

TABLE OF CONTENTS

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EDITORIAL

- Are PTSD Witnesses Credible? 1
Letters from Youk Chhang:
Three Projects to Help DK Survivors
See Justice Done 2

DOCUMENTATION

- Petition to Condemn the Pol Pot-leng Sary
Clique 5
Confession Summary : Lam Sameth 6
Confession Summary : Lam Viry 8

HISTORY

- Ma Las: How Did I Get Through the KR? 10
Surviving Death 13
Former Prisoner of Sang Relieved 14
Sum San's Family 16
Ma Khin Me: What is Angkar? 18
A Hope for Justice 20
Pon Aron: Former Provincial Court Clerk 22
Memory of a Childhood 26
The Dark Planet 33
Battlefield after the Liberation 36

LEGAL

- Introduction to the Khmer Rouge Tribunal 40

PUBLIC DEBATE

- AI Calls on States to Nominate Qualified Judges
and Prosecutors for the EC 50
KR Tribunal Needs More than Money 51
Inaccurate Article on KR Tribunal 53
The Importance of Witness Preparation and
Judicial Awareness for KR Tribunal 54
Encountering KR Leaders, For What? 57

FAMILY TRACING

- Searching for Missing Family Members 60



Ma Khin Me and her children

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EDITORIAL:

ARE PTSD WITNESSES CREDIBLE?

It has been nearly 30 years since the Khmer Rouge regime, officially known as Democratic Kampuchea, was ousted from power in 1979 by the Vietnamese invasion. After nearly four years of exposure to constant fear of death by starvation, overwork, imprisonment, and execution, most Cambodians still carry some level of trauma. Many will carry these legacies of the regime with them for life.

Immediately after the Khmer Rouge were removed from power, people across Cambodia found themselves debating whether they should seek new lives in foreign lands or go back to their birthplaces. A recent study by the RAND Corporation's Grant Marshall reports that 62 percent of Cambodian refugees in the United States suffer from Post Traumatic Stress Disorder (PTSD). Even after living for 20 years or more in an advanced country like the United States, these people are still struggling with the aftermath of their tragic experiences, which remain with them no matter where they go and no matter what sort of life they enjoy.

Seeing such a high rate of severe depression among Cambodian refugees in a foreign land, one has to wonder about those who remained in Cambodia. Even after they fell from power, the Khmer Rouge continued to terrorize the country until 1999. Civil war between the People's Republic of Kampuchea and the Khmer Rouge dragged on for nearly two decades. During this period, Cambodians lived in fear of being drafted to fight the Khmer Rouge or of being killed in clashes between the two forces. Added to this, even today, some people in the countryside live in fear of starvation. Given the level of fear that so many Cambodians have lived with for decades, one would expect to discover that the prevalence of PTSD among this group is at least as high as that

prevailing among Cambodian refugees in America.

The results of the RAND study did not surprise Ka Sunbaunat, director of the National Program for Mental Health of the Cambodian Ministry of Health, who believes that the prevalence of mental disorders among Cambodians who stayed in their country is actually much less than in Cambodian communities in the United States. He feels this is because the cultures and behaviors of the two countries are very different.

It may be possible that people here are too impoverished to be overly concerned about their mental state—survival is their priority. But it is important to consider the issue of mental health among survivors in Cambodia, especially now when the tribunal for senior Khmer Rouge leaders is moving toward becoming a reality. For that reason, more work needs to be done on this issue in order to be prepared for the tribunal. This is particularly true regarding survivors who may be called upon to testify in court, and to publicly recall and speak about their tragic experiences. One can only guess at the fear that will be generated by having to confront the architects of the regime.

Will this be an issue before the Extraordinary Chambers? Will the testimony of witnesses found to be suffering from PTSD be credible? This may be a problem if a large number of the regime's survivors are found to be suffering from PTSD. What if their statements are challenged as being not credible because they are deemed mentally unstable? The defense counsel is highly likely to impeach the credibility of such witnesses by raising this issue before the tribunal's judges, and ask the courts to dismiss their statements. If many crucial witnesses' statements are challenged and the challenges are

upheld, the chance of convicting the tribunal's defendants will be diminished in legal terms.

The Law on the Establishment of Extraordinary Chambers and the UN-Cambodian agreement both provide that when there is gap in domestic law, the tribunal may look to rules and procedures established at the international level. With respect to the issue of the credibility of witnesses suffering from PTSD, a decision of the International Criminal Tribunal for Rwanda held that, "Even when a person is suffering from PTSD, this does not mean that he or she is necessarily inaccurate in the evidence given. There is no reason why a person with PTSD cannot be a perfectly reliable witness."

Sophearith Chuong, the team leader for the Documentation Center of Cambodia's Victims of Torture Project, which is providing assistance to victims of the Khmer Rouge whose mental state is

unstable, agrees with the ICTR's reasoning. He believes that despite the aberrant behavior of persons suffering from PTSD, which can include such symptoms as continuously thinking about the frightening events, reliving the shocking events just as if they were happening again, and avoiding conversation, the veracity of testimony of such sufferers concerning past events is not necessarily compromised. In other words, a person with PTSD can be a perfectly reliable witness.

We must do everything possible to help these people achieve some peace, and achieving justice would be the most helpful way to put their minds at rest.

Terith Chy is the English co-editor-in-chief of the special English edition of Searching for the Truth.

LETTERS FROM YOUK CHHANG:

THREE PROJECTS TO HELP SURVIVORS OF DEMOCRATIC KAMPUCHEA SEE JUSTICE DONE AND ENCOURAGE THE PUBLIC TO INCREASE THEIR PARTICIPATION IN THE KHMER ROUGE TRIBUNAL

Nearly 2 million people lost their lives during Democratic Kampuchea (DK) regime, which ruled Cambodia from 1975-1979. The quarter of the country's population killed by the Khmer Rouge constitutes the largest death toll in percentage terms of all the genocides in modern history. After their regime collapsed in January 1979, the Khmer Rouge continued to control areas of the country, mount insurgencies, and terrorize Cambodian society until 1999.

Despite the relative calm of the past six years, Cambodia still ranks as one of the poorest countries in Asia--more than 40 percent of its people earn a dollar a day or less. Its population of 12 million is growing rapidly, and Cambodia faces immense

challenges in trying to establish a foundation for democratic governance and economic development. Shattered by the Khmer Rouge, the very institutions that can help a country recover from traumatic events are weak or absent. The scarcity of human resources continues to impact the health and well-being of the Cambodian people today.

Against this backdrop, the Documentation Center of Cambodia is implementing three projects (Victims of Torture, Living Documents and the Public Information Room) that will help average Cambodians empower themselves in terms of learning and understanding their own contemporary history, participating more actively in their justice system, and



Union support their plan to establish an office of the National United Front in Moscow, so as to make close connection with, and receive all sorts of assistance from, the Soviet government. After he learned about this, Chea San set up a meeting with the Soviet state body in order to block the two men's scheme. Viry had not seen the two since.

From 1973 to 1976 Viry reduced his connections with the Soviet KGB because he was busy with his school work. In addition, he had to fulfill the tasks assigned by the Soviet Council of Hydroelectric Scholars, which including preparing his paper on scientific findings to be presented at a scientific conference held annually at Moscow's Civil Engineering Institute.

Viry was awarded his doctoral degree in Engineering in Moscow on June 29, 1976. He left for Beijing on July 31, 1976, and continued his journey to Cambodia on August 6, after which Angkar took him to the K-15 center. Since he had just arrived, Viry did not perform any significant actions against

the revolution. He met some of his friends who arrived before he did, and they talked about their disapproval of Angkar's policies—the elimination of private property, abolition of national currency, class division, eradication of everything in the society, and the comparison of Cambodian communism with that of the Soviet Union. Two months later, on October 12, Angkar arrested Viry and sent him to be interrogated at S-21.

Viry was interrogated at least 30 times by comrade Chhay, "one of Run's group members," and was executed on March 18, 1977.

Viry's father was Lam Som and his mother was Meng Kim Son. He had 10 siblings. His wife was a Soviet named Nadesda Nicolai Yeva. They had a daughter named Lam Sophy Vyrian, who were living in the Soviet Union.

