

## OPINION

## When Genocide Justice Is Unfair, Lessons Can Be Learned

BY YOUK CHHANG

The Extraordinary Chambers in the Courts of Cambodia (ECCC) recently confirmed that Case 002 accused Ieng Thirith is unfit to stand trial as a result of suffering a progressive form of cognitive impairment. Despite being long-anticipated, this news remains a difficult reality for many victims of the Khmer Rouge to accept.

This is especially true when Ieng Thirith's specific role in the Khmer Rouge movement is considered. She has routinely been mislabelled the "First Lady" of the Khmer Rouge in the international press, a title that is both inaccurate and misleading. Ieng Thirith was not a passive individual who became linked to the Khmer Rouge solely through her status as Ieng Sary's wife and Pol Pot's sister-in-law, but was an influential party member who wielded nationwide power as the regime's Minister of Social Affairs. Indeed, in this role, Ieng Thirith was personally and directly involved in denying Cambodians with even the most basic

of health care during the regime's years in power. Thus, for victims, Ieng Thirith's access to world class health care and multiple medical experts during her detention stands in stark contrast to the improvised and often deadly brand of "health care" she helped the Khmer Rouge impose.

In addition to the special medical attention Ieng Thirith has been receiving, it is also difficult for victims and indeed, all Cambodians to accept the especially vigorous enforcement of Ieng Thirith's rights taking place at the ECCC. Even the most basic defense rights remain a largely abstract concept in Cambodian courts and so the ECCC's statements about fair trial rights and rights of an accused are strange and foreign concepts to the average Cambodian person. Again, the failings of Cambodia's criminal justice system are largely a legacy of the Khmer Rouge's decimation of Cambodia's institutions and civil society, creating a palpable sense of injustice for victims who see Ieng Thirith receiving a level of due process no

Cambodian accused can expect when prosecuted even for minor crimes in local courts.

Yet, even if Ieng Thirith ultimately wins the race against time and accountability and is never prosecuted for her role in the Khmer Rouge, this unfortunate turn of events could still be utilized as part of the larger transitional justice process taking place in Cambodia.

First, Ieng Thirith's unfitness is not fatal to the larger justice-seeking process currently under way at the ECCC in Case 002 and will hopefully reinforce the need for the Court to move forward in the case against other Khmer Rouge leaders with all urgency.

Also, the treatment Ieng Thirith has received can be a symbol of defiant compassion as a powerful counterpoint to the complete lack of compassion demonstrated by the Khmer Rouge regime. Some satisfaction can be salvaged from victims being stripped of the opportunity to hold Ieng Thirith to account in a court of law by refusing to compromise basic fair trial

standards, even in the face of the horrific crimes she stands accused of. Moreover, the complex mental health issues at play at the ECCC can be used to underscore the ongoing mental health problems pervasive in Cambodia that are a legacy of the Khmer Rouge regime.

During the Khmer Rouge period, the regime fought violently against even the most basic of human emotions and saw even the slightest sign of pain, such as a headache, as a symbol of weakness and imperialism. People with serious mental health issues, such as those which Ieng Thirith now suffers, were simply discarded by the regime as symbols of social weakness that needed to be excised. Now, Ieng Thirith is defiantly being shown the compassion that she actively worked to eradicate as a Khmer Rouge minister. While this is a painful lesson for victims, hopefully in the long run it will be seen as a small victory for justice and human dignity.

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## The US Constitution Gave Birth to a New Era of Humanity

BY AKHIL REED AMAR  
LOS ANGELES TIMES

On September 16, 1787, kings, czars, sultans, princes, emperors, moguls, feudal lords and tribal chieftains dominated most of Earth's landmass and population. Wars and famines were commonplace. So it had always been. Democracies had existed in a few old Greek and Italian city-states, but most of these small-scale republics had winked out long before the American Revolution. While Britain had a House of Commons and a broad-based jury system, hereditary British kings and lords still retained vast powers. A small number of Swiss yeomen governed themselves, and the Dutch republic was on its last legs. That was about it for democracy.

Today, roughly half the planet lives under democracy of some sort. What happened to precipitate this stunning global transformation?

Here's what: On September 17, 1787, a small cluster of American notables who had been meeting behind closed doors in Philadelphia went public with an audacious proposal. The plan, signed by George Washington, Benjamin Franklin and 37 other leading statesmen, began as follows: "We the People of the United States...do

ordain and establish this Constitution for the United States of America."

Of course, on that day, nothing had yet been ordained or established. The proposal was a mere piece of paper. But what happened over the ensuing year, in special elections held in every state, made the opening words flesh: We, the people of the United States, did in fact ordain and establish the September 17 proposal.

This was big news on the world stage. Before the American Revolution, no regime in history—not ancient Athens, not republican Rome, not Florence nor the Swiss nor the Dutch nor the British—had ever successfully adopted a written constitution by special popular vote.

In an unprecedented series of special ratification elections held in each state that was part of the union, most states lowered or waived their ordinary property requirements. Never in human history had so many gotten to vote on society's basic ground rules.

True, the ratification elections of 1787 to 1788 look anemic when judged by the standards of 2012: What about women and slaves? But women and slaves had never voted anywhere in the world before 1787. Judged by the stan-

dards of its era, the breadth of democratic participation was epic world-changing.

So was the depth of participation. In the ratification elections of 1787 to 1788, the continent teemed with talk of the freest sort. Leading men on both sides of the Great Debate of 1787 to 1788 later came to hold positions of high honor—as presidents, vice presidents and Supreme Court justices—under the new regime.

The American conversation in 1776 had been far less open. The war had begun well before independence was declared, and virtually all who opposed independence in 1776 were cast into political exile.

Shortly after the people convened in 1787 to 1788 to say, "Yes, we do," Americans fashioned a Bill of Rights to fix some of the biggest bugs of Constitution 1.0. Unsurprisingly, no phrase appeared more often in the Bill of Rights than "the people." Later amendments carried forward this democratic momentum, repeatedly expanding but almost never limiting liberty and equality, and eventually welcoming blacks, women, young adults and unpropertied Americans as equal democratic participants.

In short, the extraordinary de-

mocratic momentum generated by the votes and voices of 1787 to 1788 has continued to propel the U.S. forward over the ensuing decades and centuries.

And not just the U.S. The world is now far more democratic than ever, thanks largely to the ideological, economic and military success of the U.S., which has proved that democracy can work on a geographic and demographic scale never previously thought possible.

Why should we care about democracy's spread? For starters, because no well-established democracy in the modern era has ever reverted to despotism. Modern mature democracies have not waged war against one another or experienced widespread famine.

This modern world was, in effect, born in the USA, and this miraculous birth began exactly 225 years ago. Happy birthday, America. Happy birthday, world.

## LETTER TO THE EDITOR

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