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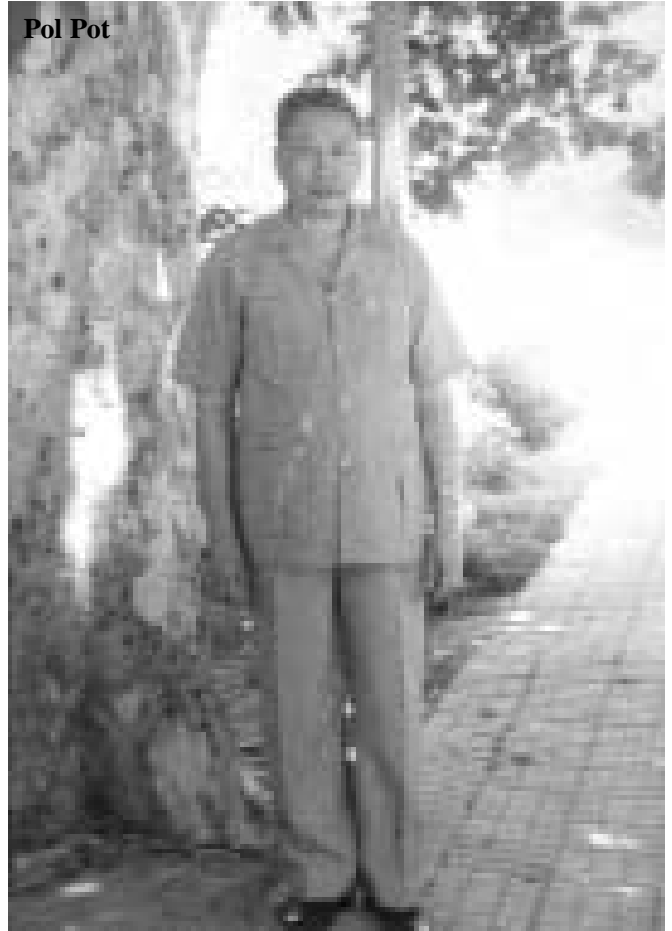
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Letter:

FOR MEMORY AND JUSTICE

The Documentation Center of Cambodia (DC-Cam) has two main objectives. The first objective is to record and preserve the history of the Khmer Rouge regime for future generations. The second objective is to gather legal evidence and other materials in support of those who seek accountability for the crimes of the Khmer Rouge. These two objectives - memory and justice - would serve to build a foundation for the rule of law and genuine national reconciliation. Also, an on-going research project attempts to analyze the primary materials collected through these various means, to understand how they fit into the overall historical context of the Khmer Rouge period.

Between 1995 and 2000, the Documentation Center of Cambodia catalogued approximately 155,000 pages of primary Khmer Rouge documents and more than 6,000 photographs. This tremendous effort barely scratched the surface of the Documentation Center's holdings. The bulk of the Documentation Center's archives have not yet been catalogued, including nearly 30,000 more photographs and more than 400,000 additional pages of documents. The Documentation Center is devising a work plan for the next five years, during which we aim to complete the cataloguing of this backlog of materials.

The second objective is to gather legal evidence and other materials in support of those who seek accountability for the crimes of the Khmer Rouge. In support of this objective, the Documentation Center is constantly cataloguing materials gathered through various means and entering them into computer databases in an effort to produce annotated indexes to the archive's contents.

Through this process, the Documentation Center, in cooperation with its international partners, has assembled extensive bibliographic, biographic, photographic and geographic databases of information related to Khmer Rouge abuses. This provides legal scholars and investigators—as well as researchers and historians — with valuable tools to understand precisely who did what to whom, when, where and how, and sometimes, even why. This also allows Cambodians to know their own history, and to come to terms with it. In February 1999 the UN Group of Experts found *prima facie* culpability against the Khmer Rouge leadership for war crimes, genocide and other crimes against humanity. Their assessment was based principally on their examination of Documentation Center holdings. The Documentation Center also expects to be called upon as the principal source of evidentiary materials for any Khmer Rouge tribunal that may be established. Prosecutors and defense counsel involved in the cases of Khmer Rouge military chief Mok and Tuol Sleng (S-21) Prison chief Duch have already requested substantial assistance from the Documentation Center.

Successfully achieving our two primary objectives - memory and justice - will serve to help build a foundation for the rule of law and genuine national reconciliation in Cambodia. We aim to pursue these objectives in several ways. First, we will sustain and then accelerate our rate of cataloguing the primary materials relating to the Khmer Rouge regime. Second, we will expand the scope of our analysis of these primary materials, focusing on topic areas relevant to accountability and finding the truth. Third, in the coming five

years, we will greatly expand the computer databases assembled during our first six years of work. These goals can be accomplished only if we have a stable and predictable source of core funding. Securing such a stable source of core funding will permit us to engage in long-term planning and to better schedule our resource utilization.

Research

Numerous historic-graphical studies have been produced under the auspices of the DC-Cam, including monographs on the Western Zone, the Northwest Zone, the Northeast Zone, the Cham minority, women, and Buddhist monks under the Khmer Rouge. These papers are scheduled for publication by Yale University's Southeast Asia Studies program. Further studies in progress include the Eastern Zone, Southwest Zone, the Vietnamese, Chinese and Hill Tribe minority groups, and children.

In addition, the DC-Cam has been hosting international research specialists on the Khmer Rouge, who are preparing a number of book-length studies based in whole or in part on DC-Cam archives. The DC-Cam hopes to expand this aspect of its research work in the near future. The DC-Cam has also hosted official US and Cambodian government researchers affiliated with the search for US soldiers missing in action during the war.

Finally, the DC-Cam has been expanding its research activities to the international level, carrying out primary research expeditions to countries in the region, and presenting research results at a variety of international, legal and scholarly conferences abroad.

The Documentation Center is staffed entirely by Cambodians. Without exception, every member of the Documentation Center team began as a volunteer, gradually gaining the experience and confidence necessary to be brought on board as paid staff. The senior members of the management team thus have all worked their way up from the bottom.

The Documentation Center staff have also been cross-trained in a variety of fields, so they can back up each other as needed.

The Documentation Center relies heavily on volunteers, interns and guest researchers. Currently, some one hundred persons work in a volunteer capacity on various projects. This provides a pool of talent with gradually increasing experience in Documentation Center methodologies from which to recruit future staff members. Meanwhile, the Documentation Center's volunteers produce large quantities of output that would otherwise not be accomplished. The Documentation Center also regularly hosts interns from universities, law firms and other institutions abroad to work on specific projects, including people from the United States, Australia, Britain, The Netherlands, Thailand and other countries. In addition, many of the world's leading scholars in such areas as the Khmer Rouge, modern Cambodia and genocide studies are regularly hosted as guest scholars to pursue advanced studies in the Documentation Center archives. Finally, because of the highly technical nature of many Documentation Center activities, we occasionally retain the services of professional consultants in a variety of disciplines such as international law, architecture, remote sensing, and so on. The Documentation Center of Cambodia's staff and volunteers have discovered many difficult truths about what happened during the Khmer Rouge regime. To communicate this information to the Cambodian people, last year the DC-Cam inaugurated a publication called *Searching for the Truth*.

The Khmer-language editions of this magazine are distributed free at the commune level throughout the country, aiming to educate the citizenry about what really happened during the "Pol Pot time," and to inform the people about progress toward accountability for the atrocities of that era. *Searching for the Truth* appears monthly, with each issues containing articles on Cambodian history,



Research and publication team of *Searching for the Truth*, 2000

DC-Cam's ongoing genocide research, legal analysis, a family-tracing page, a column for public debate and photographs from DC-Cam's archives of people and places during the Khmer Rouge regime. *Searching for the Truth* is perhaps the purest expression of DC-Cam's commitment to memory and justice.

DC-Cam's quest for memory and justice has more to do with the future than with the past. It is about the struggle for truth in the face of an overwhelming power that virtually destroyed our society, a power that continues in more subtle ways to threaten our aspirations for a peaceful future. The violence of that power shattered Cambodian society and scattered the Cambodian people across the planet in a terrible diaspora. But no matter how far or near to the homeland, and whether they are survivors or the new generation born after the overthrow of Pol Pot, all Cambodians still suffer from a profound sense of dislocation. This

dislocation is rooted in a loss deeper than material deprivation or personal bereavement. It is the loss of soul, of something central to the Cambodian heart. It is a loss that can never be recovered. Thus, full healing of the wounds of genocide will require that something new is built to take the place of that which has been lost. By reconstructing a historical narrative of what happened to Cambodia, and by striving for justice where that is an appropriate remedy, we aim to lay a foundation upon which all Cambodians can find firm footing in moving toward a better future. It has been said that Cambodia will be determined one leg at a time. In the same sense, reconciliation in Cambodia will happen one heart at a time. Cambodians cannot forgive one another until they know who to forgive, and for what. DC-Cam's focus on memory and justice seeks to assist Cambodians in discovering the truths upon which a genuine national reconciliation depends.

Documentation Center of Cambodia

CONFESSION OF PANN SIM ALIAS SEL

Kalyan Sann

Pann Sim, whose revolutionary name was Sel, became a prisoner at S-21 (Tuol Sleng Prison) in April 1977 at the age of 28. He was accused of conspiring to oppose the revolution. Based on his confession found at S-21, he was born in Kanleng Chek Village, Mien Quarter, Koh Sotin District, Kampong Cham Province, Region 22. His father's name was Pann Siek and his mother's name was Launh Yim. Pann Sim became a member of the Kampuchean Labor Party in April 1970. Following battlefield work, he was appointed Secretary of Company 152, whose responsibility was to commit traitorous acts in battlefields. In April 1977, he was arrested by Angkar and transferred to Tuol Sleng prison.

Pann Sim's confession revealed that he had known Tom (Secretary of Region 22) when he was 19 years old (1967). Following the coup d'état by the Lon Nol regime on 18 March 1970, a mass demonstration broke out on 23 March. Pann Sim was then convinced by Phon and Dim to join the resistance movement. In Pann Sim's confession, Phon and Dim said, "There are no people suppressing people in a socialist society. Everybody works, everybody gets results... So everybody must have discipline." Pann Sim was admitted by Phon to the Labor Party in April of the same year,"...when Comrades Dim and Phon called on me and admitted

me into the Kampuchean Labor Party in April 1970... they hoisted a flag with signs of a sickle and a hammer and a star symbol underneath the above...then a sworn statement was read for me to hear, 'I swear with my words of allegiance under the flag and the souls of the heroes of the Kampuchean Labor Party, that if I am not loyal to, or betray, Angkar, I shall deserve to be killed by the souls of the heroes of the Kampuchean Labor Party.'" Upon becoming a member of the Kampuchean Labor Party, his first task was to serve as a messenger carrying letters from the District Office to the headquarters and from the District Office to the office of the regional messenger.

Before 17 April 1975

In early 1972, Pann Sim was in command of a company, with Chao Sieng as Secretary of the company and Chhouk Sao as Deputy Secretary. In May 1971, his company was assigned a task to complete at Chroy Ampil.

In August 1971, Angkar assigned Pann Sim to be member of the company of Koh Sotin District in place of Chhouk Sao who was to be transferred to the zone. Under the leadership of Mot, Dim and Chhean, he fought in many battles in Koh Sotin, Tonle Bit, Koh Pen, Khsach Kandal, Koh Ouknhatei, Prek Ampil, Mouk Kampoul, and Areikhsatr. He committed acts that Sim mentioned in his

confession as traitorous, such as discouraging combatants so that they lost their fighting spirit. He also allowed enemies to escape, destroyed weapons and ammunition, leaked secrets to enemies, spoiled combat strategies, caused almost every battle to fail, started disputes with the nearby Vietnamese bases, and constantly created problems.

In December 1975, Angkar promoted him to Deputy Secretary of Regiment 124, with Comrade Mit as Secretary (former Secretary of Kandal Khsach District) and Kry as Member (former Deputy Secretary of O'Reang Ov District). The new regiment soldiers were given political and technical training until the end of December 1974. In February 1975, Angkar assigned Regiment 124 to fight in battles at Prek Tasek and Prek Takong Villages, together with soldiers from the Northern Zone, who were pushing the attack from Peam Reang. Pann Sim confessed to committing traitorous acts by causing several battlefield failures.

In April 1975, seeing the weaknesses of Regiment 124, Tom gave him instructions to shift combat strategies and attack the enemy from behind by using weak forces while reserving stronger ones for an attack on Phnom Penh.

After 17 April 1975

According to Pann Sim's confession, after the Khmer Rouge liberated the city of Phnom Penh, soldiers of Regiment 152 withdrew from the city and were based at Chroy Changva in order to protect their forces, sweep out enemies in the region, and control war achievements. They then withdrew as far as Pok Russei, where they were assigned to stabilize security matters in parts of the region, sweep out enemies and evacuate people from Phnom Penh to Tonle Bit and Chi He. At that time, Sim made a plan in which he had a person named Phat destroy the evacuation plan. Phat stalled out



A prisoner thought to be Pann Sim

02165

two or three ships in the Mekong River, blocking the transport of prisoners of war.

In June 1975, Pann Sim reported to Tom about the situation in a number of districts from Koh Sotin to Lvea Em, which were encountering shortages of food and salt. In Pok Russei, for instance, people did not have adequate rice rations.

In August 1975, Angkar transferred Pann Sim from Regiment 124 and made him Secretary of Regiment 152. The position of secretary of Regiment 124 was given to another person named Pich.

In November, Tom told Pann Sim to prepare 10 warships, including weaponry, food supplies and soldiers, for fighting in the planned coup. Because the armed forces had to be able to fight on both land and water, in April and May 1976, an order was

issued for all soldiers to remain in place, avoid leaking secrets, and be ready to fight once an order was given. In December, Tom told Pann Sim to prepare a boat for him. 50-ton and 100-ton cargo ships were also to be prepared for transportation in 1977 as waterway transport cost less than overland carriage.

Angkar required Regiment 152 to build 50 transport ships, to be ready in January 1976. Pann Sim assigned Them and Yet to be responsible for a workshop to make ships. According to his confession, materials and tools in the workshop were wasted or even destroyed so as to slow down shipbuilding progress. In addition, Tom assigned Pann Sim to set up a messenger office near Chroy Changva Bridge on the west side of the riverbank to facilitate correspondence with Region 22. The office was operating as a ferry station for transport to and from Prey Sar.

In June 1976, Pann Sin imposed increased labor burdens on workers. He confessed, “I over-worked people at Prey Sar...they were rationed with two meals per day, a thin-rice gruel meal and a rice meal. Two hundred of 400 workmen fell ill each day as a result. For instance, in the past rainy season, I assigned a 30-man work force to transplant three hectares of seedlings a day. So, all of the assigned people had to work ten hours a day.”

In July, a ship was completed and waiting to be launched. Pann Sim then sabotaged the track through which the ship was supposed to be moved into the water, warping the body of the ship.

In August-September, Tom told Pann Sim to review the reserved weaponry, food, supplies and vehicles, and put the reserved soldiers on alert because fighting could break out at any place or time.

Therefore, assignments were brought under

control in order to master the situation in advance. In November 1976, Tom had Pann Sim fix a vehicle, putting it in good working order so that he could give it to Brother Phim. In December, Tom came to Pann Sim again, having him design a maritime warship made of wood, using a Chinese “Voldet” ship as a model. The ship was to be completed in January 1977.

In 1977, the ship was in the first stage of construction. Tom often went to see Pann Sim to examine the progress being made, while constantly giving him advice on reviewing the readiness of the reserved supplies and forces for the planned coup. Tom also advised Pann Sim to damage a ship so that it could not be used in seawater, adding that he wanted to spare one for his own use on the Mekong River and that he would give it back later.

The ship was tested and able to run at a speed of 40 kilometers an hour by March 1976. Khieu conducted the test run. After some additional repairs were made to parts of the ship’s body, the ship was taken to sea for a trial in the waves. Next, Angkar assigned Pan Sim to construct a sewage system, which could be used as a bridge at Chraing Chamreh. The time allowed for construction of the sewage system was 15 days. However, Angkar arrested Pann Sim at Tuol Sleng before the sewage system was completed.

At Tuol Sleng prison, Pann Sim was interrogated by Chhin of “Group A.” His signed, hand-written, 90-page confession is dated 7 June 1977. Page 3 contains a hand-written note that reads, “Keep secret.” Attached to the confession is a list of 74 names; the occupation and workplace of each person is specified.

According to the list of prisoners to “be smashed,” Pann Sim was killed on 12 December 1977, along with 300 other prisoners.

GENOCIDE SITES IN BATTAMBANG PROVINCE

Rasy Pheng Pong

DC-Cam's 1998 killing fields mapping project was conducted from 21 August to 3 December 1998 in four districts of Battambang Province: Bavel, Battambang, Sangke, and Rattanak Mondul.

Bavel District

There are two killing sites in this district, which was known as District 70 of the Northwest Zone during the Khmer Rouge regime. The first is a Khmer Rouge security office in Bavel subdistrict and a nearby orange grove, and the second site is in Kdol Taken subdistrict.

Bavel district is situated about 50 kilometers from the provincial town of Battambang. It shares borders on the east with Battambang district, on the north with Mongkul Borei district in Banteay Mean Chey province, on the south with Rattanak Mondul district, and on the west with Sampeou Poun, Phnom Srok, and Kamrieng districts.

Security Office in Region 3

The current Bavel subdistrict office is a former Khmer Rouge security office in Region 3. It lies 52 kilometers from the Battambang province office, and about 2 kilometers northeast of the Bavel district office. This office stands on a country road in Bavel 1 village.

The former security office has remained intact since the Khmer Rouge regime. It is made of wood and has separate small rooms between which there is a hallway, allowing passage throughout the entire office.

Tapp Tao, chief of Bavel subdistrict, said that prisoners of all kinds were taken to the security office. The prisoners were taken to be killed at a site



Tapp Tao

about 150 meters from the orange farm of an elderly woman named Thai Ratt, and about one kilometer from the security office. Tapp Tao added that the former Bavel subdistrict office provided treatment for frontline Khmer Rouge

combatants only. In 1978, many Khmer Rouge patients were fired on and killed in the hospital because they were unable to move. Their bodies were taken to be burned behind the hospital compound. Currently, this site houses Bavel College.

Execution Site at the Orange Farm

Gazetteer code: 020401

According to a Democratic Kampuchea map printed in 1976, this execution site is located in Bavel 1 village. Far from the town settlement and roads, this site can be accessed only in the dry season. According to readings measured by a Global Positioning System, the orange farm lies at a latitude of 10°20'25.24" and a longitude of 103°15'10.62".

The lives of hundreds of innocent families were ended at the farm. Even today, the people in Bavel district associate the place with its Khmer Rouge execution site. Physical evidence of the executions that took place here remained until the early 1990s, including large and small pits within an area of one square hectare. But the pits have gradually become invisible due to soil erosion and farming. Thai Ratt said that as a result of land disturbances, her orange trees were planted after



Thai Latt, the owner of the orange farm

1979. She had to plant the orange saplings far from one another to avoid pits and graves. Some rows are 5-6 meters apart. Her son Phon Phat said that when he cleared weeds at the farm during 1990, he found several pits, but most have since disappeared. Traces

are left of only a small number.

Information from the district office confirms Thai Latt's account that there were approximately 30 pits containing an estimated 540 bodies: male and female, young and old, at the orange grove.

Execution Site at Stung Dach, Kdol Taken Subdistrict

Executions at this site took place in 1976. According to the testimonies of the people in this subdistrict, the Khmer Rouge killed many people there. They did not bury the bodies, but instead scattered them carelessly. Uncle Uy and other villagers in the subdistrict said that wild animals, such as feral dogs and tigers, ate all the victims' bodies two or three days after they were killed. Now, nothing remains there but huge rice fields.

(Continued in February 2001 issue)



RENAKSE RECORDS

Youk Chhang

The Renakse records, unearthed by the Documentation Center of Cambodia in late 1995, are referred to by the Center as “the million documents” because they bear the signatures and fingerprints of more than one million Cambodians. Our archives house 1,738 Renakse records, including 1,250 petitions. The petitions were made in favor of a decision by the National Assembly of the People’s Republic of Kampuchea in the fifth session of its first legislature. That decision concerns genocidal crimes committed by the clique of Pol Pot, Ieng Sary, and Khieu Samphan against the people of Kampuchea between 1975 and 1979. Most of the petitions were hand written and signed or fingerprinted by individuals and farmers in solidarity groups and villages throughout the country.

Based on records at the Center, 336,868 people died during the Khmer Rouge regime. The People’s Revolutionary Tribunal prepared an official report on the death toll. *Crimes Committed by Peking Expansionists and their Stooges—Pol Pot, Ieng Sary, Khieu Samphan—Against the People of Kampuchea in the Period from 1974 to 1989*, No. 1051-83, dated 27 July 1983, was published by the Council of the Front for National Solidarity, Reconstruction, and Defense. This official report suggests that 1,166,302 people wrote petitions. Based on the petitions, it estimated that 3,314,768 people died under the regime. Its figures included 1,927,061 peasants; 505,517 workers, government employees, and merchants; 488,359 ethnic minorities; 25,168 Buddhist monks; and an additional 568,663 people who perished in the jungle due to overwork and/or starvation.

Most of the petitions are similar and describe

personal accounts and the locations of mass graves, and give the names of perpetrators. The petitions were submitted to the National Assembly of the People’s Republic of Kampuchea to support the Assembly’s decision on human rights violations carried out by the Khmer Rouge. They also requested the United Nations to seek justice for the people of Kampuchea and in the meantime, to expel the genocidal clique that was still holding Cambodia’s seat at the United Nations at that time.

Parts of the Renakse collection were catalogued and converted into a bibliographic database in 1996. Because they are a secondary priority of DC-Cam and their dates are out of the scope of our research mandate, the complete set of these records remains to be catalogued. However, they have been categorized by their district of origin and contents for preservation in boxes at the Documentation Center.

◆ You cannot be murdered twice, the first time physically and the second to have your memory killed.

(Elie Wiesel, Nobel Peace Prize Winner)

KHMER ROUGE SLOGANS FOR 1977

◆ Attack constantly with the great movement of the masses at a speed of the “great leap forward.”

◆ A clean Party means a strong party, a strong revolutionary movement.

◆ A clean Central Party [means] a strong Central Party [that] leads the revolutionary movement throughout the country with high quality.

(*Revolutionary Flag*, Issue 6, June 1977)

TEMPORARY STATUTES OF THE COMMUNIST YOUTH LEAGUE OF KAMPUCHEA OF THE COMMUNIST PARTY OF KAMPUCHEA

(An original excerpt from a notebook of comrade Iv Bun Chhoeun)

Fundamental Political Standpoints and Principles of the “CPK Communist Youth League of Kampuchea”:

1) A body of our Kampuchean revolutionary youth is called the “Communist Youth League of Kampuchea of the Communist Party of Kampuchea,” or “CPK Communist Youth League of Kampuchea.”

2) The “CPK Communist Youth League of Kampuchea” is the right hand of the Communist Party of Kampuchea, and a core strength of the Communist Party of Kampuchea. Therefore, “CPK Communist Youth League of Kampuchea” is one that actively implements all political guidelines, policies and decisions of the Communist Party of Kampuchea in all circles of Kampuchean youths, people and activities. (Article 35 of the Party’s Statutes)

3) The “CPK Communist Youth League of Kampuchea” is under the leadership of the Communist Party of Kampuchea.

4) The real nature of the “CPK Communist Youth League of Kampuchea” consists of two basic elements: a class element and a pioneer element.

a) The Party’s class element is characteristic of the nature of the proletarian class of the Communist Party of Kampuchea. Therefore, in performing and directing activities in the entire periphery of youths in general, attention must be paid to actively setting up principal objectives in all the tasks of propagandizing, education, assignment, struggling among all circles of the youth workers,

youth laborers, youth farmers, and youth students of the revolution. With these objectives, other youth circles must also be encouraged to join in implementing the tasks.

b) The Party’s pioneer element is characteristic of the most courageous, resolute, vigorous and active natures in combating, implementing political guidelines and making decisions on all kinds of work such as the revolutionary struggle, army, politics, economy, culture, social affairs, defense, correspondence, transportation, other skills and specialties, etc. All members of the “CPK Communist Youth League of Kampuchea” must have the brave revolutionary spirit, the spirit of organizational discipline, and the spirit of high self-awareness, and shall not give in to any battles at the front or at the rear, in easy or difficult times. With both these solid elements, “The CPK Communist Youth League of Kampuchea” gives impetus to intensify the current revolutionary resistance movement and is the successor to the destiny of the revolution in the future.

5) The strategic goal of the “CPK Communist Youth League of Kampuchea” shall be in line with that of the Party, that is to say, to achieve a popular and democratic revolution, then move toward achieving a socialist revolution and finally becoming a communist revolution in the future.

6) All “CPK Communist Youth League of Kampuchea” members shall learn and adhere to Mark-Leninist ideology as a base for their views and thinking by constantly following the theoretical and practical principles with regard to the Kampuchean

revolution. All “CPK Communist Youth League of Kampuchea” members shall be properly equipped with and adhere to sound and solid world views and revolutionary criticism. All “CPK Communist Youth League of Kampuchea” members shall be against any of the views and criticisms that are non-revolutionary, and shall oppose any petty bourgeoisie, capitalist, feudalistic and imperialist revolutions.

7) The “CPK Communist Youth League of Kampuchea” shall hold firm the masses’ views, and constantly and unchangeably grip the masses’ guidelines. They must believe in the strength of the masses and constantly keep pace with the masses’ revolutionary resistance movement under the leadership of the Party. The “CPK Communist Youth League of Kampuchea” shall oppose isolationism, bureaucracy-ism, absolute power and military-ism, and shall not have any such element.

8) All “CPK Communist Youth League of Kampuchea” members shall absolutely respect and follow [the Party’s] centralized democratic [principles]. All “CPK Communist Youth League of Kampuchea” members shall have high respect for organizational discipline with a sense of self-awareness. All “CPK Communist Youth League of Kampuchea” members shall absolutely have the spirit of high revolutionary vigilance, keep secrecy, cope with all destructive enemy acts and schemes, and protect the “CPK Communist Youth League of Kampuchea,” the Party, the Revolution and the people.

9) All “CPK Communist Youth League of Kampuchea” members shall take the regime of criticism and self-criticism as a means for building up internal forces, obliterating bad points, promoting good points, and helping the “CPK Communist Youth League of Kampuchea” to progress continuously.

10) All “CPK Communist Youth League of Kampuchea” members shall firmly grasp and

properly implement [the standpoints of the] revolutionary nationalism and internationalism.

Revolutionary nationalism

Revolutionary nationalism is the love for the nation based on the worker classes and the people struggling to eliminate the imperialist, invader and oppressor classes, liberating the people, and opposing the narrow-minded nationalism of the oppressor and racist castes.

Revolutionary internationalism

Revolutionary internationalism is based on international worker classes and international revolutions that support one another, oppose the imperialists and reactionary groups, liberate and protect their respective nations based on the principles of equality, and mutual respect for their independence and sovereignty. They oppose acts of mutual violations and of big nations debasing small ones.

Statutes:

1) Membership

Article 1: All progressive youths of Cambodian nationality from the ages of 17 to 30, who agree to abide by the statutes, secret plans and fundamental political guidelines of “the Communist Youth League of Kampuchea,” to join “the Communist Youth League of Kampuchea,” to live with “the Communist Youth League of Kampuchea,” to join organizational activities, and to pay a monthly contribution to Angkar, shall have the right to be admitted into the membership of the “Communist Youth League of Kampuchea.”

