Magazine of Documentation Center of Cambodia

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A Khmer Rouge Soldier

Photographs by the Documentation Center of Cambodia and Tuol Sleng Genocide Museum.

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Letter :

Genocide Justice in 2002?

There has been a lot of talk about justice recently. Justice for Osama bin Laden, justice for victims, justice in special military tribunals, and so on. In Sierra Leone the United Nations is assisting with the establishment of a special tribunal, and even in Belgrade, former home of a genocidal regime, the largest Serb party has decided to expel those who were responsible for the heinous crimes committed in the 1990s, including the likes of Mladic and Karadzic, both indicted war criminals.

Where does all this talk about justice leave Cambodia? Is justice any closer for the victims of the Khmer Rouge?

Although al Qaida's Osama bin Laden and his fighters inflicted great damage in New York and Washington DC, America will soon rebuild and be stronger and even more secure than before. The Taliban's days and those of their guests will come to an end, and their attacks on America failed to touch the foundations of the nation or the people.

In contrast, without the use of high-tech means of mass destruction, Pol Pot and the Democratic Kampuchea leadership (known as the Khmer Rouge) were able to kill millions of Cambodians and lay waste to the country. Their secret weapon was the politics and policies of Angkar, the organization that governed every aspect of Cambodians' lives. The legacy of their insane successes remains with us today, not only in the underdeveloped state of Cambodia's political and economic reality but also in the ruptured social structures that resulted from Ankgar's relentless assault upon religion and the family.

More than seven years after the U.S. Congress passed the Cambodian Genocide Justice Act, the King of Cambodia, Norodom Sihanouk, signed the law establishing the special Khmer Rouge Tribunal on August 10, 2001. Article 1 states, "The purpose of this law is to bring to trial senior leader of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979."

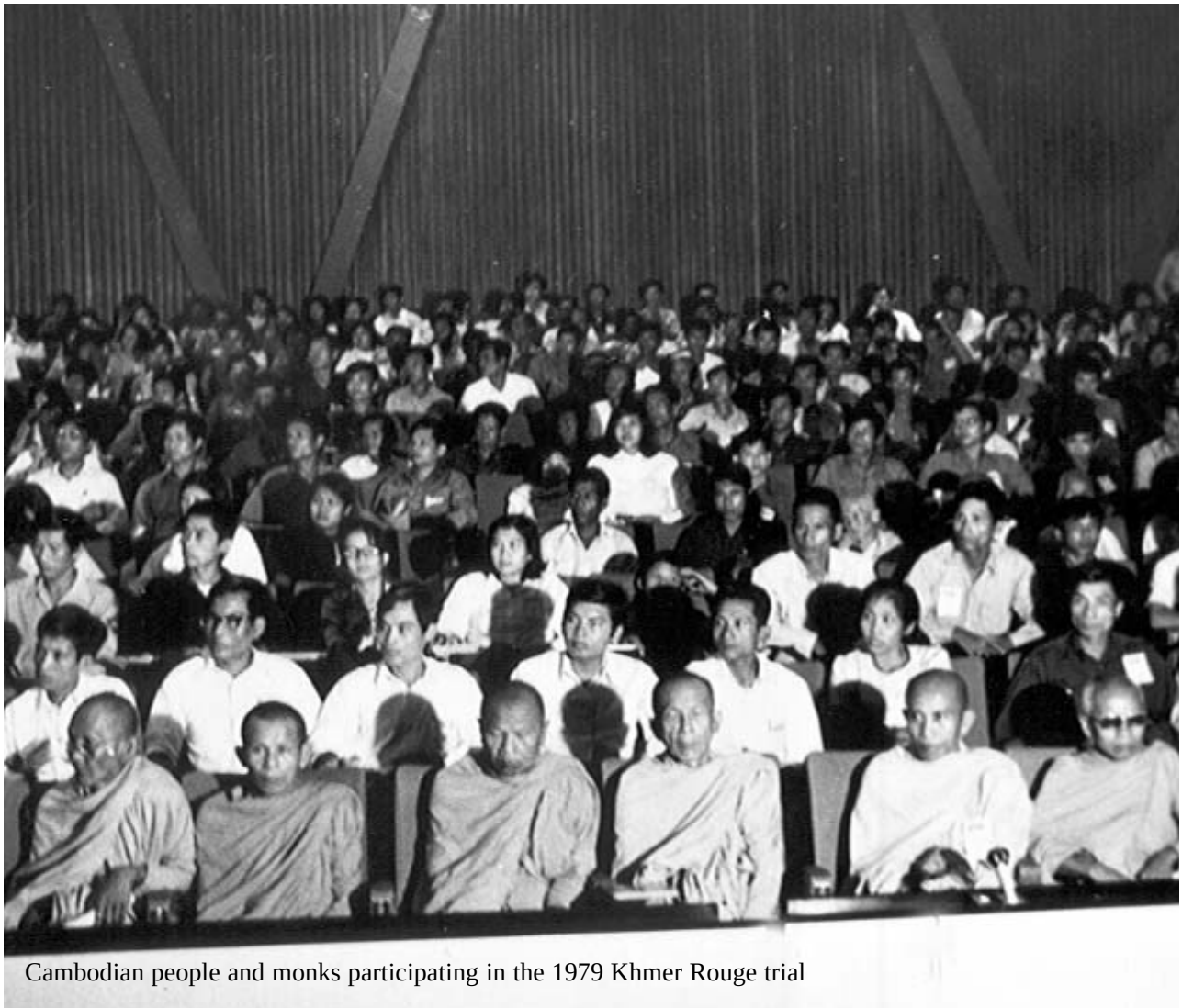
It took seven years to pass this law–four years more than it took the Khmer Rouge to execute and starve to death millions of people. Yet twenty-three years after the fall of the Khmer Rouge regime, the victims continue to wait for justice and truth, while the leaders of that regime continue to live in freedom among them. While many of the regime's victims live in dire poverty, some of their former leaders, such as Ieng Sary and Ieng Thirith, are free to travel to Thailand for expensive medical treatment. Now, as the Khmer Rouge tribunal process is finally approaching its goal of rendering some degree of

justice for the victims, it is imperative that efforts to bring the process to fruition be maintained.

Over the past few months the world's attention has focused on justice for bin Laden and his followers. It is very clear that an all-out effort should be made to apprehend them and that they should be brought to justice for their heinous crimes. At the same time, however, it is saddening to see that the international community now shows so little interest in justice for Cambodians and humanity. It is relatively easy to bring the former Khmer Rouge leaders to justice and it can be done at a fraction of the cost required to take on al Qaida. All it takes is a meeting of political wills between the international community and Cambodia. That meeting has come quite close, but the momentum now seems to be fading. This should not be allowed to happen.

The upcoming Khmer Rouge tribunal must not only render justice, it must be seen as doing so through the eyes of both the victims and the perpetrators.

Youk Chhang
Editor-in-chief and Publisher



Cambodian people and monks participating in the 1979 Khmer Rouge trial

A Statement by Hou Yuon

September 30, 1974 in the 23rd Anniversary of the Fighting in Amlaing District

Sophal Ly

A celebration of the 23rd anniversary of the struggle of the Communist Party of Kampuchea was held on September 30, 1974 in Omloang district, Kampong Speu province. In attendance were party members, members of the armed forces, and Kampuchea's "liberated people" from the district.

After an opening statement by Chou Chet, the soldiers put down their weapons and stood for the national anthem and the souls of the heroes. Hou Yuon (Minister of Interior in charge of Urbanization and Cooperative Management) then gave an hour-long statement:

Hou Yuon

During WWII, Kampuchea was oppressed by the superpowers, causing the people to live in misery. The Indo-Chinese people have been cooperating in fighting against French colonialism since 1951.

When the war was over, superpowers and many other countries attended the Geneva Conference on Indo-Chinese Countries hosted by the USSR. However, Kampuchea did not appoint any representative to participate. Only Thailand and Vietnam were present. The conference decided to allow Ho Chi Minh to govern Indo-China, which implied that Kampuchea would be erased from the world map. Confronting this terrible situation, three courageous Khmers—Iev Kaes, Yutevong, and Son Ngoc Thanh—set off to negotiate. But, it was too late. Then the three began gathering forces in different ways. Iev Kaes launched propaganda. Son Ngoc Thanh turned to "SEATO." Yutevong sought help from the Democratic Party. Seeing that the three worked in this way, [the King] eliminated them from the country; some died by covert murder.

The wars in Indo-China continued restlessly. Another conference was held in Geneva. This time Kampuchea, Laos and Vietnam attended. With its fierce struggle inside and outside of the country, Kampuchea acquired victorious independence. Nonetheless, this independence fell only to the royal and the feudal groups, while the Kampuchean people as a whole still lived under oppression.

Therefore, Angkar did not cooperate. Angkar assigned work to many groups: one went to study in North Vietnam, and others stirred up the political movement in urban areas and the countryside. In 1960, the movement of Angkar gained more popularity. Then King Sihanouk became furious, fearing his throne and feudalism might disappear. He then behaved openly as a businessman to persuade labor unions and the Association of Communist Youth of Kampuchea (S.N.K.B.). In that period, the operation of the Communist Party of Kampuchea did not go smoothly, since many members of S.N.K.B and cadres escaped into the forest. Those who were not quick enough were killed by Sihanouk's men in the city, like comrade Bo Phann. Others, like comrades Sorn and Seng Kim Ay, were chased into the countryside and killed. This

situation forced many students, professors and other people to leave the cities to hide themselves in the Kamchay mountain range, Chamkar Leu and Mount Oral. Some of them died from eating poisonous food, stomach inflammations, and malaria.

From 1962-1964, due to the difficulty our cadres were facing in hiding, the party decided to fight with weapons. In 1964, the first armed conflict occurred. Angkar assigned all syndicate members to take over weapons from ministries in the countryside, as well as the Ministry of Forestry and guerilla units, while cadre members of the S.N.K.B. in Phnom Penh were conducting activities using appropriate strategies.

In 1968, Angkar provoked many movements of the labor class, since this class was the root of the party. In the same year, Angkar led this class to stand up and fight against various barbarous plans of the feudal king, Sihanouk. In this turbulent year, the S.N.K.B. lost approximately 1,000 members.

Between 1954-1970, before March 17, there was another party, which aimed at eliminating this feudal/ royal regime. In one plot, King Sihanouk was invited to attend a party at the new house of Chhuon Mchulpech, called Dab Chhuon. In another (the coup plan), he was to be sent a box of goods on August 31, 1969 from Hong Kong. This plan was not successful because Angkar informed Sihanouk about it in advance. Angkar thought if SEATO managed to stage a coup against Sihanouk, the CPK would surely be unable to lead the people toward socialism and Democratic Kampuchea efficiently.

On March 18, 1970, another coup was staged when Sihanouk was in France receiving medical treatment. Then, Angkar took the opportunity to direct the movement by appointing two representatives. The first was sent to contact communist countries, specifically China, to ask for refuge for King Sihanouk and for his indirect political involvement. Another representative was to stay with King Sihanouk and to suggest that he stay in China as planned, which would make it easy to persuade the public, since China had a radio facility for this. People favored Sihanouk at the time.

Angkar then organized an overseas government by appointing Sihanouk as the leader of the Royal Government of the National Union of Cambodia (RGNUC), so that Sihanouk could encourage his followers to cooperate with Angkar as quickly as possible. Just as the propaganda was launched, 3,000 teachers and professors, veterans, intellectuals, students, and people of all walks of life, including 7th Comrade, North Vietnam, cooperated with Angkar.

On September 25, 1970, King Sihanouk became suspicious, having noticed that all members of the council of ministers were intellectuals, who had been sentenced to death by the king himself since 1960. By the end of 1970, some syndicate members who had been studying in Hanoi returned home. Our military forces were large, but not strong. The 7th Comrade (Viet Nam) took this opportunity to rob villagers to feed their people and secretly killed some Kampuchean comrades.

Later, Angkar carried out the plan, which was remembered by the statement "the first phase is to fight in the countryside, while the second phase is to surround the cities." The plan was accomplished later. By 1971, Angkar decided to separate all the cadres and armed forces from Vietnam and inculcated them in learning to be self-reliant. In a short period, Angkar endeavored to educate the Liberation Front personnel, using various documents, little by little, so that they stopped favoring Sihanouk.

In 1971, after learning of our plan, Sihanouk ordered Huot Sambath to leave the United Nations to organize new armed forces, called the Third Force or "Sihanouk's Armed Forces," in Kratie and Stung Treng. Upon learning about this plan, Angkar sent Ieng Sary to Beijing to stop Huot Sambath from doing so. We were successful and Sihanouk was disappointed. After that, Angkar allowed Sihanouk to attend parties in allied countries, and made him obsessed with girls and alcohol, so that he would forget about his country.

By the end of 1971 and the beginning of 1972, our forces became so strong and aware of the purpose of the struggle that Angkar celebrated the first anniversary publicly, during which Angkar revealed its 21-year struggle. At present, Angkar is satisfied with the Southwest Zone. This zone consists of Kampuchea's liberation armed forces and important legitimate cadres. It has the largest

area and is spending up to 5 millions riel a month on the salaries of administrative staff and Khmer Rouge soldiers: each receives 240 riel. However, Angkar is still worried about some zones, which lack qualified cadres. Before taking a position, each cadre has to participate in a long training session, and those cadres have to be selected from among former communist youths and the Association of Democratic Women.

On September 30, 1974, the struggle of CPK is 23 years old. It has been successful both inside and outside of the country, and was graded as the number-three movement in the world, after China and Albania. There have been some allied countries, like China and Korea, who have come to learn from us.

Although the party has been this successful, it has not yet gone through all of its phases. Kampuchea is still half feudalist, half-colonialist and imperialist, and under the rule of foreigners politically, militarily, economically, socially, and culturally.

From this moment on, cadres and the armies have to completely liberate the country, but do not forget that before fighting with external enemies, we must first get rid of the enemies within ourselves. You have to classify who is friend and who is enemy, and stick to the stances of politics, solidarity, ideology, and organization. All cadres and soldiers must:

◆ Love your labor and the people; accept Angkar's proposals, understand the difficulties, and study the people's working techniques, since people are inexhaustible sources of knowledge.

◆ Promote the spirit of respecting the individual groups' organizational disciplines.

◆ Train hard to eliminate "original nature," which is not revolutionary.

◆ Improve the spirit of materialism.

◆ Understand that politics is "the first strength," while the military is just a tool of politics.

◆ Adhere to the following 16 points:

1. Love, respect and serve the people of the party, laborers, and peasants with your hearts and souls. Do not use dictatorship on the people openly or secretly. Do not intimidate them. Always be polite toward them, since Angkar has a slogan, "People are fish, Angkar is the water."

2. Be honest with the public; strive for the benefits of the public resolutely; do not take away the public's properties, even a chili or a can of rice, in a violent or non-violent way; and do not accept bribes from the people.

3. Apologize to the people if you have done something wrong.

4. Speak, sleep, walk, stand, sit, eat, and joke in a proper manner in conformity with tradition.

5. Do not abuse women.

6. Do not drink like a gangster, which is not revolutionary.

7. Do not gamble.

8. Do not steal the money or the property of the people or Angkar.

9. Join labor projects with the people.

10. Always respect the orders of Angkar.

11. Honestly and regularly carry out criticism and self-criticism within each section. Promote internal agreement. Do not fight with one another outside Angkar or speak ill about others to dispute power.

12. Hold the spirit of self-consciousness and self-reliance. Do not rely on foreigners.

13. Be independent when solving problems relating to the lives, the spirit, and the materials of the people.

14. Every cadre and soldier has to abandon idea of liberalism, authoritarianism, individualism, selfishness, isolationism, personal affairs, and nepotism.

15. Always bear a burning grudge against our enemies.

16. Cadres and soldiers must believe that although our struggle is hard, we will succeed.

Before ending his statement, Hou Yuon advised all cadres and soldiers to be ready to fight and defend their positions politically and militarily along national road 3 (Phnom Penh-Kampot) in the upcoming dry season. If this was accomplished, he said, no party member would be able to persuade people to join the army to gain recognition for themselves from Angkar or to ask for rewards from Lon Nol for succeeding in making contact with Kampuchea's armed liberation forces.

