

*Searching for*

# THE TRUTH

- ◆ Trust Fund for Victims, Reconciliation and Reparation
- ◆ "You Cannot Smash Human Beings"

*«Money can never mend survivors' wounds, and they themselves are the most aware of this.»*

-- Youk Chhang

Special  
English Edition  
Fourth Quarter 2009

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### FRONT COVER PHOTO:

**Seun (Tower):** Built in 1834, this majestic Seun is located on the banks of the Mekong River in the village of Svay Kleang, Kampong Cham province. The village itself has been the heart of Cambodia's minority Muslim community for centuries and played a key part in the Cham Rebellion against the Khmer Rouge in 1975. After brutal and systematic persecution by the Khmer Rouge, the Cham community in and around Svay Kleang is now experiencing a revival, and

have requested DC-Cam's assistance in preserving this unique cultural monument. Previously, the seun was used five days a week to announce the Muslim call to prayer and to observe the moon to determine the beginning and end of Ramadan. However, the structure has since fallen into disrepair and due to structural weakness, it is no longer possible to ascend to the top of the tower, rendering it unusable. This disrepair is exacerbated by the erosion caused by the waters of the Mekong River, which flows just 50 meters away. It is therefore vital to buttress the structural support of the seun in the short-term while also undertaking conservation efforts on the tower itself. These efforts are designed to conserve and preserve the only Cham Muslim seun in Cambodia. A nearby house, over one century old, was recently donated to DC-Cam for preservation and it is hoped that these two projects can help raise interest in Cham culture and possibly bring tourists to this historic village.



District Chief asked questions during the meeting

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LETTER FROM YOUK CHHANG:

## TRUST FUND FOR VICTIMS, RECONCILIATION AND REPARATION

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I am writing to share my views on the suggestion that a Trust Fund for Victims similar to that created as part of the International Criminal Court be established by the ECCC. Neither the Framework Agreement between the UN and Cambodia nor the 2004 ECCC Law provides for such a fund; therefore a new agreement would have to be negotiated. This in itself would be a major hurdle as the protracted negotiations for an anti-corruption mechanism clearly demonstrate. Moreover, it would take time and focus away from the primary purposes of the Court. To my mind, these are twofold: (1) to reach final judgment regarding the accused; and (2) to provide formal recognition of the crimes committed against the Cambodian people.

I believe that a Trust Fund would be an ill-advised mechanism for achieving this second goal. When the ECCC finishes the cases before it, its international staff will leave the country. Following the spirit of the Framework Agreement, a Trust Fund would likely be administrated jointly by the Government and the UN, possibly with the assistance of a local NGO. In the current political and cultural climate of Cambodia, it would be impossible to establish a fund of money involving the Government or local NGOs that would be transparently administered and reach its intended beneficiaries: the victims. In establishing the ECCC, all best efforts were made to ensure transparency in its budget and hiring practices; however these efforts have failed from the start. The same will be true for a Trust Fund. Corruption of a victim fund would be much more damaging to the reputation of the ECCC than the ongoing kick-back allegations, as the money would not be exchanged between officials, but taken from victims. This would raise the specter of survivors stealing from survivors.

In addition to corruption concerns, the existence

of a monetary fund is likely to create divisions among victims. Even though any reparations would be moral, symbolic, and collective, choices would be made about where a stupa is built, or where a facility is built, and not all of the estimated five million survivors of the Democratic Kampuchea regime would be in a position to benefit. Moreover, no sum of money would ever be enough to repair what these survivors have lost.

Since the fall of the DK regime, victims have themselves made efforts to achieve reconciliation, including building stupas and other memorials. Rather than building new ones, past efforts could be recognized with special commemorations or celebrations. Inexpensive placards could be placed at memorials, mass graves, and prison and forced labor sites, to recognize those who were abused and killed.

Another possibility-suggested to me by a civil party -would be to donate collection boxes to each pagoda in the country to which locals and visitors could contribute in the name of the victims from that area. Rather than a top-down approach subject to misappropriation, a bottom-up approach would help ensure that funds stayed in the local community and would also empower the community to make its own decisions about how the money would best be spent.

A third idea would be to have the Court provide symbolic recognition of crimes suffered in local communities. The Renakse petitions of the 1980s, which include individual and group accounts of harm suffered, could be used as one source for this information. Moreover, localities could be asked to submit new petitions including information about the crimes that took place there and the number of victims. The Court could symbolically recognize the

submission by sending a general acknowledgment letter that communities could frame and hang in government offices for all to witness. These letters should not verify the specific claims, only acknowledge their receipt and their contribution to a more complete understanding of the OK period.

Finally, I'd like to propose an event at the end of trial proceedings at the old capital of Udong. Thousands of monks could easily be brought to the top of the mountain to hold a ceremony dedicating their merit to OK victims, helping the dead achieve peace and survivors find relief from their suffering. Both the nation and the world would take notice of such a large ceremony and it would do far more to repair survivors than a fund of money from which they will likely never receive any benefit.

I encourage you to seriously consider my proposals. Any reparations involving a monetary fund will be subject to serious abuse-it is an inevitability. Moreover, money can never mend survivors'

wounds, and they themselves are the most aware of this. If presented as an option, people will seek to have a new stupa built in their community even if they already have one. But if their existing stupa is commemorated, it will recognize their own past efforts toward reconciliation, and avoid divisiveness, greed, and unrealized expectations.

Reconciliation through the use of placards, collection boxes, petitions, and ceremonies has been taking place in Cambodia ever since the fall of the Khmer Rouge. All they have been lacking for is official and international recognition. Offering such recognition would cement the legitimacy and legacy of the Court among Cambodians, unlike a fund of a few million dollars, which is not enough to compensate even one survivor.

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

## **CAMBODIAN 'JUSTICE' WITHOUT MAJOR PERSONNEL CHANGES, THE KHMER ROUGE TRIAL RISKS DESCENDING INTO FARCE**

*Sophal Ear*

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While my mother, four siblings and I escaped Pol Pot's Cambodia in 1976, my father died of dysentery and malnutrition after a brief stay at a



**Sophal Ear and his mother**

mite-infested Khmer Rouge "hospital." Although I have harbored grave doubts about the ability of the Khmer Rouge Tribunal underway in Phnom Penh to punish the guilty, I hoped for the best and even filed a civil complaint with the Tribunal's victims unit last year.

But I can no longer in good conscience sit back in silence and watch this theater of the absurd. As with so many other donor-financed projects, the Tribunal-set up in 2006 to bring justice to millions of Khmer Rouge victims-has been mired in an endless stream of corruption and mismanagement allegations.

The latest news came on August 11, when Uth Chhorn was named to the court as an independent counselor. Mr. Chhorn is Cambodia's auditor-general

and heads the seven-year-old National Audit Authority, which is supposed to audit the government's activities. It has yet to make a single report public. His appointment was sanctioned by the United Nations, which manages the court alongside the Cambodian government.

This news is only the most recent window-dressing in the Tribunal's brief history. In February 2007, a kickback scheme was exposed by the George Soros-funded Open Society Justice Initiative. Two years and seven international investigations later, basic questions of accountability remain unanswered. The Cambodian authorities have stonewalled and denied wrongdoing.

Confidence in the Tribunal was further shaken by the resignation in May of Keat Bophal, the Cambodian head of the victims unit and an experienced human-rights defender. She was replaced on May 18 by Helen Jarvis, an Australian citizen, in a move to "strengthen" the Tribunal. Several years ago, Ms. Jarvis was awarded Cambodian citizenship for her many years of loyal service to the authorities.

Ms. Jarvis's independence came under further question in May when Michiel Pestman, a defense lawyer for one of the Khmer Rouge defendants, Nuon Chea, discovered a 2006 open letter written by the "Leninist Party Faction" of the Democratic Socialist Perspective, an Australian political party, and signed by Ms. Jarvis and her husband. It provides a disturbing window into the mind of a person who played a key role in the Tribunal as its chief of public affairs until her redeployment earlier this year to handle victims' complaints:

"We too are Marxists and believe that 'the ends justify the means.'... In time of revolution and civil war, the most extreme measures will some times become necessary and justified. Against the bourgeoisie and their state agencies we don't respect their laws and their fake moral principles." Ms. Jarvis refused to comment publicly about the letter. At a June 10 press conference, a U.N. legal communications officer said that Knut Rosandhaug, deputy director of the

Tribunal and coordinator of U.N. assistance to the Tribunal, "fully supports the appointment of Dr. Jarvis as the new head of the victims unit." Never mind victims, their concerns, and their rights.

To be sure, a coterie of other left-leaning academics and contemporaries of Ms. Jarvis were to varying degrees little more than apologists for the Khmer Rouge during their reign of terror, including the late Malcolm Caldwell and linguist Noam Chomsky. At the time, Mr. Chomsky hedged his statements of support for the Khmer Rouge with caveats that could later provide plausible deniability. But he and others praised the work of Caldwell and Khmer Rouge groupies George Hildebrand and Gareth Porter whose "Cambodia: Starvation and Revolution" (Monthly Review Press, 1976) ranks with Walter Durranty's New York Times coverage of Stalinist Russia.

Although the Tribunal has shuffled personnel, the wrong people are leaving. Ms. Keat's exit deprives the court of both credibility and a passionate defender of victims' rights. International co-prosecutor Robert Petit will retire from the court next week because of obligations to return to work for the Canadian government. Mr. Petit gained acclaim for insisting that the Tribunal try more than five individuals—contrary to the Cambodian authorities' wishes. The bungled testimonies in mid-July of witnesses such as a nurse and a deputy head of S-21, a notorious Khmer Rouge torture center, were an embarrassing comedy of errors for the Tribunal's judges, lawyers and victims alike.

The record of the past two years suggests the Tribunal isn't serious about delivering real justice. The best way to correct this course is for the court to reboot with a new set of personnel, including the director of administration, deputy director and head of the victims unit. We, the victims, deserve no less.

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***Sophal Ear is an assistant professor of national security affairs at the U.S. Naval Postgraduate School in Monterey, California.***

# A ROYAL PALACE WORKER UNDER THE KHMER ROUGE

*Vannak Sok*

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After Democratic Kampuchea was formed, revolutionary ideology and political indoctrination could easily persuade young people that the revolutionary Angkar would lead the country to prosperity with a great leap forward. As a villager of Rolaing Ken sub-district, Kandal Stung district, Kandal province, Ran aka Rith, who was then 14 years old, left home in order to join the revolution soon after she was contacted by Angkar.

Similar to other teens in the village, Ran never attended school even if she was old enough because after her parents had passed away, she relied on her brothers' assistance. After the Khmer Rouge took power in 1975, her unit chief told Ran and other members to work hard because one day Angkar's higher officials would visit "our" place. At that time, Ran and her female workmates were amused, as they had never met any higher ranking member of Angkar. One day at about 9 o'clock am, Ran saw a car arrive carrying a higher official and two armed bodyguards. Ran was told by her female chief, "He is Ta Mok, the Secretary of Southwest zone. The purpose of his visit is to select a number of poor young farmers to serve Angkar. Those selected will go to work in Phnom Penh." The mobile work brigade were, at that time, nervous about whom Ta Mok would select. When her name was called, she was very happy hoping to travel to Phnom Penh.

At about 8 am in the next morning, a truck carrying the selected members headed to Phnom Penh. After several hours, at 11 am the truck arrived in Takeo where she saw many people arriving from various provinces. Staying overnight in Takeo, she got back on the truck in the morning bound for Phnom Penh, passing through Bati district, Ta Khmao, Kbal Thnal, Royal Palace, and then got on a boat to Arrey Ksath, Lvea Em district.

Ran grew vegetables there for a year and in

mid-1976, the unit chief told her that Angkar needed to recruit young female biographies from 15-17 years of age to work in the Royal Palace. Ran was selected and moved to the Royal Palace. At first, she was a gardener and was later appointed as a waitress carrying food for King Norodom Sihanouk, who was served simple rice and soup, the same as the palace workers ate. The King had only two meals a day: lunch and dinner. Ran had never met the King before so every time she brought him a meal, she rarely ever used the royal word but instead the ordinary "eating" word, used amongst her workmates; nevertheless, the King did not mind. Later, a security guard told Ran that he was King Norodom Sihanouk. Ran felt a terrible fear because she had failed to address the King with proper royal language. After discovering her error, Ran got dressed neatly and used as many royal words as she could when serving him. She recalled that the King appeared unhappy as if he was imagining something. However, Ran did not have enough courage to ask him, as she was just his waitress. Because of her being honest and reliable, on a day the King told a number of stories. "Before living in the Royal Palace, Angkar had detained him for 2 months in Chaktomouk theatre," described Ran. "Daughter, do not stay long around here, beware somebody will see you," the King tenderly told Ran. After hearing this warning, she quickly left the place after completing her work. Ran also recalled that there were two regular visitors.

As she and other female servants became familiar to the environment of the Royal Palace, she began asking bodyguards where the visitors came from every time a car arrived. Ran was merely told the visitors were from China, but was not informed whom they would meet. Ran remembered that Khieu Samphan, the head of the state, was also present in the Royal Palace, and was responsible

for King Sihanouk's meals. "No need to take him much food, it is wasted," said Khieu Samphan who occasionally inspected the royal kitchen. Even Ran often saw him in the Royal Palace and was aware that he stayed at a building east of the Royal Palace compound, she did not know about his visiting purposes. She still recognized him and said he did not look cruel. Furthermore, he was friendly towards female workers and has never talked violently. During her two years in the Royal Palace, she was unaware that her relatives who were living in her home province had been starved and killed.

On January 3, 1979, she saw ten trucks loaded with many Khmer Rouge soldiers arriving at the Royal Palace. Khieu Samphan then brought all the servants together, telling that they [the soldiers] came to escort the King to China and the others would accompany him in 3 or 4 days. Three days later, a truck had stopped to pick Ran and the other workers up but did not head to the airport. Instead, the truck continued the journey on national route number 5, passed Kampong Chhnang, Pursat, Battambang and finally stopped at Bavel district due running out of petrol. It was there that she saw

that many people had arrived and some even died of hunger on the roads.

In August 1979, Ran decided to return to her home province, thinking that if she kept wandering in the jungle, she would, one day, share the same destiny as others who had been killed or died from malaria. Between 1979-1980, she became well aware that the Khmer Rouge regime left about 2 million people dead from execution, starvation, overwork and torture, after she had witnessed regional prisons along with piles of bodies and bones, which still remain in other provinces.

Presently, Ran lives a hard life in a 4-meter-square cottage under a thatched roof and walls and a bamboo bed to sleep on. She is the one in her family who earns a living in order to support her disabled husband and 7 children. Ultimately, she does not expect to meet the King again, but wonders if he still remembers her. She hopes that "the King lives in health and a long life to be a standing head of the nation."

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***Vannak Sok is a Team Member of Promoting Accountability Project.***

## SEARCHING FOR MISSING FAMILY MEMBERS

### **Missing Son**

I am Pich Yann, 66, of Trapaing Chouk village, Chhlorng sub-district, Baray district, Kampong Thom province. I have four children; one died in 1975. I am searching for my son, Hor Ol, who disappeared before the liberation day (April 17, 1975). At that time Hor Ol was 16; he followed the Khmer Rouge soldiers with Lorn at Wat Kuk Khnong. I have not heard from him since. If anyone has heard about him, please inform me or contact the Documentation Center of Cambodia via phone: (855) 23 211 875. Thank you.

### **Missing Son**

My name is Koh Chann, age 71, I am living in Trapeang Chhouk village, Chhlorng sub-district, Baray district, Kampong Thom province. I would like to search for my son Sar Hai, who disappeared in 1978 because Angkar assigned him to the battlefield. At the time, he was 15 years old.

If anyone knows or has heard anything about him, please contact me through the Documentation Center of Cambodia via phone: 023 211 875 or P.O. Box 1110, Phnom Penh. Thanks.

# JUSTICE AND GENOCIDE EDUCATION TOUR

*Savina Sirik*

From August 16-18, 2009, a total of 459 people from across Cambodia participated in a tour in which participants received educational training to obtain information on the Khmer Rouge trial, listen to survivors speak about their experiences at the S-21 torture center, and watch a new play "Breaking the Silence." Participants also had a chance to visit the Khmer Rouge tribunal courtroom and attend the trial of Kaing Guek Iev alias Duch (former chairman of S-21), and to visit one of the most important genocide commemoration sites: Tuol Sleng (S-21) Genocide Museum. The tour brought together 350 Cham Muslim religious leaders from 396 mosques, 13 Khmer Kampuchea Krom from Pursat, 30 nuns from Kampong Speu and Phnom Penh and selected villagers from Kandal, Takeo, Kampong Cham, and Prey Veng provinces (mostly civil party applicants to the ECCC through DC-Cam's Victim Participation

Project). A majority had participated both in previous large-scale ECCC tours in 2006 and small-group visits to watch ECCC hearings. The tour was significant because it not only highlighted victims' role at the tribunal and allowed participants to see with their own eyes how the trial was functioning, but also provided an opportunity for survivors to share their common understanding of history and how to preserve that history.

The mixture of groups represented a range of religious beliefs, ages and status under the KR. This diversity makes their role in passing on information and news they learned through the tour more effective. Cham-Muslims religious leaders, Tuons and Hakems, are key persons for disseminating information because they are well-respected and educated people in their communities. Tuons are religious teachers holding daily classes with community members and work



DC-Cam staff address the ECCC developments to groups of Cham-Muslim survivors

inside the mosque. They teach the Cham language and the Qur'an to children. Hakems or "judges" are in charge of the villages and settle conflicts in their communities. Through its Cham Oral History project, launched in 2004, DC-Cam has been working with mosques throughout the country on a variety of projects, including interviewing Cham-Muslims religious leaders and Cham-Muslim women about their life experiences under the DK in order to ensure that the voice of ethnic minorities is heard by the outside world.

Khmer Kampuchea Kroam from Pursat participating in this tour represented another large minority group who suffered great losses under the Khmer Rouge. They requested to attend the tour because they were extremely interested and personally motivated by their horrible experiences to learn more about Duch's trial and other survivors' experiences. Very few Khmer Kampuchea Kroam have previously participated in the Living Documents program. They were cruelly abused by the Khmer Rouge and their participation is a powerful means to keep alive their experiences under the Khmer Rouge. Because of the mixture of participants taking part in this tour, the trip was even more exciting and special.