Article 2: Any of the progressive youths in the city worker class, city laborer class, city petty-bourgeoisie class, poor farmers’ class or farmers’ middle class seeking to be admitted into the membership of the “Communist Youth League of Kampuchea,” shall seek an introduction from two persons with no less than one month serving the “Communist Youth League of Kampuchea,” an agreement from a representative team of “the

Communist Youth League of Kampuchea,” and an approval from responsible persons in the Party’s local authority (either direct and indirect). Where there is no such representative team of “the Communist Youth League of Kampuchea,” the Party’s responsible persons [of the local authority] shall take direct responsibility for this work.

Article 3: For any of the progressive youths in the farmer middle or upper class, or city petty-bourgeoisie middle or upper class, to be admitted into membership in the “Communist Youth League of Kampuchea,” they shall seek an introduction from two persons with no less than three months serving the “Communist Youth League of Kampuchea,” an agreement from a representative team of “the Communist Youth League of Kampuchea,” and an approval from responsible persons in the Party’s local authority (either direct and indirect). In cases where there is no such a representative team of the “Communist Youth League of Kampuchea,” the Party’s responsible persons [of the local authority] shall take direct responsibility for this work.

Article 4: For any of the progressive youths in classes other than the above, to be admitted into membership in the “Communist Youth League of Kampuchea,” they shall be constantly observant during the period of their candidacy and adequately qualified to meet the membership requirements. They must also seek an introduction from two persons with no less than one year serving the “Communist Youth League of Kampuchea,” an agreement from a representative team of the “Communist Youth League of Kampuchea” and a district committee of “the Communist Youth League of Kampuchea,” and an approval from the Party Branch’s responsible persons and the Party’s District Committee.

Article 5: The requirements for admission into membership of the “Communist Youth League of Kampuchea” are as follows:

1) Be active in struggling to perform one’s tasks and having gained favor and recognition from most of the masses as a result of completing one’s tasks.

2) Be of good caste, importantly of the caste status as provided in Article 2, and then the caste status as provided in Article 3.

3) Be clean in terms of ethics and livelihood, and be politically clean and clear-cut.

Article 6: Admission into membership of the “Communist Youth League of Kampuchea” requires an induction in which one is to pledge allegiance in front of the Party’s flag by saying, “I will be loyal to Angkar, ‘the Communist Youth League of Kampuchea,’ and the worker classes. I will be loyal to and serve the revolution, and dedicate myself to the cause of revolutionary struggle, and serve for the revolution, the Party, the worker classes and the people to the utmost of my life.”

Tasks of the members of the “Communist Youth League of Kampuchea”

Article 7:

1) Make every effort to implement the political agenda and the statutes of the “Communist Youth League of Kampuchea.”

2) Mobilize youths by enticing them in terms of politics, assignment, struggle (struggle to eliminate [enemies] and struggling to build up [forces]), in all areas such as political livelihood, military, economy, culture, and social affairs.

3) Maintain, protect and strengthen the solidarity and internal unity within the “Communist Youth League of Kampuchea” and in line with the ideology, statutes, and political agenda of the “Communist Youth League of Kampuchea.”

4) Maintain all kinds of secrecy about the “Communist Youth League of Kampuchea,” either in assigning units or in work performance.

5) Maintain, protect and expand the effects of the “Communist Youth League of Kampuchea,” and then strengthen and widen the quality and quantity

of “Communist Youth League of Kampuchea” members of all ranks.

6) Perform Angkar’s regular livelihood and regularly pay the monthly contribution fee.

7) Try to study the Party’s guidelines, policies, culture and expertise so that one can have the capability to always uphold one’s revolution.

The rights of the members of the “Communist Youth League of Kampuchea”:

Article 8:

1) [Each member of the “Communist Youth League of Kampuchea” is entitled to] vote for others, or stand as a candidate for appointment and selection for admission into leadership functions at various levels.

2) [All members of the “Communist Youth League of Kampuchea” have the rights to] their own opinion, questions, criticisms, inquiries, and adoption in all matters discussed in meetings and conferences. For matters not discussed in meetings and conferences, however, [all members have the rights to] make requests, criticisms and inquiries by solely following the secret organizational networking.

3) [Each member of the “Communist Youth League of Kampuchea” has the rights to] be given attention, support and opportunities by the “Communist Youth League of Kampuchea” for self-education in all fields in order to become a good revolutionary youth.

2) Assignment

Article 9: Work assignments of the “Communist Youth League of Kampuchea” are based on the principle of centralized democracy, i.e.:

1) Everyone can share ideas and discuss things of all sorts before the collective which will make decisions on various matters.

◆ When a decision comes down from the collective, it becomes Angkar’s idea [directive] that people of all levels must absolutely follow.

◆ All members of leadership functions are chosen by means of voting. In difficult situations,

the superiors have the authority to make decisions and assignments.

2) Angkar’s assignments shall be respected in accordance with the principle of “individuals respecting Angkar,” “subordinates respecting superiors,” “minority respecting majority,” “collective leadership responsibility,” and “separate individual responsibility.”

◆ There shall be reporting from the lower levels to the top levels and vice versa by following the principle of reporting from the masses to the masses.

Article 10: The assignment network of the “Communist Youth League of Kampuchea” is as follows:

◆ Villages, quarters, streets, factories, ministries, are all considered base functions. A sub-district consists of at least three villages. A district, a quarter or a provincial town, consists of at least three sub-districts, quarters, streets, factories, or ministries. A province or a city consists of at least three districts, quarters or cities. A center consists of at least three provinces or cities.

Article 11: The assigning network of the base functions at the village, quarter, street, factory and ministry levels is as follows:

◆ Three persons or more are assigned to a group within the “Communist Youth League of Kampuchea,” which is code-named “the Communist Youth League of Kampuchea group.”

◆ Six persons or more are assigned to a group within the “Communist Youth League of Kampuchea,” which is code-named “the Communist Youth League of Kampuchea group” like above; but the group is further divided into two sub-groups; each has least three persons and is headed by a chief and deputy chief.

◆ Nine persons or more are assigned to a group within the “Communist Youth League of Kampuchea,” which is code-named the “Communist Youth League of Kampuchea group” like above; but

the group is further divided into three sub-groups, all under the control of a steering committee of the “Communist Youth League of Kampuchea.”

Article 12:

1) The “Communist Youth League of Kampuchea” holds regular livelihood meetings and conferences in the following:

Group of sub-group: one meeting every fifteen days; sub-district committee: one meeting every three months and one conference every three months; committee of district, Sangkat, and town: one meeting a month and one conference every six months; committee of provincial town and municipality: one meeting a month and one conference every twelve months; central committee: one meeting every six months and one conference every two years. Extra meetings or conferences can be held if deemed necessary. The conference or major conference is obliged to examine the foregoing activities and funds.

- ◆ Approve new work-programs
- ◆ Elect new committees
- ◆ Amend statutes and political programs (for the great conference only).

3) About discipline

Article 13: The discipline of the “Communist Youth League of Kampuchea” is to be respected and implemented on the basis of self-consciousness by its members. Therefore, it is a strict, not a lax, discipline. Every member of any level of organization who has correctly put into practice a statute of a political program of the “Communist Youth League” should be appraised and promoted according to his or her qualifications and position.

◆ Any member or organization that imposes harm to or violates a statute of a political program, duty or the rights of the “Communist Youth League” must be criticized, warned, or punished according to his or her offense.

4) About funds

Article 14: Funds and properties of the

“Communist Youth League” derive from:

◆ A contribution is to be made by every member, who is required to pay a riel a month. Those who are poor can obtain more favorable conditions; they can pay over the long or short term at the discretion of Angkar.

Expenses are to be paid in cash or equipment by members, the public or other revolutionary organizations. The management of the funds and properties of the “Communist Youth League” must be based on the principle of economization and clear instructions.

Ratification and amendment of statutes:

Article 15: These statutes are considered as temporary and for temporary implementation. Only the great conference of the “Communist Youth League” has the right to ratify or amend the statutes of the “Communist Youth League.”



COMRADE PIN'S FILE

Kalyan Sann



Comrade Pin

The man standing in the photograph above is comrade Pin, former secretary of Division 703 based in the Eastern Zone and a member of the Zone Committee. He was the second to Sao Phim (smashed). Comrade Pin accompanied Elizabeth Becker (author of *When the War Was Over*) to the Krek region of Kampong Cham province in 1978. Comrade Pin was arrested by Angkar and executed in early 1979 on a charge of treason.

The following files have been found regarding comrade Pin:

◆ File Number L257: Report

To respected comrade Saom of Office 62

Objective: About the phenomenon and activity of Division 08 (Free Group).

1) A person named Meng Nhoel: Pretended to be sick many times, did not work, and defecated on the bed several times. Subsequently, he stole. The collective drew these acts to his attention in the morning, but he continued them in the evening. After he was full, [he] threw out the steamed rice and stole food for pigs to eat. [He] associated with three other people: Ao Eng, Meng Try and Khorn Run. In secret, [he] slaughtered chickens to eat three times.

2) Khorn Run: Stole strong cords of buffalo skin used to tie up yokes, and baked them for food. [He] ate raw fish and boiled baby pig without removing the hair. He would not stop eating until he could not stand up. [He] ate much more food than rice. An 8-liter pan of soup was not enough for eight people, including [him]. [He] sneaked out of cadre meetings very often.

3) Meng Try: Stole this and that - once he stole a watch, once chicken eggs. [He] stole steamed rice and food for pigs. [He also] took a dead kitten to boil and eat. When [he] was full, [he] threw the food away. [He] pretended to be sick many times. [He] escaped from work by finding a hiding place under a house. When our comrades met him, he left for the paddy fields under the shade trees.

4) Ao Eng: Did [everything] freely. Lazy. [He] stole three chickens [and] coconuts from Cell 31 so many times that our comrades could not help arresting him. After being instructed often, he still committed the thefts.

5) Samrith Bo: Stole everyday. He stole chicken eggs, chickens, and steamed rice. He traveled by car without organizational discipline. When summoned by cadre, [he] seemed to be normal without any change of

mood and acted as if nothing happened to him.

Note: As for Unit 8, before we cooked only 30 kilos of rice, but now even 60 kilos would not be enough. [They] ate until they could not stand up. So far successive re-education has taken place, but there is no improvement. For this reason, the thing to be worked out is to get [them] out of the unit. After reviewing this report, please comrade, be informed and give your recommendation and decision.

With the highest revolutionary vigilance,

22 December [19]76

For Division Committee 703, Pin
Resolution

The following are the names of traitors:

1) Major Ung Bun Lakk, Prey Sar, has been gradually promoted by his vicious commissions.

2) Lieutenant colonel Kham Phuong, former commander of the stationary unit based in Ta Khamau. His family members are all traitors. He possesses the very nature of a vicious person.

3) Em Than, spy.

4) Kaing Kim Leang, second lieutenant of the Special Unit commanded by the contemptible It Suong.

5) Major Manh Chhuon, military commander in charge of mobilizing ordinary people to join the army.

6) Major Leang Chhang, used to fight in Germany and Europe as an ordinary soldier. He is very vicious.

7) Lieutenant colonel Sisowath Ritharavong, who possesses the nature of feudalism and is disloyal to the people.

8) Lieutenant colonel Am Sa Chen, partisan of the contemptible Sakk Sut Sakhan and contemptible Hou Hong.

9) Major Sam Sen, former soldier of Brigade 20.

10) Lieutenant colonel Tes Sa Un, partisan of the contemptible Am Ron in charge of reports on daily

military activities.

11) Major Nuon Khuch, military policeman whose family are traitors. He is very vicious.

12) Major Prak Vanna Rin of Brigade 28. He has the very nature of a vicious person and is anti-revolutionary. This contemptible person wrote biographies criticizing us.

13) First lieutenant spy Choa Yu Hor, a Sino-Khmer and fascist soldier.

14) First lieutenant Im Say, corrupted, debauched, soldier. Former traitorous teacher. His biography heavily criticizes us in terms of psychological warfare. His answers are in absolute support of the republic regime and against the revolution.

15) First lieutenant Saom Sakhom is a fascist, as is Nguon Lie Kheang. [They have] a tendency toward political war.

16) First lieutenant Lonh Mean Siravuth, who is so arrogant to us.

17) Captain Mean Miem whose family members are all traitors.

Note: The 17 elements have been examined and the party has decided to smash them. Request your comrades' implementation based on the principles of the party. June 4, 1975. Commander Pin. The following names are to be examined further:

◆ Tuok Sivantha, first lieutenant, Medical Corps

◆ Sam Nim Heng, second lieutenant

◆ Kim Try, former subdistrict chief of Chroy Ta Keo.

4 June [19]75.

◆ File J368: The confession of a Tuol Sleng prisoner named By Saret, former Political Big Cell [member] of Battalion 706, Division 703, bears a note on the cover page reading: "Already sent a copy to comrade Pin, 18 August, 7:03.

◆ File L 1371: Minutes of the meeting of the Divisional Company's secretary and deputy secretary,

held on 2 August [19]76 at 7:30.

Comrade Pin: Education has been promulgated from party members to the Communist Youth League. Two battalions haven't yet conveyed it to the public. As a result of the courses, there is general progress. However, there are some no-good elements reacting adversely. There are two individuals who have attacked our cadres on the matter of hierarchy. As for short-term rice, 193 out of the planned 300 hectares have been cultivated. Four hundred sacks of rice seeds have been sowed, of which 150 sacks are spoiled. The delay is the result of a shortage of rice seedlings. The planned 300 hectares must be achieved. It's so lucky that we have another 300 sacks left. For long-term rice, 126 hectares have been transplanted. The result of producing compost is not satisfactory. They still have grass and the terrace is uneven. And the transplanted rice seedlings are placed in lines that are too sparse or too dense. It does not match with the soil conditions.

For strong points, all cadres and combatants are aware of the instructions by the party. Weak points happen in the field of farming short-term rice. There is no real understanding. There are still obstacles. Still worse, the cadres still lack practical knowledge.

◆ File L 1449: Minutes of the Independent Divisional and Regiment Secretary-Deputy Secretary meeting held on 16 September [19]76 at 7:00.

Comrade Pin: 1) On 16 September, there was an explosion and then Cham groups began to sharpen their knives. They stopped working in preparation for rebellion against the Khmers. 2) Eight people were on a boat traveling to Koh Tral. They were brought back to the base.

◆ File L 1451: Minutes of the Divisional and Regiment Logistics Secretary meeting held on 2 August [19]76 at 7:00.

Comrade Pin: 1) The enemy situation on the night of 16 September. At the Industrial Development, there were people trying to approach the house of Brother Say. [We] tried to surround [them] but [they]

managed to escape. 2) Cultivation situation: For the planned 300 hectares of short-term rice cultivation, 301 hectares have been transplanted.

◆ File L 1500: Minutes of the Independent Divisional and Regiment Secretary-Deputy Secretary meeting held on 19 October [19]76 at 14 hours.

Comrade Pin: [I am] in total agreement with the issue of traitors and the measures taken by the party. The reason for the treason arose from hierarchical conflicts. Despite their experiences, the traitors took an absolute stand. They still went on with their acts, although their leadership had already been arrested. As to the matter of controlling the unit, after the training courses and successive screening, the party is safeguarded. They still have some jabbering elements, thieves and pro-rank elements, even though 80 have been arrested. These elements have no possibility of continuing with the revolution, as they have no clear-cut stand in favor of the revolution. A regimental cadre has a disagreement with his superior. When the collective re-educated him, he pretended to be joking.

KHMER ROUGE DEFINITIONS

(Excerpted by Sokhym Em)

- ◆ To criticize: To sincerely advise, remind, and refresh your comrades, both in terms of good points and bad points.
- ◆ Self-criticism: Raising one's own weaknesses and strengths to your comrades and asking them for heart-to-heart recommendations on the road to self-improvement.
- ◆ Active: Working promptly and with attention.
- ◆ Conference: A meeting scheduled for the discussion of a particular issue.

KHMER ROUGE LAW

Youk Chhang

On Friday, December 29, 2000 the National Assembly of Cambodia discussed and ratified the draft Law on the Establishment of Extra-ordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed During the Period of Democratic Kampuchea.

The draft law consists of 18 chapters and 47 articles. Chapter one—general provisions—was approved on the same date. Article one states: “this law is established for the purpose of bringing to trial the senior leaders of Democratic Kampuchea and those persons who are most responsible for the serious crimes and violations of Cambodian criminal law, international humanitarian law and international custom, and international Conventions

recognized by Cambodia, and which were committed in the period from April 17, 1975 to January 6, 1979.” Other chapters and articles were adopted on Tuesday, January 2, 2001. After ratification by the National Assembly, the draft will be the subject of discussion by Cambodia’s Senate and Constitutional Council. The draft will be finalized and confirmed by the signature of the King before an official agreement on legal procedures between the United Nations and the Royal Government of Cambodia.

The Documentation Center of Cambodia has transcribed the entire debate of the draft law at the National Assembly and has made it available on a special web page.



Ieng Sary

Pol Pot

ETHNIC CHAM UNDER DEMOCRATIC KAMPUCHEA

Osman Ysa

Among the individuals and religions harmed and/or destroyed by the Khmer Rouge, the Cham and Khmer Muslims suffered the most. The regime's almost two million victims include approximately 400,000 to 500,000 ethnic Cham. This figure was cited by Zakariya Adam, who saw the statistics compiled by royal official Res Lah, former director of Islam in Cambodia during the Sangkum Reastr Niyum (Popular Socialist Community) and Khmer Republic. According to Van Math, who saw the statistics compiled by general Les Kosem, a researcher on ethnic Cham prior to 1975, and the memories of most of Cham leaders living in Cambodia, about 700,000 Cham people lived in Cambodia before 1975 (ten percent of the country's population). After the fall of the Khmer Rouge regime in 1979, Ney Pena, author of *The Collapse of Pol Pot's Genocidal Regime*, published in 1991, only 200,000 remained alive. Ben Kiernan's 1996 book, *The Pol Pot Regime*, however, suggests that the number of Cham in Cambodia fell from about 250,000 in 1975 to about 173,000 in 1979.

My research parallels Kiernan's and concurs that in 1979, 200,000 Cham remained in Cambodia, but disagrees on the number prior to 1975. According to Khmer Rouge telegram number 15, dated 30 March 1975, more than 100,000 Cham were left in the Eastern Zone after 50,000 had been relocated to the Northern Zone. One can thus deduce that 150,000 Cham inhabited only part of Kampong Cham province. Given the number of Cham in other districts of Kampong Cham and other provinces and cities, the total figure for 1975 increases to one well

above that determined by Kiernan. It approaches the number claimed by Res Lah and Les Kosem, which is also the figure held in the memory of almost every Cham: 700,000.

The following is a list of Cham families who disappeared from some villages in Cambodia:

◆ Svay Khleang Village prior to 1975: 1,240 families; post-1979: 120 families.

◆ Akmok Village prior to 1975: 1,100 families; post-1979: 100 families.

◆ Chroy Changvar Kraom (Ek Raingsei Mosque) prior to 1975: 1,000 families; post-1979: 30 families.

◆ Samrong Village prior to 1975: 40 families; post-1979: 6 families.

◆ Trapeang Chhouk Village prior to 1975: 250 families; post-1979: 200 families.

◆ Daun Pen prior to 1975: 150 families; post 1979: 100 families.

◆ Koh Phal Village prior to 1975: 1,864 families; post-1979: 180 families (no valid figures were available from family books).

Even worse, almost all of the Cham residents in nine villages were slaughtered. The number of survivors fell so sharply that they decided to abandon their homesteads and migrate to other villages. These former villages, which are farmland today, are: Bay Kay, Lvea Em district; Po Tonle, Koh Thom district, Kandal province; Koh Prak, Cham Ka Sam Sep, Kra Kor, Koh Roka, La-ang, Kampong Siem district, Kampong Cham province; Khvav, Prey Chhor district, Kampong Cham; and Tuol Leang, Baray district, Kampong Thom

province.

To help eliminate the religion, traditions, and customs of the Cham, the Khmer Rouge selected the poorest and lowest social status Cham in a village to be its leaders. Their aim was to keep track of and execute Cham and, with a view to exterminating their religion and traditions, to drive a wedge between individual Cham so they would turn each other in to the authorities. Obviously, mosques were closed down, while Zakats celebration and other ceremonies were highly discouraged, as were prayers and the priesthood. Still worse, Korans, other holy books, sarongs, and turbans were collected. The Khmer Rouge also forced Muslims to eat pork and women to cut their hair short, and banned the traditional head scarf. However, the goals of the Khmer Rouge were not completely achieved. Him Leh, the Khmer Rouge-nominated chief of Po Tonle village, encouraged Cham to flee to Vietnam. As a consequence, he was imprisoned for more than one year. Math Ly, chief of Tbong Khum district, decided to flee into the jungle as he did not want to view the mistreatment of the Cham. When ordered by the high-level organization to shut down mosques, Sman Kade (the leader of Svay Khleang village) and Res Tort (chief of Koh Phal village) incited Koh Phal villagers to rebel against the Khmer Rouge.

The following radical Cham leaders were executed under the Khmer Rouge regime:

1) Haji Royal Official Res Lah, Director of the Muslim-Kampuchea [Association], arrested in 1975 in Mesar Prachan village, Mesar Prachan sub-district, Peareang district, Prey Veng province;

2) Haji Sulaiman Shukry, First Deputy Director of the Muslim [Association], arrested in 1975 in Kohe village, Rokar Kaong sub-district, Muk Kampoul district, Kandal province;

3) Haji Math Sleth Slaiman, Second Deputy Director of the Muslim [Association], arrested and killed in 1976 in Bak Rotes village, Prek Luong

district, Ek Phnom district, Battambang province;

4) Haji Math Liharoun, Director of Muslim-Kampuchea, arrested in 1975 in Cham Leu village, Prek Thmei sub-district, Koh Thom district, Kandal province;

5) Haji Srong Yusuf, an Islamic leader educated in Egypt, arrested and executed in 1975 in Mesar Prachan village, Mesar Prachan sub-district, Peareang district, Kandal province;

6) Toun Haji Ly Mussa, professor educated in Malaysia, executed in 1975 in Krauch Chhmar district, Kampong Cham province;

7) Man Set, Director of Muslim Youth (place and exact date of arrest and execution unknown);

8) Toun Haji Yusuf Avny, a professor educated in Saudi Arabia, arrested in 1977 in Pongro Ling village, Bak Snar sub-district, Baray district, Kampong Thom province;

9) Toun Haji Mohammad Kaji bin Mussa, advisor to the director of the Muslim [Association], arrested in 1974 and executed in 1975;

10) Toun Sulaiman bin Yusuf, professor educated in Egypt, arrested in early 1974 and executed in 1975 in a prison at Krauch Chhmar district, Kampong Cham province;

11) Toun Yakaup, a professor, arrested in early 1974 and executed in 1975 in a prison at Krauch Chhmar district, Kampong Cham province;

12) Toun Ismael Flahy, a professor, arrested in 1978 in Porpreng village, Porpreng sub-district, Chamkar Leu district, Kampong Cham province;

13) Toun Seh No, professor, arrested in 1978 in Svay Teap village, Svay Teap sub-district, Chamkar Leu district, Kampong Cham province;

14) Toun Eh Math, professor educated in Malaysia, arrested in 1975 in Porpreng village, Porpreng sub-district, Chamkar Leu district, Kampong Cham province;

15) Toun Haji Mohammad Ali, a professor educated in Saudi Arabia, arrested in 1974 in Akmok village, Cheyuau sub-district, Chamkar Leu

district, Kampong Cham province;

16) Toun Haji Mohammad Tort, advisor to the director of the Muslim [Association] (no place or exact date of arrest);

17) Toun Haji Itris, advisor to the director of the Muslim [Association] (no place or exact date of arrest);

18) Haji Math Sen, professor (no place or exact date of arrest)

Some high-ranking Cham officials who died



Res Lah



Haji Srong Yusuf



Sulaiman Shukry



Math Sen



Math Sleh Slaiman



El Brahimi

under the Khmer Rouge regime were:

1) El Brahimi, Colonel of the Royal Military Police of Muk Kampoul district, deceased in Kandal province;

2) Math Slaiman, Colonel, commander of Brigade 5;

3) Chek Brahimi, Lieutenant Colonel, commander of Battalion 182, died at Office S-21 (Tuol Sleng);

4) Ungkary Dauman, Lieutenant Colonel, Third Bureau of General Staff;

5) Aus Slaiman, people's representative;

6) Haji Saleh Yahya, senator who died at Office S-21 (Tuol Sleng);

7) Ibrahim En Nhoul, leader of the FULRO Movement;

8) Soh Man, chief of the Cham Movement, died in Tbaung Khmum district, Kampong Cham province.

Before 1975, it was common for Cham villagers in Kampot, Sihanoukville, the Kampong Luong and Ponhea Leu districts of Kandal province, and Chrang Chamreh adjacent to Phnom Penh to speak both Khmer and Cham. However, in 1975, the Khmer Rouge absolutely prohibited conversing in the Cham language, and executed many old villagers, religious leaders, and teachers who spoke Cham. As a result, Cham living in these areas can no longer speak their own language, and after 1979, many young Cham had no knowledge of the Cham language.

In addition, the Khmer Rouge made every Cham, both young and old, change his or her name. The Khmer Rouge largely succeeded in this respect. However, the Khmer Rouge were not able to achieve their goal completely. In reality, when Cham relatives or family members were able to meet and talk with one another, they still used their original names. Also, young Cham often found it difficult to remember their new names and thus continued to use their birth names. The Khmer Rouge were not

able to achieve their principle one hundred percent. In a situation where there were few people, once Cham relatives or family members had a chance to meet and talk to each other, they still could use their own original names. As often as not, young Cham found it harder to remember their new names. Therefore, they had to use their original names, like it or not.

Cham people throughout Cambodia were relocated and separated into small cells of four or five families. Some were made to live in cottages far from their villages, while others were sent to live in Khmer communities. The separation and relocation resulted Angkar's categorization of them as "enemies of first type" (presumably those perceived to be against the revolution), "enemies of second type" (those who supported traitorous forces), and "enemies of third type" (the lowest class in a village). Enemies of these three types were portrayed as "new people," who would suffer more mistreatment than those labeled "old" (those living in Khmer Rouge-liberated zones before 1975). Given the experiences of Svay Khleang and Koh Phal villages, where insurgencies occurred in September 1975, such deportation was a policy set up with the purpose of suppressing Cham villagers from rebellion.

The aim of the Khmer Rouge was not only to eradicate Islam, but also all other religions, which they perceived as reactionary. However, the implementation of actions aimed at sweeping out Cham and their religion was the Khmer Rouge's primary goal. Sos Kamry was assigned by Angkar to take care of 400 children in Chey Yo sub-district, Chamkar Leu district, Kampong Cham province because the Khmer Rouge did not know his ethnicity. One day in 1977, Sos Kamy was summoned to a secret meeting held in Bos Knhaor village, 1st sub-district, Chamkar Leu district, Kampong Cham province. The meeting, attended by 40 people whom Angkar trusted, talked about plans

to smash enemies. Sos Kamry heard people saying, "Enemies of the revolution are of numerous types, but the big enemy is the Cham. Thus, adhering to the plans, all Cham must be smashed before 1980." Some time later, Sos Kamry read a book entitled *The Advanced Cooperative Plan*, in which he found a phrase declaring: "The enemy before us is Cham. Therefore, they must be smashed before 1980." Pieces of evidence in certain places show that the Khmer Rouge intended to discriminate against Cham (e.g., Trea village, Kroch Chhmar district, Kampong Cham province). Early in 1976, the Khmer Rouge congregated those found guilty into a house mixed with Khmer people. All prisoners were asked only one question: "Are you Cham or Khmer?" Those who identified themselves as Cham went to one side, and Khmers the other. Finally, nearly all of the approximately 100 prisoners of Cham ethnicity disappeared. A women named No Satah claimed that she survived because she lied to the Khmer Rouge, telling them she was a Khmer.