Farina So is a staff writer for Searching for the Truth and a radio broadcaster at DC-Cam.

ANNOUNCEMENT

KHMER ROUGE HISTORY PRESERVATION FORUM ESSAY CONTEST

On April 2, 2004 DC-Cam and the Khmer Writers' Association (KWA) announced the four winners of an essay competition for survivors of Democratic Kampuchea. Contestants submitted narrative essays on their lives during the regime or their thoughts on issues related to the Khmer Rouge.

Because of the important role this contest can play in preserving the history of the Khmer Rouge period for future generations and in giving a voice to its survivors, DC-Cam and KWA are holding another essay contest. It is open to students, survivors of Democratic Kampuchea, and other Cambodians, both those living in Cambodia and abroad. The winning essays will be announced in April 2006. The winners will be given cash awards. The winning essays will be published in *Searching for the Truth*.

Those who are interested in submitting an essay are required to write at least ten pages. Your essays can talk about your own experiences during the regime, the stories you have heard about others, and/or your own thoughts about Democratic Kampuchea.

Please submit your narrative essays by mail to KWA's office at Botum Vatey Pagoda in Phnom Penh or to DC-Cam at P.O. Box 1110, Phnom Penh, Cambodia or email: dccam@online.com.kh. The deadline for submissions is February 28, 2005. For details please contact Mr. Sophearith Chuong at (855) 23 211 875 or by email: truthsophearith@dccam.org. Thanks!

bring anything along, aside from some garments for my son and family members. The Khmer Rouge announced that people would be away from their homes for only 3 days; enemies would be swept cleaned within this period, and people would be returned to their places afterwards. Day after day we were waiting to be returned, but never told anything."

Concealing Backgrounds

Ma Las's husband was afraid about his role as a journalist in the defeated Lon Nol regime; what's more he had heard a rumor about the purge of ex-Lon Nol members and the arrest and execution of Oeur Kim Than, a Khmer Republic colonel. He warned his family members not to expose anything relevant to his career and not to be where people were acquainted with them.

Ma Las decided to make her way to Ta Pon sub-district because there were many Muslims living there. She packed rice, but only enough for three days. "When we were out of rice, I became very worried. I would buy the rice regardless of its price. Then we were told not to panic as gruel rations would be delivered," she said. She added that one tao [a measurement unit equivalent to 12 kilograms] of unhusked rice cost her one chi [a measurement unit of gold equivalent to \$40 dollars or so at the current price], and that the prices of everything shot up. Those who owned foodstuffs made a great deal of money because everyone had to buy food to eat, but it was sad that money was not useful.

In 1976 Ma Las was evacuated to O-muny village. Angkar assigned her to harvest rice with a women's unit at O-muny Pagoda, and she was permitted to visit her home once every ten days. Old ladies at the childcare center babysat her little children.

Separation

In 1977 Kimly was assigned to plow rice fields and fish in the swamps. He was allowed to visit his family once every month. Before her husband was executed, Ma Las had a sense that something bad was about to happen. But she did not take notice of it. A man named Hoeub told her later that when he

was carrying fish from the swamp where Kimly was working, he saw the Khmer Rouge execute 8 men, one of whom was her husband. Hoeub added that Ma Las's husband was beaten to death with a wooden bar and buried along with the other 7 men in a collective grave near a tamarind tree. As soon as she was informed, she fainted and was helped by Hoeub.

A Two-Child Widow

After her husband was murdered, Ma Las was evacuated to Trabek Lake; it took an entire night to reach the lake. She built a cottage and lived with her two children. At night she was scared when she heard the chirping sound of animals or the sound of a snake. A lady next door told her to put heavy things on the foot of her mosquito net, so as to prevent snakes from entering.

Five days later her youngest son became very sick--the lower half of his body became swollen from malnourishment. Ma Las did not have sufficient breast milk for her baby. She recalled, "My son became sick because he was exposed to sunlight, wind and dew. His legs puffed up. I went to harvest rice the next morning, and on the way I encountered Samuon, one of my friends, bringing a fish for my son. 'I left a fish at your kitchen; grill it for your baby,' she told me. I then thanked her. 'Son, where is the fish?' I asked him when I arrived home and could not find it in the kitchen. He told me that he finished it already. 'Did you eat the raw fish?' I asked. He said he was too hungry to wait. My tear fell down, feeling so compassionate."

Seeing her son's disease worsening, one night Ma Las asked permission from the unit chief to borrow a bicycle to look for medicine for her son. The chief agreed, but stipulated that she had to return to work on time the next morning. At dusk, she peddled to the village where she used to live. On the dusty roads with numerous holes, she prayed to Allah that she would not encounter Khmer Rouge militiamen. She sneaked into O-muny village and dug up potatoes that her husband grew when he was alive. She exchanged the potatoes for palm juice sugar for her son to eat. Her son then got better. After about

"The Khmer Rouge put me and the others into the locked cell. Both my children and those of the others cried out. Everyone was sweating and there was no water to drink."

The next morning, the Khmer Rouge opened the cell door and accompanied the prisoners to the Bati River, where they were allowed to gather water for their personal use. Pakk noted that all prisoners were handcuffed at night and were not allowed to talk. But during the day the male prisoners were handcuffed in pairs while the female prisoners were not cuffed at all. Each morning the prisoners walked out of the prison in lines to their worksites.

Once while she was working, Pakk saw Khmer Rouge militiamen escorting people; she thought they were being taken away to be killed. While she was watching them, one of the prison guards shouted at her, "What are you looking at? Mind your own business. Don't look back and forth." Hearing this, Pakk was so terrified that she never again disobeyed a prison guard's order. "Be careful or be killed like your husband!" the prison chief Mong threatened her when she made a few mistakes. Her little daughter, who was just seven months old, died in the prison Pakk did not have enough milk for her.

Pakk still does not know why the Khmer Rouge killed her husband and imprisoned her. Even though she has more freedom today, her mind is not free. Losing her beloved daughter and husband, and the insults and threats from the prison guards made Pakk an easily frightened person and one who does not like to talk with others.

The Documentation Center of Cambodia's Victims of Torture Project has identified Pakk as suffering from Post Traumatic Stress Disorder. Her mental illness is now being treated by the Transcultural Psychosocial Organization (TPO). Her treatment began in January and will continue until September 2005.

After 6 months of consultation and treatment, Pakk is not as frightened as she was and can sleep

better. According to Leang Lo, an expert from TPO and Pakk's counselor, "Pakk's condition is now improved. She has learned to deal with her anxiety, and recently she was brave enough to look at the face of the victim when there was murder in the village. If she had been in this situation before receiving treatment, she would have been terribly frightened and reduced to trembling. She can still remember her bitter past, but it does not control her mind as it did. She knows how she can relieve her anxiety, and thinks about good things for the present and future. She wants to share her experience under the Khmer Rouge, and is able to control her emotions. Her mental state is relatively improved."

Socheat Nhean is a DC-Cam staff member who works on the Victims of Torture Project.

ATTENTION!

We are seeking footage, photos, recordings and contact information for Cambodian Rock and Roll singers and musicians from the 60's and 70's for a documentary feature film being produced in Hollywood about Cambodian Music. Equally important, we would also like to interview people who have stories about singers and musicians from that time.

All items will be returned or deposited within the archives of the Documentation Center of Cambodia (DC-Cam) for future researchers. Everyone who contributes will be credited in the film as helping to preserve the history of Cambodia.

If you have any information that you think may be useful please contact: Miss Rachana Phat via cell phone 012 402 740 or truthrachana@dccam.org or Miss Farina So via cell phone 012 967 565 or truthfarina@dccam.org or via DC-Cam's email: dccam@online.com.kh

Thach longed for her husband to come back home. Sometimes while carrying baskets of earth, she thought of her husband and wondered whether he knew about her condition, and why he had not visited her. For years Thach constantly asked people for information on her husband, but she never heard anything at all.