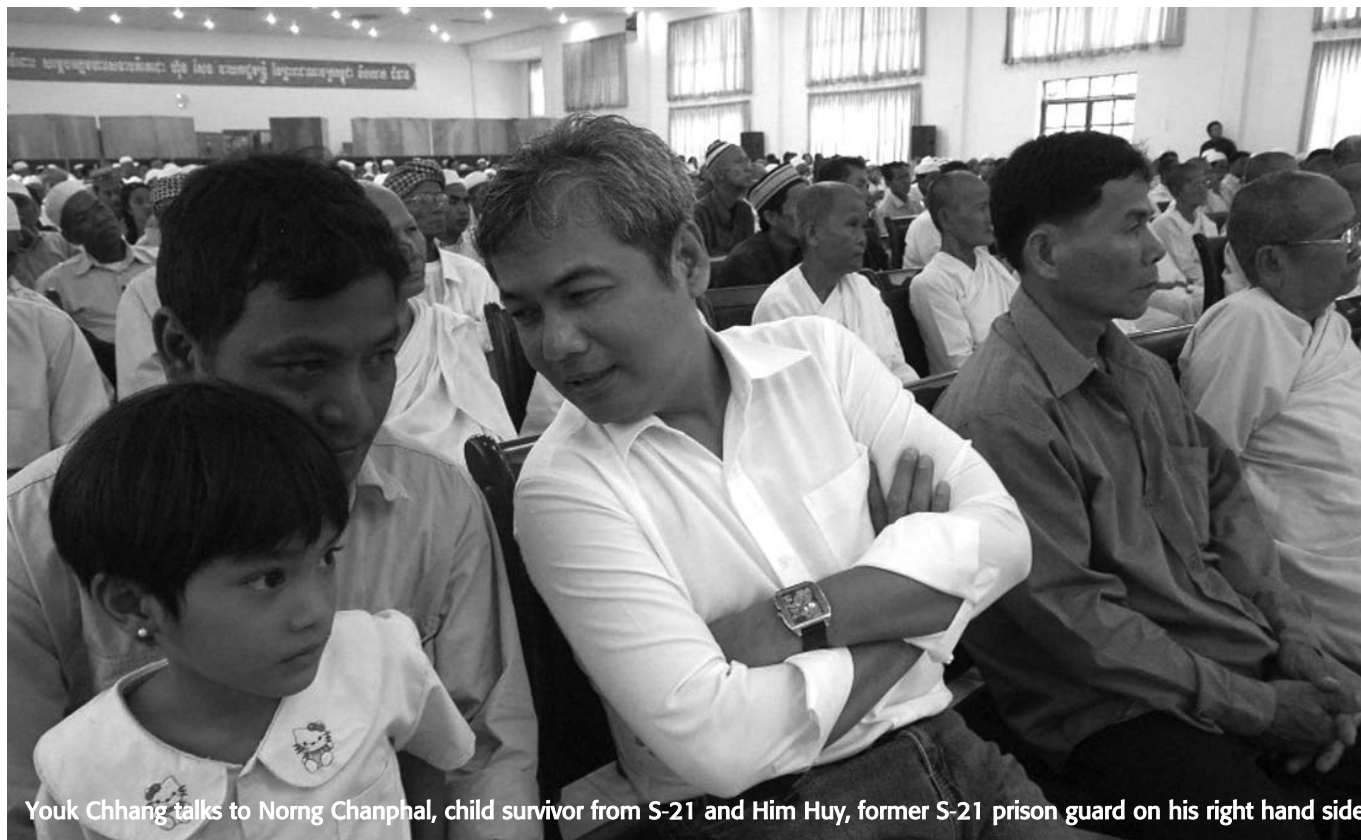
### **Pre-ECCC Education**

On the first day of the tour, villagers arranged their own transportation to come to DC-Cam where its staff and volunteers were ready to welcome and provide them with a packed lunch. Victim Participation project members were also on hand to assist villagers whose victim complaints to the ECCC had been determined incomplete, and to deliver acknowledgement of receipt letters from the Court to those whose complaints had been accepted. That afternoon, all participants were bused to a conference hall of the National Institute of Education, where they listened to presentations by DC-Cam project leaders and DK survivors.

Mr. Ly Sok-Kheang opened the meeting by welcoming the group and describing the purposes

of the tour. He encouraged participants to pass on information they learned from the tour to their community members. He then gave the floor to Mr. Youk Chhang, director of DC-Cam, to welcome the group. Mr. Chhang stressed importance of the trial and the crucial role of victims in the process. He advised the groups to focus on the trial proceedings and keep good manners in the courtroom. He then discussed a new Cambodian performance piece, "Breaking the Silence," which they would be attending later that evening. Mr. Chhang encouraged the groups to ask questions and make comments about the play. Next Mr. Dara Vanthan, deputy director of DC-Cam, described recent activities of the tribunal and at Duch's trial. He described structure of the court, its functions and its personnel, including those involved in the Duch trial, and Duch's biography and role in the regime.

Ms. Farina So, project leader for the Cham-Muslim Oral History project, began her presentation with welcoming words in the Cham language to all the Tuons, Hakems, and other groups in the hall. She provided a brief overview of the project's objectives and activities with Cham-Muslims community leaders to advance knowledge about KR atrocities against Cham communities. She discussed how the project had published magazines stories about Cham-Muslims and other minority groups such as Charay, Tumpuon, Kuoy, etc. The project will also create a website for Cham-Muslim communities that will have space for information sharing, cultural learning, studying of crimes against the Cham-Muslims people, and fostering communications between local Cham communities and the wider Muslim world. These projects are intended to help the voices of minorities groups be heard by connecting them to the world, allowing both local and international communities to learn about the sufferings of Cham-Muslims and other ethnic groups under the DK. Lastly, the project will use the interviews conducted with survivors, especially with women, to write a book on Cham-Muslim experiences under the DK. Ms. So said that



Youk Chhang talks to Nong Chanphal, child survivor from S-21 and Him Huy, former S-21 prison guard on his right hand side

recording stories of vulnerable groups and making their voices heard would turn community suffering and anger toward educating the younger generation about what happened to Cham-Muslims during the KR regime.

Afterwards, Mr. Khamboly Dy introduced his book, "A History of Democratic Kampuchea (1975-1979)," and discussed genocide education in Cambodia. He stressed the importance of teaching DK history at school as this topic is sensitive to Cambodian people. Education about genocide is beneficial for two reasons. First, feelings of anger or revenge may be relieved by making these crimes the subject of school study. Second, studying the history of the genocide could help to prevent it from reoccurring. Mr. Dy also emphasized that the tribunal alone cannot prevent genocide from happening again; education also contributes to the long-term process of reconciliation.

These presentations were followed by two short talks from Mr. Him Huy, a former S-21 guard, and Mr. Nong Chan Phal, a child survivor from

S-21. Mr. Him discussed in brief his experiences at the horrible prison from the time he was recruited until the DK regime fell. He described his job at S-21 as part of the arrest unit, in charge of both sending the prisoners out to the Cheung Ek Killing Fields and arresting prisoners to send to S-21. Him explained the situation in 1977-78 when he observed that many S-21 staff disappeared and ended up prisoners in the very place they used to work. He recalled the fear that followed him the whole time he was working at S-21. At the end of his speech, Him said that hoped that his testimony at the trial would be useful in showing Duch's accountability for these serious crimes.

Mr. Nong Chan Phal then told of being arrested and imprisoned at Tuol Sleng. Nong was sent along with his mother and brother to the place he learned later was Tuol Sleng prison. He recalled in detail how his mother was handcuffed and had her photograph taken. Nong and his brother were separated from his mother after staying together for one night. Sad and emotional, Nong described the

last time he saw his mother. He recalled, "My mother looked at me from a window but said nothing because we were too far to hear each other." Norng strongly hopes that the Khmer Rouge tribunal will be able to find justice for him and all Cambodian survivors who suffered from the genocide. When asked how he felt about testifying at the trial, Norng said that he was pleased to do so.

After the presentations, facilitator Ly Sok-Kheang encouraged participants to ask questions. Several Tuons and Hakems shared their experiences with the groups and asked questions. The first question was if Duch acknowledged Him Huy and Norng Chan Phal at the trial and how many witnesses had Duch acknowledged. The second was if the KR senior leaders feel remorse for their actions. The third was what kind of compensation the civil parties asked for. Norng and Him answered the questions emotionally, saying that Duch would not acknowledge witnesses if there were no documents to prove their connection to S-21. Him added that Duch did not accept some facts related to his work at S-21. "I could swear to death for what I have said at the trial. I did

not tell lies," emphasized Him. Other questions and comments included: 1. Why did the KR leaders not understand the Cambodian people and not speak the truth? 2. If the KR leaders did not speak all the truth, what would the court do? 3. Is there a death penalty for the senior KR leaders such as Khieu Samphan? 4. Why did the Khmer Rouge kill so many? 5. What kind of punishment would Duch receive? 6. Why did the international community not intervene during and after the KR regime?

After dinner, participants returned to the hall to watch "Breaking the Silence." This play depicts the tragic experiences of survivors during the Khmer Rouge. It is divided into seven sections mixed with traditional songs and Cambodian folk tales. It also depicts several common stories of both victims and perpetrators of the Khmer Rouge. The play visited several provinces in early 2009 and will later travel to 18 places across the country. The play is performed in rural areas to promote discussion of KR history among survivors and between victims and perpetrators. It is intended to educate and foster communication and knowledge among survivors of the KR and the



A scene from "Breaking of the Silence"

younger generation. In addition, it is hoped that the play will contribute to healing, forgiveness and reconciliation, which are the pathways towards a stable and peaceful society.

Ms. Sayana Ser, the Student Outreach project leader, and Mr. Youk Chhang introduced the play and encouraged people to discuss it afterward. Then Mr. Bunrith from the Amrita Art Performance summarized the play's stories and apologized for the lack of decoration and rehearsal. Mr. Chhang reminded participants to comment on their feelings about the song. In addition to tour participants, ECCC officials also attended the performance.

Throughout the play, the audience sometimes laughed at the monkey character and other times were emotionally touched by the stories, which made them relive their past sufferings. When a character reported the names of friends and relatives to the KR interrogator to escape from being tortured, one villager told me that the play depicted the very true story. She explained that because of the pain, victims would call out all the names that come into their mind, although they knew they would endanger others' lives. At the end of the play, a villager from Takeo province, Mr. San Sok, expressed his excitement about the play and requested that it be broadcast on TV and radio so that Cambodians across the country can reflect on their own experiences and share it with their children. Regarding to the meaning of the song, Chak Thoeung, a participant from Kandal, opined, "The song is very meaningful for national reconciliation. It means to remind people to move on to the future and tell people to live together in harmony." At the end of the day's program, a Cham-Muslim woman expressed how excited she was to see the play. She took the time to share her tragic personal account with others in the hall and commented that it was a huge relief to have the opportunity to speak of her experiences.

#### **Observing Court hearing**

The second day of the program was devoted to observation of the Duch trial. Participants were

based to the ECCC's courtroom located outside of the town. They sat and watch the proceedings carefully, waiting to hear from the infamous former prison chief Duch. Duch has been on trial since February 2009. This week, the Trial Chamber heard testimony from three civil parties who shared their personal suffering with the court. A mother, Martine Lefevre, and a daughter, Ouk Neary, were first called by the court to read their statement. Lefevre described her despair after her husband, Ouk Ket, returned to Cambodia from abroad at the request of the DK Ministry of Interior. She lost hope after a great effort in searching for him. Her daughter Neary then recalled her experience finding her father's photo at S-21 as the shock in her life.

During the afternoon session the court called to testify a third civil party, Robert Hamill, from New Zealand. His brother Kerry Hamill was captured, tortured, and killed at S-21 during a sailing trip in Southeast Asia. He described the pain his family had endured. Kerry's younger brother, John, threw himself from a cliff after learning that his brother had been killed. Following each of their testimonies, Duch was given time to make observations. He acknowledged the three civil parties and expressed his sympathy for the suffering and loss they had been through. In addition, as he had expressed during previous hearings, he accepted all responsibility and agreed to accept any punishment determined by the Court.

#### **Reactions on Duch Trial**



Cham-Muslims queue at ECCC gate



Cham-Muslims queue at ECCC gate

After a whole day of observing the hearings, reactions from participants were varied. Roun El, 53, a Hakem from Kampong Cham, unwillingly served the KR army. He said that he expected to see this trial make Duch accountable for his crimes. He said, "My life was like a broken clay pot. You can't just put the pieces together as an original one. One thing I would like to see is that those responsible for Cambodian lives are punished." This view was shared by a participant from the nun group, Oum Sinuon, 68, from Wat Sampoeu Meas, who suffered devastating experiences during the DK time. She described in tears how she lost all her family members and how she was forced to work day and night. These sufferings were, however, relieved once she entered into a religious life. The Buddhist teaching has educated her to remain calm and give up the idea of revenge. When asked how she wanted out of the trial, she answered, "I want to see Duch and other KR leaders confess what they committed against the Cambodian people so that survivors can be relived and the souls of victims can rest in peace." She expressed her concern that the aging KR leaders who are now in custody may die before revealing the truth.

After dinner, there was an additional program for all participants. Singer Cheam Chan Sovannary was invited to sing the song "Oh Phnom Penh!" for participants. This opportunity was also used by the participants to gather together and share their opinions on the program and the trial hearing. A

young Cham-Muslim woman from Kampot was the first brave person to speak. She began by expressing her profound pleasure with the program. Though she was born after the Khmer Rouge, she had sympathetic feelings for the victims who had to endure grave sufferings. However, as she observed the hearing and saw Duch today, she was uncertain if she should blame him for all that happened at S-21 or forgive him for his acknowledgement of his guilt. Mr. Ha Chim, a Cham Muslim from Kampot and a genocide victim, firmly responded that Duch had to accept all responsibility and agree to all kinds of punishment, even life imprisonment. Until today, Ha does still not understand the goals of Democratic Kampuchea and whether it wanted to make the country peaceful or a blood bath. He remarked that he would not be able to forgive Duch or any of his alliance and requested to the court to punish him according to the law.

Before ending the program that evening, Mr. Meas Chan Than, a Khmer Kampuchea Kroam from Pursat, stood before the group to make his observations. Like Ha, Meas wanted the KR tribunal help find an answer to the question asked by many: why Khmer Rouge killed so many people, especially Khmer Kroam. Meas recalled the massacres of Khmer Kroam in Rumlech commune. He said, "Almost all identified as Khmer Kroam were targets of the KR." He said that after watching "Breaking the Silence" the previous day his painful experiences buried inside his memories for years had been vividly recalled. "Sad experiences and sufferings of Khmer Kroam would not be buried if there is something, like the play, to awake us," emphasized Meas. At the end of his remarks, Meas requested that this play be recorded as a documentary and passed on to others so that memories of the KR regime remain alive. Meas hoped that doing so would encourage those who were perpetrators to come up to speak the truth and admit their wrongdoing in front of the victims.

### **The Visit to Tuol Sleng Genocide Museum**

The last program of the tour was a visit to the

infamous Tuol Sleng Genocide Museum. The site, which holds hundred photographs of prisoners and torture equipment, was a powerful stimulus for brining back the participants' vivid memories. For many, even though this was not their first time visiting the place, they were sad and emotional. All participants were stunned and shocked by the photographs of the victims. Many were looking at each of the photographs trying to recognize if any of these portraits are familiar with them. Ms. Sam Sineth, 46, from Kampong Thom lost all her family members to the regime, including her grandfather whom she learned was executed at S-21. She had filed complaint to the court to become a civil party. She was invited several times to Phnom Penh for updates on the tribunal and had been to the Tuol Sleng museum searching for her grandfather's photograph but her efforts did not achieve results until today. At the genocide museum, she walked slowly back and forth along the photo galleries of building B to carefully examine the photographs. She finally found him. In the very first room of the building she pointed to a photograph of a middle-aged man with a gentle but terrified look that she believed was her grandfather's portrait. Eyes filled with tears, Ms. Sam began to tell us the story.

Heach Kim was a mason before the KR time. Ms. Sam lived and grew up with him until KR took control of the capital. During the Khmer Rouge, they were living together with her uncle and aunts' families and his wife. Not long after, her grandfather and all the families were sent out of the village except her. She never heard from them again. Sam described how she came to realize that they ended their lives at S-21. She told us, "In 1989, my mother's friend told me to find information about them and their photos at this museum. But I didn't pay serious attention to finding them.

It is only this time that I am able to look thoroughly at all the photographs and find him here. I am still trying to look for my uncle and aunt."

Another program participant from Svay Rieng found his neighbor's photograph accidentally at the museum while he was looking to see if any of his relatives' photos remained there. Among black and white photographs of women with short haircuts in the glass panel, there was the photograph of Ms. Pen Thoeun, Mr. Oum Piseth's neighbor. Mr. Oum described Ms. Pen Thoeun, today known as Chhay Thoeun, as a quiet and considerate person. Thoeun served the Khmer Rouge since 1974. Her marriage to a KR cadre was arranged by Angkar during the regime. She was later sent to S-21 prison. Oum told us that he was curious to know what her job was during the Khmer Rouge but she never told him anything in detail about her background. Oum took a photo of her photograph and promised to show her once he returned.

In the courtyard of the museum compound a group of civil parties informally met with senior staff from the office of US Senator John Kerry, who has been supportive to the Khmer Rouge tribunal. Mr. Terith Chy, DC-Cam's Victim Participation project leader, introduced villagers to the staff and explained how the villagers are accepted as civil parties for the Duch case. When the Senator's staff



Buddhist nuns look at photos of S-21 prisoners at Tuol Sleng

asked what the civil parties wanted out of this trial, they quickly answered "We wanted to know why all that happened during the KR." When asked how they felt when seeing Duch on trial, they said, "We feel very angry at him, but we also feel glad that the court could put him on trial."

The tour was covered by several national and international media outlet such as Raksmei Kampuchea and the Associated Press. DC-Cam's magazine team and film team interviewed several participants about their life experiences under the DK and write articles for publications. DC-Cam's magazine, *Searching for the Truth*, and the textbook, "A History of the Democratic Kampuchea (1975-1979)," were distributed to each of the participants.

On the personal level, the tour brought back many victims' painful memories. A Cham-Muslim woman from Kampong Chhnang said at Tuol Sleng that seeing image of prisoners' bodies lying on floor revived her past experiences with the Khmer Rouge. She was once ordered to collect bodies of soldiers at the front lines. She was both terrified and sad. At the end the hearing day, however, the participants' feelings of suffering and anger were relieved when they saw Duch on trial. Duch's acknowledgement to the relatives of S-21 victims that day helped cool the minds and hearts of some participants. Ms. Chan Pheap and Long Mary from Kandal expressed their deep sympathy for the victims and the civil parties who testified that day and noted that Duch had accepted guilt. This view was however contested by other program participants, especially ones who had relatives executed at the prison. They found it very hard to offer forgiveness to Duch.

The tour also educated participants about the process of the tribunal and DK history, which they will now share with their community members and their children. In particular, the program encouraged all DK victims, especially ethnic minorities who have small voices and have suffered much, to speak up and discuss their personal accounts and express their point

of view about the trials. At this point none of the ECCC suspects are charged with the crime of genocide. The accounts of targeted ethnic groups such as Cham Muslims and Khmer Kroom are critical to the prosecution if a case for genocide is to be made.

### **Challenges**

This large-scale tour faced several challenges. The first problem related to food delivery for villagers. Some villagers complained because the packed food for first day's lunch and second day's breakfast came late. Also, some villagers were not familiar with packed food and it made them sick. The staff and volunteers tried to reduce health issues by comforting participants on the buses and at the end of the day. Some headache medicine was provided to those who did not feel well. The second challenge was transportation. Participants were not assigned to ride on specific buses and there was some confusion among villagers about which bus to take. The third problem was the wrong calculation for travel from some provinces. This caused disappointment for those who traveled from far remote areas as the budget provided was not enough to cover their travel expenses. The last challenge was that the Cham-Muslim participants found the schedule too tight. They requested that next time the team include an adequate amount of time for Cham-Muslims to pray as this is required in their religion. For the next large-scale trip, we will make sure that these challenges are addressed. DC-Cam staff and volunteers need to provide prompt responses to such situations and better communication to minimize challenges. Nevertheless, the tour went quite smoothly with useful feedback and excellent engagement from participants. Although long and a bit hectic, the first day's program went accordingly schedule and received particular attention from the groups. The play was especially well received.

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***Savina Sirik is the Team Leader of DC-Cam's Living Documents Project.***

# THEATRE PERFORMANCE "BREAKING OF NOVEMBER



# OF THE SILENCE" AT RUPP CAMPUS 2

## 23, 2009



# MY REFLECTION: THE CHAM MUSLIMS

*Suyheang Kry*



I recently made my first visit to Svay Khleang, a Cham Muslim village in Kampong Cham Province, well-known for its historical background in struggling for freedom against the Khmer Rouge regime. The visit provided me with much new information, both intellectual and spiritual.

Before arriving at Svay Khleang, reading a book written by Osman Ysa published by the Documentation Center of Cambodia ("The Cham Rebellion") formed an image in my mind regarding the Cham community- in a word, solidarity. To prevent their religion from being destroyed through systematic persecution, the entire Cham community unanimously and audaciously stood up against Khmer Rouge's cruel treatment. Although they seemingly knew that it would result in disaster, they still fearlessly rose up against the Khmer Rouge. Ultimately, only 600 out of 6,200 Chams (1970's population figure) were able to survive the regime's terror. (Osman Ysa, 2006.)