Cham in most parts of Cambodia were killed. In addition, most Cham in Kampong Cham were relocated to malaria-prone areas within their own or Kampong Thom province.

A number of Cham and Khmer who lived in or near Phnom Penh were relocated twice, first from Phnom Penh to the districts of Sa-ang, Koh Thom and Muk Kampoul on April 16-18, 1975, and after three or four months, again to Preah Vihear and Battambang provinces. Most Cham in Prey Nup district of Kampot province (the present-day Prey Nup sub-district, Sihanoukville) were evacuated to Kampong Speu and Kampong Chhnang provinces. Cham who lived around the Kampot provincial town were deported to the Touk Meas and Chhouk districts of Kampot. The alleged executions of 400,000 to 500,000 Cham occurred throughout Cambodia. It may be possible to conclude that each of the country's mass graves include the bodies of Cham.

Cham Muslims Imprisoned at Tuol Sleng (S-21) between 1975-1979

Name	Taken from	Date of entry	Date of smashing	Source
Chek Brahim	Koh Thom, Kandal	24-1-76	26-5-76	D21897
El Man	Division 310	7-12-77	9-12-77	D21898
El Man	301st Battalion	30-4-77	8-?7-77	D21898
Him Man	Sa-ang, Kandal	22-7-75		D02673
Him Put	S-21 Kho	27-3-77	13-4-77	D21898
Ismael Ahmad	Sting Trang, Kampong Cham	2-1-77		I08450
Kaup Him	Region 505	27-12-78	31-12-78	D21899
Keo Ibrahim	Kampong Cham			K05839
Kufi	Battambang			K06975
Lep Math	Kampong Cham	12-2-77		I09797
Ly Leh	Division 290	28-8-77	15-10-77	D21898
Mae Math	Factory K1	4-1-77	18-10-77	D21898
Man Math	State Commerce	?-10-75		I09069
Man Sim	Division 310	4-12-76	17-3-77	D21898
Man Tech	S-21Kho	17-6-78		K02614
Man Ya	Kampong Cham	?-7-76		I09371
Math El	Battambang	13-2-76	10-6-76	I09197
Math Leh	Kampong Cham	27-1-78		D02661
Math Loh	Kampong Cham	13-2-76		K05804
Math Loh	Kampong Cham	10-2-76		I09197
Math Man	Northeastern Zone	25-10-77	4-11-77	D21898
Math Sah	Pochentong	27-3-76	27-5-76	D21897
Math Tam	S-21		27-8-77	D21898
Maut Hiet	Battambang	19-6-78		K04373
Mohammad	Kandal	5-1-76		K06688
Roun Math	Koh Thom, Kandal	?-9-75		D02674
Sa Loh	Hospital P260		3-8-77	D21898
Sa Math	Eastern Zone	28-8-78	2-9-78	D21899
Sa Math	Koh Thom, Kandal	?-11-75		D02676
Saleh Hiet	Battambang	18-6-78		D02681
Saleh Yahya	Muk Kampoul		2-5-76	D21897
Samas Karim	Prek Phneou	8-1-76	27-5-76	D21897
Sim Mel	S-21 Kho		30-4-78	D21899
Sman Ny	S-21	28-6-77	29-6-77	D21898
Sman Sleh	Koh Thom, Kandal	?-11-75		D02676
Sman Sok	Office V 66	5-6-77	3-7-77	D21898
Soh	Kandal			K05756
Soh Math	Water Truck	15-6-77	3-7-77	D21898
Soh Tort	Kampong Cham	12-1-77		I08540
Tep Yunus	Kampong Som	20-5-76	10-6-76	D21897
Ya Man	S-21Kho		27-8-77	D21898
Yeu Math	S-21	22-2-77	12-5-77	D21898

(Continued from the December 2000 issue)

The culprits belonged to Division 170, a unit formed after April 1975 out of Division 1, who had been recruited in the Eastern Zone during the civil war. At the time of the explosions, elements of the division were stationed on the outskirts of Phnom Penh, where its soldiers were assigned to growing rice—a task many of them found demeaning. In keeping with S-21 practice, which it shared with police operations everywhere, the culprits were pressed to implicate their superiors. Suspicions soon coalesced around Chan Chakrei, a flamboyant Eastern Zone military figure and former Buddhist monk who was acting as Division 170's political commissar. Chakrei, thirty-three years old, was also deputy secretary of the newly formed national army's general staff, working under Son Sen.

Chan Chakrei had switched sides at least once before; he had come under CPK scrutiny in 1975.

Arrested on 19 May, he was designated in S-21 documents by the Roman numeral I, at the head of the “string” of alleged conspirators that ran to twenty by the end of the year. In the course of a four-month interrogation he confessed to links with the Lon Nol regime and to membership in the Khmer Serei, a quasi-military, anti-Sihanouk movement based until 1975 in South Vietnam. He also claimed to have planned to assassinate Sihanouk and to poison the “upper brothers.” In the wake of Chakrei's arrest, Ly Vay, the deputy secretary of Division 170 (Number II), was hauled in. In his confession, Ly Vay spoke vaguely of “wanting to

disrupt security in Phnom Penh.” Chakrei, for his part, implicated Ly Phen (Number IV), the political commissar of the Eastern Zone armed forces, Ros Phuong of Division 170 (Number VII), and Suas Neou (alias Chhouk, Number VIII), the secretary of Sector 24 in the Eastern Zone. Ly Phen was arrested in June 1976, Ros Phuong in July, and Chhouk in August.

Chhouk was a long-time protégé of the Zone secretary, Sao Phim, a senior revolutionary who was close to the Party Center but already suspected of disloyalty because of his friendly relations, dating back to the 1950s, with Vietnamese Communist cadres. Sao Phim at this time belonged to the so-called Center Military Commission (*kanak kammatikar santesuk -yothea*), which allegedly set policies for purges in DK.

Chhouk's confession was of special interest to the Party Center because of his connections with Sao Phim. A passage dated 28 September 1976—which may



VOICES FROM S-21

Chapter Three: Choosing the Enemies David Chandler

of course be fictional, like so much of the archives—suggests that Sao Phim had prepared him for the possibility of interrogation. We know from Phuong's 1978 confession that Chhouk's arrest in 1976 had been delayed until Sao Phim returned from a mission to China, so a briefing may well have taken place. The passage reads:

“During the second stage when the Party interrogated me using torture [Chhouk wrote] I stuck to Brother [Sao] Phim's instructions by agreeing to implicate Keo Meas. [The Organization] still did not believe me, since I could not provide exact answers about treasonous activities, I did not

know where any Party Center standing committee traitors were. I did not know how many there were...or how they acted. I implicated Keo Meas but I didn't know where he was. I implicated Vietnam, but incorrectly in the details. Then my situation gradually deteriorated as the Organization asked to uncover the apparatus leaders. I tried to evaluate and balance between two things: Who was stronger, my group or the Party?...I stuck to the hope that no matter how the security people educated and questioned me I could protect the treasonous elements [of Sao Phim], evade up and down to implicate the Hanoi group, the old resistance group and miscellaneous small elements. But because of the Party's inspired judgment, the Party refused to accept my reports, saying they were unclear and asking me to do them again. This was the final word of the Party, asking me to reconsider. Then...even if I was to lose my life, I was determined to answer the Party truthfully about [Sao Phim's] treason....I pledge absolutely to follow the Party's road."

Purging Senior Cadres, 1976

Those besides Sao Phim implicated in Chhouk's confession included three senior Party figures: Ney Saran (alias Ya, Number IX), the secretary of the Northern Zone; Keo Meas (Number X), a veteran revolutionary then under house arrest; and Non Suon (alias Chey, Number XII), who was serving in effect as DK's secretary of agriculture.

They were not informed of the Party's suspicions, of course, and for the time being they remained at large. In July and August the CPK convened meetings to acclimatize Party members to its Utopian Four-Year Plan, scheduled for promulgation in September. In that month, Ney Saran and Keo Meas were brought into S-21. Non Suon was arrested at the beginning of November.

These three men had much in common with each other. Aside from their age, they had almost nothing in common with Pol Pot. They had joined the anti-French resistance in 1945 and 1946. They

had learned about Marxism-Leninism from Vietnamese Communist cadres or from Cambodians trained in Vietnam. None of them had studied in France. Unlike Brother Number One and Two, Non Suon and Keo Meas had operated in the open in the 1950s; Ney Saran had taught at the same school as Saloth Sar. Keo Meas had twice run as a radical candidate for the National Assembly, and Non Suon had been imprisoned by Sihanouk in 1962. Both men had joined the Party's Central Committee in September 1960, alongside Saloth Sar, whom they knew well.

In 1963, Ney Saran and Keo Meas had joined Pol Pot and a handful of others in Office 100, the Vietnamese base on the Cambodian-Vietnamese border, where they remained until 1965. From then on, their paths diverged. Non Suon, released from prison in 1970, joined the *maquis* near Phnom Penh, Ney Saran became a military leader in the northeast, and Keo Meas worked in Beijing and Hanoi on behalf of the United Front government in exile. When he returned to Cambodia in 1975, Keo Meas, probably suspected of being pro-Vietnamese, was placed under house arrest.

At S-21, the three were accused of having formed the Workers' Party of Kampuchea (WPK) to oppose the CPK from within. Belonging to WPK, it seems, was shorthand for treason committed by CPK members after Pol Pot had been brought into the Party Center in 1960. In 1977 and 1978, the dissident "party" became the focus for accusations leveled at many prisoners at S-21. The party was a moving target, and WPK had the same portmanteau usefulness as "CIA" or "KGB." Because WPK was seen as a permanent source of enemies, its leaders were always said to be at large. In July 1978, for example—almost two years after Keo Meas had been arrested and put to death and a month after Sao Phim had killed himself—Pon wrote in his notebook: "Find the leaders of the WPK. This is crucial."

Ironically, as many high-ranking prisoners knew perfectly well, Pol Pot's own party had chosen the Workers' Party of Kampuchea as its name in 1960. Although the name change had probably been approved, if not imposed, by the Vietnamese, there is no evidence that a rival party using this name was ever established. Instead, the Party was known as the WPK until mid-1966, when Pol Pot, again in secret, renamed it the CPK.

Despite these contradictions, the idea that Keo Meas had founded a concealed party called the WPK was still current in 1978, when Von Vet, the deputy prime minister, was arrested and wrote in his confession that "The subversive party was put together with the help of the Vietnamese, who had Keo Meas create it so that the Vietnamese could build up their forces in Kampuchea. The important CIA people joined this party. In form it belonged to the Vietnamese, but [in] reality....it belonged to the

CIA. It took the form of the Communist Party in order to proceed with its work."

Keo Meas and Ney Saran were arrested in a bewildering sequence of events that began in August 1976, when the CPK's Four-Year Plan was discussed at a cadre meeting, and closed in October with a controversy over the founding date of the CPK, manipulated by the Party Center, that was resolved in Pol Pot's favor. Taken together, the events and arrests marked a turning point in the histories of DK and S-21.

By the end of the year, perhaps as a result, the Party Center's pronouncements had become pessimistic and bellicose. By the beginning of 1977, purges reached the central nervous system of the CPK. For these reasons, the sequence of events that occurred from August to October 1976 must be set out in detail.

(Continued in the February 2001 issue)

S-21 youths practicing martial arts



VICTIMS AND PERPETRATORS

THE TESTIMONY OF YOUNG COMRADES AT S-21



Meng Try Ea and Sorya Sim

Were the young comrades of S-21 perpetrators or victims? How were they perpetrators, and how were they victims? This paper argues that the S-21 young comrades must also be seen as victims of the Khmer Rouge regime, which contrasts with the traditional view that they were simply perpetrators. These comrades worked in the most secret and systematic execution center of the regime, and oversaw the execution of some 20,000 people. This paper posits that innocent boys from Region 31 were

transformed into young revolutionaries, and finally became S-21 young comrades.

Child cadres in Region 31 (Kampong Chhnang province) Damban Samsep Muoy, Khet Kampong Chhnang, joined the Khmer Rouge revolution under the command of the mighty village and district chiefs. They were not told where they were going or what they would be doing. They were indoctrinated to hate their parents and to love Angkar boundlessly. They were robbed of their childhood.

Child cadres from Region 31 became slaves to a revolution they could not escape. They endured horrible conditions, and many of them did not survive the experience. Those who did survive bear physical and psychological scars from which they will never recover. In each of these ways, the young comrades of S-21 fell victim to the Khmer Rouge revolution.

INTRODUCTION

The infamous Khmer Rouge S-21 prison was located in the southern part of the capital of the Phnom Penh, in Tuol Svay Prey sub-district. S-21 stands for “Security Office 21.” A former school known as Tuol Svay Prey, it was converted by the Khmer Rouge for use as the headquarters of their secret police organization, the Santebal. It functioned mainly as an interrogation and torture facility.

The prison was used to uncover suspected enemies of the party from throughout the country, as

well as those from foreign countries. Several annexes of the main S-21 facility at Tuol Sleng were also part of the headquarters complex, including a training school in Ta Khmau called S-21 (*kor*), a colonial-era prison in Dang Kor District which was called Office 24 or S-21 (*kh*) and was used as a prison farm and reeducation center, a place called Boeung Tompon about five kilometers south of Phnom Penh used to raise animals, and a large execution site eighteen kilometers west of Phnom Penh known as Cheung Ek, or S-21 (K).

Established in May 1976, S-21 employed a total of 1,685 cadres in four categories:

1. Internal Forces -141
2. Officers - 148
3. Interrogators-54
4. Capable Workforce-1,377.

The prison workers were carefully selected, and had to have good “revolutionary” biographies and a firm political background. The Khmer Rouge recruited workers for this crucial state institution from all around the country, and for the most part, they were children.

This paper examines a group of children under 18 years old who were recruited from Kampong Chhnang province, some ninety kilometers north of Phnom Penh. In the Khmer Rouge time, this area was known as “Region 31,” encompassing several districts, including Samokki Mean Cheay (called District 12 in the Khmer Rouge time), Kampong Tralach (District 18), Rolea Pier (District 20), Toek Phos (District 14), Kampong Leng (District 16) and Barihor (District 10).

The guards, interrogators and other staff at the infamous Khmer Rouge S-21 prison, are almost always depicted as heinous perpetrators of the Cambodian genocide. But it is rarely recalled that many, perhaps most, of these Khmer Rouge cadres were in fact children. They were deprived of their innocence and thrust into a world that none of them could have imagined, and few would have chosen.

Therefore this paper argues that these “child soldiers” of the Khmer Rouge revolution must be viewed not just as perpetrators, but also as victims of the Khmer Rouge revolution.

It first examines the views of psychologists regarding children, their malleability, and the damage that can be inflicted upon them by trauma at a tender age. It also examines the work of scholars



whose studies reveal that the Khmer Rouge purposely selected children to be the vanguard of their revolution because they are so easily shaped. Last it shows how many of these children fell victim to the Khmer Rouge.

School-aged children in Khmer Rouge Region 31, like children everywhere, wanted only to play with toys and chase one another in the fields. But

they were manipulated and forced to join the Khmer Rouge revolutionary armed forces. They were assigned to join village militias and become district cadres. After gaining some experience, these youthful village and district cadres were assigned by their village and district chiefs to leave their homes and their parents to work for the “Party Center.”

These child cadres were deceived by their local leaders, and sent to nearby villages for study. Some, unwilling to leave their families, were forced to go. They were told to pack and leave in the middle of the night. These child cadres had no idea where they were going or what they would be doing. They left their home villages filled with suspicion and fear. After leaving their homes, the child cadres were sent to a military training school at Ta Khmau. There they were trained in military arts, and required to work very hard, day and night. They suffered from all manner of illnesses due to rations consisting mainly of banana stalks and papaya trunks. They were reduced to eating insects in order to survive.

The child cadres were indoctrinated to love the Khmer Rouge and hate their own parents. They were indoctrinated into the Khmer Rouge ideology, emphasizing love of their work and love for the Khmer Rouge organization. They were being turned into revolutionaries, and being prepared to serve as prison guards, interrogators, prison support staff or whatever other work the party specified.

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2001 issue)**



“THE NUMBER”—QUANTIFYING CRIMES AGAINST HUMANITY IN CAMBODIA

Craig Etcheson

Introduction

1999 was the fifth year of the Documentation Center of Cambodia’s (DC-Cam) Mass Grave Mapping Project, and this report describes the fieldwork in those efforts. This year’s report details missions by DC-Cam Mapping Teams to twelve of Cambodia’s twenty-one provinces: including Banteay Meanchey, Kampong Chhnang, Kampong Speu, Kampong Thom, Kandal, Kratie, Phnom Penh, Prey Veng, Siem Reap, Takeo, Monduliri and Ratanakiri provinces. Thus the report covers all corners of Cambodia, from the densely populated south to the jungle-clad north, from the remote reaches of the east to the far western rice bowl, and provinces in Cambodia’s heartland around the Great Lake.

As in previous years’ work, there is a depressing uniformity of findings. Witnesses testify to torture and murder on an astounding scale, and remains of mass graves and former Khmer Rouge prisons provide their own mute testimony, littering the countryside as physical evidence of these crimes. It happened everywhere, and it happened in much the same way across the country. This confirms that the Khmer Rouge terror was both massive and systematic, which meets one of the key criteria in the definition of crimes against humanity. A brief review of some of this year’s findings drives home this stark reality.

Torture

Historian David Chandler recently published a masterful new work, *Voices from S-21: Terror and History in Pol Pot’s Secret Prison*. In assessing his subject, Chandler argues that “torture was one thing

that made S-21, the headquarters of the Khmer Rouge secret police, unique in the nation-wide network of Democratic Kampuchea’s internal security centers.”

Thousands of men and women charged with lesser offenses or imprisoned as class enemies succumbed to malnutrition, illness, and savage treatment in provincial prisons, but in general these people were not tortured to produce evidence of their crimes.

The evidence generated by interviews with hundreds of witnesses to events at these same provincial prisons, gathered over the last five years by DC-Cam investigators, does not always correspond with this conclusion. Indeed, various forms of torture seem to have been common at most of the zone, region and district-level prisons operated by Khmer Rouge security forces throughout Cambodia, and sometimes it was used to extract admissions of guilt from the prisoners. The 1999 data bear this out.

For example, in Kratie Province, witnesses told of severe torture employed to produce evidence of “crimes.” At Veal Kchoeng in Kratie Province, Mr. Th Nhi describes having seen prisoners tortured to extract “answers” from them, adding that the guards beat the victims “like cattle.” At Prek Koun Nge, he said, prisoners “were beaten to [make them] confess.” A second witness, Mr. Poeng Vin, confirmed that at this site prisoners would be “beaten to force a confession.” Another method of torture in this region, according to Mr. Nhi, was to bury prisoners alive up to their necks in the earth. At another location in Kratie, prisoners at the Kanh

Chor commune prison were tortured; Mr. Yoeun Chhoeun describes how he himself was “physically tortured” until his ribs were broken. He also recalls that many prisoners were starved to death. Mr. Paong Bopha Rith relates how young prisoners at Ro Leak Village prison were “seriously tortured” before being executed. Mr. Heng Be of the same province described prisoners at Prek Kaun Nge prison as having been “severely tortured” before being taken away for execution.

Witnesses who were detained by the Khmer Rouge in Kampong Thom Province at two different prisons there, Tradet and Wat Baray Choan Dek, testified that they were beaten so savagely by guards that their ribs were broken. Given their continuing ill health, the beatings may also have inflicted various internal injuries on these victims. As with so many who experienced the inside of Khmer Rouge prisons, they still bear scars on their legs, from the deep wounds caused by crude shackles which restrained them, in itself a form of torture. The same story of brutal beatings by guards is told by Mr. Cap Bun of Kampong Thom Province, who relates how guards at Tradet prison also beat him so severely that he coughed up blood. In Siem Reap Province, it was the same. Mr. Aun Soeun of Banteay Srei Sub-district described prisoners who were tied up and tortured at Wat Tbeng.

One peculiar form of torture seems to have been inflicted merely for the sake of tormenting the prisoners, as recounted by a woman who was held in a facility at Wat Khnol Roka in Kandal Province. Ms. Pal Ran describes how during her imprisonment, “Sometimes, while the prisoners were sleeping on the bamboo floor, the Khmer Rouge bayoneted them from below, injuring some in the back or in the feet, causing very painful wounds.” Unsurprisingly, she remembers the Khmer Rouge cadres in charge of the prison as being “very cruel.”

As data continue to be collected from sub-districts all around Cambodia, more and more often

people are also testifying to rape and other forms of sexual violence inflicted on female prisoners by the Khmer Rouge. For example, in Kampong Chhnang, at a site called Prey Trapeang Ampil, the witness Bin Met asserted that Khmer Rouge cadres routinely raped the women prisoners before killing them. This, too, can only be classified as a type of deliberate torture.

It may be correct, as Chandler asserts, that torture for the purpose of extracting confessions was not used as systematically in the lower-tier facilities of the Khmer Rouge prison system as it was at the apex of the system, S-21. It appears that in many cases torture may have been more commonly used at these lower-level prisons simply as a method to inflict suffering upon “enemies,” or to bring about their deaths. And it certainly seems to be true that the methodology of torture was much more highly refined at S-21 than it was in the lower tiers of the Khmer Rouge extermination apparatus. More often than not, torture at the zone, region, district, commune and village-level prisons was done with the bare hands or with simple wooden or metal implements, beating the prisoners until they were bleeding and senseless, or dead.

Again and again in accounts of life and death in the lower levels of the Khmer Rouge prison system, we hear that guards often shackled certain classes of prisoners, and then left them restrained in custody without food and sometimes without water, until they expired from starvation or dehydration. This appears to have amounted to a very deliberate low-tech and low-impact form of execution. (See, for example, the story of Prey Damrei Srot prison, as told by Mr. Kim Porn of Kampong Chhnang Province; or Mr. Ao Yoeng of Kampong Thom Province, regarding his experience at Tradet prison.) I would maintain that this practice, which seems to have been widespread, constitutes a particularly cruel form of torture, albeit not in the traditional understanding of torture. To be slowly starved to

death in a roomful of similarly suffering victims seems to me to be a much more excruciating and horrible way to die than simply being marched off to a mass grave pit and smashed on the back of the head with an iron bar.

Killing

Beyond torture, the principal function of the network of Khmer Rouge security centers seems to have been to physically eliminate perceived enemies of the regime. A fantastic number of people were killed. It is often asked, “Why did the Khmer Rouge kill so many Cambodians?” The mapping reports provide at least a partial answer to this question, though the answer is hardly a satisfying one. The list of reasons why people were killed is shocking in itself.

Simply having been a policeman, soldier or civil servant during a previous regime was adequate to earn the death sentence. Being related by blood or marriage to one of those “class enemies” was also enough to bring a chop from the executioner’s ax. As witness Ok Tuon noted of Khmer Rouge activity in Kampong Chhnang’s Prey Damrei Srot prison, “none of the relatives of the accused was spared.” Also in Kampong Chhnang Province at Prey Ta Kuch, according to Uk Yun, the Khmer Rouge took “families” to be executed. This information conforms to a pattern we have seen in all five years of the mass grave mapping reports.

Besides having been any type of government official, ordinary people of many descriptions also qualified as “enemies.” Former students, who were referred to as “intellectuals,” were also very often put at the top of the list of those to be exterminated. Thus the simple act of having attended school and learning to read could get one killed. One witness from Ratanakiri Province in this year’s mapping report, Mr. Bun Vantha, believes he was arrested by the Khmer Rouge simply because he had written a letter to them.

Another form of “class enemies” exterminated

en mass was “capitalists,” which in the Khmer Rouge’s primitive taxonomy could include such lowly toilers as a street noodle vendor or a motorcycle taxi driver. The “feudalistic,” or those who expressed any form of affection for Cambodia’s beloved Prince Sihanouk, could also receive capital punishment.

All of these things—having been a soldier, a student, a civil servant, a petty bourgeois vendor, an admirer of the monarchy, or having been related to someone with such characteristics—was called “having a tendency” or a “trend.” The Khmer Rouge had a tendency to murder anyone with “tendencies.”

With the spread of internal purges inside the Communist Party of Kampuchea, having been a civil servant of a previous regime was no longer required to earn a death sentence; increasingly, “civil servants” or cadres from within the organizational apparatus of Democratic Kampuchea itself were widely rounded up and terminated. And as leadership purges accelerated, so too did the murder of those who had served under the previous cadres in virtually any capacity. The testimony of Mr. Chann Tauch of Mondulkiri Province eloquently describes this process. In 1977, Mr. Tauch recounts, “all the people related to the top two Khmer Rouge leaders—Ham and Kham Phoun—were arrested wholesale and sent to Phnom Kraol prison.” Eventually, this form of repression became so extreme that merely being an ordinary citizen in a region formerly governed by someone now judged a “traitor” became enough to be added to the list, as was seen in the purges of the Eastern Zone.

In addition to being killed for reasons of classification—that is, membership in an unfavored group such as former students—large numbers of people were also executed for reasons of having committed or having been alleged to have committed “offenses.” The categories of offenses punishable by death were often capricious in the extreme. For example, in Banteay Meanchey

Province, witnesses described a series of different kinds of “mistakes” which could cause one to be condemned. “Traveling from one village to another without permission” is mentioned as one reason why someone might be labeled an “enemy” and put to death. Unauthorized possession of foraged food was another reason to die. People who were caught with a fish, a crab, a snail or a lizard were sometimes summarily executed for misappropriation of the “people’s” resources, as witnesses in Banteay Meanchey’s Thmar Puork District testified. This practice was equivalent to a charge of attempting to survive starvation without permission.

Also in Banteay Meanchey, a somewhat novel reason for execution was described; cadres ordered farmers to “walk on the right” side of the plough rig

behind the oxen, but instead, the unwary peasants followed their traditional practice of walking on the left side. As a result, “They were accused of being the enemy and killed immediately in front of all the people who plowed there.”

Romantic indiscretions were another reason why people were executed; total control over love and sex was demanded by the Khmer Rouge. This, as much as anything else, defines the Khmer Rouge as perhaps the most extreme totalitarian organization in the modern history of repressive regimes. In every sense of the term, they would win the people’s hearts and minds, or else the people would die. But not everyone died, even among those who were arrested.

(Continued in the February 2001 issue)



A SAMPLING OF DOCUMENTARY EVIDENCE LINKING THE KHMER ROUGE LEADERS

Steve Heder

(Continued from the December 2000 issue)

...Son Sen was thus able to assert in his summing up, first, that “those present at the meeting” were “in unity with the Party in considering that the arrest of these traitors is a great victory over the revisionists who were following the secret road and had been infiltrating for more than ten years already”; second, that “these events have heightened our spirit of vigilance”; third, that “these experiences have further heightened our concerns about those elements with not good biographies, whose ideology is highly status- and rank-oriented, and whose entry into the Party was not in a proper state, such as Charkei, Ya and Kaev Meah”; and finally, that now everyone realized that “trivial activities attacking the revolution ... all issue forth from such traitorous links.” Thus, Son Sen explained, even though the Party had now “smashed to smithereens” its internal enemies “and smashed them to smithereens strategically” because it had “smashed to smithereens their contemptible traitorous commanders,” no one should be “subjective” and think the struggle against them was over.

Rather, it remained “imperative to pay attention” even to “trivial enemies within” in order “to prevent them from conducting activities” and “to defend the Party.” Although “we have defeated the enemy and defeated him fundamentally and strategically so that he no longer has any capital, ... the enemy will attack us again; the enemy is extremely furious with us.” Therefore, it was “imperative to further heighten the spirit of revolutionary vigilance and, most importantly, vigilance with regard to concrete operationalization.” There was no room for passivity. Instead, it was

“imperative to purge no-good elements absolutely in the sense of an absolute class struggle.” Son Sen explained that this purge was “premised on three principles:

Category 1: The dangerous category: they must be absolutely purged.

