly built 64-year-old with graying sideburns and a quick smile, if he had told them about his experiences. He frowned. "My grandchildren refuse to believe that something so horrific happened. They wonder, 'If it really happened, then how are you still alive?'" he said.

The story of Cambodia between 1975 and 1979 still waits to be told. As time goes by, and the past slips further from collective memory, the opportunities to do so dwindle. Court officials hope the ECCC will correct this, but Cambodians are wary. After so many years of waiting, they are eager for their tormentors to face justice. But will the tribunal go far enough? "Finding the truth and punishing those responsible are equally important," said So Phen Khun, a 62-year-old former mechanic for the regime. "If the truth is established, then there will be justice. You can't have one without the other."

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## THE HISTORY OF THE RENAKSE PETITIONS AND THEIR VALUE FOR ECCC PROCEEDINGS

*William J. Schulte*

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In 1982 and 1983, hundreds of thousands of survivors of the Khmer Rouge regime wrote and signed petitions as part of a massive effort by the Vietnamese-installed Peoples' Republic of Kampuchea (PRK) government to appeal to the United Nations (UN) to recognize the atrocities committed by the Khmer Rouge and remove Khmer Rouge representatives from Cambodia's UN seat. This vast collection of victims petitions is known as the Renakse records and is sometimes commonly referred to as the "million documents."

The petitions' authors described, frequently with gruesome detail, the suffering that they and others went through during the Khmer Rouge era. The petitions often recorded the number of people in a village killed or missing, homes destroyed, animals killed, methods of torture used by the Khmer Rouge, locations of mass graves, and the desecration of Buddhist pagodas, among other things. Because of the vast quantity of valuable information that they contain, the Renakse records are one of the most

important and useful sets of documents on the workings of the Khmer Rouge. They also comprise the most comprehensive list of the names and locations of victims with a stake in the upcoming trials of the Extraordinary Chambers in the Courts of Cambodia (ECCC).

### **Formation of the Research Committee and Its Report**

The Renakse petitions were written and compiled from August to October 1983, just a few years after the Khmer Rouge fell from power. The process that led to their production began on October 5, 1982 when the Solidarity Front, an entity of the PRK government, created a crime research committee (Research Committee) and charged it with the responsibility to investigate the crimes of the Khmer Rouge era. The Solidarity Front instructed the Research Committee to compile accurate statistics on the number of people dead, the forms of torture to which people were subjected, and the extent of property destruction.

Upon completion of its research nine months

later, the Research Committee published a report (Research Committee Report) on July 25, 1983, accompanied by a detailed table of statistics documenting the number of dead in each province. The Committee indicates over 1,000,000 petitioners from 19 provinces supplied information for the Report. The Report was presented to the Solidarity Front and the National Assembly in August 1983. Both the Front and the Assembly subsequently adopted and published formal decisions endorsing the Report and its conclusions.

### **The Conference of Cambodian Intellectuals and Monks**

After the National Assembly heard and commented on the Research Committee Report, it directed the people of Cambodia to further "disclose" the crimes of the "Pol Pot genocidal regime ... for additional discussion." A few weeks later, on September 12, 1993, the Solidarity Front held a conference in Phnom Penh entitled the "Conference of Cambodian Intellectuals and Monks." On that day, over 300 intellectuals, monks, and representatives of Cambodian minority groups gathered to listen to the conclusions of the Research Committee Report and the ensuing decisions of the Solidarity Front and the National Assembly. They then issued a series of "open letters" that were "to be submitted to intellectuals, monks, international organization[s] and the people [of] the world" in order to convince them that the Khmer Rouge should be ousted from Cambodia's UN seat. All together, the Conference produced seven letters. These letters expressed the opinions and concerns of educators, health professionals, artists, monks, Cambodian minorities, the royal family, and finally the conference as a whole.

### **Public Meetings and the Drafting of Petitions**

Within two months of the Conference of Cambodian Intellectuals and Monks, the Solidarity Front arranged public meetings throughout Cambodia. These meetings were held in villages and sub-district centers for the purpose of discussing the Research Committee Report, the decision of the National Assembly, and the open letters authored at the Conference. It is unclear how many people

participated in these meetings. Notably, the attendee of one meeting, a deputy village chief at the time, has said that "hundreds" of people in his village were in attendance.

People attending the meetings discussed their reactions to the presentation and then collectively, and sometimes individually, wrote the petitions that have become part of the Renakse collection. Nearly all of the petitions that have been reviewed by this author state that the signatories to each petition heard the Research Committee Report, the August 18, 1983 decision of the National Assembly, and the open letters before signing. Several attendees have confirmed this sequence of events.

Once the petitions were drafted, they were compiled and sent to the Solidarity Front. The Front totaled the number of petitions and signatures, broke them down according to province and government ministry, and produced its findings in a November 9, 1983 report entitled "Summary of Petitions Supporting the Decision of the National Assembly and the Open Letter of Intellectuals and Monks" (Summary of Petitions). The Summary of Petitions says that petitions were gathered from 12 provinces and 22 government ministries and that there were 8,832 petitions with 560,194 signatures.

Exactly what happened to the petitions after they were collected by the Solidarity Front remains a mystery. Although the majority of the petitions contain appeals to the United Nations to oust the Khmer Rouge from Cambodia's seat, for some unknown reason they were never sent to the UN. A large number of the petitions were stored at the PRK's Solidarity Front Office until 1997 when they were handed over to DC-Cam. Of the nearly 9,000 petitions reportedly drafted, DC-Cam acquired approximately 1,250. The fate of the remaining petitions is unknown.

### **Description of the Renakse Petitions and Their Content**

The majority of the Renakse petitions are group petitions that can be divided into three categories. One category is based on geographic location, such as villages, sub-districts, districts, and provinces. Another represents employment groups such as the

workers of Cambodian rubber plantations, education offices, and medical facilities. A smaller but still significant portion of the Renakse petitions represent various religious and minority groups. The most common types of petitions in this category are Buddhist monks and members of the Cham Muslim minority. Finally, the Renakse collection includes a large number of petitions that were authored and signed by individuals.

There are a few common characteristics of all of the Renakse documents, whether they are authored by a group or an individual. Nearly every petition denounces "Pol Pot and his lackeys and the Beijing expansionists" and expresses support for the Communist Party and the PRK government. Most petitions also include direct appeals to the UN, to the National Assembly, or to the world at large to apply pressure to "oust the Pol Pot clique from the seat of the United Nations and ask the United Nations to award the seat to the People's Republic of Kampuchea." For example, one individual petition appeals "to the UN 38th Session to immediately oust these bloodsucking devils from their seat to the UN." In another, the author wrote that she was committed to "forever follow[ing] the Marxist-Leninist path of the Party," and that she recognized the PRK "as the only legitimate government." A group of monks from Ang Tnaot village in Takeo Province appealed to the National Assembly "to forward our petition to the UN in order to oust the clique from the UN seat." Another group of monks from Kampot Province appealed "to the world to force the Beijing expansionists and the US imperialists and a number of reactionaries to stop feeding and immediately oust the Pol Pot clique from the United Nations."

Outside of these formulaic statements, the group petitions vary greatly in terms of their length and degree of detail. Some petitions describe the meeting at which the Research Committee Report was read and the petition was written. Others record the number of people killed in a certain area. Some petitions describe the methods by which people

were killed; others describe the locations of mass graves. For example, a group of monks from Tram Kak District, Takeo Province wrote a petition that contained the number of monasteries in their sub-district destroyed, the number of monks who were defrocked, and the number of mass graves along with the number of bodies in each.

Nevertheless, many of the group petitions do not offer any personal information. For example, a petition from Kampot Province describes only in general terms the means of killing employed by Khmer Rouge cadres, the destruction of the nation's infrastructure, and the use of schools and monasteries for prisons and animal pens. Similarly, a group representing the Cham minority in Siem Reap Province wrote a petition that appears to be a general description of the experiences of the Cham in that province. The petition described how the Muslims were forced to eat pork and would be killed if they refused, how their mosques were converted into either animal pens or waste storage facilities, and how Khmer Rouge cadres used pages of the Koran for toilet paper and cigarette paper. It does not contain any detail about the events that happened specifically to the petitioners.

In contrast, the individual petitions often consist of one to two page personal narratives documenting in great detail the author's experiences under the Khmer Rouge. For example, one petitioner wrote about being forced from Phnom Penh but forbidden from returning to her village home and living there. She explained that her husband was called to work but was later killed, and that her elder sister and brother were also killed. She also explained that in 1977 the people in her village were separated into two groups: 'new' people and 'old' people. In another example, a petitioner wrote in detail about his imprisonment and subsequent torture.

#### **Value of the Renakse Petitions for ECCC Proceedings**

It has been suggested that the expressions of support for the PRK and the denunciations of the Khmer Rouge in the petitions may cause them to be "deemed too biased to be afforded significant

weight in the ... tribunal." It is true that the petitions were created at the instigation of the PRK government. The uniform language in the petitions suggests that they are the product of a highly organized effort at top levels. Indeed, one petitioner has stated in an interview that he received instructions from the Solidarity Front on the language that should be included in the petition. However, the petitions' political aspects should not detract from the value and reliability of their personal content. The reign of the Khmer Rouge had ended only a few years before the villagers and monks and workers of Cambodia wrote or signed these petitions, and so their memories and pain were still fresh. Up until then the people of Cambodia had no opportunity to tell the world what had happened to them, and many saw the petitions as an opportunity to do so. Indeed, the petition effort may be seen as a kind of informal "truth commission." Most of the people who have been recently interviewed about their participation in the creation of the petitions maintain that signing them was completely voluntary and they were not obligated or forced. Furthermore, many petitioners assert that the information that they put into the petition was true and that they would stand by it to this day. For example, one petitioner has said that he was not forced or pressured in any

way whatsoever to write his petition; he wrote it voluntarily and stated that all of the information in it was true. For these reasons, their accounts should be valued independently of any political motivation of the government in power at that time.

In addition to their value as potential evidence for the ECCC, the petitions can serve as a means by which to locate victims who may wish to participate in ECCC proceedings. As discussed in the article in this issue by Sarah Thomas and Farina So, DC-Cam has begun a Victim's Participation Project that, with the assistance of the Renakse petitions, will help it locate survivors and provide them with the information they need to make an informed decision about whether or not to participate. Just as the petitions gave ordinary Cambodians an opportunity to participate in a form of "truth commission" in 1982-83, locating their original signatories and requesting that they provide testimonies today gives them an opportunity to re-activate such a commission, and to know that their earlier testimonies were not in vain.

Thanks to Terith Chy for his assistance in conducting research for this article.

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*William J. Schulte is a DC-Cam Legal Associate and student at Rutgers University.*

## **KHMER ROUGE HISTORY AVAILABLE ON AIR**

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

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

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

For comments or questions on our programming, please contact Sin Sothida and Chheng Sothearin at P.O. Box 1110, Phnom Penh or 023 211 875.



# COMMUNE AND VILLAGE CHIEFS PARTICIPATE IN THE ECCC PRE-TRIAL HEARING UNDER THE LIVING DOCUMENTS PROJECT

*Thea Clay*

After years of preparation and public anticipation, the first public hearing of the Extraordinary Chambers in the Courts of Cambodia (ECCC), otherwise known as the Khmer Rouge Tribunal, was held on November 20, 2007 in Phnom Penh. The Documentation Center of Cambodia (DC-Cam) used the opportunity to begin Phase 2 of its Living Documents Project by inviting 40 victims of Democratic Kampuchea to witness the pre-trial hearing and 41 additional victims to view the decision announcement. Both events were facilitated by members of the DC-Cam staff and were recorded by the Film Team; their film of the hearing has been posted on the Cambodia Tribunal Monitor website ([www.cambodia-tribunalmonitor.org](http://www.cambodia-tribunalmonitor.org)).

## Introductory Sessions and Filing of Complaints

On Monday, November 19th, the first group of participants met in DC-Cam's Public Information Room. They were greeted by Team Leader Sok-Kheang Ly, who summarized the Living Documents Project for them. The Center's Deputy Director Dara Peou Vanthan then welcomed the group and briefly described the schedule of events for the coming days. He also updated the participants on the case against Noun Chea and the recent arrests of Ieng Sary, Ieng Thirith, and Khieu Samphan. Mr. Ly then explained the second phase of the project, which includes DC-Cam staff visiting communities and facilitating meetings where participants will talk about their trip to the ECCC and answer questions about the Tribunal. (The Team's first trip took place on December 1 when they visited the northeast region of Cambodia.)

Following a short break, DC-Cam Legal Associate Sarah Thomas presented a brief biography of former S-21 Prison Chief Kaing Guek Eav, alias Duch, and detailed the structure and make-up of



Duch  
Photo: Sinith Heng

the court, the nature of the charges against Duch, and the essence of the arguments that would be presented. She also explained the legal issues surrounding the provisional detention order, the difference between the domestic and international charges, and the sequence of events they would witness. To ensure that all of the participants had enough historical background to evaluate the pre-trial hearing, the DC-Cam-produced documentary film *Behind the Walls of S-21* was shown. Ms. Thomas and Mr. Ly then walked the participants through the complaint form and explained the three ways in which a person can participate in the Tribunal (as a criminal complainant, a civil party, or witness). After lunch, the group was invited to complete complaint forms, which DC-Cam staff would then deliver to the ECCC's Office of the Co-Prosecutors on their behalf.

Before the participants were paired with DC-Cam staff members to complete the complaint forms, they were reminded of the important role these forms play; not only will they aid in the prosecution

of senior officials, they will also help create an accurate historical record that will allow future generations to understand the actions of the Khmer Rouge regime. Issues of confidentiality and the functions of DC-Cam in the context of the ECCC were also explicated. Thirty-three of the forty village and commune chiefs completed the complaint forms.

### Attending the Public Hearing

On November 20th, DC-Cam staff accompanied the participants to the ECCC to take part in the Tribunal's first public hearing. Eight members of the DC-Cam group were selected to view the court proceedings in person. The rest were seated in the auxiliary room and viewed the hearing via a live feed.

The hearing began with the entrance of the judges, co-prosecutors, and co-defenders. The press rushed forward when Duch was brought into the courtroom. After a few minutes of photo opportunities, the judges had to repeatedly order the press to return to their seats. Duch was told to stand and was informed of his rights and the charges against him. He gave a brief autobiography and identified his attorneys. He stood with his hands pressed together as a sign of greeting to the court and answered all questions addressed to him quickly. He clearly understood the nature of the proceedings and was in complete control of his mental faculties. His facial expression remained fixed throughout the morning portion of the hearing.

The legal contents of this portion of the hearing centered on the reading of the charges, an explanation of the problematic nature of the provisional detention order, and a summation of the six amicus briefs (one of which was written by DC-Cam legal advisor Anne Heindel) submitted to the Courts. DC-Cam's monograph, *Victims and Perpetrators*, was referenced by the co-prosecutor, as were additional interviews conducted by the Center and members of the press. DC-Cam was also named as the primary source of documentation and research surrounding the activities of the regime. The co-prosecutors, Robert Petit and Chea Leang, appeared exceptionally confident.