Our group of approximately 30 people from the Documentation Center of Cambodia (DC-Cam) arrived at the village on 21 October 2009 to spend 6-10 days in the local community. The aim of the program was to engage the local community in the ongoing Khmer Rouge tribunal through community education and potentially civil party status. Immediately upon arriving, I could feel the warmth of the villagers' friendliness mixed with their simple and traditional lifestyle. What I had thought earlier about the Cham community was gradually becoming obvious after one particular occurrence - a crowd of daring children struggling for Num (cake) during the village forum. From a quick glance at this situation, one must have

thought that these children were so vicious that they thought carelessly about their own safety.

However, at the same time, if we look deeper into the situation, these children have been equipped with the same sense of solidarity as their Cham elders. These children might believe that they must act as a whole if they want to get what they desire. Therefore, they'd better try it, despite knowing that sometimes their reward will be nothing. Only with such a small thing they were so cooperative. How about fighting for their own values and freedom? For sure, they would vigorously and courageously fight for it (particularly if we reflect on the case of the rebellion in late 1975).

I believe that a strong bond has been forged among the villagers, made stronger by their common culture and religion. For example, a huge number of enthusiastic villagers attended the forum on 25 October, where community leaders and DC-Cam staff spoke about the Khmer Rouge period, the Cham Rebellion against the Khmer Rouge, and the search for truth and accountability. There was also a screening of two short films: one with interviews of S-21 survivors and a S-21 guard, and one clip of Duch's apology at the Tribunal. The villagers showed great interest in the film screening. In responding to



**Old Houses:** one of the remaining few old houses, aged close to 100 years old or more, in the Svay Klaing Village of Kampong Cham province. The village was known to the locals as the birth place of Islam in Cambodia.

Duch's apology, one elder male villager stood up and said that "it's not acceptable for he had killed so many people. So, how can an apology compensate for everything we lost, especially our family members' lives?"

From this remark, it can be seen that the fire of anger and the need for justice is still burns in their hearts and may never be put out unless real justice is achieved.

However, many of the Cham women whom I met seemed not to have such strong feelings. Although many of their family members had been killed during DK and they themselves have endured for such a long period of time, they are now content with living their lives and seem prepared to let bygones be bygones. A case in point is Yea Ti, who claimed that nearly 30 of her relatives had been massacred, and contrary to what I expected, she preferred not to fill out the victim's complaint form.

I was amazed at her decision. After having talked to her, I realized that there were some significant reasons why she didn't want to participate in the trial. To begin with, seeking justice for her is so long overdue that she has already reconciled herself to this broken society. She has been calmed by gradually allowing religion to control her. She inferred that time is a great healer by giving me an example that if she had known the perpetrator earlier, she would have publicly killed him by her own hand without any hesitation. However, she said, now it's been too

long to have such a strong feeling of an eye for an eye. In return, she compared the term revenge as the growing climbing plant (Daem Voa). Then the Voa of vindictiveness will never cease growing if one keeps watering it. Therefore, "why not pull its roots out and throw it away so as to live with peace of mind." Also, she stated that she didn't know the real perpetrators. Particularly, she is now too old to think of revenge but prefers a peaceful life.

I do sympathize with her. Besides what she had mentioned, the rationale behind her position can be easily understood. As a matter of fact, after 1979 the majority of the survivors of Muslim community in Svay Khleang were women and children. As a result, they are more or less likely to still suffering not only on the inside but on the outside as well. Inside one is concerned with the great suffering of losing family members, while outside pressure forces them to re-integrate into the broken society with their empty hands. They are somehow fearful of anything that, through their own perspective, might cause them further harm or trouble.

Regardless of the terrible consequences of the Khmer Rouge regime that has scared the Cham people for life, they still endure the difficulties and live in a society with their own values and dignity intact. While a few choose to forget, a majority of them still continue to search for justice for all they have lost. I really appreciate them for their enthusiasm in searching for the truth - justice, the root of the vindictive Voa. As long as we cannot find its roots, never will we be able to effectively extinguish it completely, and the root continues growing. This wound of great suffering will never be effectively healed if we leave it alone. One day, the wound will come back and hurt us again when we touch it. To remedy it completely, seeking effective medicine - justice - will be the only way to handle such an unforgettable wound.



Cham-muslim villagers watch video clips from Duch trial

*Suyheang Kry is a Team Member of Victim Participation Project.*

# THE TEACHING OF "A HISTORY OF DEMOCRATIC KAMPUCHEA (TEACHER TRAINING UNDER THE AUSPICES OF H.E. IM SETHY, N



# 1975-1979)", THE OPENING CEREMONY OF THE PROVINCIAL MINISTER OF THE MINISTRY OF EDUCATION YOUTH AND SPORT



H.E. Im Sethy

Minister of the Ministry of Education Youth and Sport

# HISTORY FORUM OF GENOCIDE EDUCATION PROJECT

*Marquita Smith*

The History Forum of the Genocide Education Project began with a speech on the history of the Khmer Rouge by Professor David Chandler translated by Mr. Kok-Thay Eng. Professor Chandler has been researching Cambodian history for almost 50 years and is considered an expert in the field. Chandler described *A History of Democratic Kampuchea (1975-1979)* as a thematic narrative history of the regime written in a way for high school students and Cambodians in general to relate. He also hopes Khamboly Dy's research will inspire others to research the past in a systematic way. Chandler said writing history is a way of gaining possession of the past and though foreign analysis may be helpful, he hopes Cambodians will write their own history. He said it is important to know the why, who, what, where, and how of the Khmer Rouge but because of the horrors it is difficult to write about it in a literary way.

Chandler compared the leaders of the Khmer Rouge to the heroes of a tragedy-never stepping back from what they were doing-but unlike tragic heroes, most of the leaders survived. He stressed the importance of considering the international aspect as well as the Cambodian one when studying the Khmer Rouge. Chandler referenced the CPK's erasure of individuality and the destruction of families, noting that their actions were executed more drastically and destructively than were those of their counterparts in the Soviet Union. Chandler has written elsewhere that Democratic Kampuchea was a Cambodian-imported Communist phenomenon, a unique mixture of Cambodian and foreign elements and finished by saying the "wheel of history," often referred to by the Khmer Rouge, had begun to roll past the leaders of Democratic Kampuchea and the almost 2 million Cambodians killed in less than 4 years.

Afterwards, the Q & A portion opened with approximately ten teachers asking questions. One

teacher who was evacuated from Phnom Penh to Kandal province on April 17, 1975 asked why food rations were different for people from the city. Chandler responded that this difference was most likely due to the valuing of "base people" over "17 April" or "new" people. Others asked about the DK regime's interactions with China and Vietnam and the reason for the lack of intervention from the United Nations. Chandler explained that the UN did not then have peacekeeping machine it does now and it could not have voted to intervene in Cambodia. Another asked why these international crimes were not being tried in The Hague, to which Chandler responded that the Cambodian government did not want the trial to take place outside the country and that such an occurrence could have been considered an infringement on Cambodian sovereignty. The last and most open-ended question asked was why the Khmer Rouge did what they did during their



Provincial teachers attend the opening ceremony of the project

reign of power. Chandler responded by telling the teachers it is their responsibility to think about the history to be prepared to answer students' questions as that is the purpose of the forum.

Following Prof. Chandler was former S-21 guard Him Huy. The audience listened carefully as Mr. Huy detailed how he arrived at S-21, some of his experiences while there, and what happened after he left the prison. He arrived in Phnom Penh on April 17th as part of Division 703. As a guard, he says he never killed anyone personally but he was responsible for transporting prisoners to Cheung Ek. He described the day-to-day life of a cadre as "waiting for your turn to be killed." He says he was transferred to a rice field in 1978 and when the Vietnamese came, he fled with other cadres. Many of the questions asked during the Q & A session revolved around Huy's personal feelings about his role as a guard. One teacher mentioned that Huy did not look like a murderer. Huy stressed that he never killed anyone and the orders to kill prisoners came from Duch. When asked about his desire for the future Huy stated that he does public speaking events such as the

forum because he wants people to know about the Khmer Rouge and to teach the younger generation.

Professor Laura Summers's presentation (translated by Terith Chy) about the local history of Pailin offered an analysis of the economic success of the short-lived capital city of Democratic Kampuchea, which, in her opinion, showed some of the first steps towards national reconciliation. In 1992, Summers spent two days in Pailin and showed the audience a number of personal photographs of the city as she saw it. Pailin was deserted until the National Army of Democratic Kampuchea reoccupied it in order to prepare it for a visit from the Prince Head of State Norodom Sihanouk. The abandoned homes were repaired by soldiers, each family being responsible for completing the repairs with the materials purchased from Thailand. One photo of Summers and army commanders atop Phnom Yat, a treasured ancient temple, was especially important since the commanders wanted to prove that the temple was not badly damaged and that they were repairing the existing damage. They wanted Cambodians to know that the national heritage was safe in their hands. The city was slowly being revived with a small hotel, apartment building, and pharmacy in place. By 1995, it was an economic success with three thousand people moving to the city each year. The economic and social order of Pailin was a big change from the failed policies of the wartime institution of Democratic Kampuchea. When Pol Pot called for re-nationalization and re-collectivization in 1996 the army commanders in Pailin refused his order. Twenty thousand people abandoned the Democratic Kampuchea movement at this time. Summers says, "The social realities of economic success obliged the commanders to obey the will of their people; they behaved as democrats." By 1998, the population of Pailin was 70, 486, making it the fastest growing province in the country. In closing, Summers said political and economic development is "spontaneous, accidental, cumulative, and hardly ever planned." During the Q & A session, one teacher asked about



vincial teacher training at Cambodian institute of Technology

funding sources besides China for the Khmer Rouge. In response, Summers stated that during the 1980s a small amount of funding was received from a few ASEAN countries but not from any others. Another teacher asked if, based on the information presented, he could deduce that the failure of Democratic Kampuchea was a result of the conflict between China and the Soviets. Summers responded no because that conflict was resolved in 1989 and stressed that Democratic Kampuchea failed mostly for internal, national reasons.

The last speaker of the day was Mr. Norng Chanphal, an S-21 survivor. Norng was one of four child survivors. His father was a cadre in Kampong Speu and in mid-1978, his family received a letter of invitation to come to Phnom Penh. His mother was sick at the time and he recalls S-21 cadre shouting for his family to get out of car when they arrived at Toul Sleng. His sick mother was having difficulty following their orders and he witnessed cadre hit and push her to the ground. After witnessing these actions, he was afraid of what was to come. He and his brother were separated from his mother upon entry to the prison and aside from one very brief glance, he never saw his mother again. Sometime close to the liberation date he hid in a pile of clothes, afraid that if he left he would not be able to find his mother. When Vietnamese soldiers came, they found him and three other surviving children. From his memory, Norng says he was at S-21 for no more than a month but according to documents, he was there for a week or less. During the Q & A session, one audience member asked about the food rations at S-21. Norng says he starved for maybe 4-10 days as all cadres had fled in advance of the Vietnamese arrival. He only remembers having a little water to drink and his brother almost died due to starvation. Another asked if his mother died due to starvation or if she was killed. Norng does not know for sure but said if the Khmer Rouge did not kill her, she would have died due to her sickness. The pain of remembering was still palpable as Norng

became teary-eyed while speaking. The final question was whether he was satisfied with the court proceedings. Norng is not satisfied and he says he cannot accept Duch's apology. His beloved mother's suffering is too deeply engrained in his memory. He has waited a long time for this trial and he is hoping for a verdict that will bring justice. After Norng's speech, Khamboly Dy asked all to stand and share condolences for the suffering of Norng's mother.

In close to the day, Dy and Peoudara Vanthan gave thanks to all the international speakers who have helped with the forum. In addition, they gave thanks to all teachers present highlighting that they are an integral part of making the Genocide Education Project effective.

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*Marquita Smith is a Legal Associate of the Documentation Center of Cambodia in 2009.*

## SEARCHING FOR MISSING SON

I am Chhoeun Uy, 84, with seven children. I lived in Svay Chek village, Ta Trao sub-district, Puok district, Siem Reap province. Now I live in Svay Chek village, Svay Chek sub-district, Ang Thom district, Siem Reap province. I would like to search for my son named Duong Tuy, who disappeared in 1973 after he was recruited into a Khmer Rouge art unit. Tuy was the third child and went to grade 11. In 1970, Tuy became a Khmer Rouge comrade whose duty was to guard the village. Later on, Angkar selected him to work in the art unit. In 1973, Tuy's mother and I were evacuated to Svay Leu district. I lost contact with Tuy at that time.

After the Khmer Rouge was toppled in 1979, we returned to our homeland and heard that Tuy had become the chief of his art unit. According to the news, he traveled to perform and then disappeared. If anybody knows or has any information regarding Duong Tuy, please contact me via the Documentation Center of Cambodia.

# VILLAGE FORUM: MEETING WITH DISTRICT CHIEFS AND VILLAGERS

*Kyle Delbyck*

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While the ECCC has set numerous goals for itself, the November 22 meeting of district chiefs highlighted the vast potential the tribunal holds as a mechanism of public outreach and education. Held in the Senate Library, the session centered on informing local representatives of the trial's latest developments as part of the ECCC's mission to help citizens throughout the country play a meaningful role in shaping Cambodia's future. More than 10,000 Cambodians have attended sessions of Duch's trial since it began in February. Calling attention to the significance of such a figure, Mr. David Scheffer, War Crimes Ambassador during the Clinton administration, later commented, "Not a single trial in the U.S has ever had 10,000 people attend it." This pride in the degree of local involvement with the tribunal pervaded the day's events.

The meeting kicked off with a short address by Vanthan, Deputy Director of DC-Cam. Speaking to a room filled with 100 district chiefs and 20 Cham Muslims, many of whom had traveled hours, Vanthan focused on the diverse options available to ordinary Cambodians who want to take part in the tribunal. Some attendees had previously expressed concern that living outside Phnom Penh and lacking the means to attend the entire trial would hinder their ability to follow the sessions. Vanthan, however, emphasized that "every minute" of the proceedings will be made available on the Cambodia Tribunal Monitor website. He further stated that although written accounts of the tribunal currently exist primarily in English and French, the DC Cam team and others are working hard to translate reports into Khmer and ensure that the entirety of the process is more accessible to locals.

Concurring with Vanthan's insights, Scheffer likewise stressed the unique local nature of the tribunal; a feature that distinguishes it from previous international

attempts at transitional justice. In addition to illustrating the ways in which the tribunal has succeeded as a local mechanism, Scheffer also made it a point to place the process within a global context. He noted throughout his speech that in light of the tribunal's groundbreaking marriage between domestic and international courts, "everyone's eyes are on Cambodia and these trials." Addressing audience members directly, Scheffer declared that Cambodians should be immensely "proud" of how the country has represented itself in the glare of the international spotlight.

From his perspective, the tribunal thus far has done a remarkable job of grappling with the legacy of the Khmer Rouge regime and tackling the ills of Cambodian society head on. Scheffer praised the effort as "an extraordinary demonstration of international justice at work...setting an example" for the rest of the world. As such, while certainly acknowledging the importance of the ECCC as a symbol of justice and a renunciation of impunity, Scheffer continually returned to the theme of "example" and the ways in which the tribunal can operate as a "teaching tool" for future generations.

With the landmark Genocide Education training workshops about to take place in six provinces in Cambodia, Scheffer's message resonated with the district chiefs who came to the meeting to learn more about the legal process and the nuances of the tribunal. Lending a personal note to the "teaching tool" discussion, Scheffer recalled delivering a presentation on conflict to his daughter's middle school class, an experience that remains vivid in his memory. With countries throughout the world continuing to struggle with the task of how to tackle the legacy of genocide and war, Scheffer urged those present to never underestimate the power that knowledge has to change the course of history. This is a power that

has become more and more evident throughout the progression of the trial.

The trial's function as an educational process and a forum for local dialogue was tangible in the ensuing question and answer session. As leaders in their respective regions, district chiefs were dedicated to ensuring that their voices be heard and that any questions they had about recent ECCC developments be answered. Many of the questions revolved around the purpose, logistics and imminent outcome of the current Duch trial. The first participant, for example, asked Vanthan and Scheffer to provide a basic explanation of the structure of the final trial sessions and a clarification of when and how a judgment will be delivered.

Other questions revolved around comparisons between the ECCC and tribunals in the former Yugoslavia, Rwanda and Sierra Leone. In answering queries about the differences between the ongoing trial and previous transitional justice mechanisms, David Scheffer was once again animated in highlighting the prominence of victim outreach and public participation in the ECCC process. In his eyes, while the Rwanda tribunal may have prosecuted more perpetrators than the ECCC, it was not as effective in paying heed to the victim experience and ensuring that those who suffered were involved in the proceedings. Furthermore, the ECCC is distinctive in that the trial is actually taking place in the country within which the conflict occurred, unlike the international hearings for Rwanda and Yugoslavia.

One district chief, after questioning the verity of allegations that Khmer Rouge prisoners possessed CIA and KGB affiliations, expressed his concern that he would not be able to attend all sessions of the tribunal. Scheffer responded that he hopes to create a two-hour film spotlighting the most interesting aspects of the trial which district chiefs can screen in their villages. In addition to this project, Scheffer also described his long-term plans to produce a book about the tribunal in the Khmer language. This would serve as another medium for Cambodians to

obtain information about the ongoing proceedings. The level of intimacy and accessibility apparent in this conversation between a Cambodian district chief and the former War Crimes Ambassador for the United States was striking.

Several of the participants referenced their personal experiences under the Khmer Rouge regime. One man principally concerned with who will be put on trial in the second case, mentioned that he had been a prisoner in Battambang in the Northwestern Zone, while another attendee brought up his role in the Khmer Rouge revolution. The presence of victims of Democratic Kampuchea enhanced the quality of the session and lent greater meaning to the discussion. It was thus fitting that the meeting closed with the screening of two films that deal largely with oral histories: "Tuol Sleng in 1979" and "Behind the Walls of S-21." The latter film in particular provided the audience with an extremely personal account of the Khmer Rouge regime and life during Democratic Kampuchea. As the audience watched survivors of



Provincial teachers attend the opening ceremony of the pro

S-21 and former S-21 prison guard Him Huy describe their experiences, it was clear that their narratives hit close to home for many participants.

The poignant stories chronicled in the film reflect the emotions and complexities also present in much of the tribunal testimony. With over 10,000 Cambodians having attended the trial sessions, Scheffer believes that there is reason for great optimism. He acknowledges that although the journey has been long and filled with numerous setbacks and challenges, the implementation of the ECCC represents a large step towards justice and reconciliation. Scheffer recalled a conversation he took part in more than a decade ago, when the possibility of justice in Cambodia seemed remote. He asked, "Was there not space for justice in Cambodia?" With the commencement of the tribunal, the kickoff of the provincial teacher training, and the establishment of public forums such as Sunday's meeting, it is clear that this "space" exists and widens day-by-day, opening up the possibility for a peaceful future.



provincial teacher training at Cambodian institute of Technology

## RESPONSE TO ECCC PROSECUTORS' CALL FOR A 40-YEAR SENTENCE FOR DUCH

Following the announcement on November 25, 2009 that Khmer Rouge tribunal prosecutors are seeking a 40-year sentence for S-21 leader Duch (Kaing Geuk Eav), local and international reactions were immediate. Below are some reactions from DC-Cam staff and affiliates.