Sophal Ly is a staff-writer for Searching for the Truth.

A Messenger of Historical Documents

Bunsou Sour

The Documentation Center of Cambodia is a leader in the dissemination of historical and legal information relating to Democratic Kampuchea. Its magazine, *Searching for the Truth*, contains the writings of national and international scholars on the Khmer Rouge regime. Since the first issues was published January 22, 2000, DC-Cam has printed 24 issues, totaling 168,000 copies.

After the demise of Democratic Kampuchea in 1979, Cambodia was an empty place, and its people began building their country from the ashes that remained. Most of its educated citizens had been killed. The new government, the government of the People's Republic of Kampuchea, began writing about the history of Democratic Kampuchea for inclusion in school curricula. However, the information the government possessed was insufficient to meet the demands of students and researchers, especially those who sought to learn about the regime's victims. At that point, there was no sign that later generations would receive any detailed education on what happened to their country and people.

In the past few years, the public has begun to question why Democratic Kampuchea receives almost no attention in school curricula. One reason may be that the subject deals with politics rather than history. Another might be that Cambodian people who were born before 1970 have their own stories to tell.

A social studies textbook has been published for grade 9 by the Ministry of Education, Youth and Sports. It covers history and biography, but treats the subject of Democratic Kampuchea in just one chapter. The chapter mentions: "In April 25-27, 1975, the Khmer Rouge held an extraordinary assembly to create a new constitution

and named Cambodia 'Democratic Kampuchea.' The new government emerged and was led by Pol Pot. Innocent people were ruthlessly killed." With such cursory treatment, how can Cambodian youths gain insight and knowledge of the genocide?

A survey conducted by the magazine team of DC-Cam's *Searching for the Truth* found that 84% of the readers like reading the magazine because it provides important information. Also, *Searching for the Truth* has received many letters on this subject from readers throughout Cambodia. Some want the magazine to publish more about Khmer Rouge arts, such as songs and poems, and request that we publish more documents, which will be necessary to assist future research on the nature of Khmer Rouge genocide.

Since April 2001, DC-Cam has published 7,000 copies per issue. However, we are well aware that this will not be adequate to supply the needs of our countrymen. Each sub-district receives only three copies of an issue, while districts and provinces receive from 5 to 10 copies. DC-Cam has begun distributing the magazine to high schools and universities nationwide, so that teachers and students can read it. The magazine focuses primarily on the Khmer Rouge leaders (like Pol Pot, Nuon Chea, Ieng Sary, Khieu Samphan, Ta Mok, Ieng Thirith, Von Vet and Duch) and its victims. Moreover, it also publishes historical accounts of the relationship between Khmer Rouge communists and Vietnamese communists, and the living former Khmer Rouge leaders' exploitation of the victims' suffering. It demonstrates the international human rights relevant to Cambodia's current situation, the process of setting up a Khmer Rouge tribunal, and other matters relating to national reconciliation.

DC-Cam distributes the magazine with the help of some NGOs, like the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), The Center of Social Development (CSD), Partners for Development and PADEC, and a number of volunteers. About 5% of the magazines are sold in Phnom Penh, which gives the Center some income with which to distribute issues to provinces, districts, sub-districts, and villages. Some institutions in Phnom Penh receive the magazine every month. They include the Royal Palace, the Senate, the National Assembly, political parties, the Council of Ministers, embassies, NGOs, the National Achieves, National Library, and the libraries of colleges, universities, and high schools.

In order to extend the international awareness of Cambodian issues the first English language versions of *Searching for the Truth* were published in mid- 2001 (8,400 copies of 12 issues). In late 2002, the Center plans to set up offices in four provinces, in part to help ensure that the magazine is properly distributed and to conduct extensive interviews with victims and research on remaining evidence.

On December 14, 2001, the government of Cambodia issued a circular on preserving the remains of the victims of Democratic Kampuchea. This recent development demonstrates the government's new focus on remembering the past terror. Recently, a 12th grade textbook was published that includes the Khmer Rouge as a topic. A member of the Ministry of Education, Youth and Sports's Textbook Development Committee said that this book would be completed in July 2001 after it was proofread. Supo Braseuty, an expert on UNESCO's school curriculum project, was of the same opinion. However, he expressed that most of the authors on the committee had a tendency toward the communist writing style, which they had been heavily exposed to in the former Soviet Union.

Nonetheless, *Searching for the Truth* plays an important role in searching for, compiling, and disseminating information on Democratic Kampuchea, at a time when our country's political problems are not solved but the people's desire to understand their history increases.

In order to help heal our people and reach reconciliation, it is vital to search for the historical truth of the Khmer Rouge regime, and spread it to the Cambodian people so that they can teach their children to never repeat this heinous crime. To move forward, Cambodia must create a clear image of its past in support its future development.

Bunsou Sour is the Editor-in-Chief of the Special English Edition series of Searching for the Truth magazine/ Co-English-Editor-in-Chief.

Master Genocide site Data

Mapping the Killing Fields of Cambodia 1995-2000

No.	Site No.	Site Name	Data of Pits and Victims by SITE FORM		Data of Pits and Victims by FIELD REPORT		YEAR Report Report Set/Year
			Estimated Pits	Estimated Victims	Estimated Pits	Estimated Victims	
(Continued from the December 2001 issue)							
251	200404	Tuol A Kriem	80	2,000	about 80	1,500-2,000	1997
252	200405	Svay Tuntim	N/A	N/A	N/A	N/A	1997
253	200406	Wat Svay Tuntim	N/A	N/A	N/A	N/A	1997
254	200601	Phoum Chong Prek	1	40	1	40	1997
255	210603	Phoum Russei	N/A	N/A	N/A	N/A	1997
256	210604	Russei	87	4,136	N/A	4,136	1997
257	210605	Tuol Kampong Chak	N/A	N/A	N/A	N/A	1997
258	210606	Tuol Kampong Chak	N/A	N/A	N/A	N/A	1997
259	210607	Tuol Trapeang Tnaot	N/A	N/A	N/A	N/A	1997
260	210701	Wat Srah Kraing Banteay	70-80	800	130	3,775	1997
261	210702	Wat Srah Kraing Banteay	N/A	N/A	N/A	N/A	1997
262	210703	Wat Srah Kraing Banteay	N/A	N/A	N/A	N/A	1997
263	210704	Pech Entrea	40-50	900	N/A	N/A	1997
264	210902	Kraing Ta Chann	11	N/A	60-70	N/A	1997
265	010301	Munty Santesokh Dambann	1	hundreds	N/A	N/A	1998
266	010302	La-ang Trapeang Thma	few pits	thousands	pond	thousands	1998
267	010303	Prey Kok Trach	N/A	hundreds	N/A	hundreds	1998
268	010304	Wat Kandal	N/A	N/A	N/A	N/A	1998
269	020201	Me Chbar	N/A	hundreds	N/A	about 300	1998
270	020202	Veal Batt Kang	N/A	500	N/A	350-500	1998
271	020203	Tuol Roung Chrey	1	400	N/A	thousands	1998
272	020401	Chamkar Krauch	30	450	10-30	300-400	1998
273	020701	Banteay O Ta Krey	35	4,000	35	1,500-1,550	1998

274	020702	Phlauv Bambek Phoum Cheav	N/A	150-200	N/A	200-250	1998
275	020703	Phoum Chipa	N/A	200-250	N/A	N/A	1998
276	020704	Phoum Wat	N/A	150	N/A	150-250	1998
277	020705	Banteay Treng	N/A	800-1,000	N/A	800-1,000	1998
278	020801	Wat Po Laingka	N/A	N/A	N/A	N/A	1998
279	020802	Kach Rorteh	100-150	250-500	100-200	12,000-20,000	1998
280	020803	Wat Samdech Muny	6	5,000-6,000	6	5,000-6,000	1998
281	020804	Phoum Chumnik	5-6	30-35	6	35-100	1998
282	020805	Phoum Chumnik	N/A	50-60	8-10	50-60	1998
283	030101	Kuk Santesokh Batheay	400-500	8,000-10,000	400-500	8,000-10,00	1998
284	030102	Chamkar Daem Khnao	150-200	3,000-7,000	100-150	3,000-7,000	1998
285	030103	Svay Chrum	N/A	500-600	N/A	500-600	1998
286	030104	Tuol Khmaoch Chaom	100-200	700-800	100-200	700-800	1998
287	030201	Kuk Mitt Sao	20-30	500-600	N/A	N/A	1998
288	030202	Kuk Mitt Sao	700-1,000	8,000-10,000	500-700	more than 10,000	1998
289	030203	Wat Por Preng	N/A	N/A	N/A	N/A	1998
290	030204	Prey Trapeang Kuk Sam	8	800-1,000	8	400-800	1998
291	030205	Chamkar Ta Pom	54	3,000-10,000	37	about 10,000	1998
292	030206	Chamkar Ta Pom	N/A	N/A	N/A	N/A	1998
293	030401	Khnao Chass	6	1.200	N/A	N/A	1998
294	030402	Khnao Chass	N/A	N/A	N/A	N/A	1998
295	030801	Wat Chumnik	40	300-800	2 ponds and many small pits	300-800	1998
296	030802	Neak Ta Chen	10	1,000-1,500	N/A	700-1,500	1998
297	030803	Wat Chy He	N/A	N/A	N/A	N/A	1998
298	031101	Prey Thoudong	6	214	N/A	N/A	1998
299	031102	Trapeang Sangke	8	319-500	8	319-500	1998
300	031103	Moat Boeng Kapik	60-61	235	61-62	235-300	1998
301	031301	Kuk Wat Ta Meak	N/A	N/A	N/A	N/A	1998
302	031302	Tuol Trapeang Lvea	50-100	300-500	50-100	170-500	1998
303	031401	Wat Chey Mungkul	N/A	N/A	N/A	N/A	1998
304	031402	Wat Chey Mungkul	7	2,000	N/A	N/A	1998

(Continued in the February 2002 issue)

A Confessed Plot Against The Khmer Rouge

(An excerpt from File D14333, held at the Documentation Center of Cambodia)

I. Outside the Country

From the outside to the inside: before the defeat [of Lon Nol]

1. Contacted various allies of Japan and Indonesia, telling them to propose negotiations (especially at the 1973 and 1974 meetings of the United Nations) to end the bloody communist war. Only these two countries support Cambodia very strongly.

2. Contacted Thailand and Indonesia, which were planning to resume diplomatic relations with Kampuchea. Not only these two countries, but any country that might do this should be contacted, so that they can provide us with valuable information and can come to Cambodia when diplomatic ties are made.

3. Intervened with China and Vietnam, which have an influence on the Khmer Rouge, to persuade the Khmer Rouge to negotiate with the Republic regime.

4. Sent a representative of the US Congress to Kampuchea to observe the real war and then describe it to the Congress and ask for more aid.

5. Sent broadcasts through various media to Thailand, Japan, Australia, Philippines, and Taiwan about the interfering war of the Communist Party of Indochina.

6. Created many humanitarian organizations to help the refugees, like RDF, World Vision, CRS, CARE, and International Red Cross. The US controls these organizations.

7. Lastly, changed the political stance and top leaders, such as Lon Nol and Sos Stene, in order to conceal the acts they committed.

◆ Do for the sake of doing; do not pay attention to what is happening in and outside the factories.

◆ Use equipment without care and place them in many spots.

◆ In some factories, there is negligence. People are not trying to preserve raw materials, which makes them unusable.

◆ Provoke women in handicraft factories to move to the back when they complete their training.

◆ In short, the plans for each factory were not different, except in the way we worked with the machines and raw materials. In general, we wanted to disrupt the operation of the factory by trying to destroy tools, which made it difficult for Angkar to do its work.

◆ Waited until the outside attack forces were near to help the undercover team create chaos in the factories.

◆ The new recruits, like civil administration, students, soldiers and civilians, who had joined us in various bases, also had the ability to provoke the people and build up forces.

◆ The first major plan, which aimed to overthrow the revolution 7 months after the liberation, failed because people were evacuated from the cities, our forces were dissolved and communications were cut off.

◆ As in the city, the situation in the provinces worsened, for people were evacuated to the rural areas.

◆ Along the Thai border, where undercover forces and the CIA were, we planned to launch attacks in January, April and May 1976, by starting from border regions, like Pai Lin, Battambang, and Preah Vihear. Possibly, we might be supported by marine forces.

◆ Food and weapons were received from the CIA by transporting them over the border from the U.S. military base in Thailand (called Uy Tapay).

Some members of the CIA who were working along the border were trained in Indonesia. I did not know whether other CIA personnel who trained in other countries returned or not. However, the plan we had made before our defeat mentioned that if the defeat

occurred, we would gather all forces in the US, Australia, Thailand, New Zealand, Indonesia and the Philippines to work.

◆ Our aim was to attack and take Kampuchea back from the revolution after the country had fallen into the hands of the Khmer Rouge.

The information mentioned above about our activities after the defeat is all that I know about the CIA's plans. But, after the defeat, I never received detailed information about the plans, except the plan for the factories.

People who had trained abroad to return to work after the defeat were in all sectors, but most of them were soldiers. The majority of the trainees in Thailand were soldiers. Some soldiers were trained in flying at the US base in Thailand. In the US, the tank team was trained in Texas. The members of the team were people who had passed Baccalaureate II or came from BST technical school. Some air force personnel were sent to the US, and some to Australia. I met a few of them in Australia in 1973.

We trained to become spies (CIA) in Indonesia and engineers in the Philippines. We studied general courses like languages in New Zealand. For war strategy, we studied in Vietnam at Lam Seung and Long Say, and in Thailand at the US military base, and in monasteries. The soldiers who were sent to study had the rank of second lieutenant and above. These are all that I know.

II. The Plan Inside the Country

◆ As a policy, they [friendly countries] declared they would give aid to Kampuchea and support the political stance of Kampuchea.

◆ Increase aid from various humanitarian organizations for refugees in the city and provinces.

◆ Promised to contact the super powers of the East to negotiate peace for Kampuchea. Some members of the Mansfield Assembly arrived in China.

◆ Changed soldiers in the military in various provinces, such as Battambang, Kampong Cham and Kampot. In Phnom Penh, nothing was changed besides sending the president to France for medical treatment.

◆ General tasks in the government were carried out by the resignation of first minister Long Boret and other ministers. Mr. Dean is set to carry out national and international missions.

◆ In educational institutions there were disagreements between students and the government. The education system was not operating properly.

◆ Importing equipment for the country was under the supervision of the US, who set up quotas for purchasing goods in conformity with the economic aid of the US.

◆ The Riel [currency] was falling continuously, but countries are trying to stabilize the value of Riel with the help of the US.

◆ If we sold gas too cheaply, they would stop giving us aid. Politically, before the failure, the whole country was under the control of the US.

◆ They wanted all soldiers to have identification cards to use with an IBM machine for receiving salaries to avoid confusion.

◆ Soldiers who went into battle were paid more.

◆ Built camps for the wives of dead soldiers.

People, offices, and the chiefs of villages or districts were not 100% in agreement. The biggest activities were preparing to fighted along with the CIA at the border in January-February 1976 and in April-May 1976.

Enlarging the Forces: In factories, as well as in other places, the recruitment of new members was carried out in places where the CIA was. I recruited eight members in my factory, and another two in milk and flour factories. It was also the same at the bases.

Hiding Forces: After the defeat, we hid our network in factories located in the cities. We also did that at bases in the countryside, where some CIA members were also evacuated. Moreover, in factories, where most workers were elderly people and the majority of them were not satisfied with the revolution, building up covert forces in the factories was going well. Most male members were from the electricity factory.

Weapons: After the collapse, there was no weapon left in my factory. Other factories did not

know about these weapons either. The armed forces along the border must have received the weapons from the US through Thailand.

Other Sectors: After the defeat, soldiers who were sent to train in Indonesia became members of the CIA. They entered the country via the Thai border. I knew about their entering and leaving the country since before the liberation, and these people were to train to carry out missions after the defeat. In the cities, since Angkar brought workers to work in the factories, the activities in the factories took place from July 1975 to December 1975.