The defense attorney, François Roux, referenced DC-Cam's archives and collection of witness and victim testimony, and stated, "As I said many times, following the tragedy that Cambodia has lived, there was the time for journalists -- there was the time for historians to try to understand and the time for NGOs to attempt to try to rebuild. Now, today is the time for justice." The defense team rebutted the co-prosecutor's claims regarding the legality of the provisional detention order, and contradicted their assertions about the safety of Duch and possible witnesses, the risk that Duch would flee, and the danger that documents could be destroyed. Mr. Roux stated that documents and witness testimony are preserved by Tuol Sleng Genocide Museum, DC-Cam and the ECCC. Mr. Roux also clarified statements Duch had made about fearing for his personal safety, saying that Duch actually said he feared Ta Mok's forces, not retribution by the public. Now that Ta Mok is dead and his forces have been incorporated into the current government, he no longer has any reason to fear for his well-being. The hearing broke for lunch late and the press flocked to the DC-Cam group for interviews.

After lunch, the group returned to the ECCC for the remainder of the proceedings. As the arguments continued, Duch appeared more relaxed. The participants listened intently the entire time; many took detailed notes and quietly discussed the arguments being presented. The court recessed for the day around 5:00 p.m. They then left the ECCC



International Co-Prosecutor Robert Petit

and discussed the day's events at dinner. The group expressed general satisfaction with the workings of the Tribunal and felt that they had witnessed a sufficient display of transparency and competence for justice to be carried out.

That night local television stations devoted a modest amount of coverage to the Tribunal. Radio coverage of the hearing and other Tribunal related events was substantial. Voice of America devoted a large portion of their programming to the pre-trial hearing, as did ABC News and other FM stations. The following morning all of Cambodia's daily periodicals featured front-page coverage of the hearing. One commune chief, who stated that some of his constituents did not fully believe the Tribunal would actually occur, divulged that he received an excited phone call from some of his villagers, who said they had seen him on TV.

November 21st was the final portion of the pre-trial hearing. Again, members of the DC-Cam group were selected to view the hearing in person. The DC-Cam participants were completely engrossed in the proceedings. They took detailed notes and listened intently.

The arguments continued throughout the morning. Duch appeared more relaxed than the previous day and often glanced around the courtroom. He seemed pleased with the efforts of his attorneys thus far. In a statement to the press, Duch's attorney expressed his client's satisfaction with the Tribunal, but resignation about the probable outcome of his appeal. After the court broke for lunch and interviews were given, DC-Cam staff and the participants discussed the hearing. The mood of the group was upbeat and optimistic.

Exit interviews were conducted with the village and commune leaders during lunch and on the bus returning from the ECCC. All expressed immense satisfaction with the Tribunal and repeatedly stated that they wished that they were able to return to the ECCC to view additional hearings. Over the course of the three-day event, their demeanor and perception changed from initial skepticism to

confidence and optimism that the ECCC would finally bring justice to Cambodia. Everyone questioned felt that the DC-Cam legal introduction prior to the hearing greatly aided their understanding of the Tribunal and issues it seeks to address. They communicated that they would return to their communities and inform the public of what they had seen and learned.

Sin Kha, who lives in Phnom Penh and was one of the eight members of the group to personally witness the hearing, stated that she would describe the hearing in a two-fold manner. First, she said she would tell her community that she felt justice could be carried out in this court. She demonstrated a detailed understanding of the provisional detention order and was able to clearly summarize the arguments given in court. The second issue she mentioned, and spoke at some length about, was the physical appearance of Duch. She said that before she attended the hearing, she felt nothing but anger towards him but, once she saw him, some of her anger was replaced with pity. She felt confident that he was no longer capable of physically harming people and looked sad and frail. Many other members of the group also reported that they felt better once they saw Duch in person and in custody; they reported seeing him allowed some measure of consolation and victim empowerment.

Ali Osman from Takeo province spoke at length about the difference between the national and international charges against Duch and had an excellent understanding of the jurisdictional issues caused by the military court that had detained Duch, and the ECCC, which was now prosecuting him. He stated that he felt the Tribunal was functioning in a manner that respected the national culture of Cambodia and was happy with the level of international involvement. He was eager to return to his village and inform his constituents of what he had seen and learned.

### **Pre-Trial Hearing Decision Announcement**

After more than a week of deliberations, the Extraordinary Chambers in the Courts of Cambodia

(ECCC) reconvened on Monday, 3 December 2007 to announce their decision on Kaing Guek Eav's (alias Duch) appeal of the Co-Investigating Judges' Order for Provisional Detention. The Living Documents Team again brought 41 commune and village chiefs and religious leaders to the ECCC to observe the proceedings.

On the morning of the decision announcement, the participants met in DC-Cam's office. All of them previously participated in DC-Cam projects and many had also attended the initial pre-trial hearing held on 19-20 November 2007. The Living Documents Team met with the participants before the hearing to answer any questions they had and interview them. Pich Kalyan of Kandal province said it was important to visit the Tribunal "to see what a real court looks like." Ms. Pich is a participant in DC-Cam's Victims of Torture Project and was imprisoned at Kok Sang during Democratic Kampuchea. She had followed the 20 November hearing and was angry to see "Duch sitting there smiling."

Oknha Khnour Kaitoam of Kampong Chhnang province came to witness the hearing so he could then tell his community about the court's decision. He described his expectations about the court's pending ruling: "It's up to the court; they have the power to do what they want." He added that personally, he didn't want Duch to be released because of what he did to prisoners at S-21.

Generally, the mood was optimistic before the 2 p.m. hearing began. However, some members of the group expressed trepidation at the idea Duch might be released and that justice for the victims of the Khmer Rouge regime would be postponed again.

At the ECCC, the public viewing room was filled with press, members of the NGO and diplomatic communities, and various other groups. The Living Documents participants were seated in the front rows of the room. A majority of the professional media outlets focused their cameras on the DC-Cam group and filmed their reactions throughout the proceedings.

The hearing began with the entrance of Duch

and a reading of the charges and the purpose of the hearing. The Court, noting the high level of public interest in Duch's case, announced that the ruling would be written in language understandable to all. Chief Judge Prak Kimsan then read the complete ruling; explaining the panel's rationale and opinion on each issue raised in the first pre-trial hearing. The translation services had improved, although some portions of the ruling were not available in English. The participants listened closely to each point detailed over the 60-minute hearing.

After each point of contention from the November 20th Pre-Trial hearing had been addressed, Chief Judge Prak Kimsan announced the decision: the Pre-Trial Chambers Judges had voted unanimously to affirm the Order of the Co-Investigating Judges and dismissed Duch's appeal. Duch was quickly escorted back to the ECCC detention facility before the courtroom emptied. Several of the Living Documents participants were interviewed by the media and expressed their general satisfaction with the decision.

Ker Math of Kampong Chhnang province stated that he had been waiting to hear the court's decision before he fully believed the ECCC could bring justice to Cambodia. "If the court released Duch I would have lost faith. I wouldn't have followed the Tribunal any more," he said. "I can believe in it now." He added that he was concerned about Duch's request for compensation for his previous detention by a military court. This was the only issue not resolved by the Pre-Trial Chambers.

Farina So, team leader of the Cham Muslim Oral History Project, conducted exit interviews for DC-Cam and documented the participants' reactions. All of those interviewed expressed satisfaction with the ECCC's decision. Many communicated that they would have lost confidence in the Tribunal's ability to find justice for the victims of the Khmer Rouge if the ruling had been different.

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*Thea Clay is a volunteer and editor for Searching for the Truth and a graduate of the University of Texas-Austin.*

# RECENT DEVELOPMENTS AT THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

*Sarah Thomas*

## **Co-Prosecutors' Introductory Submission**

On July 18th, 2007, the Co-Prosecutors filed their Introductory Submission. This Submission contained the facts that may constitute crimes, identified persons suspected to be responsible for those crimes, and requested the Co-Investigating Judges to investigate those crimes and suspects. The Co-Prosecutors indicated that their factual allegations constitute "crimes against humanity, genocide, grave breaches of the Geneva Conventions, homicide, torture and religious persecution" and that their preliminary investigations identified five suspects. The Co-Prosecutors did not, however, release specific details of the factual allegations or the identities of the suspects. The Co-Prosecutors reported that, in support of their factual submissions, they had submitted more than 1,000 documents to the Office of the Co-Investigating Judges "with the assistance of the Documentation Centre of Cambodia."

## **Charging of Duch and Order of Provisional Detention**

On July 31st, after investigating the allegations, the Co-Investigating Judges charged Kaing Guek Eav (known as Duch) with crimes against humanity (and, later, with grave breaches of the Geneva Conventions (war crimes)). The Co-Investigating Judges concluded that Duch had committed these crimes as the Director of Security Prison S-21, where "countless abuses were allegedly committed against the civilian population (arbitrary detention, torture and other inhumane acts, mass executions, etc.)." In response to the Co-Prosecutors' request that Duch be placed in provisional detention, the Co-Investigating Judges ordered his transfer from the Military Court of Phnom Penh to the ECCC Detention Facility and his provisional detention "for a period not exceeding one year." The Judges made this order despite defense protestations that Duch's prior detention was unlawful.

## **Duch's Appeal against Order of Provisional Detention**

On August 23rd, Duch's defense team, Mr. Kar Savuth and Mr. François Roux, lodged an appeal challenging the Order of Provisional Detention. The appeal to the Pre-Trial Chamber focused on the implications of Duch's prior detention by the Military Court for 8 years, 2 months and 20 days. They submitted that this lengthy detention violated Cambodian law and international standards for the protection of human rights. They argued that the Co-Investigating Judges erred in ordering Duch's provisional detention because they had "a duty to take into account the eight years [Duch] had already spent in detention." Furthermore, they claimed that the requirements for provisional detention (e.g. risk of pressure on witnesses) had not been met. They requested Duch's release on bail and an award of either compensation or sentence reduction in recognition of the violation of his rights.

## **Charging of Nuon Chea and Order of Provisional Detention**

On September 19th, the police arrested Nuon Chea in execution of an arrest warrant and officials brought him before the ECCC. That same day, the Co-Investigating Judges charged him with crimes against humanity and graves breaches of the Geneva Conventions (war crimes). The Co-Investigating Judges concluded that Nuon Chea had committed these crimes as inter alia the Deputy Secretary of the Communist Party of Kampuchea, a member of the CPK Central and Standing Committees, and the acting prime minister and Vice Chairman of the CPK Centre Military Committee. In response to the Co-Prosecutors' request that he be placed in provisional detention, the Co-Investigating Judges ordered Nuon Chea's provisional detention due to the likelihood his release would disrupt the public order, would

threaten his personal safety, and would place him in a position to threaten witnesses and/or to flee.

### **Appeal of Nuon Chea**

On November 8th, Nuon Chea's defense team, Mr. Son Arun and Mr. Michiel Pestman, lodged an appeal challenging the Order of Provisional Detention. They have challenged the order on two grounds. First, they argue that the Co-Investigating Judges infringed Nuon Chea's fundamental rights by accepting his waiver of legal assistance at the detention hearing. They argue that Nuon Chea could not have validly waived his right to representation because of: (a) his ill health; and (b) the Judges' failure to explain the consequences of such waiver. Second, they argue that the requirements for provisional detention have not been met and that the detention order "was not factually motivated" because the Co-Prosecutors and the Co-Investigating Judges failed to substantiate the alleged risks of flight, of interference with witnesses, and of a threat to public order or to Nuon Chea's personal safety.

### **Charging of Ieng Sary and Ieng Thirith and Orders of Provisional Detention**

On November 12th, the police arrested Ieng Sary and Ieng Thirith at their Phnom Penh villa in execution of an arrest warrant and officials brought them before the ECCC. On November 14th, the Co-Investigating Judges charged Ieng Sary with crimes against humanity and grave breaches of the Geneva Conventions (war crimes) and Ieng Thirith with crimes against humanity. The Co-Investigating Judges concluded that Ieng Sary had "exercise[ed] authority and effective control over the Ministry" as the Minister of Foreign Affairs, while Ieng Thirith had been the Minister of Social Action. The Co-Investigating Judges concluded that the 1996 Royal Pardon did not cover offenses within the jurisdiction of the ECCC and that it did not establish an obstacle to prosecution. The Judges ordered that both Charged Persons be placed in provisional detention, dismissing bail orders as insufficient to ensure their presence at trial.

### **Charging of Khieu Samphan and Order of Provisional Detention**

On November 19th, the Co-Investigating Judges charged Khieu Samphan with crimes against humanity and grave breaches of the Geneva Conventions (war crimes). The Co-Investigating Judges concluded that Khieu Samphan had committed these crimes as the Chairman of the State Presidium, a leader within the Centre Political Office, and as a full rights member of the Central Committee. In response to the Co-Prosecutors' request that he be placed in provisional detention, the Co-Investigating Judges ordered Khieu Samphan's provisional detention. The Judges concluded that there are well-founded reasons to believe that he is criminally responsible for the acts with which he is charged as he "facilitated and legitimated... [Through public approbation of the regime's policy and his denial in international forums] the continued perpetration of criminals acts throughout Cambodia."

### **Pre-Trial Chamber Hearing and Decision on Duch's Appeal**

On November 20th, the Pre-Trial Chamber held a public hearing on Duch's appeal. Many members of the public and representatives of organizations and the press attended. On December 4th, the Chamber pronounced its decision, dismissing Duch's appeal. The Judges found that the Chamber had a duty to take a prior violation by an independent organ into account in ordering provisional detention only if the ECCC had "accepted" the act or had "acted in concert" with the said organ. They found no such evidence in this case. They concluded that the Chamber did not have jurisdiction to review the legality of the prior detention because the ECCC Law makes no provision for interaction between the ECCC and the Military Court. They rejected the defense's request for leave on bail, ordering his continued provisional detention.

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# THE RENAKSE PETITIONS: SUGGESTIONS FOR FUTURE USE

*Amy Gordon*

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After the liberation of Cambodia in January 1979, the People's Republic of Kampuchea (PRK) became the de facto government of the country. The PRK was created from the Salvation Front, a group that had formed in December of 1978 with the goal of overthrowing the Pol Pot regime. On October 5, 1982, the Salvation Front established a Research Committee into the Crimes of the Pol Pot regime. It was tasked with preparing an overview of crimes committed under the Pol Pot regime and compiling documents that could be disseminated nationally and internationally to raise awareness about these crimes.

The Research Committee was established chiefly to collect evidence that could be used to persuade the U.N. to deny recognition to the Khmer Rouge as Cambodia's representative to the U.N. and to convince other countries to recognize the suffering of the Cambodian people and bring the Khmer Rouge leaders to justice. The Research Committee's findings were included in a Report that was adopted by the National Assembly, which then called for the people of Cambodia to further "disclose" the crimes of the Khmer Rouge. As a consequence, public meetings were held around the country at which victims' personal accounts were gathered in the form of petitions. These petitions are sometimes referred to as the *Renakse* documents or the *Renakse* records.

## **Uses for the petitions in the Khmer Rouge Tribunal**

There are a variety of roles that the petitions could potentially play in the Extraordinary Chamber in the Courts of Cambodia (ECCC or Khmer Rouge Tribunal). The following analysis will discuss several ways in which the petitions could prove useful in the ECCC.

### ***Source of information for investigations***

The substance of the petitions varies, but those that contain more detailed information could be used by the Investigating Judges as a source of information. Similarly, petitions from communes or from groups could help guide investigators in determining where to conduct their investigations. Some petitions also describe the methods of killing and of torture that the Khmer Rouge employed, and the investigators could use these petitions as a basis for further research into Khmer Rouge tactics and specific crimes.