*"He managed to hide his evilness in front of the public, thus life imprisonment is a must."*

**-Youk Chhang, Director of DC-Cam.**

*"I think this is too few years!! It should be life imprisonment although we know that he would not survive after 40 years."*

**-Kok-Thay Eng, Deputy Director of DC-Cam and doctoral student at Rutgers University.**

*"I anticipated that the prosecutors would make a measured request to strike the balance between the prevailing public expectation for maximum punishment and the need for the KR leadership's truth telling/responsibility taking. Apparently, they put more emphasis on the latter as they turn their attention to the second case. My guess is that the result would be more or less similar."*

**-Kosal Phat, Adjunct Professor at University of Southern California.**

*"We all know that Duch, now 69, could not make it to another 10 or 15 years. Duch expresses remorse which I believe is genuine perhaps at least to a certain level. Maybe Duch did not reveal did everything we saw for the purpose of seeking lesser punishment. Nonetheless, he is collaborating with the tribunal and at least via Duch, a certain level of truth and how the regime runs have been shed some lights on. With this consideration, I believe Judges must think about this and will ultimately reduce some sentence for Duch. Plus, Duch has said that he will not appeal."*

**-Terith Chy, Victim Participation Project leader of DC-Cam.**

*"Practically it makes no difference because of his age, but symbolically it makes a tremendous*

*difference for the victims since it is the maximum sentence the court can give. The conviction of causing the deaths of over 15,000 people should get the maximum sentence. The purpose of the tribunal above all else is to deliver justice for victims. They should be able to extract the necessary information from KR leaders to convict them without relying on 100% cooperation or leader's admission of responsibility. Plus, for the remaining KR leaders if they know that Duch who is arguably less senior than them is sentenced to 40 years, they should expect to get at least that amount if not more. Practically to them, 40 years and life imprisonment are the same so I don't think the tribunal's 'measured request to strike the balance between the prevailing public expectation for maximum punishment and the need for the KR leadership's truth telling/ responsibility taking' will work on the remaining 4 leaders."*

**-Dacil Keo, DC-Cam Public Affairs Officer and doctoral student at UW-Madison.**

*"He caused the death of more than 1,200 people and was imprisoned for 40 years. This*

*means that killing one person cost Duch to be jailed for about 10 days. Prosecutors must be so funny."*

**-Socheat Nhean, MA student at Northern Illinois University.**

*"This is the end of Mr. Duch trial, and I have a big question after the news that the prosecutors (Mr. Smith and Mrs. Leang...may be others in the team) is seeking only 40 years in prison. The crime that Mr. Duch committed with all those torturing and killing which caused 15000 people to die under his commands, I would think the prosecutors would ask a lot more years or life time in prison. Seeking only 40 years in jail is shocking me and I am sure many others people."*

**Channary -- Former Duch's student in Kampong Cham province.**

*"Finally, Cambodian people are receiving apologies. It is not enough but it is a good start!"*

**Virginie Martins de Nobrega - former ECCC intern.**

*"Vengeance is under rated!"*

**- Peter Maguire, author of "Facing Death in Cambodia."**



**From left to right : Poeu Dara Vanthann, Professor David Scheffer and Terith Chy**

# WHEN WILL THE SENIOR LEADERS OF THE KHMER ROUGE BE JUDGES?

## THE IMPORTANCE OF CASE 002

*Youk Chhang*

Last week, the Extraordinary Chambers in the Courts of Cambodia (ECCC) tasked with prosecuting crimes committed during the period of Democratic Kampuchea (1975-1979), concluded Case 001. The case investigated Duch (Kaing Geuk Eav) who was the prison chief of S-21 where approximately 14,000 people were forced to confess under torture and ultimately executed. As the Khmer Rouge regime's highest level security center, S-21 imprisoned mostly Khmer Rouge cadres and party officials. Throughout the length of the case, it was evident that Duch was unremorseful despite his public apology at the onset of the trial in February. Indeed, some victims viewed his apology with skepticism and expert observers saw it as a strategy for a lesser sentence. His concluding remarks last week affirm this and his attempt to use the Court as his last battle to defend his belief in the Khmer Rouge revolution. His words and thoughts remain strikingly inhumane in the eyes of survivors; he has not changed in the least.

The Court's next case, Case 002, is the most important one because it involves the four highest-ranking Khmer Rouge leaders who are still alive today: Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu

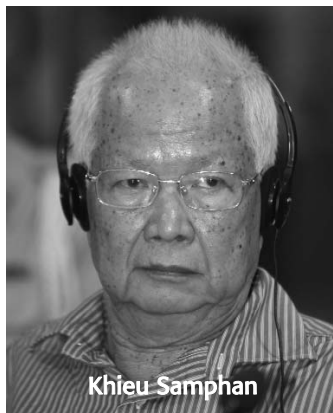
Samphan. Many questions concerning Democratic Kampuchea's three year, eight month, and 20 day rule have not been answered. These leaders have not admitted any responsibility for the crimes during this period and instead have blamed lower cadres. Abundant information exists however that demonstrate their culpability, including numerous documents detailing their actions and witnesses who can testify to the formation and implementation of these actions. Therefore, this trial offers an important chance to uncover and analyze how Khmer Rouge leaders made decisions that caused the deaths of nearly two million Cambodians. Case 002 could provide long-awaited answers to questions that many Cambodians have had regarding Democratic Kampuchea. Additionally, this case has the potential to offer some justice and relief from the immense pain and suffering borne by victims through the punishment of those responsible.

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



Nuon Chea



Khieu Samphan



Ieng Sary



Ieng Thirith

# PROFESSOR DAVID SCHEFFER MEETS WITH CAMBODIA AT THE SENATE LIBRARY



Poeu Dara Vanthann

Professor David Scheffer

# WITH DISTRICT CHIEFS FROM ACROSS THE ARY ON NOVEMBER 22, 2009



Professor Gregory Stanton



# "YOU CANNOT SMASH HUMAN BEINGS"

*David Scheffer*

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A week of closing arguments in the trial of Kaing Guek Eav (alias Duch) commenced today with lengthy statements from the Cambodian and international lawyers representing the four groups of civil parties, who total about 90 individual victims. The public gallery in the courtroom was packed with a large audience of Cambodian citizens, including some of the civil party victims, and a small group of foreigners. Civil society representatives and the international press were present in full force. U.S. Ambassador Carol Rodley and her Deputy Chief of Mission, Ted Allegra, attended the initial hour of the arguments. The final stages of this historic trial thus began with an impressive display of domestic and global interest.

Duch arrived wearing a yellow long sleeve turtle neck shirt and white slacks. In the afternoon session he wore a white shirt. Duch was seated in the middle of the courtroom facing the judges, with his defense counsel on his right and the co-prosecutors and civil party lawyers on his left. He maintained his composure throughout the day and spent most of his time scribbling notes, watching the video screen in front of him, and occasionally turning to his left to face his accusers. But when Philippe Canonne, the French avocat representing Group 3 civil parties, and his co-counsel Martine Jacquin of France delivered perhaps the most pointed and eloquent statements of the day, Duch locked eyes with both for the duration of their arguments, leaving me to wonder whether I was witnessing remorse or defiance as each minute ticked by.

On two occasions during the recesses, Duch wandered over to the glass partition and placed a piece of paper with his writing on it against the glass. Several Cambodians whom he may have known (that was not clear) waited for him and then smiled when they read his note. He withdrew the paper from the glass, smiled, turned, and then

laughed. One foreigner placed a message on the glass for him to read. They smiled at each other, Duch saluted him, and then returned to his seat. Stranger things have happened in courtrooms, but this ranked among the most disturbing, particularly given the emotional and condemnatory context of the civil party arguments today.

The civil party arguments varied significantly in their substance and delivery. Rule 23 of the Internal Rules stipulates that the civil party participates for the purpose of supporting the prosecution and to allow victims to seek collective and moral reparations. That may not have always been the case today. President Nil Nonn opened the afternoon session, which followed the Group I and Group II arguments, by reminding the civil party lawyers that they must confine their statements to the Rule 23 parameters. He claimed that the morning session had strayed far afield. Most of the afternoon arguments appeared to comply with his instructions. With the time afforded the civil party lawyers to prepare for today's focus on their clients' interests and needs for realistic remedies, I found it surprising that some of the lawyers had not organized and delivered their statements more effectively.

## **Group 1**

The experienced English prosecutor, Karim A.A. Khan, delivered the opening statement for the 37 Group 1 civil parties. Khan has not been present for most of the Duch trial and recognized the work of his co-counsel, including Alain Werner of Switzerland (absent today), Brianne McGonigle of the United States, and Ty Srinna, the Cambodian lawyer who followed Khan at the desk-top podium. Khan spoke very deferentially to the judges and delivered an eloquent statement. He acknowledged that there were a lot of firsts in the courtroom, including the first internationalized trial where civil

parties have had an active role in the trial proceedings. He explained that whatever flaws or defects arose from civil party representation in the trial, their work had been done in good faith and with a sincere attempt to make the system work, as envisaged by the Cambodians and by the United Nations.

Khan stressed the need to distinguish between rhetoric and reality. He noted the allegation that the civil parties wanted vengeance done, or blood, during the trial. The defense had emphasized this by saying "we are in a court of law, not in a market square where we are stoning the accused." But Khan said that all civil parties had not succumbed to the basic instincts of seeking revenge. Instead, they honored the procedures of the court so that they could achieve closure and get to the truth of what really happened at Tuol Sleng prison.

Then there was the defense counsel's suggestion, Khan said, that "we are no more than the prosecution." He stressed that Rule 23 limited the scope of civil party participation. "We have not aped the prosecutor uncritically," he exclaimed. Indeed, he had made his reservations on the prosecutor's joint criminal enterprise theory in the case well known. Group 1 had not filed any document to support that theory.

Khan claimed that the trial was not simply about the guilt or innocence of Duch. One of the advantages behind civil party participation (aside from a remedy of reparations) is that it allows victims to come before the judges to give them an insight into the impact of the crimes on their lives. That is a unique perspective that only the victims can provide. The defense counsel's complaint that the civil parties created an inequality of arms in the courtroom invited a strong rebuttal from Khan. He denied that Duch faced five prosecutors. The civil parties are not prosecutors, he said. They had received no financial assistance from the court. This was the case despite the basic rule in international human rights law that all rights should be rendered practical and effective and not illusory. Khan said the civil parties lacked

the resources of the prosecutor and of the defense, implying that the inequality is one that short-changes the civil parties rather than creating some juggernaut aimed at the defense.

Khan concluded his initial statement by reminding the judges that Duch's acceptance of certain allegations nonetheless requires that those allegations be proven before them. He said the judges must objectively review the evidence whether or not what has been conceded by Duch is the truth. When all the evidence is reviewed, he said, it reveals only one conclusion: in large, important particulars, Duch has sought to evade and minimize his role.

The Cambodian counsel to Group 1, Ms. Ty Srinna, then rose. Three orange-robed Buddhist monks entered the public gallery as she began, framing her remarks with appropriate solemnity. Srinna described the role of the civil parties to unearth the truth of the crimes. They would endure great mental suffering for the rest of their lives. Without their participation, she said, the trial chamber would have difficulty measuring the magnitude of the crimes and the suffering at S-21. Their object is to seek justice for themselves and for their loved ones. The court's mandate is to help the civil parties relieve their grievances and suffering.

Since many of the original victims of S-21 were not told of their offenses when arrested, the trial represented the chance to find out the truth and ensure that justice will be done. Why were they arrested? The trial has much to do with national reconciliation also.

Srinna then proceeded to describe a number of the civil parties in Group 1 and the victims of Tuol Sleng whom they represent. Many of her accounts had been disclosed in earlier trial testimony. But Srinna plodded on so long that she consumed a large chunk of Group 1's allotted time and was compelled to rush through the names without further descriptive accounts. Her occasional asides to Khan revealed that they had not prepared their

closing arguments with attention to the time scheduled for Group 1. An air of disorganization began to take over. Srinna closed quickly with the important clarification that many documents identifying the relationships between the civil parties and the original victims were destroyed during the Khmer Rouge regime and in the intervening years. That explained, she said, some of the difficulties in responding to defense counsel's challenges to the authenticity of the civil parties.

Khan rose again for Group 1 with a statement that consumed almost 20 minutes. It was this statement that might have been on President Nil Nonn's mind when he later cautioned the civil parties' counsel to remain within the parameters of Rule 23. For Khan aimed his considerable skills, as if he were the prosecutor, directly at Duch. While support for the prosecutor is part of the Rule 23 mandate, the judges appear reluctant to view the civil party lawyers as wading too deeply into the issue of the defendant's culpability.

Khan took issue with Duch's protestations that he had no autonomy at S-21, that he was just a tool. It was a camp dedicated to death and Duch led it. Duch did not use his autonomy to alleviate any suffering. "This is no Schindler in front of you," Khan exclaimed. Duch was dedicated to his job. But what he accomplished was not confined to S-21, Khan said. The campaign of terror and torture that Duch ran in S-21 had the effect of increasingly the paranoia elsewhere in the party. It created a vicious cycle in which more and more arrests occurred, and more individuals were tortured into making false confessions implicating others that fed the cycle once again. Duch did all this because he was ideologically of the same mind as the leadership. It was not only because he wanted to belong to a powerful group, but also because it made life comfortable for him.

The evidence spoke for itself, Khan said. When he had the option during the chaos of the Vietnamese invasion to let people go, Duch instead

smashed them. He had demonstrated his resolve at an early age in high school, and he did his job at S-21 by his own volition. He had sufficient confidence to report to his superiors, who rubber-stamped what he proposed. While the defense seeks to minimize the role of Duch, he failed repeatedly to seize options that would have minimized his role. There were no documents dictating to Duch the forms of torture but he designed a cruel and callous system at M-13 and then used it at S-21. Duch claimed he



put people into pits at M-13 to protect them from U.S. air strikes when in reality such aerial bombardments had ended. The pattern emerges, Khan said, where Duch shifts and minimizes his role in the most brazen fashion. He failed to discipline guards who ordered prisoners to eat their own excrement. It was patent nonsense, Khan claimed, that Duch told interrogators to have detainees draw a picture of a dog and pay homage to it for the purpose of sparing the victim a worse fate.

Khan made the further point that although Duch showed remorse in small areas, when one compares what he had conceded in the courtroom with the truth and reconciliation model, amnesties under such mechanisms are awarded only where witnesses give the full truth and demonstrate remorse. Khan pleaded with the judges to be "alive" to the fact that Duch fell far short of that standard. Duch's strategy, Khan said, is to bluff the court. He closed by asking the judges to consider the evidence most

would close one of the impunity gaps in recent history, namely arising from the Pol Pot era. She and her team represent 17 civil parties in Group 2. The civil parties have to deal with the meaning of what happened every day. Why were they selected to be imprisoned and tortured when they were not guilty of anything? How were they interrogated and by whom? How and why were they killed? The trial cannot answer all of those questions, but the civil parties, who suffer permanent restlessness their



carefully, noting that the truth does not require a penny in reparations. But truth is of enormous value to the civil parties. He asked the judges to find Duch guilty of the charges.

### Group 2

Following a brief adjournment, Group 2 counsel Silke Studzinsky from Germany described herself as someone who lives with Germany's own past. Despite Nuremberg, the atrocities had continued since World War II. She believed the Duch trial

entire lives, demand disclosure of the entire truth. It is the only way to re-establish their dignity, she said. Studzinsky recounted the stories of nine of the civil parties she represents that were not related in the trial.

Studzinsky then launched into scathing criticism of the judges and how they had allegedly mishandled the civil parties. She accused the judges of not being sympathetic to the suffering of the civil parties. She said that "thank you" are only two words, but they mean a lot and the judges

never used them with the civil parties. There was insufficient attention to how traumatized the civil parties are, how they could not sleep the night before their testimony, they were so distraught. None of the experts would have been treated so insensitively, Studzinsky said. Civil parties were told to control their emotions, so they sought to suppress their tears and emotions. But the painful and traumatic expressions of civil parties reveal the crimes of Duch and the judges should see that. When one victim was told to show his scars publicly in the courtroom, his lawyer intervened and fortunately reversed the judge's request. Studzinsky claimed that the civil party lawyers were often interrupted by the president of the court and thus gave the impression judges were not interested in the civil parties.

Studzinsky criticized Cambodian defense counsel Kar Savuth for his alleged insults of a sexual character to the international counsel for the civil parties. Studzinsky asked why the civil parties could not be treated with equal respect. "Is the suffering too hard to bear," she wondered? The president of the court should have protected the interests of the civil parties, she said. Despite these shortcomings, the civil parties appreciated the opportunity to tell their stories before the court.

Following her accounts of the grievances of several civil parties, Studzinsky concluded with the story of one civil party rape victim. She had remained silent for so many years because to disclose being a victim of rape in Cambodia invites being considered "fair game" for everyone. But when she saw Duch in the courtroom, she could no longer be silent. There would be no justice for the victim of rape if her claim is denied.

Cambodian counsel Kong Pisey focused on the crime of rape and criticized Duch for hiding behind his supposed ignorance of the penal code on the crime. It was a slap in the face of the victim to do so. Duch, Pisey claimed, attempts to cleverly avoid responsibility when it suits him. Many women, he

said, felt prey to sexual assaults under his command. Pisey gave some examples, stressing that male guards oversaw the women detainees. Since the women already were assigned to death, they became easy prey for sexual assaults. But Duch failed to prevent abuses or to punish the perpetrators of sexual assault. He also allowed guards to shame male detainees by taunting them when they had to completely strip during the water hose-downs. It was sexual harassment that constituted yet another inhumane act against the detainees.

Pisey stressed that Duch is not a scapegoat. He was a willing and enthusiastic participant with broad discretion regarding the prison conditions. Pisey claimed that Duch was not only proud of his job, he enjoyed the power as a power-hungry man. Duch's aim was to keep power. He later converted to Christianity in order to be on the right side of a powerful religion rather than remain a Buddhist and be condemned to the 18th level of Hell with no prospect of return. In the courtroom, Pisey claimed that Duch was neither sincere nor truthful and his admissions were half-hearted. There were too many questions he did not respond to or circumvented. He failed, Pisey said, in his promise to the civil parties to contribute to the truth and answer all their questions. Duch's repeated remorse and apologies are contradicted by his defense. He cries on cue crocodile tears at 4 p.m. His is an orchestrated remorse.

Pisey articulated some interesting ideas for reparations. Duch could write an autobiography and use the royalties to support the civil parties. He could work while in prison and use those earnings for such support. Pisey also proposed that Duch write two letters to the government. The first letter should be his apology to the government, while the second should request that one-third of the entrance fees at S-21 be used for reparations. Duch's wish to return to Cambodian society should be rejected, Pisey concluded.

With the close of Group 2's arguments, the court adjourned for lunch.

### Group 3

Philippe Canonne delivered the first closing argument for the 28 Group 3 civil parties. He described what confronted the civil party lawyers. They had worked tirelessly on the monumental task to bring together the victims. The civil party in an international criminal trial is a major innovation. The lawyers sought to assist the court to ensure the fairness of the trial.

The first reaction of the civil parties is often instinctive: Duch must suffer the same treatment we did. Canonne advised that the counsel give voice to the first reaction but they must transcend it. Then justice would be rendered and not savagery. Canonne quoted a string of statements by Duch during the trial, all of which directly implicated him in the commission of the crimes charged in the indictment. In light of those statements, Canonne wondered whether Duch's contrition in the courtroom was sincere. Although weeping is the beginning of contrition, Duch sought to be released. "So look at the victims! Look at them, Duch, whom you sought to punish!" Canonne continued, "You can smash insects and animals. You cannot smash human beings, because one day they will rise again because they or their successors will demand a reckoning.... Their gaze beyond death is there to judge you. Perhaps your victims will forgive you after this trial. Imagine how much these people are searching, trying to understand why a man can set up such barbarity. How can an ordinary person be so respectable and yet so terrifying?"

Canonne reminded Duch that the civil parties are simple, modest, poor, and either barely educated or high educated, and they are all fighting the same, universal fight to find in the law their continuation as human beings and not sink to the level of animals. Their intent is not to destroy fellow human beings in the name of ideology. To treat civil parties with scorn would be a new form of de-humanization.

Interestingly, Canonne admitted that the civil parties were disorganized during the trial. But they

were inaugurating a new system with the Duch trial. If the court reverts to silencing the civil parties during the trial, they will become icons only-voiceless-and once again they will be buried. If they are not to be victims of their stories, then we must understand them. It is with the victims, Canonne predicted, where history will be reconstructed. The most valuable reparation, he said, is the victims' presence in the court and the acknowledgement of their rights.

