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The English translation edited by
Youk Chhang and Raymund Johansen;
Proofread by Julio A. Jeldres and Rich Arant.

Authors: Craig Etcheson, David Chandler, Raymund Johansen, John Ciorciari, Steve Heder, Kenton J.
Clymer. Staff Writers: Kalyan Sann, Sophal Ly, Sophearith Chuong. Assistant Editor-in-chief: Sokhym
Em. First Deputy Editor-in-chief: Kosal Phat. Second Deputy Editor-in-chief: Sorya Sim. Translator:
Bun Sou Sour. Editor-in-chief: Youk Chhang. Graphic Designer: Sopheak Sim. Distributor: Sopheak Try.

Letter:

# *for the truth.*



The Documentation Center of Cambodia (DC-Cam) is an independent Cambodian research institute dedicated to documenting the genocide history of the Democratic Kampuchea (DK) regime, more commonly known as Khmer Rouge (KR), from 1975 to 1979. Founded pursuant to the U.S. Cambodian Genocide Justice Act initiatives in April 1994, DC-Cam became a fully independent Cambodian research institute in January 1997. DC-Cam has to date received political and financial support from a variety of sources, including 39 countries on four continents: North America, Europe, Asia, and Australia.

DC-Cam believes that seeking justice for the Cambodian genocide through an independent tribunal requires the participation and monitoring of everyone in society, particularly the victims of the Khmer Rouge regime. The victims deserve to see the perpetrators tried for their crimes. In order to relate to the legal process, they additionally need to be kept closely informed of the history as well as the Khmer Rouge tribunal process.

DC-Cam will facilitate this process of active participation and monitoring for the Khmer Rouge victims by serving as a “messenger” on these matters. In order to accomplish this task, DC-Cam has

launched an education campaign with the objective of disseminating information on the tribunals and the history of the Khmer Rouge regime. The information used in the campaign is based upon original documents held at DC-Cam and other sources, including respected law schools in the United States and Europe, Cambodian non-governmental organizations, Cambodian scholars, legal experts, historians and DC-Cam’s Academic Board of Advisors. The end result of this education initiative is DC-Cam’s new monthly magazine: ‘Searching for the truth’, which you are holding in your hands at this moment.

In order to help ensure both that justice is done in the courtroom and that it is perceived as being done by the public, especially survivors, there is a need to raise the general awareness of how the rule of law is (or is not) being reflected in the Khmer Rouge tribunal.

There are very few sources of independent news in Cambodia. The newspapers, TV and radio are all blatantly biased in one way or another, and even the Khmer-language Voice of America (VOA) is considered by some to be politically aligned. ‘Searching for the truth’ fills this critical need for a Khmer-language source of non-partisan coverage of the Khmer Rouge history and tribunal. More importantly, ‘Searching for the truth’ will act as the trial “watchdog” and limit the degree of political interference as only a free and unfettered Khmer-language publication can. In addition, general explanations and updates of what is going on in the courtroom will be of great value to survivors and the general Cambodian public.

There is a convincing legal and moral argument that the survivors of massive human rights abuses have a right to know the truth about what happened. The importance of learning “the truth” is a recurring theme whenever I talk to victims of the Khmer Rouge regime. They almost always say something along the lines of, “I want to know what happened, who ordered the killings, and why.” By publicizing exactly what happens as the Khmer Rouge tribunal unfolds, ‘Searching for the truth’ will be an integral part of the truth-telling mechanism and







## ABOUT THE MAGAZINE: *‘Searching for the truth.’*

The Magazine will include five sections concentrating on different topics as follows: 1) documentation at DC-Cam; 2) history; 3) legal analysis; 4) public forum for debates; and 5) family tracing column describing the efforts of the DC-Cam to locate information about missing family members in the Khmer Rouge time.

The first column will be prepared by the staff of the Documentation Center of Cambodia, based on the original documents.

Simply put, it will have summarized texts converted from the original documents. The objective of this section is to inform the public about the kinds of documents at the DC-Cam.

The second column will feature articles concentrating on analysis of the Khmer Rouge history. The text for this section will be provided by international experts on Khmer Rouge history, and its aim is to examine this history. This column will support preparation of history text books about the Khmer Rouge to be included in the Cambodian government’s educational curriculum in the future.

The third section will feature legal analysis by international lawyers, judges, or experts. The articles will analyze legal concepts concerning the crimes committed by the Khmer Rouge (and of the resolutions) of each crime.

The fourth section will provide a public forum for debates. The articles will be contributed by non-governmental organizations, government officials,

teachers, students, and others. While the opinion pieces will reflect all opinions in society, debate articles accepted for publication will have virtue, quality of education, and dignity. It is a section for sharing ideas designed for resolutions for justice, historical illustration, mental illness healing, and future education.

The fifth section is for tracing victims’ family members, who died or disappeared in the Khmer Rouge time. While it will be a column of horrific and tragic pain, it is a column that will help eliminate doubt and bring an eternal happiness. The column will help honestly disseminate information to the public, and it

will describe new lives after the Khmer Rouge time. All requests by the public for family tracing will be welcome.

In summary, the above five columns of the magazine of the Documentation Center of Cambodia will be open to the public from all walks of life on a nondiscriminatory basis. ‘Searching for the truth’ is for every Cambodian citizen, established by Cambodians, for the sake of Cambodians and to help Cambodians find a real justice.

All letters or texts to be sent to “The Truth” should bear the name, occupation, address and telephone number of the contributor for confir-

mation of the authenticity and essence of letters or texts before their publication. The Magazine reserves the right to correct words or letters for the purpose of maintaining their intended meaning. However, the Magazine will rigorously respect the government press law, specifically as per Chapter 5.

*Youk Chhang*



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## THE KHMER ROUGE DOCUMENTS

*By Youk Chhang*

The Documentation Center of Cambodia has preserved more than 400,000 pages related to the Democratic Kampuchea, or “Khmer Rouge” regime. This number does not include the many photographs, audio and videotapes, diaries, and copies of the party magazine that form part of the DC-Cam collections. Due to the word usage of the Khmer Rouge cadre and the fact that much of the documentation concerned security matters, the documents will frequently appear obscure to the general reader. While each document is independent, each must also be seen as a piece of the larger puzzle. The records fall into several broad categories, including biographies, reports, meeting minutes, telegrams and communications, and confessions extracted under torture and threat of torture. Among the documents are one particular collection of 6,185 pages, most of which contain notations by, or concerning, individual members of the Khmer Rouge leadership. The exact nature and origin of the documents in this particular collection is a matter of dispute among the experts. Some believe they belonged to Son Sen, the former Khmer Rouge Minister for National Defense, while others variously believe they belonged to the Communist Party of Kampuchea, the “Santebal” (the Khmer

Rouge security organization), or to Pol Pot himself.

These documents are of both historical and legal value. The magazine writers will try to summarize the original documents, converting them into appropriate texts that will be easier to understand. The Documentation Center is only playing the role of “messenger” in relaying these samples in their original sense to the public. It is left to the reader to draw his or her own conclusions as to their value and meaning.



## NECESSITY OF PRESERVING PHYSICAL EVIDENCE

By Kosal Phat

The mass graves and remains of its thousands of victims are perhaps the main physical evidence of the crimes committed by the DK regime. This evidence has both historical and legal importance.

It is imperative that Cambodians should understand and believe the whole truth about the Khmer Rouge genocidal regime so that they can learn from it and prevent such tragic history from ever being repeated in the future of Cambodian society. Only by properly securing and preserving this important physical evidence can the full horror of the Khmer Rouge genocide history be made clear to Cambodians and the world.

As the Khmer Rouge tribunal approaches, the victims' remains, the regime's prisons and mass graves, which are located in almost every one of Cambodia's 170 districts, will be among the most important subjects of the court's investigations. To highlight the importance of physical evidence, the United Nations' "Group of Experts" has noted that "the physical evidence most relevant for any proceedings can be divided into three categories: human remains, structures and mechanical objects and documents..." (Report of the United Nations Group of Experts for Cambodia [1999], Section 4, Point "B").

Although the People's Republic of Kampuchea took steps to preserve the evidence of the Democratic Kampuchea regime in the 1980s, the Royal Government of Cambodia should, and indeed is obligated, to take timely measures to ensure that this evidence of the Khmer Rouge crimes will never be lost or contaminated. It is especially important to ensure that local authorities are well informed of this vital need. Victims' remains must be securely stored and any plans for erasing or developing killing sites must be put on hold at least until a proper investigative process for the Khmer Rouge trial is completed.

Very recently, a DC-Cam team made a visit to a genocide site called Kuk Sang (Sang Prison) in Trapeang Sva village of Kandal province, a site that was also visited



My dad, mom and me

by the UN Group of Experts during its mission to Cambodia in November, 1998. The team noted that the remains of the Khmer Rouge victims there had been disturbed. Below are excerpts from our interview with a local Patriarch Monk:

**Question (Q):** We are from the Documentation Center of Cambodia. We are here to see the remains of the victims of the Khmer Rouge regime in Kuk Sang. When we arrived, we noticed a proper memorial for the remains. Villagers have told us that you initiated the construction of the memorial. What was the reason for your constructing this memorial for the remains?

**Answer (A):** One reason I got the idea to construct this memorial is that one member of my family was killed at Sang Prison. Another reason is that I observed the remains in a sad state, just sitting there exposed to the sun, wind, and rain. The remains have decayed and have even been eaten by cows. That inspired me to think that if the remains continued to lie in the state they were in they would certainly vanish and no evidence would be left for younger generations to see. In addition, if Buddhist followers wanted to come to light incense and pay homage to commemorate the souls of the dead, there was not a place for them to do so. So this idea of building a memorial for the remains came to my mind. I started with the idea of gathering Buddhist followers from many localities, including the local authorities such as the District Governor and Provincial Governor. Then, with their contributions, we built this memorial and stored all of the remains inside it. Contributions continued to come from generous individuals until the building of the memorial was finished. Another problem is that when people come, they do not have a shelter. When we had a religious ceremony during Phchum Ben Day (day to pay homage to the dead), it rained and everyone got soaked. But in remembrance of the souls of the dead, the monks ate the offered food in the rain. When we held an inaugural







relatives died here in the Pol Pot time?

**(A):** Many people from here died in the Pol Pot time, as we know from people who live nearby and those who made contributions, not to mention many others living at some distance from here. We just spent a small sum of money to disseminate our plan to build. Then people came with their contributions and help.

**(Q):** The death of your father at Sang Prison partly motivated you to build that memorial. Were you aware of how your father was killed?

**(A):** No I was not. I did not know because I was small, but my mother told me that he only worked as a plumber but the Khmer Rouge said my father was a high-ranking officer in the Khmer Republic regime. Then they took him from Sang to be killed.

**(Q):** How do you know that he was killed?

**(A):** There are people who saw and told me, and the Khmer Rouge cadres who took my father to be killed are still alive.

**(Q):** What are their names?

**(A):** They are Roeung and Mao. They controlled this

prison. Many Khmer Rouge killers from Trapeang Sva are still alive.