Before the Defeat: The defeat was anticipated since late 1973 after the US bombardment, and all pre-defeat plans were carried out.

After the Defeat: Increase the force in cities, provinces, and rural areas. Cities had military forces, civil servants, students and civilians. The military forces consisted of soldiers, armed forces, police, and spies. Provinces were like the cities; they had mostly soldiers. Major provinces were Battambang, Pailin, Koh Kong, Kampong Som, Preah Vihear, and especially provinces bordering Siem Reap. In the countryside, our forces were trying to hide among the people, teachers and regional cadres.

◆ In 1973, all sectors increased the force's size, compared to other years. And the forces continued to grow, especially soldiers groups, which was the most important for carrying out our plan.

◆ Officers and members of the CIA were sent out of the country to train and were reserved for conducting the CIA's plans after the defeat.

◆ Civilians were also sent abroad to prepare them for carrying out such CIA tasks as contacting foreign civilians, who contacted the military.

◆ They planned to train civilians and soldiers in various countries so that they could help carry out the plan when needed. Those countries were allies and under the support of the US. They were the Philippines, Indonesia, Thailand, Australia and New Zealand.

◆ In the country, plans were also made to overthrow the revolution by handing the plan to the military, 7 months after the Khmer Rouge liberated the cities.

◆ Prepared to disrupt the operations in factories and destroy their equipment. When the activities come from outside to inside, like the plan for July, forces in the factories can help from the inside.

◆ The roles of civil servants, students and teachers, and civilians were to stir up confusion in their ministries.

◆ As far as I know, the forces and the CIA's plans before the defeat are as reported above. However, the biggest failure was that the CIA did not think of the evacuation of Phnom Penh, which

Khmer Rouge Youths on Stage

resulted in a total communications breakdown.

◆ The CIA hid forces and soldiers in random places along the border with Thailand.

◆ Prepared ships for an attack, which was to be carried out in December 1976 and in April-May 1976.

Plan after the Defeat

◆ Members evacuated from Phnom Penh incited the evacuees and people in the countryside to build up new forces.

◆ The CIA, working under cover in factories, began to provoke workers and tried to identify the network.

◆ After the provocation, the workers began to conduct such missions as sabotaging equipment and recruiting more members. The objective was to cause chaos in the factory when attacks from outside occurred.

◆ The post-defeat plan (the first-level plan), which aimed to liberate cities, was cancelled since there were no forces or people in the cities.

◆ Plans to be carried out at the border, if based on the pre-defeat plan, were to put troops and CIA in place to act.

(Continued in the February 2002 issue)

List of Prisoners Smashed at S-21 (Tuol Sleng)

Compiled by Nean Yin

No.	Name	Rank	Place of Arrest	Date of smashing	Others
1	Mam En	Soldier		March 22,1976	
2	Keo Sophal	Sergeant-major	March 22, 1976		
3	Chan Ty	Corporal		March 22, 1976	
4	Uy Keo	Soldier		March 22, 1976	
5	Pet Soben	Sergeant-major		March 22, 1976	
6	Sok Phon	Soldier		March 22, 1976	
7	So Chakk	Soldier	Behind Chinese Hospital, Pochentong	March 22, 1976	
8	Chuop Heng	Soldier		March 22, 1976	
9	Keo Phuong	Soldier		March 22, 1976	
10	Keo Puonhaong	Soldier		March 22, 1976	
11	Kong Khoeun	Soldier		March 22, 1976	
12	Hong Him	Soldier		March 22, 1976	
13	Sou Soeun	Sergeant		March 22, 1976	
14	Sar Sarat	Sergeant-major		March 22, 1976	
15	Kim Uk	Sergeant-major	Region 25	March 22, 1976	
16	Long Heng	Corporal		March 22, 1976	
17	Chay Sovanna	Spy	Behind Chinese Hospital	March 22, 1976	
18	Kheng Khan		Soldier	March 22, 1976	
19	You Saroeun	Sergeant-major	Battambang	March 22, 1976	
20	Eng Phal	Corporal	Battambang	March 22, 1976	
21	Pich Saokheng	Master Sergeant	Battambang	March 22, 1976	
22	Khoem Ty	Sergeant-major		March 22, 1976	
23	Tuot Nhim	Sergeant-major	Baray pagoda	March 22, 1976	
24	Nget Sim	Soldier	Pochentong	March 22, 1976	
25	Ung Pha	Medic		March 22, 1976	
26	Braing Muong	Soldier	Pochentong	March 22, 1976	
27	Nut Hon	Corporal Chief	M.P. office	March 22, 1976	
28	Dorm Sari	Military Police		March 22, 1976	
29	Bann Iech	Soldier		March 22, 1976	
30	Nguon Lem	Master Sergeant		March 22, 1976	
31	Thaong Chhuong	Soldier		March 22, 1976	
32	Kim Sambath	Soldier		March 22, 1976	

33	Yuos Kin	Soldier	March 22, 1976	
34	Bann Ny	Soldier	March 22, 1976	
35	Khuon Vuthy	Soldier	March 22, 1976	
36	Vong Sarith	Soldier	March 22, 1976	
37	Saom Sakk	Soldier	March 22, 1976	
38	Mou Chanphal	Soldier	March 22, 1976	
39	Hang Sie	Soldier	March 22, 1976	
40	Krauch Kuthveang	Soldier	March 22, 1976	
41	Hang Sram	Soldier	March 22, 1976	
42	Loch Yan	Soldier	March 22, 1976	
43	Kong Aun	Soldier	March 22, 1976	
44	Ngieng Yang Oeung	Soldier	March 22, 1976	
45	Sam San	Soldier	March 22, 1976	
46	Mao Boran	Soldier	March 22, 1976	
47	Sar Ponra	Soldier	March 22, 1976	
48	But Phat, aka But Son	First Lieutenant	March 22, 1976	
49	Pich Khon	Major	March 26, 1976	
50	Pich Simoeun	Major	March 26, 1976	
51	Saen Heng	Captain	March 26, 1976	
52	Khieu An	Major	March 26, 1976	
53	Nop Ouch	Major	March 26, 1976	
54	Vong Sophano	Colonel	March 26, 1976	
55	Ban Uochnilpich	Major	March 26, 1976	
56	Noeng Keo	Major	March 26, 1976	
57	Pok Chum	Major	March 26, 1976	
58	Chao Kork	First Lieutenant	March 26, 1976	
59	Ham Theum	Captain	March 26, 1976	
60	Sar Bunkeu	Colonel	March 26, 1976	
61	Prek Yon	Major	March 26, 1976	
62	Long Thin	Teacher	March 29, 1976	(Network of Long Boret)
63	Long Bundara	Teacher	March 29, 1976	(Network of Long Boret)
64	Long Sotheary	Student	March 29, 1976	(Network of Long Boret)
65	Long Thiravuth	Student	March 29, 1976	(Network of Long Boret)
66	Nhem Mli	Wife of Long Thin	March 29, 1976	

(Continued in the February 2002 issue)

Nean Yin is the team leader of the Microfilm Project of the Documentation Center of Cambodia.

Documentary Photographs

Kalyan Sann

The young men pictured here were combatants at S-21 (Tuol Sleng). Some of them became prisoners at S-21 and were killed by their co-workers. Some died after 1979, while others are still alive. The DC-Cam has traced their identities.

1. Sun Koy, age 20, guard, was born to a peasant family in Kampong Sambour Krom village, Prek Thmei sub-district, district 18 (Koh Tom), Region 25. Sun Koy's parents were Sun Nay (father) and Chea Krek (mother). He had a tenth grade education under the old education system. Sun Koy joined the revolution on April 6, 1973 and was arrested in 1977. His present status is unknown.

2. Ung Choeun, age 17 in 1977, driver, was born in Russei Srok village, Chheu Teal sub-district, district 16, Region 25. His mother was Neou Lai and his father was Un Chieu. Ung Choeun had four sisters and one brother. He joined the revolution on April 5, 1975. His current status is unknown.

3. Oy Ngornly, alias Oy Ly, age 19, interrogator, was born in Prek Take village, Koh Thom sub-district, district 18 (Koh Thom), Region 25. An only child, Oy Ngornly's father was Oy and mother was Kul Chhou. He reached ninth grade under the old education system. He joined the revolution on May 9, 1973 and was arrested and detained at S-21 in 1977. His

current status is unknown.

4. Saom Met, age 20 in 1978, guard, was born in Prek Speu village and sub-district, district 18 (Koh Thom), Region 25. His father was Som Sok, his mother was Uk Nan (or Uk An), and his brother was Saom Tay. Soam Met's education level was grade 11. He joined the revolution on November 11, 1973. At present, he lives in Kandal province.

5. Mann Meng, age 24 in 1977, chef, was born in Kandal Koh village, Toekvil sub-district, district 20 (Leuk Dek), Region 25. His father was Mann Sambath and his mother was Sampheach. He had two brothers and three sisters. His education was grade 10 (under the old system). He joined the revolution on December 30, 1972, and became a member of the Yuvakak League (Cambodian Communist Youth League) on December 26, 1973. He began working at S-21 in October 1975. At the end of 1977, Duch detained him in the prison. His current status is unknown.

6. Suos Thy, alias Thy, was born on April 3, 1951 in Prek Keo village, Koh Kel sub-district, district 20, Region 25. His father was Suos Thuy and his mother was Nhoem Roeun. He had four brothers and four sisters. Suos Thy had a second grade education, Baccalaureate I. He joined the revolution on August 3, 1971 in Koh Kel sub-district, and the Yuvakak League on June 30, 1973 in Reaydab village, Reaydab sub-district, Kandal Stung district, Region 25. At present, he lives in Kandal province.

(Continued in the February 2002 issue)

Kalyan Sann is a staff-writer for Searching for the Truth.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(Continued from the December 2001 issue)

Violence and Sadism

Interrogations could be stopped, intensified, or interrupted at the whim of the interrogation team leader. The torturer—usually a different person—could resume using his hands, take up a new weapon, or return the prisoner to his cell. If a confession could be obtained merely by beating or by asking questions, so much the better. If none was forthcoming after extensive torture, so much the worse. Some prisoners were tortured on a daily basis. Ten Chan, a survivor, recalls being beaten and occasionally tortured for twenty-six days in a row.

Voices from S-21

Chapter Five: Forcing the Answers

David Chandler

The victims of torture often died. The prison authorities were unconcerned if death occurred after a confession had been obtained, but if a prisoner died beforehand the interrogator was often suspected of sabotage. Several interrogators imprisoned at S-21 confessed to killing prisoners under interrogation, and so did two of the guards, but in most cases it is unclear whether this crime was the one for which they had been arrested or whether it reflected their own assessment of punishable actions in their recent past. In any case, sadistic emotions occasionally spilled over, as the former guard Son Moeun wrote in his confession:

"After I was assigned to guard this prisoner [in the "special prison" south of Tuol Sleng] I saw the [interrogators] beating him, and when the interrogators were gone I stole inside and beat him too, pushing, kicking, and punching him freely, until the prisoner said, 'What are you doing? You'll kill me this way!'" Soon afterwards, the prisoner in question, Bun Than, died from the injuries inflicted by the interrogators and the guard. His confession is incomplete.

In any case, locked inside a total institution that was cross-cut by the competing demands of permissiveness and "discipline," empowerment and mistrust, violence and propaganda, interrogators always walked a fine line between too little and too much. They usually erred in the direction of excess, which was seldom punished, rather than discretion, which was never rewarded.

Like their counterparts in the Nazi death camps, they became callous. Cruelty at the prison, if we can judge from the documents that survive, was often what Randall Collins has called "cruelty without passion," in which "the subject of the violence is simply an instrument or an obstacle, and his suffering is merely an incidental (usually ignored) feature of some other intention." A vivid example of cruelty without passion at S-21 is a note sent by senior interrogator Pon to Ouch following a day of vigorous interrogation. The prisoner in question was Keo Meas, a former member of the Party's Central Committee. Pon wrote: "On the night of 26 September 1976, after threatening [the prisoner] with a few words, I had him remove his shirt and shackled his arms behind him, to be removed only at meals. [I thus] deprived him of sleep and let mosquitoes bite."

Penal and Judicial Torture

The phenomena of torture and violence at S-21 need to be placed in a historical context. Did they have roots in pre-revolutionary Cambodian practices, or were they new phenomena traceable to the needs of the Khmer Rouge and less firmly to specific foreign models?

Etymology sheds some light on the issue of torture itself. The Cambodian word for torture, *tearunikam*, shared with Thai, derives from the Sanskrit *daruna*, meaning "fierce" or "savage," and the Pali *kamm*, meaning "action." According to the definitive Khmer dictionary

published by the Buddhist Institute in Phnom Penh in the 1960s, its secondary meanings, like those of its Thai counterpart, are "savagery," "cruelty," and "barbarism." The illustrative sentence for *tearunikam* in the Buddhist Institute dictionary reads: "Don't ever torture [i.e., inflict cruelty on] people or animals."

Torture in its Khmer linguistic context, then, implies mere cruelty, carries moral opprobrium, and is not associated with the administration of justice. The phrase dak *tearunikam*,"to impose torture," suggests a cruel ordeal, or what Foucault and Rejali have referred to as penal torture, embodying what Foucault has called "the revenge of the sovereign," rather than what Edward Peters has referred to as *judicial* torture, which has been connected throughout history with gathering evidence and obtaining confessions.

Peters's magisterial study traces the practice of judicial torture from Greece in the fifth century B.C., where it was practiced only on slaves, through its development under Roman law and its revival in western Europe in the twelfth and thirteenth centuries A.D. Peters goes on to describe what he calls the "regularizing" of judicial torture that occurred between the thirteenth century and the eighteenth, when the practice came under sustained attack. He closes his book by discussing the revival of judicial torture on a global scale in recent times.

A shortcoming of Peters's absorbing study is its failure to take up Asian examples of judicial torture in any detail. Both judicial and penal torture were widespread in classical China, Japan, and Vietnam, especially in interrogating prisoners of war or when confessions or the names of a prisoner's associates were required. A Chinese term, *kaowen*, breaks down into the characters for "interrogate" and "beat," while the Vietnamese term, *tra tan*, uses the verbs "to examine" and "to question" without implying violence. The notion of blending torture with interrogations to produce confessions-missing from the word *tearunikam*—seems to have been a Sino-Vietnamese concept as well as a European one, but it was not familiar in the Theravada Buddhist parts of Southeast Asia. Evidence for its arrival in Cambodia before DK is lacking.

Even with this neglect of Asia, what Peters writes about judicial torture in Europe prior to 1800 is applicable to S-21. With the rise of Christianity, he tells us, judicial torture became integral to heresy cases. It was justified partly because "heresy was a shared offense [and] besides the salvation of the heretic's soul, inquisitors needed the names of fellow-heretics." Under torture, the suspected heretic produced the names of people who were subsequently tortured and who then produced more names, in widening spirals similar to those constructed centuries later at Tuol Sleng. In a perceptive paper about medieval torture, Talal Asad has suggested that "since the crime of holding heretical views could not be confirmed independently of a confession by the accused, [torture] had to be tried before the existence of the crime could be established. Since the crime itself was deliberately hidden, the hunt for the truth had to employ its own game of deadly secrets." In most of these cases, as at S-21, defendants were assumed from the start to be guilty, were allowed little or no formal defense, and were subject to condemnation on the strength of hearsay.