### ***Means of identifying potential witnesses***

In addition to providing leads for investigators, the petitions could be used to identify potential witnesses. It is still possible to find petitioners who are willing to discuss their experiences. Moreover, given that in 1983 they were willing to speak openly about their experiences, it is possible that the petitioners will again be willing to testify in court.

### ***Means of identifying victims***

As with identifying witnesses, the petitions could provide useful information for identifying victims who wish to participate in some capacity in the Tribunal. Victims will be able to lodge complaints or join the action as civil parties. Lodging a complaint does not require that the victim participate any further in the investigation or in the court proceedings. Joining the action as a civil party requires that the victim become a party to and participate in the trial. Due to the potentially large number of victims who could claim compensation for damages suffered and due to the lack of sufficient funds to provide compensation to everyone deserving of it, civil parties to ECCC criminal trials will not be able to obtain monetary compensation. Symbolic and collective reparation will be available, but the details have yet to be determined.

### ***Evidence at trial***

Another possible use for the petitions is as



evidence during the trials. According to the ECCC Internal Rules, unless otherwise provided, all evidence is admissible at trial. Under Cambodian criminal law, the rules of evidence are similarly permissive. Thus, the ECCC, following both Cambodian and more general civil law practice, has relatively lenient rules concerning the introduction of evidence at trial, and the prosecution might be able to find a way to introduce the petitions.

### **Possible Uses for the Petitions in Restorative Justice Approaches**

In addition to using the Renakse petitions in some form in the ECCC trials, the petitions could play a role in restorative justice mechanisms or in other attempts to address the past. Craig Etcheson, an expert on the Cambodian genocide, believes that the collection of the petitions and the work of the Renakse Research Committee during 1982 and 1983 constituted a type of truth commission. Etcheson explains the Committee "interviewed people all over the country, compiled statistics on the damage to Cambodia's infrastructure that was done during the Khmer Rouge regime, collected information about who killed whom, where and when, exhumed mass graves, studied Khmer Rouge documents," and compiled all this information in a report, which it presented to the government; thus acting somewhat like a classic truth commission.

However, as Etcheson points out, very few people in Cambodia know about the work of this "truth commission" so one of the main goals of such a Mechanism—publicizing information in an attempt to ensure that all of society knows about the past—was not fulfilled. Moreover, the work of the Committee seems relatively one-sided insofar as the Committee does not appear to have elicited testimony from Khmer Rouge cadres.

The petitions could serve several functions in a future truth commission. For instance the petitions could provide a useful means of identifying victims who might want to testify in a truth commission. Moreover, if the truth commission were to hold

hearings in communes around the country, the petitions could offer a useful guide for determining which communes the commission should target. Finally, the petitions themselves could be entered into the record of the truth commission, not to provide a definitive account of what happened under the Khmer Rouge regime but to serve as an historical record of the response of the PRK to the genocide and to offer to the victims some sense that their original testimony was not in vain.

In addition to playing a role in a formal truth commission, the petitions could be the foundation for other activities recognizing the victims who authored the petitions and who evidently received little recognition, official or otherwise, for their suffering and willingness to speak about it. Findings ways to educate people about the petitions and to offer some type of recognition to the petitioners could prove valuable both to victims and to society at large.

Several means exist for publicizing the petitions and appealing to the petitioners. For instance, an NGO such as DC-Cam could use its extensive country-wide networks and media influence to teach people about the history of the petitions. Staff could write newspaper editorials, encourage radio and television shows to discuss the petitions, and refer to the petitions in interviews about the ECCC or other transitional justice issues. Additionally, many NGOs are currently conducting public fora about the ECCC; information about the petitions could be included in these. NGOs could also provide information about the petitions on their websites, as a source both for victims who are trying to learn about the fate of the petitions and for outside researchers curious about official attempts to respond to the Khmer Rouge regime.

In addition to more general activities aimed at increasing overall awareness of the petitions and the Research Committee's work, NGOs or even the government could take action targeted at the petitioners. Before deciding on a specific course of action, more research is probably necessary to determine the interests of the petitioners and thus

figure out an appropriate way of addressing their needs. If for instance, the petitioners want official recognition for their suffering and for their participation in the collection of the petitions, NGOs or other interested parties could try to lobby the government to pass some sort of resolution or make some sort of formal statement recognizing the Renakse documents and the victims who told their stories. Furthermore, if victims wanted to discuss either their experiences during the Khmer Rouge or their experiences writing the petitions and speaking with members of the Research Committee, an NGO could start a program related to the documents and do workshops with petitioners around the country. If most petitioners are mainly curious about the fate of the petitions, an NGO, particularly one with a strong country-wide network of contacts, could take on the task of meeting with commune chiefs and explaining to them the history and current status of the petitions, so that the chiefs could then pass on the information to their community members.

The Renakse documents offer insight into the suffering endured by millions of victims of the

Khmer Rouge regime, the PRK government's reaction to the crimes committed by the Khmer Rouge, and the attitude of the international community toward those crimes. While not regarded as such at the time, the process of collecting petitions in 1983 and the other work of the Research Committee could be viewed as a form of truth commission. At the very least, educating Cambodians about the Renakse documents and providing petitioners with information about the fate of the petitions are important steps toward building an historical record both of the Khmer Rouge regime and of the response of the Cambodian government to the genocide. As with other attempts to promote reconciliation and foster healing—such as the building of memorials and the declaration of days of commemoration—the Renakse documents should not be lost to history but should become part of Cambodia's history and be used, to the extent possible, to further the goals of reconciliation and recovery.

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# VICTIM PARTICIPATION PROJECT

*Farina So and Sarah Thomas*

## Introduction to Victim Participation

The Internal Rules of the Extraordinary Chambers in the Courts of Cambodia (ECCC) provide for the participation of survivors of the Democratic Kampuchea regime in the upcoming tribunal proceedings. This provision for victim participation is to be applauded, as it allows survivors to play an active role in the process of achieving justice through assisting the ECCC in its task of trying senior leaders and those most responsible. This opportunity will, hopefully, provide survivors with peace of mind and help the healing process continuing in Cambodia to this day. Elaborating on the Internal Rules, on October 5th, 2007, the ECCC issued a Practice Direction on Victim Participation. It provides for the participation of survivors in three ways: (1) by volunteering to be witnesses (namely, by giving live testimony about crimes suffered or witnessed);

(2) by filing complaints (namely, by providing the Co-Prosecutors with factual information to aid prosecution); and (3) by applying to become civil parties (namely, by applying to join the proceedings as a party and to claim collective or moral reparations).

The Practice Direction contains a Victim Information Form (the "Form") for survivors to submit to the ECCC Victims Unit. Using this Form, survivors may provide inter alia their personal information, details of crimes suffered or witnessed, and their preferred mode of participation in the proceedings (as a witness, complainant and/or civil party). In addition, survivors applying to be civil parties may propose their preferred form of "collective and moral" reparations. Appropriate proposals include creating a national memorial, establishing a mental health clinic for victims, or printing commemorative banknotes. The Practice



Cham Muslims filling out complaint forms at DC-Cam

Direction requires the Co-Prosecutors to contact every complainant informing them of their decision whether to accept or reject the complaint within 60 days of registration. There is, however, no clear requirement that the Victims Unit or the Co-Investigating Judges contact voluntary witnesses and/or civil party applicants. The ECCC Rules and Procedure Committee should consider an amendment to the Internal Rules to rectify this discrepancy.

The Center considers it very important that survivors assist the ECCC in its task of trying senior Khmer Rouge leaders by completing the Form. Furthermore, by contributing to the ECCC's archives, survivors can participate in the creation of a vast historical record of the crimes of the Democratic Kampuchea regime. This will help improve understanding of the period and create a valuable resource for future generations. Survivors should be aware that the ECCC will select only a small number of survivors to participate in the trials.

If you choose to complete the Form and the ECCC fails to select you, this does not mean that it does not believe or value the information that you have provided. The ECCC has limited resources, a short time frame, and focuses on senior Khmer Rouge leaders and those most responsible for crimes from 1975-1979. Therefore, the ECCC may not have the resources or the power to charge the person responsible for the crime against you or may only charge the responsible person in relation to crimes committed elsewhere or at another time.

### **Overview of the Center's Recent Activities Relating to Victim Participation**

Despite the issuance of the Practice Direction less than two months ago, the Documentation Center of Cambodia has already commenced efforts to promote the participation of survivors in tribunal proceedings. The Center has hosted a conference on victim participation and conducted a number of field trips to inform remote and impoverished communities of their rights. The Center does, however, play only a limited role in victim participation in

tribunal proceedings. We are not a victims' rights association and we cannot provide legal representation to survivors. We seek only to inform survivors of their participation rights and to assist them in completing and filing the Form with the ECCC Victims Unit. We have considerable experience in doing so, having already assisted more than 450 survivors. Due to our established contacts with survivors of the Democratic Kampuchea regime and possession of the Renakse Petitions, we believe that the Center has an important part to play in assisting victim participation. Examples of past and ongoing efforts are detailed below.

From October 24th to 26th, the Center hosted 280 Cham Muslim *Hakims* (judges) and *tuans* (religious teachers) in Phnom Penh for a conference on "The Progress of the ECCC and Victim Participation." This conference formed part of the Center's Cham Muslim Oral History Program, convened by Farina So. Its purpose was to inform survivors of their participation rights and to assist them in registering with the Victims Unit. The conference explained the place of victim participation in the tribunal process. Staff at the Center provided participants with a short Victim Participation Information Sheet. Thereafter, the participants split into groups of twenty, each supervised by a staff member, and those who wished to complete the Form had an opportunity to do so. The vast majority—200 of the 280—of participants chose to complete the Form. Upon completion, staff collected the Forms and placed them in sealed envelopes for submission to the Co-Prosecutors. On October 26th, DC-Cam staff met with the Co-Prosecutors to deliver the Forms.

After the conference, the Center contacted a number of participants to gain feedback. Many participants expressed their satisfaction with and enthusiasm for the conference and its goals. After attending the conference, Sin Kha, 58, from Phnom Penh, told her children and other villagers of her experiences under the Khmer Rouge and of the ECCC's provision for victim participation. She said: "I want to educate the young generation about the

Khmer Rouge regime, so the old should tell them about the regime." She expressed her joy at the possibility of being involved in seeking justice for her brother and victims in general. Similarly, Toloars Smael, 52, from Kampong Cham, organized a meeting about the Conference in his mosque and told his people about the importance of complaints filed by Cham Muslims. Most participants did not fear filing complaints or civil party applications and many, such as Smas Smael, 58, from Kampong Cham, and Ker Math, from Kampong Chhnang, stated that they were eager to appear before the ECCC, if requested.

### **Ongoing and Future Activities of the Center Relating to Victim Participation**

In past weeks, DC-Cam has been reaching out to members of other ethnic minorities in the hope of gathering information that might support an all-important charge of genocide. Thus far, the Co-Investigating Judges have announced charges of crimes against humanity and war crimes only. Although another international criminal tribunal has stated that there is no hierarchy of international crimes—meaning that, as a matter of law, a charge of crimes against humanity is just as grave as a charge of genocide: the general public widely perceives genocide to be "the crime of crimes." According to a recent *Cambodia Daily* article, many Cambodians feel anger at the lack of a charge of genocide. To be convicted of genocide, the accused must have committed certain acts, including killing members of a group, "with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group." As such, the Center has made field trips to the Vietnamese community in Prey Veng, the Chinese community in Kampot, the Stieng community in Kampong Cham, the Mil community in Kratie, and the Prov community in Ratanak Kiri.

The Center is in a unique position to assist the Co-Prosecutors in building cases against senior leaders and those most responsible for particular crimes, as it has been working with and interviewing a wide variety of survivors of the Democratic

Kampuchea regime for over 10 years. Many of the Center's interviews indicate, for example, that the Khmer Rouge specifically targeted members of ethnic minorities for execution and other abusive treatment, such as prohibiting the practice of their customs. To provide an example, a Cham Muslim hakim and farmer, 54, from Kampong Cham, tells in his interview of how, in June 1978, the Khmer Rouge took a number of Chams by oxcart to a port near his village in the Eastern Zone for execution. According to the hakim, the Khmer Rouge selected only Chams for this fate and released any claiming to be of Khmer ethnicity. He states that in 1980, one year after the fall of the regime, he saw the skulls and bones of those killed.

In 2008, the Center plans to expand its efforts to promote victim participation with the launch of a new project, the Victims Participation Project, to assist at least 10,000 survivors of Democratic Kampuchea in registering with the Victims Unit as witnesses, complainants and/or civil party applicants. In particular, the Project will focus on distributing Forms to and assisting the over one million individuals who signed the so-called "Renakse Petitions" in 1982-3. These petitions detailed the crimes of the regime in an effort to persuade the United Nations to deny the Khmer Rouge the Cambodian seat in the General Assembly. The Center considers that such a project will help ordinary Cambodians to participate in the process of bringing the leaders of Democratic Kampuchea to a formal legal accounting and in re-establishing the less formal "truth commission" begun during the 1980s by the "Renakse Petitions." The experience gained by the Center's staff in conducting outreach activities relating to victim participation this year should certainly provide a sound base for next year's expanded efforts.

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***Sarah Thomas is a DC-Cam Legal Associate and Legal Fellow from Columbia Law School.***

# TRANSPERANCY ALWAYS

*Norman Henry Pentelovitch*

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On November 14th, the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) held a "directions hearing," which was aimed at ensuring readiness for the first public hearing of the ECCC. The ECCC previously scheduled the hearing to be held in public, but it reversed course and the hearing was closed to the public. The Pre-Trial Chamber attributed the change to a request by the prosecutors and defense attorneys. The Court's internal rules specify that the hearings of the Pre-Trial Chamber are to be held in private unless a judge or party requests a public hearing, which the Pre-Trial Chamber may then approve. If such a request is made, the Pre-Trial Chamber can decide whether or not it should be in public.

The Pre-Trial Chamber, as well as the Prosecutors and the Defense Support Section, should be working to make the proceedings of the ECCC available to the public. Particularly given recent criticisms of the court for withholding a United Nations Development Programme (UNDP) report commenting on misallocation of funds and improper hiring practices, the ECCC should be taking every opportunity possible, consistent with fair and impartial processes of justice, to make all aspects of the Tribunal public.

There has also been criticism from various civil society groups of the discretion that the Tribunal can exercise to keep its proceedings private. For instance, the rules say that judicial investigations will not be conducted in public, but that the Co-Investigating Judges can issue information about a case to the public to keep the public informed. Similarly, the rules state that the Co-Prosecutors may provide the public with an objective summary of information contained in their submissions, but are not required to. The reason for such latitude is that the court is "mindful of the need to ensure that the public is duly informed of ongoing ECCC proceedings.

Both of these rules have a presumption of confidentiality that must be overcome by a specific effort to make proceedings public. The decision to close the "directions hearing" to the public reflected a lack of such an effort, and potentially sets a dangerous precedent for future transparency.