After January 7, 1979, Thach returned to her husband's birthplace in Pursat province, hoping that she would find him there, but she did not. Thach received information only from her brother-in-law Koam Saphan. Before 1976, Saphan said, he and Thet had been in touch with each other through letters. In his last letter, Thet informed Saphan that Angkar would soon take him from France to assist in "building the country." That was the last time he heard from Thet. Saphan said that Koam Thet responded to Ieng Sary's appeal to Cambodian students who had gone overseas to their degrees, saying they should return home to assist in developing Cambodia. Saphan warned Thet not to come back, but Thet refused to listen, and scolded his younger brother for ignoring the motherland. Thach was convinced that her husband decided to return

home because he missed his wife and children, and also because he wanted to make his knowledge useful in the service of his country.

In 1982, Thet's friend Ben Saroeun told Thach that he has seen Thet's photo in his prison garb hanging in Tuol Sleng Museum. This news convinced Thach that her husband had in fact returned home and died during the Khmer Rouge regime.

Now Thach can only do good deeds and send their merit to her husband. She can only look at her husband's photo that she had hidden from the Khmer Rouge long ago.

Som Thach hopes that one day justice will be found by bringing the Khmer Rouge leaders to trial. Although the tribunal cannot compensate her for the loss of her beloved husband, she at least can feel relieved and lessen part of the anger she has long carried.

Sarin Vireak is a member of DC-Cam's Promoting Accountability Team.



Som Thach Koam Thet

Taken in 1974 before he left for France

everywhere. My parents decided to take my seven younger siblings and move to Kampong Som, leaving my elder sister and me at Kampot because we were already married. My father wanted to go overseas. At Kampong Som, my mother and my younger siblings ran a tiny business, but my father became sick and stayed home all day.

On April 17, 1975, the day of liberation, my parents and younger siblings boarded a ship with the Lon Nol soldiers, preparing to head for Thailand. Just after the ship embarked, my father changed his mind and came back to find my elder sisters and me. After they reached shore, my family was evacuated to Prey Nub. Angkar assigned them to live in Smach Dek village, where we were made to cut *tontrien khet* [a small common plant] and dig earth. At first, my family ate at home because we had some rice left. Later, Angkar ordered us to have meals collectively. My four siblings moved in with my father, while those who were married were assigned to live in other villages.

In 1976, the Khmer Rouge took my father out to be killed. One night, a militiaman came to call my father, and said, "Prepare your things and be ready to move to a new village, Mr. Court Clerk." My mother and my two younger brothers fixed their eyes on my father. My brothers saw a truck parked in front of the district office. The militiaman tied my father's arms behind his back and covered his face with a piece of black cloth. My younger brothers hid themselves and cried because they could do nothing to help their father. Then he was carried away with other prisoners in a truck. While my younger brothers were on their way back home, they encountered a militiaman who asked, "Where are you going at midnight?" My brother answered, "We have just come back from finding a lost cow." The militiaman warned my brothers not to do that again or there would be big trouble if the soldiers saw them. When my mother learned what happened to my father, she thought he would surely die because she had seen a lot of people who were sent to new villages and never returned. The

base people told my mother in whispers not to wait for my father since he was dead.

After my father had gone, my mother carried on her work as usual. She kept silkworms and looked after infants in a children's center. A month after my father's death, my younger sister Rada went to visit my mother, but found only an empty, silent home and the broken poles that our mother had used to support gourd vines our father had planted. The villagers secretly told my younger sister that my mother and my other four siblings were being taken to a new village. Some people also said that Angkar had not beaten my father to death; they took my father by car to Pich Nil and threw him into a ravine.

When my husband and I were evacuated, we encountered many difficulties. We walked aimlessly for many miles. Angkar had ordered us to settle in Prey Sbov, Mean Chey sub-district, Chhouk district, Kampot province. Arriving there, I was glad to think that I would meet my relatives on my mother's side. However, all the relatives pretended not to know me. What was worse, they said they never had relatives who were "17 April People"--the enemy--like me.

On April 2, 1976 we arrived at Ang Svay Pagoda in Ang Svay Vvillage, Mean Chey sub-district. Angkar had me transplant rice in a women's unit, while my husband worked in a youth unit. The elderly women took care of my son. Because I had never done farm work before, the base women despised me, and were always watching for me to make a mistake. They scornfully said I was one of the 17 April people who used to exploit the farmers. They looked down on me for not being able to transplant rice like them. My unit chief was also a base person. I had many duties in the cooperative such as pulling out young seedlings, transplanting rice, and carrying earth. I had to finish 3 to 4 *plaun* [1 *plaun* equals 40 sheafs of rice] per day. I had to complete my tasks as assigned; otherwise, I would be blamed by the unit chief and criticized at meetings.

My husband was very gentle. He always helped

On November 20, 1978, I heard faint sounds of gunfire from the boundary of Kampot province. Only 13 of us were left in the prison. Suddenly a child appeared with keys to open the gate for us. With tears of joy, I carried my children and ran out of the prison. We walked through forests and rice paddies until I met some villagers and we continued the journey together. I carried my children and walked towards Noreay Pagoda. On the way, I heard a voice of the liberating army appealing to people to return to their homes. I arrived at Prey Sbov village and decided to stay there temporarily.

One day, I went to collect rice from the barn. While I was talking to the soldiers there, I heard a voice

calling from behind me. When I turned around, I was taken aback to find my former fiancé calling for me. He asked me to stay with him and promised to take good care of my children.

I can never forget the events happened to me during the Khmer Rouge regime, especially when they took my husband out to be killed, and the time when I was detained. I would like to see a tribunal that can bring justice to light, so that people of the next generation will never repeat the same thing.

Beang Pivoine is a researcher working on the photograph project of the Documentation Center of Cambodia.

PUBLIC INFORMATION ROOM

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

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

The PIR offers four services:

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

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



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

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

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

in a swamp known as Os Touk, located some 30 to 40 kilometers from Kampong Sambour. The first day after we arrived, I told my mother that I could not live in this fly-infested forest as there was nothing there. I told her that I planned to go back to the village and steal some rice and potatoes for the family to live on, and she agreed. I then persuaded an old lady and a young boy named Keo to come along. I departed at 3 a.m., and before I left, my mother blessed me and prayed to the soul of her husband to protect me from danger.

The three of us walked the whole day without a grain of rice to eat. We walked across a huge rice field, fruitless due to drought, and everything was silent except for the sound of birds flying from tree to tree. As I looked at the fields, I was reminded of the time when my family members were evacuated. My family used to work on these very fields for several months a year, but Angkar had killed my father.

While we were walking, three armed men jumped down from a tree and threatened us: "Hands up!" I was terrified. They let us go after searching our



a cup of hot water," the old man responded. "You want hot water or you want to be killed?" the cadre continued. The miserable man then shut his mouth.

On the third day prisoners were assigned to clear preah klob [a thorny herb] next to the execution site. While working, the Khmer Rouge called each of the new prisoners and took down their names. I thought they did this to report to the village in which we were living.

My reputation was not good in the children's mobile work brigade because every time I was hungry, I dug up potatoes and stripped off rice grains, and was often caught and tortured. Fearing that my unit chief would report my bad behavior to the prison and that I would be killed by the guards, I tried to escape. Knowing that my turn to give my name was coming, I crawled through a hole in the barbed wire fence near the feet of a guard one afternoon.

After I was through the fence, I dared not run, fearing the guards nearby would notice me. So I walked for about 200 meters and pretended to sit down near a dike as if I were defecating. When I saw that no one noticed me, I lifted my pants and ran towards a nearby orange grove. All the way, I prayed for my father's soul to protect me from being seen by the Khmer Rouge. As soon as I reached the orange grove, I ran towards Kampong Sambour village and then on to No-rea village. Both places were so quiet that I wondered where the villagers were. I was overwhelmed with joy at being able to escape the prison. I felt it was likely that my father's soul helped to protect me all the way.

Soon I encountered my brother Bunthan, who was carrying earth for a road building project in No-rea village. Bunthan told me to work in his unit as the gruel rations were a bit larger and people's biographies were not checked. But when I still did not receive enough food, I decided to move on to the provincial town of Battambang. The road was silent.