Torture in Cambodia's Past

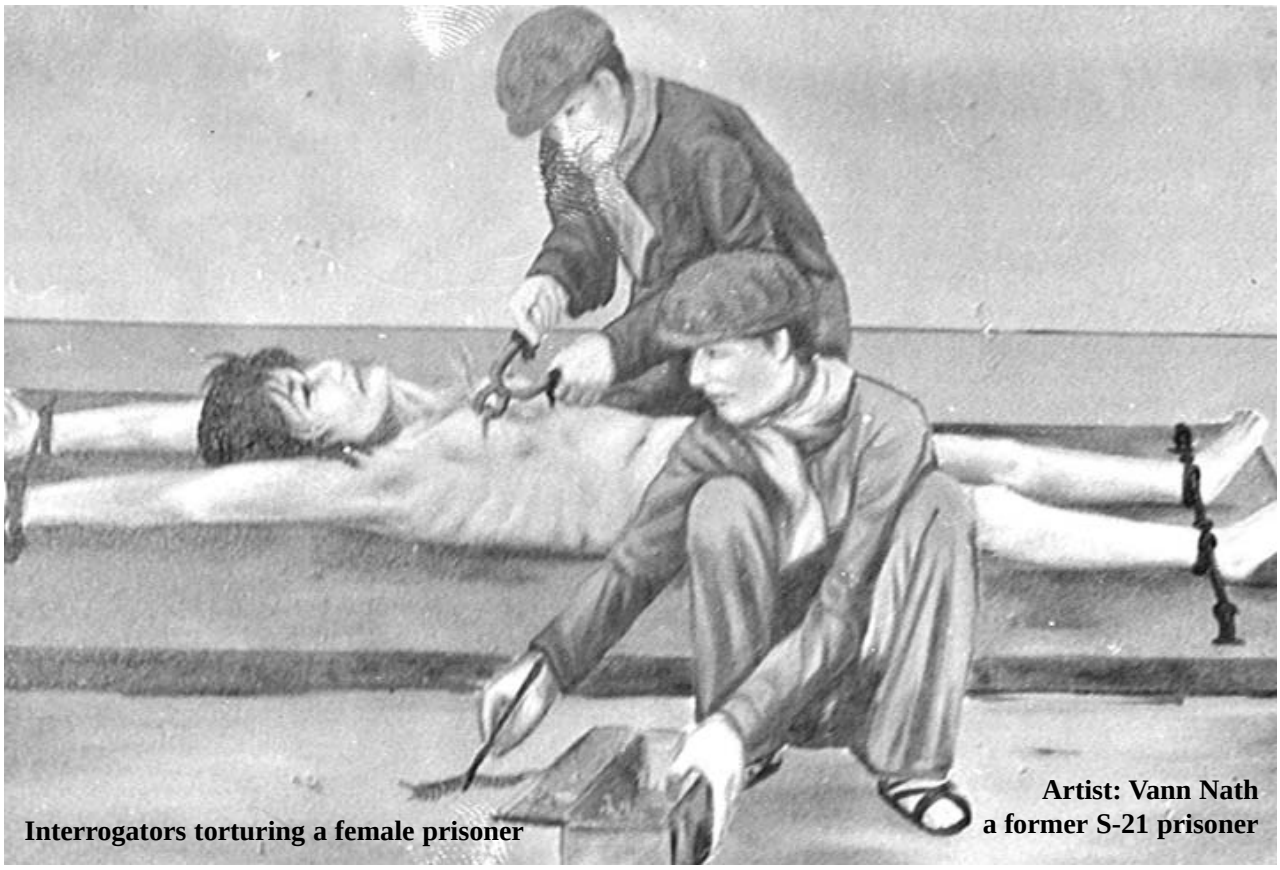
In pre-revolutionary Cambodia, there is no documentation of torture being used for evidentiary purposes, although suspects were sometimes subjected to painful ordeals to "prove" that they were lying or telling the truth. Instead, scattered evidence suggests that torture took its punitive form, extending or intensifying punishments meted out for crimes of lèse-majesté. Vivid examples of such ordeals can be found in several Angkorean inscriptions and are mentioned as penalties for defiance of oaths sworn by medieval Cambodian officials. Bas-reliefs in the southern gallery of Angkor Wat depict some of the punishments that were thought to await transgressors. In the reliefs, Yama, the Hindu deity of the underworld, is shown astride a buffalo dispatching rows of men and women either to an antiseptic heaven or into thirty-two vividly imagined levels of hell, where they are condemned, as in Dante's *Inferno*, to gruesome tortures appropriate to their sins. A guide who pointed out the bas-reliefs to a visitor in 1981 likened Yama to Pol Pot.

In post-Angkorean Cambodia, images of hell,

with victims being tortured, were painted as murals in many Buddhist *wats*. Vann Nath has compared the prison to such a hell (*norok*) and his own experiences to those pictured in Buddhist murals, noting that prisoners were often addressed as a-*pret* ("damned souls") by prison personnel. To complete the circle, Vann Nath's paintings of tortures inflicted at S-21 now adorn the walls of the Tuol Sleng Genocide Museum.

In this context, the prisoners' systematic dehumanization, which Nath has discussed in several interviews, may well have been linked to the fact that they were seen by their captors as irredeemable "unbelievers"—an unconscious carryover, perhaps, from Buddhist thinking, which tends to view nonbelievers (*thmil*, or "Tamils," in Cambodian and Thai) as beyond the pale. Dehumanizing them made things easier for workers at S-21, just as dehumanizing Jews, Gypsies, homosexuals, and other inmates made things easier for workers in the Nazi death camps. Those who were being tortured and killed, like the people in hell in the murals, were *others*. Pol Pot himself, in his marathon speech announcing the existence of the CPK in 1977, made this point succinctly: "These counterrevolutionary elements which betray and try to sabotage the revolution," he said, "are not to be regarded as our people."

Elaborate public executions in pre-colonial Cambodia, often involving trampling by elephants, demonstrated the power of the king, destroyed the culprits, and awed the onlookers summoned to the scene. It is as if the judgment of their superiors and the fate of the culprits' souls, as depicted at Angkor Wat and in later murals, had to be prefigured by the public destruction of their bodies.



Interrogators torturing a female prisoner

Artist: Vann Nath
a former S-21 prisoner

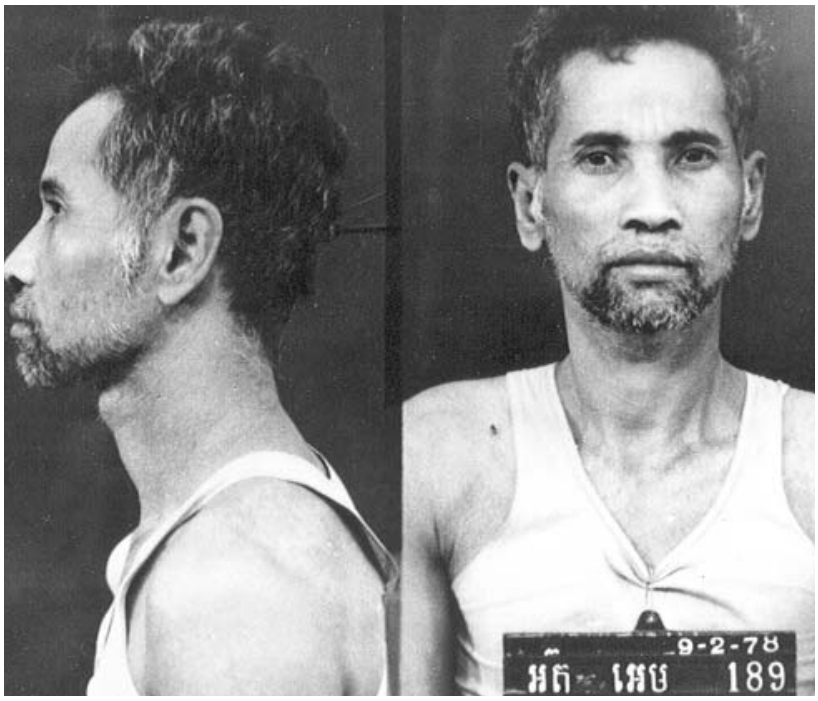
Other physical punishments for crimes in pre-colonial times were also very severe. Seventeenth-century Cambodian legal codes, for example, list twenty-one time-consuming, extremely painful punishments that were permissible in cases involving people "who seek to become great and seek to betray the king who is the lord of the land." The Khmer narrative poem *Tum Taev*,

set in the seventeenth century, first published in the early 1900s, and familiar to generations of Cambodian school-children, closes with the execution of an entire family after one of them is accused of lèse-majesté. Buried up to the neck, the family is decapitated by passing an iron harrow drawn by water buffaloes across their protruding heads.

These pre-colonial cases and prescriptions resemble the public executions in pre-revolutionary France described in detail by Michel Foucault in the opening pages of *Discipline and Punish*. But these cases differ in several ways from what went on in S-21, where tortures were inflicted selectively, in private, and had no connection with executions, which were carried out later, in secret, en masse, and usually at night. By combining elaborate physical torture and total secrecy, heavy documentation and complete surveillance, the practices of S-21 blend what Foucault has argued, in France at least, were separable stages in an evolutionary process, which he calls respectively the "vengeance of the sovereign" and "the defense of society."

In the colonial era in Cambodia (1863-1954), the French set up a career police force that operated under their supervision. By 1900 or so, penal torture had ceased to be practiced by Cambodian officials. Because of French scruples, judicial torture was never openly employed. Instead, the French established procedures, courts, and institutions for the administration of Western-style justice. Within this supposedly rational framework, however, interrogations of prisoners were often very rough. After Cambodia gained its independence, its French-inspired gendarmerie still beat prisoners, and people accused of treason were often tortured before being put to death. In the Lon Nol regime, prisoners of war were routinely tortured to obtain information. There is no evidence, however, that judicial torture was practiced extensively by the police, or used as an instrument of national security, before the Khmer Rouge came to power.

Why was this the case? To begin with, hardly anyone accused of treason under Sihanouk or Lon Nol ever went on trial; thus there was little call under those regimes for the detailed confessions that judicial torture might be expected to produce. Another constraining factor was that until 1975, Western-style police procedures and courts in Cambodia remained in place. Evidence obtained under torture, if its use could be established, might have been challenged in court, and the unwelcome publicity, if it reached foreign observers, might have besmirched Cambodia's reputation. This kind of constraint operated in other countries as well. If judicial torture occurred in postcolonial Cambodia, the absence of docu-mentary corroboration suggests that it was carried out in secret, as has been customary elsewhere in modern times.



(Continued in the February 2002 issue)

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Democratic Kampuchean-Chinese Relationships the revelations of a Khmer Rouge Cadre

Osman Ysa

Man

After the Khmer Rouge victory on April 17, 1975, the party gave an embassy building to Man's military unit to use as its headquarters. Man, who had been a member of the Phnom Penh security unit, was appointed in 1976 to welcome Chinese guests in Kampong Som and as a controller of goods imported from China at the Kampong Som harbor. He reported that he saw a white Chinese ship and a black Korean ship docking constantly in the port. Man also noticed that most of the goods coming into the harbor were mechanical equipment, fuel, garments, and sealed boxes.

Later, Man was given the responsibility of accompanying three Chinese military strategists staying in Kampong Som. Man related, "They changed my role from greeting Chinese guests and controlling the commodities to working with the Chinese. The Chinese knew me better than others, since we used to work together on the ships. When they taught military tactics; they needed me.... I and an interpreter named Chiev accompanied three Chinese, two males and one female."

Man said that only those with the rank of platoon chief and above were allowed to receive training from experts. The trainees came from the Southwest and Southern Zones. After the training was completed, the Chinese allowed the trainees to teach their soldiers. Man noted, "They were trained and taught for a long time, two or three months (the Khmer Rouge called it political study). Hundreds of soldiers from special regiments of Oeun's division in the Southern Zone and from another division of the Southwest Zone attended a session on constructing cooperative halls. During the training, we practiced, while the Chinese gave technical advice. In martial arts training, we were taught Chinese martial arts."

In 1977, Man was sent to Phnom Penh to accompany a Chinese engineer in examining construction sites in the countryside. Man still remembers that the Chinese engineer's name was Vong; the two had known each other in Kampong Som. After each site visit, Vong had them return to Phnom Penh. Man said, "Vong gave me a set of clothes. In about three months, Vong and I visited many dams and water reservoirs, including Boeng Krachab Dam in Kampong Cham province, January 6 Dam in Kampong Thom province, and other dams in Takeo and Kandal provinces. Every time we went, we were escorted by five Chinese soldiers and two big trucks of Khmer soldiers. The Chinese soldiers were armed and drove a Jeep behind my vehicle. In my Jeep were Vong, the interpreter, the driver and me. The two trucks were Chinese made. One truck led in the front; the other protected the back.

Upon arriving, the chiefs of the work sites came up to shake my hand, while the workers worked as usual. I saw Vong ask the chiefs questions and then write the answers in his notebook. At some places, like January 6 Dam, Vong reprimanded the chiefs loudly for failing to conform to proper construction techniques." Man said, "I did not notice how miserable the people were because I never faced a hard time. Once at a work site, after drinking coconut juice, we threw the coconut meat away, but I did not see the workers who picked them up to eat. Moreover, I never

observed the work site directly. After meeting the chiefs, we returned to Phnom Penh." Man remembered his suspicion, however, "There was a strange occurrence. I asked them many times if I could visit my home, but they always replied with the same answer: wait for a while."

After three months examining work sites, Vong was ordered to teach soldiers in Phnom Penh. Man was again allowed to stay with Vong. As in Kampong Som, only platoon chiefs and above were trained. Man said, "Vong taught them behind the present French Embassy and next to the old stadium. His martial arts style was similar to the styles taught in Kampong Som. During the training, I would watch in order to give some technical advice. After about ten days, the division chief, Oeun, told me I had learned martial arts, then he sent me to oversee the military airfield construction site in Kampong Chhnang."

In 1978, Man was sent to a work site in today's Pungro village, Pungro sub-district, Rolea Phieat district, Kampong Chhnang province. When he arrived, he recognized that the field was half completed. Man met with about 50 Chinese engineers, one of whom told him: "There are two airports in Kampuchea. One is Pochentong civil airport and the other is the military airfield in Kampong Chhang." Man said the Chinese told him that when the construction was completed, they would build a secret underground

structure close to the airfield, where warplanes would be kept (China provided such planes to Kampuchea). Those who had learned martial arts would be selected as the pilots or airfield guards. Man continued, "I was there to help other people to communicate with the Chinese. For example, if the Khmer side needed something, they told me and I sent a message to the Chinese translator." Man claimed the equipment used in the construction was imported from China because he had seen it in Kampong Som when he was a controller there in 1976.

A few months later, Man met Vong when he was visiting the work site. Vong was to supervise the construction of a building on a mountain and the digging of a tunnel through another mountain, which he had told Man about earlier. Man mentioned, "Not far out of Kampong Chhnang in Pungro village, there were two mountains. On one, Vong built a concrete building equipped with radar, and they planned to dig a secret tunnel into the second mountain. Vong had already measured the second mountain and made some excavations."

The construction of the airfield was almost completed and the drilling of the tunnel had begun in 1978. However, the projects were suspended due to the collapse of the Khmer Rouge regime in 1979. Before the Khmer Rouge regime, Man lived in Meak village, Prekakk sub-district, Stung Trang district, Kampong Cham province. In 1970, when he was 14, two friends named Mao and Roun persuaded him to join the National Liberation Front. Believing that joining the army was fun, Man and his friends enlisted in Sopheas village, Sopheas sub-district, Stung Trang district, Kampong Cham province, a Khmer Rouge liberated zone. The recruiter asked Man, "Do you join the army because you have suffered?" Man replied, "Yes." Man was then selected as a messenger of Sakk, the chief of the 3rd company of Heng's division.

Because of the courage he displayed, Man was promoted as the chief of the 2nd Company of Oeun's division, which was positioned on the outskirts of Phnom Penh. In the fierce fighting to take control of Phnom Penh from the army of the republic regime, Man struggled and commanded his soldiers in the battlefield of Phnom Brasith village, west of Phnom Penh, until they reached Phnom Penh. Today, Man lives in a village in Kampong Cham province.

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Khmer Rouge Wedding

Ratana C. Huy

Weddings during Democratic Kampuchea were different from the traditional ones in a number of respects. First, many of the couples, who were forced to marry, were physically frail as a result of overwork and malnutrition. Second, male and female youths had to stand in two lines waiting to receive their new spouses, who Angkar would determine randomly. Third, Khmer Rouge weddings were held without informing the brides or the grooms in advance; those to be married did not know the names of their future spouses or what they looked like. Last, family members were not allowed to attend the weddings because the Khmer Rouge considered Angkar to be everyone's parents.