Many scholars have noted that international criminal tribunals, particularly "hybrid" tribunals such as the ECCC (and the Special Court for Sierra Leone), provide the opportunity for domestic legal systems to utilize the example set by the Tribunal as a standard which other judicial processes in the country can aspire to. By keeping proceedings, even specialized proceedings like a "directions hearing" private, no lessons can be learned and no examples can be set for the Cambodian legal community.

The fact that a "directions hearing" was strictly a procedural matter as opposed to a substantive one is all the more reason to make it a public process. Much of the trial proceedings of the ECCC will occur beyond the view of the public. There are good reasons for doing this in some cases, such as protecting witnesses from reprisal, or protecting victims from the prying eyes of the public when the victims request privacy. However a judicial process is a series of steps, from investigation, to indictment, to trial, to decision, to sentencing, with numerous sub-steps along the way. Attempting to demonstrate a fair judicial process cannot be accomplished by showing fragments of the whole.

A study conducted by a Cambodian NGO in 2006 has found that there is not a widespread understanding of judicial processes in Cambodia. Given the country's complex legal and political history—characterized by a fusion of different legal traditions and series of different constitutions—that finding is hardly a surprise. As much as possible, the ECCC

should be striving to take advantage of every opportunity to open its proceedings to the public in order to help Cambodians begin to understand what a judicial process looks like. Some may argue that only the most important and determinative of judicial proceedings should be made public to avoid confusing Cambodians about what is occurring at the Tribunal. However, that argument fails to account for the overall effect that a broad dissemination of information about the Tribunal can have.

By sensitizing Cambodians to the fact that proceedings are occurring at all, it may be more likely that as the trials begin Cambodians will already have a sense of how the judicial process works and

be in a better overall position to assess the trials and judge whether justice is done. The Pre-Trial Chamber, Co-Prosecutors, Co-Investigating Judges, and other organs of the court should capitalize on every opportunity to make information regarding the ECCC public that won't be prohibitive of fair and impartial justice, be it a preliminary hearing or a decision on criminal culpability. The ECCC is a tribunal for the Cambodian people, and the actions that it takes should reflect this mandate.

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## WHY THE ECCC OFFICE OF ADMINISTRATION WOULD BENEFIT FROM BEING STRUCTURED MORE LIKE A "REGISTRY"

*Anne Heindel*

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A spate of recent news stories has made public growing concern among ECCC officials and outside observers about the preparedness of the administrative arm of the Extraordinary Chambers in the Courts of Cambodia (ECCC) to handle the Court's increasing judicial workload. In June, two reports critical of ECCC management were issued by different groups of international experts. One of those groups - comprising two independent experts in administration - visited the ECCC in late May to assess the preparedness of the Court to conduct judicial proceedings. This Assessment Team's report remains confidential except for a short summary of its recommendations. Nevertheless, this summary, together with press accounts of the findings, make it clear they believe there are "serious flaws" in the Court's administrative leadership and reporting structures.

At the ECCC, general administrative functions are the responsibility of the Office of Administration (OA). In addition to hiring and supervising Court personnel, the OA supports the Court's legal organs by serving as the official channel for both internal

and external ECCC communications, maintaining a database containing copies of all case files, preserving and storing evidence, ensuring security, monitoring the conditions of detention, training Court staff, and providing a variety of other physical and administrative requirements (including supplies, equipment, facilities management, information technology, and transportation).

### **Current Administrative Organization**

The OA is headed by a Cambodian Director and an international Deputy Director. The Director of the Office is responsible for the OA's "overall management," except with respect to "matters that are subject to United Nations rules and procedures." The Director's responsibilities include hiring Cambodian staff and requesting their appointment by the Cambodian Government. The Deputy Director is responsible for the administration of all international components of the Court, including the recruitment and administration of international staff. In fulfilling these responsibilities, the Director and the Deputy Director are required to "cooperate in order to



ensure an effective and efficient functioning of the administration.

Despite the OA leadership's reportedly cordial and constructive working relationship, the split authority between the national and international "sides" of the office with regard to budget, hiring, and staff reporting appears to be undermining their best efforts to meet the daunting challenges of running a complex new tribunal. According to news accounts, the Assessment Team has determined that the organizational division "serves only to constantly hinder, frequently confuse and certainly frustrate the efforts of a number of staff on both sides of the operations." Areas of concern include, among other things, OA capacity for witness protection, document management, victim support, and detention-facility oversight. Additionally, courtrooms remain unfinished, audio/video equipment has not yet been installed, and translation services are considered woefully inadequate.

#### **Alternative Administrative Organization**

At most courts with mixed national and international jurisdiction (called "hybrid" courts) as well as international courts, Registries are responsible for administrative functions. Two aspects of the way these Registries are structured offer insights into how the OA could be better organized to function more efficiently.

#### ***Unified and Accountable Leadership***

The feature that most clearly distinguishes a Registry from the OA is the fact that a Registry's leadership, and consequently its reporting structure, is unified under one court official. For example, the Rome Statute provides that the International Criminal Court's Registry "shall be headed by the Registrar, who shall be the principal administrative officer of the Court." Unified leadership is arguably not only an important but also an essential ingredient of a well-run administrative office. Conversely, a lack of clear authority results in no one taking "ownership" of essential tasks.

For example, for the first three years of operation of the Special Panels for Serious Crimes in East Timor --a hybrid court similar in many respects to the ECCC

--there was no central administrative authority to make and bear responsibility for core management decisions. Expert observers have attributed many of the Panels' severe organizational problems to this gap. Administrative and management functions were instead shared between the UN mission and the national authorities, with both sides deferring to the other's jurisdiction when problems arose. These difficulties were partially overcome only after the role of Judicial Coordinator was created and staffed by a well-qualified official. In the words of that official, the split in authority created an environment where "the chain of command was not clear, lines of responsibility were not always apparent, and the duty to sustain and support the process was often undefined."

As noted by the Assessment Team, similar weaknesses in the OA are attributable to its divided structure and split leadership, creating a confusion of roles and responsibilities between the two top officials. As a consequence, no OA official has a sufficient mandate to take action essential to the Court's early operations or to be held accountable for his or her failure to do so.

#### ***Judicial Coordination and Oversight***

A second major difference between the OA and a Registry is the fact that a Registrar works in close coordination with, and under the authority of, the court's head judicial officer, usually called the President. The President's supervisory authority makes the Registrar directly accountable to the judicial arm of the court, ensuring that judicial concerns are heard and addressed. Moreover, because the Registrar acts on behalf of the President, he or she has a powerful mandate to make and implement decisions necessary to ensure the effective operation of the court.

At the ECCC, neither the Framework Agreement between the UN and the Cambodian Government nor the law establishing the Court, create a single office of President. They create instead a Cambodian President of each of the Pre-Trial, Trial, and Supreme Court Chambers, but none of these officers has responsibility for overseeing the OA. The Internal

Rules partly remedied that problem by establishing a "Judicial Administration Committee" made up of three national judges and two international judges, in which the OA Director and Deputy Director participate "in a consultative capacity." This Committee is mandated to "advise and guide the Office of Administration concerning activities relating to the administrative and judicial support provided to the Office of the Co-Prosecutors, the Office of the Co-Investigating Judges and the Chambers, including the preparation and implementation of the budget."

However, the Judicial Administration Committee's authority to "advise and guide" does not institutionalize the OA's accountability to the judicial organs, and it does not guarantee their regular coordination. Consequently, the Committee's powers may not be sufficiently robust to solve the ECCC's current management problems. It is worth noting that the International Criminal Tribunal for the Former Yugoslavia has a Management Committee that assists coordination with the Registry, but the court's President also has express "supervisory" authority over the Registry's activities.

#### **Recommendation for an ECCC Registrar**

The OA would clearly benefit from having a more well-defined chain of command. In theory, this could be accomplished by carefully delineating the responsibilities of its leadership in all areas. The

United Nations Assessment Team has made this recommendation, emphasizing the need to "clarify the responsibilities of the Director and the Deputy Director to ensure more effective decision-making, preferably by their agreeing to divide responsibilities for certain key areas between them and that the staff working in each of those areas should report directly to the one of them responsible for that area."

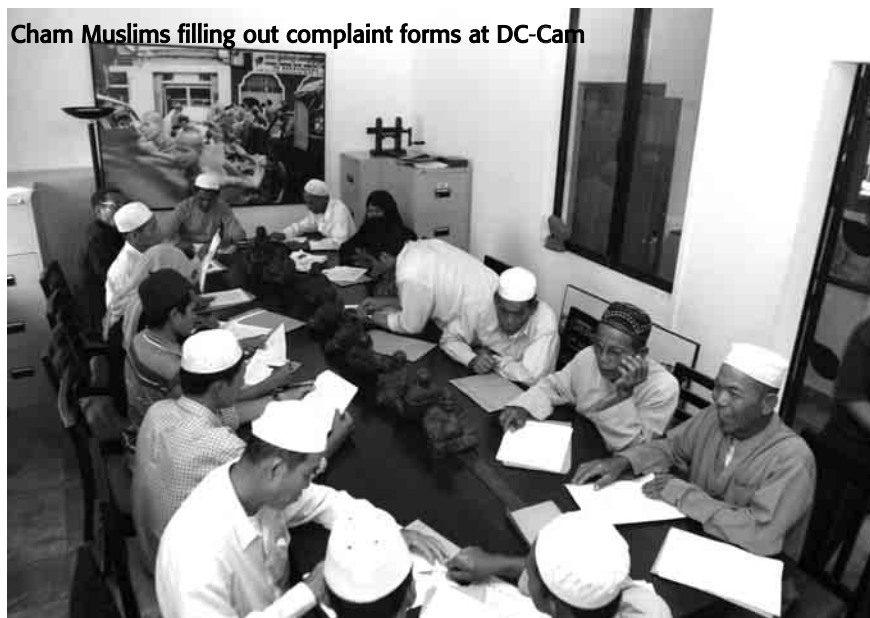
However, even if the roles of the Director and Deputy Director were clarified, the split of day-to-day authority between the national and international sides would likely still impede the ability of the OA to act decisively. For this reason, it would be preferable to create a new Registrar position with primary oversight authority over the whole of the OA, and staffed by someone with demonstrated experience in court administration. This would also go a long way toward implementing another of the Assessment Team's recommendations: combining the functions of the parallel national and international administrations.

At the same time, the experience of the international(ized) courts suggests that the OA would be more effective if its leadership was provided both the mandate and the responsibility to make decisions under judicial authority. The Assessment Team has therefore recommended that a liaison or resident judge be given the power to provide the OA "decisions and directions on matters concerning

judicial administration." Due to the importance of including both international and Cambodian views, it may be advisable to give this responsibility to a Presidency made up of one international and one Cambodian judge. A dual Presidency with supervisory authority over a unified administration would also help address concerns about maintaining the current balance of national and international decision-making in the OA.

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**Cham Muslims filling out complaint forms at DC-Cam**

# MAKING MEMORY ACCESSIBLE: A PUBLIC CONTEMPLATION OF REPARATIONS IN CAMBODIA

*Natalie Senst*

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Rarely are victims of mass atrocity given a voice in the international legal arena. Yet victims' rights to remedy and reparation are increasingly well established in international law, as demonstrated by United Nations' adoption in 2006 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law. Importantly, the Internal Rules of Extraordinary Chambers in the Courts of Cambodia (ECCC) follow this trend in recognizing that victims of the Khmer Rouge (KR) regime have a right to seek reparations from the court as civil parties. But this right means nothing if (a) Cambodians do not know about it, or (b), Cambodians do not make use of it. Cambodians must recognize the importance of this right and seek its implementation in the context of the ECCC. And there is no time to waste.

Thirty years after the genocide, the Cambodian public is being presented with the opportunity to speak up in an internationally supported legal tribunal about their rights and needs in the search for justice. The chance for participation has a fast-approaching deadline, as all civil party applications to the ECCC must be made prior to the start of a trial. This means that KR victims have only a few months to learn the scope of their rights in relation to reparation if they want to apply with some knowledge of what rights they are seeking to fulfill and what outcomes they are looking to achieve.

The ECCC is a hybrid of international and Cambodian criminal legal systems. This tribunal has the authority to put on trial senior KR leaders and persons «most responsible» for the atrocities committed by the Khmer Rouge from 1975 to 1979. The tribunal's constitutive documents borrow from the International Criminal Court (ICC) by including a Victims' Unit

and the opportunity for victims participate in trial proceedings. However, unlike the ICC's Rome Statute, which broadly defines reparation as inclusive of individual restitution, compensation, and rehabilitation, the ECCC's Internal Rules limit the awards victims can seek through the tribunal to collective and moral reparations. The simple and very practical reason behind this limitation is that the ECCC has neither the funding nor the time to be able to organize a process for offering individual monetary reparations to all of the KR regime's victims.

The insufficient ability to repay Cambodia's many victims has already been demonstrated. Two years ago, a single Japanese philanthropist announced the creation of a \$1.3 million trust fund for KR victims. As the donor requested, the money was distributed to 10,000 victims at \$100 each. Just thinking about the selection process for the lucky 10,000 is a reminder of how quickly such a large sum of money is reduced to too little for too few. Responses to this news in *The Cambodia Daily* newspaper were concerned that there were better, collective, ways for this money to have been used.

This collective opportunity is before Cambodians now, so long as they demand it from the tribunal. It is imperative for victims to get serious about the form of reparation they desire and to apply to the tribunal as civil parties in order to seek such reparation. As highlighted in ECCC Internal Rule 110, "[t]he enforcement of reparations shall be made at the initiative of a Civil Party." Thus, if victims do not seek reparations as civil parties, no one else will. But before Cambodians can make their request, they must consider the form of reparation they wish to seek at the ECCC. Factors that will affect the type of reparation requested include the limited scope of the term

"reparation" as set out in the court's Internal Rules, the amount of funding available, and the needs of Cambodians today given the significant time delay since the occurrence of the atrocities. Based on other societies' experiences in providing collective reparations, it appears likely that forms of reparation focusing on memorialization are likely to be the most effective at reaching and providing the greatest benefits to Cambodians.

### **Memorial as Reparation for Lost Memories**

Responsible for more than the destruction of countless innocent lives, the Khmer Rouge regime also stole memories. To remember is therefore to reclaim that which was taken. Memorialization is inherently a collective action in any of its material or symbolic manifestations and can be attached to a wide variety of social development projects from which Cambodians can really benefit. Memorialization is thus not simply the creation of monuments. Moreover, memorialization is valuable as a process. This process continued over time works to counter denial and forgetting, and can provide official acknowledgement of past wrongs. The collective act of creating a memorial, of deciding what and how best to memorialize, can have reparative value by helping people to recognize their individually important roles as members contributing to their community.

This is why it is up to Cambodia's KR victims to determine the best combination of reparations to use in the creation of a memorial. Collective and moral reparations can take many forms and can be realized symbolically or in material form, or even as a combination of the two. Scholars in the field recognize that memorialization, in its various forms, can help to achieve acknowledgement, end impunity or rebuild a society.

Cambodia's existing memorials are insufficient. Created under the direction of a foreign General, the best-known memorial sites of Tuol Sleng

and Choeung Ek have failed the Cambodian public to the extent that they were not created from any deference to victims' wants or needs and that their value as national memorials currently seems to come second to their importance as key tourist attractions.