Category 2: The ordinary liberal category: they must be educated again and again in our education schools.

Category 3: The category of those who have merely been incited by the enemy and merely believed the enemy’s incitement. As a first step, they should undergo re-education to get them to no longer believe the enemy.”

Son Sen also gave instructions on “the problem of analyzing or discovering the enemy.” He explained that if untoward “phenomena already exist, you must find the reason, the source, where they come from.” Thus, “wherever an incident takes place, you must look there,” and “if there is evidence, then you must follow up.” At the same time “all units must be reorganized, and all biographies” of cadre and combatants in them “must be grasped again,” that is, reviewed.

Finally, he instructed that the names of “traitors” should not be disseminated. Thus, “in educating the brothers and sisters” who comprised the military’s rank-and-file, they should be educated “only in terms of perspective and standpoint,” not in terms of specifics.

Although in all of this, Son Sen never explicitly said that those arrested for treason had been or would be executed, his constant use of the term “smashed” and his reference to at least the purported ringleaders as “super-traitors” seemed to

leave no doubt. His delineation of a category of “absolute purge” for dangerous elements, to be dealt with by means more than repeated re-education, also pointed toward execution, albeit less clearly.

Mut and Met were also present at an 21 November 1976 “plenary meeting of Divisions” at which various cadre gave reports on “enemy situations.” Although at this particular meeting neither Mut nor Met reported any purges or arrests by or within Divisions 164 and 502, they heard accounts of such things in reports by others. The replacement for Chakrei as Secretary of Division 170, Kae San alias Sok (later purged), said it had “arrested an enemy coming from the grassroots.” Division 450 Secretary Suong reported arresting “someone ... who had stolen a boat.” Division 290 Secretary Meah Tal reported having arrested “seven persons,” adding that “from what they said during questioning, they were a mobile unit from S’ang district” in Sector 25 of the Southwest Zone. They also heard independent Regiment 488 Secretary Uch Tol alias Pheap (later purged) state that some of its combatants had “been asking to go home to live with their parents, citing as their reason that somebody is killing them.” Regiment 152 Secretary Pan Sim alias Sel (later purged) said that it had “arrested two boys who had escaped from Steung Meanchey” on the outskirts of Phnom Penh, who, “upon questioning,” had “said they had fled while tending cattle.”

At a meeting in mid-December 1976, Met reported that there had “been no unusual enemy situations internally” in Division 502 “over the past several days.” Instead, he claimed that in his unit, “the brothers and sisters are boasting that the line our Party is implementing is faster than that of anybody else.” However, he said one section of the Communist Party Youth League did “not seem able to keep up” because the Party’s line was “so profound as to be beyond their capabilities of comprehension.” He heard Division 170 Secretary Sok report that there were some problems with that unit’s combatants

because they had “blood relatives” who had been “taken away by the Organization for no apparent reason.” After listening to all the reports, Son Sen reiterated that although the revolution’s “internal enemies” had “been basically routed,” there were, “at the same time, ... some phenomena” proving “that enemies still exist who are conducting burrow-from-within activities inside our Army.” He explained:

“For example, slogans have been issued attacking the collective system, there is still some disruption and wrecking of equipment, there is still some theft, and still some throwing of anonymous leaflets. These phenomena prove that enemies still exist, and also that they exist because they arise from internal contradictions. From what we know, the Soviet and Vietnamese revisionists are continuing to conduct more activities in our country, although they have been basically disbanded. The CIAs have also been basically disbanded, but they, too, will be continuing to conduct more activities.”

He called for further attention to “purging our army to make it clean,” stressing again the necessity to be concerned about and follow up on trivial phenomena. “The reality is that their causes are interrelated. Do not ever in the least adopt the perspective that all this is normal. The way of discovery is to keep track of and then meet to assess every phenomena.... it’s imperative to be concerned about the remnant internal enemies. If we relax into a state of pacifism, they will take advantage of this to attack our revolution.

“Thus, it was still imperative to purge dangerous elements completely from units of organization, predicated on the degree of their errors: do whatever is necessary not to be left and not to be right. The results of this round of grasping biographies has been good, but there are still some comrades who are concealing their pasts. Be most vigilant vis-à-vis those whose parents or siblings have been swept cleanly.”

Met was also at a meeting of division cadre

convened by Son Sen on 1 March 1977, the agenda of which included not only “internal enemy situations” but also “purging elements in units of organization to make them clean.” Met himself declared that it was now “obvious that number of elements” from Division 502 whom had been “previously arrested really are enemy elements,” and revealed that “more than 50 no-goods” from the unit had “been sent to S-21.” Met also reported three recent enemy situations involving the Division: one “enemy situation at the guard post in the vicinity of the Monks’ Hospital” in Phnom Penh during which “somebody was able to grab a pass from a guard” belonging to the unit; one in which “a woman farmer was detained walking near the enemy’s Advanced Military Academy” in the capital; and one in which a grenade was rigged in an attempt to “kill a comrade.” He declared that Division 502 could only achieve political “reliability if five more platoon secretaries are removed.”

Met heard a report by Division 920 Secretary Chhin, who was about to be purged, that those elements of this division who had previously served with Vietnamese units and those who were “the children of soldiers, subdistrict chiefs and police” had been “purged and sent to do production in one place,” but that there were “still enemies within” it, and that Chhin was “following this up.” He heard Regiment 488 Secretary Pheap report on its detention of “one person ... because he was close to a depot” and of problems because low-ranking cadre in the regiment had “persuaded combatants to drink alcohol” or “contradicted the prohibition that doesn’t allow the free picking of fruit to eat.” He heard a leading cadre of Division 450, Yan, say not only that there might “still be enemy elements inside” it, but that in addition “maybe 600 persons are elements who must be removed.” He heard Regiment 152 Secretary Sim report on the arrest of two medics from that unit who had visited the Po-98 military hospital looking for combatants who had been purged. He

heard Division 290 Secretary Meah Tal tell of how it had “removed” and “concentrated” an unspecified number of “no-good elements.” He heard Division 703 Secretary Pin report on its arrest in Southwest Zone Sector 35 of “two or three persons from the districts ... who were mixed up with Sector 37.” One was a “boy” who said under interrogation that he had been instructed “that if anything went wrong, he was to reply by implicating the Organization’s troops.”

Met then heard another summing up from Son Sen, who stressed that things were worse than the Party had thought in late 1976. In an exposition on “the state of antagonistic and internal contradictions” in Democratic Kampuchea that had “existed in the past, exist now and will exist in the future,” Son Sen explained that there had “been additional recent past incidents that enlighten us about contradictions in Kampuchea’s current situation, because previously, the analytical perspective of our Party and Army on contradictions has been somewhat correct, but these recent incidents prove that our perspective had not yet penetrated to the meat of the matter, as it does now. These incidents proved that the CIA, Yuon and revisionist enemies are powerfully continuing their activities to wreck our revolution, with the intention of overthrowing our revolution, our Party and our army, and they are impeding us in our revolutionary tasks. CIA enemies are attacking us from without, but they are in particular burrowing from within inside our Party and Army.”

Thus, although in late 1976, the Party had “eliminated” the “treasonous networks” of East Zone Sector 24 Secretary Chhouk and Northwest Zone Secretary Ya, it had since “discovered another treasonous network,” which had now also been “basically eliminated,” which was another “enormously great victory.” He asserted that “after we arrested the contemptible traitors Chhouk, Ya and Chakrei, ... the important experiences deduced made it possible for us in 1977 to see more clearly the contradictions and the enemy. We previously did not

see deeply into antagonistic and internal contradictions, and for the most part we gave more weight to the internal contradictions.

“For example, it had been deduced that although the contemptible Chhouk, Ya and Chakrei traitorous networks were revisionist networks, we did not give weight to characterizing them as CIA networks. In fact, all these contemptible guys were CIA links who had been infiltrated into our Party long ago. The contemptibles to the east and the contemptibles to the west have gotten together to attack our revolution. Each of them individually is a CIA who falls back on the revisionists outside the country and the traitors inside the country to attack our revolution.

“They had assigned revolutionaries or relatives of revolutionaries who were corrupt and greedy or who had capitulated to the enemy in prison, who were CIAs, to burrow from within the revolution, the Party and the Army, using revolutionary slogans to fashion underground forces, and deviating step-by-step from our revolutionary line using the slogan ‘burn the outside to a crisp, but pull it out while the inside is still raw.’”

All this yet again showed that both “the CIA and the revisionists are one and are similarly opposed to a correct revolution,” and that the problem “to which the utmost degree of attention must be paid is the antagonistic contradiction coming from the outside, by which I mean enemies from the outside who have infiltrated our revolution. Our revolution must continue further with opposition to the enemies of the revolution in the world, because each and every one of the traitorous forces in our country is connected to the enemies on the outside.

“Revolutionary vigilance means constant absolute storming attacks on the enemies burrowing from within. In the absence of constant storming attacks on these enemies, don’t talk about building up the country, because if enemies burrowing from within exist, they will impede us constantly.

“Socialist revolution does not only mean merely eliminating private property rights. It also necessitates attacking the enemies who oppose the revolution internationally. The antagonistic contradictions inside and outside the country remain acute.”

This meant that although it was “imperative to continue with further political and ideological education, ... mere education is not enough: it is imperative to continue further with absolute purges.” Thus, “the imperative measure vis-à-vis the troops is to purge absolutely the no-good elements.” Moreover, although in “the past, we have eliminated a lot of important traitorous links,” it remained “imperative to continue with further revolutionary vigilance because remnants still remain, and new traitors will continue to be born.” Again, Son Sen stressed that the enemy was “wrecking” the Cambodian revolution “through many phenomena of every description.” Wherever “antagonistic contradictions” arose, they must be resolved through what he now called “absolute organizational methods.” He again seemed to establish three categories of those who had to be purged: first, “enemy elements” whom it was “imperative to remove absolutely”; second, “liberals,” who must “be rounded up and sent to do production as a single unit of organization”; and, third, those who owed some sort of political debt to the enemy, who “must be re-educated and concentrated in one place.”

Met soon cooperated with Son Sen’s instructions by arresting and sending to S-21 more cadre and combatants who had deserted, who engaged in “liberal activities” or did not respect “organizational discipline” and who were implicated as “traitors” in the “confessions” of persons previously arrested. Notes addressed by Met to Duch on 1 and 2 June 1977 gave such reasons in explaining why persons from Division 502 were being sent to the S-21 Chairman. A similar note to Duch on 4 October 1977 accompanied two more prisoners.

REVENGE IN THE POL POT PERIOD

Alex Hinton

(Continued from December 2000 issue)

The Red Flag

“Glittering red blood blankets the earth - blood given up to liberate the people: the blood of workers, peasants, and intellectuals; blood of young men, Buddhist monks, and girls. The blood swirls away, and flows upward, gently, into the sky, turning into a red, revolutionary flag. Red flag! red flag! flying now! flying now! O beloved friends, pursue, strike and hit the enemy. Red flag! red flag! flying now! flying now! Don’t leave a single reactionary imperialist (alive): drive them from Kampuchea. Strive and strike, strive and strike, and win the victory, win the victory!” (Chandler, Kiernan, and Lim 1976:14)

Like the national anthem, “The Red Flag” song, with its analogy between blood sacrifice and the color red and its encouragement to “strike and hit the enemy,” provided a metaphoric message to cadre, urging them to continue their class grudge until not “a single reactionary imperialist” was left alive.

Realizing to whom such ideology would have the greatest appeal, the Khmer Rouge usually placed the extreme poor and the young in local-level positions of power during DK. These individuals had the greatest reason to hate their “class enemies” and to be loyal to their powerful new patron, Angkar. Khmer Rouge propaganda attempted to keep their memory fresh about how the city people had caused them to suffer and feel humiliated. As one radio broadcast reminded the poor: “Our brothers and sisters lived a most miserable life, enduring all manner of hardships . . . They never had enough food, never were happy and never had an opportunity to receive [an education]. Our brothers

and sisters were looked down upon, regarded as animals.” Such propaganda, combined with basic political education about class struggle, was often effective in encouraging low-level cadre to seek revenge against their class enemies. One “old person” recounted how his village leader, Boan, was changed by such Khmer Rouge ideology: “At first Boan was like us. After they had brainwashed him, however, his heart and thoughts changed. He became angry at the people, particularly the rich and soldiers. Boan was an ignorant person and couldn’t write much . . . but he loved Angkar and would report on people who were then killed.” Haing Ngor once made a pun to some other “new” people in his work group that such Khmer Rouge cadre weren’t “communist” (*kommuyonis*) but “revenge people” (*kum monuss*). “‘That’s what they are at the lower level,’ I said, ‘revenge people.’ ‘All they know is that city people like us used to lord it over them and this is their chance to get back. That’s what they are, communist at top and *kum-monuss* at the bottom.’”

Given the frequent dehumanized treatment of “new people” and Khmer Rouge ideology which fostered a class grudge and glorified violence against the enemy, it is not surprising that revenge killings continued to take place long after the first wave of DK executions. Having annihilated most of the Lon Nol government’s leadership, the Khmer Rouge began to gradually kill off other “class enemies” such as rich “capitalists,” intellectuals, professionals, and lower-ranking soldiers, police, and governmental employees. Local cadre continued to research people’s backgrounds. Upon arriving at a new village, a woman named Yum explained that a cadre “asked my husband what he had done. He lied and told them he had ridden a

cyclo bike and guarded a house. The cadre said, ‘if so, why are your hands, legs, and face so nice?’ They asked him to prove that he was really from the countryside by plowing a rice field and doing other peasant tasks.” Because he had grown up performing such labor in a rural village, Yum’s husband was able to successfully do what the cadre asked. In the end, however, the Khmer Rouge still found out that her husband had been a soldier. Yum added, “There were people from our village living there who knew my husband’s occupation. Whoever hated us told the Khmer Rouge that my husband had been a soldier.” After learning about this family of Lon Nol soldiers, the district security office gave orders for them to be executed. Yum began to cry as she recounted how her husband’s brother, who worked at the district office, arrived that evening with some guns and provisions and fled with his brothers into the rainy night, never to be seen again.

The family of a young woman named Gen experienced a similar tragedy that I will recount in detail. When local officials began researching people’s backgrounds, her family could not hide the fact that her father, Tak, had been a teacher during the Lon Nol period since he had taught in the area. Tak eventually went to the local hospital because his stomach had become swollen due to the lack of food. A few days later, Tak was told to gather his things because he was being transferred to the regional hospital. Instead of going there, Tak was taken to an area behind the hospital and killed. Witnesses told Gen that when the killers returned, they were covered in blood.

One of them, Hean, had been a student of Tak’s. Gen explained, “My father was an extremely strict teacher and would frequently hit his students in order to make them want to learn. Hean was a



particularly lazy and disobedient student and was beaten often. These beatings really hurt, so Hean became angry at and held a grudge against my father.” Afterward, Hean was overheard bragging that before killing Tak, he told him (using superior to inferior prefixes): “When you (hâ’aeng) were my (ânh) teacher, you beat me and made me hurt. Now, I will repay your ‘good’ deeds (sângkun) in turn. I will kill and discard you, so that you can no longer be such a mean teacher.”

Perhaps two months later, Gen’s mother went to the hospital to get an injection to make her feel better. Before administering the shot, the doctor, Lon, supposedly asked, “Are you Tak’s wife?” When she responded affirmatively, Lon filled the syringe with a white liquid. Gen’s mother died

immediately after receiving the shot. Earlier in the day, cadre had been asking where Gen's mother was and then, upon hearing that she had gone to the hospital, went and spoke with Lon. Gen has no doubt they ordered Lon to kill her mother.

Three of Gen's sisters were the next to be killed. The oldest, Kolap, had a silk scarf (*krâma*) that had been used in their parent's wedding ceremony. The subdistrict head, Rom, saw the scarf and "suggested" that Kolap give it to her, but Kolap refused because the scarf had such sentimental value. Gen explained, "When my elder sister didn't give the scarf to her, Rom became very angry with this new person who thought she was better than an old person. Rom held a grudge against my sister and waited for an opportunity to get her back." A few days later, Kolap was plowing a field and swore at one of her oxen. Rom was nearby and claimed that Kolap had sworn at her. That evening, one of Rom's minions told Kolap that Rom wanted to see her. Gen's other elder sister insisted upon coming along because she was afraid something bad would happen to Kolap; they took along their youngest sibling who was just an infant.

Later, after DK, Beng, a person who worked with Rom at the subdistrict office, told Gen that Kolap and her sister were tied up and led away to a local killing field by Rom and a group of five or six other people. Rom reportedly said to Kolap (using superior-inferior prefixes): "So, you were trying to act tough with me and wouldn't give me your scarf. This is what you get." Upon hearing this, Kolap, despite having her arms tied, began to kick wildly at her captors, managing to tear some of their clothes. Rom was incensed. Gen recounted what supposedly happened next: "They stripped off her clothes and made her stand there naked in front of the group, some of whom were men. One of them then grabbed my infant sister and smashed her head against a tree stump. Her head burst open with a pop and she died at once." Next, they made Kolap watch as her other

sister was executed. Rom and the other executioners then began to beat Kolap all over the body. "Rom told my sister, 'It's going to be a long time before you are dead.' They punched and kicked all over until she was finally finished off. She suffered so much. It's so sad." A few days later, Gen and her younger sister made a dramatic escape from the village. Unfortunately, Gen's four younger brothers were still in the area living with an uncle. Rom sent for them and had them work at the local pagoda, which was being used by the Khmer Rouge as a prison. Their job was to carry out the prisoners' excrement. Just before the end of DK, the boys were all executed after being forced to dig their own graves.

The destruction of Gen's entire family illustrates how the Khmer Rouge attempted to take disproportionate revenge in such a manner as to "completely destroy" (*phchanh phchal*) their class enemies. Because the Khmer Rouge were so powerful, they were able to engage in the most extreme form of *phchanh phchal*—killing off the enemy's line. As Gen sadly explained, "The Khmer Rouge had a grudge against my family because my father had been a government worker during the previous regime. They were seized with painful anger and wanted to take revenge against 'new' people like us. They wanted to cut off our entire familial line so no one would be left to seek vengeance against them on a later day." Many other Cambodian family lines were similarly destroyed during DK. For example, eight out of nine of Yum's husband's siblings (seven of whom had been in the army) were executed. Every person in four of these siblings' families were killed. In some cases, the Khmer Rouge would simply load families of "new" people into trucks and take them to local execution centers to be exterminated. The Khmer Rouge saying, "to dig up grass, one must also dig up the roots" (*chik smav trauv chik teang reus*), encouraged such annihilation. Echoing the

explanation of many others, a former DK village chief of Gen's village told me that this phrase meant that cadre "were supposed to 'dig up' the entire family of an enemy — husband, wife, kids, sometimes from the grandparents down — so that none remained . . . to kill off the entire line at once so that none of them would be left to later seek revenge, in turn." Thus, the severity of at least part of the DK killing was motivated by this lethal blend of communist ideology and fear of revenge. Many of the poor were angry at the rich and powerful who looked down upon them and made them suffer. Khmer Rouge ideology inflamed this feeling of resentment even further, trying to make its followers completely "seized with painful anger" (*chheu chap*) to the point of wanting to avenge their class grudge. As the brother of one high-ranking Khmer Rouge cadre explained, "The destruction of the Cambodian people can be [largely] understood in terms of the resentment (*chheu chap*) of the destitute (*neak ât*) who suffered and were looked down upon . . . Their resentment became a grudge that was repaid: (*sâng*) when they had power, they repaid [this debt] by killing." The Khmer Rouge first killed off virtually the entire military and governmental leadership of the Lon Nol regime, and then set out to eradicate other suspected enemies and, in many cases, part or all of their family lines. By taking revenge, the Khmer Rouge were attempting both to completely defeat (*pchan pchal*) their class enemies and to prevent the cycle of vengeance from continuing thereafter.

As illustrated by the revenge killings that took place at the end of DK, the Khmer Rouge were not totally successful in preventing such retaliation. One woman described how Son, a harsh village head whom she had watched kill two ethnic Vietnamese, was himself killed by an irate mob: "They were angry at him for all he had done. I went and watched as a great number of people beat him and cut off his head." Similarly, one of Rom's associates named

Phat fled into the jungle when the Vietnamese invaded Cambodia. After hiding for a few days, Phat tried to sneak into a village to steal some food one night and was shot and wounded. A crowd soon gathered and began to beat Phat. Another woman whose husband had been killed by Phat said, "More and more people kept coming, grandfathers and grandchildren. They really hated her because she had killed so many people. I hit her two times, too. I hated her because she had killed my husband. We wanted revenge." Most Cambodians can relate a similar violent story about the post-DK revenge killing of former Khmer Rouge cadre.

Many Cambodians who suffered greatly during DK continue to hold a grudge against the Khmer Rouge. When I asked her how she feels when she sometimes sees Hean, for example, Gen responded: "I get really hot and angry inside my heart. My heart is still tied in wanting revenge. I want to ask him, 'What did my father do to you to make you kill him? You were beaten because you were lazy.' When I think about him, I get so angry."

How might justice be found for victims like Gen and the members of her family? How might we avoid future cycles of revenge? These are just some of the many complex questions that Cambodians are now facing with the recent demise of the Khmer Rouge movement. First, people must be careful not to stereotype one another. Many poor people did not hold a class grudge; some "old people" helped "new people" during DK. Sometimes "old people" and Khmer Rouge cadres also lived in fear for their lives. Moreover, many city people did not look down upon the poor and tried to help them when possible. Sometimes even local Khmer Rouge cadre tried to prevent or diminish the killing that took place in the areas under their control. There are many types of people and, as opposed to labeling them a friend or an enemy (as the Khmer Rouge did), human beings must try to increase their understanding of one another.

Buddhism provides another important method of dealing with anger (*kar chii chap*). As opposed to seeking revenge, Buddhism teaches that feelings of anger (*moha dhosa?*) arise from ignorance and teaches that people may choose “to block/control [his or her] heart” (*tuap chett*) or to “disperse [his or her] anger” (*rumsey komhoeng*). As the Great Religious Patriarch Maha Ghosananda has stated, the path to peace is a “step by step” process of compassion and forgiving. Many Cambodians have followed this path to deal with their grief about the Pol Pot period. Ultimately, the law of karma states that sinners (*neak twee bap*) will suffer the consequences of their actions in their next life. Thus, some Cambodians, like Gen, say that Pol Pot and other Khmer Rouge leaders will go to hell or be reincarnated as a *bret* or some other hideous, despicable, and evil spirit.

On an institutional level, legal and educational practices could be modified. If the corruption within the Cambodian judicial system were reduced, for example, Cambodians might feel less desire to personally exact revenge when someone has done something bad to them. Alternatively, teachers could analyze, point out the detrimental results of, and explain the different options to revenge. Finally, a Nuremberg-like trial of the Khmer Rouge leaders, now being made possible by the work of lawyers, politicians, and scholars, would likely help Cambodians like Gen find justice for their suffering and losses. The thorough documentation work being done at DC-Cam would be crucial to the success of such a trial. Whatever the means, Cambodians would benefit greatly if the destructiveness that results from such cycles of revenge were brought to an end.



AMNESTY

Jan van der Grinten

(Continued from the December 2000 issue)

Other treaties

Cambodia is a party to the Torture Convention, which also contains a provision in Article 7 concerning the obligation to prosecute. In regard to this provision, The Human Rights Committee found that Article 7 creates the obligation to investigate torture and prosecute those held responsible, and entitles the victim to an effective remedy, including the right to obtain compensation. Regarding amnesty, the Committee found:

“The Committee has noted that some states have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future.” (Sources in International Treaties, p. 29)

In addition, Cambodia is a party to several treaties relating to the human rights area, such as the International Covenant on Civil and Political Rights. Like other human rights treaties, this Covenant imposes an obligation on parties “to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.” There is no explicit obligation to prosecute human rights violations. As Naomi Roht-Arriaza states, however, it is now widely accepted that references to ensuring the full enjoyment of the enumerated rights in comprehensive human rights treaties impose affirmative obligations on states. (Sources in International Treaties, p. 29). The obligation of countries to a treaty to offer an “effective remedy” to victims of norm violations may be interpreted as an obligation to institute a criminal investigation and prosecution of violators

of human rights, especially if this concerns the most fundamental rights and serious violations thereof, which can be regarded as crimes against humanity. (Crimes Against Humanity, p. 231)

The Torture Convention dates from the 1980’s and Cambodia became a party to most Human Rights treaties only in the early 1990’s. Insofar, however, as amnesties were granted after the treaties were signed for violation of the norms included in the aforementioned treaties - certainly if these could also already be regarded as a violation of the norm before the treaty was signed - a defensible argument can be made that such an amnesty can still constitute a violation of an international law obligation.

Obligations not based on treaties

Treaties are not the only source of international law obligations. A state may be obliged to prosecute violators of serious crimes based on sources other than treaties. The most important of these sources are:

1. Customary law, international rules consisting of “general and consistent practice followed by states from a sense of legal obligation.”
2. General principles of law, which consist of expressions common to the major legal systems or may also express rules of law commonly developed within international law. (Naomi Roht-Arriaza, ‘Nontreaty Sources of the Obligation to Investigate and Prosecute’ in: Impunity and Human Rights in International Law and Practice New York, 1995, p. 46)

With an eye toward the relevance in terms of the Tribunal, I will limit myself below to the question of whether and to what extent amnesties for “crimes against humanity” are contrary to these sources of international law.

Crimes against humanity

In their case study on the atrocities of the Khmer Rouge, Abrams and Ratner state that crimes against humanity remain of central importance to those seeking to bring the Khmer Rouge to justice



Ieng Sary

(Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law*, Oxford: 1997, p. 247). While various definitions of crimes against humanity have been set forth, there is nevertheless consensus about most of the major elements. Crimes against humanity are inhumane acts of a very serious nature committed as part of a widespread or systematic attack against a civilian population on political, ethnic or religious grounds (*Crimes Against Humanity*, p. 274). The acts must involve governmental action, and in the definition as it existed after World War II, must be committed in the course of an international armed conflict. A more specific definition can be found in the Charter of the International Military Tribunal at Nuremberg: “murder, extermination, enslavement, deportation, and other inhuman acts committed against any

civilian population, before or during the war, or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”

The Charter and the subsequent codification by the International Law Commission and approval by the UN General Assembly do not by their terms require states to punish such acts; they merely permit such prosecutions, and provide their legal basis. (*Nontreaty Sources*, p. 51)

Numerous relevant international law sources confirm, however, that there is international consensus with regard to the fact that an obligation exists to prosecute those accused of crimes against humanity.

These sources include the UN resolution of 1967, urging states not to grant asylum to anyone seriously suspected of crimes against humanity; the Convention of the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, opened for signature in 1968; and the Principles of International Co-operation in the Detection, Arrest, Extradition, and Punishment of Persons Guilty of War Crimes and Crimes against Humanity, adopted by the UN General Assembly in 1973. All of these sources emphasize the obligation on states to punish crimes against humanity. (*Crimes Against Humanity*, p. 232)

Robbertson and other authors thus conclude that international law requires states to prosecute crimes against humanity. In Robbertson’s words: “In summary, international law now imposes an erga omnes obligation on states to investigate and prosecute crimes against humanity, even if this means annulling amnesty laws (...)” (*Crimes Against Humanity*, p. 247)

The rulings of the Inter-American Court and Commission on Human Rights, as well as Inter-American Human Rights Treaties, also show that

amnesties may not apply to crimes against humanity, including forced disappearances. (Douglas Cassel, 'Lessons from the Americas: Guidelines for International Response to Amnesties for Atrocities' in: Law and Contemporary Problems, 1997, p.197)

With regard to all crimes that can be characterized as crimes against humanity, it is therefore recommended that the prosecutor take the position that any domestic amnesties do not apply to those crimes.