Reaching Balad Pagoda, I saw a man who was fishing in the Sangke River and had caught a lot of fish. I was hanging on to a tree branch, looking at the

man and desperately wanting to eat the fish. Suddenly the branch fell down, and I landed in a pile of rice husk ashes. It was lucky that I fell onto the side of the pile; only my left leg was burned. I rolled into the river to cool the wound and cried silently. While crying I found an orange floating beside me. To appease my hunger, I grabbed it and ate it quickly.

Because of the burn, I was unable to stand straight. A passerby on a bullock cart told me to put fresh cow dung on the wound so as to reduce the pain. I did this, but it did not help and it smelled bad. So, I went to the hospital at No-rea Pagoda to get some medicine. "Friend, what makes you so? You were trying to steal property?" asked a woman medic. "No, I accidentally stepped on burning embers," I responded. The medic then gave me an injection. I noticed that the medicine they used was foreign and not a rabbit-dropping medicine [a Khmer Rouge medicine which looked like rabbit dung]. I then dozed off in the pagoda yard. After an hour, I went to see Bunthan who was working nearby. On the way I found the shell of a turtle, which had been partially eaten. Some flesh was still attached to the shell, and I ate it ravenously.

"I have no idea of how I can help you," said Bunthan when he saw me, so I continued on to Kampong Sambour village, and met a man named Pao, who was also evacuated from Sa-ang. I spent the night beneath his cottage. He told me that I should wait until I got better and then he would accompany me to the forest. He added that he would bring along fishing equipment and that he would share some fish with my family.

When the lunch bell rang, Pao was still asleep. When I tried to awaken him, I saw there were bruises all over his body, and he was barely breathing. Then old Nong, the village chief's mother, arrived and insulted me, "You Tha! You are coming to steal things again?" "No, I came to see the ill Pao," I answered. Nong said scornfully, "What! Are you a doctor?" Nong then ordered a few men to bury Pao beneath a mango tree behind the house. I suspected that Pao had not stopped

THE DARK PLANET

Khun Ly Bakk Aun

My house was located just behind the former Chenla Theatre in Klaing Rumsev village, sub-district 3, Phnom Penh. In 1975, my family had six members:

1. Khun Ly Bakk Aun, 37, working for the Khmer Alcohol Company
2. Nuth Thuok, 35, a nurse (my wife)
3. Khun Ly Bakk Srey Vathna, 13, a student (my first daughter)
4. Khun Phally, 9, a student (my second daughter)
5. Khun Phalla, 7, a student (my youngest daughter)
6. Saly Ngam, 67, a housewife (my mother-in-law).

Life under the Khmer Rouge

At about 2 p.m. on April 17, 1975 my family was forced to leave our home and all of our possessions. The Khmer Rouge soldiers pointed guns at people and chased them from their homes. My family was able to grab just a few belongings which we carried on our heads, backs and shoulders, and then began walking along Mao Tse Tung Boulevard.

There were so many people along the way that we were almost unable to move. The sounds of gunfire compelled people to move faster, but how could we when the streets were so crowded? My family had intended to cross Monivong Bridge, but the Khmer Rouge soldiers had blocked it and ordered people to walk to Takmao. Some who did not want to make their way to Takmao stopped and waited for a chance to cross the bridge, but the Khmer Rouge soldiers fired into the air, leaving them no choice but to obey. As we approached Noreay roundabout, my family turned left and walked along the riverside until we reached Takmao. Waiting to see if there would be any change in the situation, we stayed at Daem Mean village for a couple of days. Once in a while, there

was an announcement over the microphone, calling for technicians or separated relatives. One night the Khmer Rouge announced that they were looking for a midwife, so my wife gave them a hand in delivering a baby.

Because there were too many people resting in the village, the next day the soldiers told us to move on. Walking along the river's edge near Sith Tbo village, we saw a ferryboat. Thinking that returning to my home village was better than roaming about the country without a destination, I asked the boat owner about his fee. He demanded 50 kilograms of rice to carry my family across. We paid him and after safely crossing the river, we walked until we reached Ta-prom village in Kien Svay district. We stayed there, waiting to be called to return to our home in Phnom Penh.

One day, I ran into some of my relatives who were living in Sarikakeo village, and they offered my family shelter for two nights. After that, we walked for three nights and arrived at Moan Dap village on the border of Srey Santhor district. There I met my elder sibling and cousin who had spent ten days peddling a bicycle and searching for me. At about 10 the next night, I arrived at the place where I was born: Prek Po sub-district in Kampong Cham province. Seeing my mother, siblings, other relatives and neighbors, we cried; we had not met since 1971.

The local Angkar usually gathered people for meetings and to record their biographies. During that time, people had to look for food, clothes, medicine, and other supplies for themselves. I lived in that situation for four months.

When the rainy season came, I heard that Angkar was going to separate the April 17 people [evacuees] from their families, so that it would be easy for Angkar to sweep out hidden enemies burrowing from the

Market. There were rumors spreading around the market that I was a spy of Lon Nol, Sirik Matak, Song Ngoc Thanh, Cheng Heng, In Tam, Long Boreth and Sosten. This information reached the ears of Hang, chief of Region 103. I was terribly worried that I would be executed. Late one night, my sister whispered in my ear, "Are you a spy of the Lon Nol regime?" I cried but could say nothing. My sister softly touched my face, perhaps knowing that I did not have the words. I could not sleep for the rest of the night.

My family and the villagers' suspicion that I was a Lon Nol spy faded day by day, but I was still under



close watch by the Khmer Rouge. Their combatants or militiamen came to sleep beneath my sister's house, observing and listening to what we said at night. One morning when I was watering crops, I heard that the Khmer Rouge cadres held a meeting at Srah Chak Pagoda. Its purpose was to examine the work I and my friends had done in a movement for the Lon Nol

regime in Kampong Cham. Unfortunately, I failed to attend because the meeting was held at least 60 kilometers away. While walking home, I debated whether I should confess about the work I used to do in Kampong Cham or keep it secret. I decided to hide it.

Under the observation of the combatant unit, I had to work hard to become a model farmer. In 1974, Angkar made me a member of the first sub-district cooperative, which was divided into seven groups. The first five groups were cooperatives, while people lived communally in the other two. On January 25, we were called to a meeting about the plan to clear Koun Gne Forest. That forest was dangerous; it was covered with jungle and mountains, and was a malarial area.

On February 1, we set out to cut down trees and bamboo according to the plan. Because I was young and strong, I was given the task of felling the big trees, while the elderly cleared the small trees, wild vines and shrubs. After about 15 days, the whole jungle became a field with lots of wood lying on the ground. I really regretted the loss of those valuable trees, which I had never seen in my homeland. Then we rested for a week while the wood dried. Next, the first and seventh groups were ordered to go by ox cart to find fish at Stung Sen River in an area called Anlong Pra about 20 kilometers away from our village. When we arrived, we found that the fish had been poisoned and were floating on the surface of the river. The next day, my group took a 100-meter fishing net and collected 500 to 600 kilograms of fresh water fish in a deeply-flooded area.

As food shortages became more dire, a rumor began to spread: "Doing farming with the sky, farmers eat rice; doing farming with irrigation systems, farmers eat watery porridge."

Yim Narin is a survivor of the Khmer Rouge regime and a reader of Searching for the Truth.

On June 30, 2005 the United Nations approved the newly constructed headquarters of the Royal Cambodian Armed Forces on the outskirts of Phnom Penh as the location for the Khmer Rouge Tribunal.



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power. A successful defense will need to focus on the nexus to armed conflict, while the prosecutor will try to show that a link to armed conflict is no longer required for a charge of crimes against humanity.

iv. State action/direction

Authorities on international law are divided as to whether governmental direction is a necessary element.

v. Discriminatory intent

Under the UN-RGC Agreement's, there is no requirement that the enumerated acts, other than persecution, be committed with discriminatory intent so long as the acts are committed against civilians (see *Prosecutor v. Akayesu, ICTR Appeals Chamber Judgment, para. 447-469*). By contrast, the ECDK Law's definition requires a discriminatory intent on political, ethnical, racial or religious grounds.