**(Q):** A moment ago someone mentioned about stealing skulls and remains. Is that true?

**(A):** There was no stealing of skulls! But shackles were stolen. Before there were many shackles, youngsters stole shackles to sell. A few years ago, I saw a lot of shackles but when I was there to remove the remains, I found few shackles left there. Skulls were eaten by cows and bones were scattered around. I once gathered the bones to keep them where they were. Before the election in 1993, the remains were taken care of and provided with shelter. Trea sub-district took good care of them. But since the election, concern has diminished.

**(Q):** So the remains that you have collected and stored are all there were, and nobody cremated anything?

**(A):** No, I brought all the remains.

**(Q):** Do you believe that by doing so, you can keep the remains for long?

**(A):** I am not so sure, but they are not exposed now. They may continue to decay, but it will take a long time, unlike when they were exposed to the wind and rain. If they remained in those circumstances much longer, they would have quickly been turned into earth.

**(Q):** What about Hatred Day of May 20? Did the district authority go and organize a ceremony there?

**(A):** We did. Many people from Kandal Stung district went there.

**(Q):** So from now on, do you think that the celebration of Hatred Day May 20 will take place at the memorial?

**(A):** Yes I think so. The last food offering ceremony took place there, and the provincial governors also came.

**(Q):** Among the reasons that you have set forth—first the death of your father, second, concern about losing the remains, third, concern about a shelter for holding ceremonies—which is the most important that so inspired you to build this memorial?

**(A):** The second reason—worry of losing remains—is the most important reason. My father is gone and I cannot get him back. But the loss of the remains is what I have worried about the most. Because if people say “many died there”, but there are no remains there, how can we believe? So preserving the remains is the most important reason. I am not conceited. Many people have contributed their money. I did not build this on my own. I do not want to lose the evidence, so that people from various places can come to pray and pay homage to the dead. And I will request the district governor that this memorial for the remains should exist forever. And I am thinking of having monks stay there and for people to come and pay homage because some souls of the dead have made their parents or



## CONFESSION OF SANN PO

By Kalyan Sann

This is a summarized text (extracted from file number J00451) of a confession made by Sann Po, prisoner at Tuol Sleng under the Khmer Rouge regime. Sann Po, 24, born in Chi Kreng District, Siem Reap Province, was arrested by “Angkar” and sent to Tuol Sleng on July 28, 1978 under an accusation of being a traitor. Before the day of his arrest, Sann Po was serving as a combatant working in a state-run market (Phsar Thmei) under the management of the Ministry of Foreign Affairs.

File number 451(J) bears the title “Confession of Sann Po, combatant of state-run market; his history of disloyalty to the Party”. It is a typewritten text dated August 2, 1978, consisting of 12 pages, containing a signature of confirmation by Sann Po himself, as well as that of the interrogator, a person named “Than”.

On the first page of the confession, there is a note in red script reading: “Comrade Vann.” [Comrade Vann was an alias of Ieng Sary, former Deputy Prime Minister and Minister of Foreign Affairs of Democratic Kampuchea. His birth name was Kim Trang]. On the back page there is a list of 34 “traitorous elements” extracted from the confession of Sann Po, of which two names, Cham Raen and Phy, are marked “already arrested by Angkar.” In the “confession”, Sann Po tells of his own “traitorous activities” as well as that of his partisans. According to his statement, Sann Po had committed the following acts against Angkar:

In December 1973, Sann Po joined the revolution through the introduction of San, chief of a hospital in Chi Kreng District, who Sann Po had met during his hospitalization. In January 1974, San convinced Sann Po to join his activities against the revolution in association with Lam, Phen, Neary Khmao, Vorn, and Nun, all of whom were serving on the hospital staff in Chi Kreng District. San persuaded the above individuals to hate those who were loyal to the Khmer Rouge revolution, and not to give any injections to them when they were sick. Furthermore, San enticed the elements not to work so hard for public health, to kill the chickens raised for food, to spoil medicine by keeping it hidden for too long, and not to provide

enough food for the sick. Sann Po and the others reluctantly accepted these conditions, fearing that San would mistreat them, as they had once witnessed happen to some people who were tied and kept in a security office because of their refusal to do what they had been told.

In April, 1974 Sann Po, Phen, and Try were removed to a military base in Siem Reap-Uddar Mean Chey, Special Region 106, located in Siem Reap Province between Preah Vihear Region 103 and Northwest Zone 560 (According to a map published by the Ministry of Education of Democratic Kampuchea in 1976). Before Sann Po left for Siem Reap-Udder Mean Chey, San told him to make contact with a person named No, chief of a military unit there. At the military base, Sann Po and another thirteen people hid two truckloads of weapons and ammunition, and thousands of tons of rice.

In July 1974, No was replaced by a man named Khroeun. Khroeun also helped Sann Po and his partisans to hide weapons, food, and equipment, and allowed the enemy to evacuate many families. After the 1975 liberation of Phnom Penh, Sann Po was sent to work at Phsar Thmei state-run market under the administration of a person named Sin, chief of the market unit. Sin ordered Sann Po and the others to hide supplies, including 30 Kei (a measure of cloth sufficient to make four shirts), 15 cases of wine, and 15 cases of pate. A week later, Angkar replaced Sin with a new chief named Lum. In 1976, Lum was replaced by a person named Phy who, after the appointment, led Sann Po and the other forces to hide food, including dried fish, fish paste and sugar, for so long that it spoiled. Two weeks later, another person named Daun was appointed to the position of chief of the market unit.

In December 1977, Daun was taken out of the Phsar Thmei unit. In January 1978, Vuy became responsible for the market. Under the command of Vuy, Sann Po, along with his partisans, took part in activities such as the hiding of unhusked rice, typewriters, scarves and other clothes. In February 1978, Vuy was replaced with another person named Moeun. Moeun later sent Sann Po to work at a plantation in Prek Phnoeu. On July 18, 1978 Sann Po was arrested by Angkar and sent to Tuol Sleng prison. There is no evidence that Sann Po survived Tuol Sleng.





diseases. Then the Khmer Rouge guards would drag the dead bodies away through the side door toward the site behind the pagoda. Mr. Yoeng said that when he thought of these events, he was still haunted by feelings of terror. One time, the Khmer Rouge security called the name of a prisoner next to him. They then released that prisoner from the shackle and walked him away at gunpoint from behind. Later, Mr. Yoeng was taken from the eating hall and placed in Mr. Le's team making ox-carts. He did this work until the liberation in 1979.

Mr. Hai, 79, lives in Tros village, Balaing sub-district. He also told us that the pagoda had been a prison, but Mr. Hai said the prisoners had not been handcuffed and shackled in the main pagoda building, nor had they been forced to work. He said that the Khmer Rouge only used the main building to keep prisoners for a short time while awaiting their deaths at the pits behind the pagoda. Hai now lives very close to the pagoda. He had also been imprisoned at Baray Choan Dek, but was released in late 1977. Shortly before the liberation day, in 1978, a cadre from the Khmer Rouge security at Baray Choan Dek was fleeing from the Vietnamese troops that attacked this area. This cadre came to Hai's house and lived there for two days. Due to the cadre's carelessness, Hai had observed a document in his possession. Hai remembered that the document had indicated that 2,514 people had been imprisoned at Baray Choan Dek. Hai insisted that he had seen this number himself.

Hai directed our eyes to a memorial behind the pagoda where the remains of the victims were stored. It is

close to the killing site. Hai and Le told us that there were between 30 and 40 mass graves. Each mass grave is 2.50 meters in depth and 3 meters on each side. There were hundreds of small pits around the pagoda building, each containing three or four victims. Hai, Le and Yoeng told us that all prisoners had been killed with axes or hammers. They were hit on the head with these implements and kicked into the mass graves. Hai picked many skulls from the pile to show us. He pointed to the cracks and wholes in the backs and sides of the skulls, which supported his statements as to how the victims were killed. Hai said that he had

heard from the cadre who had stayed at his house for two days that the victims had been from many social layers, such as officials of Khmer Republic regime, police, military, teachers, and urban people from various places who were evacuated into this area. He said that among the victims were members of a royal family-Norodom Odom-vong, his wife and two daughters.

Hai, Le and Yeong mentioned their shared concern that a considerable amount of victims' remains were being eaten by pigs and cows. Some remains had been lost due to removal at different times and exposure to wind and rain for a long time. Now there is a concrete memorial behind the pagoda in which the remains are piled up. We saw a cup of sand with remains of incense, and Tung Proling "cloth of souls" stuck into the wall of the memorial. The monks in the pagoda told us that people come from various places in Kampong Thom province and other provinces to pay homage to the victims because those people believe that their relatives were among the people killed by the Khmer Rouge at Baray Choan Dek. Every year on May 20, officials and representatives from all sub-districts and districts hold a ceremony to remember the genocide regime at the memorial.

Hai also told us the names of the Khmer Rouge security chiefs and cadres at Baray Choan Dek prison who were responsible for what had happened there.

Hai, Le and Yoeng told us that they want courts to seek justice for them and the other victims at Baray Choan Dek prison. They would be willing to testify should the court require it.



# CHAM MINORITY PRISONERS AT TUOL SLENG PRISON

*By Sorya Sim*

Like other ethnic minorities, Chams were arrested and incarcerated at Tuol Sleng by the Khmer Rouge. When they fled from the Vietnamese, the Khmer Rouge left many documents at Tuol Sleng including biographies, lists of prisoners, and confessions. Well-known historians have never paid much attention to the ethnic minorities issue, arguing that the documents are not valid because the confessions were made under forced interrogation. On the contrary, upon reviewing these documents, I have found many of them to hold important factual

information relating to the Khmer Rouge’s torture of persons representing many ethnic minorities. In this paper, I would like to introduce the case of a Cham named Ha Chy Sa Leah Yass Ya, called Kong Sei Matt, or Saray in the Khmer Rouge time.

Yass Ya’s confession is four pages long. He was interrogated by comrade “Leng”, who worked in an interrogation section called “Small Pon’s Interrogation Group” at Tuol Sleng prison. These pages describe in detail Yass Ya’s autobiography, his education, work, and alleged traitorous activities against the Khmer Rouge.



Based upon my investigation, the one aspect of Yass Ya's confession that is inarguably false is that of his purported traitorous activities against the Khmer Rouge. As of yet, we have not found any one who can verify any of these purported traitorous activities on the part of Yass Ya. Does it not make sense to conclude that Yass Ya did not commit these traitorous acts, but just wrote this part of his "confession" under the forced interrogation of "Leng"? The significant points we have verified are that Yass Ya was in fact a member of the senate of the Khmer Republic, that he was minister for Muslim Affairs of the Ministry of Cults in Reastr Niyum (Popular Socialist Community), and that he was arrested and sent to Tuol Sleng by the Khmer Rouge. Moreover, we have already checked this information against his documented confession. Based on my interviews with his relatives and the many other people who used to know him, Yass Ya's confession is largely true.