Conclusion

The culture of impunity, which is seriously eroding respect for Cambodia among the international community, may be changed for the better if serious attempts are made to establish a tribunal with the support of the international

community.

In the past, Khmer Rouge members responsible for the crimes committed here were left alone by the government, with various official and non-official amnesties being granted.

As a party to many international treaties and under customary law, Cambodia is obliged to prosecute these crimes, insofar as they may be considered crimes under international law. Such crimes include war crimes, crimes against humanity, genocide and torture. Amnesties regarding these crimes are incompatible with this obligation and represent a violation of Cambodia's obligations under international law. Such amnesties cannot therefore be considered in connection with prosecution of Khmer Rouge members.



UN legal experts

THE KHMER ROUGE JUSTICE: WILL IT BE A TRIAL OR A PROPAGANDA?

Bora Touch

The tension between the UN's desire for an international tribunal on the one hand and the Royal Government's desire for an internal tribunal on the other, for trials of former KR members for their alleged crimes appears to have ended with the triumph of the Royal Government. The Royal Government based its preference for an internal tribunal on its unfounded "sovereignty" argument. Instead of opting out of discussions on the tribunal since the Royal Government refused to adopt its model, the UN chose to collude with the Hun Sen Government in what I believe to be a completely foreseeable mockery of justice. It has been obvious to most people that the Royal Government has been maneuvering to avoid bringing the KR to justice, thus, demonstrating a lack of political will. Yet the UN has opted to go along with the Hun Sen government all the time knowing that lack of political will is the integral element of a failure of justice.

The UN's motives are unclear but there is some evidence suggesting that the UN is following the United States in its long attempt, since 1991, to build a relationship with a new, presentable Hun Sen so that the US can do business with him and his private group. Once a tribunal is established in Cambodia, it will not be about justice but politics. The courts will go through the motions, just as was done during the show trials of Ieng Sary and Pol Pot during the Vietnamese-installed government immediately after the demise of the Khmer Rouge regime.

The following, to me, demonstrates that the UN was never serious about establishing a tribunal to ensure, once and for all, that Khmer Rouge criminals were brought to justice or at least on a proper form:

- ◆ The UN made no attempt to draft an alternative law. It relied on Cambodia's draft. The UN did not make any attempt to have a Cambodian law specialist participate in the negotiations. The negotiations were not transparent and therefore there was no public debate;
- ◆ Under the Cambodian proposal, the security of suspects, witnesses and experts is left in the hands of Hun Sen's police. As far as I am aware, this was not challenged by the UN;
- ◆ Conduct of trials: The suspects that are arrested and indicted are to be to "brought to trial according to the existing procedures in force." The law that covers this process is the State of Cambodia's Law on Criminal Procedure 1993. This law does not have a single reference role of defense lawyers in the trial process. Worse, the law does not even have legal force as it was made by the SOC faction, which had no power to make the law because after 23 October 1991, the law-making power was given to the Supreme National Council.

The existing practices of the Cambodian police with suspects are well known for their brutality. It is not an exaggeration to say that most of those arrested, one way or the other, undergo police torture or coercion, either physical or mental, before being brought to appear before a prosecutor or a

court, who in turn continue to harass the accused and treat them with utter contempt. The French confessional civil law system, complete with interrogating judges, serves to extract confessions rather than to ensure justice in Cambodia. The UNTAC law on torture by police is inadequate and, as pointed out by Mark Plunkett, the UNTAC Special Prosecutor, “an offence of assault was not punishable unless it resulted in permanent injury or an injury lasting six months.” This is far different from countries like Australia, where intentional spitting constitutes a punishable assault. In my experience, the Cambodian police are skilled enough to make sure that their physical coercion of suspects will not result in permanent injury or an injury lasting six months. Further, the system does nothing to discourage coercive tactics on behalf of the police, even if the tactics do not constitute criminal offences.

Judges’ permanent job security: This is the mainstay of the independence of a country’s judiciary, yet Cambodia does not have a law on the status of judges that would guarantee the independence of the country’s judiciary. Although the draft law states both judges and prosecutors are independent of the government during the KR trials, it is not guaranteed that they will retain their judgeships or jobs following the KR trials if they do not render judgments that are supported by the government. Worse, nothing in the draft law prevents the Supreme Council of the Magistracy (SCM) from sacking judges at will. Article 10(2) of the draft KR Law states that all judges are independent in performing their functions, and must not accept or seek any instruction from any source, but the draft law fails to provide for punishments in case these incidents happen nor does it provide for penalties for political interference. Thus, this provision has few teeth in reality.

Worse, the draft law provides that all judges and prosecutors are to be appointed by the SCM which is effectively an arm of the CPP, with Chea Sim, the president of the CPP and Senate, as its president. The SCM organic law itself does not provide for job security for its members; thus, to remain in their jobs judges must listen to and obey their political patrons. It is not an exaggeration to say that both the individual members and the legal system of Cambodia are held hostage by the CPP. Chea Sim was a replacement of Dith Munty, who is an influential member of the CPP’s Central Committee, the Standing Committee and the Permanent Committee, and is now the Chief Justice of the Supreme Court. Ly Vuoch Leang, a CPP Central Committee candidate, is also a member of the SCM who and the Chief of the Appeals Court. Although under the SCM Act, Sim’s involvement in SCM is not illegal, the Act allowing a person of Sim’s nature into this judicial disciplinary body is in violation of the constitutional rule of separation of powers; thus, both the SCM Act and Sim’s involvement are unconstitutional.

◆ There is no evidence act in Cambodia. In my experience as a public defender in Cambodia, most, if not all, Cambodian judges do not have any education about evidence law. Despite the constitutional prohibition against forced confessions, the police practice of torturing or coercing suspects or accused persons to extract confession is rife. In most, if not all, cases, the judges admit such extracted or illegal confessions without questioning the way the confession was obtained. In some incidents, as pointed out by the Report of the Special Representative for Human Rights in Cambodia (1997), the courts even suppress a defendant’s testimony of police brutality by screaming at the accused that the court is not the place to redress police misconduct. In that case, the forced confession was admitted, but not evidence of

the police coercion. Regarding this issue of police brutality, the current transitional law is on the side of the police. The law was deliberately drafted this way. Under this law, an assault is not a crime, so long as it does not result in a permanent injury or injury lasting six months. Thus, even if there were an attempt to punish the police for coercive or abusive behavior, this would be futile unless the law were changed. One way within the current legal framework would be to exclude coerced confessions to teach the police that their abusive tactics are not fruitful, but as stated above, this is not likely to happen.

◆ The draft law is silent on which body will have constitutional review power. Therefore, the existing Constitutional Council, a heavily politicized body (six out of nine members are CPP political appointees and every decision is made by a majority of five members. The three non-CPP members are easily excluded), will have the jurisdiction to review constitutional issues. This is another significant point which, in my view, should have been contested by the UN.

◆ What is a fundamental flaw of the law is that it does not provide for any defenses. In fact, all current laws including the so-called Transitional Criminal Law or UNTAC law do not permit basic criminal defenses. Under the UNTAC law, self-defense, insanity and other affirmative defenses do not constitute defenses but rather mitigating circumstances.

Another disappointing aspect is the UN's obvious collaboration with Hun Sen and his government regarding who is to be brought before the tribunal. To limit the scope of prosecution, the UN added the word "most" to the draft. That is, the purpose of the law is now to try "senior leaders of DK and those who were most responsible for the crimes." The reason the UN added this word was,

according to the note to the draft, "such a result is obviously not intended by the government...The UN delegation has therefore added the word 'most' as an illustration of how one could limit the scope of personal jurisdiction in a reasonable way. If other solutions are contemplated to achieve the same result, the UN is of course prepared to examine them. At the express request of HE Sok An, the UN delegation has examined such solutions, while emphasizing that the formulation of this article is a political decision to be taken at the national level" [emphasis added]. The note goes on to say "With this proviso, we suggest that an alternative text could be, for example, 'and the most notorious perpetrators of the crimes and serious violations, etc.'"

In this aspect, noted scholar of Cambodia Steve Heder rightly pointed out "here it is made obvious that the UN is complicit with the Royal Government in seeking a formulation that is politically acceptable in that it guarantees impunity to current members of the CPP. And that this decision is to be made on political grounds, although the justification of practicality is tacked on as a facilitating argument. Notoriety, of course, is a completely absurd legal category. It reflects propaganda, not facts, politics, not justice. Notoriety arises not from a judicial process, but from political propaganda. 'Senior leaders' and 'notorious perpetrators' are formulations which exclude those who were not publicly demonized by the Vietnamese, the People's Republic of Kampuchea and the international media. What is self-incriminatingly tell-tale here is the studious avoidance of the sensible, straightforward, politically neutral formulation put forward by the experts: 'those most responsible for the most serious violations.' The impression is left that this obvious solution is unacceptable precisely because it might

include some CPP members and exclude some ‘senior leaders’ and ‘notorious perpetrators’ who committed the political sins of opposing the PRK, the UN, the US and so on, and are therefore political fair game, regardless of whether they are in fact the worst criminals of the DK era.”

Some evidence suggests that crimes committed by Ieng Sary and Pol Pot may be no worse than crimes committed by Nuon Chea and Son Sen, the Minister of Defense. Why were the latter two not put on trial in 1979? It is likely that the reason the trio were not tried (or effectively demonized) by the Vietnamese/Heng Samrin/Hun Sen regime was because the Vietnamese regarded Nuon Chea, Son Sen and Sao Pheum as “our men,” especially Nuon Chea as “our man and my personal friend,” as in early 1976 Le Duan, the then Secretary-General of the Vietnamese Communist Party, stated in a conversation with the then Soviet Ambassador to Vietnam. (Whether or not Le Duan’s statement was an invention designed to incite an internal purge, thus applying the typical Vietnamese divide-and-conquer tactic, is a different matter.) The important issue is that only two people were demonized — Pol Pot and Ieng Sary. Another example is that Ta Mok’s nickname, “the Butcher” was invented by the western media.

A false law:

1. Jurisdictional issues

A key difference between international and ordinary national courts is their competence to try crimes of different natures, i.e., the former tries international crimes and the latter tries domestic crimes. For the latter to hear international crimes, appropriate legal and legitimate measure must be taken. The formulation in relation to crime provisions of the draft law, in my view, is not legitimate.

Article 1 of the draft law states “The purpose

to the law is to bring to trial senior leaders of DK and those who were most responsible for the crimes and serious violation of the Cambodian penal law and international law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.”

There are two problems with this article as well as with other articles related to international crimes:

(1). It is discriminatory in that it is only meant to prosecute the KR. It excludes the US, whose indiscriminate bombardments, according to a Report of the Special Representative of the Secretary-General on Human Rights 1996, killed 700,000 and made 2 million others homeless just a few years before the KR took power. The law also excludes prosecution of members of the Vietnamese/Heng Samrin/Hun Sen regime. It was a fact that when Vietnam invaded Cambodia in 1979, it did not stop the killing of the Cambodian people, it just slowed down the killing. The forced labor policy (the K Plan 1984-1989) remained intact which reportedly resulted in the deaths of at least 80,000 people, not to mention those who were left amputees and sick. And the regime’s human rights situation remained bleak, as pointed out by the Lawyers Committee for Human Rights Report (1985) “daily reality is characterized by flagrant human rights violations by the current regime, amounting to pervasive disregard for the rule of law” p.5.

(2) This article is legally inappropriate because of the status of these international crimes in Cambodia. In the notes of negotiations between the UN and the Government, there was no mention of a plan for how these crimes would come under the jurisdiction of the Khmer tribunal. If this article stops here and is not followed by a plan to incorporate international treaties and, consequently,

international crimes into the national law of Cambodia, the tribunal will not have the competence to try crimes, such as genocide, war crimes and crimes against humanity.

It is true that Cambodia is a party to all the treaties above except the Crimes against Humanity, as the latter was not a treaty-based obligation. In 1998, crimes against humanity were codified in the Rome Statute of the International Criminal Court to which Cambodia is not party. Even if Cambodia were a party, this Statute does not operate retroactively. The way Cambodia currently treats these criminal treaties and treaties in general in domestic courts gives rise to problems of enforcement of the draft law and prosecution of those accused of international crimes, such as war crimes, by domestic tribunals.

Article of 31 of the 1993 Constitution audaciously states “Cambodia shall recognize and respect [note: not observe] human rights as defined in the United Nations Charter, the Universal Declaration of Human Rights, international treaties and all treaties, conventions related to human rights, women’s rights and children’s rights.” And Article 26 insufficiently provides that the King shall sign and ratify international treaties after parliamentary approval. Thus, how these treaties or conventions and rights and obligations stipulated under them are treated in domestic legal order are uncertain, i.e., whether Cambodia adopted the monist or dualist concept of international law.

In an attempt to clarify the role of these treaties in Cambodian courts, UNTAC in 1993 advised the Khmer Drafting Committee of the Constituent Assembly that “International treaties to which Cambodia is or may become a party are applicable as law in Cambodia as soon as they have been entered into force and are promulgated by the State.” Accepting this advice would have brought

Cambodia in line with the French Constitution. Article 53 of the French Constitution provides that most treaties require parliamentary approval prior to ratification. Article 55 then provides for the automatic domestic application of a duly ratified treaty, which is given superiority over national statute. But the Drafting Committee, whose influential vice-president was the late Chem Snguon, rejected the advice; thus leaving the legal status of international treaties in the dark.

This issue was clarified when the Royal Government submitted its 1997 Report to the UN Committee on the International Convention on the Elimination of all Forms of Racial Discrimination. In its report, Cambodia states all “these covenants and conventions may not be directly invoked before the courts or administrative authorities”: CERD/C/292/add.2, 5 May 1997. It was Chem Snguon again who chaired this inter-ministerial Report Committee. This is evidence that Cambodia has adopted the dualism concept of international law and the failure to incorporate UNTAC’s advice could be viewed to have been a deliberate act by the government to attempt to block the ability of victims of human rights abuses from seeking redress in the “national” courts.

While France adopted the monist principle, as is evidenced in the Constitution of the Fifth Republic, the absence of effective judicial review has led to a practice in France of incorporating treaties by means of a formal amendment of national law. “This practice, which combines dualism and monism, has the advantage of calling the attention of public authorities, the courts and the general public to the law applicable.” (Jean Marellet, 1970)

In addition, because of the impact of these treaties on people’s rights, dignity and obligations and, especially the circumstances in which Cambodia acceded or ratified these treaties, it is fair

and desirable that Cambodia adopted the dualism approach. Having it adopted otherwise may not be appropriate as the Cambodian parliament has not had the chance to have article-by-article debates on these treaties before their accession or ratification. In fact, most, if not all, of the treaties to which Cambodia has acceded or ratified, were ratified or acceded to by way of an executive act. For example, in a letter dated 19 August 1950, Son Sann in his capacity as the Foreign Minister to the UN Secretary-General, stated “the Government of His Majesty the King of Cambodia, by the Council of Ministers expressly declared accession by the Kingdom of Cambodia to the Convention against Genocide set out in the conditions of article 11 of that Convention.” There was no debate by the Cambodian parliament. Also just having parliament approval before or after accession without a debate would be a rubber-stamp, hence at best an offense to the system of parliamentary representation and at worst unconstitutional.

“If the legislature is confronted with the fait accompli of a ratified and internationally binding treaty, the legislative decision is far from free...Democratic ground rules require that a parliament should participate in treaty-making in a meaningful way and should be reduced to a posterior acclamation by way of slowing willy-nilly a strong government’s lonely decision.” (Wildhaber, 1968).

It is not sufficient for the draft law merely to refer that the Tribunal has the jurisdiction to try “crimes of Genocide as defined in the [Genocide Convention]” as stated in article 4. The same can be said in articles 5 6, 7 and 8 because, as said above, for the Cambodian national court to try international crimes, Parliament must pass a specific piece of enabling legislation before the tribunal can hear these international crimes. This practice is seen in the UK, the US, except for “self-executing” treaties,

and Australia which has enacted the Geneva Convention Act (1957), Genocide Convention Act (1949), War Crimes Act (1945), Crimes (Internationally Protected Persons) Act (1976), and Crimes (Torture [Convention Against Torture and Other Cruel Inhumane or Degrading Treatment or Punishment) Act (1988). Failure to enact specific legislation could result in KR defendants walking free on the basis of preventable procedural errors.

Article 3 of the draft law states “the statute of limitations set forth in the 1956 Penal Code shall be extended for an additional 20 years.” This addition of time to the applicable statute of limitations might not survive a strict constitutional review as the current Constitution prescribes that criminal statutes have to be construed in favor of the accused. Perhaps the better option would be for the Parliament to pass legislation to suspend the operation of the Penal Code during the period of the KR regime and re-ratify the Penal Code subsequently.

2. Definitional issues

Article 4: Genocide

Perhaps the reason that the Genocide Convention requires specific incorporation by legislative statute is because the Convention definitions are extremely broad, as an international law scholar pointed out, the first fundamental flaw of the unreserved Genocide Convention is the question of focus and the question of definition. In terms derived from a legal system, the definitions given in articles 2 and 3 of the Convention [and 4 of the Draft law] are vague and overly broad, arbitrary and capricious, and statutorily unreasonable both in construction and application. They are in breach of substantive due process and could not withstand strict constitutional scrutiny of any fair court. As the crimes, “(a) killing members of the group” does not allow for any defenses; (b) “Causing serious bodily harm to members of the group” does not specify the

degree of the mental harm or distinguish whether the injury includes psychological disorientation of a temporary nature; (c) “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” can lead to charges raised by minority groups suffering from economic disadvantage such as living in less fortunate conditions in, for example, ghettos; (d) “Imposing measures intended to prevent births within the group” can lead to complaints directed against governmental agencies promoting contraceptives or against government governmental officials...for allowing the practice of abortion (the pro-life terrorists could end their bombings, and could concentrate instead upon paralyzing the federal courts with a flood of genocide actions); and (e) Forcibly transferring children of the group to another group “may involve the placing of dependent minority children in foster homes.” (Robert Friedlander, 1986).

Like the Convention, the draft law fails to specify the size of the potential victim group in article 4; thus it may raise a possibility that a single victim of the group may be sufficient to substantiate a genocide charge.

Like the Convention, the draft law incorporates into the definition of “genocide” acts of conspiracy, attempt and complicity [(the word “complicity” in Khmer is translated as *choul ruom*, and English as “participation” is legally unintelligible. This is an indication that those who drafted the law were not lawyers)]. “None of these punishable forms of conduct...contain any material elements whatsoever. There is no indication as to what methods of legal analysis obtain for ascertaining the required criminal liability connected with the aforementioned activities.” Id.

In addition, conspiracy (an agreement to commit an illegal act) is dissolved once the act

conspired of has been committed as in the case of the KR. And complicity in itself is not a crime. It is a foolish drafting and useless to mention it here as it is mentioned in article 29.

The lack of definition may also result in genocide charges against the Khmer Rouge leaders being dismissed as under the Convention. As pointed out by Stephen Marks, killing one’s own national group, i.e, Cambodians killing Cambodians, is not an act of genocide. More precisely, the Khmer Rouge did not commit genocide against the Khmers although what they did most certainly constitutes war crimes or other crimes under international law.

Further, charges against the Khmer Rouge for acts of killing minority groups may be unsubstantiated for the following reasons: (a) there was no state policy to eliminate them. The Khmer Rouge Directive issued in 1976 regarding minorities is far from being useful as evidence against them; and (b) most if not all of the top and notorious KR leaders in fact came from these various ethnic groups. For example, Ieng Sary and Son Sen are of Sino-Vietnamese ethnicity; Pol Pot, Ta Mok and Khieu Samphan can also; and Tuol Sleng chief Duch is of Sino ethnicity. Thiounn Prasith is also of Vietnamese ethnicity (Thiounn Prasith’s grandparents were of Vietnamese origin).

Evidence also indicates that the Chams also took part in torturing and killing people, for example, one of the ruthless torturers of Tuol Sleng was a Cham by the name of Seum Mal. Mat Ly, another Cham (now a member of the CPP Central Committee), was also a high ranking KR cadre. A Khmer Loeu, a highlander by the name of Savonn who succeeded Pol Pot’s adopted son Phum, was one of the cadres in charge of the B-30 or Boeng Trabek Re-education Camp, in which among more than 1000 returnees, about 250 survived. Y Chhien, the Pailin governor, is also a Khmer Loeu - Jarai,

Gen. Bou Thong is also Khmer Loeu - Tampuan, Gen. Soey Keo is a Lao, Say Phuthong is a Thai, and Ny Korn is a Sino-Khmer.

Article 5: Crimes against Humanity

This provision in the draft law is worse than the genocide provision because of its ambiguity. It is not known which international law principle the drafters were referring to here. Elements of crimes against humanity are still largely unsettled in relation to connection to war and motivational elements. Without precise definitions, trials for crimes against humanity will not result in justice for the victims and again will enable defendants to walk on the grounds of ambiguity or procedural difficulties.

There is a discrepancy between the Khmer version and the English version of the draft. In Khmer, the draft refers to “*tweou manukheat*” meaning manslaughter; but in the English version, it reads “murder.” In Cambodian UNTAC law the killing of human beings is classified into three categories: (1) *kheatakam* or murder, (2) *manukheat* *doul chetana* or voluntary manslaughter; and (3) *manukheat achetana* or involuntary manslaughter. It is not certain whether the drafters mean number (2) or number (3), but it is obvious that they meant one of the two. If so, then an act of murder is not a crime under this provision. This is absurd. It is not an exaggeration to say that the drafters neither know the law nor understand English properly. The translation of the crime provisions from the English to Khmer is imprecise, almost childish, creating a dangerous ambiguity.

Absent from this article is the crime of forced labor as recommended by the UN experts. Enslavement has rather different elements to those of forced labor. It could be argued that the forced labor during the KR era did not constitute enslavement, as the products of the labor (at least in

theory) belonged to the people collectively.

Failure to incorporate the crime of forced labor may have been deliberate by the Cambodian negotiators so as to avoid implicating the K Plan instituted under the Hun Sen regime.

Articles 6, 7 and 8 of the draft law are even more ambiguous. These articles simply refer to the relevant international treaties, about which most current sitting Cambodian judges have no idea.

Article 29: Individual responsibility

The intention of this article appears to be to cover complicity; thus it overlaps with article 4 regarding “participation in acts of genocide.” Complicity in itself is not a crime under Cambodian law. Rather complicity extends liability. To put the word “plan” here is also legally unintelligible. Does this mean that the drafter wanted to criminalize planning? The word “planning” does not belong in the law of complicity and is vague.

In Cambodian criminal law, for an act, e.g., an act of murder, to become a criminal act, the act must have at least reached its third stage. The stages are: (1) intent, (2) preparation (planning), (3) commencement, and (4) accomplishment. Acts that are at stage (1) and stage (2) do not constitute a crime. However, when an act reaches stage (3), for example, when the illegal act has been commenced but failed to kill the target, it would constitute an “attempt”; at stage (4) if the act was accomplished, it would constitute a “murder.” Thus, it is not sure what the drafters really meant by the word “plan.” Hence what is the reference to “planning” in the law intended to mean?

As stated above, the draft law in its current form is flawed. It does not provide for basic legal defenses nor mitigating circumstances, and this is despite the recommendation by the UN legal experts that defenses should be included in the draft. What happens to those who committed the crimes of

which they are accused but who were insane, coerced, and/or totally ignorant of state policy at the time, especially minor offenders (say 12 year olds) who were perhaps brainwashed to believe that killing was the way of life and state obligation? In this respect, this draft law runs against all principles of justice.

Section 36: Appeal by accused, victims and prosecutor

Allowing an accused to appeal may be legally acceptable to a certain degree, but allowing the victims and prosecutor to appeal on the basis of an error of fact and of law is in violation of the principle of double jeopardy stipulated in the International Covenant of Civil and Political Rights of which Cambodia is party.

Article 40: Pardon and amnesty

The two terms are not defined, thus their effect and affect are unknown. The words *loeklaengtoh* for pardon and *travbraneitoh* for amnesty in the legal context are not correct as both terms, *loeklaengtoh* and *travbraneitoh* are synonymous in Khmer. The legal significance of both terms, pardon and amnesty, are different. The word pardon is used for post-conviction but amnesty is used for pre-conviction. The proper Khmer word for amnesty is *neetooskamm*.

There is also a great discrepancy between the English version and the Khmer version. In English, it read “Royal Government shall not request an amnesty or pardon for any person who may be investigated for or convicted of crimes...” It

is clear in the English version that neither pre-conviction amnesty nor post-conviction pardon is allowed. However, in the Khmer version, it reads “Royal Government shall not request *loeklaengtoh*, a pardon, for convicts who have committed crimes...” This opens for pre-conviction amnesty by the government.

In conclusion, the only thing that is clear in the draft is a firm control by Cambodia, precisely the CPP, in the judicial process.

It surprised no one when the Vietnamese and other foreigners in 1979 assisted the farcical “genocidal trial” of the KR leaders, but it is a sorrow for KR victims for the UN to do the same with a regime that rules with impunity and toleration of the murdering of its own people.

Cambodians need justice. But to have a KR trial at all costs and at the expense of the rule of law and actual justice is not an answer. Cambodians deserve all or nothing. The UN should not compromise the standards of international law and human rights.



Han Corell

DIARY

(Translation)

The Documentation Center of Cambodia has brought to light more than 400 notebooks and personal diaries written during the Khmer Rouge period. They belonged to both Khmer Rouge cadre and Khmer Rouge victims. Those written by the cadre mostly depict personal matters relating to the daily work of Angkar, discussions held at livelihood meetings or political education sessions, and military strategies from the central level. In contrast, the personal diaries of victims generally recount their life stories from the heart. Both notebooks and personal diaries help illustrate the fact that expressions of feelings may not be curbed even in circumstances of hardship, misery, and vicious suppression.

Morgat, 19 August 1975

Chu Y, sometimes I have missed you. The day I really missed you was when I took a lonely sightseeing tour in Quimper along the Oldef River, imagining how much pleasure we would have if we had been together. Where are you now? How are you doing? What have you been doing? I cannot predict or guess. As often as not, I am preoccupied with thinking about you. How about you? Do you have the same feelings? My love remains the same. You are the only person I think of and love, even though I have no hope of meeting you. What causes me to have these feelings? I regret that we had not said goodbye to each other the time we separated. Is it true? The moment I heard that the war ended, I wanted to return to our hometown immediately; I do not want to live in France. I haven't heard anything about you. Where are you now? Can you tell me? My God, why do such things happen?