Remarks:

i. Crimes against humanity originate in customary international law. It was the Nuremberg Charter that first crystallized the use of the term "*crimes against humanity*." The definition of crimes against humanity has evolved over time and differed depending on the tribunal. Different definitions of CAH were used in the Charter of the Nuremberg Tribunal, the ICTY Statute, the ICTR Statute and the ICC Statute. Given the legal principle *nullum crimen sine lege*, it will be necessary for the KRT to determine the extent to which CAH were prohibited by customary international law at the time the Khmer Rouge were in power.

ii. Cambodia has been a member of the International Criminal Court (ICC) since October 23, 2000. Cambodia ratified the ICC Statute on April 11, 2002.

c. Grave Breaches of the Geneva Convention

Definition:

Article 9 of the UN-RGC Agreement refers to Grave Breaches of the Geneva Conventions of 12 August 1949, which are any of the following acts committed against persons or property protected under the provisions of the relevant Geneva Conventions.

- (a) Willful killings;
- (b) Torture or inhuman treatment, including

biological experiments;

(c) Willfully causing great suffering, or serious injury to body or health;

(d) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(e) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(f) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(g) Unlawful deportation or transfer or unlawful confinement;

(h) Taking of hostages.

Article 6 of the ECDK Law adopts the same definition.

Key elements:

i. An armed conflict. The prosecutor must demonstrate that a sustained armed conflict was taking place during the period at issue.

ii. State nexus. It requires the perpetrator to be an official acting for the country.

Remarks:

i. Cambodia was a party to all four Geneva Conventions of 1949 during the relevant period at issue. In addition, grave breaches of the Geneva conventions are considered to be customary international law.

ii. Common Article 3 of the Geneva Conventions of 1949 is the only international humanitarian law provision governing *internal* conflicts in effect during the Khmer Rouge years.

Can decisions of prior international criminal tribunals be used before the KRT?

Ordinarily, prior case laws from other international courts do not become binding laws in the context of international or mixed criminal tribunals. However, in the past, defense counsel and prosecutors have frequently made reference to prior decisions with the hope that the courts would follow those interpretations of the applicable law. Although not all prior case laws will be adopted in the decision, judges of international or mixed criminal courts are mindful of precedents

and often cite principles established from prior decisions.

For example, in *Prosecutor v. Dragan Nikolic*, Judgment of 5 May 2003, page 9, the Supreme Court of Kosovo made reference to some ICTY and ICTR decisions in its decision.

The presiding judge held that;

"...Appropriate guidance in this regard can be found in the case-law of The Prosecutor v. Jean-Paul Akayesu before the International Criminal Tribunal of Rwanda (ICTR) (Decision of 2 September 1998, paragraph 140, 142, 155, 156) and in the ICTY case The Prosecutor v. Tadic (Trial Chamber Judgment of 7 May 1997, paragraph 54)."

d. Destruction of Cultural Property

Definition:

Article 7 of the ECDK Law provides as follows:
"[t]he Extraordinary Chambers shall have the power to bring to trial all Suspects most responsible for the destruction of cultural property during armed conflict pursuant to the 1954 Hague Convention for Protection of Cultural Property in the Event of Armed Conflict..."

Key element:

The destruction of artistic, literary, religious, architectural and other cultural property during an armed conflict.

Remarks:

i. Cambodia has been a party to the Hague Convention since 1962.

ii. Note that Article 44 of the UNTAC refers to the Law on the 1996 Protection of Cultural Heritage.

e. Crimes against Internationally Protected Persons

Definition:

This crime is covered by Article 8 of the ECDK Law, which sets forth that the KRT will try *"all suspects most responsible for crimes against internationally protected persons pursuant to the Vienna Convention of 1961 on Diplomatic Relations, and which were committed during the period from 17 April 1975 to 6 January 1979."*

Remarks:

i. The Vienna Convention of 1961 deals with a

State's obligation towards foreign diplomatic missions. Article 29 provides in particular that: *"[t]he person of a diplomat agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity."*

ii. In April 1975, the Khmer Rouge regime detained personnel in the French embassy and then removed and murdered Cambodian spouses of foreign diplomatic personnel.

2. Domestic Crimes

a. 1956 Code Penal of Cambodia

The principle of *nullum crimen sine lege* requires that a person be punished only for crimes that are recognized as crimes at the time they are committed. Therefore, if Cambodia is to hold accountable individuals for crimes committed under the Khmer Rouge regime, it can apply only laws in effect as of 17 April 1975, when the Khmer Rouge took control of the Kingdom of Cambodia. At that time, the primary source of substantive domestic law for prosecution of criminal acts in Cambodia was the 1956 *Code Pénal et Lois Pénales*, published by the Ministry of Justice of the Kingdom of Cambodia.

Although Cambodian courts have not applied the 1956 law for a generation, it constitutes the primary source of law for the prosecution of domestic crimes before the KRT. The ECDK Law refers to its provisions, in Article 3, as follows:

"Extraordinary Chamber shall have the power to bring to trial all suspects who committed crimes set forth in the 1956 Cambodian penal code and which were committed during period from 17 April 1975 to 6 January 1979:

◆ *Homicide (article 501, 503, 504, 505, 506, 507 and 508)*

◆ *Torture (article 500)*

◆ *Religious persecution (article 209 and 201)"*

The 1956 Penal Code of Cambodia classifies offenses by severity into *crimes* (akin to felonies); *délits* (misdemeanors); and *contraventions* (police infractions

or petty offenses). *Crimes* and *délits* are divided into first degree, second degree, and third degree depending on the degree of severity of the sentence; third degree is the most serious.

Moreover, the 1956 Penal Code provides for clear statutes of limitations: ten years for *crimes*, five years for *délits*, and one year for *contraventions*. The statute of limitations runs from the date of the commission of the criminal act. The statutes of limitations of the domestic crimes enumerated in the ECDK Law are extended for an additional 30 years (Article 3 of the ECDK law).

b. Homicide - Articles 501, 503, 504, 506, 507 and 508 of the 1956 Penal Code.

Homicide can be voluntary or involuntary. This depends on whether or not the perpetrator of the crime intended to cause death. Homicide requires the act of killing, and a culpable mental state—intent to kill, reckless disregard for life or negligence. The different levels of mental state correspond to different “degrees” of homicide.

Involuntary homicide includes manslaughter through negligence and other types of recklessness and is punishable in varying degrees of severity.

Homicide committed with the intent to cause death is murder, a second-degree felony. When the murder has been premeditated, the crime is qualified as assassination, a third degree felony.

c. Torture - Article 500 of the 1956 Penal Code.

Art. 500: *“Any individual who commits acts of torture against a third person, either in order to extract from the person, under pain, some useful information on the commission of a crime or misdemeanor, or for reprisal or barbaric motives, shall be punished with a third degree criminal sentence felony.”* (Unofficial translation)

d. Religious Persecution - Articles 209 and 210 of the 1956 Penal Code.

Art. 209: *“An attack on the life of a religious person practicing a religion recognized by the Cambodian government while exercising his profession or in the course of the exercise of his profession shall be*

punished by a third degree criminal sentence.” (Unofficial translation)

Art. 210: *“An attack on a religious person practicing a religion recognized by the Cambodian government while exercising his profession or in the course of the exercise of his profession shall be punished by a second degree criminal sentence.”* (Unofficial translation)

III. PROCEDURAL RULES BEFORE THE KHMER ROUGE TRIBUNAL

A. Procedural Rules in General

Rule of law implies that government authority may only be exercised in accordance with established procedural laws. Criminal procedural rules aim at protecting the interests of the suspects, as well as those of society and the victims. In most jurisdictions, a criminal action will be invalid if the action was not initiated in accordance with the criminal procedural rules. Generally, procedural rules are encoded in criminal procedure laws.

Procedural rules in international and mixed criminal courts

For international criminal courts, sets of rules of procedure and evidence have been specifically drafted.

ICC: Rules of Procedure and Evidence.

ICTY: Rules of Procedure and Evidence.

ICTR: Rules of Procedure and Evidence.

For mixed tribunals, some courts apply domestic procedural law, while others created new procedural rules to be followed during war crime proceedings.

Kosovo: In April 2004, the Provisional Criminal Procedure Code of Kosovo replaced the Socialist Federal Republic of Yugoslavia Criminal Procedure Code formerly applicable.