After stating that he had encouraged Cham leaders named Him Man and Ly Mou Ha Matt, as well as people in Ko He Village, Roka Kaong Sub-district, Srok Muk Kampoul District, to rebel against the Khmer Rouge, Yass Ya added: "On the night of December 6, 1975, at 10 pm, Angkar arrested me at my home located in Ko He Dam Rei Sar Raka Kaong". Yass Ya's nephew, who was kept in the same prison and survived the Khmer Rouge regime, told me that he had met his uncle Yass Ya in Wat Dam Rei Sar:

"At about 5 p.m., he saw me in that place. Upon seeing me, he fell to the floor and crept towards me. At that time, there were about 30 prisoners present. When he managed to reach me, Yass Ya rested his head against my thigh and took my hand to put on his head asking me how long I had been there. I replied that I had been there for about two weeks. Then he said he had been staying next to the room we were in, but had not seen me. He continued, saying they had taken him to question and then they had sent him to meet me. He asked me to struggle against the Khmer Rouge, and ask them for permission to perform worship at his burying ceremony if he died. I touched his head, which was wounded. When I asked him what the Khmer Rouge had hit him with, he said he had been hit with a pistol. At 6 o'clock the Khmer Rouge opened the door and

said they had tried to find Sa Leah Yass Ya for a long time, and that now that they had found him, that would be the end of the problem. They took Yass Ya away, and after a few moments, all we heard were screams of pain. Prisoners next to the room tried to steal a glance over the wall. They saw something that frightened them, and dropped down from the wall."

According to the confession document, the information about Yass Ya had not been known to the Khmer Rouge. Based on the "black list of honor" at Tuol Sleng prison, Yass Ya continued to be tortured at Tuol Sleng until May 2, 1976—the day of his death. Yass Ya had been arrested after a rebellion on November 22, 1977. The rebellion was put down, and hundreds of participants were imprisoned at Wat Dam Rei Sar. Two victims who were kept at this monastery are still alive and have been interviewed. Most villagers call this Buddhist Monastery "Wat Dam Rei Sar", or "Wat Serei Mung Kul", the present name appearing on the entrance sign.

In summary, the confession document reveals the following facts about Yass Ya: the exact time of his arrest, the place of his arrest, people who had met him, the names of prisoners held at the same place, the fact that he died of "gaseous illness and suffering pain", and lists of prisoners held at Tuol Sleng. In addition, the confession file contains photographs of Yass Ya taken at the time he was a member of the senate, as well as those that were made and kept at Tuol Sleng and have survived the Khmer Rouge regime.

Yass Ya was one of 40 members of the senate during the Khmer Republic under the leadership of Field Marshal Lon Nol. In the Sangkum Reastr Niyum (Popular Socialist Community) of the 1960s, Yass Ya was the Office Administrator in the Ministry of Cults and was responsible for Muslim Affairs. He stood for election in Krek, Kampong Cham Province in the Sangkum Reastr Niyum time. Yass Ya had also participated in a conference on Asian-African Muslim Affairs held in Indonesia in 1965. He had celebrated the Islam Ha Chy ritual ceremony in Mecca, Saudi Arabia. Yass Ya was born in 1922. He majored in Islam and general education at Chroy Chang Va, Phnom Penh. His wife's name was Amy Nass. His mother's name was Kh Ti Cheh. His father's name was Sa Leh.







charged with turning people's loyalties from the Khmer Rouge to the Americans. With the persuasion of Master Leng, Thou Hai worked in the same capacity as Master Sam Korn and Master Pao. Later he met Sem. Knowing Thou Hai was coming back, Sem asked Hai to make connections with another three elements: Sin, Sung and Heng. These three people had also managed to educate three more people. Sem ordered the elements to entice the people in the village to report to him if there was any Khmer Rouge activity. In mid-1963, Thou Hai received orders from Sao, Som and Sem to eavesdrop in Kampot in order to make contacts with former soldiers who were previous networks of Sem. Then all elements jointly examined the Khmer Rouge activities and persuaded the villagers to hate and not to believe in the Khmer Rouge on the grounds that, in the presence of the Khmer Rouge, any business opportunity would be lost.

By the end of 1963, Thou Hai brought his family to Prek Ambel, Kandal Province. Then he came to earn his living by driving a cyclo in Phnom Penh with Heng. Heng drove the cyclo at night, and Hai during the daytime. In 1964, Thou Hai, through Heng, contacted two policemen in Kratie Province named Sien and Ly, who were also in Sem's network. Hai continued to work at sawmills in that province until 1966. During that time, Thou Hai managed to recruit three more operatives by introducing them to the rights of Americans, who were happy, prosperous and free. After succeeding in enticing these three people, Thou Hai returned to his home village by the end of 1966, earning his living by sawing wood in Chheu Khmao Sub-district, Koh Thom District, Region 25, Kandal Province. A month later, he worked with three people in Chheu Khmao: Phat, Neang, Seng, who were in the network of Sao. In 1967, Thou Hai received orders from Phat to encourage people to fight against the Khmer Rouge, keep track of people if they gave food or supplies to the Khmer Rouge, and to build up CIA agents. Between 1967 and 1968, Thou Hai was instrumental in having Neang arrest two Khmer Rouge elements living in Kampot Province, this based upon a secret report from Prey Lvea to Sin and Sung.

In 1969, Thou Hai returned to his home village bringing his brother to work with a man named Khut, after realizing that Khut was in Phat's network. Thou Hai introduced Chak and Cheav to Khut for cooperation. In 1969, Thou Hai arrested and then released two people who were reportedly Khmer Rouge elements from Region 33, Southwestern Zone. In 1970, Thou Hai started working with former sub-district chief Khut and his three forces. Khut brought up the fact that where there were many "Yuon" (a pejorative term for the Vietnamese) elements entering the country and suggested starting a movement to encourage people not to support the Vietnamese, to help hide former civil servants of the previous administration, and not to tell any one so that the secret forces could continue working.

In 1971, Khut asked Hai, Chak and Cheav to work with him. He had joined North Vietnamese and Viet Cong networks, but only in name; his real objective was to conquer the power of the revolution as the CIA agents were doing. However, the three couldn't agree to the working conditions because they had too many children. Khut understood, but urged the three to work in the bases by encouraging people not to support the revolutionary forces, to keep track of and destroy revolutionary elements wherever they met them, and to return after having fulfilled these tasks. Khut tried to make Hai and his wife work together, because he thought it would not be a healthy situation to make Hai work without involving his wife. Then, Hai educated her to work with him by assigning her to encourage troubles among women in the village in an attempt to make them fight each other.

In 1972, Hai asked Heng to make a connection with Khut's networks. Khut agreed and five days later announced that Heng, Hai and his wife were in the lines of the Labor Party of North Vietnam. At the same time, a person named Song Heng took a statue of an anchor from his pocket to show them that this was the coat of arms of the Labor Party. In the same year, Hai, Chak and Cheav went down to the base to encourage people to urge sub-district chiefs to issue letters of permission to allow villagers to have free movement accessing





Ieng Sary

Region 33 in order to bring their unhusked and husked rice there in exchange for something else. They and then destroyed a waterwheel.

In 1973, the three people put into practice the plan to provoke troubles among cooperatives with the aim of making them fight each other and destroy the cooperatives' equipment. Later, Hai made contacts with another person named Son. After forming an agreement, they jointly destroyed plowing tools and a waterwheel in a cooperative located in Sam Pan Krom Village, Prek Ambel Sub-district, Kandal Province. In 1974, Song Heng, Teacher Chak, Bon, Hai and sub-district chief Khut gathered together outside of Prek Ambel Village with the aim of extending the implementation of special tasks, especially that of destroying the cooperatives. Hai and his partisans continued destroying tools of cooperatives in Sam Pan Leu by dropping those items into the water. In May they spoiled 40 bunches of rice seedlings by placing them under water for a long time, and cut flesh from the legs of cattle in the cooperative of Prek Ta Lai. In October, they stepped on all newly planted corn, and then continued destroying plowing instruments, rakes, and waterwheels in Traey Troeng Village, Prek Ambel Sub-district, Kandal Province.

In 1975, after the Liberation Day, Hai was removed to work at a sawmill in Phnom Penh, where he

met another person named An. After becoming friendly with this person, Hai realized An was connected with Chak. The two then cooperated in destroying the clutches of two sawing machines. They then threw four water pumps into the river. In November 1975 a person named Phem, a member of Factory Kilometer 6, wanted to see and work with Hai because he heard that Hai was easygoing, and that at his place all kinds of food were available at any time. Phem introduced Mom to Hai. About three days later, Mom asked Hai to catch fish by means of a spreading fishing net, and then asked

Hai to work with him, to which Hai agreed.

In 1976, Hai was persuaded to sabotage a sawing engine by putting a crow bar into the engine to wear out the teeth of the gearwheel and cause the oil to flow out of the engine. During that year, Hai worked with many other people in this negative manner. In 1977 the group continued with these and similar activities. As a result, 25 planks were in bad condition. Then, during working hours, they tried to push the sawing machine over. As a result, a sawing machine was put out of order. In October, Angkar assigned Hai to install a sawing machine in Preah Vihear Province, where he met a worker named Chhan who used to live next to his home. Hai asked Chhan to work with his group. Chhan agreed, because after joining the revolution he found it very hard to get enough to eat, got bored, and had no freedom of movement. In Preah Vihear, they failed to put oil into some engines, leaving one machine and a diesel generator worn out. On November 20, 1977, Hai received an order from Angkar to return to his original working place.

Over a period of 10 years, Hai committed his acts of sabotage and built up a number of forces to fight against the Khmer Rouge regime in an attempt to impede progress of the revolution. Unfortunately, after fulfilling the mission, Hai, his wife, and seven children were arrested by Angkar.







Rouge are coming closer and closer. Now go to your work places.”

On April 15, 1975 the situation in Phnom Penh seemed to be stable, except the area north of Pochentong, where the Khmer Rouge increased their attacks. In northern parts of Ta Khmao and east of Chbar Ampoeu, the Khmer Rouge launched such heavy attacks that the villagers were forced to flee to Phnom Penh. At that time, Tiv Mei made an urgent report to the office chief. On the night of April 16, 1975, Chbar Ampoeu was attacked by the Khmer Rouge. Houses were burned down indiscriminately, and numerous shells were fired over at Kbal Thnal. Tiv Mei moved back to Phnom Penh. Normally, the curfew in Phnom Penh began at seven in the evening, but on that night, the curfew could not curb the masses of people fleeing into the city. All roads were jammed. No one could know that Phnom Penh was to be liberated on April 17, 1975, and the Ministry took no measures. On the morning of the following day, the word was that soldiers had stopped fighting each other due to a negotiation, and that white flags, a sign of victory, were being raised everywhere. At around 11 pm, the Khmer Rouge military told people to prepare and move out luggage from their homes within three days so that Angkar could rearrange the whole city. Every one became doubtful, but no one realized it was the “plan of evacuation” of Angkar. People hoped that they would be permitted to return to their homes because they had prepared food for only three days, based upon the statement that they would be gone for only three days. Some felt afraid, while some others were happy, saying: “We will wait and see the new management of the revolutionary Angkar and the abolition of corruption as they are pure people, and have never been in favor of any corrupted government official.”

After the evacuation, Tiv Mei lived with his parents in a cooperative in Takeo Village, Kor Sub-district, Northern Zone. At that time, comrade Nang, the village representative, asked him about his history during his time working in Phnom Penh. Tiv Mei told the representative: “I still work for the Sugar Manufacturer.” If I was not a worker, I would have been killed, because Angkar have already swept up from villages the people in all ranks from soldiers, ordinary policemen and military policemen.”