Morgat, 7 September 1975

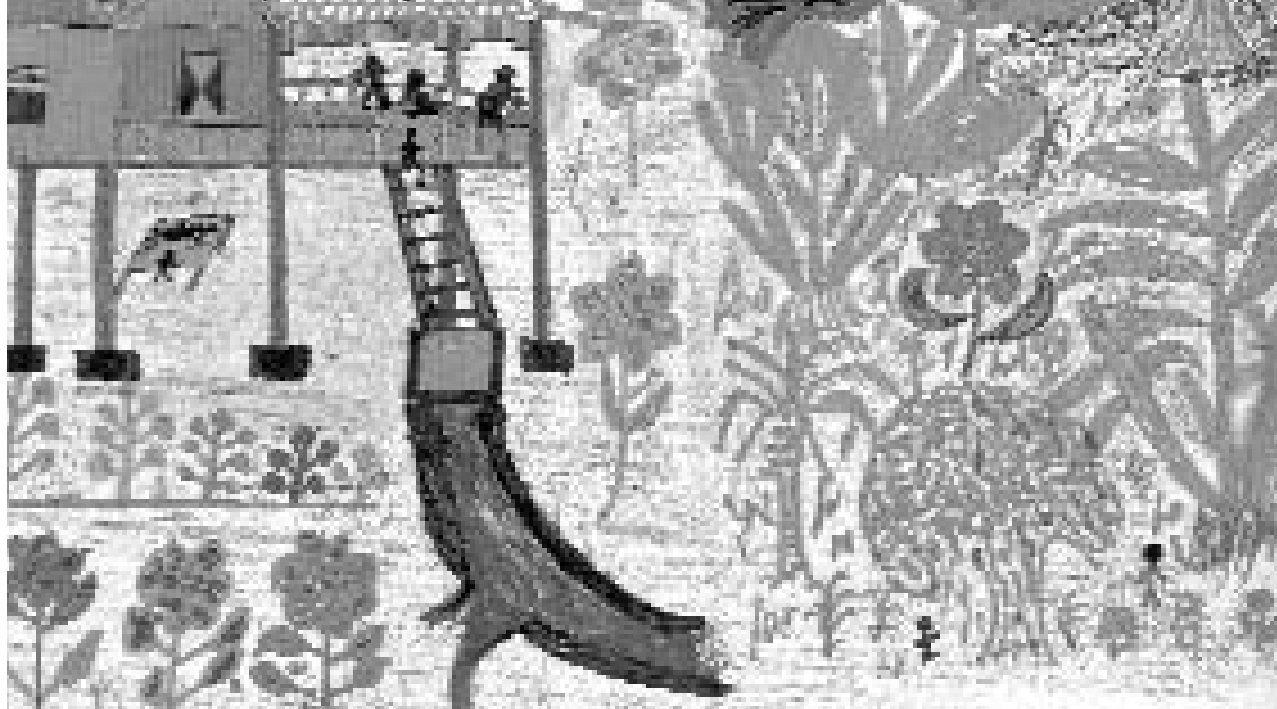
Oh my homeland! When will I have a chance to see you? When will I have a chance to live with my family again? Where are you now, my beloved mother? I miss you so much. I want to return to get a genuine picture of your lives and contribute to the reconstruction of Cambodia. I was born in Cambodia and am interested in serving the Khmer

people. My strength is nurtured by our beloved Cambodia, and I am grateful to it. My hands, my physical strength, and my intelligence must be used to assist the country. My commitment to return to Cambodia does not mean that I only want to see Chu Y to reinforce my love. Rather, it is my patriotism that does not allow me to be in this country [France] any longer, as living here is not useful. The longer I stay, the greater the loss. I have to return to Cambodia to witness the events happening there. How much can I contribute to our tiny nation?

Morgat, 11 September 1975

The blue sea rushes to the shore and hits against the rocks, making a natural sweet melody. Ocean waves, are you angry at anyone? In the sunlight, the cool September breeze gives me hope that one day I will have a chance to enjoy such beautiful weather again. I really love the ocean. Its beauty makes me homesick and makes me miss one of my friends who lived nearby who said, "Scooping up water to wash your face will help you forget your sorrows." I have tried, but not succeeded. Oh, my life encounters endless sorrow and separation just like the waves, overlapping one on top of the other. Oh the sea! If you can hear, I will divulge my anguish so that I can obtain relief. On the face of it, there are hundreds of matters on

This is a place of happiness. My homeland is quiet and peaceful because it has a breathtaking landscape. I dream of living in a home surrounded by beautiful gardens and all kinds of crops.



The 11-year old artist who produced the painting above

my mind, namely the nation, my family, living, personal education, work, and so on - oh, tens of thousands of issues. On the one hand, I want to return to serve the nation and on the other, I wish to find my beloved parents. I become

bewildered by these alternatives. I don't know how to make a decision. Everyone says that I shouldn't return. To me there is no point in staying here, only to be hired by the French. This is the problem. I am a Cambodian. Thus, I must serve the Cambodian nation, because Cambodia is the source of my wealth. I must meet my respected and beloved

mommy and daddy. This has motivated me to make the decision that I must return no matter what hardships I encounter. Somehow, hardship is better than worry, and my life would be better there than here, where there is no end to my grief. As a matter of fact, I have enough to eat and have time to travel, but mentally, I feel so uneasy that I must return home. Convey what I have said to all my friends there: that I will come back at any cost.

(Continued in the February 2001 issue)

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SPECIAL ISSUE:

***THE NATIONAL ASSEMBLY'S DRAFT LAW ON THE ESTABLISHMENT
OF EXTRA-ORDINARY CHAMBERS FOR PROSECUTING
CRIMES COMMITTED BY THE KHMER ROUGE***



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(translation provided by DC-Cam)**

KHMER ROUGE JUSTICE IS BEING SOUGHT

Youk Chhang

Finally, the people of Cambodia—especially the victims of the Democratic Kampuchea regime—have lived to see debate on the law on The Establishment of Extraordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed during the Period of Democratic Kampuchea.

H.E. Mr Sok An, head of the Royal Cambodian Government Negotiation Team, made it clear that the Government did its homework and so did the United Nations. However, I wish to add that two key points contributed greatly to this historic event. Those points are:

1) The role of the Cambodian people and organizations. They have made very clear to their

government that anything less than full justice will not do. It is not only the international community which has been pushing; domestic pressure for genocide justice has never been more intense, and media coverage of the events under the Democratic Kampuchea regime has never been more extensive than today.

2) The role of the Cambodian National Assembly, which in a unique gesture asked the public for comments on the draft law that was submitted to it by the Royal Cambodian Government in January 2000. Many responded.

It would have been appropriate if the above key points were mentioned at the beginning of the debate.



Nuon Chea



Khieu Samphan



Duch



Ieng Sary



Ieng Thirith



Ke Pauk



Ta Mok

A LITMUS TEST FOR THE HUN SEN GENOCIDE TRIAL: AN ANALYSIS OF EVENTS FROM 1999 TO PRESENT. FINAL OF A TWO-PART SERIES

George Chigas

In February 1999, Hun Sen proclaimed the end of the Khmer Rouge military threat. Firmly in power, he was prepared to begin the final phase of events leading to a trial of the former Khmer Rouge leadership.

This phase formally began in 1997 with a letter to the UN Secretary General from then-first Prime Minister Norodom Ranariddh and then-Second Prime Minister Hun Sen asking for assistance in trying the Khmer Rouge leadership.

In 1998, the US Secretary General created the Group of Experts for Cambodia led by Australian Sir Ninian Stephen, and in February 1999, the group submitted its report recommending the creation of an international tribunal to judge the crimes of the Khmer Rouge period.

During this final phase, the perspectives of the Cambodian government and the international community regarding a Khmer Rouge trial are the reverse of what they were in the first phase between 1979 and 1989. Now, the US and the international community are calling for legal proceedings against the Khmer Rouge leadership, while the Hun Sen government considers legal proceedings a possible hindrance to its consolidation of power.

Guided by a perverse political pragmatism similar to that of the US and the international community during the first phase, judicial proceedings against the Khmer Rouge leadership serve Hun Sen's purposes only to the extent that they reassure the international donor community of his government's reliability for receiving additional aid.

The Hun Sen government has been hard pressed, however, to convince the international community of its judicial system's credibility. On February 26, 1999, a US State Department report entitled *Cambodia Country Report on Human Rights Practices for 1998* decried the inadequacy and highly politicized nature of the Cambodian judiciary.

Cambodia's Prime Minister Hun Sen, chated with Khmer Rouge defectors Khieu Samphan and Nuon Chea, in Phnom Penh in 1998. Hun Sen said at that time that a trial for the pair might not be in the conflict-scared country's best interest.

The report states: "A serious lack of resources and poor training contribute to inefficiency in the judicial branch, and in practice the Government does not ensure due process." Because of this skepticism, the trial of the Khmer Rouge leadership had become a litmus test for assessing the trustworthiness of the Hun Sen government.

In response, the government had taken a number of steps to demonstrate its resolve to pass this test.

On March 6, 1999, Chhit Choeun alias Ta Mok, the former Khmer Rouge military leader known as “the Butcher,” was captured by the Cambodian army and charged by a military tribunal under the 1994 Cambodian law banning the Khmer Rouge. Two months later, Kang Kek Ieu, known as Deuch or Duch, the former chief of the Khmer Rouge interrogation and execution facility Tuol Sleng, was charged under the same law.

At the same time, the Cambodian government was making significant diplomatic and political gains on the world stage. At an international donors meeting in February 1999, the first donors meeting since the July 1997 coup, US\$470 million was pledged to Cambodia, \$100 million of which was from Japan.

However, the promise of funds came with the precondition that Cambodia carry out sweeping reforms in the military and the civil service and was subject to review every three months. On April 30, Cambodia became the tenth country to join the Association of Southeast Asian Nations (ASEAN).

And on August 11, in time for the September 9 deadline for Ta Mok’s trial, the national assembly approved a new law extending the period of detention without trial from six months to three years for people charged with serious offences like crimes against humanity.

By the time talks with the UN negotiating team began at the end of August 1999, the stage was set for Cambodia to affirm its insistence on a Cambodian-controlled trial. Not surprisingly, the talks ended without agreement as each side used the opportunity to state its position.

Ralph Zacklin, the US assistant secretary for legal affairs who led the UN team, said that if the Cambodian government did not meet conditions that the UN believed necessary for a tribunal of international standards, “The UN will simply cease to follow this process.” Specifically, the UN wanted to see a special court set up under Cambodian law with foreign judges in the majority and an internationally appointed prosecutor.

For its part, the Cambodian government reiterated its insistence that while it would allow international participation, it, not the international community, would control the process. That is, the trial would take place in Cambodia, under Cambodian law, and with a majority of Cambodian judges and prosecutors.

The Cambodian government was negotiating from a position of increasing strength as its strategy to win the support of international financial institutions began to yield results. In August, teams from the International Monetary Fund (IMF) and the World Bank returned to Cambodia for talks on resuming multi-million dollar loans.

The IMF had a \$120 million three-year program in Cambodia, but only half of the loans had been disbursed when it, along with the World Bank, suspended its assistance in mid-1997 in the aftermath of the coup.

At the end of August 1999, the IMF reached an agreement in principle on a new \$80 million loan, but before concluding the deal it wanted to see action on revenue management and forestry.

In response, Finance Minister Keat Chhon said the government would act to meet the IMF’s conditions.

Hun Sen's Options

On September 7, Mok was charged with genocide under a 1979 decree. This meant that he could be held for up to three years in jail without trial according to the new law on detention for serious crimes. Two weeks later, at the United Nations General Assembly, Hun Sen delivered a document to UN Secretary General Kofi Annan outlining three options for UN involvement in a Khmer Rouge tribunal:

- 1). provide a legal team to help Cambodian lawyers draft laws and to assign judges and prosecutors in Cambodia's existing courts.
- 2). provide only a legal team and not participate in a trial.
- 3). withdraw completely from the proposed trial.

As evidence of the Cambodian government's resolve to hold a trial albeit on its own terms, Sok An, head of Cambodia's task force for the Khmer Rouge trials, said his legal team would finalize its draft law for a trial within a few weeks and seek approval from the cabinet, the National Assembly and the Senate.

On September 24, the day after Sok An's announcement, the Japanese chairman of the Overseas Economic Cooperation Fund, Kyousude Hinozawa, and the Cambodian minister of economy and finance, Keat Chhon, signed documents to extend a 4.14 billion yen (\$400 million) soft loan to Cambodia. It was the first loan to the country by Japan in 30 years.

As further evidence of Cambodia's improved economy and world standing, Cambodian Tourism Minister Veng Serivuth announced on September 27 that tourism in the first six months of 1999 was 37 percent higher compared with the same period in the previous year. While the Cambodian government remained steadfast in its insistence to control the format of a Khmer Rouge trial, international approval of the trial was still necessary to win the confidence of world financial institutions, it stepped in to break the impasse in negotiations between the UN and the Cambodian government.

In October, the US suggested a compromise proposal, which called for a tribunal with three Cambodian judges and two UN-appointed judges. Decisions would require a supermajority, by which at least one of the UN-appointed judges would have to agree with any verdict passed by the tribunal. On October 19, Hun Sen expressed his support for the US proposal, thereby demonstrating his willingness to bend in order to gain international endorsement of the trial.

The strategy appeared to be paying off, and on October 25, the IMF officially renewed the \$81.6 million loan program for Cambodia initially discussed in August. Kong Vibol, Secretary of State for Finance, said that the resumption of loans indicated that the IMF was becoming satisfied with Cambodia's commitment to economic reform. Cambodian minister of finance Keat Chhon said the resumption of IMF assistance sent a positive signal to the financial community and aid donors. He added that Cambodia would continue to press ahead with key reforms to assure other international financial institutions and donor countries that the IMF's confidence in his government was not misguided.

As mentioned above, an important concern voiced at the February international donor meeting was the reform of the civil service. At the top of the list of concerns was the demobilization of Cambodia's inflated military. The demobilization-working group, chaired by the World Bank, expressed serious doubts over the

ability of the government to deal with the problems of demobilization.

There were some 148,000 military servicemen in Cambodia, and nearly half of the government's \$400 million budget is allocated to the military. In other words, the amount of annual foreign aid approximately equals the military spending, which is rife with opportunities for corruption and poses a serious challenge to his authority and resolve.

The Cambodian government responded to the donor community's skepticism saying that it aimed to cut some 55,000 members from its military and divert spending to areas such as education and health. To reassure donor countries of its commitment, the government made regular announcements of its progress. In June 1999, at a meeting with representatives of donor countries, Prime Minister Hun Sen said, "After only a few months, we have removed 12,868 soldiers and 105,234 ghost dependents from the military payrolls. As a result, some 9 billion riels (about \$2.4 million) was saved in this fiscal year." In August, a government official announced that thousands of ghost government soldiers and tens of thousands of their dependents had been discovered in addition to the previous figures provided in June. Finally, just prior to the October quarterly donors meeting, a Cambodian government report said 15,151 ghost soldiers had been found on the public payroll in the January-September period.

Little Progress on Demobilization

The government's actions on demobilization were apparently sufficient to satisfy donors, and at the October 27 quarterly meeting, the donors and the government renewed their agreement. The identification of ghost soldiers notwithstanding, there was very little real progress on the demobilization of soldiers, which was the core of military reform. And although fiscal reforms had led to increased tax revenues, spending on health and education was still minimal, and military spending still accounted for nearly half of the budget.

One of the most alarming statistics announced at the meeting concerned the sharp rise in violent crime. The impact of violent crime has obvious implications for Cambodia's appeal to donors and potential investors, to say nothing of the threat it poses to the people's confidence in their country's judicial system.

The situation provided Hun Sen with a perfect opportunity to extend his power while addressing the donor community's concerns about the rule of law in Cambodia.

During the first week of December 1999, he ordered the re-arrest of offenders who had been reportedly released by court officials after offering them bribes totaling hundreds of thousands of dollars. In addition, Phnom Penh's municipal court chief and chief prosecutor were suspended on charges of corruption.

In response to the crackdown, the top UN human rights official Thomas Hammerberg suggested that the actions taken were unconstitutional, since only the country's top legal body, the Supreme Council of the Magistracy, had the authority to take action against judges and prosecutors who allegedly violate the law. Not surprisingly, Hun Sen's actions were supported by the state-run Television Kampuchea, which claimed thousands of Cambodians had sent them statements welcoming the crackdown on crime and corruption.

Despite objections from some human rights activists who feared the crackdown could spin out of

control, the government pursued its drive against crime and corruption by offering cash bonuses to police for the re-arrest of criminals who had bribed their way out of punishment. In the end, it was Hun Sen himself, not the country's judicial system, that took the credit for stemming crime on Cambodia's streets.

As negotiations between the Cambodian government and the UN over the format of a Khmer Rouge trial enter their final episode, the question is how much Hun Sen is willing to test the limits of his authority over the military and especially its former Khmer Rouge commanders in order to meet the international community's minimum requirements for accountability. The degree to which Hun Sen will have to test this limit depends of course on how much the international community is willing to compromise its own position.

Throughout the negotiation process, each side had tried to appear steadfast in its position. Kofi Annan has maintained that the UN would only participate in a joint tribunal that is "international in nature" and that meets minimum standards of justice, while Hun Sen had said that he would go it alone if the UN did not accept a minor role.

Since December, negotiations between the Cambodian government and the UN over the details of the law by which to try the former Khmer Rouge leadership have continued with a sense of urgency. At each step of the process, the Cambodian government has attempted to dictate the terms of the negotiations by calling on the UN to respond to its various drafts on very short notice.

On Monday, December 20, the Cambodian government sent the UN a draft saying it would not wait beyond Friday, December 24, for a response before sending it to the National Assembly for ratification. On December 23, UN Secretary General Kofi Annan responded to the draft law in a letter to the Cambodian government. After receiving the UN response, Sok An announced that the UN indicated that it would choose the second of the three options that Hun Sen had outlined at the September meeting in New York. That option provided a mechanism for the UN to provide a legal team to assist Cambodian lawyers in drafting necessary legislation without taking part in the proceedings themselves.

The next day, the Cambodian government amended the draft so that Cambodia would pay for its own judges, prosecutors and staff members, while the UN would sponsor its own staff. Previously, all trial expenses were to be paid by the UN. On December 28, a second draft of the law was sent to the UN Secretariat requesting once again a quick response.

The following week, on January 6, 2000, hours before the Cambodian cabinet was due to vote on the draft law, Han Corell, the UN legal counsel, gave the UN's response to the draft to the Cambodian ambassador in New York. The response stated generally that the UN still had concerns about the draft law and invited the Cambodian government to send a representative to New York as early as possible.

Despite US urgings "to show flexibility," the Cambodian cabinet approved the draft law calling it "final." Hun Sen rejected the US offer to send representatives to New York, but said he was willing to hold discussions in Phnom Penh. On January 11, the process took another turn following the visit of Japanese Prime Minister Keizo Obuchi to Cambodia. During his visit, Prime Minister Obuchi expressed support for Cambodia's various reforms and pledged \$18 million in aid.

In turn, Hun Sen presented the prime minister with a “gift,” announcing that he would revise the draft law to allow for the participation of foreign judges in the trial, and on January 14, the Cambodian cabinet formally amended the “final” draft.

On January 18, the UN received an official translation of the revised draft law. The next day, Sok An submitted the draft law to Prince Norodom Ranariddh, the president of the National Assembly. Although the assembly was in recess, it was due to hold a special session to debate the bill on February 21, by which time the UN was expected to respond to the newly revised draft. Like many of the previous timelines, that one was not kept and a special session was not convened.

Indeed, the Cambodian government has very handily made it appear that it is trying to move the trial process forward despite UN inaction. From the outset of negotiations, the Cambodian government has taken control of the process. It has independently drafted the trial law then presented the drafts to the UN with a minimal amount of time to respond. The strategy has forced the UN to react to the demands of the Cambodian government and, consequently, to appear to be on the defensive in ongoing negotiations.

On January 29, Prince Ranariddh complained that the UN had yet to respond to the revised draft it had sent only 11 days earlier and that he would send the UN a letter urging its involvement in a trial. “They failed to respond to us,” Ranariddh was quoted as saying. “What can we do? Whether they are pleased or not with the draft, they should make their opinion known.”

Sticking Points

Contrary to appearances, however, throughout the ongoing negotiations with the UN, the Cambodian government had significantly revised its position in response to UN demands. Yet, some significant differences remain unresolved. One of the most critical points is whether the Cambodian and foreign prosecutors will be able to indict suspects independently. While Hun Sen claims that independent prosecutors would result in chaos, the UN argues that co-prosecutors working together would paralyze the process and allow some Khmer Rouge leaders to go uncharged.

On February 8, Kofi Annan responded to the latest draft law in a letter to Hun Sen. The letter stated that there were four key issues that stood in the way of UN involvement in a trial. In addition to the status of the foreign prosecutor, there are the issues of apprehension of suspects, amnesty, and the number of foreign judges.

Hun Sen’s initial response to Annan’s reply was that it was unfair to Cambodia. The UN’s continued distrust of Cambodia’s judicial institutions did not take into account the reforms that had been made. However, both leaders struck a much more optimistic tone the following week at the UN Conference on Trade and Development (UNCTAD) in Bangkok, where Hun Sen and Annan met on the sidelines of the meeting. Last Wednesday, a UN team led by legal counsel Han Corell left Phnom Penh with no agreement after a new round of talks.

At this point, one still wonders who has more to lose from the absence of international participation in the trial and to what extent concern for the victims of the crimes of the Khmer Rouge period play into the decision.

**KINGDOM OF CAMBODIA
NATION-RELIGION-KING**

**LAW ON THE ESTABLISHMENT OF THE EXTRA-ORDINARY CHAMBERS IN THE
COURTS OF CAMBODIA FOR PROSECUTING CRIMES COMMITTED DURING THE
PERIOD OF THE DEMOCRATIC KAMPUCHEA.**

**CHAPTER I
GENERAL PROVISIONS**

Article 1:

The purpose of this law is to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.

**CHAPTER II
COMPETENCIES**

Article 2:

Extraordinary Chambers shall be established in the existing court structure, namely the trial court, the appeals court and supreme court, to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian laws related to crimes, international humanitarian laws and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.

Senior leaders of Democratic Kampuchea and those who were most responsible for the above acts are hereinafter designated as “suspects.”

Article 3:

The Extraordinary Chambers shall have the power to bring to trial all suspects who committed any of these crimes set forth in the 1956 Penal Code of Cambodia, and which were committed during the period from 17 April 1975 to 6 January 1979:

- ◆ Homicide (articles 501, 503, 504, 505, 506, 507 and 508)
- ◆ Torture (article 500)
- ◆ Religious Persecution (Articles 209-201)

The statutes of limitations set forth in the 1956 Penal Code shall be extended for an additional 20 years for the crimes enumerated above, which are within the jurisdiction of the Extraordinary Chambers.

The penalty for conviction under Articles 209, 500, 506 or 507 of the 1956 Penal Code shall be limited to a maximum of life imprisonment, in accordance with Article 32 of the Constitution of the Kingdom of Cambodia, and as further stipulated in Articles 38 and 39 of this Law.

** **Please note:** The law published in January 2001 was revised in August 2001. The August version is reprinted here.*

Article 4:

The Extraordinary Chambers shall have the power to bring to trial all Suspects who committed the crimes of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, and which were committed during the period from 17 April 1975 to 6 January 1979.

The acts of genocide, which have no statute of limitations, mean any acts committed with the intention to destroy, in whole or in part, a national, ethnic, racial or religious group such as:

- ◆ killing members of the group;
- ◆ causing serious bodily or mental harm to members of the group;
- ◆ deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- ◆ imposing measures to prevent births within the group;
- ◆ forcibly transferring children from one group to another group.

The following acts shall be punishable under this Article:

- ◆ attempts to commit acts of genocide;
- ◆ conspiracy to commit acts of genocide;
- ◆ complicity in acts of genocide.

Article 5:

The Extraordinary Chambers shall have the power to bring to trial all Suspects who committed crimes against humanity during the period 17 April 1975 to 6 January 1979.

Crimes against humanity, which have no statute of limitations, are any acts committed as part of a widespread or systematic attack directed against any civilian population, on national, political, ethnic, racial or religious grounds, such as:

- ◆ murder;
- ◆ extermination;
- ◆ enslavement;
- ◆ deportation;
- ◆ imprisonment;
- ◆ torture;
- ◆ rape;
- ◆ persecutions on political, racial, and religious grounds;
- ◆ other inhuman acts.

Article 6:

The Extraordinary Chambers shall have the power to bring to trial all Suspects who committed or ordered the commission of grave breaches of the Geneva Convention of 12 August 1949, such as the following acts against persons or property protected under provisions of this Convention, and which were committed during the period 17 April 1975 to 6 January 1979:

- ◆ willful killing;
- ◆ torture or inhumane treatment;
- ◆ willfully causing great suffering or serious injury to body or health;
- ◆ destruction and serious damage to property, not justified by military necessity and carried out unlawfully and wantonly;

- ◆ compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- ◆ wilfully depriving a prisoner of war or civilian the rights of fair and regular trial;
- ◆ unlawful deportation or transfer or unlawful confinement of a civilian;
- ◆ taking civilians as hostages.

Article 7:

The Extraordinary Chambers shall have the power to bring to trial all Suspects responsible for the destruction of cultural property during armed conflicts pursuant to the 1954 Hague Convention for Protection of Cultural Property in the Event of Armed Conflict, and which were committed during the period from 17 April 1975 to 6 January 1979.

Article 8:

The Extraordinary Chambers shall have the power to bring to trial all Suspects 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.

CHAPTER III COMPOSITION OF THE EXTRAORDINARY CHAMBERS

Article 9:

The trial court shall be an Extraordinary Chamber composed of five professional judges, of whom three are Cambodian judges with one as president, and two foreign judges; and before which the Co-Prosecutors shall present their cases. The president shall appoint one or more clerks of the court to participate.

The Appeal Court shall be an Extraordinary Chamber composed of seven judges, of whom four are Cambodian judges, with one as president, and three foreign judges; and before which the Co-Prosecutors shall present their cases. The president shall appoint one or more clerks of the court to participate.

The Supreme Court shall be an Extraordinary Chamber composed of nine judges, of whom five are Cambodian judges, with one as president, and four foreign judges; and before which the Co-Prosecutors shall present their cases. The president shall appoint one or more clerks of the court to participate.

CHAPTER IV APPOINTMENT OF JUDGES

Article 10:

The judges of the Extraordinary Chambers shall be appointed from among the currently practising judges or from judges who are additionally appointed in accordance with the existing procedures for appointment of judges; all of whom shall have high moral character, a spirit of impartiality and integrity, and experiences, particularly in criminal law or international law.

Judges shall be independent in the performance of their functions, and shall not accept or seek any instruction from any government or any other source.

Article 11:

The Supreme Council of the Magistracy shall appoint at least twelve Cambodian judges to act as judges of the Extraordinary Chambers, and shall appoint reserved judges as needed, and shall also appoint the President of each of the Extraordinary Chambers from the above Cambodian judges so appointed, in

accordance with the existing procedures for appointment of judges.

The reserved Cambodian judges shall replace the appointed Cambodian judges in case of their absence. These reserve judges may continue to perform their regular duties in their respective courts.

The Supreme Council of the Magistracy shall appoint at least nine individuals of foreign nationality to act as foreign judges of the Extraordinary Chambers upon nomination by the Secretary-General of the United Nations.

The Secretary-General of the United Nations shall submit a list of not less than twelve candidates for foreign judges to the Royal Government of Cambodia, from which the Supreme Council of the Magistracy shall appoint nine sitting judges and three reserve judges. In addition to the foreign judges sitting in the Extraordinary Chambers and present at every stage of the proceedings, the President of each Chamber may, on a case-by-case basis, designate one or more reserve judges already appointed by the Supreme Council of the Magistracy to be present at each stage of the trial, and to replace a foreign judge if that judge is unable to continue sitting.

Article 12:

All judges under this law shall enjoy equal status and conditions of service according to each level of the Extraordinary Chambers.

Each judge under this law shall be appointed for the period of these proceedings.

Article 13:

Judges shall be assisted by Cambodian and international staff as needed in their offices.

In choosing staff to serve as assistants and law clerks, the Director of the Office of Administration shall interview if necessary and, with the approval of the Cambodian judges by majority vote, hire staff who shall be appointed by the Royal Government of Cambodia. The Deputy Director of the Office of Administration shall be responsible for the recruitment and administration of all international staff. The number of assistants and law clerks shall be chosen in proportion to the Cambodian judges and foreign judges.

Cambodian staff shall be selected from Cambodian civil servants or other qualified nationals of Cambodia, if necessary.