Sierra Leone: Rules of Procedure and Evidence of the Special Court of Sierra Leone.

East Timor: Transitional Rules of Criminal Procedure.

As of June 2005, there are two criminal procedural laws operating in Cambodia – the 1993 Cambodian

Law on Criminal Procedure and the United Nations Transitional Authority in Cambodia's decision of 10 September 1992 on Provisions relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (UNTAC Law).

B. Khmer Rouge Tribunal's Procedural Law

UN-RGC Agreement Article 12: Procedure

The procedure shall be in accordance with Cambodian law. Where Cambodian law does not deal with a particular matter, or where there is uncertainty regarding the interpretation or application of a relevant rule of Cambodian law, or where there is a question regarding the consistency of such a rule with international standards, guidance may also be sought in procedural rules established at the international level.

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

1. Domestic Procedural Law

Regarding the KRT, Article 12 of the UN-RGC Agreement provides that *"the procedure shall be in accordance with Cambodian Law"* and Article 33 of the ECDK Law provides that trials are *"conducted in accordance with existing procedure in force."*

Hence, in the absence of any Rules of Procedure and Evidence specifically drafted for the KRT, the

Extraordinary Chambers shall ensure that trials are conducted in accordance with the 1992 UNTAC Law and/or 1993 Law on Criminal Procedure.

2. International Procedural Law

The UN-RGC Agreement and the ECDK Law make it clear that rights provided and guaranteed by Articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR) should apply before the KRT. Those ICCPR's provisions should supersede any other criminal procedural rules. In addition, considering that Cambodia has ratified the ICCPR (on 26 May 1992), it could be argued that the KRT judges should also respect all rights provided in this Covenant, such as, for instance, the right to liberty and security (Article 9 of the ICCPR).

For international procedural rules other than the ones provided in the ICCPR, the UN-RGC Agreement, Article 12, and the ECDK Law, Article 33, provide that: *"[w]here Cambodian law does not deal with a particular matter, or where there is uncertainty regarding the interpretation or application of a relevant rule of Cambodian law, or where there is a question regarding the consistency of such a rule with international standards, guidance may also be sought in procedural rules established at the international level."*

Therefore, it is left to the KRT to decide when to seek guidance in international law.

IV. ACTORS BEFORE THE KHMER ROUGE TRIBUNAL

Overview of the persons likely involved in the KRT's proceedings

- ◆ 12 Trial Chamber and Supreme Court Chamber's judges (7 Cambodian judges and 5 International judges), and 5 Pre-trial Chamber's judges
- ◆ 2 investigating judges (one Cambodian and one International)
- ◆ 2 prosecutors (one Cambodian and one International)
- ◆ The accused
- ◆ Defense Counsel
- ◆ Witnesses and victims

A. Trial and Supreme Court Chambers' Judges

1. Composition

The KRT will consist of a Trial Chamber and a Supreme Court Chamber. These chambers will be set within the existing court system. The Trial Chamber and the Supreme Court Chambers will be respectively composed of 5 Judges (3 Cambodian and 2 international judges) and 7 Judges (4 Cambodian and 3 international judges)

The decisions and judgments would require a so-called "*supermajority*", namely, the affirmative vote of a majority of the judges of that Chamber, plus one. This would mean that in the trial court, at least four votes are needed. In the Supreme Court, at least five votes are needed.

2. Selection of Judges

Cambodian Judges

Under Article 3 of the UN-RGC Agreement and Article 11 of the ECDK Law, the Supreme Council of Magistracy (SCM) will appoint 7 Cambodian judges, as well as reserve judges as needed.

International Judges

The United Nations shall submit a list of at least 7 candidates for foreign judges to the Royal Government of Cambodia, and the Supreme Council of Magistracy shall appoint five sitting judges and 2 reserve judges from the list.

B. The Pre-Trial Chamber

(See Article 20 of the ECDK Law and Article 7 of the UN-RGC Agreement)

1. Composition

The function of the pre-trial Chamber is to resolve disagreements between the two co-prosecutors, as well as those between the two co-investigative judges. The Pre-trial Chamber will be composed of 5 Judges (3 Cambodian and 2 international judges).

Decisions of the Pre-trial Chamber would be taken by an affirmative vote of at least four judges. A decision therefore could not be taken without the support of at least one international judge.

2. Selection of Judges

The three Cambodian Judges will be appointed

by the Supreme Council of the Magistracy, and the two foreign judges, will be appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General of the United Nations.

C. Co-Prosecutors

Under Article 6 of the UN-RGC Agreement and Article 19 of the ECDK Law, two Co-Prosecutors, one international and one Cambodian national, will be responsible for the conduct of the prosecutions.

Article 18 of the ECDK Law provides that the SCM shall appoint Cambodian prosecutors and Cambodian reserve prosecutors as necessary from among the Cambodian professional judges. In addition, the SCM will appoint one foreign prosecutor and one reserve foreign prosecutor from a list of at least two candidates submitted to the RGC by the Secretary-General of the United Nations.

If the co-prosecutors disagree about whether to proceed with a prosecution, one of them can request a decision from the pre-trial chamber (see above).

D. Co-Investigating judges

Under Article 5 of the UN-RGC Agreement and Article 23 of the ECDK Law, two co-investigating judges, one international and one Cambodian national, will be responsible for the conduct of the investigations.

Article 26 of the ECDK Law provides that the SCM shall appoint Cambodian investigating judges and Cambodian reserve investigating judges as necessary from among the Cambodian professional judges. In addition, the SCM will appoint one foreign investigating judge and one reserve foreign investigating judge from a list of at least two candidates submitted to the RGC by the Secretary-General of the United Nations.

If the co-investigating judges disagree, one of them can request a decision from the pre-trial chamber (see above).

E. The Accused

The KRT will have a jurisdiction to try the senior leaders of Democratic Kampuchea, as well as those most responsible for committing serious crimes. Therefore, it is very likely that some of the top leaders who held government posts during the Khmer rouge regime

Foreign defense counsel in other international and mixed criminal courts

1. ICTY and ICTR: Accused is entitled to be represented by foreign lawyers.
2. Kosovo: Foreign attorneys have been allowed to assist the defendants during criminal proceedings. However, so far, only attorneys who are registered with the Kosovo Bar association can stand in court.
3. Sierra Leone: Both foreign and domestic defense counsel are entitled to stand in court.
4. East Timor: Accused persons have been represented by both foreign and domestic defense counsel.

D. Witnesses and victims

Witnesses

The UN-RGC Agreement and ECDK Law contain provisions dealing with witnesses and victims' protection (see Art. 33 of ECDK Law and Art. 23 of UN-RGC Agreement) , as well as with the witnesses'

immunity from prosecution or from limitation of their liberty (see Art. 22 of UN-RGC Agreement).

However, those laws do not make any other specific references as to the role of witnesses during the KRT's trials. Nonetheless, the Law on Criminal Procedural of 1993 contains numerous provisions on witnesses and experts.

Victims

The role of the victims appears to be limited before the KRT. Apart from the provisions referring to the victims' protection above mentioned and to the victims' right to appeal decisions of the Extraordinary Chambers trial court (Art. 36 of ECDK Law), the ECDK Law and UN-RGC Agreement do not further specify the role of the victims during the future KRT's trials. In particular, those laws do not specifically provide for the victims to be a party at a criminal trial and to claim compensation, although they are entitled to do so under the current Cambodian Law on Criminal Procedure.



secret the criteria for evaluation and the timeframe for its undertaking.

Both of these developments are worrying. The first has been taken by some observers to suggest that the government does not fully support the tribunal. As one observer noted, the government didn't seem to have much trouble finding the millions of dollars needed to pay for damage caused in the infamous anti-Thai riots in 2003. If the tribunal does come to fruition--as still seems likely--it may not be able to count on full cooperation from the government. At the same time, the lack of transparency in the jurist selection process suggests that the court may not take place in the open and transparent manner advocates had hoped.

This would be a tragedy. The Khmer Rouge tribunal holds great potential benefits for the Cambodian people; chief among them is its potential impact on the deeply troubled judicial system. A tribunal that respected international norms of fairness and due process would provide a powerful example to the national system, and could inspire increased independence and reform while dealing a significant blow to the entrenched culture of impunity.