Based on the Tiv Mei confession, the control of the New People by the village representative and the “sweeping up” campaign of Angkar against the enemies were increased dramatically. During every meeting, the representative always talked so much about the “enemy sweeping” that Tiv Mei became seriously frightened. Having witnessed the transportation of Angkar’s traitorous elements by the Regional Security Office based in Takeo Village, Tiv Mei felt so scared that he dared not operate. He only thought of to survive.

The evacuation plan of Angkar effectively disrupted CIA networks. As a result, from the day of the evacuation to the day of his arrest, Tiv Mei never met any of his partisans. In the cooperative, Tiv Mei worked very hard in all fields under the assignment of the cooperative chief. He paid so much attention to his work that the local villagers could not help but appreciate him. Tiv Mei was arrested on May 11, 1977 by the chief of the cooperative with the assistance of a few forces while he was loading hand-sewn palm leaves onto an ox-cart for roofing his house.

Overall, the confession of Tiv Mei purports to describe his traitorous acts against the Khmer Rouge revolution in the Northern Zone. Tiv Mei’s answer implicated the 31 persons that he named as “accomplices” under torture at Tuol Sleng. The confession text, dated 18 September 1977, bears the thumbprint of Tiv Mei who was interrogated by Oeun, an interrogator at Office S-21, now known as Tuol Sleng. Several notes appear on the confession document.

After receiving this document, Duch, the chief of Office S-21, relayed the “confession” to a higher level with an introductory note beginning: “Dear respected Brother” and concluding: “By Duch, 11 November 1977”. The document was sent to Son Sen and apparently Nuon Chea as well, based upon a note reading, “Ph. Ph.1/2 (Central Zone). Younger brother Tiv Ol. I haven’t yet read. Sent a copy to brother Nuon, 11 September 1977.” ‘Younger brother Tiv Ol’ means Tiv Mei was a younger brother of Tiv Ol, who had already been arrested by Angkar. Enclosed with the confession file, there is a list of the 31 people’s names identified by Tiv Mei as being traitors. These 31 names were crossed out as “remarks” by Son Sen.





imagined. On average, the Khmer Rouge killed 5,200 people every week for a period of 3 years, 8 months and 20 days. Another one million people died due to the general serious mistreatment and neglect of the Democratic Kampuchea government, from such causes as starvation, disease, lack of medicine and forced labor. The mapping project is currently carried out by a team of highly trained and experienced Cambodians, with technical assistance from experts in the United States and Australia. Since 1995, the mapping team has visited 145 of the 170 districts of Cambodia, with support from the Council of Ministers and Ministry of Interior of the Royal Government of Cambodia, and cooperation from district and provincial authorities. So far, we have mapped 415 genocide sites. Each genocide site includes mass graves, Khmer Rouge prisons and security facilities, and memorials of victims' remains built in the 1980s by the People's Republic of Kampuchea. In addition, data on each site includes witness accounts, photographs of the site, and the names of informants or witnesses. In addition to the national map, the mapping team produces sketch maps of each site, along with relevant road conditions, to aid in future access, because locations of sites are mostly in the jungle or on small roads leading to sites that bear no names. The findings from the mapping project, which are being compiled into a comprehensive report, are based entirely on interviews with survivors from the barbarous regime, who either experienced or witnessed the horrible events.

The mapping team has so far interviewed hundreds of potential witnesses. Ms. Say, 62, living in Anh Chanh village, Kratie district, Kratie province said, "In the Pol Pot time, I was imprisoned in Au Lorng work site in Kratie district for nearly three years. Before my arrest, the Khmer Rouge arrested my husband took him away from my house to be killed. They arrested me because my

husband was a Lon Nol military officer. In Au Lorng work site, there were between 200 and 300 prisoners working all day and night. The Khmer Rouge security surrounded the work site with such dense barbed wire that even a chicken could not get out. The chief killer there was Comrade Au...During my imprisonment, I saw a woman who I knew as Ms. Phal with a child being raped by the Khmer Rouge security cadres. She had been deceitfully told to come receive some clothes that Angkar had distributed for her. After having been raped, she was dragged away to be killed at a nearby mound".

Ms. Say is only one of many important witnesses in Cambodia who can tell us her experience of the Khmer Rouge terror. Our concern is that such witnesses are getting very old. Important information about the Khmer Rouge regime is only in their memory and will never be documented should they die without telling their stories. Even worse, throughout the Cambodian countryside, mass graves, victims' remains and memorials are disappearing or being damaged every day by erosion, animal activity, and general neglect. For these reasons, it is urgent to document all pieces of this important evidence before they disappear. For example, remains in Bati district are almost gone, having been replaced by a small stupa. The Documentation Center of Cambodia appeals to the Cambodian government to pay more attention to the preservation of the Khmer Rouge genocide sites.

The ultimate objective of the mapping project is to produce a narrative mapping report in both the Khmer and English languages that will contain not only the maps indicating the locations of the graves themselves, but also the numbers of graves, pits, and bodies, witness accounts of both victims and former Khmer Rouge cadres and photographs. This report will complement the comprehensive national map of the Khmer Rouge genocide sites.



Photo: Hong Hun, female combatant arrested October 1976.

# Voices from S-21

## Chapter One: Discovering S-21

*By David Chandler*

On 7 January 1979, a bright, breezy day in Cambodia’s cool season, heavily armed Vietnamese forces, accompanied by lightly armed Cambodian allies, reached the outskirts of Phnom Penh after a blitzkrieg campaign that had begun on Christmas Day. For over a year, Vietnam had been at war with the Maoist-inspired regime of Democratic Kampuchea (DK), known in the West as the Khmer Rouge. Their invading force of over one hundred thousand troops, including armored units, was reinforced by a sustained aerial bombardment.

The rapidity of the Vietnamese success took

their commanders by surprise. After barely two weeks of fighting, Cambodia cracked open like an egg. The leaders of DK, most of their army, and tens of thousands of their followers fled or were herded out of the city. The invaders were welcomed by nearly everyone who stayed behind. These were people terrorized and exhausted by nearly four years of under-nourishment, back-breaking labor and widespread executions. A similar welcome, tragically misplaced, had greeted the Khmer Rouge themselves when they had occupied Phnom Penh in April 1975 and ordered its population into the countryside to become agricultural workers. In both cases, people were longing desperately for peace.

By late afternoon the Vietnamese forces had occupied the city. Aside from a few hundred prisoners of war and other people—including some of the workers at S-21—who were in hiding, waiting to escape, Phnom Penh was empty.

After the Khmer Rouge had emptied the city in 1975, Phnom Penh had remained the country’s capital, but it never regained its status as an urban center. The bureaucrats, soldiers, and factory workers quartered there probably never numbered more than fifty thousand. During the DK, the country had no stores, markets, schools, pagodas, or public facilities, except for a warehouse in the capital serving the diplomatic community. In Phnom Penh, barbed-wire fences enclosed factories, work-shops, barracks, and government offices. Street signs were painted over, and barbed-wire entanglements blocked many streets to traffic. Banana trees were planted in vacant lots. Automobiles abandoned in 1975 were rusted in piles along with refrigerators, washing machines, television sets, and typewriters. Scraps of paper in the gutters included pre-revolutionary currency, worthless under the Khmer Rouge. On 7 January 1979, no people or animals could be seen. As in 1975, the central government, such as it was, had disappeared. Once again, Cambodians were being made to start at zero.

**(Continued)**



## THE PERILS OF NEUTRALITY: THE BREAK IN U.S. - CAMBODIAN RELATIONS, 1965

*By Kenton J. Clymer*

Early on the morning of 26 April 1965, a flash telegram arrived at the State Department from the American embassy in Phnom Penh, Cambodia. Several hundred demonstrators were converging on the embassy, the crowd was growing steadily, and “rocks have begun to fly.” All local employees were sent home, embassy automobiles removed from the vicinity, and American dependents sent to the Hotel Royal. In another hour most of the windows had been broken and the embassy’s American flag burned. A few placards were seen calling on the United States to go home. The police, who had arrived late, made only perfunctory efforts to control the demonstrators and instead were reportedly “standing around watching the festivities.”

For another hour “rocks of assorted sizes” barraged the embassy and then police in riot gear moved in and began to push back the crowd, which by then amounted to several thousand people. Chargé d’affaires ad interim Alf Bergesen characterized the participants as predominantly “riffraff”. Cyclo (bicycle rickshaw) drivers were reputedly the chief rock throwers. By the end of the demonstration the building was a mess “with rocks, tomatoes and broken glass in every room.” Graffiti covered the exterior walls. But the crowd did not penetrate the embassy itself, and damage to the building was a relatively modest \$4,878.06.

This was not the first violent demonstration against the American embassy. In March 1964 a more serious attack caused nearly \$160,000 in damage. On that occasion Cambodia’s leader, Prince Norodom Sihanouk, may personally have given the order to trash both the American and British embassies. Afterward, relations were tense, but there was no break. Now, however, it looked as if Sihanouk was determined to cut the ties. On the day following the demonstration, for the first time in memory, anti-American demonstrations took place in several provincial cities, with the participants demanding that Cambodia break relations with the United States. About the same time, Cambodian authorities ordered the last American missionary, Carl E. Thompson, out of the country. They told him that all other Americans would soon be forced out as well, including even the American spouses of Cambodian citizens.

On 3 May the embassy reported that in an “imperfectly monitored” speech, Sihanouk had indicated that he was breaking diplomatic relations with the United States. The prince hoped, however, to maintain consular relations, since, as he acknowledged, Cambodia needed the foreign exchange American tourists provided. Bergesen got the word officially at 6:00 P.M. that evening. Because Cambodia would not give assurances regarding the continuity of

consular relations, the United States decided to cut off relations entirely. By the end of May no official Americans remained in the Khmer kingdom.

The ostensible reason for the demonstration was Sihanouk’s outrage over Bernard Krisher’s article in the 5 April issue of Newsweek magazine, which alleged that Queen Sisowath Kossamak (Sihanouk’s mother) was “money-mad” and kept a string of bordellos on the outskirts of the capital. Sihanouk was very sensitive to criticism of Cambodia-especially of the royal family-that appeared in the Western press. Australian diplomat and historian Milton Osborne agrees that the Newsweek piece enraged Sihanouk and “triggered” the break. Historian David P. Chandler concurs. The article, he writes, was the “last straw for Sihanouk in his dealings with the United States.”

At the time, however, American officials believed that the offending article was only a pretext, for relations that were near the breaking point well before the demonstration. Some officials felt that the demonstration was related to Sihanouk’s campaign to block a proposed Geneva conference to guarantee Cambodia’s neutrality, a conference that the prince had long wanted but that he was no longer supporting. An official unpublished history of U.S.-Cambodian relations offered another explanation: an armed incursion into Cambodian territory from South Vietnam in April was to blame.