CHAPTER V

DECISIONS OF THE EXTRAORDINARY CHAMBERS

Article 14:

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

a) a decision by the Extraordinary Chamber of the trial court shall require the affirmative vote of at least four judges.

b) a decision by the Extraordinary Chamber of the appeal court shall require the affirmative vote of at least five judges.

c) a decision by the Extraordinary Chamber of the supreme court shall require the affirmative vote of at least six judges.

2. When there is no unanimity, the decision of the Extraordinary Chambers shall contain the *opinions* of the majority and the minority.

Article 15:

The Presidents shall convene the appointed judges at the appropriate time to proceed with the work of the Extraordinary Chambers.

CHAPTER VI CO-PROSECUTORS

Article 16:

All indictments in the Extraordinary Chambers shall be the responsibility of two prosecutors, one Cambodian and another foreign, hereinafter referred to as Co-Prosecutors, who shall work together to prepare indictments against the Suspects in the Extraordinary Chambers.

Article 17:

The Co-Prosecutors in the trial court shall have the right to appeal the verdict of the Extraordinary Chamber of the trial court.

The Co-Prosecutors in the appeals court shall have the right to appeal the decision of the Extraordinary Chamber of the appeal court.

Article 18:

The Supreme Council of the Magistracy shall appoint Cambodian prosecutors and Cambodian reserve prosecutors as necessary from among the Cambodian professional judges.

The reserved prosecutors shall replace the appointed prosecutors in case of their absence. These reserve prosecutors may continue to perform their regular duties in their respective courts.

One foreign prosecutor with the competence to appear in all three Extraordinary Chambers shall be appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General of the United Nations.

The Secretary-General of the United Nations shall submit a list of at least two candidates for foreign Co-Prosecutor to the Royal Government of Cambodia, from which the Supreme Council of the Magistracy shall appoint one prosecutor and one reserve prosecutor.

Article 19:

The Co-prosecutors shall be appointed from among those individuals who are appointed in accordance with the existing procedures for selection of prosecutors who have high moral character and integrity and who are experienced in the conduct of investigations and prosecutions of criminal cases.

The Co-prosecutors shall be independent in the performance of their functions, and shall not accept or seek instructions from any government or any other source.

Article 20:

The Co-Prosecutors shall prosecute in accordance with existing procedures in force. If necessary, and if there are lacunae in these existing procedures, the Co-Prosecutors may seek guidance in procedural rules established at the international level.

In the event of disagreement between the Co-Prosecutors the following shall apply:

The prosecution shall proceed unless the Co-Prosecutors or one of them requests within thirty days that the difference shall be settled in accordance with the following provision;

The co-prosecutors shall submit written statements of facts and the reasons for their different positions to the Director of the Office of Administration.

The difference shall be settled forthwith by a Pre-Trial Chamber of five judges, three Cambodian

judges appointed by the Supreme Council of the Magistracy, one of whom shall be President, and two foreign judges appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General of the United Nations. The appointment of the above judges shall follow the provisions of Article 10 of this Law.

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

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

In carrying out the prosecution, the Co-Prosecutors may seek the assistance of the Royal Government of Cambodia if such assistance would be useful to the prosecution and such assistance shall be provided.

Article 21:

The Co-Prosecutors under this law shall enjoy equal status and conditions of service according to each level of the Extraordinary Chamber.

Each Co-Prosecutor shall be appointed for the period of these proceedings.

In the event of the absence of the foreign Co-Prosecutor, he or she shall be replaced by the reserve Prosecutor.

Article 22:

Each Co-Prosecutor shall have the right to choose one or more deputy prosecutors to assist him or her with prosecution before the chambers. Deputy foreign prosecutors shall be appointed by the Supreme Council of the Magistracy from a list provided by the Secretary-General.

The Co-Prosecutors shall be assisted by Cambodian and international staff as needed in their offices. In choosing staff to serve as assistants, the Director of the Office of Administration shall interview, if necessary, and with the approval of the Cambodian Co-Prosecutor, hire staff who shall be appointed by the Royal Government of Cambodia. The Deputy Director of the Office of Administration shall be responsible for the recruitment and administration of all foreign staff. The number of assistants shall be chosen in proportion to the Cambodian judges and foreign judges.

Cambodian staff shall be selected from Cambodian civil servants and other qualified nationals of Cambodia, if necessary.

CHAPTER VII INVESTIGATIONS

Article 23:

All investigations shall be the joint responsibility of two investigating judges, one Cambodian and another foreign, hereinafter referred to as Co-Investigating Judges, and shall follow existing procedures in force. If necessary, and if there are lacunae in these existing procedures, the Co-Investigating Judges may seek guidance in procedural rules established at the international level.

In the event of disagreement between the Co-Investigating Judges the following shall apply:

The investigation shall proceed unless the Co-Investigating Judges or one of them requests within thirty days that the difference shall be settled in accordance with the following provisions.

The Co-Investigating Judges shall submit written statements of facts and the reasons for their different positions to the Director of the Office of Administration.

The difference shall be settled forthwith by the Pre-Trial Chamber referred to in Article 20.

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

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

The Co-Investigating Judges shall conduct investigations on the basis of information obtained from any institution, including the Government, United Nations organs, or non-governmental organisations.

The Co-Investigating Judges shall have the power to question suspects and victims, to hear witnesses, and to collect evidence, in accordance with existing procedures in force. In the event the Co-Investigating Judges consider it necessary to do so, they may issue an order requesting the Co-Prosecutors also to interrogate the witnesses.

In carrying out the investigations, the Co-Investigating Judges may seek the assistance of the Royal Government of Cambodia, if such assistance would be useful to the investigation, and such assistance shall be provided.

Article 24:

During the investigation, Suspects shall be unconditionally entitled to assistance of counsel free of charge if they cannot afford it, as well as the right to interpretation, as necessary, into and from a language they speak and understand.

Article 25:

The Co-Investigating Judges shall be appointed from among the currently practising judges or from judges who are additionally appointed in accordance with the existing procedures for appointment of judges; all of whom shall have high moral character, a spirit of impartiality and integrity, and experience. They shall be independent in the performance of their functions and shall not accept or seek instructions from any government or any other source.

Article 26:

The Cambodian Co-Investigating Judge and the reserve Investigating Judges shall be appointed by the Supreme Council of the Magistracy from among the Cambodian professional judges.

The reserve Investigating Judges shall replace the appointed Investigating Judges in case of their absence. The reserve Investigating Judges may continue to perform their regular duties in their respective courts.

The Supreme Council of the Magistracy shall appoint the foreign Co-Investigating Judge for the period of investigations, upon nomination by the Secretary-General of the United Nations.

The Secretary-General of the United Nations shall submit a list of at least two candidates for foreign

Co-Investigating Judge to the Royal Government of Cambodia, from which the Supreme Council of the Magistracy shall appoint one Investigating Judge and one reserve Investigating Judge.

Article 27:

All investigating judges under this law shall enjoy equal status and conditions of service.

Each investigating judge shall be appointed for the period of the investigation.

In the event of the absence of the foreign Co-Investigating Judge, he or she shall be replaced by the reserve Investigating Judge.

Article 28:

The Co-Investigating Judges shall be assisted by Cambodian and international staff as needed in their offices.

In choosing staff to serve as assistants, the Director of the Office of Administration shall comply with the spirit of the provisions set forth in Article 13 of this law.

CHAPTER VIII INDIVIDUAL RESPONSIBILITY

Article 29:

Any suspect who planned, instigated, ordered, aided and abetted, or committed the crimes referred to in articles 3,4,5,6,7 and 8 of this law shall be individually responsible for the crime.

The position or rank of any Suspect shall not relieve such person of criminal responsibility or mitigate punishment.

The fact that any of the acts referred to in Articles 3,4,5,6,7 and 8 of this law were committed by a subordinate does not relieve the superior of personal criminal responsibility if the superior had effective command and control or authority over the subordinate, and the superior knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

The fact that a Suspect acted pursuant to an order of the Government of Democratic Kampuchea or of a superior shall not relieve the Suspect of individual criminal responsibility.

CHAPTER IX OFFICE OF ADMINISTRATION

Article 30:

The staff of the judges, the investigating judges and prosecutors of the Extraordinary Chambers shall be supervised by an Office of Administration.

This Office shall have a Cambodian Director, a foreign Deputy Director and such other staff as necessary.

Article 31:

The Director of the Office of Administration shall be appointed by the Royal Government of Cambodia for a two-year term and shall be eligible for reappointment.

The Director of the Office of Administration shall be responsible for the overall management of the Office of Administration.

The Director of the Office of Administration shall be appointed from those with significant experience in court administration and fluency in one of the foreign languages used in the Extraordinary Chambers, and shall be a person of high moral character and integrity.

The foreign Deputy Director shall be appointed by the Secretary-General of the United Nations and assigned by the Royal Government of Cambodia, and shall be responsible for the recruitment and administration of all foreign staff, as required by the foreign components of the Extraordinary Chambers, the Co-Investigating judges, the Co-Prosecutors' Office and the Office of Administration. The Deputy Director shall administer the resources provided through the United Nations Trust Fund.

The Office of Administration shall be assisted by Cambodian and international staff as necessary. All Cambodian staff of the Office of Administration shall be appointed by the Royal Government of Cambodia at the request of the Director. Foreign staff shall be appointed by the Deputy Director.

Cambodian staff shall be selected from the Cambodian civil service system and, if necessary, other qualified nationals of Cambodia.

Article 32:

All staff assigned to the judges, Co-Investigating Judges, Co-Prosecutors, and Office of Administration shall enjoy the same working conditions according to each level of the Extraordinary Chambers.

CHAPTER X

TRIAL PROCEEDINGS OF THE EXTRAORDINARY CHAMBERS

Article 33:

The Extraordinary Chamber of the trial court shall ensure that trials are fair and expeditious and are conducted in accordance with existing procedures in force, with full respect for the rights of the accused and for the protection of victims and witnesses. If necessary, and if there are lacunae in these existing procedures, guidance may be sought in procedural rules established at the international level.

Suspects who have been indicted and arrested shall be brought to the trial court according to existing procedures in force. The Royal Government of Cambodia shall guarantee the security of the Suspects who appear voluntarily before the court, and is responsible for taking measures for the arrest of the Suspects prosecuted under this law. Justice police shall be assisted by other law enforcement elements of the Royal Government of Cambodia, including the armed forces, in order to ensure that accused persons are brought into custody immediately.

Conditions for the arrest and the custody of the accused shall conform to existing law in force.

The Court shall provide for the protection of victims and witnesses. Such protection measures shall include, but not be limited to, the conduct of in camera proceedings and the protection of the victims's identity.

Article 34:

Trials shall be public unless in exceptional circumstances the Extraordinary Chambers decide to close the proceedings for good cause in accordance with existing procedures in force.

Article 35:

The accused shall be presumed innocent until the court gives its definitive judgement.

In determining charges against the accused, the accused shall be entitled to the following minimum

guarantees, in full equality:

- a) to be informed promptly and in detail in a language that they understand of the nature and cause of the charges against them;
- b) to have adequate time to be prepared and contact their counsel;
- c) to be tried without delay;
- d) to defend themselves or with the assistance of their counsel;
- e) to examine evidence against them and obtain the presentation and examination of evidence on their behalf under the same conditions as evidence against them;
- f) to have the free assistance of an interpreter if the accused cannot understand or does not speak the language used in the court;
- g) not to be compelled to testify against themselves or to confess guilt.

Article 36:

The Extraordinary Chamber of the appeals court shall decide the appeals from the accused persons, the victims, or by the Co-Prosecutors on the following grounds:

- ◆ An error of fact
- ◆ An error of law

The Extraordinary Chamber of the appeals court shall review the decision of the Extraordinary Chamber of the trial court and may affirm, reverse or modify the decision. In this case, the Extraordinary Chamber of the appeals court may apply existing procedures in force. If necessary, and if there are lacunae in these existing procedures, guidance may be sought in procedural rules established at the international level.

Article 37:

The Extraordinary Chamber of the Supreme Court shall decide appeals made by the accused, the victims, or the Co-Prosecutors against the decision of the Extraordinary Chamber of the appeals court. In this case, the Supreme Court shall make final decisions on both issues of law and fact, and shall not return the case to the Extraordinary Chamber of the appeals court.

CHAPTER XI PENALTIES

Article 38:

All penalties shall be limited to imprisonment.

Article 39:

Those who have committed crimes as provided in Articles 3,4,5,6,7 and 8 shall be sentenced to a prison term from five years to life imprisonment.

In addition to imprisonment, the Extraordinary Chamber of the trial court may order the confiscation of personal property, money, and real property acquired unlawfully or by criminal conduct.

The confiscated property shall be returned to the State.

CHAPTER XII AMNESTY AND PARDONS

Article 40:

The Royal Government of Cambodia shall not request an amnesty or pardon for any persons who may be investigated for or convicted of crimes referred to in Articles 3,4,5,6,7 and 8 of this law.

CHAPTER XIII

STATUS, RIGHTS, PRIVILEGES AND IMMUNITIES

Article 41:

The foreign judges, the foreign Co-Investigating Judge, the foreign Co-Prosecutor and the Deputy Director of the Office of Administration, together with their families forming part of their household, shall enjoy all of the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. Such officials shall enjoy exemption from taxation in Cambodia on their salaries, emoluments and allowances.

Article 42:

1. Cambodian personnel shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity.

2. Foreign personnel shall be accorded in addition:

a) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

b) immunity from taxation on salaries, allowances and emoluments paid to them by contributing States of the United Nations Trust Fund;

c) immunity from immigration restriction;

d) the right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Cambodia.

3. The counsel of a suspect or an accused who has been admitted as such by the Extraordinary Chambers shall not be subjected by the Government to any measure that may affect the free and independent exercise of his or her functions under the Law on the Establishment of the Extraordinary Chambers.

In particular, the counsel shall be accorded:

a) immunity from personal arrest or detention and from seizure of personal baggage relating to his or her functions in the proceedings;

b) inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;

c) immunity from criminal or civil jurisdiction in respect of words spoken or written and acts performed in his or her capacity as counsel.

4. The Archives of the court, and in general all documents and materials made available, belonging to, or used by it, wherever located in the Kingdom of Cambodia and by whomsoever held, shall be inviolable for the duration of the proceedings.

CHAPTER XIV

LOCATION OF THE EXTRAORDINARY CHAMBERS

Article 43:

The Extraordinary Chambers established in the trial court, the appeals court and the Supreme Court shall be located in Phnom Penh.

CHAPTER XV EXPENSES AND SALARIES

Article 44:

The expenses and salaries of the Extraordinary Chambers shall be as follows:

1. The expenses and salaries of the Cambodian administrative officials and staff, the Cambodian judges and reserved judges, investigating judges and reserved investigating judges, and prosecutors and reserved prosecutors shall be borne by the Cambodian national budget;

2. The expenses of the foreign administrative officials and staff, the foreign judges, Co-investigating judges and Co-prosecutor sent by the Secretary-General of the United Nations shall be borne by the United Nations Trust Fund;

3. The salaries of the foreign administrative officials and staff, the foreign judges, Co-investigating Judges and Co-Prosecutors shall be borne by the countries that contribute them at the request of the Secretary-General of the United Nations;

4. The defense counsel may receive fees for mounting the defence;

5. The Extraordinary Chambers may receive additional assistance for their expenses from other voluntary funds contributed by foreign governments, international institutions, non-governmental organisations, and other persons wishing to assist the proceedings.

CHAPTER XVI WORKING LANGUAGES

Article 45:

The official working language of the Extraordinary Chambers shall be Khmer, with translations into English, French and Russian.

CHAPTER XVII ABSENCE OF FOREIGN JUDGES OR CO-PROSECUTORS

Article 46:

In order to ensure timely and smooth implementation of this law, in the event any foreign judges or foreign investigating judges or foreign prosecutors fail or refuse to participate in the Extraordinary Chambers, the Supreme Council of the Magistracy shall appoint other judges or investigating judges or prosecutors to fill any vacancies from the lists of foreign candidates provided for in Article 11, Article 18, and Article 26. In the event those lists are exhausted, any such vacancies shall be filled by the Supreme Council of the Magistracy from candidates recommended by the Governments of Member States of the United Nations or from among other foreign legal personalities.

If, following such procedures, there are still no foreign judges or foreign investigating judges or

foreign prosecutors participating in the work of the Extraordinary Chambers and no foreign candidates have been identified to occupy the vacant position, then the Supreme Council of the Magistracy may choose replacement Cambodian judges, investigating judges or prosecutors.

CHAPTER XVIII EXISTENCE OF THE COURT

Article 47:

The Extraordinary Chambers in the courts of Cambodia shall be dissolved following the definitive conclusion of these proceedings.

FINAL PROVISION

Article 48:

This law shall be proclaimed as urgent.

Phnom Penh Municipality, 10 August 2001.

(Signed)
Norodom Shinanouk

Submitted for Royal Assent by
the Prime Minister

(signed)
Hun Sen

Submitted to the Prime Minister by the
Senior Minister in Charge of the Council of Ministers

(signed)
Sok An

No. 174
For publication
Phnom Penh Municipality, 10 August 2001
Under Secretary-General for the Government

(signed and stamped)
Sin Serei

**THIS LAW WAS ADOPTED BY THE NATIONAL ASSEMBLY OF THE
KINGDOM OF CAMBODIA ON 2 JANUARY 2001, DURING THE 5TH
ORDINARY SESSION OF ITS 2ND LEGISLATURE**

PHNOM PENH, ON DECEMBER 29, 2000

THE PRESIDENT OF THE NATIONAL ASSEMBLY

**MINUTES ON THE SESSION OF
THE NATIONAL ASSEMBLY OF THE KINGDOM OF CAMBODIA**

**A DRAFT LAW ON THE ESTABLISHMENT OF EXTRA-
ORDINARY CHAMBERS IN THE COURTS OF CAMBODIA
FOR PROSECUTING CRIMES COMMITTED DURING THE
PERIOD OF DEMOCRATIC KAMPUCHEA**

[Friday, December 29, 2000]

Secretary of the Parliamentary Session:

I would like to pay my respects to Samdech Krom Preah, President of the National Assembly; Samdech First Vice President; Your Excellency Second Vice President; and the National Assembly. I would like to inform you that this morning, 97 parliamentarians are present. Thank you.

Samdech Krom Preah (Prince Norodom Ranariddh):

I would like to pay my respects to Samdech First Vice President, Your Excellency Second Vice President, Your Royal Highnesses, Your Excellencies, Excellency members, and all the members of the National Assembly; and I would like to pay my respects to Your Excellencies representing the government. According to the decision of the Permanent Commission meeting held on December 12, 2000, the request of the Legislative Commission, and the approval to include Agenda #10 in the fifth session of the National Assembly, legislature 2, which was approved by plenary assembly on December 14, 2000, I would like to ask Excellency Mao Sophan, Chairman of the Legislative Commission, to report to the National Assembly on the observations and study of the draft law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed during the Period of Democratic Kampuchea. Please, Your Excellency Mao Sophan.

His Excellency Mr. Mao Sophan:

I would like to pay my respects to Samdech Krom Preah, President of the National Assembly; Samdech First Vice President; Your Excellency Second Vice President; Your Royal Highnesses; Your Excellencies. On behalf of the

Legislative Commission of the National Assembly, I would like to present the Commission's commentary to the National Assembly that examines the draft law on the Establishment of Extra-Ordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed during the Period of Democratic Kampuchea.

Administration:

The draft law was submitted by the Royal Government to the National Assembly -reference no. 08 dated on April 18, 2000 and enclosed with statement of fact no. 01 dated January 18, 2000 and 122 copies of the draft law, which were distributed to parliamentarians. After an examination and discussions, on January 21, 2000, the Permanent Commission of the National Assembly agreed to submit the draft law to the Legislative Commission - with letter no. 86 dated April 25, 2000. The draft law, which has been submitted to the National Assembly for discussion and approval, has been written in accordance with the administration, referred to in article 21 of the internal rules of the National Assembly. As a result of the study by the Legislative Commission of the National Assembly, the draft law was established by lawyers of the Kingdom of Cambodia and international lawyers. The draft law is based on the following important points:

Laws, procedures and other norms that are still in force in Cambodia,

International conventions on the establishment and condemnation of crimes of genocide approved by the United Nations convention in 1948,

The 1949 Geneva Convention on crimes against humanity and property that must be protected,

The 1954 Hague Convention on the protection of cultural property in the event of armed conflict,

The 1961 Vienna Convention on Diplomatic Relations.

The crimes of genocide and crimes against humanity in Cambodia, which caused the deaths of millions of people, seriously violated many international conventions acceded to by the Kingdom of Cambodia. In line with our national sovereignty and reputation, and which will be practiced inside and outside the country, it is important to establish the Extra-Ordinary Chambers to try the crimes in the existing court system of Cambodia, with the participation of Cambodian and foreign prosecutors and judges who are experienced in criminal and international law. The draft law was written to establish Extra-Ordinary Chambers to try the senior leaders of Democratic Kampuchea and the individuals most responsible for the crimes. The Extra-Ordinary Chambers will be established in the existing court structure of Cambodia, with the following composition of judges at each level of the courts: 1) Trial Court: There are five judges of whom three are Cambodian with one as president, and two are foreign judges. 2) Appeals Court: There are seven judges of whom four are Cambodian with one as president, and three are foreign judges. 3) Supreme Court: There are nine judges of whom five are Cambodian judges, with one as president, and four are foreign judges.

All courts at all levels will have co-prosecutors and co-investigating judges-one Cambodian and one foreign. The decisions made by the Extra-Ordinary Chambers will be subject to unanimous opinion, but a vote will be needed when there is no unanimous opinion. The vote requires the support of at least one foreign judge. The draft law also describes the establishment of a pre-trial chamber for solving problems among co-prosecutors and co-investigating judges. In addition, the draft law talks about the organization, processes and competencies of the Extra-Ordinary Chambers. After examining and studying this draft law in detail, the Legislative Commission of the National Assembly has agreed to the Royal Government Representative's requests for modification, which are the result of an agreement between the Royal Government and the representative of the Secretary-General of the United Nations, as given in the second text, which was already distributed. After examining and studying the details, the Legislative Commission of the National Assembly has agreed with the Royal Government's representative to submit this draft law to the National Assembly for discussion and approval. As to the request for modification and the reasons leading to the request, the Legislative Commission will be informed when the National Assembly examines the content of this draft law. As to the report as presented above, I

would like to request the National Assembly to accept this draft law and discuss and approve it chapter by chapter as quickly as possible. Thank you.

Samdech Krom Preah:

Thank you, Excellency President. I would like to stress that the report submitted was written article by article. His Excellency Chairman was not mistaken that His Excellency has requested the National Assembly to discuss and approve the draft law chapter by chapter. Referring to new article 29 of the internal rules, I would like the floor to discuss and approve the overall content of this draft law first. Your Excellency Sor Ka Un, please.

His Excellency Mr. Sor Ka-Un:

[I would like] to pay my respects to Samdech Krom Preah, President of the National Assembly; Samdech First Vice President; Your Excellency Second Vice President; the National Assembly and the Royal Government's representatives. Regarding the draft law on the Establishment of Extra-Ordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed during the Period of Democratic Kampuchea, I think that due to the established fact that genocide was committed in Democratic Kampuchea between April 17, 1975 and January 6, 1979 - lasting 3 years, 8 months and 20 days - the ideas of Cambodian nationals who were the victims of Democratic Kampuchea, the international community, and according to Article 6 of the Convention on the Protection and Condemnation of Crimes of Genocide, I think that the draft law should be discussed and approved. Thank you.

Samdech Krom Preah:

Thank you Your Excellency. Please Your Excellency Sam Rainsy.

His Excellency Mr. Sam Rainsy:

I would like to pay my respects to Samdech President of the National Assembly, the whole National Assembly and the Royal Government's representatives. On behalf of the Sam Rainsy Party, I would like to support the draft law, which reflects the agreement between the Royal Government of Cambodia and the United Nations. Yesterday, I received confirmation from his Excellency Sok An, the Royal Government's representative, that today's discussion is about the draft law, which fully reflects the agreement between the Royal Government and the United Nations. Although there is no English text, the contents stated in Khmer bear no remarkable differences from those of the Royal Government/United Nations agreement, so I totally support the draft law.

Samdech Krom Preah:

Thank you Excellency. Excellency Bun Ly, please.

His Excellency Mr. Bun Ly:

I would like to pay my respects to Samdech Krom Preah, President of the National Assembly; Samdech First Vice President; Your Excellency Second Vice President; Your Royal Highness; and Excellencies parliamentarians. I do not differ from the earlier speaker. Excellency, regarding the draft law on the Establishment of Extra-Ordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed during the Period of Democratic Kampuchea, I would strongly like to support the general contents of the draft law, and I believe that Excellency Government's representatives, who struggled to make this law, will assure that the contents of the whole law parallel the result of the agreement achieved between the Royal Government and United Nations. On this point, I would like to voice my support, Thank you.

Samdech Krom Preah:

Thank you, Excellency. His Excellency Mr. Chhour Leang Huot, please.

His Excellency Mr. Chhour Leang Huot:

I would like to thank Samdech Krom Preah, President of the National Assembly, and I would like to pay my

respects to the whole National Assembly. I am also in accord with the earlier speakers. After thoroughly examining and observing the contents of the draft law, I find that it is sufficient to establish a tribunal to try crimes of genocide in Cambodia. At the same time, I am not only happy, but also extremely excited because nationalism is being shown now. So far, some Cambodians have a notion of not trusting Cambodians, not trusting themselves. And they demand an international court to work on these cases. And so far, the Royal Government, led by Samdech Prime Minister Hun Sen, has strongly challenged and made demands to the international lawyers. I believe that shortly, Your Excellencies Royal Government's representative will provide a commentary. The challenge has been strongly criticized by both nationals and internationals, but some individuals have not helped, even making the situation worse. That is why all of us who live in the country, who try to be patient because we respect the constitution, are always scolded and called a "Cambodian body with a Vietnamese brain."

But the truth is still the truth. All of Your Excellencies were involved in writing the constitution and have been involved in drafting the constitution and attended many seminars. After attending seminars again and again, I feel lazy about participating because what I am interested in is one phrase in the constitution, which was written in 1981. What does it say? It says..., please let me see it first because it was long time ago and I have forgotten. One article states that the Cambodian people are the owners of their country's destiny. This is a phrase that we few who are local lawyers, who survived, are challenged to make our people remember: "Cambodians don't sell their good will." The first phrase that we wrote is "Independence and Sovereignty." If we only have independence and sovereignty in terms of land that belongs to us, but our brain is enslaved, our brain is led-that is not Cambodian. Cambodians are the owners of their fate, the destiny of Cambodians is formed by Cambodians. These ideas not only exist today but have existed since we wrote the constitution. We are patient in order to complete the work successfully. Those who used to oppose us now support us 100 percent without having discussed the matter. [They] have not done anything, just asked others and documents were not there - this is not a simple idea. A good idea is independent. We do something, and we determine our own fate - that is Cambodians. This is the outcome we can show after having worked for a long time to achieve this draft law, and this is because of the government's achievement, especially Samdech Prime Minister Hun Sen and his colleagues who struggled to express ideas.

I would like to say that I am not in the government, but perhaps it is known that I know law a little bit. So when foreigners come, they always ask me. I have been invited to have meals and to seminars many, many times. They asked me and they wanted to know our ideas. They cannot read our minds because we are the owners of our country's fate. Fate cannot be seen, but land and border sovereignty can be seen. They asked and asked - the question is how we debate with high-level lawyers, let alone undistinguished lawyers who come to the seminars. During discussions, the high-level judges respect and admire those of us who are ordinary local lawyers who love nation, sovereignty, and constitution, and who know how to determine their own fate, dare to challenge ideas and not to surrender. The ones who don't know always blame us and accuse us of prolonging the draft law. The draft law took a long time because we were negotiating sovereignty. They want advantages from us and we want advantages for ourselves too. Our goals are to protect [sovereignty] and the spirit of determining our own fate. We know that in small matters, Cambodians want a Paris court, this or that court and they don't go to Cambodian court. This is what we call "holding the tails of others, holding the tails of foreigners." Cambodians are not like that; Cambodians don't have such ideas. An ideal that we all share is that we are the owners of our fate.