Based on recent interviews with religious leaders, government officials and commune chiefs in Cambodia, all seem eager to support a national effort to make use of memory and seek reparation in the aftermath of the Khmer Rouge regime. Cambodians are now emphasizing the importance of education and the search for truth, especially as the younger generations are growing up with little to no knowledge of this piece of Cambodia's history. Disbelief stemming from the inability to comprehend such massive horrors is common. One man commented that he had brought his son to see the skulls at Choeung Ek, but his son, unable to comprehend such horrors, asked if the bones were made of plastic. A new memorial, chosen by Cambodians, ideally will provide reparative value in its ability to affirm the truth of Cambodia's history during the KR time, be this in material preservation of evidence, or in centers for healing that symbolize a recognition and validation of the traumas Cambodians have endured.

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**Nuns Visiting Choeung Ek Killing Field**

# WHY THE CAMBODIA TRIBUNAL MATTERS TO THE INTERNATIONAL COMMUNITY

*David Scheffer*

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After a decade of turbulent negotiations, which often appeared so futile and yet so vitally important to keep alive, the Extraordinary Chambers in the Courts of Cambodia (ECCC) are now a fact. Lawyers and judges are pursuing justice for the estimated 1.7 million Cambodians who perished during the rule of the Khmer Rouge from April 1975 to January 1979. But it has been thirty years since the killing fields of Cambodia were first littered with their corpses and tilled by the millions of other Cambodians forced into slave labor by the Pol Pot regime. Why should the international community care, especially when so many years have passed, the surviving senior Khmer Rouge leaders are few in number, and Cambodia is at peace? Why invest in a hybrid judicial process fraught with risk and so uncertain in its ultimate outcome? The answers lie in the relentless quest to defeat impunity for the atrocity crimes (genocide, crimes against humanity, and war crimes) that define our collective past and present and that must not shape the future.

My colleague in Phnom Penh, Youk Chhang, who is the Director of the Documentation Center of Cambodia, has written a companion essay explaining why the ECCC matters so much to the Cambodian people. In this essay I briefly explore why the ECCC should matter to the international community. With so many other judicial challenges in the realm of atrocity crimes elsewhere in the world, and with so many other war crimes tribunals requiring the financial and political support of nations, can the international community appreciate and sustain its initial support for the ECCC? Let me offer some answers to that question:

During the years of negotiations which began in 1997, I was often confronted with the cynical

view that the pursuit of justice for the atrocity crimes of the Pol Pot regime was a hopelessly flawed endeavor. I reminded the cynics (and there were so many of them) that we have a supreme responsibility to those who perished in Cambodia to bring the leading perpetrators to justice. I could not in good conscience negotiate the creation of tribunals for the Balkans conflict of the early 1990s, the Rwandan genocide of 1994, the Sierra Leone atrocities of the late 1990s, or the permanent International Criminal Court and at the same time ignore what happened in Cambodia in the late 1970s. Nor should the international community abandon the judicial challenge arising from that horrific assault on the citizens of Cambodia while the world held itself aloof in the aftermath of the Vietnam War. For Americans in particular, the secret bombing of Cambodia during the Nixon presidency, which helped to destabilize that country as the Khmer Rouge were gaining power, leaves us no moral choice but to make every possible effort to achieve some measure of credible accountability for the slaughter that ensued.

If the futile message after World War II was "never again," the more hopeful lesson from Cambodia that the ECCC embodies is, "never forget." Perhaps the most fundamental purpose of the ECCC from an international perspective is that it demonstrates, provided it continues to function pursuant to its constitutional design, which impunity will not prevail in Cambodia for surviving senior Khmer Rouge leaders or others most responsible for the atrocity crimes of the Pol Pot regime. That fact alone sends a powerful signal throughout the world that the international community is getting serious, indeed very serious about accountability for atrocity crimes

and that there is no stopwatch for justice. If the ECCC can administer fair trials, fully respectful of international standards of due process, the judgments of guilt or innocence that emerge will stand as beacons of hope for all victims of such assaults on humankind. They will know that if justice could be rendered in Cambodia—three decades after that nation's apocalypse—then there must be hope that they too can build or find the courtroom that renders credible justice, if not immediately then within the lifetimes of the atrocity lords who must face their reckoning.

The ECCC is such a uniquely crafted court that the international community will focus on whether it fulfills its mandate with objectivity and integrity or whether it succumbs to political influence and manipulation. The ECCC is not an international criminal court. Rather, it is a special domestic Cambodian court that functions in partnership with the United Nations (pursuant to a treaty and a specially designed Cambodian law) and that embraces a great deal of international criminal law and international standards of due process. While the Special Court for Sierra Leone, which was created by treaty between the Government of Sierra Leone and the United Nations, is an international criminal court, the ECCC was designed somewhat differently as a national court of "extraordinary" international character.

Many international observers will watch and monitor how the ECCC will go about its daily tasks of investigation, prosecution, adjudication, and sentencing without falling prey to political intrigues that seem to define every aspect of Cambodian society. There is no question that the ECCC is an experiment, but one for which there really was no viable alternative after years of negotiations. If the ECCC succeeds in achieving credible justice within the Cambodian judiciary, it will demonstrate that international justice can be distributed among national and international courts with greater confidence that we could have imagined a decade or so ago.

Finally, the ECCC is an important test for the United Nations, which is partnered so closely with

the Royal Government of Cambodia in the staffing, financing, and administration of the Chambers. The international community would expect nothing less than the high standards of performance for the ECCC and the Cambodian government that are required by U.N. officials. How the United Nations handles this delicate relationship, which at all times requires patience, perseverance, diplomatic tact, and the defense of the rule of law, will say a lot about the international organization and its ability to manage novel but essential mechanisms of domestic and international justice.

The Cambodia Tribunal Monitor website ([www.cambodiatribunal.org](http://www.cambodiatribunal.org)) is also a unique international venture. It will web cast the trial proceedings of the ECCC and interviews with Cambodian citizens reacting to the trials. By bringing the trials to the forefront of the international audience and to the growing number of Cambodians with access to the internet, the Cambodia Tribunal Monitor serves the larger purpose of ending impunity through education and awareness of the atrocities of the past. It will serve that purpose well if succeeding generations across the globe never forget what happened in Cambodia.

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# HOW TO RECONCILE PUNISHING THE KHMER ROUGE FOR CRIMES AGAINST HUMANITY WITH CAMBODIAN BUDDHIST PRINCIPLES

*Virginia Hancock*

On July 31, 2007, the Extraordinary Chambers in the Courts of Cambodia (ECCC) issued its first indictment, for the charge of crimes against humanity, against a former official of the Khmer Rouge. This was a long-awaited step towards achieving justice and reconciliation for struggling Cambodians. Yet the very existence of the tribunal, formed in 2004 between the U.N. and the Government of the Kingdom of Cambodia, presents an unanswered query to the global community: what should internationalized criminal justice look like in a kingdom that has attempted to institutionalize the Theravada Buddhist religion? The tribunal's ability to convince

Cambodians that it is achieving justice will likely depend, in no small part, on whether its methods can be perceived as being compatible with the religion that a majority of Cambodians adhere to. Issues involving Buddhism thus become exceedingly important if one takes seriously the proposition that one of the purposes of an international criminal tribunal is to promote healing and reconciliation on a national scale.

In Cambodia, there is no clear consensus about the tribunal's compatibility with Buddhism. It was established at the request of the (avowedly Buddhist) government, yet several prominent



Sub-District Chiefs view the ECCC courtroom

Cambodian monks have argued against the establishment of an adversarial criminal tribunal. As might be expected, popular opinion among lay Buddhists in Cambodia is also mixed.

This article contributes to current discussions about the hybrid tribunal by comparing crime and punishment in Theravada Buddhism with the definition and rationale for punishment under crimes against humanity. It shows that the most significant difference between Theravada Buddhism and the international criminal framework stems from the Buddhist doctrine of “no-self,” which, when taken to its logical conclusion, leads to the assertion that neither the victim nor the perpetrator of a crime has individual rights. Thus criminal harm—though wrong and worthy of sanction—cannot be conceived of solely in terms of a culprit and victim, and punishment should not be retributive because no proportional harm can be exchanged. I argue, however, that a community-oriented theory of crimes against humanity is both justifiable as an understanding of crimes against humanity and compatible with Theravada Buddhist principles. I further argue that the forms of punishment under the ECCC may be compatible with Theravada Buddhism if certain conditions such as detailed sentencing guidelines and procedures are met.

### **Crime and Punishment in Theravada Buddhism**

References to crime and punishment in Buddhist doctrine are relatively rare. Despite a long tradition of Buddhist governance in South and Southeast Asia, traditional Theravada Buddhism is arguably more concerned with describing what is right—the *dhamma*—than investigating the constitutive elements of what actions are wrong. The ancient Buddhist monastic code envisions a system of governance and sanction but lacks a clear typology of crimes or punishments.

The two traditional written sources of Buddhist doctrine are the Pali canon and well-known stories about the Buddha in his former lives. The Pali canon is the oldest and most sacred collection of texts in Theravada Buddhism and is viewed by

Cambodian Buddhists as a source of Buddhist law. The canon is divided into three *pitaka* (“baskets”): the *vinaya pitaka* (“discipline” or monastic code); *sutta pitaka* (sermons or sayings of the Buddha); and *abhidhamma pitaka* (discourses on causation and the nature of reality). Of the three written sources of Buddhist law, the *vinaya* (literally “discipline”) arguably corresponds most closely to law as described in Western legal scholarship. However all three sections of the Pali canon are relevant to understanding the Theravada Buddhist conception of crime.

Theravada Buddhism also has a rich “extracanonical” tradition that focuses on the stories of the previous lives of the Buddha. The majority of lay Buddhists are arguably more familiar with the *jatakas* than they are with the Pali canon. The *jatakas* also articulate explicit moral principles and outline a system of sanctions for moral transgression. Most if not all Theravada Buddhists would be familiar with the *jatakas*, either in oral or written form.

Finally, contemporary Buddhist discourse increasingly includes a discussion of Buddhism, crime, and punishment. For example, there is reference to crime and punishment in the context of “engaged Buddhism,” a cross-disciplinary religious movement that focuses on Buddhism as a vehicle for eradicating social and economic injustice. Some scholars and Buddhist practitioners from countries that have experienced recent conflict explore the relationship between Buddhist crimes, punishment, and reconciliation. Although these sources are not part of the traditional Theravada Buddhist canon, this paper draws on their analyses in presenting a tentative framework for understanding the Buddhist attitude towards crime.

### **Popular Opinion in Cambodia**

Based on available research, it is difficult to ascertain whether Cambodians generally believe that the ECCC is compatible with Buddhist principles. Many monks and lay Buddhists are reticent to try former members of the Khmer Rouge, instead



advocating amnesty or forgiveness as the best method of achieving national reconciliation. Venerable Maha Gosananada, well-known for starting the Dhamayeitra peace marches in Cambodia, offered the even more radical prescription that Cambodians should learn to love former members of the Khmer Rouge in a manner prescribed by Buddhism. He explained: "I do not question that...Cambodians loving the Khmer Rouge may be the most difficult attitude to achieve. But it is a law of the universe that retaliation, hatred and revenge only continue the cycle and never stop it." The results of a survey conducted by Jaya Ramji-Nogales in 1997 support the conclusion that Cambodian Buddhists value amnesty and forgiveness in a way that is perhaps incompatible with an adversarial tribunal.

However, it is also possible that Cambodians favor the tribunal as the best way of achieving Buddhist justice, perhaps in the sense of public acknowledgement of wrongdoing. Some prominent Cambodian monks have stated that they favor a trial of the former Khmer Rouge members. Other monks have stressed that prosecution with a fair judicial process may be important for achieving national reconciliation. Many lay Buddhists supported trials for Khmer Rouge leaders in their interviews with the Documentation Center of Cambodia, sometimes making a connection between Buddhist law and contemporary criminal justice. Because Buddhist principles clearly call for some sort of accountability mechanism, a tribunal with international support may be an appealing option because of well-known problems with the Cambodian legal system.

However, it is possible that many individuals who support the tribunal do so because of a misconception about international criminal proceedings. In 2002, the Documentation Center of Cambodia (DC-Cam) surveyed the readers of its monthly magazine, *Searching for the Truth*, about their opinions on accountability and reconciliation for the Khmer Rouge atrocities. Most responders who said they could "forgive" the Khmer Rouge stated that they

could only do so through an international tribunal. However, when questioned about the proceedings of the tribunal it became clear that there were some misunderstandings about the procedures that would be followed. For example, many Cambodians may erroneously believe that a trial is analogous to the traditional Buddhist processes of confession and acknowledgement of guilt. An earlier survey concluded that many Cambodians did not realize that a criminal trial is an adversarial process. Instead, they thought that former members would be assumed to be guilty, and then forced to confess their crimes in public and apologize. DC-Cam highlighted this lack of consensus about whether the tribunals are compatible with Buddhist teachings.

#### **Customary International Law and the ICC Statute: Crimes against Humanity**

"Crimes against humanity" are notable both for the vileness and breadth of their contemplated acts. The judicial rubric defining "crimes against humanity" includes the acts of murder, extermination, enslavement, deportation, torture, rape, or other inhumane acts.

Traditionally, four conditions must be met for successful prosecution of crimes against humanity. The first requirement is a nexus to armed conflict. The second requirement that must be met for a successful prosecution of crimes against humanity addresses the nature of the acts committed, requiring that they were (1) of mass or systematic nature, and (2) directed against civilians. The third requirement is that the acts be committed with some discriminatory intent. The fourth requirement for finding a violation of crimes against humanity was previously understood as a state action requirement, but has now been expanded to include the policies of non-state actors as well.

The ICC Statute requires that "the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population." This element also incorporates some aspect of criminal *mens*

*rea*. While not requiring that the accused had knowledge of “all characteristics” of the attack or “precise details” of the organizational policy or plan, the accused must have had a threshold awareness of the fact of the policy behind the act.

Finally, ICC Statute requires that all crimes, “unless otherwise required,” be committed with the *mens rea* of “intent and knowledge.” A showing of “intent” would require that the perpetrator “mean[t] to engage in the conduct” at issue. “Knowledge” is defined as “awareness that a circumstance exists or a consequence will occur in the ordinary course of events.” Because the ICC Elements of Crimes require that a perpetrator of crimes against humanity acted with “knowledge of the attack” against a civilian population, it is possible that, because of the “unless otherwise required provision,” that Article 30 will have little substantive impact on a tribunal’s understanding of the requisite *mens rea*. Thus an individual would need to have knowledge of the relevant factual background of the “attack” but would not need to know that the attack was definitively “widespread or systematic” in nature.

### **Comparison with Theravada Buddhism**

The acts that can constitute crimes against humanity are also condemned as being unskillful or unvirtuous by Buddhism, which prohibits all forms of violence, both through words and deeds. In fact, a hypothetical Buddhist list of criminal acts would be more comprehensive than that of the ICC Statute. One significant difference is that Theravada Buddhism would eschew violence against all “sentient beings”—which includes animals—rather than focusing only on violence inflicted on humans. Another difference is that a crime cannot be understood merely as being committed “against” humanity; it is an affront to all animals and other entities included in Buddhist cosmology as well.

In addition, whereas the customary international law of crimes against humanity has developed around physical actions, Buddhist law also classifies some forms of bad speech as the highest order of

crime. A hypothetical Buddhist-influenced list of “crimes against humanity” might therefore include the words or gestures of individuals who tell lies to the public that result in the harms listed in the ICC Statute.