No single factor caused the break. Rather, it was the cumulative effect of several issues that increasingly strained the relationship. The war in neighboring Vietnam was of central importance. The demonstration at the embassy came shortly after the United States had begun bombing North Vietnam in a sustained way and had sent its first combat units to South Vietnam. The war was on the verge of escalating out of control, and Sihanouk feared that the hostilities would engulf his own small country. As Bergesen put it at the time, the demonstration resulted from “the Prince’s frequent and increasingly vituperative criticism of American policy, especially in Viet-Nam.” More generally, the overarching Cold War and Sihanouk’s militantly neutral posture underlay the break. In the end, the demands of the Cold War-particularly the desire to contain China and defeat the Communist-led insurgency in neighboring Vietnam-revealed the limits of American acceptance of neutralism in Cambodia. Although internal Cambodian factors contributed to the break in relations, in the final analysis in Southeast Asia the United States was simply unable to find a way to support anti-communism and neutralism at the same time.

(continued)

## A SAMPLING OF DOCUMENTARY EVIDENCE LINKING SURVIVING SENIOR LEADERS OF THE COMMUNIST PARTY OF KAMPUCHEA TO CRIMES AGAINST HUMANITY

*By Steve Heder*

### **Introduction:**

In March 1999, UN Secretary-General Kofi Annan made public the “Report of the Group of Experts for Cambodia” established “to evaluate the existing evidence” of “serious violations of Cambodian and international law” committed during the rule of the Communist Party of Kampuchea (CPK—derogatorily known as “the Khmer Rouge”) in Cambodia from 17 April 1975 to 6 January 1979.

The three UN Experts, Rajsoomer Lallah, Sir Ninian Stephen and Steven R Ratner, had visited Cambodia from 15 to 22 November 1998. As Kofi Annan put it in his letter presenting the Report to the Presidents of the Security Council and General Assembly, the three concluded that “the evidence gathered to date testifies to the commission of serious

crimes under international and Cambodian law” including “crimes against humanity, genocide, war crimes, forced labor, torture and crimes against internationally protected persons”.

They identified several victim groups “targeted ... for extermination by virtue of their imputed political beliefs or social or ethnic background,” declaring in this regard that “without recourse to any formal judicial system, virtually every unit of the [CPK] regime appears to have had the right, even the duty, to identify, detain and execute those believed to be enemies.” They specified that “those categories of society regarded with particular suspicion” included “officials of the prior regime”, such as “former government leaders, military officers and bureaucrats of the Khmer Republic” that collapsed on 17 April 1975, who “were immediately



targeted for elimination”. They added that “by 1977, this purge had extended to the lowest ranks of the Khmer Republic’s army as well as to relatives and friends.” They also included ethnic minorities that were “targeted ... for forced assimilation or worse.” Above all Islamic Cham communities, were “forcibly dispersed, had their language and customs banned and saw their leaders and others resisting governmental policies killed,” virtually all members of which were eventually killed.

Two other categories of victims which were included on the list of targeted groups were “teachers, students and other educated elements” and “religious leaders” generally, not only minority Islamic leaders but also monks of the Buddhist majority.

Finally, the Experts pointed to “purges within the CPK” itself that targeted purported “enemies within the Party” who were accused “of being agents of the CIA, KGB or of Viet Nam”.

They concluded that members of all these groups were subjected to “direct executions” by CPK cadre aiming at “specified targets,” although they also declared that “some abuses appear to have occurred without any clearly identifiable pattern.”

While declaring that the evidence testified to the commission of genocide, and indeed that under CPK direction, the “Government subjected the people of Cambodia to almost all of the acts enumerated in the Convention [on the Prevention and Punishment of the Crime of Genocide],” the Experts cautioned that it might be a “difficult task” to determine whether the CPK “carried out these acts with the requisite intent and against groups protected by the Convention”. They therefore called for further investigation into evidence for “the commission of the genocide against the Cham, Vietnamese and other minority groups, and the Buddhist monkhood.”

The Experts appeared to be arguing more unequivocally that former Khmer Republic officials and

members of the CPK itself were victims of crimes against humanity, because of the extensive torture, and targeted in a mass or systematic way through acts that were “committed with a discriminatory motive based on ... political viewpoint.”

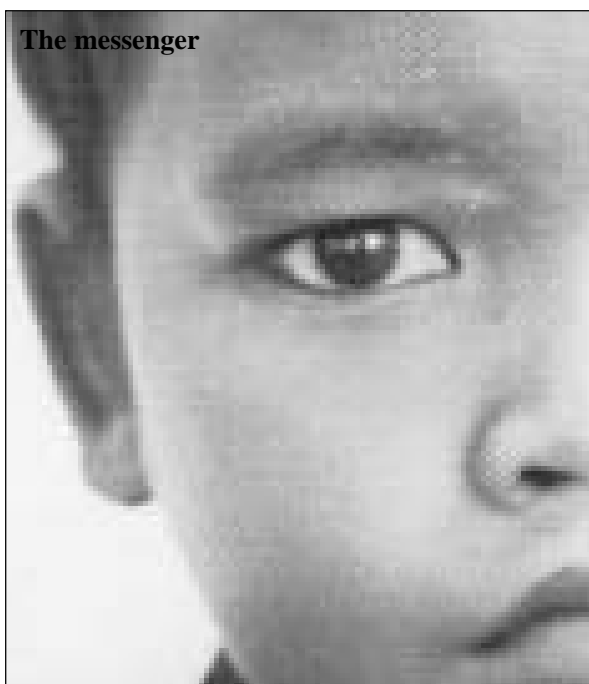
With regard to the question of individual criminal responsibility, the Experts stressed that “international law has long recognized that persons are responsible for acts even if they did not directly commit them.” Thus, criminal responsibility should extend not only to CPK military but also to those who “knew or should have known that atrocities were being or about to be committed by their subordinates and...failed to prevent,

stop or punish them.” They argued that this suggested “the need to investigate the roles of those ... officials in responsible governmental positions with actual or constructive knowledge of the atrocities.” At the same time, they cautioned that the formal “list of top governmental and party officials may not correspond with the list of persons most responsible for serious violations of human rights in that certain top governmental leaders may have been removed from chart of senior leaders may have played a significant

role in the atrocities.”

As one of them explained in a more general context, “conclusions based on the historical record are not the same things as definitive findings concerning the guilt of individuals. These require an examination of detailed evidence regarding precise events and the role of individual actors in them, and evidence deemed admissible by a proper judicial forum.”

In any case, they recommended “that any tribunal” convened in relation to the crimes of 1975-1979 should “focus upon those persons most responsible for the most serious violations of human rights” during responsibility over the abuses as well as those at lower levels who are directly implicated in the



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# INTERNATIONAL HUMAN RIGHTS LAW RELEVANT TO THE CAMBODIAN GENOCIDE

*By Elizabeth van Schaack*

## 1. Genocide

### a. The Genocide Convention

The term “genocide” was first coined by Dr. Raphael Lemkin in response to Winston Churchill’s description of the Nazi extermination program as a “crime without a name.” The Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter, “Genocide Convention”) was one of the fledgling UN’s first major human rights instruments and is the primary authority on genocide. The Convention defines genocide as: “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such:

- (a) Killing members of the group
- (b) Causing serious bodily or mental harm to members of the group
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- (d) Imposing measures intended to prevent births within the group
- (e) Forcibly transferring children of the group to another group.”

The specific acts that make up a crime of genocide will be discussed below under separate headings.

According to Article III of the Genocide Convention, the following acts are punishable: genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide. The Genocide Convention obligates state parties to take action to “provide effective penalties” for those found guilty of genocide and genocidal acts as defined in Article III. More specifically, the Genocide

Convention requires that those charged with punishable acts be tried by a tribunal of the “State in the territory of which the act was committed,” or by an international penal tribunal. Constitutionally responsible rulers, public officials, and private individuals are all punishable for acts of genocide as defined in Article III. State parties to the Genocide convention must undertake the obligation to punish “in accordance with their respective constitu-tions.” This may be viewed as limiting their duty to enforce the Genocide Convention, to the extent that their constitutions are unaccommodating.

On the other hand, the prohibition against genocide is binding on all states, even non-signatories, as a jus cogens norm. The International Court of Justice recognized the jus cogens nature of the norm against genocide in the Reservations to the Convention on the Prevention and Punish-ment of the Crime of Genocide case. Later, the I.C.J. reconfirmed this obligation in the Barcelona Traction case. Here, the I.C.J. proclaimed that the responsibility of states under the Genocide convention was a duty erga omnes (for all). Such responsibilities “by their very nature ... are the concern of all states. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes.

To invoke the Genocide Convention, one must first identify a national, ethnic, racial, or religious group as the victim. Second, it is necessary to show intent to destroy wholly or partially that group. Intent to destroy a group distinguishes genocide from other crimes against humanity.<sup>7</sup> Intent is perhaps the most difficult aspect of genocide to prove, because it is necessary to distinguish between ordinary combatant and civilian casualties arising out of an act of war





leadership.” The killing of all men or women of a particular group, or all members of a group that reside in a particular country or region of a country, may also fulfill the “in part clause”.

Intent distinguishes genocide from common crimes, such as murder and, unless this intent element is present, no act, regardless of how atrocious it might be, can constitute genocide.

The actual ability of the perpetrators of genocidal acts to destroy the target group is irrelevant to the determination as to whether acts constitute genocide.

Intent is generally perceived as the most difficult element of genocide to prove and often only indirect or circumstantial evidence of it will be available.

Examples of evidence that might show intent:

- ◆ Written or oral orders to the effect that a protected group is to be eliminated.
- ◆ Evidence that a protected group has been labeled as an enemy of the state or evidence of a systematic and destructive pattern of behavior with respect to such a group.
- ◆ Proof of the genocidal intent of an organization or a state may be imputed to individuals closely associated with such an organization or state.

◆ If the foreseeable consequences of an act are, or seem likely to be, the destruction of a group.

◆ With regard to Article II(c) of the Convention, a report on the draft of the Convention offered the following guidance with regard to the establishment of genocidal intent:

“Obviously, if members of a group of human being are placed in concentration camps where the annual death rate is thirty percent to forty percent, the intention to commit genocide is unquestionable. There may be borderline cases where a relatively high death rate might be ascribed to lack of attention, negligence or inhumanity, which, though highly reprehensible, would not constitute evidence of intention to commit genocide.”