Nowadays, they come to teach so-called democracy. I would like to say that I don't want to attend these seminars because they give me a headache. I also have high blood pressure. When they explain to me a lot, my blood pressure rises [laughter]. That is why I rarely attend. I also learned about democracy when I was at school. Although I have not

read thousands of books, I have read hundreds of books. My teacher asked what democracy was, but no one could give a clear answer. They just answered vaguely. Their answer on democracy was ambiguous and who knows democracy? No one, Silent! When asking, democracy is unknown. The King also said that some countries are debating democracy. Therefore, we must dare to determine our own destiny. Our country is a democratic one, and we represent people who are determining their own fate. First, we are destined to make law. Second, Cambodians are to establish chambers on their own. While foreigners will participate, Cambodians will be in the majority. After the negotiations, Cambodians have gained a majority.

However, I would like to say that previously we did not accept international court chambers because of our past experience. Foreigners have never helped us until the end. They only help set up a trial, and after the trial, which prison will be used? The internationals have no prisons. Which countries have prisons? No [foreign] countries have prisons, and there is no international prison either. There is an international court, but there is no international prison, so Cambodia must use her prisons to jail Cambodians. I have experience in this matter. When UNTAC came to Cambodia during the election, they made the law and arrested a lot of people. After the arrests, the UNTAC police were afraid because they did not know how to deal with those people, and they did not know which court they had to send them to. Later they came to the Ministry of Justice. At that time His Excellency Chem Snguon said no, no; he wanted to challenge the internationals. He said, “I do not know. You arrested them so you are responsible for them. You send them to any court; I don’t care.” UNTAC asked again and again. This shows that this task is for Cambodians and not for foreigners. Foreigners arrested them, and why didn’t they send them to us. They kept them, and later they were afraid, then they came to us. It is the same now that they want to organize the court.

Now according to the newspapers, we set up a court and the question has been raised. Maybe Samdech Prime Minister has been asked whether he dares to arrest [the suspects] for the court. They are so afraid to arrest them. This is not different from the UNTAC era: they were brave only in Phnom Penh. And when they went to Pailin, they had to stop just because of a small Khmer Rouge soldier carrying an AK 47 with a bamboo trunk blocking the road. They were afraid to enter because of one gun, which was very small. As far as I know, they did not dare to enter. This is our experience. We know that in some matters, we must be the owner. If we want to succeed, we must do it on our own. We can do it. They [foreigners] could help, but on some points they could not help because they had their mandate. They could not eat pra-hok [Cambodian fermented fish], they could not sleep in the forest, they did not know much, and they even did not understand the language - their languages and ours are totally different. Laws were also different. Some foreigners only knew one part of laws and became experts. This is enough for us.

We have a lot of experience with the internationals. That is why we have challenged our ideas, but we don’t speak up. What do we do and how do we try the genocidal regime, while making sure that the court will bring justice. There is nothing better than Cambodians running their own court, so we have struggled to express ideas, and today we come to a conclusion.

Regarding the law, let His Excellency Sok An explain more. What I would like to share is the spirit of self-reliance and the spirit of ownership of our country’s fate as referred to in the constitution. Now we have succeeded, and it is an historical event. I request that Cambodians not sell their brains to others in the future. If you want money, you can sell your body, but not your brain or national spirit. This point is set forth in the constitution - from the constitution in 1981 to the present constitution. This is what I would like to share with. Thank you. If I’ve said anything wrong, please forgive me.

Samdech Krom Preah:

Your Excellency Cheam Channy

His Excellency Mr. Cheam Channy:

After examining the essence of the law, I would not like to make any comments. Thank you.

Samdech Krom Preah:

Thank you Your Excellency. Please Your Excellency Keat Chhon.

His Excellency Mr. Keat Chhon:

I would like to pay my respects to Samdech Krom Preah, President of the National Assembly; Samdech First Vice President; Your Excellency Second Vice President and the whole Floor, who have allowed me to speak. Although I am a member of the Royal Government and a government representative here to defend the draft law, I would like to be allowed to express ideas as a parliamentarian. Today we are preparing a mechanism, but not an institution to judge the past. We all know that we don't have to predict the past because the past is already known. But in general, in history, it is hard to predict the past, please let me speak in French "Le passé est temp pre'visible"; in English we say "You can not predict the past." Even in history books, there is disagreement over the interpretation of events. But for the time being, we must develop a mechanism, as requested by Royal Government, to judge the past.

The part of the past that is not hard to predict is that we all suffered, which has led us to a mechanism to judge the past because it was a period full of suffering, the worst for Cambodia. Therefore, it is necessary to formulate a mechanism for judging the past. Everywhere, every day when meeting each other no matter where - in Phnom Penh or abroad such as in the United States, France, Australia or wherever, first people talk about normal friendship. Then they start talking about personal backgrounds and personal misery, and they would continue non-stop, and only after a while, would stop and talk about something else. Because the tragedy that occurred in Cambodia from 1975 to 1979 affected all of its people. The survivors are not normal - they are physically and mentally weak, so our mentality is weak. We are thus required to use our hearts, brains, spirits, motivations, all parts of us, to seek the most objective judgment - or what? For the next day, there will be no fear of killing in this or other countries, and this affects society, ethnicity, community, a lot. The death figures in the Pol Pot regime can be conflicting, 1,700,000 or 3,000,000, but no matter which figure, even 100,000 people or 20,000 is too much, and these crimes should have not been committed.

On April 17, 1975, it was hoped that our nation would have peace and national reconciliation under the leadership of Samdech Head of State Norodom Sihanouk. Unfortunately, his power was seized and the country, which was bright, was diverted to not only the complete darkness, but also to the flames of fire. We thus have an obligation here - an obligation to make law. I observe that there will be unanimity because the Royal Government did this piece of work under the direct leadership of Samdech Prime Minister with suggestions from high institutions like the National Assembly, which is led by Samdech President of the National Assembly and the Senate led by Samdech President of the Senate. I dare not judge the distinguished suggestions from the King, whose life is on our head.

Why do we need unanimity? I would like to cite the phrase of Mr. Elie Weisel, who won a Nobel Peace Prize. It doesn't mean that we don't have words to express this feeling. Each of us has a lot to express, no matter what their family, perhaps except the next generation who didn't live [during the Pol Pot regime], but those who were mature at that time and survived will remember forever. Mr. Weisel said "You cannot be murdered twice, the first time physically and the second to have your memory killed." Please let me speak in French "Il peut pas de l'assassinats du deux fois premier fois phisiquement votre phisique et deuxieme fois votre memoire."

Therefore, the mechanism is to judge the dark and painful past, which led to the deaths of millions of Cambodians and other ethnic groups living in Cambodia. We have an obligation to remember and develop the will to build a bright future and to avoid what we had from 1975 to 1979. Speaking so, I am sure that our ideas are not much different. In memory of this, we have an obligation to find justice, to pay tribute to millions of innocents who lost their

lives. This is for memory and justice. In practice, we are strengthening peace, national agreement and national reconciliation, and transforming and developing the country, which is advancing. These contexts have led us to formulate the mechanism, but we also need to focus on the country's current needs. It is important to find justice as I mentioned earlier, but it is also important to have a balance among the three corners of a triangle. Justice is the first corner; strengthening peace and national unity, and national reconciliation is the second; and continuing to transform and develop the country is the third. What I said doesn't mean to devalue the core tasks for the mechanism. I only want the tasks, which need to be judged by this mechanism, to be placed in a new context of the Royal Government, which is advancing.

Generally speaking, we are facing difficulties and fragility. I thus believe that after formulating the mechanism and process, the preparation and practical application must focus on our needs, because whatever needs to be done each day, we must strike a balance between what we need and what we want. Even democracy and freedom are necessities. A while ago, his Excellency Chhour Leang Huot talked about democracy. If democracy is not carried out well, it will become anarchy. Therefore, democracy and freedom must be carried in context in order to deal with what we are confronting. Nothing is absolute. Freedom and necessity - necessity also limits freedom. In the history of humanity, there has always been a struggle among necessity, freedom and democracy. Democracy will not exist for long unless there is peace, political stability, security, and in addition, the upgrading of the middle class. This will not happen because of getting a salary from the government, but because of nationwide effort. When the large middle class becomes strong, there will be enough stability and a base for democracy. The middle class does not mean aristocrats or the poor. I am not going to use specific countries as a comparison. In some countries, when the middle class comprises only 8 percent, there is a sufficient base for democracy. But when democracy is built from the top layer of society, it will be unstable because there is no economic structure to support it. That is why some democratic movements in some countries fall into bloodshed. In countries with a 16-17 percent middle class, democratic elections can be held. Democracy is limited. In short, it is time to consider the context and find justice, to heal the wounds of survivors, and to pay tribute to those who died most unjustly.

Samdech Krom Preah:

Please, Excellency Ek Sam Ol.

His Excellency Mr. Ek Sam Ol:

Samdech Krom Preah, President of the National Assembly; Samdech First Vice President, Excellency Second Vice President; the whole floor. I am deeply impressed by the fact that the 2nd legislature of the National Assembly has received a draft law on the Establishment of Extra-Ordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed during the Period of Democratic Kampuchea. Today is Friday. On the lunar calendar it is the 4th day of the new moon, the month of Baus, the year of the Dragon, and the Buddhist year 2,543. It is also the best of the days on which we have discussed previous draft laws, which Excellency Sam Rainsy, the President of Sam Rainsy Party, has never before supported. So, today is so good, so harmonious, that I think the process of discussion and approval of this draft law will go faster than the way our National Assembly sessions have ever done before. This is my remark, my impression. I think that that the National Assembly discussing and approving this law is essential and historical for the Kingdom of Cambodia. Second, the law has an international dimension, because it has taken many years to address crimes of genocide in Cambodia (to be debated), especially since the first legislature when Samdech Krom Preah, the first Prime Minister, and Samdech Hun Sen, the second Prime Minister, raised the issue of a trial. If I am not mistaken, it was 1997 when Samdech Krom Preah was the first Prime Minister and Samdech Hun Sen was the Second Prime Minister. It has taken from 1997 to December 29th, 2000 to achieve this draft law, and from what I understand of the

discussions so far, members of the National Assembly support the general content as well as the move forward. So, it is my suggestion that [we] approve the general content. Thank you.

Samdech Krom Preah:

Please, Excellencies, the Floor, approve the general content of this draft law.

Secretary of the Parliamentary Session:

Samdech Krom Preah, President of National Assembly; Samdech First Vice President; excellency Second Vice President; the whole floor. The vote on the general content of the Draft Law on the Establishment of Extra-Ordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed during the Period of Democratic Kampuchea, is 98 of 98.

Samdech Krom Preah:

The National Assembly has approved the general content of this draft law. Please, Excellency Senior Minister Sok An, Minister in charge of the Cabinet, come up to defend the law in front of the session of the National Assembly. Thank you.

His Excellency Mr. Sok An:

Samdech Krom Preah, President of the National Assembly; Samdech First Vice President; Excellency Second Vice President; the whole session of the National Assembly, welcome Excellency embassy representatives who have come to listen to this discussion. Before going into the introductory commentary on this important draft law, with your permission, I would like to make two points. First, I remember December 29, 1998, and today is December 29, 2000. December 29, 1998 was the day high-ranking Khmer Rouge leaders traveled to Phnom Penh to defect to the government. It was thus an important day in the history of Democratic Kampuchea. The other point I would like to make is that a moment ago, Excellency Sam Rainsy said that yesterday he asked me if the content of the law was far from the text of the United Nations. If both were the same, he would support it. I would like to explain this point because as you may be aware, this is a negotiation. In every negotiation, one party cannot always accept the other party's position. To have 100% agreement is not a negotiation, it is a mirror copy, an acceptance of commands, and negotiations mean negotiations. However, we should be happy that we have agreed on important principles, on big principles, on which I think the introduction to my speech will reflect.

In this commentary, I will elaborate on five points. First, I would like to respectfully inform the National Assembly about the history of international tribunals or what is called a tribunal that tries crimes. And what will our tribunal be? The second point I would like to talk about concerns the principles that are the foundations of this important draft law. The third point is that the process that began in 1997 and continues today. In this process, we have moved forward to achieve this draft law that the floor is discussing today. The fourth point is the important compromise points between us and the United Nations, which include important principles of this draft law. The fifth point will be a summary of each chapter.

I would like to start my discussion of the first point by talking about the history of various international tribunals. I would like to stress that the concept of state, which is called e'tat, has existed for many hundreds or thousands of years. We are proud that recent research in Takeo province shows that it was the first state in Cambodia and researchers said it was the first state in Southeast Asia. So, let me come back to my meaning. That is, when a state exists, a big concept, a big task, is to respect the national sovereignty of that state, which is independent. This principle is so important that the UN charter upholds it and considers it necessary to respect. So the respect of national sovereignty means that a country's courts or judges prosecute crimes within that country, and as it is said of the principle of sovereignty since [speaking French]. So, each country prosecutes its people who commit crimes, who violate the law of the state. This is

the implementation of law, which gradually forms the concept of a constitutional state, which we are promoting today in the Kingdom of Cambodia. So, if we talk about this concept, since a state came into existence (before World War II), a national court prosecutes the people in its country, and there is no problem of judges in one country prosecuting people in another country.

But another concept was adopted after World Wars I and II, especially II. Between the world wars, there had been effort to establish what was called the ICC. An effort had been made to form a permanent International Criminal Court since before World War II, that is, 1937. The convention agreeing to form a permanent criminal court has been signed, but the court has not been formed. Since 1937, a permanent international criminal court has not been formed because some countries still hesitate. They have not tried to contribute to this effort. So after World War II, when Germany and Japan were defeated, criminal courts were formed to try their leaders. In Germany, an international military tribunal was formed in Nuremberg. Its formation was underway when the war was still going on, through the London agreement on August 8, 1945. So, in 1945-46, the Nuremberg military tribunal was formed. It was held by the winners of the war (especially the allied countries, US, France, UK, former Russia), so it is not the same as our tribunal. I will point this out again later. So, this tribunal was formed to try leaders of German fascism, who committed the most serious war crimes. In the Nuremberg trials, 24 persons were tried, of which some were released, some sentenced to death, some to life imprisonment, to 10 to 20 years in prison, for example. What I want to point out is that the tribunal was formed by lawyers of the winning countries to prosecute the losers. So, the losers did not have defenders. Yes, it was a tribunal formed from the outside to prosecute leaders of crimes of German fascism who waged World War II. Another tribunal after World War II, from 1946 to 49, was called the International Military Tribunal for the Far East. This tribunal was formed in Tokyo to prosecute Japanese leaders. The Nuremberg tribunal defined crimes called crimes against peace, crimes against humanity, war crimes, and especially as a concept, crimes against peace and crimes against humanity. War crimes have existed since that time. The international military tribunal in Japan tried 28 people. And a concept of individual responsibility was formed, as well as crimes against humanity and genocide. This tribunal was no different: it was held by countries that won the war.

Long after that, another tribunal was formed in Yugoslavia, called the international criminal tribunal for former Yugoslavia and Rwanda. The Yugoslavia tribunal was formed in 1993 and held in the Hague, not in Yugoslavia, and it was also arranged by foreign lawyers. The Rwanda tribunal had two sections, an international tribunal, which was not based in Rwanda, but in Tanzania to prosecute the leaders of Rwanda. This trial completed 45 cases of high-ranking leaders. The tribunal held in Rwanda was called the national Rwanda tribunal, for the prosecution of those who also committed genocidal crimes but were low-ranking, these were many in number. The number of those to be tried and imprisoned was 120,000. This is difficult because 120,000 people must be tried. So, there was gradual adjustment, for example, a change into a popular village trial, a condemnation of crimes by the people, and so on.

A tribunal we recognized as having prosecuted crimes was held in Cambodia in 1979 in order to try genocidal crimes committed by the Khmer Rouge, when we tried two KR leaders. The court that I just mentioned, yes, the international criminal court, which they have tried to form since 1947 and today, an agreement has been reached by more than 60 countries, and it is possible to say that in the future, efforts will be made to form a permanent court. That is, there is no need to have a special court, like Nuremberg, Tokyo, Rwanda, former Yugoslavia. A permanent criminal court, this court is expected to come into being in the future, probably in the Hague. This is the history of cases, I can summarize that there have been criminal courts to prosecute those crimes. The most serious were crimes against humanity, genocide crimes, and crimes against peace; the concepts for them came from the special courts I mentioned. However, those courts, compared to what we are doing, are different. The part that we have described is the tribunal

arranged from the outside to prosecute people or leaders of a country.

What Cambodia is doing is new, the first time in the world, because it is a tribunal held with our direct approval. Today, if this law is approved by the National Assembly, goes through legal procedures, and goes into effect, it will mean an agreement between us (the host) and those from the outside who helped arrange it (the UN). So, the draft law that we have written can be considered new. The principles we followed, which I will explain next, are new in world laws, both large and small laws. They have come out of Cambodia. And today, according to reliable information we received, the Security Council is starting to talk about the model of the Cambodian tribunal. Even though we have yet to complete the law and establish tribunal mechanisms, the UN has said in our discussions and agreements on basic principles, that these principles can be used. In the Security Council, opinions were expressed regarding the tribunal model of Cambodia. This is the first point I would like to raise, a practical point in this commentary.

Second, I would like to talk about the viewpoints and important principles of this draft law. In practice, one can say that we have used three important principles in establishing the tribunal mechanism. The first is the respect for justice, the search for justice. Excellency Senior Minister Keat Chhon also put forth a number of opinions in judging the past. In judging the past, sometimes opinions differ among researchers, lawyers and politicians, and sometimes there are agreements. However, for the past we are discussing, I think, as Excellency Keat Chhon said, it is easy for us to understand one another because it was a tragic past that we all - young, old, men, women, politicians, lawyers, researchers, academia - condemn as crimes, that we all call genocidal crime. So, the first point, the first big principle, is that we endeavor to provide justice to the victims, to the people of Cambodia, and the Cambodian nation, to contribute to humanity, to the humanitarian principles of the world, that need to condemn and prevent genocide from happening again. So, that we remember, we are establishing this tribunal as a practical step to providing justice, showing memory. Memory is essential in helping prevent this crime from happening again in Cambodia, and especially helping prevent this crime from happening in other countries. Our contribution does not mean that we can completely prevent these crimes, but it is an important contribution, that I think lawyers, politicians, and academia will learn from and study the Cambodian model. This is the first principle raised in the search for justice in order to close historical black chapters that have happened in Cambodia.

The second principle is the maintenance of peace, political stability, and national unity that Cambodia has just achieved. I think people from all walks of life in Cambodia welcome the peace, political stability, security, and social order that we have obtained. If we compare the current situation to the previous one, we have not achieved 100% social order or security, but no other country has. We are proud that we have stepped forward in the process of enhancing political stability, peace, and security in Cambodia. This is most valuable for our beloved motherland and it is easy to understand why. If we compare Cambodia to neighboring countries 30 or 40 years ago, we see that the Kingdom of Cambodia's development levels were similar to those of Thailand, Singapore, Malaysia, Indonesia, Taiwan, and Korea. But today we are far poorer than them, and are considered a least-developed country. There are many reasons, but the main reason is one we all know: we had civil wars, political instability, no peace. So, we get poorer and poorer, while they get richer and richer. So, today we cannot compare with them in terms of stability of development. I think that we all highly appreciate peace, stability, security, and social order as the most vital tasks for all institutions in Cambodia and the Cambodian people. So, whatever we do, we must not endanger the peace and stability we have obtained. Before pursuing this important task, we have thought it through and have held to clear principles. And as Excellency Chhor Leang Hourt said, some people think it has taken too long. It is taken long because it is a difficult task, one we have had to study fully, a task to seek unity, a task to seek a consensus, based on the highest interests of the country. This is difficult, not easy. If we did things without thinking, it would have taken no time, but we carefully balance things, we

can't just proceed at will. But we have stepped forward. So, I think the second point will be supported by our esteemed National Assembly, by all people who need political stability, peace, and security.

The third principle is respect for national sovereignty. As I have mentioned, independence, national sovereignty, and territorial integrity form the most important principles in the UN charter. So, the fact that we talk about respect for national sovereignty is reasonable. And we have struggled in this sense. So, in this draft law, what are the points that reflect respect for national sovereignty? As in the negotiations I have mentioned, we respected the interests of the other side, and the other side has also respected our interests. So, there are three practical points that I would to make, in which the other side of the negotiations respects Cambodian national sovereignty. The first point is about judges. We are talking about national sovereignty; why do we allow foreign judges to make decisions in Cambodia? This is a sensitive point that I would like to comment on as follows. We accept foreign judges because we want support from the international community, especially the United Nations, that put forward a principle called credibility, that is, trust and belief in us. In order that they believe in the trial process, they need to manifest certain ideas and principles. Regarding the trial, I would like to talk about the big steps of compromise. They want an international tribunal and we want a national tribunal. So, the compromise is a national tribunal, but with the participation of foreign judges. A remarkable point is that those judges are appointed by the highest competent institution of Cambodia, the Supreme Council of Magistracy. The draft law clearly states that the Secretary General of the United Nations shall nominate, but those who shall appoint are the Cambodian Supreme Council of Magistracy. This point, I believe, reflects in part the respect for Cambodia's national sovereignty. Another point is that we want the majority to be Cambodian judges and the United Nations wants the majority to be foreign judges. So, how will we compromise? We pointed out that in order to reflect the respect for Cambodian sovereignty, the trial chambers must have a Cambodian majority. If 5, we have 3; if 7, we have 4; 9 we have 5, meaning that the majority is with Cambodia. The United Nations pointed out that for credibility they need a majority of foreign judges. This point came to a deadlock. A compromise that reflects the principle of national sovereignty was reached. It allowed a majority of Cambodian judges and a minority of foreign judges, but decisions were to be based on a new formula, never used before in the world, called Super Majority. That is, if there are 5 judges, they have 2, and we have 3, but a decision is made by 4. Thus, the 3 Cambodian judges cannot make a decision unless one foreign judge agrees. If we think of a legal principle, we have the majority, and they have the minority, but the ability to block. So, negotiations find a middle course, not a mirror copy. This is a compromise. They respect us and we respect them. This is the principle of negotiation. My second point reflects national sovereignty. The third point: as I mentioned, throughout history, the majority of criminal tribunals worldwide have been established by foreign judges, initiated by foreign judges, and imposed on the country.

As for our arrangement, our mechanism, which we call Extra-Ordinary Chambers in the framework of the Cambodian court, is a compromise between us and the United Nations. We need them to recognize us, to be aware of our case, and we want the trust of the international community. Therefore, there needs to be a compromise. We need them, and they want this to work. So, the three points - the appointment of judges, composition of judges, and initiatives to establish this mechanism - reflect the principle of respect for national sovereignty, which is a main principle of the mechanism. This is the point that reflects the title of the text I would like to discuss here. We entitled it the Draft Law on the Establishment of Extra-Ordinary Chambers in the Courts of Cambodia. So, these terms Extra-Ordinary Chambers and courts come from the compromise that allows for Cambodian courts but also for Extra-Ordinary Chambers, meaning that existing Cambodian courts and the chamber work on the case of Khmer Rouge leaders to prosecute crimes committed in the period of Democratic Kampuchea.

(Continued in the February 2001 issue)

A NOTE ON THE FRONT COVER PHOTO

Dear Youk,

First, I'm very please that you will be using the photograph for your magazine. I am a great admirer of your work and would like to help you in any way I can.

Now for the details of the photograph: I took the photograph in December 1978, about two weeks before the Vietnamese invasion. We were at Krek, near the Vietnamese-Cambodian border off National Route Seven in what was then known as the Eastern Zone. Comrade Pin is in the background. (As you know Pin was not only a top leader in the Eastern Zone but he was also associated with the security police headquartered at Tuol Sleng.) In the foreground are young soldiers whom I presume fought when the Vietnamese invaded a few weeks later.

We were the first and last Western journalists to see Cambodia under the rule of Pol Pot as well as the actual battlefield where the Vietnamese and Khmer Rouge had been fighting that summer.

We were under very heavy guard. We could hear the sound of artillery in the distance and far off in the direction of the border I saw clouds of smoke from artillery exchanges. Otherwise the battlefield was quiet and we saw very, very few people along the road or in the fields.

Comrade Pin was anxious to prove that the Khmer Rouge were in control of Krek and would fend off the Vietnamese invaders. He said that the party had "eliminated" the "agents infiltrated by the Vietnamese," what I took to be a reference to the wholesale slaughter of the Eastern Zone cadres.

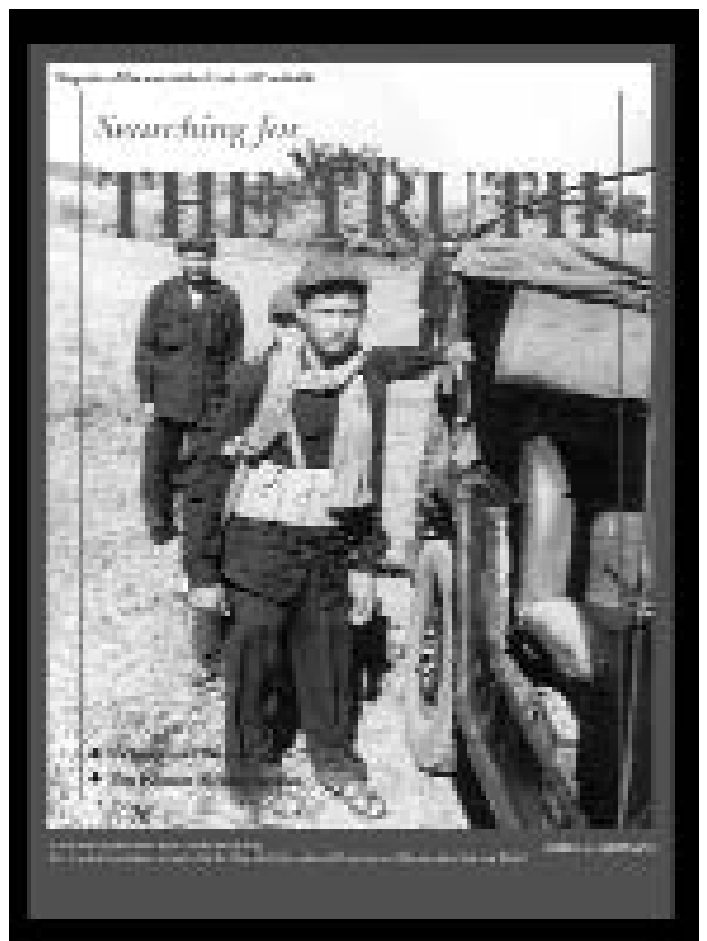
The Vietnamese captured Krek a few weeks later.

I was in the company of two other western journalists—Malcolm Caldwell and Dick Dudman. Several nights later we were all attacked at the guest house in Phnom Penh and Dr. Caldwell was murdered.

Please ask if you need any other information.

Next year I hope to visit Cambodia and would like to see you then.

Best wishes, Elizabeth Becker



Magazine: Searching For The Truth, 2000.



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ដើម្បីទប់ទល់ការបោះពុម្ពនិងបែកបាយដោយឥតគិតថ្លៃដល់មន្ទីរស្រុកនិងឃុំនៅទូទាំងព្រះរាជាណាចក្រកម្ពុជា
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The Documentation Center of Cambodia would like to appeal to governments, foundations and individuals for support of the publication of
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