Because of the Theravada Buddhist emphasis on the ruler as an instrument for propagating the correct moral order (*dhamma*), a Buddhist conception of “crimes against humanity” might punish state officials more severely than other citizens. In this respect, the hybrid tribunal’s focus specifically on former leaders of the Khmer Rouge would be compatible with Buddhism.

However, the Buddhist crime would not require a nexus to armed conflict or a form of state action. This is because Buddhist political theory differs from customary international law in its approach to state sovereignty. Buddhist political theory deemphasizes the extent to which nation states are truly politically independent, partly as a corollary to classical Buddhist teachings about interdependence and causation. It is therefore unlikely that Buddhism would require a state action nexus, which was included primarily to rebut the presumption that sovereign states should be able to act upon their citizens however they wish.

Buddhist teachings require some form of *mens rea* before a person can be punished for his or her actions. Specifically, the doctrine of *karma* necessitates consideration of a person’s intentions. *Karma* is most commonly understood as “action and result”: every action produces either a positive or negative result in proportion to the nature of the action itself. Unintentional bad acts do not produce the same negative *karmic* results that intentional bad acts will produce. The extent of bad *karma* one accumulates as a result of an action also depends on the degree of intentionality and volition behind the action.

According to traditional Theravada doctrine, intentional bad acts deserve harsher punishment than unintentional bad acts. Thus the worst offenses

in the *vinaya* include killing, thieving, and misclaiming meditative prowess—all require that the act be intentional. Some of the Buddha’s sermons also imply that *karmic* punishment for bad acts is lessened if the actor was acting under a mistaken belief. The doctrine of *karma* thus suggests that Buddhist principles of crime, like customary international law, would predicate punishment for certain crimes upon a showing that individuals knowingly and intentionally engaged in the acts that are prohibited.

Indeed, certain descriptions of Buddhist “crimes” contain elements that are very similar to the mental elements required for crimes against humanity. For example, the *vinaya* states that there are four constituents of a punishable lie: (1) the lie itself; (2) the intent to deceive; (3) the effort to deceive; and (4) the act communicating the untruth. The second and third constituencies, taken together, might correspond to Article 30(2) of the ICC Statute, which predicates criminal liability upon successful showing of the perpetrator’s “intent” to

commit the underlying conduct. The fact that the *vinaya* includes “the lie itself” as an element of the crime might indicate a threshold requirement of knowledge of the crime, similar to the requirement of “awareness that a circumstance exists.” Therefore, under each framework, both the required actions and intentions seem largely compatible.

### **Ignorance, Community, and Moral Rectification: Three Theravada Buddhist Principles of Crime**

This section is modeled after an article on crimes against humanity by David Luban, and postulates that the Buddhist conception of crime is based on three principles: (1) criminal acts must be understood in relation to ignorance; (2) criminal acts harm the community because they violate natural and worldly law; and (3) criminal acts should result in ultimate and worldly punishment. It then draws on these principles in comparing the modern scholarship on crimes against humanity with Theravada Buddhist conceptions of crime.

#### *Criminal Acts Are the Result of Ignorance*



Buddhist doctrine teaches that ignorance is the source of the intention that motivates wrongful actions. The doctrine of dependent origination underlies the Buddha's enlightened insight about human ignorance about the true nature of the universe. Put simply, dependent origination is a statement of causation: everything depends on everything else. The most important aspect of the doctrine of dependent origination is the resulting conclusion that the human ego does not exist. Although sentient beings *believe* their egos exist, in fact the ego is nothing more than a "rapidly changing 'integrated form composed of various elements.'" These elements, described in detail in Buddhist texts, may interact to compose the human ego, but they do not create a substantive (i.e, physically or intellectually permanent) entity or correspond to conceptions of the individual person. This proposition is often referred to as the no-self doctrine (*anatta*).

In terms of understanding the Buddhist attitude towards crime, perhaps the most radical implication of the no-self doctrine is that neither the victim nor the perpetrators have rights. As the scholar Derek Jeffreys argues, "Without a substance, who claims a right?" Thus the harms that criminal sanctions attempt to correct and prevent receive attention because they violate the *dhamma* by increasing the suffering of sentient beings, but not because they have violated, detracted from, or negated the individual *rights* of the victim.

Furthermore, the doctrine of dependent origination, in particular the concept of no-self, implies that wrongful actions are always the result of ignorance. Wrongful actions can only be motivated by human desire for feelings, emotions, or objects—none of which exist in a permanent sense. Because the criminal does not understand the true nature of her actions, she violates the law of *dhamma* and accumulates bad *karma* for this and future lives. A person who understands that all phenomena are impermanent, in contrast, will not be motivated by cravings to act against the *dhamma*.

The argument that Buddhist teachings point to ignorance as the cause of wrongful actions is supported by the fact that the Four Noble Truths and the Eightfold Path, the most fundamental teachings of Buddhism, focus solely on the eradication of ignorance. The Four Noble Truths, which comprise the core of the Buddha's first sermon after enlightenment, are: (1) life is suffering (or painful); (2) suffering is caused by craving; (3) the cessation of craving can cause the cessation of suffering; and (4) the way to end suffering is to follow the Eightfold Path. The Eightfold Path, also referred to as the Middle Way, was the Buddha's guide for curing ignorance. The Path is divided into three categories: (1) wisdom (right view, right intention); (2) ethical conduct (right speech, right action, right livelihood); and (3) mental discipline (right effort, right mindfulness, right concentration). Following the physical and mental prescriptions of the Eightfold Path results in the realization that dependent origination describes



the cycle of birth, death, and the impermanence of the human ego in the present life. Ultimate knowledge of the nature of reality then leads to cessation of craving and attainment of nirvana, or enlightenment. Salvation, like criminality, is understood not in terms of good and bad, but rather in terms of correct and incorrect perceptions of reality.

*Criminal Acts Harm the Community by Violating Natural and Worldly Law*

Buddhist teachings hold that wrongful acts, in addition to causing pain to the victim, result in injury to the community because they disrupt the natural order of the universe. The Pali word *dhamma* refers to the correct order of the universe as revealed in the Buddha's teachings. *Dhamma* is sometimes equated to a "natural law" that is superior to man-made laws such as monastic or state codes. One key aspect of *dhamma* is the duties that individuals owe to one another. *Dhammic* duties also stem from and encompass the truth that all sentient

beings are inherently related to each other. Therefore *dhamma* encompasses both positive and negative obligations. Because the *dhamma* encompasses all sentient beings and their attendant duties, acts that are contrary to the *dhamma* result in harm to the community as a whole.

Buddhist monastic punishment further suggests that criminal acts primarily harm the community. The *vinaya's* harshest punishment is not retribution for the victim, but removal from the monastic community. The most common punishment, again reflecting the relationship between individual actions and communal harms, is ritualized isolation. This system of punishment appears to conceive of criminal harms primarily in terms of their communal, rather than individual impact. Although the victim certainly suffers as a result of the perpetrator's transgression, the method of punishment focuses primarily on repairing or preventing a related harm that was suffered by the community.

*Criminal Acts Should Result in Worldly and Ultimate Punishment*

The doctrine of *karma* holds that individuals who commit bad acts will suffer negative consequences in proportion to the harms they cause. The effects of *karma* may be felt either in this life or the next. In the next life, sentient beings will be reborn as higher or lower forms of life depending on their "karmic balance" when they die. In this life, *karmic* retribution can occur through negative events and through mental suffering and anguish. *Karma* is closely related to *dhamma*, and the *karmic* effects of bad actions are therefore beyond the control of sentient beings.

Both textual and historical examinations of Theravada Buddhism suggest that individuals who commit crimes should be punished by governing institutions, in addition to the punishment they receive as a result of *karma*. The *vinaya* describes flexible punishments that are tailored to provide rehabilitation for the specific crime and can be amended to respond to future transgressions.



Contemporary Cambodian monks also refer frequently to the need to punish former members of the Khmer Rouge in the here and now, rather than relying only on *karmic* justice. Human punishment may thus be appropriate because, while karma metes out justice in the next life, the state still needs to provide correct incentives here and now.

### **Understanding Crimes against Humanity and “Rights” Within a Buddhist Framework**

Given Buddhist teachings on ignorance, causation, and the no-self doctrine, the compatibility of Buddhist thought with prosecutions for crimes against humanity depends largely on whether notions of the victim’s individual human rights are the justification for classifying the culprit’s act as an international crime. An international system of justice that conceives of harm as a loss incurred by the victim differs greatly from the Buddhist notion of harm, which is a disruption to the natural and worldly order. Although *Dhamma* accords the victim a high degree of “worth,” on par with that of all sentient beings, the doctrine of dependent origination questions the extent to which an independent entity has ownership of a set of rights to take an entitlement from. The Buddhist framework locates the harm that results from crime outside the victim, whose suffering is a part of, but does not encompass the full extent of, the harm being addressed through criminalization.

This approach to crime and punishment may initially seem irreconcilable with theories of “crimes against humanity,” which are often cited as a means of protecting individual rights. However, scholarship by individuals such as Hannah Arendt, David Luban, and Larry May suggests that the concept of “crimes against humanity” is premised primarily on the notion that individual actions can harm all humanity—not just the individual victim. Thus a parallel between the two frameworks appears: Buddhism, a religion that offers the “Middle Way” towards enlightened knowledge, rejects a monk or nun whose ignorance is so great that he would intentionally take the life

of another through its eviction of him or her from the *Sangha*. Similarly, contemporary political and legal communities, defined largely by conceptions such as the “social contract” and individual rights, are compelled to hold individuals accountable when their actions negate the purpose of these frameworks.

In each framework the theory of crime and sanction also rests on the assumption that the harm inflicted by the crime encompasses something greater than the victim. That “something” is both defined and characterized by humans: in the Buddhist context, the monastic order, political community, and all sentient beings suffer; crimes against humanity focuses on the social, political, and legal relationships that characterize modern existence. In both Theravada Buddhism and the customary international law of crimes against humanity, the “crime” thus conceptually defines how the perpetrator has deviated from the institutions humans have defined for themselves.

### **Punishment: Rationale and Methods**

#### *The ECCC*

Neither the body of the Statute nor the Elements of Crimes provide substantive explanation of the purposes of punishment, although the preamble to the ICC Statute does reference retribution, rehabilitation and deterrence as rationales. Presumably the Statute and the Elements of Crimes could be supplemented with customary international criminal law, which recognizes four rationales for punishment: retribution, deterrence, rehabilitation and expression of moral condemnation.

The *Extraordinary Chambers Law* and ICC Statute provide only limited guidance on methods for determining the type and severity of criminal sentencing. According to Articles 3 and 38 of the *Extraordinary Chambers Law*, the maximum sentence will be life imprisonment. The ICC Statute states the same, with the qualification that this sentence must be “justified by the extreme gravity of the crime and the individual circumstances of the convicted person.” The ICC Rules of Evidence and Procedure list

aggravating and mitigating factors that can be considered during sentencing, which include the nature of the harm caused, degree of intent, personal characteristics and prior criminal record, and the mental capacity of the perpetrator. The Rules of Evidence and Procedure do not, however, describe the relative weight that should be accorded to these factors.

Finally, the *Extraordinary Chambers Law* references Cambodia's 1956 Penal Code. However, the fact that the Code is rarely used even in domestic Cambodian courts suggests that it is unlikely to provide additional guidance. Thus, although the ICC Statute mandates consideration of the specific context of the crime and the perpetrator, the method that the ECCC will use is unclear.

#### *Theravada Buddhism*

Buddhist punishment is specific to the character of the individual (rather than being driven by principles or facts), the affected community, and is oriented towards future practice and rehabilitation. Deterrence is secondary and capital punishment is forbidden. In the words of the Tibetan monk Samdhong Rinpoche, "Punishment is a training to transform a person." For example, the primary means of punishment in the *vinaya* is an adaptable and community-oriented ritual of probation. The ritual first requires the monk to confess his crime to the community and offer contrition. He then takes refuge in the three jewels of Buddhism and begins a period of physical and spiritual isolation from the community. The length of the punishment is adapted to address the circumstances surrounding the crime as well as the needs of the offending monk. The *vinaya* does not offer a clear sentencing guideline or rule, however, reflecting the fact that Buddhist punishment generally focuses on individual circumstances rather than the application of rigid rules or principles.

Buddhist punishment ideally allows the criminal to atone for her wrong actions through acts of contrition or by committing good deeds. In addition, punishment should focus on accruing good merit

for the future rather than on investigating mistakes from the past. This is partly because the doctrine of dependent origination, or Buddhist causality, makes it difficult if not impossible to assign blame from a practical standpoint. The forward-looking aspect of Buddhist punishment is related to the perceived deterrence benefits of punishment. Even Buddhist societies need to punish criminals, because it will make other people afraid to commit the same acts. From the perspective of the victim, punishment is useful because it helps her understand and eventually forgive the person who harmed her.

Finally, Buddhist punishment should not be confused with legal amnesty. Amnesty can imply forgetting past actions or absolving the criminal of responsibility for those actions. Buddhist punishment requires that the criminal understand, regret, and make genuine attempts to atone for past actions. Likewise, forgiveness should not be misinterpreted as a requirement that victims forget what has happened to them. Although the purposes of punishment are forward-looking, Buddhist teachings do not deny that a redressible harm has occurred.

#### **Reconciling Punishment under Crimes against Humanity with Theravada Buddhist Principles**

Despite possible differences between the two frameworks, the procedures of Cambodia's hybrid international tribunal could yield results that are compatible with Theravada Buddhist principles. This section outlines three key areas of concern: practical differences that might otherwise be overlooked because of normative similarities, the relationship between criminal punishment and victims' retribution, and the need for detailed sentencing guidelines.

#### **Taking Practical Differences into Account**

The Buddhist understanding of punishment is theoretically compatible with expressive, deterrent, and rehabilitative justifications for punishment of crimes against humanity. In practicality, however, the rehabilitative function of punishment might be quite different under the two frameworks. For example, it is difficult to conceive of the rehabilitative benefit

of a life sentence that the international criminal regime might impose on someone who might likely die in prison. The Buddhist framework, in contrast, often includes procedures for apology and contrition that facilitates incremental reentry into society.

Additionally, Buddhist punishment would place greater emphasis on individual circumstances during sentencing. Because Buddhist teachings hold that humans are defined by mental and physical circumstances, punishment that fails to consider aggravating and mitigating factors would fail to fully consider the truth of the issue. Notably, although mitigating factors are included in the ICC Rules of Evidence and Procedure, the *Extraordinary Chambers Law* does not refer to them explicitly.

#### **Limiting the Promotion of Internationalized Retribution**

Internationalized criminal punishment in Cambodia should not be promoted solely as a vehicle for retribution. This is because justifications for retribution are based on the premise that the person

is stable, unchanging and—most importantly—real. Buddhist doctrine holds the opposite. As the vast the majority of Buddhist commentary, scholarship, and ritual practice indicates, Buddhist teachings do not view retribution as an appropriate rationale for punishment.