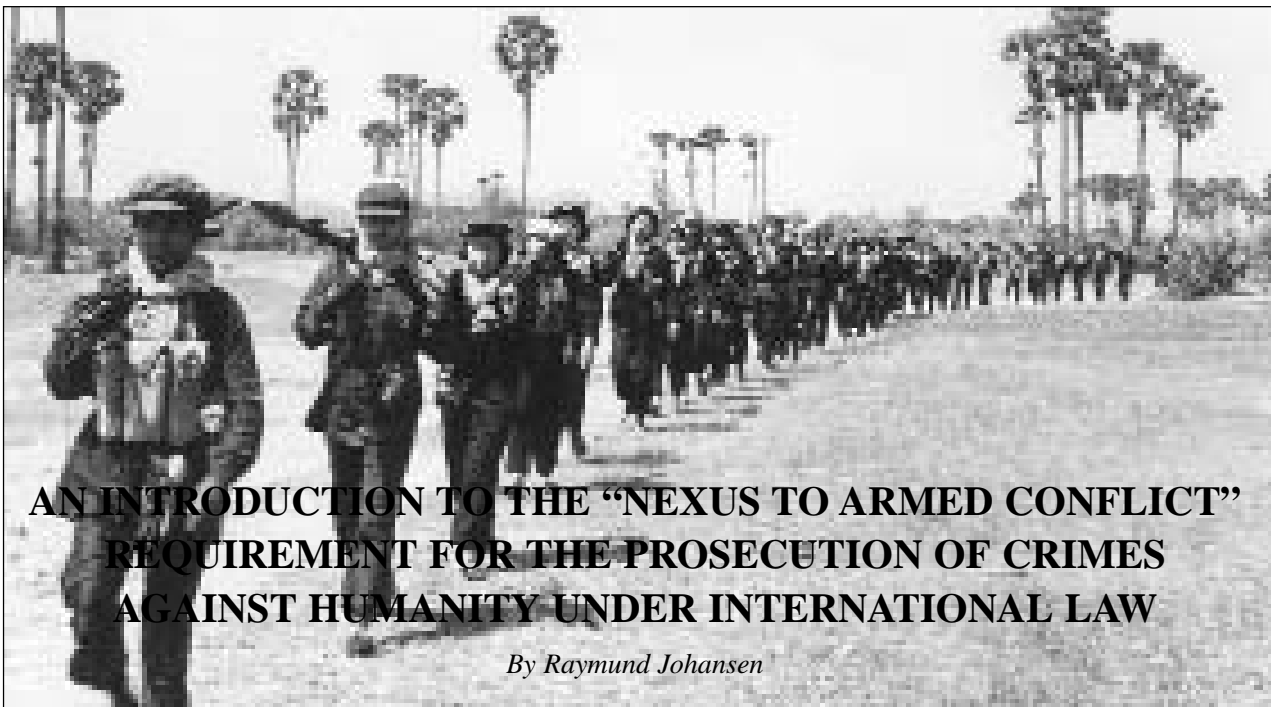
◆ Intent should be inferable from, among other things, actions or omissions of such a “degree of criminal negligence or recklessness that the defendant must reasonably be assumed to have been aware of the consequences of his conduct.

Most jurists assert that so long as the requisite intent is established, underlying motives are irrelevant. According to this assertion, an act would not fail to constitute genocide merely because it was motivated by political reasons.

(Continued)



S-21 prisoner: Vinh Yang Fa



**AN INTRODUCTION TO THE “NEXUS TO ARMED CONFLICT”  
REQUIREMENT FOR THE PROSECUTION OF CRIMES  
AGAINST HUMANITY UNDER INTERNATIONAL LAW**

*By Raymund Johansen*

For the average reader unfamiliar with the fine points of the law concerning “crimes against humanity”, scholars and lawyers discussing these matters may sometimes sound as if they come from another planet. How, the reader may wonder, faced with the suffering and death of untold numbers of human beings, can these “experts” concern themselves with such niceties as whether or not the atrocities were committed “in connection with” an international armed conflict? Are not murder and torture equally heinous regardless of the presence of such seemingly irrelevant circumstances? In order to understand the answers to such perfectly reasonable and legitimate questions, it must be recognized that the law of international accountability for human rights atrocities is by its very nature in conflict with a central principal of international law—the sovereignty of the nation-state. For the international community to reach inside of a sovereign nation and hold its leaders legally accountable for the inhumane treatment of their fellow citizens is a concept that was unheard of in the not-too-distant past. That this concept has begun to be taken seriously at the dawn of the new millenium is a testament to humanity’s common disgust with the savagery of the 20th century.

The purpose of this article is to briefly explain the meaning and origin of the “nexus to armed conflict”

requirement for prosecutions of crimes against humanity under international law. A tribunal’s determination as to whether or not this “nexus requirement” was still in force at the time of the Khmer Rouge regime, and if so, whether or not it can be demonstrated to have been satisfied with respect to the Khmer Rouge regime’s conduct during its rule over Cambodia, will be important preliminary issues in any prosecution of the Khmer Rouge leadership for the crimes against humanity they inflicted upon the people of Cambodia.

Briefly defined, the “nexus to armed conflict requirement” for prosecutions of crimes against humanity under international law necessitates the establishment in fact of, first, an ongoing international armed conflict in which war crimes were committed, and second, a linkage between the acts alleged to have constituted crimes against humanity and the war crimes committed during that ongoing international armed conflict. The importance of demonstrating these two facts to a prosecution of the Khmer Rouge leadership for their crimes against humanity is entirely a result of the historical development of international law in this area. Unlike the case with most national law, the international law of crimes against humanity does not exist in any specific, written document. Rather, this body of law has evolved over time based upon the



custom and practice of nations.

The original modern formulation of the law of crimes against humanity arose out of the Nuremberg Tribunal, at which the leaders of the German Nazi party were prosecuted for the crimes they committed during World War Two. The Nazis murdered millions of civilian non-combatants during that war. The dead included both civilians of other nations that the Nazis had conquered and civilians of German nationality, mostly Jews, but also members of other minority groups. The problem facing the Nuremberg Tribunal was that, while it had clearly been a violation of the international law of war for the Nazis to have murdered civilian noncombatants of other nations, there did not yet exist any international law that criminalized the murder of the millions of German citizens who also perished in the Nazi concentration camps. (Here the point should be made clear that the need for an international tribunal in cases such as the Nazi Holocaust and the Khmer Rouge Genocide arises because the national government leadership itself was the perpetrator of the crimes, and without prosecution by the international community, their crimes would likely go unpunished. Thus there is a need for an international tribunal conducted pursuant to international law.)

Despite the lack of any clear authority under international law to prosecute the Nazis for the murder of their fellow German citizens, the Tribunal at Nuremberg concluded that the conscience of humanity itself demanded that justice be done for these murdered millions. After much debate, a compromise was reached between those who argued that the Tribunal was without authority under international law to prosecute the Nazis for the murder of their fellow German citizens, and those who argued that such atrocities should not be allowed to go unpunished. This compromise was that, to the extent the murder of German citizens by the Nazis could be shown to have been connected with the Nazi regime's war crimes perpetrated in the course of its armed conflicts with other nations (which crimes were already clearly punishable under the international law of war), to that extent the Tribunal would prosecute the Nazi defendants for the murder and mistreatment of their own citizens. This determination of the Nuremberg

Tribunal marked the birth of the modern concept of "crimes against humanity", and the compromise just described developed into the "nexus to armed conflict" requirement for prosecutions of crimes against humanity under international law.

While the matter is open to debate, many scholars are of the opinion that as of 1975, this "nexus to armed conflict" requirement was still in effect. Most legal scholars agree that the continued development of the international law of crimes against humanity since the end of the Khmer Rouge regime has dispensed with the "nexus to armed conflict" requirement. Thus if a government were to commit mass murder against its own citizens today, there would be no need to address this "nexus to armed conflict" requirement in order to prosecute such a government's leaders for crimes against humanity under international law. However, it is a basic rule of criminal law that a defendant must be tried pursuant to the law that was in effect at the time the crime was committed. Therefore, in order to prosecute the Khmer Rouge leadership for the murder and mistreatment of their own citizens while they ruled Cambodia, a tribunal may conclude that it is necessary to prove that these acts were committed "in connection with" war crimes committed by the Khmer Rouge during an ongoing international armed conflict. While these are clearly matters to be determined according to law by a duly constituted tribunal, it is submitted that sufficient evidence exists tending to demonstrate: 1) that the Khmer Rouge regime was in a state of armed conflict with Vietnam from the very first year of its rule over Cambodia, 2) that the Khmer Rouge regime committed numerous war crimes during that armed conflict, and 3) that the Khmer Rouge regime's self-described "smashing" and "sweeping" of so-called "internal enemies" was inextricably linked in theory and practice to the international armed conflict(s) in which it was engaged. Given a finding by the tribunal in accordance with these conclusions, the "nexus to armed conflict" requirement should pose no bar to a prosecution of the Khmer Rouge leadership for the crimes against humanity they perpetrated upon the people of Cambodia. (Interested readers are directed to the September, 1999 DC-Cam publication on this issue.)



command relationship existed between the accused superior and his subordinate at the time the criminal act was committed. The relationship may be *de jure* (existing by law) or *de facto* (existing in fact), and both military and civilian superiors can be held guilty under the doctrine. In order to establish the required command relationship, the accused superior must have had actual power to control the actions of the subordinate. “Actual power” means that the superior had the ability (1) to prevent the subordinate from committing the criminal act or (2) to punish the subordinate for committing the act after the act’s commission. It is important to note that the accused superior can be held liable even if he is many levels of authority removed from the perpetrator of the act. Thus, a high military officer can be held responsible for the act of the lowest soldier beneath him if an unbroken chain of command, or line of authority, is properly established.

#### **c. Mens Rea (the Intent Requirement)**

The second requirement for a superior to be held liable under the doctrine of command responsibility is *mens rea*, the intent requirement. The superior satisfies the intent requirement if he had actual knowledge, proven by direct or circumstantial evidence, that his subordinate either had committed or would commit the criminal act in question. A court or tribunal will not presume that the commander had actual knowledge; that fact must be proven according to evidentiary standards. A prosecutor can show that the accused superior had actual knowledge by providing evidence such as (1) the number, type and scope of illegal acts; the timing and logistics of the acts; (2) the number and type of troops involved; (3) the geographic scope and location of the acts; the speed with which operations were carried out; (4) the way other, similar crimes were committed; (5) the identities of officers and staff involved; and (6) the location of the superior at the time of the crime’s occurrence.

The intent requirement is also met if the superior had information that should have put him on reasonable notice that his subordinate might commit a criminal act and should have recognized the need for additional investigation. Normally, a commander cannot be held responsible if he was merely negligent. He must have had actual knowledge, as described above, or he must

have been so negligent that his actions demonstrate his acquiescence in the crime or his malicious intent toward its victims.

#### **d. Actus Reus (the Act Requirement)**

To be held liable under the doctrine of command responsibility, a superior must also satisfy the act requirement (*actus reus*.) Although called the act requirement, *actus reus* can be satisfied by either an affirmative act or an omission. A superior is “directly” responsible when he ordered or encouraged criminal acts by his subordinates. “Indirect” responsibility occurs when the accused superior (1) failed to punish subordinates for criminal acts committed or (2) failed to take measures of reasonable prevention and investigation when he knew or should have known that there was a high risk of the crimes’ occurrence. A superior can only be held “indirectly” responsible if he had reasonable ability to prevent or punish the act in question.

### **3. Command Responsibility and the Khmer Rouge**

When all of the requirements of the doctrine are met, the guilty superior faces the same responsibility as the subordinate who committed the act. Thus, the doctrine of command responsibility exposes even the most senior former CPK leaders to legal accountability and justice. In the case of the DK regime, it is not difficult to find hundreds of thousands of underlying crimes, nor is it difficult to show that many of the most heinous offenses were encouraged, or at least unpunished. However, the secrecy of the CPK organization makes it challenging to show all of the necessary command relationships. As the trials of surviving CPK chiefs approaches, prosecutors will need to clarify the chain of command that existed in the DK regime, blending documentary evidence, oral testimony and expert scholarly reports to demonstrate the required command relationships. In addition, evidence showing that the defendants had guilty knowledge and meet the intent requirement will be vital. Again, a combination of sources will yield the most complete picture and aid the court or tribunal in its effort to assign the appropriate criminal responsibility. Only by understanding and applying the doctrine of command responsibility will justice be done for Cambodia and for the myriad victims of the DK regime.