One of the Khmer Rouge's requirements for weddings was that brides and grooms had to be in the same social class. Khmer Rouge society had three classes: the upper-middle class, the middle class, and the lower-middle class. Marriages were arranged between members of the same social class because

Um Chheav and his wife, who he married in the Khmer Rouge Regime

new couples were thought to have the same level of class anger.

Um Chheav and Chann Than, former Khmer Rouge cadres, are now living in Peam Brachum village, Prek Ambil sub-district, Saang district, Kandal province. Their marriage was arranged by Angkar in 1977 at Boeng Choeung Ek. Chann Than mentioned that she had never known who was going to become her husband. "Even when we sat on the chairs during the marriage, we did not see each others' faces," she said. She continued that if she disagreed with Angkar, she might be killed, since a small mistake relating to a marriage might lead to death. Um Chheav added, "I was not satisfied with the marriage without the presence of both parents. I did not know how I would get along with her."

Un Tim, who lives in Anlong Romiet said, "In the marriage ceremony, the Khmer Rouge usually declared, 'Your parents do not attend this wedding. We are your parents who arrange your marriage.'" In 1978, Un Tim was married in a wedding of about 160 couples.

Kong Chhun, a former Khmer Rouge cadre in Kbal Koh Ke village, Koh Khsach Chunlea sub-district, Saang district, Kandal province, used to make arrangements for Khmer Rouge weddings. He said, "The marriage was officially completed after a declaration which stated, 'These two people are now husband and wife, who must take care of each other for the rest of their lives and learn about one another.'"

The majority of people were forced to wed without love. Only a handful of cadres and base people, who Angkar considered as pure revolutionaries, had the right to reject a marriage when they were not satisfied. They had the right to propose to Angkar to marry a person they loved or marry in a more prestigious ceremony. Also, a small number of new couples were given clothes, mosquito nets, blankets, sleeping mats, cushions and shelters.

Kou Siem, another former Khmer Rouge cadre living in Moeung Char village, Cheang Torng sub-district, Tram Kak district, Takeo province, was a group chief in Prey Lvea village. He asked Angkar if he could marry a medical cadre. He added that he got married in 1977 and there were only three couples in his wedding; all of them were from the same social class. At the time he was in the lower-middle class.

Phann Chanta, a former medical staff member in Tram Kak district, Takeo province, confirmed that she rejected Angkar's proposal to marry two or three times, but did not receive any punishment. Later, she accepted the party's offer to marry to a driver, with whom she is still living.

Kou Siem

Phann Chanta

Riel San, a former medical secretary in Tram Kak district, said that when he worked at the Tram Kak hospital, he always ordered people to bake cakes and slaughter pigs for the party, and even gave houses to the new couples.

Why did the Khmer Rouge eliminate the marriage traditions

of the Cambodian people and introduce new, less personal marriages?

Angkar instilled revolutionary ideology about setting families into male and female youths. They criticized and showed disapproval for the conventional marriage, regarding it as imperialist, feudalist, and capitalist.

A notebook on "revolutionary and non-revolutionary views toward building up a new family," written by an unknown Khmer Rouge cadre, reveals that traditional marriage was a tool the brides and grooms used for personal benefit. For example, in ord er to become rich or powerful, the groom may seek a bride who is a daughter of a rich family or a high ranking officer. Likewise, if the bride marries a rich or high-ranking groom, she would live in prosperity, no matter how bad her family background is.

Thus, the Khmer Rouge matched couples in the same social class.

A report on an investigation of crimes of genocide conducted by the State of Kampuchea reveals two reasons for forced marriage: 1) The Khmer Rouge hated beautiful women and 2) the Khmer Rouge disapproved of culture in general and Khmer culture in particular. Accordingly, the Khmer Rouge always forced arrogant, beautiful young women to marry disabled men. But these forced marriages generally failed and often ended with suicide. Nguon Sopheap, who worked in the Ministry of Information and Culture, stated, "My sister committed suicide because she did not accept the marriage arranged by Angkar, who forced her to marry to a Khmer Rouge cadre she did not love."

Elder Svay Yin, living in Sampan Leu village, Prek Ambil sub-district, Saang district, Kandal province, said that on Koh Khsach Chunlea island, the Khmer Rouge forced a woman to marry to an amputee. After the marriage, soldiers spied on them from below the house at night to investigate whether the new couple was getting on well with each other.

In some cases, rejection or disagreement with Angkar's choice of spouse was considered as "high treason," punishable by imprisonment or even execution. In 1977, Nuon Thok, a former Khmer Rouge cadre, was required to marry to a disabled youth, but she refused. The Khmer Rouge then detained her in Siem Reap prison for disobeying Angkar's order. Phai Ven, living in Thlork village, refused to marry an old man, for which the Khmer Rouge tied her up and sent her to Kaun Kleng prison to be interrogated and forced to overwork.

Although the marriage of ordinary people was slightly different from that of cadres, the situation after marriage was the same. Two or three days after they became husband and wife, a couple had to live apart in order to conduct their assigned tasks. They only met once in a while. Phan Chantha said she only met her husband every ten days or so because her husband was a driver who traveled to far away places frequently.

The Khmer Rouge's marriage policies puzzle Heang Bunna, living in Damrei Chhlang, who asks, "Why did the Khmer Rouge force people to marry if after the marriage they could live with each other only one night and after that they were separated?"

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Summary Execution

Elizabeth van Schaack

It is undisputed that the prohibition against summary executions is a jus cogens norm. The Charter of the International Military Tribunal defines crimes against humanity as follows: "murder, extermination, enslavement, deportation, and other acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal." The same proscription can be found in Common Article 3 of the 1949 Geneva Conventions: among the acts prohibited under all circumstances are violence to life and person, in particular murder of all kinds and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized nations.

That the right to life is explicitly included in many international human rights instruments attests to its fundamental importance under international law. The right to life is not absolute; a state may impose the death penalty after a conviction or permit the killing of another in self-defense. Nonetheless, according to the Human Rights Committee, the deprivation of life by the authorities of the state is a matter of utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

Much of the international community has long sanctioned the prohibition against summary executions. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power calls upon governments to investigate deaths caused by law enforcement agents. In 1982, the United Nations established a special Rapporteur on Summary or Arbitrary Execution. Then, in 1989, the U.N. General Assembly endorsed the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions. The Principles call for a thorough and prompt investigation into all suspected violations. The inter-American Committee has forcefully reached the same conclusion: Governments may not use, under any circumstances, illegal or summary execution to restore public order. This measure is proscribed by the constitution of the states and the international instruments that protect the fundamental rights of persons.

Disappearances

The crime of disappearances consists of the forced abduction of individuals, usually by police or paramilitary personnel, under the direction of government authorities or with their tacit approval, and with a refusal on the part of the government to acknowledge their custody of the individual. The victims are often people opposed to the current government or considered otherwise dangerous or subversive. Detainees may be subjected to torture or summary execution, while authorities typically deny any knowledge of the victims' whereabouts and reject claims of state accountability. Disappearances are difficult to prosecute, because until the missing person is found, there is often no proof that a crime has occurred at all. The Inter-American Commission on Human Rights addressed this problem in a case against Honduras and adopted broader rules of evidence to compensate for the unique aspects of the crime. It is extremely difficult for a claimant to prove government-sanctioned disappearances, because it is almost impossible to obtain evidence to that effect. "[In the Velasquez case] the Court...considered a broad range of circumstantial evidence (i.e., that there was a systemic pattern of disappearances in Honduras, ... hearsay, and indirect proof of [Velasquez's] fate) to conclude that the victim's human rights had been violated."

Many commentators argue that a prohibition against

enforced or involuntary disappearances is emerging as a peremptory norm of international human rights law. In December 1978, the United Nations adopted a General Assembly Resolution on Disappeared Persons, calling upon governments to undertake investigations into reports of disappearances, to ensure that law enforcement and security authorities remain accountable in the discharge of their duties, and to abstain from abuses of power. The resolution was adopted without a recorded vote.

Additionally, in 1980, the Commission on Human Rights established a Working Group on Enforced or Involuntary Disappearances to enhance the U.N.'s ability to address disappearances. Concurrently, it established a Special Rapporteur on Summary or Arbitrary Executions, Torture, Religious Intolerance and Mercenaries. Together, these bodies prepare public reports, monitor state practice, and compel state to defend themselves before the Commission. In December 1992, the United Nations General Assembly adopted, without a vote, the Declaration on the Protection of All Persons From Enforced Disappearances. Specific provisions of this Declaration include the following:

◆ Each state shall endeavor to prevent enforced disappearances in its territories. Article 3.

◆ All acts of enforced disappearance shall be offenses under criminal law. Article 4.

◆ No derogation is permitted. Articles 5 and 7.

◆ The victims and their families shall obtain redress and shall have the right to adequate compensation. Article 19.

A similar declaration has been promulgated by the Inter-American Covention.

The Inter-American Court of Human Rights characterized disappearances as a crime against humanity in the Velasquez case. If characterized as a crime against humanity, disappearances invoke the Nuremberg Principles, and the United Nations Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

In Forti v. Suarez-Mason, 694 F.Supp 707 (N.D.Cal. 1988), a United States District Court found disappearances to be a universally recognized offense under the law of nations. For the purpose of granting jurisdiction, international torts were defined as violations of current customary law, [which] are characterized by universal consensus in the international community as to their binding status and their content. That is, they are universal, definable, and obligatory international norms. The court in Forti relied in part upon affidavits submitted by international jurists who defined disappearances as (i) abduction by a state official or by persons acting under state approval or authority; and (ii) refusal by the state to acknowledge the abduction and detention, and testified to the universal condemnation of the practice.

Although the International Covenant on Civil and Political Rights does not explicitly include disappearance, the Covenant's Human Rights Committee has imposed a duty on states to investigate disappearances when they occur. Furthermore, disappearances arguably violate the guarantees set forth in Article 8 of the International Covenant, Article 9 (everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention) and 14 (everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law). Additional condemnation appears in the Universal Declaration of Human Rights, which guarantees that no one shall be subjected to arbitrary arrest, detention or exile given that disappearance is a more serious crime than arbitrary detention. However, such assurances are tempered by the International Covenant, which provides for the temporary suspension of certain guarantees (including Articles 9 and 14) during state of emergency.

Elizabeth Van Schaack is co-editor of a Teaching Manual for the Cambodian Genocide Justice Project at Yale University, Truth and Justice in Cambodia: Human Rights in Transitional Regimes.

East Timor's Special Panel for Serious Crimes

Suzannah Linton

Introduction

In its capacity as transitional administrator of East Timor, the United Nations Transitional Administration in East Timor (UNTAET) has been holding trials of persons accused of involvement in atrocities since 1999. The first judgment in a case of crimes against humanity was delivered on 11 December 2001. These cases have been conducted at the District Court of Dili, where special panels of international and East Timorease judges have jurisdiction to hear what are called "serious crimes," namely genocide, crimes against humanity, war crimes, torture and certain violations of the applicable domestic legislation, the Indonesian Penal Code. The similarities with what is planned for Cambodia through the Extra-ordinary Chambers project are immediately apparent.

The Serious Crimes project draws from an earlier model for the Cambodian tribunal and reportedly also from Kosovo's now-abandoned War Crimes and Ethnic Crimes project. East Timor has pioneered a new device for international justice, the "internationalized domestic tribunal," which is grafted on to the judicial structure of a nation where massive violations of human rights and humanitarian law have taken pace. East Timor's Special Panel is not an ad hoc international tribunal created by the UN Security Council; neither is it is a purely domestic criminal process. Local prosecutors and judges are able to take part in the proceedings alongside international counterparts, unlike at the ad-hoc international tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), where such involvement was rejected for fear of tainting the impartiality and independence of the court.

The Special Panels (there was until recently only one panel; there are now two) have now been operating for a year and provide valuable lessons for Cambodia and also Sierra Leone, where the UN and the government have negotiated a Special Court that is also to be an "internationalized domestic tribunal." This paper is the first in a series that seeks to put the Cambodian Extra-ordinary Chambers (KR Tribunal) project into a more international context by focusing on East Timor and the work of its Special Panels. Amid the differences, there are very many similarities. This paper seeks to draw on the experience of East Timor and its Special Panel in dealing with atrocities. This effort to heighten awareness of East Timor's relevance to Cambodia is done in the hope of making a positive contribution to Cambodia's quest for justice.

East Timorese delegates arriving Kampuchea

Background on East Timor

1975 was a tragic year for both Cambodia and East Timor. On 17 April 1975, Phnom Penh fell to the forces of the Communist Party of Kampuchea. On 7 December 1975, what was then the Portuguese colony or "non-self-governing territory" of East Timor was invaded by the armed forces of the Republic of Indonesia under the presidency of Suharto.

Throughout the 24-year long occupation, the Indonesians faced a small but determined indigenous resistance movement (known as the FALINTIL) that had extensive grassroots support. Indonesia's modern Western-trained-and-armed military was unleashed upon the national liberation movement, and the civilian population that provided it with extensive grassroots support. The Indonesian forces developed and supported domestic militias and other paramilitary groups, who often fought alongside them and had a key role in the violence of 1999. The many reports of atrocities have led to allegations that the Indonesian authorities are responsible for the perpetration of crimes against humanity. In fact, the ultimate charge has often been laid: that Indonesian authorities perpetrated genocide on the people of occupied East Timor.

Following the resignation of President Suharto and a rapidly changing domestic situation in 1997 and 1998 that was linked to the Asian financial crisis, Indonesia agreed to hold a referendum that would permit the people of East Timor to determine their future. That referendum, organized by the UN, was held on 30 August 1999. 78.5% of the East Timorese voted against remaining within Indonesia, despite much intimidation and violence. Within hours of the announcement of the result, a tense situation escalated dramatically throughout East Timor, with widespread murders, kidnappings, rape, property destruction, theft of homes and property, the burning and destruction of military installations, offices and civilian residences perpetrated by Indonesia-supported militias. Thousands of civilians were herded to West Timor by road, sea and air. The UN was besieged in its compound and was forced to evacuate its staff and the East Timorese civilians whom it had been sheltering. Militia gangs, supported by the Indonesian forces, rampaged unchecked across East Timor. An international force (INTERFET) mandated by the Security Council finally arrived on 20 September 1999 and commenced steps to restore law and order. The occupation of East Timor formally terminated with the handover of Indonesian authority and control over East Timor to the United Nations on October 25, 1999 and the withdrawal of its remaining armed forces. The UN has now taken over the administration of East Timor through UNTAET, headed by a Special Representative of the Secretary General who acts as Transitional Administrator of the territory. East Timor's first free elections were held on 30 August 2001 and the former Portuguese colony is now governed by an all-East Timorese Transitional Government with UN assistance. Full independence was achieved on 20 May 2002.

The Search for Justice in East Timor

Some of the maelstrom of violence unleashed in East Timor in September 1999 took place before the eyes of the world's media and UN staff, and the resulting images on television screens and in the printed media around the world led to international outrage and calls for those responsible to be held accountable. The United Nations engaged its own experts to examine what happened in 1999 and established who was responsible. Three Special Rapporteurs and an International Commission of Inquiry were dispatched to the region. They found clear patterns of a widespread, systematic attack on the civilian population of East Timor coupled with state involvement, the key legal elements of crimes against humanity.

The International Commission of Inquiry found evidence that the Indonesian Army and the civilian authorities in East Timor and some in Jakarta pursued a policy of engaging the militia to influence the outcome of the popular consultation. It stressed that the intimidation, terror, destruction of property, displacement and evaluation of people would not have been possible without the active involvement of the Indonesian army, and the knowledge and approval of the top military command. The Commission concluded that the Indonesian army was ultimately responsible for the intimidation, terror, killings and other acts of violence experienced by the people of East Timor before and after the popular consultation.

Indonesia's investigators from its Human Rights Commission found evidence of crimes against humanity arising from the planned, systematic, widespread and gross violations of human rights, systematic murder, extensive destruction, enslavement, forced deportations and displacement, and other inhumane acts committed against the civilian population including torture and ill-

treatment, disappearances, violence against women and children (including rape and sexual slavery) and implementation of a scorched-earth campaign. It is, however, important to stress that these are the findings of missions of inquiry, which do not assess evidence using the strict standards required in a court of law. Ultimately, it will be up to the courts to assess the evidence presented by the parties and make a determination by using the applicable legal standards.