The problem is that international tribunals frequently cite retribution, which focuses on the guilt of the perpetrator in light of his moral or legal transgression, as a primary rationale for punishment. Kant is perhaps the most famous proponent of retribution, arguing that criminals must always be punished because it is a moral imperative. Versions of Kant's moral argument have great weight in the context of international crimes, where retribution is necessary for the international community to condemn egregious violations of human rights. Liberal proponents of retribution further hold that proportional retributive punishment offers the only acceptable justification for state intrusion on the individual defendant's rights.

Dhamayeatra for Peace and Justice on December 25, 2007





Yet the relevance of retribution to punishment for crimes against humanity is subject to several limitations, which should be given great importance in arguing that the ECCC can be considered to be compatible with Buddhism. First, a common criticism is that retribution carries little practical weight because of the small number of international criminal prosecutions. When so many perpetrators remain free, the extent to which an international criminal tribunal offers meaningful opportunity for retribution diminishes greatly.

Retribution is subject to normative attack as well. For example, how can one argue that a sentence of life imprisonment—or less in most cases—is proportional to the moral culpability of the perpetrator of gross human rights violations? Furthermore, it hardly seems proportional for an individual who is convicted of a single murder in domestic courts to receive the same punishment as an individual convicted of hundreds of murders at an international criminal tribunal.

In addition, because of the need to respect the rights of criminal defendants as well as victims, there will always be a gap between the perpetrator's moral culpability and the level and form of punishment. An international criminal tribunal cannot exact "an eye for an eye" because it is bound by international human rights norms. Fulfillments of retributive punishment's normative aspirations, which focus on proportionality, thus conflict with its application through contemporary criminal proceedings. As Mark Drumbl summarizes, "[I]f international law were to fulfill its retributive aspirations it would likely impair other normative aspirations, in particular those enumerated by international human rights law, and thereby upset the balance in the process of rectifying the balance." Thus, while the need for retribution may have been a crucial catalyst for the formation of international criminal tribunals, retribution alone is not sufficient justification for continued sanction of atrocity and crime. This in turn implies that while the stated goals of punishment under

the international criminal system may often be at odds with Buddhist principles, the two frameworks may not—in theory—be completely irreconcilable.

### **Creating Adequate Sentencing Guidelines and Procedures**

Given the level of specificity accorded to certain Buddhist rituals for punishment, it is crucial that the ECCC likewise provide detailed explanation of its sentencing procedures—perhaps through sentencing decisions, a sentencing phase at trial, or guidelines. The ECCC cannot repeat the mistakes of the domestic criminal justice system in Cambodia.

The ECCC could, for example, consider drafting detailed sentencing guidelines, specific to Cambodian Buddhist culture, which would both reassure the public and increase the likelihood that its punishment would take individual circumstances and rehabilitative needs into account.

Indeed, one possible advantage of the hybrid tribunal, rather than a purely international tribunal, is that the tribunal's procedures might be created with greater cultural specificity because they are separate from an emerging uniform international sentencing regime. Sentencing guidelines might even be drafted in consultation with Buddhist monks or laypeople. They should also clearly explain the purposes for punishment under the *Law of the Extraordinary Chambers*.

In addition, the ECCC should be required to provide detailed reasoning for its choice of criminal sentence and should avoid issuing a single sentence for multiple crimes without explaining the justification for punishment of each crime. A detailed explanation of the choice of punishment would reassure the public that the tribunal has not strayed from its established guidelines, reinforce the purposes of punishment described in those guidelines, and perhaps promote a sense of resolution among Cambodians. It would also contribute to the formation of uniform jurisprudence for the tribunal.

Finally, the ECCC should not follow the precedent, set by the International Criminal Tribunal for Rwanda

(ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), that rejects the use of a distinct sentencing phase at trial. Robert Sloane has described sentencing of the ICTR as an “afterthought,” noting that this limits the ICTR’s ability to contribute to the normative goals of international criminal justice. This implicitly focuses only on the victim and the crime, rather than skillful punishment of the perpetrator, and is at odds with Theravada Buddhism. The Theravada Buddhist conception of crime rests on the no-self doctrine and on proposition that criminal acts will receive ultimate punishment *regardless of whether the state, king, or Sangha intervenes*. The Buddhist theory of crime is thus first and foremost a theory of reconciliation and rehabilitation, and giving primacy to a discussion of the precise nature of the bad act might be a distortion of the correct method of punishment. The idea that sentencing is an “afterthought” in some sense reverses the proper order for considering crime and punishment within the Buddhist tradition.

### Conclusion

If societal reconciliation is a primary justification for having an internationalized criminal tribunal, then the ECCC must be cognizant of the Cambodian Buddhist perspective on crime and punishment. In addition, evidence of a recent resurgence of traditional monastic methods of Buddhist punishment lends credence to the argument that reclaiming Buddhist practice is of great importance to contemporary Cambodians.

This paper has illustrated the extent to which prosecution for crimes against humanity may be compatible with principles of crime and punishment in Theravada Buddhism, the national religion in Cambodia. Whether implementation of these principles would share the same similarities is, of course, open to debate. Public opinion about the compatibility of the two frameworks for criminal justice is another important issue that is beyond the scope of this paper. Practical concerns aside, however, the comparative approach highlights two features of crimes against

humanity might not be noted in other contexts.

First, the severity that is attached to a crime is not always, perhaps counter-intuitively, proportional to the attention given to the individual victim or perpetrator. This paper has argued that both frameworks offer the highest form of condemnation for atrocious acts of violence, and they do so by moving harm from the “victim” to “humanity.” Yet few would claim that either system devalues the victim as a result. Indeed, one of the advantages of the crimes against humanity and the Buddhist approach is that neither views the acts involved with the crime through the perspective of the perpetrator (in comparison with the discriminatory intent requirement for genocide). By acknowledging the collective nature of the harm incurred, the definition of a crime itself may devalue the actions of the culprit while acknowledging the severity of the harm suffered by the victim.

Second, there is clearly opportunity for debate and reform about the proper role of retribution in international criminal proceedings. This paper emphasized the normative limitations of retribution in order to emphasize that the Buddhist framework and the international criminal framework might have more in common than is immediately apparent. In practice, both systems of justice likely emphasize retribution to a greater or lesser extent than their formal principles suggest. However, this discussion does suggest that the principles for sentencing under crimes against humanity—and indeed the theory of the crime—can be adapted for local cultural norms. Thus, in the case of crimes against humanity, the primary obstacles to culturally appropriate use of internationalized criminal justice might stem from a lack of practical, rather than normative, flexibility.

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# THE RESPONSIBILITY OF INTERESTED STATES TO FUND AND MONITOR THE ECCC

*Anne Heindel*

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The Extraordinary Chambers in the Courts of Cambodia (ECCC) is currently undertaking a funding drive to secure around 45 million US dollars to meet unanticipated costs and to provide for the Court's operation through 2010. States such as the United States are considering whether or not to contribute funding for the first time. Some say that any new donations should be conditioned on the meeting of benchmarks demonstrating improvement in Court management. This raises the question of what role current Court backers should play in making the ECCC more accountable and convincing new states to provide funding.

State sponsors of U.N. resolutions, such as the one approving the Framework Agreement for the ECCC, seem to have no formal duties and only one implied task: to help the resolution get passed. After a tribunal is created, they have no clear obligations to provide funding or to encourage other states to fund. According to former US Ambassador-at-Large for War Crime David Scheffer, sponsorship only indicates "a willingness to be approached to press others to fund." Others, however, say that states may have a "moral" obligation to ensure that an institution they helped create is able to function properly.

In practice state sponsors of tribunals often do provide funding and make at least hortatory efforts to encourage other states to do the same. For example, in General Assembly discussions on the ECCC Framework Agreement, the representative of Japan, the largest ECCC donor, stated "that the international community had a great stake in ensuring the success of the Extraordinary Chambers" and that, "[a]s a sponsor of the draft resolution, his delegation hoped that Member States ... would provide financial and other support for implementation of the draft agreement."

One commentator has described the haphazard efforts to secure voluntary funding for tribunals in these terms: "the country making the request [to establish the tribunal] picks up part the bill and whichever other states have an interest make the balance." This is why state sponsors often form a "Group of Interested States" ("GIS") to coordinate support after a new tribunal is established. For example, an informal GIS was formed as part of discussions on the implementation of the Security Council resolution on the Special Court for Sierra Leone (SCSL). Important state contributors and "activist" countries among the GIS, together with a representative of the U.N. Secretary General, then formed a Management Committee. The Management Committee leads SCSL efforts to seek additional funding. Additionally, it oversees the court's non-judicial operations, reviews and adopts its budget, provides policy advice, and acts as a facilitator between the court and the larger GIS. One commentator has called this Committee "an advocacy base within the U.N. system."

The ECCC also has a GIS, which met for the first time in 2004. Additionally, state donors, with France and Japan acting as co-chairs, meet regularly in Phnom Penh as "Friends of the ECCC" for updates on the Court's progress. However, unlike the SCSL Management Committee, this group does not actively assist the ECCC's efforts to find new donors or provide budget advice or oversight. With many states questioning why they would want to get involved with a court plagued by accusations of corruption and mismanagement, it may be time for the Friends to assume this "moral" responsibility and assure potential donors that the ECCC is a worthwhile investment.

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*Anne Heindel is the DC-Cam Legal Advisor.*

# COMMUNITY LEADERS COMPLETING ECCC



# COMPLAINT FORMS ON OCT. 25-26, 2007



# THE TRUTH ABOUT MY CHILDHOOD

*Hou Sami*

In 1974 bombs dropped like rain in some areas of Takeo province. By early 1975, the civil war was killing more and more Cambodians and the Khmer Republic was failing. In the middle of April, the civil war that had broken the solidarity of the Cambodian people came to end.

## **The Arrival of the Liberation Forces: April 18, 1975**

On the way to Takeo province, cars bearing red flags and filled with armed infantry dressed in all black speed along the road. The first group carried banners that said "Defeat American Imperialism!" "Long live the Liberated Unit!", and "Defeat Social Imperialism!" In some areas people lined the streets to cheer and show their support for the victors. As the military unit continued its march forward, troops sporadically fired guns at the sky and people raised white cloths to show their peace and neutrality.

News of the Khmer Republic's failure spread throughout Takeo province in only a few hours. The population was surprised to learn of the planned evacuation of city people to rural areas. The Liberation Unit explained that people would be displaced for "only 3 days because we are afraid the American military will bomb the area." At that time I was 9 years old and lived near Kbal Po, in the Southeast of Takeo province.



Khmer Rouge Forces entered Phnom Penh in April 1975

## **The Evacuation of Phnom Penh**

The following morning, the sound of gunfire and fighting could still be heard. Along the main road to Kbal Po families rushed to pack up their belongings. In front of my house an ox cart was waiting to carry my family's luggage. The cart belonged to my Uncle Thou and Aunt Rim, long time friends of my parents'. They knew that my family had little chance of transporting our belongings because my father was still in Phnom Penh. He was a member of the Khmer Republic military.

Although our luggage was in the cart, my mother was unhappy. She was worried about my father's safety. As we headed towards the main road, my brother, Oeun, pushed a bike loaded with bags and my sister Sareth and I each led a cow. My littlest sister was still young so she rode in the cart with Aunt Rim.

When we were reached the provincial hospital I saw corpses on the pavement and a hospital gurney carrying 3 or 4 patients flipped over on the road. I saw many corpses but, by that time, I had already gotten used to it. Around noon we reached an open space; black uniformed youths carefully controlled the travelers. On the other side of road sat many people with their hands tied behind their backs. They had hopeless looks on their faces.

We were allowed to stop and relax at Champa pagoda. Uncle Thou's hometown was near this pagoda but he promised that if we could not find my father, he would accompany us to our village first. The pagoda, which that had once been a quiet place, became crowded; full of the sound of people's voices; crying because they had been separated from their families.

Soon after we arrived, my father appeared. I could not recognize him at first because he wore a black uniform and had a scarf on his head. He was pushing a bike and carried knife with a long handle. I ran to embrace him and he held me in the air as

we hugged. My father talked with Uncle Thou and Aunt Rim and thanked them for helping his family. Not long after, Uncle Thou left for his hometown and my father took us to join the rest of the family.

### **Becoming Angkar's People**

My extended family traveled for many days before we reached our home in Trapeang Veng village in Kirivong district. When we arrived, Angkar would not permit us to live in our house. A cadre announced that "new people had to abandon their property because everything now belonged to Angkar." We eventually went to live with my Uncle Ngon.

When the rainy season arrived, the village chief ordered my father to yoke cattle that had not yet been broken. My mother went to work in a fertilizer hall. When the season changed, my older brother Oeun was sent to work on the sub-district's mobile youth work brigade. My sisters were sent to work on the all girl mobile work brigade. I went to tend cattle with my father in the rice field. We were not allowed to study like before. Children had to work everyday and did not have free time. As time went on, the revolution reached another level; we slept together and ate together. Soon I was told to prepare to live with children's mobile work unit.

In Romdeng sub-district, Angkar divided the population into mobile work brigades. They were organized according to their age and sex. All the mobile work brigades worked in the "agricultural sector." The only people who were not assigned to mobile work brigades were old people, women who had just delivered babies and small children who were too young to work. But Angkar did not let those people rest; Angkar assigned them to work in child care centers.

### **Children's Mobile Work Brigade**

Next, I was sent to Tropeang Veng village and then, Dei Krohom village. All children in Romdeng sub-district were ordered to gather in a long, open hall. Angkar ordered my unit to stay in an abandoned house about 200 meters west of the hall. Our beds were arranged in identical rows.

Our first assignment was to break the earth

and then scatter it on the rice fields. Each child had to scatter 2 square meters of land per day. Every night there was a meeting that lasted until midnight. In each meeting the Unit chief mentioned the same thing: "In order to become a good person in the eyes of Angkar, we must train ourselves to become revolutionaries. Revolutionaries sacrifice their lives for Angkar, sacrifice their selfish desires, and obey Angkar's assignments. We are children, we must dare to sacrifice our selfish wants and be responsible for what we do." We had the same meal every day: potato soup without meat.

Half month had passed and I was never allowed to visit my home. I heard that my mother had already delivered her baby. The Unit chief did not permit me to go home. He said, "You have no duty to look after your mother. If your mother had a baby, she will be cared for by Angkar's doctors and there are many people to for care her. You do not need to worry."

One evening after work, the Unit chief told us of a new plan. "Angkar wants us to complete more work at night. Now, after dinner, we must gather in front of the rice hall. Anyone who tries to escape the work will be punished."

One day, my mother visited me. When she first saw me, she did not recognize me because my body was covered with dust. She knew me only by my voice. She led me to the pond in front of my house and bathed me. She gave me a few potatoes and a bar of palm sugar. I refused to take it because receiving extra food was a betrayal against the collective, our friends in the unit, and everything that the Revolution fought for. My mother knew this so she broke the potatoes in to small pieces and mixed it with the bar of palm sugar.

One evening, the Unit chief was looking for someone who was able to read. I had studied until grade 10 and could be considered literate. He let me stop working temporarily to practice singing revolutionary songs for the coming April 17 Anniversary. I was allowed to wash with bath soap and I received more food than before. After the celebration, my diet

and work load returned to what it had been before.

### **Another Evacuation**

In the end of 1977 Angkar again evacuated new people to other places. We gathered in Bour village and waited for trucks to transport us. There were many people there. The trucks moved west into the sunset.