At the end of this month, the consultative group of leading foreign donors is scheduled to meet with Prime Minister Hun Sen to discuss progress on commitments made last December.

Donors have already done much for the tribunal, but their work is not done. In order for the tribunal to make good on its potential for the Cambodian people, it is now clear that these major donors will have to exercise their political influence on its behalf. At their upcoming meeting with Mr. Hun Sen, they should push the following three points:

First, the selection process for judges, lawyers and court staff must be made open and transparent. The public deserves to know who is being considered, what criteria will be used to evaluate them, and when decisions will be made. Civil society, particularly those NGOs who work in the legal sector, should be

approached for comments and recommendations.

Second, the government must explain, to donors and the public alike, how it plans to cover its share of the tribunal's budget. It cannot expect donors to rush to bail it out, and it must adequately explain why it rejected the idea of a national fund-raiser.

Though not all Cambodians can afford to donate money, many have suggested they would like to give as a way of feeling involved in the process of holding the former Khmer Rouge leaders accountable. At the absolute least, the government should accept donations offered freely by private citizens.

Third, donors should impress upon the government the importance of a successful tribunal outreach campaign to educate the general population. There have long been misconceptions amongst the public as to how the tribunal will work and who it will prosecute; it is time they be cleared up.

Such misunderstandings have the potential to ferment unrest--particularly if former Khmer Rouge cadres mistakenly fear they may be jailed--and they will certainly lead to disappointment with the tribunal when victims notice that ex-Khmer Rouge in their communities are still at liberty.

Though many Cambodian NGOs are preparing outreach programmes, their plans do not excuse the government from its own responsibility to educate. Mr. Hun Sen could begin to demonstrate his commitment to a successful process by recording public service announcements for radio and television which introduce and describe the tribunal. Donors have much to discuss and there is much work that still needs to be done in Cambodia to help its people. But given the enormous potential and equally enormous cost of the Khmer Rouge tribunal, it deserves a high place on the agenda.

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hopes that the witness will comply rather than be confrontational. The entire atmosphere is intimidating to witnesses, and so they tend to agree with opposing counsel's statements (masked as a question) rather than cause conflict. This can be devastating to the accuracy of their story since it comes out slanted in the language of the opposing attorney. The sense that their story and experience "isn't coming out right" is extremely demoralizing and traumatic to witnesses, and contributes to a continued feeling of victimization.

Moreover, attorneys tend to interrupt and cut off witnesses in mid-sentence when they don't like the direction in which the testimony is headed. Witnesses need to be told that once a question is asked, they have the right to answer it completely without interruption and should not let their natural politeness or attorney attempts at intimidation keep them from telling their entire story. They should be prepared to persist in finishing their answers despite opposing counsel's attempt to silence them. One thing to note is that those witnesses who had been tortured under interrogation by the Khmer Rouge may also need significant psychological intervention in order to reduce the chances of re-traumatization set off by an aggressive opposing counsel. Preparation by legal and psychological counsel to help the witness withstand this kind of questioning is essential for both the accuracy of the testimony and the well-being of the witness.

Secondly, counsel for the witness should ensure that the witnesses' accounts, given over 25 years since the end of the genocide, are coherent enough to hold up under intense scrutiny. For example, a victim's ability to remember events may not manifest itself in the strictly linear form favored by traditional legal proceedings. Within the larger context, specific dates are not nearly as important to the witness as the overall experience. Again, a significant amount of therapy/ preparation may be needed in some cases to turn a larger experience into a narrative suitable for judicial proceedings, i.e., testimony that is consistent, non-speculative, and emotionally powerful.

"The narratives of persons traumatized as adults are fragmented and incomplete. The narratives often show lapses in monitoring of reasoning, such as lack of logic or lack of reality testing when discussing the trauma. Lapses in the monitoring of discourse are characteristic as well, such as prolonged silences, a focus on details or unfinished sentences....Turning trauma into a coherent narrative means challenging the narrative defenses, such as psychic numbing, dissociation of feelings from the story, selective forgetting or fragmentation. Initially, this might be in direct conflict with the tendency to avoid the trauma memory. The therapist then needs to 'stand for the part of the victim's self that could not bear to look at what is done to her'. Eventually, the traumatized person might be able to integrate the dissociated parts into a coherent narrative of the experiences." (Van Dijk et al.).

As a result, in addition to psychological preparation, counsel for the witness should separate out vague or inconsistent recollection. It is better for a witness to straightforwardly say "I don't remember" than to speculate; it strengthens the veracity of what is remembered and minimizes misstatements based on faulty recollection that lawyers jump on to impeach the witness's total credibility. Often it is impeachment on otherwise insignificant material that can confuse and frustrate the witness and leave him feeling as if he were the one on trial.

While "putting words in the witness's mouth" or suggesting factual scenarios should be strictly prohibited, the stress and fear naturally engendered by the situation and surroundings lead many witnesses to give short, one-sentence answers that do not adequately portray the witness's experience, as well as the severity of physical, mental and emotional suffering. In short, much is left unsaid in response to any single question. As such, the attorney "friendly" to the witness should know, through previous discussions with the witness, the particularly important information that the witness possesses and should ask follow-up questions designed to open up the witness without

ENCOUNTERING KR LEADERS, FOR WHAT?

Kok-Thay Eng

I think we should not consider meeting surviving senior Khmer Rouge leaders, such as Nuon Chea or Khieu Samphan, and treating it as an important moment. People seem to be excited in some way when meeting them, feeling it is a special kind of privilege or honor. Others feel they are brave to have met such brutal people.

Victims and foreigners write their impressions of meeting former Khmer Rouge leaders as though these people were very special. They are invariably polite toward them and listen to them repeat their denials about the existence of all sorts of concrete evidence. If we consider what they say carefully, these meetings yield very little that is significant or relevant at all.

They are still Khmer Rouge who committed crimes against countless people during their rule 30 years ago. They have not changed. One of the characteristics of the Khmer Rouge is that they consider truth as a fault and faults as truth. People were killed for the most unimaginably trivial reasons, which the Khmer Rouge thought were critical. They are the same today. For example, Nuon Chea denied that millions of people were killed, as well as the existence of S-21 and documentary materials. They smile through their interviews as if nothing happened.

Theary Seng, the author of *Daughter of the Killing Fields*, wrote an article recently about her meeting with Khieu Samphan: "I am amazed at his ability to live with himself, at his ability to convince himself of the rightness of his cause to a degree where he is still functioning well." This is more clear evidence that he has not changed. He is an expert in lying to the extent that he is able to maintain decent health after all that happened.

As leaders they do not have any qualities to admire. They fought among themselves; they lied to

the people and their soldiers; they made sure they disregarded the lives of others. One of their slogans is: "It is better to have several foot soldiers killed than one leader killed." They do not take responsibility for what happened under their leadership. So why meet them?

Not they are only paper tigers, but they were also fake tigers when they were in power. We should not think of them as good guys, fighting all sorts of social injustices or behaving in a down-to-earth way in the 1950s, 1960s or during the war, to make our meeting with them something to write about. Nor should we be excited with the fact that they were Brother Number 1, 2 or 3 of a revolution, because it was a disastrous revolution. They are totally incompetent.

Apart from not changing themselves, feeling remorse, or taking responsibility, they continue hurting the victims with their denials, confusing them, and trying to change their minds again, just like they did in the past using the same old tricks. With denials they perplex the already uncertain people about their own history which they never had a chance to learn fully.

We should think of them as the worst people in Cambodian society. They are hopeless people and will not change. We should not fear them in any way or consider them as belonging to Cambodia or anywhere else, and tell them we wish them dead.

People might want to meet them in order see the face of the man responsible for the murders of their relatives. For me it is like this: if the murderer is a mentally ill person, meeting him would mean absolutely nothing. Meeting a cyclo driver who was their victim and listening to his story is much more meaningful.

Kok-Thay Eng is a Fulbright Scholar who is now pursuing a Master's Degree in Global Change at Rutgers University, USA.