The Special Rapporteurs and the International Commission called for an international tribunal to try the 1999 East Timor atrocities. In what has turned out to be an accurate prediction, the Special Rapporteurs foresaw that the as yet-unformed East Timorese judicial system could not hope to cope with investigations into atrocities of this scale, and that the best efforts would be unlikely to result in complete investigations into the full range of crimes. The Commission recommended strengthening UNTAET's investigative capacity as an interim measure pending the establishment of an international tribunal. While the Commission chose to put its faith in Indonesian promises to try perpetrators through the Indonesian justice system, it did approve the development of investigative capacity in East Timor. Unlike the UN's long and complex negotiations with the elected Cambodian leadership, East Timor's scheme for justice through an internationalized domestic tribunal was rushed through within a matter of months of the establishment of UNTAET. A new court system had just been created from out of the rubble left by the departing Indonesian forces. It was staffed with East Timorese who had no previous experience before being appointed judges and prosecutors, and had to start work with hardly any training, minimal guidance and very little logistical or material support. Similarly, there were no people trained in court administration.

As de facto and de jure ruler of East Timor, UNTAET passed legislation for the creation of an internationalized domestic tribunal for the prosecution of atrocities, centered at the District Court of Dili. This crucial decision was not taken as a result of meaningful or wide-ranging public debate with the East Timorese or even the Presidency of the District Court of Dili, which by law should have been consulted. This resulted in great local resentment. Local NGOs and civil society are very much in favor of the creation of ad-hoc international tribunals such as the ICTY and ICTR to prosecute those responsible for the atrocities. An international campaign is now underway to pressure for its establishment. The calls have in fact grown stronger as UNTAET's Serious Crimes enterprise and efforts in Indonesia have become increasingly regarded as failing to bring justice. It is certainly ironic that while the Cambodian government has had the luxury of rejecting an international tribunal, the persistent calls for one by East Timorese experts and NGOs have come to no avail.

Justice, amnesties and reconciliation are now much discussed issues in East Timor. On 13 July 2001, a regulation for the creation of a Commission for Reception, Truth and Reconciliation for East Timor (RTR Commission) was passed. At the time of this writing, candidates for the commission are being shortlisted. There are two aspects to this process-one is the work of the RTR Commission itself, which will seek to establish an accurate record of what happened in East Timor by examining the pattern and scope of human rights violations in the context of the country's unhappy history since 1974. The other is the establishment of a Community Reconciliation Process, which will facilitate the return and reintegration of those who have committed less serious crimes by granting them amnesties. The Process is designed to permit considerable input by the office involved in the investigation and prosecution of "serious crimes" in East Timor. The effect of this is that if amnesties are to be given, they can only be in relation to minor crimes that do not qualify as "serious crimes" and with the approval of the prosecuting authorities.

(Continued in the February 2002 issue)

Suzannah Linton practices International Law and has worked on accountability for gross violations of human rights in many countries, as well as at the International Criminal Tribunal for the former Yugoslavia. She worked in Cambodia in 2001/2002, has published several legal studies on accountability for the Democratic Kampuchea era.

Non-Justice Is Injustice

Dara P. Vanthan

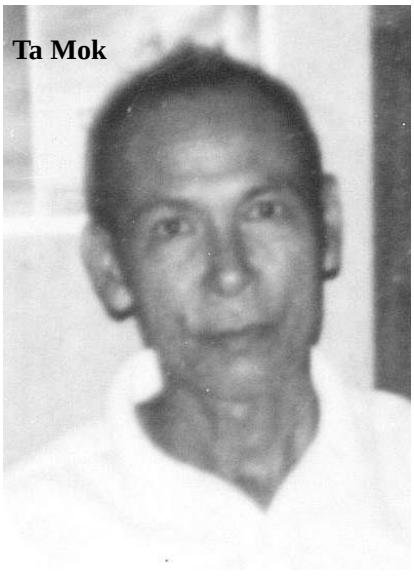
Ta Mok and Duch have been temporarily detained for nearly three years now, based on a law that provides for a three-year period of temporary detention. The question is: if Ta Mok and Duch have already been kept behind bars for three years, should they be released?

Paragraph 4 of Article 38 of the Constitution of the Kingdom of Cambodia states, "Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited…" Paragraph 6 adds, "Any case of doubt shall be resolved in favor of the accused." The two last paragraphs state, "The accused shall be considered innocent until the court has judged finally on the case," and "All citizens shall enjoy the right to defense through judicial recourse." According to the constitution and the concepts behind other laws in the Kingdom of Cambodia and other countries, as long as the court has not successfully prosecuted Ta Mok and Duch, they are considered to be innocent.

Ta Mok, who has multiple aliases—Ek Choeun, Chhit Choeun, and Ta 15—was the chief of military staff of the CPK's standing committee and was an eminent cadre in the Southwest Zone during the Pol Pot regime (in 1977, he was the secretary and the commander in chief of the Southwest Zone.) He was arrested by the government on March 6, 1999.

Duch, whose original name is Kaing Kek Ieu, was the director of Office M-13 Amlaing, Thpong district, Kampong Speu province, and later, of S-21 (Tuol Sleng). He was arrested on May 10, 1999, three months after the arrest of Ta Mok. These two people have not yet been prosecuted by any court, and are under temporary confinement of the military court, waiting for a tribunal to be set up.

Based on the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed during the Period of Democratic Kampuchea, which was signed by King Norodom Sihanouk on August 10, 2001, Ta Mok and Duch are regarded as suspects and are accused of crimes. Since the law was signed, these two have become the accused and have been detained temporarily in order to wait for the prosecution to be executed by a court of law. Therefore, according to Article 38 of the constitution or/and other laws, all legal decisions made during this period, which relate directly to the cases of Ta Mok and Duch, benefit them, since Ta Mok and Duch are detainees who are being held in custody by the military court. In contrast, they do not benefit from the law if their detention is prolonged.



Ta Mok

Duch

The request for the continued detention of Ta Mok and Duch has

already been made once, dependant on the provisions relating to the judiciary and criminal law and the procedures applicable in Cambodia during the transition period, which allows temporary detentions of no longer than four months, and can be as long as six months if an impartial investigation is needed (Article 14, paragraph 4). This delay was legalized by the amendment of Article 14 of the provisions relating to the judiciary and criminal law and procedures applicable in Cambodia during the transition period. The amendment was passed by the National Assembly on August 11, 1999, which lengthened the permissible period of pre-trial detention from six months to three years for those accused of war crimes, genocide or crimes against humanity. Ta Mok and Duch's detention period will end in early 2002. Thus, when this period is completed in conformity with the above-mentioned law, Ta Mok and Duch have the right to be released from custody. There is no reason to continue their detention, since it was done once. How the prosecution will be conducted against Ta Mok and Duch is a legal procedure of the extraordinary court that is expected to emerge in the near future.

The request to detain Ta Mok and Duch for the second time is not justice under the law. Yet, if the two are released, serious injustice will occur for millions of victims killed between 1975-1979. These victims hope Cambodia and the UN sides, as well as the international community, will soon create a tribunal to prosecute those responsible for the crimes committed during Democratic Kampuchea. Nuon Chea, Ieng Sary, Kieu Samphan, Ta Mok and Duch are becoming older each day and are increasingly plagued by diseases of old age. Having no a single senior Khmer Rouge leader to be prosecuted due to death of natural causes is possible.

Pol Pot, originally named Saloth Sar, the secretary of the Communist Party of Kampuchea (CPK) and Brother Number One of the Democratic Kampuchea regime, died on April 16, 1998, without leaving anything behind for the tribunal, but uncertainty for millions of Cambodian people and the victims.

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An Internationalized Domestic Tribunal?

Suzannah Linton

The Debates about Jurisdiction are "Academic" and Irrelevant

I do not agree. They are highly relevant, even if they will eventually fail to be determined by the Extraordinary Chambers (however, it is a fair point that they will probably not be able to deal with such technical legal issues). One of the reasons why they are so important is the fundamental principle of criminal justice that prohibits someone from being convicted of something that was not a crime at the time it was committed. This is a particular issue in judicial processes that attempt to bring justice to historical atrocities, as the legal situation is confused and does need to be clarified if there is to be a fair process.

The preceding debates (Searching for the Truth, Issues Number 22 and 23) are between someone taking an objective view, reading the law as it is, and testing what happened in Cambodia (Schabas) and someone who takes a subjective view and manipulates the situation to fit into the law (Stanton). Both are well-intentioned and I sympathize. However, I do believe the Schabas approach is the correct one. Nevertheless, I would have liked to see this discussion followed by a more constructive examination of whether we need to reconsider the Genocide Conventions in light of its inherent limitations. Both Cambodia and East Timor, victims of what seem to a layman to be genocide, do have problems in meeting the threshold of the Conventions, despite the extraordinary seriousness of what happened.

Mr. Johansen seems to assume that the selection of the subject matter jurisdiction for the KR tribunal means a decision has been taken that these things happened in Cambodia and it is just a matter of deciding if the accused did what he is accused of. I disagree, even though I recognize that the drafters do impose a certain understanding of the situation upon the court (e.g., by limiting war crimes to grave breaches of the Geneva Conventions, they appear to have decided there was an international armed conflict). The accused may still challenge the jurisdiction, for example, on the grounds that at the time of the offense, such an act was not a crime and not prosecutable. The role of the court is to decide, on the basis of evidence submitted by the parties, whether the wider as well as the specific elements are satisfied. For example, when looking at the grave breach provisions, it will have to decide whether 1) there was an armed conflict, 2) that armed conflict was international, 3) whether the Geneva Conventions applied, and 4) whether the legal elements of a grave breach are satisfied (the victim was a protected person or property, the accused was sufficiently linked to a party to the conflict etc.). Likewise, the prosecution will have to prove that genocide happened in Cambodia and then, and only then, that an accused's acts were genocidal.

The Origins of the Notion of Genocide and Crimes against Humanity

Mr. Johansen is right that the nexus to an armed conflict in the IMT Charter's definition of crimes against humanity was artificial. Without the link to an armed conflict (when the laws of war would apply and on which there was less controversy), many of the crimes committed against Jews and German civilians would have been considered to be within the domestic jurisdiction of the German Reich and nobody else's business. As it was, the charges of Holocaust were a minor part of the case against the leadership. The link to the armed conflict made it the business of other states and thus enabled the crimes to be prosecuted by states that would otherwise be violating that cardinal principle of domestic sovereignty.

It has always been acknowledged that this nexus between crimes against humanity, and either crimes against peace or war crimes, was peculiar to the jurisdiction of the Nuremberg Tribunal. It has come to be abandoned in customary international law, and has

already disappeared from the definition contained in Article II (1)(c) of Control Council Law No. 10. If one recognizes genocide as a species of crime against humanity, it is not irrelevant that back in 1948, the crime was not seen as having a nexus to an armed conflict. It would seem that by 1975 the nexus was not a characteristic of crimes against humanity in customary international law, as evidenced by state practice and opinio juris. But Schabas is right in that somewhere between 1945 and 1993, the nexus disappeared. It will be for the court to decide whether it was still a legal element of crimes against humanity in the period 1975-1979. So there seems to me to be no point in getting too hung up about this or the reason why it was present in the IMT Charter.

Genocide as a crime only came into existence with the Genocide Convention and was first successfully prosecuted at the ICTR in the Akayesu case in 1997/98. Its definition was settled at a time before the Cold War hardened positions and when the world was still struggling to comprehend the enormity of Nazi atrocities and determined to prevent its recurrence. Genocide is founded in the concept of the killing of a people, what occurred during the Holocaust. It should not be linked to the development of crimes against humanity through the IMT Charter and Judgement. I wouldn't call this a political definition, but rather one that arose directly from the experiences of the war and reflected the realities of the time. What we should be looking at is whether the time is right to consider a fresh look at the Convention.

Usurping the Jurisdiction of Domestic Courts

Underlying Mr. Johansen's arguments seems to be a belief that the international community is falling over itself to "steal" the jurisdiction of domestic courts. Not so. The sorry record of post-Nuremburg justice reveals a reality of indifference and failure to act, even in the face of the most egregious crimes. Only two ad hoc international criminal tribunals have been created by the Security Council, and both acknowledge the concurrent role of domestic courts, even if they have precedence should they choose to exercise jurisdiction. Neither the ICTY nor ICTR have precluded domestic trials under domestic law—in Bosnia there is a scheme called "Rules of the Road," whereby the prosecutor's office approves cases for domestic trial (the Bosnia Penal Code recognizes war crimes, etc.) Rwanda's prisons are notoriously packed with persons awaiting trial in domestic courts. There is to date just one functioning hybrid "internationalized domestic tribunal," that of East Timor, and it is located in the District Court of Dili.

The ICC is structured on the concept of complementarity: domestic courts are the first port of call. If those courts are unable or unwilling to fulfil their international obligations, and subject to the terms of the Statute, the ICC will be able to exercise its jurisdiction.

Towards the end of his paper, Mr. Johansen alludes to September 11; I think this is really what he has been writing about, rather than Cambodia. Calls for such serious crimes to be dealt with in an international arena will always be stronger when there is concern about the inability or unwillingness of the State to fulfill its legal responsibilities in domestic law. No one is denying that the USA has jurisdiction and the right to try those involved in the horrendous attacks. But Mr. Johansen needs to understand why some observers are inclined towards some form of international tribunal for Bin Laden and his terrorists—America and all its institutions have demonized the man and as a result, he has been convicted in the public mind. Many Moslem nations are convinced that America is persecuting Moslems and will take revenge by punishing those who simply defended their country from attack. One need only switch on CNN and listen to its journalists, American leaders and the public at large to get a sense of why some may feel there could be genuine problems of fair trial in the USA.

Are Genocide and Crimes against Humanity More Serious than Domestic Crimes?

Mr. Johansen is right that mass murder is and will always be a violation of domestic law. That has never been denied. That is why domestic law is in the KR Tribunal Law; it is also there as a recognition of national sovereignty, and to act as a fall-back should the prosecution not be able to prove international crimes. But the question is whether some crimes are so awful that they are considered as a separate class of crime and can fail to

be tried by states or international judicial bodies.

Mr. Johansen finds the notion that crimes against humanity and genocide are more serious than domestic crimes to be offensive. He misleadingly suggests that it is legal experts and the like who have arbitrarily come up with the notion that some crimes are more serious than others. For a very long time the notion has existed that certain crimes are so shocking to the conscience of mankind as to transcend the traditional boundaries of state sovereignty and engage the responsibilities of the entire international community. There are plenty of examples of this. Humanitarian intervention arose as a response to gross violations of human rights committed in the Christian lands occupied by the Ottomans, and state sovereignty was subordinated, if temporarily. After WWI, there were British attempts to prosecute crimes against humanity in Turkey for the massacres of Armenians, but these were eventually abandoned. We all know about WWII and the IMT at Nuremberg prosecuting for crimes against peace, war crimes and crimes against humanity. The Genocide Convention and Geneva Conventions of 1949 came later. There is no doubt that it is international law, borne out in the practice of states that regard certain crimes as particularly serious and deserving of the attention of the international community, and not the arbitrary ivory tower musings of certain academics.

So, what is an international crime? A crime that goes beyond an ordinary domestic crime and meets the legal definition of customary international law or treaty. Such crimes are so serious as to trigger certain legal consequences for states. One of those is universal jurisdiction. When international crimes such as genocide, crimes against humanity and war crimes occur, all states (including the state where the crime happened) are obliged to investigate, prosecute and punish suspects within their jurisdiction in relation to that crime or extradite such persons to another state to stand trial. An aggressive interpretation of this basic concept allows states that are keen to "do their part" to actually hunt down suspects in countries that aren't doing anything. The person accused of an international crime can be arrested and prosecuted by any state; in fact, there is a legal obligation upon states to take action. This does not occur for ordinary murder, even mass murder, which is premised on the understanding that the accused will be tried in the state with jurisdiction, and getting hold of the accused will be governed by rules on inter-state cooperation in crime prevention and extradition laws. The situation is now complicated by international legal bodies such as ad-hoc criminal tribunals to which one cannot extradite, but can simply "transfer'"someone to stand trial. Be that as it may, it should be clear that these bodies do not exclude the exercise of jurisdiction by national courts.