Attempting to get at some parts of the problem of truth, Aristotle devised a system of “logic.” He began with the most self-evident of propositions: “a thing is itself.” This relation is called the “identity,” and can be expressed in symbolic form as “A equals A.” From this simplest of observations, Aristotle proceeded to develop his system of logic, by which we can determine if something makes sense. Using this system, for example, we can construct “syllogisms,” or sets of logical relations.

A classic example of a syllogism is the construct, “All men are mortal, Socrates is a Man, Therefore Socrates is mortal.” However, if we change this just a little bit and say instead, “The statement ‘All men are mortal, Socrates is a Man, therefore Socrates is mortal’ is true,” then we have a problem. This second proposition, strictly speaking, is a misnomer. And it is a misnomer that is responsible for much confusion. Properly stated, the syllogism about Socrates’ mortality is not “true,” but rather it is said to be “valid.” A valid statement is one in which there are no logical inconsistencies, or internal contradictions.

The distinction between truth and validity has caused lots of problems to very smart people for a long time. This can be seen in the history of a branch of mathematics called geometry. Another famous ancient Greek philosopher named Euclid developed a system of mathematics concerned with lines, angles between lines, figures and shapes. This system of geometry bears his name—“Euclidian Geometry”—and it is still an essential element of basic instruction today in schools everywhere in the world, 2,300 years after he invented it. Euclid was a follower of Aristotle, and as such, Euclid’s principles of geometry were built upon and always followed the rules of Aristotle’s Logic. An example of this is the proposition, “In any triangle, two angles taken together in any manner are less than two right angles.” Because this proposition—indeed, all of the propositions in Euclid’s geometry—followed the rules of Aristotle’s logic, Euclid believed that his system described immutable truths of nature. But it turned out that he was not quite right.

Many centuries later, a group of mathematicians including Labachevsky, Bolyai, Gauss and Riemann developed a branch of mathematics now called non-Euclidean geometries. In these systems of geometry,

some of Euclid’s propositions are not true! Going back to Aristotle, to make an analogy, it is possible in non-Euclidian geometry that in some cases, “A is NOT equal to A.” So this gave rise to a terrible debate: which of the geometries is “true,” Euclidian geometry, or non-Euclidian geometry? As often is the case with such things, this dilemma was confusing because it was based on an incorrect question. No geometry is “true.” Rather, just as with systems of logic, a system of geometry is said to be “valid,” because its rules are all internally consistent. Validity refers only to logical consistency of relations among or between propositions. Truth, on the other hand, refers to a relationship between a language statement and an empirical reality in the objective world.

Even so, the ancient Greeks had two different words, both of which translate into English as “truth.” To distinguish between these two terms, I will refer to one as (small-t) “truth” and to the other as (capital-T) “Truth.” One Greek word for “Truth” is “episteme.” This kind of Truth refers to a divine state of true knowledge, something that is accessible only to God or the Gods (depending upon whether one believes in a mono-theistic or a poly-theistic religious philosophy). Episteme means that whole, true knowledge of the Universe that is beyond the grasp of mortal beings such as ourselves. This is omniscience, knowing all about everything. That’s a bit much to expect from you or me!

A second word for “truth” used by the Greeks was “noesis.” This meaning of truth refers to the world of ordinary experience and sense perception. Noesis, then, is in the realm of commonplace human understanding. This kind of truth is that which is sought by scientists. In fact, this meaning of truth is that which is to a certain extent mastered by any successfully functioning human being. One of the greatest thinkers of all time, Albert Einstein, referred to noesis when he made his famous comment, “The most incomprehensible thing about the Universe is that it is comprehensible.”

In that comment, Einstein encapsulated one of the enduring mysteries in the Philosophy of Science. Why does mathematics “work”? Why do scientific theories permit us to so accurately predict so many things about the external world? What is the relationship between those theories and the world

which allows us to understand what is going on around us? In other words, what is the nature of “truth”? This begins to get into questions of metaphysics and ontology, and that’s where the problem of truth starts to get really complicated!.

A philosopher of science named Karl Popper sought to unravel this mystery of why scientific theories seem to “fit” so well to the world. Popper posited that there are different worlds. One world is the “objective” external world, the world filled with stars, planets, plants and animals and so forth. Another world is the “subjective” world, that is, the world which is within each of our minds. He attempted to describe a system by which we humans, locked in our subjective worlds, are able to discover things about the external, objective world. He called this the “logic of scientific discovery.” According to Popper, the way that the logic of scientific discovery works is actually fairly simple.

Popper describes science as the process of creating statements or hypotheses to which one can apply some kind of test. Scientists attempt to prove that particular statements or hypotheses are not true. If they cannot show that the statement is false, then it must be “correct.” This method is called “falsification,” because the goal is to prove things false, and then to accept as correct what cannot be shown to be false. Or at least it is close enough to “correct” to accept until we come across another, better explanation which describes the phenomenon in question more fully, and also cannot be shown to be false. Across years and centuries of testing hypotheses in this way, so Popper argues, complex and sophisticated theories have been devised which help us to understand how the world works, such as the germ theory of disease, or the table of periodic elements. In this way, science seeks and finds a kind of “truth.” But

the kinds of truths discovered in science are only one kind among the sources of truth known to humanity. There are also religious truths, literary truths, and what we might call “political” truths. Followers of the great monotheistic religions—Judaism, Christianity and Islam—believe that truth is handed down by God, and revealed in their scriptures or holy texts. Interestingly, these three religions all “reveal” pretty much exactly the same “truths,” such as ‘thou shall not kill,’ ‘Thou shall not commit adultery,’ and so on. These are moral and ethical principles or rules by which humans are supposed to conduct their lives, and the world is



The comrades





probably a better place for having these truths to live by. At least that is the case when people obey those rules, instead of killing each other in arguments over whose version of the rules is true! Similarly, non-theistic “religions” such as Buddhism and poly-theistic religions like Hinduism also provide rules or “truths” by which people may order their lives, and understand their relationship to the universe.

Some stories that are found in literature also contain another kind of “truth.” The stories handed down by oral tradition in some societies, mythological tales committed to ink and paper and thus preserved, and the writings of great fiction authors often display a distilled wisdom of the ages, a wisdom which counts as another type of truth. For example, the story of Oedipus the King, written by the Greek poet Sophocles more than 2,400 years ago, is not true in any literal sense. Yet the play contains “truths,” insights about the nature of human relations, of hubris, ambition and tragedy. These insights are one of the reasons why this play survives to this day, and is still performed on stage and screen. We can learn important truths by studying it, even if it is entirely based upon fictional events.

Political “truths” are another matter. In the United States, for example, one of the most basic documents of American democracy begins with the words, “We hold these truths to be self-evident, that all men are created equal...” This “political truth” is one of the basic organizing principles for government and politics in America. In Cambodia, to give an example closer to home, many would consider it a “truth” that “The King is the father of the nation and the protector of religion.” This is reflected in the national motto, from Article 4 of the Constitution of the Kingdom of Cambodia: “Nation-Religion-King.” Thus, this is a basic organizing principle for government and politics in Cambodia—though the precise nature of that relationship can

be difficult to understand at times, much as it sometimes is difficult to see how “all men are created equal” always applies in the USA. One of the great men of American letters, Henry Adams, is famously said to have once written, “He really did not care whether truth was, or was not, true.” Perhaps this helps us to distinguish between political truths and some of the other kinds! A friend of mine recently told me a joke about truth. It goes like this: A businessman was looking to hire an accountant to work at his company. Three candidates showed up for the inter-view. The businessman called the first accountant into his office and asked him, “How much is 2+2?” The accountant answered, “Four.” The businessman thanked him and showed him to the door. Then the second accountant came in for his interview, the businessman again asked, “How much is 2+2?” The second accountant also answered, “Four.” The second accountant is then also asked to wait outside. The third candidate for the accountant job then comes into the business-man’s office, and he is asked, “How much is 2+2?” This third candidate then got up from his chair, locked the door to the office, closed the curtains on the window, and whispered into the businessman’s ear, “How much do you want it to be?” The third accountant was hired on the spot. Such a story, though it is a joke, somehow rings true to people in many countries!



S-21 prisoner

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How, then, can we discover the truth about politics? In the Khmer language, the words for “politics” and “cheating” share the same root—and this may reflect a basic cul-tural view that politics is somehow an opposite of anything true! But it is possible to discover truths about politics; we can do this by applying versions of the scientific method. This is a discipline of study which in many western countries called “political science” – some thing which, curiously enough, is not taught in most Cambodian schools. But perhaps it should be taught, because through this means, we can better understand that truths lie behind words and posturing of politicians.

For example, we can think of a hypothetical case where a businessman is awarded a large contract to perform some public work for the state, such as building a new road. We can ask questions about how that contract came to be awarded to that particular businessman. Did the businessman pay bribes or “commissions” to the politicians who awarded the contract? Did the legislators who voted in favor of that contract receive any favors from those who benefit from the legislation? Does one of the politicians happen to own a farm which lies along the path of the new road? Is there any evidence to show that the road will actually benefit the constituents who were cited by the politician in his arguments in favor of awarding the contract? Who exactly will obtain concrete benefits from the contract? Were there other companies who could have built a better road, for a lower cost? Was the decision taken purely in the public interest, or were private interests also served? Are there any documents, or other records of negotiations, which might help to shed light on any of these questions?

In this way, we can begin to unravel the web of interests which underlie such a decision, and begin to get at the “truth” of politics. In an important sense, this is the kind of truth that the Documentation Center of Cambodia tries to find. The motto of the Documentation Center is ‘*Searching for the truth.*’ The kind of truth that the Documentation Center searches for is what the Greeks called noesis; it is the same kind of truth that scientists search for using the logic of scientific discovery described by Karl Popper. DC-Cam searches for the truth about politics in, or more precisely, perhaps, about the administration of the Democratic

Kampuchea regime. Exactly how did so many people die during the Pol Pot time? What did they die from? How many died from starvation? How many died from disease? How many Cambodians were killed by execution? How were those executions organized and carried out? Who gave the orders? When, where and how were those orders transmitted from the people at the top to the people in the rank and file who carried out the orders? What was the organization and who was in command of the security forces of the Khmer Rouge state? Where were the executions carried out? Who were the victims, and who were the killers? These are the kinds of questions DC-Cam seeks to answer.