Everyone in the truck was permitted to rest under the trees in an old villa. Under the orders of Angkar, everyone from Tropeang Thom sub-district was divided into units. Later that day, my father and brother went to work; my mother stayed home because she had twin babies to look after. My sisters stayed in the girl's unit on the north side of the road. I stayed in a mobile work brigade nearby Serey Domnak. Angkar ordered children to collect cattle waste from the rice field and put it in a hall to make fertilizer for the next year.

Time passed and the green rice turned bright red. Our unit harvested and collected the rice. My youth unit soon moved to another village farther north of the main road. In the new place I met two of my cousins, Soeun and Song. A few days later Bros, the 5 year-old brother of Song and Soeun, was sent there also. In a meeting, the Unit chief accused Bros of being an enemy and wanting to stop the revolution. We were so worried because everyone knew Bros was our bother. In the meeting, Bros was forced to confess, so all the child would know his mistake, that he stole sugar-palm juice. After the meeting ended, Soeun and Song took Bros to rest. Dy and I decided to move our sleeping place to avoid seeing the Unit chief come to get Bros at night. Unfortunately, by the time Dy and I arrived, Soeun and Song were in tears and Bros had already been taken away by the Unit chief. As the other children slept, we waited for Bros to return. By morning he was still not back.

Soeun and Song's father was sent to be re-educated by Angkar. Two days later there was a new grave about 200 or 300 meters away from the unit. The unit had to leave the sub-district and my cousins and I were separated.

I was assigned to work in Beong Sroghel, collecting cattle waste. We were supposed to collect 100 kilograms per day. At first I could only find 60 kilograms; my shortfall was added to the next day's requirement. Dy and I were afraid our Unit chief would punish us or cut our diet so we started sleeping in the barn and collecting the waste there. What I found each night I kept in a nearby forest and used in the next day's total. We have stayed in Beong Sroghel for a long time and then moved to Prey Kav.

One day Angkar called all the children to a meeting. The Unit chief said that the meeting focused on punishing the ones who were inactive. He called one of my friends to sit in the front of the room. My friend put his hands together and said with fear that he did not know his mistake. The Unit chief told him to stay calm; then he called out my name. He ordered me to stand up and walk to the front. He asked me with a smile, "Do you have any mistake?" I turned to him and said "I do not have any mistakes, please...!" He said "if you do not have mistakes, why are you so fearful? I just wanted to know if you dared to admit it or not. You two do not be afraid. I only wanted to test you two."

In the rainy season that year I could not do farm work with the children's unit like before. Once the harvesting started, the situation changed. While we were working, strange rumors disturbed the upper level cadres and they fled. In a few days, all youth units were cancelled and we were allowed to return home. My brother, Oeun, walked with me through the forest to our home in Tropeang Krolanh. Once there, our family decided to return to Phnom Penh. On the way, we began to hear the sound of gunfire and saw a long line of soldiers walking to the west. At night, while we slept on the ground, a soldier came to talk to us. We could not understand his language but I heard an elderly person say it was Vietnamese. We continued along the crowded road to Phnom Penh. We did not have to eat or sleep together any more. My family settled in the city a few weeks later and we have lived happily until now.



# LETTER TO THE ECC AND DC-CAM

*Nou Hun*

## To the Extraordinary Chambers in the Courts of Cambodia or Khmer Rouge Tribunal:

My name is Nou Hun, 68 years old, and I am a former officer at the Ministry of Health. I am the father of Nou Chan Houdy Vin, a victim of the Khmer Rouge and a representative for the family of Pech Chong Kal, an architect educated in Tokyo, Japan and the former director of a phosphoric fertilizer factory in Kampot province. Pech Chong Kal was married to Meng Vanthan, the younger sister of my wife. They had four sons: Pech Thamak, Kaneth, Vithyea, and Nopon (Nop Pon). Chong Kal's family, their baby-sitter and my daughter were killed when a Khmer Rouge spy overheard Pech Chong Kal complain about his son's medical treatment. All he said was, "How will my son recover from his illness if he is forced to take medicine made from rabbit's excrement."

### Respectful Tribunal:

Pol Pot took away my daughter and the lives of 9 members of a happy family; he killed children who never got the chance to grow up. Can I please ask, "What was my daughter's fault? What were the mistakes of my young nephews? How serious of a mistake is it for a father to merely ask about his son's treatment? Nearly 30 years have passed and millions of people have not received comfort, let alone justice. How can their spirits wait for so long?"

### Respectful and Hopeful Tribunal:

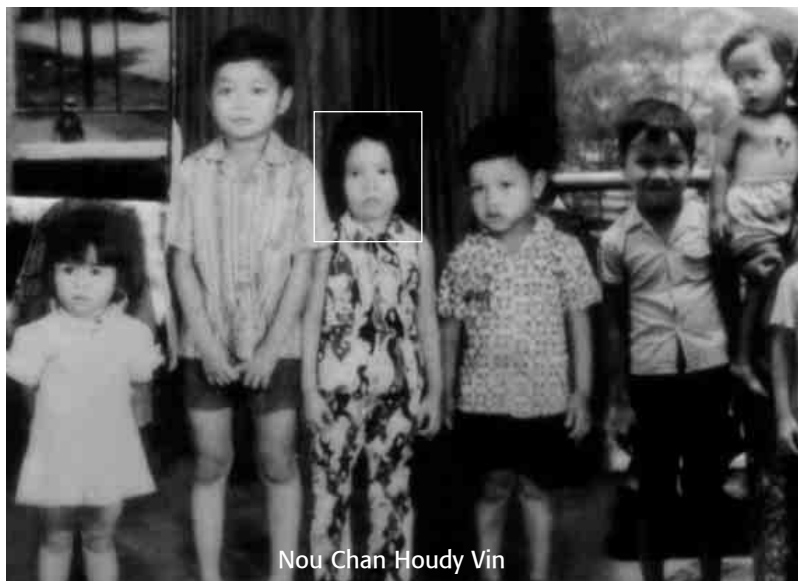
As a father and a representative for Pech Chong Kal's family, please grant justice that will satisfy me. I hope the tribunal will provide justice for the victims of the Khmer Rouge, especially those who are still alive. Even though there are obstacles, the reality of justice will appear in the near future. I respectfully thank the Tribunal and all personnel who serve the Extraordinary Chamber in the Courts of Cambodia.

## The Documentation Center of Cambodia:

First of all, please permit me to state why I am writing this essay to the Documentation Center of Cambodia. On Monday, 13 August 2007, when I was visiting a family who lives near my house, I saw the Documentation Center of Cambodia's magazine, *Searching for the Truth*, issue #74 (February 2006). I suddenly remembered that period of time so long ago. I borrowed the magazine from my friend and read it in two days.

Looking through the magazine, all the stories of victims and their families are real. They show how unforgettable the misery and pain is for survivors. I feel very sorry for the people who meaninglessly died under the direction of the Khmer Rouge. The Khmer Rouge fell into the ruse of others and destroyed their own nation. Leaders of the Khmer Rouge said that they were our friends; in truth, they were not. They took all the benefits from Cambodia and the Cambodian people,

I still wonder why the surviving leaders of the Khmer Rouge were allowed to live in freedom until now. They always boast that they loved and never betrayed the nation, kept the territorial integrity of our borders and protected the nation from outside



Nou Chan Houdy Vin

threats. But instead they killed many of their own people, did not provide enough food, offered poor medical care, damaged the country's culture, destroyed books and removed the rule of law and principle. People with advanced skills were almost all killed; the Khmer Rouge did not seem to worry then and now, they dare not admit responsibility for their mistakes.

I honestly respect and admire the efforts of the Document Center of Cambodia, which is under

the control of a director who tries with all his physical and emotional ability, and against many obstacles, to work for positive results. It offers hope to all ranges of victims, even dead and missing people, but especially to the family members who are still alive today. The problems caused by Democratic Kampuchea's activities are solved through justice within the ECCC process; please avoid obstacles that can stop the search for justice.

## PUBLIC INFORMATION ROOM

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

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

The PIR offers four services:

1. Library: Through our library, the public can read documents, books and magazine, listen to tapes, watch documentary films, and view photographs held at DC-Cam, the Tuol Sleng Genocide Museum, National Archives and other locations.

2. Educational Center: DC-Cam shows documentary films and offers lectures on Khmer Rouge history, the tribunal, and other related subjects.

3. Tribunal Response Team: Our document and legal advisors provide research assistance to the tribunal's legal experts from both Cambodia and the United Nations, as well as to the public.

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

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

Thank you.



Cham Muslims filling the complaints



Cham Muslims filling the complaints

# SEARCHING FOR MISSING FAMILY MEMBERS

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## **Missing sons and daughters**

My name is Kvet Nik and I am a 79 year old female. My husband's name was Em Aun (died in 1979). I was born in Kampot province, Kampong Trach district, Angromeas commune, Krang Lieve village. I had a total of eight children: two sons and six daughters. Their names are as follows: 1) Ouch Eoun, female, 2) Ouch Lao, male (worked in a 17th April Hospital at the end of 1979), 3) Ouch Ang, male (died at Chamkar Doung, Kep City due to malaria), 4) Ouch Mom, female, 5) Oung Eeoun, female, 6) Ouch Or, female, 7) Ouch On, female, 8) Ouch Ern, female. I am searching for information about my second child, Ouch Lao, who disappeared. He was last seen in Pursat province in 1979. My present address is Trapaing Chuk village, Mean Rith commune, Dornng Tung district, Kampot province. If anyone knows about Ouch Lao, please contact me through the above address or via the Documentation Center of Cambodia. Their phone number is: (855) 23 211 875. Thank you.

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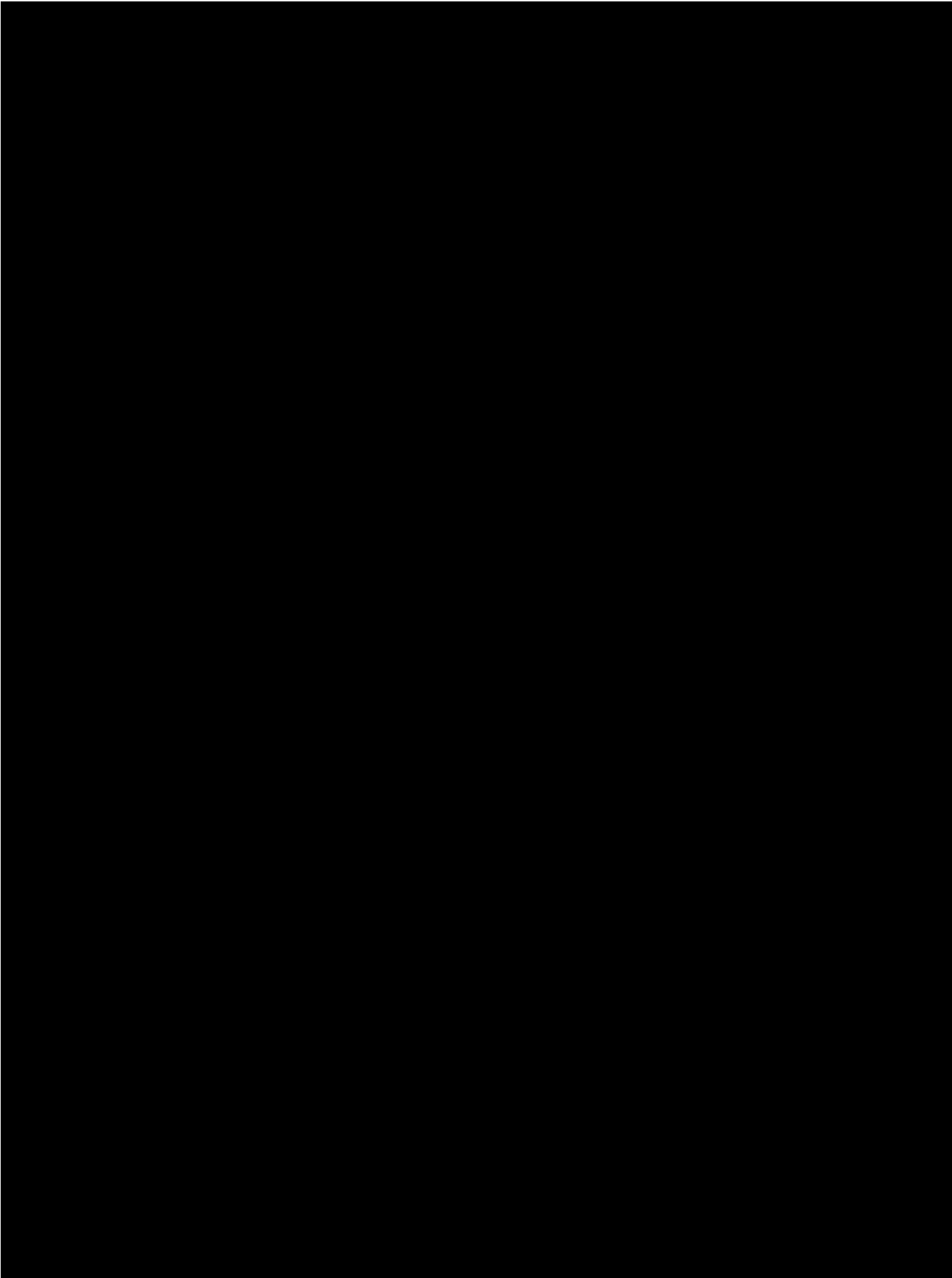
## **Missing mother and younger brother**

My name is Min Kim Arng. I am a 52 year old female. My place of birth was Kampot province, Kampot district, Koun Satt commune, Bos Jhenh village. My mother, Pov Soun and father, Min Mang (died in 1979 in Pursat province). I have five siblings, 3 males and 2 females. Their names are: 1) Min Kim Ang, female, 2) Min Ly, male (disappeared), 3) Min Phan, male (deceased), 4) Min Phal, male (deceased), and 5) Min Eng, female (deceased). I would like to make an announcement that I am seeking information about my mother (she was 55 years old when we were separated) and my second youngest brother, Min Ly. I lost them after we stayed in Pursat province for a month in 1979. My present address is Trapaing Chuk village, Mean Rith commune, Dornng Tung district, Kampot province. If anyone knows where they are or has information about them, please contact me through the above address or through the Documentation Center of Cambodia. Their phone number is (855) 23 211 875. Thanks.

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## **Missing brother**

I am Ouy Seap, a female aged 51 years old. My place of birth was Kampot province, Chuk district, Angromeas commune, Krang Lieve village. I currently live in Anntung Bekok village, Angromeas commune, Dornd Tung district, Kampot province. My father was Ouy Butt (died in 1978). He was killed during the Pol Pot regime. He used to work in a hospital in Angromeas commune. My mother was Leing Sien; she died in 1974 because of an unknown illness. I am searching for my younger brother, Ouy Cheoung, whom I lost when he was 13 years old. During the Pol Pot regime he was assigned to study technology in Kampot Town and was then ordered to drive a salt truck. He disappeared shortly after his assignment. If anyone knows what happened to Ouy Cheoung, please contact me through the above address or through the Documentation Center of Cambodia. Their phone number is (855) 23 211 875. Thank you.



DC-Cam: #66, Preah Sihanouk Blvd, Phnom Penh, Cambodia. Tel: (855) 23 211 875, Fax: (855) 23 210 358, Email:dccam@online.com.kh, Homepage: www.dccam.org.

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