Mr. Johansen seems not to appreciate that international justice does not mean that one has to have international tribunals; it means that states have to comply with their obligations to each other to contribute to the maintenance of international peace and security by using their domestic law to repress these very serious crimes. The international judicial bodies come into the picture because of an inability or unwillingness on the part of the State to meet its obligations.

As for the suggestion that international crimes were never meant to be prosecuted in domestic courts, I would draw Mr. Johansen's attention to the provisions in the four Geneva Conventions of 1949 about how states' parties are required to adapt their laws to permit the proper implementation of the enforcement mechanisms-and prosecution is a key tool for ensuring respect for international humanitarian law. Also, I would point out that genocide, crimes against humanity, torture and war crimes are increasingly being prosecuted in domestic courts-for example, Balkan war criminals have been prosecuted not just in the Balkans but also in domestic courts in Switzerland, Norway, Germany and The Netherlands, just to name a few. The Spanish are famously after General Pinochet; the Belgians have prosecuted genocidaires from Rwanda and are now after Ariel Sharon for the Shabra and Shatila massacres. I would also stress that domestic law was applied in the occupied zones of Germany-the Canadians used Canadian law and the Brits used the Royal Warrant of 1945 with attached regulations (Control Council Law No. 10 was used in the US zone and followed the IMT Charter in the main). German courts

applied German law to try German war criminals. The Israelis used domestic law to try the kidnapped Adolf Eichmann, etc.

The Hierarchy of International Crimes

This is a touchy subject. Some see a hierarchy that begins with aggression, going down to genocide, crimes against humanity and then war crimes. Others say it is immoral to enter into a process that looks at how many victims and the degree of suffering caused, thus creating first- and second-class crimes. Some say this notion of a hierarchy is just not borne out by international jurisprudence. Others say it is. Some fine debate has taken place on this issue at the ICTY-particularly in relation to whether crimes against humanity are more serious than war crimes. It may seem an academic issue, but it is in fact important, particularly when the court comes to consider sentencing.

Can an International Tribunal Use Domestic Law-Can a Domestic Tribunal Use International Law?

As creatures of an international system, international courts and tribunals only apply international law. They do gain guidance from domestic law in certain situations, but do so cautiously as the rules cannot simply be transposed onto the international arena. The judges of an international court therefore only look at international crimes and yes, that reveals that international crimes are indeed regarded as a special category of crime deserving of a special regime. But by the time we get to this stage, the situation that led to the crimes being committed will have been a very serious one-usually one that has led to the creation of the court as a measure to restore international peace and security.

An examination of domestic courts trying international crimes reveals that they do in the main examine international law and its jurisprudence in the cases before them. But much depends on the caliber of the judges, and there is always a tendency to rely on domestic concepts and provisions, as international criminal law is still in an evolutionary stage. What is clear is that growing reliance is being placed on the jurisprudence that has emerged from the ICTR and ICTY. There are often complaints about domestic trials being second-class justice. Sometimes they are justified and sometimes not. Victims of atrocity would seem to prefer an international process, as Mr. Johansen suggests, because they see it as a "better" justice. International standards are certainly under the spotlight in an international process and I would suggest that rights are generally well protected in the international judicial process. If there is a domestic process, it may well be because that is the only way that justice will be done for the victims of atrocity. Without generalizing about the standards of domestic justice, which will vary tremendously, it often comes down to trial in the domestic courts or nothing at all. International justice is very rare in the scale of things: how many convictions and acquittals can the ICTY and ICTR show for all the millions they have cost the world?

Again, I would stress that the existence of an international body with jurisdiction does not mean the domestic jurisdiction of the sovereign state is subordinated. The international tribunal is usually established to try leaders and those most responsible in situations where the state is unable or unwilling to do anything to investigate, prosecute and punish. We are talking about crimes that are universal in nature, that transcend the interest of any one state. In such circumstances, the sovereign rights of states cannot and should not take precedence over the right of the international community to act appropriately as they affect the whole of mankind and shock the conscience of all nations of the world. A properly constituted international tribunal could try these crimes on behalf of the international community, but would have to take a considered decision that examines the prospects of a trial in the domestic courts, including whether this would accord with international standards of due process and fair trial.

Suzannah Linton practices International Law and has worked on accountability for gross violations of human rights in many countries, as well as at the International Criminal Tribunal for the former Yugoslavia. She worked in Cambodia in 2001/2002, has published several legal studies on accountability for the Democratic Kampuchea era.

Nato Intervention in Kosovo:

Is it promoting the existing International Law or Destroying it?

Bora Touch

(Continued from the December 2001 issue)

The UN Security Council adopted Resolution 1199 in September 1998. China abstained from voting on the Resolution on the grounds that it constituted an intervention in FRY's domestic affairs. This time, the Council determined that the crisis in Kosovo amounted to "a threat to peace and security in the region." The Resolution demanded that both parties cease their military hostilities and requested that FRY take appropriate measures in order to obtain peace for the region. In addition, the Resolution went on to state that the Security Council decided that "should the concrete measures demanded in this Resolution and Resolution 1168 (1998) not be taken, [the Security Council] would consider further action and additional measures to maintain and restore peace and stability in the region."

Despite the fact that both resolutions indicated that armed intervention in Kosovo would require authorization by the Security Council, NATO argued that it could justify its armed attack on FRY on the basis of Resolution 1199. China, Russia and other members of the Security Council rejected this argument. Russia vowed to veto any draft resolution by the Security Council that called for military action, saying this would aggravate the situation in Kosovo, which turned out to be right. Because Security Council authorization of the use of force requires unanimous consent by permanent members of the Security Council, the Russian and Chinese stand against the use of force negated any legal basis for UN-sanctioned military action in Kosovo.

Absent Security Council authorization, another possible way of seeking authorization for the use of force would have been for NATO to seek approval from the UN General Assembly under Chapter IV of the UN Charter. The General Assembly in the past has authorized the creation of military and non-military missions such as the United Nations Emergency Force, the 1990 Haiti election verification and the United Nations Council on Namibia. However, NATO did not make any attempt to seek authorization either by the Security Council or by the UN General Assembly before it waged its war against FRY.

NATO's action against FRY therefore violated Article 2(4) of the UN Charter and did not fall within the narrow exceptions of self-defense or action authorized by the Security Council or the UN General Assembly.

A further justification relied upon by NATO for its use of force was humanitarian intervention. NATO stated that force was required to protect ethnic Albanians from ethnic cleansing being conducted by FRY. Nine NATO members used the term "armed humanitarian catastrophe" while only Belgium used the term "armed humanitarian intervention," which it contended was compatible with Article 2(4) of the UN Charter. In putting forward the argument that NATO's use of force was justified on the grounds of humanitarian intervention, Belgium admitted that this doctrine is not settled in international law.

The doctrine of humanitarian intervention has not been accepted as a justification for the unilateral use of force by one or more states against another state, even when the latter state has grossly violated the human rights of its own people. However, intervention on humanitarian grounds may be permissible in international law if it is sanctioned by the UN Security Council under Chapter VII, such as the recent examples of UN-sanctioned use of force in Bosnia and Rwanda. Chapter VII relates to actions "with respect to threats to the peace, breaches of the peace and acts of aggression." Under Chapter VII, the Security Council may take military enforcement action involving the use of force of member states. In some cases, the Security Council might allow a regional body to carry out its mandate under Chapter VII. However, if use of

force is not justified as self defense or authorized by the Security Council under Chapter VII, it will be regarded as a violation of international law, regardless of whether a state or a regional body justifies its actions on the grounds of "humanitarian intervention."

Human suffering or an internal crisis that has resulted in the displacement of people may not justify armed intervention by one or more other states. In its judgment in the Nicaragua case, the ICJ made it clear that a massive outflow of refugees outside a state resulting from human rights violations did not qualify as an armed attack that would justify the threats or use of force by other states. In its argument against using the doctrine, FRY pointed out the statement of the Foreign Office of the United Kingdom arguing against humanitarian intervention:

"the overwhelming majority of contemporary legal opinion comes down against the existence of a right of humanitarian intervention, for three main reasons: first, the UN Charter and the corpus of modern international law do not seem to specially incorporate such a right; secondly, state practice in the past two centuries, and especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention, and, on most assessment, none at all; and finally, on prudential grounds, that the scope for abusing such rights argues strongly against its creation.... In essence, therefore, the case against making humanitarian intervention an exception to the principle of non-intervention is that its doubtful benefits would be heavily outweighed by costs in term of respect for international law."

In their submissions to ICJ, the NATO countries failed to cite any authorities that supported the use of force on humanitarian grounds and failed to argue that the British assessment had been nullified by more recent developments in international law.

If FRY committed ethnic cleansing, as has been alleged, why did the US, Spain and other NATO member countries refuse to consent to the ICJ's jurisdiction? Notably, in its submission denying the ICJ's jurisdiction, the US reminded the Court of its reservation to the Genocide Convention, precluding the Court from hearing any case arising from that Convention without the consent of the US. In the FRY case, the Court upheld the reservation saying the US' s "reservation to Article IX is not contrary to the Conventions' object and purpose."

NATO also invoked the justification of necessity for its military action. According to Article 33 of the Draft Articles of State Responsibility of International Law Commission 1980:

"In any case, a state of necessity may not be invoked by a state as a ground for precluding wrongfulness:

(a) if the international obligation with which the act of the state is not in conformity arises out of a peremptory norm of general international law; or

(c) if the state in question has contributed to the occurrence of the state of necessity."

Respondent states to the FRY proceedings-the United States, France, Italy, Belgium, Germany, the Netherlands and Canada-allowed funding of the KLA through financial institutions in their countries. Bank accounts for the KLA were even advertised in certain respondent countries, both in print media and on the internet. NATO countries' support of the KLA arguably constituted interference in FRY's domestic affairs, contrary to the General Assembly Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation of 1970. NATO is therefore precluded from arguing necessity defense as a justification for the NATO air strikes.

Did NATO Commit the Crime of Aggression?

A crime is considered to be an international crime if the injuries that the crime causes jeopardize the security of all states in the world. NATO's actions could qualify as acts of aggression against FRY. However, throughout history, there have been problems in defining the term "aggression" and in reaching agreement on what exactly constitutes criminal aggression in international law.

At the Nuremberg trials following World War II, the International Military Tribunal argued that international law supported finding criminal responsibility for "crimes against peace," i.e., crimes of aggression. The Tribunal supported the finding of individual

responsibility for crimes of aggression. Article 6(a) of the London Charter provided:

"Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to the planning, preparation or waging a war of aggression, or a war of violation of international treaties, agreements or assurance, or participation in a common plan or conspiracy for the accomplishment of the foregoing."

Despite the treatment of crimes of aggression at the Nuremberg trials, no defendant was sentenced to death at those trials merely for crimes of aggression. Generally, those condemned to death were found guilty of crimes against humanity or war crimes.

In 1946, the UN General Assembly unanimously adopted the Nuremberg definition of crimes of aggression in Resolution 95(1). In its 1950 restatement of the law of the Nuremberg trials, the UN International Law defined "crimes against peace" in Principle VI(a), as:

"(1) planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances; [and] (2) participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (1)."

The UN General Assembly adopted a resolution in 1974 which specifically outlined elements of the crime of aggression. While earlier definitions of crimes against peace or the crime of aggression allowed for the possibility of individual responsibility for these crimes, the UN Resolution focused solely on state responsibility. Article 1 of Resolution 3314 provided that aggression "comprises acts that are done by states against other states that threaten the territorial integrity or political independence or breach the UN Charter." Further, acts that could constitute aggression included, inter alia, "(a) invasion, attack, military occupation or annexation by one state over another; (b) bombardment by one state over another; (c) blockade of ports; and (d) attack on land, sea or air."

While Resolution 3314 was not binding on UN member states, its definition of crimes of aggression was adopted by the ICJ in the Nicaragua case. In that case, the majority of the ICJ stated that Resolution 3314 reflected the customary international law position on crimes of aggression.

In 1987, the UN General Assembly adopted its Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations. This Declaration affirmed Resolution 3314 and stated that the use of force was always prohibited-there would be no consideration of why force was used. Finally, in 1996, the UN International Law Commission issued its Draft Code on Crimes Against Peace and Security of Mankind, including a definition of the crime of aggression. With its Draft Code, the UN reverted to the Nuremberg conception of individual responsibility for crimes of aggression. It now appears possible that both states and individuals may be held responsible for crimes of aggression. There is no precedent, however, apart from Nuremberg and the draft code, for holding individuals responsible; nor would it be illegal to create one.

Because, like the United States in the Nicaragua case, states view the use of force as a political or national interest, states have been reluctant to give up the option to resort to aggression in the face of a dispute. This may be the reason why there has not been consensus among states and little interest in codifying the prohibition against aggression. However, the fact that aggression has not been defined and codified does not mean that an act of aggression by a state is not international crime. Prohibiting aggression is a rule of jus cogens and international customary law, which attracts both civil and criminal sanctions.

Criminal and Civil Responsibilities of Individual Member States of NATO

As argued above, the ten members states of NATO have violated international law by using force against FRY without any legal justification. Further, NATO's actions qualify as crimes of aggression. Under Article I of the Draft Article of State Responsibility, "every international wrongful act of a state entails the international responsibility of that state." Any breach of international obligation gives rise to the duty to make reparations. According to the Permanent Court of

International Justice:

"The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals-is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."

Of the three categories of reparation, namely restitution, compensation and satisfaction, in the case of FRY, compensation would be most appropriate because restitution would entail placing FRY in its pre-breach state. This is impossible as lives were lost and property destroyed. Compensation would involve considering multiple state responsibility. The ICJ should consider the relative blame of all of the NATO states to allocate the amount of compensation payable by each state. Satisfaction, alternatively, could involve an apology, declaration of responsibility, guarantee that the action would not be repeated and punishment of individual actors.

In their submissions to the ICJ, legal representatives of NATO members have claimed that actions of the command structure cannot be attributed to individual member states and therefore, member states cannot be held liable. By arguing that NATO, as an international organization, is exclusively responsible for armed actions, NATO attempts to prevent any attribution of the actions of its member countries to the individual member states. NATO is an international organization that may not possess the required international personality that enables it to sue and be sued. Therefore, if NATO succeeded in its argument, then both NATO and the individual states could potentially escape international responsibility.

However, despite NATO's argument in the FRY case, the NATO 1998 Handbook prescribing the "principal policy and decision-making forum of NATO, the North Atlantic Council," undoubtedly imputes any fault that may arise to the individual member state. The Handbook states:

"when decisions have to be made, action is agreed upon on the basis of unanimity and common accord. There is no voting or decision by majority. Each nation represented at the Council table or any of its subordinate committees retains complete sovereignty and responsibility for its own decision."

In addition, the Handbook implies that individual political figures of each state may be held liable for their decision. The Handbook stipulates: "in accordance with the fundamental principles which govern the relationship between political and military institutions within democratic states, the integrated military structure remains under political control and guidance at the highest level at all times."

Thus, NATO's claim that individual member states are not responsible for the military should fail. In addition, the individuals who commanded the air strike and those who enforced the command can also be held criminally responsible under international law.

In the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Preliminary Objections) of Bosnia and Herzegovina v Yugoslavia, the ICJ ruled that although the international crime was committed by individuals, the state or its relevant entities may be held responsible under the general rule of international responsibility. Further, the Court also explained that even if the international crime is not attributable to the state and its entities, individuals could be held responsible for the crime.

What is FRY's recourse as an injured state under international law? FRY could bring an action in the ICJ based on the international law principle of duty to make reparation for breaches of international obligations and under Article 45 of the Draft Articles which requires reparation, cessation of the illegal act, restitution, compensation and assurance of non-repetition. It is unlikely that FRY has any actual recourse against at least the USA and Spain, because these states are not under the compulsory jurisdiction of ICJ and thus, may be able escape responsibility. However, if the eight other members or one of them is held responsible for the crime of aggression, both the United States and Spain would also be required to pay damages under the principle of joint and several liability. Other countries,

such as Macedonia and Albania, which allowed their territories to be used by NATO to attack FRY, may also incur liabilities.