DC-Cam relies heavily on scientific methods. Political scientists and other social scientists from Europe, Australia and the United States regularly advise the Documentation Center on how to organize the search for the truth in Cambodia using modern scientific techniques. These methods include such things as using satellites in space to help create maps of the Killing Fields; using modern information technologies to organize the information and build computer databases of the findings; and using a variety of other information technologies to preserve, store and reproduce various forms of raw data discovered in the process of the research. Most of all, perhaps, the Documentation Center’s research relies on discovering the bureaucratic paperwork produced by the Khmer Rouge killing machine, paperwork such as memos, notes, orders, execution lists, meeting minutes, and so on. This paperwork describes how the Cambodian genocide was organized, and the Documentation Center has recovered hundreds of thousands of pages of such material. Uncovering and analyzing that information will tell the story of the Cambodian genocide, the stories of its victims, and the stories of its perpetrators. These are stories that Cambodians of present and future generations have a right to know.

Searching for the truth about these questions is the mission of the Documentation Center. As I have suggested in this article, finding the truth and knowing it when we find it is not a simple task. But it is possible to seek the truth, and for Cambodia, it is essential. The Documentation Center will continue to devote itself to Searching for the truth about what happened during the Pol Pot regime, and aims to succeed at the task.



# LEGACY OF THE KHMER ROUGE

By Craig Etcheson

With the disintegration of the Khmer Rouge political organization and the collapse of their military power, Cambodia is nearing the endgame of the epic tragedy of the Khmer Rouge. I have noticed, however, that new expatriates arriving in Cambodia—and indeed, I fear, some who have been here a long while—do not always realize the profound consequences the Khmer Rouge have had on Cambodian society and the Cambodian people. Amid the current debate over how to deal with jailed Khmer Rouge military chief Ta Mok, this seems like an appropriate juncture to discuss the Khmer Rouge legacy and its implications for the future of Cambodia. It is a complex legacy, to be sure, with dramatic effects across the entire range of Cambodian realities—economic, military, social, political and legal.

Let's first consider the economic legacy of the Khmer Rouge. At today's remove, it is difficult to recall that thirty years ago, the Cambodian economy was strong compared to Cambodia's Vietnamese and Thai neighbors. The Khmer Rouge utterly destroyed the Cambodian economy between 1975 and 1979, which was no mean feat insofar as it was primarily a barter and subsistence agrarian economy, though with an emerging modern sector in the urban areas.

Even after the Khmer Rouge were driven from power in 1979, however, the threat of their "return" continued to haunt Cambodia in the form of nearly two decades of festering warfare. For these past twenty years, huge portions of the national budget have been devoted to defending against the return of the Khmer Rouge, meaning that those economic resources were not available for rehabilitation and development. This

legacy shows in the condition of the country's economy and infrastructure.

Further, to support the seemingly interminable war, all sides resorted to rapacious and unsustainable exploitation of natural resources—gems', forests' and fisheries' products—driving the country to the edge of ecological catastrophe, perhaps over the edge. Time will tell about that, but the environmental rape continues even though the war has ended. The current government has pledged to terminate these disastrous policies, and has made some moves in that direction. But the problem is deeply enmeshed in the socio-political structure. Elements of the Royal Cambodian Armed Forces are involved in deforestation.

The "former" Khmer Rouge of the northwest have recently proposed rather grandiose development projects, and those proposals are currently pending at the CDC in Phnom Penh. Ieng Sary's men wish to attract foreign direct investment for infrastructure development projects—large hydro dams for power and agricultural irrigation – and foreign humanitarian aid for social development projects—schools, clinics, demining and so

forth. The European Union has recently announced a grant of \$5.7 million for this latter category of projects in the northwest. In any event, these Khmer Rouge development proposals amply demonstrate how far from their crude Maoist origins Khmer Rouge economic thinking has come. As do the casinos and Vietnamese prostitutes in Pailin.

In the northern former Khmer Rouge zones, old ways of thinking continue to hold sway. Logging and looting of the ancient pagodas for artifacts still appear to be the main forms of economic activity there.



Children of Angkar

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But very soon after one arrives in Cambodia and begins to have relations with ordinary Cambodians, one notices that the psychological legacy of the Khmer Rouge remains profound among the population.

Traditional Cambodian society was organized communally, around village and clan. Despite their rhetoric of social solidarity, the Khmer Rouge shattered the traditional social mode of organization and atomized society, forcing each individual to fend for himself. The legacy of this insane policy is a nation of strangers, where the old concepts of mutual obligation have been deeply eroded. It is as if the leap from traditional society to modernity was done not over a few generations, but rather forced in a few short days.

Oddly, the current government's development policy appears aimed at doing precisely the opposite of what Pol Pot did, a perfect mirror image. Pol Pot sought to develop through total autarky, severing virtually all external economic relations, isolating internal regions one from the other by enforcing self-sufficiency and isolating people one from another by declaring that Angkar, the Organization, was the only permitted object of attachment.

The current regime has reversed this logic. It seeks to build webs of economic relationships with countries near and far, to catalyze domestic commerce by linking the internal regions of the country through improved lines of communication and transport, and by providing a significant measure of freedom and autonomy to the individual. Freedom, of course, provided that the people do not attempt to infringe upon what the leadership sees as its own prerogatives.

This strategy is particularly important when it comes to the former Khmer Rouge zones. The recently departed US Ambassador, Kenneth Quinn, used to tell me about ten years ago that the best way for the United States to destroy the Khmer Rouge was to keep building roads into Khmer Rouge zones. This, he argued, would

contaminate them with alien ideas and commerce, resulting in their disintegration as a cohesive ideological and military force. At the time I thought this was crazy idea, but in the end that's pretty much exactly what happened. I don't know it for a fact, but I would bet that Ambassador Quinn made precisely this same argument to Prime Minister Hun Sen, and he appears to have convinced him.

The long-term social consequences of the government's development strategy may well be profound far beyond their impact on the Khmer Rouge legacy, as rural life becomes tied to urban life in a way never before experienced in Cambodia.

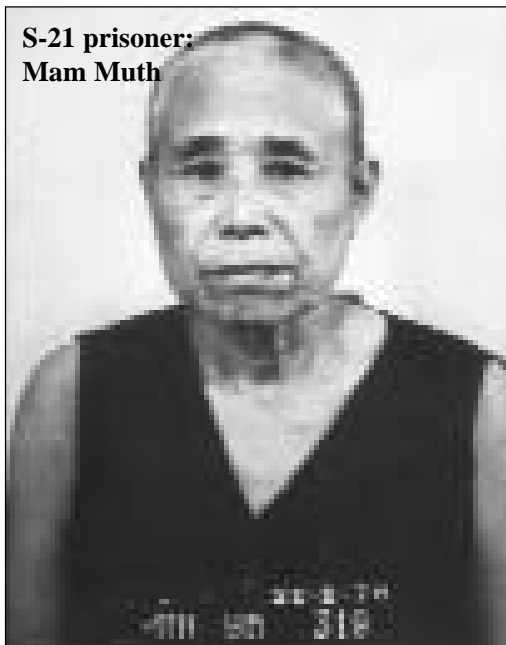
Perhaps the most complex of all the Khmer Rouge legacies is its political legacy. Here, we need only go back to the formative event of the current political scene: July 1997.

In my view, the spark that ignited the July 1997 fighting was singular. Under the influence of a tragically misguided strategy, the royalist forces of the coalition government foolishly attempted to form a military alliance with the Khmer Rouge in an effort to counter the superior strength of Cambodian People's Party (CPP) forces.

Predictably, this was perceived by the CPP not only as a coup d'etat, but indeed as the return of the Khmer Rouge. So the CPP responded in kind. One effect of these dueling coups in 1997 was that the CPP crushed and eliminated the command elements of the royalist armed forces.

Though it was gratuitously savage, this action had the salutary effect of removing a critical axis of structural instability in Cambodia: competing armed forces. Hun Sen thus accomplished the integration of the armies, which had been a key unfulfilled plank of the Paris Accords. It was probably inevitable that this could not be done without spilling some blood. Furthermore, the forcible unification of the RCAF command under the CPP effectively eliminated the

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investigation of Mok had revealed that the genocide had been carried out by a “regime,” by a “political movement,” and that therefore the prosecution of Mok and Duch would not be enough to “achieve justice” for the Cambodian people. This certainly doesn’t constitute much of a revelation for anyone even vaguely aware of modern Cambodian history. But does this signal something important about Hun Sen’s long-term intentions?

Hun Sen has long said that one has to catch the fish before one decides how to fry them. Hun Sen’s frying pan is now getting very warm, and he will be able to drop the fish into the bubbling oil, one by one. But he will do this in his own good time, according to his schedule, rather than on any timetable the international community may attempt to impose. Is there a fundamental disconnect between the international community’s timetable and the Cambodian government’s sense of how quickly to move on the Khmer Rouge issue?

The Chinese have reacted strongly to the possibility of justice for the former Khmer Rouge leadership, pulling out all the stops to defend their former allies. Chinese officials have been actively lobbying both the Cambodian National Assembly and the government in an effort to kill any international role in a Khmer Rouge tribunal, in favor of the Chinese vision of Asian values, where mass slaughter of domestic enemies is nobody’s business. Will Cambodia kowtow before Chinese influence, instead of continuing to move forward toward a society based on the rule of law?

France dispatched a crack team of lawyers to advise the Cambodian government on how to handle a Khmer Rouge tribunal. One can only hope that this team does not include the same French Foreign Ministry personnel who continued to ship weapons to Rwanda’s Hutu genocidaires during and after 1994 slaughter of the country’s Tutsi minority. Does French concern with the matter of genocide justice in Cambodia go beyond attempting to ensure that the official languages of any such tribunal will be Khmer and French?

Meanwhile, the United States, which had devoted significant resources and rhetoric to seeking justice for the Khmer Rouge in recent years, has lately been

missing in action, distracted by the war in Kosovo as well as by domestic political concerns. Hopefully, with a new American ambassador in Cambodia and a strong new ambassador at the United Nations, the lackluster and ineffective leadership of the United States on this issue will receive a much-needed boost. But can US-Cambodia relations survive a failure by Cambodia to cooperate with the international community in bringing the Khmer Rouge justice?

Strong, creative and principled leadership on the issue of genocide justice in Cambodia from the international community is sorely needed, because Cambodia’s leaders appear to be unable either to come to grips with the challenge on their own or to explain to the world why they continue to dither. Prime Minister Hun Sen has an admirable history of moral rhetoric when it comes to justice for the Khmer Rouge. But lately, according to an emerging consensus in the international community, he appears morally lost on this issue.

Now that the time for action on genocide justice has arrived, Ieng Sary is fighting back, ironically, with the very weapon his Khmer Rouge attempted to abolish: money. And this surprise Khmer Rouge cash counter-attack seems to have caught the government completely off guard. As one of the most experienced CPP cadres wryly told me when I recently asked him why the CPP is failing to act in accordance with its historical position on genocide justice, it may be a problem of “cash flow.” Will Hun Sen be able to extract himself from the web of patronage binding his regime ever more tightly to its former nemeses in Pailin?

These are the kinds of questions which are being asked today about the legacy of the Khmer Rouge. The Cambodian people, along with the international community, await the answers with baited breath.

*Please send letters or articles to  
Documentation Center of Cambodia (DC-Cam)  
P.O. Box 1110, Phnom Penh, Cambodia  
Tel: (855) 23-211-875  
Fax: (855) 23-210-358  
Email: [dccam@bigpond.com.kh](mailto:dccam@bigpond.com.kh)  
Homepage: <http://welcome.to/dccam>*