Canonne said that the Extraordinary Chambers in the Courts of Cambodia foreshadows a new blueprint for hybrid international courts with attention to the victims. He closed by criticizing Duch's use of the French poem, "The Death of the Wolf," because he only looks to the most morbid element in the poem. He gives no chance to humankind. Because of that he cannot fathom Duch's contrition. Is he simply trying to put all of us to sleep, Canonne wondered? Where is there any romanticism in the deaths of 16,000 or more at Tuol Sleng? "We consider you have become a wolf for mankind," Canonne said to Duch as he finished his statement.

Martine Jacquin followed Canonne with a second eloquent statement. She described how it took the victims decades to speak out. She said, "This court is giving voice to memory." It enabled sons and daughters of the dead to be allowed to be heard. She then showed photographs of a number of the original victims and their civil party representatives. Then she said that the perpetrators of such crimes do not commit them out of mental illness. Rather, they take pleasure in submitting to popular madness. That is the most frightening reality. The civil parties must give testimony so that all of humanity can take up the mission of justice. In Jacquin's view, the civil party will only forgive somebody who proves to be aware of the faults of the past and will endeavor to excise those faults from the consciousness of others. Nothing, she said, can ever justify one human being dominating another.

Cambodian counsel Moch Sovannary expressed

her gratitude to the Cambodian Government and the United Nations for the creation of the court. She focused on reparations and stressed the need for effective medical care for the surviving victims. The civil parties need justice and justice has to be seen to be done-reparations would accomplish that. Sovannary proposed several ways to implement reparations: 1) create a voluntary trust fund; 2) preserve crime sites where the victims were executed and all related documents, so that younger generations can stop the "horrible historical wheel;" 3) preserve all portraits displayed at S-21; 4) erect a plaque naming all of the victims and forced labor; 5) preserve the grave and pits at Cheong Me; 5) disclose the assets of Duch; and 6) determine precisely who will implement the reparations.

#### Group 4

Cambodian counsel Hong Kim Suon led off the fourth segment of closing arguments with his representation of civil parties in Group 4. He proceeded to deliver an exhaustive rendition of data about each of the ten civil parties in his group. One had to wonder whether he was making the best use of his valuable time for the civil parties. While some may have appreciated his recognition of their presence in the courtroom, nothing he said was of a persuasive character to influence the thinking of the judges. Duch appeared utterly disinterested. However, Hong Kim Suon's concluding point that part of the entrance fee at S-21 should be allocated to reparations was an intriguing idea.

Pierre-Olivier Sur from France delivered the final closing argument of the day. He noted the paradox that Duch came to the courtroom without a great deal of difficulty while the victims had enormous troubles in securing recognition as civil parties. The total number of 94 civil parties reduces the situation to the level of theory, he said. Indeed, Sur argued, Duch is in complicity with the court on the rights of the victims. While the victims are steeped in Buddhism, with its Karma, reincarnation, and "letting go" concept, their country, led by a former Khmer Rouge soldier,

has enough trouble looking to the future while keeping memories alive. It has only been a few months since school textbooks were circulated with information about S-21.

Sur claimed that Duch's shedding of tears in public is at odds with Buddhist culture, which embraces the survival of the fittest. By converting to Christianity, Duch actually followed the logic of survival of the fittest. Duch has sought to demonstrate total complicity and monopolize the trial in the process. Among the victims there is a great sense of discomfort.

For the victims, Sur argued, forgiveness can only be accompanied by sincere and exhaustive confessions. Duch has not done that. Instead, he has been evasive. Duch's further argument that he was just a follower in the Khmer Rouge machinery is not plausible. He perfected his methods at M-13, so much so that he was better than others and was promoted to chair S-21. He had the power to save people, but chose to do so only for the photographer (who took thousands of photos of Duch in his private life), dentist, and painter. If he was able to spare life, he also was able to smash it-even his school teacher. He was no pawn. He must be judged as a criminal against humanity.

Sur recounted some of the civil parties' stories. He then proposed entrusting to international justice the "noble mission of saying and judging that there are crimes against humanity that will not remain unpunished."

President Nil Nonn announced that Tuesday, November 25, would be devoted entirely to the closing arguments of the co-prosecutors.

*Note: For a recent essay on civil party participation at the ECCC, see Civil Party Participation at ECCC: Overview, by Michael Saliba, November 6, 2009, posted on the Cambodia Tribunal Monitor. Labels: duch, Duch Closing Arguments.*

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**David Scheffer, Professor and Director, Center for International Human Rights, Northwestern University School of Law.**

# DUCH HIDES BEHIND HIS ORDERS

*David Scheffer*

International Co-Prosecutor William Smith continued his closing arguments in the trial of Kaing Guek Eav (alias Duch) before the Extraordinary Chambers in the Courts of Cambodia (ECCC). The defense rose following his statement, first with the defendant Duch speaking and then his Cambodian defense counsel, Kar Savuth, delivering his entire closing argument. The international defense counsel, François Roux, will present his closing argument on Thursday, November 27.

## **International Co-Prosecutor William Smith**

Smith described Duch as a perpetrator of multiple forms of liability under Article 29 of the ECCC Law, in other words, someone who planned, instigated, ordered, aided and abetted, and committed crimes against humanity and war crimes. Duch had to fulfill all these modes of participation in order to establish and operate S-21, Smith argued. He also charged Duch as a superior who failed to prevent

the crimes of or to punish his subordinates. In fact, he hired staff for the express purpose of committing crimes.

Smith made the case for joint criminal enterprise liability (JCE) as well before the judges. This is an issue that has been deferred to the merits judgment of the Duch case, so the international co-prosecutor was compelled to make his best argument for it in his final submission. JCE captures the essence of Duch's responsibility, Smith argued. The efficiency of S-21 could not have been achieved without the planning and collaborative work with both superiors and subordinates that Duch orchestrated as chairman of the prison.

The statutes of other international and hybrid criminal tribunals of the modern era refer to the same modes of liability as does the ECCC Law, and therefore Smith inferred that what emerged from those tribunals as JCE should be applicable to the



William Smith international prosecutor

Chea Leang national prosecutor

ECCC as well. He said that the drafters of the ECCC Law intended it to be part of the body of international precedents represented by the tribunals. Thus, refusing to apply JCE as a mode of liability would put the ECCC at odds with the very tribunals it was intended to model itself after.

The grand criminal vision of JCE is to employ others as a tool to achieve a criminal goal. The result can be far more serious commission of crimes than when they stand alone. JCE, Smith proposed, perfectly captures the scope of crimes by Duch. The co-prosecutors obviously disagree with the Pre-Trial Chamber's ruling that denied JCE and Smith requested that the Trial Chamber find Duch guilty of JCE.

Regarding Duch's personal commission of crimes, they were limited to a small number of very significant acts, Smith contended. He should be guilty, the co-prosecutor said, under the mode of physical commission of crimes as well. Smith concluded that the co-prosecutors had proven beyond a reasonable doubt crimes against humanity, grave breaches of the Geneva Conventions, and two categories of violations—homicide and torture—of the 1956 Penal Code of Cambodia.

### **Sentencing**

Smith delivered a lengthy statement about the sentencing of Duch in the event he is proven guilty of the charges (to which he already has admitted his guilt). Smith said that in international criminal jurisprudence there are no real guidelines on sentencing. It was necessary to look to the sentencing principles of other tribunals. Under those standards, the sentence must reflect the gravity of the crimes. Here there was the utmost gravity in both number and type of crimes which were committed daily and systematically at S-21. The crimes committed had long-term physical and mental impacts on the victims and their relatives. Three survivors of S-21 who testified in the case are permanently scarred from their imprisonment and severe mistreatment, including emotional instability.

The family survivors extend around the world, with many families ripped asunder by what happened to their loved ones at S-21. For some, suicide has been the only way to deal with grief. The number of such family victims is unknown, but surely, Smith believed, they must number in the tens to hundreds of thousands. The costs are still being felt today, with countrywide post traumatic stress disorder experienced by countless victims.

The extent of Duch's participation depends upon the court's examination of whether Duch inflicted pain with his own hands and whether, with his superior position at S-21, he inflicted such pain through the work of others he supervised. If both, he becomes more culpable. If he engaged in such acts enthusiastically, then his criminal participation becomes even more serious. If he acted voluntarily and with pre-meditation, then his participation reaches its zenith. In fact, Duch stayed with the Communist Party of Kampuchea (CPK) throughout the violence. He was an effective leader, Smith argued, who relished in transforming staff into killers. He mastered all details of his work. As chairman of S-21, Duch had significant responsibility for a wider net of torture. Thousands were arrested, tortured, and killed at Tuol Sleng. He toured interrogation cells, personally kicked detainees, and forced prisoners to fight each other. Duch was one of the most effective tools of CPK policy to seek out and kill assumed enemies. Indeed, what he accomplished has rarely been matched in world history regarding the scope and callousness of the criminal conduct.

Smith reminded the court that Duch was highly educated, intelligent, and logical. He made the choice to be part of the CPK rather than to withdraw from it. As chairman of M-13 for four years prior to Pol Pot's rule of Cambodia, Duch knew what was expected of him—to arrest, detain, interrogate, torture, and execute CPK enemies. Indeed, he personally tortured many times himself during those years.

### **Aggravating Factors**

Smith then advanced the aggravating factors

that should guide the court's consideration of a sentence for Duch. First, Duch's authority at S-21 was not itself an aggravating factor, but how he used it may be. He should have protected the rights of the detainees there and he failed to do that. In fact, he did the opposite. He never acted as if he were under any duty to protect the welfare of the prisoners.

Second, the infliction of unusual pain and suffering on victims is an aggravating fact, Smith argued. What he oversaw was particularly savage, sadistic, and ruthless. The catalog of brutality at S-21 was truly grotesque and Smith went on to describe how that was so. The terror, shock, and fear were beyond our imagination, he said. Prisoners saw what foreshadowed their own fate. "Imagine what each prisoner felt when fellow prisoners disappeared and they waited for their own names to be called. Imagine how many contemplated suicide," Smith suggested.

Smith described the defenselessness of the victims at the killing fields. He suggested that all three of these aggravating factors are directly relevant and must be taken into account in Duch's sentence.

### **Mitigating Factors**

He next turned his attention to mitigating factors in the sentence. On the issue of duress, the evidence does not support Duch's claim that he hated his work. He was a man of terror, not a victim of terror. The defense has not proven, Smith argued, that Duch was subject to the terror that began to grip the country in 1978. As Elizabeth Becker has written, Smith said, Duch was one of a half dozen of the most important leaders in the country at that time. He spread terror throughout Cambodia in his capacity as chairman of S-21. He designed the terror machine and he was an enthusiastic participant in it.

The defense of superior orders, which is addressed in Article 29 of the ECCC Law, requires that a subordinate relying on the defense as a mitigating circumstance must show the order had an influence on his behavior. But the defense

collapses if the defendant would have committed the crime anyway without specific orders. Duch actually desired to carry out the revolution and smash its enemies, rather than simply comply with orders. In sum, duress and superior orders do not apply with respect to duress and thus should not be considered as mitigating circumstances.

Cooperation with the court is a mitigating factor under international criminal law. The test rests on the quantity and quality of the information provided and if it is given selflessly without any quid pro quo. Early cooperation also is important, as is cooperating in the investigations of other trials. If the information provided is limited or not entirely true, then cooperation would not be considered sufficient. Duch made the choice not to surrender from 1979 to 1999. For 20 years, he was a fugitive; indeed for the first 15 years of that period, he collaborated as a fellow fugitive with the senior leaders of Democratic Kampuchea. He changed his name and did not reveal his connection to S-21. Only when photographer Nic Dunlop tracked him down did he find it impossible not to reveal the truth. He would not have been arrested and imprisoned but for Dunlop's persistent tracking of him.

Granted, Duch has provided evidence recently regarding the CPK and with respect to other charged senior leaders. But, Smith contended, Duch only admitted part of the truth regarding his own conduct. He essentially has confessed, "I did really terrible things but it's not my fault; it is the fault of my superiors."

### **Smith Hits at the Defense Strategy**

Further, the defense strategy at the trial, Smith explained, is to try to limit the court's efforts to review the facts. The cumulative effect of the defense's challenges is to try to reduce the impact of the crimes and Duch's own liability for them. The defense has claimed little evidence that would bring Duch into the ECCC Law Article 1 personal jurisdiction of the court. The defense objected to any evidence being admitted regarding Duch's behavior at M-13 prior to the temporal jurisdiction of the court. That deprives the court of reviewing

evidence regarding the character of Duch as a killer. In contrast, defense counsel wanted the court to hear about Duch's good behavior as a young student, long before the atrocities of 1975-1979. The defense also objected to detailed witness summaries, a tactic clearly designed to make the voluminous written evidence less easily available to the court. Judges need summaries as a roadmap to understand key issues in the case. But the defense aim was clear—to instill less clarity.

The defense objected to a reserve witness list, which would fill gaps if witnesses suffered memory loss or some other setback. Smith considered reserve witnesses essential because the court has prohibited the co-prosecutors from meeting with witnesses in advance. Since most witnesses were former S-21 staff, it is difficult to know whether the particular individual will lie or limit the information requested out of a sense of personal guilt or embarrassment. This actually proved true during the trial, with a general reluctance to speak freely. When the defense energetically advised a witness who had been an S-21 interrogator that he might be prosecuted in national courts, the defense sent a message all similar witnesses that they might be prosecuted in national courts. The defense injected fear into every S-21 witness. The tactic does not encourage witnesses to tell the truth; in fact, the defense took great pleasure in the witness not telling the truth. Finally, the defense sought to limit the documents to be delivered to the court, including documents relating to expert Craig Etcheson's findings on the existence of an international armed conflict.

Thus, on one level Duch provided evidence regarding the CPK regime and he assisted in providing information voluntarily to the court. On another level, however, Duch was not cooperative about his own role at S-21. He stated a truth only when it proved too difficult to maintain a falsehood. "You cannot challenge the trial process throughout and then claim you have cooperated with the court," Smith said.

Regarding Duch's admission of guilt, Smith described it as limited in character. When pressed on his own involvement in the crimes, Duch was always recalcitrant in the courtroom. He claimed he was forced to torture and kill. He must, Smith demanded, accept and face up to the truth with the enthusiasm of an ardent revolutionary. He has not accepted full responsibility for crimes before this court. His remorse is limited by his denial of responsibility. Duch has an inability to empathize.

Would a reduced sentence for Duch contribute to national reconciliation? Smith said it is a legitimate consideration, but Duch's behavior has not added significantly to national reconciliation. The purpose of the court is to end impunity. A heavily reduced sentence would hamper and not help reconciliation. National reconciliation is the by-product of the trial, not its purpose. Duch's admissions cannot have any impact on peace in the country. He failed to demonstrate that a lighter sentence would be advantageous for national reconciliation. "Humanity must be made whole by sternly punishing one of its own," Smith said. "That will do far more to advance reconciliation than a disproportionately lower sentence."

### **Smith Requests a 40-Year Sentence**

Smith spoke favorably of giving Duch credit for the time he served under the jurisdiction of the Cambodian military court prior to his arrival at the ECCC. That prolonged detention was a serious violation of international law. "Here, the rule of law must apply," he proposed. When an accused is not brought to trial in a reasonable period of time, such a violation of law must be remedied. Smith recommended that given the gravity of the crimes in this case, the court should start with life imprisonment for Duch's sentence. The court should take the breach into account. A fair course of action would be to commute the sentence of life imprisonment to a determinant sentence.

Smith claimed that Duch had been met with a fair trial by independent and impartial judges. He should be sentenced only for crimes he committed.

At S-21, the detainees never had such justice. Duch ensured that they were treated as animals. Nothing can justify the brutality at S-21. Duch worked tirelessly to identify, arrest, and “smash” enemies. He repeated apologies and shed tears at Cheong Ek. Smith acknowledged Duch’s admissions of guilt. But he saw no remorse in Duch’s refusal to reject his active participation in the crimes. Whenever possible during the trial, Duch sought to minimize his role, claiming he was trapped by secrecy and terror. But the court must not allow him to hide behind false claims, Smith pleaded. Duch was a loyal and dedicated agent of the CPK.

Smith quoted William Shawcross, the English prosecutor at Nuremberg, who said, “There comes a point when a man must refuse to answer to his leader if he is also to answer to his conscience.” Duch refused to answer to his conscience. He willingly and enthusiastically abandoned all respect for human life. He had a choice: the abuse of power or his conscience, and he chose the former.

Smith believed that Duch deserves a sentence of life imprisonment, but that it had to be reduced to a fixed number of years. He recommended adjusting the sentence to 45 years to reflect a credit for time served at the military court and as an additional remedy for being detained there without trial and contrary to international criminal law. Smith recommended a further reduction of five years in recognition of Duch’s general cooperation, conditional remorse, and apologies, and the possible effect his conviction will have on national reconciliation. Thus, Smith proposed a sentence of 40 years for Duch.

Smith closed by saying that all should be mindful of the dreams and opportunities denied due to the crimes at S-21. The families of the victims still suffer today. “This court must speak on behalf of that humanity, that crimes like these must never be perpetrated again,” Smith said. “Let your judgment speak of justice and establish criminal responsibility for 12,000 crimes. You are not taking away Duch’s humanity; you are giving it back to the victims of S-21.”

## Duch Speaks



Duch former chief of S-21

Duch, who again declined to look at Smith during the latter’s statement, read his closing statement facing the judges and a packed auditorium of Cambodians. He focused almost exclusively on the CPK’s policy of killing its alleged enemies and distancing himself from the decision-making that drove that policy. Both Duch and his Cambodian defense counsel, Kar Savuth, later referred repeatedly to the practice of “smashing” at S-21 and elsewhere in Cambodia during the Pol Pot regime years. They could have ceased using that highly derogatory word, which was part of the Khmer Rouge strategy of dehumanization, in the courtroom and referred instead to “murdering” or “killing.” It seemed odd that the very terminology the Khmer Rouge leaders would want us to apply in conformance with their own usage during the 1970’s repeatedly infected the court proceedings.

Duch set out a fairly detailed description of how the CPK developed a policy of killings to protect the Party itself and how internal purges became standard operating procedure from the beginning. He admitted that before 1975 he already was plunged deeply into the criminal acts that defined the internal purges. “Anyone the CPK identified as the enemy had to be smashed—no one could challenge that,” he admitted. He was afraid of being removed if he did not join in the CPK policy. “I knew how to control and save myself.” He identified ten individuals

who decided who would be killed and who would be spared. The list included Pol Pot, Nuon Chea, Ta Mok, Son Sen, and Ke Pauk. No one else had such a right, he contended.

Duch read through a tedious list of the leadership structures (and the changes therein over time) in each zone of Cambodia, as if to emphasize that he was not in any of the leadership slots. He claimed he could do nothing about the overall policy of “smashing.” Pol Pot, he said, was the criminal. “He wanted to become King.” As for S-21, Duch claimed that it was under the supervision of Son Sen, to whom all annotated confessions were sent for transmission to Pol Pot for final decisions. S-21 was unique because members of the Standing Committee were detained and killed there. “These people were a thorn in Pol Pot’s eyes,” Duch said. The people killed at the 195 other detention centers were “innocent and honest people who committed no wrong.” He said he was still terrified about what happened to all those innocent people.

Duch said he was responsible and would be forever liable for the crimes at S-21: “I am accountable to the entire Cambodian population for the souls that perished. I am deeply remorseful and regret such a mind-boggling scale of death.” He continued, “I ended up serving a criminal organization. I could not withdraw from it. I was like a cog in a machine. I regret and humbly apologize to the dead souls. I acknowledge all of the crimes at S-21 in a legal and a moral context.”

Duch hoped that the victims would leave their doors open for his apology. He claimed to fully and sincerely cooperate with the courts, including the military court where he was first detained. He wanted to be recognized again as a member of humankind.

Duch finished by reading

all 34 footnotes to his statement, without any reference for the audience as to what point in the text the individual footnote referred. It was an odd finish, but emblematic of the teacher in Duch and his attention to details.