Conclusion

Under existing international law, NATO' s armed invasion of FRY was without legal justification. It was not authorized by the Security Council or the General Assembly and clearly was not self-defense. Further, armed humanitarian intervention is not an accepted justification under international law. The flood of refugees out of Kosovo and human rights violations, no matter how gross or widespread, are not justifications for an armed attack under international law. Further, the justification of "humanitarian intervention" is dangerous because it is used selectively according to the political and other interests of states. Finally, under international law, it is prohibited for states to interfere in the domestic affairs of another sovereign state. FRY is a sovereign state.

While it is not contested that human rights abuses occurred in Kosovo and that both Albanians and Serbs were killed during the Kosovo crisis, the Kosovo crisis was a domestic conflict between a legitimate state under international law (FRY) and a province (Kosovo) that was seeking to secede from that legitimate state through illegal armed rebellion. The international media and NATO did not seek to present the conflict as an internal dispute in which Kosovar Albanians and Serbs alike were victims. Further, there were ways in which the crisis could have been settled by peaceful means in accordance with the principles of the UN Charter.

NATO's actions therefore violated international law. Under international law, each state should be held both individually and collectively accountable for the NATO aggression. Because of politics and because of the reservations about the ICJ Statute by two NATO states (notably, the United States which is the world's superpower and without which it is unlikely the NATO campaign would have taken place), it is unlikely that the NATO countries will be held responsible for their actions. The FRY case at the ICJ demonstrates the failings of international law and tests both the principles in the UN Charter and state responsibility. If powerful nations are not held to account for violations of international law, international law is without force or credibility.

After the Cold War, the term "new world order" is obviously not an international legal order based on the principles of the UN Charter or international law. Rather, the new world order is the one that is dictated by the country or group that is more powerful, now the US. If the law is relied on, it is only when it is to the liking of those powerful countries. The FRY case is an example of the manipulation of international law to the benefit of the powerful countries without these countries facing responsibility. NATO conducted its air strike because it accused FRY of committing ethnic cleansing, but when FRY brought an action against the NATO countries, alleging that these countries committed genocide against the people of FRY by the use illegal depleted uranium and cluster bombs, the NATO countries vigorously and effectively refused the ICJ's jurisdiction. If NATO's claim was meritorious, NATO should have counterclaimed against FRY, as the USA and FRY did in the case on Oil Platform Islamic (Republic of Iran v. United States of America) [10 March 1998] and Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegivina) [17 December 1997] respectively. NATO failed to do so in the FRY case.

Bora Touch, a reader, submitted this article.

Khmer Rouge Slogans

◆ Fight to achieve 100% the plan of reconstructing the country based upon self-reliance, creativity, initiative, and highest level of economizing.

◆ The social affairs, health, education, and information sectors determine to achieve the plan a hundred percent and more.

◆ Harvest, store and preserve agricultural products a hundred percent. *(Notebook 076 KNH)*

Biography of Um Phaly

Aun Long

Um Phaly at Khav Y Dang Refugee Camp, Cambodian-Thai Border

Dammlou is a village in Vangchass sub-district, Uodong district, Kampong Speu province. During the Democratic Kampuchea regime, Kampong Speu was in Region 32 of the Southwest Zone. Dammlou is the birthplace of Um Phaly, called Keo. She was born in 1958, the third child in a middle-class family of eight children. Her father's name was Um Oeu, a goldsmith, and her mother's name was Cheam Say. From 1969 to 1970, Um Phaly was a student at Uodong High School (Ancient City) in Kampong Speu.

During the relentless fighting between Lon Nol and Pol Pot's soldiers before the Khmer Rouge came to power, Um Phaly's family was frightened, as were the rest of the people in the district. Um Phaly described what happened: "1973 was the year in which Uodong was taken over by the Khmer Rouge, and the beginning of my separation from my family. My father, mother and siblings were evacuated to an unknown destination. But the day before the Khmer Rouge arrived, I was visiting my sick grandmother in Banteay Lungvek (the birthplace of my grandmother and mother). I had no choice but to stay on with my grandmother ever after that. So, I became an orphan. Despite this, I managed to obtain my Baccalaureate I certificate."

On April 17, 1975, most Cambodians were celebrating the Khmer Rouge victory because it brought an end to the civil war. But the Khmer Rouge instead used this day to force people out of their homes at gunpoint. Um Phaly's hopes of reuniting with her family on this day turned out to be false.

She and her grandmother left their home and set off for Kampong Chhnang. Along the way, they stumbled across the corpses littering the road. Um Phaly silently asked herself, "Why should I deserve being separated from my family? Did I commit any sin?" According to her, when she and other evacuees arrived the provincial town of Kampong Chhnang, they were gathered together to hear about the plans of the Khmer Rouge. Then they were dispersed. At dawn, the Khmer Rouge gave new orders to the people to travel again. During the journey, she saw the bodies of numerous people who had died from exhaustion and starvation. She said that she saw Khmer Rouge soldiers leading away lines of Lon Nol soldiers, which they then killed without mercy.

After two days of walking, Um Phaly arrived at Trapeang Pring village, Chaongmaong sub-district, Toekphos district, Kampong Chhnang province, where Angkar had ordered her to stay. Three days

later, Angkar ordered all single women to do manual labor, like building dams and water channels. Angkar said they would select women for a mobile unit, which would work in a forested area far from any village (these units were continuously moved from one place to another).

One day, her unit was assigned to construct levees at the foot of a mountain, where she was made to clear the forest day and night, without rest. She said that when the rain fell, she shivered from the cold. She slept in damp place and did not have enough food to eat, making her to think of her family, since she had never faced such misery before. She was hopeless. Before long, she fell ill. The chief of the unit allowed her to stay in a hospital for a week. When she finally left, Um Phaly walked alone through a quiet forest. She fainted, but there was no one to help. Luckily, a Khmer Rouge soldier riding an ox-cart spotted her and saved her. He brought her to her mobile unit, then rode on. But upon entering the camp, she discovered that it was empty; the entire unit had moved. She was alone, not knowing where to go. Without food for many days and with her illness, she fainted again. She did not know how many days she slept. When she woke up, she was in a village called Sre Ktorm, not far away from Trapeang Pring village. She had been saved by a rather old woman, who asked her, "Where do you live? Why were you in that cottage alone?" She then related what had happened to her. After two days, she was fine. She asked that woman to bring her to the village of her grandmother. When she arrived, she saw her grandmother, who was weaving a palm leaf mat. At first, her grandmother did not recognize the thin and frail Um Phaly. But when she finally did, she burst into tears.

Her grandmother cured her with traditional medicine. As soon as she had fully recovered, the chief of the village assigned her to work in a unit. The carrying pole was constantly on her shoulders. Year after year, she never tasted solid rice, eating only rice porridge with water cabbage and water lily stalks. She added, "Even though hundreds of people were working close together, it seemed we were working alone, because the Khmer Rouge forbade people talking to each other. Everyone just struggled to do their own tasks. They could only look at each other in sorrow."

One day, when she was climbing up a dam, she became dizzy and fell down. A Khmer Rouge guard dashed to her and yelled at her, "You want to die? Did you pretend to fall? Or are you dissatisfied? Stop exploiting others' labors or I'll bury you in this dam…." She continued, "Upon hearing this, I was terrified; I quickly rose up and grabbed my carrying pole and the baskets to continue working." Returning home, she decided to escape from the village to her home, despite the risk of losing her life. She ran through the forest, hungry and thirsty. After walking for a full day, she reached national road 5 (between Lungvek and Uodong). When she recognized she had ridden bicycles with her friends at this place, she felt relieved. She continued her journey at night from Trach market to Uodong. When she arrived at the edge of the village, the chief of Ampil village, who had known her parents well, told her that her parents were murdered in 1974 after being accused of being feudal and rich, and possessing much personal property.

She spoke in tears, "That village chief saved my life by hiding me in a secret place."

In 1977, Angkar ordered village chiefs to recruit all women in their villages to mobile units. The chief of Ampil village put her into a mobile unit in order to avoid being arrested. In the unit, she had a friend called Sophal. Although they were the same age, Sophal was not one of the April 17 people. They became intimate friends until the day when Sophal's family was evacuated to Battambang. Um Phaly continued to work in the same unit.

On January 7, 1979, the Cambodian people were freed from their "prison without walls." Everyone was congratulating each other on their new lives. But Um Phaly still feared that the regime might return. She was also "grief-stricken at being separated from my family and at their deaths."

At the end of 1979, she journeyed to the refugee camps on the Cambodia-Thai border. She had to go through many obstacles before reaching Rithisen camp. In 1987, she married to a teacher in the camp, and then moved to Khav Y Dang camp located in Cambodia. In 1991 she and her husband were divorced and Um Phaly went to live with her daughter. Later she returned to Phnom Penh, where she is now working as a nurse in Phsar Daem Thkov Hospital.

Um Phaly has stated that she wants nothing but a just, fair and independent tribunal to prosecute former top Khmer Rouge leaders, who murdered millions of their own people.

Aun Long is a member of the Microfilm Project of the Documentation Center of Cambodia.

KHMER ROUGE NOVEL:

The Sacrifices of our Mothers

This is the first part of a serialized Khmer Rouge novel excerpted from the Revolutionary Flag, *1976.*

I was the youngest daughter of a family of four. My brother was 12 years old. My parents worked on a farm, grew crops, and harvested wild plants, some of which were used to weave mats. We had nearly a hectare of field, which was cleared by the pure labor of my parents. In the past, this place had been occupied with impenetrable dense jungle, consisting of bamboo and a variety of trees. My parents had fought with their lives against the threats of wild animals and diseases to slash and clear this forest to grow crops for our living. Mummy frequently told us about her experience of working in the forest. It seemed she wanted to instill the spirit of overcoming obstacles into us from a young age.

Was there any village more beautiful than ours-Samlaut. Each house was surrounded with slender areca palms growing straight up, competing for space with coconut trees bearing numerous fruits under the lush broad leaves. Rambutan, mangosteen, jack-fruit, mango, banana and other trees competed for nutrients. If we walked farther to the back of the village, we would enjoy picking wild fruits from the forest.

The villagers had the culture to live in harmony with one another, like relatives of the same blood. Whenever a villager caught a wild animal, for example, a wild boar, we always shared the catch with each other, not concealing the food for individual consumption.

One morning when our villagers were plowing the field, they saw two 10-wheeled vehicles full of soldiers, approximately 60, dashing in at high speed. The trucks stopped in front of our fields. Then the soldiers in the front truck jumped down quickly. They were armed. They surrounded the field and turned their gun barrels toward us all, right away. Seeing this, the villagers were terrified, standing stiffly, looking at each other in surprise. They waited in silence to see what would happen. I had thought they were coming to hunt, since I used to see daddy venture into the

forest with my brother to trap deer and wild boars. I could see in the faces of daddy and mummy that they seemed unhappy with these soldiers.

After that, the soldiers in the second truck began to drop coils of barbed wire and many wooden poles onto the ground. Some began to dig holes to plant the poles, while others were quickly unfolding the wire to attach to the poles. Before long, our rice fields were encircled with spiky wire. Every villager was wondering what they were doing. When the fence was completed, they took out a rather big sign, which read: "These plots of land belong to Major Chhuon. Do not trespass. Violating individuals will be punished by the law."

After their mission was completed, they went back. When they came, they did not speak to us a word, and when they returned they did not either; probably they considered us to be the same as the poles. After they had gone, we ran to read the sign. My daddy was so angry that his limbs shook. He almost cut the sign into pieces with his forest knife, but mummy stopped him. Mummy told him, "Don't be furious, listen to our villagers." But daddy did not reply; he spat onto the sign and walked away in anger. Elder Khut, uncle Peang and Nam spoke indignantly, "These land is an exchange of our labor; we risked our lives to turn the forest to productive field. Now, they rob it from us in broad daylight." Uncle Sok insulted and cursed Chhuon, while aunt Trabb prayed to the gods asking for bad luck to befall this man. Nonetheless, no one knew what to do next.

Chhuon had only arrived in Samlot three months ago, but his reputation already stank. One day he was drunk, he drove a car into uncle Chev's ox-cart, at O Apeb, killing him. More seriously, he did not even help the victim. Uncle Chev's family made a legal protest, but it was unanswered. They regarded poor peasants as being lower than their dogs. Moreover, he robbed and turned the villagers' land into his own mangosteen and durian plantations. Chhuon possessed land everywhere, including in Srei Andaung, Srei Punleu, Srei Chapeou, Bakampong, and Kanhchoang. Now he took our village's land.

The next day, we went to work in our field as usual, but about 100 of Chhuon's soldiers were already waiting there to stop us from going onto our land. They shot into the air for a short time to scare us off. Some people were frightened. They sped across the river to hide inside bamboo bushes, where their hands and bodies were cut and bleeding after scratching against the sharp bamboo thorns. Some simply walked back home with a dreadful grudge against these land robbers.

Consequently, elder Khut and uncle Nam met with daddy to solve this problem. Khut blurted, "Giving up our land to these gangsters and clearing the forest elsewhere to farm is not possible, since Phoeun, the forest warden of Chhuon, is going to issue a law banning people from cutting down trees in the forest, using the reason that doing so will deplete the state's natural resources. But he himself cut down hundreds of trees to build houses for his second wives, and allowed boss Kakk, the owner of a logging company called the "Great Commerce Company" to turn the forest to barren land.

While talking, they saw Chhuon's bodyguards walking toward them. They walked heavily up the stairs, making the hut almost fall to one side. One of them said, "The major has sent me to tell you that if you need land to farm, he takes a rent of 100 thang (5,000 pounds) of rice in a season from each family. For he feels sympathy for all of you. He wants desperately to relieve you from your present poverty. I have only this message! Goodbye!"

From then on, all villagers had to rent Chhuon's land to farm. Everyone then became indebted to him. Their living conditions worsened. The productivity of each family never went higher than 120 to 150 thang. In the period of sickness our debt increased. The rent had to be paid on time; otherwise, Chhuon would send his soldiers to harm us. As a result, the people, even in sickness or in hunger, had to borrow from others or sell their inherited belongings, do anything to pay the rent to "Major Chhuon."

(Continued in the February 2001 issue)

Letter from a reader:

Searching for a Missing Cousin

To Youk Chhang, the Director of the Documentation Center of Cambodia:

I have seen the magazines you sent to me after I returned from America. I would like to express my gratitude for your efforts in doing this. This historical document is now installed in the pagoda for the public. We will send financial aid to the center later.

I also listened to the Listeners' Opinion program of Radio Free Asia, on December 3, about the prosecution of the Khmer Rouge. If you express your opinions again, please discuss the elimination of Buddhism based on the discovered documents, such as murdering monks, forced excommunication, pulling down pagodas, and burning holy books.

Wishing you happiness.

May the search for justice for the victims be accomplished.

Hok Sovann

Canada

Revolutionary Children

REVOLUTIONARY SONG:

WE, THE PEOPLE, WOULD LIKE TO ADMIRE OUR REVOLUTIONARY BROTHER SOLDIERS

Complied by Sayana Ser

Brother soldiers, you smashed the enemies and liberated our nation and the people in April.

We all are inspired by your courageous revolutionary spirit, daring to sacrifice your lives without hesitation.

With only bare hands, you creatively endeavored to seek all measures to challenge the masters of imperialism.

You have truly been contributing to the new historical page of independence and self-reliance, shining in the world.

Workers, peasants, and the poor, in the past you were forgotten, but now you are the leaders of the revolution.

You are the master of your own fates and the leaders of your countries. You are free; you are famous.

This is because you are polite, and respectful to the organization and the discipline.

You adhere to the revolutionary morals, fierce fighting morals with national fury as hot as fire, yet love the people with a pure heart.

We are pleased to admire every one of you; you really are revolutionary soldiers, the children of poverty-stricken people, and the children of revolutionary Angkar.

We wish you good health to accomplish new missions of defending and rebuilding the nation.

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