ANNOUNCEMENT

DC-CAM LOOKING FOR PHOTOGRAPHS OF FORMER NEW PEOPLE

DC-Cam recently wrote a book called *Stilled Lives: Photographs from the Cambodian Genocide*. It describes the lives of 51 men and women who joined the Khmer Rouge revolution. Thirty-nine of these fifty-one people died at Tuol Sleng prison. Only nine are alive today.

We will soon read selected stories from the book on our radio program. The stories will air on: FM 102 MHz, Phnom Penh, FM 93.25 MHz, Kampot, FM 99 MHz, Preah Vihear, and FM 103.25 MHz, Battambang.

To write the book, we interviewed former cadres, base people, and their family members. They also gave us photographs of themselves. Many of the pictures were taken before the Khmer Rouge came to power, but some show the cadres during the revolution.

Funding for the book was provided by the National Endowment for Democracy. The book revealed that those joining the revolution had the same hopes and needs as other Cambodian people, and also lost their loved ones. We hope this book will help Cambodian people to understand that both victims and perpetrators share a common humanity.

We are now planning a book that will tell the stories of the new people and their families during Democratic Kampuchea. If you or one of your relatives was a new person and would like to tell your stories for the book, we would like to interview you. We welcome the contributions of Cambodians from both at home and abroad.

Because photographs will be a very important part of this book, we are only asking help from people who would agree to share their photographs with us. They must have been taken before or during Democratic Kampuchea. We will scan the photographs and return the originals to you. Please call DC-Cam at 023-211-875 or write us at Box 1110, Phnom Penh. Email: truthpivoine@dccam.org or truthsavina@dccam.org.



LETTER FROM READERS:

JUSTICE FOR VICTIMS

Starting with the forced evacuation of people from the cities and provinces, and leaving numerous mass graves scattered across the country, the Killing Fields regime ended with the loss of 1.7 million of its own people's lives within a period of only 3 years, 8 months and 20 days.

All Cambodians old enough to remember bear their personal heartbreaking stories about the pain and suffering that resulted from fierce hardship and family separation. The stories depict hard labor, starvation, and the physical and mental torments inflicted upon them, their parents and relatives by local Khmer Rouge cadres.

Although these excruciating stories took place some 30 years ago, the trauma remains with the victims to this day. The only way to heal this trauma is by providing an honorary justice to the regime's victims - a pure justice that is not vengeance.

Three decades have passed, and those responsible for the deaths are getting older and older. Some of those responsible for the massacres, such as Pol Pot, Son Sen and Ke Pauk, have gone without leaving any explanation for why the Killing Fields were brought to life. Pol Pot, Son Sen and Ke Pauk do not know that the survivors of their clique dare not confront the truth, and approve of their deceased comrades' cowardice by challenging the efforts to achieve accountability. And justice is yet to be done for all victims, both dead and alive.

When will justice be delivered to all victims of the Killing Fields? May the tribunal be established soon for the purpose of reaching closure on this the dark chapter of the country's history. This is an appeal made in the name of a victim of the Khmer Rouge regime.

Rasmey Meng

THE TRIALS AS LESSONS

Carrying along for 30 years, I still wonder about what had been done by the Khmer Rouge or "Democratic Kampuchea" regime, ruled by Pol Pot and his clique, the hasty evacuation of Phnom Penh dwellers in mid-April 1975, and the merciless executions of Lon Nol soldiers, students, intellectuals, monks, professors and artists, etc., and above all, of war prisoners of the ousted regime, who sacrificed their lives for the defense of the nation against foreign aggression.

Who ordered the evacuation of city dwellers, especially Phnom Penh's? Pol Pot, Ieng Sary, Khieu Samphan, Nuon Chea, Son Sen, Ta Mok, or Duch? Or was it the awful scheme of an outsider?

If it was to wage war against North Vietnam, why did they kill soldiers of the Lon Nol regime? Who was the mastermind behind the organization of a country where schools, currency and "registry institutions" were abolished?

These are some of the questions on my mind. The products of the killing fields created by Pol Pot and his associates were painful deaths and injustice. Justice should have been achieved long ago, not 30 years later.

The upcoming tribunal for leaders of the Khmer Rouge, to be established with the involvement of international judges, is the first attempt at justice by the international community for the more than two million innocent Cambodians, chiefly Phnom Penh dwellers, who lost their lives to the regime between 1970 and 1975.

Will the tribunal be able to ensure justice for the victims? How will the survivors benefit from the tribunal?

As far as I am concerned, although the tribunal cannot provide complete justice to the victims, and may benefit other countries, it must be established so as to punish those who led the country toward catastrophe, and especially for the loss of the lives of their own people.

Thalsavuth Heng

Missing Son

I am Mom Nan, age 73, and my husband was Nuy Srun (died in 1982). Today I live in Kandach village, Chong Ampil sub-district, KanhChreach district, Prey Veng province. I would like to search for my son Srun Map who joined the revolution in 1973. Around June or July 1976, Map visited home once after he had been injured and sent to P-2 hospital for several months.

I had not received any information about him until 1979, when a relative named Khuth Khuon, who worked for the revolution with Map, told me that Map was imprisoned at Chy Mountain in 1978, then was sent to the Dang Rek Mountains. I have not heard anything about Map since then.

If Map himself or anybody else has heard anything, please inform me through Nuy Dany via telephone: 012 180 26 52. Thank you.

Missing Daughter

I am Chan Siem, age 57; I live in Chy Chrap village, Sanlong sub-district, Traing district, Takeo province. I would like to search for my daughter Ouch Savoeun aka Yoeun, who carried wounded persons in a women's unit at Angkao Pagoda, Angkao sub-district, Traing district, Takeo province.

In 1976, Yoeun sent a letter saying that she was living in Bakan district, Pursat province. I sent my son to search for her, but he failed to find her. I have not heard anything about her since then. Now Yoeun would be about 40.

If Yoeun herself or anybody has heard anything about her, please contact the Documentation Center of Cambodia.

Missing Brother

I, Phan Phong, am now age 65, and my husband's name is Chiev Tith. We live in Chong Koh Thmei village, Koh Thom sub-district, Koh Thom district, Kandal province. I would like to search for my younger brother named Phann Nanh who was appointed to be a Khmer Rouge soldier in 1976 by Tith, the village chief of Chong Koh Thmei. I have not heard from him since he left for the revolution.

In 1990, a soldier living in Chong Koh Thmei told me that he had worked with Nanh from 1976 to 1979, and he once met Nanh at Anlong Veng Mountain.

If my brother or anyone else has any information about Phann Nanh, please contact me through the above-mentioned address or the Documentation Center of Cambodia. Thank you.

Missing Brother and Sister

I am Khek An, 48. Today I live in Balaing village, Balaing sub-district, Baray district, Kampong Thom province.

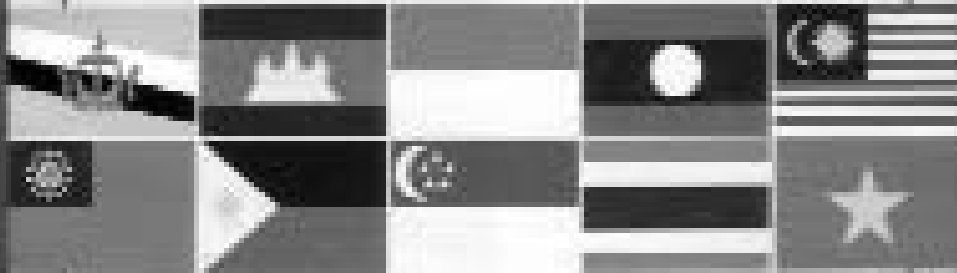
I would like to search for my older brother named Chroeng Soeur and my older sister named Chroeng Suor. They both disappeared in 1979. In late 1978, Soeur sent a letter to inform his family that he was a soldier in a division in Memuth district. Suor was also separated from us in 1979. Someone said they met her while they hiked up Mondulkiri Mountain.

If my siblings or anybody else knows the two people mentioned above, please contact the Documentation Center of Cambodia. Thank you.

Magazine of the Documentation Center of Cambodia

Searching for

THE TRUTH



◆ A Book for the People of Cambodia
◆ The Program of the Documentation Center of Cambodia

Special

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Third Quarter



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