### **Defense Counsel Kar Savuth**

Duch’s Cambodian defense counsel, Kar Savuth, spoke for almost three hours. He repeated many times and presented information that he argued supported a general theme: that Duch was neither a senior leader of the Khmer Rouge nor someone who had the most responsibility for the commission of the crimes covered by the court (ECCC Law and UN/Cambodia Agreement Article 1 personal jurisdiction requirements).

Savuth pointed out that there were 196 security prisons and that each district had mass graves. Why, he asked, were the chairmen of the other prisons “living happily with their families” while his client, Duch, sat in the dock as a scapegoat? Compared with the larger numbers of victims at some of the prisons, Duch killed very few people at S-21, he said. Savuth returned to this theme repeatedly throughout his oration.

He also objected to the extension of the 10-year statute of limitations by 30 years for certain designated crimes under the 1956 Penal Code as set forth in Article 3new of the ECCC Law. He said it violated



the non-retroactivity principle in international law. Since the Cambodian legislature passed the ECCC Law with the extension, Savuth essentially was arguing the unconstitutionality of the law (or at least Article 3new) under Cambodian law—all in an effort to knock out the charges of Article 3new crimes against his client. Thus the court could not prosecute Duch under national law, Savuth argued. Regarding crimes against humanity and grave breaches (war crimes), Savuth explained that only governments made the decision to go to war and Duch was only following orders. Further, it was the top leadership who ordered and thus was most responsible for the actions constituting crimes against humanity. Since, in Savuth's view, Duch was neither a senior Khmer Rouge leader nor someone most responsible for the commission of the crimes at S-21, he should not be charged under the ECCC Law. He fails Savuth's test of personal jurisdiction under that law. In his view, only three individuals should be prosecuted by the court because only three surviving persons fall within the personal jurisdiction of Article 1 of the ECCC Law: Nuon Chea, Khieu Samphan, and Ieng Sary. Furthermore, only these individuals could order arrests and acts of "smashing." Duch was at the third tier of recipients of orders. The top individual was Pol Pot, then Son Sen, and only then does one arrive at Duch following Son Sen's orders. "The person who received orders and executed them is not 'most responsible' under the ECCC Law," Savuth argued. He kept returning to his scapegoat theme as well, noting that other chairmen of prisons during the Khmer Rouge regime roam freely in Cambodian society and should be prosecuted if his client is being prosecuted. Such inequality of treatment, Savuth contends, violates the equality provision of Article 31 of the Cambodian Constitution.

While he and his client admit that crimes existed at S-21 ("You can't cover an elephant with a rice basket."), Savuth argued that Duch was not culpable for those crimes under the Cambodian

1956 Penal Code or the ECCC Law. He also claimed that Duch acted under duress and Article 238 of the 1956 Penal Code provides that if one obeys superior orders under duress, then the prosecution can only be brought against the superior.

Savuth ignored other provisions of the ECCC Law, such as the denial of defense of superior orders other than for mitigating purposes, and the fact that sufficient records simply do not exist for the other prison camps that would ensure successful prosecutions of other surviving prison chairmen. The voluminous records of S-21, thanks in large part to Duch's meticulous attention to detail, and S-21's notorious and systematic use of torture and other methods to extract confessions prior to executions arguably provide the basis for prosecution of him. One must also consider the raw evidence of what actually occurred at Tuol Sleng and who in reality led in the execution of the crimes.

Nor did Savuth consider the intent of the negotiators of the ECCC Law with respect to the scope of personal jurisdiction. He based his entire analysis on what was established on paper in the CPK regarding the issuance of orders. The commission of crimes against humanity and war crimes on the massive scale experienced in Cambodia from 1975 to 1979 cannot rest only on how the CPK defined its leadership structure on paper. It is up to the co-prosecutors, co-investigating judges, and judges to determine who constitutes a "senior leader" and one "most responsible" for the crimes. Since Duch acknowledged his responsibility for the crimes at S-21, Savuth's arguments today appeared awkward in that he was seeking to deny any culpability under the law for Duch's actions at S-21. Perhaps international defense counsel François Roux will clarify matters during his closing arguments on Thursday morning.

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***David Scheffer, Professor and Director, Center for International Human Rights, Northwestern University School of Law.***

# THE CRIME OF OBEDIENCE

*David Scheffer*

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On Thursday, November 27, 2009, international defense counsel François Roux rose to deliver about four hours of closing arguments in the trial of Kaing Guek Eav (alias Duch) before the Extraordinary Chambers in the Courts of Cambodia (ECCC). He made two dramatic announcements at the outset: 1) he had to revise his pleadings overnight in light of the argument made by his co-counsel, Cambodian Kar Savuth, on November 26, and 2) this would be his last pleadings as a lawyer. In the latter respect, Roux said that it had been 37 years since he took the oath as a lawyer and at the end of this day he would be taking off his gown. He will head up the defense office of the Special Tribunal of Lebanon in The Hague and continue his commitment to the service of international criminal justice. He dedicated his words during the day to his grandchildren and to the young generations, particularly the young female lawyers on the civil party counsel teams in the courtroom.

Roux continued that “to stand up and speak in defense is what makes our job noble.” He stood “beside one accused of one of the most serious crimes imaginable—crimes against humanity. When hear such a plethora of mistruths by the co-prosecutors and not hear anything of our humanity, of how the accused has provided the co-prosecutors with the bulk of the charges against him, then stand tall as a defender.”

“Beneath the gown,” Roux said, “there is a human being—a man so perturbed by what the victims have experienced. My compassion and respect as a human being tell me this morning that I was pleased to hear all civil party groups say that this trial for our client has been the first step on the road to catharsis. Let us celebrate that this little drop of water will cool the great suffering they have endured. The civil party groups are defending the

presence of victims in our proceedings. This is the beginning to make sure this happens for the first time in an international criminal court: the presence of victims as civil parties.”

Looking at the ECCC itself, Roux asked, “How many cynics said it would never take place? And then the trial took place, with all the complexities



we had to deal with and transcend. But here we are; we’ve done it. Today, we can say this trial will be inscribed in the annals of international criminal justice that is evolving in our time. It is still a child. We’re all trying to find the best way forward. At the end of the day justice is rendered. But you, the judges, are not in charge of effecting reconciliation. You cannot force reconciliation. But you must render justice. You are not here to fight impunity.

That is the co-prosecutors' job. You are here to render justice in a court whose strength is to enable adversarial proceedings."

After noting the work of the Truth and Reconciliation Commission in South Africa and Desmond Tutu's writings that it had allowed for the rebirth of the human race in his country, Roux said, "At times, we had the impression as though we were taking part in a truth and reconciliation commission in this courtroom. It is to the honor of Cambodia that this court has allowed so many to



follow the trial, which serves as a model for that purpose."

#### **Disagreement Between the Defense Counsel**

Roux acknowledged what had been so apparent on Wednesday—a huge last-minute rift between his strategy for the defense of Duch and the strategy of his Cambodian co-counsel, Kar Savuth. He described some of Savuth's objectives as unacceptable and would let him prepare his

own rebuttal for the counterattack that was sure to come from the co-prosecutors. First and foremost, Roux admitted that the case law of the International Criminal Tribunal for the Former Yugoslavia had dealt at length with the criteria for who falls within the category of "those most responsible" for the commission of genocide, crimes against humanity, and war crimes. The national law of Cambodia simply is not applicable on that issue, "and therefore international law must prevail," he said. International law had already been introduced into domestic law in this respect.

Second, Roux had to address the vexing reality that Savuth essentially had argued the innocence of Duch under the ECCC Law and 1956 Penal Code and thus for his acquittal of all charges. In contrast, for months Roux had guided his client through many representations of responsibility for the crimes charged in a manner that constituted a *de facto* guilty plea (even though such a plea technically is not available under the law for the ECCC). "We cannot ask for acquittal of the accused as well as enter a guilty plea for him," Roux conceded. Although Duch will not literally plead guilty, "who is in a position to dispute the tears wept by Duch? Who can contest his apologies? These were moments of truth that were experienced by an accused person who wept before victims and the co-prosecutors and who proclaimed, 'These are the words I have waited to utter for 30 years.' Who can dispute that? Duch has acted with utmost sincerity and has been utterly moved." Roux said that Duch recognizes his guilt, and that fact alone is a historic moment for Cambodia. "We must build the truth," he advised. "We heard a man apologize on his knees yesterday."

#### **Dragan Obrenović Precedent**

Roux then received permission from the judges to show a film from the trial of Dragan Obrenović before the International Criminal Tribunal for the Former Yugoslavia (ICTY). Obrenović was the acting commander of the Zvornik Brigade

of the Bosnian Serb forces that swept through Srebrenica in July 1995 and executed Muslim men and boys. He entered into a plea agreement with the ICTY prosecutor and plead guilty to one count of the crime against humanity of persecution, and was sentenced to 17 years imprisonment on December 10, 2003. The film extract showed the closing statement of the prosecution regarding his sentencing. It was a powerful and eloquent statement for the ECCC trial audience to watch, for the ICTY prosecutor explained the admission of guilt by the defendant, his remorse, his cooperation with the prosecutor, his provision of the truth about what happened at Srebrenica, and the prosecutor's basis for seeking a 17-year sentence. Following the showing of the film, Roux rose and said simply, "So there you have it. This is what this trial should have been. This might have prevented what happened yesterday afternoon [i.e., Savuth's pursuit of an acquittal]." Roux emphasized that Obrenoviæ did not admit to everything; in fact he plead not guilty to all charges until the first day of his trial. Then he

approached the prosecutor and only at that time did he plead guilty to one charge. "It was not a deal," Roux said. "It was a dialogue, a discussion between the prosecutor and the defendant."

### **Co-Prosecutors Miss Their Date with History**

In civil law, Roux continued, the guilty plea does not exist as such. But the court can draw upon international law for the application of what constitutes a guilty plea in a case and trial of this character. "The co-prosecutors missed their date with history, and this led to frustrations in public opinion among the victims that Duch is not telling them all that he should. What a waste! From the outset Duch told the co-investigating judges that he is guilty and responsible for all of the crimes. But no, the co-prosecutors decided to submit to the conventional argument whose underlying philosophy is, 'This man is a monster.' Instead, we must understand how a decent man becomes a torturer. That is what I would have liked the co-prosecutors to say."

Roux initiated the core theme of his closing



Cham-Muslim children in Svay Kleang village, Kampong Cham province

argument, which he drew from expert witness David Chandler and his writings: "This is a case about the crime of obedience. How do you become a criminal when you have been obedient?" Roux did not want Duch to be a scapegoat; he should not bear on his head all of Cambodia's atrocities. He ripped into the co-prosecutors' "gratuitous statements" and "farfical words" describing his client. He challenged Craig Etcheson, who works in the office of the co-prosecutors, as an expert.

Roux rhetorically asked, "Did Duch become Pol Pot?" Then he said, "I apologize to the victims for what I am about to say: How many died at S-21—about 12, 280. In Cambodia, 1.7 million people died. S-21 was responsible for less than one percent of the deaths in Cambodia. And yet we are to believe that Duch was a terror that bathed the country in blood!"

There was no question, Roux continued, that Duch has admitted the facts. The loss of life in Cambodia was huge. He has acknowledged responsibility for lives lost at S-21 and in particular for torture and executions there. He never wavered in admitting this. Roux then recited a litany of admissions of facts by his client, where he admitted to heinous crimes at S-21 and said he was criminally responsible for the acts committed on his watch. He confirmed his own remorse and that he was extremely ashamed, that he has shame he carries with him each and every moment of his life. Roux quoted Duch when, on June 15, 2009, he admitted that he betrayed his friends and that what he did "transcends cowardice."

Roux pointed out, forcefully, that Duch had agreed to cooperate during the investigative phase of his case and during the re-enactments. "He takes nothing away from the seriousness of the crimes. He is full of remorse," Roux contended. But, he said, the co-prosecutors lacked contact with Duch. As his lawyers, Roux and Savuth see him alone when he speaks freely from the heart, when he collapses into tears. Roux railed against the co-

prosecutors for not acknowledging, in their written submission to the court, Duch's admissions of guilt. "Not once have they said it in their final submission!" The co-investigating judges recognized the admissions and said Duch acted out of fear and shame.

At the proceedings on September 16, 2009, Roux recited to Duch co-prosecutor Robert Petit's statement regarding what he wanted from Duch as an admission of guilt. "Do you admit to it?" Roux asked Duch. "That you implemented it all? Yes or no!" Duch replied, "Yes, I admit it completely." Roux looked at the co-prosecutors and asked, "So how can there still be a shadow of doubt with the co-prosecutors? How, two months later and the submission of a 160-page brief to the court, could the co-prosecutors not confirm Duch's admission of September 16?"

Roux then raised the expert testimony of David Chandler. He reminded Chandler of Duch's admission on April 17, 2009, that he was ashamed of photographs from S-21 where he looks proud of the work he was doing. "I am ashamed," Duch said. "It is shocking and one feels shame when depicted in such a photograph." Roux said Duch recognized that he ordered and supervised crimes. When asked about this, Chandler said, "Yes, what Duch said will serve history. I was very impressed by Duch's admission of guilt. He is unique among the surviving actors of the Khmer Rouge regime." Roux accused the co-prosecutors of reinventing the history of Democratic Kampuchea. They had explained it was a dictatorship. "If S-21 occupied an important position," Roux responded, "and its head had such autonomy in decision-making, indeed that he advised his superiors and frightened them, well, then it's not a dictatorship anymore. It's participatory democracy where there are no superiors!" He continued, "Duch was the subordinate of Son Sen. You cannot avoid that fact! Duch never enjoyed full autonomy in his position at S-21. The prison was closely monitored from the very top of the CPK leadership. S-21 was in the grasp and control of the Central Committee.

78 percent of those killed at S-21 were members of the regime. S-21 was directly controlled by the center of the regime.”

### **Etcheson Testimony**

The testimony of Craig Etcheson presented a new version of the facts, Roux contended. Etcheson maintained that Duch had fueled the paranoia of the regime leaders. Chandler had testified that S-21 confessions were like a mantra protecting the party from others. Etcheson admitted that the Standing Committee controlled all communication in Democratic Kampuchea and that it was a top-down hierarchy. Roux said that Duch’s mission was defined by the fact that anyone who entered S-21 was to be executed. “This was the sinister task Duch was given. It is a rewriting of history to claim that Duch had the will to choose independently who to arrest or who to execute.” Roux objected to Etcheson’s effort to cast Duch as a source for a constant purge in the ranks. Once again, Roux said that 12,380 deaths are one too many, but they are not 1.7 million deaths that the senior leaders of Democratic Kampuchea must be responsible for.

Duch’s job was simply to elicit confessions at S-21, Roux said. He was an instrument in the hands of the party and he acted like an obedient machine. “He had to choose to kill or be killed,” according to Roux. Chandler testified, he said, that if Duch did not obey orders, death was certain. Etcheson testified to this reality as well. Why did Duch not escape? The answer was based on common sense. Others had more power than Duch and they were unable to escape with their lives. All of the CPK leaders who entered S-21 were unable to escape. “This was a system of paranoia, of madness,” Roux concluded. “You are reproaching Duch for doing something demanded of everyone!” He continued, “Isn’t it too comfortable to see Duch as a monster? The co-prosecutors don’t have the courage to seek a life sentence; they opt for a 40-year sentence. Isn’t that too comfortable a solution?”

### **President Obama’s Instructions**

Roux advised that the real task of the co-prosecutors should be to discover the phenomenon whereby a normal man becomes a murderer. We return, he said, to Chandler’s ultimate quest: the crime of obedience. Roux said he had defended civil disobedience in the courtroom for 35 years in an effort to change the law in the same spirit as Gandhi practiced in India. Roux took note of what President Barack Obama had said months ago, that those individuals fulfilling in good faith the advice of the Justice Department during the Bush Administration on the interrogation of terror suspects, which included acts of torture, would not be prosecuted. How can that instruction stand in contradiction to what Duch confronted at S-21, namely to follow the orders on interrogation of prisoners? Why didn’t the U.S. personnel disobey? “If we don’t learn how to disobey in a democracy, how do we do it in a dictatorship?” We all operate in a world, Roux said, where we ask our superiors what to do. Are we all engaged in crimes of obedience? “After 35 years of defending acts of disobedience, here I stand defending someone who slavishly obeyed his orders.”

### **Joint Criminal Enterprise**

Roux next turned to the co-prosecutors’ continuing attempt to hold Duch liable under the joint criminal enterprise theory (JCE). He argued that the trial chamber cannot determine that Duch committed acts in joint criminal enterprise with individuals whom you did not give the right to appear to defend themselves of that accusation. The co-prosecutors should have sought a closed session so that these individuals could testify and defend themselves from JCE theory. Further, Roux stressed that Duch cannot be prosecuted for committing torture himself, as the co-prosecutors sought this week. The Pre-Trial Chamber had rejected that charge. Roux then launched into a lengthy critique of Rule 87, which requires the judges “must be convinced of the guilt of the accused beyond reasonable doubt.” He claimed there was a problem in the translation of the rule from the original English

into French. He hoped the judges would be guided by “your intimate conviction” when deciding Duch’s guilt.

Roux sought to portray Duch’s more humane side as a “sweet” and “nice” man. He quoted from page 256 of Nic Dunlop’s book about Duch, where Duch, long after the Pol Pot era, averted an outbreak of typhoid in the humanitarian camp where he worked and saved countless lives in doing so. Roux raised the prospect that Duch suffered from post traumatic stress disorder, which may cause the victim to evade reality and to be emotionally insensitive. Roux remained convinced there were certain things Duch was still not telling him, and that PTSD might be the reason.

### **Duch’s Sentence**

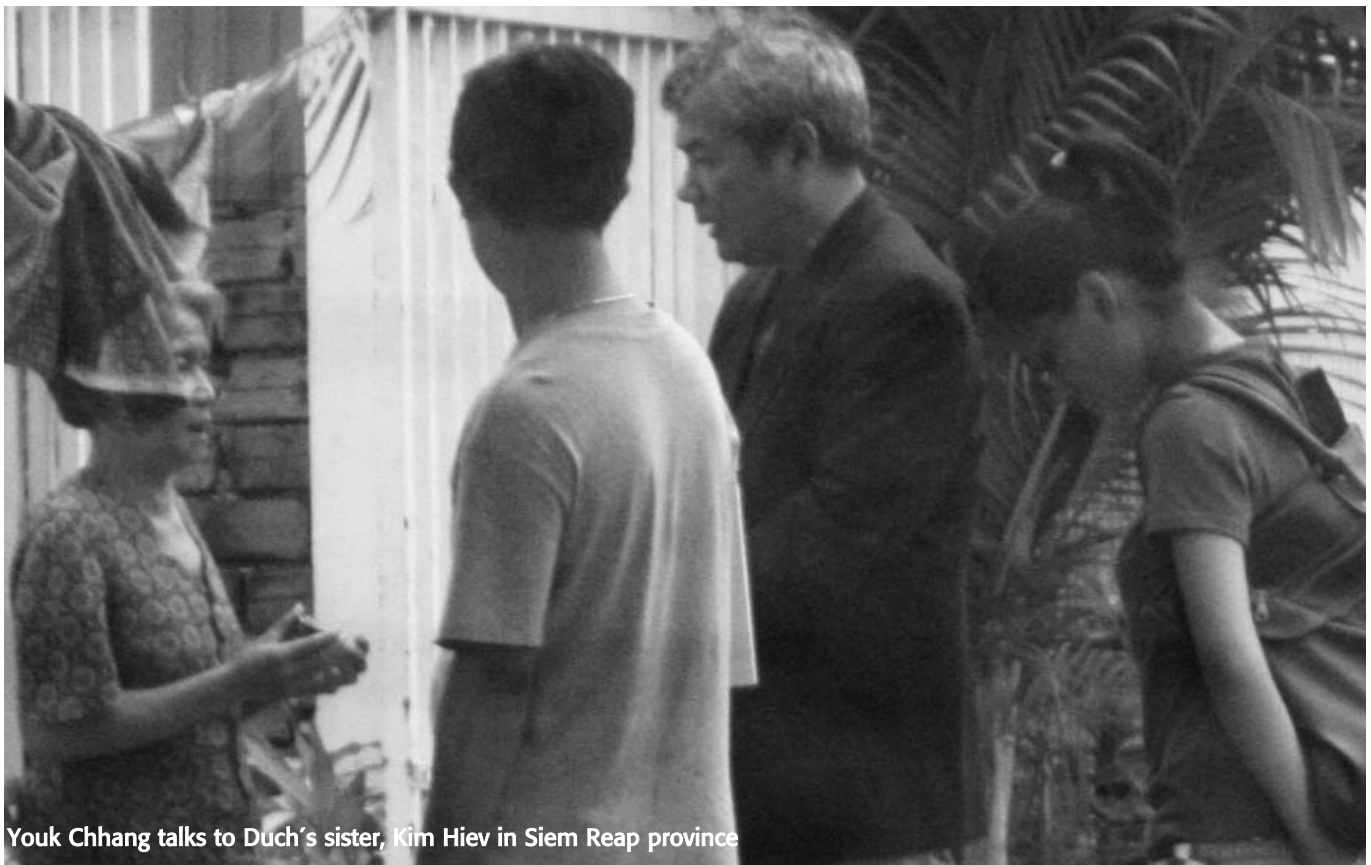
Regarding the sentence against Duch, Roux noted that the other criminal tribunals regarded obeying superior orders as a mitigating circumstance. Duch, he said, was in the chain of command and was a servant and hostage of the regime at all times. Duch also is continuing to cooperate in Case 002,

Roux revealed. In fact, Duch and his lawyers met with the co-investigating judges about two weeks ago and will do so again next week. Roux regretted not stressing this fact of continuing cooperation of the defendant earlier in the trial.

Roux envisaged Duch sentenced to the duty of explaining to younger generations touring Cheong Ek, the killing fields, what must not be done in the future.

### **The Albert Speer Defense**

Since yesterday, Roux admitted, there was no longer a guilty plea by his client. “We are in the Albert Speer defense now. At Nuremberg, Speer did not plead guilty but he acknowledged his responsibility. Prosecutor Jackson gave value to Speer’s acknowledgement, saying he was the best among the worst of the defendants at Nuremberg. Speer received a 20 year sentence. Obrenović got 17 years. “Can Duch still be useful to humanity?” Roux asked. Roux claimed that Duch had been a fugitive for 20 years and imprisoned for 10 years. So for 30 years he has not been a free man-a point



Youk Chhang talks to Duch’s sister, Kim Hiev in Siem Reap province

the co-prosecutors doubtless will contest on Friday. Roux said Duch already had paid for the evil he has committed. "Send him home!" Roux pleaded. In human eyes, Duch will never be forgiven. "But can we look Duch in the eye and see him for the human he is? Will you bring Duch back into the fold of humanity? Duch is dead. Today his name is Kaing Guek Eav. He is no longer the Duch of the revolution."

Roux sat down, having completed a brilliant, albeit contestable, closing argument. The rebuttal phase of the closing arguments then commenced with the civil party lawyers leading the statements.

#### **Civil Party Group 1**

Karim A. A. Khan began the rebuttals of the civil party groups in his capacity as counsel to Group 1. He acknowledged Roux's elegant delivery, great wealth of experience, charm, and ability. But Khan immediately went on the attack. He accused Duch of trying to ride two horses. At the last possible moment, things changed on Wednesday. For months Duch had expressed a guilty plea in all material respects, and yet now he seeks to be acquitted and set free. That is unfair to the people of Cambodia, Khan said.

There is no provision similar to Rule 71 of the Internal Rules for a disagreement between defense counsel. That kind of disagreement logically should be resolved by the client who would give instructions to counsel as to what the client desires. In some respects, what happened with Mr. Savuth's closing argument on Wednesday was an abuse of process, Kahn said. Kahn turned the tables on Roux's allegation that the co-prosecutors had missed their date with history. "In my view," Kahn said, "Duch has missed an important opportunity to speak clearly, spontaneously, and candidly to the court. He was the de jure head of S-21 but in fact voluntarily joined in that venture. He turned away from the co-prosecutors rather than engage them." An act of contrition and expressions of sincerity and frank acceptance of the truth are priceless and are all that Duch can offer the civil parties. Tears alone

are not determinative, Khan said. Khan said that Roux's raising of post traumatic stress disorder was entirely irrelevant, that this is a court of law and not someplace where you can bring unsupported hypotheses into the courtroom at the last moment.

"There were 12,380 moments when Duch could have done the right thing. But he has been content to leave it all opaque," Khan contended. He continued that the defense fundamentally misconceived the issue of extending the statute of limitations on the 1956 Penal Code, as Savuth had contested on Wednesday. As for Savuth's claim of lack of personal jurisdiction, under Rule 89 preliminary objections of that character should have been filed within 30 days of the closing order. In any event, there are reams of case law to knock out the argument. On the issue of joint criminal enterprise theory, Kahn noted the Seromba judgment of March 12, 2008, by the International Tribunal for Rwanda. There the judges found it irrelevant that the accused did not personally drive the bulldozer that became a killing machine. The accused exercised influence over the driver and that was sufficient to find JCE in that case.

Khan concluded by saying, "We don't know what is being said by the defense anymore. Mr. Roux claims Duch is not pleading guilty, but has contrition. Mr. Savuth wants Duch released as a free man."

#### **Civil Party Group 2**

Silke Studzinsky rose for Group 2. She immediately argued that the non-guilty pleading of Savuth on Wednesday was "a slap in the face of the civil parties." They were shocked by his request for Duch's acquittal and immediate release. Duch was and continues to play a good game, she said. But the time has come to shed the sheep's clothing. Studzinsky then repeated and elaborated upon many of the points raised by Khan a few moments earlier. She emphasized that the objection to personal jurisdiction should have been pleaded earlier and is not admissible at this stage. Savuth

fundamentally misunderstood Article 31 of the Cambodian Constitution, which has no concept of equality for injustice. That right does not exist, she said. The legality of a decision cannot be sanctioned for failure to prosecute others.

Savuth's arguments regarding defense of superior orders insults the civil parties, Studzinsky claimed, and in any event does not relieve Duch of culpability. It can only be considered as a mitigating circumstance for sentencing.

The new logic of the defense team seems to be, Studzinsky said, that Duch completely escapes criminal responsibility and that only Pol Pot is liable! Duch's defense strategy does not contribute to the reconciliation process. The civil parties are even more alienated now. Indeed, the defense strategy contradicts the defendant's genuine remorse of prior statements. His wish to return to Cambodian society must be rejected, she concluded.

#### **Civil Party Group 3**

Martine Jacquin rose for Group 3. She said that the civil parties had not heard words of deep contribution from Duch. "You lacked courage under the Khmer Rouge. You lacked courage here as well! You did not fundamentally ask for forgiveness. You missed an appointment with the history of your country. You have not understood the civil parties. You have not distanced yourself from the murderous Utopia of the regime. You seek the pity your victims never had." Throughout Jacquin's statement, Duch stared at her. (Usually, he looks away from opposing counsel.) Philippe Canonne followed (and Duch looked away) and began by praising Roux for his decades of service to the law. He said, "How much we would have appreciated a guilty plea. We could have come closer to a fair sentence. This would have been a bridge. We expected words of sincerity, not of convenience. We heard from Duch a piling up of events, of case numbers, document numbers. Perhaps Duch has not understood a single thing here. Perhaps he is still lost in his footnotes. He operated in the most absurd bureaucracy where reason and

sensitivity were completely absent. And now the defense asks for his acquittal. This is irresponsible!"

Canonne argued that an order must be disobeyed if it is cruel and Duch had the leeway to do that, but refused to do so. Not once was there any discussion of reparations by Duch. How could the civil parties hear the statistic of only one percent of all deaths in Cambodia at that time occurred at S-21? "How can you say that to them?! These are heavy statistics that weigh on the hearts of all survivors."

#### **Civil Party Group 4**

Hong Kim Suon spoke for Group 4. He spoke emotionally and twice stopped for many seconds to collect himself. He said he was a victim and it was hard to compose himself. "I apologize for not controlling my emotions," he said.

Hong Kim Suon accused Savuth of contradicting what Duch had already said in the trial regarding his own responsibility and thus inflicted more pain and suffering on the civil parties. Was it convincing to argue that Duch was not among the most responsible or not a senior leader? Duch was most responsible when he oversaw the execution of over 12,000 people. His experience at M-13 made him trusted by the regime and promoted to S-21 to extract confessions. It is a lie, Suon said, when Duch claimed he could not escape and was simply a cog in the machine. He personally annotated for years all of the death documents.

Suon called for a harsh sentence. He requested that Duch's apology be broadcast on radio. Oddly, Suon closed by proposing that a statute of Duch, in uniform, be erected at S-21 to remind everyone he is a criminal. Cambodians in the public gallery gasped at the suggestion, some laughing at it and others with expressions of horror on their faces.

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***David Scheffer, Professor and Director, Center for International Human Rights, Northwestern University School of Law.***

# EXAMINING MODELS OF JUSTICE IN POST-GENOCIDAL CAMBODIA

*Savannah Wiseman*

I went to Cambodia to research the question of justice in post-genocidal Cambodia. I looked at various models of transitional justice and how they could be applied to the current situation there. Specifically, I spoke with former members of the Khmer Rouge regime and with victims of the regime, and attended the ongoing trials of senior Khmer Rouge leaders at the Extraordinary Chambers in the Courts of Cambodia (ECCC) in the outskirts of Phnom Penh. After listening to the stories from both the victims and the perpetrators of the horrors of the regime, I questioned whether any amount of legal prosecution, punishment, forgiveness, and truth-telling can ever compensate for the torture, the starvation, the fear, and the killings that defined this period in Cambodian history.

Justice, as a concept, implies fairness, and therefore seems like an impossible goal after genocide. Indeed, you can think of the most severe punishment in the world and it does not seem comparable in light of the crimes committed. But while justice

seems unattainable, attempts to impose some degree of justice should be undertaken with the hope of moving towards reconciliation and peace in Cambodia. To that end, I propose that the most effective way of promoting reconciliation and achieving a lasting peace is by implementing retributive and restorative models of justice. By doing so, the ECCC can impose a punishment on the perpetrators who were most responsible for the genocide that will act as a deterrent against future violations of human rights, but also can acknowledge and then forgive the crimes of those who were acting out fear for their lives, keeping families intact, promoting peace in the community, and thus contributing to the process of social healing.

The retributive model of justice is widely supported as an effective and necessary way of addressing crimes and administering "justice." The retributive model focuses on holding wrongdoers accountable for their criminal acts. To that end, the ECCC has been designed to hold top leaders of the



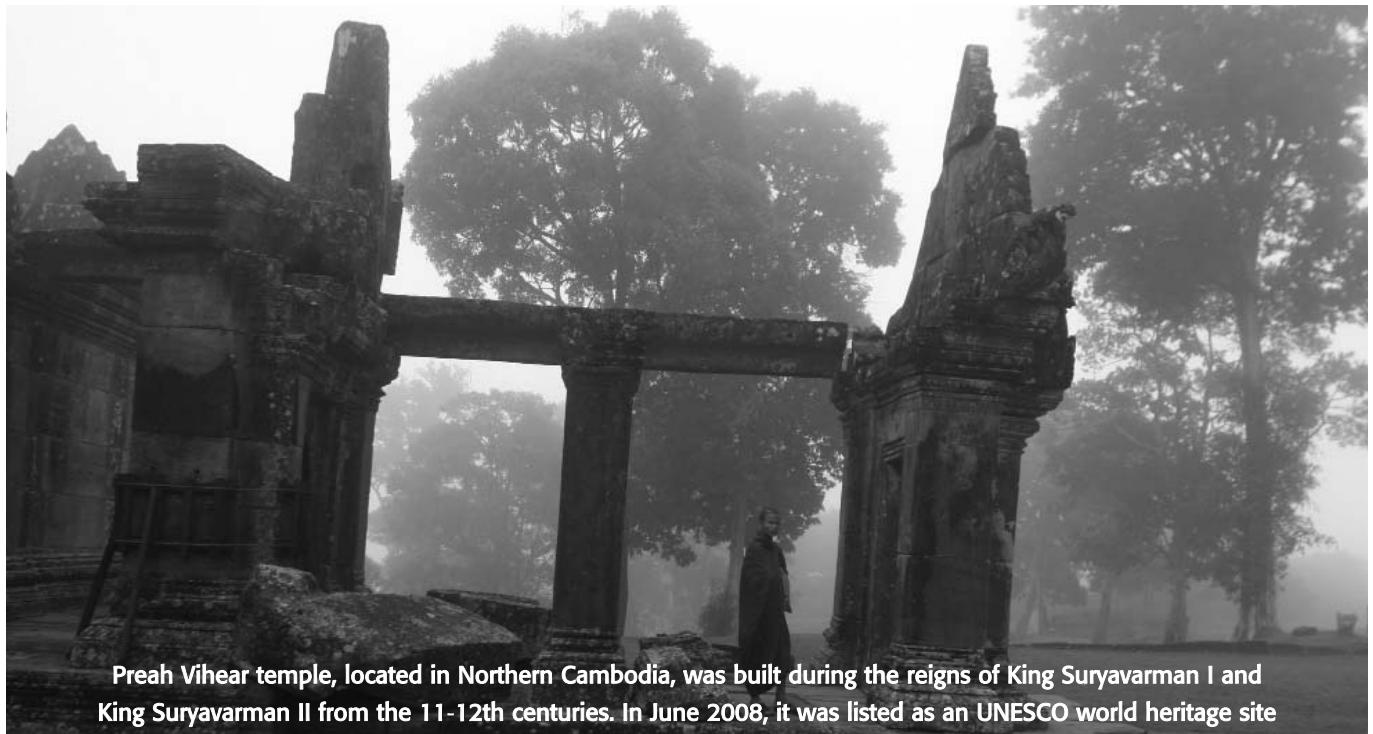
Banteay Chhmar temple, constructed during the reign of Jayavarman VII in the 12th century, in Banteay Meanchey province

Khmer Rouge accountable for crimes against humanity, war crimes, and grave breaches of the Geneva Convention, and to punish those convicted with a maximum sentence of life in prison and a minimum sentence of five years. And although it is not clear what the result will be, many Cambodians and members of the international community are hopeful that, by focusing on retribution, the ECCC may be able to help the victims heal by punishing those responsible, and send a powerful message of condemning heinous crimes such as extermination and torture, and hopefully deter future perpetrators from committing similar crimes. In these ways, the retributive model of justice may make very meaningful contributions toward a future of peace and reconciliation in Cambodia.

The restorative model of justice can supplement a retributive model to ensure that proper attention is paid to the victims' needs specifically. The restorative model generally includes the recognition of and the forgiveness of crimes, which can facilitate reconciliation at the local level. The Khmer Rouge systematically destroyed the traditional bonds of family, friendship, and community, replacing these bonds with absolute obedience and loyalty to "Angkar" (the Organization).

Testimonies from survivors reveal that failure to obey the orders of the Khmer Rouge resulted in torture, starvation, and death of the offender. For these reasons, legally prosecuting and punishing those who complied with the Khmer Rouge out of fear may actually hurt the reconciliation process by further disrupting family and community life. Locking up all "perpetrators" will break up families, leaving wives without husbands, children without parents, etc. Because the retributive model is counterproductive on an individual and communal level, the restorative model is paramount to achieving reconciliation for individuals, families and communities.

In some ways, the Cambodian government has chosen to implement restorative justice ideals by electing to forgive mid and lower level perpetrators in the sense that the court is not seeking their legal prosecution or punishment. In a published statement, Prime Minister Hun Sen acknowledged the Khmer Rouge's guilt in the loss of three million Cambodian lives between 1975-1979. He also declared that the "crimes of the Khmer Rouge period were committed not just against the people of Cambodia but against all humanity" and promised to "build a culture that will prevent the recurrence of such crimes anywhere".



Preah Vihear temple, located in Northern Cambodia, was built during the reigns of King Suryavarman I and King Suryavarman II from the 11-12th centuries. In June 2008, it was listed as an UNESCO world heritage site

Prime Minister Hun Sen's recognition and condemnation of the Khmer Rouge regime is critical in validating the grievances, sufferings, and losses of the victims and their families, and, in reassuring the Cambodian people, "Never again." Many members of the Cambodian government, including Prime Minister Hun Sen himself, were at some point Khmer Rouge members (either by choice or through intimidation). It is therefore important that they disavow their previous loyalty to the Khmer Rouge regime and condemn its actions as not only criminal, but immoral, through statements such as the one made by Prime Minister Hun Sen.

The second part of the restorative model implemented by the Cambodian government is the forgiveness of mid and lower level perpetrators. An ECCC publication states: "The Cambodian government and the U.N. decided that the court should limit prosecutions to the senior leaders of [the Khmer Rouge]...that are most responsible for committing serious crimes". By forgiving mid and lower perpetrators and focusing on the prosecution of senior leadership, the Cambodian government and the U.N. avoid the difficult task of discerning who is a victim and who is a perpetrator, as many "perpetrators" were victims themselves. I witnessed this gray area between victim and perpetrator first hand in my interview with former S-21 Prison Guard, Kiev Peou. Peou explained that he was taken by the Khmer Rouge when he was 12 years old and was trained as a child soldier before being sent to work at S-21 Prison at age 15. As another victim said, "Cambodian children [were] trained to carry out Khmer Rouge orders, no matter how brutal and cruel". Several of the interviewees I spoke with felt that legal prosecution and punishment of "perpetrators" living in their community was unnecessary for this reason. One interviewee, a neighbor of Him Huey (a well-known S-21 leader) said he did not believe Huey should be punished because he was following orders out of fear for his life.

By not pointing fingers at every individual who may have committed a crime, the forgiveness

model has the potential of restoring a peaceful, community-based life to Cambodia. It is thought by some that national forgiveness can reduce community-wide stress and panic caused by fear of legal prosecution and punishment, prevent further hostilities resulting from factual disagreements in individual cases, cultivate empathy and compassion for the perpetrators, many of whom share the same grievances, sufferings, and losses of the victims, and encourage a more forward-looking approach to understanding the Khmer Rouge era.

Some critics, however, argue that national forgiveness would encourage a culture of impunity. However, the likelihood that forgiveness will result in individual and communal reconciliation seems to outweigh the possibility that it could facilitate a sense of impunity. Furthermore, by holding accountable only those most responsible (the senior leadership of the Khmer Rouge) through legal prosecution, the ECCC may achieve an optimal balance between encouraging reconciliation while still deterring impunity.

The international community and a significant portion of the Cambodian community vigorously support the work of the ECCC in seeking the truth and in prescribing punishment for the senior leaders. Several recent surveys show that between 75 and 85 percent of Cambodian respondents were in favor of ECCC trials of senior Khmer Rouge leaders. Surprisingly, however, many of the Cambodians I spoke with were adamantly opposed to prosecuting perpetrators at mid and lower levels who might now be their neighbors. This seems to indicate that the general population is receptive to the idea of forgiveness alongside retribution.

### **Policy Prescriptions: Retributive and Restorative Models of Justice**

The U.N. and the Cambodian government can take steps to improve the use of both the retributive and restorative models of justice. Well-designed social programs can improve and enhance each model's ability to achieve reconciliation for Cambodians.

The Documentation Center of Cambodia (DC-Cam) has been instrumental in developing a variety of social programs, which have aided in the reconciliation process. Some of DC-Cam's social programs involve efforts to preserve and to translate Khmer Rouge documents, distribute textbooks of the history of the Khmer Rouge to Cambodian schools, document the testimonies of survivors, provide parties to the ECCC with evidence of the atrocities committed by the Khmer Rouge, and build a permanent research center, library, museum, and memorial site dedicated to the victims of the Khmer Rouge. However, Cambodia needs more than the efforts of DC-Cam to successfully achieve reconciliation. The international community and the Cambodian government should coordinate with DC-Cam and other organizations in developing, funding, implementing, and expanding different kinds of social programs.

Social programs that enhance the retributive model of justice should be designed to increase direct victim participation in the trial process by



Memorial in Pursat province

providing transportation for Cambodians to attend the trials and by helping victims register as civil parties, and increase indirect victim participation in the trial process by educating citizens about the rule of law and by making information available and accessible to all Cambodians, especially those in the remote areas. Such efforts may be best accomplished through pamphlets, radio broadcasts, community leaders, television, and in the schools. Additional programs should be established to publicize apologies given by former Khmer Rouge, through widespread press, and provide a fund for victim reparations, which can be used to pay for social welfare programs for victims.

To supplement programs animated by retributive models of justice, social programs focused on restorative models of justice should also be encouraged. Such programs should aim at publicizing the government's acknowledgement of the crimes committed down to the local level, formally educate the Cambodian population about the Khmer Rouge period, and develop healing programs based on Buddhist teaching that encourage forgiveness.

No single model of justice is sufficient to reconcile the entire Cambodian population. Seventy percent of Cambodians are under the age of 25 and have no memory of the Khmer Rouge period. The younger generation therefore needs to be reconciled in ways that are different from those of the older generation, which suffered first hand. It is important that the reconciliation process be multi-faceted, and should include opportunities to not only remember the past, but to positively impact the future. Establishing rule of law in Cambodia through the ECCC, and ensuring that this genocide will never happen again, through education and social programs, may not be "justice" for genocide, but perhaps could be reconciliation for the tortured past and hope for a peaceful future.

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# LOOKING TO THE FUTURE: JUSTICE AND RECONCILIATION IN CAMBODIA

*Kiel Stroupe*

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As my plane touched down in Cambodia almost a month ago, I was prepared to witness the detrimental affects that genocide had imposed on the country. Two weeks of classes prior to my arrival made me expect the worst. Ready to walk into Cambodia circa 1979, I imagined Phnom Penh as I had seen it in pictures; a desolate city with blank, desperate expressions upon the faces of all of its war weary inhabitants, bodies lying on the side of the road, bomb shells littering the countryside. To my surprise, Phnom Penh was a noisy, bustling city packed with people and motorcycles speeding by. The people on those motorcycles mostly looked happy, with their families and loved ones enjoying an evening ride. Although poverty is all around, the city seems to overcome this with the bustling activity of its inhabitants and the fixed smiles painted on their faces. I realized that I was no longer in a country enveloped in a culture of fear and constant war; it was clear to me that a new dawn was rising in Cambodia, and that the youthful and motivated population were ready to pick up the pieces of its shattered past.

Although Cambodia has come a long way since the nightmare of the Khmer Rouge, it still faces many issues that continue to hinder its development and the vitality of its people. One of the major issues facing Cambodia today is how to continue the transition towards justice and reconciliation in a post-genocidal society. Thirty years after the complete obliteration of modern Cambodian society and the death of one-fourth of the population, Cambodia must strike a balance between facing the past and looking hopefully towards the future. After talking with several survivors of Pol Pot's genocidal regime, it became clear that in order to move forward, the country must adopt two models of transitional justice: restorative and retributive justice.

According to the International Center for

Transitional Justice, transitional justice "is a response to systematic or widespread violations of human rights." The Center has highlighted several approaches which can aid in this transitional process and which can be adopted and applied on a case-by-case basis. These include criminal prosecution, memorialization efforts, truth commissions, reparations programs and security system reform.

In terms of criminal prosecution, the Extraordinary Chambers in the Courts of Cambodia has the jurisdiction to put the most senior Khmer Rouge officials on trial. It has taken thirty years and countless obstacles to bring about a process of criminal prosecution in Cambodia, and yet, despite the delay, it seems that there is broad public support for the ECCC. According to Craig Etcheson in *After the Killing Fields*, public opinion surveys show "strong majorities of from 75 to 85 percent of respondents favoring a tribunal for the Khmer Rouge leadership." During my time in Cambodia, my team members and I were lucky enough to interview both survivors and perpetrators of the Khmer Rouge. Our interview process revealed that all of those we interviewed as a group, either victim or perpetrator, were in favor of criminal prosecutions, believing that they would help provide justice of some sort. After examining the interviews of the other teams, it is also apparent that many Cambodians are apprehensive about the success of the trials as well as how long the process will take. Although there are mixed responses towards the ECCC, the majority of those interviewed thought the trials could bring a sense of hope to the population. It is also the intention of the courts to provide varying forms of justice to the people of Cambodia that expand beyond the boundaries of retributive justice. Looking back at the different forms of transitional justice outlined above, the ECCC will be able to provide the Cambodian people with three of those forms; criminal prosecution, truth commissions and

reparations. While the Court does not formally function as a state sponsored truth commission or a financial reparations program, the trial proceedings will also allow for elements of each to take place in a public setting.

While the ECCC performs criminal prosecutions, it also has the means to serve as a truth commission and provide reparations in terms of apologies and explanations by the accused for those affected by the genocide. While viewing the trial proceedings, it was evident that apart from establishing Duch's guilt, the Tribunal also endeavors to inform the public about what exactly happened under the DK regime (April 1975 and January 1979). A former commune cook, Nao Okn, said during his interview that he believes justice is the full truth, being honest. When it comes to the ECCC, he believes it will bring truth out of the top DK leadership.

The Court also explicitly covers reparations. A passage in the introductory pamphlet explains, "...the judges may award collective and moral reparations such as an order to publish the judgment in any appropriate news or other media at the convicted person's expense, or an order to fund any non profit activity or service that is intended for the benefit of victims." While the court will not provide individual financial reparations for each person affected by the genocide, they are dedicated to funding organizations that can further the reconciliation process, such as the Documentation Center of Cambodia (DC-Cam) and other NGOs in the field.

The court also hopes to provide reparations in the form of formal apologies from the accused and explanations for their wrongdoings. While we were attending the Duch trial, he mentioned several times how sorry he was for what he had done. While this may satisfy some survivors, there are others such as Kung Suor who believe that, "the trials seem to have given people like Duch another way out by allowing them to blame their superiors for their crimes."

Disappointment with the trial process has also been expressed in reference to two major

complications: corruption and the length of the process. In a pamphlet distributed at the ECCC to all visitors, former UN Secretary General Kofi Annan wrote a message declaring the existence of the ECCC as "signaling that the sinister culture of impunity is, indeed, being replaced by a culture of accountability." Yet it seems that even this "beacon" has fallen prey to charges of corruption. Unfortunately, the corruption within the administration is affecting the legitimacy of the trial process and causing many to lose faith in its ability to provide justice. Ang, a female survivor of the DK regime in the Eastern province of Svay Rieng, expressed her disappointment with the Court. She said, "I believe justice will be achieved, but I have doubts [about the trials] because they are taking a long time without any concrete results, and the accused are still trying to find ways to go free-I look behind you at [those] skulls, evidence of what they did."

One of my team members interviewed a former Khmer Rouge soldier who was imprisoned for three months in Chilone prison. His name was Sanhim and he came to see Duch's trial. He expressed some disappointment with the trials on the day he visited, explaining, "Today there is not enough said during the trials," and "that there are still so many more details that go unstated and unheard." The legal process can seem confusing and drawn out to many Cambodians. Translation issues with documents and other pertinent legal files are also stalling the process because of the trials international component which requires that proceedings take place in three different languages; Khmer, English and French. While they know that the trials will take time, there is a sense of urgency among the Cambodian people who see that it has taken thirty years for this process to begin, and therefore do not want to waste any more time. Khmer Rouge survivor and former monk Kung Suor expressed this frustration, explaining that he would like the tribunal to speed up the already delayed trials because even if there are reparations, they are not meaningful to the victims who are

dying every day because they are old, and want to see schools and pagodas built.

Despite the Court's shortcomings, it has been relatively successful in promoting reconciliation. According to one of the survivors we interviewed, Norng Chanpal, there is a belief that the trial is providing a means for all those affected by the Khmer Rouge to come to terms with their past. In his interview, this Tuol Sleng survivor stated that, "the trials give the survivors spirit to live and they can start new lives." He said that he had been trying to avoid all journalists until he heard about Duch's trial and then decided to speak to journalists because he wanted to provide information to ensure that Duch ends up in jail.

The trials are also addressing the idea of criminal accountability. When I asked Nong Chounpal who he felt was responsible for the loss of his family members he stated that he believes those who were considered to be the top leadership, like Pol Pot, should be brought to justice. Many of those interviewed shared this belief and, in fact, few people felt the need to try anyone besides the five senior leaders who are scheduled for trial. During an interview, former Khmer Rouge soldier Sok Phat stated that he "agrees 100 percent that the top five who are being tried are enough for justice." He said it is important to try those at the top; low-level perpetrators, who were often coerced into performing criminal acts, are useful for providing information to bring top officials to justice. On the other hand, survivor Ang expressed a desire to try more perpetrators. She said that she disagrees that an expansion of the trial would destabilize Cambodia and argued that the top leaders' accomplices should be tried. She added that no one in her village should be tried, noting that she would have dealt with anyone within her own village after [the liberation] if they were responsible. In all, it seems that there are varying opinions on who is responsible, and while most will find peace with the trial of the top officials, others yearn to see low-level perpetrators brought to justice.

While retributive justice may be limited to the criminal prosecution of a handful of top Khmer Rouge officials, it is still an important step towards ensuring accountability through the rule of law. It may be difficult, though, to identify those who are criminally responsible for the actions taken between 1975-79. Due to the overwhelming culture of fear that encompassed every aspect of life under the Khmer Rouge, it is difficult to distinguish perpetrator from victim. In his memoir *Survival in the Killing Fields*, Hang Ngor describes the pervasive apprehension and terror that was everyday life under the Khmer Rouge: "The Khmer Rouge's greatest strength was propaganda. They knew that a small lie can be caught and that a big lie is easier to get away with. Their system was so different from anything we had known before, and so complete, that we gave in without really knowing how to resist. Even if we had been allowed to speak out publicly, which we weren't- and if we did, they tied us up and marched us away- there was something inadequate about trying to counter their words with arguments of our own. It just didn't help."

The system of identifying enemies during this time also lent to the culture of fear. According to official Khmer Rouge document D01791, an "Enemy" is anyone who is non-revolution and against the revolution." This broad definition for identifying potential enemies of the state points to the idea that anyone, regardless of whether they were a "new" person or a Khmer Rouge cadre, could be deemed an "enemy". Therefore, while retributive justice must take its course, pursuits of restorative justice should be the main focus due to the effects that the genocide had on all of Cambodian society.

Memorialization efforts have been hugely successful in Cambodia to date. Visits to Choeung Ek and the former S-21 prison at Tuol Sleng allowed me to examine the efforts put forth to preserve the mass graves that claimed thousands of lives and the actual rooms in which the torture of victims took place. There were museums at each location with information about the Khmer Rouge regime

and the horrific effects of the massive labor, famine and execution that was imposed upon Cambodia. Non-governmental organizations such as DC-Cam have been extremely active in documenting and uncovering the truth about what took place during the Democratic Kampuchea (DK) era, as well as educating the public and youth about the past in order to prevent its recurrence in the future.

There has been a huge focus on genocide education in Cambodia recently, and hopefully this trend will continue and allow the next generation of Cambodians to learn from the past and look towards a brighter future. A program that I found especially inspiring was called "Breaking the Silence," which is a play written by DC-Cam staff members and performed in villages. Its purpose is to encourage people to talk about their experiences during the Khmer Rouge regime and facilitate the sharing of stories within families and villages to assist in the reconciliation process. I found this performance very effective in promoting reconciliation and healing in Cambodia, as those in the audience seemed to have few other opportunities to share recollections of their painful past.

It is my belief that Cambodia will continue to move in the right direction towards a more prosperous future. While there are many aspects that hold back Cambodia developmentally, I have seen that the people of the country seem happy to just be living in a relatively peaceful country. They are content to be living in a home with their family, tending to their animals and rice fields, conversing with neighbors, and showing affection to the ones they love. The simple things in life hold so much meaning because many in Cambodia know what it is like to be stripped of the things that others take for granted.

After half a decade of genocide and two more decades of war, Cambodia is finally at peace and ready to remain there. The foundations of Cambodian society were shaken to the core and almost completely eliminated by the ruthless social experiment of Pol Pot and the Khmer Rouge leadership. After such a

drastic reversal of all aspects of modern life from 1975-1979, it is only natural that it has taken time for the infrastructure of the country to build up once again and for the Cambodian people to overcome the wounds of the past. I believe that Norng Chanpal expressed the sentiments of many fellow Cambodians when he stated that time is the only real answer to achieving reconciliation. In a moment of touching candor, he said quietly that the memories of the Khmer cadre beating and kicking his mother will be hard to forget. Memories cannot be erased and they need to be preserved in order to record and document what happened during the DK era. Although the past carries with it horrific scenes of death, fear and desperation, the new generation has begun to heal these wounds through processes of education and a constant search for the truth. It is my deep hope that both truth and lasting peace will come to Cambodia.

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## MISSING BROTHER

My name is Gek Ly, age 47, and now I am living in Australia. My father is Bun Duk. In 1975 he had a shoe shop called Nam Yoeung in Kampong Som.

I would like to search for my brother Bun Trach aka Chrouk (he would now be 50 years old), who left home to serve in the revolution in 1970 and other five cousins: Ing Sina (female), Ing Sipha (female), Ing Ya (male) and two younger cousins whose names I do not remember. In Sangkum Reastr Niyum, this family lived near Vimean Tip Cinema, selling shoes.

If anyone has known or heard anything about him, please contact me via phone: 012 909 770 or 012 809 880, or Gek Ly, 1 Bracknell Rd, Canley Heights, NSW 2166, Australia.

Mobile: 0402-194-182, Home: (02) 9711-7637  
Email: emmatran90@gmail.com

# MY MOTHER'S RECALLED STORY

*Sok Sreinitn Ten*

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The genocidal history of the Khmer Rouge left bitter experiences for Cambodian people who had gone through such a cruel and inhuman regime—the regime that took lives without a sense of sympathy. Whenever hearing the word Khmer Rouge, I visualize them the group of people in black uniform with red scarf around their neck. This image was frequently recalled by my mother. To me, I did not know what experiences the Khmer Rouge left for the survivors today. However, after listened to my mother's recalled story, I was shocked to what the Khmer Rouge did to his own people.

At that time, my mother was thirteen years old. She lived with her parents in Phnom Penh. My grandfather was a security guard at Phsar Thom Thmei and my grandmother sold Naum Banh Chuk (Cambodian Noodle) to earn a living. My mother was a student in Grade 11 (old education system). However, she quitted her studies in order to assist her mother's business.

In April 17, 1975, as the Khmer Rouge soldiers entered the city, my mother, like other children and elderly people, stood along the road clapping and waving the flag with enthusiasm for their victory. However, the Khmer Rouge soldiers armed with weapons started shooting to the old governmental soldiers and the ordinary people without questioning. Seeing this, my mother was extremely terrified, and decided to come back to the place where the grandmother sold Naum Banh Chuk. In the evening, the Khmer Rouge took immediate action, announcing to all the families in the whole city to be ready for the evacuation to the countryside for only three days. Their reason was to reform the whole city.

My mother's family still kept doing their business as usual. However, on the second day after the Khmer Rouge presented in the Phnom Penh, the Khmer Rouge soldiers began threatening and pointing the

gun to my mother's family and forced them to leave their house. Following their command, my mother's family left the house with some valuable stuff, plates, cooking pans, and little rice.

My mother started the journey with her parents and accompanied by my grandfather's cousins. In sum, there were six people of them. They all did not move far from the city since they had planned to move in again. Consequently, they decided to stay in the house of my grandfather's cousins at Boeng Tamponn.

While staying there, my grandfather, because of feeling insecure, collected old tires and wood and made a cart used for transporting the family's equipment.

One day later, the Khmer Rouge soldiers entered the house my mother's family stayed. Following Angkar's order, they asked everyone in the house to move further in tomorrow morning. My grandparents buried some of their valuables deep in the pond and kept the remains with them.

In morning, they began the journey. My grandfather pulled the cart, while my grandmother, my aunt, and my mother were in the cart. Along the way, my mother saw the bodies of dead people lying along the road. Some were swollen, while the others were headed off, and their legs and arms were cut. It looked so frightening that my mother dared not look at those bodies. She noticed that there were so many dead people who were the old governmental officials, soldiers, and ordinary people who refused to follow the Khmer Rouge orders. Having traveled not far enough, their cart was broken. Consequently, they had to go on by foot. When the night fell, they had to rest on the pavement of the main road surrounding by the dead body. They kept furthering the journey until reaching the injunction of the main road where the crowds were trying to

go to Battambang province and some other provinces in the Northeast. Since my grandfather's hometown was in Takeo province, they decided to wait until the route to Takeo province and other provinces in the Northwest were available.

Once the route was available, they began the journey for about one week to reach the province. Upon arriving there, everyone in the family was ordered to stay with the deposit base people in the large house attached with no wall. Land, rice field, and the farm belonged to my grandfather were strictly prohibited because it was seized as the collectivism. Two days later, my mother's sister and she herself were admitted in Children Unit. They two were asked to do labor work such as transferring animal deposit, guarding the cow, digging the soil, and pulling the tree roots out of the ground. My mother's base was nearby the grandmother's; therefore, she frequently visited her. Working in the Children Unit, my mother was provided with enough ration of food. The children like my mother may have rice and food to eat in several occasions. One month later, my mother was admitted in Female Unit. At that time, she was assigned to work in the rice field and build dam far away from home. Experiencing hard work, having insufficient food and time to rest, and lacking of salt nutrient, she was infected with the swollen disease. Though ill, she forcibly worked as usual. Soon after, the grandfather heard that she was ill. As being brave, my grandfather went to the Village Chief's house to ask for some salt. He knew clearly that there were plenty jars of salt and sugar at the Village Chief's house. However, his request was denied by the Chief. My grandfather argued that "Angkar used to tell everyone to request for everything needed, why my request was refused instead?" To rescue my mother, he decisively went to steal the salt and sugar at the Village Chief's house. Luckily, no one could see him in spite of the fact that the Chief and other comrades were busy discussing. After having salt and sugar, the grandfather gave it to grandmother, and she molded it for my

mother. My grandfather sent the salt and sugar with people whose base was nearby my mother's base. Long after that, she recovered. Everyday my mother worked as hard as other females in the unit. Since she was a hard working, she was not being threatened by any Khmer Rouge comrades. Because of missing home, my mother asked the chief unit to visit my grandmother. However, her request was denied. Being unable to visit home as expected, she secretly went to visit the grandmother in the afternoon after finishing her work. No sooner had she arrived at the grandmother's house, reconnoiters followed her and asked her to go back. My grandparents were so frightened that they thought my mother would have been killed. Luckily, she was forgiven because she was a hard working.

Although I am just one of the younger generations who have never gone through or experienced the Khmer Rouge regime, by reading books and working at Documentation of Cambodia (DC-Cam), I understand more deeply about the Democratic Kampuchea. The history of the atrocities and inhumanity committed during the Khmer Rouge regime that I have been reading by far keep frightening me and other Cambodian people. To me, I am so regretful for thousands of lives that had been taken away. I strongly believe that all the survivors want to see justice in order for the lives that lost and in order to help alleviate the psychological trauma left by those unbearable experiences once justice is truly achieved. The justice that all Cambodian people in the country hope to get is totally relied on the Extraordinary Chambers in the Court of Cambodia which, at the present time, is trying one of the five of the Khmer Rouge senior leaders who are all considerably old. Without losing hope, all Cambodian people including the younger generations hope that justice will be found in the near future in order to clear the darkened genocidal history so that Cambodia and her people will live peacefully with constant improvement.

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***Sok Sreinith Ten is a volunteer at DC-Cam.***

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



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Minister of the Ministry of Education Youth and Sport

